

Public Prosecutor

AND

Chin Chee Vun

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 19 OF 2023)**

Haji Abdullah Soefri bin POKSM DSP Haji Abidin, J.C.
11th September 2024

Criminal Law – Section 6(b) Prevention of Corruption Act, Cap 131 read with Section 13 of the same – Acquittal – Appeal – Instigation run and continues in accordance of purpose – Magistrate decision is against the weight of evidence – appeal allowed -Magistrate decision reversed

Cases cited:

Public Prosecutor v Datuk Haji Harun bin Haji Idris (1977) 1 MLJ 180
Hj Abdul Ghani bin Ishak & Anor v Public Prosecutor (1981) 2 MLJ 230

DPP Hajah Rozaimah Bte Hj Abd Rahman for Public Prosecutor/Appellant.
Mr Chin Chee Vun In Person/Respondent.

RULING

Haji Abdullah Soefri, J.C.:

Introduction

This is an appeal by the Public Prosecutor against the Senior Magistrate’s decision in acquitting D2 on 5/12/2023 who is facing a charge as follows:

2nd Charge (Against D2)

“That you, sometime between September 2021 and the 4th day of October 2021, did instigate one Argel Sanchez David to corruptly give monies to an agent, a Customs Inspection Officer with the Royal Customs and Excise Department, Ministry of Finance and Economy, as an inducement or reward for doing an act in relation to her principal’s affairs, to wit, not to take any action against the said Argel Sanchez David for any violations pertaining to customs declaration, and in pursuance of that instigation an act took place on the 4th day of October 2021, at the Payment

*Counter of the Customs Guardhouse and Muara Port Post Office, Muara, in Brunei Darussalam, in which the said Argel Sanchez David did corruptly give gratification of BND\$20.00 (Twenty Brunei Dollars) to an agent, one **Dyg Nor Ameizalina binti Mohd Zulazri**, a Customs Inspection Officer with the Royal Customs and Excise Department, Ministry of Finance and Economy, which is an offence under Section 6(b) of the Prevention of Corruption Act, Chapter 131, was committed in consequence of your abetment, and you have thereby committed an offence punishable under section 6(b) of the Prevention of Corruption Act, Chapter 131 read with Section 13 of the same.”*

It is imperative to highlight that D1(PW4) was convicted and sentenced after he had entered a guilty plea on 20/7/2022 on the following 1st Charge:

1st Charge

“That you, on the 4th day of October 2021, at the Payment Counter of the Customs Guardhouse and Muara Port Post Office, Muara, in Brunei Darussalam, did corruptly give gratification of BND\$20.00 (Twenty Brunei Dollars) to an agent, one Dyg Nor Ameizalina binti Mohd Zulazri, a Customs Inspection Officer with the Royal Customs and Excise Department, Ministry of Finance and Economy, as an inducement or reward for doing an act in relation to her principal’s affairs, to wit, not to take any action against you for any violations pertaining to customs declaration, and you have thereby committed an offence punishable under Section 6(b) of the Prevention of Corruption Act, Chapter 131”

GROUND OF APPEAL

The Prosecution Notice of Appeal against acquittal was made under Section 438A and 438D of the Criminal Procedure Code, Cap 7. These two provisions are for appeal to the Court of Appeal. Nevertheless, this Court strongly believe that the Prosecution has made typographical error when they inserted sections 438A and 438D in their notice and this is error is not prejudicial to the Defendant.

The Appellant listed down 3 grounds of appeal against the acquittal which are as follows:

- a) The Court below had erred in law and/or fact by misdirecting herself on the ingredients of the charge.
- b) The finding by the Court below was plainly against the weight of the evidence adduced during the trial.
- c) The Court below had erred in law and/or fact in that she failed to consider that the Respondent’s defence of bare denial was incredible given the weight of the evidence.

The Appellant expanded the first ground above and submitted that:

“the instigation on the part of the Respondent on his employee, i.e 1st Defendant, is an instigation that had taken place within that period between September 2021 up until the day the corruption offence was committed by the 1st Defendant on 4/10/2021. The wordings of the charge were constructed in such a manner so as to capture any date or dates in which the Respondent has instigated the 1st Defendant to give monies to an agent, namely a Customs Inspection Officer..... It is humbly submitted in view of the said timeframe as set out in the charge, the Appellant need only adduce evidence to prove that instigation has been made by the Respondent on the 1st Defendant, thereby resulting in him corruptly giving monies on 4th October 2021 to the agent, Dyg Nor Ameizalina binti Mohd Zulazri.”

In the Senior Magistrate’s judgment in paragraph 16, she held as follows:

“There is no disagreement regarding the BND\$20 was given by PW4 to PW1. Both PW4 and PW1 attested that PW4 provided the money and PW1 received it. Accordingly, I accept that the element of this charge has been met.”

In paragraph 17, the Senior Magistrate highlighted:

“The central issue before the Court revolves around the alleged instigation by the Defendant, who at that time was in an employer-employee relationship with PW4 to induce PW4 to provide gratification to PW1. In particular, the Court must determine whether the corrupt action taken by PW4 involving the payment of BND\$20 to PW1 on 4/10/2021 was of his own accord or whether it was influenced by the defendant’s actions and instructions given in between September 2021 and 4th October 2021.”

The Senior Magistrate referred to two cases:

- 1) *Public Prosecutor v Datuk Haji Harun bin Haji Idris* (1977) 1 MLJ 180
- 2) *Hj Abdul Ghani bin Ishak & Anor v Public Prosecutor* (1981) 2 MLJ 230

The Senior Magistrate further held that:

“to determine the presence of instigation, it is imperative to review and evaluate the WhatsApp communication exchanged between the Defendant and PW4”

The Magistrate concluded that:

“It appears that PW4 voluntarily offered the BND\$20 independently without specific instruction from the Defendant. In light of this, I am persuaded to believe that PW4’s actions were independent of any coercive influence from the Defendant, reflecting a voluntary decision on PW4’s part.”

I would like to refer back to the Magistrate’s judgment.

Paragraph 9: “.... *The Defendant instructed PW4 to collect \$50 from Chin Chiew Ling and present it to a Customs Officer as a “supervising fee” or “belanja”. PW4 clarified that the payment was intended to ensure smooth customs declaration processing for J3Smart Consignment goods, preventing adverse actions against him or his company for customs declaration-related violations”*”

Paragraph 10: “*On 1/10/2021, PW4 received \$50 from Chin Chiew Ling, documented in a cash payment voucher from Silvi. The voucher indicated it was for a supervising fee and a token of appreciation for the smooth clearance of J3Smarts’ cargoes.”*”

Paragraph 11: “*On 4th October 2021, while handling consignment goods for J3Smart, PW4 handed BND\$20 in cash to PW1 at the payment counter, mentioning it was for “belanja”.*”

Paragraph 14: “*The Defendant insists that PW4 independently offered money to Customs Officers emphasizing that he had no influence over PW4. The Defendant denies giving instructions to PW4 and highlighted PW4’s history of disregarding procedures. Additionally, the Defendant maintains that the payment usually extended was intended for supervising fees and necessities for warehouse staff, not due Customs Officers.”*”

The Senior Magistrate held in paragraph 20 that:

Paragraph 20: “.... *Simply staying silent or passively agreeing is not sufficient to constitute an offence of abetment by instigation as applied and affirmed in the cases cited. With that in mind, to determine the presence of instigation, it is imperative to review and evaluate the WhatsApp communication exchanged between the defendant and PW4...*”

The messages that were reviewed and evaluated were WhatsApp messages dated 22nd September 2021, 23rd December 2021 and 27th September 2021.

The Senior Magistrate in paragraph 26 held as follows:

Paragraph 26: “*Based on the excerpt of the WhatsApp messages spanning from 22nd September 2021 until 27th September 2021, it is clear that both the Defendant and PW4 have a close working relationship.... Therefore, I reject the Defendant’s assertion that he does not provide direct instructions to PW4. By refuting the defendant’s position, I acknowledge that obtaining approval from the Defendant in his role as the General Manager of Sivli is essential for any customs declarations or supervising fee as evidenced by the WhatsApp conversation. For that reason, I affirm the Prosecution’s argument in this regard establishing that in Customs*”

clearance matters, instructions indeed originate from the Defendant in his capacity as the General Manager.”

In para 27, the Senior Magistrate held further:

Paragraph 27: *“... I find it more plausible to accept the Prosecution’s position. Foremost, I accept the word “gate” refers to a term frequently used by the Defendant when discussing the Customs Department at the Muara Guardhouse with his employees. I further accept that the supervising fee was payment to be given to customs officers to render any assistance required during the customs declaration process, common practice, as revealed in the WhatsApp messages often involving sums around BND\$50. Finally, I accept that the payment voucher was designated for the said payment to be handed over to customs officers.”*

The Senior Magistrate in paragraph 29 said:

Paragraph 29: *“The evidence at hand unmistakably indicates that the Defendant instructed PW4 to bribe customs officers responsible for customs declaration clearance. However, it remains to be determined whether this directive extends to PW1, who was not on duty on 4th October 2021 when handling customs declaration clearance made by PW4.”*

The Senior Magistrate in paragraph 31 held as follows;

Paragraph 31: *“No additional evidence has been introduced to suggest any subsequent instigation by the Defendant to provide a supervising fee to PW1 between 24th September 2021 and 4th October 2021. Therefore, I acknowledge the presence of instigation, but it is not explicitly linked to PW1, except for the episode on 23/9/2021 as no evidence has been presented to indicate any further instructions to bribe PW1 after that date.”*

The Senior Magistrate in her judgment further added as follows;

Paragraph 34: *“Upon careful examination of the evidence in this case, it appears that there was no apparent benefit for PW4 to engage in any misconduct on that day. This is particularly evident in the customs declaration made on 4th October 2021 where no complications arose and the process was not cleared by PW1... Given the absence of issues in the customs declaration process and its successful clearance by a different officer, there appears to be no logical motive for PW4 to participate in any form of bribery at this specific juncture.”*

In paragraph 35, the Senior Magistrate observed that;

Paragraph 35: *“There is no evidence provided indicating the extension of supervising fees even when customs clearance proceeds without any issues, suggesting that financial transactions were occasionally initiated with customs officers as a means to foster positive relationships, rather than being directly to issues in the clearance process.”*

The Senior Magistrate further added that in paragraph 36;

Paragraph 36: *“However, there was no evidence to support the contention that the defendant provided specific instruction for bribery on that day. In my view, the lack of supporting evidence indicating that the defendant instigated the bribery after being informed by PW4 on 23rd September 2021 that PW1 does not accept bribes as reflected in paragraph 24 above further adds to the limitations in the prosecution’s case.*

The Senior Magistrate in paragraph 37 of her judgment held that;

Paragraph 37: *“The absence of customs declaration issues on 4th October 2021 and the involvement of another officer in the clearance process significantly undermine the prosecution’s assertion regarding payment of BND20 to influence future outcomes. This is crucial as it forms the basis for questioning the prosecution’s argument that the cash payment was intended to impact future outcomes in connection to customs processes. To my mind, it appears that PW4 voluntarily offered the BND20 independently without specific instruction from the defendant. In light of this, I am persuaded to believe that PW4’s actions were independent of any coercive influence from the defendant, reflecting a voluntary decision on PW4’s part.”*

RESPONDENT’S SUBMISSION

The Respondent in his submission, submitted that D1 paid the \$20 purposely wanted to get close to PW1 for his own intention as PW1 also said there was no requirement to make payment for customs clearance process on 4th October 2021. So, this money which is the \$20 was from D1 and not related to works and customs clearance on that day.

FINDINGS

The grounds of appeal were highlighted earlier in this judgment.

From the judgment below, the Senior Magistrate found and accepted and held as follows;

“PW4 had testified that sometime at the end of September 2021, the Respondent have given instructions to collect money BND\$50 from Chin Chiew Ling and to give such cash money to a

Customs Officer as ‘supervising fee’ or ‘belanja’. The 1st Defendant (PW4) had further testified that he received BND\$50 cash together with a Sivli Logistics Sdn Bhd Cash Payment Voucher dated 1st October 2021 with remarks ‘Being Cash Payment for Supervising Fee, ... Remarks Token of Appreciation for smooth clearance of J3 cargoes.’

In paragraph 26, the Senior Magistrate held that; *“it is clear that both the Defendant and PW4 have a close working relationship.”*

In paragraph 27, she held that; *“I accept the word ‘gate’ refers to a term frequently used by the Defendant when discussing the Customs Department at the Muara Guardhouse with his employees. I further accept that the supervising fee was payment to be given to Customs Officers to render any assistance required during the customs declaration process, a common practice, as revealed in the ‘WhatsApp’ messages often involving sums around BND\$50. Finally, I accept that the payment voucher was designated for the said payment to be handed over to Customs Officer.”*

It is clearly being established in this case that the Respondent provided BND\$50 for the said payment to be handed over to Customs Officer and the Magistrate has held that it was payment to be given to Customs Officers to render any assistance required during the customs declaration process and this instruction indeed originate from the Defendant in his capacity as the General Manager.

The instigation starts and continues to run when PW4 collected and received BND\$50 with instructions from the Respondent in his capacity as the General Manager as payment to be given to the Customs Officers to render any assistance required during the customs declaration process. This is the active participation of the Respondent and it runs and continues to run. PW4 used the money for the intended purpose and this is what he pleaded guilty to.

The issue that the Senior Magistrate raised in her judgment *“The central issue before the Court revolves around the alleged instigation by the Defendant, who at that time was in an employer-employee relationship with PW4 to induce PW4 to provide gratification to PW1. In particular, the Court must determine whether the corrupt action taken by PW4 involving the payment of BND\$20 to PW1 on 4/10/2021 was of his own accord or whether it was influenced by the defendant’s actions and instructions given in between September 2021 and 4th October 2021.”* is not an issue central to the case as the instigation still runs and continues when the given money was used for the intended purpose.

The finding by the Court below where the Senior Magistrate held that *“PW4’s actions were independent of any coercive influence from the defendant, reflecting a voluntary decision on PW4’s part”* and concluded that *“the overall evidence fails to sufficiently demonstrate that the defendant has abetted PW4 through instigation to bribe PW1, thus leaving a gap in establishing all the elements of the offence outlined in section 6 (b) of the Prevention of Corruption Act, Chapter 131.”* were plainly against the weight of the evidence adduced during the trial. In fact, the instigation by the Respondent continues and was still running when PW4 committed the offence on the 4th

October 2021. What PW4 had done was what he was instructed to do from the beginning and the instruction and purpose of the money which the Senior Magistrate in her judgment has said “*I further accept that the supervising fee was payment to be given to Customs Officers to render any assistance required during the customs declaration process, a common practice, as revealed in the ‘WhatsApp’ messages often involving sums around BND\$50. Finally, I accept that the payment voucher was designated for the said payment to be handed over to Customs Officer.*”

Having had said all the above, by virtue of Section 291 of the Criminal Procedure Code, Cap 7, I am satisfied that the findings and judgment by the Court below were plainly against the weight of the evidence adduced during the trial and reverse the decision of the Court below. I allow the appeal and by virtue of section 284(c) of the Criminal Procedure Code, I find the Respondent guilty of the charge which the lower court might have convicted him of that is the charge that I have stated earlier and pass sentence on him in accordance to law.

Appeal is allowed. Magistrate’s acquittal is reversed and the Respondent is found guilty of the 2nd charge under section 6(b) of the Prevention of Corruption Act, Chapter 131 read with section 13 of the same and will pass the sentence on him accordingly to law.

Appeal is allowed.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner