

Case Summary

HKSAR v Tam Tak Chi (譚得志)

DCCC 927, 928 & 930/2020; [2021] HKDC 424;
[2021] 2 HKLRD 491
(District Court)

(Full text of the Court’s ruling in English at
https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=134825&QS=%2B&TP=JU)

Before: HH Judge Stanley Chan

Date of Ruling: 9 April 2021

District Court – jurisdiction to try sedition offence under s. 10(1)(b) of Crimes Ordinance (Cap. 200) and sedition conspiracy following promulgation of NSL – sedition constituted offence endangering national security – intention of NSL 45 – purposive interpretation – offences endangering national security being indictable could be heard by District Court – NSL prevailing over inconsistent HKSAR local laws – need for adaptation of Part III of Second Schedule to the Magistrates Ordinance (Cap. 227) concerning excepted offences relating to Part I and II of the Crimes Ordinance - sedition offences properly transferred to District Court

Background

1. The Defendant was charged with 14 counts of various offences, including 7 counts of uttering seditious words contrary to s. 10(1)(b) of the Crimes Ordinance (Cap. 200) (“the sedition charges”) and one count of conspiracy to utter seditious words (“the sedition conspiracy charge”). The case had been transferred from the Fanling Magistrates’ Courts to the District Court. The Defendant applied for a stay of proceedings in relation to the sedition charges and the sedition conspiracy charge but

raised the issue of jurisdiction first.

Major provision(s) and issue(s) under consideration

- NSL 41, 45 and 62
- Crimes Ordinance (Cap. 200) (“CO”), Part II, s. 10
- Interpretation and General Clauses Ordinance (Cap. 1) (“IGCO”), s. 19
- Magistrates Ordinance (Cap. 227) (“MO”), s. 88(1); and Second Schedule, Part III

2. Under s. 88(1) of the MO, a magistrate could not transfer the indictable offences specified in Part III of the Second Schedule to the MO (“the excepted offences”) to the District Court. The Defence submitted that since sedition offences, being offences under Part II of the CO, were included in Part III of the Second Schedule to the MO, a magistrate could not transfer those sedition offences to the District Court; and that since those sedition offences could not be lawfully transferred to the District Court, the District Court had no jurisdiction to try them. The Court examined the merits of this submission, and specifically whether the District Court had jurisdiction to try and hear the 7 sedition charges and the sedition conspiracy charge. (paras. 30 and 34)

Summary of the Court’s ruling

3. The Court adopted a purposive approach in construing the Articles of the NSL which should be read in the whole context with the General Principles under its Chapter I in mind and having regard to the principle of interpretation under s. 19 of the IGCO, which provided: “An Ordinance shall be deemed to be remedial and shall receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.” (para. 31)

4. The Defence accepted that sedition offences under s. 10 of the CO were offences endangering national security. NSL 45 provided that unless otherwise provided by the NSL, all courts in Hong Kong,

including the District Court, should handle proceedings in relation to the prosecution for offences endangering national security in accordance with the laws of the HKSAR. The Court stated that if sedition offences under s. 10 of the CO were offences endangering national security, it would be absurd that the NPCSC would “exclude” those s. 10 offences from being tried in the District Court. (paras. 39-40)

5. The excepted offences under Part III of the Second Schedule to the MO did not cover s. 10 sedition offences because they were summary offences before the enactment of the NSL. The prosecution was then entitled to transfer the summary offences to the District Court for trial if the conditions under s. 88(1)(b) of the MO were met. (para. 44)

6. NSL 41(3) provided that cases concerning offence endangering national security within the jurisdiction of the HKSAR should be tried on indictment. This meant that s. 10 sedition offences, being offences endangering national security, became indictable offences despite the fact that the words “on indictment” did not appear in the original s. 10 sedition offence provision. (para. 46)

7. It was the intention of the NSL that indictable offences endangering national security could be heard in or handled by the Magistrates’ Courts, the District Court, the High Court and the CFA: NSL 45. As the NSL prevailed over local laws of the HKSAR under NSL 62 where inconsistencies appeared, the excepted offences relating to Parts I and II of the CO as stated in Part III of the Second Schedule to the MO, being inconsistent with the General Principles and the relevant Articles of the NSL, would not be valid. Part III of the Second Schedule to the MO would have to be “adapted” to cater for offences endangering national security because of the enactment of the NSL. This meant that the sedition offence could still be transferred to the District Court for trial because the sedition offence was no longer an excepted offence in the Second Schedule to the MO. In these circumstances, it would be lawful for the magistrate to transfer the indictable offence to the District Court under s. 88(1)(a) of the MO. (paras. 48-50 and 54)

8. The transfer of the sedition charges and the sedition conspiracy

charge to the District Court was valid and it was effected in accordance with the NSL. Hence, the District Court had the jurisdiction and powers to try those charges. (paras. 55-56)

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