

O N A P P E A L  
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

THE ATTORNEY GENERAL OF HONG KONG Appellant

- and -

HO PUI-YIU Respondent

CASE FOR THE APPELLANT

Record

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1. This is an appeal pursuant to a grant of special leave to the Appellant from a judgment of the Court of Appeal of Hong Kong (Briggs, C.J., Huggins and Pickering, J.J.A.) ordering that an appeal of the Respondent to the said Court of Appeal be allowed his conviction quashed and his sentence set aside consequent upon his appeal against his conviction of being a Crown servant in control of pecuniary resources or property disproportionate to his then present or past official emoluments contrary to section 10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201 of the Laws of Hong Kong.

Page 40-43

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2. The Respondent was charged with the following offence :

Pages 1 & 2

Statement of Offence

Being a Crown servant in control of pecuniary resources or property disproportionate to his then present or past official emoluments, contrary to section 10(1)(b) of the Prevention to Bribery Ordinance, Cap. 201, Laws of Hong Kong.

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Particulars of Offence

Ho Pui-Yui, Lawrence, a Crown servant, was on 3rd December 1973 in control of pecuniary resources totalling \$15,516.09 and property, namely :

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- (i) Flat D, 15th floor, Shung Chi House, Baily Street, Hunghom, Kowloon;
- (ii) One Volkswagen motor car registration number PC1218;
- (iii) One fifth interest in the following:
  - 2,000 shares of Realty Development Corporation Ltd. 'A'
  - 2,000 shares of Madison Securities Ltd.
- (iv) 44 shares of Hong Kong & Shanghai Banking Corporation;
- (v) 400 shares of China Light & Power Co. Ltd.;
- (vi) 1200 shares of Hutchison International Ltd.;
- (vii) 500 shares of Hong Kong Land Co. Ltd.;
- (viii) 1,000 shares of YangtzeKiang Garment Manufacturing Co. Ltd.;
- (ix) 100 shares of Hong Kong Telephone Co. Ltd.

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which pecuniary resources and property were disproportionate to his then present or past official emoluments.

3. The relevant Hong Kong statutory provision creating the offence with which the Respondent was charged is as follows -

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" Prevention of Bribery Ordinance,  
Chapter 201.

10. (1) Any person who, being or having been a Crown Servant -

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

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shall, unless he gives a satisfactory explanation to the courts to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

10 (2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

(3) In this section, "official emoluments" includes a pension or gratuity payable under the Pensions Ordinance."

20 4. That the trial of the said Respondent commenced on the 28th March, 1978 before his Honour Judge Garcia in Victoria District Court, Hong Kong and concluded on the 28th April, 1978.

5. That the case for the Crown consisted of agreed evidence, oral evidence and documentary evidence. Such evidence established or sought to establish the following :-

- (1) the Respondent was a married man with four children. Page 4
- (2) his net salary for the period 1st November, 1956 to 30th December, 1973 was HK\$297,336.66. Pages 5 & 6
- 30 (3) between 2nd June, 1972 and 3rd December, 1973 his net salary was HK\$66,722.77, an average of HK\$3706 per month. Page 6
- (4) on the 3rd December, 1973 the Respondent was in control of the pecuniary resources and property acquired and paid for as listed below.

<u>Item</u>	<u>Date of Acquisition</u>	<u>Payment</u>	
40 (i) Bank account creditors		£15,516.09	Pages 7-9

<u>Record</u>				
Pages 9 & 10	(ii) Flat D, 15th floor, Shung Chi House	18.10.72	\$41,800 down payment \$21,988 further payment down to 31.12.73 Total \$63,788.20	
Pages 10-12	(iii) Volkswagen Car	15.2.73	\$7,710 after deducting "trade in" allowance	10
Page 12	(iv) 1/5th interest in share syndicate	July 1973	\$6,000	
Page 13	(v) 44 shares H.K. and Shanghai Banking Corp.	Feb. 1973	\$18,032	
Pages 13 & 14	(vi) 400 shares China Light & Power Co. Ltd.	17.1.73	\$22,755.60	20
Pages 14 & 15	(vii) 1,000 shares Hutchison International Ltd.	May 1973	\$18,162	
Pages 15 & 16	(viii) 500 shares Hong Kong Land Co. Ltd.	July 1973	\$5,149.50	
Page 16-18	(ix) 1,000 shares Yangtzekiang Garment Manufacturing Co. Ltd.	After mid 1972	\$11,049.50	30
Pages 16-18	(x) 100 shares Hong Kong Telephone Co. Ltd.	After mid 1972	\$ 9,200	
			\$178,362.89	
			Correct figure for the total, should be (169,652.89)	
Pages 19-22	At the end of the Crown case Counsel for the Respondent submitted to the learned trial judge, inter alia, that there was no case to answer, in that, there was no evidence of the value of the assets as at the charge date and that accordingly the necessary element of disproportionality had not been proved by the Crown. The learned trial judge held that the			40
Page 22				

Respondent had a case to answer and the Respondent then adduced evidence. No evidence adduced on behalf of the Respondent touched upon the values of the assets alleged to be under the control of the Respondent.

10 6. That at the hearing before the learned district judge the Crown adduced evidence to prove the acquisition cost of each of the assets the subject of the charge. However the Crown choose to adduced no evidence as to the current market value of the assets as at the date of the charge so as to show the appreciation or depreciation of the asset since the date of acquisition.

7. That during the course of the trial, the Respondent gave evidence and called witnesses seeking to give a "satisfactory explanation" within the ambit of section 10(1)(b) of the Prevention of Bribery Ordinance.

20 The learned district judge held, inter alia, that the bank balance item (1) Para. 5, hereof, did not "require any explanation" and went on to hold that the Respondent "was in control on the charge date of the following property of which no satisfactory explanation has been given" -

- (i) \$44,847.20 (Flat D, 15th floor, Shung Chi House - Item (ii) para. 5 hereof) Pages 24-26
- 30 (ii) \$7,710 (Volkswagen Car - item (iii) para. 5 hereof) Pages 23 & 24
- (iii) \$18,032.00 (44 shares H.K. & Shanghai Banking Corp. - item (v) para. 5 hereof) Page 26
- (iv) \$9,520.00 (400 shares China Light & Power - balance unexplained, item (vi) para. 5 hereof) Pages 27-28
- (v) \$18,162.00 (1000 shares Hutchison International Ltd. - item (vii) para. 5 hereof) Page 28
- (vi) \$8,149.50 (500 shares Hong Kong Land Co. Ltd. - item (viii) para. 5 hereof) Page 29
- 40 (vii) \$11,049.50 (1000 shares Yantsekiang Garment Manufacturing Co. Ltd. - item (ix) para. 5 hereof) Pages 29-32

Record

Pages 29-32 (viii) \$9,200.00 (100 shares Hong Kong Telephone Co. Ltd. - item (x) para. 5 hereof)

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\$124,650.20

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Items (i), (ii) and (vi) as listed at page 37 (427 of Record), contains typing errors. The correct figures should be (1) 41,800, (2) 7,710, (6) 5,149.50, accordingly the amended total taking into account the adjustment is \$120,623.00.

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Pages 19-22

8. That the learned trial judge convicted the Respondent on the 28th April, 1978 and sentenced him to a term of imprisonment and to a fine of \$75,000. In the course of his judgment the learned trial judge referred to the submission made by Counsel for the Respondent at the conclusion of the prosecution evidence and reaffirmed his rejection to that submission. The learned trial judge accepted that the Crown was required to quantify the value of the assets under the control of the Respondent at the charge date and held that in the absence of other evidence as to the value of a particular asset he was entitled to adopt the acquisition cost of such asset to the Respondent.

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9. That from this decision the Respondent appealed to the Court of Appeal of the Supreme Court, Hong Kong and prayed in aid of this appeal, inter alia, the following ground -

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"That the learned trial judge erred on a point of law in holding that the prosecution need for adduce evidence as to the value of the assets at the charge date as opposed to the values at the date of purchase to prove that the assets at the charge date were disproportionate to the official emoluments received by the Respondent from the commencement of Government service up to the charge date".

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Pages 40-43

10. That the Court of Appeal of the Supreme Court of Hong Kong commenced the hearing of this appeal on the 2nd January, 1979 and this hearing concluded on the 9th February 1979, and allowed the appeal on the aforementioned ground, stating inter alia:-

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"In the present case no evidence was given of the value of the accused's total assets as at the charge date so that comparison of that total value with total emoluments as at the charge date was impossible ....., However, this is not a case where we can say that the values at the charge date must have been greater than those at the date of acquisition and accordingly we cannot apply the proviso."

10 11. That the Appellant submits that the decision of the Court of Appeal allowing the Respondent's appeal against conviction was incorrect and that the Appellant's appeal ought to be allowed for the following:

R E A S O N S

- (1) That the Court of Appeal erred in holding that no evidence had been given as to the value of the Respondent's assets as at the charge date.
- 20 (2) That for the purposes of section 10(1)(b) of the Ordinance a valuation of the Respondent's assets meant the cost to the Respondent of acquiring such assets and not the current market value.
- (3) That the Court of Appeal erred in law in not accepting that evidence of the amount the Respondent had paid for the assets prior to the charge date was evidence of the value of those assets as at the charge date.
- 30 (4) That the Court of Appeal erred in law in adopting as the sole test of such disproportion a balancing of total official emoluments received throughout a Crown servant's service against assets controlled by him on charge date and in failing to regard the financial position of such a Crown servant at the respective dates upon which such assets were acquired and the prices paid therefore.
- 40 (5) That the Court of Appeal erred in law in ruling that the acquisition cost of assets was irrelevant in determining the issue of disproportion having regard to the requirement that a satisfactory explanation, should such be held to be required, relates to how such assets came under the control of an accused.

ANTHONY SCRIVENER Q.C.

No. 13 of 1979<sup>1980</sup>

IN THE PRIVY COUNCIL

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Appellant

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