

HONG KONG / JUDGMENT

HKSAR v. DAVINDER SINGH

[2018] HKCFI 1668**COURT**

Court of First Instance

DECIDED

21 June 2018

CASE / FILE NUMBER

HCMA167/2018

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bjbj HCMA 167/2018

[2018] HKCFI 1668 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 167 OF 2018 (ON APPEAL FROM STCC 4649 OF 2017)

BETWEEN HKSAR Respondent and Davinder Singh Appellant

Before: Deputy High Court Judge V Bokhary in Court Date of Hearing: 21 June 2018 Date of Delivery of Judgment: 21 June 2018

JUDGMENT

The Appellant was convicted after trial in the Magistrates Court on a charge of taking employment while being a person in respect of whom a removal order is in force, contrary to section 38AA(1)(b) and (2) of the Immigration Ordinance (Cap 115). He appeals against conviction. The prosecution's case was that the Appellant took up employment as an odd job worker in Mongkok. It was formally admitted at the trial that there was a removal order in respect of the Appellant in force on 29 November 2017. An immigration assistant, who was PW1, gave evidence that on that day in Mongkok he saw the Appellant pushing a trolley loaded with canvas. The Magistrate accepted PW1's evidence that he saw that. PW1 also said that the Appellant had admitted under caution to being employed to set up a stall. But there were language difficulties, and the Magistrate attached no weight to the admission of which PW1 gave evidence. The Magistrate also attached no weight to PW1's evidence that the Appellant had been wearing gloves. The Appellant did not give or call evidence. The Magistrate referred to the criminal inference to draw from that in the circumstances was, the Magistrate concluded, that the Appellant had taken up employment. As to the circumstances, the Magistrate said this:

22. I note that the material place is where the Ladies Market is situated, where stalls were set up by putting up the canvas. The observation was made at around 10 am, exactly the time when stalls are getting ready to operate. It is indeed the observation of PW1 that other stalls were getting ready and being set up. The canvas loaded on the trolley was the kind of canvas which were used in the stalls.
23. The appellant, being a recognizance holder, would have no business whatsoever with the canvas. In the absence of other evidence, I draw as the only inference that the appellant must be employed as an odd job worker to set up the stall. The Appellant's grounds of appeal attack the evidence that he had made an admission and that he was wearing gloves. His grounds of appeal also assert his innocence. The attack on that evidence Appellant was denying guilt and that the prosecution bore the burden of proving his guilt beyond reasonable doubt. There is no proper basis for disturbing this conviction. The appeal is therefore dismissed. (V Bokhary) Deputy High Court Judge Mr Prakash L Daryanani, SPP of the Department of Justice, for the Respondent The Appellant appeared in person - PAGE * MERGEFORMAT - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C h;F+ h{` ) gdVu gdVu gdI& h{`) hCA\$ h@# = gd?i h~@0 gd?i D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V gd?i & # \$ & # \$ & # \$ [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q- jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /EE} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml 4m1` s\ 9z8 `f&8 pyA) IIQ> jp#jWZCy7 #hWIP w-8:~ 2%wb~ drs/downrev.xmlL 6)i6E @\*\YS \DQ, [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml gJs)rL. Vv5S TA E 2ZCt [ml84; uA~Z LX7Ge \ \$K/* #HXI drs/downrev.xmlL 6)i6E @*\YS \DQ, [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml #&\*Ys | \_W- kEG@ JVLk8- TA E A7rB P\*8| I"/ uA~Z LX7Ge drs/downrev.xmlL 6)i6E @\*\YS \DQ, [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml gJs)rL. Vv5S TA E I"/ I[Zv ^P"a drs/downrev.xmlL 6)i6E @*\YS \DQ, [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK &tBL ;R,U VZ" E*p# ;R,U _V5i ZTgG High Court Normal.dotm Windows User Microsoft Office Word Judiciary Hong Kong Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/

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