Salwant Singh s/o Amer Singh v Public Prosecutor (No 2)
[2005] SGCA 7

Case Number : Cr App 15/2004

Decision Date : 02 February 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Kan Ting Chiu J; MPH Rubin J

Counsel Name(s) : The appellant in person; Christopher Ong Siu Jin (Deputy Public Prosecutor) for the respondent

Parties : Salwant Singh s/o Amer Singh — Public Prosecutor

Criminal Procedure and Sentencing – Record of proceedings – Whether appellant entitled to copy of notes recorded at pre-trial conference of criminal case – Whether pre-trial conference part of criminal proceedings – Whether notes recorded at pre-trial conference forming part of "record of proceedings" in Criminal Procedure Code – Section 400(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

2 February 2005

Chao Hick Tin JA (delivering the judgment of the court):

1 This was an appeal by Salwant Singh ("the appellant") against the decision of Lai Kew Chai J where he rejected the appellant's application to set aside the decision of the Registrar of the Subordinate Courts ("the Registrar") refusing the appellant's request for a copy of the notes of the pre-trial conferences held by the Registrar or the district judge in relation to certain cheating charges which were then pending against him in the Subordinate Courts. We dismissed the appeal on 22 November 2004 for the reasons set out hereunder.

The background

2 In 1999, the appellant was a director and majority shareholder of an information technology service company, Infoseek Communications (S) Pte Ltd ("Infoseek"), which was providing services to the United Overseas Bank ("UOB"). He fraudulently overcharged UOB in respect of the services rendered and fled to India. He was tracked down two years later and extradited to Singapore. He faced a total of 765 charges of cheating under s 420 of the Penal Code (Cap 224, 1985 Rev Ed). On 20 May 2003, before the District Court, he pleaded guilty to five charges in the presence of his counsel, Mr Chandra Mohan Nair, with the rest of the charges being taken into account for the purpose of sentencing. The court then adjourned sentencing to enable his counsel to prepare a mitigation plea on his behalf.

3 On 22 May 2003, following the request of the Deputy Public Prosecutor ("DPP") for an order for preventive detention, the District Court called for a pre-sentencing preventive detention report. At the time, the appellant did not allege that the DPP had breached an undertaking. Some two weeks later, the appellant sought to retract his plea of guilt to the five charges but it was rejected. The district judge disbelieved the appellant's assertion that there was a deal with the Prosecution that it would not press for a deterrent sentence and sentenced him to 12 years' preventive detention. The DPP filed a notice of appeal on the ground that the sentence imposed was manifestly inadequate. This was followed by the appellant appealing also against sentence. He claimed that, in fact, he also wanted to appeal against conviction but was advised that as he had pleaded guilty to the charges, it was only possible to appeal against sentence.

4 On 14 August 2003, the cross-appeals came before the High Court and the Chief Justice dismissed his appeal but allowed the Public Prosecutor's appeal by enhancing his sentence to 20 years' preventive detention. The Chief Justice also rejected his attempt to retract his plea of guilt and did not accept his allegation that the Prosecution had "cowed and deceived him" into pleading guilty.

5 After he was formally charged and before he pleaded guilty before the district judge on 20 May 2003, the appellant had attended several pre-trial conferences ("PTCs"), with the attendance of the DPP by way of video-link. At the earlier PTCs, he was represented by counsel. But later, he appeared in person. Following his appeal being dismissed in the High Court on 14 August 2003, the appellant, on 23 October 2003, requested the Registrar for the notes recorded by the district judge or Registrar at the various PTCs, including any video recording and whatever orders or directions issued at those hearings. This request was turned down by the Registrar.

6 Nevertheless, the appellant made a formal appeal to the Registrar, purportedly pursuant to O 55B of the Rules of Court (Cap 322 R 5, 2004 Rev Ed), to ask again for the notes of the PTCs. On 24 June 2004, the Registrar advised the appellant that his "appeal" had no legal basis in law.

7 This led to the appellant filing, on 10 September 2004, Criminal Motion No 20 of 2004 in the High Court seeking, pursuant to O 55B of the Rules of Court, to appeal against the Registrar's decision on the ground that he was entitled to the notes as they formed "part of the record" within the meaning of s 400(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC").

8 When the criminal motion came before Lai Kew Chai J on 10 September 2004, it was clear that no video recording had been taken of the PTCs. Thus, there was no question of there being any such recordings that could be furnished to the appellant. As regards the handwritten notes taken at the PTCs by either the district judge or Registrar, Lai J noted that as the PTCs only dealt with the administrative aspects of case management and no judicial decisions were made at the PTCs, the notes recorded thereat did not form part of the "record of proceedings" within the meaning of s 400(1) of the CPC. It was against this decision of Lai J that the appellant filed the present appeal.

Our decision

9 The basis upon which the appellant sought to obtain the notes of the PTCs was s 400(1) of the CPC, which reads:

> If any person affected by a judgment or order made by a criminal court desires to have a copy of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished with it by the court.

He relied in particular on the expression "or other part of the record". It is important to bear in mind the context in which this expression appears. Clearly, such "other part of the record" must relate to the proceedings or trial in which a judgment or order affecting the appellant was made. The appellant had not alleged that at any of the PTCs, the district judge or Registrar had made any order affecting him. His grouse was essentially that the investigating officer had promised him that if he were to plead guilty to the charges, the Public Prosecutor would not ask for a deterrent or enhanced sentence. Thus, he alleged that at one of the PTCs, the DPP had even informed District Judge Wong Keen Onn that the Public Prosecutor would "leave sentencing to the court".

10 For the hearing of the cross-appeals before the High Court, all relevant records of the

proceedings at which he pleaded guilty to the five charges, the rest being taken into account, were furnished to him and placed before the Chief Justice. Unlike PTCs in civil proceedings, which are governed by the Rules of Court, a PTC in a criminal case is not provided for in the CPC or any other statute. It is really a procedure initiated by the courts for the purposes of case management with the aim of encouraging disclosure and the narrowing down of issues to facilitate the trial of the case. Only when the PTC judge thinks that the case is ready for trial will a date be allocated to it. This ensures that there will not be any unnecessary adjournment and precious judicial time will not go to waste. Thus, what took place at the PTCs did not form part of the criminal proceedings in which the appellant was convicted and sentenced, and the notes taken at the PTCs were irrelevant to the cross-appeals.

11 The above is sufficient to dispose of the appellant's grounds of appeal. However, we would hasten to add that it does not follow that just because s 400(1) of the CPC does not apply that the court could not, pursuant to its inherent jurisdiction, have ordered the production of the notes taken at the PTCs. Here, we must have regard to what transpired at the trial and at the appeal before the High Court.

12 While the appellant did assert before the district judge who imposed the sentence that there was an understanding with the Prosecution relating to the sentence, the DPP denied what he termed "scandalous and baseless allegations". The DPP said:

> In fact, during the plea bargaining process on 20 May 2003 where the accused requested … the prosecution not to submit on sentence, I informed the accused and his counsel, in the presence of the IO, that the prosecution *will* submit on sentence. The [appellant] understood the prosecution's position and signed on the cancellation of his request of not submitting on sentence on his written representations to acknowledge it. [emphasis in original]

13 This position averred by the Prosecution is wholly consistent with an exchange of letters between the appellant and the DPP. In his letter of 14 April 2003 to the DPP, written on his behalf by his wife, the appellant made, *inter alia*, the following requests:

> 3. I further urge you to proceed [on] only 5 charges and to "take into consideration" all remaining charges …
>
> 4. Finally, I request that you:
>
> a. Inform the honourable court of my co-operation in/during the police investigation,
>
> b. Do not seek a deterrent sentence.

14 In his reply of 14 May 2003, the DPP stated:

> 2. I write to inform you that if you are willing to plead guilty to 5 out of the 765 charges which you are facing in Court 19 on 20 May 2003 and express your intention to do so early, the prosecution will apply for the remaining charges to be taken into consideration for the purpose of sentencing as we have indicated during the pre-trial conference on 29 April 2003.
>
> 3. Please be informed that the prosecution will be taking no further action against your wife … in respect of this matter.

15 It would be noted that there was no agreement by the Prosecution to the appellant's request not to press for a deterrent sentence. More pertinent is the fact that, on 22 May 2003, when the DPP asked for preventive detention, there was no outcry of breach of understanding by either the appellant or his counsel. All the appellant submitted at that juncture was that the imposition of preventive detention in the circumstances of the case would be too harsh. This is most telling.

16 In any event, when the appellant raised the allegation on the day of sentencing, the district judge rejected it as "mere ploys to delay his sentence". As mentioned earlier, the point that he was "deceived" into pleading guilty was taken on appeal before the Chief Justice who, having perused the record of the District Court, did not think it had any merit. The Chief Justice duly dismissed his appeal. There is no further "appeal" available to him.

17 As an aside, we should add that the appellant had earlier in 2004 made an application to, *inter alia*, review the propriety of the action of the Commercial Affairs Department in seizing the property of Infoseek and seek the return of certain documents seized on that occasion. The documents and other property were handed over to the Official Receiver as the liquidator of Infoseek. The outcome of that application was addressed in our judgment of 5 October 2004 reported at [2005] 1 SLR 36.

18 Thus, as far as his conviction and sentence for the cheating charges were concerned, the appellant had exhausted all legal recourse. His applications (including that mentioned in [17] above) were nothing more than attempts to reopen the charges on which he had been convicted and sentenced. We did not think that the court should grant the request in the exercise of its inherent jurisdiction. What he was seeking to do was vexatious, amounting to an abuse of legal process. The process of the court must be used *bona fide* and properly. The court will prevent the improper use of its machinery: see *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374 at [22].

Appeal dismissed.