IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 193

Magistrate's Appeal No 9216 of 2023

Between

Alka

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Appeal — Statutory offences — Employment of Foreign Manpower Act]

TABLE OF CONTENTS

Alka
v
Public Prosecutor

[2024] SGHC 193

General Division of the High Court — Magistrate's Appeal No 9216 of 2023
Aedit Abdullah J
8 July 2024

25 July 2024 Judgment reserved.

Aedit Abdullah J:

1 This is a brief judgment in respect of the appeal against the conviction of the appellant on one charge under s 22(1)(*d*) read with s 22(1)(ii) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) (the "Act") ("the charge").[1] The appellant pleaded guilty to another charge under s 5(2) read with s 5(7) of the Act for working without a valid work pass, for which she has

[1] Record of Appeal ("ROA") at pp 3–6.

not appealed against.[2] This judgment is subject to full grounds being issued if required.

2 Having considered the arguments and evidence before me, I conclude that the charge was not made out against the appellant, and thus allow her appeal.

3 The charge against the appellant was for making a statement which she knew to be false in a material particular, *ie,* that she was employed as a foreign domestic worker by one Anil Tripathi ("Anil") when she had no intention to be so employed. However, the supposed false statement in the form that was filled up by the appellant was not in fact false, as the appellant was employed within the meaning of the Act. Reference could not be made to regulations under the Act to determine what amounted to employment. It may be that other offences may have been committed by her, but I decline in the circumstances to amend or substitute the charge before me. Whether or not she should be prosecuted for any other offence other than what she is acquitted of is a matter for the Prosecution to decide.

Background facts

4 The appellant had worked as a foreign domestic worker in Singapore since 2014.[3] In October 2017, the appellant's then employer informed her that her services were no longer required.[4] The appellant informed her boyfriend,

---

2 ROA at p 7.

3 ROA at p 567 para 8; Appellant's Submissions at para 12.

4 ROA at p 567 para 8; Appellant's Submissions at para 12.

one Gurwinder Kumar ("Gurwinder"), that she wished to remain in Singapore; and Gurwinder subsequently introduced the appellant to Anil.[5]

5 Sometime prior to 22 December 2017, the appellant signed page two of the "Application for a Domestic Helper Declaration" form (the "Form"), exhibited as P5.[6] In the Form, the appellant stated that Anil was her employer and that her place of employment was Anil's personal residence. The Form was submitted to the Controller of Work Passes (the "Controller") on 22 December 2017.[7] On 15 October 2018, the appellant was arrested by officers from the Ministry of Manpower, for working as a sales assistant without a valid work pass, at A1 Fashion located along Serangoon Road.[8]

6 According to the Prosecution, the appellant had made a false statement to the Controller, by way of the Form submitted, that she would be employed by Anil as his foreign domestic worker.[9] The learned district judge found that there was an agreement between Anil and the appellant for their mutual benefit – Anil would be listed as the appellant's employer allowing her to remain in Singapore with Gurwinder, while Anil would have someone to cook meals for him three to four times weekly.[10] He thus found that the charge against the appellant was made out.

---

5 ROA at p 567 para 9; Appellant's Submissions at para 13.

6 ROA at pp 568 para 11; ROA at p 643.

7 ROA at p 568 para 11.

8 ROA at p 566 para 6; Appellant's Submissions at para 9.

9 Respondent's Submissions at para 15.

10 ROA at pp 580–581 para 38.

7 The issue on appeal is whether the charge was made out. This in turn depends on the scope and meaning of 'employment' under the Act, and whether what she said was in fact false.

Scope of the Charge

8 The charge is one of making a statement known to be false in a material particular, namely that the appellant would be employed by Anil as a foreign domestic worker when she did not have the intention to be employed as such. The charge states:[11]

> You Alka … are charged that you, on or about 22 December 2017, in Singapore, did make a statement to the Controller of Work Passes in connection with an application for a work pass, which you knew was false in a material particular, in an "Application for a Domestic Helper" form submitted to the Work Pass Division of the Ministry of Manpower, to wit, by declaring in the said form that you would be employed by one Anil Tripathi [NRIC redacted] as a foreign domestic worker when you did not have the intention to be employed as such, and you have thereby committed an offence under section 22(1)(d) of the Employment of Foreign Manpower Act (Chapter 91A) punishable under section 22(1)(ii) of the said act.

9 Section 22(1) of the Act reads as follows:

> 22.—(1) Any person who —
>
> …
>
> (*d*) makes any statement or furnishes any information to the Controller or an employment inspector under this Act which he knows or ought reasonably to know is false in any material particular or is misleading by reason of the omission of any material particular;…
>
> shall be guilty of an offence and shall be liable —
>
> …

[11] ROA at p 6.

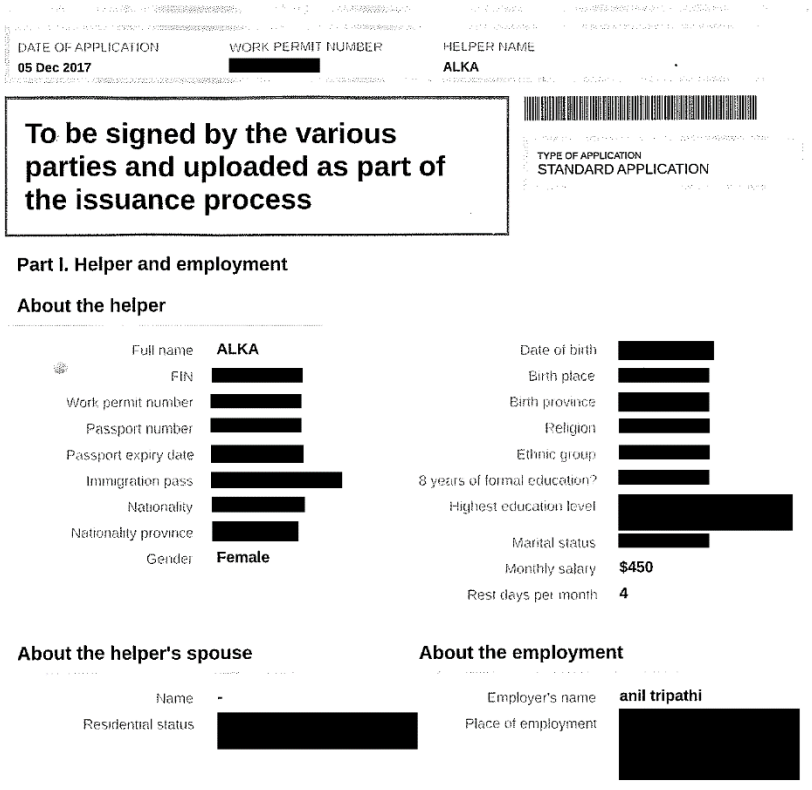
> (ii) in the case of an offence under paragraph (*d*), (*e*) or (*f*), on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 12 months or to both …

10 It needs to be borne in mind what the appellant was not charged with. She was not charged for the misleading omission of a material particular, that is, she was not charged with suppressing or hiding some matter which would have cast her statement or information she provided in a different light. Neither was she charged under a different provision for breach of the Employment of Foreign Manpower (Work Passes) Regulations 2012 (the "Regulations"). The Prosecution referred to breaches of the Regulations, but such breaches are not captured by the charge they proceeded with against the appellant and which she was tried on. The charge was also not for the false declaration of her employment details (*ie,* her monthly salary or rest days per month).

The statement made in the submitted Form

11 In the Form P5, the appellant set out her personal details (such as her full name, work permit number and nationality), her marital status and her

employment details (such as her salary, rest days per month, employer's name and place of employment):[12]



DATE OF APPLICATION: 05 Dec 2017
WORK PERMIT NUMBER: [redacted]
HELPER NAME: ALKA

To be signed by the various parties and uploaded as part of the issuance process

TYPE OF APPLICATION: STANDARD APPLICATION

Part I. Helper and employment

About the helper

Full name	ALKA
FIN	[redacted]
Work permit number	[redacted]
Passport number	[redacted]
Passport expiry date	[redacted]
Immigration pass	[redacted]
Nationality	[redacted]
Nationality province	[redacted]
Gender	Female
Date of birth	[redacted]
Birth place	[redacted]
Birth province	[redacted]
Religion	[redacted]
Ethnic group	[redacted]
8 years of formal education?	[redacted]
Highest education level	[redacted]
Marital status	[redacted]
Monthly salary	$450
Rest days per month	4

About the helper's spouse

Name	-
Residential status	[redacted]

About the employment

Employer's name	anil tripathi
Place of employment	[redacted]

Under the section titled "Declaration by foreign domestic worker", the appellant declared as follows:[13]

> I declare that:
>
> 1. I have read and understood the conditions of work permit, which are set out in the Employment of Foreign Manpower (Work Passes) Regulations c 91A, available at www.mom.gov.sg
>
> 2. I have had at least eight years of formal education and have the certificates to prove this. (This does not apply to you if you

12 ROA at p 643.

13 ROA at p 644.

> have been employed as a foreign worker or confinement nanny in Singapore before.)
>
> 3. I have never been convicted of a criminal offence in any country or state.
>
> 4. All the documents that have been submitted on my behalf in support of this Application for a Work Permit are true copies of the authentic documents.

12 In the Form, the appellant indicated that Anil was her employer, and that her place of employment would be at Anil's personal residence.[14]

13 Notably, the Form does not require the foreign domestic worker to declare that she would comply with the Regulations. Instead, the Form only includes a declaration that she "ha[d] read and understood" those Regulations. Thus, in determining whether the charge against the appellant was made out, the fact that the appellant may have breached the Regulations is irrelevant.

Whether the statement was false

14 Determining whether the statement made by the appellant was false turns on the meaning of 'employment' as well as the evidence adduced.

Meaning of Employment

15 'Employ' is defined under s 2 of the Act as follows:

> In this Act, unless the context otherwise requires —
>
> …
>
> "employ" means to engage or use the service of any person for the purpose —
>
> (*a*) of any work; or
>
> (*b*) of providing any training for that person,

[14] ROA at p 643.

> whether under a contract of service or otherwise, and with or without salary;

16 It is important to note the definition of employment under the Act. It encompasses the engagement or use of the service for "any work". That is very broad. The Act does not prescribe any type or characteristics of work; it does not specify the duration, or even the degree of supervision required. Further, the payment of salary is a wholly irrelevant consideration in determining whether there is "employment" under the meaning of the Act. Therefore, the breadth of the definition would, to my mind, be capable of covering occasional cooking or other minor work, done for no pay.

Whether the Regulations are relevant under this charge

17 Reference was made by the Prosecution to the Regulations which impose various other restrictions and duties on the employer and employee,[15] such as:

> (a) requiring the employer to ensure that the foreign domestic worker resides only at the residential address stated in the work permit and/or a residential address approved by the Controller,[16] paying the fixed monthly salary due to the foreign domestic worker within the stipulated time period,[17] and exercising control and supervision over the foreign domestic worker (see the Regulations, Fourth Schedule, Part I, Conditions 5 and 6;[18] the Regulations, Fourth Schedule, Part II, Condition 1); and

---

15 Respondent's Submissions at paras 21–26.

16 Respondent's Submissions at para 25(e).

17 Respondent's Submissions at para 25(f).

18 Respondent's Submissions at para 25(h).

(b) requiring the employee to only work for the employer specified in the work permit and reside only at the residential address in the work permit and/or a residential address approved by the Controller (see the Regulations, Fourth Schedule, Part VI, Conditions 1 and 2).[19]

18 The Prosecution submits that the Regulations guide the interpretation, and are indicative, of the fundamental features of "employment" as a foreign domestic worker.[20] I disagree. The Regulations cannot modify the definition of employment in s 2 of the Act. Subsidiary legislation such as the Regulations, which are published by ministries or agencies, cannot modify or delineate the definition used in primary legislation, enacted by Parliament, unless there is a specific empowering provision in the latter (and even that may raise other problems) (see for *eg*, *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company)* [2022] 1 SLR 771 at [76] where the Court of Appeal stated that "there is no canon of interpretation that allows subsidiary legislation to inform the meaning of primary legislation").

19 The broad definition of employment in s 2 of the Act is to be applied, without regard to the Regulations. The charge against the appellant cannot be interpreted in such a way that it would cover a contravention of the Regulations. To do so would be to improperly enlarge a very specific allegation to cover things not mentioned in the charge, and which would have entailed a very different defence being run.

---

19 Respondent's Submissions at para 25(j)–(k).

20 Respondent's Submissions at para 25.

Whether the evidence supported the charge

20 The charge fails even on the best case for the Prosecution. In other words, the charge fails even on the evidence as relied upon by the Prosecution, namely, the appellant's statement P2 and Anil's statement P6, and the rejection of the whole of Anil's oral testimony.

21 The Prosecution's evidence does not support a finding that there was no employment, as defined by Act, whatsoever. There was no such finding by the learned district judge. In fact, the Prosecution's case, both at trial and on appeal, was that the appellant had cooked for Anil on an ad hoc basis.[21] This was also the learned district judge's findings.[22]

22 I would thus only briefly note that there was sufficient basis for the court below to have concluded that the impugned statements (P2 and P6) were given voluntarily, without threat, inducement or promise.[23] While the court below found that Anil's credit was impeached, the court below however did not sufficiently establish why the impugned statements should be preferred to the oral evidence of the appellant.[24] I do find, however, that the absence of any record of salary payments as well as the consistency between the two impugned statements lent weight and force to their showing the truth, and that these were supported further by the inherent probabilities of the situation.

---

21 ROA at p 676 para 54; Respondent's Submissions at para 68(d).

22 ROA at p 578 para 35(b).

23 See ROA at pp 571–577 paras 24–31; Respondent's Submissions at paras 33–40.

24 See ROA at pp 576–577 paras 29–32.

Substitution of other charges

23 I had considered whether another charge should be substituted. Given the way the case was run at trial, and the defence proffered, I do not think it appropriate for me to amend the particulars of the charge. I also do not think I should substitute any other charge, such as one under the Regulations. It would be left to the prosecuting agency to consider if any such charge under the Regulations can be made out here.

Conclusion

24 The appeal against conviction is allowed and the appellant acquitted of the charge against her. The appeal against sentence accordingly falls away.

25 I must emphasise that the failure in the charge is not merely what some might see as a 'technicality'. Criminal prosecutions put those accused at risk of being imprisoned, fined or caned. Thus, the charge that an accused person faces must be clear, definite and founded properly on the provisions of the law, and a person should only be convicted if the evidence supports the charge.

Aedit Abdullah
Judge of the High Court

Sarbrinder Singh s/o Naranjan Singh and Nicholas Say Gui Xi
(Sanders Law LLC) for the appellant;
Samuel Chua Hwa Kuan, Nee Yingxin and Brian Tang Wai Lreng
(Ministry of Manpower Legal Services Division) for the respondent.