Mohd Fauzi bin Mohamed Mydin *v* Public Prosecutor
[2015] SGHC 313

Case Number : Magistrate's Appeal No 105 of 2015

Decision Date : 07 December 2015

Tribunal/Court : High Court

Coram : See Kee Oon JC

Counsel Name(s) : The appellant in person; Bagchi Anamika (Attorney-General's Chambers) for the respondent.

Parties : Mohd Fauzi bin Mohamed Mydin — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act

Criminal Procedure and Sentencing – Appeal – Appeal against mandatory minimum sentence – Summary rejection of appeal

7 December 2015

See Kee Oon JC:

Introduction

1 The appellant, Mohd Fauzi bin Mohamed Mydin ("the Appellant") pleaded guilty in a District Court to a charge under s 8(*b*)(ii) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for consuming morphine, a specified drug. His charge is also commonly known as a "Long Term-2" or "LT-2" charge because it attracts enhanced punishment under s 33A(2) of the MDA.

2 The Appellant was represented by Mr S K Kumar ("Mr Kumar") when he pleaded guilty on 2 June 2015. He was sentenced to the mandatory minimum sentence of seven years' imprisonment and six strokes of the cane. At counsel's request, the District Judge backdated the imprisonment sentence to 1 April 2014, which was the date of his first remand.

3 The Appellant subsequently filed a notice of appeal against his sentence. After hearing arguments from the Appellant and the Prosecution, I dismissed his appeal. For the purposes of this judgment, aside from explaining the reasons for my decision, I have also set out my views on s 384 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), a provision which allows for the summary rejection of an appeal. I will discuss also how this provision could have applied to the present appeal, as well as similar appeals that may be filed in future.

Proceedings in the court below

4 I will first summarise the facts of the present case and what transpired in the court below.

Charges and the Statement of Facts

5 On 2 June 2015, the Appellant pleaded guilty to a charge of consuming morphine, a specified drug listed in the Fourth Schedule to the MDA. In the charge sheet, it was indicated that before the commission of this offence, the Appellant had been convicted on 26 April 1999 in District Court 24 for

a similar offence of consumption of morphine. For that earlier offence, by virtue of ss 8(*b*)(ii) and 33A(1) of the MDA, he was liable for a mandatory minimum enhanced long-term ("LT-1") sentence. In the event, he was sentenced to five years and six months' imprisonment and three strokes of the cane, which conviction and sentence have not been set aside. For the present charge, the Appellant was liable to an enhanced LT-2 punishment under s 33A(2) of the MDA. As indicated in the same charge sheet, this meant that the Appellant would be liable to a mandatory minimum sentence of seven years' imprisonment with six strokes of the cane, up to a maximum sentence of 13 years' imprisonment with 12 strokes of the cane.

6 The exact circumstances of the Appellant's offence are unremarkable. They were set out in a Statement of Facts ("SOF") which he admitted to without qualification. In essence, the SOF showed that the Appellant was arrested on 24 March 2014 at about 4.10 p.m. on suspicion of having consumed a controlled drug. Thereafter, his urine samples were procured and they were then sent to the Health Sciences Authority ("HSA") for analysis. The HSA analysts subsequently issued two certificates under s 16 of the MDA, which certified that the Appellant's urine samples were found to contain morphine. Besides being a specified drug listed in the Fourth Schedule to the MDA, morphine is a known metabolite of diamorphine. The Appellant also admitted that he had been consuming heroin (the street name for diamorphine) since November 2013. The presence of morphine in the Appellant's urine samples was a result of his consumption of heroin.

7 The SOF also indicated that prior to the current offence, the Appellant had been convicted of an LT-1 charge in 1999 for consumption of morphine, and was sentenced to five years and six months' imprisonment and three strokes of the cane. Hence, for his latest LT-2 drug consumption offence, the Appellant was liable for enhanced punishment under s 33A(2) of the MDA. In addition to pleading guilty to the LT-2 charge, the Appellant also consented to having a similar LT-2 charge taken into consideration for the purpose of sentencing.

Antecedents, Mitigation and Prosecution's position on sentence

8 Aside from the LT-1 conviction on 26 April 1999, the Appellant also had past convictions in 1986 for drug possession and in 1999 for failures to report for urine tests, as well as convictions for property offences. In addition, he was committed to a Drug Rehabilitation Centre ("DRC") for drug consumption on three occasions in 1993, 1994, 1996, and placed under drug supervision for 24 months on four separate occasions.

9 In the court below, his counsel, Mr Kumar, had urged the court to impose the minimum sentence of seven years' imprisonment and six strokes of the cane, and to backdate the imprisonment sentence to the date of the Accused's first remand. In the mitigation plea, counsel highlighted that the Appellant was 47 years old and hence was still liable for caning.

10 The Prosecution did not object to the imposition of the mandatory minimum sentence of seven years and six strokes of the cane, or for the imprisonment sentence to be backdated to the date of the Accused's first remand.

The decision below

11 From the record of proceedings, the District Judge had reviewed the SOF, the Appellant's antecedents and his plea in mitigation, as well as the Prosecution's position on sentencing. In his grounds of decision (published as *Public Prosecutor v Mohd Fauzi bin Mohamed Mydin* [2015] SGDC 195), the District Judge highlighted the following matters:

(a) The Appellant was aware of, and had requested for, the imposition of the mandatory minimum sentence. When the charge was read to the Appellant by the interpreter, the punishment provisions (on the charge sheet) were interpreted to him. In addition, pursuant to s 227(2)(*b*) of the CPC, counsel had confirmed that the Appellant understood the nature and consequences of his plea, and that he intended to admit the offence without qualification. In addition, the SOF set out the fact that because of the Appellant's previous LT-1 conviction, he was liable for enhanced (LT-2) punishment under section 33A(2) of the MDA. Finally, counsel had specifically requested that the court impose the mandatory minimum sentence of seven years and six strokes, and had asked for the sentence to commence from 1 April 2014 (at [16]–[18]).

(b) Aggravating features that could have justified a sentence higher than the mandatory minimum were present. The District Judge also noted several features in the Appellant's case which could have warranted the imposition of a higher sentence, notably the fact that the Accused had consented to having another LT-2 drug consumption charge taken into consideration for the purpose of sentencing, the fact that his previous LT-1 consumption charge involved the same type of drugs (*ie*, morphine), as well as the Appellant's numerous DRC admissions and drug supervision orders (at [21] and [23]–[24]).

(c) While the District Judge opined that there were reasons to consider imposing a sentence above the mandatory minimum, he elected not to do so in the light of the Appellant's plea of guilt, and the fact that the Prosecution had not objected to the request for the imposition of the mandatory minimum sentence (at [26]–[28]). In his grounds of decision the District Judge noted that the sentence that he imposed was "*simply the minimum sentence that must be imposed by law*" (at [32]).

The Appeal

12 On 26 June 2015, the Appellant filed a notice of appeal against the mandatory minimum sentence imposed by the District Judge. In his petition of appeal filed on 23 July 2015, his ground of appeal was simply that the sentence imposed is "*manifestly excessive*".

13 On 27 August 2015, the Appellant tendered skeletal arguments in support of his appeal. In his skeletal arguments, the Appellant, surprisingly, stated that "*I'm not appealling* (*sic*) *my LT-2 conviction*". Instead, the Appellant indicated he was actually appealing against his earlier LT-1 conviction recorded on 26 April 1999. This was ostensibly because of the suggestion made by his counsel Mr Kumar, that the Appellant's "*urine sample percentage*" was very low at the time, and that he was "*not eligable (sic) to be charge (sic) in court*" for the LT-1 charge as he was apparently informed by Mr Kumar that it was common practice then that such cases (with "*low percentage urine sample*")* were not proceeded with in court. The Appellant also requested that the Prosecution provide the relevant documents relating to his earlier LT-1 conviction as those formed the crux of the Appellant's case.

14 In opposing the appeal, the Prosecution made the following arguments:

(a) In his petition of appeal, the Appellant had merely stated that the sentence imposed is "*manifestly excessive*" without providing any further grounds. This failed to meet the requirement stipulated in s 378(2) of the CPC that sufficient particulars must be stated in a petition of appeal. Section 378(6) CPC further provides that an appellant shall not be permitted (without the leave of court) to rely on any ground of appeal other than those set out in the petition of appeal.

(b) Moreover, in the light of the Appellant's claim that his earlier LT-1 conviction was not

made out, it "*thus appears that the Appellant's true intention is not to appeal against the sentence imposed for the LT2 charge (DAC-6807-2014), but instead to file an appeal out of time against the earlier LTI conviction (DAC-15020-1999) imposed by the court on 26th April 1999*". The Prosecution argued that the Appellant had failed to satisfy the requirements set out in s 250 of the CPC then in force (Cap 68, 1985 Rev Ed), and in established case law, for leave to be granted to file an appeal out of time against the LT-1 conviction.

(c) In addition, there was no basis for the Appellant to ask the High Court to exercise its revisionary powers to set aside his plea of guilt relating to the LT-1 conviction in 1999.

(d) Furthermore, the Appellant had the opportunity to review his LT-1 conviction before he pleaded guilty on 2 June 2015 to the present LT-2 charge, as he was represented by Mr Kumar at the mention on that date. The District Judge had granted Mr Kumar a three-week adjournment to clarify matters pertaining to the proposed commencement date of the sentence, the validity of the Appellant's LT-1 charge, and also to prepare his mitigation plea. Moreover, before the Appellant's actual plea of guilt was recorded, Mr Kumar had indicated that he had clarified matters with the Prosecution and confirmed that there was no issue with the Appellant's previous conviction. He had also asked for the sentence to commence from the date that the Appellant was remanded, *ie*, 1 April 2014.

(e) Finally, as regards the punishment imposed for the current LT-2 charge, the mandatory minimum sentence is a punishment prescribed by the Legislature. As such, there is simply no basis for the court to impose a lower sentence in respect of this charge.

My decision

15 Notwithstanding that it was stated in the Appellant's Petition of Appeal that he was appealing against the sentence imposed for his present LT-2 charge, when the Appellant appeared before me, he repeated his claim that his lawyer had told him to appeal against his 1999 (LT-1) conviction. The Appellant's statement in court echoed the position that he had taken in his skeletal arguments that his quarrel was actually not with the present LT-2 conviction, but with the earlier LT-1 conviction instead.

16 I begin by turning to s 375 of the CPC, which provides that an accused person who has pleaded guilty has only a limited right of appeal. The section reads:

> **Limited right of appeal against plea of guilty**
>
> **375.** An accused who has pleaded guilty and has been convicted on that plea in accordance with this Code *may appeal only against the extent or legality of the sentence*. [emphasis added]

17 I was unable to see how the present appeal fell within these parameters. The Appellant could not raise any issues about the length, nature or validity of his punishment (*ie*, "*the extent or legality of the sentence*") for the present LT-2 charge. And indeed he did not do so since there was evidently nothing inherently objectionable or defective in relation to the extent or legality of his sentence on the face of the record; he had pleaded guilty voluntarily on the advice of counsel, proper procedural safeguards had been observed, and he had been sentenced to the mandatory minimum sentence prescribed by law for the offence. The legality of the sentence could not be impugned; this was not a case where an unlawful sentence (*eg*, exceeding the District Court's jurisdiction or the statutorily-prescribed maximum punishment) had been passed.

18 On a plain reading of s 375 of the CPC, given the background set out above, the Appellant had *prima facie* failed to establish that he had a right of appeal against the sentence. His appeal would have failed *in limine.* He was in effect attempting to use the appeal proceedings as a back-door to challenge his prior LT-1 conviction. But the appeal before me was one against the sentence for his LT-2 conviction and not against the validity of his prior LT-1 conviction. The validity of the LT-1 conviction could not be a subject matter of his appeal against his sentence for the LT-2 charge.

19 I agreed with the Prosecution that there was no basis for me to allow the Appellant to file an appeal out of time against the LT-1 conviction, in the light of his inordinate delay in pursuing an appeal against that conviction recorded in 1999, his lack of explanation for the delay, as well as the dismal prospects of success for such an appeal. I saw no cogent basis to exercise my revisionary power in his favour, whether in respect of his LT-1 conviction or the LT-2 conviction.

20 Further, it must also be said that whatever misgivings the Appellant may now harbour against his prior LT-1 conviction, no such misgivings were surfaced when he pleaded guilty to his LT-2 charge in the court below. Both he and his lawyer, Mr Kumar, had accepted the validity of his previous LT-1 conviction at that time. Yet, the Appellant now claims that it is the same lawyer who has urged him to appeal against his LT-1 conviction and if so this would appear *prima facie* to be an abuse of the court's process.

Summary rejection of appeal: Section 384 CPC

21 This appeal was dealt with in the conventional way with a full hearing before me before I dismissed the appeal. However, I am of the view that this appeal could also have been disposed of in a more efficient but no less effective manner through a summary rejection of the appeal as provided for under s 384 of the CPC. I will now set out my views about the applicability of this provision.

Section 384 CPC

22 The provision reads:

> **Summary rejection of appeal**
>
> **384.**—(1) Where the grounds of appeal do not raise any question of law and it appears to the appellate court that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the appellate court to consider that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order under the hand of a Judge or a presiding Judge, as the case may be, certifying that the appellate court, having perused the record, is satisfied that the appeal has been brought without any sufficient ground of complaint.
>
> (2) Where an appellate court comprises more than one Judge, the decision of the appellate court to reject the appeal summarily under subsection (1) can only be made by a unanimous decision of all the Judges or Judges of Appeal.
>
> (3) Notice of the rejection must be served on the appellant.
>
> (4) If, in any case rejected under subsection (1), the appellant gives, within 14 days of service of notice of the rejection on him, notice to the Registrar of the Supreme Court of an application for leave to amend his grounds of appeal so as to raise a question of law,

accompanied by a certificate signed by an advocate specifying the question to be raised and undertaking to argue it, the Chief Justice (in the case where the appeal is made to the Court of Appeal) or any High Court Judge (in the case where the appeal is made to the High Court) may grant leave to amend the grounds of appeal accordingly and shall restore the appeal for hearing.

(5) For the purposes of subsection (4), the question whether a sentence ought to be reduced shall be deemed not to be a question of law.

23 The above provision was adapted from s 52 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). In essence, after the preparation and/or filing of the notice of appeal, the record of proceedings, the grounds of decision and the petition of appeal in accordance with ss 377 and 378 of the CPC, s 384(1) of the CPC provides that the appeal can be summarily rejected, without being set down for hearing, if:

(a) The grounds of appeal do not raise any question of law;

(b) It appears to the appellate court that the evidence is sufficient to support the conviction; and

(c) There is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the appellate court to consider that the sentence ought to be reduced.

24 I would add that if the above conditions for the court to summarily reject the appeal are present, the appellant would invariably fail in his appeal even if the appeal proceeds for hearing. Thus, a summary rejection of such an appeal would clearly save not only judicial time, but also the resources of both the prosecution and the defence. Should the court summarily reject the appeal, s 384(4) of the CPC allows the appellant to seek leave to amend his grounds of appeal (in the petition) to include an appropriate question of law and have the hearing restored if leave is granted.

25 For completeness, it should be noted that for the purposes of the s 384(4) application, the question whether a sentence ought to be reduced shall be deemed not to be a question of law: see s 384(5) of the CPC.

Section 384 of the Indian Code of Criminal Procedure, 1973

26 For purposes of comparison, s 384 of the Indian Code of Criminal Procedure, 1973 ("the Indian CPC") also provides for summary dismissal of appeals. The provision reads:

384. Summary dismissal of appeal.

(1) If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that-

(a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 383 shall be dismissed except after giving the

appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

27 In *Ratanlal and Dhirajlal*'s *The Code of Criminal Procedure* (LexisNexis, 20th Ed, 2011), at p 846, the learned authors elaborated on how this provision of the Indian CPC has been interpreted and applied by their courts. Amongst other things, they stated that:

(a) The word "summarily" means "in an informal manner and without the delay of formal proceeding".

(b) In rejecting the appeal under this section, the appellate court is not bound to give any reasons for the dismissal.

(c) An appeal can be summarily dismissed if no arguable point is raised on behalf of the appellant. But if the appeal raises arguable and substantial points, the High Court should give reasons for dismissing the appeal summarily.

The s 384 CPC procedure applied to the present case

28 In the present case, it is clear from the record of proceedings that the sentence imposed by the District Judge was the minimum sentence that he was required by law to impose. The record also shows that the Appellant's plea of guilt was validly recorded in accordance with the procedures set out in ss 227 and 228 of the CPC. In particular, they showed that the Appellant had been advised by his lawyer on the nature and consequences of his plea, in accordance with s 227(*b*) of the CPC, before his plea of guilt was recorded. He did not in any event suggest that he had misunderstood the nature and consequences of his plea or that his plea was qualified.

29 Thus, from the record of proceedings, as well as the grounds of decision of the District Judge and the Petition of Appeal by the Appellant, the three conditions for summary rejection of the appeal were satisfied, namely that they showed that:

(a) The grounds of appeal do not raise any question of law;

(b) It appears that the evidence is sufficient to support the conviction; and

(c) There is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the appellate court to consider that the sentence ought to be reduced.

30 Pursuant to s 384(1) of the CPC, and consonant with the practice in India (albeit under a differently worded provision), this case would have warranted a summary rejection of the appeal, without the necessity of written submissions from parties or a full hearing. In line with s 384(3) of the CPC and the practice adopted in India under the Indian CPC, a notice of rejection could have been issued before the matter was set down for hearing.

31 If an appellant should feel aggrieved by a summary rejection of the appeal, he can apply to restore his appeal for hearing, if he is able to comply with the conditions set out in s 384(4) of the CPC. But where the appellant's real complaint is simply that the sentence is "*manifestly excessive*", being the sole ground of appeal set out in his Petition of Appeal in the instant case, there is no basis for the appeal to be restored, since it is explicitly stated in s 384(5) CPC that "*the question of whether a sentence ought to be reduced shall be deemed not to be a question of law*" and he cannot expect any reduction in his sentence in any case.

Conclusion

32 An appellate court is in no position to interfere with a mandatory minimum sentence lawfully imposed pursuant to a voluntary and unqualified plea of guilt – at any rate, it cannot be said to be a "manifestly excessive" sentence which might warrant reduction. Moreover, s 375 CPC expressly limits the right of appeal in cases involving guilty pleas, and it may be useful to consider whether clearer legislative provision ought to be made to preclude the filing of such appeals. If there is any quarrel with the legality or validity of the *conviction*, that is a separate matter which can be appropriately addressed through other means. The proper course is not to file an appeal against sentence but a criminal revision setting out grounds for invoking the court's revisionary jurisdiction to set aside the conviction.

33 Within the present legislative framework, it is evident from s 384 of the CPC that our criminal procedure rules do not contemplate encumbering the appellate courts with hearing of appeals against sentence where accused persons have been sentenced to mandatory minimum sentences after they have pleaded guilty. Hence where the conditions set out in s 384(1) CPC are satisfied, and where a perusal of the record demonstrates that the procedural safeguards set out in the CPC have been observed, I am of the view that the courts can and should consider summary rejection of such appeals in future. Employing the s 384(1) CPC procedure will ensure that the courts continue to strike an appropriate balance between safeguarding the rights of accused persons and ensuring that cases continue to be effectively dealt with without unnecessarily taxing valuable public resources and scarce judicial time.