

Marites Dela Cruz Martinez v Public Prosecutor and another
[2011] SGHC 51

Case Number : Magistrate's Appeal No 367 of 2010 (MSC 1713-1714 of 2010)
Decision Date : 07 March 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Glenn Knight (Glenn Knight) for the appellant; Eugene Lee and Kevin Yong (Deputy Public Prosecutors) for the first respondent; Chen Chee Yen and Rubin Mulkam (Tan Rajah & Cheah) for the second respondent.
Parties : Marites Dela Cruz Martinez — Public Prosecutor and another

Criminal Procedure and Sentencing

7 March 2011

Choo Han Teck J:

1 The appellant was a Filipina who was described by the trial judge as a domestic worker for a Dr Ashok Segar ("Dr Segar") in Singapore. The Public Prosecutor is the first respondent in this appeal. The appellant had helped Dr Segar in treating the second respondent (it may be reasonable to assume that this referred to medical treatment) but denied that she was dispensing medication, and thus regarded the second respondent's complaints (to the Ministry of Manpower as well as the Singapore Medical Council) that the appellant was dispensing medicine as a "clinic assistant" to be defamatory. Consequently, the appellant felt that she had been defamed by the second respondent's complaints, and on 25 January 2010 she swore a Magistrate's Complaint against the second respondent. Summonses were issued charging the second respondent for criminal defamation under s 500 of the Penal Code (Cap 224, 1985 Rev Ed). The trial judge stated in her grounds of decision that when the parties appeared for a pre-trial conference ("PTC"), on 7 October 2010, the Public Prosecutor intervened. During the PTC, the Public Prosecutor entered a *nolle prosequi* and informed the court that it did not intend to pursue the charges against the second respondent. The judge below then discharged and acquitted the second respondent of the charges before her. In so doing, the judge relied on s 184(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") which provides:

"at any stage of any summary trial before judgment has been delivered, the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the defendant upon the charge and thereupon all proceedings on the charge against the defendant shall be stayed and he shall be discharged from and of the same."

Section 232 of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010") (which came into effect on 2 January 2011) reads as follows:

Public Prosecutor may decline further to prosecute at any stage of trial

232. — (1) At any stage of any proceedings in court —

(a) before an accused is acquitted of any charge; or

(b) where an accused has been convicted of any charge but before he is sentenced for that charge,

the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the accused upon the charge, and the proceedings on the charge against the accused must then be stayed and he shall be discharged from and of the same.

- (2) Except in cases referred to in section 147, a discharge under subsection (1) shall not amount to an acquittal unless the court so directs.
- (3) Where an accused had previously been granted a discharge not amounting to an acquittal by a Magistrate's Court or District Court in relation to an offence triable in the Subordinate Courts, any Magistrate's Court or District Court, as the case may be, may grant the accused a discharge amounting to an acquittal on the application of the Public Prosecutor.
- (4) Where an accused had previously been granted a discharge not amounting to an acquittal by a Magistrate's Court or District Court in relation to an offence triable in the High Court, any Magistrate's Court or District Court, as the case may be, may grant the accused a discharge on the application of the Public Prosecutor.
- (5) A discharge under subsection (4) shall have the effect of an acquittal.
- (6) An application under subsection (3) or (4) may be granted by the court notwithstanding the absence of the accused.

The relevant provisions in the CPC and the CPC 2010 were intended to add substance to the Constitutional right given to the Public Prosecutor under Article 35(8) to have full discretion to "institute, conduct or discontinue any proceedings for any offence".

2 The appellant appealed before me against the order of acquittal. Mr Glenn Knight appeared on behalf of the appellant in the appeal and submitted that the Public Prosecutor was wrong to have intervened. Counsel submitted that the exercise of the power to discontinue a prosecution is subject to the judicial review of the court to determine whether the Public Prosecutor acted constitutionally or, as in the present case, acted in good faith. Counsel also argued that the Public Prosecutor "acted for some other purpose", which was the same argument based on bad faith. What was the bad faith complained of in this case? Counsel submitted that the Public Prosecutor's failure to justify his decision to discontinue the prosecution on the basis that it did not serve the public interest to allow the case to continue constituted bad faith. The thrust of counsel's case on this point was that the case had gone on to the trial stage and it was thus far too late for the Public Prosecutor to say that there was no public interest. Counsel also argued that the second respondent swore a false declaration under the Oaths and Declarations Act (Cap 211, 2001 Rev Ed), and that was a serious matter which public interest required to be heard in court. Beyond this, Mr Knight did not elaborate on what constituted bad faith on the part of the Public Prosecutor in the present case. Even if there were any basis for alleging bad faith on the part of the Public Prosecutor this appeal must fail for the following reasons.

3 Procedurally, the judge below was right in saying that the appellant was wrong to file an appeal because the law provides that only the Public Prosecutor has a right to appeal against an order of acquittal. Section 376 of the CPC 2010 reads as follows:

Appeal against acquittal and sentence in private prosecutions

376. — (1) Where in any prosecution by a private person —

- (a) an accused has been acquitted by a court; or
- (b) an accused has been convicted and sentenced by a court,

there shall be no appeal against the acquittal or the sentence, as the case may be, by the private person.

- (2) The Public Prosecutor may appeal against any judgment, sentence or order of a court in a private prosecution or he may, by fiat, and on such terms and conditions as he thinks fit, permit a private person to pursue such appeal.

Section 245 of the CPC has the same effect in providing that “when an accused person has been acquitted by a District Court or a Magistrate’s Court there shall be no appeal except by the Public Prosecutor”. The CPC 2010 thus has not changed the law, but has made it clearer that in such situations, the private person has no right of appeal when an acquittal has been granted by the court. That being the case the grievances of the appellant regarding the alleged bad faith of the Public Prosecutor ought to have been brought under a separate originating action and not by way of an appeal in the present criminal case. This was a fundamental procedural error that could not be rectified without disregarding the clear and uncompromising words of the CPC and the Constitution.

4 The issues raised by the appellant before me were similar to those discussed and determined by Yong Pung How CJ in *Jasbir Kaur v Mukhtiar Singh* [1999] 1 SLR(R) 616 in which Yong CJ approved the views of Lai Kew Chai J in *Hawa bte Haji Mohamed Hussain v Miranda* [1988] 2 SLR(R) 110. In that case Lai J held at [9] that “as a matter of principle, it must be recognised as it was in *Ponniah v Lim* [1960] MLJ 152, that the interests of the State in a criminal matter which are entrusted to the Public Prosecutor are not always the same as those of a complainant who may allow his “private passions and prejudices to creep into the conduct’ of the criminal appeal”. If there is any grievance against the way the Public Prosecutor exercised his discretion, assuming that discretion is subject to challenge, the aggrieved party must initiate the action through a separate originating action to bring that issue before the court.

5 For the reasons above, the appeal was dismissed.

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