

HONG KONG / JUDGMENT

HKSAR v. SINGH JAGRAJ

COURT

Court of First Instance

DECIDED

30 May 2007

CASE / FILE NUMBER

HCMA386/2007

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bjbj HCMA386/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 386 OF 2007 (ON APPEAL FROM TMCC 750 OF 2007)

BETWEEN HKSAR Respondent and SINGH JAGRAJ Appellant

Before : Deputy High Court Judge Longley in Court Date of Hearing : 30 May 2007 Date of Judgment : 30 May 2007

J U D G M E N T

AUTONUMOUT The appellant appeals against sentences totalling 15 months imprisonment imposed upon him by Mr Kwok at Tuen Mun Magistrates Court on 9 March 2007, following his plea of guilty to one charge of possession of an identity card relating to another person, contrary to section 7A(1A) of the Registration of Persons Ordinance, Cap. 177 and one charge of breach of his conditions of stay, contrary to section 41 of the Immigration Ordinance, Cap. 115.

AUTONUMOUT On the charge of possession of an identity card relating to another person, he was sentenced to 15 months imprisonment. On the charge of the breach of his conditions of stay, he was sentenced to 3 months imprisonment. Both sentences were ordered to run concurrently.

AUTONUMOUT The grounds of the appellant's appeal in his Notice of Appeal are that his sentences were too severe. AUTONUMOUT The appellant was arrested on 21 February 2007 in relation to another matter. He was taken to Yuen Long Police Station where he produced a Hong Kong identity card in the name of Singh Darshan as proof of his identity. It came to the police's attention during the course of their inquiries that the appellant might not be the genuine holder of the identity card in the name of Singh Darshan. AUTONUMOUT On 22 February, a friend of the appellant brought his Indian passport to Yuen Long Police Station. This passport showed that the

appellant had entered Hong Kong on 24 May 2003 and had only been permitted to stay for 14 days. He therefore stayed beyond the permitted period by nearly three years and nine months at the time of his arrest. AUTONUMOUT The appellant was interviewed the following day. He claimed that he had picked up the identity card in the name of Singh Darshan in Yuen Long about one month prior to his arrest and that he tried to use it as his own identity card because he overstayed his visa. AUTONUMOUT The appellant had a clear record. AUTONUMOUT The appellant was represented by a lawyer instructed by the Duty Lawyer Service. He told the court that the appellant was a farmer in his native India. He has four children ranging from three to nine years of age. Life has been very difficult for his family in India so that he came to Hong Kong to earn money to support them. He was anxious to return to India to his family. AUTONUMOUT These circumstances that were urged upon the court in mitigation are the same circumstances that have been raised by the appellant today in support of his appeal. AUTONUMOUT The magistrate rightly bore in mind that the normal sentencing tariff was 15 months imprisonment on a plea of guilty for those who possess or use a Hong Kong identity card of another person to further their unlawful stay in Hong Kong (see R. v. Shamin Nawaz [1994] 1 HKCLR 195; HKSAR v. Li Chang Li [2005] 1 HKLRD 865). Not surprisingly in view of the use that the appellant had made of this identity card, he found that there was a link between the appellant's unlawful immigration status in Hong Kong and his possession of another person's identity card. The magistrate said it was obvious that the appellant was trying to conceal his true immigration status from the police so that he would not be arrested for overstaying and so that he might continue to stay in Hong Kong. He found that there were no exceptional circumstances or strong humanitarian reasons for warranting a departure from the normal tariff. AUTONUMOUT Bearing in mind that the appellant had overstayed in Hong Kong for nearly three years and nine months, he adopted a starting point of three months imprisonment in respect of the defence of breach of conditions of stay. He considered the totality of the two sentences and as a measure of leniency towards the appellant, he ordered the two sentences to run concurrently. AUTONUMOUT I am satisfied that the magistrate's reasoning and the sentences imposed by him cannot be criticized. There are no circumstances warranting any reduction of sentence. Accordingly, I dismiss the appeal. (P.K.M. Longley) Deputy High Court Judge Mr Y.M. Lui, SGC of the Department of Justice, for HKSAR The Appellant in person, present PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 29 October 2026 · Esheria