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

[2025] SGHC 32

Magistrate's Appeal No of 9157 of 2024

Between

Akbar Ali s/o Abdul Majeed

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Appeal — Criminal Procedure Code 2010 (2020 Rev Ed) — Costs and compensation]

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Akbar Ali s/o Abdul Majeed
v
Public Prosecutor

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General Division of the High Court — Magistrate's Appeal No 9157 of 2024
Aidan Xu @ Aedit Abdullah J
14 February 2025

24 February 2025 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

Introduction

1 This judgment is in respect of Mr Akbar Ali s/o Abdul Majeed ("Mr Ali")'s appeal against the District Judge's dismissal of his application for costs and compensation orders pursuant to ss 355(2) and 359(3) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC") (the "Application"). The District Judge had earlier ordered a discharge not amounting to an acquittal on Mr Ali's charge under s 22(1)(*a*) read with s 20(1)(*a*) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) ("EFMA") and regulation 4(4) of the Employment of Foreign Manpower (Work Passes) Regulations 2012 (the "Regulations"), punishable under s 22(1)(*i*) of the EFMA (the "Charge"). This was because she found that a *prima facie* case had not been established against Mr Ali. This judgment is subject to full grounds being issued if required.

2 Having considered the arguments and the evidence before me, despite the best efforts of Mr Ibrahim, counsel for Mr Ali, I conclude that Mr Ali had not proven, on a balance of probabilities, that the prosecution was frivolous or vexatious, and thus dismiss his appeal.

3 For the purposes of this appeal, and for ease of expression, in referring to arguments that have been made, I do not distinguish between Mr Ali and his counsel.

Background facts

The Charge

4 Mr Ali was a director of Newtec Engineering Pte Ltd ("Newtec") from 10 September to 28 November 2018.[1] While he was a director, a Newtec employee, one "Janaed", sustained an injury while working and was hospitalised at the National University Hospital ("NUH").[2] Mr Ali signed a Letter of Guarantee to NUH dated 14 November 2018 which stated that Newtec would pay for Janaed's medical expenses.[3] Mr Ali subsequently resigned from Newtec.[4] Thereafter, NUH issued an invoice dated 12 February 2019 for Janaed's medical expenses, which Newtec did not pay.[5] The Prosecution brought the Charge against Mr Ali, alleging that he had consented to Newtec's contravention of Condition 1 in Part III of the Fourth Schedule of the Regulations (the "Condition"). The Condition states that the employer is

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1 Agreed Statement of Facts dated 10 April 2022 ("ASOF") at para 1.

2 ASOF at paras 6–7.

3 Record of Proceedings ("ROP") at pp 368 and 372.

4 ROP at p 368 para 8.

5 ASOF at paras 7–8 and Annex B.

responsible for and must bear the costs of the foreign employee's upkeep and maintenance in Singapore, which includes the provision of medical treatment.

The District Judge's decision on the Charge

5 At the close of the Prosecution's case, Mr Ali made a submission of no case to answer (*Public Prosecutor v Akbar Ali s/o Abdul Majeed* [2023] SGMC 72 ("*Akbar Ali*") at [13]). The District Judge rejected Mr Ali's arguments in support of a no case to answer submission (at [27]–[39]). However, she found that there was no *prima facie* case as it was difficult to infer from Mr Ali's prior position as a director that he had retained relevant knowledge of Newtec's affairs at the time that the medical invoice became due. Therefore, the element of consent (of Newtec's commission of the offence) required to establish the Charge was not made out ([44]–[49]). Accordingly, she ordered a discharge not amounting to an acquittal ([50]–[51]).

The District Judge's decision on the Application

6 Subsequently, Mr Ali brought the Application. Under ss 355(2) and 359(3) of the CPC, orders for costs and compensation may be made where there is an acquittal, and if it is proved to the satisfaction of the court that the prosecution was frivolous or vexatious. The District Judge, following *Parti Liyani v Public Prosecutor* [2021] 5 SLR 860 ("*Parti Liyani*"), held that the burden of proof was on Mr Ali to show, on a balance of probabilities, that the prosecution was frivolous or vexatious, in the sense that either (a) its commencement or continuation was marked by evidential insufficiency, or (b) it was brought because of malice, dishonesty or an improper motive.[6] The District Judge rejected Mr Ali's submissions and accordingly, the Application.

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[6] ROP at p 106 at [17].

Issues on appeal

7 There are three issues in the present appeal: (a) first, whether an appeal lay against the decision of the District Judge; (b) second, what is the standard for a frivolous or vexatious prosecution; and (c) third, whether the District Judge had erred in applying that standard to dismiss the Application.

Whether an appeal lay against the decision of the District Judge

8 Mr Ali sought to demonstrate his right of appeal against the District Judge's decision, as it was noted that s 374(4) of the CPC refers to an appeal by a person convicted.[7] As the Prosecution in the oral hearing before me did not take issue with the right of appeal, it suffices for me to note that s 394 of the CPC, which governs the grounds for reversal of a decision, is very broad, and I would think that the appellate courts would not hesitate to assume jurisdiction in a case of this nature.

Standard for a frivolous or vexatious prosecution

9 A number of propositions as to the characteristics of a frivolous or vexatious prosecution were laid down in *Parti Liyani* and were considered by the District Judge:

> (a) The primary question is whether the commencement and continuation of the prosecution was justifiable on the evidence (at [116]);

[7] Appellant's written submissions dated 3 February 2025 ("AWS") at paras 5–6.

(b) Frivolous prosecution includes instances when the decision to commence and / or continue prosecution was factually or legally unsustainable (at [117]);

(c) The court does not reason in hindsight (at [136]);

(d) The existence of malice, dishonesty or improper motives may well render a prosecution vexatious (at [126]); and

(e) The burden lay on the applicant to prove, on a balance of probabilities, that the prosecution was frivolous or vexatious (at [128]–129]).

10 I found that the District Judge did not err on the correct standard to be applied. Mr Ali took issue with the District Judge's citation of the *The "Bunga Melati 5"* [2012] 4 SLR 546 as it was concerned with costs in a civil claim. Mr Ali argued that the District Judge's reasoning that the prosecution was not factually unsustainable was faulty because it relied on *The "Bunga Melati 5"*.[8] I was unable to accept his submissions. As the Prosecution had argued, to the extent that the District Judge had cited *The "Bunga Melati 5"*, she was merely seeking guidance on what was meant by the phrase, "factually unsustainable". Ultimately, she made her decision by applying the overarching standard of whether the prosecution had been evidentially insufficient and finding that the prosecution had not failed that requirement.

11 Furthermore, I was unable to agree with Mr Ali's argument that a new test applied, based either, on a speech by our Attorney-General and secondly

[8] AWS at paras 26–28.

the Public Prosecution Service of Canada Deskbook (the "Deskbook").[9] The law is clear and has been set out in *Parti Liyani*. The Attorney-General's speech was meant to serve as guidance for DPPs and does not supplant any test applied by the courts. As for the Deskbook, it has limited relevance to the Prosecution in Singapore: the court would be wary of importing prosecutorial standards and expectations from other jurisdictions.

12 Mr Ali further argued that there was an abdication of prosecutorial duty by the prosecution,[10] on the basis that there was no verification of what was referred to as foundational evidence. Any such proposition is again too broad – any prosecutorial assessment will be done at a holistic level and the court will not impose a test of detailed or minute verification. Otherwise, that will unduly intrude into a responsibility vested in the Attorney-General or Public Prosecutor.

Impact of a submission of no case to answer

13 Mr Ali argued that a successful submission of no case to answer showed that the prosecution was frivolous or vexatious. The basis for this was the statement by the court in *Parti Liyani* that a failure to make such a submission is a good indicator that the prosecution was not frivolous or vexatious.[11] Mr Ali's argument takes that statement and flips it around in an unsound way. Firstly, the omission of a submission that there was no case to answer did not preclude the court from making a finding of a frivolous or vexatious prosecution. I agree with the District Judge that there is nothing in the law which suggests a bright line approach that every submission of no case to answer is

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9 AWS at paras 32–35.

10 AWS at para 37.

11 AWS at paras 19–22.

determinative.[12] Secondly, as was highlighted by the Prosecution, the District Judge had pointed out that a submission of no case to answer looks at the evidential sufficiency in establishing a *prima facie* case, while the standard for a frivolous or vexatious prosecution looks at the evidential sufficiency in deciding if a case was fit to be tried. I agree that the two standards are different.[13] Equating the two would unduly constrict the discretion of the Public Prosecutor to prosecute with an onerous burden of forecasting precisely and accurately how the evidence would play out in an actual hearing. Thirdly, taking Mr Ali's argument to its logical conclusion, it would erase the line between the initial decision to prosecute and the outcome of the case. This would lead to an absurd situation where every acquittal could be seen as proof that the case should never have been tried. This cannot be so.

14 In any case, Mr Ali's actual submission of no case to answer was based on legal arguments. He alleged, amongst others, that the Condition was not intended to cover medical expenses from employment-related injuries due to the Workplace Injury Compensation Act. Furthermore, the element of consent to make out the Charge could not be established because Mr Ali had resigned before the medical expenses became due. Accordingly, he could not have consented to Newtec's contravention of the Condition (*Akbar Ali* at [15]–[19]).

15 In contrast, the District Judge's holding was based on factual findings. The District Judge rejected Mr Ali's arguments in support of the no case to answer submission (at [27]–[30] and [38]–[40]). She found that there was no evidence that Mr Ali had consented to Newtec's commission of the offence. It was not shown that Mr Ali knew that Newtec was likely to default on the

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12 ROP at p 108 at [24].

13 Respondent's written submissions dated 3 February 2025 at para 44.

payment of NUH's invoice. NUH had issued the invoice more than two months after Mr Ali ceased being a director, and between Mr Ali's resignation and the issue of the invoice, Newtec changed hands twice. Thus, the knowledge of Newtec's affairs that Mr Ali possessed as a director was likely to become outdated, or even obsolete in these intervening months (at [44]–[46]).

Whether the District Judge had erred in dismissing the Application

16 Turning to the evidence that was before the lower court, it was argued for Mr Ali that the evidence rendered the prosecution evidentially insufficient. For one, it was argued that the Letter of Guarantee was exculpatory and would completely exonerate Mr Ali.[14] I am not inclined to disturb the District Judge's finding against the Letter of Guarantee. I agree that the Letter of Guarantee was not enough to show that Mr Ali had intended for Newtec to pay the medical costs.[15] In my view, all that it showed was that he was aware that Newtec would have an obligation to do so, in the future.

17 Mr Ali examined each individual piece of evidence, in isolation, arguing that each failed to show or give rise to the inference of Mr Ali's knowledge that Newtec was unable to pay the medical invoice.[16] This approach is not correct. A decision on conviction or acquittal rests on the totality of the evidence, not the isolated strength of each piece of evidence. Moreover, it had already been established that the Prosecution's case was premised on circumstantial rather than direct evidence.[17]

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14 AWS at paras 57–62.

15 ROP at pp 109–110 at [30].

16 AWS at paras 42–56 and 68–79.

17 ROP at p 111 at [34].

18 Turning to the totality of the Prosecution's evidence, I do not agree with Mr Ali that the bulk of the evidence was irrelevant, and that the resulting confusion from the irrelevant evidence would not have led an objective, reasonable DPP to consider the matter fit for trial.[18] This argument seemed to have been reasoned back from the District Judge's ruling of there being no *prima facie* case.

19 Adopting the same approach as in *Parti Liyani*, I do not find that the prosecution was marked by evidential insufficiency, such that an objective, reasonable DPP would not have considered that there was sufficient evidence to render the case fit to be tried. Mr Ali's statement, screening records, Directors' Resolution and the testimony of a former director showed that at the time of signing the Letter of Guarantee, he was, at the very least, aware of Newtec's future obligation to pay the medical bill and Newtec's overall financial health. Admittedly, more was needed to establish the element of consent. When the District Judge found that Mr Ali's knowledge of Newtec's affairs would have become outdated or obsolete when the medical invoice became due, this meant that the inference of consent was too weak to be drawn, rather than that it was factually unsustainable. I note that the District Judge had reasoned in a similar manner, finding that the basis on which she ultimately found the case to be lacking was not an obvious and glaring point.[19] In the circumstances, I could not find that the prosecution was evidentially insufficient and thus, frivolous or vexatious.

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18 AWS at para 85.

19 ROP at p 112 at [38].

Impact of the propriety of investigative and prosecutorial processes

20 Mr Ali also raised arguments about the propriety of the investigative and prosecutorial processes. He alleged that the Ministry of Manpower's failure to validate or confirm work pass compliance directly enabled the supposed frivolous prosecution.[20] However, as noted by the court in *Parti Liyani*, s 359(3) of the CPC is not directed at the conduct of prosecutions by prosecutors. Such examination of the conduct of prosecutions would only be of evidential value if it showed a lack of good faith or malice which would render the prosecution frivolous or vexatious (at [110]–[111]). Indeed, the question of the propriety of the investigations and the prosecutorial process is a separate inquiry from the evidential sufficiency of the prosecution, although they could be in some instances related. Just as was the case for the proceedings in the lower court,[21] the present appeal is also not the appropriate forum for these complaints to be ventilated. Mr Ali's concerns with the constitutionality or propriety of the processes should be dealt with under more appropriate modes, including judicial review.

Whether there were improper motives behind the prosecution

21 Mr Ali also alleged that the prosecution was seeking to establish precedent.[22] Reading this submission in the context of arguments raised in the lower court, presumably, Mr Ali sought to argue that the prosecution was vexatious as it was done with the improper motive of examining a novel legal issue, namely whether a director who had resigned should be criminally liable

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20 AWS at paras 80–81.

21 ROP at p 119 at [61].

22 AWS at para 45.

for an offence that was subsequently committed by the company.[23] I agree with the District Judge that there is nothing to show such a motive by the Prosecution. In any case, I take the same view as the Prosecution and the District Judge that this was not novel.[24] It is trite, as a matter of law, that depending on the circumstances, ex-corporate officers can be, and have been held liable for corporate wrongs committed after their departure from the company. It would be against the spirit of the law to incentivise errant behaviour by corporate officers who are allowed to escape liability so long as they resign before the corporate wrong materialises.

22 In any event, even if the prosecution was indeed pursuing a novel legal question, that would not by itself show an improper motive. The prosecution would only be vexatious or frivolous if the legal proposition underlying the prosecution was clearly unsustainable on any reasonable reading of the law.

Materials from foreign jurisdictions

23 Lastly, Mr Ali referred to materials from foreign jurisdictions, which were also cited in the lower court proceedings.[25] These materials did not, however, assist.

24 First was the Australian High Court case of *Latoudis v Casey* [1990] HCA 59 ("*Latoudis*"), which was cited for the proposition that costs in criminal proceedings are compensatory and not punitive.[26] This, it was argued, supported the proposition that the Prosecution's failure to meet evidential

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23 ROP at p 104 at [11].

24 ROP at p 116 at [49]–[50].

25 ROP at pp 117–118 at [54]–[56] and AWS at paras 89–111.

26 AWS at para 89.

thresholds from the outset made it just and reasonable to indemnify Mr Ali fully.[27] I could not accept this. *Latoudis* proceeded from a wholly different foundation, taking the ordering of costs as the norm. That is not the law in Singapore. Secondly, reference was made to the Australian Law Reform Commission's Report of 1994 as well as academic materials from the US. But these involved examination and advocacy of policy, and ran up again against the very stark statement of our legislation. They were thus irrelevant.

Conclusion

25 Accordingly, I dismiss the appeal and uphold the District Judge's dismissal of the Application.

Aidan Xu
Judge of the High Court

Mohamed Ibrahim s/o Mohamed Yakub (Achievers LLC) for the appellant;
Chan Huseh Mei Agnes and Regina Lim Siew Mei (Attorney-General's Chambers) for the respondent.

[27] AWS at para 92.