

Public Prosecutor v Amir Hamzah Bin Mohammad
[2012] SGHC 165

Case Number : Magistrate's Appeal No 6 of 2012
Decision Date : 13 August 2012
Tribunal/Court : High Court
Coram : Chan Sek Keong CJ
Counsel Name(s) : Leong Wing Tuck and Ma Hanfeng (Attorney-General's Chambers) for the appellant; The respondent in person.
Parties : Public Prosecutor — Amir Hamzah Bin Mohammad

Criminal Procedure and Sentencing – Sentencing

13 August 2012

Chan Sek Keong CJ:

1 This was an appeal by the Public Prosecutor against the sentence of six weeks' imprisonment imposed on Amir Hamzah bin Mohammad ("the Respondent") by the District Judge ("DJ") for an offence under s 409 of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC") committed by him when he was serving national service in the Singapore Police Force. He was found guilty after an 18-day trial for committing criminal breach of trust in respect of cash amounting to \$893.75 in his custody as a public servant (see *Public Prosecutor v Amir Hamzah Bin Mohammad* [2012] SGDC 52 ("the GD")). The Respondent had finished serving his sentence prior to the hearing of the appeal.

2 At the conclusion of the hearing of the appeal, I allowed the Public Prosecutor's appeal and sentenced the Respondent to six months' imprisonment. I now set out the reasons for my decision.

Facts

3 The Respondent, currently aged 24 years, was attached to the Found and Unclaimed Property Office ("FUPO") at the Police Logistics Base located at No 1 Hemmant Road, Singapore. His duties in FUPO were to collect lost-and-found properties that were deposited at various police divisions and to bring them back to FUPO. To carry out his task every day, he was provided with a van which he drove without an escort. The apparent weakness in this working procedure led to the offence being committed. The workflow, in brief, was as follows:

(a) Drivers from FUPO would collect from the police divisions the lost-and-found properties which were individually sealed in polymer bags. The FUPO driver was required to acknowledge receipt of the items by signing a "collection list". A copy of the collection list would then be faxed to FUPO.

(b) The FUPO driver, upon bringing the lost-and-found properties back to the holding area in FUPO, was required to segregate them into three separate categories, marked "Traceable", "Public Transport" and "Untraceable". The descriptions of the lost-and-found properties would subsequently be entered into the Police CRIMES 2 computer database ("the CRIMES 2 system").

(c) At the material time, FUPO had an existing backlog of lost-and-found properties waiting to

be registered and processed. Lost-and-found properties were often registered into the CRIMES 2 system about two to three months after they were brought back to FUPU. As a result, the supervisors had also stopped checking against the collection lists items that the drivers had handed in from their collection rounds.

(d) To handle the existing backlog of cases, different registration priorities were set for the different categories of lost-and-found properties. Items in the "Traceable" category were given higher priority and registered sooner, whereas items in the "Untraceable" category were given lower priority in registration. Cash was classified under "Untraceable" as there was no information allowing the Police to trace the owner. Once an item was registered in the database, it would be deposited in a safe.

4 On 21 September 2010 at about 11.15am, the Respondent collected a total of 32 polymer bags from Clementi Police Division Headquarters ("D Division"). He was the only FUPU officer involved in the collection from D Division on that day and time. The Respondent noted from the collection list that there was a polymer bag that contained cash exceeding \$800 (numbered "FA 31203") and two other polymer bags, each containing \$1000 cash. He signed the collection list to acknowledge receipt of the polymer bags.

5 The Respondent then hid FA 31203 under the driver's seat in his van before heading to the next police division to collect other lost-and-found properties. When the Respondent returned to FUPU at noon that day, he brought all the lost-and-found properties that he collected into the office of FUPU, except FA 31203 which the Respondent left under the driver's seat of the van. This omission went undetected as there were then no proper checks in place, due to the backlog of registrations.

6 A few days later, the Respondent took the cash from FA 31203. On 27 September 2010, the Respondent used part of the money to pay for his car insurance premium amounting to \$839.08.

7 Unbeknown to the Respondent, the \$893.75 in FA 31203 was the cash equivalent of gaming chips that were found at the premises of Resorts World Sentosa ("RWS") which was subsequently handed over to the Police. On 8 October 2010, one Mr Tan Kim Tong showed up at FUPU with a memorandum from RWS, seeking to claim a sum of \$194 from FA 31203. At that point, the counter officer, W/Sgt Parameswari d/o Arumugam, discovered that FA 31203 could not be located at FUPU.

8 As a result, FUPU conducted a thorough physical search for FA 31203. The search party included the Respondent. An audit of the records of FUPU was also done in the process. The FUPU management encouraged the culprit responsible to own up. As this was unsuccessful, a police report was lodged regarding this matter. After investigations, the Respondent was charged, as follows:

... sometime between the 21st day of September 2010 and 19th day of November 2010, at Police Logistics Base located at No. 1 Hemmant Road, Singapore, being entrusted with cash amounting to \$893.75/- in your capacity as a public servant, [you] committed criminal breach of trust in respect of the said S\$893.75/- when you dishonestly misappropriated the said S\$893.75/- and you have thereby committed an offence punishable under s 409 of the [PC].

The DJ's decision

9 At the conclusion of the trial, the DJ convicted the Respondent and sentenced him to six weeks' imprisonment, taking into account the fact that the Respondent had made full restitution of the cash which he had taken from FA 31203. According to the GD, the DJ referred to some sentencing precedents on s 409 of the PC, cited by defence counsel, which the DJ noted were cases involving

higher sums of money, but the DJ did not identify those cases in the GD. Based on the court record, however, only one of the cases set out in defence counsel's mitigation plea appeared to be concerned with criminal breach of trust by a police officer of property entrusted to him for safekeeping.

The Prosecution's appeal

10 The arguments of the Public Prosecutor before this court could be summarised as follows:

- (a) a higher, deterrent sentence is warranted whenever a law enforcement officer (as the Respondent was at the material time) commits a criminal breach of trust in the course of his or her duties;
- (b) the Respondent's offence was a grave one as he had committed the offence while carrying out a statutory duty and had done so with much premeditation and planning;
- (c) the DJ erred in giving substantial weight to the mitigating factors mentioned in the GD; and
- (d) the sentence of six weeks' imprisonment for the offence of a criminal breach of trust by a public servant is substantially lower than the sentences in previous cases of a similar nature.

11 The Public Prosecutor therefore submitted that the appropriate sentence in the present case should be in the region of six months' imprisonment.

The sentencing benchmark for criminal breaches of trust by police officers

12 The Respondent was charged for the most serious offence involving criminal breach of trust under s 409 of the PC because he was a police officer who had committed the offence in the course of his duties. The maximum sentence for criminal breach of trust under s 406 of the PC is imprisonment up to seven years or a fine, or both. However, s 409 of the PC provides as follows:

Criminal breach of trust by public servant, or by banker, merchant, or agent

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, a merchant, a factor, a broker, an attorney or an agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 20 years, and shall also be liable to fine.

13 Before me, the Public Prosecutor submitted that the sentence of six weeks' imprisonment was manifestly inadequate, having regard to previous sentences meted out to police officers who had committed criminal breaches of trust, even of small sums of money. In *Public Prosecutor v Wu Zhihao Anthony* (District Arrest Case No 6605 of 2012) (unreported), the accused, a 25-year-old police sergeant stationed at a neighbourhood police post, misappropriated a lost wallet which was given into his custody by a member of the public. He was found guilty under s 409 of the PC in respect of \$435 in the wallet and was sentenced to four months' imprisonment. In an earlier case with similar facts – *Public Prosecutor v Mohamed Hanafi Bin Mohamed Riza* (District Arrest Case No 35167 of 2010) (unreported) – a police officer was convicted under s 406 of the PC for dishonestly misappropriating a wallet containing \$70. There, the police officer was also sentenced to four months' imprisonment.

14 In *Public Prosecutor v Abdul Latif Bin Mohamad* (Magistrate's Appeal No 160 of 1999/01)

(unreported), a CISCO auxiliary police officer with ten years of service was attached to the cash processing centre as a 'central banker'. He was entrusted with cash collected from all DBS Bank's branches. However, he pilfered cash on 12 separate occasions amounting to \$1,200. He made full restitution and pleaded guilty to an offence under s 406 of the PC. The trial court imposed a fine of \$10,000 (in default five months' imprisonment). On appeal, the High Court sentenced him to six months' imprisonment (with the fine ordered to remain).

15 Even in cases where police officers charged have been convicted of theft as opposed to criminal breach of trust, the sentences imposed have been between imprisonment terms of four to six months. In *Fackir Mohamed Shariff v Public Prosecutor* [2003] SGDC 189 ("*Fackir*"), a 39-year-old SATS police lance corporal, was convicted for an offence under s 380 of the PC while performing night guard duty in a building. He stole about \$25 and was sentenced to three months' imprisonment by the District Court – a sentence which was affirmed on appeal. In his written grounds of decision, the District Judge said (at [11]–[16]):

11. ... the single most aggravating factor in this case which, I feel, far outweighs any mitigating circumstances was the fact that the accused committed the offence in his capacity and in the course of his duties as an auxiliary police officer. Even as an auxiliary police officer, he is conferred with the same powers of a regular police officer pursuant to section 71 of the Police Force Act (Cap 235) and he has the duty to safeguard life and property within the limits and area for which SATS police is responsible.

12. In my opinion, his behaviour constituted a dishonour to the policing profession and a betrayal to his organisation. It was both a dishonour and betrayal of the highest degree because he had stolen from and thus breached the very security of the building that he was supposed to safeguard. He had failed in the most fundamental of his duties which was to preserve and protect the property within his purview. It was also quite obvious that it was not an isolated incident and that he had stolen on other occasions. This was evident from the second charge which was taken into consideration for purpose of his sentence. These were particularly aggravating factors.

...

15. In summary, offences committed by law enforcement officers, especially police officers, are treated seriously. It is recognised that the public is entitled to expect the highest standards of conduct, honesty and integrity from police officers and therefore when a police officer commits an offence in the course of his duty, it would be in the public interest that a deterrent sentence be imposed.

16. In the present case, the accused was for all intent and purposes a police officer conferred with the powers and responsibilities of the office. As such, the above sentencing principles would be equally applicable to him. He had clearly fallen short of the high standards of conduct and morality expected of him. Not only did he commit an offence in the course of duty, he committed the very offence for which he was responsible to prevent. He should therefore be punished appropriately.

16 Finally, in *Public Prosecutor v Mohammad Yus Bin Ismail* [2005] SGDC 168, the accused was a case investigating officer in the Singapore Police Force. He obtained the PIN number of the ATM card belonging to a suspect in police custody, stole the ATM card and withdrew \$1,000 each from an ATM machine on two separate occasions. He was convicted of three charges of theft under s 379 of the PC and sentenced to six months' imprisonment for the theft of the ATM card, and eight months'

imprisonment each for the theft of the cash with the ATM card.

17 On the basis of these sentences, it was clear that the punishment of six weeks' imprisonment imposed on the Respondent was manifestly inadequate, even if the lack of remorse was not taken into account. That law enforcement officers who have abused their positions and have breached their public trust should be punished more severely than ordinary offenders is justifiable on retributive and deterrent considerations. In this regard, I would refer to the statement (with which I agree) of V K Rajah JA in *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [3]:

... [the] hard-won reputation of law enforcement and security agencies cannot be taken for granted. *It has to be jealously protected.* If and when their personnel break the law, they must be punished appropriately - in particular, in cases where such personnel abuse the colour of their office, severe punishment may be necessary so as to adequately reflect the damage that may have been inflicted and/or sustained to the standing of all other law enforcement personnel and the institutions they represent. ... [emphasis added]

Mitigating and aggravating factors

18 The DJ credited the Respondent's full restitution of the misappropriated sum of \$893.75 as a mitigating factor. In fact, this was the Respondent's only effort to mitigate his offence. However, the DJ did not explain that the restitution was made only *after* the Respondent was convicted at the end of the 18-day long trial, and *before* he was sentenced. I therefore agreed with the Public Prosecutor that the restitution made was not borne out of genuine contrition but motivated by the desire to obtain a lighter sentence (see *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334, *Soong Hee Sin v Public Prosecutor* [2001] 1 SLR(R) 475 at [9]). In my view, the DJ was overly generous in giving credit to the Respondent's restitution. The DJ should not have given any significant mitigating value to the Respondent's act of restitution.

19 On the other hand, the Respondent's lack of remorse was quite patent. He had several opportunities to own up to his offence, but took the chance that he would not be found out. He caused great inconvenience and unnecessary work for the officers in FUPO who had to search high and low for the missing FA 31203. Even after he was charged, he continued to show a lack of remorse by casting aspersions on the investigating officers in connection with his statements, and prolonged the trial unnecessarily.

Conclusion

20 For the above reasons, I allowed the Public Prosecutor's appeal and increased the sentence to six months' imprisonment.