IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 73

Criminal Motion No 36 of 2020

Between

Amarjeet Singh

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Initiation of proceedings]

Amarjeet Singh
v
Public Prosecutor

[2021] SGHC 73

General Division of the High Court — Criminal Motion No 36 of 2020
Sundaresh Menon CJ
3 February 2021

30 March 2021

Sundaresh Menon CJ:

1 The applicant, Mr Amarjeet Singh ("Mr Singh"), filed a criminal motion seeking an order that I enforce a plea agreement that had allegedly been struck with the Prosecution. The criminal motion is a procedural device that is deployed in a variety of settings by parties invoking aspects of the criminal jurisdiction exercised by the court. However, it seemed to me that there had to be some limits that circumscribed the circumstances in which a matter could be said to have been properly brought by way of a criminal motion. This was so because I consider that the criminal motion is a *procedural device* by which the criminal jurisdiction of the court may be invoked, rather than being a *source* of such jurisdiction. That being the case, it would be necessary, at least in cases of doubt, to first establish a proper jurisdictional basis for the matter before the court instead of assuming this just because a criminal motion had been filed. This could be especially important because in some instances, the court's

exercise of its jurisdiction may be controlled or circumscribed by certain preconditions such as the need to apply for leave. When I raised these concerns with Mr Singh's counsel, Mr Rakesh s/o Pokkan Vasu ("Mr Vasu"), it resulted in the application being withdrawn. As a consequence, I never reached the substantive questions raised by the application. Nonetheless, the application afforded me the opportunity to outline what I consider to be the appropriate jurisdictional contours of a criminal motion, an important subject which has not yet been explored in our jurisprudence.

Facts

2 On 10 April 2019, Mr Singh was arrested for using criminal force on Staff Sergeant Chong Guan Tao ("SSgt Chong"). SSgt Chong was allegedly pushed on the shoulder in the course of executing his duties as a public servant. As such, Mr Singh was originally investigated for a potential offence under s 353 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). On 19 June 2019, Mr Singh's cautioned statement was taken, and on 20 June 2019, he was charged with an offence under s 352 of the Penal Code (instead of the offence under s 353 of the Penal Code that he had initially been investigated for). For context, s 353 of the Penal Code sets out an aggravated form of the offence and it concerns the use of criminal force to deter a public servant from discharging his duty, whereas s 352 of the Penal Code concerns the use of criminal force *simpliciter*. Both offences are punishable with imprisonment, fine or both imprisonment and fine. The only difference between them is in the maximum imprisonment terms and the maximum fines that may be meted out.

3 At the first pre-trial conference ("PTC") held on 3 October 2019, the Prosecution indicated that it intended to proceed with a single charge of an offence under s 352 of the Penal Code. The Defence then sought a discussion

with the Prosecution as to its intended sentencing position, through a Criminal Case Management System ("CCMS") conference. The District Judge presiding over the PTC ordered that a CCMS conference (if any) be held by 10 October 2019.

4 Following this, the parties' narratives of the relevant events diverged somewhat. Mr Singh's version was that the Prosecution acting through Deputy Public Prosecutor ("DPP") Andrew Low promised that it would only seek a non-custodial sentence under s 352 of the Penal Code if Mr Singh was willing to plead guilty to the offence. The Prosecution's version was that it had only given an indication of the sentence which it would seek under s 352 of the Penal Code, but had not entered into any plea agreement with Mr Singh. Whatever the truth of the matter was, another PTC was convened on 17 October 2019 with Mr Nevinjit Singh ("Mr Nevinjit"), Mr Singh's counsel, confirming that his client intended to plead guilty and the Prosecution informing the court that it had conveyed its sentencing position to Mr Singh through his counsel. A hearing was scheduled for 29 July 2020 for the court to take Mr Singh's guilty plea.

5 Sometime after the PTC on 17 October 2019, a new DPP ("DPP Lum") took charge of the matter. DPP Lum reviewed the file and assessed that the s 352 charge was not commensurate with the gravity of Mr Singh's offence in the light of his culpability. DPP Lum decided to amend the charge to one under s 353 of the Penal Code and informed Mr Nevinjit of this over the telephone on 8 November 2019. According to Mr Nevinjit, he was told at the same time that the Prosecution would seek a custodial sentence against Mr Singh. DPP Lum, on the other hand, contended that he had only observed to Mr Nevinjit that the sentence for such offences would ordinarily involve a custodial term.

6 Mr Singh elected not to plead guilty at the hearing on 29 July 2020. Instead, he took the position that there was an enforceable plea agreement between him and the Prosecution. Accordingly, he made an oral application to enforce the alleged plea agreement. This was dismissed by the District Judge who considered that he had no jurisdiction to make such an order. Mr Singh then filed the present application by way of a criminal motion in the High Court.

Issue to be determined

7 Criminal motions are routinely filed to seek a broad range of remedies associated with the criminal jurisdiction of the court. However, in this case, it seemed to me that Mr Singh might face a jurisdictional difficulty because having considered the substance of the application, it was not clear to me that, in fact, it was the criminal jurisdiction of the court that was being invoked. I therefore considered it necessary, as a preliminary matter, to establish the nature of the jurisdiction of the court that was being invoked. Specifically, was it the original, revisionary, appellate or supervisory jurisdiction of the court? Further, was it the criminal or the civil jurisdiction of the court? It was then necessary to consider whether the criminal motion was the correct mode by which to attempt to enforce the alleged plea agreement (assuming that it was enforceable at all).

The parties' cases

8 Mr Vasu characterised his client's application as an attempt to invoke the original criminal jurisdiction of the High Court under s 15(1)(*a*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) as enacted prior to the Supreme Court of Judicature (Amendment) Act 2019 (No 40 of 2019) ("SCJA"). Section 15(1)(*a*) of the SCJA provides:

Original Jurisdiction

Criminal jurisdiction

15.—(1) The High Court shall have jurisdiction to try all offences committed —

(*a*) within Singapore;

…

9 Proceeding on that basis, he argued that in reneging on the alleged plea agreement, the Prosecution had (a) breached the understanding between the parties; (b) disappointed his client's substantive legitimate expectations; and/or (c) acted in bad faith.

10 The Prosecution on the other hand took the view that the application was in truth, an attempt to invoke the High Court's supervisory jurisdiction. Such a jurisdiction should correctly have been invoked by way of an application for judicial review by first seeking the leave of court to do so. In any case, even assuming that the criminal motion had been the correct procedural device for enforcing a plea agreement, the Prosecution denied that there had been a plea agreement at all and further contended that any such agreement, if it existed, would have been unenforceable.

11 There was no suggestion from either party that any other type of jurisdiction was being invoked in the present matter. In fact, Mr Vasu took pains to clarify that his client was *not* seeking to invoke my revisionary jurisdiction. He was, in my view, right to do so. As stated in *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 ("*Knight Glenn*") at [19], revisionary intervention is only warranted when the court is satisfied that there is an issue with respect to "the correctness, legality or propriety of any order passed" *and* when material prejudice has consequently arisen. Mr Vasu explained that he was not challenging the District Judge's conclusion that he lacked jurisdiction

to make an order enforcing the alleged plea agreement. He was therefore not questioning that decision's correctness, legality or propriety. This, in and of itself, precluded recourse to my revisionary jurisdiction. I also note that Mr Vasu maintained that he was, in his words, "seeking recognition" of the alleged plea agreement. This seemed to suggest a recognition on Mr Vasu's part, that the District Judge, at least, did not have the jurisdiction to grant the relief sought by Mr Singh in this case, the effect of which relief would have been to enforce the alleged plea agreement. This is a point of some interest that I will return to a little later.

12 Similarly, it was common ground that I was not being asked to exercise my appellate jurisdiction. This much was sound because:

(a) any appeal against the order of the District Judge *should not* have been pursued by way of a criminal motion; and

(b) moreover, if this was an appeal against an interlocutory order, in the sense of an order that was not final and dispositive of the matter, then such an appeal *could not* have been pursued in light of the well-established position that an appeal will not generally lie against an interlocutory order of a trial judge conducting a criminal matter: *Xu Yuanchen v Public Prosecutor and another matter* [2021] SGHC 64 ("*Xu Yuanchen*") at [10].

13 Hence, although it looked as though Mr Singh was seeking in substance to persuade me to reverse the order of the District Judge, Mr Vasu was anxious not to characterise the application as an appeal. In that light, I turn to the central question.

The applicable legal principles

The criminal jurisdiction of the court

14 It is helpful to begin by considering the criminal jurisdiction of the court. A court's jurisdiction refers to "its authority, however derived, to hear and determine a dispute that is brought before it": *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [13], citing *Muhd Munir v Noor Hidah and other applications* [1990] 2 SLR(R) 348 at [19]. In the context of the criminal jurisdiction of the court, this can be considered in terms of its original jurisdiction, its appellate jurisdiction, its revisionary jurisdiction, and arguably in limited circumstances, its supervisory jurisdiction. Of course, matters do not always fall neatly into these jurisdictional silos, but it is helpful to consider these facets of the court's criminal jurisdiction more closely.

15 Beginning with the original criminal jurisdiction, this is primarily concerned with the court's *trial* jurisdiction and would extend to matters incidental or ancillary thereto. This much is clear from the plain language of s 15(1)(*a*) of the SCJA: "The High Court shall have jurisdiction to try all offences committed … within Singapore" (see [8] above). The Court of Appeal in *Ang Cheng Hai and others v Public Prosecutor and another appeal* [1995] 3 SLR(R) 151 explained this as follows at [17]–[18]:

> 17 The concept of 'original jurisdiction' has been defined to mean 'jurisdiction to consider a case in the first instance … to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts': *Black's Law Dictionary* (6th Ed). In *Wong Hong Toy v PP* [1985–1986] SLR(R) 371, the Court of Criminal Appeal observed (at [16]):
>
> > … The all-embracing original criminal jurisdiction of the High Court under s 15 of the [Supreme Court of Judicature] Act is not in all cases exercised by the High Court but the administration of criminal justice in respect of what we may call the less serious criminal cases, generally those cases not involving the sentence

> of death or life imprisonment, is entrusted to the Subordinate Courts. The exercise of the original criminal jurisdiction of the High Court involves generally the more serious criminal cases or such less serious criminal cases as may be transferred from the Subordinate Courts to the High Court.
>
> 18 It is implicit from the above *dicta* that 'original jurisdiction' refers to original *trial* jurisdiction. …
>
> [emphasis added]

16 Next, there is the appellate criminal jurisdiction which is exercised when the court considers appeals arising from "any judgment, sentence or order of a court, or any decision of the High Court mentioned in section 149M(1) [of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC")]": s 374 of the CPC; *Kiew Ah Cheng David v Public Prosecutor* [2007] 1 SLR(R) 1188 ("*David Kiew*") at [3]. The scope and character of this jurisdiction is set out under s 19 of the SCJA and s 374 of the CPC. The relevant provisions are as follows:

> **Appellate criminal jurisdiction**
>
> **19.** The appellate criminal jurisdiction of the High Court shall consist of —
>
> (*a*) the hearing of appeals from District Courts or Magistrates' Courts before one or more Judges according to the provisions of the law for the time being in force relating to criminal procedure;
>
> (*b*) the hearing of points of law reserved by special cases submitted by a District Court or Magistrate's Court before one or more Judges according to the provisions of the law for the time being in force relating to criminal procedure;
>
> (*c*) the hearing of appeals from Family Courts when exercising criminal jurisdiction; and
>
> (*d*) the hearing of appeals from Youth Courts.
>
> **When appeal may be made**
>
> **374.**—(1) An appeal against any judgment, sentence or order of a court, or any decision of the High Court mentioned in section

> 149M(1), may only be made as provided for by this Code or by any other written law.
>
> (2) An appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.
>
> (3) An appeal by the Public Prosecutor shall be against the acquittal of an accused or the sentence imposed on an accused or an order of the trial court.
>
> (4) An appeal by a person convicted by a trial court shall be against his conviction, the sentence imposed on him or an order of the trial court.
>
> (4A) No appeal may lie against the conviction of an accused of any offence by a trial court until after the trial court imposes a sentence in relation to that offence.
>
> (5) No appeal may lie against any order made by a Magistrate, a District Judge, the Registrar of the State Courts or the Registrar of the Supreme Court in any criminal case disclosure conference held under Part IX or X.

17 Next, there is the supervisory jurisdiction, which is provided for under s 27 of the SCJA. This refers to the scrutiny and control exercised by the High Court over decisions of the inferior courts and tribunals or other public bodies discharging public functions: *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 ("*Ng Chye Huey*") at [48] citing *Haron bin Mundir v Singapore Amateur Athletic Association* [1991] 2 SLR(R) 494 ("*Haron bin Mundir*") at [19]. In *Haron bin Mundir,* G P Selvam JC (as he then was) described the supervisory jurisdiction as such (at [18]–[19]):

> 18 … The law makes a distinction between private law liability and public law illegality. The following is a lucid statement of the distinction between the two regimes: *An Introduction to Administrative Law* by Peter Cane (1985) at p 40:
>
> > Just as public law illegality does not entail private law liability, so also private law liability does not necessarily involve public law illegality. For example, a breach of contract by a public authority might not fall under any of the recognized heads of public law illegality. One of the most important consequences of this gulf between public law illegality and private law liability can be seen in the law of remedies. The remedies developed by the

> courts for use in public law perform three functions: the 'quashing' (that is, the invalidation) of administrative decisions; the prohibition of administrative action; and the ordering of authorities to perform duties. The common law remedy of damages is a private law remedy for private law wrongs. Unless the victim of public law illegality can also show that the authority's action amounts to a private law wrong he will not be entitled, at common law, to monetary compensation.
>
> The public law activities of public bodies are subject to scrutiny and control by the High Court in the exercise of what is called its 'supervisory' jurisdiction. Under this jurisdiction (which is 'inherent', that is, the product of common law rather than statute) the High Court has power to 'review' the activities of public authorities and, in some cases, of private bodies exercising functions of public importance such as licensing. To be contrasted with the supervisory jurisdiction is the court's appellate jurisdiction. The common law never developed mechanisms for appeals as we understand them today, and all appellate powers are statutory.
>
> 19 The expression 'supervisory jurisdiction' is a term of art. It is the inherent power of the superior courts to review the proceedings and decisions of inferior courts and tribunals or other public bodies discharging public functions. …

18 Finally, there is the revisionary jurisdiction, which is provided for in s 27 of the SCJA:

> **General supervisory and revisionary jurisdiction of High Court**
>
> **27.**—(1) In addition to the powers conferred on the High Court by this Act or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts.
>
> (2) The High Court may in particular, but without prejudice to the generality of subsection (1), if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in any subordinate court, call for the record thereof, and may remove the matter or proceeding into the High Court or may give to the subordinate

> court such directions as to the further conduct of the matter or proceeding as justice may require.
>
> (3) Upon the High Court calling for any record under subsection (2), all proceedings in the subordinate court in the matter or proceeding in question shall be stayed pending further order of the High Court.
>
> (4) The High Court shall, when exercising (or deciding whether to exercise) its supervisory and revisionary jurisdiction under subsection (1) or powers under subsection (2) in relation to any matter which concerns a case where the High Court has heard and determined an appeal from a subordinate court, have regard to whether that matter was, or could reasonably have been, raised in that appeal.

19 The Court of Appeal in *Ng Chye Huey* (at [46]–[47]) described the revisionary jurisdiction as a "statutory *hybrid* of the pre-existing supervisory and appellate jurisdictions … formulated to remedy perceived inadequacies in the High Court's inherent supervisory jurisdiction over inferior courts" [emphasis in original]. These "perceived inadequacies" (and the manner in which the revisionary jurisdiction makes up for them) were set out at [46]:

> (i) supervision extends to all administrative tribunals but revision is *confined to subordinate courts*;
>
> (ii) supervision depends upon party initiative in seeking relief but *revision may occur on a judge's initiative*;
>
> (iii) supervision generally is confined to questions not touching the merits of the case but revision will lie on *errors of law and fact*;
>
> (iv) supervision is effected by way of prerogative writs but revision is marked by *complete flexibility of remedies*.
>
> [emphasis in original]

20 Once seized of its revisionary jurisdiction, the High Court may call for and examine the record of any criminal proceeding before any State Court to satisfy itself as to the regularity of those proceedings, and the correctness, legality or propriety of any judgment, sentence or order passed: s 400 of the

CPC. The High Court may then exercise certain powers flowing from its revisionary jurisdiction. Such powers include the power to alter or reverse any order made by the court below or the power to take further evidence: s 401 read with ss 390 and 392 of the CPC.

21 These powers are similar to those exercised by a court invoking its appellate jurisdiction. Indeed, some of the power-conferring provisions for a court sitting in its revisionary capacity are found in the division of the CPC that outlines its *appellate* powers and procedures: ss 383, 389, 390 and 392 of the CPC. However, revisions fundamentally differ from appeals. For one, "an appellant has a *right* to demand adjudication on a question of law or fact while a petitioner in a revision only brings his case to the notice of the court which may interfere in the exercise of its *discretion* as to the proper case" [emphasis added]: *Knight Glenn* at [22]. In other words, appeals are invoked by a right (statutorily provided under s 374 of the CPC) while revisions are a matter of the court's discretion. It is only when the threshold for revisionary intervention is met, that the High Court will exercise its revisionary jurisdiction. There are also specific situations in which an appeal can be made (such as those identified in s 149M of the CPC) and specific matters that may be subject to challenge in an appeal (such as questions of fact, law or a mix of both: s 374 of the CPC). Revisions on the other hand, may involve the "correctness, legality or propriety of any decision recorded or passed" by the subordinate court: s 24 of the SCJA. In light of the potentially wide reach of the court's revisionary jurisdiction, it has traditionally been tightly controlled and sparingly exercised. Its invocation requires a demonstration not only that there has been some error but also that "grave and serious injustice" has been occasioned as a result: *Knight Glenn* at [19].

22 In the exercise of these various aspects of the criminal jurisdiction of the court, the court may have to deal with a variety of applications that are ancillary to or related to the principal (or primary) action. Thus, in the course of prosecuting an appeal, the appellant might wish to make an application for leave to adduce further evidence pursuant to s 392 of the CPC. That application, which is incidental to the appeal would, in my judgment, be heard as part of the appellate jurisdiction of the court. Such an application could also be made pursuant to s 401 of the CPC where the court is exercising its revisionary jurisdiction and where that is the case, the application would be heard as part of that jurisdiction. Such applications, involving matters as routine as seeking an extension of time or as complex as re-opening a concluded appeal (see for example *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2017] 2 SLR 741), are commonly brought by way of a criminal motion. But beyond a *corpus* of common practices pertaining to them, there has been little guidance on their juridical nature (and by extension, their proper usage).

23 The starting point is the set of statutory provisions in the CPC which relate to criminal motions. These are few in number and are found in Division 5 of Part XX of the CPC ("the CM provisions"):

> **Motion**
>
> **405**.—(1) A motion to the High Court or the Court of Appeal in respect of any criminal matter must be made in accordance with this Division.
>
> (2) In this Division, the relevant court is the court to which the motion is made.
>
> **Notice of motion**
>
> **406**.—(1) No motion shall be made without previous notice to the other party to the proceedings.

(2) There must be at least 7 clear days between the service of the notice of a criminal motion and the day named in the notice for hearing the motion, unless —

(*a*) the relevant court gives leave to the contrary; or

(*b*) each party required to be served with the notice consents to the relief or remedy that is sought under the motion.

Form and issue of notice of motion

407.—(1) The notice of a criminal motion must be in the prescribed form.

(2) The notice of a criminal motion must be —

(*a*) supported by an affidavit setting out a concise statement of the facts, the relief or remedy required and the reasons for the relief or remedy; and

(*b*) sealed by an officer of the Registry of the Supreme Court.

Adjournment of hearing

408. The hearing of a criminal motion may be adjourned from time to time by the relevant court on such terms as the relevant court thinks fit.

Dealing with motion in absence of parties, etc.

408A.—(1) The relevant court may deal with a criminal motion in the absence of the parties to the proceedings, if —

(*a*) the respondent is —

(i) the prosecution; or

(ii) an accused who is represented by an advocate; and

(*b*) each party —

(i) consents to the motion being dealt with in the absence of that party; and

(ii) consents to the relief or remedy that is sought under the motion.

> (2) Where subsection (1) applies, but the relevant court is not inclined to grant the relief or remedy that is sought under the motion —
>
> (*a*) the motion must be set down for hearing; and
>
> (*b*) each party to the proceedings must be informed of the date and time appointed for the hearing.
>
> (3) The relevant court may, after hearing every party that attends the hearing mentioned in subsection (2), make such order as the relevant court thinks fit.
>
> (4) Where every party to the proceedings consents to the withdrawal of the motion, the relevant court may summarily give leave to withdraw the motion by an order under the hand of a Judge of Appeal or a Judge, without the motion being set down for hearing.
>
> **Decision or order affecting lower court**
>
> **408B.** Where, on hearing or dealing with a criminal motion, the relevant court makes a decision or an order that affects a lower court, the relevant court must certify its decision or order to the lower court.
>
> **Costs**
>
> **409.** If the relevant court dismisses a criminal motion and is of the opinion that the motion was frivolous or vexatious or otherwise an abuse of the process of the relevant court, it may, either on the application of the respondent or on its own motion, order the applicant of the criminal motion to pay to the respondent costs on an indemnity basis or otherwise fixed by the relevant court.

24 Three observations may be made. First, these provisions do not, on their face, seem to describe or constrain the particular jurisdiction that may be invoked by a criminal motion. Instead, they appear to be largely administrative in nature. They make provision as to the form to be used, the procedure for giving notice to the other party and other assorted logistical concerns such as adjournments and dealing with a motion in the absence of a party. This may be explained on the basis that the CM provisions replaced "the limited guidance

that was provided … in the form of the regulations found in Part III of the Supreme Court (Criminal Appeals) Rules (Cap 322, R 6, 1997 Rev Ed) ["Supreme Court (Criminal Appeals) Rules"]": *The Criminal Procedure Code of Singapore* (Academy Publishing, 2012) at para 20.254. Those rules too, outlined largely administrative procedures (such as how and where an application was to be made and how orders could be discharged or varied), and the CM provisions seem to be, broadly speaking, a set of administrative instructions that took over the role previously performed by the Supreme Court (Criminal Appeals) Rules in relation to criminal motions.

25 Second, the CM provisions do not identify or specifically limit the powers exercisable in a criminal motion. This is in contrast to many of the power-conferring provisions found in other divisions of Part XX of the CPC:

(a) the grounds for reversal by an appellate court are stated in s 394 of the CPC;

(b) the powers exercisable in a petition for confirmation of a death sentence are set out in s 394C of the CPC;

(c) the requirements for the exercise of powers of review of an earlier decision of an appellate court are outlined in s 394J of the CPC;

(d) the power of the court to state a case on a question of law is provided for in s 395 of the CPC;

(e) the powers of the High Court on revision of a decision of a lower court are listed under s 401 of the CPC; and

(f) the powers to revise orders made at criminal case disclosure conferences are stated in s 404 of the CPC.

26 In all these provisions, the scope and occasions for the exercise of powers are extensively set out. It is also reasonably clear or may be quite readily inferred what jurisdiction of the court is typically invoked by processes such as criminal revisions and appeals. That does not appear to be the case for the CM provisions, even as they contemplate the possibility that orders arising from a criminal motion may affect lower courts: s 408B of the CPC. This is ultimately unsurprising once it is recognised that the criminal motion is, as I have noted at [1] above, just a procedural device and not itself a source of jurisdiction or of judicial powers that may be exercised. Once that is appreciated, it becomes clear that in cases of doubt, it will be necessary to establish a proper basis for invoking the relevant jurisdiction of the court or the exercise of particular powers by the court.

27 Third, and that being said of the CM provisions, it might not be accurate to describe them as *entirely* administrative in nature. I note that s 405 of the CPC describes the criminal motion as "[a] motion … *in respect of* any criminal matter" [emphasis added]. This suggests that a criminal motion is typically or ordinarily brought for some purpose that is ancillary to a pre-existing criminal matter. To put it another way, motions are commonly filed to seek an order that is in some way connected to or supportive of a primary action. Taking the most common criminal motions for example – applications to vary bail, extend time for some step to be taken or adduce further evidence – these are all ancillary to a primary action. An accused person might seek bail pending his trial (*Ewe Pang Kooi v Public Prosecutor* [2015] 2 SLR 672); another might seek an extension of time for filing his notice of appeal (*David Kiew*); and yet another might seek to adduce further evidence in support of his appeal (*Lee Yuen Hong v Public Prosecutor* [2000] 1 SLR(R) 604). Such applications are invariably brought by way of a criminal motion and in each of these instances, the subject matter of

the motion is fundamentally tethered to the conduct of the main trial or appeal or application for revision and the effort *to ensure that the correct outcome is reached* as a result of that trial or appeal or application for review. This remains true even for the somewhat more uncommon applications typically made by way of a criminal motion such as those seeking leave to allow video link testimony at trial (*Kim Gwang Seok v Public Prosecutor* [2012] 4 SLR 821); or those applying for trials to be transferred to another court (*Goh Kah Heng (alias Shi Ming Yi) v Public Prosecutor and another criminal motion* [2009] 3 SLR(R) 409); or even those seeking to reopen a concluded matter on the basis of further evidence (*Kho Jabing v Public Prosecutor* [2016] 3 SLR 135).

28 In my judgment, the criminal motion is a mode of process that is *primarily* invoked when seeking a form of relief that is ancillary to or supportive of the conduct of a primary criminal action. By primary criminal action, I mean an action that invokes the original, appellate or revisionary criminal jurisdiction of the court. Thus, where a court's criminal revisionary jurisdiction has been invoked by way of a petition for criminal revision, criminal motions are commonly brought to seek relief that is ancillary to or supportive of such an action (see for example *Lee Cheong Ngan alias Lee Cheong Yuen v Public Prosecutor and other applications* [2004] SGHC 91 ("*Lee Cheong Ngan"*) at [14] where the applicants' petitions for revision were supported by applications made through a criminal motion to adduce new evidence). Further, where one is dealing with at least some aspects of the court's appellate criminal jurisdiction, such as in seeking to refer or to determine a question of law of public interest or to state a case for determination (see for instance s 19(*b*) of the SCJA), these too, along with any ancillary reliefs are often sought by way of a criminal motion.

29 It follows then, that criminal motions may arise from a variety of parent actions and may be brought seeking a variety of orders. Depending on the circumstances, the criminal motion may well involve the court's original, revisionary or appellate jurisdiction. Thus, as noted at [22] above, where a party seeks an extension of time to file his notice of appeal, his application may involve the court's appellate jurisdiction (*David Kiew* at [5]); where a party seeks leave to adduce further evidence in support of an application for revision, the revisionary jurisdiction might be invoked (see for example *Lee Cheong Ngan* at [15]).

30 What is common to all these situations is that the criminal motion is used to seek a form of relief that is ancillary or incidental to a primary criminal action heard by the court in the exercise of its original, appellate or revisionary criminal jurisdiction, or to invoke some aspects of the criminal jurisdiction of the court, such as the appellate jurisdiction, for instance when seeking leave to refer questions of law of public interest or to state a case, and where necessary, to seek particular relief that is supportive of or incidental to such an action.

The propriety of using a criminal motion

31 In light of the foregoing discussion, I turn to consider the potential difficulties that might arise when a party seeks to invoke the jurisdiction of the court using a criminal motion.

32 In the criminal context, the point is significant because as I alluded to earlier at [10]–[11], criminal references, revisions, appeals and trials have their own rules which prescribe how the court's process may be invoked, managed and controlled. For example, the procedure for appeals (including the requirements of notice and timelines for the filing of the appellant's case) are

set out in s 377 of the CPC; likewise, the procedure for referring questions of law of public interest to the Court of Appeal is extensively set out at s 397 of the CPC and has been the subject of consideration in a considerable body of jurisprudence (see for example *Bachoo Mohan Singh v Public Prosecutor and other applications* [2010] 1 SLR 966; *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 859; and *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486); and so too the requirements for the exercise of powers of review under Division 1B of Part XX of the CPC which are set out in s 394J of the CPC. These are but a sample of the sorts of procedural safeguards which exist in order to streamline administration, restrain abuse of process, preserve the finality of judgments and constrain the circumstances in which the court's powers may be invoked and exercised. While the court might, and often will, eschew unyielding and undue emphasis on compliance with procedural formalities (see for instance the approach of the Court of Appeal in *James Raj s/o Arokiasamy v Public Prosecutor* [2014] 3 SLR 750 at [20]–[22]) these should not be ignored or overlooked as irrelevant. In the context of the particular point that was before me, my concern was that recourse to criminal motions should not subvert the established processes, safeguards and constraints that I have mentioned. The criminal motion, although endowed with a high degree of procedural flexibility, is not intended to be a mode of process by which the attendant procedural safeguards that apply to certain originating actions or appeals or revisions can be circumvented.

33 Thus, as mentioned earlier, the use of a criminal motion should not be a means by which a party seeks to circumvent the general rule forbidding appeals against interlocutory or procedural rulings: *Xu Yuanchen* at [10]. While not an absolute prohibition, such appellate intervention is typically difficult to justify since interlocutory appeals invariably arise in "inchoate circumstances" where

there is little basis for a judge to evaluate the nature and extent of any alleged injustice: *Yap Keng Ho v Public Prosecutor* [2007] 1 SLR(R) 259 ("*Yap Keng Ho*") at [6]. Barring something "imminently fatal to the applicant's case" (*Yap Keng Ho* at [6]), the law will not usually entertain such premature applications in the middle of trial. But more importantly, that prohibition preserves the momentum of the criminal process, ensuring that the progress of a criminal matter is not undermined by every conceivable grievance arising from each of the many interlocutory rulings which a judge will invariably make throughout the course of trial. And in the criminal context, this is not merely a question of administrative expedience but a matter of justice as well. "[Disrupted] and fractured criminal trials" create "unacceptable delays in their final disposal" (*Xu Yuanchen* at [11], citing *Azman bin Jamaludin v Public Prosecutor* [2012] 1 SLR 615 at [44]) and ultimately "[tarnish] the image of the rule of law": *Yap Keng Ho* at [7].

34 For these reasons, I considered it necessary and appropriate to assess the jurisdictional soundness of the present application that was brought by way of a criminal motion, principally by first examining whether it was, in fact, brought within the court's criminal jurisdiction by (a) constituting a primary action invoking or purporting to invoke the court's criminal jurisdiction, or (b) seeking specific reliefs incidental to or supportive of a primary action invoking the original, appellate or revisionary criminal jurisdiction of the court. As I explain at [40]–[43] below, it became apparent to me on closer scrutiny that the present case was not concerned with either of these aspects of the court's criminal jurisdiction and so, I was of the view that the criminal motion was not the appropriate mode of process. As I have noted already, when I pointed this out to Mr Vasu, he considered the point and then sought leave to withdraw the application. But it was also evident, both as a matter of practice and from the

case law, that criminal motions are quite freely deployed and so I considered whether there were any instances where this had been done in a manner that was akin to the present case, and if so, whether these could be explained.

35 From my review of the case law, I identified two cases where criminal motions had been entertained notwithstanding the fact that they did not appear strictly to have been brought within the court's criminal jurisdiction: *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") and *Yong Vui Kong v Public Prosecutor* [2012] 2 SLR 872 ("*Yong Vui Kong*").

36 In *Ramalingam*, the applicant filed a criminal motion for an order that the capital charges against him be amended to non-capital charges and an order that the sentence imposed be set aside and replaced with a suitable non-capital sentence such that there was no difference in punitive treatment between him and his co-accused. This application was based on the ground that the Attorney-General had exercised his prosecutorial discretion in a manner contrary to Art 12(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) by prosecuting the applicant in respect of a capital offence while prosecuting his co-accused, who was involved in the same criminal enterprise, in respect of non-capital offences. Although the form of the relief sought there appeared to concern the outcome of the criminal charges that had been brought against the applicant, the criminal motion in *Ramalingam* seemed to me, in substance, to be a challenge against the constitutionality of the Attorney-General's exercise of his prosecutorial discretion. If such a challenge was successful, then consequential relief might follow but it did not seem to me to seek relief that was incidental to a particular parent criminal action. Notably, the named respondent was the Attorney-General in that capacity rather than in the capacity of the Public Prosecutor.

37 *Yong Vui Kong* involved a similar constitutional challenge. There, the applicant was convicted of trafficking in 47.27g of diamorphine and was sentenced to death. He brought a criminal motion challenging what he regarded as "selective prosecution as between [him] and his alleged boss and supplier … who had the charges against him discontinued pursuant to a discontinuance not amounting to an acquittal": *Yong Vui Kong* at [1]. The applicant claimed that this was in violation of his right to equality before the law, effectively challenging the constitutionality of the Attorney-General's exercise of his discretion. The criminal motion was not ancillary or incidental to any primary criminal action. Indeed, his trial and appeals had concluded by the time the criminal motion was brought. The criminal motion arguably did not invoke any *criminal* jurisdiction but might be best characterised as an action brought to review the Attorney-General's exercise of his prosecutorial powers in a manner akin to judicial review. Such review would have been an exercise of the court's supervisory *civil* jurisdiction.

38 These cases though brought by criminal motions concerned what appeared to involve constitutional challenges against the prosecutorial discretion of the Attorney-General. By bringing these matters by way of criminal motions, the applicants in question appear to have bypassed the need to secure leave to commence actions for judicial review. That said, I did not regard these authorities as detracting from the principles I have outlined above at [27]–[34]. Jurisdictional objections were simply never raised before the court in these cases and hence were not considered. There was no examination of the jurisdictional propriety of the criminal motions in those matters, and specifically, no inquiry into the propriety of using criminal motions to mount those constitutional challenges. The respondent in *Yong Vui Kong* for example, argued only that the applicant could have raised these allegations of a

constitutional breach at any of the three earlier stages of the proceedings: *Yong Vui Kong* at [15]. The respondent in *Ramalingam* simply argued that the motions were disguised attempts to reopen a concluded appeal: *Ramalingam* at [15]. In both these matters, the courts proceeded on the basis that there were important constitutional matters which ought to be addressed: *Ramalingam* at [16]–[17] and *Yong Vui Kong* at [15]–[19]. This concern might well have displaced the occasion for concerns to arise over the fact that leave should have been but was not in fact obtained. Given how the court saw the importance of the issues raised, this would also be consistent with the point I have made at [32] above, that the court may in suitable cases take a course that avoids an unduly rigid emphasis on compliance with procedural formalities. Given the manner in which the issues were ventilated in these cases and the fact that jurisdictional concerns were not squarely before the courts in these authorities, I did not consider them to displace the approach and the principles I have outlined at [27]–[34] above and that I went on to apply.

The present application

39 This brings me to the present application; the starting point was to correctly characterise the jurisdiction that Mr Singh was seeking to invoke. As I have noted, Mr Vasu suggested that this application was an invocation of the court's original criminal jurisdiction. This could not have been the case for two reasons.

40 First, as stated earlier, the original criminal jurisdiction is the court's *trial* jurisdiction. Here, there was no trial before me and neither was this matter related to any ongoing trial. Nor was Mr Singh seeking any relief that could fairly be described as incidental to or supportive of the proper or fair conduct of a pending trial. Indeed, on the contrary, the real point of the application was to

stop the Prosecution from proceeding with its intended prosecution of the offence under s 353 of the Penal Code.

41 This leads me to the second point, which is that in substance, Mr Singh was seeking to secure public law remedies through his application. The motion states that Mr Singh was seeking to *enforce* the plea agreement. What "enforcement" entailed was not specified in the submissions. But its ordinary meaning would suggest that Mr Singh was seeking an order that the alleged plea agreement be carried out or performed by the Public Prosecutor. He was, in effect, seeking a mandatory order which is rightfully pursued under O 53 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") and granted pursuant to the court's *supervisory civil jurisdiction*.

42 In substance, this application was an attempt to control the conduct of the Prosecution. The jurisdiction it invoked was not ancillary to any parent criminal proceeding but was instead an *independent* attempt to persuade the court to act in its supervisory (civil) capacity by exercising its powers of judicial review over the Attorney-General's exercise of his prosecutorial discretion. Allowing such an endeavour to proceed by way of a criminal motion would effectively result in judicial review being sought without first obtaining leave when the grant of leave is a necessary precondition to a party invoking the court's exercise of its powers of judicial review. Such leave would only be granted where (a) the subject matter of the complaint was susceptible to judicial review; (b) the material before the court disclosed an arguable case or a *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant; and (c) the applicant has sufficient interest in the matter: *Jeyaretnam Kenneth Andrew v Attorney General* [2014] 1 SLR 345 ("*Jeyaretnam*") at [5].

43 Mr Singh would avoid scrutiny of all these requirements if he were able to secure what amounts to a mandatory order by filing a criminal motion instead. Additionally, he would evade the sort of analysis that typically applies to applications under O 53 of the ROC. He would not have to concern himself with demonstrating that alternative remedies have been exhausted or that the relief sought has practical utility: *Singapore Civil Procedure 2020* vol I (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) ("*Singapore Civil Procedure*") at para 53/1/5. This, in my view, was impermissible and brings me back to a point I noted at [11] above. This, in fact, might explain Mr Vasu's position that the District Judge was correct to find he had no jurisdiction to make the orders Mr Singh sought, though I apparently did have such jurisdiction. After all, the power of judicial review, which is what this action was really about, is vested in the High Court and not in the lower courts: s 16(1)(*a*) of the SCJA and s 19(3)(*b*) of the State Courts Act (Cap 321, 2007 Rev Ed).

Conclusion

44 As stated earlier, the substantive questions in this criminal motion were not in the end addressed because of this jurisdictional hurdle. When I raised these concerns, which the Prosecution associated itself with, Mr Vasu accepted that he had not chosen the appropriate means by which to seek relief. He accepted that the proper course for him, if he wished to pursue the point, was to seek leave to commence judicial review. He accordingly applied for leave to withdraw the motion, which I granted. I also directed Mr Singh to give the

Prosecution, within a week from the hearing, an indication of how he intended to proceed. Additionally, I ordered bail to be extended on the present terms.

Sundaresh Menon
Chief Justice

Rakesh s/o Pokkan Vasu, Gomez Winnifred, Nevinjit Singh, Yeo Ying Hao (Yang Yinghao) and Farhan Tyebally Tyebally (Gomez & Vasu LLC), Gill Amarick Singh (Amarick Gill LLC), Paul (Cross Street Chambers), and Ramesh Chandr Tiwary (Ramesh Tiwary) for the applicant;
Kow Keng Siong, Lum Wen Yi Dwayne and Lu Yiwei (Attorney-General's Chambers) for the respondent.