

PUBLIC PROSECUTOR

AND

HAJAH FAIZAH BINTI HAJI ABDUL GAPAR

**(HIGH COURT OF BRUNEI DARUSSALAM)
(CRIMINAL APPEAL NO. 20 OF 2023)**

Haji Abdullah Soefri bin POKSM DSP Haji Abidin, J.C.

8th April 2024

Criminal Law – Section 34 Public Order Act – appeal against sentence and dismissal of Prosecution Cost – appeal dismissed

Cases cited:

Koh Yong Chiah v Public Prosecutor (2016) SGHC 253

Public Prosecutor v Tan Kim Hock Anthony (2013) SGDC 114

R v Northallerton Magistrate's Court, ex parte Dove (2000) 1 Cr App R (S) 136 (CA)

DPP Raihan Nabilah binti Haji Ahmad Ghazali for the Appellant.

DC Pg Shahyul bin Pg Abdul Rahman of Messrs LZ Hussain & Co. for the Respondent.

RULING

Haji Abdullah Soefri, J.C.:

Introduction

This is an appeal by the Public Prosecutor against the sentence imposed on 21st December 2023 and the dismissal of the costs order made by the Chief Magistrate Dk Norismayanti binti Pengiran Haji Ismail. The Appellant is dissatisfied with the Magistrate's sentence as the sentence is manifestly inadequate. The Appellant is further dissatisfied with the Chief Magistrate's decision to dismiss the costs order on the ground that she has erred in principle in exercising her discretionary powers under Section 382(1)(a) of the Criminal Procedure Code.

The Charge

That you, at about 1858 hours on the 31st day of August 2021, in Brunei Darussalam, did make a false statement, to wit, by making a video recording with a caption purporting that four employees at ABC Eats Restaurant were discovered by police officers to have violated their Quarantine

Orders by attending work while their BruHealth was on “Code Red”, which was likely to cause public alarm, and you have thereby committed an offence under Section 34 of the Public Order Act, Cap 148.

The penalty for the offence is a fine of \$3000 and imprisonment for 3 years.

On 21st December 2023, the Magistrate imposed a fine of \$2700 in default of 3 weeks’ imprisonment and dismissed the Prosecution’s application for costs order.

Appellant’s Submission

The fine imposed is manifestly inadequate and inconsistent with the sentencing principles, in consideration of sentences imposed by the Court in previous cases.

There are two cases in the Magistrate’s Court for which sentences were meted out for offences under Section 34 of the Public Order Act.

In MCCT/937/2020, a fine of \$3000 was imposed on the Defendant who had pleaded guilty and who had composed a false statement in the style of a news article, claiming that a friend of his had witnessed the commission of a robbery. The Defendant then sent the said statement to a WhatsApp group comprising of thirty members. The Defendant revealed that his intention in doing so was for the statement to be taken as a joke.

In MCCT/376/2021, the Defendant received a WhatsApp message from her brother that a person had arrived in Brunei Darussalam via a mouse trail during the Covid-19 pandemic. The Defendant then forwarded the message to several of her close friends, with the intention of alerting the police and armed forces. Upon a plea of guilty, the Defendant was sentenced to a fine of BND\$3000.

The Appellant further submitted that the Magistrate has failed to consider custodial in her sentencing and submitted the guidelines set out by the Singapore Court in ***Koh Yong Chiah v Public Prosecutor* [2016] SGHC 253** and also the ‘Clang of the Prison Gates’ principle and cited the case of ***Public Prosecutor v Tan Kim Hock Anthony* [2013] SGDC 114**.

Respondent’s Submission

The Respondent submitted that Section 291 of the Criminal Procedure Code provides as follows:

“No judgment or order of the Court of a Magistrate shall be reversed or set aside unless it is shown to the satisfaction of the higher Court that the judgment or order was either wrong in law or against the weight of the evidence, or, in the case of a sentence, inappropriate in the circumstance of the case.”

The Respondent further submitted that “*whilst it is trite law that the Courts should in the first instance look to prior sentencing benchmarks, it is trite law that the sentence imposed by the lower courts are not binding or authoritative on the lower courts or the higher courts.*” (See *Public Prosecutor v Yahya bin Hj Budin* [COA Criminal Appeal No. 15 of 2017]).

It is submitted that the Appellate Court would only increase a sentence when it is manifestly inadequate even if it may be considered lenient (See *Public Prosecutor v Abdullah Muhammad Sham Khairunnas bin Abd Wahab* [COA Criminal Appeal No. 18 of 2018] and *Public Prosecutor v Norhanisah binti Hj Md Nor* [COA Criminal Appeal No.6 of 2018]).

Magistrate’s Decision

The Magistrate has considered public interest and also the impact of the offence on the public and the potential for alarm to the community or society at large (Paragraph 13).

The Magistrate has considered the Defendant’s antecedents and had not considered the hardship as a result of this conviction as a mitigating factor.

The Court below understood that the Defendant was in a situation where she was trying to protect herself and those around her and that she pleaded guilty soon after she received the Court’s determination on the *mens rea* elements of the Section 34 offence albeit after the Prosecution’s case.

The Magistrate in her sentencing held that “*the court cannot ignore the potential ramifications of the false statement spread in the video. By sending out the video as it is, there was the potential to harm the restaurant’s reputation and financial standing. Additionally, there was the potential to unnecessarily alarm the regular patrons of the restaurant, with the likelihood of this information spreading to the broader community and possibly the public at large.*”

Prosecution Cost

The Chief Magistrate has considered and gave a detailed account on the reason why she did not exercise her discretion to award the Prosecution cost. I have no reason to interfere with her decision. She had prudently analysed the application and I agree with her decision.

If the Court exercises their discretion to order for cost, in the case of ***R v Northallerton Magistrates’ Court, ex parte Dove* [2000] 1 Cr App R (S) 136 (CA)**, the Court of Appeal provided the following guidance as to making an Order for Costs against a person convicted of an offence:

“ - *The award of costs which the convicted offender is ordered to pay should be reasonable and should take the offender’s means into consideration.*

- *The amount to be paid by the offender should not amount to more than the amount of costs incurred reasonably by the Prosecutor.*
- *Costs should be awarded to the Prosecutor in circumstances where unreasonable conduct of the offender has led to avoidable costs; but a costs order should not be made against the defendant for simply attempting to defend themselves.*
- *Costs ordered in favour of the Prosecutor should be proportionate to any fine ordered for the offence.*
- *The costs order should be reduced in circumstances where the combined total of the costs sought by the Prosecutor and the proposed fine exceeds a sum which could be reasonably ordered against the Defendant.*
- *The offender is responsible for providing details of their financial position so that the Court can decide on a costs order based on their circumstances.”*

Conclusion

The question that needs to be addressed is whether the sentence is “inappropriate in the circumstance of the case”. There are two cases of the same offence that had been decided before and both are Magistrate’s Court cases. In both cases, the Magistrates imposed non-custodial sentences but the Defendants were imposed with the maximum fine. There is no indication to show that the Prosecution had appealed against both the sentences in those cases. In MCCT/376/2021, the case had nearly similar facts with the present case.

If the Prosecution is of the view that the fine imposed in this present case is not appropriate or is inadequate or custodial sentence is more justifiable, the Prosecution has failed to show to this Court that there is a need to impose a heavier sentence than that which has been imposed in the two cases that are cited. Further, there is no data presented to this Court to show that there is an increase in the number of cases that have been committed or reported for offences under Section 34.

Having had said all the above, I am satisfied that the sentence imposed by the Magistrate is appropriate and it is not manifestly inadequate and not inconsistent with the sentencing principles as the Chief Magistrate had taken into account and considered all the relevant factors before imposing her sentence.

This Court dismisses the Prosecution’s appeal against the sentence and the dismissal of the Prosecution’s application for prosecution cost.

Before I take my leave, I would like to comment in technology. Internet has created an open forum for people. If internet is used correctly and responsibly, it will be beneficial to all. However, if technology is used irresponsibly or misused and if it is proven that it has created or caused disharmony to the peaceful society of ours or cause a threat to security and peace of this country, this Court would like to warn that it will not hesitate to impose a much heavier sentence.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner