

Tan Hock Chuan v Tan Tiong Hwa
[2002] SGHC 117

Case Number : Cr Rev 9/2002
Decision Date : 29 May 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Paul Poh Kong Kok (Poh & Co) for the petitioner; Tng Soon Chye (Tng Soon Chye & Co) for the respondent
Parties : Tan Hock Chuan — Tan Tiong Hwa

Criminal Procedure and Sentencing – Revision of proceedings – Entitlement to petition for criminal revision – Orders made pursuant to application for personal protection order under Women's Charter (Cap 353, 1997 Ed) – Whether such proceedings criminal in nature – s 266 Criminal Procedure Code (Cap 68) – s 65(5) Women's Charter (Cap 353, 1997 Ed) – s 23 Supreme Court of Judicature Act (Cap 322, 1999 Ed)

Family Law – Family violence – Orders for protection – Whether application for personal protection order civil or criminal in nature – ss 65(5) & 79 Women's Charter (Cap 353, 1997 Ed)

GROUND OF JUDGMENT

This was a petition for criminal revision by Tan Hock Chuan ('Hock Chuan') as he was dissatisfied with the orders made by District Judge Regina Ow on 3 April 2002. The judge directed that Summons No. SS 5/2002 ("the first summons") and Summons No. SS 754/2002 ("the second summons") were to be heard jointly on 13 May 2002. The first summons was issued against the respondent, Tan Tiong Hwa ('Tiong Hwa'), pursuant to a complaint lodged by Hock Chuan for family violence. The second summons was issued against Hock Chuan pursuant to a complaint lodged by Tiong Hwa against Hock Chuan for family violence based on the same incident that the first summons was founded upon.

History of proceedings

2 On 2 January 2002, Hock Chuan lodged a complaint under s 133 of the Criminal Procedure Code, Cap 68 ('CPC') against Tiong Hwa for family violence under s 65(2) of the Women's Charter, Cap 353. The examining magistrate issued the first summons against Tiong Hwa pursuant to s 42 of the CPC. The case was mentioned on 25 January 2002, 21 February 2002 and 27 March 2002 and was fixed for hearing on 13 May 2002.

3 Meanwhile, on 27 March 2002, Tiong Hwa applied for a counter-summons against Hock Chuan for family violence based on the same incident. Pursuant to that application, the second summons was issued against Hock Chuan and mentions was fixed on 3 April 2002 at 9 a.m.. On that date, Hock Chuan, but not Tiong Hwa, appeared in court at the appointed time. Consequently, Hock Chuan successfully applied to strike out the action against him.

4 On 3 April 2002, Tiong Hwa applied for the second summons to be restored in the absence of Hock Chuan. The application was allowed by District Judge Regina Ow. She also ordered that the second summons and the first summons were to be heard together on 13 May 2002 and that the affidavits that were already filed in the first summons were to be used in the joint trial.

The Criminal Revision

5 There were two issues before me. First, whether Hock Chuan was entitled to take out a petition for criminal revision. Secondly, if Hock Chuan was entitled to take out this petition, whether I should exercise the powers of criminal revision in his favour.

6 Criminal revisions are taken out pursuant to s 23 of the Supreme Court of Judicature Act ('SCJA'), Chapter 322, read with s 266 of the CPC. Section 23 of the SCJA reads:

The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with the provisions of any written law for the time being in force relating to criminal procedure.

Section 266 of the CPC reads:

The High Court may call for and examine the record of any *criminal proceeding* before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of that subordinate court.

7 Tiong Hwa raised a preliminary objection to Hock Chuan's petition for criminal revision. He argued that Hock Chuan was not entitled to take out such a petition because the orders made by Regina Ow DJ arose out of an application for a personal protection order under the Women's Charter which is essentially civil in nature.

8 I agreed that Hock Chuan was not entitled to take out a petition for criminal revision. Under s 266 of the CPC, the High Court's power of criminal revision is clearly restricted only to examining the record of *criminal* proceedings. This section was inapplicable in the present case because the orders made by Regina Ow DJ arose out of *civil* proceedings for family violence governed by the Women's Charter. By s 79 of the Women's Charter, the originating process for an application for personal protection order is a criminal process, i.e. through lodging a complaint with the magistrate under s 133 of the CPC. However, the utilisation of criminal procedure in such proceedings does not automatically make them criminal in nature. More importantly, s 65(5) of the Women's Charter directs the subordinate courts to apply a civil, not criminal, standard of proof in determining whether personal protection orders should be issued. Furthermore, no conviction, fine or criminal record can flow from an application for a personal protection order. As such, cases on family violence are not criminal proceedings to which s 266 of the CPC and s 23 of the SCJA apply.

9 While s 266 of the CPC and s 23 of the SCJA were inapplicable, Hock Chuan was not left without recourse. By ss 24 and 25 of the SCJA, the High Court also has the power to call for and examine the records of any civil proceedings and give such orders thereon to secure substantial justice. The proper mode for invoking the High Court's revisionary jurisdiction over civil matters is to apply for judicial review under Order 53 of the Rules of Court and comply with the specific requirements in that Order. In my opinion, since there is a specific procedure and requirement for the taking out of an application for judicial review, Hock Chuan could not be permitted to circumvent these requirements by applying for criminal revision instead.

10 As I had concluded that Hock Chuan was not even entitled to take out a criminal revision in the present case, it was unnecessary for me to consider the merits of the revision and I declined to do so.

Conclusion

11 For the reasons above, I dismissed this petition for criminal revision.

Sgd:

YONG PUNG HOW
Chief Justice

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