

The Law Society of Singapore v Amdad Hussein Lawrence
[2000] SGHC 180

Case Number : OS 541/2000
Decision Date : 01 September 2000
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Wong Siew Hong and Hemalatha d/o Silwaraju (Yeo Wong & Thian) for the applicant; Respondent absent
Parties : The Law Society of Singapore — Amdad Hussein Lawrence

Legal Profession – Show cause action – Advocate & solicitor of 15 years' standing convicted of theft in dwelling – Advocate & solicitor under stress and medication – Whether advocate & solicitor unfit for legal profession – Whether offence not done in capacity as lawyer relevant – Whether stress a mitigating factor – Whether length of standing a mitigating factor – ss 83(1), 83(2)(a), 94A & 98(1) Legal Profession Act (Cap 161, 1997 Rev Ed)

(delivering the grounds of judgment of the court): This was an application by the Law Society of Singapore (‘the applicant’) pursuant to s 94A read with s 98(1) of the Legal Profession Act (Cap 161, 1997 Ed) (‘the LPA’) for the respondent to show cause why he should not be dealt with under the provisions of s 83(2)(a) of the LPA on account of his criminal conviction.

The respondent was not present nor represented at the proceedings before us. Counsel for the applicant informed the court that the respondent had indicated that he did not intend to show cause. At the close of the proceedings, we ordered that the respondent be struck off the roll of advocates and solicitors and now give our reasons.

The facts

The respondent was 39 years old and an advocate and solicitor of 15 years’ standing, having been admitted to practice on 12 June 1985. At all material times, he was practising as the proprietor of the law firm of Ng Thin Wah & Co.

On 17 November 1999, the respondent pleaded guilty to and was convicted on one count of theft in a dwelling-place punishable under s 380 of the Penal Code (Cap 224). He was sentenced to imprisonment for a period of two months, which sentence has since been served. The conviction for theft arose out of the following facts. On 16 December 1998 at about 7.50pm, at Carrefour supermarket located at Suntec City Mall, the respondent was observed to be behaving suspiciously by a security officer of the Carrefour Supermarket. In particular, he was observed to have placed some items into a plastic bag inside a shopping trolley at various sections of the supermarket. The respondent later proceeded to the cashier’s counter and paid for some items amounting to about \$57. He was stopped after leaving the cashier’s counter and a check was conducted on the contents of the shopping trolley. A total of nine unpaid items amounting to \$478.50 were found in two plastic bags inside the trolley. These consisted of assorted items including a VCD player, VCDs, food items and a toy. The respondent was detained and later arrested by the police. The unpaid items recovered from the respondent formed the subject-matter of a charge under s 380 of the Penal Code.

The show cause proceedings

The present proceedings arose pursuant to s 94A read with s 98(1) of the LPA, under which it was mandatory for the Law Society to proceed with an application for the respondent to show cause upon his conviction for an offence involving fraud or dishonesty. The Law Society contended that due cause had been shown for disciplinary action to be taken against the respondent under ss 83(1) and 83(2)(a) of the LPA which provide as follows:

(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.

(2) Such due cause may be shown by proof that an advocate and solicitor -

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession.

...

By virtue of s 83(6) of the LPA, the respondent's conviction must be accepted as 'final and conclusive'. As such, it was not open to the respondent or the court to go behind his conviction: **Law Society of Singapore v Tham Yu Xian Rick** [1999] 4 SLR 168 at [para] 12; **Re Mohomed Jiffry Muljee** [1994] 3 SLR 520 at p 523, **Law Society of Singapore v Narmal Singh** [1996] 2 SLR 184 at p 186.

In this regard, the nature of the offence is material as not every violation of the criminal law implies a defect of character which makes the offender unfit for his profession: **Law Society of Singapore v Tham Yu Xian Rick**, supra, at [para] 13, following **Re Weare, A Solicitor** [1893] 2 QB 439 at p 445. Rather, the offence must be of such a character that it is expedient for the protection of the public and the preservation of the good name of the profession to remove the solicitor from the roll or from practice: **Law Society of Singapore v Wee Wei Fen** [2000] 1 SLR 234 at [para] 25; **Law Society of Singapore v Tham Yu Xian Rick**, supra, at [para] 13.

Apart from the nature of the offence, the sentence imposed by the court must also be taken into consideration. We reiterated this position in our recent decision in **Law Society of Singapore v Wee Wei Fen**, supra, at [para] 26:

*In **Tham Yu Xian Rick** [at [para] 14, 15], we accepted that **in addition to considering the nature of the offence, the court is also entitled to take into account the circumstances surrounding the commission of the offence by having regard to the actual penalty imposed by the sentencing court. We said there that the nature of the crime, though important, is not and cannot be conclusive since an offence may range over a multitude of different circumstances, from the serious to the relatively condonable. In the premises, it is both the penalty as well as the nature of the offence which must be looked at in determining whether the conviction unfits a solicitor for his profession. ... [Emphasis added.]***

This was because the penalty imposed by the sentencing court served as a good indication of the moral obliquity or turpitude involved in the solicitor's conduct: **Ratnam v Law Society of Singapore** SLR 39 at p 52, cited with approval in **Law Society of Singapore v Tham Yu Xian Rick**, supra, at

[para] 15.

Applying the above principles, we were more than satisfied that due cause had been shown. The offence in question involved dishonesty which was a constituent element of the charge. We also took account of the circumstances surrounding the commission of the offence, as evidenced by the sentence of two months' imprisonment imposed by the court. Cumulatively, they revealed the respondent's lack of honesty and implied a defect of character which rendered him unfit for his profession. In our view, the fact that the offence was not committed by the respondent in his capacity as a solicitor was wholly irrelevant: **Re Jeyaretnam JB** [1988] SLR 195 at p 200; **Law Society of Singapore v Tham Yu Xian Rick**, supra, at [para] 16.

The appropriate order

The penalty which this court could impose on the respondent under s 83(1) of the LPA ranged from censure to suspension of up to five years and to striking off. The respondent had through counsel conveyed to this court his remorse and regrets for the negative perception cast over the legal profession as a consequence of his conduct. The respondent sought the mercy and compassion of the court, and explained that he was suffering from stress and was under medication at the material time. It was also highlighted that the offence was not committed in his capacity as a solicitor.

The earlier decisions in **Law Society of Singapore v Ravindra Samuel** [1999] 1 SLR 696 at [para] 15; **Law Society of Singapore v Tham Yu Xian Rick**, supra, at [para] 18; **Law Society of Singapore v Suresh Kumar Suppiah** [1999] 4 SLR 50 at [para] 18 and **Law Society of Singapore v Heng Guan Hong Geoffrey** [2000] 1 SLR 361 at [para] 28, 29 have consistently affirmed and applied the following principles on disciplinary sentencing:

a where a solicitor has acted dishonestly, the court will almost invariably order that he be struck off the roll of solicitors;

b if he has not acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, he will nonetheless be struck off the roll, as opposed to being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner

In determining the appropriate order, we also bore in mind the three-fold functions of disciplinary sentencing under s 83 of the LPA: (a) punishment of the errant solicitor for his misconduct; (b) deterrence against similar defaults by other like-minded solicitors in the future; and (c) protection of public confidence in the administration of justice: **Law Society of Singapore v Tham Yu Xian Rick**, supra, at [para] 18. In **Law Society of Singapore v Ravindra Samuel**, supra, the underlying considerations were explained in the following terms:

11 It is not simply a question of punishing the solicitor concerned. A further consideration must be what course should the court take to protect the public and to register its disapproval of the conduct of the solicitor. In the relevant sense, the protection of the public is not confined to the protection of the public against further default by the solicitor in question. It extends also to the protection of the public against similar defaults by other solicitors through the court publicly marking the seriousness of what the instant solicitor has done. The orders made must therefore accord with the seriousness of the default and

leave no doubt as to the standards to be observed by other practitioners. In short, the orders made should not only have a punitive, but also a deterrent effect.

12 There are also the interests of the honourable profession to which the solicitor belongs, and those of the courts themselves, to consider. **The administration of justice can only proceed on the basis that solicitors can place reliance upon the honesty of the solicitors with whom they deal. The public too must be able to repose confidence in the profession which plays so indispensable a part in the administration of justice. Similarly, the courts of this country must be able to depend on the honesty and integrity of all practitioners appearing before them and to expect that they will maintain the highest standards of personal honesty and integrity in their dealings with the courts .**

13 **There is therefore a serious responsibility on the court, a duty to itself, to the rest of the profession and to the whole of the community, to be careful not to credit any person as worthy of public confidence and therefore fit to practice as an advocate and solicitor who cannot satisfactorily establish his right to those credentials. In the end therefore, the question to be determined is whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court, and the orders to be made are to be directed to ensuring that, to the extent that he is not, his practice is restricted . [Emphasis added.]**

There was no doubt that the respondent in the instant case had acted dishonestly, dishonesty being an essential element of a charge under s 380 of the Penal Code. Applying the principles enunciated in the above cases, we were of the opinion that the appropriate order which would follow in the normal course of events was an order that the respondent be struck off the roll. It bore repeating that the public dimension of disciplinary sentencing is a highly relevant consideration. The interests of the legal profession and the public demand that members of the profession observe the highest possible standards of conduct. By failing to adhere to these standards, the respondent had caused harm to the profession as a whole: **Law Society of Singapore v VCS Vardan** [1999] 2 SLR 229 at [para] 14.

In our view, there were no mitigating circumstances which merited a less severe penalty. The fact that the offence was not committed in the respondent`s professional capacity was of no mitigating value, there being no requirement that the offence be connected in any way with the discharge of his professional duties: **Re Knight Glenn Jeyasingam** [1994] 3 SLR 531 at p 537B.

We also had regard to the plea that the respondent was suffering from stress and was under medication at the time of the offence. However, as explained in **Re Knight Glenn Jeyasingam** , supra, at p 537:

... in any case where the court is bound to consider the appropriate order to be made in respect of an advocate and solicitor convicted of a criminal offence - particularly one involving dishonesty - the paramount considerations must be the protection of the public and the preservation of the good name of the profession. Certainly the court will give its consideration to the mitigating circumstances in each individual case but it can do so only so far as is consistent with the above two related objectives.

In this regard, we need only refer to our recent decision in **Law Society of Singapore v Wee Wei Fen**, supra, where the respondent was convicted of cheating and forgery, which offences were committed in her capacity as an advocate and solicitor. There, it was submitted that the respondent was under a great deal of stress which eventually led to depression. She had not received any pecuniary benefit nor occasioned any monetary loss to anyone as a consequence of her conduct. Nonetheless, we gave short shrift to the mitigating factors and ordered that the respondent be struck off the roll. We affirmed the principles set out in **Re Knight Glenn Jeyasingam**, supra, and stated:

*39 ... In **Tham Yu Xian Rick** [at [para] 22] , we held, following **Bolton v Law Society** ... that **considerations which ordinarily weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than sentences imposed in criminal cases as show cause proceedings are primarily civil and not punitive in nature. In any case, the weight to be attached to a plea in mitigation in disciplinary proceedings is negligible where the case is one involving proven dishonesty, as striking off will often be the consequence as a matter of course .***

*40 In the circumstances, we had no doubt that the mitigating factors highlighted above were of no avail to the respondent in this case. It is a fact that most lawyers work under constant pressure and it is only inevitable that stress levels are high in the workplace. In fact, it is this sort of environment which provides the dynamism and efficiency with which our legal system is well-known to function. **Clearly it is not an excuse for a lawyer to act dishonestly and fraudulently simply because he or she could not cope with the demands of work. ... It cannot be over-emphasised that the function of any disciplinary tribunal is to uphold the good name of the profession and to ensure that that name is not tarnished by the aberrant actions of a mere handful who cross the line .** In addition, the court has also to be mindful of the exceedingly compelling interest of protecting members of the public who find need to use the services of the profession. ... [Emphasis added.]*

In the criminal proceedings against the respondent, medical reports were tendered in mitigation, suggesting that the respondent`s higher mental functioning, judgment and impulse control could have been affected or impaired by the effects of the medication which were taken prior to the incident. Nonetheless, it was not disputed that the respondent possessed the specific intent and retained the ability to distinguish between right and wrong at the material time. In our view, the weight to be accorded to this mitigating factor was negligible when the offence involved proven dishonesty.

Finally, we would emphasize that the fact that the respondent was an advocate and solicitor of 15 years` standing was patently devoid of any mitigating weight. On the contrary, the more senior an advocate and solicitor, the more damage is done to the integrity of the legal profession as a consequence of the solicitor`s misconduct: **Law Society of Singapore v Edmund Nathan [1998] 3 SLR 414** at [para] 33.

In light of the foregoing, we had no hesitation in ordering that the respondent`s name be struck off the roll of advocates and solicitors. We also ordered that the respondent pay the Law Society the costs of these proceedings.

Outcome:

Order accordingly.

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