

PUBLIC PROSECUTOR

AND

DOMENIC CHONG YIN LUNG

**(High Court of Brunei Darussalam)
(Criminal Appeal No 9 of 2016)**

**Steven Chong, J.
14th July 2016**

Detention of travel document by the Anti-Corruption Bureau – Jurisdiction of Magistrate – Interpretation of Statutes

PO Shamsuddin Hj Kamaluddin for the Public Prosecutor /Appellant
Hj Mohamad Rozaiman bin Dato Hj Abdul Rahman (Messrs. Rozaiman Abdul Rahman Advocates and Solicitor) for Respondent

Case cited:

Public Prosecutor v Low Kok Heng [2007] 4 SLR 183,

Steven Chong, J.:

This is an appeal by the Public Prosecutor against a Magistrate’s order for the passport of the defendant to be released to him from the custody of the Anti-Corruption Bureau (“the ACB”).

Background

On 2 March 2016 in the Magistrate’s Court the defendant pleaded not guilty to the offence of assembling and servicing seven gaming machines contrary to section 4A (b) of the Common Gaming Houses Act.

Earlier on, the defendant’s passport was surrendered to the ACB to be detained for 6 months pursuant to a notice issued by a Magistrate under section 23C of the Prevention of Corruption Act (“the PCA”). Subsequently, the Chief Magistrate authorized two further detentions of the passport of 3 months each.

On 7 April 2016 counsel for the defendant made an application to the Magistrate presiding over the trial of the defendant on the gaming offence for the release of the passport on the ground that the last detention order was wrong as section 23C of the PCA only allows the

passport of a suspect under investigation for a corruption offence to be detained for a maximum period of 9 months.

The Magistrate agreed with the submission of counsel for the defendant and ordered the immediate release of the passport.

On 21 April 2016, the Chief Magistrate granted the application of the prosecution for a stay of the Magistrate's order for the release of the passport.

Jurisdiction

Counsel for the Public Prosecutor submits that the Magistrate erred in law in ordering the release of the passport. First, it is contended that the Magistrate cannot reverse or set aside the order of another Magistrate.

I agree. Section 291 of the Criminal Procedure Code states:

"No judgment or order of a Magistrate's Court shall be reversed or set aside unless it is shown to the satisfaction of the court above that such 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 circumstances of the case."

Clearly, only the High Court can reverse or set aside a Magistrate's order. The Magistrate in the present case did not have jurisdiction to order the release of the passport because the effect of her order was to set aside the Chief Magistrate's last order extending the detention of the passport for a further 3 months.

Interpretation of statutes

The second argument advanced by counsel for the Public Prosecutor is that the Magistrate wrongly construed the words "may be detained for a further 3 months" in section 23C (6) of the PCA to mean the court may, after a travel document has been detained for 6 months, authorize only one further detention of 3 months, viz, a maximum detention period of 9 months.

Counsel for the Public Prosecutor submits that section 23C (6) confers a discretion on the court to authorize multiple extensions of 3 months' detention if the court is satisfied the investigations cannot reasonably be completed within the time given.

I will reproduce the relevant provisions in the PCA which fall to be considered for ease of reference.

Section 23C (1) provides:

"A Magistrate may, on the application of the Director, Deputy Director or an Assistant Director by written notice require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Act to surrender to the Director any travel documents in his possession."

Section 23C (6) provides:

“A travel document which is surrendered to the Director under the section may be detained for 6 months from the date on which it was surrendered and may be detained for a further 3 months if a Magistrate, an application by the Director, Deputy Director or an Assistant Director, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such further detention.”

The approach to be adopted in the construction of statutes is provided by Section 7A(1) of the Interpretation and General Clauses Act which states:

“In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.”

A purposive interpretation simply requires one to approach the literal wording of a statutory provision bearing in mind the overarching and underlying purpose of that provision *as reflected by and in harmony with the express wording of the legislation*: *Public Prosecutor v Low Kok Heng* [2007] 4 SLR 183, per VK Rajah JA at 200.

The language used in section 23C (6) is clear, simple and unambiguous. The letter “a” immediately preceding the words “further 3 months” means one.

Plainly, on a contextual reading of the wording “a further 3 months”, it means that the Magistrate may authorize only one extension of 3 months for the detention of a travel document after the initial detention of 6 months, and not unlimited multiple detentions of 3 months.

This purposive interpretation of section 23C of the PCA promotes the underlying purpose of the provision “as reflected by and in harmony with the express wording of the legislation” which is to ensure that (1) a person suspected of an offence remains in Brunei Darussalam whilst the ACB is investigating; and (2) the ACB conduct investigations expeditiously so that the freedom of a suspect to travel is not unduly hampered.

To read the words “a further 3 months” to mean the court may authorize multiple detentions of 3 months would be inconsistent with the express wording of the provision and the rationale of promoting expediency in ACB investigations. There is nothing in the section which justifies construing the expression “a further 3 months” to mean multiple detentions of 3 months.

The court cannot rewrite the law. As was observed by VK Rajah JA in *Public Prosecutor v Low Kok Heng* (supra) at 201:

“Courts must be cautious to observe the limitations on their power and to confine themselves to administering the law. “Purposive construction often requires a

sophisticated analysis to determine the legislative purpose and a discriminating judgment as to where the boundary of construction ends and legislation begins” (per Mc Hugh JA in Kingston v Ke prose Pty Ltd (1987) 11 NSWLR 404 at 423). Section 9A of the Interpretation Act should not be viewed as a means or licence by which judges adopt new roles as legislators; the separation of powers between the judicial branch and the legislative branch of government must be respected and preserved.”

The Chief Magistrate erred in law in authorizing the last detention of 3 months.

Conclusion

For the reasons I have given I make the following orders:

1. The appeal is allowed and the Magistrate’s order of 7 April 2016 is quashed.
2. The passport of the defendant is to be returned to him forthwith.

DATO PADUKA STEVEN CHONG
Judge, High Court