Chee Soon Juan v Public Prosecutor
[2003] SGHC 122

Case Number : MA 256/2002

Decision Date : 30 May 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Bala Reddy (Deputy Public Prosecutor) for the respondent; Hui Choon Kuen (Deputy Public Prosecutor) for the respondent

Parties : Chee Soon Juan — Public Prosecutor

Constitutional Law – Fundamental liberties – Freedom of speech – Whether violated by laws regulating licencing of public entertainment – Constitution of the Republic of Singapore art 14(2((a)

Public Entertainment – Places of entertainment – Right to express opinion – Attempt to hold rally on grounds of Istana without licence – Whether "public entertainment" – Activities considered "public entertainment" – Public Entertainments and Meetings Act (Cap 257, 2001 Rev Ed) ss 2, 19(1)(a)

Words and Phrases – "Public entertainment" – Public Entertainments and Meetings Act (Cap 257, 2001 Rev Ed) s 2

1 The appellant ("Chee") was convicted in the district court of two offences. The first was for wilfully trespassing on property belonging to the Government under s 21(1) of the Miscellaneous Offences (Public Order & Nuisance) Act, Cap 184. He was sentenced to a fine of $500, with one week's imprisonment in default. The second offence was for attempting to provide public entertainment without a licence under s 19(1)(a) of the Public Entertainments & Meetings Act, Cap 257 ("PEMA") read with s 511 of the Penal Code, Cap 224. For this offence, he was sentenced to a fine of $4,000, with four week's imprisonment in default. He did not pay the fines and had served the default sentences of imprisonment before his appeal came on for hearing. Chee's appeal concerned only the second offence, for which the maximum penalty was a fine of $10,000.

Preliminary Issue

2 In Chee's notice of appeal, he stated that he would be appealing both his conviction and sentence for the second offence. The DPP pointed out that his petition of appeal mentioned only an appeal against sentence.

3 No written submissions were tendered by Chee. In court, I took the opportunity to clarify the issue and confirmed that he was indeed appealing against both his conviction and sentence.

Background

4 Chee had applied to the Public Entertainment Licencing Unit ("PELU") for a licence to hold an exhibition-cum-rally on 1 May 2002, Labour Day, outside the Istana. His application was rejected on the ground of the potential disruption to public order, but he subsequently stated in press releases his intention to continue regardless.

5 On 1 May 2002, the grounds of the Istana were open to the public. Chee was spotted moving to a traffic light in the foliage area in front of the Istana around noon, where he was surrounded by a crowd of about 30 people. Accompanying him was one Ghandi, a member of Chee's political party who was also there to speak at the rally. Ghandi had been separately charged and

convicted for his part in the incident, and I dismissed his appeal against sentence on 25 February 2003.

6 One of the policemen on duty that day, DSP Lim, immediately approached Chee and asked him to leave. DSP Lim testified that he had to prevent a "law and order situation" arising, since there were close to 5,300 people in the Istana grounds at the time. Also, Chee had already publicised through the press his intention to hold a rally there, despite having been warned by the police that this would be in breach of the law.

7 DSP Lim warned Chee a total of four times to leave the place. Chee refused to comply and insisted on having his say. Consequently, DSP Lim ordered his arrest. The incident was recorded on audio tape by another police officer, one ASP Abdul Rani. From the transcript of the tape recording, it was apparent that Chee had prepared for the rally, as he made reference both to props and exhibits that he had brought and to the fact that he would be speaking later. DSP Lim's four warnings were also caught on tape. They showed that Chee had been warned about the potential offence he was committing (breach of PEMA) and that he had been given an opportunity to leave.

8 It was not undisputed that Chee and Ghandi were standing on government land at the time they were arrested.

The appeal against conviction

9 Chee did not tender any written submission in support of his case. In court, his sole contention before me was to challenge the constitutionality of PEMA, both in its enactment and application. He argued that the licencing requirements imposed by PEMA were contrary to his constitutional right of free speech and association granted by Art 14(1)(a) of the Constitution. In a related vein, Chee also alleged that PEMA was being applied in a discriminatory manner against him, as evidenced by the refusal of his application for a licence to hold his rally.

10 Chee did not seek to challenge the prosecution's case against him nor the decision of the judge below to convict him of the charge. However, being mindful of the fact that he was unrepresented by counsel both here and in the court below, I took it upon myself to examine the proceedings below to ensure that the decision to convict him was correctly reached.

The law on PEMA

11 Section 19(1)(a) PEMA provides that it shall be an offence for any person to provide public entertainment without a licence duly issued under the Act. There is no precise definition of public entertainment in PEMA, but a list of categories of activities which would be considered public entertainment is found in s 2 of the Schedule, from s 2(a) to (n). In addition, s 2 also states that these activities must be done "*in any place to which the public or any class of the public has access whether gratuitously or otherwise*".

12 In *Jeyaretnam JB v PP* [1989] SLR 978, Chan Sek Keong J (as he then was) noted that "public entertainment" as used in PEMA had a wider ambit than its ordinary dictionary sense. The activities specified within s 2 of the Schedule included those which would not be understood as providing "entertainment" in the general sense. Hence, he concluded that whether an activity is "public entertainment" should be determined simply by its form and correspondence to the list in s 2 of the Schedule.

13 In my opinion, for an activity to come within the scope of PEMA, the activity must be

directed at the public; in the sense of procuring their involvement whether actively or passively. This should be read implicitly into the activities listed in s 2 of the Schedule, and is an objective test to be satisfied on the facts of the case. A substantive offence under PEMA would then be constituted when any member or members of the public are actually involved in the activity.

Chee's conviction

14 Chee had attempted to hold his rally without a licence issued by PELU. He would clearly be guilty of an offence under s 19(1)(a) PEMA if his actions constituted public entertainment as provided for in the Act.

15 It was not disputed that on Labour Day, the public had access to the grounds of the Istana, subject to conditions imposed by the police. In the trial below, Chee readily admitted in cross-examination that he had gone to the Istana to speak on labour issues. I can do no better than to refer to his answers in the court below:

> Q. Put – You had deliberately gone to the Istana at about 12.15 p.m to carry out your purpose of holding an exhibition cum rally in breach of the Public Entertainment and Meetings Act.
>
> A. I accept that wholeheartedly. ……
>
> … …
>
> Q. Put – But for your arrest you would have proceeded with your talk or speech.
>
> A. Yes, the police very rudely interrupted the rally.

16 Section 2(m) of the Schedule includes "a*ny lecture, talk, address, debate or discussion"* as an activity that would be public entertainment. In *Jeyaretnam JB v PP* (supra), Chan Sek Keong J held that the word "*address*" in s 2 should be held to bear its ordinary meaning, that is, a speech made to a group of people, usually on a formal occasion. The ordinary meaning of rally is that of a gathering of people for a common purpose. Chee freely stated that he intended to speak at the rally. I had no hesitation in concluding that his actions would have constituted an "*address"* under s 2(m).

Whether Chee's actions constituted an attempt under s 511 of the Penal Code

17 Chee's intention to commit the offence under s 19(1)(a) PEMA was undoubted. From the transcripts of the audio tape, he had clearly prepared props and exhibits for the rally. He and Ghandi had arrived at the scene of the offence in preparation for the rally. I had no doubt that his actions fulfilled the requirements for an attempt under s 511 of the Penal Code.

The constitutionality of PEMA

18 Having concluded that Chee was correctly convicted of the offence as charged, I turned to examine the merits of his arguments against PEMA.

19 The right to freedom of speech is enshrined in Art 14(1)(a) of our Constitution. However, this right is expressly made subject to the limitation in Art 14(2)(a) of the Constitution, which reads as follows:

> (2) Parliament may by law impose —

(a) on the rights conferred by clause (1) (a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;

20 In any society, democratic or otherwise, freedom of speech is not an absolute right. Broader societal concerns such as public peace and order must be engaged in a balancing exercise with the enjoyment of this personal liberty. This is embodied in Art 14(2)(a). I did not find the provisions of PEMA to be in any way contrary to our Constitution. Indeed, it seemed eminently clear that the enactment of PEMA was fully within the power of the legislature pursuant to the power granted to it by Art 14(2)(a).

21 With regard to Chee's contention that the provisions of PEMA were applied in a discriminatory fashion, the short answer was that he had not a shred of evidence to support this contention. Chee did not see fit to provide the court with any submissions or evidence of any sort, relying purely on his oral submission before me. If it was indeed his contention that PELU had exercised its powers arbitarily in denying him a licence, then it was beholden on him to produce something more concrete in court than his personal unsubstantiated belief.

22 In any event, the objective facts of the case did not bear out his allegation. The opening of the Istana grounds on Labour Day was a highly visible event with strong public participation. Indeed, there were close to 5,300 people in the grounds on the day of the offence. It did not take a great stretch of imagination to conclude that a political rally in the grounds that day could have resulted in a threat to public order and safety. In my opinion, PELU's refusal to issue a licence to Chee was clearly the prudent thing to do.

23 I also noted that s 13 of PEMA allows for an applicant to require reasons for the refusal of the grant of a licence in writing. The applicant may then proceed to appeal to the Minster against this refusal, pursuant to s 13(3) PEMA. In the present case, Chee had done none of the above.

Chee's appeal against sentence

24 With regard to Chee's sentence, the only issue to consider was whether it was manifestly excessive given the circumstances. The judge below noted that this was his *fourth* conviction under s 19(1)(a) PEMA. His previous conviction was on 29 July 2002, for which he was fined $3,000. This was only three months before his current conviction.

25 Chee had shown himself to be a habitual offender with little or no respect for the law. In this latest incident, he had brazenly advertised in the media his intention to breach the law. He had shown no remorse whatsoever for his actions, ascribing them as an assertion of his constitutional rights.

26 I found that the sentence imposed in this case was manifestly *not* excessive. Chee had shown a habitual lack of regard for law and order in society. His cavalier attitude towards the legal system was offensive and there was a total lack of mitigatory factors in the current case. In *Chee Soon Juan v PP* (MA No 246 of 1999), I had allowed his appeal against a sentence, reducing the fine to $1,900 so as to enable him to stand for election to Parliament. I warned him however against repeating the offence. The warning had obviously been lost on him.

27 Before me, Chee had the sheer arrogance to purport to speak on behalf of the people of Singapore, in asking for their right to free speech to be returned to them. I found his impertinence

remarkable, particularly since he said that he was not a member of Parliament. He clearly had no mandate to speak on behalf of the people of Singapore. The views that he expressed in court were at best his personal beliefs, and I could see no evidence that it reflected the views of anybody else.

28 In the result, I dismissed Chee's appeals against both his conviction and sentence.

Appeals dismissed.