Ong Beng Leong v Public Prosecutor
[2005] SGHC 22

Case Number : MA 114/2004

Decision Date : 01 February 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : K Shanmugam SC, Ganga Avadiar (Allen and Gledhill) and Mimi Oh (Mimi Oh and Associates) for the appellant; Winston Cheng and Aaron Lee (Deputy Public Prosecutors) for the respondent

Parties : Ong Beng Leong — Public Prosecutor

Criminal Law – Statutory offences – Prevention of Corruption Act – Use of false documents with intent to deceive principal – Whether appellant knowing documents false – Whether appellant having intent to deceive – Whether offence requiring actual deception – Section 6(c) Prevention of Corruption Act (Cap 241, 1993 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Appeals – Use of false documents with intent to deceive principal – Whether trial judge should have considered appellant's prior military conviction and punishment when sentencing appellant – Whether sentence of two months' imprisonment on each of ten charges manifestly excessive – Section 108(2) Singapore Armed Forces Act (Cap 295, 2000 Rev Ed)

Words and Phrases – Meaning of "use" and "other document" – Section 6(c) Prevention of Corruption Act (Cap 241, 1993 Rev Ed)

1 February 2005

Yong Pung How CJ:

1 The appellant was convicted in the District Court of ten charges of using false documents with intent to deceive his principal, an offence under s 6(c) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"): see [2004] SGDC 215. Another 57 similar charges were taken into consideration, and he was sentenced to two months' imprisonment on each of the ten charges. The sentences in three charges were ordered to run consecutively, bringing his total sentence to six months' imprisonment. He appealed against both conviction and sentence. I dismissed the appeal against conviction but allowed the appeal against sentence. I now give my reasons.

Facts

2 The Singapore Armed Forces ("SAF") set up the Training Resource Management Centre ("TRMC") in April 1999. TRMC, which was a consolidation of the SAF's Training Means Branch and the Training Means Support Branch from the Camp Commandant Office, was tasked with the management and maintenance of all training areas and facilities belonging to the SAF in Singapore.

3 The appellant, a Lieutenant-Colonel with the SAF, was the Commanding Officer ("CO") of TRMC between 1999 and 2001. As CO, he was responsible for overseeing the entire TRMC, which was broadly organised into the following departments: Administration & Finance, Resources & Operations and Maintenance. The present charges relate to the manner in which the Maintenance Department allocated work to the construction company, Sin Hiaptat.

SAF procedure

4 According to GS Planning Directive No 3 of 2000 ("Directive P77"), the proper procedure for processing requests for maintenance works of up to $5,000 was as follows:

(a) Upon identification of the works required, an approval of requirement form ("AOR") would be prepared. This internal document would specify the scope of the works and their estimated cost, and also verify that they were necessary and within the budget.

(b) The completed AOR would be sent to the relevant authority for approval. According to Annex C of Directive P77, the relevant approving authority in this case was the CO of TRMC, *ie*, the appellant.

(c) Once the AOR was approved, the unit could either appoint a Ministry of Defence ("MINDEF") term contractor to carry out the works, or source for three quotations from independent contractors.

(d) If the unit chose to source for quotations, three separate companies would be invited to submit quotations for the works. A contractor, usually the one who submitted the lowest quotation, would then be selected.

(e) A work order would be prepared and issued to the chosen contractor, who would only commence work after the issue of the work order.

(f) After the completion of the work, the contractor would submit an invoice for payment. The unit would verify the works before making payment.

5 If the value of the works exceeded $5,000, the unit would have to obtain a cost estimate from the Defence Science & Technology Agency – Building and Infrastructure ("DSTA BI") Regional Office and put up an AOR based on this. The work order for such works would be prepared by DSTA BI instead of TRMC.

The events in TRMC

6 Unfortunately, TRMC's Maintenance Department failed to comply with the practice outlined above. Instead, maintenance works valued at up to $10,000 were regularly allocated to Sin Hiaptat without first sourcing for two other quotations from independent companies. Ong Chye Tab ("Ong"), the sole proprietor of Sin Hiaptat, also commenced work before any AORs or work orders were prepared. After each project was completed, Ong directed his secretary, Khoo Swee Im ("Khoo"), to prepare a quotation from Sin Hiaptat as well as two forged quotations from other companies. All three quotations were backdated to give the appearance that they were prepared before the maintenance works had commenced. To justify awarding the contract to Sin Hiaptat, Ong also instructed Khoo to ensure that Sin Hiaptat's quotation was invariably the lowest of the three quotations submitted.

7 Once the quotations were received by TRMC, the staff of the Maintenance Department would prepare and backdate the AORs and work orders to conceal the fact that the prescribed procedure had not been followed. During his tenure as CO, the appellant signed several AORs and work orders relating to these maintenance works. The irregularities were only discovered when Lieutenant-Colonel Phang Chee Keng ("LTC Phang") succeeded the appellant as CO on 15 December 2001. After some staff members alerted him to the problem, LTC Phang contacted his superior and an investigation was launched.

SAF trial and the present charges

8 After the investigation, the SAF conducted a summary trial against the appellant pursuant to ss 21 and 25 of the Singapore Armed Forces Act (Cap 295, 2000 Rev Ed) ("SAF Act"). The appellant took command responsibility for the breaches, and was fined a total of $2,250.

9 He also faced separate criminal sanction in the form of 67 charges of knowingly using false quotations with intent to deceive his principal, an offence under s 6(c) of the PCA. The charges corresponded to 67 forged quotations submitted by Sin Hiaptat to TRMC. In the court below, the Prosecution elected to proceed on the first ten charges (District Arrest Cases ("DACs") Nos 48307 to 48316 of 2003), which formed the subject of the present appeals.

The Prosecution's case

10 According to the Prosecution, the appellant knew that Ong regularly submitted false quotations after each project to create the impression that the work had been awarded to Sin Hiaptat in accordance with proper procedure. The charges against the appellant, which were identical save for differences in the details of the quotations, stated that:

> You, Ong Beng Leong, are charged that you, sometime in 2001, in Singapore, being an agent, to wit, the Commanding Officer attached to Training Resource Management Centre in the employ of the Singapore Armed Forces, did knowingly use with intent to deceive your principal, namely the said Singapore Armed Forces, a quotation … in respect of which your principal was interested, and which was false and which to your knowledge was intended to mislead your principal and you have thereby committed an offence punishable under Section 6(c) of the Prevention of Corruption Act, Chapter 241.

The defence

11 As a preliminary point, the appellant took issue with the application of Directive P77 to TRMC, as it only referred to "local camps" and not training areas. In his view, the proper directives were MINDEF Finance Directive 5500/14/C and the General Orders of MINDEF which, read together, entitled him to call for quotations of up to $20,000, rather than the $5,000 limit stipulated in Directive P77.

12 The appellant also disclaimed any knowledge of the irregularities in the paperwork. While he did not dispute that he had signed the AORs and work orders for the offending projects, he claimed that he had no time to examine the quotations in detail. Having many other responsibilities as CO, he was forced to rely on his staff in the department, including Kat Boon It ("Kat"), the head of Maintenance, and his subordinates, Jeff Koh and Patrick Chua.

The decision below

Directive P77

13 The district judge first observed that the appellant was not being charged with breaching Directive P77. The directive was only relevant to the proceedings if it could be shown that the appellant had *knowingly* breached it, since the Prosecution relied on this to substantiate its case that the appellant *knew* the quotations were false.

14 After considering the various directives adduced by both the Prosecution and the Defence, the district judge found that the specific references to TRMC and training areas in Annex C sufficiently proved that Directive P77 did apply to TRMC. However, he also accepted that the text of the directive was ambiguous, as the reference to "local camps" may or may not have included training

areas under TRMC's charge. As the appellant's opinion that the directive did not apply to TRMC was not so outrageous or incredible that it could not be believed, the Prosecution had failed to prove that the appellant had knowingly breached Directive P77. Therefore, the fact that the directive was not complied with did not add anything to the determination of whether the appellant knew that the quotations were false.

The charges

15 The appellant was charged under s 6(c) of the PCA, which provides that:

> If any person knowingly gives to an agent, or *if an agent knowingly uses with intent to deceive his principal, any* receipt, account or other *document in respect of which the principal is interested*, and which *contains any statement which is false* or erroneous or defective in any material particular, and which *to his knowledge is intended to mislead the principal,* he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both. [emphasis added]

16 Therefore, the essential elements of each of the ten charges against the appellant were that:

(a) he was an agent of the SAF;

(b) the quotations were false;

(c) the quotations were receipts, accounts or other documents in respect of which the SAF was interested;

(d) he had used the quotations knowing they were false and intended to mislead the SAF; and

(e) he intended to deceive the SAF.

17 It was undisputed that the quotations were false (sub-para (b) of [16] above). The district judge also had little difficulty in finding that the appellant was an agent of the SAF, and that the quotations were documents in respect of which the SAF was interested (sub-paras (a) and (c) of [16] above). The main issues in contention were:

(a) whether the quotations were "used" within the meaning of s 6(c) of the PCA;

(b) the extent of the appellant's knowledge of the false quotations; and

(c) whether the appellant intended to deceive the SAF.

"Use" in s 6(c) PCA

18 Drawing support from the decision of the High Court in *Knight v PP* [1992] 1 SLR 720, the appellant argued that s 6(c) was the PCA's equivalent of cheating under the Penal Code (Cap 224, 1985 Rev Ed), and the word "use" in s 6(c) should be restricted to mean "use to cheat".

19 At 728, [20] of his judgment in *Knight v PP*, L P Thean J made the following comments on s 6(c) of the PCA:

> The charge under s 6(c) of the Act does not imply any corruption at all. The word "corruptly" which is present in paras (a) and (b) of s 6 is absent in para (c). But the offence under s 6(c) does imply an element of dishonesty. *In effect, it is an offence of cheating under a different statutory provision*. On the facts admitted by the appellant, he could be charged for cheating under s 417 or s 420 of the Code. [emphasis added]

20 The district judge disagreed with the appellant's interpretation of *Knight v PP* and its purported restriction of s 6(c). In his view, Thean J was merely making an observation on the facts of that particular case, and his words should not be read to mean that the ingredients of s 6(c) and the Penal Code offences of cheating were identical in every respect. The district judge therefore held that the word "use" in s 6(c) should be given its natural meaning, *ie*, "to employ to any purpose": *Chandos Pte Ltd v Comptroller of Income Tax* [1987] SLR 287 at 298, [27], subject to the proviso that the document had to be used for the purpose of misleading the principal. In this case, the quotations were "used" in the relevant sense as the appellant and his staff had used them to mislead the SAF into believing that TRMC had complied with the relevant guidelines for work procurement.

Extent of the appellant's knowledge

21 The crux of the case, and much of the evidence, centred on the appellant's knowledge of the irregularities in the Maintenance Department's paperwork. For the charges against the appellant to be made out, the Prosecution had to prove that he knew that the quotations were false and that he intended to mislead the SAF. To a large extent, the determination of this factual question depended on the district judge's assessment of the veracity of the witnesses.

22 In evaluating the evidence of the staff in charge of the offending projects (Kat, Jeff Koh and Patrick Chua), the district judge acknowledged that they were accomplices who may have had an incentive to downplay their role. Nevertheless, he found their evidence to be honest and consistent in most of the material particulars. In fact, their evidence that they had brought certain irregularities to the appellant's attention was corroborated by the appellant himself. In his testimony in court, the appellant conceded that Kat and Jeff Koh had gone to see him sometime between April and May 1999 to highlight certain problems in the paperwork for Sin Hiaptat.

23 A cursory examination of the documents also revealed various suspicious elements. Most significantly, the two other quotations for all the maintenance works invariably came from the same few companies, and the prices quoted were always several thousand dollars more expensive than Sin Hiaptat's. This, coupled with the evidence from the staff, convinced the district judge that the appellant must have known of Ong's practice of submitting false quotations. This finding was further bolstered by the appellant's police statement recorded on 5 September 2002 ("the statement"). In para 53 of the statement, the appellant admitted that when he signed and stamped the AORs, he

> knew all along that works were already done before the quotations and Ong Chye Tab would definitely get the job. The purpose of having three quotations to be in place was just for documentation purposes. When I signed my name as the approving officer, I knew that such documents were [*sic*] be falsely interpreted that there were three quotations when in fact it was not true.

When confronted with the statement in court, he flatly denied any such knowledge at the material time. This, along with other material inconsistencies between the statement and his subsequent testimony, led the district judge to impeach the appellant's credit and prefer the evidence in his statement over his testimony in court.

Intention to deceive

24 The district judge noted at [240] of his Grounds of Decision:

> Very often, motive is confused with intention. Motive refers to the subjective reasons a person may have for acting whereas intention connotes cognition. A person can be said to intend a certain consequence if he does an act with the desire to produce the consequence or if he foresaw the consequence as a virtual certainty: *R v Woolin* [1998] 3 WLR 382 (House of Lords).

25 Based on the evidence, the district judge found that the appellant had in all likelihood known and approved of Ong's practice of submitting false quotations. Since the only reason for creating these false quotations must have been to deceive the SAF into believing that proper procedures had been complied with, the final essential ingredient of s 6(c) was also proved, and the appellant was convicted on all ten charges.

Sentence

26 The offence of using false documents with intent to deceive is punishable with imprisonment for up to five years, or a fine not exceeding $100,000, or both. Although the appellant did not receive any pecuniary benefit from his offences, the district judge found several aggravating factors that justified the imposition of a substantial custodial sentence. In particular, the appellant had committed these offences in his official capacity as CO, public funds were involved, and the dishonest practice of the department had severely undermined the SAF's safeguards against corruption. The remaining 57 similar charges (DACs Nos 48317–48373 of 2003) were also taken into consideration for the purpose of sentencing.

27 Considering all the relevant circumstances, including the appellant's past contributions to the SAF as well as his loss of employment as a result of the conviction, the district judge sentenced him to two months' imprisonment on each of the ten charges. The sentences in DACs Nos 48307, 48309 and 48316 of 2003 were ordered to run consecutively, bringing the appellant's total sentence to six months' imprisonment.

28 The appellant appealed against both conviction and sentence.

The appeal against conviction

29 The appellant's grounds of appeal centred on the same points raised in the court below, namely:

(a) whether the quotations were "used" within the meaning of s 6(c) of the PCA;

(b) the extent of his knowledge of the false quotations; and

(c) whether he intended to deceive the SAF.

"Use" in s 6(c) PCA

30 As I noted earlier at [16] above, one of the essential elements of the offence under s 6(c) of the PCA was that the appellant must have "used" the false quotations with intent to deceive the SAF. The appellant claimed that the district judge had erred in giving the word "use" in s 6(c) its natural and ordinary meaning, *ie*, to employ to any purpose. Instead, he contended that a document

should only be considered "used" in the relevant sense when it was submitted to a third party.

31 The appellant found ostensible support for his argument in the English Court of Appeal case of *Regina v Tweedie* [1984] QB 729. In this case, the accused was a metal dealer who had been instructed by one of his directors to sell silver and palladium before the close of trading as the market was likely to fall soon. The market did fall, but the accused failed to do as he was told. To cover up his mistake, he made three false entries on his trading sheet purporting to show that he had sold the silver and palladium. The trading sheet was handed over to the company's accounting department, and his deception was subsequently uncovered. After a long investigation, he was charged and convicted of an offence based on the third paragraph of s 1(1) of the UK Prevention of Corruption Act 1906 (c 34) (*in pari materia* with s 6(c) of the PCA).

32 On appeal, his conviction was set aside as the Court of Appeal found that the trading sheet was not a document covered by the offence. The court noted at 734:

> [The third paragraph of s 1(1)] is part of one subsection which deals in the first two paragraphs with dishonest conduct, either as a fact or in contemplation, between an employee and a third party. *It would be odd* drafting for the last part of this subsection *to create an offence which made an employee criminally liable for using a document which did not have any connection with a third party or was not intended to go to a third party.* As Hobhouse J. pointed out in the course of argument, the words "receipt" and "account" in the third paragraph, as a matter of the ordinary use of English, refer to documents inter partes either in creation or use. A receipt is made out to someone who has paid a debt. An account is rendered by one person to another. The words *"or other document" should*, in our judgment, *be construed as meaning a document which would pass inter partes. Such documents are capable of being given by a third party and then used by an employee*. [emphasis added]

33 The above comments were cited with approval by Thean J in *Knight v PP* ([18] *supra*), and I accept that the words "or other document" in s 6(c) refer only to documents *inter partes*. However, I fail to see how this necessarily means that the word "use" in s 6(c) should also be restricted to usage directed at a third party. Section 6(c) provides that an offence is committed when an agent "uses" a false "receipt, account or other document". The court in *R v Tweedie* only decided that the words "or other document" should be restricted to *inter partes* documents; the meaning of the word "use" in the section was never disputed. By linking his argument on usage with the court's decision in *R v Tweedie*, the appellant appeared to have conflated what were essentially two separate elements of the offence.

34 To my mind, there is no justification for limiting the word "use" in s 6(c) to situations in which the false documents were actually submitted to a third party. In the context of the provision, the plain and ordinary meaning of the word is clear: to employ to the purpose of misleading the principal. On the facts, the appellant and his staff had plainly "used" the false quotations to regularise the paperwork to disguise from the SAF their breach of SAF guidelines. The fact that the appellant was the final approving authority under Directive P77 did not mean that the SAF would never be misled – the appellant was fully aware that the quotations could be subject to future inspections or audits. Indeed, it must have been the possibility of a future audit that prompted the TRMC staff to collude with Sin Hiaptat to generate the misleading paperwork. I therefore found that the appellant had "used" the false quotations within the meaning of the word in s 6(c).

35 I also had no doubt that the quotations in this case were *inter partes* documents within the scope of the offence. In *R v Tweedie*, the court had found that the falsified trading sheet had none of the characteristics of an *inter partes* document because the document was purely internal. The

accused had created the document and forwarded it to the company's accounting department, and no third party was ever involved in its creation or receipt.

36 The same could not be said of the forged quotations in the present case. It was undisputed that Ong and Khoo of Sin Hiaptat had forged the quotations before submitting them to TRMC. As there were third parties actively involved in generating the false documents, the quotations clearly came within the scope of s 6(c). As Thean J specifically stated at 727, [19] of his judgment in *Knight v PP*, the offending documents must be "*inter partes either in creation or use*". The highlighted words clearly indicate that third party involvement in the creation of the false documents is sufficient for a charge under s 6(c) to be made out.

Extent of the appellant's knowledge

37 The appellant also claimed that the district judge erred in finding that he had known and acquiesced in the Maintenance Department's practice of allowing Sin Hiaptat to start work before the AORs and work orders had been issued, and later accepting false quotations to regularise the process. Given that this was essentially a finding of fact, it is trite law that it should not be disturbed unless it was plainly wrong or against the weight of the evidence: *Lim Ah Poh v PP* [1992] 1 SLR 713; *PP v Azman bin Abdullah* [1998] 2 SLR 704.

38 In this case, it was clear that the district judge had arrived at his finding after carefully assessing the veracity of the witnesses. In these circumstances, it is axiomatic that an appellate court would be even more reluctant to overturn his findings: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656; *Arts Niche Cyber Distribution Pte Ltd v PP* [1999] 4 SLR 111.

39 The contractor, Ong, gave evidence that the appellant had instructed him to commence work even before the paperwork was completed. Although the district judge had found various parts of Ong's evidence marred by his poor health and memory, this did not preclude him from accepting the other more credible portions of his evidence. A court is entitled, for good and cogent reasons, to accept one part of a witness' testimony and to reject the other: *PP v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15; *Ng Kwee Leong v PP* [1998] 3 SLR 942. In this case, I found no reason to fault the district judge's approach, as he had carefully sifted through Ong's evidence and accepted the parts that were reliable, whilst rejecting those that were not.

40 The district judge had also meticulously considered the evidence from the accomplice witnesses – namely, Kat, Jeff Koh and Patrick Chua – before accepting their version of events. All three witnesses had testified that the appellant was aware of the irregularities in the Sin Hiaptat paperwork. In assessing the veracity of their evidence, the judge correctly noted that they were accomplices who may have had an incentive to shift the blame to the appellant. However, after considering their evidence as a whole, he found no tendency on the part of these witnesses to embellish their evidence against the appellant. Although illus (b) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) states that an accomplice is presumed to be unworthy of credit and his evidence must be treated with caution, s 135 of the same Act emphasises that there is no rule of law requiring corroboration of an accomplice's evidence before an accused may be convicted: *Abdul Rashid v PP* [1994] 1 SLR 119.

41 Whether an accomplice's evidence is reliable or not will depend on all the circumstances of the case: *Hon Chi Wan Colman v PP* [2002] 3 SLR 558. Kat, Jeff Koh and Patrick Chua had all candidly acknowledged their involvement in the deception, and their evidence was cogent and consistent in most of the material particulars. In fact, parts of their evidence were corroborated by the appellant himself, such as the conversation in which Kat and Jeff Koh had informed the appellant of irregularities

in the Sin Hiaptat paperwork. The contents of this conversation clearly discredited the appellant's defence that he was wholly ignorant of what was going on, since he admitted that he told Kat and Jeff Koh that there was nothing wrong with what they did, so long as Sin Hiaptat's prices were competitive and they did not accept any bribes from Ong. In the circumstances, I found that the district judge was perfectly entitled to accept the evidence from Kat, Jeff Koh and Patrick Chua.

42 The documentary evidence further substantiated the district judge's finding that the appellant must have known that the quotations were false. The irregularities in the paperwork were patent. The same few companies were repeatedly submitting quotations for works that invariably were awarded to Sin Hiaptat, and there were significant disparities between the prices quoted by Sin Hiaptat and those quoted by the other two companies. The bare contents of the false quotations, shorn of details of the works in question, were a further indication that something was amiss. The unusually close dates of the work orders and invoices from Sin Hiaptat also implied that, in some cases, the contractor completed the work within the same day he was instructed to commence work. The above evidence, taken together, should certainly have aroused the appellant's suspicions.

43 By the appellant's own admission, the maintenance of training areas formed at least 25% of his job scope. Given that the works formed a substantial portion of his responsibilities, his defence of complete ignorance simply defied belief. As CO charged with supervising the operation and maintenance of TRMC, he must have noticed that a sizeable portion of maintenance works was consistently being allocated to Sin Hiaptat, despite the existence of the quotation system. The only conclusion that could reasonably be drawn was that the appellant must have known that the quotations were false.

44 Further, the irregularities did not simply concern trivial administrative details. Substantial public funds were involved, and the first ten charges alone related to maintenance works worth more than $87,000. In the circumstances, I had no doubt that the appellant as CO had a duty to ensure that his subordinates complied with the work allocation guidelines of the SAF. The appellant could not simply absolve himself of all responsibility by claiming that he left everything to his staff and had no knowledge of what was going on in the department.

45 In any case, the appellant's protestations of ignorance rang hollow in the face of his police statement, which further fixed him with knowledge of what was going on. In the statement, the appellant unequivocally confessed that he had on many occasions instructed Ong to commence work without any work orders. He also acknowledged that when he received the three quotations after the works were completed, he knew that the other two quotations would definitely be higher than Sin Hiaptat's as the latter would "definitely get the job". Having admitted that the purpose of having three quotations was "just for documentation purposes", the appellant must have known that the other two quotations could not be genuine. He further said at paras 53 and 56 of his statement:

> When I signed my name as the approving officer, I knew that such documents were [*sic*] be falsely interpreted that there were three quotations which in fact it was not true. By signing my name as the approval officer, I am supporting the claim that there were minimum three quotations which in fact it was not.

46 The contents of the statement clearly contradicted the appellant's evidence in court, and the discrepancies went to the heart of the matter. The appellant's defence in court was one of complete denial of knowledge, yet the statement clearly proved that he was very much aware that work was being allocated to Sin Hiaptat in direct contravention of SAF guidelines. Such a glaring discrepancy could hardly be dismissed as minor. Given the inconsistencies in his evidence, I found that the district judge's decision to impeach his credit and prefer his statement under s 147(3) of the

Evidence Act was amply justified.

47 The appellant tried to explain away the inconsistencies by insisting that his incriminating statements referred to his knowledge *at the time the statement was recorded*, and not when the quotations were first brought for his signature. I had little difficulty in rejecting his flimsy explanation, given that the appellant had specifically stated at paras 53, 54 and 56 of the statement:

> *When I stamped and signed on the approval form, I knew all along* that works were already done before the quotations and Ong Chye Tab would definitely get the job …
>
> *When I asked my staff to tell Ong Chye Tab to send* it [*sic*] *his quotation, I also knew all along* that Ong Chye Tab would send in his quotation with two other companies quotations …
>
> *I knew all along* that Ong Chye Tab had been sourcing the other two quotations in all of the quotations that he was involved in *when I took over command in TRMC*.
>
> [emphasis added]

The highlighted portions of the statement clearly date the appellant's knowledge to the time when he received the paperwork for his signature. Therefore, the statements could not be explained away as new knowledge that he had gained only after the SAF investigation began in 2002. Given his knowledge of the department's general practice, it was obvious that he must have known that each of the ten quotations corresponding to the ten charges was false.

Intent to deceive

48 Another essential element of s 6(c) of the PCA is the requirement that the agent must have intended to deceive his principal. This, the appellant argued, was not satisfied in the present case as there was no evidence that anyone was deceived by the false quotations. To my mind, this line of reasoning obviously mistakes an intent to deceive with the quite separate consideration of whether a person was actually deceived. An intent to deceive is a *mens rea* requirement that is expressly provided for in s 6(c). There is however no mention of actual deception as a further element of the offence.

49 The underlying flaw in the appellant's argument was his attempt to draw a complete parallel between s 6(c) of the PCA and the cheating offences under the Penal Code. The requirement of actual deception is expressly stipulated for in s 415 of the Penal Code, which defines the offence of cheating as follows:

> Whoever, by *deceiving any person*, fraudulently or dishonestly induces the *person so deceived* to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces *the person so deceived* to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". [emphasis added]

50 In contrast, s 6(c) of the PCA is silent on the issue of actual deception, and merely focuses on the intent to deceive:

> If any person knowingly gives to an agent, or if an agent knowingly uses with *intent to deceive his principal*, any receipt, account or other document in respect of which the principal isinterested, and which contains any statement which is false or erroneous or defective in any

material particular, and which *to his knowledge is intended to mislead the principal*, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both. [emphasis added]

51 The only support the appellant could find for reading an element of a cheating offence into s 6(c) of the PCA was Thean J's *dictum* in *Knight v PP* ([18] *supra*), where he had remarked that s 6(c) was "in effect … an offence of cheating under a different statutory provision". Although the sentence, by itself, appeared to lend credence to the appellant's assertions, it was evident from a careful reading of the entire judgment that Thean J did not intend to hold that the two offences were identical in every material particular. Instead, he was merely commenting on the similarities between the two offences, and observing that the factual scenario in the case itself could conceivably support a charge of cheating under the Penal Code as well. There was absolutely no evidence to indicate that he intended to go further and hold that both offences were identical in every respect.

52 As a matter of common sense, the appellant's position could not be sustained. Although both offences are similar in nature, it is undeniable that they were enacted as two separate criminal offences with very different legal elements. The appellant produced no evidence to suggest that s 6(c) was intended to be a re-enactment of the cheating offences. Indeed, one would be hard-pressed to explain why Parliament would choose to provide for two separate offences if they were intended to be identical in every aspect, especially when the provisions were so differently worded.

53 The starting point for interpreting any statute must be the words of the statute itself. Section 6(c) of the PCA provides that an intent to deceive is sufficient, and the requisite intent was clearly made out once the appellant knowingly allowed Sin Hiaptat to submit false quotations to regularise the paperwork. The only reason why the false quotations were created was to deceive the SAF into believing that the proper procedures had been followed, in the event of a future inspection or audit. The fact that no such audit took place, and no other persons in the SAF were deceived by the false quotations, did not absolve the appellant from liability under the present charges.

54 I therefore found that the appellant had been correctly convicted on the ten charges under s 6(c) PCA, and proceeded to consider the issue of sentence.

The appeal against sentence

55 Taking into account the remaining 57 similar charges, the district judge sentenced the appellant to two months' imprisonment for each of the ten charges. Three of the sentences were ordered to run consecutively, bringing his total sentence to six months' imprisonment. In this appeal, the appellant contended that this sentence was manifestly excessive, particularly because the district judge had failed to take into account the military punishment already meted out to him in the SAF's summary trial.

56 Under s 108(2) of the SAF Act, a civil court shall, in awarding punishment, have regard to any military punishment the accused may already have undergone as a result of his conviction by a disciplinary officer. In this case, the appellant was fined a total of $2,250 by the SAF tribunal for disobedience of general orders and conduct to prejudice of good order or discipline, military offences under ss 21 and 25 of the SAF Act respectively. Given that no mention was made of this in the Grounds of Decision below, I found some force in the appellant's argument that the district judge had failed to properly take into account his prior punishment by the SAF.

57 However, I could not agree with the appellant that s 108(2) of the SAF Act directs the court to tailor its sentence for a criminal offence to the military punishment. In the first place, the offences

under the SAF Act for which the appellant was charged were military offences that were completely different from the criminal charges under s 6(c) of the PCA. Moreover, as I had noted in *PP v D'Crus* [1993] 1 SLR 864, there is a distinct dichotomy between the ordinary civil courts and the military courts, and the military courts' powers of punishment are also different. Although the SAF is undoubtedly the authority best suited to deal with military discipline, the appellant's actions also constituted criminal offences for which the civil courts of Singapore are the proper arbiters of punishment.

58 All that s 108(2) of the SAF Act states is that the court should have regard to the military punishment already administered to the appellant. Since the military offences for which the appellant was convicted by the SAF arose from the same set of facts as the criminal charges, the earlier punishment could be taken into account as a further mitigating factor. However, I saw no reason for the military court's punishment to further fetter my discretion in passing a sentence that was appropriate to the facts and the serious criminal charges faced by the appellant.

59 In view of the aggravating factors in this case, I found the imposition of a custodial sentence to be unavoidable. Corruption is always a serious offence, and the severity of the present charges was compounded by the fact that the appellant was a senior officer of the SAF and public money was involved. The grave nature of his offences was also underlined by the fact that he was convicted of no less than ten charges, with a further 57 similar charges taken into consideration.

60 Nevertheless, I found the total sentence of six months' imprisonment imposed by the district judge to be manifestly excessive in the circumstances. The offences which the appellant was convicted of could in fact be described as partly technical. There was never any suggestion by the Prosecution that the appellant had been motivated by pecuniary gain. Indeed, the evidence suggested that the appellant had honestly believed, albeit misguidedly, that he was expediting the works for the benefit of TRMC and the SAF. There was also no indication that the appellant had actively participated in the scheme to submit false quotations, which distinguished his case from those of Ong and Khoo. In my view, although his acquiescence in the Maintenance Department's practice was deplorable, it did not warrant such a substantial custodial sentence.

61 The appellant has been suspended from the SAF since the commencement of the trial, and is likely to lose considerable amounts in pension and other benefits as a result of his convictions. Balancing all the relevant facts and circumstances, both aggravating and mitigating, and giving credit for his past exemplary service to the SAF, I found that a sentence of two weeks' imprisonment in respect of each of the ten charges was appropriate. The sentences in DACs Nos 48307, 48309 and 48316 of 2003 should run consecutively, bringing the total sentence to six weeks' imprisonment.

62 At the end of the trial, the appellant also requested that his sentence commence only after the Chinese New Year. As the Prosecution had no objections, and the appellant did not pose any flight risk, I ordered bail to be extended and the appellant's sentence to commence from 11 February 2005.

Appeal against conviction dismissed and appeal against sentence allowed.