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DCCC 927/2020
DCCC 928/2020
DCCC 930/2020
[2020] HKDC 1153

**IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CRIMINAL CASE NO 927 OF 2020**

HKSAR
v
TAM TAK CHI

**IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CRIMINAL CASE NO 928 OF 2020**

HKSAR
v
TAM TAK CHI

**IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CRIMINAL CASE NO 930 OF 2020**

HKSAR

v

TAM TAK CHI

Before: His Honour Judge Ko

Date: 2 December 2020

Present: Mr Anthony Chau, Deputy Director of Public Prosecution
(Ag) and Miss Crystal Chan, Public Prosecutor, for HKSAR
Mr Philip Dykes (SC) leading Mr Jeffrey Tam and Mr Brian
Tsui, instructed by Michelle Tsoi Solicitors, for the defendant

Offence: (DCCC 927/2020)

[1] Holding or convening an unauthorized assembly (舉行或
召集一個未經批准集結)

[2] Disorderly conduct in a public place (公眾地方內擾亂秩
序行為)

[3] Refusing or wilfully neglecting to obey an order given by
an authorized officer (拒絕遵從或故意忽略遵從授權人員
作出的命令)

[4] Uttering seditious words (發表煽動文字)

(DCCC 928/2020)

[1]、[3] & [5] to [7] Uttering seditious words (發表煽動文字)

[2] Disorderly conduct in a public place (公眾地方內擾亂秩
序行為)

[4] Conspiracy to utter seditious words (串謀發表煽動文字)

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(DCCC 930/2020)

[1] Incitement to knowingly take part in an unauthorized assembly (煽惑他人明知而參與未經批准集結)

[2] Uttering seditious words (發表煽動文字)

[3] Disorderly conduct in a public place (公眾地方內擾亂秩序行為)

RULING

1. Under article 44(3) of The Law of the People’s Republic of China on Safeguarding National Security in the HKSAR (“the National Security Law”), all proceedings in relation to the prosecution for offences endangering national security in the District Court shall be handled by the designated judges in the District Court.

2. The prosecution has applied for assignment of a designated judge to handle these proceedings based on, *inter alia*, the above provision. The applicability of the National Security Law to these cases is disputed by the defence, who argues that the sedition offences under section 10 of the Crimes Ordinance, Cap 200, with which the defendant is charged are not offences endangering national security. The dispute will have to be determined by the court.

3. The prosecution further seeks a direction that the application be listed before a designated judge for argument. That is also disputed by

A
B the defence, who contends that if the prosecution's direction is allowed, it
C would have granted what the prosecution applied for at the outset.

D 4. At the last hearing, I adjourned the proceedings to today and
E invited for submissions to better appreciate the argument of both sides. I
F am grateful for the submissions of the parties.

G 5. Having considered their submissions, I can see the possibility
H of *ultra vires* if the application is not determined by a designated judge. A
I non-designated judge who rules in favour of the prosecution would in
J effect be confirming that he/she personally lacks jurisdiction to handle the
K argument in the first place. His/her decision may be subject to challenge
L by way of judicial review. On the other hand, if he/she rules in favour of
the defence, then the prosecution may persist in arguing the jurisdiction
point on appeal or judicial review.

M 6. I do not think the doctrine of *de facto* judge would avail the
N defence. The basis of the doctrine is said to be that the public must be able
O to rely on the acts of judges and officers so long as there is no reason to
P suppose that they are not validly appointed.¹ By refusing to give the
Q direction sought, I would in effect be confirming that the judge presiding
R over the argument would not be a designated judge and the doctrine would
S not apply. It has also been said that the doctrine will not apply to "someone
T who knows, even if the world knows not, that he is not qualified to hold
U the office he is exercising".² A non-designated judge would certainly
V know that he/she has not been designated.

¹ Wade & Forsyth, *Administrative Law*, 11th edition (2014), p 240.

² *Coppard v Customs and Excise Commissioners* [2003] 2 WLR 1618 (CA) *per* Sedley LJ at para 17.

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7. The listing and handling of cases and the assignment of which judge to handle a case are matters within the sole responsibility of the Judiciary. My function as the listing judge is to ensure that cases are listed before appropriate judges with the minimum of delay. In my view, it is undesirable to leave a blemish on such an important issue so early in the proceedings, which may come back to haunt the parties in due course. In the exercise of my administrative function, I have decided to list the substantive argument before a designated judge to avoid any potential *ultra vires* problems and so that the parties may focus on their substantive argument and not sidetracked by collateral matters.

8. As my decision is not based on any interpretation of the National Security Law, the judge hearing the argument would be free to construe the relevant provisions and decide one way or another.

9. As a matter of fact, I have a designated judge ready tomorrow morning at 10 am to hear the argument. There will not be any delay in entertaining the argument.

(Justin Ko)
Chief District Judge