SPP Guiding Case No. 210: Reconsideration Case Concerning the Decision Not to Approve the Arrest of Yang Mou for Suspected False Litigation

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Supreme People's Procuratorate Guiding Case No. 210 (Batch 52, 2024)

Keywords

False litigation; tampering with evidence; comprehensive performance of duties; reconsideration of non-approval of arrest.

Holding

In determining the crime of false litigation, whether the actor has fabricated a civil legal relationship and fabricated a civil dispute shall be grasped. Where the actor has tampered with some evidence but a genuine civil legal relationship and civil dispute exist between the parties, the conduct is not deemed a crime. In handling reconsideration cases of non-approval of arrest, the people's procuratorate shall strengthen communication with the public security organ to promote understanding and acceptance of the reconsideration decision. Where the actor's conduct does not constitute a crime but has hindered judicial order or infringed upon the lawful rights and interests of others, the people's procuratorate shall put forward a procuratorial suggestion so that the actor bears corresponding legal liability.

Basic Facts

Criminal suspect Yang Mou, male, born in April 1966, legal representative and chairman of an ecological tourism development company in Ziyang, Sichuan.

On March 8, 2018, to expand the company's business projects, Yang Mou introduced citrus saplings and, through an intermediary, negotiated with four farmers including He Mou on the purchase of 63,000 citrus saplings. Afterwards, a company employee, Zhong Mou, signed agreements with the farmers separately in his personal name. The agreements stipulated the ordered quantity, price, quality, delivery time and method of the citrus saplings, as well as liability for breach, but did not stipulate the delivery standards, the conditions and consequences of terminating the agreement. Among them, liability for breach stipulated that "in case of breach, the breaching party shall pay liquidated damages to the non-breaching party (calculated at the standard of RMB 5 per citrus sapling)." On March 9, Yang Mou arranged for Zhong Mou to pay the farmers an advance of RMB 63,000 through the company account using company funds, at the standard of RMB 1 per sapling. Afterwards, because the intermediary died, the inspection and quarantine procedures that the farmers had originally promised to handle were delayed, and until the performance period expired on June 30, 2018, the agreement had still not been actually performed and the citrus saplings had not been dug up.

Because the market price of citrus saplings continued to decline and the company was short of funds, in early 2020, Yang Mou proposed to He Mou and others to refund the advance of RMB 63,000. After multiple unsuccessful negotiations, Yang Mou changed the original agreement's Party A from "Zhong Mou" to "the ecological tourism development company in Ziyang, Sichuan," added "plant quarantine certificate" as a delivery standard, fabricated content such as "if a plant quarantine certificate cannot be issued, the agreement may be terminated" and "the collected deposit, citrus sapling payment and any other amounts shall be refunded in full," and on September 23, 2020 filed a lawsuit with the Jianyang Municipal People's Court of Sichuan Province, requesting a judgment to "terminate the original agreement," "refund the sapling purchase payment of RMB 63,000 and interest for occupation of funds" and "pay liquidated damages of

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RMB 25,200." The court held two hearings. During the hearings, Yang Mou did not actually claim the liquidated damages. Afterwards, because He Mou and other farmers submitted the original agreement to the court, Yang Mou's tampering with the agreement was discovered. The court held that Yang Mou's submitted agreement differed from the original agreement in terms of contract subject and content, and might involve the crime of false litigation, and on November 8, 2020 transferred the clues to the Jianyang Municipal Public Security Bureau.

Procuratorate Performance of Duties

(1) Review for arrest approval. The Jianyang Municipal Public Security Bureau opened an investigation on November 11, 2020, subjected Yang Mou to criminal detention on March 22, 2021, and on April 2 submitted a request to the Jianyang Municipal People's Procuratorate for approval of arrest of Yang Mou on suspicion of the crime of false litigation.

The Jianyang Municipal People's Procuratorate held upon review that Yang Mou, as the company's legal representative, negotiated with the farmers and paid the advance on behalf of the company; the purchaser of the citrus saplings was nominally Zhong Mou but actually the company, and He Mou and other farmers knew and accepted this. Therefore, a genuine civil legal relationship existed between the company and the farmers; the failure of Yang Mou's negotiation with the farmers to refund the advance was a civil dispute occurring between the company and the farmers, which the farmers also knew and accepted; although Yang Mou objectively committed acts such as forging the performing party of the agreement, subjectively his purpose was to be entitled to sue, and was not fabricating false litigation out of nothing to infringe upon the lawful rights and interests of others. Therefore, Yang Mou's conduct did not meet the provision of Article 307-1 of the Criminal Law on "filing a civil lawsuit based on fabricated facts," and did not constitute the crime of false litigation.

On April 9, 2021, the Jianyang Municipal People's Procuratorate made a decision not to approve arrest of Yang Mou in accordance with law, served the public security organ with an explanation of the reasons for not approving arrest, and explained the reasons for not approving arrest. On the same day, Yang Mou was released.

(2) Reconsideration of non-approval of arrest. On April 14, 2021, the Jianyang Municipal Public Security Bureau, holding that Yang Mou's tampering with the subject of the civil contract caused a change in the subject of the civil legal relationship and caused the court to hold two hearings, hindering normal judicial order, and that Yang Mou was already suspected of the crime of false litigation, and that the procuratorate's decision not to approve arrest was erroneous, requested reconsideration by the Jianyang Municipal People's Procuratorate.

The Jianyang Municipal People's Procuratorate assigned a different prosecutor to handle the matter. The prosecutor retrieved and reviewed the original case file, interrogated the criminal suspect, inquired of key witnesses, and conducted comprehensive review and verification of the evidence. Upon review, it held that in accordance with Article 307-1 of the Criminal Law and the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of False Litigation, the objective manifestation of the crime of false litigation is the conduct of fabricating a civil legal relationship and fabricating a civil dispute by means such as forging evidence and making false statements, and filing a lawsuit with the people's court. Based on the ascertained facts concerning the attribution of rights and obligations and the subject of fund payment, it could be determined that Party A in the original agreement (i.e., Zhong Mou) was actually not the subject of the civil legal relationship, and Yang Mou's tampering with the performing party merely changed the original agreement in form and did not cause the actual subject of the civil legal relationship to change. The facts that the two parties did not actually perform the agreement and that they negotiated a refund of the advance but failed nearly two years after the expiry of the term could establish that the civil dispute genuinely occurred and was not fabricated. Yang Mou's purpose in tampering with the agreement was to resolve the dispute through

litigation, and his claim of "refund of the sapling purchase payment of RMB 63,000" was in substance the disputed content. Therefore, Yang Mou's conduct did not meet the provisions on the crime of false litigation.

On April 21, 2021, the Jianyang Municipal People's Procuratorate upheld the original decision not to approve arrest after study by the procuratorial committee. In handling the reconsideration case, the Jianyang Municipal People's Procuratorate held discussions with the public security organ and proactively strengthened communication. The public security organ expressed acceptance of the reconsideration decision and did not request re-review. On May 11, the public security organ revoked the suspected false litigation case of Yang Mou in accordance with law.

(3) Comprehensive performance of duties. With respect to the illegal act of Yang Mou's deliberate tampering with evidence discovered in the handling of the case, the Jianyang Municipal People's Procuratorate followed up with supervision and put forward to the Jianyang Municipal People's Court a procuratorial suggestion to impose judicial punishment on Yang Mou in accordance with law. On May 25, 2021, the court imposed on Yang Mou a judicial penalty of a fine of RMB 20,000. Yang Mou accepted the penalty and paid the fine on schedule.

Guiding Significance

(1) In handling criminal cases of false litigation, whether the actor has "filed a civil lawsuit based on fabricated facts" shall be reviewed. The essential characteristic of the crime of false litigation is that there is no civil legal relationship and civil dispute between the actor and another person, and the actor fabricates a civil legal relationship and civil dispute out of nothing and files a civil lawsuit. In judging whether it constitutes fabricating a civil legal relationship and civil dispute "out of nothing," substantive judgment shall be upheld. Where a civil legal relationship and civil dispute actually exist between the actor and another person, and the actor tampered with some evidence for the purpose of winning the lawsuit without substantively changing the original civil legal relationship and civil dispute, it shall not be determined as the crime of false litigation. Where other illegal or criminal conduct is constituted, legal liability shall be pursued in accordance with the relevant provisions.

(2) In handling reconsideration cases, attention shall be paid to communication to promote the public security organ's understanding and acceptance of the reconsideration decision. In handling arrest review cases, where the people's procuratorate determines upon review that the conduct does not constitute a crime, it shall make a decision not to approve arrest on the ground of non-constitution of crime in accordance with law. When handling cases where the public security organ requests reconsideration, attention shall be paid to hearing the opinions of the public security organ, fully explaining the facts of the case, the reasons for not approving arrest and the reconsideration decision and the legal basis, so as to promote consensus.

(3) Comprehensive performance of duties shall be strengthened to enhance the quality and efficiency of procuratorial supervision. False litigation infringes upon the lawful rights and interests of other civil subjects and hinders judicial credibility and judicial order. In handling cases, the people's procuratorate shall strengthen comprehensive performance of duties, and where the conduct does not constitute a crime but undermines normal civil litigation order and judicial punishment is required, shall promptly transfer the clues to the people's court in accordance with law and put forward a procuratorial suggestion.

Relevant Legal Provisions

Paragraph 1 of Article 307-1 of the Criminal Law of the People's Republic of China; Article 92 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment); Article 290 of the Rules of Criminal Procedure for People's Procuratorates (2019 Revision); Articles 1 and 2 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of False Litigation (Fa Shi [2018] No. 17); Articles 2, 3, 4 and 23 of the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Further Strengthening the Punishment of the Crime of False Litigation

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