Luyono Lam *v* Public Prosecutor
[2010] SGHC 158

Case Number : Magistrate's Appeal No 386 of 2009

Decision Date : 24 May 2010

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Harpal Singh and Gurdip Singh (Harpal Mahtani Partnership) for the appellant; Kan Shuk Weng (Attorney-General's Chambers) for the respondent.

Parties : Luyono Lam — Public Prosecutor

Criminal Law

Criminal Procedure and Sentencing

24 May 2010

Chao Hick Tin JA:

Introduction

1 This is an appeal by Mr Luyono Lam ("the Appellant") against his total sentence of eight months' imprisonment after being convicted of three counts of moving cash of more than the prescribed amount of $30,000 into and out of Singapore pursuant to s 48C(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the Act"). In sentencing, four other counts of the same charge were taken into consideration.

2 At the conclusion of the hearing before me on 3 March 2010, I was of the view that the imprisonment sentence imposed was manifestly excessive. Accordingly, I allowed the appeal and substituted the imprisonment term with a total fine of $24,000. I now give my reasons.

Facts

3 The Appellant is a 30-year-old Indonesian citizen who is the managing director and shareholder of a money-changing business in Jakarta, Indonesia. On 22 May 2009, the Appellant arrived in Singapore and proceeded towards the Green Channel exit. While doing so, an Immigration & Checkpoints Authority ("ICA") officer conducted an X-ray screening of the Appellant's trolley bag and haversack and discovered some dense organic images. The officer then asked the Appellant if he had anything to declare, but the Appellant said "no". Just as the officer was about to conduct a physical check of his luggage, the Appellant informed the officer that he had cash with him. The Appellant was then brought to the ICA duty officer and the matter was subsequently referred to the Commercial Affairs Department for investigation. At the time of the Appellant's arrest, the Appellant was also found to be in possession of some unfilled declaration forms.

4 Investigations later revealed that the Appellant was in the business of money exchange, and he had brought cash and traveller's cheques (which is a form of bearer negotiable instruments as defined under s 48B(1) of the Act) on various occasions into and out of Singapore for the purposes of selling and exchanging them with a Singapore money changer located at Marine Parade Central. In carrying

out these transactions, it was not disputed that the Appellant had been reminded by his Singapore counterpart of the declaration requirement under the Act if he were to bring into or out of Singapore cash of any currencies or bearer negotiable instruments exceeding a value of $30,000.

5 Further investigations, and this was from the Appellant's own admission, revealed that the Appellant had moved physical currencies and traveller's cheques on seven occasions; moving cash exceeding the prescribed amount *into* Singapore on 15, 17, 18, 22 May 2009, and moving cash exceeding the prescribed amount *out* of Singapore on 15, 17, 18 May 2009. These seven occasions formed the basis of the seven charges preferred against him, with the total amount of cash involved being $3,236,172.

Prescribed sentence

6 Pursuant to s 48C(2) of the Act, a person found guilty of either moving into or out of Singapore cash exceeding the prescribed amount of $30,000 in contravention of s 48(C)(1) (read with s 48C(4)) shall be liable to a fine not exceeding $50,000 or to imprisonment for a term not exceeding three years or to both. Section 48B(1) further defines "cash" in s 48C(1) to mean physical currency or a bearer negotiable instrument (which would include, *inter alia*, a traveller's cheque).

Proceedings before the District Court

7 Below, the Appellant appeared in person and pleaded guilty to three counts of the offence and consented to the remaining four counts to be taken into consideration for the purpose of sentencing. In mitigation, the Appellant apologised for committing the offences and pleaded for leniency given that he was the sole breadwinner of his family and had only come to Singapore with those amounts of cash for legitimate business purposes.

8 In reply, the Prosecution called for a deterrent sentence to be imposed on the Appellant, and in so doing, rested its submission on two main grounds. Firstly, it argued that specific deterrence was necessary since the Appellant knew of such a reporting requirement and deliberately chose not to comply with it. Secondly, the Prosecution argued that general deterrence was also necessary given that the key rationale behind implementing this cash reporting regime was the enhancement of Singapore's counter-terrorism and anti-money laundering measures. On the admitted facts, the Prosecution argued that the Appellant made a mockery of the reporting system by frequently moving cash into and out of Singapore without making the necessary declarations on no less than seven occasions. General deterrence was therefore necessary to deter potential offenders from committing similar violations in the future and was also appropriate given the difficulties of detection. However, this court noted that while the Prosecution below had asked that a deterrent sentence be meted out, it stopped short of specifically asking for the imposition of a custodial term.

9 After considering the Appellant's mitigation plea and the Prosecution's submission on sentence, the District Judge ("the DJ") sentenced the Appellant to four months' imprisonment for each of the three counts, and ordered two of these sentences to run consecutively (see *Public Prosecutor v Luyono Lam* [2009] SGDC 459). In all, he was sentenced to eight months' imprisonment. The DJ was in general agreement with the Prosecution. He reasoned that firstly, the offences were committed with premeditation. Secondly, a general deterrence sentence was necessary to deter like-minded persons from committing such offences in light of the difficulties facing enforcement agencies in detecting and apprehending culprits contravening this cash reporting regime.

The appeal

10 Dissatisfied with the sentence, the Appellant appealed. The thrust of his appeal was that he was not involved in any money laundering or in any other nefarious or illegal activity. His movement of the various physical currencies into and out of Singapore, which formed the bases of the charges, was pursuant to his money-changing business which his company was legitimately involved in. He pleaded that he was truly a businessman carrying out a legitimate business and it was not his intention to flout any of Singapore's laws. Viewed in this light, the Appellant submitted that the DJ erred when he gave undue weight to the sentencing principle of deterrence. In response, the Prosecution raised the same arguments on the need for both specific and general deterrence as it did before the District Court and contended that a signal ought to be sent to the public to underscore the importance of the cash reporting regime. Furthermore, the Prosecution, while accepting that sentences imposed in most of the previous cases were fines, submitted that incarceration was appropriate in this case given the sheer volume of cash involved and the increasing number of similar violations.

My consideration of the appeal

11 As I saw it, this appeal centred around one main issue: whether in determining the appropriate sentence to be meted out to the Appellant, the DJ adequately appreciated the overall objectives of the Act. This was where I thought inadequate consideration was given.

12 A major thrust of the Prosecution's submission in both the District Court and this court was that, on the factual matrix of this case, a general and specific deterrence sentence was called for. I accepted that the Appellant's deliberate refusal in making the declaration was based on his perception that such an infraction was technical at best given that he was carrying out a legitimate business in moving physical currencies and traveller's cheques into and out of Singapore. For that infringement, I acknowledged that he should indeed be punished. What was in dispute, however, was whether there was a need to impose a custodial sentence as deterrence in a case such as this. In this regard, it is crucial to consider the objectives of the Act.

13 It is patently clear that Parliament's primary objective in enacting the Act was to criminalise the laundering of benefits derived from corruption, drug trafficking and other serious crimes and to allow investigation and confiscation of such benefits, as well as, in general, to curb and protect society from such serious criminal activities (if anything, the title of the Act would have already suggested this; see also *Singapore Parliamentary Debates*, *Official Report* (6 July 1999) vol 70 at col 1731 (Wong Kan Seng, Minister for Home Affairs)). Specifically, in relation to Part VIA of the Act which comprises ss 48A to 48G, s 48A provides in no uncertain terms the objective of this part of the Act:

> **Object of this Part**
>
> 48A. The object of this Part is to impose measures for the disclosure of information regarding movements of physical currency and bearer negotiable instruments into and out of Singapore *for the purpose of detecting, investigating and prosecuting drug trafficking offences and serious offences*.
>
> [emphasis added]

Part VIA of the Act was introduced via the enactment of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Act (Act 44 of 2007) ("the Amendment Act"). At the second reading of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill (Bill 33 of 2007), which was eventually enacted as the Amendment Act, the Senior Minister of State for Home Affairs, Assoc Prof Ho Peng Kee, reiterated that the purpose of

the cash reporting regime under Part VIA was to enhance the anti-money laundering and counter-terrorism financing measures (*Singapore Parliamentary Debates*, *Official Report* (19 September 2007) vol 83 at col 1965):

> There is an urgent need for us to address the increasingly complex challenges posed by the *abuse of our financial systems by terrorists and money launders*. The devastating 9/11 attacks underscore the urgent need for governments around the world to implement measures to suppress terrorist financing as part of the global effort to combat terrorism [emphasis added]

Accordingly, the very object of such a regime was to serve as a tool to detect and prevent such insidious criminal syndicates or terrorists from using our financial system for their own illicit purposes.

14 While the DJ did, in fact, acknowledge the overarching objective and context of such a cash reporting regime, the DJ appeared not to have given sufficient consideration to it when sentencing the Appellant, a person who was in legitimate business and not involved in any money-laundering or terrorist activities and was a person without antecedents. The punishment imposed must correspond to the culpability of an offender *in the context of the objectives of the Act* (and in this case, it must correspond in particular to the objective of Part VIA of the Act). I also noted that Parliament had enacted an over-inclusive provision in s 48C(1) of the Act which made it an offence for a person to bring into or out of Singapore cash amounts of more than $30,000 if an appropriate declaration was not made, regardless of whether the money originated from money laundering or is intended for terrorist activities, or otherwise. It is understandable that Parliament had seen it fit to enact such an all-embracing provision in order to ensure that the Act's objectives would be effectively met. That said, a court still has the responsibility to strike a balance between upholding the cash reporting regime and the spirit behind that provision, and mete out a sentence that fairly accounts for the over-inclusiveness of the provision and yet without disregarding the real objective of the provision in assessing culpability for the purpose of punishment. Arguably, Parliament, in not imposing a mandatory minimum period of imprisonment for such an offence, recognised that there is a range of culpability for the offence under s 48C and it would be up to the courts to determine *when* it would be appropriate to incarcerate an offender for such a violation.

15 In several past cases involving materially the same fact situation, where the offenders were found to have fallen foul of the reporting requirement, but where the movement of cash was predicated on the offenders' legitimate money-changing business, the courts had appropriately exercised their discretion to impose only a fine (see *Public Prosecutor v Loh Chai Huat* (DAC 22565 of 2008), *Public Prosecutor v Lai Nai Jen* (DAC 30616–31620 of 2008), *Public Prosecutor v Ahmad Ibrahim* (DAC 31396–31398 of 2009) and *Public Prosecutor v Yee Wai Pang* (DAC 44703 of 2009), where fines were imposed notwithstanding that the offenders in these cases knew of the reporting requirement and had deliberately failed to make the necessary declaration). Similarly, fines were only imposed in cases where cash was transported for the purposes connected with legitimate commercial transactions (see *Public Prosecutor v Tay Zar Myo Hein* (DAC 5504 of 2009) (cash found in offender's possession was for purchasing stock for a friend's handphone business), *Public Prosecutor v Nguyen Ni Xa* (DAC 35521 of 2009) (cash found in offender's possession was for handphone trading business) and *Public Prosecutor v Worrawut Rungchiwa* (DAC 30242–30244 of 2009) (cash found in offender's possession was intended payment to his rattan and rattan furniture supplier in Malaysia)).

16 In contrast, courts have been prepared to impose terms of incarceration where there was an underlying crime to the movement of money. In *Public Prosecutor v Stanley Ong Beng Hock* (DAC 20870, 33414 and 33415 of 2009), the offender was sentenced to six months' imprisonment for his s 48C(1) offence when he attempted to transport out of Singapore part of the physical cash which he stole from his employer. Similarly, in *Public Prosecutor v Derek Graham Engelbreact @ Sergio Roberto*

Kabemba (DAC 21233 of 2009), the offender was sentenced to three months' imprisonment for trying to leave Singapore with fraudulently obtained funds.

17 Having considered these precedents, it was clear to me that ordinarily, unless the money sought to be moved (and not declared as required) were tainted as shown in those cases cited in the preceding paragraph, imposition of a custodial sentence for an offender under s 48C was not usually called for.

18 In this regard, I would emphasise that it is not illegal to move any sum of money into or out of Singapore. Very often the offender might opt not to declare out of convenience so that there would not be any delay, in arriving or departing from Singapore, on account of having to comply with that requirement. In the case of the Appellant, his trips to Singapore were invariably day trips and so there was a need to save time. While I am not saying that this is excusable, I am simply stating that this could be at the forefront of the Appellant's mind when he deliberately omitted to disclose the currencies he was carrying. Since offenders such as the Appellant are engaged in that nature of activity (money-changing) for profit, it would serve just as good a deterrence, both general and specific, if a substantial fine is imposed. Such a penalty, in my view, would be an adequate and effective disincentive against deliberate disclosure violations. Moreover, as stated earlier, the real culprits which the law targets are those involved in money-laundering and terrorist activities.

19 Quite naturally the burden fell on the Appellant to prove that the currencies he moved into and out of Singapore were pursuant to legitimate commercial transactions. In this case, it was glaringly clear that the offences were committed against the backdrop of a legitimate business. It was not disputed that the Appellant was then the managing director and shareholder of an Indonesian money-changing business. There was neither a suggestion nor suspicion that the Appellant's company was a business front for any illegal criminal activity or was used as a money laundering arm of a criminal syndicate. Notably, when the Appellant was arrested, he was found with numerous physical currencies which were in irregular denominations. This, in my view, corroborated with his claimed business. The significance of this detail did not seem to have been appreciated by the parties. Therefore, considering the totality of the evidence before me, I was amply satisfied that the Appellant was engaged in a *bona fide* money-changing business and was simply in Singapore to legitimately trade currencies with his Singapore counterpart. Thus the large amounts involved. But as counsel for the Appellant had pointed out, what amount of money (in varying currencies) the Appellant had brought into Singapore, he would in turn have brought out a substantial part, if not all, of an equivalent amount (in other currencies). In a sense, there would be double counting if we were to just add the two sums brought into Singapore and correspondingly brought out of Singapore by the Appellant, which counsel reckoned to be $1,866,457 and $1,369,715 respectively. As I stated earlier, the DJ, in considering the need for deterrence, did not have sufficient regard to what was the real mischief which the Act sought to address.

20 I recognise that it is trite law that an appellate court should not interfere with a sentence meted out by the trial judge unless it is satisfied that (see *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [14]):

(a) the trial judge had made the wrong decision as to the proper factual matrix for sentence;

(b) the trial judge had erred in appreciating the material before him.

(c) the sentence was wrong in principle; or

(d) the sentence imposed was manifestly excessive, or manifestly inadequate.

21 In the circumstances, and bearing in mind the precedents, any term of imprisonment would have been disproportionate to the nature of the offence committed and the culpability of the Appellant. Equally important, I noted that the charges preferred by the Prosecution were primarily based on the money-changing receipts that the Appellant himself produced to support his claim that he was legitimately trading in those currencies. If he had really thought that by not making the declaration he had committed a grave offence, I would have imagined that he would not have so willingly confessed to the similar earlier trips which he had made. Quite clearly, the Appellant came clean from the very outset, and this reflected the extent of remorse within him. Without such cooperation, details of his past movements of cash would not have surfaced and would not have led to the multiplicity of charges he now faced. These were undoubtedly mitigating factors to which consideration should be given (see *Public Prosecutor v Lim Hoon Choo* [1999] 3 SLR(R) 803 at [16] and *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [69]).

Conclusion

22 For all the above reasons, I was of the firm view that the circumstances of the case only warranted a sentence of no more than a fine. That said, I agreed with the submission made by the Prosecution below that a substantial fine ought to be imposed to reflect the predominant principle of specific deterrence on the facts of this case as well as the need for some general deterrence against similar offenders avoiding the reporting requirement in the future. Accordingly, I allowed the appeal and I ordered the sentences to be substituted with a fine of $8,000 per charge, making a total fine of $24,000. Such a fine should cause sufficient pain to act as a general and specific deterrent to a money-changer like the Appellant.