SPP Guiding Case No. 190: Case of Song Moumou for Illegally Issuing Financial Instruments, Illegally Granting Loans, and Accepting Bribes as a Non-State Functionary

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Keywords

Illegally issuing financial instruments / illegally granting loans / subject of responsibility for bribery by a non-state functionary

Holding

Whether a person exercising public power in a collective economic organization is a state functionary shall be examined and determined based on elements such as the shareholding structure of the collective economic organization and whether he is engaged in public affairs. Where a staff member of a bank or other financial institution, in violation of provisions, improperly performs or exceeds his authority in issuing a letter of credit or a guarantee, a negotiable instrument, a certificate of deposit or a creditworthiness certificate, and the circumstances are serious, he shall constitute the crime of illegally issuing financial instruments.

Basic Facts

The defendant Song Moumou, male, former secretary of the Party committee and chairman of the board of the Rural Credit Cooperative Union of County A, Sichuan Province (hereinafter "Credit Union A"), and formerly secretary of the Party committee and chairman of the board of the Rural Credit Cooperative Union of County B, Sichuan Province (hereinafter "Credit Union B"), and secretary of the Party committee and chairman of the board of the Rural Commercial Bank of County B, Sichuan Province (hereinafter "Rural Commercial Bank B").

(I) Crime of illegally issuing financial instruments. In early 2015, a real estate project developed by Sichuan XX Industrial Co., Ltd. (hereinafter "XX Company") was in urgent need of working capital, but because it did not comply with the relevant national loan policies, it could not obtain a loan from a bank. In April 2015, Ye Mou, the legal representative of XX Company, through an introduction by a financing intermediary, decided to raise RMB 400 million by way of non-standardized creditor's-rights assets (referred to as "non-standard financing"). Subsequently, Ye Mou, through a certain investment company, packaged XX Company's real estate project as a RMB 400 million wealth-management product, and contacted a rural commercial bank in Sichuan and a rural commercial bank in Hebei to fund the purchase. The two banks required XX Company to provide security for the RMB 400 million wealth-management product, so Ye Mou sought out Song Moumou, then secretary of the Party committee and chairman of the board of Rural Commercial Bank B, hoping that Rural Commercial Bank B would issue a guarantee for the RMB 400 million wealth-management product to provide security, and at the same time promised to give Song Moumou a benefit fee of 2% of the guarantee amount. Song Moumou knew that the business scope of Rural Commercial Bank B did not include issuing financing guarantees, and without investigation or review, and without collective research, privately decided to issue a RMB 400 million financing guarantee in the name of Rural Commercial Bank B. By the time the case was discovered, XX Company was unable to pay the principal and returns of the RMB 400 million wealth-management product, and Rural Commercial Bank B bore joint and several repayment liability. At present, the RMB 100 million principal and returns of the Sichuan rural commercial bank are being gradually repaid from the assets of the real estate project developed by XX Company, and the Hebei rural commercial

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bank has sued Rural Commercial Bank B over the repayment of RMB 300 million principal and returns, the case being at the court trial stage.

(II) Crime of illegally granting loans. In 2018, while serving as secretary of the Party committee and chairman of the board of Credit Union A, Song Moumou, in order to avoid being implicated by the discovery of the non-standard financing he had assisted XX Company and a Sichuan real estate development company with during his tenure at Rural Commercial Bank B, in violation of the provisions of laws and regulations such as the Commercial Banking Law of the People's Republic of China and the General Rules on Loans, discussed with Ye Mou and Sun Moumou, the legal representative of the real estate company, to apply for loans from Credit Union A in the name of companies controlled by the two but not actually carrying out business activities. In order to circumvent the regulatory requirement that enterprise loans with a credit limit exceeding RMB 40 million should be reported to the higher-level union for risk review, Song Moumou decided to split the large loans into multiple small loans of no more than RMB 40 million each. After Ye Mou and others applied for the loans, Song Moumou improperly instructed the relevant personnel of the unit's enterprise department and credit management department in advance, requiring them not to conduct substantive review and to handle the loans as quickly as possible. Song Moumou illegally granted loans totaling RMB 412.8 million to companies related to Ye Mou and Sun Moumou; by the time the case was discovered, the principal and interest of the above loans could not be recovered after becoming overdue.

(III) Crime of accepting bribes as a non-state functionary. From 2013 to 2019, while serving as the main person in charge of Credit Union B, Rural Commercial Bank B and Credit Union A, Song Moumou took advantage of his position to seek benefits for Ye Mou and others in matters such as loan financing and project contracting, and accepted property given by the above persons totaling RMB 9.62 million. Among these, he accepted RMB 8 million given by Ye Mou at 2% of the guarantee amount.

This case was transferred for prosecution after the conclusion of the investigation by the Guang'an Municipal Supervisory Commission of Sichuan Province. On May 20, 2020, the People's Procuratorate of Guang'an District, Guang'an City, Sichuan Province prosecuted Song Moumou for the crimes of illegally granting loans, illegally issuing financial instruments, and accepting bribes as a non-state functionary. On December 31, 2020, the People's Court of Guang'an District, Guang'an City, Sichuan Province rendered a first-instance judgment, sentencing Song Moumou to nine years' fixed-term imprisonment for the crime of illegally issuing financial instruments; to nine years' fixed-term imprisonment and a fine of RMB 200,000 for the crime of illegally granting loans; and to seven years' fixed-term imprisonment with confiscation of RMB 500,000 of personal property for the crime of accepting bribes as a non-state functionary; combining the punishments for the several crimes, the court decided to impose nineteen years' fixed-term imprisonment, a fine of RMB 200,000, and confiscation of RMB 500,000 of personal property. After the first-instance judgment, Song Moumou appealed, and the Intermediate People's Court of Guang'an City, Sichuan Province ruled in second instance to dismiss the appeal and affirm the original judgment.

Procuratorate Performance of Duties

(I) Early intervention. At the request of the supervisory organ, the procuratorial organ intervened early in the case. By reviewing the case file materials and listening to the investigators' introduction of the case, it provided written feedback opinions on evidence collection, characterization and application of law. First, it supplemented and improved the evidence of Song Moumou's identity as a subject, clarifying the subject-matter jurisdiction. It suggested that the supervisory organ supplement and obtain the articles of association of the Sichuan Provincial Rural Credit Cooperatives Union (hereinafter the "Provincial Credit Union"), the relevant documents of the provincial Party committee's Organization Department on the cadre management authority over the province's rural credit cooperatives, the articles of association and business licenses of Credit Union B, Rural Commercial Bank B and Credit Union A, and documentary evidence such as Song Moumou's appointment and removal approval procedures, so as to accurately determine the nature of the units involved and Song Moumou's identity as a subject. After supplementing the relevant evidence, it

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was ascertained that the Provincial Credit Union was established by the provincial government and performed the provincial government's functions of serving, guiding, coordinating and industry-managing the province's rural credit cooperatives; the credit unions where Song Moumou had worked before the case was discovered were collective economic organizations; and after being nominated by the Party committee of the Provincial Credit Union, he engaged in organization, leadership, management and supervision work, belonging to the "other personnel performing public duties in accordance with law" enumerated in Item 6 of Article 15 of the Supervision Law of the People's Republic of China and Item 3 of Article 43 of the Regulations for the Implementation of the Supervision Law of the People's Republic of China. Second, it put forward the opinion that Song Moumou was not a state functionary. Upon investigation, although the provincial government and the Provincial Credit Union had certain management responsibilities over the relevant enterprises where Song Moumou held office, the nature of an enterprise should be determined based on its articles of association and industrial and commercial registration; none of the relevant enterprises involved had state-owned capital in their registered capital and they were not state-funded enterprises, so Song Moumou did not bear the responsibility of managing, operating or supervising state-owned assets, and his position did not have the nature of "engaging in public affairs"; he did not belong to a "state functionary" within the meaning of Article 93 of the Criminal Law of the People's Republic of China. Song Moumou's conduct of taking advantage of his position to accept property from others should be determined as the crime of accepting bribes as a non-state functionary.

(II) Examination for prosecution. During the examination-for-prosecution stage, the procuratorial organ carried out examination work around the factual and legal-application disputes in the case.

First, it ascertained the "illegal points" in Song Moumou's granting of loans. Focusing on the specific manner of illegally granting loans, it built and improved the evidence system from three aspects. It sorted out the materials of Ye Mou and others' establishment of shell companies or application for loans in others' names, bank approval documents and the flow of loan funds, locking in the fact of "loans under borrowed names"; it sorted out Song Moumou's confession and the testimony of Ye Mou and others, ascertaining the means by which Song Moumou and Ye Mou and others "divided a whole into parts" by splitting large loans into multiple small loans with relatively relaxed approval procedures in order to circumvent large-credit risk warnings and regulatory requirements; and it sorted out the documentary evidence and witness testimony of each key link of illegal lending, ascertaining the fact of "reverse-procedure operation" that appeared lawful and compliant but was in fact Song Moumou's first giving instructions and then going through the loan approval procedures.

Second, it ascertained the business scope of Rural Commercial Bank B, and studied and argued the nature of the act of exceeding authority to issue a guarantee. The procuratorial organ sorted out the guarantee qualifications of the financial institution involved, the articles of association, the banking regulatory department's approval of the business scope of the financial institution involved, and the objective evidence of each procedural node of illegally issuing financial instruments; it ascertained that Rural Commercial Bank B was a commercial bank, that issuing financing guarantees was a guarantee business, and that, according to the relevant provisions of the Commercial Banking Law of the People's Republic of China that "the business scope of a commercial bank shall be stipulated in its articles of association and reported to the banking regulatory authority of the State Council for approval," the articles of association of Rural Commercial Bank B did not stipulate contents related to engaging in financing guarantee business, and the banking regulatory department had not approved it to carry out such business; therefore its issuance of financing guarantees was an act of exceeding authority.

(III) Charging and proof of crime. At trial, the public prosecutor, focusing on the focal issues of whether Song Moumou constituted the crime of illegally issuing financial instruments and whether the granting of loans was Song Moumou's individual decision, put forward targeted cross-examination and rebuttal opinions.

First, Song Moumou knew that Rural Commercial Bank B was not qualified to issue financing guarantees, violated the provisions of laws and regulations such as the Commercial Banking Law of the People's

Republic of China, and arbitrarily decided to issue a financing guarantee in the name of Rural Commercial Bank B; his conduct constituted the crime of illegally issuing financial instruments. Although Rural Commercial Bank B was not qualified to issue financing guarantees, as a banking financial institution, its issuance of a guarantee was closely related to its business scope and could hardly be known to a bona fide third party; its act of exceeding authority to issue a guarantee not only undermined the safety of financial transactions and bank credit, but also brought a huge risk of capital loss to the bank, infringing upon the legal interest protected by the crime of illegally issuing financial instruments.

Second, Song Moumou knew that the relevant companies did not satisfy the conditions for granting loans, yet still discussed with the loan applicants to circumvent the relevant provisions and submit loan applications; at the same time, at each link of loan granting, Song Moumou, as the unit's "top leader," instructed the relevant department personnel in advance, requiring them not to conduct substantive review and to grant the loans as quickly as possible, rendering the unit's credit examination and verification functions a mere formality; ultimately, the granting of the loans was the result of his use of his position to push it through and was a manifestation of his personal will.

(IV) Issuance of a procuratorial recommendation. Song Moumou's criminal acts lasted a long time, involved especially huge amounts, and involved multiple major businesses, reflecting that the relevant financial institution had loopholes such as weak supervision of key personnel and key positions and lax control at key links. On July 12, 2020, the procuratorial organ issued a procuratorial recommendation to Credit Union A, proposing to properly handle the relevant offending personnel in accordance with laws and regulations, to warn and educate cadres and employees, to improve the loan management system, and to strengthen the supervision of the "top leader." Credit Union A attached great importance to this, imposed accountability treatment such as serious administrative demerits, warnings, removal from office, transfer from posts and revocation of intra-Party positions on 22 relevant personnel, took measures to recover more than RMB 900,000 in loans, placed a wait-list seizure on RMB 22.61 million of the guarantor's funds, held a case warning and education meeting for all staff, improved the supervision and restraint mechanism for the "top leader," and implemented systems such as the "three examinations of loans."

Guiding Significance

(I) For criminal cases involving persons exercising public power in collective economic organizations transferred by the supervisory organ for prosecution, the procuratorial organ shall focus on examining whether they are state functionaries. Where a collective economic organization has no state-owned capital in its registered capital and the work performed does not have the attribute of "engaging in public affairs," the relevant personnel do not belong to state functionaries. Affected by the planned-economy system and the needs of rural economic development, before their transformation into rural commercial banks or rural cooperative banks, rural credit cooperatives were rural cooperative financial institutions formed by voluntary shareholding of farmers, rural industrial and commercial households, enterprise legal persons and other economic organizations as well as the cooperatives' own employees, and were collective economic organizations in nature. According to Item 6 of Article 15 of the Supervision Law of the People's Republic of China and Item 3 of Article 43 of the Regulations for the Implementation of the Supervision Law of the People's Republic of China, their managers are "other personnel performing public duties in accordance with law." When examining duty-crime cases involving such personnel transferred by the supervisory organ for prosecution, the procuratorial organ shall examine whether they have the status of state functionaries and make an accurate determination of the characterization of their conduct and the crimes involved. Generally, judgment should be made based on the shareholding structure of the credit cooperative where they work; where the registered capital contains no state-owned capital and the work performed does not have the attribute of "engaging in public affairs," the relevant personnel do not belong to state functionaries.

(II) Where a staff member of a bank or other financial institution that is not qualified to issue financial instruments such as guarantees or negotiable instruments issues financial instruments for others in violation

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of provisions, and the circumstances are serious, it shall be determined to constitute the crime of illegally issuing financial instruments. The relevant national financial laws and regulations have strict provisions on the conditions and procedures for issuing financial instruments, and banks and other financial institutions also have strict internal rules and regulations and business procedures; where a staff member of a bank or financial institution that is qualified to issue financial instruments issues financial instruments in violation of statutory procedures or beyond the scope of authority, and the circumstances are serious, he shall constitute the crime of illegally issuing financial instruments. Where a person, knowing that the financial institution where he works is not qualified to issue financial instruments, still issues the relevant financial instruments for others, this is an act of abusing authority beyond the scope of authority, with deeper subjective culpability and greater social harm; punishing him in accordance with law is not only the proper meaning of the criminal law, but also consistent with common sense and the general understanding of the public; where the elements of the crime of illegally issuing financial instruments are satisfied, it shall be determined in accordance with law.

Relevant Legal Provisions

Article 93, Article 163, Paragraph 1 of Article 184, Article 186 and Paragraph 1 of Article 188 of the Criminal Law of the People's Republic of China

Article 15 of the Supervision Law of the People's Republic of China

Article 31 and Article 43 of the Regulations for the Implementation of the Supervision Law of the People's Republic of China

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