SPP Guiding Case No. 212: Reconsideration and Review Case Concerning the Non-Prosecution of Mao Mou for Organizing Prostitution

Dan Young Business Consultancy — www.danyoungcpa.com

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SPP Guiding Case No. 212 (Procuratorial Example No. 212)

Keywords

Organizing prostitution; harboring prostitution; substantive review; correction by higher-level review; reconsideration and review of non-prosecution.

Holding

Where a venue has both regular consumer items and prostitution activities, and the venue operator claims ignorance of the prostitution, the evidence on record shall be comprehensively reviewed, and logical rules and rules of experience shall be applied to determine whether the operator had subjective knowledge. Where the venue operator, knowing that another person has leased the venue to manage or control the prostitution of others by means of recruitment, employment or the like, nevertheless provides the venue, and manages and agrees on the ratio of prostitution payment distribution and administers the prostitution venue and personnel, the operator shall be determined to have committed the crime of organizing prostitution. In handling a review case over non-prosecution, a people's procuratorate at a higher level that finds a non-prosecution decision of a lower-level procuratorate genuinely erroneous shall, in accordance with the law, order the lower-level procuratorate to correct it, or revoke or alter the non-prosecution decision.

Basic Facts

Defendant Mao Mou, male, born in May 1967, a shareholder and actual operator of a bathhouse.

Mao Mou funded and operated a bathhouse and was responsible for its actual operation and management. Beginning in December 2012, Mao Mou, knowing that Wang Mou (sentenced for organizing prostitution) and others recruited and employed prostitution personnel to engage in prostitution, nevertheless leased the first-floor private-room area of the bathhouse to Wang Mou and others, agreed with them on the ratio of prostitution payment distribution, and administered the prostitution venue. During this period, Wang Mou and others managed the prostitution personnel, while the bathhouse uniformly collected the prostitution payments, first took the bathhouse's share at the agreed ratio, then transferred the remainder to Wang Mou and others. During the operation, the bathhouse was fined twice by the public security organ for prostitution. On May 30, 2013, the Tiantai County Public Security Bureau of Zhejiang Province caught six prostitution personnel on the spot. Upon investigation, the venue had 992 recorded instances of prostitution, with total illegal gains of more than RMB 300,000, of which Mao Mou received approximately RMB 100,000.

Judgment

Review of arrest. In May 2013, the Tiantai County Public Security Bureau opened a case against Wang Mou and others for suspected organizing prostitution. During the investigation, Mao Mou was summoned multiple times and claimed that the bathhouse operated regular items, that the manager and cashier were responsible for daily management and the external leasing of the private-room area, and that he was unaware of Wang Mou and others' prostitution activities. The public security bureau considered the evidence of Mao Mou's crime insufficient and did not open a case against him. In 2018, in a special review, the Taizhou Municipal Public Security Bureau considered that Mao Mou, responsible for the bathhouse's leasing and management, was a major suspect, and required continued investigation.

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On January 22, 2019, the Tiantai County Public Security Bureau issued a criminal detention decision against Mao Mou and pursued him online. On August 26, Mao Mou surrendered, but still claimed ignorance of the prostitution. The public security bureau considered that bathhouse staff testified that leasing of the private-room area required Mao Mou's approval, and the bathhouse manager testified that he had been instructed by Mao Mou to evade anti-vice inspections, so it could be determined that Mao Mou knowingly provided the venue for prostitution and was suspected of harboring prostitution. On September 17, it requested approval of arrest from the Tiantai County People's Procuratorate.

The Tiantai County People's Procuratorate, upon review, considered that in the Wang Mou case, the bathhouse manager (sentenced for assisting in organizing prostitution) and Mao Mou shifted blame to each other, both claiming the other managed the bathhouse, and had conflicting interests, so the manager's testimony had weak probative force, and there was no objective evidence; the evidence proving Mao Mou's subjective knowledge was insufficient. On September 20, 2019, it decided not to approve arrest and proposed supplementary investigation, requiring the public security organ to obtain objective evidence such as contracts. The public security organ supplemented the cashier's testimony proving that Mao Mou was responsible for bathhouse management and fund settlement.

Examination for prosecution. On January 2, 2020, the public security bureau transferred the case for prosecution against Mao Mou for suspected harboring prostitution. After two returns for supplementary investigation, the Tiantian County People's Procuratorate, upon study by the procuratorial committee, considered that evidence proving Mao Mou's knowledge of prostitution remained insufficient, and on April 27 rendered a non-prosecution decision for insufficient evidence.

Reconsideration of non-prosecution. The public security bureau considered that evidence proved Mao Mou was responsible for management, decided project entry, provided accounts for fund collection, and instructed the manager to evade anti-vice inspections, so it could be determined that he knowingly provided the venue, and on April 29, 2020, requested reconsideration of the non-prosecution decision. The Tiantian County People's Procuratorate assigned another department head to handle it, and on May 29, 2020, upon approval by the chief procurator, decided to uphold the non-prosecution decision.

Review of non-prosecution. On June 4, 2020, the public security bureau requested review by the Taizhou Municipal People's Procuratorate. The Taizhou Municipal People's Procuratorate assigned the deputy chief procurator in charge to handle the case, reviewed the original case files and the files of co-defendants already sentenced, verified key evidence, and heard the opinions of the public security bureau and the lower-level procuratorate. It concluded that Mao Mou was the actual operator of the bathhouse, that all bathhouse affairs including prostitution were managed and controlled by him, and, combined with the fact that the bathhouse had been administratively punished for prostitution during operation, even without Mao Mou's confession, the facts and evidence as a whole established that he knowingly provided the venue while also managing and settling prostitution funds, and administering the prostitution venue and personnel, which constituted organizing prostitution rather than harboring prostitution.

The Taizhou Municipal People's Procuratorate considered that the original handling had misapplied the crime and the standard of proof, and on July 3, 2020, revoked the non-prosecution decision of the Tiantian County People's Procuratorate and guided it in examination for prosecution and court prosecution.

Result. On July 3, 2020, the Tiantian County People's Procuratorate decided to arrest Mao Mou for suspected organizing prostitution. After arrest, Mao Mou pleaded guilty and accepted punishment, confessed the criminal facts, and signed a written statement of guilty plea and acceptance of punishment. On August 12, the procuratorate prosecuted Mao Mou for organizing prostitution. On August 31, 2020, the Tiantian County People's Court adopted the accused facts, crime and sentencing recommendation, and sentenced Mao Mou to five years and three months of fixed-term imprisonment and a fine of RMB 200,000 for organizing prostitution. Mao Mou did not appeal, and the judgment became effective.

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Reasoning

(1) In handling criminal cases involving prostitution, where the venue operator claims ignorance of prostitution in the venue, the evidence as a whole shall be analyzed and judged. Where regular items and prostitution coexist in the venue, when determining whether the operator had subjective knowledge, the procuratorial organ shall examine whether the direction of proof of the evidence on record is consistent and mutually corroborating, and, in combination with the operator's position and authority, whether it evaded inspections, and whether the venue had previously been punished for prostitution, apply logical rules and rules of experience to analyze whether the operator's explanation is reasonable, and judge based on the evidence as a whole.

(2) Where the venue operator provides the venue for prostitution while also managing and controlling the prostitution activities, it shall be determined to constitute organizing prostitution. The objective aspects of organizing prostitution and harboring prostitution may both include harboring prostitution, but the elements of harboring prostitution are limited to providing a venue. Where the venue operator, knowing that another person leases the venue to manage or control the prostitution of others by recruitment, employment or the like, nevertheless provides the venue, and agrees on and manages the ratio of prostitution payment distribution and administers the prostitution venue, personnel and income, it shall be determined to constitute organizing prostitution.

(3) A higher-level procuratorate handling a review case over non-prosecution shall conduct substantive review, and where it finds the non-prosecution or reconsideration decision of a lower-level procuratorate erroneous, it shall correct it in accordance with the law. The public security organ's reconsideration and review of non-approval of arrest and non-prosecution decisions reflects mutual restraint between the public security and procuratorial organs, as well as internal supervision and supervision by higher levels over lower levels. The error-prevention and standard-unifying functions of reconsideration and review procedures shall be fully utilized. For major, difficult and complex reconsideration and review cases, handling by department heads, deputy chief procurators or chief procurators is encouraged. In handling review cases, case files shall be retrieved, substantive review conducted, and the opinions of the public security organ and lower-level procuratorate heard; where necessary, evidence shall be re-verified. Where the non-prosecution decision of a lower-level procuratorate is found genuinely erroneous, it shall be ordered to correct it, or revoked or altered, with guidance on subsequent handling.

Relevant Legal Provisions

The first paragraph of Article 358 and Article 359 of the Criminal Law of the People's Republic of China.

Article 179 of the Criminal Procedure Law of the People's Republic of China (as amended in 2018).

The second paragraph of Article 379 and Article 380 of the Rules of Criminal Procedure of People's Procuratorates (as amended in 2019).

Article 1 and the first paragraph of Article 8 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 Organizing, Forcing, Luring, Harboring and Introducing Prostitution (Interpretation No. 13 [2017], effective July 25, 2017).

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