Loh Song Chin v Timbalan Menteri Dalam Negeri & Ors

[2015] MLJU 1897

Malayan Law Journal Unreported

HIGH COURT (SHAH ALAM)

WONG TECK MENG JC

PERMOHONAN JENAYAH NO: 44-118-07/2015

31 December 2015

Luqman b Mazlan (Shamsuddin & Co) for the applicant.
Sofiah bt Mohmad Sopah (Ruvina with her) (Timbalan Pendakwa Raya, Pejabat Penasihat Undang-Undang Kementerian Dalam Negeri Putrajaya) for the respondents.

Wong Teck Meng JC:

GROUNDS OF JUDGMENT INTRODUCTION

[1]The Applicant Loh Song Chin is now detained at Pusat Pemulihan Akhlak Batu Gajah for a period of two years pursuant to an order made under section 6(1) Dangerous Drugs (Special Preventive Measures) Act 1985. She now applies for an order that a writ of habeas corpus be granted by this Court to release her from the said detention which she alleged as illegal. The Respondents are the Deputy Home Affairs Minister, the Director Pusat Pemulihan Akhlak Batu Gajah and the Government of Malaysia.

[2]The Application is supported by the affidavit of Loh Song Chin affirmed on 30.1.2015. The

Respondents' affidavit in reply was affirmed by Aimi Zahiah bte Abdul Rahim on 7.8.2015 in which she also exhibited ten affidavits affirmed by the relevant officers of the Respondents in response to the Applicant's affidavit in support of the application. Despite the numerous allegations made by the Applicant in her affidavit, the parties have narrowed down the issues involved to only three.

THE LAW

[3]It is trite law that a challenge against a detention order made by the Minister by way of writ of habeas corpus under this Act must be premised on the ground of procedural non compliance. Section 11 C Dangerous Drugs (Special Preventive Measures) Act 1985 specifically provides that there shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di Pertuan Agong or the Minister in the exercise of their discretionary power in accordance to this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

[4]In *Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914, the Federal Court at page 915 held that the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non compliance. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements.

[5]Next, in *Mohd Faizal Haris v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 4 CLJ 613, the Federal Court made the ruling that generally a writ of habeas corpus must be directed against the current order of detention even when the earlier arrest is irregular.

[6]In *L. Ragenderan R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 7 CLJ the Federal Court confirmed its decision in Mohd Faizal Haris and further held that only when statute requires an act to be a condition precedent to the making of a detention order can a valid complaint be made against the detention such as under the Act, as spelt out by s.6 (1)

thereof there are two conditions precedent for the Minister to consider before making a detention order, viz, the complete report of investigation and the report of the Inquiry Officer.

[7]Bearing mind the above stated principles I now have to determine the three issues raised.

ISSUES TO BE TRIED

[8]Whether the type of drug mentioned in the statement of grounds on which the order was made and of the allegations of fact on which the order was based against the Applicant is not listed under the First Schedule, Part III, Dangerous Drugs Act 1952

It is not disputed that the dangerous drug stated in the statement of the grounds on which the order was made and of the allegations of fact on which the order was based is 3, 4 – Methylenedioxymethaphetamine. What is listed under the First Schedule, Part III, Dangerous Drugs Act 1952 is 3, 4 – Methylenedioxymethamphetamine (MDMA).

The Applicant submits that the dangerous drug 3, 4 – methylenedioxymethaphetamine stated in the said statement is not listed in the First Schedule, Part III Dangerous Drugs Act 1952. On the contrary, the Respondents submit that the said drug is listed there in the First Schedule, Part III Dangerous Drugs Act 1952 and the omission of the abbreviation '(MDMA)' in the said statement is immaterial and not fatal to nullity the detention order.

It is gainsaid that under section 6 (1) Dangerous Drugs (Special Preventive Measures) Act 1985, before the Minister issue the order of detention on any person, inter alia, he must be satisfied that such person has or is associated with any activity relating to or involving the trafficking in dangerous drugs. "Dangerous drug' means any drug which in for the time being comprised in the First Schedule of the Dangerous Drugs Act 1952.

After considering the arguments made by the parties, it is my considered view that the said dangerous drug stated in the said statement is listed under the First Schedule, Part III

Dangerous Drugs Act 1952 and the omission of '(MDMA)' which is an abbreviation is of no consequence to the definition of this type of dangerous drug. An abbreviation is merely a shortened form of a word or phrase and whether it is there after the word or phrase is immaterial as the correct word for this dangerous drug is 3,4 – Methylenedioxymethaphetaimine which is stated in the said statement. What is of crucial importance is the word or phrase and not its abbreviation.

[9]Whether the report of investigation under Section 3(3) Dangerous Drugs (Special Preventive Measures) Act 1985 is not in order and as a direct result making the detention order under Section 6 of the said Act defective

Basically, as deduced from the Applicants' written submission on this issue, the Applicant is dissatisfied that there is no affidavit evidence to verify that the investigating officer Inspector Kanapaty a/l Samidurai was assisted by a police personnel or had used the services of an interpreter during the recording of witnesses' statements. The Applicant expects the same procedure be followed in the recording of witnesses' statements that the Applicant was accorded that is another police personnel assisting the investigating officer or the use of an interpreter as in the Applicant's case. Hence, the Applicant submits that the mechanism and procedure used in the recording of witnesses' statements is not in accordance to the procedure accorded to the Applicant.

The Applicant says therefore no recording of witnesses' statements was done and that the report of investigation under section 13 (3) Dangerous Drugs (Special Preventive Measures) Act 1985 made against the Applicant only relied on the statement the Applicant only. According to the Applicant, based on a defective report of investigation, the detention order made Under Section 6 (1) of the 1985 Act against the Applicant is defective as the Minister had premised on a defective report of investigation before issuing the detention order.

I now refer to the affidavit of Inspector Kanapaty a/l Samidurai at paragraph 11 which reads:-

"*11. Dalam melengkapkan siasatan, rakaman percakapan ke atas saksi-saksi lain juga diambil oleh saya yang mana tatacara dan prosedurnya adalah sama dengan rakaman percakapan yang dibuat terhadap pemohon dan telah mematuhi peruntukan undang-undang. Walau bagaimanapun, keterangan yang diambil daripada saksi-saksi adalah rahsia dan tidak boleh didedahkan atau dibacakan semula kepada pemohon. Ini kerana segala maklumat-maklumat risikan tersebut sekiranya didedahkan akan mengancam keselamatan saksi-saksi yang memberi keterangan terhadap pemohon. Oleh itu, saya menuntut perlindungan di bawah Perkara 151 (3) Perlembagaan Persekutuan dan Seksyen 14 Akta tersebut".*

It is my considered view that from this paragraph 11 of the affidavit, it is obvious that Inspector Kanapaty a/l Samidurai had recorded statements from witnesses other than the Applicant and in accordance to the same mechanism and procedure accorded to the Applicant. The procedure that was followed must be the procedure under section 4 of the 1985 Act. I have no doubt that Inspector Kanapaty a/l Samidurai had recorded witnesses' statements and followed the procedure under section 4 of the 1985 Act as this court can presume under section 114 (e) Evidence Act 1950 that official acts have been regularly performed.

There is no reason to disbelieve Inspector Kanapaty a/l Samidurai as he was merely performing an official duty under the Act in which he had no personal interest. Next, there is no prescribed procedure under the 1985 Act such as the requirement of another police personnel or an interpreter to assist the investigating officer to record witnesses' statements as alleged by the Applicant. Furthermore, Inspector Kanapaty a/l Samidurai is entitled under Article 151 (3) Federal Constitution and section 14 of the 1985 Act not to disclose facts or produce documents which he considers to be against the national interest to disclose or produce. Hence, the absence of any affidavit with regards witnesses' statements is protected under the law.

Therefore, it is my considered view that the issue raised by the Applicant is mischievous and misleading.

[10]Whether the detention order issued under section 6(1) Dangerous Drugs (Special Preventive

Measures) Act 1985 **is defective due to a flaw in the report of investigation under** Section 5 **of the Act**

The Applicant submits that there is a flaw in the report of investigation of the Inquiry Officer under section 5 of the 1985 Act by referring to the affidavit of Intan Noorashikin binti Nasarudin (Inquiry Officer) at paragraphs 9 and 11 which are reproduced here:-

> *"9. Setelah mendengar dan menimbangkan keterangan-keterangan yang dikemukakan oleh Pemohon dan juga setelah meneliti laporan lengkap penyiasatan yang dikemukakan oleh Inspektor Polis Kanapaty a/l Samidurai berkaitan dengan aktiviti-aktiviti Pemohon berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya, saya kemudiannya telah menyediakan satu laporan bertulis kepada Timbalan Menteri Dalam Negeri di mana saya menyatakan bahawa berdasarkan kepada laporan lengkap bertulis oleh pihak polis dan siasatan ke atas Pemohon yang telah dijalankan itu, saya telah berpuas hati bahawa terdapat alasan-alasan yang munasabah untuk mempercayai bahawa Pemohon pernah ada atau sedang ada kaitan dengan aktiviti-aktiviti yang berhubung dengan atau yang melibatkan pengedaran dadah berbahaya".*

> *"11. Merujuk kepada perenggan 16 dan 28(a) Afidavit Pemohon, saya sesungguhnya menafikan dakwaan Pemohon yang menyatakan bahawa tiada siasatan dijalankan di bawah Seksysen 5 Akta tersebut. Saya sesungguhnya mengulangi penyataan saya dalam perenggan 5 hingga 10 di atas dan menyatakan bahawa, saya telah bertemu dengan Pemohon dan menjalankan siasatan secara fizikal terhadap Pemohon pada 18-02-2014 jam 10.55 pagi, di Bilik Gerakan Jabatan Narkotik Ibu Pejabat Polis Kontijen Negeri Sembilan menurut Seksyen 5(2) Akta tersebut. Saya juga telah meneliti serta mengkaji segala keterangan dan bukti-bukti yang ada dan setelah mengambil peluang mendengar keterangan dan membuat siasatan ke atas Pemohon, saya berpuas hati* ***terdapat alasan-alasan yang munasabah untuk mempercayai bahawa Pemohon pernah ada kaitan dengan aktiviti pengedaran dadah berbahaya****. Oleh yang demikian, dakwaan Pemohon adalah tidak berasas".*

Based on the two paragraphs, the Applicant submits that there was a contradiction in the statement of the deponent as a result of the omission of the words, *" atau sedang ada"* in paragraph 11 and hence resulting in the Deputy Home Affairs Minister to issue the detention order based on the defective report of the Inquiry Officer.

The issue raised by the Applicant is not new or novel as such an omission of the words "is associated" ("atau sedang ada") has been determined in the case of *Chan Ng v Menteri Hal*

Ehwal Dalam Negeri Malaysia & 2 Ors [1995] 2 CLJ 795 at page 795 at held [5] which is reproduced:-

> *"[5] The only difference found in* s. 6(1) *relates to the words "has been" or "is associated" and that difference is only a grammatical difference and nothing more. That section is worded to cover the past and present tense of participation in any activity relating to or involving the trafficking in dangerous drugs. The person who can be detained must either be a person who:*
>
> a. *has been associated with any activity relating to or involving the trafficking in dangerous drugs; or*
>
> b. *is associated with any activity relating to or involving the trafficking in dangerous drugs.*
>
> *There are no separate limbs, the only difference is purely grammatical. Similarly there is no difference with regard to the words "relating to or involving the trafficking in dangerous drug" found in the section; these words do not at all denote that there is more than one limb as argued by Counsel. These words merely encompass persons who aid and abet those who traffic in dangerous drugs, there is only one limb in the* s. 6(1) *of the Act and that is "any activity relating to or involving the trafficking in dangerous drug".*

Next, I would wish to refer to the case of *Zali bin Shariff v Timbalan Menteri Dalam Negeri, Malaysia & Anor* [2004] 1 MLJ 480 where it held that:-

> *"[1] Mere surplusage of words or mere omission would not automatically render the order defective. In the instant case, the question was the effect of an alleged omission or the absence of words in the recital part or statement of purpose of the order. The omission to refer to the second part of the* s 6(1) *of the Act was purely a technical error that did not render the whole order as defective (see paras 35, 49)".*

Hence, based on the case law above, the omission of the words, or "is associated" ("atau sedang ada") in the report of the Inquiry Officer which was considered by the Deputy Home Affairs Minister in the issuance of the detention order does not make the detention order defective and does not amount to procedural non compliance that warrants judicial review of the said detention order.

CONCLUSION

[11]There are no merits in all the three issues raised by the Applicant. In the event I dismissed the said applicant.

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