



Summary of Judgment

Secretary for Justice (“SJ”) v Cheung Chi Ho (“Defendant”)

HCMP 830/2021; [2023] HKCFI 2099 & [2023] HKCFI 2104

Decision : Defendant liable for civil contempt, sentenced to 4 months’ imprisonment, with costs to SJ on indemnity basis.

Date of Hearing : 18 July 2023 and 14 August 2023

Date of Decisions : 18 July 2023 (decision on liability, “Liability”) and 14 August 2023 (decision on mitigation and sentencing, “Sentencing”)

Background

1. On 31 October 2019, the Court of First Instance (“**Court**”) granted an injunction order (“**Incitement Injunction**”) ¹ to SJ as the guardian of public interest restraining anyone from:-
 - (a) wilfully disseminating, circulating, publishing or re-publishing on any internet based platform or medium any material or information for the purpose of promoting, encouraging, or inciting the use or threat of violence, intended or likely to cause: (i) unlawfully bodily injury to any person within Hong Kong; or (ii) unlawfully damage to any property within Hong Kong;
 - (b) wilfully assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorising others to commit any of those aforesaid acts or participate in any of those aforesaid acts.
2. On 3 December 2020, the Chief Magistrate’s Office received a phone call in which the caller threatened to kill the Chief Magistrate, his wife, and his son by a bomb (“**Bomb Threat**”). The Defendant later used his Facebook account and posted two Facebook comments (“**Comments**”):
 - (a) On 5 December 2020, the Defendant posted a comment in a particular Facebook group named “51 黃金良心圈” underneath a post which referred to the Bomb Threat, and which said “講系無用，炸死全家先有證據” ² (“**Comment 1**”). The Facebook group concerned was a “public” group meaning that anyone could see the posts and comments published.

¹ The order was continued on 15 November 2019 and amended on 20 November 2019.

² English translation: “It is useless to talk. Bomb the whole family to death. Then there will be evidence.”



(b) Later on the same day, a second comment was posted on the Facebook page of i-Cable News, underneath the post about the Bomb Threat saying “炸死全家先有證據”³ (“**Comment 2**”). The i-Cable post was a “public” post, meaning that it could be accessible by anyone with an internet connection.

Both Comments 1 and 2 reached a broad audience and attracted reactions and comments on the Facebook.

3. The Defendant was arrested in March 2021. Under caution, he admitted that he posted the Comments, albeit he said he did it out of anger and/or impulse and that he did not actually intend to bomb the chief magistrate and his family to death. The Defendant has subsequently absconded from police bail and departed from Hong Kong on 28 September 2021.
4. In light of the breach of the Incitement Injunction, SJ commenced the present civil contempt proceedings against the Defendant. The Defendant did not participate in the proceedings. On 18 July 2023, the Court found the Defendant liable for contempt with arrest warrant issued against him and fixed 14 August 2023 to deal with penalty.

Issues in dispute

5. The question for determination is liability of contempt and if yes, the appropriate sentence.

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

(Full text of the Decision on Liability at:

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=154364&QS=%2B%7C%28HCMP%2C598%2F2022%29&TP=JU

Decision on Sentencing at:

<https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2022/HCMP000598A2022.doc>)

Liability of contempt

6. Having been satisfied that the Defendant had knowledge of the circumstances of the proceedings by sending the Documents to his email address without bouncing back (Liability §§2, 10), the Court considered it appropriate to deal with the question of liability in the Defendant’s absence. The Court held that the Comments posted by the Defendant were clearly in breach of the Incitement

³ English translation: “There will only be evidence when the whole family is bombed to death.”



Injunction and the acts were obviously intentional. The Defendant was found liable for civil contempt. (Liability §11)

Defendant's absence in the proceedings

7. The Court had issued a warrant to arrest the Defendant so that he could be brought before the Court as soon as possible for submissions on sentencing. Nonetheless, a long stop date of 14 August 2023 was set by the Court for affording a further chance to the Defendant to participate in the proceedings, and by then the Court would decide whether it was appropriate to proceed with sentencing even if he continued to be absent. (Liability §§12-15; Sentencing §§6-8)
8. The Defendant continued to be absent on 14 August 2023. The Court proceeded with sentencing in the circumstances, particularly where the Defendant was served with the papers; and the Court's decision on liability had received media attention. The Court clearly has jurisdiction to proceed to sentencing in the absence of the Defendant where circumstances so justify. (Sentencing §§8-10)

Sentencing considerations

9. In determining the **appropriate sentence for contempt by breaches of the Incitement Injunction**, the general principles include: (Sentencing §§20-21)
 - (a) The sentencing principles and guidance as explained by this Court for contempt of the Doxxing Injunction is applicable.
 - (b) The appropriate starting point remains one of an immediate custodial sentence, and one perhaps measured in months.
 - (c) The conduct of inciting violence online can be said to be more serious than that of doxxing, as the threat posed by inciting violence is more direct, explicit and immediate.
 - (d) The Court is not concerned only with the subjective intention of the contemnor, but with the objective potential or likely effect of the words used.
10. In deciding on the **appropriate and proportionate sentence in the present case**, the Court took into account factors including:-
 - (a) Comments were posted on public pages and were widely accessible. They were posted deliberately so as to be publicly and widely accessible, in two separate and distinct places. (Sentencing §25)
 - (b) The Comments were made at the time when the media was widely reporting the actual Bomb Threat which the Chief Magistrate received by phone. The act which the Comments incited was specific and extremely serious. An aggravating factor was that the Comments were itself a serious affront and challenge to the administration of justice, being directed not just at a senior



judicial officer but also at his wife and child, which was utterly repugnant and unacceptable. (Sentencing §26)

- (c) The Defendant posted two Comments with substantially the same content, which was an intentional act involving some active consideration on his part; and he was the originator of the Comments, rather than a mere re-posting of information found elsewhere. He did not remove the Comments. (Sentencing §§27-28)
- (d) The Defendant has no remorse - he has not appeared in, and has apparently refused to engage in, these proceedings; and has deliberately failed to admit liability for contempt, and deliberately failed to offer any form of apology for his conduct. (Sentencing §29)
- (e) The Defendant appears to have deliberately jumped bail and absconded from the jurisdiction to seek to avoid liability. (Sentencing §30)
- (f) There was no delay in launching these proceedings by the SJ. (Sentencing §31)

11. The Defendant was ordered to serve an immediate custodial sentence of four months' imprisonment.

Costs

12. The Court has also ordered the costs of the proceedings to be paid by the Defendant on indemnity scale, to be summarily assessed. (Liability §16, Sentencing §§33-35)

Civil Division

Department of Justice

14 August 2023