

## Case Summary (English Translation)

### HKSAR v Yuen Man On Tommy (阮民安)

DCCC 424/2022; [2023] HKDC 1218

(District Court)

(Full text of the Court's reasons for sentence in Chinese at

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=154722&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=154722&currpage=T))

Before: HH Judge E Lin

Date: 31 August 2023

***Sentencing – offence of doing an act or acts with a seditious intention – s. 10(1)(a) of the Crimes Ordinance – dealing with property known or believed to represent proceeds of an indictable offence – s. 25(1) and (3) of the Organized and Serious Crimes Ordinance – publishing and/or continuing to display on social platforms posts of texts, pictures and emojis with seditious statements – soliciting donations by fabricating a fictitious character – circumstances of offence were serious – a total starting point of 39 months' imprisonment – reduced by one-third to 26 months' imprisonment for guilty plea***

### Background

1. The defendant was charged with 2 offences, in respect of which he was convicted upon his plea and admission of the facts, namely: (paras. 1-2)

- (a) doing an act or acts with a seditious intention, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200) (“Charge 1”); and
- (b) dealing with property known or believed to represent proceeds of an indictable offence, contrary to s. 25(1) and (3) of the Organized and Serious Crimes Ordinance (Cap. 455) (“Charge 2”).

## **Summary of the reasons for sentence**

### ***(a) Facts of the case***

#### **Charge 1**

2. The Defendant, between 26 September 2021 and 21 January 2022 in Hong Kong, did an act or acts with a seditious intention, namely making and/or continuing to display, in his name, on his three registered accounts on Facebook and Instagram posts of texts, pictures and emojis with seditious statements as well as giving encouraging responses to the comments made by viewers; the posts in question were available for public viewing, commenting or re-posting. His purpose was incitement to: (paras. 1, 4-7 and 15)

- (a) bring into hatred or contempt or to excite disaffection against the HKSAR Government;
- (b) excite inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established;
- (c) bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; and/or
- (d) raise discontent or disaffection amongst inhabitants of Hong Kong.

#### **Charge 2**

3. The Defendant, between March 2021 and 2022, published a total of 87 public posts online to support relevant social movement events, advocate Hong Kong independence, commemorate the anniversary of the “anti-extradition to China” movement, promote other “yellow shops” (namely shops operated by those supporting/participating in social movement events), ridicule and defame police officers, praise and support those detained for their participation in social movement events, and encourage others to continuously join hands in fighting. Meanwhile, he solicited donations on various pretexts, including: promoting his concerts; selling fruits; and, through collaboration with his

wife to fabricate a fictitious character, A, and publication of A's background information, photos, particulars of the criminal proceedings against her, etc., appealing to viewers for support of A by purchasing cookies or making donations. (para. 7)

4. Between 27 April 2021 and 15 February 2022, a total of 3,907 deposits in the total sum of HK\$2,015,622.35 were paid into a bank account held by Defendant's brother-in-law. Among which, 1,657 deposits totalling HK\$718,788.27 were made upon the Defendant's appeal through online media to assist A. Withdrawals from that account totalled HK\$1,798,061.90, 92.2% of which (i.e. HK\$1,657,386) was transferred to the Defendant's personal bank account.

5. In addition, a total of 357 deposits in the total sum of HK\$3,397,835.31 were paid into the Defendant's bank account. There were altogether 1,233 withdrawals totalling HK\$3,379,635.20 from that account, of which HK\$1,012,500 was transferred by the Defendant to his personal Jockey Club account for gambling.

6. The Defendant was in control of the fund flow of the two accounts mentioned above. Judging from the incomes as declared by the Defendant and his brother-in-law, there was simply no reasonable and lawful means for them to obtain and deal with the abovementioned deposits and withdrawals. The Defendant, knowing or having grounds to believe that the HK\$718,788.27 on his account was donations in relation to A, which represented proceeds of an indictable offence, dealt with the said sum of money. (paras. 8, 10, 14, 16 and 18)

***(b) Defendant's intention and culpability***

**Defendant's posts**

7. By the following analysis, the Court held that the offence committed by the Defendant was an act endangering national security, and that his culpability and sentence should be treated in a commensurate manner. (paras. 19-20)

- (a) The Defendant's spleen-venting and sloganised curses and vituperation about news of the society aimed at pandering to and stirring up public discontent and grievances against the Government and those responsible for safeguarding social order. (para. 19)
- (b) The posts in question did not offer any constructive criticism, improvement proposal, political opinions or reasonable and dispassionate discussion. Also, most of the posts ended with promotion of yellow shops, his own concerts and appeals for donations in sensational wording, for the purpose of rekindling the discontent and unease that had gradually subsided in society in his own interest at the expense of public peace. (para. 19)
- (c) Most of the posts were: satire and ridicule, aiming to provoke public contempt against the HKSAR Government and the existing legal system and bring into hatred against law enforcement and administration of justice as well as the officials responsible for maintaining the operation of society; moral blackmail on others for money to support those who had breached and intended to breach the law; and even advocacy of Hong Kong independence. They carried the clear objective to preclude Hong Kong society from continuing to operate in the present manner and structure, and the implication of seceding the HKSAR from the State. (para. 20)

8. Citing the gravamen of incitement offence as an inchoate offence as construed by the Court of Appeal in *Secretary for Justice v Poon Yung Wai* [2022] 4 HKLRD 1002, the Court pointed out that in the present case the number of viewers and the actual effects were but some of the factors in the overall consideration. That said, the Defendant's posts had thousands of responses while replied to and shared by many, thereby causing considerable harm to society. (para. 21)

#### **Defendant and his wife co-fabricated the character A**

9. In the Court's view, the Defendant's conduct not only aimed at creating a fictitious victim for bringing the public into resentment against

the Government and law enforcement officers, but was also a means of making money. In order to excite social discontent against the Government, the Defendant constructed plots, morally kidnapped the sympathy of others and continued to seek public attention for their unceasing donations. His conduct, which was an elaborate design and persistent means of self-publicity and money-making, was even more despicable than the risk-taking behaviours of those ordinary criminals in general who were compelled by circumstances or momentarily yielded to the lure of materialistic desires. For the pursuit of his personal gain, the Defendant had not hesitated in provoking all sorts of social grievances and abusing public sympathy for self-fattening, and even went so far as to fan the flames for looting the burning house. Therefore, the Court found the Defendant even more culpable than ordinary fraudsters. (paras. 22-23)

***(c) Sentencing considerations***

**Charge 1**

10. The Defendant was a first offender on this offence, for whom the maximum penalty was 2 years' imprisonment and a fine of HK\$5,000. There were no clear sentencing guidelines for this charge. The Defendant's culpability was determined based on the facts of the present case. (paras. 25-26)

11. The Court pointed out that the Court of Final Appeal in handling the appeal in *HKSAR v Ng Hau Yi Sidney* [2021] HKCFA 42 concerning the issue of bail in a case involving an offence contrary to section 10(1)(c) of the Crimes Ordinance (Cap. 200), ruled that the combined effect of BL 23 and the NSL was that such offence was an offence endangering national security mentioned therein, whereby the court should adopt the stringent threshold for bail under the NSL. By the same logic, the Court should also, within the sentencing limits prescribed in the Crimes Ordinance, draw reference from the NSL provisions and the relevant case law in evaluating the Defendant's culpability. (paras. 27-28)

12. NSL 21 categorises cases into “serious” or “minor” by their circumstances of the offence, and provides for corresponding penalties. The Court applied *HKSAR v Ma Chun Man* [2022] HKCA 1151, where the Court of Appeal ruled that in assessing the seriousness of the circumstances of the case, the prime focus was on the offender’s acts, as well as the actual consequences, potential risks and possible influence entailed. (para. 29)

13. Given the following factors concerning this case, the Court considered that the Defendant’s endless posts had incited those who were unwilling to let the social events subside to attempt to breach public peace and order again. Accordingly, the Court held that the facts of this case were bordering on “serious”, which warranted a sentence of 21 months’ imprisonment on the Defendant. (paras. 29-30)

- (a) At the material times, Hong Kong was undergoing a period of unprecedented social events and plague while the Defendant’s posts were intended to reignite the fire;
- (b) The Defendant, by virtue of his celebrity, continuously made on the online platforms satirical, vituperative and defamatory remarks about certain people and events;
- (c) The offence spanned over nearly 3 months;
- (d) The posts in question were circulated and viewed by thousands of people, attracting hundreds of replies;
- (e) The Defendant’s conduct involved certain degree of planning and steps; and
- (f) Despite no advocacy of violence by the Defendant, he, with his satirical, vituperative and gloating posts, created a generally negative atmosphere in the community and even attracted numerous callous remarks.

## **Charge 2**

14. Charge 2 was a serious offence, where the level of penalty varied with the facts of individual cases and there were no clear sentencing guidelines. (para. 31)

15. Having taken into account the following factors, the Court held that the appropriate starting point for Charge 2 was one of 21 months' imprisonment (para. 35):

- (a) The sum involved was HK\$718,788.27, which, albeit not of an exceedingly large amount for a case of its kind, was obtained by high-profile deception and extortion from ordinary people by manipulating their sympathy; (para. 33)
- (b) The offence lasted for nearly 11 months, during which 1,657 deposits (each not exceeding HK\$500 on average) were made and approximately over one thousand people were deceived; (para. 33)
- (c) At least two co-conspirators and an elaborate deceptive operation were involved; (para. 34)
- (d) The Defendant was evidently the mastermind who orchestrated the entire deceptive operation. He also took the initiative to arrange and direct that the funds in question be deposited firstly into the account of the co-conspirator and then into his own personal account. Hence, his culpability could not simply be gauged by the sheer sum involved. (para. 34)

**(d) *Sentencing***

16. The two charges were distinct, but there were overlapping considerations and in view of the totality principle, the Court ordered that 3 months of the sentence for Charge 2 to run concurrently with the sentence for Charge 1, making a total sentence of 39 months' imprisonment. (para. 36)

17. The only valid mitigation was the Defendant's guilty plea and accordingly the Court reduced his total sentence to one of 26 months. (paras. 38-40)