

Goh Kah Heng (alias Shi Ming Yi) v Public Prosecutor and Another Criminal Motion
[2009] SGHC 61

Case Number : Cr M 4/2009, 8/2009
Decision Date : 12 March 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Andre Yeap SC, Adrian Wong Soon Peng, Hamidul Haq and Jansen Chow (Rajah & Tann LLP) for the applicant in Criminal Motion No 4 of 2009; Ng Lip Chih (NLC Law Asia LLP) for the applicant in Criminal Motion No 8 of 2009; Jaswant Singh and David Chew (Attorney-General's Chambers) for the respondent
Parties : Goh Kah Heng (alias Shi Ming Yi) — Public Prosecutor

Courts and Jurisdiction – Judges – Transfer of cases – Application to have trial transferred from Subordinate Courts to High Court – Applicants charged by Commercial Affairs Department – Senior District Judge head of Commercial Affairs Department at time when applicants charged – Section 185(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Trials – Transfer of cases – Application to have trial transferred from Subordinate Courts to High Court – Applicants charged by Commercial Affairs Department – Senior District Judge head of Commercial Affairs Department at time when applicants charged – Section 185(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

12 March 2009

Judgment reserved

Choo Han Teck J:

1 Goh Kah Heng @ Shi Ming Yi (“the first applicant”) was charged with various offences under the Penal Code, Cap 224, 1985 Rev Ed and the Charities Act, Cap 37, 2007 Rev Ed. Raymond Yeung Chi Hang (“the second applicant”) was charged for two offences of abetment by conspiracy with the first applicant. The trial has been scheduled to commence in the District Court from 2 April to 24 April 2009. Both applicants applied in these proceedings before me for an order transferring the trial from the District Court to the High Court. The application was made pursuant to s 185(1) of the Criminal Procedure Code, Cap 68, 1985 Rev Ed (“CPC”) the relevant portion of which provides as follows:

Whenever it is made to appear to the High Court that ... a fair and impartial inquiry or trial cannot be had in any criminal court subordinate to it, it may order that ... [that] criminal case shall be transferred to and tried before the High Court.

Mr Andre Yeap SC, counsel for the first applicant, submitted that this court should make the order because there is a reasonable apprehension that a fair trial would not be possible. Mr Ng Lip Chih, counsel for the second applicant agreed with Mr Yeap and submitted that the second applicant’s trial be similarly transferred to the High Court.

2 The reason for these applications under s 185(1) of the CPC was that when the applicants were charged by the Commercial Affairs Department (“CAD”) Mr Tan Siong Thye, the present Senior District Judge, was the head of the CAD. Mr Yeap contended that since the Senior District Judge assesses the overall performance of his subordinate judges such as the trial judge, there is, therefore, a reasonable apprehension that the applicants may not receive a fair trial since the trial judge may “subconsciously” be prejudiced against them, and where there are evenly balanced arguments, lean in favour of the prosecution. Mr Yeap and the Deputy Public Prosecutor Mr Jaswant Singh could not

agree as to whether Mr Tan was personally involved in the investigation of the applicants. For the reasons that I shall now set out, I am of the view that this was not an issue that I needed to decide because my decision here would be the same even if Mr Tan was personally involved in the investigation.

3 Mr Yeap cited a number of cases in support of his client's cause. In the Indian case of *Narendralal Mukherjee v The State* (1956) Cr LJ 974(2) Vol 57 ("*Narendralal Mukherjee*"), CN 354 as well as the Burmese case of *Maung Than Shwe v Deputy Commissioner, Hanthawaddy* (1937) 38 Cr LJ 923 ("*Maung Than Shwe*"), the High Court ordered the trial of the applicants there to be transferred to another court because of the apprehension that the applicants would not receive an impartial trial. In *Narendralal Mukherjee* the High Court was of the opinion that a magistrate who had assisted in the investigation of the accused person should not also be the same person to conduct the trial. In *Maung Than Shwe* the High Court was of the opinion that the magistrates from the district in which the accused was charged should not conduct the trial because the accused person was a clerk to the bench of magistrates from that district and he was charged for misappropriation of money paid as fines by persons convicted before those magistrates. I am in agreement with the opinion of the court in those cases because it expressed a basic rule of jurisprudence – one should not be a judge in his own cause. It is not disputed that Mr Tan, even if he were the investigating officer, was not going to be the judge in the applicants' trial. The claim asserted by Mr Yeap that there is a reasonable apprehension that the applicants may not get a fair trial was thus not based on the same ground that moved the court in the cases cited.

4 What is the nature of the apprehension of unfairness in this case? In a zealous effort to cover all grounds Mr Yeap confounded Mr Jaswant Singh who wondered how counsel could remind the court that the standing of this country's judiciary is among the highest in the world, and promptly express the fear that the trial judge may not be impartial because the head of the Subordinate Courts was the head of the CAD when the latter began its investigation into the applicants' conduct, and subsequently charging them with the offences for which they must now be tried. Mr Yeap, in his submissions, explained his contention in these words:

It is precisely because the Singapore courts have worked so hard to ensure that justice is not only done but also seen to be done that it is important to ensure that there is no spectre of any suspicion of bias, which would serve only to chip away the hard earned reputation of and public confidence in the Singapore judicial system. In order for public confidence to be strengthened, justice ought to be seen to be done in the present case by way of a transfer of the criminal proceedings against the [first applicant] to the High Court.

5 The precise nature of the "spectre" that frightens the applicants in Mr Yeap's submission was that the trial judge may not wish to disagree with the Senior District Judge, and "in borderline cases, may lean towards the boss's views." This then is the crux of the applicants' apprehension – that the trial judge might not have the courage to disagree with his boss. This was not a case concerning a true conflict of interests in which the trial judge had a personal stake in the outcome of the trial. The expressed fear was really that the trial judge might not express his true opinion in deference to the opposing opinion of his superior judge. It is fair to say that as in cases of a conflict of interests no one can tell what extraneous and irrelevant factors might influence the judge's mind. It is for this reason that in cases of a conflict of interests it is preferable to act in excess of caution. A decision for a judge to recuse himself is thus made, often by the judge himself, after considering the interests of a fair trial in Mr Yeap's words, "in ensuring that justice is seen to be done". In all such cases, the facts may differ and the apparent conflicts may vary in nature and degree. Ultimately, a limit must be imposed; otherwise the courts might not function; and a virtue of justice thus becomes corrupted from a paralysis brought about by fear. The fear expressed by the applicants is not just the fear that

the trial judge would defer to the Senior District Judge because he was formerly the head of the CAD but that the Senior District Judge has the power to assess the judge's performance. It is a fear that the judge may not dare disagree with the views of the Senior District Judge because of that power. If so, it goes beyond this case and would apply even in cases that do not involve the CAD so long as the Senior District Judge holds a different view. The ideal of judicial independence would be undermined. A rejection of this fear should not be seen as a stubborn denial that there may be the occasional weak judge who might so fall; but the test of a reasonable apprehension of the fear envisaged is not based on the possibility of the rare and remote case.

6 The formation and expression of the court's opinion is a critical aspect of a judge's work. He is required by the oath that he takes to administer the law without fear or favour. It is a requirement to conduct his case impartially. It is also a requirement that he makes his decisions concerning the case freely and boldly. When "the interests of justice" is being considered, one must also take into account the ideal of independence of the judiciary. It is an ideal that means little if individual judges cannot be independent. A judge must not be afraid to express a view just because another judge holds a different view. Every judge is mindful by virtue of the oath of office that he has taken, that in reaching his verdict he does not take instruction from a superior judge except in the form of the binding authority of precedent cases; for he knows that when the trial starts, he is the boss. I am, therefore, of the view that the applicants' fear that the trial judge might act otherwise is not a reasonable apprehension.

7 Mr Jaswant Singh also submitted that there would be all sorts of problems if the trials of the two applicants were truncated and brought to the High Court leaving the third accused person in the same case to be tried in the subordinate courts. Mr Yeap called this a "systemic" problem. I think he meant to say "an administrative" or a "practical problem" as opposed to a matter of law or principle. I agree that matters of administration and practical functions must defer to law and principle; but since my opinion was rendered on the law, I need not say more about the practical problems here save that in any case in which it might become relevant, the court will have to assess such problems together with other considerations and determine how they might affect the case.

8 For the reasons above, the applications are dismissed.

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