Attorney-General *v* Mah Kiat Seng
[2013] SGHC 172

Case Number : Originating Summons No 334 of 2012

Decision Date : 12 September 2013

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Mohamed Faizal and Teo Siqi (Attorney-General's Chambers) for the plaintiff; Defendant in person.

Parties : Attorney-General — Mah Kiat Seng

Courts and Jurisdiction – vexatious litigants

12 September 2013 Judgment reserved.

Lee Seiu Kin J :

Introduction

1 In this originating summons, the Attorney-General ("AG") applied under s 74(1) of the Supreme Court of Judicature Act (Cap 332, 2007 Rev Ed) ("SJCA") for the following order:

> No criminal legal proceedings or judicial review application shall without the leave of the High Court be instituted by Mah Kiat Seng (NRIC No [xxx]) with respect to his conviction for an offence under s 13(2)(*a*) of the Registration of Criminals Act (Cap 268, 1985 Rev Ed) *vide* District Arrest Case No 62538 of 2009 in any court established by the SCJA or constituted under the Subordinate Courts Act (Cap 321, 1999 Rev Ed) 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 ("Court"); and that any such legal proceedings instituted by the said Mah Kiat Seng in any Court before the making of this order, including Criminal Motion No 15 of 2012, shall not be continued by him without such leave, and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

Background

2 The defendant was arrested on 17 July 2009 for the offence of voluntarily causing grievous hurt, an offence under s 325 of the Penal Code (Cap 224, 2008 Rev Ed). He was taken to Bedok Police Station and there, asked to have his finger impressions and photograph taken. He refused to do so. He was then requested to have his blood sample taken, which he also refused. He was accordingly charged with two offences: (a) refusing to submit to the taking of finger impressions and photographs when lawfully required by an authorised police officer, an offence under s 13(2)(*a*) of the Registration of Criminals Act (Cap 268, 1985 Rev Ed) ("the RCA") ("First Charge"); and (b) refusing to give a blood sample when lawfully required by an authorised police officer, an offence under s 13E(5)(*a*) of the RCA ("Second Charge").

3 The defendant was tried in the District Court on the two charges. At the conclusion of the trial on 29 July 2010, District Judge Roy Neighbour ("the DJ") found him guilty of both charges and

sentenced him to a fine of $500 for each offence. The DJ gave detailed reasons for his decision in *Public Prosecutor v Mah Kiat Seng* [2010] SGDC 315. The defendant appealed against the convictions in Magistrate's Appeal No 184 of 2010 ("MA184/2010") and this was heard by Choo Han Teck J on 18 October 2010. Choo J allowed the appeal in respect of the Second Charge and ordered the $500 fine that the defendant had paid in respect of this charge to be refunded to him. However Choo J dismissed the appeal against the conviction in respect of the First Charge and upheld the conviction and sentence.

4 Dissatisfied with the decision of Choo J to dismiss his appeal against the conviction in respect of the First Charge, on 15 November 2010, the defendant filed Criminal Motion No 42 of 2010 ("CM42/2010") to apply to reserve 22 questions of law to the Court of Appeal ("the CA") pursuant to s 60(1) of the SCJA. On 10 February 2011, Choo J heard the application and dismissed it, setting out his grounds of decision in *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 122. The judge found that the defendant's questions were rambling and repetitious and many were not questions of law but fact. He found that the provisions concerned in the RCA, namely s 8 and s 13(2)(*a*) were clear and there was no basis to reserve the questions to the Court of Appeal.

5 On 10 February 2011, the day that Choo J gave his decision in CM42/2010, the defendant filed Criminal Motion No 7 of 2011 ("CM7/2011") to apply to the CA for leave pursuant to s 397 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") to refer 26 questions of law to the CA. I should explain that s 60(1) of the SCJA was repealed with effect from 2 January 2011, and from this date the procedure contained therein for referring questions of law to the CA was to be found in s 397 of the CPC. One of the differences between s 60(1) of the SCJA and s 397 of the CPC is that, in the former, the application for leave to refer the questions of law is made to the High Court, whereas in the latter the application is made to the CA. The CA dismissed this application on 26 April 2011 and delivered its written grounds of decision on 30 May 2011: see *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 859. The CA found that many of the questions were repetitive in nature and merely restated identical or similar points and that those which were questions of law were not questions of law of public interest. The CA concluded (at [21]) that the defendant "was in effect seeking, by the back-door, an appeal against the decision of [Choo J]".

6 On 15 June 2011, a little over two weeks after the CA delivered its grounds of decision in CM7/2011, the defendant filed Criminal Motion No 45 of 2011 ("CM45/2011"). This prayed, *inter alia*, for the High Court to review the decision of Choo J in MA184/2010 and set aside the defendant's conviction of the offence under the First Charge. This application was heard by Steven Chong J on 28 July 2011. After hearing the submissions of the defendant and deputy public prosecutor, Chong J dismissed the application. Chong J stated that the application was, in essence, for him to rehear MA184/2010, for which there was no statutory basis. The judge stated that, in the circumstances of this case, he had no inherent jurisdiction to do so in his capacity as a judge sitting in the High Court. At the end of the hearing Chong J warned the defendant that if he persisted in taking up criminal motions in respect of the same issues, he might be faced with an application under s 74 of the SCJA.

7 On 5 March 2012, the defendant filed Criminal Motion No 15 of 2012 ("CM15/2012") seeking to review the decision by Chong J in CM45/2011. On 3 April 2012, the Attorney-General ("AG") filed this application.

Appointment of advocate & solicitor

8 Under s 74(2) of the SCJA, if the court is satisfied that the defendant lacks the means to retain an advocate and solicitor, it shall assign one to him. On 29 June 2012 the defendant appeared before me in Chambers. He informed me that he did not have the means to engage a lawyer to act for

him in resisting this application as he was unemployed and did not own any property. He was single and was living in his parents' home. He admitted that he had some savings but it was not substantial. After hearing him, I was satisfied that he lacked the means to retain an advocate and solicitor and gave instructions to the registrar to assign one to him.

9 In the event, an advocate and solicitor, Mr Foo Cheow Ming of M/s Peter Ong & Raymond Tan was assigned to him on 13 July 2012. However on 16 October 2012, Mr Foo applied to be discharged. On 19 October 2012, the High Court appointed Mr Chung Ting Fai of M/s Chung Ting Fai & Co to act for him in place of Mr Foo. However on 18 February 2013 Mr Chung appeared before me in Chambers along with the defendant and applied to be discharged from acting for the defendant. I granted his request and the defendant requested me to appoint a third lawyer to act for him. He said that he did not know why Mr Foo and Mr Chung did not wish to act for him. I asked him whether he knew of any lawyer whom he would like the High Court to engage. I also informed him that the court cannot keep on instructing lawyers for him who eventually decline to continue acting for him. The defendant said he did not know of any lawyer whom he would like the court to appoint for him but requested to appoint Mr Gregory Vijayendran ("Mr Vijayendran") from M/s Rajah & Tann as he would be experienced in this area of law, having acted for the defendant in *Attorney-General v Tee Kok Boon* in originating summons no 1069 of 2007 (reported [2008] 2 SLR(R) 412). I informed the defendant that I would request the registrar to appoint Mr Vijayendran but if he could not accept the appointment it was not possible to keep appointing solicitors. Eventually the hearing would have to proceed even if he was not represented. In the event, Mr Vijayendran was not able to accept the appointment. In the circumstances, I was satisfied that it was not possible to appoint an advocate and solicitor to act for the defendant in the matter and directed that the hearing proceed, although the defendant had liberty to engage an advocate and solicitor at any time during the proceedings. The submissions of the AG and defendant were heard over two days, on 19 April and 13 August 2013, at the end of which I reserved judgment.

Defendant's objection

10 The defendant objected to my hearing this application. However, apart from the general statement that he felt that he did not think that I would decide it without bias, he was not able to give any specific reasons for this. He gave the names of a few other judges whom he felt would be suitable to deal with this application. On my part, I had no idea who the defendant was until this application was placed before me. I had not been involved in the defendant's various court proceedings. Apart from reading the judgments that were released by the High Court and Court of Appeal in those cases, I had no other knowledge of the matter. I therefore did not think that there was any ground at all to recuse myself from hearing this application.

The submissions of the AG

11 State Counsel, Mr Faizal, appearing for the AG, tendered his written submission marked "PWS". Mr Faizal submitted that the facts of the case clearly show that the defendant falls within the circumstances set out in s 74(1) of the SCJA. He also cited various authorities to support his submission that the court ought to make the order prayed for.

The submissions of the Defendant

12 The defendant tendered his written submission entitled "Defence" which was marked "DWS". He supplemented this with an oral submission, marked "1DWS".

13 Most of the defendant's submissions pertain to the merits of the applications before Choo J and

Chong J as well as the CA that were dismissed by those courts. They were not relevant to the application before me. But this is understandable as the defendant is not trained in the law. The relevant parts of his submissions were as follows:

(a) The Court has a discretion in such applications as some of the cases cited have resulted in no order by the court.

(b) The facts of this case do not justify the conclusion that he is a vexatious litigant in comparison with cases dealing with such applications.

(c) Section 74 of the SCJA is only applicable to a vexatious plaintiff rather than the present case which involves his seeking justice for a wrongful conviction.

(d) Failed proceedings which possess merits are not vexatious.

My decision

14 Section 74(1) of the SCJA provides as follows:

> **74.** – (1) If, on an application made by the Attorney-General, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in any court or subordinate court, whether against the same person or against different persons, the High Court may, after hearing that person or giving him an opportunity of being heard, order that —
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> (*a*) no legal proceedings shall without the leave of the High Court be instituted by him in any court or subordinate court; and
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> (*b*) any legal proceedings instituted by him in any court or subordinate court before the making of the order shall not be continued by him without such leave, and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

15 For an application under s 74(1) of the SCJA to be granted, the AG must satisfy the court that the person against whom the application is made has "habitually and persistently and without any reasonable ground instituted vexatious legal proceedings" in any court. The meaning of this formulation and of the various terms within it, *ie*, "habitually", "persistently" and "vexatious", was considered by Woo Bih Li J in *Attorney-General v Tee Kok Boon* [2008] 2 SLR(R) 412 ("*Tee Kok Boon*") at [102]–[105]. Woo J quoted with implicit approval passages from Australian and Canadian authorities and, like him, I find myself in general agreement with the views expressed therein. I think that the concepts of "habitually" and "persistently" are ordinary English expressions and do not require precise elaboration, but nevertheless I am happy to avail myself of helpful definitions furnished in the foreign authorities cited by Woo J which would cover most situations. "Habitually" suggests that the institution of legal proceedings occurs as a matter of course, or almost automatically when the appropriate conditions, whatever they may be, exist. "Persistently" suggests determination, and continuing in the face of difficulty or opposition, with a degree of stubbornness. As for the meaning of "vexatious", I need not and do not attempt an exhaustive definition; in the circumstances of the present case, it suffices to say that proceedings are to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless and only serve to tax the resources of the courts.

16 These definitions accord with the views of Woo J in *Tee Kok Boon* at [119] that an application under s 74(1) of the SCJA is not a "numbers game". The defendant argued in his written submissions (at para 31) that "the number of vexatious legal proceedings … is crucial to determine a litigant to be vexatious", and that "[a] necessary but insufficient condition to [declaring a litigant vexatious] is the volume of prior proceedings". I do not agree. In my judgment, the number of proceedings instituted by the person against whom the application is made may well be a factor to be taken into account in the question of whether those proceedings were instituted "habitually" or "persistently", but it is not determinative, nor is it necessarily an important factor. The significance of the number of prior proceedings is especially reduced where the application is a narrow one, *ie*, where what is sought is not a blanket restriction on instituting all future proceedings, but merely a restriction on instituting future proceedings in relation to specific causes or issues. In such a situation, if it has been decided with unimpeachable finality that the person's cause has no merit, and that person nonetheless institutes a subsequent proceeding in pursuit of exactly the same cause such that it is doomed to fail, there is no reason in principle why the court should have to wait until the person has reached a minimum number of proceedings before it can act to prevent a waste of judicial time and resources.

17 I should further express my agreement with two propositions which may be found in Woo J's analysis in *Tee Kok Boon*. The first, adverted to at [106] and [121] of his judgment, is that whether a person falls under s 74(1) of the SCJA depends on an objective view of the facts, and it is immaterial that, in instituting the relevant legal proceedings, that person acted in good faith and/or sincerely believes in the justice and correctness of his cause. The second, adverted to at [104] and [120] of his judgment, is that the court hearing the s 74(1) of the SCJA application should take a broad view of all the legal proceedings instituted by the person against whom the application is made. This means that the court should consider the general character and result of all those proceedings, and not merely whether there may not have been possible causes of action in some of those proceedings: see the dissenting judgment of Blair JA in the Ontario Court of Appeal case of *Foy v Foy (No 2)* (1979) 26 OR (2d) 220 at 237–238.

18 I turn now to apply the definitions and principles set out above to the facts before me, and I begin by recapitulating in brief the history of the legal proceedings involving the defendant. The source of the chain of litigation was the defendant's conviction in the District Court on 29 July 2010 on the two charges. He appealed against the conviction before Choo J who upheld the conviction on the First Charge and set aside the conviction on the Second Charge on 28 October 2010. This is normally the point at which such a matter should end because, under Singapore's criminal justice system, a case heard in a District Court (or other Subordinate Court) has only one level of appeal, *ie*, to the High Court, as was affirmed by the CA in *Mohammad Faizal bin Sabtu and another v Public Prosecutor and another matter* [2013] 2 SLR 141 at [21]. In other words, there is no further appeal from the High Court exercising its appellate jurisdiction in a criminal matter. Subsequent recourse to the CA may only be had in a limited circumstance, *viz*, when a party wishes to refer any question of law of public interest which has arisen in the matter. The defendant sought precisely this limited avenue of recourse to the CA – he twice applied for leave to refer questions of law to the CA, and on both occasions he was unsuccessful. Choo J dismissed CM42/2010 on 10 February 2011 and the CA dismissed CM7/2011 on 26 April 2011. As the CA is the final court of the land, the matter should finally have ended there. However, it did not and the defendant resuscitated his campaign by filing CM45/2011 on 15 June 2011. This was dismissed by Chong J. Then, some nine months later, on 5 March 2012, the defendant filed CM15/2012 to review that decision of Chong J. These actions have been the subject of no less than four written judgments ("GD"); the GD of District Judge Roy Neighbour for the appeal in MA184/2010, the GD of Choo J in MA184/2010, the GD of Choo J in CM42/2010 and the GD of the CA in CM7/2011.

19 From the foregoing chronology, it is clear that, in relation to his conviction in the District Court,

the defendant has exhausted all possible recourse to the superior courts provided for by law. He has been afforded full opportunity to argue his case, the respective courts have carefully scrutinised the matter, and detailed reasons for the decisions have been given. In seeking to go beyond that – first by filing CM45/2011 to review the decision of Choo J in MA184/2010, and then by filing CM15/2012 to review the decision of Chong J in CM45/2011 – I am satisfied that the defendant has instituted legal proceedings "without any reasonable ground", in that he has not furnished any valid basis on which to impeach judicial determinations that are final. These proceedings are so obviously untenable and manifestly groundless as to be utterly hopeless, and for that reason I am satisfied that they are "vexatious". The defendant argued that they were not "vexatious" because his appeal and applications had in a number of instances been partially successful: first, he managed to overturn his conviction on the Second Charge in MA184/2010; second, the CA held in CM7/2011 that 11 of his 26 questions were questions of law, albeit not of public interest; and third, Chong J in CM45/2011 agreed with him that there were instances in which the High Court could review its previous decision. But success on the Second Charge as well as "partial success" in the other applications does not mean that, viewed as a whole, the proceedings in relation to the First Charge are not utterly hopeless. As a consequence, I am unmoved from my view that the proceedings were "vexatious". I am satisfied that the defendant has instituted these vexatious legal proceedings "habitually", in that he did so almost as a matter of course whenever a decision turned out against him. I have no doubt, based on what has gone before, that the defendant will not cease to make application after application to the court until he gets his conviction in respect of the First Charge overturned, notwithstanding that there is no longer any possibility of this outcome being achieved. His is a stubborn refusal to yield in the face of impossibility, and for that reason I am satisfied that he has "persistently" instituted proceedings.

20 I am satisfied, therefore, that the actions and behaviour of the defendant fall within the words in s 74(1) of the SCJA in that he has "habitually and persistently and without any reasonable ground instituted vexatious legal proceedings". However, notwithstanding that the grounds for the application are present, there is a residual discretion by the court to refuse to make such an order. I turn to examine the authorities on the issue of the objective behind the power of the court to deal with vexatious litigants.

21 In *Attorney-General v Barker* [2000] 1 FLR 759, a decision of the Divisional Court of the Queen's Bench, Lord Bingham of Cornhill CJ said at p 764C and G:

> … The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.
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> …
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> The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; … that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop.

22 In *Tee Kok Boon*, Woo J held at [75] that the purpose of s 74(1) of the SCJA was "to prevent

an abuse of the process of the courts". He further stated that:

> … the problem with vexatious litigation is that it diverts the court's resources from dealing with meritorious disputes. I would add that it also diverts the attention and resources of the respondent and is oppressive.

23 I also find the following passage from a speech by the Right Hon. Sir Anthony Clarke, MR, entitled "Vexatious Litigants & Access to Justice: Past, Present and Future", to be very apposite to the present case:

> Vexatious litigation poses problems for the courts and society at large. It can even be said to pose problems for the litigants who initiate such proceedings. It does so as it represents an inability to draw a rational and reasonable halt to a dispute which has been fairly and properly adjudicated, albeit the result of that adjudication was clearly not one the litigant firmly, perhaps too firmly, believed he deserved to achieve.

24 The starting point, of course, is that persons should in general enjoy unfettered access to the courts. It is through the courts that persons vindicate their rights under law, and compromising their access to the courts creates a risk of their being unable to seek redress in our courts. But where a person has instituted legal proceedings and it is clear beyond doubt that there is nothing, or nothing left, by way of rights to vindicate, then instituting further proceedings in pursuit of the same cause not only is vain, but also diverts the court's time and resources from vindicating the rights of other persons with meritorious causes. It is also detrimental, objectively speaking, to the person himself, because maintaining the proceedings similarly diverts his own time and resources from more productive endeavours. Thus the court declares a litigant to be vexatious not only for its own protection, and not only in the interests of other persons in society, in particular the litigant's opponents, but also for the benefit of the litigant himself.

25 The defendant argued that a provision such as s 74(1) of the SCJA is meant for plaintiffs "on the offensive" who continually bring unmeritorious actions, not a subject of a criminal prosecution such as himself who is "on the defensive". I do not agree. The court would never prevent a person from defending himself when he is prosecuted in court, or from prosecuting an appeal properly brought up. The present application is not to prevent the defendant from defending himself in criminal proceedings nor from appealing against the judgments of such proceedings. The application is to prevent him from launching vexatious and hopeless applications in court which seek to set aside his conviction after all avenues for appeal have been exhausted. The defendant also drew comparisons between his case and those of such persons as Linda Lai and Yong Vui Kong, both of whom have been parties to a number of legal proceedings. Linda Lai was a party in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133, *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565, *Lai Swee Lin Linda v Attorney-General* [2008] 2 SLR(R) 794 and several other proceedings, while Yong Vui Kong was a party to *Yong Vui Kong v Public Prosecutor* [2010] 2 SLR 192, *Yong Vui Kong v Public Prosecutor and another matter* [2010] 3 SLR 489, *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 and a number of other proceedings. The defendant asserted that those individuals "had each gone through far more number of court proceedings" compared to him. He argued that, given that it was not sought to invoke s 74(1) of the SCJA against them, it would be "unfair" to declare him a vexatious litigant. I see no merit in this argument. As I have said above, it is not a "numbers game", so even accepting that other persons have instituted a greater number of proceedings than the defendant, it does not follow that, if they are not declared to be vexatious litigants, then neither should he. And those individuals named by the defendant are not appropriate for purposes of comparison simply because no application under s 74(1) of the SCJA was made against them, which means that there has been no consideration at all of whether they "habitually

and persistently and without any reasonable ground instituted vexatious legal proceedings". I am not in a position to give consideration to that question in relation to other cases not before me.

26 Returning to the present case, it is clear to me that the defendant is unwilling or unable to accept any decision of the court that goes against him. This is clear not only from the chain of court applications that he has made, but also from the manner in which he made his submission before me. The essential theme of his submission is that no judge is correct unless that judge rules in his favour. He is unable to accept the possibility that he is wrong. It is unfortunate that he cannot see this and it must be a terrible position for any person to be in, where everyone around him is so clearly in the wrong. It is obvious that he requires assistance and perhaps even counselling for him to come to terms with life as he finds it. But the courts are not equipped to do this and the defendant will have to be helped by some other body with the necessary competence in this area. Notwithstanding the defendant's unfortunate situation, it is essential that the courts be able to go about its business without having its resources tied down by the defendant. Once the court has determined that there is nothing further in his complaints and that he is making one futile application after another, it is incumbent on the court to restrain the defendant from continually placing encumbrances on the efficient conduct of its business. It should not be forgotten that the scope of the order which the AG seeks is narrow and targeted – it only seeks to restrict the defendant's access to the courts in relation to his conviction on the First Charge. It does not hinder him in any way from having recourse to the courts in any other matter. This means that the adverse effect of an order under s 74 of the SCJA on the defendant's liberty is very contained. In short, I am of the view that it is in the interests of the court, society in general, the Public Prosecutor and the defendant himself that I should accede to the AG's application under s 74 of the SCJA.

27 I therefore hold that, having been satisfied on the evidence before me that the defendant has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in our courts, I should exercise my power under s 74(1) of the SCJA to make the order as prayed in the AG's amended originating summons. I so order.