

Pg Ahmad bin Pg Hj Md Daud

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No.29 of 2014)**

Pg Hjh Rostaina bte Pg Hj Duraman, J.C.

16th February 2016

Mr Sheikh Noordin bin Sheikh Mohammad of Messrs Sheikh Noordin Mohammad & Associates for the Appellant.

DPP Shamsuddin bin Hj Kamaluddin for Respondent.

Cases referred:

Abdul Salam bin Mohamed Salleh v Public Prosecutor (1990) 1 SLR (R)198 at (30).

Ng Ai Tiong v Public Prosecutor (2000)1 SLR (R) 490 at (10).

Ong Beng Leong v Public Prosecutor (2005) SGHC 35.

JUDGMENT

1. This is an application by the Appellant under section 291A of the Criminal Procedure Code, Cap 7.
2. The Appellant was convicted before the Magistrate's court for two charges under section 6(a) of the Prevention of Corruption Act, Cap 131 and two corresponding charges under section 165 of the Penal Code, Cap 22.
3. He was accordingly sentenced in total to 36 months with effect from 16th June 2014. He appealed against both convictions and sentence and it was heard before myself in the Appellate court. I dismissed his appeal on 12th January 2016.
4. Immediately after the dismissal, Counsel for the Appellant referred and applied before myself to invoke under section 291A of the Criminal Procedure Code, Cap 7, to hear and determine that there are points of law of public interest in the case, that requires determination by the Court of Appeal.
5. Section 291A of the Criminal Procedure Code, Cap 7 reads as follows:

Reference to Court Appeal from Magistrate's court on grounds of public interest.

"When an appeal from the decision of a Court of a Magistrate in criminal matter has been heard and determined by the High Court and the Judge who heard the appeal or the Public Prosecutor, on his own behalf or on the application of any party to the proceedings, has, within one month of such determination or within such further time as the Court of Appeal may permit, signed and filed with the Registrar a certificate that the decision of the High Court involves a point of law which it is desirable in the public interest to have determined by the Court of Appeal, such appeal shall be re-heard by the Court of Appeal."

6. In order for the Court of Appeal to re-hear this appeal;
 - The judge who heard the appeal has within one month of such determination signed and filed with the Registrar a certification, and
 - That the judge's decision involves a point of law which is desirable in the public interest to be determined before the Court of Appeal;
7. Counsel for the Appellant had submitted there are four points of law of public interest to be determined by the Court of Appeal. Basically these four points of law touches on the issues of corroboration and similar facts evidence.
8. In replying to the submission submitted by the Counsel for the Appellant the DPP cited S.60 of the Singapore's Supreme Court of Judicature Act (SCJA) Cap 322, which is similar to our S.291A of the Criminal Procedure Code.

S 60 (1) of SCJA, Cap 322 provides that:

Reference to Court of Appeal of criminal matter determined by High Court in exercise of its appellate or revisionary jurisdiction

60- (1) When a criminal matter has been determined by the High Court in the exercise of its appellate or revisionary jurisdiction, the Judge may on the application of any party, and shall on the application of the Public Prosecutor, reserve for the decision of the Court of Appeal any question of law of public interest which has arisen in the matter and the determination of which by the Judge has affected the case. (43/98)

The DPP also cited the case of Ong Beng Leong v PP (2005) SGHC 35, where the Hon. CJ Yong Pung How, had said the following..

... "Whether a question of law is a public interest depends on the facts and circumstances of each case. Even if the above requirements are met, the court still retains a residual discretion to refuse an application made by any party other than the Public Prosecutor. I have repeatedly stressed that the discretion under section 60 of the SCJA must be exercised sparingly.

The Hon. CJ Yong Pung How in the same case had quoted the case of **Ng Ai Tiong v PP (2000) 1 SLR (R) 490 at (10)**..where he gave recognition and effect to Parliament's intention for the High Court to be the final appellate court for criminal cases commenced in the Subordinate Courts. The importance of maintaining finality in such proceedings must not be seen to be easily compromised through the use of such a statutory device.

He also cited the case of **Abdul Salam bin Mohamed Salleh v PP (1990) 1 SLR (R) 198 at (30)**, and quoted **Chan Sek Keong J**, who had cautioned that ... section 60, SCJA is not an ordinary appeal provision to argue points of law which are settled or novel points which can be decided by the application or extension of established principles of law or the application of statutory provisions which have been authoritatively construed by higher courts ...

Earlier in his judgment, he had also stated "In Singapore, the majority of criminal cases are tried in the Subordinate Courts. The normal recourse available to a convicted person who is dissatisfied with his conviction and/or the sentence is to appeal to the High Court. It is in the public interest that a person who has been wrongly convicted of any offence (and not only a grave offence), whether by the wrong application of the law or the application of the wrong law, should be able to have it corrected on appeal. Such a right is provided under existing law, but it does not go beyond the High Court.

The public interest in giving a convicted person the right to have his conviction corrected on appeal has to be balanced against the public interest that there has to be finality in the proceedings, and Parliament has decided as a matter of policy that finality in criminal cases tried in the Subordinate Courts stops at the High Court.

Hence, it is imperative that section 60 of the SCJA is utilized only in exceptional cases so as to ensure that the proper purpose of the section is not abused to serve as a form of 'backdoor appeal'."

9. The question now before myself is, are the points of law raised by Counsel for the Appellant on issues of Corroboration and Similar Facts Evidence desirable in the public interest to be determined before the Court of Appeal?

The issue of points of law (on Corroboration and Similar Facts Evidence) which were expounded by the Counsel for the Appellant had been settled and decided in the Appellate court before myself on 12th January, 2016.

It is in the interest of the public that finality on matters which had been decided and has no novel points and which is not desirable in the public interest to be reheard by the Court of Appeal has to be estopped.

As cited above, it was held by the Hon. CJ Yong Pung How in ***Ng Ai Tiong v PP (2000) 1 SLR (R) 490*** and similarly stressed by the learned Justice, Chan Sek Keong J, in the case of ***Abdul Salam bin Mohamed Salleh v PP (1990) 1 SLR (R) 198*** that the importance of maintaining finality must not be seen to be easily compromised through the use of such a statutory device.

I find that there are no grounds to allow this matter to be determined and re-heard before the Court of Appeal for it will tantamount for the same issues to be heard for the second time.

10. I therefore, dismissed the Appellant's application under section S291A of the CPC, Cap 7 and will not issue (sign and file) the certificate with the Registrar that there are points of law which is desirable in the public interest to be determined by the Court of Appeal.
11. I also dismissed the Appellant's application under section 291A(3) to be released on bail.

PG HJH ROSTAINA BTE PG HJ DURAMAN
Judicial Commissioner