

Public Prosecutor v Ganesh s/o M Sinnathamby
[2007] SGDC 95

Case Number : OA 48/2006, MA 58/2007

Decision Date : 26 March 2007

Tribunal/Court : District Court

Coram : May Lucia Mesenas

Counsel Name(s) : Ramesh Shanmugam for the Prosecution; Surian Sidambaram (Surian & Partners) for the accused

Parties : Public Prosecutor — Ganesh s/o M Sinnathamby

26 March 2007

District Judge May Lucia Mesenas:

1 The accused pleaded guilty to three charges for leaving Singapore on three separate occasions, that is, on 3 May 2003, 27 December 2003 and 10 March 2004 respectively, without the prior permission of the Official Assignee (hereinafter referred as "OA"), which is an offence under section 131(1)(b) of the Bankruptcy Act Cap 20 and punishable under section 131(2) of the same Act. Fifty-two similar charges were taken into consideration for the purposes of sentencing.

Summary of Facts

2 The accused admitted to the Statement of Facts (**Exhibit 'A'**) pertaining to the charge, without qualification. He was therefore convicted on the three charges accordingly. The salient points are as follows:

(a) The accused was adjudged a bankrupt by the High Court on 25 April 1997 in Bankruptcy No. 389 of 1997. He was subsequently discharged from bankruptcy on 5 July 2004.

(b) The accused is aware of the requirement to seek the OA's prior permission before leaving Singapore. On 26 May 1997, the accused acknowledged receipt of the Bankruptcy Information Sheets which notified him that it is an offence for an undischarged bankrupt to leave Singapore without the previous permission of the OA.

(c) The accused had previously applied for and was granted permission by the OA to leave the country on 3 occasions, that is, from 10 to 23 April 2000, 11 to 15 May 2001 and from 24 December 2002 to 17 January 2003.

(d) The Singapore International Passport issued to the accused on 1 April 2000 was inspected by the OA in June 2006. It was discovered that the accused had travelled on this passport without the OA's permission.

(e) On 3 May 2003, 27 December 2003 and 10 March 2004, the accused left Singapore on these three respective occasions for India, without the prior permission of the OA.

Mitigation

3 The accused is a first offender. In mitigation, counsel for the accused submitted that in mid 2000, his client was offered employment on a commission basis, which required him to travel to Malaysia and Indonesia at short notice. As he was unable to secure any permanent job, he decided to take up the job as he was then already running in arrears with his monthly payments to the OA. Further, he was also supporting his mother then as his other siblings were also facing financial difficulties. Out of necessity and desperation, the accused left Singapore without permission from the OA, in the hope of earning money as and when he closed deals for his employers in Malaysia and Indonesia, which would then enable him to survive and support his mother. These were the subject matter of the charges which were taken into consideration for purposes of sentencing,

4 In respect of the three proceeded charges, the reasons for the accused leaving the country without the OA's permission include:

a) Accompanying his wife and child to India , solely to assist his wife in fulfilling her vow (of her whole family going to India and to have their child's hair shaved off as an offering in a particular temple, after the safe delivery of their child);

b) Leading some regular patrons of an Indian prayer group for a pilgrimage trip to India as he was the designated group leader; and

c) Securing an affidavit from a witness in India for a close friend who was facing a criminal charge then.

5 The accused was subsequently discharged from his bankruptcy status on 5 July 2004. Since then, the accused is the sole breadwinner of the family. He is also shuttling his younger brother for dialysis treatment as well as for change of dressing to the latter's amputated foot. Currently, the accused is gainfully employed as a taxi driver and working as a part-time consultant with a company.

6 Furthermore, the accused and his family have been seriously affected by this entire episode. Counsel for the accused submitted that the accused is unlikely to commit similar offences as he has already been discharged as a bankrupt. He urged this court to consider imposing a fine in the circumstances.

Prosecution's Submissions

7 Initially, the prosecution had on 5 January 2007, submitted for a custodial sentence as the accused had not paid the creditors the debts he owed notwithstanding that he is presently a discharged bankrupt. Of the outstanding claims of about \$213,666, the accused had only contributed \$2,320 to his bankruptcy estate. However, on 5 February 2007, the prosecution submitted that they would not be pressing for a custodial sentence to be imposed given that the present facts were exceptional in that the accused is currently a discharged bankrupt as compared to the case of *PP v Choong Kian Haw* [2002] 4 SLR 776, where the accused in *Choong's* case was an undischarged bankrupt at the material time.

8 In their written submissions dated 12 February 2007, the prosecution took the position that they were not addressing the court on sentence and left the court to impose an appropriate sentence. It was however, highlighted that the present case could be distinguished from the other precedent cases (tendered by the prosecution), in that the accused in the present case, has been discharged from his bankruptcy at the time of his conviction, whereas the other accused persons were still undischarged bankrupts at the time of their conviction and sentence.

9 Furthermore, the prosecution drew the court's attention to *PP v Choong Kian Haw (supra)*, which stood for the proposition that the burden was on the offender to show that there were exceptional circumstances in his case that he should not be given a custodial sentence. However, the prosecution did not address me directly on this point as to whether the present factual matrix fell in the category of 'exceptional circumstances', which warranted a departure from the normal tariff of custodial sentences to be imposed.

Sentence

Sentencing Considerations

10 The punishment prescribed under 131(2) of the Bankruptcy Act Cap 20 is a fine of up to \$10,000 or imprisonment of up to 2 years or both.

11 In the case of *PP v Choong Kian Haw (supra)*, the learned Chief Justice Yong Pung How (then) laid down very clear pronouncements and guidelines on how such cases would be dealt with by the Courts:

I was of the view that the case law clearly stood for the proposition that a custodial sentence would generally be imposed for the offence of leaving the jurisdiction without the previous permission of the Official Assignee. The burden was on the offender to show that there were such exceptional circumstances in his case that it warranted a deviation from the usual imposition of a custodial sentence.

12 This imposition of a fine as an exception is also consistent with the approach which was taken by the High Court in the case of *PP v Ong Ker Seng* [2001] 4 SLR 180. In that case, the accused was convicted of two charges, under section 141(1)(a) of the Bankruptcy Act, of obtaining loans without informing the lender that he was a bankrupt. The High Court was of the view that such an offence would generally attract a custodial sentence. It was further noted in *PP v Choong Kian Haw's (supra)* case that for offences under section 141(1)(a):

Fines were normally inappropriate because the funds to pay the fine would either come from a third party, diluting the punitive effect on the bankrupt, or from funds which should go to the unpaid creditors in the first place.

13 In addition, it is also clear that Parliament's intention was to protect the interests of creditors and improve the administration of the affairs of bankrupts. As articulated by Yong CJ in paragraph 28 of *PP v Choong Kian Haw's* case, he stated as follows:

The purpose of prohibiting an undischarged bankrupt from leaving the jurisdiction without the previous permission of the Official Assignee is to ensure that the Official Assignee can monitor the bankrupt's movements to properly administer his affairs for the benefit of his creditors. A bankrupt who goes overseas without permission would have opportunities to salt away his assets, since the Official Assignee would not have the power to supervise his affairs. **As such, it is necessary to treat every infraction of s 131(1)(b) seriously** [emphasis mine].

14 With these sentencing considerations in mind, I now turn to the present facts and circumstances of the case.

Facts of the present case

15 In so far as the three proceeded charges are concerned, there was no question that the accused was aware that he had to seek approval from the OA to leave the jurisdiction before doing so. This was evident by the accused's own admission that he had acknowledged receipt of the Bankruptcy Information Sheets which notified him that it is an offence for an undischarged bankrupt to leave Singapore without the previous

permission of the OA. Further, he had applied for permission from the OA on three previous occasions to leave Singapore and was indeed granted the same. This is for periods from 10 April 2000 to 23 April 2000, 11 May 2001 to 15 May 2001 and 24 December 2002 to 17 January 2003. Thus for the three occasions that he had left Singapore without permission for the following periods, that is: 3 to 19 May 2003, 27 December 2003 to 4 January 2004 and 10 to 12 March 2004 respectively, the accused, by virtue of the fact that he had failed to make the respective applications seeking permission from the OA, had clearly committed the offences wilfully.

16 In mitigation, counsel submitted the various reasons for which the accused left the country without permission, which ranged from accompanying his wife to the temple in India, to leading a prayer group to India and securing an affidavit on behalf of his friend and lastly for work purposes (that is, in relation to the charges taken into consideration for sentencing purposes). To my mind, these reasons did not fall within the ambit of 'exceptional circumstances' as contemplated by the High Court in the case of *PP v Choong Kian Haw* which would warrant a departure from the normal benchmark of custodial sentences to be imposed for such offences of leaving the country without the OA's prior approval. The accused could have easily taken the extra step to seek the OA's permission before leaving for any of these trips.

17 However, for two of the three overseas trips that the accused made (ie two of the three proceeded charges – 27th and 38th charges), the accused had failed to pay the arrears to the OA and 'to procure a guarantor/sponsor to make the necessary application to leave Singapore at the material time'. He therefore chose to ignore his obligations and had in fact left the country knowing full well of the penal consequences. As for the 43rd charge, for which the expenses for the trip to India to secure an affidavit, were purportedly paid by the accused's friend, one Mr C Sundararajan --- that bore little mitigatory weight in the context of the present factual matrix, especially when the accused had made numerous overseas trips (that is, fifty-five trips in total) without seeking the OA's permission. It was evident that the accused had committed the offences deliberately and in blatant disregard for the law.

18 It was further highlighted in mitigation by counsel that the accused has since 5 July 2004 been a discharged bankrupt. I noted that the accused's last unauthorised trip was on 30 June 2004 and barely five days later, he was discharged from his bankruptcy status. The OA had conceded that they were unaware that he had made the unauthorised trips at the time when he was discharged a bankrupt on 5 July 2004. It bears mentioning that it was only in June 2006 that the OA discovered that the accused had travelled overseas using his International Passport issued to him on 1 April 2000 (paragraph 5 of the Statement of Facts refers), without the OA's permission, during the relevant periods when he was still an undischarged bankrupt.

19 Whilst the accused is presently a discharged bankrupt, the question then is whether the court should take this factor into consideration for the purposes of sentencing. The answer would, in my view, be in the affirmative. As to whether it would amount to 'exceptional circumstances' as contemplated by the High Court in *PP v Choong Kian Haw's* case, which would warrant a departure from the usual benchmarks of custodial sentences, I did not think that it did.

20 My reasons are as follows:

a) As stated in the preceding paragraphs above, fines were normally inappropriate since the funds to pay the fine would either come from a third party, diluting the punitive effect on the bankrupt, or from funds which should go to the unpaid creditors in the first place. The fact that the accused is currently a discharged bankrupt, it would appear that imposing fines on the accused would still achieve the desired 'punitive effect' and may be considered as one of the sentencing options especially since the accused in the present case is a first offender. However, it must be reiterated that the intent of Parliament is clear in that one of the main objectives of the Bankruptcy Act to prohibit a bankrupt from leaving the country without the OA's permission is for the purposes of the OA monitoring the bankrupt's movements and to properly administer his affairs for the benefit of his creditors. The accused had committed the said offences at the time when he was still an undischarged bankrupt, for which like-minded persons should be deterred from committing such offences in future. Thus, a message has to be sent that the courts take such offences seriously.

b) Furthermore, it was undisputed that the accused had not fully paid up the debt he owed (for which the amount is disputed) to his creditors even at the point when he was discharged from his bankruptcy status by the OA. To this end, the purpose of the said Act was also meant to prohibit bankrupts from leaving the jurisdiction without permission from the OA and salting their assets away when such funds should be rightly channelled for the benefit of his creditors. In the present case, the trips made overseas (save for the 43rd charge) would have incurred expenses for which the same could have been utilised to pay towards the accused's bankruptcy estate at the material time.

c) The fact that a bankrupt is currently discharged would be a mitigating factor to be taken into account in that he is unlikely to commit such similar offences in future as pointed out by the defence in the present case. Additionally, the prosecution had also stated the factors which were considered before the accused was granted a discharge – the cause of the accused's insolvency (which was not elaborated), the period of the bankruptcy which was seven years, the debt owed which was less than \$500,000 and the conduct of the accused which was according to the prosecution, 'not adverse' (which, of course, on hindsight, may not be the case, since the accused had made numerous unauthorised trips prior to his discharge, unbeknownst to the prosecution). It however, should be noted that the fact that the accused is a discharged bankrupt, would only go so far as determining the length of the custodial sentence to be imposed.

21 The prosecution tendered a table of case authorities for which it was clear that for cases where the accused persons left the jurisdiction without permission on numerous occasions, it would generally attract a longer period of imprisonment. In the present case, the accused had made fifty-five unauthorised trips which would ordinarily attract a custodial sentence of at least six months' imprisonment had he still been an undischarged bankrupt.

22 However, I was mindful that he is presently a discharged bankrupt, a first offender, remorseful for his actions and also pleaded guilty at the first available opportunity, thus saving all parties concerned time and resources. I also noted the accused's medical condition in that he was diagnosed with heart problems as well as his 'unselfish contributions' in volunteering his time and services in church for the benefit of others.

23 Whilst a custodial sentence may invariably cause hardship to the accused's family, however, this would not be a factor which would justify a departure from a custodial sentence on the account that his family would suffer. In the case of *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305 the learned Yong CJ stated as follows:

As for the argument that, the appellant being a divorcee with two young children, her imprisonment would cause hardship to the family, this is in my opinion not an argument which should normally be taken into account for the purposes of sentence. Most of the time, imprisoning the main or sole breadwinner of a family unavoidably causes hardship to his family. In *R v Ingham*, Lord Widgery CJ said as follows:

... it is not altogether an easy case, but of course this always happens, time and time again, that imprisonment of the father inevitably causes hardship to the rest of the family. If we were to listen to this kind of argument regularly and normally in the cases that come before us, we should be considering not the necessary punishment for the offender but the extent to which his wife and family might be prejudiced by it. The crux of the matter is that part of the price to pay when committing a crime is that imprisonment does involve hardship on the wife and family, and it cannot be one of the factors which can affect what would otherwise be the right sentence.

We do not think this is a case which is so unusual in its individual factors as to justify us departing from the general principle. One cannot modify a sentence on the husband merely because the wife and family, or prospective family, will suffer.

24 For the above reasons, I now sentence the accused to four weeks' imprisonment for each of the charges. Pursuant to section 18 of the Criminal Procedure Code Cap 68, the sentences in the 27th and 38th charges are ordered to run consecutively, totalling eight weeks' imprisonment which is appropriate in the circumstances.

The accused is sentenced to eight weeks' imprisonment.

BACK TO TOP

Copyright © Government of Singapore.