

HONG KONG / JUDGMENT

HKSAR v. MAZHAR UL HAQ

COURT

Court of First Instance

DECIDED

12 February 2016

CASE / FILE NUMBER

HCMA567/2015

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMA 567/2015 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 567 OF 2015 (ON APPEAL FROM STCC 2562 OF 2015)

BETWEEN HKSAR Respondent and MAZHAR UL HAQ Appellant

Before : Deputy High Court Judge Stanley Chan in Court Date of Hearing : 7 January 2016 Date of Judgment : 12 February 2016

J U D G M E N T

The Appellant, who was D3 in the charge sheet, pleaded guilty to one count of taking employment while being a person in respect of whom a deportation order is in force before Deputy Magistrate Ho Chun-yiu on 13 August 2015. The Appellant was sentenced to 15 months imprisonment. The Appellant was represented by a lawyer under the Duty Lawyer Service at the Magistracy. A review hearing was conducted on 25 August 2015 but the term of imprisonment was maintained. The Appellant now appealed against his sentence, and the issue was confined to the Appellant's period of detention under the administrative detention. The Appellant had been detained for 165 days under the administrative detention, but the Court was told that 41 days had been deducted already. THE FACTS OF THE CASE The Magistrate has summarized the facts as follows On 10 August 2015, D3 together with 2 other co-defendants were intercepted and arrested by police officers. They were all holders of recognizance forms. D3 was observed to have conveyed metal scraps at a closed-down fast-food restaurant under dismantling. Upon enquiry, D3 admitted to be introduced by an unknown man to work there. GROUNDS OF APPEAL AGAINST SENTENCE In his handwritten submission which was undated but received on 5 November 2015, the Appellant said, my appeal is not against the sentence because the

punishment is just. I sat in the Immigration Centre CIC for 165 days. The Appellant pleaded to have this period of detention be counted as part of the imprisonment term. The Appellant also filed Form 102 on 31 August 2015 with a letter of 2 pages. The Appellant said his wife, who was a domestic worker in Hong Kong, was pregnant for 3 months. He wanted to be released earlier so that he could take care of his wife.

DISCUSSION The Magistrate mentioned the Appellant's mitigation as follows: D3 is 32 years of age and a national of Pakistan. He sneaked into Hong Kong and was first arrested by the Police on 7 July 2009, and was released on recognizance on 16 July 2009 after being detained for 10 days. In 2010, he was again arrested and, after legal proceedings, was referred to the Immigration Department. He was once more released on recognizance on 27 October 2010 after being detained for 31 days. In 2012, D3 was arrested for the third time, and was subsequently referred to the Immigration Department. A deportation order for life was then issued against him on 5 October 2012. On 8 February 2013, he was yet again released on recognizance after being detained for 124 days, and is now a torture claimant in Hong Kong. He has 2 previous convictions, 1 of which is similar to the present offence. In relation to the issue of administrative detention, the Magistrate made it clear that, in respect of the administrative detention prior to the present offence, D3 would not be entitled to any statutory reduction under section 67A of the Criminal Procedure Ordinance, Cap 221, as they were not spent by D3 immediately prior to his first appearance in court in connection with the offence charged, and were not related to the present offence. And the Magistrate ruled that, on the facts as admitted by D3, the administrative detention had nothing to do with the present offence which concerned his taking employment while a deportation order was in force. The factual background of his administrative and the facts of the present offence were entirely unrelated. The period spent in administrative detention was not connected to the present offence. Moreover, his detention took place long before the present case. Under the circumstances, I refused to exercise my discretion to deduct the time spent by D3 in administrative detention. I totally agree with the remarks made by the Magistrate. It is abundantly clear that the Appellant was and is manipulating and even abusing the system. The Appellant had been detained three times under administrative detention and was also granted recognizance. When the deportation order was issued on 5 October 2012, the Appellant then filed his torture claim and is now a so-called torture claimant in Hong Kong, even though he had sneaked into Hong Kong sometime before July 2009. It is apparent that the current system is encouraging more people to register themselves as torture claimants. The phenomenon and the trends speak volume as to the urgent need to tackle the issues by the executive government. The Appellant had applied for a review against the sentence imposed on him on 25 August 2015 and was rightly refused by the Magistrate. He now took a further step to appeal against his sentence. The Appellant's appeal is totally unmeritorious.

CONCLUSION

For the reasons above said, I dismiss the appeal against sentence. I have considered the issue of loss of time as I have ruled the Appellant's grounds of appeal are unmeritorious. That said, after taking all relevant considerations into account, I would not make such an order. (Stanley Chan) Deputy High Court Judge Mr Prakash L DARYANANI, Senior Public Prosecutor of the Department

Source & reproduction note

ORIGINAL SOURCE	https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=102644
CASE PAGE	https://chat.esheria.ai/case-law/hong-kong/hksar-v-mazhar-ul-haq-2016

Research copy · Verify against the source