

YONG VUI KONG LATEST CHALLENGE ON UNFAIR TREATMENT

Background paper

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Backgrounds:-



Mr Yong Vui Kong, a Malaysia citizen who has been convicted of trafficking in 47.27 gram of diamorphine under s5(1) (a) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) and sentenced to death in Singapore, has recently filed an application in the Supreme Court, claiming that the prosecution in exercising its discretionary power to prosecute, had, *prima facie*, acted discriminatory against Yong Vui Kong, thus violating his rights under Article 12 of the Singapore's Constitution in relation to equal treatment.

The application was heard by the Supreme Court of Singapore on 14 March 2012 and further submission by counsel on 19 March 2012. The court reserved its decision to a further date.

Legal Basis of Yong Vui Kong's claim

Relying on the latest decision of *Ramalingam Ravindthran v Attorney General (2012) SGCA 2* ("the Ramalingam's principle"), Mr Ravi, counsel for Yong Vui Kong, argued that the prosecution, while exercising its prosecutorial discretion in relation to Yong Vui Kong's case, has acted in a manner that:

- (i) It failed to give consideration to all relevant factors
- (ii) It took into account irrelevant consideration
- (iii) It failed to give unbiased consideration to all offenders

thus, fulfilling the *prima facie* standard that the prosecution has acted discriminatory against Yong Vui Kong, denying him of an equal treatment.

Factual Backgrounds to the claim

Yong Vui Kong was charged and convicted of a capital offence. At the trial in the High Court, the High Court judge has indeed requested the prosecution then to divide the charge and reduce it to a non-capital offence. This request was rejected by the prosecution team.

In the mean time, Yong Vui Kong has identified his Boss, the mastermind that handed him the packet and gave him instruction, to be one Chia Choon Leng. However for the safety of his family, Yong Vui Kong has expressed that he is not willing to testify against Chia Choon Leng in the court room.

Chia Choon Leng is a Singaporean.

Chia Choon Leng was then charged with 26 counts of offences, 5 of which are directed related Yong Vui Kong. The charge was, *inter alia*, abetment Yong Vui Kong to commit an offence, instigating Yong Vui Kong to transport packets of drug.

However, all 26 charges were later withdrawn. The prosecution has cited the reason of "insufficient evidence" for such withdrawal.

Chia Choon Leng is now detained under executive order without trial.

It was argued by Mr Ravi, that the prosecution while exercising its discretionary power to prosecute Yong Vui Kong on a capital offence, and on the other hand to withdraw all charges against Chia Choon Leng, has taken into consideration a completely irrelevant factor(s) and indeed failed to give an unbiased consideration.

The reason "insufficient evidence" is so unpersuasive on the following reasons, argued Mr Ravi:-

- (i) The fact that 26 charges were initially made against Chia Choon Leng would have meant that there are some kind of basis to prosecute. This is particularly so where there are multiple levels of review and consideration by the Attorney General before a charge is laid against a person. In fact, for Chia Choon Leng, it took over a period of 2 months for the prosecution to carefully consider the charge. It variably points to the fact that there must be some *prima facie* evidence against Chia Choon Leng.
- (ii) Yong Vui Kong's concern about the safety of the family is understandable. But Yong Vui Kong is a competent witness who can be compelled to give evidence. In fact, Yong Vui Kong has been co-operative with the police investigation in identifying Chia Choon Leng all along. The prosecution relying on Yong Vui Kong's concern for his family safety as the basis of withdrawing the charge against Chia Choon Leng is, one would say, utterly untenable.
- (iii) The prosecution also failed to take into consideration that Yong Vui Kong has identified Chia Choon Leng to be the one who handed him the packet, instructed him what to do and where to deliver. These are all evidences against Chia Choon Leng which warrant a charge.
- (iv) In fact, during the trial, the prosecution has repeatedly referred Chia Choon Leng as the "Boss" while examining and re-examining Yong Vui Kong. It only goes to show that there is another party involved in the criminal activity where Yong Vui Kong is charged with and that person is Chia Choon Leng.
- (v) There was a parliamentary question and answer confirming that Chia Choon Leng is a drug syndicate, not only involved in Yong Vui Kong's case, but also many others.

It is undoubtedly that Chia Choon Leng is the one mastermind behind Yong Vui Kong's offence. The facts remain that the more culpable offender has escaped the prosecution while the less culpable offender is charged and convicted of an offence punishable with mandatory death sentence.

During the course of submission, the Supreme Court has taken the initiative to reveal to both counsels of more facts relating to Chia Choon Leng. The revelation was indeed shocking.

- (i) Some 2 months before Yong Vui Kong's charge, Chia Choon Leng was charged with two counts of offence of giving drug to one Koh Bak Kiang
- (ii) Koh Bak Kiang is a Singaporean, who on the same account, was charged and prosecuted for trafficking in not less than 14.99 grams of the drug. This is non-capital charges as it is below the statutory limit of 15 grams.
- (iii) Koh Bak Kiang pleaded guilty to the charges.
- (iv) During the trial of Koh Bak Kiang's case, the High Court Judge has said that "Koh ad cooperated with the authorities and was willing to be a prosecution witness in the "forthcoming" trial against Chia Choon Leng. In fact, the trial judge in Koh's case had

observed that Chia Choon Leng was not only involved in drug trafficking, but he actively recruited, instructed and supplied drugs to courier and was at the apex of an organized group that carefully planned and coordinated drug trafficking activities.

- (v) However, there is no such “forthcoming” trial as the charges against Chia Choon Leng were withdrawn. The Court ordered a discharge not amounting to acquittal.

This case has a direct relation which Yong Vui Kong case in so far as it goes to show the culpability of Chia Choon Leng, and it collaborate with Yong Vui Kong’s statement to the police identifying him as Boss.

The manner, in particular Yong Vui Kong’s case, in which the prosecution exercises its discretionary power, to prosecute or not to prosecute, has been questioned.

It is acknowledged that the prosecution has the discretion to prosecute based on evidences available, however, Mr Ravi argued that, as long as the applicant (here Yong Vui Kong) can establish, on *prima facie* evidence, that the prosecution has acted discriminatory by prosecuting him for a capital offence and at the same time, withdrawing the charges against Chia Choon Leng, by failing to take into account relevant factors and had in fact acted with biasness, he can then claimed that his right of equal treatment had been violated.

Mr Ravi has sufficiently laid down its arguments and the *prima facie* evidences against Chia Choon Leng as opposed to the Attorney Chamber “insufficient evidence” position.

Indeed, it is the intention while parliament enacted the law that the anti drug policy should target the more culpable than merely the courier boy.

Indeed, it is legally and morally wronged to let go of the mastermind, while hang the courier boy.

Further Argument by AG Chamber on jurisdiction

To complete the picture, the Attorney Chamber argued that in relation to Yong Vui Kong case, the prosecution cannot bring a charge against Chia Choon Leng as at the time the offence was committed, Chia Choon Leng was in the territory of Malaysia and not Singapore, thus, the issue of jurisdiction.

In rebuttal, Mr Ravi argued that in bringing the first initial 26 charges against Chia Choon Leng, 5 of which directly involved Yong Vui Kong, the prosecution did not raise the issue that it lacked the legal power to prosecute, indeed, when the trial judge ordered a discharge (based on the withdrawal of charges by the prosecution), the court did not do it based on jurisdictional issue. Mr Ravi had cited common law to support his contention the previous judgment had made it clear that Singapore laws do not prevent such presocation.

Pending decision

The above are the summary of the latest challenge by Yong Vui Kong and the matter is now in the hands of the Supreme Court. A decision date will soon be announced once the Court is ready.

Our demand to the Malaysia Government

In respect of all Malaysians who are facing trial and death penalty all over the world, while we acknowledge that it is our citizen that allegedly breach the law of a sovereign beyond our

jurisdiction, the Malaysia government has an obligation to ensure that his/her right to a fair trial is not violated as that is a fundamental human rights, we urge that:-

- (i) Malaysia government shall ensure that the Malaysia citizen concerned receive a fair trial (fair trial is the fundamental of the rule of law);
- (ii) Malaysia government shall lent all support necessary including providing legal and financial assistant;
- (iii) Malaysia government shall take the appropriate actions to defend the rights of its citizen in a foreign country.

Malaysia government has over and again cited that Malaysia adopt the same drug laws and policy that we lacked the moral ground to interfere when our citizen is involved in the same offence in Singapore or elsewhere, unless the Malaysia government exercise the same unfair treatment to a foreigner which lead the argument on lack of moral ground, otherwise, the Malaysia government should and has the obligations to interfere and ensure our citizen's rights are not compromised or violated in any event.

***** END *****