Public Prosecutor

AND

Chan Kui Yu

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 49 of 2020)

Harnita Zelda Skinner, Judge
17th October 2020

Criminal law – guilty plea- sentence - section 468 of the Penal Code – section 471 of the Penal Code- forging documents - section 3(1)(b) Criminal Asset Recovery Order- money laundering -section 408 of the Penal Code – criminal breach of trust

DPP Dk Didi-Nuraza Pg Abdul Latiff for Public Prosecutor.
Defendant in person and unrepresented

Cases cited:
Public Prosecutor v Tan Eng Hoc [1969] MLJ 15
Public Prosecutor v Ronie bin Morni (HCCT No. 21 of 2010)
Public Prosecutor v Mohd Rosmadi and another (Criminal Trial No.13 of 2017)
Public Prosecutor v Amiruddin Haji Junaidi (Criminal Trial 11 of 2015)
Ruhaya Binti Mohd Razali v Public Prosecutor (CA No.9 of 2018)
Public Prosecutor v Pg Hussin bin Pg Sulaiman (CA No. 8 of 2017)
Public Prosecutor v Awg Ismail Bin Sahari @ Abdul Hamid (CA No.12 of 2006)
R v Barrick [1985] 81 Cr App r. 78

SENTENCE

Harnita Zelda, Judge:

Background

The defendant is facing 8 charges under section 468 of the Penal Code, 8 charges under section 468 read with section 471 of the Penal Code, 7 charges under section 3(1)(b) of the Criminal Asset Recovery Order, 2012 and 1 charge under section 408 of the Penal Code, Chapter 22.

He has pleaded guilty to all the charges.

Penalty

The penalty under section 468 of the Penal Code, Chapter 22 is an imprisonment for term which may extend to 10 years and shall also be liable to fine.

The penalty under section 471 read with section 468 of the Penal Code, Chapter 22 is an imprisonment for a term which may extend to 10 years and shall also be liable to fine.

The penalty under section 3(1)(b) of the Criminal Asset Recovery Order, 2012 is a fine not exceeding $500,000, imprisonment for a term not exceeding 10 years or both

The penalty under section 408 of the Penal Code, Chapter 22 is an imprisonment for a term of 10 years and fine.

Statement of facts

The defendant agreed to the statement of facts.

The defendant is 40 years Bruneian. He was previously employed as Head of Business Support at Bureau Veritas (M) Sdn Bhd in June 2014. His job in the company involved issuing invoices, amount to be paid and foresee that payments were made in a timely manner. On 15th April 2015, he was entrusted with the company's fund when he replaced one of the authorized signatory.

Section 468 and Section 468 read with section 471 of the Penal Code, Chapter 22

Between 28th August 2014 and 8th May 2015, the defendant has electronically forged two authorized signatories of the company, Chia Yuk Mei and Amirthasamy Mahalingam. The defendant issued the forged cheques by affixing the signatures of two authorized joint signatories on empty cheques that were previously scanned and created using a 'photoshop'. With the forged cheques, he penned down his name as payee and desired amount to be withdrawn. A total of 11 cheques amounting to B$72,050.00 have been forged.

Between 1st September 2014 and 8th May 2015, the defendant then produced the 11 cheques to the tellers at Hong Kong and Shanghai Banking Corporation Limited (HSBC). A total of B$72,050.00 were paid to the defendant.

Section 3(1)(b) of the Criminal Recovery Asset Order, 2012

Between 9th May 2015 and 20th May 2015, the defendant had remitted a total amount of B$42,493.89 to his wife and father-in-law in the Philippines via Western Union.

Section 408 of the Penal Code, Chapter 22

Between 20th May 2015 and 19th December 2015, the defendant misappropriated a total amount of B$616,251.26 from the company's Hong Kong and Shanghai Banking Corporation Limited (HSBC) account 00211678800 when he replaced one of the authorized signatory, Chia Yuk Mei. He issued a total of 85 cheques when he affixed his signature and forged the second authorized signature, Amirthasamy Mahalingam.

Mitigation factors

I give weight to the full co-operation provided by the defendant throughout the investigations. He is remorseful for his actions and pleaded guilty to all 24 charges saving the court and prosecution time and likely a lengthy trial. In mitigation, he had pleaded guilty to all the charges. A guilty plea is usually considered as a strong mitigating factor as it saves time. The defendant is a first offender.

Aggravating factors

Turning to the aggravating factors, the first aggravating factors is the significant degree of premeditation in this case. In the charges, the defendant devised a plan to dishonestly misappropriate money from the company by affixing the signatures of two authorized joint signatories on empty cheques that were previously scanned and created using a 'photoshop'. The careful planning on the defendant's part is therefore apparent. Further to avoid detection, the defendant would use false invoices to make transactions. He has taken an active and consistent steps to avoid detection for a prolonged period is a further aggravating factor.

Further aggravating factor, is the misappropriation of a huge sum of money. He dishonestly used the forged cheques and presented it to the bank tellers. A substantial amount of money were withdrawn from the company's account. This is a serious persistent breach of trust. He had abused the employer's trust as Head of Support where he was entrusted to issuing invoices, amount to be paid and foresee that payments were made in a timely manner. The company has a high degree of trust in him that sometime in April 2015, he replaced one of the authorized signatory and was able to withdraw a limit of $50,000.00.

The defendant was never in any financial disadvantages as he had a promising job with the company. In essence, the defendant was driven by personal greed and used his ill-gotten gains to transfer funds to the Philippines and spending on family holidays and gambling. In doing so, the defendant knowingly used moneys which were entrusted in him for his personal vices which had clouded his good judgment. His offences were deliberate, determined and not a momentary lapse of judgment.

<u>Sentence</u>

In determining the appropriate aggregate sentence, reference is made to the authorities below, which involved offenders who had committed financial crimes involving large sums of money.

In considering my sentence I refer to the case of Pu*blic Prosecutor v Tan Eng Hoc* [1969] MLJ 15, where the HC Judge states that "*in considering the appropriate sentence the Court should always be guided by certain principles, the first and foremost of which is the public interest. The criminal law is publicly enforced, not only with the object of punishing a crime but also preventing it. In fixing sentence, the nature, the circumstances and the degree of deliberation must be taken into account".*

I will first deal with section 468 of the Penal Code, Chapter 22 and section 471 of the Penal Code, Chapter 22.

In *Public Prosecutor v Ronie bin Morni* (HCCT No. 21 of 2010), the defendant was convicted after trial to six counts under the Penal Code including 5 charges of forging cheques with intent that they be used for cheating contrary to section 468 Penal Code. A sentence of 2 years' imprisonment on each count to be served concurrently.

In Public Prosecutor v Mohd Rosmadi and another (Criminal Trial No.13 of 2017) the defendant was convicted on 16 counts of forging signatures on cheques totaling B$42,000.00 under section 468 of the Penal Code and sentenced to 3 years 'imprisonment on each count.

In *Public Prosecutor v Amiruddin Haji Junaidi* (Criminal Trial 11 of 2015), the defendant was convicted for 2 charges under section 468 of the Penal Code and 2 charges under section 471 of the Penal Code totaling B$160,000.00. He was sentenced to 2 years' imprisonment in each charges to be served concurrently.

In Ruhaya *Binti Mohd Razali v Public Prosecutor* (Criminal Appeal No.9 of 2018), the defendant was convicted for forging 8 cheques totaling $37,779.00 under section 471 of the Penal Code read with section 468 of the same. The Court of Appeal viewed that a sentence of 2 years for each charge reduced to 3 months imprisonment for unjustified delay.

Having considered the penalty and aggravating factors of this case, there is a need to consider a custodial sentence so as to deter likeminded offenders who, by virtue of their elevated position of trust, are given access to large sums of money which may be misappropriated for their personal gain. Furthermore, the company has suffered permanent financial losses and there were no retribution.

In deciding for dishonestly forging under section 468 Penal Code for the amended 1st, 3rd, 5th, 7th, 9th, 11th, 13th, 15th charges, the court takes a starting point of 3 years' imprisonment. In view of guilty plea and no previous conviction reduced to 2 years' imprisonment for each charges which are to be served concurrently.

As for dishonestly use as genuine document under section 471 read with section 468 Penal Code for the amended 2nd, 4th, 6th 8th, 10th, 12th, 14th, 16th charges, the court takes a starting point of 3 years' imprisonment. In view of his guilty plea and no previous conviction, reduced to 2 years' imprisonment for each charges which are to be served concurrently.

I now deal with section 3(1)(b) of the Criminal Asset Recovery Order.

In *Public Prosecutor v Pg Hussin bin Pg Sulaiman* (Criminal Appeal No. 8 of 2017), the defendant pleaded guilty to 20 counts of money laundering contrary to section 3(1)(b) of the of the Criminal Asset Recovery Order. Over a period of 5 months, the defendant remitted a totaling amount of B$98,029.00 to the Philippines. The Hon. Judge held that a starting point of 3 years would be appropriate for each charges reduced to 2 years' imprisonment to be served concurrently.

Offences involving large sums of money have to be dealt with sternly so as to deter offender from committing the same offence. Taking into account of the penalty and aggravating factors, the court takes a starting point of 3 years' imprisonment. In view of guilty plea and no previous conviction, reduced to 2 years for each charges which are to be served concurrently.

I now consider the last charge, section 408 of the Penal Code, Chapter.

In *Public Prosecutor v Awg Ismail Bin Sahari @ Abdul Hamid* (Criminal Appeal No.12 of 2006), the defendant was charged under section 408 of the Penal Code for misappropriated a total amount of $326,890.00. The trial judge sentenced the defendant to 4 years' imprisonment and 6 months.

An offence of this kind is considered as a serious matter as it carries an imprisonment of up to 10 years' imprisonment and fine. In *R v Barrick* [1985] 81 Cr App r. 78 "*In general, a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small….*"

In this case the defendant made no restitution. A custodial sentence is necessary to reflect the gravity of the offence and also to deter potentials offenders that criminal breach of trust is a serious offence.

Taking into account of the penalty and aggravating factors, the court takes a starting point of 2 years and 6 months' imprisonment. In view of guilty plea and no previous conviction, the court sentence the defendant to an imprisonment of 1 year's imprisonment.

Total sentence

Having regard to the overall criminality involved and the totality principle, the amended 1st, 3rd, 5th, 7th, 9th, 11th, 13th, 15th charges, amended 2nd, 4th, 6th 8th, 10th, 12th, 14th, 16th charges, 17th to 23rd charges and 24th charge are to run consecutively with each other resulting in a total sentence of 7 years' imprisonment.

The sentence is to run from the date of his remand, 30th September 2020.

HARNITA ZELDA SKINNER
Judge, Intermediate Court