Salwant Singh s/o Amer Singh v Public Prosecutor
[2008] SGHC 164

Case Number : Cr M 17/2008

Decision Date : 24 September 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Applicant 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

24 September 2008

Tay Yong Kwang J:

1 The applicant is presently serving a sentence of 20 years preventive detention. By this application, he seeks the following relief, pursuant to s 327(b) and (c) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)("CPC") and Article 9(2) of the Constitution:

(a) the issuance of an order to the Superintendent of Prisons, directing the production of the applicant before the High Court;

(b) the review of the applicant's continued and unlawful detention;

(c) the applicant's immediate and unconditional release.

2 The said s 327(b) and (c) fall within Chapter XXXIII of the CPC entitled "Order for Review of Detention". Before 1 January 2006, the title of this chapter was "Habeas corpus and directions in the nature of habeas corpus". This change in terminology was made in conjunction with amendments made to the Rules of Court (Cap 322, R5) to simplify civil procedure and to abandon the use of Latin and archaic terms. Section 327 of the CPC provides as follows:

(1) Any person –

(a) who is detained in any prison within the limits of Singapore on a warrant of extradition under any law for the time being in force in Singapore relating to extradition of fugitive offenders;

(b) who is alleged to be illegally or improperly detained in public or private custody within those limits; or

(c) who claims to be brought before the court to be dealt with according to law,

may apply to the High Court for an Order for Review of Detention.

3 Article 9(2) of the Constitution provides:

> Where a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him.

4 On 20 May 2003, the applicant pleaded guilty in a district court to five charges of cheating under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) and consented to have 760 similar charges taken into consideration for the purpose of sentence. He was legally represented at that time. On 11 June 2003, he was sentenced to undergo 12 years' preventive detention. Both the applicant and the Public Prosecutor appealed against this sentence.

5 On 14 August 2003, Yong Pung How CJ heard the appeals. He rejected the applicant's attempt to retract his plea of guilt and dismissed his appeal. The applicant had alleged that the prosecution had "cowed and deceived him" into pleading guilty. Yong CJ allowed the prosecution's appeal and enhanced the period of preventive detention to the maximum of 20 years provided by law. The applicant is now serving this period of preventive detention.

6 On 11 May 2004, the applicant took out Criminal Motion No. 9 of 2004 for a review of the seizure of certain property by the Commercial Affairs Department and the return of seized documents. He wanted the property and the documents returned in order to appeal to the Court of Appeal to prove that he was innocent of the charges on which he had been convicted. On 28 May 2004, Lai Siu Chiu J dismissed this application on the ground that it had no legal basis as that the applicant had exhausted all avenues of appeal in respect of his conviction and sentence.

7 Undaunted by this, the applicant proceeded to file Criminal Motion No. 16 of 2004 for essentially the same relief as that sought in Criminal Motion No. 9 of 2004. On 26 August 2004, Choo Han Teck J dismissed this further application.

8 The applicant then filed Criminal Motion No. 20 of 2004 to apply for an order to set aside the decision of the Registrar of the Subordinate Courts who had refused his request for a copy of the notes of the pre-trial conferences held in relation to the cheating charges which were then pending against him. On 10 September 2004, Lai Kew Chai J dismissed this application. The applicant appealed to the Court of Appeal in Criminal Appeal No. 15 of 2004.

9 On 21 Sept 2004, the Court of Appeal dismissed the applicant's application in Criminal Motion No. 18 of 2004, taken out pursuant to s 50 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), for an extension of time to appeal against Lai Siu Chiu J's decision at [6] above (see the Court of Appeal's decision in Salwant Singh v PP [2005] 1 SLR 36). The Court of Appeal noted at [22] of that decision that there was no further avenue of appeal available to the applicant in relation to his conviction and sentence.

10 On 22 November 2004, the Court of Appeal heard and dismissed Criminal Appeal No. 15 of 2004, which was the appeal against Lai Kew Chai J's decision at [8] above (see the Court of Appeal's decision in Salwant Singh s/o Amer Singh v PP (No. 2) [2005] 1 SLR 632). The Court of Appeal reiterated (at [18] of that decision) that:

> 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].

The application mentioned in [17] of the judgment of the Court of Appeal was the application heard and dismissed by Lai Siu Chiu J at [6] above.

11 In his lengthy written submissions in the present application, the applicant is essentially seeking to "prove his conviction [was] unlawful and sentence illegal" and to "expose the malicious prosecutions conducted" in the Subordinate Courts and in the High Court by two named "wily" deputy public prosecutors. The said deputy public prosecutors were alleged to have had "vile intents" and to have misled the courts "to impose draconian punishments" on the applicant. The prosecution was also said to have "conducted fraud on the court". The applicant also wishes to adduce "fresh and newly discovered evidence, which shall irrefutably and conclusively disprove the fraud and faulty evidence fabricated by the Prosecution and upon which solely his conviction was held by the District Judge, and further sustained by the former Chief Justice, who enhanced his sentence". He also wishes to place before the court "facts material to legal processes of his unlawful conviction whereby the District Judge purposefully disregarded grossly contradicting facts tendered by the applicant's defence counsel, which additionally invalidated his already ambiguous plea of guilty".

12 In the Malaysian case of Re Gurbachan Singh's Application [1967] 1 MLJ 74, the High Court there was also dealing with a case where the applicant, whose appeal against conviction and sentence had already been dismissed by a High Court, was applying for a writ of habeas corpus on the ground that his conviction was wrong in law because of the trial judge's refusal to admit certain evidence. Yong J in that case, in considering the equivalent of our s 327 CPC, said (at 74):

> In my view the proper or improper admission or non-admission of evidence by the trial court in convicting an accused person is not a good ground for granting *habeas corpus. Habeas corpus* is not a means of appeal against conviction and sentence. If convicted persons are not satisfied with the trial court's judgment, their remedies lie in their appeal to the High Court, the Federal Court or even to the Privy Council if they can. *Habeas corpus* should not be used as a means of appeal. …

After considering several authorities, the judge concluded (at 75):

> These cases have established unequivocally the principle that a writ of *habeas corpus* cannot be granted to persons who are serving sentences passed by courts of competent jurisdiction. In this case there is no doubt whatsoever, that unless the applicant's conviction is set aside by the proper appellate court, he is lawfully in custody, serving a lawful sentence.

Accordingly, the judge refused the application.

13 I agree with the principles expressed in Re Gurbachan Singh's Application. It is quite obvious that the applicant in the present case is again seeking to reopen his conviction and sentence. It is equally obvious that his conviction and sentence were ordered by a court of competent jurisdiction and the appeal therefrom has been heard by the appellate court specified by law. There could be no argument also that the enhanced sentence was unlawful in any way. It has certainly not expired yet. The applicant is therefore clearly in lawful custody.

14 As noted by the Court of Appeal at [10] above, the applicant's case has gone through the entire legal process and there is really nothing more he can do to challenge his conviction and sentence. The present application is merely a continuation of the vexatious applications that the

applicant has been making to the High Court and it has absolutely no merits in law. He is clearly abusing the process of the court. I therefore dismissed the application.

15 Section 335 of the CPC provides:

> No appeal shall lie from an order directing or refusing to direct the issue of an Order for Review of Detention or from an order made under section 328 but the Court or Judge may at any time adjourn the hearing for the decision of a Court consisting of 3 or more Judges.

Despite having been informed that no appeal lies from this decision refusing him an Order for Review of Detention, the applicant has appealed to the Court of Appeal in Criminal Appeal No. 8 of 2008 anyway.