

Mohd Ghalib s/o Sadruddin v Public Prosecutor
[2002] SGHC 188

Case Number : MA 99/2002
Decision Date : 24 August 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Gurdaib Singh (Gurdaib, Cheong & Partners) for the appellant; Ivan Chua Boon Chwee (Deputy Public Prosecutor) for the respondent
Parties : Mohd Ghalib s/o Sadruddin — Public Prosecutor

Criminal Law – Statutory offences – Prevention of Corruption Act – Giving misleading information to CPIB – Whether information misleading – s 28(a) Prevention of Corruption Act (Cap 241, 1993 Ed)

Criminal Law – Statutory offences – Prevention of Corruption Act – Giving misleading information to CPIB under cover of another person's name – s 28(b) Prevention of Corruption Act (Cap 241, 1993 Ed)

Criminal Procedure and Sentencing – Sentencing – Giving misleading information to CPIB – Giving misleading information to CPIB under cover of another person's name – Whether appellant's sentence manifestly excessive – s 28 Prevention of Corruption Act (Cap 241, 1993 Ed)

Evidence – Witnesses – Expert witness – Whether trial judge correct in accepting expert witness's opinion that appellant wrote letter

Judgment

GROUND OF DECISION

This was an appeal against the decision of district judge Audrey Lim who convicted the appellant on three charges under the Prevention of Corruption Act (Cap 241). The first two charges were under s 28(a) of the Act for knowingly giving misleading information relating to an offence under the Act to the Corruption Practices Investigation Bureau ('CPIB') by a letter allegedly written by the appellant. The third charge was under s 28(b) of the Act for knowingly giving misleading information to the CPIB by writing the letter in the name of another person. The appellant was sentenced to six weeks' imprisonment on each charge, with the terms of imprisonment on the first and third charges to run consecutively, thus totalling 12 weeks' imprisonment. The appellant appealed against both conviction and sentence. I dismissed the appeal and now give my reasons.

The facts

2 Sometime in late June 2000, the CPIB received a letter ('the letter') dated 27 June 2000, addressed to one Osman bin Ahmad, a Senior Special Investigator at the CPIB. The letter contained several allegations surrounding officers from the Traffic Police, namely one Steven Tang ('Steven'), then Officer-in-Charge of the Transport Section ('OC Transport'), and his superior DSP Loh Kim Hock ('DSP Loh') who was then the Head of Administration ('Head Admin'). In particular, two of the allegations formed the subject matter of the first and second charges.

3 The first allegation stated that at the Traffic Police, Steven

became very close to present Head Admin DSP Loh Kim Hock, by doing personal favours and errands for him. Being obligated, Loh Kim Hock appointed him as OC Transport despite so many hues and cries from other staff of TP. There were other competent officers for the post of OC Transport but were left out.

The second allegation stated that:

The present towing company namely Eng Bee Chop is awarded contract every year by the present Head Admin Loh Kim Hock. We believe there is something fishy.

4 The back of the envelope containing the letter bore the name of one Paul Anthony ('Paul'), who was another officer of the Traffic Police. This formed the subject of the third charge, in that the appellant, also a Traffic Police officer, had given misleading information to the CPIB, namely that one Paul Anthony had written the letter.

Decision of the trial judge

5 The trial judge was satisfied, based on the handwriting analysis of document and handwriting examiner Yap Bei Sing ('Yap') as well as surrounding circumstances, that it was the appellant Ghalib who had written the letter. She accepted Yap's expert opinion on the basis that he was able to "conclusively" say that it was Ghalib who had written the letter after finding that the appellant's normal and request specimen handwriting tallied with that in the letter. She found no reason to disagree with Yap, as this was a matter outside the technical competence of the court. Noting that Yap was an experienced expert who had examined about 3000 cases, of which 85% comprised handwriting examination and signature verification, she was satisfied that his opinion was formed on the basis of sound reasoning as he had explained how he compared the letter against the handwriting of Paul and Ghalib. She also found him to be a reliable witness who had maintained neutrality and impartiality in exercising his judgment, having readily admitted that document examination was not an exact science but an opinion science and that there would be variations in a person's handwriting.

6 The trial judge followed the decision of the Court of Appeal in *Saeng-Un Udom v PP* [2001] 3 SLR 1 which held that:

the court should not, when confronted with expert evidence, which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and prefer to draw its own inferences. While the court is not obliged to accept expert evidence by reason only that it is unchallenged... if the court finds that the evidence is based on sound grounds and supported by basic facts, it can do little else than to accept the evidence.

7 She also looked at surrounding circumstances which indicated that the writer of the letter was more likely to be someone in the Traffic Police because it was signed off by a "group of police officers from TP" and in fact the envelope bore the name of "Paul Anthony", an officer from the Traffic Police. The writer must have been quite close to Paul because Paul testified that he was known to his friends as "Paul Anthony". He must also have been quite familiar with Steven, DSP Loh and the Traffic Police based on the contents of the letter. For instance, he could allude to Steven's prior posting at Security Branch, that he had resigned and subsequently rejoined the Police Force, that he was in Transport Unit and was promoted to OC Transport when DSP Loh was Head Admin, and that Eng Bee Chop had been the towing contractors of the Traffic Police for many years. An outsider would not have readily known this.

8 In addition, the trial judge was of the opinion that the writer must have been aggrieved by Steven's promotion to OC Transport which occurred in June 2000, around the time when the letter was written, and he would more probably than not be someone who was working with Steven or under him in the same department and who did not get along with him. The writer also must have borne a grudge against DSP Loh because of the allegation of impropriety in the letter. In this respect, Paul and Ghalib had openly admitted in their testimonies to being unhappy with and bearing a grudge against DSP Loh and Steven. The trial judge ruled out Paul as the culprit on the basis of Yap's expert opinion as well as the reasoning that Paul would not have blatantly used his name in writing the letter especially when he had already been investigated and charged previously for filing an anonymous complaint. Instead, she was satisfied that Ghalib was the writer of the letter as it was dated 27 June 2000, shortly after Ghalib failed in his delivery duties during the National Day rehearsals on 24 June 2000 and shortly after DSP Loh told Ghalib on 26 June 2000 that formal investigations would be carried out to take disciplinary action against him. Moreover, the letter was posted at Tanjong Pagar, which according to DSP Loh, was near Ghalib's residence and it was addressed to a CPIB officer known to Ghalib.

9 As such, she was satisfied that Ghalib was the writer of the letter and he had knowingly given misleading information to the CPIB. She held him guilty on the third charge.

10 As for the first charge, the trial judge was of the opinion that the material information which was misleading was not whether there was much hue and cry over Steven's appointment but rather the allegation that DSP Loh had appointed Steven as OC Transport because he was obligated to Steven for running personal errands and favours. Thus although she accepted that there was dissatisfaction among some of the officers on Steven's appointment and he was not popular among certain quarters, she held that the information in the letter was nevertheless misleading as there was no evidence that Steven had done personal favours and errands for DSP Loh nor that there was any impropriety in DSP Loh's appointment of Steven as OC Transport.

11 With regards to Ghalib's and Paul's accusations that Steven was hanging pictures and painting carpark lots as a personal favour to DSP Loh during the Traffic Police's shift to its new premises at Ubi Avenue, the trial judge accepted that it was part of Steven's administrative duties to carry out these tasks along with other officers and noted that this was done in the open and not surreptitiously. She rejected Paul's testimony that Steven had informed him that he was running personal errands for DSP Loh in order to get a promotion. This was done on the basis of Steven's own denial and her opinion that it would have been foolish of Steven to have blatantly declared this to anyone, especially to his subordinate, even if he indeed had such an ulterior intent. She bore in mind the fact that Paul had an axe to grind as he was still angry with DSP Loh and Steven whom he regarded as being responsible for his dismissal from the Police Force and treated his testimony with caution. Ghalib was also unable to give details of the alleged personal favours and claimed to have merely heard this from Paul. She was further convinced that DSP Loh had appointed Steven on merit as it was the former OC Transport SSgt Chong Kok Chong ('Chong') and not DSP Loh who recommended Steven for the promotion and DSP Loh even instructed Steven and the then Asst OC Transport SSgt Mohd Noh ('Mohd Noh') to reverse appointments upon the latter's promotion to staff sergeant. This was supported by Steven's testimony.

12 The trial judge went on to find that Ghalib had fulfilled the *mens rea* requirement of the offence in that he clearly knew the allegations to be misleading. This was due to the fact that Ghalib had said he was very sure and "felt very strongly" that the allegations were true, but he could not give a convincing explanation for this. He alleged that he had heard "a lot of" officers were unhappy with Steven's promotion but did not name these officers. He then said that he heard about Steven doing personal favours for DSP Loh from only two persons, namely Paul and another colleague Lum Kar Kit ('Lum'), but again could not elaborate on what those personal favours and errands were. There was no evidence from Lum on this at all and the trial judge had earlier rejected Paul's testimony that Steven had openly informed him that he was running personal errands for DSP Loh in order to get his promotion. As such, she held that the prosecution had proved its case beyond reasonable doubt on the first charge.

13 The trial judge again found no merit in the second charge. She accepted the testimonies of all the prosecution witnesses on the tender process and award since they were consistent and not challenged by the defence. DSP Loh was neither a part of the evaluation committee nor the Tender Board. Though he was the one who ultimately endorsed the former's recommendation, he had to have some proper basis for so doing. There was no evidence to show any inducement or favour given by Eng Bee Chop to anyone in order to obtain the contract year after year. The tender was also an open one with no restrictions on related companies tendering, so it did not matter that two of the three tenderers in 2000 were related companies. Most importantly, the trial judge noted that as DSP Loh became Head Admin only in June 1999 and was involved in only one tender process, it could not be said that Eng Bee Chop was awarded the contract every year by DSP Loh.

14 She further found that Ghalib knew this information to be misleading and had no basis for making such an allegation. He would have known that DSP Loh only became Head Admin in June 1999, as prior to this, he was serving in the Gurkha Contingent, which was not part of the Traffic Police. Moreover, although Ghalib did not know how the tenders were evaluated and awarded, he knew that Eng Bee Chop had been the Traffic Police's towing contractors for many years, even before DSP Loh joined the Traffic Police. Thus he must have known that it was impossible for DSP Loh to have awarded the towing contract every year to Eng Bee Chop and, as such, that there could not be anything "fishy" about DSP Loh's dealings with Eng Bee Chop. Hence she found that the prosecution had proved its case beyond reasonable doubt on the second charge.

The appeal against conviction

15 The appeal against conviction was based on the ground that the trial judge had erred in her finding of facts by wrongly accepting or rejecting certain testimonies at trial. However the appellate court, if it wishes to reverse the trial judge's decision, must not merely entertain doubts as to whether the decision is right but must be convinced that it is wrong: *PP v Azman bin Abdullah* [1998] 2 SLR 704.

(a) Accepting that it was the appellant who had written the letter and rejecting Lum's evidence

16 There appeared to me no reason why the trial judge should have rejected Yap's expert opinion that it was Ghalib who wrote the letter. The trial judge had already accepted that document examination was not an exact science but an opinion science and there would be variations in a person's handwriting. However, she considered this admission on Yap's part to be a sign of his neutrality and impartiality and found him to be a reliable witness. In addition, she was also correct in following the decision of *Saeng-Un Udom v PP* and not rejecting Yap's uncontested expert testimony.

17 I also found that the trial judge was correct in treating Lum's testimony regarding the handwriting in the letter with caution, given the manner in which he vacillated during his testimony. He first claimed familiarity with Ghalib's handwriting and then failed to recognise samples of it. When told that one of the handwriting samples belonged to Ghalib, Lum then claimed that he could now recognise the handwriting by reading the contents of the sample, whereas he had earlier only "glance(d) through" the document. The trial judge considered that Lum had in fact taken some time with the document and questioned Lum on this. Lum then conceded that he in fact could not recognise Ghalib's handwriting "at a glance". Given this inconsistency, the court could not be expected to rely on Lum's testimony.

(b) Rejecting Paul's testimony that Steven had informed him that he was running personal errands for DSP Loh in order to get his promotion

18 The trial judge had already given clear reasons for rejecting Paul's testimony on this. First, she found Paul to be a partial witness as a result of his grudge against DSP Loh and Steven whom he regarded as being responsible for his dismissal from the Police Force. Secondly, she reasoned that it would be foolish of Steven to declare such an intention to anyone, let alone a subordinate. Finally, she paid careful attention to the testimonies of the witnesses concerning the errands in question, namely the painting of carpark lots and the hanging of pictures on the wall, and came to the conclusion that they were within the official scope of Steven's work and were done in full view of other officers. In my opinion, this finding of fact could not be said to be plainly wrong.

(c) Concluding that there was no reason for DSP Loh to be 'obligated' to Steven and to promote him on this basis

19 The trial judge had already considered all the evidence which showed that DSP Loh was not directly responsible for Steven's promotion. Instead, it was Chong who admitted to having first recommended Steven. Another witness, SSI Pong Siang Yin ('SSI Pong'), who was Steven's immediate supervisor and DSP Loh's subordinate, also concurred with the promotion. There were also sufficient and convincing reasons for promoting Steven instead of Mohd Noh, the other candidate whom Paul and Ghalib favoured. Steven had better computer skills and Mohd Noh was reluctant to assume a leadership post. Even the defence witnesses conceded that Steven was suitable for the appointment. Most importantly, DSP Loh lacked motive to promote Steven at the risk of corruption charges since Steven had apparently done no more than to paint carpark lots and hang up paintings for him. Besides the fact that they are, even from an outsider's point of view, administrative duties within the normal scope of a police officer's job, they also do not benefit DSP Loh in any apparent manner. In the absence of other evidence of the alleged "personal errands or favours", I found that the trial judge was not wrong to hold that there was no reason for DSP Loh to promote Steven because he was obligated to him.

(d) Concluding that the appellant had downplayed his role and had behaved out of line and was told to put on full uniform when performing his duties

20 Counsel's basis for this point of appeal was that p 135 of the Notes of Evidence suggested that Ghalib was told to put on full uniform only after DSP Loh was called up for investigation by the CPIB. The prosecution rebutted this by showing that the Notes of Evidence had in fact revealed that the recommendation for Ghalib to put on full uniform came as early as when Chong was still the Transport OC. I accepted the prosecution's submission on this matter and came to the conclusion that Ghalib had borne a grudge against his superiors as a result of this recommendation even before DSP Loh was investigated by the CPIB and before the letter was written, thus providing him the motive to write a letter to frame his superiors.

21 In addition, there were many witnesses testifying to Ghalib's poor work performance. The trial judge found SSI Pong, Mohd Noh and Chong to be truthful, credible and consistent witnesses who had nothing to gain from their testimony as they were not implicated in any way. Moreover, she noted that DSP Loh was no longer SSI Pong's and Mohd Noh's superior at the Traffic Police at the time of this case and hence they had nothing to fear from giving unfavourable testimonies against DSP Loh or Steven who had also left the police force. Chong also said that he was a good friend of Ghalib and SSI Pong testified that she had tried counselling Ghalib to change his ways instead of taking drastic action against him. This showed that they bore no grudges against Ghalib. As for DSP Loh and Steven, the trial judge was also of the view that they were reliable and honest, as their testimonies with regard to material matters, such as the allegations contained in the letter as well as Ghalib's work attitude were largely supported by the other witnesses. All these considerations showed that the trial judge was not wrong in accepting that Ghalib had a very poor work attitude.

(e) Concluding that the appellant was a "dishonest and evasive" witness

22 The trial judge found Ghalib to be a dishonest and evasive witness because he was unable to elaborate on what the alleged personal favours and errands were despite feeling "very strongly" that the allegations were true. He also kept changing his answers when queried as to the source of this information. In addition, he claimed to be a model worker who did not pose any problems to his superiors, was always punctual, did all duties assigned to him and never attended any counselling sessions. This was contradicted by Steven, Chong, SSI Pong and DSP Loh. Even Lum, the defence witness, testified that Ghalib did come to work late and leave early, albeit giving reasons for so doing, and was told to put on full uniform when performing his duties. In fact, after Ghalib stated categorically that he was a good worker, he then reluctantly admitted that he had attended counselling sessions with SSI Pong and said that Chong had also given him "friendly advice". Moreover, it was clear that he was unhappy with Steven and DSP Loh, the two implicated by the allegations in the letter and this could have an impact on the partiality of his statement. I found that the trial judge's reasons fully supported her findings and she had the opportunity to observe the demeanour of the witnesses before coming to this conclusion.

(f) Rejecting or ignoring evidence that there were "hues and cries" surrounding Steven Tang's appointment

23 I found this point of appeal to be without basis because in para 58 of the trial judge's Grounds of Decision, it was clearly explained that "the material information that was misleading was not whether there was much "hue and cry" on Steven's appointment or whether other competent officers had been left out. Rather the crux of the allegation which was misleading was that DSP Loh had appointed Steven as OC Transport because DSP Loh was obligated to him for running personal favours and errands, and not because Steven was qualified for the post." First of all, this meant that the trial judge did not ignore the fact of "hues and cries" surrounding Steven's promotion. Secondly, as the trial judge pointed out, that was not what was misleading. Whether it was true or not would not have made a difference to Ghalib's charge because what he was charged for was knowingly providing false or misleading information regarding a Prevention of Corruption Act offence. It was the motive behind Steven's promotion that could lead to such an offence, not the response to his promotion. Whether there were "hues and cries" surrounding someone's promotion does not necessarily have a bearing on whether that person was promoted by corrupt means, since the person who is a suitable candidate to the boss may not be a suitable candidate to the subordinates and such is a fact of life.

(g) Not giving sufficient weight to the fact that DSP Loh ultimately endorsed the evaluation report and that it would have been sufficient to influence the Evaluation Committee to award the contract in Eng Bee Chop's favour

24 I dismissed this point of appeal for two reasons: first, it was an undisputed fact that DSP Loh had been involved in no

more than one tender and it was therefore misleading anyway for the letter to allege that he awarded Eng Bee Chop towing contracts every year. Secondly, the trial judge had carefully considered the whole tendering process and found that DSP Loh, for that one and only tender he was involved in, was not on either the tender evaluation committee nor the Tender Board, and therefore played no more than a minimal role. To say that he could have influenced the tender process was to regard the whole tender procedure, specially put in place by the Police Force to prevent any one individual from exercising substantial influence, as ineffectual. There was no evidence that this was so and thus I gave this point no weight.

(h) Failing to adequately consider the implications when Travelwide and Eng Bee Recovery tendered for the same contract and that Richard Tan is in charge of both companies

25 It was clear that there was nothing in the tender exercise that precluded related companies from tendering for the same contract. It was also not shown what the "implications" were. The fact that these two related companies had tendered for the same contract was not relevant to DSP Loh and in any case there was no indication that DSP Loh was aware of this fact. The defence counsel highlighted SSI Pong's testimony where she admitted to being surprised to learn that two of the tenderers were related companies but in the absence of any evidence showing that this was against the tender rules, I could not attribute any corrupt motive behind this fact.

26 For the reasons given, I upheld the trial judge's decision and dismissed the appeal against the appellant's conviction.

The appeal against sentence

27 The sentence was for a term of six weeks' imprisonment per charge, with two sentences to run consecutively, thus totalling 12 weeks' imprisonment. Having regard to the maximum sentence of a fine not exceeding \$10,000 or a term not exceeding one year's imprisonment or both, this was a comparatively light sentence. The trial judge bore in mind that this was a deliberate act by the appellant to falsely implicate another person of corrupt practices and was not done to absolve or protect the writer from some wrongdoing. Furthermore, the allegations were made by a police officer, whose duty was to maintain law and order, against fellow police officers. In addition, the envelope bore the name of another person and the effect was to cause great inconvenience to the CPIB in having to investigate not just the alleged person complained of but also the purported writer. The appellant had also claimed trial. The trial judge felt the circumstances meant that a fine would have been inappropriate. However, she took into account the fact that Ghalib was a first offender and the three charges related to the same letter.

28 The trial judge considered the only High Court precedent relating to the same offence – *Balasundaram v PP* [1996] 2 SLR 331 – where the accused was sentenced to a term of three months' imprisonment on one charge, though the accused had antecedents. She also considered s 182 of the Penal Code (Cap 224), a fairly similar offence, and found the sentences ranging from two weeks' to four months' imprisonment (*Lai Oei Mun Jenny v PP* [1993] 3 SLR 305; *Madavi d/o Sethu Pillay v PP* (MA 75 of 1993); *Oh Chor Lan v PP* (MA 410 of 1993); *Kulandaivelu Palaniyappan v PP* (MA 227 of 1996); *Thirumalai Kumar v PP* [1997] 3 SLR 434; and *PP v Muhammad Baharuddin bin Amat* (MA 20 of 1999)).

29 The section under which Ghalib was charged was added in July 1989 by the Prevention of Corruption (Amendment) Act to update and tighten the provisions because, as the then Minister for Law Prof S Jayakumar explained during the second reading of the Bill on 11 July 1989, previously persons who deliberately gave false information to the CPIB could only be prosecuted under s 182 of the Penal Code which carried a maximum penalty of six months' imprisonment or a fine of \$10,000 or both. It was felt that this penalty was insufficient to deter persons from deliberately giving false or misleading information to the CPIB. He felt that persons who commit such offences must be subjected to greater penalties because "their action can not only detract the CPIB in its investigations but can cause a great deal of harm to others". Bearing in mind therefore that s 28 is for the very purpose of meting out a heavier sentence, it is unsurprising that the sentence in question, when compared against the spectrum of sentences under s 182 of the Penal Code, is on the higher end. I therefore found the sentence not manifestly excessive and saw no reason to interfere with the sentence imposed by the trial judge.

Conclusion

30 For the reasons stated above, I dismissed both the appeals against conviction and sentence.

Appeal dismissed

Sgd:

YONG PUNG HOW

Chief Justice

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