

PUBLIC PROSECUTOR

AND

MOHD AZAM ZAKI BIN HAJI MOHD ZAIN

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 15 of 2017)**

**Steven Chong, J.
29 September 2017**

Cheating by employee of a public body – Appropriate sentence.

DPP Suriana bte Hj Radin for the Public Prosecutor/Appellant.
Respondent unrepresented.

Cases cited:

Md Hisham bin Hj Abd Rahman v Public Prosecutor [2001] JCBD28.

Mohd Aza Izuan bin Ibrahim v Public Prosecutor [2012] 1JCBD144.

Public Prosecutor v Pengiran Asmadi bin Pengiran Ali [Criminal Motion No. 38 of 2015].

Public Prosecutor v Pengiran Hussin bin Pengiran Sulaiman [Criminal Appeal No. 8 of 2017].

Steven Chong, J. (ex tempore):

This is an appeal against sentence by the Public Prosecutor.

On 18 May 2017 in the Magistrate's Court the defendant pleaded guilty to two counts of conspiracy with one Chien Vun Thian ("*Chien*") to cheat Brunei Shell Petroleum ("*BSP*") contrary to section 420 read with section 109 of the Penal Code.

The Magistrate sentenced the defendant to concurrent terms of 14 months' imprisonment on each count. She also ordered the sentence to be served concurrently with the sentence of 4 years' imprisonment imposed on the defendant on 17 January 2017 when he pleaded guilty to five counts of receiving bribes contrary to section 6(a) of the Prevention of Corruption Act.

No complaint is made of the order of the Magistrate making the sentences concurrent in relation to each count and also to the existing sentence in respect of the corruption offences. But the Public Prosecutor contends that the sentence of 14 months' is manifestly inadequate.

In summary the facts were that in August 2008 the defendant, a "Scheduler" employed in BSP, conspired with Chien, the Director/Manager of Voon Hua Hardware Company Sdn Bhd ("*VHH Company*") to cheat BSP by deceiving BSP to award VHH Company the supply of 22 Proto toolsets and roller cabinets to BSP when the roller cabinets were not required by BSP and they would not be delivered by VHH Company. The defendant created 22 sets of work order and 22 sets of purchase requisition for the Proto toolsets and roller cabinets for delivery to BSP. To ensure the selection of VHH Company as the supplier the defendant submitted a Technical Evaluation Form to BSP stating that it was the only company which offered a lifetime warranty. This was false as all Proto toolsets and roller cabinets carried a lifetime warranty.

Subsequently, the Proto toolsets were delivered but not the roller cabinets. BSP made a report to the Anti-Corruption Bureau of the defendant's criminal conduct following internal investigations in March 2011. The deception caused BSP to pay VHH Company a total of \$154,000 when it should have paid \$61,600.

Sentences of between 3 to 4 years have been imposed for cheating offences: see *Md Hisham bin Hj Abd Rahman v Public Prosecutor* [2001] JCB28; *Public Prosecutor v Pengiran Asmadi bin Pengiran Ali* [Criminal Motion No. 38 of 2015]; *Mohd Aza Izuan bin Ibrahim v Public Prosecutor* [2012] 1JCB144; and *Public Prosecutor v Pengiran Hussin bin Pengiran Sulaiman* [Criminal Appeal No. 8 of 2017].

I agree with the contention of the Public Prosecutor that the sentence of the court below is unduly lenient. This was a serious breach of trust and position by an employee of a public body causing a loss of \$92,000.

An appropriate starting point sentence on each count is 5 years reduced to 3 years having regard to the guilty plea and unexplained delay in the prosecution and the appeal is allowed to this extent.

Since the Public Prosecutor does not take issue with the order of the Magistrate that the sentences on each count be served concurrently with the existing sentence of the defendant I affirm this order.

DATO PADUKA STEVEN CHONG
Judge, High Court