SPP Guiding Case No. 7: Case of Hu Baogang and Zheng Ling for Failing to Transfer Criminal Cases by Fraudulent Means

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

Keywords

Litigation supervision; crime of failing to transfer criminal cases by fraudulent means

Holding

Litigation supervision is an important part of the lawful performance of legal supervision by the people's procuratorates. In practice, procuratorial organs and case-handling personnel shall adhere to attaching equal importance to case handling and supervision, establish and improve a working mechanism for the effective linkage between administrative law enforcement and criminal justice, and be adept at discovering various leads of duty-related crimes in the course of case handling. Where administrative law enforcement personnel, by fraudulent means, fail to transfer criminal cases that should be transferred, and such conduct constitutes a crime, they shall be pursued for criminal liability in accordance with the law.

Basic Facts

The defendant Hu Baogang, male, born in 1956, formerly the section chief of the Fair Trade Section of the Hexi Branch of the Tianjin Administration for Industry and Commerce.

The defendant Zheng Ling, male, born in 1957, formerly a staff member of the Fair Trade Section of the Hexi Branch of the Tianjin Administration for Industry and Commerce.

While serving as the section chief of the Fair Trade Section of the Hexi Branch of the Tianjin Administration for Industry and Commerce (hereinafter referred to as the "ICBC Hexi Branch"), on the morning of January 11, 2006, the defendant Hu Baogang led the defendant Zheng Ling and other staff members of the section to conduct an on-site inspection of Tianjin Huaxia Shenlong Science and Trade Development Co., Ltd. (hereinafter referred to as "Shenlong Company"), which had been reported by the public as suspected of illegal pyramid selling. They seized on the spot a number of financial statements and promotional materials, and interrogated the company's legal representative Li Peng that same day. Li Peng admitted that the company's business turnover was more than 1.14 million yuan (consistent with the figures in the seized financial statements). The defendant Zheng Ling was then specifically responsible for handling the case. On March 16, 2006, the defendants Hu Baogang and Zheng Ling, in the case investigation conclusion report and the penalty decision, determined that Shenlong Company's conduct constituted illegal pyramid selling, but concealed the fact that the case involved a huge business amount, and, in order to seek the benefit of a fine commission for their small collective, proposed an administrative fine. The defendant Hu Baogang also concealed the fact that a huge business amount was involved when reporting the case at the director's office meeting. On April 11, 2006, the ICBC Hexi Branch approved the handling opinion of the defendants Hu Baogang and Zheng Ling and imposed on the party an administrative penalty of "ordering the cessation of the illegal conduct and imposing a fine of 500,000 yuan," after which Li Peng paid the 500,000 yuan fine to the ICBC Hexi Branch in several installments. As a result of this case, the Fair Trade Section where the defendants Hu Baogang and Zheng Ling worked received a fine commission of 25,000 yuan.

While paying the ICBC fine in installments, Li Peng further established Hexi, Heping, and Nankai branch companies, with Wang Fuyin serving as the person in charge of the Hexi branch company, and continued to carry out disguised pyramid selling activities, causing economic losses totaling more than 400,000 yuan to victims such as Hua XX. After receiving reports from victims, the public security organs determined that the

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illegal business amount of Li Peng's pyramid selling activities totaled more than 22.77 million yuan (more than 16 million yuan at the time of the ICBC investigation). In the course of reviewing and prosecuting the illegal business case against the defendants Li Peng and Wang Fuyin, the case-handling personnel of the Hexi District People's Procuratorate of Tianjin discovered leads that Hu Baogang and Zheng Ling were suspected of the crime of failing to transfer the illegal business criminal case against Li Peng and Wang Fuyin by fraudulent means.

Procuratorate Performance of Duties

On January 13, 2010, Hu Baogang and Zheng Ling were placed on file for investigation by the Hexi District People's Procuratorate of Tianjin on suspicion of the crime of failing to transfer criminal cases by fraudulent means, and were released on bail pending trial on the same day. The investigation was concluded and the case transferred for review and prosecution on March 15; due to the complexity of the case, the review and prosecution period was lawfully extended by half a month on April 22; the case was returned for supplementary investigation on May 6, and the investigation was concluded and the case re-transferred for review and prosecution on June 4. On June 12, 2010, the Hexi District People's Procuratorate of Tianjin initiated a public prosecution against the defendants Hu Baogang and Zheng Ling for the crime of failing to transfer criminal cases by fraudulent means before the Hexi District People's Court. On September 14, 2010, the Hexi District People's Court rendered a first-instance judgment, holding that the defendants Hu Baogang and Zheng Ling, as ICBC administrative law enforcement personnel, knowing that the illegal pyramid selling conduct under investigation involved a huge business amount and should be transferred to the public security organs for criminal liability in accordance with the law, for the sake of small collective interests, concealed and failed to report the amount involved in the illegal facts, and substituted an administrative fine for criminal punishment, failing to transfer the case to the public security organs, thereby causing the criminal suspects to continue their illegal and criminal activities during the administrative penalty period, with serious circumstances, and that the two defendants bore unshirkable responsibility and their acts had both constituted the crime of failing to transfer criminal cases by fraudulent means, and constituted a joint crime. In accordance with Article 402, Paragraph 1 of Article 25, and Article 37 of the Criminal Law of the People's Republic of China, the defendants Hu Baogang and Zheng Ling were convicted of the crime of failing to transfer criminal cases by fraudulent means. After the first-instance judgment, neither of the defendants Hu Baogang and Zheng Ling appealed within the statutory period, and the procuratorial organ did not lodge a protest, so the first-instance judgment became legally effective.

Relevant Legal Provisions

Article 402 of the Criminal Law of the People's Republic of China.

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