Yuen Wai Loon v Public Prosecutor
[2009] SGHC 160

Case Number : MA 209/2008

Decision Date : 10 July 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Wong Siew Hong (Infinitus Law Corporation) for the appellant; Hay Hung Chun (Attorney-General's Chambers) for the respondent

Parties : Yuen Wai Loon — Public Prosecutor

Statutory Interpretation – Construction of statute – Private Investigation and Security Agencies Act (Cap 249, 1985 Rev Ed) – Applicability and scope of s 18 – Whether s 18 was of general application or confined only to specific class of people – Section 18 Private Investigation and Security Agencies Act (Cap 249, 1985 Rev Ed)

10 July 2009 Judgment reserved.

Choo Han Teck J:

1 The Appellant is a Malaysian national working in Singapore for Singapore Airlines. While on a trip to Phuket in Thailand he bought several truncheons and placed them in his check-in luggage for the flight back to Singapore. The truncheons were detected when the Appellant's luggage was scanned at the Singapore Budget Terminal upon the Appellant's arrival back in Singapore on 28 February 2007. A year later, on 25 February 2008 the Appellant was charged under section 18(1) of the Private Investigation and Security Agencies Act (Cap 249), ("PISAA"). PISAA was repealed on 27 April 2009. The governing legislation has been re-enacted in the Private Security Industry Act (Cap 250A) ("PSIA"). The Appellant was convicted under s 18(1) of the PISAA and sentenced to pay the maximum fine of $1,000 and in default to serve one week's imprisonment. Section 18 of the PISAA provided as follows:

> 18(1) Any person who in any public place carries or has in his possession or under his control any truncheon, handcuffs, or such other weapon or equipment as may be from time to time specified by the Minister in a notification in the *Gazette*, otherwise than with lawful authority shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding one month or to both.
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> [Emphasis added]

2 The appellant appealed against conviction and sentence. His counsel submitted that s18 did not apply to members of general public and that the District Judge ("DJ") erred in finding that there was a case to answer when he called on the defence. The purposive approach in the interpretation of statutes was discussed and explained in *PP v Low Kok Heng* [2007] 4 SLR 183. Section 9A(1) of the Interpretation Act (Cap 1, 2002 Rev. Ed.) encourages a purposive approach in the interpretation of statutes in order to promote the underlying purpose behind the legislation. A purposive interpretation requires the court to approach the literal wording of a statutory provision bearing in mind the main purposes of that provision and the Act in question. It is not necessary for the provision to be ambiguous or inconsistent provision before a purposive approach to statutory interpretation is taken.

3 The Appellant's counsel argued that s 18 did not apply to persons who do not carry on or

purport to carry on the business of or act as private investigators or carry on the business of a security guard agency. The DJ rejected this argument and held that s18 was of general application and not confined to persons connected with or engaged in the private investigation and security business. The DJ was of the opinion that:

> (a) the words "any person" occur regularly throughout the Act and there was no indication anywhere in the Act that the word "any person" has limited application and should only refer to persons who are in the business of private investigation or security agency.
>
> (b) While s 18 is targeted at the employees of private investigations or security guard agencies, it does not state that it is restricted only to that class of persons.
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> (c) Since its enactment, s18 has been used to prosecute individuals who have had prohibited items in their possession without lawful authority, eg, *Kuai Cheng Yan & Anor v PP* (unreported).
>
> (d) there is material in parliamentary debates that s18(1) was equally applicable to persons in general.

I incline to the defence counsel's argument. Section 18(1) was not of general application. First, the Preamble to the PISAA reads as follows:

> An Act to provide for the licensing and control of those persons who carry on the business of or act as private investigators or carry on the business of a security guard agency and for purposes connected therewith

The purpose of the statute was to regulate people who carry on or purport to carry on the business of private investigators or security guards. The statute was not meant to be of general application. The entire Act concentrated on the regulation of the business of private investigators and security guards. The Minister for Health and Home Affairs said in the parliamentary debate on the PISAA Bill:

> The Bill seeks to regulate and control the activities of persons who carry on the business of a private investigator or of a security guard agency and to provide for the licensing thereof

On section 18, the Minister said:

> Effective control over the types of weapons that employees of private investigation or security guard agencies may use is provided by clause 18

When the PISAA was repealed and re-enacted as PSIA, s 18 was not re-enacted in the PSIA. Instead it was moved to the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev. Ed.) ("MOA"), which is an Act of general application to the public. Counsel rightly pointed out that the move from an industry specific statute to a penal statute of general application should incline the court in interpreting s18 to the view that the section as it existed in the PISAA did not apply to members of the general public. The offence under the MOA now reads:

> 22A(1) Except as provided in this section, no person shall, in any public place, carry or have in his possession or under his control (whether or not in the performance of his functions as a private investigator, security officer or security service provider licensed under the Private Security Industry Act (Cap. 250A)) any truncheon, handcuffs, or such other weapon or equipment as may from time to time be specified by the Minister in a notification published in the *Gazette*.

(2) Any private investigator, security officer or security service provider licensed under the Private Security Industry Act, or any other person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding one month or to both.

4 The learned DPP submitted that during the passage of the Private Security Industry Bill, the Home Affairs Minister said:

> Sir, I think there are certain categories who may be allowed to carry truncheons and handcuffs. Because it is not just security guards or private investigators or whichever category who are currently licensed to do so under this particular Act. There could be others who were given permission under other legislation. And that is why that particular provision is moved to the Miscellaneous Offences Act.
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> Every day, every month, we do see people bringing in such items from overseas and it keeps our ICA very busy because as part of the security screening, ICA has to make sure that contrabands such as these are not brought in by unlicensed people. So, anyone who is caught carrying such items will be committing an offence and therefore, he will be dealt with under the Miscellaneous Offences Act, rather than under the Private Security Industry Act

The learned DPP thus argued that this made it clear that s 18(1) of the PISAA was intended for general application to "any person". In my opinion, while it might have been the intention to make the section applicable to the general public, Parliament did not do so then. And moving the section to the MOA clarified this. Consequently, I am of the view that the appellant who was not carrying on the business of a private investigator or security guard was not a person to which s18 applied. It is also important that in the interpretation of a criminal statute, any doubt or ambiguity should be resolved in the accused person's favour.

5 The appeal is therefore allowed and the fine is to be refunded to the appellant.