Public Prosecutor *v* Victorine Noella Wijeysingha
[2013] SGHC 63

Case Number : Magistrate's Appeal No 87 of 2012 (DAC No 60801-60803 of 2010)

Decision Date : 19 March 2013

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Navin S. Thevar (Attorney-General's Chambers) for the appellant; Peter Keith Fernando (Leo Fernando) for the respondent.

Parties : Public Prosecutor — Victorine Noella Wijeysingha

Criminal Law – Statutory offences – Prevention of Corruption Act

19 March 2013 Judgment reserved.

Choo Han Teck J:

1 The respondent Victorine Noella Wijeysingha was acquitted of three charges under s 6(a) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("POCA") of corruptly obtaining gratification from one Tan Kok Keong ("Tan"), the managing director of Kok Keong Landscape Pte Ltd ("KKL"), as an inducement for showing favour to KKL in relation to her principal's affairs by being lenient in the supervision of contractual works performed by KKL and by assisting KKL in avoiding any delay in the completion of its works. The Public Prosecutor ("PP") appealed against the acquittal on all three charges.

2 The three charges against the respondent involved the sums of $1,500, $1,000 and $1,500 that the respondent had received from Tan on three occasions in November 2008, January 2009 and March 2009 respectively when she was acting as a Resident Technical Officer (Landscape) ("RTO") for landscaping works along Orchard Road carried out by the Singapore Tourism Board ("STB"). The STB's landscaping works were contracted to one Expand Construction Pte Ltd ("Expand") and the softscaping works were further subcontracted to TKK. The STB also engaged one Arborculture Pte Ltd ("Arborculture") to provide arborist services, and the appellant was subsequently appointed by Arborculture as the RTO on a subcontract basis. Under the contract between the STB and Arborculture, the respondent was responsible for inspecting and certifying TKK's works for compliance with the relevant contractual specifications and reporting to the STB, National Parks ("NParks") and architects of the overall project. The Prosecution's case at trial was that the respondent had been overly strict in her supervision of the works and was in a position to cause delays to TKK's completion of the contractual works. Sometime in November 2008, the respondent allegedly told Tan that she could help to "take care" of the job and requested Tan to "cover" her. Tan agreed to "cover" her by making payments of $1,500 a month. These payments were therefore purportedly solicited from Tan by the respondent for the purpose of inducing her to be lenient in her supervision. The respondent did not dispute receiving the payments, but claimed that Tan had made the payments for additional services that she had provided to TKK prior to her appointment as the RTO. The District Judge held that the Prosecution had failed to prove beyond reasonable doubt that the respondent had corruptly intended to solicit and accept payments from Tan as inducements for her to exercise leniency in her supervision.

3 Before me, the Deputy Public Prosecutor ("DPP") submitted that the court's primary inquiry

under s 6(a) should be the recipient's state of mind. The District Judge had therefore misdirected herself in law by placing undue weight on Tan's evidence on whether he had intended the payments to be made for the purpose of inducing the respondent to show leniency in her supervision and approval of the contractual works, and by failing to accord sufficient weight to other evidence that indicated the respondent's belief that the payments had been made for such purpose. The DPP further relied on s 9(1) of the POCA, which provides as follows:

> **9**.—(1) Where in any proceedings against any agent for any offence under section 6(a), *it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification, having reason to believe or suspect that the gratification was offered as an inducement or reward* for his doing of forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business, *he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity to do so*, show or forbear or that he accepted the gratification *without intending to do so*, show or forbear or *that he did not in fact do so*, show or forbear or that the act, favour or disfavour was not in relation to his principal's affairs or business.
>
> [emphasis added]

The DPP contended that s 9(1) sets out the legal position that a charge is made out under s 6(a) once the Prosecution proves that the accused received gratification believing or suspecting that the gratification was an inducement for him or her to show favour to another in relation to the principal's business, notwithstanding whether the accused actually could do so or did so.

4 Section 6(a) is concerned with corrupt bargains – there must be an objectively corrupt element in the transaction and guilty knowledge on the part of the recipient in accepting the gratification: *Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 at [32]. I agree with the submissions of the DPP that the focus of s 6(a) is on whether the accused accepted the gratification as an inducement knowing or believing it to be for a corrupt purpose, but the onus in every case is on the Prosecution to prove this *mens rea* element beyond reasonable doubt. The relevant intention of the accused may be inferred from all the surrounding circumstances, including the facts relating to whether the person offering the gratification could and would have subjectively intended to offer an inducement, whether both parties believed that the object of the inducement could be carried out, and whether the object was in fact carried out. The subjective intention of the accused in accepting or obtaining the gratification need not, and in many cases, cannot, be assessed in isolation. Section 9(1) does not qualify the requisite elements in s 6(a) and the requirement that guilty knowledge must be proven by the Prosecution; this section provides that the guilty knowledge is directed towards the acceptance of the corrupt bargain and that an offence under s 6(a) does not require the actual or intended performance of the purpose of the corrupt bargain. Section 9(1) therefore applies after the elements of the s 6(a) offence have been *prima facie* satisfied, and does not limit the scope of the court's inquiry in s 6(a) in relation to the inferences that may be drawn from all the relevant facts.

5 Turning to the merits of the appeal, there is, in my judgment, no basis for me to interfere with the decision of the District Judge. I do not agree with the DPP's argument that the District Judge had misdirected herself in law by considering the corrupt intent underlying the payments from Tan's perspective. The three charges against the respondent were framed in the following precise terms:

> You...did corruptly accept for yourself a gratification… as an inducement for showing favour to KKL in relation to your principal's affairs, to wit, *by being lenient in your supervision of the work performed by KKL and by assisting KKL in avoiding any delay in the completion of its works* and you have thereby committed an offence punishable under Section 6(a) of the Prevention of

Corruption Act, Cap. 241.

[emphasis added]

The District Judge therefore proceeded on the narrow basis that the Prosecution's theory of guilt hinged on whether it could be proven, beyond reasonable doubt, that the respondent had corruptly solicited the payments as inducements for her to be lenient in her supervision of KKL's work. It is clear from the Grounds of Decision (the "GD") that the District Judge was aware that the key inquiry was (at [49] of the GD):

> ... whether the evidence supported the inference of a *corrupt intent on the part of the [respondent]* and also whether this was done with a *corrupt knowledge*. [emphasis added]

In my view, the District Judge was entitled to take a broad approach to this question by considering the totality of the evidence, including Tan's intentions in making the payments. The District Judge considered Tan's intentions as part of the overall assessment of whether the respondent could plausibly be said to have had the requisite guilty knowledge in soliciting the payments, and reached a reasonable conclusion on the evidence that a corrupt arrangement and guilty intent were not proven as neither party was, based on the surrounding events at the material time, likely to have intended for the respondent to be lenient or have believed that the respondent had the scope to exercise leniency (at [56]–[57] of the GD). This was an inference of fact on the respondent's intentions based on the plausibility of the Prosecution's case, and I do not think that this finding can be impugned on the basis that the District Judge had embarked on her analysis from the incorrect legal starting point.

6 I also do not accept the DPP's submission that the District Judge's findings of fact in relation to the respondent's intentions in accepting the payments were against the overwhelming weight of the evidence. First, I do not think that the District Judge's finding (at [54]–[55]) of the GD) that Tan had not been motivated to pay the respondent in order to induce her to be lenient in her supervision was unsubstantiated. The evidence adduced at trial, while slightly vague and at times inconsistent, indicates on balance that Tan's overall subjective understanding of "leniency" was not that the respondent would approve works that otherwise fell short of the contractual specifications, but that she would help to look after the site and provide assistance and advice to his workers on what had to be done if problems were encountered on-site. Second, I am not persuaded by the DPP that the inferences that the District Judge drew on the respondent's intentions were erroneous and against the clear weight of the evidence. The District Judge held that the objective evidence did not fully support the Prosecution's events of how and when the respondent had approached Tan to "cover" her (at [44] of the GD), and doubted (at [56]–[58] of the GD) whether the respondent would plausibly have corruptly solicited payments for her to be lenient in her supervision when the evidence indicated that she was always strict in her inspections and that both parties believed that the respondent was not able to exercise leniency due to the overall oversight of the STB and NParks. The selected fragments of evidence on the respondent's intentions that the DPP emphasised before me do not unambiguously evince the respondent's express belief that the payments were made for some corrupt purpose. Read in the context of the particular line of questioning during cross-examination, the respondent's affirmative answers to whether Expand (and by extension, Tan) wanted her to be lenient were directed towards the specific instance of a particular dispute the respondent had with Expand when she had refused to approve Expand's landscaping works. These remarks cannot be construed as clear admissions of her belief that Tan wanted her to be lenient in her supervision of TKK's works in exchange for the payments. It cannot be disputed that the respondent had the power to be "lenient" (in a broad sense) in that she had the power to delay approval from the STB, but there is no clear and unmistakable evidence on whether the respondent accepted the payments believing them to be inducements for her to show leniency in her supervision. The DPP has not shown

why the evidence unequivocally contradicts the inferences that the District Judge drew, and I do not see a compelling reason for me to depart from these findings of fact on the respondent's intentions. I agree with the District Judge that there were many unexplained elements in the defence, and I also had some reservations in accepting the District Judge's evaluation of the significance of the SMS sent by the respondent enquiring when Tan would "pass [her] the monthly for Orchard" and her finding of fact in relation to the timing of the conversation when the respondent had allegedly made the request for Tan to make payments to "cover" her. Notwithstanding my misgivings on these aspects, I do not think that they substantially undermine the District Judge's conclusion that the Prosecution's evidence fell short of proving the crucial element of the respondent's guilty knowledge at the time the payments were solicited or accepted. I am therefore of the view that the District Judge correctly gave the benefit of the doubt to the respondent.

7 For the above reasons, I find that the Prosecution has failed to show that the District Judge erred in either law or fact and accordingly dismiss the appeal.