Ramalingam Ravinthran *v* Attorney-General
[2011] SGHC 140

Case Number : Originating Summons No 234 of 2011

Decision Date : 31 May 2011

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : M Ravi (L F Violet Netto) for the plaintiff; Aedit Abdullah and Teo Guan Siew (Attorney-General's Chambers) for the defendant.

Parties : Ramalingam Ravinthran — Attorney-General

Administrative Law

31 May 2011 Judgment reserved.

Tan Lee Meng J:

Introduction

1 The plaintiff, Mr Ramalingam Ravinthran, was convicted by Kan Ting Chiu J ("the trial judge") of two capital charges relating to drug trafficking under s 5(1)(a) read with s 33 and the Second Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). His appeal against the trial judge's decision was dismissed by the Court of Appeal. He instituted Originating Summons No 234 of 2011 ("the OS") under O 53 of the Rules of Court for leave to apply for the following orders:

(a) That the Plaintiff be granted a quashing order in that the judgment in *Public Prosecutor v Ramalingam Ravinthran* [2009] SGHC 265 be quashed for being obtained as a result of discriminatory and unconstitutional prosecution of the Plaintiff ("the quashing order");

(b) That the Plaintiff be granted an order of prohibition to enjoin the director of prisons from executing the Plaintiff and that the Plaintiff is granted an indefinite stay of execution ("the prohibition order"); and

(c) That the Plaintiff be granted a mandatory order instructing the Defendants to prefer the same charges preferred against the co-accused against the Plaintiff as well ("the mandatory order").

Background

2 On 13 June 2006, the plaintiff, who had a sports bag ("the bag") in his car which contained eight blocks of vegetable material wrapped in aluminium foil, was arrested by officers of the Central Narcotics Bureau. An analysis of the eight blocks revealed that they contained 5560.1g of cannabis and 2078.3g of cannabis mixture. One Sundar Arujunan ("Sundar"), who had been in the car together with the plaintiff just before the latter's arrest, was arrested on the same day.

3 Initially, both Sundar and the plaintiff faced capital charges in relation to the drugs found in the bag. Subsequently, the charges against Sundar were reduced to non-capital charges and he pleaded guilty to the non-capital charges. He was sentenced to imprisonment for 20 years and 24 strokes of

the cane. On the other hand, the plaintiff, who continued to face capital charges, was convicted by the trial judge. His appeal to the Court of Appeal (in Criminal Appeal No 28 of 2009) was dismissed on 7 September 2010.

4 Following the dismissal of his appeal by the Court of Appeal, the plaintiff instituted the present proceedings for judicial review. Mr M Ravi, the plaintiff's present counsel, argued that there was room for judicial review because Arts 9 and 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") were violated when capital charges were preferred against the plaintiff but not against Sundar. The Attorney-General opposed the plaintiff's application.

5 In *Chan Hiang Leng Colin & others v Minister for Information and the Arts* [1996] 1 SLR(R) 294, Karthigesu JA stated (at [25]) that what is required for leave to be granted for judicial review "is not a *prima facie* case, but a *prima facie* case of reasonable suspicion". When endorsing this relatively low threshold in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133, the Court of Appeal stated (at [22]) that "leave would be granted if there appears to be a point which might, on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed". In appropriate cases, it may be preferable not to have a hearing of the application for leave followed by another hearing regarding the merits of the case should leave be granted: see, for instance, *Yong Vui Kong v Attorney-General* [2011] 1 SLR 1. In the present case, both parties agreed that the application for leave as well as the merits of the application for the orders in question should be heard together. This was a sensible approach to take as the main issue before the court concerns the interpretation of provisions of the Constitution. Apart from the fact that all the evidence was before the court, there was no dispute of fact and only pure questions of law had to be considered.

Withdrawal of the application for a quashing order

6 At the outset, it ought to be noted that the OS was misconceived as it sought to have a High Court judge quash a decision of another High Court Judge. Furthermore, the OS made no reference whatsoever to the decision of the Court of Appeal which affirmed the trial judge's decision.

7 In *Re Racal Communications Ltd* [1981] 1 AC 374 ("*Re Racal*"), Lord Diplock reiterated (at p 384 F-G) that judicial review is available as a remedy for mistakes of law made by inferior courts and tribunals only, and added that mistakes of law made by judges of the High Court acting in their capacity as such can be corrected only by means of an appeal to an appellate court. Furthermore, as the trial judge's decision was affirmed by the Court of Appeal, what the plaintiff should have done was to apply to the Court of Appeal for a hearing of his arguments on the alleged breach of Arts 9 and 12(1) of the Constitution instead of instituting this OS in the High Court. Relying on *Re Racal*, Mr Aedit Abdullah, who appeared for the Attorney-General, submitted that the plaintiff's application was so fundamentally flawed that it must be dismissed. After considering the Attorney-General's submission, the plaintiff's counsel, Mr M Ravi, withdrew his client's application for an order to quash the trial judge's decision at the hearing of the OS on 13 May 2011. He then informed the court that his client would only be applying for the prohibition order against the Director of Prisons and the mandatory order against the Attorney-General.

The application for the other orders

8 By seeking a prohibition order against the Director of Prisons and a mandatory order against the Attorney-General, the plaintiff was in fact inviting the High Court to completely ignore the effect of the decision of the trial judge as well as that of the Court of Appeal which affirmed the trial judge's decision.

9 The Director of Prisons is required to enforce the sentence meted out by the trial judge and upheld by the Court of Appeal unless that sentence has been set aside. Indeed, the Director of Prisons does not exercise any discretion that can be the subject matter of judicial review. As the decisions of the trial judge and that of the Court of Appeal have not been set aside, it follows that the application for the prohibition order against the Director of Prisons was misconceived and cannot succeed.

10 As for the application for the mandatory order against the Attorney-General, apart from the fact that the Attorney-General cannot be ordered by the High Court to exercise his discretion in a particular way (see paras [12]-[25] *infra*), surely the Attorney-General cannot be expected to prefer different charges against the plaintiff unless the latter's conviction and sentence have been set aside. As such, the application for the mandatory order against the Attorney-General is also misconceived and cannot succeed.

11 I thus hold that the plaintiff's application for the prohibition order against the Director of Prisons and the mandatory order against the Attorney-General is so fundamentally flawed that it must be dismissed. Mr Aedit Abdullah rightly pointed out that as the plaintiff's ultimate objective was to set aside his conviction and sentence, both of which were upheld by the Court of Appeal, the latter should have applied to the Court of Appeal for leave to file a motion to re-open the case for his concerns to be considered: see *Koh Zhan Quan Tony v PP and another motion* [2006] 2 SLR(R) 830.

Equal protection of the law

12 In view of the gravity of the issue before the court, the plaintiff's arguments regarding his constitutional rights will, for the sake of completeness, also be considered.

13 It is quite clear from previous decisions of the Court of Appeal, which bind the High Court, that the plaintiff's case relating to the alleged breach of his constitutional rights cannot get off the ground.

14 In the present proceedings, the plaintiff relied on Arts 9 and 12(1) of the Constitution. Art 9 provides that no person "shall be deprived of his life or personal liberty save in accordance with law". In attempting to establish that the preferring of capital charges against him was not in accordance with the law as required by Art 9, the plaintiff relied on Art 12(1), which provides that all persons "are equal before the law and entitled to the equal protection of the law". He asserted that the decision to prefer capital charges against him when Sundar was charged with non-capital offences is a denial of his right to equality and the equal protection of the law. He added that this decision is irrational and smacks of "*Wednesbury* unreasonableness" (see *Associated Provincial Picture Houses*, *Limited v Wednesbury Corporation* [1948] 1 KB 223).

15 Art 12(1) of the Constitution must be read together with Art 35(8) of the Constitution, which outlines the role of the Attorney-General as the nation's Public Prosecutor. Art 35(8) provides:

> The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

16 In *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 ("*Phyllis Tan*"), Chan Sek Keong CJ explained the effect of Art 35(8) of the Constitution (at [145]):

> In relation to public prosecutions, Art 35(8) makes it clear that the institution, conduct or discontinuance of any criminal proceedings is a matter for only the Attorney-General to decide.

> This means that *except for unconstitutionality*, the Attorney-General has an *unfettered discretion* as to when and how he exercises his prosecutorial powers.
>
> [original emphasis omitted; emphasis added in italics]

17 There are good reasons why, except in cases of unconstitutionality, the courts should defer to the decision of the Attorney-General on the institution, conduct or discontinuance of proceedings for any offence. In *US v Christopher Lee Armstrong et al* (1996) 517 US 456, the United States Supreme Court explained:

> Judicial deference to the decisions of these executive officers rests in part on an assessment of the relative competence of prosecutors and courts. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake.

18 Admittedly, Chan CJ stated in *Phyllis Tan* (at [149]) that judicial review of the Attorney-General's exercise of prosecutorial discretion is not totally excluded. However, it is crucial to note that Chan CJ added that the possibility of judicial review only arises in two situations. First, there is room for judicial review where prosecutorial discretion is abused in the sense that it is exercised in bad faith for an extraneous purpose. The second situation is where the exercise of prosecutorial discretion results in a contravention of constitutional protection and rights, such as where an accused is deprived of his right to equality under the law and the equal protection of the law under Art 12(1) of the Constitution.

19 The plaintiff did not allege that prosecutorial discretion was exercised in bad faith in the sense that it was exercised for an extraneous purpose against him. As such, the first ground for judicial review of the exercise of prosecutorial discretion need not be further considered.

20 In regard to the second ground for judicial review of the exercise of prosecutorial discretion, namely a breach of Art 12(1) of the Constitution, two decisions of the Court of Appeal which considered the ambit of Art 12(1) in the context of Art 35(8) of the Constitution may be referred to. To begin with, in *Sim Min Teck v Public Prosecutor* [1987] SLR(R) 65 ("*Sim Min Teck*"), the appellant was convicted on two charges that in furtherance of a common intention he, with two other persons, committed murder by causing the deaths of two persons. He was sentenced to death. However, his accomplice, Beh Meng Chai ("Beh"), was only charged with culpable homicide not amounting to murder. One of the grounds relied upon by the appellant in his appeal was that he had been discriminated against in violation of Art 12(1) of the Constitution because Beh had been charged with a lesser offence on the same facts. The Court of Appeal accepted that there was overwhelming evidence that the appellant, Beh and a third accomplice had fatally stabbed both deceased with knives in circumstances which amounted to murder by one or more of them, and that the stab wounds were inflicted in furtherance of their common intention to commit armed robbery and if necessary to use the knives with which they were armed. However, the court found that Art 12(1) had not been infringed. Wee Chong Jin CJ endorsed the following words of Lord Diplock in *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50 at p 56 ('*Teh Cheng Poh*"):

> There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each

of them may vary enormously between one case and another. All that equality before the law requires, is that the cases of all potential defendants to criminal charges shall be given unbiased consideration by the prosecuting authority and that decisions whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration.

21 Wee CJ explained (at [9]) why the Court of Appeal found that Art 12(1) had not been infringed:

> [I]t was contended on behalf of the appellant that because Beh had been charged on the same facts with the lesser offence, the appellant had been discriminated against contrary to Art 12(1) of the Constitution of the Republic of Singapore which states that "All persons are equal before the law and entitled to the equal protection of the law". We rejected this contention. The Attorney-General of Singapore is by Art 35(8) of the Constitution given power, exercisable at his discretion to institute, conduct or discontinue any proceedings for any offence.

22 The decision in *Sim Min Teck* was followed by the Court of Appeal in *Thiruselvam s/o Nagaratnam v Public Prosecutor* [2001] 1 SLR(R) 362 ("*Thiruselvam*"). In this case, the appellant was charged with abetting one Katheraven s/o Gopal ("Katheraven") in committing the offence of trafficking in 807.6g of cannabis. He was found guilty of this capital charge. Katheraven was only charged with trafficking in a smaller quantity of drugs and was convicted of this non-capital charge. The appellant contended that his right of equality before the law had been infringed as the main offender had been convicted of a lesser charge while he, who abetted the main offender, faced a capital charge. This argument was rejected by the Court of Appeal. L P Thean JA, who delivered the judgment of the court, explained (at [32]):

> It is true that in *Sim Min Teck …* the accused was one of the main offenders and the accomplice played a lesser role in the commission of the offence of murder. In the instant case, the position is the reverse: the appellant was only an abettor of Katheraven, the person who committed the main offence. To that extent, this case is slightly different from *Sim Min Teck*. However, this difference is immaterial and does not detract from the weight of that authority. The principle remains the same. The Prosecution has a wide discretion to determine what charge or charges should be preferred against any particular offender, and to proceed on charges of different severity as between different participants of the same criminal acts. In this case, it has a discretion to choose between preferring a charge against the appellant for abetment of trafficking in a quantity which carries the capital punishment and preferring one for abetment of trafficking in a quantity which does not. In our judgment, there was no breach of Art 12 of the Constitution.

23 It is also worth noting that in *Sinniah Pillay v Public Prosecutor* [1991] 2 SLR(R) 704, the appellant was convicted of conspiracy and abetment to commit grievous hurt by means of a corrosive substance under s 326 of the Penal Code (Cap 224, 1985 Rev Ed) while his co-conspirators were charged for abetment and conspiracy to commit an offence under the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Rev Ed). The Court of Appeal, noting that the appellant and his co-conspirators had been charged under different statutes, pointed out (at [24]) that it was not unusual to find that a given set of facts can give rise to a number of different charges and that it was the prerogative of the prosecution to decide which charge it would prefer.

24 In *Mah Kah Yew v Public Prosecutor* [1968-1970] SLR(R) 851, Wee Chong Jin CJ, who stated that the doctrine of *stare decisis* is a necessary and well established doctrine in our system of jurisprudence and of our judicial system, reiterated (at [15]) that decisions of the Court of Appeal bind the High Court. This view was also reiterated by the Court of Appeal in *Wong Hong Toy and another v Public Prosecutor* [1987] SLR(R) 213 (at [27]-[28]). No attempt was made to distinguish the present case from *Sim Min Teck* and *Thiruselvam*. Instead, Mr M Ravi argued that the Court of

Appeal had in those two cases misread Lord Diplock's view in *Teh Cheng Poh* and that those two decisions can no longer be considered good law in the light of *Phyllis Tan*.

25 Chan CJ's observation in *Phyllis Tan* that the Attorney-General's prosecutorial discretion is subject to judicial review where Art 12(1) of the Constitution has been breached does not conflict with the earlier decisions of the Court of Appeal in *Sim Min Teck* and *Thiruselvam*. What the Court of Appeal held in those two earlier cases was that Art 12(1) had not been breached in the circumstances of those cases. As the circumstances in the present case cannot be distinguished from those in *Sim Min Teck* and *Thiruselvam*, the issue of equal protection under the law need not be further considered.

Conclusion and costs

26 For the reasons stated, I dismiss the plaintiff's application for the prohibition order against the Director of Prisons and the mandatory order against the Attorney-General. Indeed, had the hearing been confined to the application for leave, I would not have granted the leave sought.

27 No order is made with respect to costs.