IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 33

Criminal Motion No 31 of 2023

Between

Mohd Noor bin Ismail

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review — Permission for review]

TABLE OF CONTENTS

FACTUAL BACKGROUND AND PROCEDURAL HISTORY 3

MY DECISION 4

THE APPLICABLE LEGAL PRINCIPLES 4

NOOR'S ALLEGATIONS AGAINST THE IO HAVE ALREADY BEEN DEALT WITH BY THE COURT OF APPEAL 5

NOOR'S CLAIM ABOUT THE COMMENTS MADE BY THE COURT OF APPEAL AND BY DPP LAU 6

NOOR'S ALLEGATIONS AGAINST MR THRUMURGAN. 7

CONCLUSION 9

Version No 1: 20 Oct 2023 (13:15 hrs)

This judgment is subject to final editorial corrections to be approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Mohd Noor bin Ismail
v
Public Prosecutor

[2023] SGCA 33

Court of Appeal — Criminal Motion No 31 of 2023
Tay Yong Kwang JCA
2 October 2023

20 October 2023

Tay Yong Kwang JCA:

1 CA/CM 31/2023 ("CM 31") is an application by Mohd Noor bin Ismail ("Noor") pursuant to s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") for permission to review the Court of Appeal's decision in *Abdoll Mutaleb bin Raffik v Public Prosecutor and another appeal* [2023] SGCA 12 ("*Mohd Noor CA*"). In *Mohd Noor CA* at [123], the Court of Appeal dismissed Noor's appeal against his conviction on a charge of importing not less than 212.57 grams of diamorphine and his sentence of life imprisonment and 15 strokes of the cane.

2 In CM 31, Noor makes the following three claims:

(a) First, he claims that the Court of Appeal stated during the hearing of the appeal that he "was not involved in this case" and that Deputy

Public Prosecutor Lau Wing Yum ("DPP Lau") also stated that "Noor was indeed not involved".

(b) Second, he repeats his previous allegation that Investigation Officer Prashant Sukumaran ("the IO") lied in court.

(c) Third, he alleges that Mr R Thrumurgan ("Mr Thrumurgan"), the lead counsel who represented him at the remittal hearing and the appeal, "did not make submissions about the IO" during the hearing before the Court of Appeal. For the avoidance of doubt, this is a separate allegation from Noor's earlier accusation that his previous defence counsel (*ie*, the lawyers that represented him before Mr Thrumurgan and his team were appointed) had given him inadequate legal assistance. This earlier allegation against Noor's previous defence counsel was dismissed by the High Court and that decision was affirmed by the Court of Appeal: *Mohd Noor CA* at [81].

3 Having considered: (a) Noor's affidavit dated 13 June 2023 ("Noor's Affidavit"); (b) DPP Lau's affidavit dated 20 September 2023 ("DPP Lau's Affidavit"); (c) the written statement of Mr Thrumurgan dated 3 September 2023 ("Mr Thrumurgan's Written Statement"); and (d) the Prosecution's written submissions dated 2 October 2023, I summarily dismiss CM 31 pursuant to s 394H(7) of the CPC. This is because Noor has failed to meet the requirements for a review application under s 394H of the CPC. Noor has not furnished any new evidence and instead has made unsubstantiated allegations that are either contradicted by the available evidence and/or previously addressed by the Court of Appeal in *Mohd Noor CA*.

Version No 1: 20 Oct 2023 (13:15 hrs)

Factual background and procedural history

4 At the trial, Noor indicated that he wished to plead guilty to his charge of importing not less than 212.57 grams of diamorphine, in furtherance of the common intention with his co-accused Mohd Zaini bin Zainutdin ("Zaini"), an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). Noor did not testify when he was called upon to give evidence in his defence. He was subsequently convicted on this charge on 21 March 2019 by the High Court: *Public Prosecutor v Mohd Zaini bin Zainutdin and others* [2019] SGHC 162 at [2]; *Public Prosecutor v Mohd Zaini bin Zainutdin and others* [2020] SGHC 76 ("*Mohd Noor HC*") at [13]. As Noor was issued a certificate of substantive assistance and was found to be a courier, he was spared the death penalty and was sentenced to life imprisonment and 15 strokes of the cane with the imprisonment backdated to the date of his arrest: *Mohd Noor HC* at [13]; *Mohd Noor CA* at [44].

5 During the first hearing of Noor's appeal on 18 August 2020, he alleged that: (a) the IO had "forced" him into admitting that he knew his co-accused had brought drugs into Singapore; and (b) that he was given inadequate and improper legal assistance by his former defence counsel, Mr Nicholas Aw and Mr Mahadevan Lukshumayeh. The Court of Appeal directed that the matter be remitted to the High Court for further evidence to be taken on these allegations.

6 Noor presented his case on these allegations with the assistance of Mr Thrumurgan and his defence team between 3–5 August and 4 October 2021. Thereafter, the High Court found that Noor's allegations were not made out and held that there was no basis to revisit the conclusion reached that Noor be convicted on the charge against him: *Public Prosecutor v Mohd Noor bin Ismail* [2022] SGHC 66 ("*Mohd Noor (Remittal)*") at [110].

Version No 1: 20 Oct 2023 (13:15 hrs)

7 Noor's appeal was heard again by the Court of Appeal on 4 August 2022. The Court of Appeal released its decision on 26 April 2023, dismissing Noor's appeal and upholding the sentence imposed on him by the High Court: *Mohd Noor CA* at [123].

(a) In respect of Noor's allegations against his former defence counsel, the Court of Appeal held that Noor had not come close to the high standard required to establish inadequate legal assistance: *Mohd Noor CA* at [81].

(b) In respect of Noor's allegations of a threat, inducement or promise ("TIP") that emanated from the IO, the Court of Appeal held that there was no reason to disagree with the finding of the High Court that Noor had acknowledged that the TIP, if any, did not operate on his mind: *Mohd Noor CA* at [82].

My decision

The applicable legal principles

8 In order to obtain permission to make a review application under s 394H(1) of the CPC, an applicant must disclose a "legitimate basis for the exercise of the [appellate court's] power of review": *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 ("*Kreetharan*") at [17]. This is achieved if the applicant satisfies the appellate court that there is "sufficient material" on which the appellate court may conclude that there has been a "miscarriage of justice" in the criminal matter in respect of which the earlier decision was made: s 394J(2) of the CPC. Section 394J(3) of the CPC defines "sufficient material" to mean material that satisfies all three of the following conditions:

Version No 1: 20 Oct 2023 (13:15 hrs)

(a) first, the material must not have been canvassed at any stage of proceedings in the criminal matter before the application for permission to review was made;

(b) second, it must be such that the material could not have been adduced in court earlier even with reasonable diligence; and

(c) third, the material must be compelling, in that it is reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter.

Noor's allegations against the IO have already been dealt with by the Court of Appeal

9 Noor's first allegation is that the IO was "caught lying". However, this was an argument that he had raised during the first hearing before the Court of Appeal on 18 August 2020. It was one of the matters that was remitted for evidence to be taken on the issue: *Mohd Noor (Remittal)* at [97]. In its grounds, the High Court made two pertinent findings and they were accepted by the Court of Appeal in *Mohd Noor CA* at [78]–[83]:

(a) First, that the IO did not lie to Noor and had instead only offered an incomplete account of the bundles that were present in his co-accused's car so that Noor would have the opportunity to give his own account as to why there was an additional bundle present: *Mohd Noor (Remittal)* at [99]. Moreover, the High Court found that the IO's approach was not improper and that the IO did not have any ulterior motive or intention to mislead Noor into giving an admission: *Mohd Noor (Remittal)* at [29] and [100].

Version No 1: 20 Oct 2023 (13:15 hrs)

(b) Second, that the IO did not make "any such exhortation or threat that Noor would be sentenced to hang if he did not admit to having knowledge that [the co-accused] brought drugs into Singapore": *Mohd Noor (Remittal)* at [102].

10 It is clear that in resurfacing the same allegation against the IO in CM 31, Noor is attempting to relitigate the same issue which has already been dealt with by the Court of Appeal in *Mohd Noor CA*. It follows s 394J(3)(*a*) of the CPC cannot be satisfied in respect of this first allegation.

Noor's claim about the comments made by the Court of Appeal and by DPP Lau

11 Noor's second allegation is that the Court of Appeal and DPP Lau had stated that he "was not involved in this case" and that he was therefore "not guilty". DPP Lau's Affidavit refutes Noor's allegation. DPP Lau states that "to the best of [his] recollection, no member of the Court made the comment that Noor 'was not involved in this case'" and that DPP Lau "also did not make such a comment".

12 Regardless of what might have been said by the Court in discussions and arguments made during the hearing, the Court's decision on the matter before it is contained in its pronouncement at the conclusion of the hearing or in the judgment that is issued subsequently. The Court's decision is not contained in any comments made or in questions that the Court poses to counsel during the hearing.

13 In the present matter, even if words such as "Noor was not involved" were mentioned by the Court of Appeal or DPP Lau, this could only have been in the context of discussions about his co-appellant, Abdoll Mutaleb bin

Version No 1: 20 Oct 2023 (13:15 hrs)

Raffik's ("Mutaleb") original conspiracy charge. The original conspiracy charge against Mutaleb stated that Zaini and Noor were involved in the alleged conspiracy. That charge against Mutaleb was amended in the course of the appeal by the Prosecution to one of attempted possession of drugs, leaving out any mention of Zaini and Noor. To that extent, Noor was no longer involved in Mutaleb's amended charge. The respective charges against Zaini and Noor still stood and Noor's conviction on his importation charge was affirmed on appeal, as stated clearly in the Court of Appeal's judgment in *Mohd Noor CA*.

14 In the concluding portion of Noor's affidavit, he asserted that it was unfair that he was sentenced to life imprisonment when he "did not know anything and was not involved in this case" while Mutaleb "who was actually connected to this case" was only sentenced to 10 years' imprisonment. As mentioned above, Mutaleb's original capital charge was amended in the course of the hearing to a less serious charge and he was sentenced according to the punishment provision for the less serious charge. Noor was likewise sentenced according to the punishment provision for his charge of importation and was actually spared the death penalty.

15 Noor's assertion about what was purportedly said in court does not satisfy the requirements of s 394J(3)(*c*) of the CPC in any way. It was at best his misunderstanding about what was being discussed during the hearing of the appeal. There was certainly no miscarriage of justice.

Noor's allegations against Mr Thrumurgan.

16 Noor's allegations against Mr Thrumurgan appear to comprise two related complaints. First, that Mr Thrumurgan failed to make written submissions on the alleged TIP made by the IO before the Court of Appeal.

Version No 1: 20 Oct 2023 (13:15 hrs)

Second, that Mr Thrumurgan did not say anything about the IO when asked by the Court of Appeal during the hearing on 4 August 2022 whether he had any arguments concerning the IO. These two points appear from the following portions of Noor's Affidavit:

> Also, my Counsel did not make submissions about the IO to the Court. When I asked him as to why he did not do so, my Counsel told me that one couldn't submit many pages to the Court of Appeal, only fifteen pages. So, he made submissions only about my previous Counsel. However, my Counsel informed me that he had prepared all submissions about the IO and he would only mention about the IO in court if the learned Judge queried. When the learned Judge asked my Counsel about the IO and whether there was anything he would like to submit? (sic) my Counsel said that he did not have anything to say about the IO.

17 At the court's direction, the Prosecution requested Mr Thrumurgan's response to Noor's allegations. Mr Thrumurgan provided a Written Statement on 3 September 2023 in which he made the following points:

(a) First, Mr Thrumurgan explained that Noor had confirmed in his written instructions to Mr Thrumurgan that all his statements were given to CNB voluntarily and that he was not forced, threatened or promised anything in return for those statements. Further, Noor also confirmed that the statements were recorded accurately and he did not have any amendments to make. For these reasons, Mr Thrumurgan did not address the veracity of Noor's allegations regarding the TIP made by the IO.

(b) Second, Mr Thrumurgan pointed out that Noor had also confirmed during the remittal hearing that any TIP made by the IO did not operate on him at all. Therefore, Mr Thrumurgan considered that there was no legal or factual basis to address the alleged TIP in his written submissions and that it would have been improper to do in the circumstances.

Version No 1: 20 Oct 2023 (13:15 hrs)

(c) Third, Mr Thrumurgan explained that while he did not make any oral submissions in respect of the alleged TIP for the above reasons, he had informed Noor that he would be ready to address the Court of Appeal on the issue should the need arise. Mr Thrumurgan noted that Noor had also agreed with this approach.

18 I accept Mr Thrumurgan's explanations and agree with the Prosecution that he cannot be faulted for his conduct of Noor's appeal. Mr Thrumurgan balanced his client's instructions and interest and his duty as an officer of the court properly when he decided not to raise unmeritorious issues on appeal. Noor's unjustified allegations against his counsel's conduct of the appeal also do not meet the substantive requirements of s 394J(3) of the CPC. There is clearly no hint of any miscarriage of justice.

Conclusion

19 For the above reasons, it is clear that the requirements set out in s 394J CPC are not satisfied by Noor in CM 31. There is no legitimate basis whatsoever for the Court of Appeal to allow a review of its decision in the appeal. I therefore dismiss CM 31 summarily pursuant to s 394H(7) of the CPC.

Tay Yong Kwang
Justice of the Court of Appeal

Version No 1: 20 Oct 2023 (13:15 hrs)

The applicant in person;
Lau Wing Yum and Kenny Yang (Attorney-General's Chambers) for the respondent.

Version No 1: 20 Oct 2023 (13:15 hrs)