

Koh Swee Beng v Public Prosecutor
[2013] SGHC 133

Case Number : Magistrate's Appeal No 1 of 2013
Decision Date : 17 July 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : S K Kumar (S K Kumar Law Practice LLP) for the appellant; Marcus Foo Guo Wen and Clarence Chua (Attorney-General's Chambers) for the respondent.
Parties : Koh Swee Beng — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Appeal

17 July 2013

Choo Han Teck J:

1 The appellant pleaded guilty to eight charges for various offences. 18 other charges were taken into account for sentencing. Three of the charges which are subject to this appeal are DAC No 31305 of 2012 under s 8(b)(ii) Misuse of Drugs Act (Cap 185, 2008 Rev Ed), for consumption of methamphetamine, DAC No 35669 of 2012 for trafficking of methamphetamine under s 5(1)(a) and s 5(2) of the same, and DAC No 44627 of 2012 for possession of offensive weapons under s 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Rev Ed). He was sentenced to seven years' imprisonment and six strokes of the cane, six years' imprisonment and six strokes of the cane, and nine months' imprisonment and six strokes of the cane for the said charges respectively. The sentences were ordered to run consecutively, thus, the total term of imprisonment ordered was 13 years and nine months with 18 strokes of the cane.

2 The punishment prescribed by law in the above charges are a minimum mandatory sentence of seven years imprisonment and six strokes of the cane and up to 13 years imprisonment and 12 strokes of the cane for s 8(b)(ii) of the Misuse of Drugs Act for DAC No 31305, a minimum mandatory term of imprisonment of five years and five strokes for s 5(1)/s 5(2) of the Misuse of Drugs Act and up to a maximum of 20 years imprisonment and 15 strokes of the cane in respect of DAC No 35669, and up to three years imprisonment and six strokes of the cane in respect of DAC No 44627.

3 The appellant's counsel, Mr S K Kumar submitted that the "one transaction" rule should apply in respect of the two charges relating to methamphetamine because the methamphetamine under trafficking charge under s 5(2) of the Misuse of Drugs Act and the methamphetamine which he consumed were one and the same parcel. He argued that the two charges should not be treated as separate offences. The appellant was not charged with trafficking for the drug that he consumed. Consumption and trafficking are distinct offences and thus an accused may be charged for both.

4 Counsel submitted that in Mohamad Iskandar bin Basri v PP [2006] SGHC 158, the court had treated the offences of causing death of one person and causing grievous hurt to two other victims arising from the same motor vehicle accident caused by the negligence of the accused as offences committed in one transaction. I think that where drug trafficking is concerned an appropriate analogy would be one in which a trafficker sold drugs to two different purchasers at the same time. It might also be analogous where an offender was caught with drugs in his possession where part of the drugs

was kept in his home and part in his car. They are all in his possession at the one and same time albeit stored in different places. Thus, if an offender had consumed some of the drugs in his possession for which he was charged for trafficking, the sentencing court can take this factor into account for the purposes of sentencing, but not, strictly speaking, as part of the same transaction rule, but as part of the individual circumstances of the case. In that regard, the court may take into account that the consumption offence arose from the offender's addiction, and that the trafficking was carried out to feed the offender's own addiction. It is one of the factors that the court may take into account, and give such weight (or none at all) to it as it thinks fit.

5 In the circumstances of this case, there was no reason to interfere with the sentences passed by the court below. The appeal was therefore dismissed.

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