

Is the potential loss of emoluments a relevant sentencing factor?
***M Raveendran v Public Prosecutor* [2021] SGHC 254**

I. EXECUTIVE SUMMARY

Is the potential loss of emoluments (i.e., workplace compensation) a relevant sentencing factor? In *M Raveendran v Public Prosecutor* [2021] SGHC 254, the High Court (“**HC**”) held that the potential loss of emoluments should not be a factor considered by the sentencing court.

The case concerned an appeal by M Raveendran (“**Raveendran**”) against the sentence imposed for the offence of driving under the influence of drink pursuant to section 67(1)(b) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (“**RTA**”).¹

The District Judge (“**DJ**”) sentenced Raveendran to one week’s imprisonment and disqualification from driving all classes of vehicles for a period of 24 months. On appeal, Raveendran did not contest the disqualification order, but only sought to persuade the HC that a custodial sentence should not be imposed because of the potential impact this would have on his entitlement to receive emoluments from the Singapore Armed Forces (“**SAF**”) upon his retirement.

The HC held that the court should not consider the possible consequences of the sentence on Raveendran’s entitlement to his retirement benefits and emolument. Nonetheless, it held that the DJ had erred in not considering some of the mitigating factors in the present case, specifically those demonstrating Raveendran’s remorse. Therefore, Raveendran’s appeal was allowed to the extent of an adjustment of sentence from one week to five days’ imprisonment.

II. MATERIAL FACTS

On 8 September 2018, Raveendran consumed some alcohol. A few hours later while driving, he lost control of the car and veered right. This caused the car to mount the center divider and collide into the railings.

Raveendran failed the preliminary breath test conducted by the investigating police officer. Raveendran was subsequently arrested, and a Breath Analysing Device test (“**BAD test**”) was administered. The BAD test showed that the proportion of alcohol in his breath was 91 microgrammes of alcohol in every 100 millilitres of breath. This was well in excess of the prescribed limit of 35 microgrammes of alcohol in every 100 millilitres of breath. Raveendran had therefore committed an offence under section 67(1)(b) of the RTA. Raveendran compensated the Land Transport Authority (“**LTA**”) for the damaged guard railings by paying the full sum of the cost of repair.

At trial, the DJ first considered the indicative sentencing ranges for drink driving offences. After considering the damage caused to the railings, the high alcohol level in Raveendran’s

¹ Section 67(1)(b) of the RTA provides that any person who, when driving or attempting to drive a motor vehicle on a road or other public place has so much alcohol in his or her body that the proportion of it in his or her breath or blood exceeds the prescribed limit, shall be guilty of an offence and shall be liable on conviction to a fine of not less than \$2,000 and not more than \$10,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a second or subsequent conviction, to a fine of not less than \$5,000 and not more than \$20,000 and to imprisonment for a term not exceeding 2 years.

Raveendran also consented to one charge of driving without due care and attention under section 65(1)(a) of the RTA being taken into consideration for sentencing. Section 65(1)(a) of the RTA provides that if any person drives a motor vehicle on a road without due care and attention, the person shall be guilty of an offence.

breath and his loss of control over his vehicle, the DJ found that the case fell within the category of “slight harm” and “medium culpability”. The DJ then determined that the indicative starting sentence was one week’s imprisonment. The DJ also considered that Raveendran’s positive record of public service and contributions and the fact that a substantial amount of his bonus and gratuity payments from SAF might be forfeited if a custodial sentence were imposed, did not justify a reduction in his sentence. Finally, the DJ considered that Raveendran’s plea of guilt and the restitution made to LTA were not sufficiently exceptional to justify any reduction in sentence.

On appeal, Raveendran argued that the imprisonment term imposed was manifestly excessive and that the appropriate sentence should be the maximum fine of \$4,000: 1) he had pleaded guilty and made full restitution to the LTA; 2) he remained at the scene and rendered assistance to the police officer; 3) he had strong propensity for reform, as evidenced in his professional record as an army officer and contributions to the nation; and 4) was at the risk of losing the emoluments he would have received from the SAF if a custodial sentence were imposed.

In relation to point 4), Raveendran was not able to provide any confirmation from MINDEF as to how his entitlements would be impacted by his sentence. However, he submitted that the potential consequences he faced in connection with potential loss of his employment benefits were relevant to sentencing in two ways: 1) this could be a basis for the exercise of judicial mercy; and 2) this could be viewed as a mitigating factor in sentencing because he stood to suffer more than other offenders who committed the same offence, and that his sentence should be adjusted on the grounds of proportionality.

III. ISSUES

The HC considered whether (a) Raveendran’s potential loss of emoluments, in the event a custodial sentence was imposed on him, was a factor that should be considered by the sentencing court; and (b) the appropriate sentence to be imposed on Raveendran.

A. Whether the loss of potential emoluments is a relevant sentencing factor

The starting position in sentencing is that an individual who breaches the criminal law generally can and should expect that the law will take its course and that he will have to face the consequences of his actions. This would only be displaced in exceptional circumstances, which must be identified and applied in a principled and transparent manner.

There are four possible bases upon which the reduction of a sentence on account of the potential loss of emoluments could conceivably be justified: 1) the principle of equal impact; 2) the principle of parsimony; 3) judicial mercy; and 4) pursuant to the express terms of an applicable statute. Each of these were considered by the HC in turn.

(1) Principle of equal impact

The equal impact principle rests on the notion that if an offender suffers from some condition that would render the sentence significantly more onerous for him than for other offenders, a sentencing adjustment may be made to avoid such an undue differential impact upon him. An adjustment serves to eliminate the increment in severity that would otherwise arise because of the offender’s condition.

The HC held that the equal impact principle is applicable only to factors that are intrinsic or inherent to an offender. These factors are part of the offender’s person and exist regardless of the offence or sentence. Factors intrinsic to an offender broadly fall into two categories.

The *first* category of factors is linked to the commission of the offence itself, including the impact of these factors on the culpability of an offender. Examples include an offender's mental condition and intellectual ability. These go towards determining what the appropriate punishment should be considering the matters that shed light on the commission of the offence.

The *second* category of factors relates to the effects or impact that a sentence would have on an offender. Examples include ill health and age. This category of factors triggers the application of the equal impact principle, because where there is an underlying condition of the requisite seriousness, the sentence to be imposed should be reduced so that it would not be disproportionate to the offender's culpability and physical condition. Since the effects of these factors on an offender are limited in scope, the court can evaluate whether the sentence would cause the offender to suffer disproportionately as compared to other offenders on whom the same sentence might be imposed. Furthermore, such intrinsic factors do not involve a wider social accounting and do not give rise to discrimination against some offenders over others. They apply only in exceptional situations where a specific offender's impediments cause a substantial imprisonment term to be disproportionate or crushing on him.

In contrast, the HC held that the equal impact principle does not extend to factors that are extrinsic to an offender. Examples include an offender's employment, wealth, or education level. The HC stated that it is not possible to compare the impact of extrinsic factors between offenders, or in relation to how the desired effect of punishment can otherwise be achieved. Extrinsic factors are downstream consequences that might or would befall the offender because of the imposition of a sentence. If courts were to take such consequences into account, there would be no logical limits as to when or how these consequences should be factored into sentencing.

The HC then provided three reasons for why these consequences could not be meaningfully considered in this context. *First*, it was impossible for the court to place a value on such downstream consequences and to translate the potential financial losses into an appropriate reduction in sentence. *Second*, the different potential financial losses that could be faced by offenders cannot be meaningfully compared, given the varied consequences that one could suffer from a particular sentence. *Third*, the consequences that would arise because of the sentence will often be indeterminate at the point when the case is heard before the court.

Additionally, the HC stated that considering extrinsic factors could result in a fundamental assault on the criminal justice system. If the court were to place weight on factors such as the financial consequences of a particular sentence and reduce an offender's sentence on that basis, it could result in the inconsistent treatment of offenders. It was a matter of fundamental importance that the criminal justice system be designed to work for all people in all circumstances. If this fundamental principle of equality were to be displaced in favour of some offenders, it would undermine and dilute the deterrent effect of the entire system of criminal justice.

(2) Principle of parsimony

The principle of parsimony states that offenders should only be punished to the minimum required to achieve the aim of punishment. The HC rejected the principle as a basis on which the sentence could be reduced and dealt with the point on parsimony briefly for three reasons.

First, it was not raised by Raveendran as part of his appeal. *Second*, prior cases suggested that the principle of parsimony was not applicable as a general principle in Singapore courts. A

sentencing judge's discretion should not be unduly fettered to selecting the least severe sentencing option. The more pertinent consideration was whether the judge had arrived at a fair and just sentence, having assessed all the evidence before him.

Third, the parsimony principle cannot apply to extrinsic factors for the reasons that have been set out in relation to the equal impact principle. Equality before the law is a fundamental principle that cannot be easily displaced. If the parsimony principle were applied as a general rule, it could result in an outcome where an offender who is better socially situated because of his circumstances would be sentenced more leniently, to achieve the aim of imposing the minimum possible sentence.

(3) Judicial mercy

The HC stated that judicial mercy is an exceptional jurisdiction that is exercised sparingly, because the effect of such judicial mercy is that the culpability of the offender is displaced by considerations of humanity in the court's determination of the appropriate sentence. The grant of judicial mercy entails a holistic review in which the relative interests are weighed. Examples include the public interest in punishing crimes to denounce them to safeguard society, and the concern to avoid imposing punishment that is unduly harsh given the particular circumstances of the offender.

There are two situations in which judicial mercy has been invoked. The typical situation is where the offender is suffering from terminal illness. There is also the situation where the offender is so ill that an imprisonment term carries a high risk of endangering his life. The HC held that these situations did not apply in Raveendran's case.

While the situations in which judicial mercy will be extended were not closed, the HC stated that judicial mercy cannot be invoked to ameliorate the possible financial consequences of a condign (i.e., appropriate) sentence. The threshold to warrant the exercise of judiciary mercy was an exceedingly high one. This is seen in how the courts have not exercised judicial mercy when offenders were faced with trying medical circumstances. The issue of loss of possible emoluments thus fell far short of warranting the exercise of judicial mercy.

(4) Any applicable statute

The HC noted that there may be statutes that require a sentencing court to have regard to certain consequences when determining the appropriate sentence. One example was section 108(2) of the Singapore Armed Forces Act (Cap 295, 2000 Rev Ed), which provides that a civil court shall have regard to military punishment which has already been administered to the offender. The HC noted that while military punishment may be considered as a mitigating circumstance, this should not fetter the civil court's discretion. The pertinent consideration remains whether the sentence imposed is fair and just, having regard to all relevant circumstances.

In this case, no military punishment had yet been imposed on Raveendran. The only available argument was that he would likely lose considerable amounts in emoluments. However, the HC noted that this did not in and of itself mean that the court should avoid imposing a custodial sentence if that is appropriate.

As such, the HC held that the possible consequences of the sentence on Raveendran's entitlement to his retirement benefits and emoluments should not be considered as a sentencing factor.

B. The appropriate sentence to be imposed

The HC agreed with the DJ's assessment of Raveendran's culpability as medium – primarily due to his high alcohol level – and the DJ's assessment of harm engendered as slight. However, the HC held that the DJ had erred in not taking into account some of the mitigating factors evincing Raveendran's remorse. Having considered factors like the harm caused and blood alcohol level, the HC was satisfied that an adjustment of the starting sentence from one week to five days' imprisonment in this case was warranted.

IV. LESSONS LEARNT

This is a welcome decision for two reasons. First, the HC clarified that the loss of potential emoluments is at present not a relevant sentencing factor in Singapore. The HC also made clear that the equal impact principle does not apply in respect of extrinsic factors.

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