

HONG KONG / JUDGMENT

HKSAR v. SEERA SINGH

COURT

Court of First Instance

DECIDED

20 March 2007

CASE / FILE NUMBER

HCMA154/2007

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bjbj HCMA 154/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. HCMA 154 OF 2007 (ON APPEAL FROM ESCC 4008 of 2006)

BETWEEN HKSAR Respondent and SEERA SINGH 2nd Appellant

Before: Hon Beeson J in Court Date of Hearing: 20 March 2007 Date of Judgment: 20 March 2007

J U D G M E N T

The Appellant was convicted after trial in the Magistracy of Possession of an Identity Card Relating to Another Person, which was contrary to section 7A(1a) Registration of Persons Ordinance, Cap. 177 and was Charge 4, on the charge sheet. He pleaded guilty to Charge 5 which was Knowingly Misleading a Police Officer, contrary to section 64(b) of the Registration of Persons Ordinance, Cap. 232 and also pleaded guilty to Charge 6, being Breach of Condition of Stay, contrary to section 41 of the Immigration Ordinance, Cap. 115. On Charge 4 he was sentenced to 18 months imprisonment. On Charge 5 the Magistrate passed a sentence of 2 months and ordered that 1 month run consecutively to the sentence on Charge 4. The Appellant was sentenced to 2 months imprisonment on Charge 6, and 2 months of that sentence was ordered to run consecutively to the sentence on Charge 5. The total sentence was 21 months imprisonment. It is against those sentences that the Appellant appealed on the ground that they were too severe. The facts showed that the Appellant and another man were stopped and searched by police officers. They misled police into believing that they were the persons named in a photocopy of a document entitled Extension of Stay and they also misled police into believing that they had relevant identity cards on them. In the course of the police investigation, it was found that the Appellant had overstayed his visa by 4 months. He was also in possession of

a Construction Industry Labour Safety Training Certificate which bore another man's name and photograph and from which the Magistrate drew the only reasonable inference, which was that his overstaying was linked with the intention of obtaining work illegally. The Magistrate was told in mitigation that the Appellant was 23, single, and worked at his family farm in India. His mother, allegedly, was ill and he wished to return home as soon as possible. There was no other mitigation advanced. The Magistrate adopted an 18 months starting point for the charge of Possession of Identity Card Relating to another Person and in the absence of a guilty plea, or other significant mitigation, imposed a sentence of 18 months imprisonment. This was on the basis of HKSAR v Li Chang-li [2005]1 HKLRD 864. On Charge 5 the Magistrate adopted a starting point of 3 months, which he reduced to 2 months for the plea of guilty and, bearing the totality principle in mind, made 1 month consecutive to the sentence on Charge 4. On Charge 6 he took a starting point of 4 months and reduced it for the plea of guilty to 2.5 months. He considered totality and ordered 2 months to run consecutively to the sentence on Charge 5. The Magistrate noted the authority of Tiongson Patricia Manalad [2002]1 HKLRD 681 relating to the question of overstaying with the intention of working illegally in Hong Kong. Today the Appellant advised the court that it was his first time to come to Hong Kong and he was not aware of the law. He was a poor man from India, where he had aged parents and was responsible for the marriages of his 3 sisters. He claimed he had been cheated by an agent who told him that he could obtain a work permit in Hong Kong, and asked that his sentence be reduced so he could look after his family. There is nothing put before me today which indicates that the Magistrate was incorrect in imposing the sentences that he did; they are neither manifestly excessive nor wrong in principle. There is no significant mitigation apart from the plea of guilty for which the Magistrate has already given the appropriate discount. Accordingly this appeal against sentence is dismissed. (C M Beeson) Judge of the Court of First Instance Ms Mickey Fung, GC of Department of Justice, for the Respondent The 2nd Appellant, acting in person PAGE - 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 1udk 1udk i\$&H HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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