

Muthukumaran Ramaiyan v Public Prosecutor
[2015] SGHC 230

Case Number : Magistrate's Appeal No 86 of 2014
Decision Date : 13 February 2015
Tribunal/Court : High Court
Coram : See Kee Oon JC
Counsel Name(s) : K Sathinathan and Mr Anil N Balchandani (T J Cheng Law Corporation) for the accused; David Chew and Nicholas Seng (Attorney-General's Chambers) for the prosecution.
Parties : Muthukumaran Ramaiyan — Public Prosecutor

Criminal Law – Offences – Property – Criminal breach of trust

[LawNet Editorial Note: This oral judgment was released in written form on 1 September 2015.]

13 February 2015

Judgment reserved.

See Kee Oon JC [delivering the oral judgment]:

1 I reserved judgment after hearing the appeal on 23 January 2015 to fully consider the written reply submissions from counsel that were tendered only on the day of the hearing. I have reviewed the evidence and considered the submissions.

2 I am not persuaded that there is any merit in the appeal against conviction. In particular, I do not agree that the accused can rely on his assertion of a bona fide belief in his entitlement to directors' fees as a defence. It is clear from the evidence that there could have been no mistaken assumption, let alone any honest belief on his part that he was allowed to help himself to the fee payments. He knew that approval was necessary before he could legitimately obtain payment. Nevertheless he went ahead and helped himself to the money disregarding the fact that no approval or authorisation had been obtained. He continued to do so even after being expressly told that the fee payments would not be approved.

3 I should add that having a belief that he ought to be paid such fees is a belief as to *entitlement to ask* for payment at best; he may even have believed in his *entitlement to be paid*. But these are plainly not the same as having an honest and genuine belief that he was *actually entitled to payment of the money without having obtained authorisation* for such payments to be made.

4 The District Judge concluded that he may have an 'underlying sense that he was entitled to remuneration as a director' (at [87] of his Grounds of Decision reported as *Public Prosecutor v Muthukumaran Ramaiyan* [2014] SGDC 330). But whatever his 'underlying sense' might have been of his entitlement, the evidence clearly shows that he could not have acted bona fide, having regard to s 52 of the Penal Code, which specifies that acts are not done in good faith if done without due care and attention. The same applies to beliefs purportedly held in good faith. The proper characterisation would be that his acts were not merely indicative of extreme presumptuousness. I have no doubt that he was dishonest.

5 With this in mind, I turn to the prosecution's appeal in relation to the District Judge's order to

convict the accused on an amended charge reflecting a lower sum of \$8,000. With respect, I am of the view that the District Judge had erred in this regard. The logical and indeed the only inference had to be that the accused knew that he was not lawfully entitled to such payments since he had not obtained any authorisation or approval. I do not see how there was any ambiguity. As for his purported expectation of ratification, this does not take him very far. In counsel's words, 'the approval never came' (at para 10 of the defence reply submissions). There is no merit whatsoever in the contention that ratification is still possible even now. I reiterate that in the absence of any approval, he could not have had any genuine or honest belief that he was allowed to make such payments to himself.

6 I see no reason to give the accused the benefit of doubt in relation to the first five withdrawals. The fact that he did not withdraw other amounts from the OCBC bank account was not necessarily indicative of honesty. This consideration was irrelevant to the issues at hand. He did not 'go for broke', in the District Judge's words, and take additional massive sums apart from the \$24,000 but this would not inevitably mean that he was not dishonest in relation to the sum he had already taken. I am also not persuaded that his 'extensive paper trail' necessarily points to innocence; not every case of misappropriation or breach of trust takes place surreptitiously or involves elaborate concealment.

7 The appeal against conviction is thus dismissed and the prosecution's cross-appeal is allowed. The original charge tendered against him reflecting an amount of \$24,000 and the dates spanning 6 March to 18 July 2012 will be reinstated and he will stand convicted on that charge.

8 The sentence of 12 weeks, premised on the amount of \$8,000, is clearly not manifestly excessive. This takes into account the restitution made. The District Judge had noted that restitution was made only at the eleventh hour. Although the accused is a first offender, he had been convicted after trial. There are no compelling mitigating factors. As the conviction relates to \$24,000 worth of payments, having regard to the sentencing precedents for s 409 cases, he will be sentenced to 8 months' imprisonment.