SPC Guiding Case No. 248: Case of Jin [X] et al. for Organizing Prostitution

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Criminal / crime of organizing prostitution / meritorious performance / unlawful means / meritorious performance leads / exposing the criminal acts of others

Holding

1. Where, during the period of release on bail pending trial, an actor arranges to purchase drugs and exposes the drug transaction in order to obtain the circumstances of meritorious performance, this constitutes obtaining meritorious performance leads through unlawful means, and shall not be found to constitute meritorious performance.

2. For a case in which the defendant appeals, where the original judgment erred in finding statutory circumstances for lenient punishment such as meritorious performance, the second-instance court shall state the error in the first-instance judgment in its adjudication document, but, in accordance with the principle of no aggravation of punishment on appeal, shall not increase the defendant's punishment.

Basic Facts

From January to March 2019, the defendant Jin [X], together with Zang [X]le, Zheng [X] and Ge [X]yu, jointly invested to open a wellness club and organized seven prostitutes to engage in prostitution. The four defendants illegally obtained a total of more than RMB 620,000 (same currency hereinafter) from organizing prostitution by others. Among them, Jin [X] received a share of RMB 76,485. After the case was discovered, Jin [X] voluntarily surrendered and returned all the illegal gains.

It was additionally found that the defendant Jin [X] was released on bail pending trial for this case from March 2019 to August 2020. During that period, in order to be found to have performed meritorious service and thereby obtain lenient punishment, Jin [X] proactively sought meritorious performance leads and contacted Li [X]peng online to purchase drugs. In December 2019, in order to test whether drugs could be purchased from Li [X]peng, Jin [X] purchased 1.18 grams of methamphetamine (ice) from Li [X]peng in Xiamen, Fujian Province. In January 2020, in order to obtain greater leniency, Jin [X] arranged with Li [X]peng to purchase 100 grams of methamphetamine, agreeing to transact in Xiamen. Jin [X] then traveled to Xiamen and exposed the drug trafficking crime to the Xiamen public security organ. At the agreed transaction location, the public security organ, based on the leads provided by Jin [X], arrested Li [X]peng, who was carrying 110.61 grams of methamphetamine. In November 2021, Li [X]peng was sentenced by a court to fifteen years of fixed-term imprisonment, three years of deprivation of political rights, and confiscation of personal property of RMB 50,000 for the above acts of trafficking and transporting methamphetamine, and the relevant judgment had become legally effective. In addition, Jin [X] also had the meritorious performance of assisting the judicial organ in arresting a criminal suspect in another case.

Judgment

On December 31, 2020, the Sucheng District People's Court of Suqian, Jiangsu Province rendered Criminal Judgment (2019) Su 1302 Xing Chu No. 895, finding that the acts of the defendants Zang [X]le, Jin [X], Zheng [X] and Ge [X]yu constituted the crime of organizing prostitution; at the same time, it found that the

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defendant Jin [X] had the circumstances of meritorious performance, namely exposing the criminal acts of others that were verified to be true, and assisting the judicial organ in arresting other criminal suspects. Accordingly, the defendant Jin [X] was sentenced to three years and six months of fixed-term imprisonment and a fine of RMB 360,000 for the crime of organizing prostitution (the sentencing items for the other defendants are omitted).

After the judgment was pronounced, the defendant Jin [X] appealed, claiming that the drug-trafficking criminal suspect he exposed could lawfully be sentenced to life imprisonment, and that he should be found to have major meritorious performance. On May 8, 2021, the Suqian Intermediate People's Court of Jiangsu Province rendered Criminal Judgment (2021) Su 13 Xing Zhong No. 140, holding that the original judgment's finding that Jin [X] committed the crime of organizing prostitution was clear in facts and sufficient and reliable in evidence; however, Jin [X]'s act of arranging to purchase drugs during the period of release on bail pending trial and exposing the transaction did not constitute meritorious performance, let alone major meritorious performance. The original judgment's finding that Jin [X]'s above act constituted meritorious performance was improper, but, in accordance with the principle of no aggravation of punishment on appeal, Jin [X]'s punishment should not be increased. Therefore, the conviction and sentencing of Jin [X] were affirmed.

Reasoning

This case had two focal points of dispute: first, whether the defendant Jin [X]'s act of arranging to purchase drugs and exposing the transaction during the period of release on bail pending trial constituted meritorious performance; second, how the second instance should handle a case where the first instance erred in finding meritorious performance and the defendant appealed.

I. On the finding of meritorious performance

Article 68 of the Criminal Law of the People's Republic of China provides: “Where a criminal exposes the criminal acts of others that are verified to be true, or provides important leads that enable the resolution of other cases, thereby having circumstances of meritorious performance, the punishment may be mitigated or reduced; where there are circumstances of major meritorious performance, the punishment may be reduced or exempted.” In accordance with the provisions of the Criminal Law and in combination with the relevant regulatory documents, the defendant Jin [X] should not be found to have meritorious performance. Specifically:

First, “exposing the criminal acts of others” should mean reporting and exposing criminal acts committed by others in which the actor did not participate. Exposing to the judicial organ criminal acts in which the actor himself participated constitutes “truthfully confessing one's own crime.” In this case, the defendant Jin [X] proactively arranged with Li [X]peng to purchase drugs and then exposed to the public security organ Li [X]peng's criminal acts of trafficking and transporting drugs. Since Jin [X] was the downstream party of the drug transaction, the acts were criminal acts in which he himself participated, and therefore should not be found to constitute “exposing the criminal acts of others.”

Second, leads of criminal acts obtained through unlawful means should not be found to constitute meritorious performance. In practice, in order to obtain lenient punishment, criminals sometimes stop at nothing to obtain leads of others' crimes through unlawful means such as bribery, violence and coercion. No one should profit from his own unlawful acts. If leads of others' crimes obtained through such means were found to constitute meritorious performance without regard to the source of the leads, it would violate basic legal principles and would “spawn” new unlawful acts and crimes. It is precisely for this reason that the Opinions of the Supreme People's Court on Several Specific Issues Concerning the Handling of Voluntary Surrender and Meritorious Performance (Fa Fa [2010] No. 60), in accordance with Article 68 of the Criminal Law, further regulates the application of the meritorious performance system in judicial practice, expressly providing: “Where a criminal obtains leads of others' crimes and ‘reports and exposes’ them through unlawful

means such as bribery, violence or coercion, or by violating supervision regulations during meetings with lawyers or relatives and friends after being taken into custody, it shall not be found to constitute meritorious performance." In this case, although the defendant Jin [X] helped the public security organ arrest the drug trafficker and seize the drugs, the drug trafficking occurred under the circumstance that Jin [X] proactively arranged to purchase drugs. Although the manner in which Jin [X] obtained the leads of criminal acts did not directly conform to the acts expressly enumerated in the above provisions, it undoubtedly had the nature of unlawfulness. If exposing criminal acts in which the actor himself proactively participated, or even induced others to commit, were found to constitute meritorious performance, it would be tantamount to covertly encouraging criminals to obtain meritorious performance by artificially "manufacturing" crimes. From the spirit of the meritorious performance system, Jin [X]'s act should be found to constitute obtaining meritorious performance leads through unlawful means, and should not be found to constitute meritorious performance.

II. On the handling of the first-instance error in finding meritorious performance

This case also had a certain special feature: the first instance erroneously found that the defendant Jin [X]'s act of arranging to purchase drugs and exposing the transaction constituted ordinary meritorious performance and gave him lenient punishment; after the judgment was pronounced, the procuratorate did not protest, but Jin [X] appealed on the ground that his above act constituted major meritorious performance and that he should receive greater leniency.

Item (2) of Article 236(1) of the Criminal Procedure Law of the People's Republic of China provides: "Where the original judgment contains no error in the finding of facts but errs in the application of law or in the sentencing, the judgment shall be amended." Accordingly, with respect to the error of the first-instance judgment in this case in finding that the defendant Jin [X]'s act of arranging to purchase drugs and exposing the transaction constituted meritorious performance, the second-instance court should point out and correct it in its adjudication. However, Article 237(1) of the Criminal Procedure Law provides: "When hearing an appeal filed by the defendant or his legal representative, defense counsel or close relatives, a people's court of second instance shall not aggravate the defendant's punishment..." Accordingly, although the first-instance judgment in this case erred in finding that Jin [X]'s above act constituted meritorious performance and giving him lenient punishment, in accordance with the principle of no aggravation of punishment on appeal, his punishment should not be increased, and the first-instance judgment's conviction and sentencing of Jin [X] should be affirmed. Although the second-instance court found that Jin [X]'s exposure involved in the case did not constitute meritorious performance, resulting in the original punishment being somewhat lenient, because Jin [X] had other circumstances of meritorious performance and was thereby given lenient punishment, the punishment imposed had not reached the level of being clearly lenient, and there was therefore no need to initiate the adjudication supervision procedure to amend the judgment after the second-instance judgment became effective.

Relevant Legal Provisions

Article 68 and paragraph 1 of Article 358 of the Criminal Law of the People's Republic of China

Paragraph 1 of Article 71 and Articles 236 and 237 of the Criminal Procedure Law of the People's Republic of China

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