

Public Prosecutor v Ho Fong Peng  
[2015] SGDC 44

**Case Number** : MA No. 9027/2015/01, District Arrest Case No. 904109 of 2014 & ors  
**Decision Date** : 26 February 2015  
**Tribunal/Court** : District Court  
**Coram** : Ng Peng Hong  
**Counsel Name(s)** : Deputy Public Prosecutor Ms Cheryl Lim for the prosecution; Defence Counsel Ms Andrea Gan and Mr Derek Kang for the accused person  
**Parties** : Public Prosecutor — Ho Fong Peng

26 February 2015

**District Judge Ng Peng Hong:**

On the application of the Accused and not objected by the Prosecution, the sentencing of the Accused was adjourned to this day to enable the Accused to spend time with her family during the festive season.

2 The Accused pleaded guilty to and was convicted on the following charges:

DAC 904109/14

*You... are charged that you, between January 2005 and December 2005, at Way Company Pte Ltd located at No 4 Joo Koon Road, Singapore, being employed as a servant, to wit, an accounts clerk, of the aforesaid company, and in such capacity being entrusted with cash proceeds and petty cash amounting to S\$208,092.05, did dishonestly misappropriate the said sum of money, and you have thereby committed an offence of criminal breach of trust by a servant punishable under s 408 of the Penal Code (Cap 224, 1985 Rev Ed).*

DAC 904110/14

*You ... are charged that you, between January 2006 and December 2006, at Way Company Pte Ltd located at No 4 Joo Koon Road, Singapore, being employed as a servant, to wit, an accounts clerk, of the aforesaid company, and in such capacity being entrusted with cash proceeds and petty cash amounting to S\$253,432.29, did dishonestly misappropriate the said sum of money, and you have thereby committed an offence of criminal breach of trust by a servant punishable under s 408 of the Penal Code (Cap 224, 1985 Rev Ed).*

DAC 904111/14

*You ... are charged that you, between January 2007 and December 2007, at Way Company Pte Ltd located at No 4 Joo Koon Road, Singapore, being employed as a servant, to wit, an accounts clerk, of the aforesaid company, and in such capacity being entrusted with cash proceeds and petty cash amounting to S\$200,986.02, did dishonestly misappropriate*

*the said sum of money, and you have thereby committed an offence of criminal breach of trust by a servant punishable under s 408 of the Penal Code (Cap 224, 1985 Rev Ed).*

DAC 904112/14

*You ... are charged that you, between February 2008 and December 2008, at Way Company Pte Ltd located at No 4 Joo Koon Road, Singapore, being employed as a servant, to wit, an accounts clerk, of the aforesaid company, and in such capacity being entrusted with cash proceeds and petty cash amounting to S\$115,552.95, did dishonestly misappropriate the said sum of money, and you have thereby committed an offence of criminal breach of trust by a servant punishable under s 408 of the Penal Code (Cap 224, 2008 Rev Ed).*

- 3 The Accused also admitted and consented to 7 charges to be taken into account for the purposes of sentencing.

### **Statement Of Facts**

- 4 The Accused admitted to the following Statement of Facts:

*"1. The accused is one Ho Feng Peng ("the Accused"), Female/42 years old, bearing NRIC No Sxxx4807E. During the material time of the offences, she was employed as an accounts clerk by Way Company PL ("the Company") located at No 4 Joo Koon Road, Singapore.*

*2. The complainant is one Ang Kong Meng, Male/63 years old ("the Complainant"). He is the chairman of the Company.*

*3. On 19 May 2010 at about 1.56 pm, the Complainant lodged a police report at Nanyang Neighbourhood Police Centre stating that the Accused had fraudulently obtained company funds of \$1,205,850.04. The Accused had, inter alia, submitted fictitious petty cash claims and misappropriated monies which were entrusted to her to deposit into the bank.*

*4. Investigations revealed that in April 2010, the Complainant had instructed the Company's business development manager to conduct a check on the monthly car park coupon reimbursements to the Company's sales staff which were handled by the Accused. The check revealed that the Accused had made fictitious car park reimbursement claims. This led the Complainant to initiate checks on other petty cash reimbursement claims. These checks revealed that the Accused had been submitting fictitious reimbursement claims and taking money from the Company's petty cash float.*

*5. Investigations revealed that the Accused had been entrusted with the Company's petty cash float in the course of her employment with the Company. The Accused would be issued cheques of about \$3,000 about 3 to 5 times a month for the purpose of meeting petty cash claims. She would cash in these cheques and the money was meant to be applied towards meeting the staff's legitimate claims for petty cash and other expenses. However, the Accused would put up fictitious petty cash claim vouchers and would misappropriate corresponding amounts from the petty cash float which she had been entrusted with. Sometimes, she would also forge the Complainant's signature in approving these fictitious claim vouchers. Occasionally, she would also amend the figures on claim vouchers which had already been approved by the Complainant.*

*6. Investigations further revealed that the Accused had misappropriated certain cash proceeds of the Company which were entrusted to her. Whenever the sales receptionist employed by the Company was not around, the Accused would assist in collecting the Company's sales proceeds which were handed over by the Company's salesperson. However, upon collecting the cash proceeds, the Accused would not hand over the sums to the Company's sales manager to deposit into the Company's account. Instead, the Accused dishonestly misappropriated the said sums.*

*7. When confronted, the Accused admitted to dishonestly misappropriating company funds which had been entrusted to her. The Accused's employment was terminated by the Company on 18 May 2010.*

**Facts pertaining to the 6th charge (DAC 904109/2014)**

8. Investigations revealed that between January 2005 and December 2005, the Accused, being entrusted with cash proceeds and petty cash amounting to S\$208,092.05 in her capacity as an employee of the Company, dishonestly misappropriated the said sum.

**Facts pertaining to the 7th charge (DAC 904110/2014)**

9. Investigations further revealed that between January 2006 and December 2006, the Accused, being entrusted with cash proceeds and petty cash amounting to \$253,432.29 in her capacity as an employee of the Company, dishonestly misappropriated the said sum.

**Facts pertaining to the 8th charge (DAC 904111/2014)**

10. Investigations further revealed that between January 2007 and December 2007, the Accused, being entrusted with cash proceeds and petty cash amounting to \$200,986.02 in her capacity as an employee of the Company, dishonestly misappropriated the said sum.

**Facts pertaining to the 9th charge (DAC 904112/2014)**

11. Investigations further revealed that between February 2008 and December 2008, the Accused, being entrusted with cash proceeds and petty cash amounting to \$115,552.95 in her capacity as an employee of the Company, dishonestly misappropriated the said sum.

12. Based on the foregoing, the Accused has committed four counts of criminal breach of trust by a servant punishable under Section 408 of the Penal Code (Cap 224). The Accused admits to the above offences and stands charged accordingly. To date, the Accused has made partial restitution of \$1,367.50 to the Company."

**Sentencing Considerations**

5 Given the nature and gravity of the offences committed, the main sentencing consideration is without doubt one of deterrence. With this principle in mind, I will proceed to consider the mitigating and aggravating factors in order to arrive at a just sentence.

**Submissions by Defence**

6 The Defence tendered 3 sets of written submissions. One particular mitigating issue was challenged by the Prosecution. Consequently, a Newton hearing was held to determine whether the Accused has given about \$0.5 m to one Sim Kok Chun (SKC) under the circumstances alleged by her. She knew SKC when she was 14 years of age. The Accused testified that her relationship with SKC was an erratic one in that it went on and off. At times the said SKC was abusive. The Accused testified that although she had suffered bruises inflicted by SKC she did not inform anyone or report to the police about it. Neither did she seek medical help.

7 The said SKC ultimately married another woman who bore him 2 children and the Accused ended her relationship. However not soon after it was ended their relationship was revived in 1998 and that was when the said SKC started to tax on her financially.

8 The Accused alleged that in the beginning SKC would ask for \$1000-\$2000 per month. Later, it was \$5000 for his divorce settlement. Next, she claimed she was conned into giving \$10,000 purportedly for his daughter's medical operation. It was around this time (the year 2000) that the Accused started to take monies from the company and when SKC continued to ask for large sums of money. SKC would also threaten her into giving him money. Ultimately, the Accused claimed that about 50% of the money misappropriated went to SKC.

9 The Accused did not call any other witness to support her allegations. The Prosecution did not call any rebuttal witness.

10 After considering the evidence and the submissions by the parties, I agreed with the Prosecution that the Defence has failed to discharge their burden of proof. I disbelieved the allegation that the Accused gave about 50% of the misappropriated sums of money to SKC due to his coercion, lies and emotional grip over her. I found that there was no corroborative evidence to support her assertion. There was also no contemporaneous evidence adduced. I also found her evidence in court to be inconsistent with her police statements recorded as early as 2010 (exhibits PS3 and PS4). In PS3, the Accused said that she used the misappropriated money to help SKC and his 2 daughters. In fact she gave him the money as "I pitied his two kids." In exhibit PS4, she said the money was "given to Sim Kok Chun as a donation." Given the inconsistencies in her evidence and the lack of corroboration, I did not believe that the Accused had given about 50% of the misappropriated money to SKC in the circumstances contended by her. I did not find her to be a witness of credit.

11 Next, Counsel urged the court to consider the fact that the Accused has no criminal antecedent before 2000. But this has to be considered in the light of the series of offences she had committed repeatedly from 2000 to 2010, a period of about 11 years. Moreover, in respect of offenders with multiple offences, the Courts have been reluctant to regard such persons as first time offenders. See *Lim Pei Ni Charissa v PP* [2006] 4 SLR 31 at [18].

12 Counsel also highlighted the hardship which the Accused's family will suffer if a long jail term is to be imposed. I noted the Accused has a handicapped mother aged 65 (a widow) and 2 young nephew and niece whose parents are divorced. I am also aware that generally hardship to the family as a result of the Accused's imprisonment has little or no weight in mitigation unless the circumstances are exceptional. See *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305 at [11]. With due respect, I failed to note any exceptional circumstances in this case to warrant a favourable consideration as contended by counsel. I am of the view that the circumstances were no worse off than the following cases. In *Balasundaram s/o Suppiah v PP* [2003] SGHC 182 at [26], the appellant, the sole breadwinner who needed to take care of his ill and aged parents was jailed 36 months for criminal breach of trust. In *PP v Mahat bin Salim* [2005] 3 SLR 104 at [35] and [36] the offender who was the only person taking care of his father, a stroke victim, was sentenced to undergo 5 years of corrective training. In these 2 cases, the sentences passed ranged from 3 years of imprisonment to 5 years of corrective training.

13 Another mitigation raised by counsel was that the Accused paid off large sums of money to settle the debts incurred by her brother due to loansharks who were harassing the family. It was submitted that the entire family was very traumatized by the repeated acts of harassment despite police reports lodged. I agree due weight must be given to this factor.

14 It was also submitted that the offences were committed out of financial need to support the family and to pay off the medical expenses incurred by the family and herself. However, as highlighted by the Prosecution, financial hardship has not much mitigating value unless in exceptional circumstances and where the offences committed were not serious. See *Lim Kim Seng v PP* [1992] 1 SLR 743 at [14]. I found no exceptional circumstances in this case.

### **Judicial Mercy**

15 Counsel submitted that no more than 2 sentences be ordered to run consecutively so as not to offend the totality principle and the one transaction rule. The total sentence submitted by counsel was 26-30 months subject to a further reduction in view of the fact that the Accused is suffering from HIV. In this context, counsel invited the court to exercise judicial mercy in accordance with the framework provided by the High Court in *Chng Yew Chin v PP* [2006] 4 SLR(R) 124 at [59] and [60]. The High Court has highlighted that judicial mercy is to be exercised only in exceptional cases and "with the utmost care and circumspection." The Court also observed that the medical condition of an offender is not a mitigating factor. "In the final analysis, the sentence meted out to a seriously ill offender must not only embrace all relevant considerations, it must also strike the right balance between the administering of an appropriate sentence on the one hand and allowing a very seriously ill person to live out his remaining days with dignity and in peace on the other. The exercise of mercy calls for sound but finely-tuned discretion." See *Chng Yew Chin v PP*, *supra*, at [61].

16 I will now examine whether there was evidence to show that the Accused was suffering from medical problems to a degree that compelled the exercise of judicial mercy. The Prosecution submitted that based on the medical reports tendered by the Defence, the following facts may be discerned:

"(a) The Accused was diagnosed with HIV in July 2004

(b) She was lost to follow up from mid-2010 to December 2012.

(c) She developed tuberculosis in 2012 that was an AIDS-defining condition.

(d) She has since completed tuberculosis treatment and is back on anti-HIV medication. Her HIV viral load was <40cos/ml (good virus suppression) and CD4 182 cells/ul in November 2013. (No opinion was proffered as to what this meant for her future prognosis)

(e) She is "on the road to recovery after re-initiating anti-HIV treatment", has "partially regained her immune function" and will require strict adherence to anti-HIV medication."

17 I have also considered the relevant written submissions by the Prosecution which state:

(a) "It is not suggested that the Accused is currently suffering/in pain or will suffer in prison. In fact, there is no indication in the medical reports that she is currently exhibiting any noticeable physical symptoms at all.

(b) It is not suggested and there is no indication that her treatment and recovery will be compromised by her being incarcerated. In this regard, prisons' position has always been that the prison has the medical facilities and capabilities to manage the Accused's condition should she be incarcerated. The Prosecution maintains its submission that it is not for this Court to second-guess the way that prisons deals with particular medical conditions, still less is it an issue to be taken into consideration at the sentencing stage, especially where there is no indication that less than satisfactory care will be provided. The treatment provided by prisons to its inmates is strictly a matter of (a) policy and (b) medical judgment on the part of the attending physician. Notwithstanding this, it is to be noted that prisons has replied to the Defence counsel's queries stating that they are able to provide the medications which the Accused is currently on.

(c) Finally, it is not suggested that the accused's illness is "terminal" and that her prognosis/life expectancy is poor. On the contrary, the Accused's condition appears to be stable and it has been stated that she is "on the road to recovery."

18 On the basis of the medical evidence available, it would appear that the Accused's medical condition is currently stable. But this state of affairs is premised upon the availability of the anti-HIV medication and the Accused adhering strictly to her anti-HIV medication indefinitely. See Prof Leo's Medical Reports dated 2 June 2014 and 24 July 2014 at Annex D and F of the Mitigation Plea dated 1st Aug 2014. In the event that the Accused can no longer carry on her existing anti-HIV medication, "it is likely that her health will deteriorate as what she had experienced before". See Prof Leo's Medical Report dated 27 October 2014 at Annex D of the Mitigation Plea dated 6 Feb 2015.

19 The Singapore Prison Service has confirmed that it can provide but will not bear the costs of the Accused's anti-HIV medication. The Prosecution had also not challenged the impecuniosity of the Accused or that she has to depend on Medifund assistance to buy her medication. I therefore concluded that she will not be able to afford her anti-HIV medication while imprisoned.

20 Against this backdrop and the views given by Prof Leo in his medical report dated 27 October 2014, *supra*, that the Accused's health will deteriorate without the existing anti-HIV medication, I am of the view that an appropriate discount in the sentence should be given but not to the extent of a nominal custodial sentence. See also *D'Rozario Pancratius Joseph v Public Prosecutor* [2015] SGHC 46 at [28] where the High Court substituted the 4-months imprisonment term with a 9-weeks jail term as any imprisonment term of some length was likely to cause the appellant considerable hardship due to his advanced age (77 years old and highly unlikely that he will reoffend) and numerous chronic medical complications. In our case, I am aware that the Accused is about 42 years of age. But she does have a serious medical condition which requires constant medical attention to prevent any probable deterioration in her health. See also *PP v Sim Choon Wee Kenny* [2013] SGDC 82.

21 In considering the sentence to be passed, I also noted the case of *PP v Lim Kim Hock* [1998] SGHC 274 where the High Court took into account favourably the fact that the offender was found to be HIV positive but did not have full-blown AIDS yet. The offender was sentenced to a total sentence of 22 years and 15 strokes of the cane, the minimum allowable under the law.

## **Aggravating factors**

22 I agree with the Prosecution that there were a number of aggravating factors. One of them was that the offences involved a fair degree of planning and pre-meditation. The Accused had admitted that the offences were committed by putting up fictitious cash claim vouchers and forged signatures to cover up the misappropriations. The offences were not committed on the spur of the moment. It was compounded by the fact that the offences were committed over a period of about 11 years.

23 Some offences were committed well before the Accused had been diagnosed with AIDS/HIV (in the year 2003, the year preceding her diagnosis, she misappropriated over \$80,000).

24 The next aggravating factor I considered was that the Accused had abused the trust her boss had placed on her. She was also solely in charge of the accounts.

25 Another aggravating feature in this case was the significant amount that had been misappropriated. The Accused pleaded guilty to 4 charges and admitted to 7 other charges which she consented to be taken into consideration for sentencing purposes. With all the charges considered, the total amount misappropriated was over \$1.2million and only a paltry sum of about \$1400 was restituted.

26 In considering the sentence to be passed I also took into account the gravity of the offences committed. The punishment prescribed for the offences committed is a mandatory imprisonment term up to 7 years and also liable to a fine. As for DAC 904112/2014, the punishment prescribed is a mandatory imprisonment term up to 15 years and also liable to a fine.

## **Conclusion**

27 The Defence submitted for a global sentence of 26-30 months but on account of judicial mercy or the medical condition of the Accused, it should be further reduced to 13-15 months. The Defence did not submit for a nominal custodial sentence.

28 Having considered all the relevant circumstances and the sentencing precedents cited by the parties, I do not accept the Prosecution's submission that a sentence of 28-30 months' jail term per charge is appropriate. With due respect, I am bound to apply the decision of the High Court in *PP v Lim Kim Hock, supra*, which illustrates the exercise of mercy for a HIV offender. In any event, even if judicial mercy is not warranted, in light of what I said at [20] above, I think some adjustment to the sentences should be made on account of the fact that the accused person with her medical condition may not be able to receive adequate care in prison and resulting in the probable aggravation of her health. See *Chng Yew Chin v Public Prosecutor [2006] 4 SLR(R) 124 at [60]*. In the circumstances, I sentence the Accused as follows:

DAC 904109/14 - 15 months' imprisonment

DAC 904110/14 - 15 months' imprisonment

DAC 904111/14 - 15 months' imprisonment

DAC 904112/14 - 15 months' imprisonment

29 In my view, the sentences commensurate with the gravity of the offences committed and proportionate to the culpability of the Accused. The sentences also factored into account the relevant mitigating circumstances including the plea of guilt. Having imposed the individual sentences, I order that the sentences in DAC 904109-10/14 are to run consecutively. In coming to this global sentence of 30 months, I also took into account the totality principle.

30 Finally, I am grateful to DPP Ms Cheryl Lim and counsel Mr Derek Kang and Ms Andrea Gan for their assistance in this case.

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