IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 251

Magistrate's Appeal No 9041 of 2019

Between

Wham Kwok Han Jolovan

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Appeal]

[Constitutional Law] — [Fundamental liberties] — [Freedom of assembly]

[Criminal Law] — [Elements of crime]

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25 October 2019 Judgment reserved.

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Introduction

1 The appellant, Mr Wham Kwok Han Jolovan, appealed against his conviction and sentence imposed by the District Judge on the following charges:

(a) organising a public assembly on 26 November 2016 to publicise the cause of "civil disobedience and democracy in social change", without a permit, an offence under s 16(1)(*a*) of the Public Order Act (Cap 257A, 2012 Rev Ed) ("POA"); and

(b) refusing to sign a statement recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") on 20 December 2016, an offence under s 180 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code").

2 The District Judge imposed a fine of $2,000 (in default, ten days' imprisonment) in respect of the first charge ("the unlawful assembly charge") and a fine of $1,200 (in default, six days' imprisonment) in respect of the second charge ("the s 180 charge").

3 I dismiss the appeals against conviction and sentence for both offences, for the reasons set out below.

Undisputed facts

4 The appellant, a 39-year-old Singapore citizen, is a social worker with an organization known as the "Community Action Network". He organized an event entitled "Civil Disobedience and Social Movements" ("the Event") together with one Zeng Ruiqing. The Event was held on 26 November 2016.

5 The Event was open to the public and the appellant publicized the Event by posting the link to the Event's page on his Facebook wall. The speakers for the Event were:

(a) Ms Han Yi Ling, Kirsten ("Han");

(b) Mr Seelan s/o Palay ("Palay"); and

(c) Mr Joshua Wong Chi-Fung ("Wong").

6 At all material times, the appellant, Han and Palay were Singapore citizens but Wong was not. The appellant was aware that Wong was not a Singapore citizen.

7 The Event was described on Facebook in the following terms:

> Join Joshua Wong, Secretary General of Hong Kong's Demosisto party as he shares with local activists Seelan Palay and Kirsten Han their thoughts on the role of civil disobedience and democracy in building social movements for progress and change.

8 On 23 November 2016, the Police contacted the appellant and advised him to apply for a permit under the POA for the Event. The appellant did not apply for a permit and knew that no such permit had been granted for the Event.

9 The Event took place as scheduled on 26 November 2016 from about 4.00pm to about 6.00pm at the AGORA which is located at 28 Sin Ming Lane #03-142, Midview City, Singapore 573972. Wong delivered his speech via video call, using the "Skype" application on a laptop. The appellant was the moderator.[1]

10 On 28 November 2016, then-Senior Station Inspector Thia Kai Wun, Eddie lodged a police report in relation to the Event, and investigations into the matter were commenced.

11 On 20 December 2016, the investigating officer recorded a statement from the appellant pursuant to s 22 CPC ("the s 22 statement").[2] The statement was read back to the appellant who affirmed that the statement was true and correct. The appellant asked if he would be given a copy of the statement. The investigating officer told him he would not be given a copy because the statement was "a confidential document for police investigations only". The appellant then refused to sign the s 22 statement, claiming that his "personal practice" was to sign a document only if he would be given a copy of it.[3]

12 On 28 November 2017, the investigating officer recorded two statements from the appellant pursuant to s 23 CPC, one in relation to the

unlawful assembly charge,[4] and the other in relation to the s 180 charge.[5] In each case, the appellant was informed that he would be given a copy of the statement.[6] The appellant signed both statements.

13 The appellant claimed trial to both charges. The Prosecution relied on an Agreed Statement of Facts[7] and evidence adduced from prosecution witnesses. The defence was called after the close of the Prosecution's case and the appellant elected to remain silent.[8] On 3 January 2019, the District Judge convicted the appellant on both charges. The appellant was subsequently sentenced on 21 February 2019.

The unlawful assembly charge

14 Before me, the appellant submitted that:

(a) section 16(1)(*a*) POA is unconstitutional because it contravenes Article 14 of the Constitution of the Republic of Singapore (Cap 1, 1985 Rev Ed) ("the Constitution");

(b) in any event, the Event did not require a permit because it did not "publicise a cause"; and

(c) the fine of $2,000 is manifestly excessive.

Whether s 16(1)(a) contravenes Article 14

15 Under s 16(1)(*a*) POA, it is an offence to organise a public assembly in respect of which a permit is required under the POA and no such permit has been granted under s 7 or no such permit is in force.

16 Section 6 POA requires that notice of intention to organise a public assembly be given to the Commissioner of Police ("the Commissioner") in the prescribed manner and not less than the prescribed period, accompanied by an application for a permit.

17 Under s 7 POA, the Commissioner may grant a permit (with or without conditions), or refuse to grant a permit on any of the grounds set out in s 7(2). Under s 11(1) POA, any person aggrieved by the Commissioner's decision to refuse to grant a permit, to cancel a permit or to impose any particular condition, may appeal to the Minister.

18 Article 14(1)(*b*) of the Constitution protects the right of all citizens of Singapore to "assemble peaceably and without arms". However, it is unarguable that this is not an absolute right. Article 14(2)(*b*) of the Constitution expressly subjects this right to "such restrictions as [Parliament] considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order". There is a wide "legislative remit that allows Parliament to take a prophylactic approach in the maintenance of public order": *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [50], referred to in the District Judge in his Grounds of Decision ("the GD") at [29].

19 Before me, the appellant accepted that s 7(2) POA sets out specific grounds upon which the Commissioner can refuse to grant a permit, and that these are not arbitrary grounds. The appellant did not contend that any of the grounds under s 7(2) POA contravenes Article 14.

20 However, the appellant contended that s 16(1)(*a*) POA contravenes Article 14 of the Constitution. The appellant made two submissions in support of this contention.

21 First, the appellant referred to *Jeyaretnam Joshua Benjamin v Public Prosecutor and another appeal* [1989] 2 SLR(R) 419 ("*Jeyaretnam*"). In that case, the first appellant ("JBJ") was convicted of providing public entertainment without a licence by addressing a public gathering, an offence under the s 18(1)(*a*) of the Public Entertainments Act (Cap 257, 1985 Rev Ed) ("PEA"). JBJ had applied for a licence but the application was rejected. Nevertheless, he proceeded to address the public gathering. On appeal, JBJ argued, among other things, that the decision not to issue the licence was contrary to law and null and void and was an unjustified interference with his right to freedom of speech and expression under Art 14(1) of the Constitution (*Jeyaretnam* at [8]).

22 In *Jeyaretnam*, the Court decided (at [26]) that the invalidity of the licensing officer's decision (assuming it was invalid) could not have provided a defence to a charge under s 18(1)(*a*) PEA because the law was that no public entertainment might be provided without a licence. Even if the licensing officer's decision was quashed in judicial review proceedings, it was still an offence to provide the public entertainment without a licence. The learned Judge went on to observe (at [27]) that the only available defence would be that the PEA (or, the scheme of licensing established by the PEA) contravenes Art 14(2) of the Constitution to the extent that it affects the right to freedom of speech and expression. However, that line of argument was not pursued in *Jeyaretnam*.

23 Picking up on the observation made by the learned Judge in *Jeyaretnam*, the appellant submitted that s 16(1)(*a*) POA contravenes Article 14 of the Constitution because under s 16(1)(*a*), any person who organises a public assembly without a permit commits an offence even though the refusal to grant the permit is inconsistent with s 7 POA and is therefore invalid.

24 To illustrate his point, the appellant contrasted the framework under the POA with a hypothetical framework under which any person who wishes to organise a public assembly merely needs to notify the Commissioner of his intention to do so and it is up to the Commissioner to issue an order prohibiting the public assembly from being held. If the organiser nevertheless proceeds with the public assembly notwithstanding any such prohibition order, he would not have committed any offence if the Commissioner's decision to prohibit the public assembly is subsequently challenged and found to be invalid.

25 I disagree with the appellant's submission. The appellant's submission rests on the assumption that a person who disagrees with the Commissioner's decision is entitled to disregard and defy it, instead of challenging it in Court in accordance with the law. In my view, this assumption cannot be justified. The Commissioner's decision, made pursuant to his exercise of a statutory power, is valid and should be obeyed until and unless it is quashed by the Court. Allowing any person organising a public assembly to ignore and defy the Commissioner's decision, instead of challenging it in Court, is to allow that person to take the law into his own hands. Such vigilante conduct cannot be condoned. Article 93 of the Constitution vests judicial power in the Courts. It is for the Court, and the Court alone, to decide whether the Commissioner's decision is invalid.

26 Second, during oral submissions, the appellant submitted that s 16(1)(*a*) POA contravenes Article 14 of the Constitution because there is no "practical remedy" against decisions made in bad faith to refuse to grant the necessary permit. The appellant argued as follows:

> (a) Even if the Court finds that the refusal to grant a permit is unlawful and quashes it, the applicant for the permit still cannot proceed to organise the public assembly because under s 16(1)(*a*) POA, it is an

offence to organise a public assembly without a permit. The applicant has to repeat the process under s 6 and make a fresh application to the Commissioner for a permit.

(b) If the Commissioner or the Minister, acting in bad faith, ignores the Court's decision and again refuses to grant the permit based on the same reasons as those that the Court has found to be unlawful, the applicant has to challenge the refusal in Court again. He would be committing an offence under s 16(1)(*a*) POA if he proceeded to organise the public assembly without a permit.

(c) This process can go on indefinitely without the applicant ever being able to organise the public assembly lawfully, since the Court can only quash a decision that is unlawful but cannot issue the permit or direct the Commissioner or the Minister to issue the permit.

27 The appellant's submission that s 16(1)(*a*) POA contravenes Art 14 of the Constitution, rests on the suggestion that the Commissioner and/or the Minister *may act in bad faith and disregard the Court's decision*. The Prosecution submitted that the Court should assume that the Commissioner and the Minister will act in good faith and not ignore the Court's decision. I agree with the Prosecution.

28 The appellant's suggestion that the Commissioner and/or the Minister may act in bad faith and disregard the Court's decision is wholly speculative and unsubstantiated. In my view, it would be wrong to strike down s 16(1)(*a*) POA based on nothing more than such a speculation. The appellant's submission would lead to the absurd result that any law that requires a permit or licence to be obtained before an activity may be lawfully carried out, can be

struck down simply by arguing that the power to grant the permit or licence *may* be exercised in bad faith.

29 I also note that it is an established principle that acts of high officials of state should be accorded a presumption of legality or regularity: *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") at [46]. In *Ramalingam*, the presumption of legality was applied to a decision which the Attorney-General *had made*. In the present case, the appellant's submission relates to decisions that the Commissioner or the Minister *may make*. In my view, there is a stronger case for the presumption that high officials of state will, consistent with the rule of law, act in accordance with the law.

30 In my judgment, the appellant's submission that s 16(1)(*a*) is unconstitutional fails.

Whether the Event was a "public assembly"

31 As stated earlier, the unlawful assembly charge against the appellant is for organising a public assembly without a permit. The Public Order (Exempt Assemblies and Processions) Order 2009 (S 486/2009) ("the 2009 Order") exempts certain public assemblies from the permit requirement under s 5 POA. Pursuant to paragraph 2 read with item 4(1) of First Schedule to the 2009 Order, the Event would have been exempt from the permit requirement if all of the speakers were Singapore citizens. However, as one of the speakers at the Event (Wong) was not a Singapore citizen, the Event was not exempt under the 2009 Order.

32 Section 2(1) POA defines "public assembly" to mean:

> an assembly held or to be held in a public place or to which members of the public in general are invited, induced or permitted to attend;

It is not disputed that the Event satisfied the "public" element; members of the public in general were invited or permitted to attend the Event.

33 Section 2(1) POA defines "assembly" to mean:

> a gathering or meeting (whether or not comprising any lecture, talk, address, debate or discussion) of persons the purpose (or one of the purposes) of which is —
>
> (*a*) to demonstrate support for or opposition to the views or actions of any person, group of persons or any government;
>
> (*b*) to publicise a cause or campaign; or
>
> (*c*) to mark or commemorate any event,
>
> and includes a demonstration by a person alone for any such purpose referred to in paragraph (*a*), (*b*) or (*c*);

34 The unlawful assembly charge against the appellant alleges that he organised a public assembly to publicise the cause of "civil disobedience and democracy in social change". The Prosecution's case was that the cause was the use of civil disobedience to bring about social change.

35 The POA does not define the term "cause". The District Judge adopted the definition in the Oxford English Dictionary, *ie*, "a principle, aim or movement to which one is committed and which one is prepared to defend or advocate" (GD at [33]). Before me, the Prosecution accepted this definition of "cause".

36 The appellant accepted that if the Event did involve a cause, the cause had been publicised. However, he submitted that the Event did not involve a cause and gave three reasons.

37 First, the appellant drew a distinction between a movement to further a substantive end and the method through which any substantive ends may be achieved. The appellant submitted that the term "cause" in the POA should be interpreted to exclude the latter, because Parliament's intent in enacting the POA was to prevent the threat of violence and anti-social behaviour. Therefore, according to the appellant, the Event did not involve a cause because it did not feature discussions about any particular cause but only discussions "about the means through which any cause might be furthered".[9]

38 I disagree. In my view, advocating the method by which a substantive end is to be achieved is as much a "cause" as the substantive end itself. In any event, this distinction is irrelevant in the present case. The allegation against the appellant is that the appellant was advocating the use of civil disobedience to bring about social change. In this context, the focus is on the use of civil disobedience and that, in itself, is the substantive end. Even if one viewed bringing about social change as the substantive end, and the use of civil disobedience as the method by which this end can be achieved, it is clear that both are causes.

39 Second, the appellant submitted that on its literal interpretation, the term "assembly" refers to an event that sought to publicise only a "single and distinct cause". Hence, because the title of the Event indicated two separate topics – "civil disobedience" and "social movements" – the Event could not have publicised a single cause.[10] I disagree with the submission that the term "assembly" refers to an event that publicises only a single cause. This interpretation would lead to the absurd result that it would be an offence to organise an event (involving a foreign speaker) publicising a single cause but not one publicising multiple causes.

40 Third, the appellant submitted that the Event was merely a discussion and sharing of thoughts and experiences about issues relating to civil disobedience and democracy in social change. The definition of "assembly" in the POA includes a "discussion". For present purposes, the question is whether the discussion publicises any cause. In my view, a discussion would publicise a cause if it defends or advocates a principle, aim or movement to which one is committed.

41 In the context of the unlawful assembly charge in this case, the Prosecution had to prove that the appellant intended that the Event would publicise a cause, specifically, that the Event would advocate the use of civil disobedience to bring about social change.

42 I agree with the appellant[11] that the title of the Event, *ie*, "Civil Disobedience and Social Movements", was neutral and did not necessarily suggest that the Event advocated the use of civil disobedience to bring about social change. During oral submissions, the Prosecution agreed.

43 However, I agree with the Prosecution that the description of the Event on Facebook did advocate the use of civil disobedience to bring about social change. It would be useful to set out again the description of the Event on Facebook:

> Join Joshua Wong, Secretary General of Hong Kong's Demosisto party as he shares with local activists Seelan Palay and Kirsten Han their thoughts on the role of civil disobedience and democracy in building social movements for progress and change.

44 It is clear from the above description of the Event that the talks were about the role that civil disobedience had to play in bringing about change. It was not (and nothing in the description suggested that it was) just a neutral

academic discussion about issues relating to civil disobedience. Further, at the material time, Wong was a known Hong Kong activist who advocated the use of civil disobedience. I have no doubt that in inviting Wong to speak at the Event, the appellant intended or expected that Wong's speech would include advocating the use of civil disobedience to bring about social change.

45 The Prosecution also relied on the statements made by Wong and the appellant during the Event. These statements were made only during the Event itself. However, they constitute evidence that supports the allegation that the appellant organised the Event to advocate the use of civil disobedience to bring about social change.

46 Wong spoke about how he transitioned from being "a normal high school student to a [*sic*] organiser of the civil disobedience" and said, "in Hong Kong, what we hope is just to prove civil disobedience and direct action to deliver our dissatisfaction".[12] The appellant submitted that Wong was not suggesting that Singapore citizens should consider using civil disobedience to bring about change. According to the appellant, Wong was merely telling the audience that the use of civil disobedience was something to think about. However, in my view, telling the audience how civil disobedience had been used in Hong Kong and asking the audience to think about using civil disobedience in Singapore, was tantamount to advocating the use of civil disobedience.

47 The appellant himself had this to say during the Event:[13]

> So it seems like the Singapore approach is to have a picnic. Right, if you look at how successful Pink Dot is, right, everyone is happy to go to Pink Dot, wear pink, and party, and you know, eat pink muffins and pink cakes, you know, pink as a show of solidarity. I mean I think it is a great movement, and I say this not to criticize Pink Dot, but it seems like in Singapore there

> are certain ways in which we do our activism, and we don't seem to like this very confrontational civil disobedience types of actions. *So how do we how do we get there, I think this is the billion-dollar question.* Step by step, do we do we wait for many Pink Dots to happen and then slowly we transition there, or do we need to have a bunch of individuals come together and really hammer on in the civil disobedience so that we open space in the same way that um, people like Seelan, Dr Chee Soon Juan and all that, did 10 years. This is something for us to think about.
>
> [emphasis added]

48 In my view, the appellant's statements clearly show that he was advocating the use of civil disobedience. After all, why would he pose, as "the billion-dollar question", how do Singapore citizens get from what he described as "picnic"-type activism to the "very confrontational civil disobedience types of actions" if he was not advocating that Singapore citizens should move to the latter?

49 I am therefore satisfied that the Prosecution has proved the unlawful assembly charge beyond a reasonable doubt, and that the District Judge correctly convicted the appellant on this charge.

Whether the sentence is manifestly excessive

50 The appellant submitted that the fine of $2,000 (in default, six days' imprisonment) is manifestly excessive and that it should be reduced to not more than $1,000 (in default, three days' imprisonment).

51 Both the Prosecution and the appellant referred to *PP v Jacob Lau Jian Rong* Magistrate's Arrest Case No 901898 of 2014 (16 September 2014) ("*Jacob Lau*"). In that case, the accused pleaded guilty to, and was convicted on, a charge of organising a public procession without a permit, an offence under s 16(1)(*a*) POA, and fined $1,000 (in default, one week's imprisonment).

The Prosecution submitted that the appellant's culpability was higher whereas the appellant submitted that it was lower.

52 In *Jacob Lau*, the accused organised a march, at 7.00pm on 5 November 2013, from the City Hall Mass Rapid Transit Station to demonstrate support for the "Million Mask March Singapore" and opposition against the new media regulations by the Media Development Authority. The "Million Mask March" was an online movement that called for 24-hour protests globally on Guy Fawkes' day (*ie*, 5 November) as a form of social protest. The movement had been promoted in Singapore through various social media platforms and on 5 November 2013, at about 4.14am, the Police issued a public advisory on Facebook advising the public that it is illegal to organise or take part in a public assembly without a permit. The statement of facts did not state that the accused in *Jacob Lau* was aware of the public advisory issued by the Police.

53 In the present case, the District Judge agreed with the Prosecution that the appellant's culpability was higher than that of the accused in *Jacob Lau* because the appellant had (a) ignored the advice by the Police to apply for a permit, and (b) shown no remorse in claiming trial (GD at [54]). I agree with the District Judge.

54 I also agree with the Prosecution that the fact that the Event was peaceful was not a mitigating factor; it merely meant that the way that the Event was conducted did not constitute an aggravating factor.

55 The maximum punishment for the offence under s 16(1)(*a*) POA is a fine not exceeding $5,000 dollars. It is trite that an appellate court should not interfere with the sentence imposed by the Court below unless the sentence is manifestly excessive in all the circumstances of the case. In my view, the fine

imposed by the District Judge in this case cannot be said to be manifestly excessive.

The s 180 charge

56 Section 180 of the Penal Code provides as follows:

> **Refusing to sign statement**
>
> **180.** Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to $2,500, or with both.

57 As stated earlier, in the present case, the appellant refused to sign the s 22 statement. The question is whether the police officer who recorded the statement was legally competent to require the appellant to sign his statement.

Whether police officer legally competent to require appellant to sign statement

58 Section 22(1) CPC provides that in conducting an investigation, a police officer may examine witnesses orally. Section 22(2) imposes a duty on the person examined to "state truly what he knows of the facts and circumstances of the case, except that he need not say anything that might expose him to a criminal charge, penalty or forfeiture".

59 Section 22(3) provides as follows:

> A statement made by any person examined under this section must —
>
> (*a*) be in writing;
>
> (*b*) be read over to him;
>
> (*c*) if he does not understand English, be interpreted for him in a language that he understands; and

(*d*) be signed by him.

60 The above references to s 22 CPC are to the version in existence before it was amended in 2018 to include provisions relating to audiovisual recording of statements. It is the pre-amendment version that applies to the appellant in the present case.

61 The appellant argued that a police officer recording a statement pursuant to s 22 CPC ("the statement-taker"), is not legally competent to require the maker of the statement ("the statement-giver") to sign the statement. Consequently, so the appellant argued, his refusal to sign his statement could not amount to an offence under s 180 of the Penal Code.[14]

62 The appellant first referred me to *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*"). In that case, the Court of Appeal said (at [56]) that "the rules prescribed by the CPC for the recording of statements are in existence to provide a safeguard as to reliability", and (at [60]) that the objective of these provisions is to ensure that the twin objectives of accuracy and reliability are met in every investigation. The appellant argued that these procedural requirements are therefore addressed to the statement-taker and not the statement-giver.

63 I disagree. Nothing in what the Court of Appeal said in *Kadar* supports the appellant's argument that the police officer has no power to require him to sign his statement recorded pursuant to s 22 CPC. The appellant accepted that the statement-giver's signature is important to ensure the accuracy and reliability of the statement, but submitted that the statement-giver is not legally bound to and can refuse to sign the statement. This does not make any sense. Requiring the police officer, who recorded the statement, to obtain the statement-giver's signature is meaningless if the police officer does not have the

concurrent power to require the statement-giver to sign his statement. Being required to sign his statement does not mean that the statement-giver has to sign the statement where he disagrees with its contents. He can amend his statement before signing it. The twin objectives of accuracy and reliability referred to in *Kadar* cannot be achieved if the statement-giver cannot be required to sign his statement.

64 Next, the appellant referred to the privilege against self-incrimination which is protected under s 22(2) CPC, and argued that under s 22(3)(*d*) CPC, the police officer is not legally competent to require a person to sign an incriminatory statement.[15] I disagree. Section 22(3)(*d*) draws no such distinction, and for good reason. A person has the right not to *say* anything that incriminates himself but if he chooses to waive this right and makes a self-incriminatory statement, there is no reason whatsoever why he should not be required to sign the statement. After all, if a self-incriminatory statement can be used in evidence against the maker of that statement, why should there be any objection to him being required to sign the same? Obviously, the right against self-incrimination ceases to apply once it is waived. The privilege is against making a self-incriminatory statement; there is no privilege against signing a self-incriminatory statement that a person has willingly chosen to make.

65 In my judgment, the police officer recording a statement pursuant to s 22 CPC is legally competent to require the statement-giver to sign his statement. The appellant had confirmed that his s 22 statement was true and correct. By refusing to sign his s 22 statement, without any valid grounds, the appellant committed an offence under s 180 Penal Code.

Whether the sentence is manifestly excessive

66 The District Judge imposed a fine of $1,200 because he was of the view that the appellant's case was "somewhat similar" to that of the accused in *Public Prosecutor v Ng Chye Huay* [2017] SGMC 42 ("*Ng Chye Huay*"). In that case, the accused was convicted after a trial on four charges of *refusing* to sign statements recorded by police officers pursuant to s 22 CPC. The accused was fined $1,200 (in default, eight days' imprisonment) on each charge.

67 In the present case, the appellant submitted that the sentence for the s 180 charge is manifestly excessive because he is far less culpable than the accused in *Ng Chye Huay* who had multiple antecedents (albeit not for a similar offence) and displayed an intransigent attitude throughout the proceedings. The appellant submitted that the fine should be no more than $600. The Prosecution submitted that the appellant has similarly not demonstrated any remorse in the present case and argued that the fine of $1,200 imposed by the District Judge is not manifestly excessive.

68 In my view, the appellant's culpability is similar to that of the accused in *Ng Chye Huay*. However, the fine imposed in *Ng Chye Huay* should be viewed in context. There, in imposing the fine of $1,200 for each charge, the District Judge had expressly tempered justice with mercy after taking into consideration the accused's financial circumstances (at [107] and [109]). The fines would doubtless have been higher otherwise. In contrast, there are no mitigating factors in the appellant's favour in the present case. In the circumstances, viewed in totality, the fine imposed on the appellant is not out of line with *Ng Chye Huay*.

69 The appellant next referred to three other cases which involved offences under ss 177 and 182 of the Penal Code – *Ng Hoon Hong v Public Prosecutor* Magistrate's Appeal 199 of 1996, *Ee Chong Kiat Tommy v Public Prosecutor* Magistrate's Appeal No 143 of 1996, and *Kuah Geok Bee v Public Prosecutor* Magistrate's Appeal 171 of 1997.[16] According to the appellant, these were relevant sentencing precedents because they involved non-violent offences for improperly furnishing information to public servants. The appellant submitted that the offences under ss 177 and 182 are more serious than offences under s 180 since the maximum fine under ss 177 and 182 is $5,000 whereas the maximum fine under s 180 is $2,500. The appellant therefore submitted that the fine of $1,200 imposed on him was manifestly excessive when viewed against the fine of $1,000 imposed in each of the three cases mentioned above.

70 However, as the Prosecution pointed out, these three cases are unhelpful because the fines imposed were in fact the maximum provided under ss 177 and 182 at the material time. The maximum fine for ss 177 and 182 was increased to $5,000 only after the commencement of the Penal Code (Amendment) Act 2007 (No 51 of 2007) on 1 February 2008.

71 In my view, the fine imposed by the District Judge in the present case is not manifestly excessive.

Conclusion

72 For all of the above reasons, I dismiss the appellant's appeals against conviction and sentence in respect of both the charges.

Chua Lee Ming
Judge

Kumaresan Gohulabalan and Seah Ee Wei (Attorney-General's Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam, Suang Wijaya and Johannes Hadi (Eugene Thuraisingam LLP) for the accused.

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1 Exhibit P5 (Record of Appeal ("RA"), at p 141, answer to Q15).
2 Exhibit P5 (RA, at pp 140–144).
3 RA, at p 34 lines 4–13.
4 Exhibit P7 (RA, at pp 151–156).
5 Exhibit P8 (RA, at pp 157–162).
6 RA, at p 38 line 29–p 39 line 3; p 40 lines 4–10.
7 Exhibit P1, RA, at pp 128–130.
8 RA, at p 84, lines 7–8.
9 Appellant's Skeletal Arguments, at paras 34–35; Petition of Appeal, at paras 3.1.2.1–3.1.2.2.
10 Appellant's Skeletal Arguments, at paras 43–44.
11 Appellant's Skeletal Arguments, at para 44.
12 Respondent's Submissions, Annex A, at 01:09 minutes and 03:05 minutes.
13 Respondent's Submissions, Annex A, at 52:38 minutes.
14 Appellant's Skeletal Arguments, at para 56.
15 Appellant's Skeletal Arguments, at paras 60–61.
16 Appellant's Skeletal Arguments, at para 66.