

**NORADIELAH BINTI ADANANI**

**AND**

**PUBLIC PROSECUTOR**

---

**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 5 of 2019)**

---

Before: Burrell P, Seagroatt and Lunn JJ A.

**Date of hearing: 5<sup>th</sup> November 2019**

**Date of Judgment: 14<sup>th</sup> November 2019**

*Headnote: The appeal against a sentence of 4 months' imprisonment imposed on the appellant in the Intermediate Court for her conviction, on her plea of guilty, to converting a pre signed cheque of her employer, which she made out and caused to be drawn in the sum of \$65,000 contrary to s.403 of the Penal Code, was dismissed.*

Mr. Mohd Shazale bin Haji Mat Salleh (Messrs. Mohd Shazale Salleh, Advocates and Solicitors) for Appellant  
DPP Yvonne Lim Swee Twan for Respondent

**Cases referred to in the judgment**

*Krishnan and Chand v Public Prosecutor [1995] 2 SLR 291*

**Lunn, JA.:**

1. This is an appeal against the sentence of four months' imprisonment imposed on the appellant on 8 May 2019 by HHJ Norismayanti following the appellant's conviction, on her plea of guilty, on 1 May 2019 to the alternative charge of having dishonestly converted to her own use a pre-signed cheque, dated 20 December 2018, drawn on the account of AT TAQWA Travel Tours Sdn Bhd ("the Company") with BIBD made payable to P. Govindarajan, contrary to section 403 of the Penal Code, Cap. 22.

*The facts*

2. In tendering her plea of guilty to the charge, the appellant accepted the Statement of Facts, dated 1 May 2019 as the basis of that plea. On 1 February 2019, following the termination of her employment as a Senior Finance Officer with the Company, by whom she had been employed in that capacity since 9 May 2016, the appellant was escorted from the premises by fellow employees. She was permitted to take her belongings with her. The Company claimed that the appellant was responsible for a shortfall of \$21,000 in the Company accounts. On 1 February 2019, the appellant had made a payment of \$11,000 to the Company.

3. On 7 February 2019, the appellant discovered that amongst the property that she had removed from the premises of her former employer was a pre-signed cheque, dated 20 December 2018 drawn on the account of the Company with BIBD payable to P. Govindarajan, but with the money amount payable left blank. Having made that discovery, the appellant determined to cash the cheque and use the proceeds to settle the outstanding balance of \$10,000 to the company and to provide for expenses to be incurred in her forthcoming wedding. In pursuit of that objective, she contacted a person called Farhan on Facebook and secured his agreement to help her cash the cheque for a reward. For his part, for that purpose Farhan introduced her to Syafiq.
4. On 9 February 2019, having entered an amount on the cheque of \$65,000 as the amount payable, the appellant met Syafiq and handed him the cheque outside a branch of BIBD in Kampong Kiulap. Syafiq presented the cheque to a cashier in the bank and secured payment of \$65,000. Then, Syafiq and Farhan met the appellant in a car park outside Soon Lee Mega Mart in Kampung Lambak Kanan, where Syafiq handed the appellant \$65,000 in cash. For her part, the appellant gave Syafiq and Farhan \$2,000 and \$1,000 respectively as their reward.
5. On 11 February 2019, the Company discovered the unauthorised transaction and lodged a report with the police. The appellant admitted that she had dishonestly misappropriated \$65,000 from the Company by converting the cheque to her own use and surrendered \$52,100 to the police. The police recovered \$1,700 and \$504.40 from Syafiq and Farhan respectively. On 12 February 2019, the appellant's father and fiancée together made restitution to the company by making a payment of \$13,000.

#### *Mitigation*

6. In sentencing the appellant, the judge acknowledged the mitigation that had been made on her behalf by Mr Mohd Shazale Salleh, who sought the imposition of a probation order or a fine rather than a custodial sentence, namely that she was a 28-year-old graduate, recently married woman with no previous criminal convictions, who had:
  - pleaded guilty to the charge at the earliest opportunity;
  - made full restitution to the company, demonstrating her remorse
  - co-operated with the police in their investigations, providing a full account of the circumstances of the commission of the offence; and
  - committed the offence in circumstances of desperation to make payment of the balance of monies demanded by the company.

Finally, it was contended that the complainant Company had forgiven her, writing a letter to the police, dated 12 February 2019, withdrawing the complaint that had been made to the police.

7. It is to be noted that in the written mitigation, dated 30 April 2019, advanced on behalf of the appellant it was submitted that the appellant had "decided to raise

funds by using the cheque to pay the company the \$10,000. She also decided to reimburse herself for the payment of \$11,000 she made on 1 February 2019.”

*Reasons for sentence*

8. In her reasons for sentence, the judge adverted to the factors relevant to determining whether the making of a probation order was appropriate, namely “the defendant’s character, antecedents, age, health or mental condition of the offender, the trivial nature of the offence and to any extenuating circumstances” and to the determination of this court in *Maimun Bte Omar v Public Prosecutor* (Criminal Appeal No. 1 of 2013) that, “...the absence of any one factor does not exclude the jurisdiction to make a probation order. Obviously when serious offences have been committing the making of such orders will be rare.”
9. In the result, in determining that “a probation order or fine will not suffice” notwithstanding “full restitution”, the judge found:

*“I do not find the offence committed in the present case is trivial in nature. I am also of the view that the supposed pressure that the defendant was under does not amount to an extenuating circumstance. Based on the facts, I find this was a crime of opportunity. Presented with the opportunity of cashing out a pre-signed cheque, the defendant went on to contact third parties ... to help cash the cheque.... in return for payment. Furthermore, the defendant not only took the amount she actually needed (\$10,000) to pay back the Company, but had cashed out substantially more in the total sum of \$65,000 not only to reimburse herself the sum she had already paid to the company (\$11,000) but also to cover her then upcoming wedding expenses. Premeditation is evident. Any pressing circumstances that may have existed for the defendant is overshadowed by the defendant’s dishonest intent to significantly benefit herself financially for her own use.”*

10. Then, having noted that the Company had forgiven the defendant and that full restitution had been made, nevertheless the judge concluded:

*“Offences involving the misappropriation of funds has always been seen by the courts as serious in nature. Any sentence imposed should act as a deterrent and should reflect the gravity of the offence.”*

11. Having referred to the judgment of the then Chief Justice of Singapore, Yong Pung How, in *Krishnan and Chand v Public Prosecutor* [1995] 2 SLR 291, a Magistrate’s Appeal to which Mr Mohd Shazale Salleh had referred the court, and having noted that the sentence of 9 months’ imprisonment imposed on the appellant, following his plea of guilty, to an offence of dishonesty misappropriating \$120,000 contrary to section 403 of the Penal Code of Singapore had been quashed and a sentence of 6 months’ imprisonment substituted, the judge said “a range between 6 to 9 months imprisonment would be a good starting point for sentencing in cases of a similar nature and involved (sic) similar facts”.
12. In the result, the judge stipulated a starting point for sentence of 6 months’ imprisonment, which she discounted by one-third to reflect the appellant’s “guilty

plea, clear record and” mitigating factors”. Accordingly, she imposed a sentence of 4 months’ imprisonment on the appellant.

*The appellant’s submissions*

13. In the Notice of Appeal, Mr Mohd Shazale submitted said the sentence was manifestly excessive and that the judge had failed to give adequate consideration to the mitigating factors. In addition, in his written submission it was contended that the judge had erred in determining to impose a deterrent sentence and had overstated the seriousness of the offence and the culpability of the appellant. Nevertheless, it was conceded that the appellant had come into possession of the cheque “whilst under the employment” of the Company and that the offence was “not trivial”. On the other hand, it was submitted that there was “little planning involved” in the commission of the offence.
14. in his oral submissions Mr Shazale contended that, notwithstanding the circumstances in which the appellant had come into possession of the signed but blank cheque, no element of breach of trust was involved in the appellant’s subsequent conversion of the cheque. She was no longer in the employment of her employer when she converted the cheque.

*The respondent’s submissions*

15. For the respondent, Ms Yvonne Lim invited the court to note that the penalty provided for by section 403 extended to 2 years’ imprisonment and/or a fine.
16. Ms Lim submitted that whilst in employment, the appellant had been trusted to have possession of the blank signed cheque. In converting the cheque subsequently the appellant was in breach of that trust. Also, she said the commission of the offence was far from being a case in which there was “*little planning involved*”, given the various steps taken by the appellant to secure the assistance of those in need of money to further her plan. In the result, she submitted that the judge had taken proper regard of all the mitigating factors and that the sentence imposed on the appellant was not manifestly excessive.
17. Ms Lim referred the court to several cases of what she said were sentences imposed in the Magistrates Court for various offences committed by defendants of theft by finding of items of relatively small value. She said that she did so because she was unable to find examples of higher courts dealing with this offence. However, she did not even provide the court with the record of proceedings in the Magistrates Court, relying on a copy of the charges and the Statement of Facts, neither of which addressed sentence.

*A consideration of the submissions*

18. We have no hesitation at all in accepting that the judge was correct to describe the circumstances of the commission of the offence and the culpability of the appellant in the way that she did, which we have quoted *in extenso* above. In particular, the appellant was possessed of a “*dishonest intent to significantly benefit herself*”. A not

insignificant degree of planning and persistence was required by the appellant. The misappropriation of \$65,000 by the conversion of a cheque that had come into her possession in the course of the appellant's duties as a Senior Finance Officer of the company was clearly an offence that was serious in nature and in breach of that trust. In all the circumstances, the judge was entitled to determine that a deterrent sentence of imprisonment was required.

19. We are satisfied that, in all those circumstances, the judge was entitled to stipulate a starting point for sentence of 6 months' imprisonment and to afford the appellant a discount of one-third from that starting point to reflect her plea of guilty, her previous good character and all the mitigating factors advanced on her behalf.
20. Accordingly, the appeal is dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**