SPC Guiding Case No. 71: Case of Mao Jianwen for Refusing to Execute Judgments and Rulings

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

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Keywords

Criminal / crime of refusing to execute judgments and rulings / time from which calculation begins

Holding

The time for the act of having the ability to execute but refusing to execute judgments and rulings is calculated from the time when the judgment or ruling becomes legally effective. Where, after a judgment or ruling with enforcement content becomes legally effective, a person under an obligation of enforcement conceals, transfers, or intentionally damages property, or commits other acts of refusing to execute, thereby rendering the judgment or ruling unenforceable, and the circumstances are serious, the person shall be convicted and punished for the crime of refusing to execute judgments and rulings.

Basic Facts

On December 11, 2012, the Pingyang County People's Court of Zhejiang Province rendered the civil judgment (2012) Wen Ping Ao Shang Chu Zi No. 595, ordering the defendant Mao Jianwen to return to Chen Xianyin, within 15 days from the effective date of the judgment, the investment amount of RMB 200,000 and interest in Wenzhou Hongyuan Packaging Products Co., Ltd., which was affiliated under Mao Jianwen's name. The judgment became effective on January 6, 2013. Because Mao Jianwen did not voluntarily perform the obligations determined by the effective legal instrument, Chen Xianyin applied to the Pingyang County People's Court for compulsory enforcement on February 16, 2013. After docketing the case, the Pingyang County People's Court found during enforcement that, on January 17, 2013, Mao Jianwen had sold the small ordinary passenger vehicle with plate Zhe CVU661 under his name at a price of RMB 150,000, and used the proceeds for personal expenses, refusing to execute the effective judgment. After Mao Jianwen was captured and brought to justice on November 30, 2013, he truthfully confessed the above facts.

Judgment

On June 17, 2014, the Pingyang County People's Court of Zhejiang Province rendered the criminal judgment (2014) Wen Ping Xing Chu Zi No. 314: The defendant Mao Jianwen committed the crime of refusing to execute judgments and was sentenced to fixed-term imprisonment of ten months. After the judgment was pronounced, Mao Jianwen did not appeal, and the public prosecution organ did not protest, and the judgment became legally effective.

Reasoning

The effective judgment held: The defendant Mao Jianwen bore the enforcement obligation determined by the effective judgment, and after a judgment with enforcement content of the people's court became legally effective, he concealed and transferred property and committed other acts of refusing to execute, thereby rendering the judgment unenforceable, with serious circumstances; his conduct had already constituted the crime of refusing to execute judgments. The charge alleged by the public prosecution organ was established. Mao Jianwen truthfully confessed his crime after being brought to justice, and could be given a lighter punishment.

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The focus of the dispute in this case was how to determine the time from which the act of “having the ability to execute but refusing to execute” stipulated in the crime of refusing to execute judgments and rulings is calculated, that is, whether the defendant Mao Jianwen’s act of refusing to execute the judgment was calculated from the time when the relevant civil judgment became legally effective, or from the time when enforcement was docketed. In this regard, the court held that the entry of an effective legal instrument into compulsory enforcement procedures was not a constitutive element or precondition of the crime of refusing to execute judgments and rulings, and Mao Jianwen’s act of refusing to execute the judgment should be calculated from the time when the relevant civil judgment became legally effective on January 6, 2013. The main reasons were as follows: First, it conformed to the legislative intent. The Standing Committee of the National People’s Congress pointed out, when interpreting Article 313 of the Criminal Law, that the “j judgments and rulings of the people’s court” in that article referred to judgments and rulings that were made by the people’s court in accordance with the law, had enforcement content, and had become legally effective. That is to say, only after a judgment or ruling with enforcement content becomes legally effective does it have legal binding force and compulsory enforcement force, and only then does the obligor bear the responsibility of promptly and actively performing the obligations determined by the effective legal instrument. The compulsory enforcement force of an effective legal instrument is not generated only after entry into compulsory enforcement procedures, but is generated from the date the legal instrument becomes effective. Second, it was consistent with the Civil Procedure Law and its judicial interpretations. Article 111 of the Civil Procedure Law of the People’s Republic of China provides that where a litigation participant or another person refuses to perform a judgment or ruling of the people’s court that has become legally effective, the people’s court may impose a fine or detention according to the seriousness of the circumstances; where it constitutes a crime, criminal liability shall be pursued in accordance with the law. Article 188 of the Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China provides that the act of refusing to perform a judgment or ruling of the people’s court that has become legally effective, as provided in Article 111, paragraph 1, item 6 of the Civil Procedure Law, includes concealing, transferring, selling, or damaging property, or transferring property without compensation, trading property at a clearly unreasonable price, waiving matured claims, or providing security for others without compensation after the legal instrument becomes legally effective, thereby rendering the people’s court unable to enforce. It can be seen that the law clearly limits the act of refusing to execute to the period after the legal instrument becomes legally effective, and does not limit the subject of refusing to execute only to the person subject to enforcement or the person with the obligation to assist in enforcement after entry into compulsory enforcement procedures, much less limit the scope of application of the crime of refusing to execute judgments and rulings only to acts occurring after an effective legal instrument enters compulsory enforcement procedures. Third, it conformed to the legislative purpose. The legislative purpose of the crime of refusing to execute judgments and rulings is to solve the problem of “difficulty in enforcement” of the court’s effective judgments and rulings. Bringing the act of evading performance of obligations after a judgment or ruling becomes effective but before enforcement is docketed within the scope of application of the crime of refusing to execute judgments and rulings is the inherent meaning of establishing this crime by law. Determining the effective date of the judgment or ruling as the starting point for calculating the act of refusing to execute in the crime of refusing to execute judgments and rulings can effectively prompt the obligor to actively perform the obligations determined by the effective judgment after it becomes effective under the deterrence of criminal punishment, avoid the effective judgment becoming a dead letter, thereby making the public truly respect judicial adjudication, safeguard the authority of the law, fundamentally solve the problem of “difficulty in enforcement,” and realize the legislative purpose of the crime of refusing to execute judgments and rulings.

Relevant Legal Provisions

Article 313 of the Criminal Law of the People’s Republic of China.

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