Lim Teck Leng Roland v Public Prosecutor
[2001] SGHC 235

Case Number : CM 28/2001

Decision Date : 24 August 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Patrick Nai (Abraham Low & Partners) for the applicant; Anandan Bala (Deputy Public Prosecutor) for the respondent

Parties : Lim Teck Leng Roland — Public Prosecutor

imprisonment Whether order a judgment Criminal Procedure Code (Cap 68) s 217

Criminal Procedure

Application for time before serving sentence of imprisonment Conditions and circumstances that necessitate or justify an order of further extension of time before serving sentence

Facts

The applicant had earlier pleaded guilty to a total of four charges of traffic offences. He was sentenced to a total of eight months imprisonment, and a total of 18 years disqualification for all classes of vehicles. Upon the dismissal of his appeal against the sentences on 2 August 2001, he applied for and was granted an order that he commence serving his sentence of imprisonment on 16 August 2001, so that he could have a period of two weeks to settle his personal and work affairs.

The applicant now filed this criminal motion for a further order that his sentence of imprisonment which was to commence on 16 August 2001, be postponed instead to commence on 30 August 2001, to settle his personal and work affairs.

Held

, dismissing the criminal motion:

> (1) Section 217(1) lays down a general prohibition against alteration of judgments by the Subordinate Courts. Section 217(2) is an exception to this general prohibition, by prescribing the limited circumstances, in which the Subordinate Courts could alter or review their judgments. Rectifications by Subordinate Courts under s 217, could go beyond mere accidental slips and omissions, the only restriction being that it must be corrected before the court rises for the day, i.e. before the working day of the court ends. And as the powers conferred on the lower courts by s 217 must by implication also be available to the High Court in its appellate capacity, the High Court has such power to rectify the judgment, provided that it has not arisen for the day (see 5-12, 18); *Chiaw Wai Onn v Public Prosecutor* [1997] 3 SLR 445, *Re Gibbons 14 ILR (Cal) 42, Public Prosecutor v Heng You Nang [1949] MLJ 285, Ooi Sim Yim v Public Prosecutor [1990] 1 MLJ 88 followed, Goh Ah San & 2 Ors v The King [1938] MLJ 95 referred, Wong Hong Toy & Anor v Public Prosecutor [1994] 2 SLR 396 not followed.*
>
> (2) The High Court, as an appellate court, could not lawfully substitute its own earlier order, if the order granting time to the applicant to settle his personal and

work affairs before commence serving his sentence is regarded as a judgment (see 12).

(3) An application to ask the court to exercise its discretion, that the applicant defer serving his sentence, is not a judgment as provided for in s 217 Criminal Procedure Code. Thus, the High Court, as an appellate court, has the power to review its own previous order (see 15); Chhotey Lal v Tinkey Lal (1935) AIR 815, Re Balasundara Pavalar (1951) AIR Mad 7 referred.

(4) The court would be guided by whether the interests of justice require that discretion be exercised to allow the applicant a further period of time before serving his sentence. At the same time, the court must take a robust approach and ensure that the discretion not be abused by frivolous requests from the applicant (see 16).

(5) In the circumstances, there was nothing in the applicants affidavit that showed a valid reason for the court to exercise its discretion the second time to allow him a further period of time, before serving his sentence (see 17).

Case(s) referred to

Chhotey Lal v Tinkey Lal

(1935) AIR 815 (refd)
Chiaw Wai Onn v Public Prosecutor [1997] 3 SLR 445 (folld)
Goh Ah San & 2 Ors v The King [1938] MLJ 95 (refd)
Ooi Sim Yim v Public Prosecutor [1990] 1 MLJ 88 (folld)
Public Prosecutor v Heng You Nang [1949] MLJ 285 (folld)
Re Balasundara Pavalar (1951) AIR Mad 7 (refd)
Re Gibbons 14 ILR (Cal) 42 (folld)
Wong Hong Toy & *Anor v Public Prosecutor* [1994] 2 SLR 396 (not folld)

Legislation referred to

Code of Criminal Procedure (Act X of 1882) [India] s 369
Criminal Procedure Code (Cap 68), s 217
Criminal Procedure Code (FMS Cap 6) [Mal] s 278
Motor Vehicles (Third Party Risks & Compensation) Act (Cap 189), s 3(1)
Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules, r 4(1)
Road Traffic Act (Cap 276) ss 43(4), 63(4)

Judgment:

Introduction

The applicant had earlier pleaded guilty to a total of four charges. They were for driving whilst under disqualification, an offence under s 43(4) of the Road Traffic Act (Cap 276), driving whilst not being covered by insurance, an offence under s 3(1) of the Motor Vehicles (Third Party Risks & Compensation) Act (Cap 189), failure to wear a seat belt whilst driving, an offence under Rule 4(1) of the Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules, and for speeding, an offence under s 63(4) of the Road Traffic Act.

2 He was sentenced on 30 April 2001, to a total of eight months imprisonment, and a total of 18

years disqualification for all classes of vehicles, a total fine of $1,000, in default, ten days imprisonment. The appeal against the sentences of imprisonment and disqualification before this Court was dismissed on 2 August 2001. Counsel for the applicant, immediately after the dismissal, sought for an order that the applicant commence serving his sentence of imprisonment on 16 August 2001, so that the appellant could have a period of two weeks to settle his personal and work affairs. I granted it and also ordered that the applicants bail be extended.

3 This Motion, filed on 16 August 2001, and heard on 17 August 2001, was for a further order that the applicants sentence of imprisonment which was to commence on 16 August 2001, be postponed instead to commence on 30 August 2001. The applicant cited in his affidavit, that he needed a further two weeks to settle his personal and work affairs, before serving his sentence.

4 The applicant was seeking, in essence, an alteration of my order of 2 August 2001 that the applicant surrender himself and commence serving his sentence on 16 August 2001. I dismissed the application.

Functus Officio

5 I shall first deal with the issue of whether I could lawfully substitute my own order, some two weeks after it had been made. Section 217 of the Criminal Procedure Code (Cap 68) provides as follows:

> 217. Judgment not to be altered
>
> > (1) No court other than the High Court, when it has recorded its judgment, shall alter or review the judgment.
> >
> > (2) A clerical error may be rectified at any time and any other mistake may be rectified at any time before the court rises for the day.

I ruled in *Chiaw Wai Onn v Public Prosecutor* [1997] 3 SLR 445 at 460, that s 217 did not attempt any substantive enactment with regard to the High Court. The phrase other than the High Court could be interpreted to suggest that s 217 allowed the High Court to alter or review its judgment. However, to regard so would mean that the High Court would never be functus officio since, in theory, there would be nothing to prevent a third judgment or a fourth judgment to supplement an earlier judgment. This would go against the universal principle of law that, when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for the same relief unless and until the previous order of final disposal has been set aside.

6 This provision, and its equivalent, has spawn different interpretations. The previous s 369 of the Code of Criminal Procedure of India provided as follows:

> No court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in ss 395 and 484 or to correct a clerical error.

Despite the express exclusion of the High Court from the operation of this provision, many Indian High Courts held that they had no implied power to alter or review their own judgment. In *Re Gibbons* 14 ILR (Cal) 42 at 47, Petheram CJ stated:

> In my opinion the effect of the words other than a High Court is precisely the same as if in place of them the Legislature had at the end of the section added these words this section does not apply to the High Court. There is no substantive enactment in that section with reference to the High Court, and all it does is to reserve the powers which existed in the High Court before, so that they are in no degree taken away. What the powers of the High Court were before it is unnecessary to consider, but whatever they were, they were reserved and they were in the same position after this section was passed as they had been in before; and inasmuch as it is not shown to us that, before the passing of this section, any power of revision existed in the High Court, that section did not, in my opinion, create any such power, and therefore, it appears that this section does not help the applicant.

7 This was cited with approval by Spenser-Wilkinson J in *Public Prosecutor v Heng You Nang* [1949] MLJ 285, a criminal appeal from Sessions Court. In this case, the Public Prosecutor had applied against the acquittal of the respondent on charges connected with the alleged importation of certain goods by the respondent. The appeal was dismissed. Subsequently, the Deputy Public Prosecutor applied by motion that the court should hear further arguments and review its judgment. Spenser-Wilkinson J referred to s 278 of the Criminal Procedure Code of Malaysia, that provides as follows:

> No Court, other than a Court of a Judge, having once recorded its judgment, shall alter or review the same: provided that a clerical error may be rectified at any time, and that any other mistake may be rectified at any time before the Court rises for the day.

and stated that

> [the case of *Re Gibbons*] lays down the correct principle that once a judgment in a criminal matter has been pronounced and signed it cannot be altered.

This was significant, as Spenser-Wilkinson J, I think quite rightly, decided not to follow the judgment of McElwaine CJ in *Goh Ah San & 2 Ors v The King* [1938] MLJ 95. Spenser-Wilkinson J said:

> [In] *Goh Ah San & 2 Ors v The King* [1938] MLJ 95, McElwaine CJ having in open court dismissed the appeal of one appellant and allowed those of the other two subsequently, when he came to give his reasons therefor, allowed the appeal of the 1st appellant. The relevant portion of his judgment is as follows:
>
> > This No 1 accused was not represented on the appeal before me, and when I dismissed his appeal, and though I had read the record, I did not appreciate the weakness of the case against him. I have had some doubts whether I am now **functus officio**, but no certificate of the result of the appeal has yet been prepared. I stated I would give my reasons for my decision, and now, having come to a conclusion favourable to the accused person I think I am justified in applying the principle in **Jones v Williams** 41 JP 614 (referred to in **Rex v Manchester Justices- Ex parte Leaver** 53 TLR 687) and in regarding myself as not **functus officio**. I therefore allow the appeal of No 1 accused.

> It is to be observed that part of the learned Chief Justices decision was reached without hearing any argument upon the point and there is a possibility that this decision might not have been the same had his power to act as he did been seriously contested.

8 *Re Gibbons* and *Public Prosecutor v Heng You Nang* were cited with approval, by the Supreme Court of Malaysia in *Ooi Sim Yim v Public Prosecutor* [1990] 1 MLJ 88. Here, the appellant had pleaded guilty to two charges, for possession of a firearm and ammunition. The trial judge sentenced the appellant to ten years imprisonment and six strokes of whipping on the first charge and another three years on the second charge and ordered that both terms of imprisonment are to run consecutively from and be backdated to the date of his arrest. About two and a half months after the disposal of the case, the trial judge issued a corrigenda to substitute the original order with a new one which had the effect of making both sentences run consecutively, i.e. the appellant was to serve a total of 13 years imprisonment to take effect from the date of his arrest. The appellant appealed against the order, contending that the two sentences should run concurrently. Mohamed Azmi SCJ ruled that s 278 of the Criminal Procedure Code of Malaysia did not empower the trial judge to substitute his judgment two and a half months after it was recorded and delivered. As the judgment he gave was equivocal and capable of two interpretations, the basic principle of criminal justice should apply in that the construction more favourable to the appellant should be adopted rather than the substituted order subsequently made by the trial judge.

9 However in *Wong Hong Toy* & *Anor v Public Prosecutor* [1994] 2 SLR 396 at 408E, a decision of the Court of Criminal Appeal, the learned Wee Chong Jin CJ disagreed with these authorities and instead, said:

> A plain reading of [s 217] shows that the High Court can alter or review its judgment. There is no reason to compel a restrictive interpretation, especially since we are concerned with a superior court of record, which is also the highest court of trial in criminal cases. We must give effect to the plain meaning of the words in the section. To ignore the words other than the High Court would be to render them otiose. In our opinion, [s 217] gives sanction to Lai Kew Chai J to alter the fine. It was necessary for him to do so to correct a mistake as to the maximum fine that could be imposed.

10 In *Chiaw Wai Onn v Public Prosecutor* [1997] 3 SLR 445 at 460, I agreed with the approach taken by Petheram CJ in *Re Gibbons* and Spenser-Wilkinson J in *Public Prosecutor v Heng You Nang* and Mohamed Azmi SCJ in *Ooi Sim Yim v Public Prosecutor*. With respect and great deference, I departed from Wee Chong Jin CJs reasoning in *Wong Hong Toy.*

11 I took the opportunity in *Chiaw Wai Onn v Public Prosecutor* to say at 68:

> ..upon a true construction of s 217, I did not think that it attempted any substantive enactment with regard to the High Court.

and at 69:

> .. In my view, the entire [s 217] might be read as if it did not apply to the High Court.

However, as I also said at 76 and 77:

> .. the powers conferred on the lower courts by s 217 must, by implication, also be available to the High Court in its appellate capacity Consequently, [the High Court has] the requisite power in altering the sentence of the appellant in the instance case, even though it was a substantive mistake, because it had not arisen for the day when the rectification was made. On this approach, it was also apparent that Lai Kew Chai J had the necessary powers to reduce the fine in the case of *Wong Hong Toy* since the mistake there was rectified before the court rose for the day.

12 I made the order of 2 August 2001, allowing the applicant a period of two weeks to settle his personal and work affairs, and commence serving his sentence on 16 August 2001. To accede to this application would, in essence, entail altering my own order of 2 August 2001. With my approach to s 217, as can be seen from the reasoning in *Chiaw Wai Onn v Public Prosecutor*, once the order is regarded as a judgment, I could not lawfully substitute my own order, some two weeks after it had been made. It is thus necessary that I go on to consider if my order of 2 August 2001, allowing the applicant a period of two weeks to settle his personal and work affairs, comes within the definition of judgment.

Judgment

13 The word judgment is not defined in the Criminal Procedure Code. The Halsburys Laws of England, Hailsham Ed, Vol IX, paras 260-265 explains it as a final order in a trial terminating in the conviction or acquittal of the accused. In *Chhotey Lal v Tinkey Lal* (1935) AIR 815, the court regarded that an order in the nature of a judgment is one which is passed on full enquiry and after hearing both parties.

14 In *Re Balasundara Pavalar* (1951) AIR Mad 7, an order on a bail application was regarded as nothing more than an interlocutory and tentative expression of the conclusion as to whether a person should be set at large pending trial, or disposal of his appeal and cannot be termed a judgment so as to attract the application of s 369 of the Code of Criminal Procedure of India. Menon J stated that [(1951) AIR Mad 7 at 12]:

> A judgment is one which finally acquits or convicts an accused person and any other order passed by an appellate court disposing of the appeal would include an order of remand or retrial. But it cannot be said that an order passed by an appellate court would include an interlocutory rejection of an application for bail.

15 Thus, by using the proper approach of analogy from decided cases from other appropriate jurisdiction, an application to ask the court to exercise its discretion, that the applicant defer serving his sentence, ought not to be treated as a judgment. Such an order cannot, by any stretch of imagination, be regarded as a final order in a trial terminating in the conviction or acquittal of an accused. The High Court, as an appellate court, has the power to review its own such previous order.

16 However, this still leaves the issue of when and in what circumstances the High Court would consider a further extension of time before serving the sentence. It would be impossible to lay down a clear-cut guideline. It is possible that during the period of extension, the applicant may suffer from illness which necessitates treatment in hospitals or other places where better facilities are available. It might be that a further extension would be justifiable as the applicants close relative or a member of immediate family happened to suffer from serious illness. Different conditions and circumstances could arise that would necessitate or justify an order of further extension of time before serving the sentence. Ultimately, the court would be guided by whether the interests of justice require that discretion be exercised to allow the applicant a further period of time before he serves his sentence.

At the same time, the court must take a robust approach and ensure that the discretion not be abused by frivolous requests from the applicant. The burden is always on the applicant to show and explain that the circumstances and conditions are of such a dire and serious nature or of such urgency that they merit the exercise of discretion by the court to grant a further period of time before he serves his sentence.

17 Thus, I concluded that the application for a further period of time before serving the sentence of imprisonment is not a judgment. Therefore, there is nothing in law to prevent the court which passed it from re-considering it or from entertaining a fresh application for the same relief. However, in the circumstances, there was nothing in the applicants affidavit that showed a valid reason for the court to exercise its discretion the second time to allow him a further period of time, before serving his sentence. I thus dismissed the motion.

Conclusion

18 Section 217(1) lays down a general prohibition against alteration of judgments by the Subordinate Courts. Section 217(2) is an exception to this general prohibition, by prescribing the limited circumstances, in which the Subordinate Courts could alter or review their judgments. Rectifications by Subordinate Courts under s 217, could go beyond mere accidental slips and omissions, the only restriction being that it must be corrected before the court rises for the day, i.e. before the working day of the court ends. And as the powers conferred on the lower courts by s 217 must by implication also be available to the High Court in its appellate capacity, the High Court has such power to rectify the judgment, again, provided that it has not arisen for the day.

19 I had decided on 2 August 2001 to grant an order that the commencement of the applicants sentence begin on 16 August 2001. And faced with the present application on 17 August 2001, although I was not functus officio, and not deprived of the power to accede to the application and alter my own decision of 2 August 2001, the applicant failed to come up with any valid excuse for the court to exercise its discretion the second time to allow him a further period of time, before serving his sentence.

Criminal Motion dismissed.

Sgd:

YONG PUNG HOW
Chief Justice

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