SPP Guiding Case No. 213: Supervision Case on the Filing of Charges Against Yin Moumou et al. for Fraud

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Supreme People's Procuratorate Guiding Case No. 213 (Batch 53, 2024)

Keywords

Filing supervision; overlap between criminal and civil matters; false litigation; investigation and verification; follow-up supervision; transfer of clues.

Holding

In cases involving overlap between criminal and civil matters, where the victim reports to the public security organ on suspicion of a criminal offense and the public security organ refuses to file the case, the people's procuratorate shall carry out filing supervision work by distinguishing different circumstances. With respect to supervision clues that truly involve criminal suspicion, various means shall be fully used in accordance with law for investigation and verification. With respect to major and complex cases under supervised filing, cooperation and coordination with the public security organ shall be strengthened, with continuous follow-up supervision, and opinions and suggestions shall be put forward on evidence collection, determination of facts, case characterization and other matters.

Basic Facts

Defendant Yin Moumou, male, born in July 1966, legal representative and chairman of Guilin Company A.

Defendant Qin Moumou, male, born in December 1960, legal representative of Guilin Company B.

Defendant Shen Moumou, male, born in December 1964, an individual industrial and commercial household operator.

The basic circumstances of the other defendants are omitted.

In May 2007, Yin Moumou and Guilin Company B, whose legal representative was Qin Moumou, agreed to cooperate in developing a commercial-residential building project, while Yin Moumou, Shen Moumou and others contracted the foundation pile work of the commercial-residential building in the name of an affiliated third-party company. In January 2008, due to a loan dispute between Guilin Company B and a certain bank, the Guangxi Zhuang Autonomous Region Higher People's Court organized, through mediation and designation of the Laibin Municipal Intermediate People's Court, a judicial auction of the land of the commercial-residential building. To prevent the judicial auction, Yin Moumou, Qin Moumou and Quan Moumou, the legal counsel of Company B, conspired and forged engineering materials, inflating the cost of the foundation pile work from RMB 9.07 million to more than RMB 41.91 million, and filed a lawsuit with the Guilin Municipal Intermediate People's Court in the name of the affiliated company, which was subsequently confirmed by court judgment. Afterwards, Yin Moumou and others, on the ground that construction project prices should be paid with priority in accordance with law, applied to the Guilin Municipal Intermediate People's Court for compulsory deduction of the auction proceeds, causing the bank's purpose of realizing its creditor's rights through judicial auction to fail. Later, upon application by the bank and the buyer, the Laibin Municipal Intermediate People's Court ruled to revoke the auction transaction result and terminate enforcement.

In January 2013, the equity structure of Guilin Company B changed, with the newly invested company becoming the controlling company, and Qin Moumou ceased to be the controlling shareholder and legal representative. Afterwards, Yin Moumou, Shen Moumou and others, in the name of the affiliated company,

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repeatedly applied to the courts for compulsory enforcement, demanding the sealing and auction of the land of the project involved in Guilin Company B and the execution of the judgment's inflated project payment principal and interest. They also engaged in acts such as preventing the new project from entering the site for construction and gathering migrant workers for petitioning. By July 2016, the courts had successively executed a total of more than RMB 47.29 million in project payment, liquidated damages and overdue interest, while another RMB 34.27 million in overdue interest was not obtained because the case was discovered. At the same time, due to the impact of civil litigation and sealing and auction, the resettlement of laid-off workers and the registration of house property rights related to the land involved came to a standstill.

Procuratorate Performance of Duties

(1) Discovery of clues. On August 31, 2016, Guilin Company B filed an application with the Guilin Municipal People's Procuratorate for supervised filing, stating that Yin Moumou and others had repeatedly defrauded it of project payment through means such as forging seals and inflating the foundation pile work quantities, which constituted a crime, but that the company had reported the matter to the public security organ on multiple occasions since May 2012 without the public security organ filing a case, and requesting that the procuratorate supervise the filing.

(2) Investigation and verification. The civil cases involved in this case had gone through multiple litigation stages including first instance, application for retrial and civil protest, spanning a long period, but the engineering materials and civil litigation materials provided by the applicant were incomplete, and the foundation piles involved had been excavated due to planning changes, making it impossible to determine the true work quantities, which caused difficulties for the procuratorate in reviewing and determining whether the parties' filing supervision application was established. To perform its supervision duties accurately in accordance with law, the Guilin Municipal People's Procuratorate carried out the following investigation and verification work. First, it heard the opinions of the applicant and its attorney, verified the engineering construction and project payment situations, and understood the relevant civil litigation and compulsory enforcement process. Second, it inquired of the public security organ staff and learned the reason for not filing, namely that the facts of the case were considered to be the same legal facts as the effective civil judgment of the people's court, and that the people's procuratorate had not notified the public security organ to file. Third, it retrieved the civil litigation file materials and relevant company seals, foundation pile design drawings, construction contracts, sampling quality inspection reports and engineering settlement documents, and upon comparison found that the original civil case involved acts such as forging the seals of Guilin Company B and the engineering settlement documents. Fourth, it retrieved documentary evidence such as the original geological and hydrological survey materials and the approval records for muck transportation; inquired of survey engineers, muck transportation drivers and other relevant construction personnel; and conducted on-site inspection of the engineering site and the muck dumping site, ruling out the possibility that the work quantities exceeded the planned quantities due to karst caves or underground rivers, and found that Yin Moumou and others had inflated the work quantities and the relevant earthwork auxiliary work quantities. Fifth, it commissioned relevant professional institutions to appraise the actual work quantities and project costs, verifying that the project payment claimed by Yin Moumou and others in the civil cases far exceeded the actual project cost.

(3) Supervised filing. On December 14, 2016, the Guilin Municipal People's Procuratorate issued a Notice Requiring Explanation of the Reasons for Not Filing to the Guilin Municipal Public Security Bureau. On December 19, the Guilin Municipal Public Security Bureau replied with an Explanation of the Reasons for Not Filing, stating that the fraud case of Yin Moumou and others involved the same legal facts as the effective civil judgment and that no criminal facts had occurred.

After review, the Guilin Municipal People's Procuratorate held that the available evidence could prove that Yin Moumou and others, after inflating the foundation pile work quantities and obtaining court judgment confirmation, obtained the inflated project payment by applying for compulsory enforcement, involving an

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especially huge amount and constituting suspected fraud, and that the public security organ's reason for not filing could not be established. On the same day, the Guilin Municipal People's Procuratorate issued a Notice of Filing to the Guilin Municipal Public Security Bureau and transferred the evidence materials obtained through investigation and verification to the public security organ. On December 29, the public security organ opened an investigation into Yin Moumou and others on suspicion of fraud in accordance with law.

(4) Follow-up supervision. After the public security organ opened the investigation, the Guilin Municipal People's Procuratorate strengthened cooperation and coordination with the public security organ, followed up on the case handling and promptly put forward opinions on investigation and evidence collection. First, it urged the public security organ to collect and preserve, in accordance with statutory procedures, evidence materials such as witness testimony, victim statements and documentary evidence obtained through the procuratorate's investigation and verification. Second, it established with the public security organ a cooperation and coordination mechanism of real-time sharing of key information, real-time contact on important evidence and real-time consultation on important nodes, closely followed the progress of investigation and evidence collection, and where supplementary evidence was found necessary, listed an evidence collection outline and urged the public security organ to complete the evidence collection work in a timely manner. In accordance with the procuratorate's opinions and the investigation and evidence collection plan formed through consultation, the public security organ lawfully searched for and obtained key documentary evidence proving the true foundation pile work quantities, and ascertained the facts of Yin Moumou conspiring with Qin Moumou, Shen Moumou, Quan Moumou and others to jointly commit fraud. Third, it continuously followed up and urged the public security organ to thoroughly investigate criminal clues, ultimately ascertaining that Qin Moumou, Yin Moumou, Shen Moumou, Quan Moumou and others were suspected of committing 18 illegal and criminal facts across 6 charges including fraud, false litigation, provoking quarrels, bribery, fundraising fraud and misappropriation of funds, with the amount involved exceeding RMB 400 million, and were suspected of constituting a mafia-style criminal organization.

(5) Transfer of clues of duty-related crimes. In response to problems such as abnormal equity changes, land unsealing and mortgage procedures found in this series of cases, the Guilin Municipal People's Procuratorate, after analysis and assessment, held that there might be suspicion of duty-related illegal and criminal conduct by state organ staff, and transferred the relevant clues to the discipline inspection and supervision organs and the procuratorate's duty crime investigation department.

(6) Supervision results. Starting from June 2018, the Guilin Municipal People's Procuratorate initiated public prosecutions against Qin Moumou, Yin Moumou, Shen Moumou, Quan Moumou and others in batches. After lawful trial, the Guilin Municipal Intermediate People's Court found that defendants Qin Moumou, Yin Moumou, Shen Moumou, Quan Moumou and others had long used construction projects to corrupt and win over state organ staff, and had seized illegal benefits through capital operation, fraud, pestering petitioning and violent and soft-violence means, constituting a mafia-style criminal organization, and were respectively guilty of fraud, fundraising fraud, bribery, misappropriation of funds, provoking quarrels and false litigation, and were sentenced to life imprisonment down to ten years of fixed-term imprisonment. After the first-instance judgment, some defendants appealed. In September 2021, the second-instance court ruled to dismiss the appeal and uphold the original judgment. At the same time, four judicial personnel were sentenced to fixed-term imprisonment with fines for bribery, and relevant administrative organ staff received party discipline and government sanctions.

After the criminal judgments, the people's courts revoked the civil judgments arising from false litigation and unsealed the sealed land and houses; Guilin Company B recovered economic losses of more than RMB 600 million and prevented losses of more than RMB 400 million; the property rights certificates of more than 900 home buyers were processed, and the resettlement of more than 400 laid-off workers was promoted and resolved.

Guiding Significance

(1) In cases involving overlap between criminal and civil matters, the principle of "criminal before civil" shall be followed, and filing supervision work shall be carried out by distinguishing different circumstances. Where the public security organ refuses to file a case on the ground that the case suspected of a criminal offense and the civil case for which the people's court has issued an effective adjudicative document involve the same facts or are related, and the parties apply for supervised filing, the procuratorate shall conduct a comprehensive review and accurately grasp the substantive legal relationship. Where review determines that the civil case and the suspected criminal case involve the same facts and the entire case is not a civil case but is suspected of a criminal offense, or where the civil case and the suspected criminal case do not involve the same facts but are related and part is suspected of a criminal offense requiring pursuit of criminal liability, and the filing conditions are met, the procuratorate shall supervise the public security organ to open an investigation in accordance with law; where it is determined that no criminal facts have occurred, or the circumstances of the crime are minor and do not require pursuit of criminal liability, or other circumstances exist under which criminal liability need not be pursued in accordance with law and the filing conditions are not met, the procuratorate shall reply to the applicant in accordance with law. Both preventing and correcting interference in economic disputes through criminal means, and avoiding indulging criminal offenses on the ground of economic disputes, shall be ensured.

(2) In carrying out filing supervision, investigation and verification shall be conducted in accordance with law. In investigating and verifying supervision matters and supervision clues, without restricting the personal and property rights of the persons under investigation, means such as interrogation, inquiry, hearing of opinions, inspection, examination, appraisal, and retrieval, query and reproduction of relevant documents and file materials may be used in accordance with law to consolidate the factual and evidentiary basis.

(3) With respect to major and complex cases under supervised filing, investigation and evidence collection work shall be continuously followed up and supervised. Through means such as hearing opinions in major and difficult cases, case consultation and legal consultation, necessary, clear and feasible opinions and suggestions shall be put forward on evidence collection, determination of facts and case characterization, promoting the public security organ to promptly collect, preserve and convert in accordance with law the evidence materials obtained through the procuratorate's investigation and verification, so as to effectively improve the quality and efficiency of investigation and case handling.

Relevant Legal Provisions

Article 266 of the Criminal Law of the People's Republic of China; Article 111 of the Criminal Procedure Law of the People's Republic of China (2012 Amendment); Articles 552, 553, 554, 555, 557, 558, 559 and 560 of the Rules of Criminal Procedure for People's Procuratorates (for Trial Implementation); Articles 4, 5, 7, 8 and 9 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on Issues Concerning Criminal Filing Supervision (for Trial Implementation).

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