Public Prosecutor v Pius Gilbert Louis
[2003] SGCA 33

Case Number : Cr Ref 1/2003

Decision Date : 22 August 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; MPH Rubin J; Tan Lee Meng J

Counsel Name(s) : Pang Khang Chau, Ms Sia Aik Kor (Public Prosecutor) for Applicant; Michael Khoo Kah Lip SC, Goh Aik Leng (Goh Aik Leng & Co) for Respondent; Davinder Singh SC, Amicus Curiae assisted by Adrian Tan

Parties : Public Prosecutor — Pius Gilbert Louis

Courts and Jurisdiction – High court – Inherent jurisdiction – Whether inherent jurisdiction can be invoked to alter substantive law

Criminal Procedure and Sentencing – Criminal references – Whether district court and High Court in the exercise of its appellate jurisdiction allowed to impose sentence beyond maximum punishment prescribed for offence – Interpretation of proviso to s 11(3) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Distinction between sentencing jurisdiction and maximum punishment prescribed for offence

Statutory Interpretation – Construction of statute – Purposive approach – Interpretation of proviso to s 11(3) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) – Sections 9A and 41 Interpretation Act (Cap 1, 2002 Rev Ed)

Delivered by Chao Hick Tin JA

1 This Criminal Reference arose from an order made by the High Court under s 60 of the Supreme Court of Judicature Act, pursuant to an application of the Public Prosecutor. The question upon which an opinion of this court is sought is:

> Whether the proviso to section 11(3) of the Criminal Procedure Code (Cap 68) allows the District Court, and consequently the High Court in the exercise of its appellate jurisdiction, to impose a sentence beyond the maximum limit prescribed for the offence.

2 The facts giving rise to this application by the Public Prosecutor are as follows. On 1 February 2002, the accused/respondent was at Chamber E of the Family and Juvenile Courts Building for the hearing of his former wife's application for a variation of some of the orders made on ancillary issues following their divorce. During the hearing, he repeatedly punched the left eye and face of his wife's female lawyer in the presence of a female District Judge. The accused/respondent was sentenced by the District Court to 6 years' imprisonment on one charge of causing grievous hurt under s 325 of the Penal Code (PC). He appealed and the High Court enhanced his sentence to one of 10 years' imprisonment. The maximum punishment prescribed by s 325 for the offence is only 7 years' imprisonment. The High Court held that it was entitled to impose a prison sentence of 10 years by virtue of the power conferred upon it under the proviso to s 11(3) of the Criminal Procedure Code (CPC).

3 As the Public Prosecutor had before the date set for the hearing of this reference advised that he would be arguing in favour of a negative answer to the question under reference, and so would be the accused/respondent, and, pursuant to the suggestion of the Public Prosecutor, this court appointed Davinder Singh SC, as *Amicus Curiae*, with a clear indication that his task was to advance arguments

in favour of a positive reply to the question.

Scheme under the CPC

4 The issue is to determine the proper interpretation of s 11(3) of the CPC, in particular its proviso. This necessarily entails an examination of the subsection and its proviso, to establish its object and scope. We will, at this juncture, set out the subsection in full:-

> 11(3) A District Court may pass any of the following sentences:
>
> (a) imprisonment for a term not exceeding 7 years;
>
> (b) fine not exceeding $10,000;
>
> c) caning up to 12 strokes;
>
> (d) any lawful sentence combining any of the sentences which it is authorised by law to pass;
>
> (e) reformative training:
>
> Provided that where a District Court has convicted any person and it appears that by reason of any previous conviction or of his antecedents, a punishment in excess of that prescribed in this subsection should be awarded, then the District Court may sentence that person to imprisonment for a term not exceeding 10 years and shall record its reason for so doing.

5 The reasoning of the High Court, in holding that the proviso to s 11(3) empowered it to sentence the accused respondent to a term exceeding that provided in s 325, is the following:-

> "However, the proviso to s 11(3) of the Criminal Procedure Code (Cap 68) empowers a district court to sentence a person to imprisonment for a term not exceeding ten years by reason of any previous conviction or of his antecedents provided that the court records its reason for so doing. Unlike the proviso to s 11(5) which limits the punishment which a magistrate's court can award to 'the full punishment authorised by law for the offence, for which that person has been convicted' there is no such restriction on the district court's powers under the s 11(3) proviso. Moreover, on a purposive interpretation, it is unlikely that Parliament intended the restriction under s 11(5) to be read into the proviso to s 11(3), since otherwise there would be extremely few cases which would warrant its use at all."

6 It will be useful to begin by first looking at the scheme of things under the CPC. Part II of the CPC, which covers s 6 to s 19, is intitled "Constitution and Powers of Criminal Courts." Section 6 provides that the High Court, District Courts and Magistrates Courts are the criminal courts. Section 7 sets out the general criminal jurisdiction of the District Courts which is to try all offences for which the maximum term of imprisonment provided by law does not exceed 10 years, except where the Public Prosecutor applies, and the accused consents, a District Court may try any offence other than an offence punishable with death.

7 Section 8 sets out the criminal jurisdiction of Magistrates Courts which is, *inter alia*, to try offences for which the maximum term of imprisonment provided by law does not exceed 3 years or which are punishable with fine only. However, s 9 gives a Magistrate's Court and a District Court extended trial jurisdiction as regards certain specified offence set out in Schedule A to the CPC.

8 Section 10 permits an offence triable by a District Court under s 9 to be tried by a Magistrates'

Court when so authorized by the Public Prosecutor but such an authorization does not enlarge the sentencing power of the Magistrate's court conferred under s 11(5).

9 Section 11 is concerned with the sentencing jurisdiction of the courts. Subsection (1) provides that the High Court has the power to pass any sentence authorized by law, but it may not impose all three forms of punishment, i.e., imprisonment, fine and canning, for the same offence. Subsection (2) empowers the High Court in respect of an accused who is again convicted of an offence which is punishable with a term of 2 years or upwards, to direct that he be subject to police supervision of up to 3 years, after the expiration of the sentence passed on him for the last of those offences.

10 Subsection (3) has already been quoted and we will return to it in a moment. Subsection (4) is similar to subsection (2) and it empowers the District Court to impose a supervision order of up to 2 years on a repeat offender.

11 Subsection 5 relates to the sentencing jurisdiction of a Magistrate's Court and as this provision played an important part in the High Court's reasoning in coming to its decision that the s 11(3) proviso empowers the District Court to impose a sentence in excess of the maximum prescribed by law for the offence, and is also relied upon in Mr Davinder Singh's argument in favour of a positive reply to the question, it is necessary that we set it out in full:-

> "11(5) A Magistrate's Court may pass any of the following sentences:
>
> (a) imprisonment for a term not exceeding 2
>
> years;
>
> (b) fine not exceeding $2,000;
>
> (c) caning up to 6 strokes;
>
> (d) any lawful sentence combining any of the
>
> sentences which it is authorised by law to
>
> pass:
>
> Provided that where a Magistrate's Court has convicted any person and it appears that, by reason of any previous conviction or of his antecedents, a punishment in excess of that prescribed by this subsection should be awarded, then the Magistrate's Court may award the full punishment authorised by law for the offence for which that person has been convicted and shall record its reason for so doing."

12 Subsection (6) is also similar to subsection (2) and it empowers a Magistrate's Court to impose a supervision order on a repeat offender, but only up to 1 year.

13 Subsection (7) is an overriding provision and it provides that where in any law a District Court or Magistrate's Court is given the power to award punishment in excess of those laid down in s 11, it may do so.

14 Section 12 of the CPC empowers the High Court and a District Court, where the conditions specified therein are satisfied, to impose, in lieu of the sentence prescribed by law for the offence in

respect of which the accused has been convicted, sentence him to corrective training for a term of between 5 and 14 years or preventive detention of 7 to 20 years.

15 From the provisions of the CPC mentioned above, three aspects should be clearly differentiated and kept distinct:-

(i) the trial jurisdiction of the court;

(ii) the sentencing jurisdiction of the court;

(iii) the maximum punishment prescribed for the offence.

As would be seen from ss 7, 8 and 11, the normal sentencing jurisdiction of a District Court or Magistrate Court is not the same as its trial jurisdiction. The sentencing jurisdiction is lower than the trial jurisdiction.

16 The distinction between sentencing jurisdiction and the maximum penalty prescribed by law for an offence was brought out in the case of *Harry Lee Wee v PP* [1980-81] SLR 301. There, Harry Wee was tried in 1978 for offences committed in 1976. At the time of the offences, s 17 of the CPC provided that where an accused was charged with multiple offences, the jurisdiction of the District Court to impose fine was limited to a maximum of twice its normal sentencing jurisdiction as to fine of $5,000. An amendment to s 17, which came into force in 1977, but before the date of the trial, removed the restrictions relating to the aggregate of fines. The District Court, relying on the new powers granted under the amended s 17, imposed fines in excess of those allowed under the previous s 17. Harry Wee contended that he was made to "suffer greater punishment for an offence than was prescribed by law at the time it was committed." Choor Singh J rejected the argument as follows:-

> "There is clearly some confusion on counsel's part for he has failed to distinguish between 'punishment prescribed for an offence' and 'powers of a court' to impose punishment. The punishment for an offence under s 213 of the Penal Code is laid down in that section. There has been no change in the punishment prescribed in s 213 between the date of the offences and the date of the appellant's trial. The change that has taken place is in the powers of a district court to impose fines. Whereas at the date of the appellant's offences in 1976 a district court could not impose fines totalling more than $10,000 it could do so at the date of his trial in 1978. It is not understood how this change can affect the appellant. No *ex post facto* legislation has been enacted altering or increasing, the punishment under s 213 of the Penal code."

17 This case of *Harry Lee Wee v PP* also illustrates the distinction between procedural law and substantive law. Whereas procedural law, such as the sentencing jurisdiction of the court, will be applied retrospectively, substantive law, such as the sentence which may be imposed for an offence, may not be applied retrospectively.

18 Exceptions aside, it would be seen from the above that the ordinary jurisdiction of the District Court is to try offences which are not punishable with more than ten years' imprisonment. But its powers to impose imprisonment term is not co-terminus with its trial jurisdiction and is restricted to only seven years.

Interpretation of s 11(3)

19 The difference of view lies in the effect of the proviso to s 11(3). The High Court, which relied on

the literal rule of interpretation, held that the second part of the proviso, i.e., "then the District Court may sentence that person to imprisonment for a term not exceeding 10 years" is clear and means what it says. This is also Mr Singh's submission. The effect of this argument is that whatever may be the offence upon which an accused has been convicted, and whatever may be the prescribed maximum punishment for that offence, the District Court would be entitled to sentence the accused, provided the condition in the proviso is satisfied, to a term of imprisonment of up to ten years.

20 It is only possible to give a positive answer to the question under reference if one looks exclusively at the words "the District Court may sentence that person to imprisonment for a term not exceeding 10 years" and nothing else. However, while the normal rule of interpretation is the literal rule, one must look at the provision as a whole. Words, by their nature, are often capable of being interpreted in several ways. It is the context which will indicate which of the possibilities is the proper interpretation. Thus, the literal interpretation must have regard to the context in which those words appear. *Driedger on Construction of Statutes (3rd Edition)* puts the point in perspective as follows:-

> "The meaning of a word depends on the context in which it is used. This basic principle of communication applies to all texts including legislation. It is reflected in the fundamental principle of statutory interpretation that to understand the meaning of legislation, the words of the text must be read in context. This principle has long been recognised. As Viscount Simonds wrote in *AG v Prince Ernest Augustus of Hanover*:
>
> > … words, and particularly general words, cannot be read in isolation; their colour and their content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense …
>
> More recently, in *Prassad v Canada (Minister of Employment and Immigration),* Sopinka J wrote:
>
> > In order to arrive at the correct interpretation of statutory provisions that are susceptible of different meanings, they must be examined in the setting in which they appear."

21 Indeed s 9A of our Interpretation Act requires the court to give statutory provisions a purposive interpretation. This principle of interpretation has also been reaffirmed in numerous cases. In *Constitutional Reference No. 1 of 1995* [1995] 2 SLR 201, this court enunciated the principle to be applied as follows:-

> "The principle to be applied is that the words of the Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament: EA Driedger, *Construction of Statutes* (2nd Ed, 1983) p 87."

22 It is not in dispute that s 11 deals with the sentencing jurisdiction of the High Court [in subs (1) and (2)], the District Court [in subs (3) and (4)] and the Magistrate's Court [in subs (5) and (6)]. Quite clearly, the main provision of subsection (3) prescribes the ordinary maximum sentencing jurisdiction of the District Court. The question that remains is whether or not there is anything in the proviso which suggests that it is not restricted to the matters dealt with in the main provision of that subsection.

23 It is an established rule of statutory construction that ordinarily a proviso qualifies or explains the main provision. In *Lloyd & Scottish Finance Ltd v Motor Cars & Caravans (Kingston) Ltd* [1966] 1 QB 764 at 780 Edmund Davies J said "the proviso must of necessity be limited in its

operation to the ambit of the section which it qualifies."

24 But we recognise that it does not follow that a proviso must be so construed in every case. A proviso can very well go beyond the scope of the main provision and be a substantive provision of its own. This is explained in the case of *Commissioner of Stamp Duties v Atwill* [1973] AC 558, a decision of the Privy Council on appeal from the High Court of Australia and which concerned the *Australian Stamp Duties Act 1920*. There, the Privy Council held (at 561):-

> "The decision of the majority of the High Court was thus based on the view that the proviso was a true proviso limiting or qualifying what preceded it. Their Lordships are not able to agree with this conclusion. While in many cases that is the function of a proviso, it is the substance and content of the enactment, not its form, which has to be considered, and that which is expressed to be a proviso may itself add to and not merely limit or qualify that which precedes it."

25 We will now examine the subject proviso. Section 11(3) provides that a District Court may pass any of the sentences listed. There cannot be any doubt that s 11(3)(a), in providing that a District Court may pass a sentence of imprisonment for a term not exceeding 7 years, does not mean that a District Court may sentence an offender to imprisonment of up to 7 years even though the offence itself only carries a prison term of up to say 3 years. Turning to the proviso, the first part sets out the premise, i.e., "where a District Court has convicted a person and it appears that by reason of any previous conviction or of his antecedents, a punishment in excess of that prescribed in this subsection should be awarded", upon which the enhanced sentencing jurisdiction may be invoked. We would emphasise, in particular, the phrase "a punishment in excess of that prescribed in this subsection." This clearly shows the link of the proviso to the main provision in subsection (3). Thus, up to that point, there is no indication whatsoever that anything outside the scope of the subsection itself is contemplated.

26 The next question that follows relates to whether or not there is anything in the second part of the proviso which indicates that Parliament had intended to go outside the scope of the main provision of subsection (3). We do not think so. There is only a slight change in terms of wording. Whereas the main provision provides that the District Court "may pass" any of the listed sentences, in the proviso it is stated that the District Court "may sentence" the accused person to a term not exceeding 10 years. There is, in effect, no real difference between the two formulations. It seems to us the reason why the word "pass" is used instead of "sentence" in the main provision is that if the word "pass" were to be replaced by the word "sentence", it would not, as a matter of language, sit well with item (d) therein. This aside, nothing in the second part of the proviso suggests that Parliament had intended to alter the substantive punishment which the accused is liable for, besides just enhancing the sentencing jurisdiction of the District Court from seven years to ten years for a repeat offender.

27 It stands to reason that if Parliament had intended something more, or different, it would surely have provided in more specific terms as it did in s 12 when it empowered the court to impose corrective training and preventive detention. A simple comparison of the wording used in s 12(1) with that in the s 11(3) proviso will bear this out. Section 12(1) says: "the court … shall pass, in lieu of any sentence of imprisonment, a sentence of corrective training for such term of not less than 5 not more than 14 years as the court may determine." Similar wording is used in s 12(2) which empowers the court to impose a sentence of preventive detention.

28 Parliament could not have intended by way of a proviso to a provision dealing with the sentencing power of the District Court, and without even using terms such as "notwithstanding" "disregarding" or "in lieu of", to allow the District Court to disregard the maximum sentence prescribed for an offence.

Otherwise, the result will be that whenever an accused person, who has previously been convicted of an offence, is again convicted of another offence, then notwithstanding what may have been the maximum punishment prescribed by law for that second or subsequent offence, and no matter how trivial the latter offence may be, say maximum prison term of 6 months or 2 years, the District Court is entitled to impose a sentence for that second or subsequent offence of up to ten years. It would effectively mean that for a repeat offender, the maximum punishment prescribed by law for that second or subsequent offence would be abrogated. Parliament would not have made such a drastic change to the substantive criminal law through some general wording in a proviso to a provision dealing with the sentencing capacity of the court.

29 Moreover, a positive answer to the question of law referred to this court would give rise to an anomaly. If the same accused were to be tried before the High Court, the latter would not have the power to impose an imprisonment term of up to ten years because the proviso to subsection (3) does not apply to the High Court. It only applies to the District Court. In this connection, one must draw a distinction between the High Court exercising its appellate jurisdiction and the High Court exercising its original jurisdiction. In respect of the former situation, the High Court would have the powers of the District Court. But it is not so in the latter situation. Mr Singh argued that there will not be any anomaly because the High Court can still exercise the enhanced sentencing power conferred on the District Court by the s 11(3) proviso by virtue of the doctrine of inherent jurisdiction. In support of this line of argument, he relied upon a passage in a lecture entitled "*The Inherent Jurisdiction of the Court"* given by I.H Jacobs, and published in *Current Legal Problems 1970,* Vol 23 p 23 at 24-25. We do not think it is necessary for us to reproduce in extenso what the author said which was quoted by Mr Singh, other than this one paragraph:-

> "The inherent jurisdiction of the court is exercisable as part of the process of the administration of justice. It is part of procedural law, both civil and criminal, and not of substantive law; it is invoked in relation to the process of litigation."

30 With respect, we think this argument has overlooked the fact that the doctrine of inherent jurisdiction is only concerned with procedural matters. It cannot be invoked to alter the substantive law, all the more so in relation to substantive criminal law. The general sentencing power of the High Court is set out in s 11(1) and (2). There is nothing in those two subsections which empowers the High Court to disregard the maximum punishment prescribed by law for the offence.

31 On this argument, Mr Singh also relied upon the Australian case of *North Sydney Municipal Council v Comfytex Pty Ltd & Anor* [1975] NSWLR 44. There the court was construing a provision which sought to limit the common law powers of a superior court to issue injunction and held that the words were insufficient to curtail the powers of the court. Street CJ said (at 450):-

> "It is a long recognised and salutary principle that the wide-ranging jurisdiction of a superior court is not to be treated as limited or abrogated by anything short of a clear expression of legislative intention to that effect … Being the court charged with unlimited civil and criminal jurisdiction, and bearing the duty of presiding over the whole system of justice, a superior court will not recognise legislative limitations on its powers, unless those limitations are express. *'Boni judicis est ampliare jurisdictionem',* in its distorted connotation: *Broome's Legal Maxims, 9th ed.* p. 57, is a sound maxim for a superior court to bear in mind.

32 In fact, this passage reinforces the point we advanced herein. Inasmuch as clear and express words are required to curtail the powers of the superior court, it must also follow that clear and specific words must be there before enhanced punishment, in excess of that prescribed for the offence, may be imposed on an accused.

33 Again, another case, *Grobbelaar v News Groups Newspaper* [2002] 4 All ER 732, which was relied upon by Mr Singh, does not advance his arguments any further. There what was held was that an appellate tribunal, in deciding an appeal, had the inherent power to make any order which the court below could have made. This proposition we accept. But it is altogether a different proposition to say that the High Court, in the exercise of its original jurisdiction, may exercise statutory powers which Parliament has conferred on an inferior court but not on the High Court.

34 The weakness of the argument based on inherent jurisdiction is that, if carried to its logical conclusion, it would mean that the High Court, in exercise of its original criminal jurisdiction, may sentence a habitual offender to a term of imprisonment longer than that prescribed by law for the offence he is charged. But this would run counter to the plain enactment of s 11(1) which provides that the sentencing jurisdiction of the High Court is to pass any sentence authorised by law.

35 The argument of Mr Singh on the scope of the proviso produces a strange result. While, the High Court has unlimited trial jurisdiction and unlimited sentencing power, it is subject, as provided in s 11(1), to passing any sentence authorized by law. Yet, on Mr Singh's argument, the s 11(3) proviso would empower the District Court to disregard the maximum sentence prescribed by law, something which even the High Court cannot do.

Section 41 of Interpretation Act

36 The construction which we have placed on the s 11(3) proviso is wholly consistent with s 41 of the Interpretation Act which reads:-

> "Whenever in any written law a penalty is provided for an offence, such provision shall imply that such offence shall be punishable upon conviction by a penalty not exceeding (except as may be otherwise expressly mentioned in the written law) the penalty provided."

37 The term "written law" is defined in the Interpretation Act to include Acts and subsidiary legislation. The effect of s 41 is that a court may only impose the punishment for the offence prescribed by law and nothing more unless, in the words set out in parenthesis, "expressly mentioned in the written law." There is some controversy as to whether the word "the" before "written law" refers to "any" written law mentioned in the beginning of s 41. We are inclined to think that the written law could not have referred to any written law first mentioned in that section, although for the purposes of the present reference, we need not express a definitive opinion on it. The relevance of s 41 to our case here is really the prescription that anything "otherwise" must be "expressly" provided.

38 We do not agree that the words in the proviso "the District Court may sentence that person to imprisonment for … 10 years" in a subsection dealing with the sentencing jurisdiction of the District Court can be construed to mean that Parliament intended to give the District Court the power to do away with the maximum sentence prescribed by law as far as a habitual offender is concerned. It is a fundamental tenet of criminal justice that an offender may not be punished with more than the maximum penalty prescribed by the offence provision. Very clear words are required to override that and such words are entirely missing in the s 11(3) proviso.

Comparison with the s 11(5) proviso

39 We now turn to consider the s 11(5) proviso. It was argued that if Parliament had intended that the sentencing jurisdiction conferred on the District Court is subject to the maximum punishment prescribed for the offence it would have used the same wording as that used in the s 11(5) proviso

which lays down that the Magistrate's Court may award "the full punishment authorised by law for the offence."

40 As we see it, the first question to ask is whether there is any difference in the object of the s 11(5) proviso and the s 11(3) proviso. In both instances, Parliament intended to confer upon the District Court and the Magistrate's Court enhanced jurisdiction as to sentencing as far as habitual offenders are concerned. For the District Court, it adopted an absolute cut-off limit of 10 years. In the case of the Magistrate's Court, it did not adopt an absolute cut-off limit but instead gave the court the power to sentence up to the maximum authorised by law for the offence in question. While the formulations used are different, the object remains very much the same: to enhance the court's sentencing jurisdiction, and not to enhance the punishment for the offence.

41 While we recognise that Parliament could have inserted in the s 11(3) proviso the expression "the full punishment authorised by law", it does not follow that its omission means Parliament intended to confer upon the District Court the power to override the maximum sentence prescribed in the offence provision. In this connection Mr Singh relied upon the English Criminal Justice Act 1991 to submit that there was a general practice among overseas legislatures to use "express language to limit the sentencing powers of the court to the ambit of the offence-creating statute". First, we do not think the UK drafting practice is altogether relevant. Second, as the DPP has shown, the practice in UK is not uniform. Third, it does not follow that just because of the drafting style adopted in the English Criminal Justice Act 1991, a new principle of statutory interpretation has arisen which requires the use of "express language to limit the sentencing powers of the court to the ambit of the offence-creating statute." There is force in the Public Prosecutor's argument that for a sentencing jurisdiction clause to expressly say that the sentencing powers are subject to the limits of the offence-creating provision is to say the obvious. That is, after all, a long established jurisprudential principle.

42 Again we would emphasise the distinction between sentencing jurisdiction of the court and the maximum punishment which may be imposed by the court for an offence. Unless this distinction is kept clearly in mind, misunderstanding is likely to arise.

43 In this regard, it is pertinent to note a related principle enunciated by the English Court of Appeal in *Zimmerman v Grossman* [1971] 1 All ER 363 that where penal provisions were framed in wide and ambiguous language they should be restrictively construed and where there were two possible meanings the court should adopt the more lenient one.

Legislative history

44 One may ask why did Parliament adopt a different set of words in the s 11(3) proviso, in contrast with that in the s 11(5) proviso. Reference was made by both the DPP and Mr Singh to the legislative history behind s 11(3) and (5). It is true that when the s 11(3) proviso was first introduced in the Singapore Legislative Assembly in 1959, it contained words similar to the s 11(5) proviso including the expression "full punishment authorised by law". The proviso then read:-

> "Provided that where a District Court has convicted any person in exercise of its jurisdiction under subsection (1) of section 8 of this Code and it appears that by reason of any previous conviction or of his antecedents, a punishment in excess of that prescribed in this section should be awarded, then such District Court may award the full punishment authorised by law for the offence of which such a person has been convicted and shall record its reason for so doing."

45 However, at the Select Committee, this phrase was replaced by the phrase "imprisonment for a term not exceeding seven years" (seven years was then the limit). No explanation was given for this

amendment either in the Select Committee report or during the Third Reading of the amended Bill in the Legislative Assembly. Furthermore, the words "in exercise of its jurisdiction under subsection (1) of section 8 of this Code" were deleted and the word "section" replaced by "subsection".

46 The DPP has offered various reasons, and not without some persuasiveness, why the amendments were made by the Select Committee. In the absence of any official reasons offered by the Select Committee, or by the relevant Minister in the Third Reading debates, which could assist the court in the interpretation thereof, we do not think it would really be profitable to go into all that. We are here dealing with criminal law and the liberty of the subject. It is an established canon of construction that the court should not construe a provision in an Act to alter substantive law, all the more so in relation to criminal law, unless there are clear specific words to that effect.

47 In this regard, it may be of interest to note what the Minister said in Parliament when introducing amendments to the CPC in 1975. In 1974, the Prisons Reorganisations Committee appointed by the Minister submitted its report. The following were two of the many recommendations which it made:-

> "Enhanced Penalties
>
> 1.2.3 We recommend that the prosecutors and the Courts make greater use of section 75 of the Penal Code and section 35 of the Criminal Law (Temporary Provisions) Act. Broadly speaking, these sections empower the Courts to impose enhanced penalties on repeat offenders.
>
> …
>
> Jurisdiction of the Courts
>
> 1.2.7 the speedy dispensation of justice requires that the burden of the High Court be reduced by enhancing the powers of the lower courts. We propose that the Criminal Procedure Code be amended so as to:
>
> (a) enhance the jurisdiction of the District Courts from 3 to 5 years for first offenders; and 7 to 10 years for habitual offenders; …"

48 It is clear that the Committee treated the s 11(3) proviso as a jurisdictional provision. In the Bill setting out the proposed amendments it was stated that "this Bill seeks to amend the Criminal Procedure Code so as to give effect to the recommendations of the Prisons Reorganisation Committee." This was again reiterated in the Second Reading speech of the Minister for Law when he said –

> "The Committee also recommended that the Criminal Procedure Code be amended so as to –
>
> (a) enhance the jurisdiction of the District Courts by empowering District Judges to pass sentences of up to five years for first offenders and up to ten years for habitual offenders; and
>
> (b) empower the Magistrates' Courts to pass sentences of up to two years on first offenders.
>
> Clauses 2 and 3 of this Bill seek to amend the Criminal Procedure Code to give effect to these recommendations." (Emphasis added).

Scheme of enhanced punishment

49 Mr Singh submitted that to construe the s 11(3) proviso as a substantive provision, not limited to

the scope of the main provision in s 11(3), is totally in line with the object of Parliament of providing enhanced punishment for habitual offenders. He added that the proviso was meant to fill a gap and to target those repeat offenders who have not offended as frequently or seriously as to trigger the imposition of corrective training or preventive detention under s 12(1) and (2) of the CPC. Counsel also went into various hypothetical scenarios to show how anomalies could arise and why the s 11(3) proviso should be construed as a substantive provision. With respect, all that is speculation. It is not for the courts to fill in gaps in the criminal law.

50 Mr Singh also spent a considerable part of his submission dealing with the need for enhanced penalty to protect society. He pointed out that being tough with repeat offenders is a phenomenon found not only in Singapore but also in other countries. This is not disputed. But the question before us is a narrower one. What is the scope of the s 11(3) proviso? It is clear that when Parliament intended that enhanced punishment, outside the limit set by the offence provision, should be applied, it had always done so expressly, e.g., s 12 of CPC, s 75 of PC and s 35 of the Criminal Law (Temporary Provisions) Act, leaving no room for any doubt.

51 Clearly, the object of the s 11(3) proviso was to bridge the gap between the basic trial jurisdiction and the basic sentencing power of the District Court. Before 1960, the basic trial jurisdiction of the District Court was limited to offences punishable up to three years and the sentencing power of the District Court was the same. The amendments that came into force that year brought about a change. The basic trial jurisdiction of the District Court was raised to 7 years but its sentencing power remained at 3 years. A similar disparity also occurred for the first time for the Magistrate's Court, namely, trial jurisdiction of 3 years and sentencing power of 1 year. Thus, on that occasion Parliament introduced the provisos to s 11(3) and (5) to give the District Court and the Magistrate's Court enhanced sentencing jurisdiction to deal with habitual offenders. At the Second Reading of the amendment Bill, the Minister explained that the changes to the trial jurisdiction of the District Court was to –

> "enable a large number of cases, which are at present tried in the High Court, to be tried in the Criminal District Court, and they will result not only in a saving of time of the High Court, but also, by reason of the fact that it will not be necessary to hold preliminary inquiries, it will result in the saving of time of the Magistrate's Court."

52 With the large number of cases being sent down to the District court, which then had a sentencing power of only 3 years, it was necessary that the District Court should have enhanced sentencing power to deal with habitual offenders. Thus, the proviso to s 11(3) which conferred upon the District Court the enhanced sentencing jurisdiction of up to 7 years (this was then the limit).

Limited application

53 We will now turn to deal with some miscellaneous points. Another argument advanced for holding that the s 11(3) proviso should be given its literal meaning is that otherwise, there would be extremely few instances to which the proviso would be applicable. Two short points may be made in response. First, it should not be in the least surprising that the enhanced sentencing jurisdiction would only apply in a limited number of cases. Second, it is not entirely true that if the negative answer is given to the question, extremely few cases would be attracted by it. Even according to the calculation of Mr Singh, 47 offences carry a maximum punishment of more than 7 years' imprisonment, not counting attempting, abetting and conspiracy to commit those offences.

An apparent anomaly

54 The point was made that if a negative answer is given to the question, an apparent anomaly can arise. The enhanced sentencing jurisdiction of the District Court is up to 10 years and that of the Magistrate's Court is up to the full punishment for the offence. Take s 409 of the PC, criminal breach of trust by a public servant, an offence punishable with life imprisonment. If an accused is charged for that offence before a District Court and he has antecedents, the District Court can only sentence him to a maximum of 10 years imprisonment. But if he is charged before a Magistrate's Court, pursuant to an authorisation by the Public Prosecutor under s 10 of the CPC, the Magistrate's Court could sentence him to life imprisonment.

55 But the anomaly will be there no matter which view one takes as to the proper interpretation of the proviso to s 11(3). The anomaly does not arise out of the proviso. Perhaps it was an oversight on the part of the draftsman when the various amendments were made to the CPC.

Conclusion

56 Finally, we would like to express our appreciation to the DPP, Mr Pang Khang Chau, the *Amicus Curiae*, Mr Davinder Singh SC, and the counsel for the respondent, Mr Michael Khoo SC, and their respective assistants, for their invaluable assistance in this reference.