IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 156

Magistrate's Appeal 9151 of 2016

Between

PUBLIC PROSECUTOR

… *Appellant*

And

PREM HIRUBALAN

… *Respondent*

ORAL JUDGMENT

[Criminal Procedure and Sentencing] – [Sentencing] – [Appeals]

Public Prosecutor
v
Prem Hirubalan

[2016] SGHC 156

High Court — Magistrate's Appeal No 9151 of 2016/01
Tay Yong Kwang JA
5 August 2016

8 August 2016

Tay Yong Kwang JA:

1 For the s 406 Penal Code (Cap 224, 2008 Rev Ed) charges (Charge 1 and the charge taken into consideration), the District Judge ("the DJ") accepted (at [38] of *Public Prosecutor v Prem Hirubalan* [2016] SGDC 176 ("the GD")) that the Respondent was motivated by desperation and panic and was less blameworthy in using the cheque to pay for the trading losses in order to avoid detection than if he had kept the misappropriated funds for himself. I do not think that is correct. The Respondent committed the offences with only his interests in mind. He wanted to advance his career as a dealer and to benefit financially from the commissions earned on the trades. The parties agreed before me that the rate of his commissions was 0.25% which would work out to be $3,000 to $4,000 based on the total amount of the illegal trades. While the amount in commissions was not huge, his actions were in complete disregard of the position of fidelity in relation to the securities company and to

his clients. How could this illegal use of someone else's money to pay for losses caused by his illegal trades be different from keeping the money for the Respondent's own use? It was ultimately for his benefit. It is the proverbial robbing Peter to pay Paul situation. The second crime was committed to try to cover up the first.

2 As for Charge 3 concerning the unauthorised sale of Mdm Pereira's shares, the sentence of three weeks' imprisonment is out of line with the sentencing precedents for similar charges. This is so despite the mitigating factors relied upon by the DJ. Counsel for the Respondent emphasized that there was no loss but he agreed with me that this was not so much a case of no loss to the investor as one of loss having been remedied by subsequent compensation. I accept that the restitution was done swiftly after the illegal acts started to come to light.

3 Charge 4 is in relation to the unauthorized trading in Mdm Ho's account without the consent of the securities company. Before me, the Prosecution stated that it does not take the position that Mdm Ho did not give consent for the Respondent's trades. The Prosecution's stand is that Mdm Ho did not know of the specific trades done by the Respondent. In *Ng Geok Eng v PP* [2007] 1 SLR(R) 913, the appellant was an investor who was dealing with his own money and who caused no loss to the account holders who were his wife and his friend who had consented to the use of their accounts by the appellant. The Respondent's actions in the present case were more aggravating as he was working as a financial professional and had a duty of fidelity to the securities company which employed him. I repeat the point that there were losses in the account but they were remedied subsequently by the Respondent's mother. There were 46 trades made by the Respondent

amounting to slightly more than $1.2m worth of shares over a period of about ten weeks. After considering all the facts of this case and taking guidance from the three judge High Court in *PP v Ng Sae Kiat* [2015] 5 SLR 167, including the non-exhaustive list of factors set out at [38] of that judgment, I am of the opinion that Charge 4 should also result in a custodial sentence rather than a heavy fine.

4 Some of the mitigating factors put forward were neutral at best. While it is true that full restitution was made by the Respondent's mother and that the victims suffered no loss eventually from the Respondent's actions, that was not direct evidence of the Respondent's remorse. The offences were discovered by the securities company after Mdm Pereira made a report. They did not come to light because the Respondent had owned up to his illegal activities.

5 I accept that the Respondent did not reoffend and that he went on to lead a normal life after leaving Singapore. There was some emphasis by Counsel for the Respondent on the gap of three years between his dismissal by the securities company and his arrest upon his return to Singapore. That delay was due to nobody's fault. The Commercial Affairs Department ("CAD") made a risk assessment at the material time and was of the view that the Respondent might not return to Singapore if he or his family were informed about the investigations. That judgment call made 3 years ago could not be said to be unjustified by simply looking at the Respondent's behaviour and compliance with CAD's directions three years later. The CAD did commence its investigations in the meantime during the Respondent's absence from Singapore. Counsel for the Respondent explained that the Respondent did not return to Singapore during those three years because his father was then

working in the Philippines and the family was there with him. However, looking at this issue from another angle, if these proceedings had commenced much earlier, the Respondent could have faced difficulties in securing a place in the university in New York and in settling down in the United States if they resulted in a criminal record for him. Nevertheless, some credit should be given for the Respondent's clean record for the past five years and the sentences could also take into account the fact that he was under the impression until his arrest in May 2014 that he could put the past behind him after his dismissal from the securities company and the changes that the delayed conviction may cause in his life.

6 Looking at all the facts of this case, I think it was wrong to order the imprisonment terms for Charges 1 and 3 to run concurrently. The net loss in Mdm Ho's account arising out of the Respondent's illegal trades was the trigger event but all three proceeded charges involved distinct offences. The Respondent could have stopped the illegal trading, owned up and made restitution after the first offence. Instead, he chose to commit another offence to try to cover up the first. He then decided to commit the third offence to try to cover up the second. From a common sense point of view, the offences could not be regarded as one transaction for the purpose of sentencing as they did not involve a single invasion of the same legally protected interest.

7 I therefore allow the Prosecution's appeal and alter the sentences imposed by the DJ in the following manner:

(a) Charge 1 – sentence of 8 weeks' imprisonment is varied to **4 months' imprisonment**. I would have ordered 6 months'

imprisonment but decided to reduce the term by two months to give effect to what I stated in the last sentence of [5] above.

(b) Charge 3 – sentence of 3 weeks' imprisonment is varied to **3 months' imprisonment**.

(c) Charge 4 – fine of $60,000 is varied to **3 months' imprisonment**.

8 In my view, on the facts here, including the two charges taken into consideration, all three imprisonment terms should run consecutively to reflect the magnitude of the Respondent's offending. The aggregate sentence is therefore ten months' imprisonment with effect from 11 July 2016. The fine of $60,000 which has been paid in respect of Charge 4 is to be refunded to the Respondent through his solicitors since the Respondent is still serving sentence.

Tay Yong Kwang
Judge of Appeal

Teo Guan Siew and Kok Shu-En (Attorney-General's Chambers) for the appellant;
N Sreenivasan S.C., Palaniappan Sundararaj and S Balamurugan (Straits Law Practice LLC) for the respondent.