

CA orders trial judge to convict ex-general manager of TVB and company director of bribery and impose sentences

26 October 2015

The Court of Appeal (CA) today (Monday) ordered the District Court trial judge to convict a former general manager of Television Broadcasts Limited (TVB) and a then director of a production company of bribery and to hand down sentences in an ICAC case, after ruling that their earlier acquittals had no legal or factual basis.

Stephen Chan Chi-wan, 56, former general manager of TVB, and Tseng Pei-kun, 33, then director of Idea Empire Advertising & Production Company Limited (IEAP), were acquitted at the District Court on September 2, 2011 after trial of five charges – three of bribery, two of which were alternative; and two of conspiracy to defraud.

The Department of Justice (DoJ) subsequently filed an appeal with the CA against the acquittal of the three bribery charges by way of case stated, and the order of court costs granted by the trial judge to Chan and Tseng for their two acquitted charges of conspiracy to defraud.

On November 21, 2012, the CA allowed the appeal by the DoJ, quashed the acquittals and remitted the case to the District Court for resumption of trial, but reserved its action to deal with the order of court costs. The trial judge, Poon Siu-tung, stood by his original verdict on March 7, 2013, hence Chan and Tseng were again acquitted of the three bribery charges.

The DoJ filed a further appeal with the CA against the acquittals by way of case stated.

The appeals were heard by Mr Justice Wally Yeung Chun-kuen, Vice-President of the CA, Madam Justice Maria Yuen Ka-ning, Justice of Appeal of the CA and Mr Justice Derek Pang Wai-cheong, Judge of the Court of First Instance, on September 8 and 9 this year.

Handing down the judgment today, Mr Justice Wally Yeung said the trial judge's ruling that Chan had a "reasonable excuse" for accepting a sum of money from IEAP as a reward for participating in a programme produced and broadcast by TVB was wrong, and had neither legal nor factual basis.

Mr Justice Wally Yeung allowed the DoJ's appeal, quashed the acquittals of Chan and Tseng, and ordered the trial judge to convict Chan and Tseng of a joint charge of conspiracy for an agent to accept an advantage, contrary to Section 9(1)(a) of the Prevention of Bribery Ordinance and Section 159A of the Crimes Ordinance; and impose sentences on them.

The joint charge stated that between December 7, 2009 and January 18, 2010, Chan and Tseng conspired together for Chan to, without lawful authority or reasonable excuse, accept \$112,000 from IEAP as a reward for Chan participating and performing in a side-show entitled "Be My Guest" in the "New Year Eve Countdown Programme at Olympic City for 2010" which was produced and broadcast by TVB on December 31, 2009.

The CA also quashed the order of court costs granted by the trial judge to Chan and Tseng, and remitted the matter to the trial judge for consideration.

The case was adjourned until November 13 this year for mention at the District Court.

Chan and Tseng were granted cash bail of \$100,000 each. They were ordered not to leave Hong Kong.

The appellant was today represented by Eric Kwok SC and Acting Senior Public Prosecutor Felix Tam, and assisted by ICAC officer Andy Yu.

上訴法庭下令原審法官裁定無綫電視前總經理及公司董事貪污罪成及判刑

2015年10月26日

上訴法庭今日(星期一)裁定一宗廉政公署案件中一名電視廣播有限公司(無綫電視)前總經理及一名製作公司前董事早前貪污罪名不成立的裁決缺乏法律及事實基礎，下令原審法官裁定二人罪名成立及作出判刑。

陳志雲，五十六歲，無綫電視前總經理，及叢培崑，三十三歲，思潮廣告制作有限公司(思潮廣告)前董事，於二〇一一年九月二日在區域法院經審訊後被裁定五項罪名不成立，即三項貪污，其中兩項為交替控罪，及兩項串謀詐騙。

律政司其後以案件呈述方式向上訴法庭就三項被裁定不成立的貪污控罪提出上訴，並就陳和叢就餘下兩項被裁定不成立的串謀詐騙控罪獲原審法官頒布的訟費判令提出上訴。

上訴法庭於二〇一二年十一月二十一日裁定律政司上訴得直，推翻兩人罪名不成立的裁決，並將案件發還區域法院繼續審訊，但至於訟費判令則容後處理。原審法官潘兆童於二〇一三年三月七日案件續審後維持原判，並再次裁定陳和叢三項貪污罪名不成立。

律政司其後再就貪污罪名不成立的裁決以案件呈述方式向上訴法庭提出上訴。

有關上訴於本年九月八日及九日由上訴法庭副庭長楊振權、上訴法庭法官袁家寧及原訟法庭法官彭偉昌審理。

楊振權法官今日頒布判詞時指，原審法官裁定陳有「合理辯解」向思潮廣告收取一筆金錢作為參與由無綫電視製作及廣播的節目的報酬乃屬錯誤，而且有關裁決缺乏法律及事實基礎。

楊振權法官裁定律政司上訴得直，推翻陳和叢罪名不成立的裁決，並下令原審法官裁定陳和叢一項串謀使代理人收受利益罪名成立，違反《防止賄賂條例》第9(1)(a)條及《刑事罪行條例》第159A條，並對二人作出判刑。

該控罪指陳和叢於二〇〇九年十二月七日至二〇一〇年一月十八日期間，一同串謀使陳在無合法權限或合理辯解下從思潮廣告接受十一萬二千元，作為陳參與和演出無綫電視於二〇〇九年十二月三十一日製作和廣播的「奧海城全城狂歡邁向二〇一〇」內一個名為「志雲飯局」的附屬節目的報酬。

上訴法庭今日又撤銷陳和叢早前獲原審法官頒布的訟費判令，並要求原審法官重新作出考慮。

案件押後至本年十一月十三日在區域法院提訊。

陳和叢各獲准以現金十萬元保釋。他們亦受命不准離開香港。

上訴一方今日由資深大律師郭棟明及署理高級檢控官談立豐代表出庭，並由廉署人員余漢傑協助。

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