



Summary of Judgment

Secretary for Justice (“SJ”) v Chin Po Fun (錢寶芬) (“Defendant”)

HCMP 231/2020; [2021] HKCFI 598

Decision : Defendant is liable for criminal contempt and is sentenced to 30 days’ imprisonment, suspended for 12 months. The Defendant is also liable to pay SJ’s costs on an indemnity basis, summarily assessed at HK\$400,000

Date of Hearing : 9 March 2021

Date of Judgment on Sentencing : 16 March 2021

Background

1. On 13 August 2019, upon the application by the Airport Authority (“AA”), the Court of First Instance (“CFI”) granted an *ex parte* injunction order (“**Injunction Order**”)¹ restraining anyone from, *inter alia*, unlawfully and wilfully obstructing or interfering with the proper use of the Hong Kong International Airport (“**Airport**”).
2. On 7 September 2019, around 40 to 50 protestors gathered at the Airport Bus Terminus in response to repeated calls on the internet to block traffic to the Airport. Consequently, the bailiffs and the staff and legal representative of the AA made repeated announcements in both Cantonese and English on the terms and contents of the Injunction Order. They requested the obstructing crowd to leave the scene immediately and warned that they may be held in contempt of court if they neglect to comply with the Injunction Order.
3. While the bailiffs and AA’s staff and legal representative were making announcements and warnings to the obstructing crowd, the Defendant remained seated on a nearby bench carrying a placard with political slogans marked on it and attached to her backpack. Subsequently, despite repeated requests from staff members of the AA and AVSECO and a police officer asking the Defendant to leave, the Defendant still remained in the Airport Area.
4. Thereafter, the Defendant was arrested by the Police for “Contempt of Court”.

¹ The order was varied and continued on 23 August 2019.

5. In light of the Defendant's obstruction or interference with the enforcement of the Injunction Order, the SJ commenced the present criminal contempt proceedings against the Defendant. The Defendant admitted liability for criminal contempt in December 2020. The CFI heard submissions on sentencing on 9 March 2021, and delivered the Judgment on Sentencing on 16 March 2021.

Issues in dispute

6. The two questions for determination are :-
- (a) the appropriate sentence; and
 - (b) costs.

Department of Justice's Summary of the Court's rulings

(Full text of the CFI judgment at

https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2020/HCMP000231_2020.docx)

7. On **sentencing**, the Court first set out the sentencing principles which include:-
- (a) Criminal contempt is engaged where there is a serious interference with the due administration of justice. The offenders are punished for the sake of public interest. (§15(2))
 - (b) Where the bailiff is involved in enforcing a court order, those in defiance of the bailiff's orders would not be regarded as simply breaching the court order *per se* but also directly interfering with the administration of justice by obstructing the execution of duties of an officer of the court, i.e. the bailiff, who acts as an extended arm of the court in administering justice and must be fully protected from interference in discharge of his duty. (§§15(3) & 17)
 - (c) It is fundamental to the rule of law that court orders are made to be obeyed, thus, the starting penalty for contempt of court in breaching an injunction order is imprisonment. (§§15(6) & 17)
 - (d) Given criminal contempt threatens the due administration of justice as a whole and presents a direct challenge to the rule of law, the sanction imposed on the contemnor is punitive in nature and a term of imprisonment is generally called for, although the Court retains a wide discretion to impose other forms of sentence as it deems most appropriate in the overall circumstances of the case. (§15(7))

- (e) Punishment and deterrence are the major sentencing considerations for cases of criminal contempt, and the sentence to be imposed should contain an element of general and personal deterrence as well (§§19 and 26)
8. The Court took into account, amongst others, the following facts and circumstances of this case:-
- (a) The Defendant was participating with other people in the “Suck with You” Campaign, which targeted at disrupting the normal operation of the Airport. Hong Kong is an international city and the Airport is its main door to and from the outside. Any attempt to obstruct its normal operation would have a knock-on effect on society as a whole and must be taken seriously. (§16)
- (b) The Defendant’s conduct is serious as she had deliberately and intentionally flouted the Injunction Order which had already been widely publicized for some time before the incident and that she also had been given numerous warnings and opportunities to leave the Airport Area prior to her arrest, all of which she had simply ignored. Irrespective of the Defendant’s political stance, there are proper channels elsewhere for her to express herself. (§17)
- (c) The Defendant committed the present criminal contempt when she was aware that there was an extant suspended sentence hanging over her head. (§22)
- (d) On the other hand, the Defendant took a limited non-leading role in the incident, there was absence of any violence or abusive language on her part, she demonstrated remorse by pleading guilty and making an unreserved apology, her breach appeared to be one-off and lasted only for about an hour, and no significant obstruction to or interference with the overall operation of the Airport or its users had been caused. (§§22-24)
9. Overall, the Court ordered that the Defendant be sentenced to 30 days’ imprisonment suspended for a period of 12 months on the following conditions, namely during the said 12-month period the Defendant must not commit any acts of criminal contempt or any criminal offences punishable with imprisonment, failing which she would be brought back to the Court and the aforesaid prison sentence would be activated. (§25)
10. In passing the above sentence, the Court made it clear that this case is a borderline case, and it did not intend to set a precedent in this case. The Court reiterated the clear and loud message of the Court of Appeal in

Secretary for Justice v Wong Chi Fung [2019] 2 HKLRD 1236 that punishment and deterrence are the major sentencing considerations for cases of criminal contempt. (§26)

11. As regards **costs**, the Court accepted that the usual order in a successful contempt procedure is for costs to follow the event and to be payable on an indemnity basis. By a broad brush approach and in exercising the discretion on costs, the Court ordered the Defendant to pay SJ's costs on an indemnity basis, summarily assessed at HK\$400,000. (§§27-30)

Civil Division

Department of Justice

17 March 2021