Tee Kok Boon v Public Prosecutor
[2006] SGHC 157

Case Number : Cr Rev 8/2006

Decision Date : 01 September 2006

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Applicant in person; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Tee Kok Boon — Public Prosecutor

Courts and Jurisdiction – Jurisdiction – Judicial review – Application to High Court for criminal revision in relation to decision of District Court upheld on appeal to High Court – Whether one High Court can exercise revisionary or supervisory jurisdiction over another

1 September 2006

Tay Yong Kwang J:

1 The applicant first appeared unrepresented by counsel before me on 19 May 2006. He applied for an adjournment of his application because he said he had lodged a magistrate's complaint in the Subordinate Courts which was to be heard on 26 May 2006 and which was supposedly related to the facts of this application. The Prosecution objected to the application for adjournment. I granted the adjournment and suggested that the applicant seek legal advice on whether the law permitted him to make the present application to the High Court.

2 At the resumed hearing on 25 August 2006, the applicant again appeared in person, having filed his written submissions pertaining to his application. He had nothing to add beyond the papers filed in this application and left the matter to the court to decide. I dismissed the application and now state my reasons for doing so.

3 The application for revision was not crafted in terms which were easy to comprehend. Essentially, it asked the High Court to find that the applicant had been wrongly convicted of an offence on the facts of the case (which I set out briefly below) and also contained various allegations concerning the competence of his counsel at the trial in the subordinate court and in the proceedings that followed therefrom.

4 On 1 December 2004, the applicant was convicted by District Judge Abdul Rahim bin Jalil after a trial on the following charge:

> You, Tee Kok Boon, M/36 years, S1829404D, are charged that you, between 20 May 2002 and 22 May 2002, at the Small Claims Tribunal, 2 Havelock Road #05-00 Apollo Centre, Singapore, in a judicial proceeding before the referee Ms Vivienne Ong, to wit, a hearing in the Small Claims Tribunal concerning a claim by M/s O K Property Pte Ltd (Claim No. H/CY/002345/2002), did intentionally give false evidence before the said referee by intentionally stating to the said referee that you had witnessed one Heng Siew Ang sign a Letter of Undertaking dated 26 November 2001 in respect of the rental of an apartment located at Block 5 Kellock Road #06-02 Kellock Lodge, Singapore which you knew to be false as you did not witness the said Heng Siew Ang sign the Letter of Undertaking and you have thereby committed an offence punishable under section 193 of the Penal Code, Chapter 224.

5 Heng Siew Ang ("Heng") was the owner of the apartment named in the charge. At the material time, the applicant was a housing agent with O K Property Pte Ltd ("O K Property"). He successfully secured a tenant for Heng. Subsequently, O K Property brought a claim against Heng in the Small Claims Tribunal over certain commission allegedly promised by Heng. The applicant was called as a witness for O K Property. He testified before the referee of the Small Claims Tribunal that he had witnessed Heng sign a letter of undertaking in which she promised to pay the said commission. Heng denied having signed the letter of undertaking. The referee ruled against Heng and ordered her to pay the commission.

6 Heng subsequently lodged a police report concerning the signature on the letter of undertaking. The police asked the applicant whether or not the letter of undertaking was signed in his presence. He replied that he believed the letter of undertaking was not signed in his presence. He was therefore prosecuted on the charge set out above. He was convicted and sentenced to undergo ten months in prison.

7 Following his conviction by the district judge, the applicant lodged a notice of appeal (Magistrate's Appeal No 167 of 2005 ("MA 167/2005")) against the conviction and sentence. He was released on bail pending the appeal, which came on for hearing in the High Court on 28 June 2005. In the meantime, the applicant filed Criminal Motion No 6 of 2005 ("CM 6/2005"), which was to be heard with MA 167/2005. This was his application to amend the petition of appeal to include an additional ground of "no case to answer" at the end of the Prosecution's case in the District Court. On 16 June 2005, he filed Criminal Motion No 8 of 2005 ("CM 8/2005") for leave to adduce fresh evidence.

8 On 28 June 2005, the applicant applied for leave to withdraw CM 6/2005 and that was granted. The High Court dismissed CM 8/2005 as well as MA 167/2005.

9 Having served his sentence, on 9 March 2006, the applicant filed Criminal Motion No 5 of 2006 to ask the Court of Appeal for an extension of time to refer certain questions of law of public interest pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA"). This was heard and dismissed by the Court of Appeal on 11 April 2006.

1 0 On 30 March 2006, the applicant filed the present application for criminal revision. The grounds relied on in the present application were those raised before the High Court in MA 167/2005. As indicated earlier, he also made allegations about his former counsel's conduct and competence in the course of all the proceedings.

1 1 The High Court has powers of revision over subordinate courts. This is clearly stated in ss 23 and 27(1) of the SCJA which read:

> **23.** The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with the provisions of any written law for the time being in force relating to criminal procedure.
>
> **27.** —(1) In addition to the powers conferred on the High Court by this Act or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts.

1 2 Similarly, s 266(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), which is the provision invoked in the present application, provides:

> The High Court may call for and examine the record of any criminal proceeding before any

subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of that subordinate court.

1 3 "Subordinate court", as defined in s 2 of the SCJA, "means a court constituted under the Subordinate Courts Act (Cap. 321) and any other court, tribunal or judicial or quasi-judicial body from the decisions of which under any written law there is a right of appeal to the Supreme Court".

1 4 In *Bright Impex v PP* [1998] 3 SLR 405, Yong Pung How CJ had occasion to examine the issue that is before me in the present proceedings. That case involved a petition for criminal revision which arose out of an offence committed by one Thameem Rajah under the Customs Act (Cap 70, 1995 Rev Ed) for having in his possession uncustomed goods. He was convicted and fined and the goods involved were forfeited. He appealed against the order of forfeiture and that appeal was dismissed by the High Court (the judge there was also Yong CJ). The petitioner for criminal revision there claimed to be the owner of the forfeited goods and asked the High Court to exercise its powers of criminal revision to reverse the forfeiture order. Yong CJ held (at [14]):

> In the present case, the decision of the district court had already been appealed against and upheld by the High Court. What the petitioner was seeking in effect was for the High Court to exercise its power of revision over a decision made by its own court. From the definition of 'subordinate court' in the Supreme Court of Judicature Act and the wording of s 266(1) of the CPC, it is clear that the High Court does not have the power to exercise its powers of criminal revision over a decision of the subordinate court which had already been upheld on appeal by the High Court. The petition for revision could have been dismissed on this basis alone.

1 5 I agree entirely with the above statement which I apply to the factual situation in the present application. Each High Court has co-ordinate jurisdiction and one High Court cannot profess to exercise revisionary or supervisory jurisdiction over another. Even the Court of Appeal does not have powers of judicial review over the High Court. The then Court of Criminal Appeal acknowledged this in 1987 in *Wong Hong Toy v PP* [1994] 2 SLR 396. Wee Chong Jin CJ, in delivering the judgment of the court, said (at 407, [47]–[50]):

> What seems to us to be even more untenable is that the appellants sought, by multiple prayers in Criminal Motion No 61 of 1986, to invoke the powers of judicial review by the Court of Criminal Appeal over the High Court. On this point, we need only refer to two passages in the speeches of two of their Lordships in [*In re*] *Racal Communications Ltd* [[1981] AC 374].
>
> Lord Diplock, at p 384, said:
>
> > The High Court is not a court of limited jurisdiction and its constitutional role includes the interpretation of written laws. … There is simply no room for error going to his jurisdiction, nor, as is conceded by counsel for the respondent, is there any room for judicial review. Judicial review is available as a remedy for mistakes of law made by *inferior courts* and tribunals only. Mistakes of law made by judges of the High Court acting in their capacity as such can be corrected only by means of appeal to an appellate court; and if, as in the instant case, the statute provides that the judge's decision shall not be appealable, they cannot be corrected at all.
>
> Lord Salmon, at p 386, said:
>
> > The jurisdiction of the Court of Appeal is defined by statute. It has no jurisdiction to make a

judicial review of a decision of the High Court.

These passages, although made in the context of an original civil jurisdiction of the High Court, are equally appropriate in our context.

16 On a related note, the Court of Appeal has held that any attempt to adduce fresh evidence and/or new arguments of law before a subsequent Court of Appeal would amount to an attempt to re-litigate the substantive merits of a case and reopen a decision that has already been rendered by the previous Court of Appeal and that such attempt was clearly impermissible as the court would be *functus officio* (see *Koh Zhan Quan Tony v PP* [2006] 2 SLR 830 at [22] and [29]). Thus, the Court of Appeal cannot reopen or review the merits of a case already decided by it, although the subsequent court comprises totally different judges from the earlier one, which was the situation in *Koh Zhan Quan Tony v PP*.

17 In summary, the principles established by statute and by case law are:

(a) The High Court has revisionary powers over all subordinate courts but not over a decision of the subordinate courts which has already been upheld on appeal by the High Court.

(b) The High Court does not have revisionary powers over another High Court.

(c) The Court of Appeal does not have revisionary (as opposed to appellate) powers over the High Court.

(d) It is of no consequence that the subsequent court comprises the same judge or judges as, or that it consists of a different judge or different judges from, the earlier one.

1 8 Granting the present application would be contrary to the first two of the four principles stated in [17] above. I certainly cannot purport to exercise revisionary powers over the High Court which heard MA 167/2005. I would add that the same legal position applies to all applications for criminal revision whether they are filed by accused persons or by the Prosecution. If the applicant believes that he has good grounds for complaint against his former counsel, he has to seek his remedy elsewhere and not by way of this application for criminal revision. For the avoidance of doubt, I express no opinion whatsoever on his allegations against his former counsel. The application is therefore dismissed.

Copyright © Government of Singapore.