IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 37

Magistrate's Appeal No 9212 of 2016

Between

Mathew Koottappillil Mathew

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal procedure and sentencing]—[Sentencing]—[Appeals]

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Mathew Koottappillil Mathew
v
Public Prosecutor

[2017] SGHC 37

High Court — Magistrate's Appeal No 9212 of 2016
Tay Yong Kwang JA
17, 24 February 2017

24 February 2017

Tay Yong Kwang JA:

1 The appellant is now 48 years old. He was convicted by the District Court on 5 September 2016 on one charge under s 6*(a)* of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) and on one charge for criminal breach of trust ("CBT") under s 406 of the Penal Code (Cap 224, 2008 Rev Ed). Three other corruption charges were taken into consideration. All the events in the charges took place in 2012. The corruption charge on which the appellant was convicted involved a gratification of $500 obtained by him. In all, the appellant received $1,500 in bribes in the four corruption charges. For the corruption charge, he was sentenced by the District Court to six weeks' imprisonment and ordered to pay a penalty of $1,500. For the CBT charge, he was fined $4,000, in default, 4 weeks' imprisonment. The fine and the penalty have been paid. The appellant appealed against the imprisonment sentence on the corruption charge and was granted bail pending appeal.

2 Counsel for the appellant argued that the District Judge was wrong to take into consideration the sentences given to two other persons – Mariantony and Ramasamy – as a guide in sentencing the appellant. Mariantony was a co-worker of the appellant at Shimizu Corporation whereas Ramasamy worked for another company. However, both of them, like the appellant, received bribes from the same person, Hong Meng Choon ("Hong").

3 In principle, the District Judge was not wrong to have considered the sentences given to Mariantony and Ramasamy when he sentenced the appellant. Mariantony, Ramasamy and the appellant were not co-accused persons in the technical sense (although the District Judge referred to them as co-accused). However, all three offenders were convicted on similar offences and there were also factual similarities in that they all received bribes in various amounts from Hong in broadly similar circumstances. The sentences given to Mariantony and Ramasamy were thus not irrelevant and the District Judge was entitled to take them into account when he sentenced the appellant.

4 Counsel for the appellant also submitted that his client was remorseful and had paid $1,500 to his former employer, Shimizu Corporation, as restitution for the bribes taken by him. For completeness, in respect of the CBT charge, he had also made full restitution of the amount taken by him. The company suffered a total loss of $6,240 (inclusive of the $1,500 bribes) as a result of the appellant's corruption offences. Counsel claimed that the appellant paid only $1,500 to Shimizu Corporation because he thought that was the only loss he caused to the company. He claimed that the appellant only found out about the actual loss shortly before the mention date for him to plead guilty.

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5 If the appellant was truly remorseful, he would have offered to make compensation for the balance amount of $4,740 ($6,240 minus $1,500) to Shimizu Corporation as soon as he became aware of the actual amount of loss. More than five months have since passed and he has not done so. Before me, the arguments were not about having no opportunity to make compensation but were instead focused on the insignificance of the loss to a multi-billion dollar company and on whether the appellant should bear responsibility for the entire loss or whether Hong should share the burden.

6 Nevertheless, since this case involved a relatively small-scale corruption in terms of the total amount of bribes, I decided to give the appellant one final chance to make amends to his former employer. At the first hearing of this appeal last Friday, after hearing counsel for the appellant and the prosecution, I asked counsel whether the appellant was willing at this late stage to pay the balance amount of $4,740 to Shimizu Corporation so that not only all gains are disgorged but all loss is compensated as well. I stressed repeatedly that even if the appellant agreed to do so, there was no promise that he would get a different type of sentence or that his imprisonment term will be reduced significantly. The prosecution rightly pointed out that even if the appellant were to make full compensation at this stage, that could at the very most reduce the imprisonment term but could not change the type of punishment. Otherwise, the prosecution explained, there would never be imprisonment once full compensation or restitution was made by an accused person. After conferring with the appellant, counsel informed the Court that the appellant was willing and able to do so within a week on the understanding that no promise was being made by the Court regarding sentence. I then extended the existing bail and adjourned the hearing for one week to today.

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7 The appellant has made full compensation of $4,740 to Shimizu Corporation. In addition, he wrote a letter by hand to the project manager of the company stating "I am very remorseful of this untoward incident which happened during my tenure as a purchaser". I recognise that this gesture does not demonstrate genuine remorse but was a purposeful move made in the hope of getting a lighter sentence. This is full compensation made at the very last minute and only at the suggestion of the court. It has limited value as a mitigating factor. However, as I pointed out at the first hearing, such compensation would at least remove the "additional aggravating factor" considered by the District Judge as he was of the view that the loss of $6,240 caused to the company was "not an insignificant loss" (see [18] of *Public Prosecutor v Mathew Koottappillil Mathew* [2016] SGDC 261). By making full restitution of his illegal gains and now making full compensation for the loss caused by his illegal acts, the Appellant has removed this additional aggravating factor, although at a very late stage in the case, and has distinguished his case on this score only from those involving Mariantony and Ramasamy where no restitution or compensation was made.

8 In the circumstances, I will modify the sentence to take into account this event which occurred after the DJ had rendered his decision, at this very late stage in the case and only after the suggestion made by me. The original sentence of 6 weeks' imprisonment is reduced to 4 weeks' imprisonment, with the penalty of $1,500 to remain. The appeal against sentence is allowed for the reasons and to the extent stated above.

Tay Yong Kwang
Judge of Appeal

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Anil Narain Balchandani and Ashwin Ganapathy (I.R.B. Law) for the appellant;
Navin Naidu (Attorney-General's Chambers) for the respondent.

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