

Re Thor Beng Huat
[2006] SGHC 166

Case Number : OS 1155/2006, SUM 2575/2006
Decision Date : 22 September 2006
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lee Lit Cheng (Deputy Public Prosecutor) for the Public Prosecutor; Spencer Gwee (Spencer Gwee & Co) and Kertar Singh (Kertar & Co) for the respondent/applicant
Parties : —

Courts and Jurisdiction – High court – Whether court having jurisdiction to make restraint orders prior to conviction – Whether sufficient grounds existing to discharge such orders – Sections 15(2) (a), 16 Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed)

22 September 2006

Choo Han Teck J:

1 This was an application by Thor Beng Huat to discharge the orders of the High Court made previously under ss 16 and 17 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) (“the Act”). Pursuant to those orders the applicant was enjoined from disposing of various assets set out in Originating Summons 1155 of 2006. These assets included a Porsche 911T motor car (“the Porsche”), the balance of proceeds of the sale of a Maserati QP motor car (“the Maserati”), amounting to \$59,015.79, the balance of proceeds of the sale of a Lamborghini motor car (“the Lamborghini”) amounting to \$234,135.77, as well as money in various accounts with the United Overseas Bank.

2 The injunction order was made *ex parte* by Kan Ting Chiu J on 19 June 2006. Prior to that, similar orders were made by Tan Lee Meng J on 19 September 2005 and Belinda Ang Saw Ean J on 16 December 2005. These orders were, by virtue of s 15(4) of the Act, discharged after three months. Hence, on 20 March 2006, the Public Prosecutor obtained a further extension from Tan J. The application before Kan J was to extend the orders of Tan J for another three months.

3 Mr Gwee appeared on behalf of the applicant and submitted that this was the first case in which a restraining order had been made before conviction. I am not aware whether it is indeed so, but I am not concerned with that. In order to succeed, the applicant needed to persuade me that there was no jurisdiction to grant such orders. Sections 15 and 16 of the Act provide as follows:

Cases in which restraint orders and charging orders may be made

15.—(1) The powers conferred on the High Court by section 16(1) to make a restraint order and by section 17(1) to make a charging order are exercisable where —

- (a) proceedings have been instituted against the defendant for a drug trafficking offence or a serious offence, as the case may be;
- (b) the proceedings have not been concluded; and
- (c) the Court is satisfied that there is reasonable cause to believe that benefits have

been derived by the defendant from drug trafficking or from criminal conduct, as the case may be.

(2) Those powers are also exercisable where the High Court is satisfied —

(a) that a person has been officially informed under section 122(6) of the Criminal Procedure Code (Cap. 68) that he may be prosecuted for a drug trafficking offence or a serious offence, as the case may be; or

(b) that investigation for a drug trafficking offence or a serious offence, as the case may be, having been commenced against a person, he dies or cannot be found or is outside the jurisdiction,

and that there is reasonable cause to believe that benefits have been derived by that person from drug trafficking or from criminal conduct, as the case may be.

(3) For the purposes of sections 16 and 17, at any time when those powers are exercisable before proceedings have been instituted —

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2); and

(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) for a drug trafficking offence or a serious offence, as the case may be.

(4) Where the High Court has made an order under section 16(1) or 17(1) by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable and which shall not in any event exceed a period of 3 months.

Restraint orders

16.—(1) The High Court may make a restraint order to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply —

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to all realisable property held by a specified person, being property transferred to him after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 17.

(4) A restraint order —

(a) may be made only on an application by the Public Prosecutor;

(b) may be made on an ex parte application to a Judge in chambers; and

- (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order —
- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the drug trafficking offence or serious offence, as the case may be, are concluded.
- (6) Where the High Court has made a restraint order, the Court may at any time appoint the Public Trustee or any person as receiver —
- (a) to take possession of any realisable property; and
- (b) in accordance with the directions of the Court, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the Public Trustee or such receiver.
- (7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) —
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from Singapore.
- (8) Where the High Court has made a restraint order, an authorised officer may, for the purpose of preventing any realisable property being removed from Singapore, seize the property.
- (9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the High Court.

4 On a plain reading of the above provisions, I am satisfied that the court has jurisdiction to make such orders prior to conviction. Section 15(2)(a) of the Act applied directly to the undisputed facts of this case. Investigations had commenced against the applicant and he was outside the jurisdiction. Upon his return to jurisdiction on 11 March 2006, he was officially informed (under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)) that he could be prosecuted for an offence under s 408 read with s 109 of the Penal Code, (Cap 224, 1985 Rev Ed) which is a "serious offence" as defined in the Second Schedule of the Act.

5 Mr Gwee submitted that the applicant has returned to the jurisdiction to face any investigation or charge against him. The main thrust of his argument was that the assets belonged to the applicant legitimately and were not from any illegal activities. It was not disputed that the applicant is a brother-in-law of Ng Teck Lee ("Ng"), the chief executive officer of Citiraya Industrial Limited. Ng and his wife, Thor Chwee Hwa, the sister of the applicant, were being investigated for misappropriating computer chips and receiving a sum of about US\$50m from the sale of those chips. Some of this money was deposited or transferred from Ng's account to his wife's account. The investigators believed that some of the money was also transferred to the applicant. All this was

denied by the applicant. He claimed that all the assets were legitimately his.

6 The applicant's income tax returns showed that his annual income in 1998 was only \$36,536. This rose to \$600,017.92 in 2004. More significant than the spectacular rise in annual income is the fact that in 12 months beginning 7 February 2004, he purchased three luxury cars that cost more than his annual income. The Porsche was purchased for \$720,000, the Maserati for \$360,000 and the Lamborghini for \$1.1m. Although they were bought on hire purchase, the purchases were well beyond his stated income.

7 The applicant claimed that he had legitimate business interests in China that enabled him to lead the ostensibly extravagant lifestyle. There was no credible evidence to support this contention. I am thus of the view that there were reasonable grounds for Kan J to have made the orders on the Public Prosecutor's *ex parte* application, and am not persuaded that there were sufficient grounds to discharge the orders.

8 Mr Gwee also complained that the police had taken an inordinately long time and had not charged the applicant. Ms Lee for the Public Prosecutor submitted that the applicant had just returned and the police needed time to verify his statement. In the circumstances, I was of the view that it was premature to discharge the orders on that ground as well. The application was accordingly dismissed.