Public Prosecutor *v* Sollihin bin Anhar
[2014] SGHC 228

Case Number	: Criminal Revision No 12 of 2014
Decision Date	: 06 November 2014
Tribunal/Court	: High Court
Coram	: Tay Yong Kwang J
Counsel Name(s)	: Gordon Oh, Hon Yi and Cheryl Lim (Attorney-General's Chambers) for the applicant; Thangavelu (Thangavelu LLC) and Ong Ying Ping (Ong Ying Ping Esq) for the respondent.
Parties	: Public Prosecutor — Sollihin bin Anhar

Criminal Procedure and Sentencing – Revision of Proceedings

Criminal Procedure and Sentencing – Bail

6 November 2014

Tay Yong Kwang J:

Introduction

1 This was an application for criminal revision in which the Public Prosecutor ("the Prosecution") sought to reverse the order made by the learned District Judge ("the DJ") on 15 July 2014 to extend bail to the respondent, Sollihin bin Anhar ("the Respondent"). The Prosecution also prayed for an order that the Respondent be remanded in custody pending the commencement of the trial. The Respondent opposed the Prosecution's application.

2 The matter was originally fixed for hearing on 11 August 2014. It came before me on an expedited basis on 31 July 2014 at the request of the Prosecution. Counsel for the Respondent applied for an adjournment and asked that the original hearing date stand. After hearing the parties, I decided that there was no great urgency to justify bringing the hearing date forward. I therefore ordered the original hearing date and the directions given by the Assistant Registrar at the earlier pre-trial conference to stand.

3 On 11 August 2014, I heard the parties and decided to dismiss the Prosecution's application. The Prosecution has since referred questions of law of public interest to the Court of Appeal in Criminal Reference No 3 of 2014 ("CRF 3/2014"). I now set out the grounds for my decision.

The factual background

Background facts

4 The Respondent is a 41-year-old self-employed manager of a motor vehicle workshop registered in the name of his wife. He was alleged to have engaged in conspiracies with various accomplices to stage motor accidents for the purpose of cheating insurance companies into making payments on fraudulent insurance claims. Prior to being formally charged on 4 June 2014, the Respondent had allegedly contacted other persons who were involved in the accident. Those persons were potential

witnesses for the Prosecution. The Respondent was alleged to have urged them not to make any admissions to the authorities or to incriminate him in any way. These conversations were said to have taken place between March and April this year.

The first mention

5 Subsequently, the Respondent was formally charged in the State Courts on 4 June 2014 on:

(a) one count of engaging in a conspiracy to cheat under s 420 read with s 116 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"); and

(b) one count of engaging in a conspiracy to cheat under s 420 read with s 109 of the Penal Code.

The Prosecution submitted that the Respondent should not be released on bail as he had attempted to suborn potential witnesses even before he was formally charged in court (see [4] above). In response, the Respondent denied contacting those potential witnesses. It was argued by the Respondent that the persons whom he had allegedly contacted were, in any event, co-accused persons as opposed to independent witnesses for the Prosecution.

6 The DJ granted the Respondent bail at $40,000 on the condition that he was not to contact any of the witnesses for the Prosecution. The Respondent was also granted permission to leave Singapore for his family holiday in Perth and Bali on the condition that an additional bail amount of $20,000 be provided. The usual conditions in relation to overseas travel were also imposed on the Respondent.

The second mention

7 On 2 July 2014, nine new charges of engaging in a conspiracy to cheat under s 420 read with s 116 of the Penal Code were tendered against the Respondent. The Prosecution submitted that bail ought to be revoked as the Respondent had allegedly contacted five potential witnesses on ten separate occasions *after* the first mention. It was argued that this amounted to multiple breaches of the bail condition imposed by the DJ at the first mention. An affidavit by ASP Lee, an officer of the Commercial Affairs Department, was also placed before the court in support of the application for the Respondent's bail to be revoked.

8 In his affidavit dated 1 July 2014, ASP Lee gave a detailed account of how the officers, including himself, had received information concerning the Respondent's multiple attempts to contact and influence potential witnesses for the Prosecution. After the first mention on 4 June 2014, the Respondent allegedly tried to persuade these persons not to cooperate with the authorities and to stick to their original account that the relevant accidents had not been staged. Apart from that, the Respondent was said to have told two different witnesses that he would find out the identity of the person who was responsible for giving information to the authorities. It was further alleged that the Respondent had threatened these potential witnesses not to make any admissions to the authorities. Extracts of selected statements that were recorded from these potential witnesses were also reproduced in ASP Lee's affidavit.

9 After considering the parties' arguments and the evidence placed before the court, the DJ rejected the Prosecution's application for the Respondent's bail to be revoked. The DJ observed that he was not in a position to accept the hearsay evidence adduced through ASP Lee's affidavit as being conclusive in the light of the Respondent's denial. Nevertheless, the DJ increased the bail quantum

from $40,000 to $60,000.

The third mention

10 On 15 July 2014, ten charges of attempting to intentionally pervert the course of justice under s 204A read with s 511 of the Penal Code were tendered against the Respondent. These ten charges arose out of the Respondent's alleged communications with five potential witnesses between the first mention on 4 June 2014 and the second mention on 2 July 2014 (see [7]–[9] above). The Prosecution made a formal application for the Respondent's bail to be revoked pursuant to s 103(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). It was acknowledged by the Prosecution that it was not adducing any "fresh evidence" since the previous mention on 2 July 2014.

11 As opposed to the second mention which was relatively brief, the Prosecution presented substantive legal arguments on the applicable standard of proof under s 103(4)(*b*) of the CPC during the third mention. It was argued by the Prosecution that the standard should not be that of beyond reasonable doubt.

12 After hearing both parties' arguments, the DJ rejected the Prosecution's application and instead increased the bail quantum to $70,000 in view of the ten additional charges preferred against the Respondent. In arriving at his decision, the DJ highlighted that the allegations made against the Respondent had to be treated with caution as they were made by persons who were alleged to have been in a conspiracy with the Respondent in relation to the staged accidents.

The fourth mention

13 It appeared that there was a subsequent mention on 31 July 2014, where seven additional charges were preferred against the Respondent. Nevertheless, the Prosecution's application for criminal revision was in relation to the DJ's decision to extend the Respondent's bail at the third mention on 15 July 2014. I therefore did not take into account the facts concerning the fourth mention.

The parties' arguments

14 At the outset, both parties agreed that a decision arrived at in relation to a bail application is merely interlocutory in nature. It does not amount to a judgment or order of finality from which an avenue for appeal arises. In particular, the Prosecution cited the Court of Appeal decision of *Mohamed Razip and others v Public Prosecutor* [1987] SLR(R) 525 ("*Mohamed Razip v PP*") in support of this proposition.

15 Apart from that, the general legal principles governing the exercise of the High Court's revisionary jurisdiction were also not heavily disputed. The parties' dispute was primarily over the application of these legal principles to the factual matrix in the present case. The Prosecution took the position that there were "clear errors of law" in the DJ's decision which led to a miscarriage of justice. In reply, the Respondent submitted that the Prosecution had not even crossed the threshold of establishing "serious injustice which is so palpably wrong" such as to warrant the exercise of the High Court's revisionary powers. For easy reference, I now set out a summary of the salient arguments presented by each party.

The Prosecution's arguments

16 In support of its position that the application for criminal revision was procedurally appropriate

on the facts of the present case, the Prosecution submitted that s 97 of the CPC does not enable the High Court to revoke bail if that was granted by the State Courts. In other words, the High Court's power to revoke bail under s 97 of the CPC could only be exercised if the accused was released on bail *by the High Court*. Therefore, given that bail decisions are non-appealable, it was argued that the only way in which a State Court's decision to grant bail could be challenged would be by way of a criminal revision. The Prosecution also relied on a line of English authorities where the decisions of the Magistrates Court to grant or revoke bail under s 7(5) of the Bail Act 1976 (c 63) (UK) ("the UK Bail Act") were held to be subject to judicial review by the English High Court. It was submitted that the High Court's revisionary jurisdiction under s 400 of the CPC should be invoked to achieve the same purpose as that of judicial review in the UK.

17 The Prosecution relied on two main submissions in support of its position that the exercise of the High Court's revisionary powers over bail decisions of the State Courts would not result in an opening of floodgates for similar challenges to be mounted in the future. First, it was highlighted that such applications would only be made *by the Prosecution* as accused persons who are denied bail in the State Courts are able to avail themselves of the right to apply to the High Court for bail to be granted under s 97 of the CPC. This is achieved by way of an application by criminal motion to the High Court. Second, the Prosecution highlighted that the threshold to be met for the High Court to exercise its revisionary powers is relatively higher as compared to a case where the High Court is exercising its appellate powers. There was therefore no cause for concern that the High Court would suddenly have a deluge of criminal revisions in respect of bail decisions of the State Courts.

18 Moving on to the issue of whether the facts of the present case warranted the exercise of the High Court's revisionary powers, the Prosecution submitted that the DJ's decision to extend the Respondent's bail was incorrect in the light of the Respondent's repeated breaches of the condition that prohibited him from contacting potential witnesses. It was further submitted that the DJ's decision amounted to an improper exercise of discretion under s 103(4)(*b*) of the CPC and that the decision had resulted in a serious miscarriage in the administration of justice in so far as it allowed the Respondent to continue interfering with potential witnesses with impunity.

19 The Prosecution highlighted that s 103(4) of the CPC was largely adapted from s 7(5) of the UK Bail Act. The latter provision has been interpreted by the English High Court to involve a two-stage process. The key question in the first stage is whether there was sufficient evidence to establish the breach of the condition. In this respect, the Prosecution referred to English authorities which observed that the hearing was intended to be a "simple and expeditious procedure" where hearsay evidence could be relied upon in so far as it was properly evaluated. The Prosecution also referred to the English decision of *The Queen on the Application of Royston Thomas v Greenwich Magistrates' Court* [2009] Crim LR 800 for the proposition that the burden of proving a breach of the condition was on a balance of probabilities.

20 On that basis, the Prosecution submitted that the principles derived from the line of English authorities should also be applicable to s 103(4) of the CPC. The procedure was meant to be simple and expeditious and the court would have to evaluate all evidence, including hearsay evidence, before arriving at a conclusion on whether the condition was breached. It was further submitted that the standard of proof to be met under s 103(4) of the CPC should be one of balance of probabilities.

21 With regard to the second stage of the inquiry, the Prosecution submitted that upon finding that there was a breach of the condition, the court would then have to determine whether bail ought to be extended or revoked. It was further argued that the nature of the condition and the extent of the breach should be taken into account at the second stage of the inquiry.

22 In applying the principles set out above, the Prosecution highlighted the presence of "clear errors of law" in the DJ's decision to extend the Respondent's bail. First, it was argued that the DJ erred in applying the criminal standard of proof beyond reasonable doubt when determining whether the bail condition was breached. It was argued that the applicable standard ought to be that of a civil standard or on a "preponderance of probabilities". Second, the Prosecution submitted that the DJ failed to properly evaluate the evidence adduced through ASP Lee's affidavit. Finally, it was argued that the DJ failed to make a proper determination under s 103(4)(*b*) of the CPC as it was not clear if he had arrived at the finding that the Respondent breached the bail condition. In the event that the DJ found a breach of the bail condition, the Prosecution submitted that the DJ's decision to extend the Respondent's bail would have serious repercussions on the administration of justice.

The Respondent's arguments

23 The Respondent submitted that the present case did not meet the threshold for the exercise of the High Court's revisionary powers. Local case authorities such as *Chua Chuan Heng Allan v Public Prosecutor* [2003] 2 SLR(R) 409 and *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 ("*Ang Poh Chuan v PP*") were cited for the proposition that the court will only exercise its revisionary powers when it is necessary to correct a serious injustice which is so palpably wrong that it strikes at the exercise of judicial power by the court below. It was further argued that the charges tendered against the Respondent involved bailable offences, where bail would be extended as of right. In this regard, the decision to extend the Respondent's bail could not have amounted to serious injustice which was so palpably wrong such that it warranted revisionary interference.

24 The Respondent also submitted that the correct procedure to challenge the DJ's bail decision was by way of a criminal motion. It was argued that a clear distinction had to be drawn between a criminal motion and a criminal revision. In the case of a criminal motion, the court was entitled to go into the merits of the bail application under s 97 of the CPC. In contrast, a court exercising its power of revision would be confined to reviewing the correctness, legality or propriety of the lower court's decision. The Respondent argued that a criminal revision was wholly inappropriate in the present case as the Prosecution had disagreed with the merits of the decision, the weight attributed to the hearsay evidence and the credibility of the witnesses.

25 In the alternative, even if it were accepted that the two-stage process as put forth by the Prosecution was applicable to the present case, the Respondent submitted that the deliberation would not progress beyond the first stage as there had not been any breach of the bail condition. The Respondent highlighted that the allegations of "witness tampering" arose from telephone calls that were made to the witnesses. The calls originated from a telephone number registered to an unidentified foreigner, whom the Respondent was not acquainted with. It was also pointed out that the Prosecution had conceded that the telephone number did not belong to the Respondent. With regard to the hearsay evidence in ASP Lee's affidavit, the Respondent also raised the concern that he had not been given the opportunity to cross-examine the deponent of the affidavit.

The decision of the court

The scope of s 97 of the CPC

26 I first dealt with the threshold issue of whether the revisionary powers of the High Court could be invoked for the purpose of reversing bail decisions of the State Courts. The Respondent adopted the position that the Prosecution's application for criminal revision was procedurally inappropriate. It was argued that the proper procedure to challenge bail decisions of the State Courts was to apply for a criminal motion and invoke the High Court's powers under s 97 of the CPC. On the other hand, the

Prosecution submitted that s 97 of the CPC does not allow the High Court to *revoke* bail that had been granted *by the State Courts*.

27 In determining whether s 97 of the CPC confers on the High Court the power to revoke bail granted by the State Courts, it would be apposite to refer to the words of the statutory provision:

> **High Court's powers to *grant or vary* bail**
>
> 97.—(1) Whether there is an appeal against conviction or not, the High Court may *grant bail* to any accused before it, *release him on personal bond* or *vary the amount or conditions* of the bail or personal bond required by a police officer or a State Court, and *impose such other conditions* for the bail or personal bond as it thinks fit.
>
> [emphasis added]

Notably, there is no mention that the High Court has the power to revoke bail and commit the accused to custody. Under s 97(1) of the CPC, the High Court only has the power to grant bail, release the accused on personal bond, vary the amount or conditions of the bail, or impose such other conditions as it thinks fits. This can be contrasted with s 97(2) of the CPC, which sets out the High Court's power to revoke bail and commit the accused to custody:

> (2) At any stage of any proceedings under this Code, the High Court may cause any person released *under this section* to be arrested and may commit him to custody.
>
> [emphasis added]

Nevertheless, a careful reading of this provision reveals that the High Court's power to have an accused arrested and committed to custody is restricted to any person released "under this section" (*ie*, s 97 of the CPC). I therefore accepted the Prosecution's argument that s 97(2) of the CPC should not be interpreted as conferring on the High Court the power to revoke bail that was granted by the State Courts. In other words, while an accused who has been denied bail at the State Courts is allowed to bring a criminal motion to invoke the powers of the High Court under s 97 of the CPC, this does not extend to the Prosecution in so far as it is seeking to *revoke* bail that has been granted by the State Courts.

28 In arriving at this conclusion, I also found it useful to refer to s 354 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), the predecessor to the present s 97 of the CPC:

> **High Court's powers to *vary* bail.**
>
> **354.**—(1) The High Court may, in any case whether there is an appeal on conviction or not, direct that any person shall be *admitted to bail* or that the bail required by a police officer or Magistrate's Court or District Court shall be *reduced or increased*.
>
> (2) The High Court may at any stage of any proceeding under this Code cause any person who has been released *under this section* to be arrested and may commit him to custody.
>
> [emphasis added]

Notably, both provisions are similar to the extent that the High Court only has the power to cause any person to be arrested and committed to custody if the person had been released "under this section". Section 354(1) only confers on the High Court the power to grant, reduce or increase bail.

It does not allow the High Court to revoke bail that has been granted by the Magistrate's Court or the District Court. This was consistent with the interpretation of s 97 of the CPC as set out above.

The scope of the High Court's power of revision

29 Nevertheless, even if it were accepted that s 97 of the CPC enables the High Court to revoke bail granted by the State Courts, this does not necessarily lead to the conclusion that the Prosecution is disentitled from bringing a criminal revision to reverse a bail decision by the State Courts. The ascertainment of whether this was procedurally appropriate would depend on the separate issue of whether the scope of the High Court's revisionary powers is wide enough to review bail decisions by the State Courts. The High Court's power of revision in respect of criminal proceedings is provided for in s 23 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which states:

> **Revision of criminal proceedings of subordinate courts**
>
> **23.** The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with the provisions of any written law for the time being in force relating to criminal procedure.

The other relevant provision would be s 400 of the CPC, which reads as follows:

> **Power to call for records of State Courts**
>
> **400.**—(1) Subject to this section and section 401, the High Court may, on its own motion or on the application of a State Court, the Public Prosecutor or the accused in any proceedings, call for and examine the record of *any criminal proceeding* before any State Court to satisfy itself as to the correctness, legality or propriety of *any judgment, sentence or order recorded or passed* and as to the regularity of those proceedings.
>
> (2) No application may be made by any party under this section in relation to any judgment, sentence or order which he *could have appealed against but had failed to do so* in accordance with the law unless the application is made —
>
> (*a*) against a failure by a court to impose the mandatory minimum sentence or any other sentence required by written law; or
>
> (*b*) against a sentence imposed by a court which the court is not competent to impose.
>
> [emphasis added]

It was acknowledged that the revisionary powers of the High Court in respect of criminal proceedings can be exercised over "any judgment, sentence or order" recorded or passed by the State Courts. Section 400(2), which forecloses any application for criminal revision if the decision is appealable, was also inapplicable given that a bail decision, being merely interlocutory and tentative in nature, would generally be regarded as a non-appealable order (see *Mohamed Razip v PP* at [15]). There was nothing to suggest that bail decisions by the State Courts could not be subject to criminal revision by the High Court.

30 It was further noted that s 401(2) of the CPC states that the High Court may in any case, the record of proceedings of which has been called for by itself or which otherwise comes to its

knowledge, in its discretion exercise any of the powers given by ss 383, 389, 390 and 392 of the CPC. Section 390 of the CPC, which deals with the appellate powers of the court, states unequivocally that the court may "in an appeal from any other order, alter or reverse the order". In fact, s 390(2) of the CPC states that:

> Nothing in subsection (1) shall be taken to prevent the appellate court from making such other order in the matter as it may think just, and by such order exercise any power which the trial court might have exercised.

In view of the above, I was satisfied that the revisionary powers conferred on the High Court were sufficiently broad so as to allow it to reverse a State Court's decision to grant bail to an accused. I now move on to the primary issue of whether this was a proper case for the High Court to exercise its powers of revision.

General legal principles relating to criminal revision

31 As mentioned at [13] above, the legal principles governing the exercise of the High Court's revisionary powers were generally accepted by both parties. In *Ang Poh Chuan v PP*, Yong Pung How CJ said at [17]:

> Thus various phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that there must be some *serious injustice*. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would *depend largely on the particular facts*. But generally it must be shown that *there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below*.
>
> [emphasis added]

In *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106, the Court of Appeal stated (at [73]) that it was trite law that the revisionary powers of the High Court ought to be exercised sparingly. The Court of Appeal also referred to *Ang Poh Chuan v PP*, wherein Yong CJ cited the governing principle of revision as set out by Hepworth J in *Re Radha Krishna Naidu* [1962] MLJ 130 at 131:

> [The court] should only exercise revisional powers in exceptional cases when there has been a denial of the right of a fair trial or it is urgently demanded in the interest of public justice.

Based on the foregoing principles, there was no doubt that the threshold for revisionary intervention is relatively high and that not all errors in a lower court's decision are liable to be remedied by way of criminal revision.

32 After considering both parties' arguments, the record of proceedings and the evidence placed before me, I was not satisfied that this threshold was met in the present case. I therefore dismissed the Prosecution's application for criminal revision.

The standard of proof

33 One of the Prosecution's main arguments was that the DJ had applied the incorrect standard of proof. While I agreed with the Prosecution that the standard of proof in such matters should not be

that of proof beyond reasonable doubt, I was of the view that the DJ had *not* applied the criminal standard of proof beyond reasonable doubt when dealing with the evidence of the Respondent's alleged breaches of the bail condition. I was therefore unable to accept the Prosecution's contention that the DJ erred in applying the *incorrect* standard of proof.

34 It was undisputed that ASP Lee's affidavit was first placed before the DJ at the second mention on 2 July 2014. The Prosecution relied on the Respondent's alleged breaches of the bail condition not to contact any prosecution witnesses as one of the grounds for the revocation of his bail. In rejecting the Prosecution's application, the DJ made the following observations:

> The court is not in a position to accept the hearsay evidence adduced through the IO as conclusive in the light of the denial of the accused. The fact that the witnesses are able to inform the IO of these calls and attempts to persuade them to give certain evidence means that the prosecution has the material to act upon to bring further charges against the defendant. Nevertheless, the prosecution will have to prove hearsay allegations in court. At this stage, the court can view the hearsay as allegations which have not been admitted by accused and therefore the court is unable to revoke bail at this stage. ...

In this regard, I noted that the Prosecution had not made any submissions on the applicable standard of proof during the second mention. The DJ therefore did not specifically deal with the applicable standard of proof in his consideration of the evidence adduced by the Prosecution. It appeared to me that the DJ only went so far as to observe that he was unable to accept the hearsay evidence adduced through ASP Lee's affidavit as being conclusive in the light of the Respondent's denial. This does not necessarily suggest that the DJ applied the criminal standard of proof beyond reasonable doubt.

35 In any event, the Prosecution's application for criminal revision was in relation to the DJ's decision to extend the Respondent's bail at the third mention on 15 July 2014. During the third mention, the Prosecution made specific submissions on the standard of proof applicable to s 103(4)(*b*) of the CPC. As there were no local case authorities that dealt with this issue, the Prosecution cited foreign case authorities in support of the proposition that the test under s 103(4)(*b*) of the CPC did not require the high criminal standard of proof beyond reasonable doubt. It appeared to me from the record that the DJ had, in fact, accepted the Prosecution's submissions that the criminal standard of proof should not be applied to s 103(4)(*b*) of the CPC:

> ... The only thing I can see is that prosecution is more thorough this time round with references to some judgments to substantiate their submissions particularly the ground of standard of proof. Hence on this issue *while I agree that we need not have a full trial which require the same burden of proof beyond reasonable doubt*, I am fully aware that such allegations are being made by people who are alleged to be in a conspiracy with the [Respondent] to commit offence of cheating. I feel therefore in such a situation in balancing the right to liberty and the need to secure the attendance of the accused should be in favour of the accused. While there is some concern that there is an attempt to influence the witnesses which is now translated into fresh charges, I am still not convinced that bail should be denied at this stage.
>
> [emphasis added]

I was therefore unable to accept the Prosecution's submissions that the DJ erred in applying the criminal standard of proof beyond reasonable doubt when he had stated unequivocally that there was no need for "a full trial which require the same burden of proof beyond reasonable doubt".

The evaluation of ASP Lee's affidavit

The evaluation of ASP Lee's affidavit

36 The other plank of the Prosecution's arguments appeared to be based on the assertion that the DJ had failed to properly evaluate the evidence as set out in ASP Lee's affidavit. It was submitted that the DJ erred in treating the evidence of the witnesses with caution on the basis that they were co-conspirators. I was, however, of the view that this was not a sufficient basis for the High Court to exercise its revisionary powers to reverse the DJ's order. In the High Court decision of *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196, Yong CJ observed at [22] that:

> ... It was clear from the authorities that powers of revision can only be exercised in *exceptional circumstances*. It was also clear that a court *does not hear a petition of revision as it does an appeal*. For instance, courts are slower to revise findings of fact on revision ...
>
> [emphasis added]

It was further held that the revisionary jurisdiction of the High Court was not to be ordinarily invoked merely because the court below had taken a wrong view of the law or failed to appreciate the evidence on record. Yong CJ emphasised that even if a different view was possible, there would be no revisionary interference where the court below had taken a view of the evidence on record and no glaring defect of procedure or jurisdiction had been engendered.

37 Looking at the way in which the DJ arrived at the decision to extend the Respondent's bail, I was not satisfied that there was a "glaring defect of procedure or jurisdiction" so as to warrant the exercise of the High Court's revisionary powers. The DJ accepted the Prosecution's submission that the applicable standard should not be that of proof beyond reasonable doubt. In fact, the DJ went on to acknowledge that a balance had to be struck between the accused's right to liberty and the need to secure his attendance. The DJ then arrived at the conclusion that the balance should be resolved in favour of the Respondent on the facts of the present case. With respect, I was unable to appreciate how this approach by the DJ could be said to be "palpably wrong" or be characterised as a "glaring defect of procedure or jurisdiction" which warranted revisionary interference.

38 During the third mention on 15 July 2014, ten new charges of attempting to intentionally pervert the course of justice were tendered against the Respondent. The DJ observed that the allegations concerning the breach of the bail condition had already been raised at the second mention and there were "no allegations of fresh tampering" by the Respondent *after* the second mention. The DJ was therefore of the view that the application for revocation of bail at the third mention was effectively the same application made at the second mention as there was no fresh evidence adduced by the Prosecution.

39 The DJ noted at the second mention that he was unable to accept the hearsay evidence adduced through ASP Lee's affidavit as being conclusive given the Respondent's denial. In my view, the DJ did not wholly reject the evidence in ASP Lee's affidavit on the sole basis that it was hearsay evidence. On the contrary, the DJ took into consideration *both* ASP Lee's evidence and the Respondent's denial before concluding that there was insufficient evidence to support a revocation of the Respondent's bail. As opposed to rejecting ASP Lee's evidence in its entirety, the DJ merely arrived at the finding that the evidence adduced by the Prosecution was not "conclusive". I did not think that this could amount to a glaring defect or palpable error so as to justify the exercise of the High Court's revisionary powers.

The determination of whether there was a breach of the condition

40 The Prosecution also argued that under s 103(4) of the CPC, an accused's bail might be

extended only in either of the following scenarios:

(a) the court was of the view that there was *no* breach of the bail condition; or

(b) the court was of the view that there *was* a breach of the bail condition but nevertheless decided that there were sufficient grounds to extend the accused's bail in spite of the breach.

The Prosecution submitted that the DJ did not articulate the basis for extending the Respondent's bail and that either of the scenarios described above could be applicable on the facts of the case. It was further argued that this was an unsatisfactory outcome as there was no clarity as to why the Respondent's bail was extended.

41 After reviewing the relevant notes of evidence, I observed that the DJ had, in fact, articulated brief reasons for his decision. At the second mention, the DJ dismissed the Prosecution's application for revocation of bail and observed that he was unable to accept the hearsay evidence adduced through ASP Lee's affidavit as being conclusive in the light of the Respondent's denial. That meant that the DJ was not satisfied that there was a breach of the bail condition based on the evidence adduced before him.

42 The Prosecution again applied for revocation of bail at the third mention. In dismissing the Prosecution's application, the DJ gave the following reasons:

> Hence on this issue while I agree that we need not have a full trial which require the same burden of proof of beyond reasonable doubt, I am fully aware that such allegations are being made by people who are alleged to be in a conspiracy with the Accused to commit offence of cheating. I feel therefore in a situation in balancing the right to liberty and the need to secure the attendance of the accused should be in favour of the accused. While there is some concern that there is an attempt to influence the witnesses which is now translated into fresh charges, I am still not convinced that bail should be denied at this stage.

Given that the Prosecution had not adduced any fresh evidence and there did not appear to be any change in circumstances between the second and the third mentions, the DJ was not satisfied that there was a sufficient basis for bail to be revoked. I was therefore unable to accept the Prosecution's argument that there was no clarity as to how the DJ had arrived at the decision to extend the Respondent's bail. What this criminal revision sought to do was essentially to ask the High Court to disagree with the DJ's view in relation to the evidence produced before him. In my judgment, the revisionary powers of the High Court should not be invoked for such a purpose.

43 In fact, the Prosecution also submitted that if there was a finding that the bail condition had been breached in the present case, the DJ's decision to extend the Respondent's bail would have "serious repercussions on the administration of justice". The Prosecution argued that the courts have always taken a strong view on the tampering of witnesses and any such finding would generally be a sufficient basis for the denial of bail to the accused. As already discussed earlier, it appeared to me that the DJ was not satisfied that there was a breach of the bail condition based on the evidence produced before him. In other words, this was not a case where the DJ was satisfied that there was a breach of the bail condition but nevertheless proceeded to extend bail to the accused. There was therefore no reason for concern that the DJ's decision would have serious repercussions on the administration of justice.

44 The Prosecution further argued that the DJ's decision to extend the Respondent's bail would result in grave and serious injustice as the Respondent would be allowed to continue interfering with

the administration of justice. I was unable to accept this line of argument for the following reasons. First, the Prosecution's position presupposed that the Respondent had, in fact, been found to have interfered with the administration of justice. As mentioned earlier, the DJ was not satisfied, based on the evidence placed before him, that that was the case.

45 Second, at the third mention, ten new charges of attempting to intentionally pervert the course of justice were preferred against the Respondent. If the Respondent is eventually convicted on these charges, he will be liable to be punished under s 204A read with s 511 of the Penal Code.

46 Third, s 102(1) of the CPC states that the court may vary the conditions of bail, impose further conditions or cause the released person to be arrested and may commit him to custody if it is shown that there has either been a material change of circumstances or new facts have since come to light. On this basis, if the Prosecution manages to uncover further evidence to prove that the Respondent had contacted potential witnesses between the second and the third mentions, s 102(1) of the CPC permits the Prosecution to make a fresh application for revocation of the Respondent's bail. Such an application can also be made in the event that the Prosecution obtains further evidence to show that the Respondent has made fresh attempts to contact the potential witnesses. This was recognised by the DJ when he dismissed the Prosecution's application for revocation of the bail at the third mention:

> Accordingly, the proper course is for prosecution to file criminal motion in the High Court to overturn my decision. There is of course *nothing to stop prosecution from coming back to me if there are new grounds why bail should be revoked*.
>
> [emphasis added]

For the reasons above, I was unable to accept the argument that the DJ's decision would allow the Respondent to continue interfering with the administration of justice with impunity.

47 Finally, it is pertinent to note that in the High Court decision of *Sarjit Singh s/o Mehar Singh v Public Prosecutor* [2002] 2 SLR(R) 1040, a clear distinction was drawn between the duties of an appellate court and that of a revisionary court. Yong CJ observed (at [32]) that the duty of the appellate court was to examine the evidence and arrive at an independent finding on each issue of fact. In contrast, the revisionary court should confine itself to only errors of law or procedure and deal with questions of evidence or finding of facts only in "exceptional circumstances to prevent a miscarriage of justice". Looking at the evidence as a whole, I was not satisfied that there were exceptional circumstances to warrant the exercise of the High Court's revisionary powers to prevent serious injustice. There were no errors in the DJ's decision that warranted revisionary interference by the High Court.

Conclusion

48 The revisionary powers of the High Court have to be exercised judiciously in exceptional circumstances to remedy serious injustice. The threshold for revisionary interference is a high one. In this case, there was no apparent illegality or serious miscarriage of justice shown. The present application for criminal revision was effectively asking me to disagree with the DJ's view on the evidence placed before him. In my opinion, the revisionary powers of the High Court should not be invoked for such a purpose. I therefore dismissed the application for criminal revision.

49 Subsequent to my decision, on 10 September 2014, the Public Prosecutor filed a criminal reference in CRF 3/2014 to refer two questions of law of public interest to the Court of Appeal. The two questions are:

(a) When exercising its revisionary jurisdiction in respect of an order of a State Court made under s 102 or s 103(4) of the CPC, can the High Court consider all material facts, including those arising or known only after the order of the State Court was made?

(b) What is the applicable legal standard of proof when a court considers whether to revoke bail or vary bail conditions, pursuant to s 102 or s 103(4) of the CPC?