Malayan Law Journal Unreported/2005/Volume/LEE NGAN FATT AND ANOR v THAM HUA KONG AND OTHERS - [2005] MLJU 40 - 18 February 2005

[2005] MLJU 40

LEE NGAN FATT AND ANOR v THAM HUA KONG AND OTHERS

HIGH COURT (SHAH ALAM)
SURIYADI, J
GUAMAN SIVIL NO MT 1-22-22489-222004
18 February 2005

Jerald Gomez dan David Peter (Jerald Gomez & Associates), Jagdit Singh (Kamarudin & Partners), Zarina (mendengar sebagai peguam pemerhati Mewakili Majlis Peguam Malaysia)

JUDGMENT

On 8 December 2004 Mr. Jerald Gomez and Mr. David Peter had appeared before me to deal with enclosure 15, which was an ex-parte notice of motion for leave pursuant to Order 52 of the Rules of the High Court 1980, to enable them to take up criminal contempt proceedings against one Lee Ngan Fatt and Encik Zamzuri Mohd Husin. Mr. Lee Ngan Fatt is the first plaintiff in the current main suit whilst Encik Zamzuri Mohd Husin is one of Mr. Lee Ngan Fatt"s solicitors.

Counsel for the applicants, began by enlightening the court that the said Mr. Lee Ngan Fatt and a company registered as Ferricon Sdn Bhd had filed a suit against one Tham Hua Kong, one Choong Yit Lin and a company called Oxidant Technology Sdn Bhd. The suit (hereinafter referred to as the substantive suit) was registered on 17 June 2004 in the High Court at Shah Alam as Guaman No. 22-489-2004. The facts of that substantive suit are irrelevant for purposes of the application of enclosure 15. After the filing of that suit, the matter was postponed in the normal course of event, so as to enable parties to take the necessary steps, before pleadings were deemed closed and for eventual hearing.Unfortunately, some melodramatic events happened along the way enroute to the disposal of that substantive suit, which led to the regretful filing of the impugned controversial enclosure.

The supporting affidavits of enclosure 15 revealed that a police report had been lodged by one Lee Kok Chee, a business partner of the first plaintiff in respect of, amongst others, an insurance claim. The spillover of the lodgment of that report was the arrest of the abovementioned Tham Hua Kong i.e. the first defendant in the substantive case, and one Lee Chee Meng, who were thereupon detained at the Subang Jaya police station. Whether by design or coincidence, Mr. Lee Ngan Fatt and Encik Zamzuri Mohd Husin (hereinafter these two persons are referred as the respondents) appeared at that police station whilst the interrogation pursuant to the above police report was in session. Being concerned with the welfare of her husband i.e. Lee Chee Meng, Choong Yit Lin the second defendant in the main suit had presented herself also at that police station.

The ex-parte enclosure 15, heard by me in open court, had alleged, amongst others, that whilst in detention the first defendant and the said Lee Chee Meng were threatened with further detention unless they cooperated with the respondents. It was also asserted that there were dramatic banging of tables, throwing of files and utterances of threats by the first plaintiff and Encik Zamzuri Mohd Husin at that police station. The combined result of all the threats and supposed utterances, were the signing and execution of several documents by the defendants prepared by Encik Zamzuri, supposedly prejudicial to the interest of the former and connected to the substantive suit. All these unusual events would certainly constitute unacceptable interference with the due administration of justice, especially as they would undermine that suit, which was pending before me. Their acts if proven would certainly qualify as contempt of

court as they would tend to undermine the system of justice or inhibit litigants from availing themselves of that system (*The Sunday Times case (1974) AC 273; Smith v Lakeman (1856) 26 LJ Ch 305: Re Mutock (1864) 3 Sw. & Tr 599; Zainur bin Zakaria v Public Prosecutor (2001) 3 MLJ 604).*

Being satisfied that the procedures, issues of locus standi and all the requirements of the Rules of the High Court 1980 had been adhered to, let alone the grounds supplied to obtain that leave was more than ample I had accordingly granted the order.It must be emphasized that since any committal proceedings under Order 52 of the Rules of the High Court are quasi criminal in nature, the applicable procedural rules therefore must be strictly enforced by me (*Syarikat M Mohamed v Mahindapal Singh & Ors (1991) 2 MLJ 112).*

After the applicants had done the needful the court had fixed 5 January 2005 as the hearing date of the motion. As the leave which I had granted earlier had yet to lapse, I had sat as a judge of the High Court in open court, to hear it. For purposes of the contempt application I was armed with the laws and powers promulgated by Article 126 of the Federal Constitution and section 13 of the Courts of Judicature Act 1964 (*Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* (1986) 2 MLJ 193 *Chan Sang & Anor v Golden Century Development Sdn Bhd & Anor* (1995) 1 MLJ 92).

Come the hearing day, with all the interested parties being present, Mr. Jerald Gomez had started off by canvassing the preliminary statement concerning the possible charges and the like. I was not unmindful of the charge already prepared by the applicant defendants exhibited as "Appendix A at the rear of enclosure 15. It reads:

> "That you, on 8th November 2004, both individually and collectively, threatened, intimidated and forced the first and second defendants and Lee Chee Ming into giving up the defence of this suit and admitting liability herein, particulars of which are detailed in the Statement of Particulars which follow, thereby interfering with the due course of these Judicial proceedings and/or with the administration of justice herein and have thereby committed an act of criminal contempt.
>
> **STATEMENT OF PARTICULARS**
>
> 1.....;
>
> 2.....;....,
>
> 3 etc....."
>
> In the course of the proceedings, counsel for the applicant again stressed on the sanctity of the court being besmirched by the conduct of the first plaintiff and Encik Zamzuri Mohd Husin. Once the words were out, Mr. Jagjit Singh who acted for the two respondents, without being prompted by anyone with alacrity had uttered the following words:
>
> "Since the fear of the applicant is that the sanctity of the court is being breached, my clients are willing to apologize."

The next issue to be resolved was the charge, and thankfully the applicants" counsel had left that matter to the discretion of the court, despite a sample having been attached to the motion. Again without any hesitation Mr. Jagjit had signaled his clients to come forward, and they without reluctance and reservation had promptly apologized unreservedly. Counsel for the respondents had stood up again and had urged the court to accept the apology, issue some warning, and to leave the matter at that. For whatever reason counsel for the applicant had, he merely said "I leave it to the court." With everyone in such an amiable mood, let alone there being no inkling of disagreement by the applicant for the court to accept the apology, which invariably also witnessed the lack of interest on the part of the applicants to submit on the matter of the charge at this stage before the apologies were tendered, I had thereupon accepted the apology. Not wishing to prolong the matter, and to avoid the substantive suit taking a back seat vis-a-vis the charge prepared by the applicants, it thus was never read out. I warned the two respondents not to repeat their mistakes again and left the matter at that (*Jaginder Singh & Ors v Attorney General (1983) 1 MLJ 71/73).*

It is trite that any contempt committed by any contemptnor, must not be read as contempt directed at the judge personally, in this case myself, but at the court specifically. With that principle in mind, I had taken into consideration all the relevant factors, including the seriousness of the allegations, the attitude of opposing parties, remorsefulness of

the respondents, the desire of not taking matters too far to the extent of allowing matters to degenerate to an unsalvageable level and the like.

As in a criminal case when a person pleads guilty but before convicting him, the court still has a duty to go through the evidence and decide whether there is actually sufficient evidence to accept that plea, and accordingly convict him. Likewise here, despite having apologized profusely, I still was duty bound to sift through the evidence and conclude whether a case of beyond reasonable doubt had indeed been established in the process. Perusing the evidence I was certainly not absolutely convinced that every allegation, especially the dramatic ones were true, as the ring of truth seemed to be absent. How Encik Zamzuri Mohd Husln who practices in Kota Bharu, Kelantan could have such total mesmerizing command and control of the Subang Jaya police station, permitting him to rant and scream and behave rather bizarrely there was beyond me. The additional strong accusations that the respondents had with them all the pre-prepared documentation for execution by the applicants, as if they knew what was coming, surely was stretching the accusations too far! With these two improbable facts facing me I was not ready at that stage to declare that the applicants had proven the case beyond reasonable doubt (*Re Brarnblevale Ltd* (1970) Ch 128 *Zainur bin Zakaria v Public Prosecutor* (2001) 3MLJ604).

The redeeming feature of the respondents of not wanting to make matters worse, when they had unreservedly apologized to the court, unfortunately had denied the court of the opportunity to test the truth of the allegations in the "Statement of Particulars". Perhaps I had erred in being overly hasty in accepting the apologies of the respondents, and had been overly accommodating when I had misread the amiable conduct and posture of Mr. Jerald Gomez. Regardless of that, I need to state in no uncertain terms that I was more concerned with the disposal of the substantive case, rather than being side tracked by red herrings on that particular day. It is quite regretful that this appeal has propelled the side issue to the front, thus nudging the main case to the back seat, the very thing I wanted to avoid.

To wind up the matter at hand, I had issued the warnings to the respondents, primarily based on the apologies offered and not on any finding whether they had been found guilty of contempt of court. I had stopped short of proceeding with the matter to fruition as, aside from the reasons supplied above in the preceding paragraphs, this was also not the usual case of contemptnors not complying with a court order, or having made some rather scathing and contemptible remarks against the judiciary or judge in relation to a case, but something that was more personal in nature involving the litigants.

It was based on all the above reasons that I had accepted the apology, and had warned the respondents not to repeat their mistakes, and thereafter leaving the matter at that.