SPP Guiding Case No. 181: Meng Moumou et al. Case of Organizing, Leading, and Participating in a Mafia-Style Organization, Picking Quarrels, and Other Crimes (Retrial Protest)

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

Keywords

Retrial protest; ruling granting withdrawal of appeal; self-initiated investigation; supplementary and additional prosecution; strengthened supervision in performance of duties.

Holding

Where a defendant is dissatisfied with a first-instance judgment and appeals, but after the expiration of the appeal period applies to withdraw the appeal and the people's court rules to grant the withdrawal, if the people's procuratorate considers that the first-instance judgment is clearly erroneous, the people's procuratorate at the same level as the people's court that rendered the ruling granting the withdrawal of the appeal has the authority to file a protest under the trial supervision procedure. In a case in which, after a protest is filed, the people's court orders a retrial under the first-instance procedure, if the people's procuratorate discovers criminal facts omitted from the original case, it shall file a supplementary prosecution; if it discovers an omitted co-defendant in the same case, it shall file an additional prosecution, and shall suggest that the people's court conduct a combined trial of the case ordered for retrial and the supplementary-prosecuted and additional-prosecuted cases, with combined punishment for multiple crimes. In handling cases, the people's procuratorate shall strengthen supervision, make full use of the method of combining its own investigation with supplementary investigation by the investigating organ (department), strengthen the linkage between investigation, procuratorial work, and supervision, thoroughly uncover omitted crimes and omitted offenders, and promote the governance of litigation at its source, continuously making supervision in case handling thorough and effective.

Basic Facts

Defendant Meng Moumou, male, born in January 1971, the owner of a certain sand-mining site.

Defendant Zhang Mou, male, born in October 1989, unemployed, an active participant in Meng Moumou's mafia-style criminal group.

The basic circumstances of the other ten defendants are omitted.

From 2014 to May 2016, defendant Meng Moumou and others, without handling a sand-mining permit, rented other people's fish ponds in the Qianchengzi section of the Weishan Lake waters (a sand-minable area requiring a sand-mining permit), privately excavated navigation channels, and used sand-pumping vessels to illegally mine a total of more than 290,000 tons of sand, valued at more than 8 million yuan; from November 2014 to May 2016, defendant Meng Moumou and others, knowing that the Nansihu Lake waters were an area where the state prohibited sand mining, nonetheless opened an illegal sand-mining area in the Liuxiangzhuang section of the Nansihu Lake waters, illegally mining a total of more than 230,000 tons of sand, valued at more than 7.49 million yuan.

On March 3, 2014, defendant Meng Moumou and others obstructed law enforcement personnel of a fishery administration station from seizing two barrels of diesel oil and some repair tools used for illegal sand mining on a sand-mining vessel, blocked the front and rear of the law enforcement vehicle with cars, verbally abused and threatened the law enforcement personnel, and snatched away the diesel oil and repair tools that had been lawfully seized. On April 3, 2014, defendant Meng Moumou and others drove vehicles to

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intercept a police car carrying out law enforcement in the Zhanglou waters of Weishan County, and verbally threatened the law enforcement police; the whole process lasted about ten minutes, after which Meng Moumou and others left upon seeing that their goal could not be achieved. On March 12, 2015, defendant Zhang Mou and others piloted multiple motorboats to ram a vessel patrolling for law enforcement in the Zhanglou waters of Weishan Lake, and rapidly circled the law enforcement vessel, creating large waves and obstructing the law enforcement vessel from approaching the sand-mining vessel. Zhang Mou also piloted a motorboat to ram the law enforcement vessel, causing water to enter the vessel, and threw stones and mud clods at it.

On February 26, 2016, defendant Meng Moumou and others piloted speedboats to surround Han Moumou and Li Moumou, who were fishing on the lake surface of the Zhanglou area of Weishan Lake, and beat the two with bamboo poles on a mound on the lake surface, causing minor injury to Han Moumou and slight injury to Li Moumou.

On December 7, 2016, the People's Procuratorate of Pei County, Xuzhou, Jiangsu Province initiated a public prosecution against Meng Moumou and 11 others for the crimes of illegal mining, obstructing official duties, and picking quarrels and provoking trouble. After trial, the People's Court of Pei County held that the crime of illegal mining charged by the procuratorial organ did not constitute the aggravated circumstance of mining in a prohibited area; that of the three criminal facts of obstructing official duties, only one could be found; and that the characterization of the crime of picking quarrels and provoking trouble was improper and should be characterized as the crime of intentional injury. On June 26, 2017, the People's Court of Pei County sentenced Meng Moumou and 11 others to fixed-term imprisonment ranging from ten months to four years and ten months for the crimes of illegal mining, obstructing official duties, and intentional injury. After the first-instance judgment was pronounced, two defendants appealed, and later applied to withdraw their appeals. On February 9, 2018, the Intermediate People's Court of Xuzhou ruled to grant the withdrawal of the appeals, and the first-instance judgment took effect from the date the ruling was served.

Procuratorate Performance of Duties

(I) Filing the protest

When reviewing the ruling rendered by the people's court at the same level, the People's Procuratorate of Xuzhou discovered that the original judgment contained errors in fact-finding and application of law, that the sentence was obviously too light, and that there were major clues to omitted criminal facts and omitted co-offenders. On March 15, 2018, it filed a protest with the Intermediate People's Court of Xuzhou under the trial supervision procedure.

(II) Protest opinions and grounds

The People's Procuratorate of Xuzhou considered that the original judgment contained errors in fact-finding and application of law and that the sentence was obviously too light. The specific grounds are as follows:

1. The original judgment's failure to find the circumstance of mining in a prohibited area was improper. The administrative organ had lawfully announced the Weishan Lake waters as a prohibited mining area and had repeatedly carried out law enforcement inspections, and the effective judgments in multiple similar cases during the same period also found the area to be a prohibited mining area.

2. The original judgment's failure to find part of the criminal facts of obstructing official duties was improper. The witness testimony, the law enforcement recorders, and the statements of the law enforcement personnel could prove that Meng Moumou and others repeatedly resisted law enforcement, assembled multiple persons to threaten and verbally abuse law enforcement personnel, drove to force law enforcement vehicles to stop, damaged law enforcement vessels, and snatched seized items, causing the law enforcement activities to be unable to proceed normally.

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3. The original judgment's change of the characterization of picking quarrels and provoking trouble was improper. Victims Han Moumou and Li Moumou stated that on the day of the incident they went to the lake to catch fish and were surrounded and beaten by Meng Moumou and others, forced to kneel, and video-recorded. The conduct of Meng Moumou and others in surrounding and beating the victims could not be characterized as the crime of intentional injury merely because the two sides had previously had a dispute. In order to obtain unlawful benefits or create illegal influence, Meng Moumou and others had in an organized manner illegally demarcated waters for sand mining, and had chased, intercepted, and beaten fishermen, causing minor injury, seriously disrupting social order with egregious circumstances; this should be characterized as the crime of picking quarrels and provoking trouble.

On September 21, 2018, the Intermediate People's Court of Xuzhou ordered the People's Court of Pei County to retry the case. On April 1, 2019, because circumstances unsuitable for the People's Court of Pei County to continue hearing the case existed, the Intermediate People's Court of Xuzhou ruled to set aside the original judgment and designated the People's Court of Yunlong District to conduct the trial under the first-instance procedure.

(III) Self-initiated investigation by the procuratorial organ

The People's Procuratorate of Xuzhou organized dedicated forces, retrieved related cases, and upon review discovered that the illegal sand-mining gang headed by Meng Moumou had more than 20 members in total; that multiple cases were already being reviewed and handled by courts in Shandong and Jiangsu; that there were additional criminal facts and multiple criminal clues that had not yet been investigated; and that there were also problems such as public officials holding shares in the business, making it very likely to be an organized crime of a mafia-style nature involving natural resources. It therefore carried out self-initiated investigation work.

1. It interviewed 56 relevant witnesses, including administrative law enforcement personnel and surrounding residents, and retrieved 32 items of evidence, including the notice prohibiting illegal sand mining, the law enforcement video recordings of the fishery administration department, the alarm records that had not been effectively handled, and injury appraisal reports, reinforcing the evidence that the Weishan Lake waters were a prohibited mining area and that Meng Moumou and others had committed the crime of obstructing official duties.

2. Focusing on the gang's violent resistance to law enforcement, contention for sand-mining areas, the hierarchy of its organizational structure, and clues to "protective umbrellas," it verified the unhandled criminal facts and clues that Meng Moumou and others used the gang's power and influence to forcibly purchase fishermen's fish ponds, competed for territory with other illegal sand-mining forces and gathered to fight, drew in and corrupted law enforcement personnel and grassroots organization personnel, arbitrarily beat and verbally abused villagers, and illegally fished aquatic products during the fishing moratorium.

3. It reported the case circumstances to the public security organ, supervised the filing of cases against Meng Moumou and others for the crimes of organizing, leading, and participating in a mafia-style organization and offering bribes to non-state functionaries, and demanded investigation and transfer for prosecution of the omitted crimes of illegal mining and picking quarrels and provoking trouble committed by the omitted offenders Chu Mou and others, involving a total of 16 omitted offenders, 7 new charges, and 18 new criminal facts.

4. It thoroughly uncovered job-related crimes and transferred clues of violations of law and discipline to the discipline inspection and supervision commissions.

(IV) Outcome of the judgment and handling of clues to job-related crimes

In June 2019, the People's Procuratorate of Yunlong District filed a supplementary and additional prosecution against Meng Moumou and 27 others on suspicion of the crimes of organizing, leading, and

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participating in a mafia-style organization, robbery, forced transaction, gathering to fight, illegal fishing of aquatic products, offering bribes, and offering bribes to non-state functionaries. On September 29, 2020, the People's Court of Yunlong District adopted the protest opinions and charging opinions of the people's procuratorate, and with respect to defendant Meng Moumou, for the crimes of organizing, leading, and participating in a mafia-style organization, robbery, illegal mining, forced transaction, gathering to fight, picking quarrels and provoking trouble, obstructing official duties, illegal fishing of aquatic products, offering bribes, and offering bribes to non-state functionaries, decided to execute a combined sentence of 19 years of fixed-term imprisonment; the remaining 27 defendants were separately sentenced to fixed-term imprisonment ranging from two years and three months to twelve years and six months. After the first-instance judgment was pronounced, Meng Moumou and others appealed. On March 15, 2021, the Intermediate People's Court of Xuzhou ruled to dismiss the appeals and affirm the original judgment.

The five "protective umbrellas" of the organization — including former police officer Zhang Mou and Zheng Mou of the Pei County Public Security Bureau and former section chief Li Mou of the mineral administration section of the Pei County Bureau of Land and Resources — were separately sentenced to fixed-term imprisonment ranging from one year and six months to five years and six months for the crimes of accepting bribes and perverting the law for personal gain, and another 11 public officials were given party discipline and administrative discipline sanctions.

(V) Proactively performing duties in accordance with law and promoting governance at its source

During the handling of the case, the People's Procuratorate of Yunlong District, with respect to Meng Moumou and others' illegal mining and illegal fishing of aquatic products, initiated incidental civil public interest litigation in accordance with law. On April 6, 2021, the People's Court of Yunlong District ordered Meng Moumou and others to bear 4.51 million yuan in ecological environment restoration costs. At the same time, in response to the grassroots governance problems reflected in the case, the People's Procuratorate of Yunlong District, after communicating with the People's Procuratorate of Pei County, issued procuratorial recommendations, promoting government functional departments to carry out rectification in areas such as strengthening integrity education and the building of grassroots organizations. The People's Procuratorate of Pei County took the lead in convening, together with the public security, water conservancy, environmental protection, and the lower Nansihu Lake water conservancy management bureau and other units, a symposium on "combating crimes that damage the environment and protecting the ecology of Weishan Lake," established a coordination mechanism for the special campaign against organized crime with the People's Procuratorate of Weishan County, Shandong Province, and carried out cooperation on the "special campaign for ecological and environmental protection and public interest litigation in the Nansihu Lake Nature Reserve" between Pei County and Weishan County, using the handling of individual cases to promote comprehensive governance of the areas around Weishan Lake.

Guiding Significance

(I) After a court rules to grant the withdrawal of an appeal, if the effective first-instance judgment is clearly erroneous and a protest should be filed, the people's procuratorate at the same level as the court that rendered the ruling has the authority to file a protest under the trial supervision procedure; after the court orders a retrial, if the people's procuratorate discovers omitted crimes and omitted offenders, it shall file a supplementary and additional prosecution.

Under the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China, where an appeal is withdrawn after the expiration of the appeal period, after the court of second instance examines the matter and renders a ruling granting the defendant's withdrawal of the appeal, the first-instance judgment or ruling takes effect from the date the ruling granting the withdrawal of the appeal is served on the appellant. The judgment by which the court makes a substantive disposition of the case and which becomes legally effective is the first-instance judgment; if the people's procuratorate at the next higher level considers that the judgment is clearly erroneous, it has the authority to file a protest

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under the trial supervision procedure. In a case in which, after a protest is filed, the people's court orders a retrial under the first-instance procedure, if the people's procuratorate discovers criminal facts omitted from the original case, it shall file a supplementary prosecution; if it discovers an omitted co-defendant in the same case, it shall file an additional prosecution, and shall suggest that the people's court conduct a combined trial of the case ordered for retrial and the supplementary-prosecuted and additional-prosecuted cases, with combined punishment for multiple crimes.

(II) The procuratorial organ shall strengthen its awareness of supervision, give full play to its supervisory functions, strengthen self-initiated investigation, and actively guide the investigation and collection of evidence.

With respect to trial supervision clues involving different judgments in the same case and omitted crimes and omitted offenders, the people's procuratorate shall, on the principles of necessity, appropriateness, and effectiveness, carry out self-initiated investigation. It shall flexibly use a variety of evidence-collection means, and through methods such as on-site inspection, retrieval of documentary evidence, and interviews with witnesses, enhance the personal involvement of case handling and improve the evidence system for the charges. For cases in which there are problems with the facts and evidence, the procuratorial organ shall promptly return them to the investigating organ for supplementary investigation, list a detailed outline for supplementary investigation, and urge the timely supplementation and improvement of evidence. It shall strengthen the coordination between procuratorial work and the police and the linkage between supervision and procuratorial work, report and study the case circumstances, accurately list the outline for supplementary investigation, fully communicate the key points of verification with investigation and inquiry personnel, and thoroughly uncover omitted crimes and omitted offenders, so as to comprehensively and accurately combat crime.

(III) The people's procuratorate shall, through proactive and integrated performance of duties in individual cases, promote the governance of litigation at its source.

In the course of handling cases, the people's procuratorate shall comprehensively and thoroughly perform its duties of legal supervision, strengthen supervision over case filing, supervision over investigation activities, and trial supervision, thoroughly uncover omitted crimes and omitted offenders, supervise and correct clearly erroneous judgments, and ensure that punishment fits the crime. It shall strengthen proactive performance of duties, extend the procuratorial case-handling function to social governance, and, with respect to social governance problems discovered in individual cases, promote the improvement and perfection of rules and regulations in relevant industries and fields and advance prevention and control at the source through means such as issuing procuratorial recommendations, carrying out judicial assistance, doing a good job of legal publicity, and carrying out regional coordination and inter-departmental cooperation. With respect to criminal conduct in the field of environmental resources, it shall make integrated efforts and simultaneously initiate incidental civil public interest litigation, assist in ecological and environmental protection, and achieve equal emphasis on "punishing crime" and "governance," serving the overall development of the economy and society.

Relevant Legal Provisions

Criminal Law of the People's Republic of China, Articles 277, 293 and 343.

Criminal Procedure Law of the People's Republic of China (2018 Revision), Articles 113 and 254.

Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China (effective in January 2013), Article 308 (now Article 386 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China, effective in 2021).

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Provisions on the Work of Procuratorial Recommendations of the People's Procuratorates (effective in 2019), Articles 3 and 11.

Procuratorial organs handling the case: People's Procuratorate of Xuzhou, Jiangsu Province; People's Procuratorate of Pei County, Xuzhou, Jiangsu Province; People's Procuratorate of Yunlong District, Xuzhou, Jiangsu Province.

Procurators handling the case: Rao Bendong, Zhang Defeng.

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