SPP Guiding Case No. 243: Supervision Case on the Investigation of False Accusation and Extortion by Li Moumou and Two Others

Dan Young Business Consultancy — www.danyoungcpa.com

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

SPP Guiding Case No. 243 (Procuratorial Example No. 243)

Keywords

Supervision of and coordination with investigation; integrated performance of duties; prevention of wrongful convictions and correction of errors; withdrawal of cases.

Holding

People's procuratorates shall strengthen coordination with public security organs, give full play to the mechanism whereby public security organs seek the opinions of procuratorial organs in handling major and difficult cases, and, through means such as reviewing evidentiary materials, put forward opinions and proposals on the characterization of cases, the collection of evidence and the application of law, so as to ensure that crimes are punished accurately in accordance with the law. With respect to cross-regional legal supervision leads discovered in the course of performing supervisory duties, the requirement of integrating supervisory case-handling shall be implemented, lead materials shall be promptly transferred to the procuratorial organ with jurisdiction, and legal supervision duties shall be performed in coordination.

Basic Facts

Sun Moumou, the suspect in the original case, male, born in 1997, unemployed.

On October 30, 2021, Sun Moumou and Li Moumou (female, born in 2004, under the age of 18 at the time of the case) met through a dating app. After dining and drinking together, the two had sexual relations at a bathing center. At around 3 a.m. on October 31, Li Moumou called the police, claiming that she had been raped by Sun Moumou while intoxicated. When the High-tech Branch of the Anyang Municipal Public Security Bureau in Henan Province attended to the incident, it found scratch marks on Sun Moumou's body that appeared to have been caused by Li Moumou's resistance. Combined with Li Moumou's statement, it considered that Sun Moumou was suspected of rape, and accordingly opened a case that day and placed Sun Moumou under criminal detention.

Judgment

Discovery of leads. On November 3, 2021, Sun Moumou's family proposed to the public security organ that the parties had reached a settlement, and provided a self-written document by Li Moumou. Upon review, the public security organ found that the content of the self-written document — that the two had sexual relations voluntarily and that "I (Li Moumou) filed a false report" — clearly contradicted Li Moumou's statements made at the time of reporting and after the case was filed, directly affecting the characterization of the case. The High-tech Branch activated the mechanism for seeking opinions in major and difficult cases, and requested the Wenfeng District People's Procuratorate to put forward opinions and proposals on the characterization of Sun Moumou's suspected rape case, evidence collection and application of law.

After receiving the request, the Wenfeng District People's Procuratorate assigned procurators to hear the briefing on the case and review the evidence on record, and, together with the public security organ, analyzed and discovered the following leads: first, two persons claiming to be Li Moumou's "aunt" and "uncle" had, after the case, demanded RMB 30,000 in compensation from Sun Moumou's family as a condition for withdrawing the report, and issued Li Moumou's self-written document after receiving the money, but no longer answered the public security organ's calls when it sought further verification. Second,

Source: https://www.danyoungcpa.com/spp-guiding-case-243-china/

upon reviewing Li Moumou's statements and synchronous audio-video recordings, it was found that the "aunt" present as an appropriate adult had been contacted by Li Moumou, but appeared noticeably young, seemingly inconsistent with the identity of an "aunt"; the public security organ had not verified her identity, and the claimed kinship was doubtful. Third, upon reviewing the surveillance video of the bathing center, it was found that Li Moumou and Sun Moumou moved freely and behaved intimately when entering the bathing center; the truthfulness of Li Moumou's statement that she had been raped while intoxicated was doubtful, and there was a possibility that she had filed a false report.

Supervision opinions. Based on these leads, after joint consultation, the Wenfeng District People's Procuratorate and the High-tech Branch decided to supplement the investigation and verify the household registration, communications, accommodation and travel information of Li Moumou and her "aunt" and "uncle", and found: first, the identities of the two persons claiming to be Li Moumou's "aunt" and "uncle" were fabricated — their real names were Wang Moujia and Wang Mouyi, both just over 18 years old and unrelated to Li Moumou; second, on the day of the case, the three had traveled together from their hotel to the bathing center and had made frequent phone calls after the case, giving rise to a suspicion that they had colluded to commit false accusation.

Based on the facts established, the Wenfeng District People's Procuratorate, in the form of a written opinion, put forward the following opinions and proposals on the investigation of Sun Moumou's suspected rape case: first, Li Moumou's statement contradicted her self-written document, and other evidence was insufficient to prove that Sun Moumou had committed rape, so it recommended that the public security organ convert Sun Moumou's criminal detention into a non-custodial compulsory measure. Second, the evidence on record was capable of proving that Li Moumou and the other two had suspicions of committing false accusation, and since their household registration and habitual residence were all outside Anyang, there was a possibility of gang-based, itinerant crime, so it recommended that the public security organ open a case against Li Moumou and the other two for suspected false accusation. Third, it put forward supervision and correction opinions to the High-tech Branch concerning such irregularities as the failure to notify a legal representative to be present when questioning the minor Li Moumou, and the failure to verify the identity of Li Moumou's "aunt" who was present as an appropriate adult.

Coordination. Pursuant to the opinions and proposals of the Wenfeng District People's Procuratorate, the High-tech Branch converted Sun Moumou's detention measure into release on bail pending trial on November 5, opened a case on November 11 against Li Moumou and the other two for suspected false accusation, and arrested the three in another province the next day.

On November 12, the High-tech Branch activated the opinion-seeking mechanism for a second time concerning Li Moumou and others' suspected false accusation. The Wenfeng District People's Procuratorate assigned the original case procurator to continue reviewing the false accusation case and, taking the two cases together, put forward the following opinions and proposals: first, to expand the scope of investigation by verifying the three persons' joint activity trajectories nationwide and checking whether there was similar alarm information in the regions of their joint activities, so as to fully ascertain the facts of their cross-regional itinerant false accusation crimes. Second, to standardize investigation and evidence collection activities: in light of the "conversion" of identities between suspects and victims in this case and the original rape case, it recommended that the public security organ accurately apply questioning and interrogation procedures to re-fix the verbal evidence on record, so as to avoid misusing forms of evidence; in light of the propensity for irregularities in evidence collection such as the seizure of mobile phones and the extraction of electronic data, it recommended that the public security organ strictly regulate the seizure and preservation of original media, and improve notices for evidence retrieval and extraction records, so as to ensure the completeness, authenticity and legality of electronic data such as chat records, SMS records and call records; and in light of the cross-regional itinerant nature of the case, it recommended that the public security organ strictly carry out cross-regional coordination work such as notification, filing, communication and consultation in accordance

Source: https://www.danyoungcpa.com/spp-guiding-case-243-china/

with the relevant provisions when carrying out cross-regional investigation activities.

Results of supervision. Through close supervision and coordination between the procuratorial and public security organs, it was ultimately established that from June to November 2021, Li Moumou and the other two had, by the same means, committed eight instances of false accusation in eight places across five provinces including Henan and Sichuan, four of which involved extorting a total of RMB 237,000 from the falsely accused persons or their families. Meanwhile, in light of the progress of the false accusation investigation, the case of Sun Moumou's suspected rape was lawfully withdrawn. On January 17, 2023, the Wenfeng District People's Court sentenced Li Moumou and the other two to fixed-term imprisonment ranging from six years and six months to seven years and six months for the crimes of false accusation and extortion.

Extended performance of duties. While pursuing the criminal liability of Li Moumou and others in accordance with the law, the Wenfeng District People's Procuratorate, jointly with the High-tech Branch, notified the procuratorial and public security organs in the localities where the other seven instances of false accusation occurred of the investigation and prosecution of Li Moumou and others' false accusation and extortion case, and transferred supervision leads and evidentiary materials. The local procuratorial and public security organs withdrew the case of one victim who had been wrongly placed under investigation, and rendered a non-prosecution decision in respect of one victim who had been wrongly transferred for examination for prosecution, effectively preventing wrongful cases.

Reasoning

(1) In handling major and difficult cases, people's procuratorates shall, together with public security organs, give full play to the opinion-seeking mechanism to ensure that crimes are punished accurately in accordance with the law. Where a public security organ requests a procuratorial organ to assign personnel to review and give opinions on a major or difficult case, the procuratorial organ shall assign procurators with rich practical experience to fully hear the case investigation situation, review the evidentiary materials on record, and put forward opinions and proposals on the characterization of the case, evidence collection and application of law. Where, after further investigation and the collection and fixation of relevant evidence by the public security organ, the evidence on record is still insufficient to prove that the suspect committed a crime, opinions and proposals to change compulsory measures or withdraw the case shall be put forward in accordance with the law; where other leads of unlawful or criminal conduct are discovered, opinions and proposals to open a case for investigation shall be promptly put forward to the public security organ. Investigation supervision duties shall be fully performed, and the public security organ shall be pointedly reminded to regulate its investigation activities and lawfully collect and fix evidence; where investigative irregularities are discovered, supervision and correction opinions shall be promptly put forward.

(2) With respect to cross-regional legal supervision leads discovered in the course of performing supervisory duties, people's procuratorates shall implement the requirement of integrating supervisory case-handling, promptly transfer lead materials, and perform legal supervision duties in coordination. In handling cases across administrative divisions, while strengthening cross-regional coordination and ensuring the quality and efficiency of case review and handling, procuratorial organs shall pay attention to reviewing and discovering various legal supervision leads and fully performing supervision duties. Where cross-regional legal supervision leads are discovered, they shall promptly transfer them to the procuratorial organ with jurisdiction, perform duties in an integrated and coordinated manner, regulate law enforcement, prevent wrongful convictions and correct errors, and give full play to the legal supervision duty of ensuring the unified application of law.

Relevant Legal Provisions

Articles 236, 243 and 274 of the Criminal Law of the People's Republic of China.

Source: https://www.danyoungcpa.com/spp-guiding-case-243-china/

Articles 2, 163 and 177 of the Criminal Procedure Law of the People's Republic of China (as amended in 2018).

Articles 256 and 257 of the Rules of Criminal Procedure of People's Procuratorates (Interpretation No. 4 [2019] of the Supreme People's Procuratorate).

Articles 186 and 349 of the Provisions on the Procedures for Handling Criminal Cases by Public Security Organs (as amended in 2020).

Opinions of the Supreme People's Procuratorate and the Ministry of Public Security on Improving and Perfecting the Mechanism for Supervision of and Coordination with Investigation (Interpretation No. 13 [2021] of the Supreme People's Procuratorate).

Disclaimer: This translation is provided for informational purposes only and is not an official translation. In the event of any discrepancy between this English version and the official Chinese text, the official Chinese text shall prevail. This translation does not constitute legal advice.