Sun Hongyu v Public Prosecutor
[2005] SGHC 72

Case Number : Cr Rev 4/2005

Decision Date : 13 April 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Lim Kim Hong (Kim and Co) for the petitioner; April Phang (Deputy Public Prosecutor) for the respondent

Parties : Sun Hongyu — Public Prosecutor

Constitutional Law – Accused person – Rights – Whether accused's right to legal counsel extending to right to contact third parties to enquire into right to counsel or legal consequences of arrest

Criminal Procedure and Sentencing – Revision of proceedings – Whether petitioner allowed to challenge unequivocal admission of statement of facts at trial by disputing facts contained therein at application for criminal revision – Whether petitioner understanding nature and consequences of plea of guilt – Whether circumstances warranting criminal revision

Immigration – Control of admission – Petitioner prohibited from entering Singapore without obtaining prior written permission from Controller of Immigration – Petitioner obtaining visa and visit pass and returning to Singapore using new passport – Whether petitioner failing to get "written permission" of Controller under s 36 Immigration Act – Meaning of "written permission" under s 36 of Act – Whether appropriate to charge petitioner under s 36 of Act – Section 36 Immigration Act (Cap 133, 1997 Rev Ed)

13 April 2005

Yong Pung How CJ:

1 The petitioner filed a petition for criminal revision to quash her conviction and set aside the sentence imposed on her on 7 February 2005 by the District Judge (the "judge") on one charge of unlawful return to Singapore under s 36 of the Immigration Act (Cap 133, 1997 Rev Ed) ("the Act"). I dismissed the application and now set out my reasons.

The facts

2 The petitioner was arrested on 11 January 2005. Investigations revealed that she had been previously arrested on 20 June 2003 for vice activities whilst on a valid social visit pass, and referred to the Immigration and Checkpoints Authority ("ICA") for repatriation. At that time, she was in possession of a People's Republic of China passport with the serial number G05643970 bearing the name Sun Hongyu (the "old passport").

3 Prior to being deported to China on 23 June 2003, the petitioner was served a ban notice by an immigration officer in Mandarin. She was informed that she was barred from entering Singapore for one year from 23 June 2003 to 23 June 2004. She had to obtain the prior written permission of the Controller of Immigration (the "Controller") should she wish to return to Singapore, and failure to do so would render her liable to be imprisoned for between one and three years. The petitioner accepted the notice and acknowledged that she knew the consequences of breaching it.

4 The petitioner subsequently obtained a new People's Republic of China passport with the serial number G09322619 bearing the name Sun Qiaoman (the "new passport"). Using the new passport, she re-entered Singapore on 20 June 2004. She had not obtained written permission from

the Controller beforehand, and upon arrival in Singapore she did not disclose that she was under a prohibition.

5 In statements recorded under s 122(5) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), the petitioner admitted that she knew that the entry ban imposed on her was in force, that she had to obtain prior written permission before visiting Singapore, and that she knew the consequences of failing to obtain permission.

6 At the trial, the petitioner, who was then unrepresented, pleaded guilty to the charge under s 36 of the Act. She admitted without qualification to the Statement of Facts (the "SOF"), which set out the facts in the preceding paragraphs. Three other charges under s 57(1)(*k*) of the Act involving false statements made to ICA were taken into consideration. The judge convicted the petitioner, sentenced her to one year's imprisonment, and ordered that she be repatriated upon completion of her sentence.

The petitioner's submissions

7 Before this court, the petitioner made the following submissions:

(a) her unequivocal admission to the SOF was qualified because she was under the mistaken impression that the entry ban imposed on her ran from 20 June 2003 and not 23 June 2003, and she could not recall being informed that she required prior written permission to re-enter Singapore;

(b) she believed that ICA was fully aware of her true identity, and that she had re-entered Singapore lawfully on 20 June 2004;

(c) she should not have been charged under s 36 of the Act, as she had obtained a visa and visit pass and therefore could not be said to have re-entered Singapore without the Controller's written permission;

(d) her cautioned statements were involuntary or, alternatively, that she was compelled to admit to the charges against her under undue influence as the immigration officer handling her case (the "Officer") had told her that she would otherwise face additional charges in respect of her engagement to one Lee Liat Yeong and a longer term of imprisonment; and

(e) she had been denied the right to contact and consult her family, friends and fiancé.

The law on criminal revision

8 The High Court's powers of revision in respect of criminal proceedings and matters in subordinate courts are conferred by s 23 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) and s 268 of the Criminal Procedure Code. Pursuant to these powers, the High Court has the discretion to, amongst other things, review a conviction passed by the subordinate courts. However, the very scope of these powers obliges the court to act with great circumspection in exercising them, and these powers will be exercised sparingly: *Mok Swee Kok v PP* [1994] 3 SLR 140. It is not the purpose of a criminal revision to become a convenient form of "backdoor appeal" against conviction for accused persons who had pleaded guilty to their charges: *Teo Hee Heng v PP* [2000] 3 SLR 168.

9 For the court to exercise its revisionary powers, there must be some serious injustice. No precise definition of serious injustice is possible as that would unduly circumscribe the discretion of

the court. However, it must generally be shown that there is something palpably wrong in the decision of the court below that strikes at its basis as an exercise of judicial power: *Ang Poh Chuan v PP* [1996] 1 SLR 326, *Mohamed Hiraz Hassim v PP* [2005] 1 SLR 622. The revisionary court should confine itself to errors of law or procedure, and deal with questions of evidence or findings of fact only in exceptional circumstances to prevent a miscarriage of justice: *Sarjit Singh s/o Mehar Singh v PP* [2002] 4 SLR 762, *Shan Kai Weng v PP* [2004] 1 SLR 57.

The petitioner's plea of guilt

10 Before a plea of guilt is accepted, the trial judge must ensure that the plea is valid and unequivocal. A plea must be unequivocal in the sense that, it must signify without doubt and qualification the accused's admission to all the ingredients of the offence and all the averments in the charge: *Rajeevan Edakalavan v PP* [1998] 1 SLR 815. For the plea to be valid, the test set out in *Ganesun s/o Kannan v PP* [1996] 3 SLR 560 and followed in *Rajeevan* must be satisfied. First, the court must ensure that it is the accused himself who wishes to plead guilty. Second, the court must ascertain whether the accused understands the nature and consequences of his plea. Third, the court must establish that the accused intends to admit without qualification the offence alleged against him. In *Chan Chun Yee v PP* [1998] 3 SLR 638, I had also said that the plea of guilt of an unrepresented person was not more easily vitiated than that of a represented person, and that the plea was not vitiated by the accused's ignorance of possible defences.

11 The petitioner's submissions, that her admission of the SOF was actually qualified because of her mistake as to when the entry ban was in force and her ignorance of the requirement for prior written permission, sought to vitiate the validity and unequivocal nature of her plea of guilt. This is because the third limb of the test in *Ganesun s/o Kannan* requires the accused pleading guilty to admit to all the ingredients of the offence contained in the statement of facts without qualification: see *Rajeevan* and *Shan Kai Weng* ([9] *supra*).

12 Section 36 of the Act reads as follows:

> Any person who, having been removed or otherwise lawfully sent out of Singapore, enters or resides in Singapore without the permission in writing of the Controller shall be guilty of an offence and shall on conviction be punished with imprisonment for a term of not less than one year and not more than 3 years and shall also be liable to a fine not exceeding $6,000, and shall in addition be liable to be removed from Singapore.

13 The elements of the offence under s 36 were set out in *Ma Teresa Bebango Bedico v PP* [2002] 1 SLR 192 ("*Ma Teresa*") at [11]. These were that:

(a) the accused had been removed from or sent out from Singapore;

(b) he entered or resided in Singapore; and

(c) he did not have the Controller's written permission to be in Singapore.

The petitioner's claim of ignorance of the need for the Controller's permission sought to attack the most critical aspect of the Prosecution's case against her.

14 I rejected the petitioner's arguments on this point. The charge and SOF were perfectly clear. The Notes of Evidence of the proceedings in the District Court indicated that the petitioner had pleaded guilty to the charge after it had been read and explained to her in Mandarin. She had

indicated that she understood the charge, and understood the nature and consequences of her plea.

15 Turning to the SOF, the offence under s 36 of the Act was made out. The petitioner was repatriated to China on 23 June 2003 after being served with the ban notice. She was also informed of the requirement for prior written permission from the Controller before re-entering Singapore. She returned to Singapore on 20 June 2004 without obtaining the Controller's permission. She admitted that she had consciously decided to re-enter Singapore with the new passport, as she knew the old passport had been coded with the entry ban. Had she used the old passport to re-enter Singapore, the Immigration Officer at the checkpoint would have been alerted to her immigration status.

16 The petitioner failed to object to the SOF at trial. This flew in the face of her assertion before this court that she had informed the Officer upon her arrest of her mistake as to her entry ban and her ignorance of the requirement for prior written permission, and that she had no intention to admit to contravening her ban despite the Officer telling her to admit to this. Assuming her story to be true, she would have known of the basis on which she could dispute the SOF, and could have easily raised her objections when she appeared before the judge. Yet, all she said in court was that she was remorseful and pleaded for leniency. In these circumstances, the petitioner could not now challenge her unqualified admission to the SOF and dispute the facts therein: *Koh Thian Huat v PP* [2002] 3 SLR 28 at [21], *PP v Oh Hu Sung* [2003] 4 SLR 541.

Knowledge of ICA

17 The petitioner submitted that ICA knew that the names Sun Hongyu and Sun Qiaoman both referred to her, and that she had re-entered Singapore under the impression that she had not contravened any immigration regulations. The implication was that ICA was somehow estopped from prosecuting her. This was a wholly untenable argument.

18 First, there was no connection between ICA's knowledge of the petitioner's true identity and her admission of the SOF at trial. The illogical nature of this proposition was self-evident. Also, from a plain reading of s 36 of the Act, and in light of the decision in *Ma Teresa* ([13] *supra*), it was irrelevant to the charge against the petitioner whether or not ICA knew her true identity.

19 Next, the petitioner submitted that she had no intention to deceive ICA as to her true identity or to conceal it. She had submitted certain certificates, which referred to her as Sun Hongyu, in support of her application for a student's pass through the Nanyang Institute of Management in April 2004. ICA had rejected her application in a letter dated 8 July 2004, where she was referred to as Sun Hongyu. Undeterred, the petitioner reapplied for a student's pass in August 2004, this time through the Thames Language School, and submitted the same supporting documents. ICA rejected this application in a letter of 17 September 2004, this time referring to her as "Sun Hongyu @ Sun Qiaoman".

20 However, I had made it clear in *Ma Teresa* that neither fraud nor the breach of a duty to disclose the entry ban was an element of the offence under s 36 of the Act. Hence, it was irrelevant whether or not the petitioner intended to deceive ICA. In any event, the petitioner's claim that she had not intended to deceive ICA was undermined by the three charges under s 57(1)(*k*) of the Act that had been taken into consideration. These charges involved false statements made on three different occasions by the petitioner to ICA that she had never used a passport under a different name to enter Singapore, and had never been prohibited from entering Singapore.

21 Further, it was telling that the petitioner obtained the new passport on 27 Feburary 2004, after she had been deported from Singapore, and used it to re-enter Singapore. If she truly believed

that she was not in breach of Singapore immigration regulations, there would have been no reason for her to use a different passport and assume a different identity. While the new passport indicated that it had been issued to replace the old passport, it did not indicate that Sun Qiaoman was also known as Sun Hongyu. Without the old passport, there would have been no way to discover, by looking at the new passport alone, that the two names referred to the same person – the petitioner.

22 That the two rejection letters from ICA referred to the petitioner as Sun Hongyu did not show that ICA knew her true identity when she re-entered Singapore. The two applications for a student's pass were prepared by the respective schools and were not in evidence, and it would be inappropriate for me to speculate on the reasons why ICA referred to the petitioner in the letters by the name of Sun Hongyu. Nevertheless, it could not be said that the references were acknowledgements by ICA that the petitioner had given notice of the changes in her name and passport number, when the letters stated, without more, that the applications had been rejected. There was nothing to suggest that the new passport had been included as a supporting document for either application, even though the new passport had been issued before the applications were made. Most importantly, both letters were issued after the petitioner had re-entered Singapore on 20 June 2004. Consequently, she had already contravened s 36 of the Act when the letters were issued.

The Controller's written permission

23 Counsel for the petitioner argued that the petitioner should not have been charged under s 36 of the Act. Persons who were not Singapore citizens can lawfully enter Singapore only if they possess one of the documents listed in s 6. Since the petitioner had obtained a visa and visit pass on 20 June 2004, she came within s 6 and had therefore obtained written permission from the Controller as required under s 36. Counsel relied on various grounds to contend that s 36 ought to apply only to prohibited immigrants who had entered Singapore by illegal means such as human smuggling.

24 The relevant part of s 6 of the IA reads as follows:

> 6. — (1) No person, other than a citizen of Singapore, shall enter or attempt to enter Singapore unless —
>
> (*a*) he is in possession of a valid entry permit or re-entry permit lawfully issued to him under section 10 or 11;
>
> (*b*) his name is endorsed upon a valid entry permit or re-entry permit in accordance with section 12, and he is in the company of the holder of that permit;
>
> (*c*) he is in possession of a valid pass lawfully issued to him to enter Singapore; or
>
> (*d*) he is exempted from this subsection by an order made under section 56.

25 I was unable to accept counsel's argument. Section 6(1) of the Act is plainly of general application to all persons entering Singapore who are not Singapore citizens, whereas s 36 (see [12]) deals only with persons who have previously been removed or otherwise lawfully sent out of Singapore. The requirement for the Controller's written permission applies to these persons as an additional requirement that must be satisfied before they can lawfully re-enter Singapore. The petitioner undoubtedly fell within the class of persons targeted by s 36, and her failure to obtain prior

permission meant that she had breached that provision. The fact that she had made two (ultimately unsuccessful) applications for a student's pass could not excuse her non-compliance with s 36, and the legality of her re-entry in terms of obtaining a visa and visit pass was not a relevant issue here.

26 Written permission in the context of s 36 could only mean prior written permission. Otherwise, the purpose of s 36, namely to afford the Controller the opportunity to decide if a person who had been removed from Singapore should be allowed entry, would be defeated: *Ma Teresa* ([13] *supra*). Counsel's interpretation of s 36, limiting it to prohibited immigrants who re-enter Singapore illegally, would likewise defeat its purpose and narrow its scope without justification. It was ironic that counsel stated that this interpretation was based on a literal reading of s 36, when the wording of s 36 does not limit its applicability.

27 The petitioner had obtained her visit pass on 20 June 2004 when she arrived in Singapore. It was difficult to see how this could amount to prior written permission. Also, she had admitted in the SOF that she had obtained the visit pass because the Immigration Officer did not know of her entry ban and entry requirement, as she had taken steps to conceal the truth from him. These steps included making a false statement that she was not prohibited from entering Singapore. The use of the new passport, bearing a different name, would probably have aided her re-entry as well.

28 There was no basis for the petitioner to complain that she had been wrongly charged under s 36 of the Act. It is trite law that the Prosecution has a wide discretion to determine the charges that may be preferred against an accused person: *Thiruselvam s/o Nagaratnam v PP* [2001] 2 SLR 125. The elements of the offence under s 36 were made out on the facts set out in the SOF. I therefore saw little need to consider the cases cited by counsel for the petitioner such as *Lee Hong Wei v PP* [2001] SGDC 273, which involved charges under s 57(1)(*k*) only and thus shed no light on the petitioner's charge.

29 I also failed to understand counsel's submission that the proposition set out in [23] was based on the disparity between the punishment imposed under s 36, which carries a minimum of one year's imprisonment, and the sentencing benchmarks for other immigration offences such as s 57(1)(*k*). It is certainly not unusual for a single statute like the present Act to provide for a number of offences, each involving different elements and carrying different penalties. The disparity in the penalties imposed between two different criminal provisions creating distinct offences can hardly be the basis for arguing that an accused person should have been charged under one provision and not the other.

The petitioner's statements

30 The petitioner asserted that her cautioned statements were involuntary, and that she had admitted to the charges against her because of the undue influence exercised by the Officer that she would otherwise face a longer period of incarceration as well as additional charges. She claimed that the Officer had "advised" her to admit that she knew the period of her ban and that she needed to obtain prior written permission from the Controller, even though she had informed the Officer otherwise.

31 The petitioner was convicted after she had pleaded guilty and admitted without qualification to the SOF. While cautioned statements had been taken from the petitioner, they were not relied upon at the trial to convict her. Since the issue of the voluntariness of an accused person's statements goes towards the admissibility of those statements as evidence at trial, the petitioner's allegations did not affect her conviction in this case.

32 I agreed with the Prosecution's written submission that there was nothing improper about its offer to proceed on one charge against the petitioner and to take the other three charges into consideration if she agreed to plead guilty. It was not the petitioner's case that when she entered her plea, she did not know exactly what she was being charged with or that she was unaware of the punishment prescribed. She knew the nature and consequences of her plea, as reflected in the Notes of Evidence. There was no evidence of the words allegedly spoken by the Officer. Nowhere in her submissions did the petitioner suggest that the Officer's words influenced her decision to plead guilty or otherwise operated on her mind. There was no evidence of the circumstances in which the words were said that could have raised the possibility of oppression. This was an obvious and feeble attempt by the petitioner to resile from her unequivocal plea of guilt and admission of the SOF.

The petitioner's right to contact her family, friends and fiancé

33 Yet another complaint by the petitioner concerned the Officer's refusal to allow her to call her family, friends and fiancé after her arrest. She claimed that she was thereby deprived of her "fundamental right" to consult these persons on the legal consequences of her actions. She went on to submit that her right to counsel, as protected under Art 9(3) of the Constitution, had been infringed. She did not know of her right to counsel because she was not allowed to contact her family, friends and fiancé.

34 These complaints were totally groundless. It is clearly established under Singapore law that while Art 9(3) protects an accused person's right to be represented by legal counsel of his choice, there is no further right for the accused to be informed of his right to counsel: *PP v Mazlan bin Maidun* [1993] 1 SLR 512, *Rajeevan* ([10] *supra*). By logical extension, there can be no right for the accused to contact third parties to discover and enquire into his right to counsel. Also, there is no fundamental right as alleged by the petitioner for an accused person to contact family and friends to enquire into the legal consequences of his arrest. In the present case, the petitioner's parents, who were in China, certainly could have offered little assistance with regards to her legal problems in Singapore.

Conclusion

35 It was notable that the petitioner's submissions did not at any point assert that the judge had committed an error of law or procedure at her trial, let alone that serious injustice had been occasioned as a result. Indeed, the general tenor of the submissions was more akin to submissions for an appeal against conviction. Despite the warning in *Teo Hee Heng* ([8] *supra*) that criminal revision should not be used as a backdoor appeal by accused persons who have pleaded guilty, this case was yet another instance where an accused person, having pleaded guilty and then regretting the decision, blatantly tried to circumvent the prohibition on appeals against conviction in such cases by proceeding via criminal revision.

36 The petitioner's conviction and sentence should not be disturbed, for there was nothing to suggest that she had suffered any injustice as a result of the judge's decision that warranted the exercise of the revisionary powers of this court.

Application for criminal revision dismissed.