

Mary Anak Aluson

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 25 of 2022)**

Steven Chong, C.J.

13 March 2023

Criminal law – Compensation order – Principles applicable

Ms Wafa Hamizah Binti Mohammad (M/S Ridzlan & Co.) for the Appellant.
DPP Pg Nor’Azmeena Bte Pg Mohiddin for the Respondent/Public Prosecutor.

Cases cited:

R v Inwood [1974] 60 Cr App R 70 at 73

R v Parker [198] 3 Cr App R(S) 278

Public Prosecutor v Lim Ai Hui [2004] 2 JCBD 189

Steven Chong, C.J.:

Introduction

The sole issue in this appeal against sentence is whether the Magistrate was right to order the appellant to pay compensation without examining her means.

On 23 August 2022 in the Magistrate’s Court the appellant pleaded guilty to committing criminal breach of trust contrary to section 406 of the Penal Code.

The Magistrate sentenced the appellant to a fine of \$5,000 in default 5 months’ imprisonment.

In addition the Magistrate ordered the appellant to pay compensation of \$51,443 within 6 months in default 6 weeks’ imprisonment.

The facts

Briefly summarized the facts were that on various occasions over a period of about 6 months between October 2011 and April 2012 the appellant aged 53 who was employed as an administration officer in the International School Brunei ("*ISB*"), Kuala Belait, misappropriated a total sum of \$53,881.59 of school fees collected by her from the parents of students.

The appellant admitted to the misappropriation when she was confronted by the principal and a police report was made. She told the police she spent the money on clothes, jewellery and overseas holidays.

Compensation order

Counsel for the appellant urged the Magistrate to consider her financial situation in determining sentence.

The appellant was a single mother to three children relying on "*gig*" work for income and had made restitution of \$2,210.

On the application of the prosecution the Magistrate ordered the appellant to compensate ISB in the amount of \$51,443 within 6 months or in default 6 weeks' imprisonment.

No examination of means was done before ordering compensation.

Submissions

Counsel for the appellant submits the Magistrate erred in principle in ordering compensation without assessing her means.

The prosecution submits that its application for compensation to be made by the appellant was premised on the Magistrate first carrying out an assessment of her means.

In the absence of an examination of means the prosecution rightly concedes that the Magistrate was wrong in making the compensation order.

Principles applicable

Section 382 of the Criminal Procedure Code provides:

“(1) When a person is convicted of any crime or offence, the Court may, in its discretion, make either or both of the following orders against him in addition to any other punishment –

(a)

(b) an order for the payment by him of a sum to be fixed by the Court by way of compensation to any person . . . “

Compensation orders were not introduced into our law to enable the convicted to buy themselves out of the penalties for crime. Compensation orders were introduced into our law as a convenient and rapid means of avoiding the expense of resort to civil litigation when the criminal clearly has the means which would enable the compensation to be paid: *R v Inwood* [1974] 60 Cr App R 70 at 73.

A compensation order does not form part of the sentence nor is it an alternative to a sentence and it should not be used as a further punishment of a convicted person. The order for compensation must not be oppressive but must be realistic and the court must be satisfied the convicted either has the means available, or will have the means, to pay the compensation within a reasonable time: *R v Parker* [1981] 3 Cr App R(S) 278.

My decision

I was minded to quash the compensation order and remit the case to the Magistrate with a direction that she examine the means of the appellant before exercising the discretion to order compensation.

The appellant, however, on her own volition has proposed to pay compensation of \$20,443 by monthly instalments of \$1,500 starting at the end of April 2023. She is unemployed but her son who works as a rigger and earns a daily wage of \$100 will provide her with the money to make payment.

This compensation proposal is considered reasonable by the prosecution.

In the circumstances, I quash the compensation order made by the court below and substitute it with an order for compensation as proposed by the appellant and in default of any one payment she is to serve 6 weeks' imprisonment.

Conclusion

The appeal is allowed to this extent for the reasons given.

A final word before taking leave of this appeal. Offences of criminal breach of trust normally attract a substantial prison sentence: *Public Prosecutor v Lim Ai Hui* [2004] 2 JCBD 189.

In the instant case the Magistrate decided to impose a fine instead of a custodial sentence due to the long delay of about 10 years in the prosecution. It would appear the police investigations took some 6 years from 2012 until 2018 when the matter was referred to the Attorney General's Chambers. Another 4 years elapsed before the appellant was charged in court in 2022.

This inordinate delay is detrimental to the proper administration of justice and the relevant authorities must address the issue with urgency.

DATO SERI PADUKA STEVEN CHONG
Chief Justice