Attorney-General v Chee Soon Juan
[2006] SGHC 54

Case Number : OS 285/2006

Decision Date : 31 March 2006

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Lee Seiu Kin, Teh Hwee Hwee and Dominic Zou (Attorney-General's Chambers) for the applicant; M Ravi and Violet Netto (M Ravi & Co) for the respondent

Parties : Attorney-General — Chee Soon Juan

Contempt of Court – Criminal contempt – Respondent reading out statement alleging court's partiality and bias before assistant registrar in bankruptcy hearing and then circulating such statement to media – Whether respondent's conduct amounting to contempt "in the face of the court" by scandalising court in assistant registrar's presence – Whether defences of fair comment or justification applicable to acts of contempt – Appropriate sentence for such contempt of court

31 March 2006

Lai Siu Chiu J:

Introduction

1 This was an application by the Attorney-General ("the Applicant") seeking an order of committal against Chee Soon Juan ("the Respondent") for contempt of court.[note: 1] Another court had on 16 February 2006 granted the Applicant leave under O 52 r 2(1) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the Rules") to apply for the order of committal.

2 The Applicant alleged that the Respondent was guilty of contempt on two counts: first, that he acted in contempt "in the face of the court" at the hearing of the Bankruptcy Petition No 38 of 2006 against him before Assistant Registrar Low Siew Ling ("AR Low") on 10 February 2006 ("the bankruptcy hearing"), and second, that he acted in contempt of the court by scandalising the Singapore judiciary through his statement entitled "Statement of Chee Soon Juan submitted to the High Court, Singapore at the Bankruptcy Petition hearing on 10 February 2006" ("the bankruptcy statement").

3 After the bankruptcy hearing, the Respondent read and distributed the bankruptcy statement to media representatives outside the courtroom and purportedly copied the document to 59 persons and organisations in Singapore and elsewhere. In addition, a slightly amended version of the bankruptcy statement ("the online version") appeared on a website that was related to the Respondent. The website of the Singapore Democratic Party, of which the Respondent is the secretary-general, provided a hyperlink to the uniform resource locator (or "URL") of the online version.

4 The bankruptcy statement, *inter alia*, alleged that the Singapore judiciary was biased and unfair, and that it acted at the instance of the Government or conspired with the Government in cases involving opposition politicians. The Respondent further alleged that he and other opposition politicians had suffered grave injustice because the Singapore judiciary was not independent and had compromised the law in order to gain favour with the Government. In addition, he insinuated that judges were controlled by the Government and were removed from the Bench if they were perceived to be lenient towards opposition politicians.

Issues

5 The following issues were raised in these proceedings:

(a) Was there contempt "in the face of the court" and contempt by "scandalising the court"?

(b) Can the Applicant initiate contempt proceedings or must it be done by the court itself?

(c) Must a contemnor be given prior warning before he can be cited by the court for contempt of court?

(d) Does the offence of scandalising the court violate the right to freedom of speech enshrined in Art 14(1)(*a*) of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution")?

(e) Are the defences of fair comment and justification in the law of defamation applicable to the offence of scandalising the court?

Contempt in the face of the court

6 The Applicant had alleged in the originating summons that the Respondent had committed "contempt in the face of the court" through his actions before AR Low. I shall first address the issue of whether hearings in chambers before an assistant registrar are hearings before a "court" for the purposes of the doctrine of contempt "in the face of the court". This question can be sub-divided into two separate issues:

(a) whether the doctrine of contempt in the face of the court only applies to hearings in open court as opposed to hearings in chambers; and

(b) whether the office of an assistant registrar, by its nature, precludes an assistant registrar hearing matters from being a "court" within the meaning of "contempt in the face of the court".

7 It cannot be denied that contemptuous acts committed before an assistant registrar amount to contempt *of* court which a court can punish even if the acts do not amount to contempt *in* court. Oswald in his treatise (*Oswald's Contempt of Court* (Butterworth & Co, 3rd Ed, 1910) at pp 13–14) rightly observed that acts of contempt committed before judges of the High Court in chambers and masters (who are the equivalent of registrars in our local context), are cognisable and punishable by the court to which the judges or masters are attached. This is based on the established proposition that "those who have duties to discharge in a court of justice are protected by the law, and shielded on their way to the discharge of such duties, while discharging them, and on their return therefrom" (*per* Bowen LJ in *In re Johnson* (1887) 20 QBD 68 at 74). Acts of interference with proceedings before a master (or an assistant registrar in our local context) would be punishable by the High Court since these judicial officers are in effect conducting the "business of the Court" and are therefore entitled to the court's protection (*The King v Almon* (1765) Wilm 243 at 269; 97 ER 94 at 105; see also *Ex parte Wilton* (1842) 1 Dowl NS 805 at 807).

8 The question of whether contemptuous acts before an assistant registrar are contemptuous acts "in the face of the court" depends in part on whether proceedings in chambers are necessarily

precluded from being proceedings in "court". There is no question that the phrase "in the face of the court" includes contemptuous acts committed before a judge in open court.

9 Historically, the common law drew a distinction between acts of contempt in the face of the court (contempt *in facie curiae*) and acts of contempt outside the court (contempt *ex facie curiae*). The jurisdiction of *inferior* courts of record to summarily punish contempt without a jury was restricted to punishment of acts of contempt in the face of the court and not outside the court (*The Queen v Lefroy* (1873) LR 8 QB 134). Conversely, *superior* courts of record such as the High Court had the jurisdiction to punish for contempt both *in facie curiae* and *ex facie curiae*.

10 For the purposes of the doctrine of contempt *in facie curiae*, no distinction should be drawn for proceedings in chambers and those in open court. The interest in the administration of justice is equally strong in ensuring the expeditious disposal of both categories of hearing. There can be no justification for the argument that proceedings in open court are more "worthy" of protection than those in chambers. As was recognised by the Committee of British Section of the International Commission of Jurists headed by Lord Shawcross in their Report on Contempt of Court (1959) (at p 19), "it is largely fortuitous whether any given cause is determined in chambers or in open court". This is reflected in O 32 r 14 of the Rules, which confers on the presiding judge the general discretion to hear a matter either in chambers or in open court. A judge in chambers and in open court has the same inherent powers, one of which is the power to punish acts of contempt committed before him.

11 Accordingly, the common law doctrine of "contempt in the face of the court" applies to both proceedings in chambers and in open court; a judge sitting in chambers is therefore also a "court" for the purposes of the doctrine.

12 As an AR's powers are derived from those of a High Court judge in chambers, his powers are indistinguishable. The similarities between the jurisdiction of an assistant registrar and of a judge in chambers are evident from a reading of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("the SCJA") and the Rules. Section 62(1) read with s 2 of the SCJA establishes that ARs of the Supreme Court have such powers as are prescribed by the Rules. According to O 32 r 9(1) read with O 1 r 4(1) of the Rules, an assistant registrar has the *same powers and jurisdiction* as a judge in chambers.

13 Viewed in that light, an assistant registrar performs the same judicial functions as a judge in chambers, and his or her office therefore possesses the same characteristics and is of the same nature as that of a judge in chambers. That being the case, an assistant registrar in chambers has the equivalent stature of being a "court". Thus, for the purposes of contempt *in facie curiae*, no conceptual distinction should be drawn between an assistant registrar and a judge in chambers when deciding whether acts of contempt directed at these respective officers are acts "in the face of the court".

14 Consequently, an assistant registrar hearing matters in chambers is treated as a "court" to which the doctrine of contempt *in facie curiae* applies. As was rightly observed by Lord Denning MR in *Attorney-General v British Broadcasting Corporation* [1981] AC 303 at 313:

> To my mind, the immunities and protections which are accorded to the recognised courts of the land should be extended to *all tribunals or bodies which have equivalent characteristics*. After all, *if the principles are good for the old, so they should be good for the new*. [emphasis added]

15 Mr Ravi representing the Respondent had submitted that his client's conduct was not tantamount to contempt "in the face of the court" because the assistant registrar did not find the

Respondent's conduct disruptive of proceedings. He relied on extracts from C J Miller's textbook, *Contempt of Court* (Oxford University Press, 3rd Ed 2000) at para 4.19 in support. On the contrary, he submitted, the Respondent had, in a respectful and non-disruptive manner at the bankruptcy hearing, read out to AR Low the bankruptcy statement which he had tendered as his submissions.

16 Disruptive behaviour was indeed one example cited in Miller's textbook of what amounted to contempt "in the face of the court". Another illustration in Miller's textbook of contempt "in the face of the court" (at para 4.27) was "insulting or disrespectful behaviour *even though it falls short of being physically obstructive*" [emphasis added].

17 The notes of evidence recorded by AR Low at the bankruptcy hearing contained the following extracts:

> Court: Do you admit the debts?
>
> Respondent: I refuse to answer any questions. I have a statement to make.

After the Respondent had tendered the bankruptcy statement to AR Low, the notes of evidence further recorded:

> Respondent: I believe I am in this situation right now because of the process of the courts. Before you adjudicate on this matter [Reads from four-page statement (the bankruptcy statement)].

I rejected his counsel's submission. I agreed with the Second Solicitor-General ("the SSG") who appeared for the Applicant, that in refusing to answer any questions posed by AR Low and then reading in court the bankruptcy statement that contained passages which scandalised the Judiciary, the Respondent displayed a defiance that was aimed at interfering with the authority and proper functioning of the court, and at impairing the public's respect and confidence in the Judiciary.

Can the Applicant initiate contempt proceedings?

18 During the proceedings, counsel for the Respondent raised a preliminary objection that the Applicant had no *locus standi* to initiate proceedings for contempt "in the face of the court". He contended that (a) such proceedings could only be initiated by AR Low and (b) AR Low should have dealt with the contempt summarily on 10 February 2006.

19 Mr Ravi's arguments were again misconceived. The Applicant is the government's legal officer. As the Respondent's contempt arose from his conduct during court proceedings (and continued outside the Supreme Court Building), these proceedings could justifiably be commenced by the Applicant. I find it strange that counsel would argue that AR Low should have dealt with the Respondent's contempt of court summarily, as his own client took a contrary view. When the Respondent addressed the court, he argued that he was entitled to a fair trial and he should be allowed to call witnesses to support his defence that there was no contempt.

20 Order 52 r 5(1) of the Rules states:

> Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases:
>
> (*a*) where the application arises out of proceedings relating to the wardship or adoption

of an infant …

(*b*) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder …

(*c*) where the application arises out of proceedings in which a secret process, discovery or invention was in issue; and

(*d*) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private,

but, except as aforesaid, the application shall be heard in open Court.

[emphasis added]

The hearing before me was therefore in compliance with O 52 r 5(1). I had, in accordance with O 52 r 5(4), also allowed the Respondent to address the court personally, after his counsel had concluded submissions on his behalf. As was pointed out by the SSG, O 52 of the Rules makes no distinction between procedures governing "contempt of court" and "contempt in the face of the court".

Must a contemnor be first warned before he is cited for contempt of court?

21 Contrary to the argument tendered by the Respondent's counsel, there is no requirement in O 52 of the Rules or at common law that a court, in whose face an act of contempt is committed, must first warn the alleged contemnor that he will be cited for contempt if he does not curb his contemptuous behaviour. What the textbook authorities do say (including David Eady & A T H Smith, *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 3rd Ed, 2005), Nigel Lowe & Brenda Sufrin, *Borrie & Lowe, The Law of Contempt* (Butterworths, 3rd Ed, 1996) and Miller's *Contempt of Court* ([15] *supra*)) is that a court summarily citing a person for contempt must give him the right to *reply* to the charge, before finding him liable of the offence.

Does the offence of scandalising the court violate the right to freedom of speech?

The offence of scandalising the court

22 The offence of scandalising the court is one of the recognised classes of contempt of court. The *locus classicus* is *The Queen v Gray* [1900] 2 QB 36 where it was said (by Lord Russell of Killowen CJ at 40) that the class of contempt referred to as "scandalising a Court" is committed by "[a]ny act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority". Another class of contempt of court was "any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts" (*ibid*).

23 As a preliminary observation, case law from the Commonwealth cited by counsel for the Respondent and in particular recent jurisprudence from the UK had to be treated with considerable caution because of the differing legislation in those countries. To begin with, the position in UK has become statutorily regulated by the Contempt of Court Act 1981 (c 49) ("the 1981 UK Act"). Admittedly, the UK position on scandalising the court still falls to be regulated by the common law since the 1981 UK Act does not address the offence of scandalising the court. I should point out, however, that the UK's accession to the European Convention on Human Rights and Fundamental Freedoms ("the European Convention") has indirectly incorporated the jurisprudence of the European

Court of Human Rights ("the European Court") and pegs the UK position on the offence of scandalising the court to the standard imposed by the European Convention.

24 The case of *Attorney-General v Times Newspapers Ltd* [1974] AC 273 shows conflicts have arisen between the common law on contempt and the UK's obligation under the European Convention to protect the right of freedom of expression, with the former involving more extensive incursions on the freedom of expression than the European Court felt that the European Convention allowed (see also *Sunday Times v United Kingdom* (1979) 2 EHRR 245). The enactment of the UK Human Rights Act 1998 (c 42) further entrenches the influence which the European Convention has since had on the development of UK common law.

25 Conditions unique to Singapore necessitate that we deal more firmly with attacks on the integrity and impartiality of our courts. To begin with, the geographical size of Singapore renders its courts more susceptible to unjustified attacks. In the words of the Privy Council in *Ahnee v Director of Public Prosecutions* [1999] 2 AC 294 at 305–306:

> In England [proceedings for scandalising the court] are rare and none has been successfully brought for more than 60 years. But it is permissible to take into account that on a small island such as Mauritius the administration of justice is more vulnerable than in the United Kingdom. *The need for the offence of scandalizing the court on a small island is greater* … [emphasis added]

26 Further, in Singapore, judges decide both questions of law and fact, unlike in the UK where questions of fact are left to the jury. As explained by T S Sinnathuray J in *AG v Wain* [1991] SLR 383 ("*Wain*'s case") (at 394, [34]), the fact that the administration of justice in Singapore is "wholly in the hands of judges" must weigh heavily in the application of the law of contempt here; any attacks on a judge's impartiality must be "firmly dealt with" (*ibid*).

27 As rightly pointed out by Yong Pung How CJ in *Re Tan Khee Eng John* [1997] 3 SLR 382 (at [13]–[14]):

> The power to punish for contempt of court allows a court to deal with conduct which would adversely affect the administration of justice. *Clearly, courts in different jurisdictions may hold different ideas about the principles to be adhered to in their administration of justice, and correspondingly about the sort of conduct which may be inimical to the effective administration of justice.* …
>
> … I do not think it would be useful or practicable in this case to adopt blindly the attitudes evinced by the English courts. *We must ask ourselves what is important to us here in Singapore*.
>
> [emphasis added]

The constitutionality of the offence of scandalising the court

28 The gravamen of the argument put forward by counsel for the Respondent as his client's defence was that the Respondent was exercising his right to freedom of speech under Art 14 of the Constitution. Contrary to the Respondent's thinking, however, there is no right of *absolute* freedom of speech in Art 14 of the Constitution. The right to free speech there enshrined is expressly subject to sub-para (2)(*a*), which stipulates certain permissible restrictions on this right. The relevant parts of Art 14 read:

> (1) Subject to clauses *(2)* and (3) —

(*a*) every citizen of Singapore has the right to freedom of speech and expression;

…

(2) Parliament may by law impose —

(*a*) on the rights conferred by clause (1)(*a*), *such restrictions as it considers necessary or expedient* in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality *and restrictions designed* to protect the privileges of Parliament or *to provide against contempt of court*, defamation, or incitement to any offence;

…

[emphasis added]

29 The offence of scandalising the court falls within the category of exceptions from the right to free speech expressly stipulated in Art 14(2)(*a*). Article 14(2)(*a*) clearly confers Parliament with the power to restrict a person's right of free speech in order to punish acts of contempt. Pursuant to Art 14, Parliament has, by way of s 7(1) of the SCJA, empowered the High Court and the Court of Appeal with jurisdiction to punish for "contempt of court". These provisions amount to statutory recognition of the common law misdemeanour of contempt of court: (see *Wain*'s case ([26] *supra*) at 394, [35]). This power under s 7(1) of the SCJA to punish for contempt would undoubtedly extend to the offence of scandalising the court as that is a form of contempt recognised by Singapore law (*AG v Wong Hong Toy* [1982–1983] SLR 398; *AG v Zimmerman* [1984–1985] SLR 814). The Respondent's submissions on this point were therefore entirely devoid of merit.

The Respondent's liability for scandalising the court

30 The position in Singapore regarding the offence of scandalising the court is well settled. Any publication which alleges bias, *lack of impartiality*, impropriety or any wrongdoing concerning a judge in the exercise of his judicial function falls within the offence of scandalising the court: *Wain*'s case at 397, [49]. A number of local cases including *AG v Pang Cheng Lian* [1972–1974] SLR 658, *AG v Wong Hong Toy* and *AG v Zimmerman* have established that mounting unfounded attacks on the integrity of the Judiciary or making allegations of bias and lack of partiality, is contempt of court.

31 Liability for scandalising the court does not depend on proof that the allegedly contemptuous publication creates a "real risk" of prejudicing the administration of justice; it is sufficient to prove that the words complained of have the "inherent tendency to interfere with the administration of justice" (*per* Sinnathuray J in *Wain*'s case at 397, [50]). In addition, the offence is also one of strict liability; the right to fair criticism is exceeded and a contempt of court is committed so long as the statement in question impugns the integrity and impartiality of the court, *even if it is not so intended* (see *AG v Lingle* [1995] 1 SLR 696 at 701, [13]).

32 With these principles in mind, I turn to the bankruptcy statement, which started off with this comment:

> After much observation and having personally gone through the judicial process, I cannot but come to the conclusion that my case has not received the justice that it is entitled to; it has been crippled right from the beginning.

33 The bankruptcy statement also contained the following passages:

> It is well-known that Singapore has detention without trial. Now it seems that we also have defamation without trial.
>
> …
>
> The above have been but a small sample of instances showing the lack of independence and fairness of our judicial system.

34 After citing defamation actions involving other opposition politicians and quoting comments made by Amnesty International, the International Commission of Jurists, and the New York City Bar Association, the bankruptcy statement added:

> Our own former solicitor-general, Mr. Francis Seow said, "the judiciary…contort themselves into obscene positions to favour...the government."
>
> …
>
> Through the decades opposition politicians have been, and continue to be, hounded, persecuted, and prosecuted by the PAP through the courts. … Today I have made the decision not to remain silent any more and tell you what you don't want to hear: That the judiciary in Singapore is, sadly, not independent especially when it comes to dealing with opposition politicians.
>
> I wish I didn't have to do this. I wish I could say that my country's judicial system is independent and fair. But I can't because that would be a lie.

35 To prove that the bankruptcy statement contained fair criticism, the SSG submitted that the Respondent must but failed to establish that:

> (a) the statements were fair and made in good faith;
>
> (b) *he did not impute improper motives or impugn the integrity, propriety and impartiality of judges or the courts*;
>
> (c) he did not cast aspersions on the personal character of a judge; and
>
> (d) he was genuinely exercising a right of criticism and not acting irresponsibly, in malice or attempting to impair the administration of justice.

36 I agreed with the SSG. These various passages from the bankruptcy statement showed how the Respondent had blatantly accused the Singapore judiciary of favouring the interests of the Government and of failing to discharge its functions impartially. The allegations of bias mounted against the entire Judiciary were unequivocal and clearly attempted to impugn the integrity of the court. To use the words of the English Court in *The King v Davies* [1906] 1 KB 32 at 40, the Respondent's bankruptcy statement was calculated to "excite in the minds of the people a general dissatisfaction with all judicial determinations". To my mind, it was beyond all reasonable doubt that such acts constituted an offence of scandalising the court.

37 Counsel had relied on *The King v Nicholls* (1911) 12 CLR 280 for his submission that the Respondent was not guilty of scandalising the Judiciary as the making and publication of the

bankruptcy statement was not calculated to obstruct or interfere with the course of justice or the due administration of the law (quoting from the headnote of the case). He pointed out that AR Low had already made the bankruptcy order against the Respondent who had also elected not to exercise his right of appeal. Consequently, there was nothing pending before the court that could be obstructed or interfered with by the Respondent.

38 Counsel, however, had selectively quoted from the headnote of *The King v Nicholls*. The complete headnote reads as follows:

> Statements made concerning a Judge of the High Court do not constitute a contempt of the High Court *unless they are calculated to obstruct or interfere with the course of justice, or the due administration of the law, in the High Court*. [emphasis added]

39 Counsel's perceived need for pending proceedings was completely spurious. The offence of contempt of court is established when conduct tends to obstruct, prejudice or abuse the administration of justice "either in relation to a particular case or generally" (*AG v Wong Hong Toy* ([29] *supra*) at 402, [20]). It follows from this that publications attacking judges in their judicial capacity are instances of contempt of court even though proceedings are not pending: *Public Prosecutor v S R N Palaniappan* [1949] MLJ 246 at 248.

40 Notwithstanding the absence of any pending proceedings by or against the Respondent, the fact remains that the statements made by the Respondent, in impugning the entire Singapore judiciary, were calculated to prejudice the future administration of law throughout all Singapore courts. That undoubtedly amounted to an act of contempt.

41 Counsel for the Respondent had also relied on the following passage from *The Queen v Gray* ([22] *supra* at 40):

> [The] description of that class of contempt [characterised as "scandalising a court or a judge"] is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and *if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court.* The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published … [emphasis added]

42 The highlighted portions from the passage qualified the right to criticise the courts and judges. To begin with, for the reasons discussed below, the bankruptcy statement could hardly be said to contain reasoned argument or exposition. In addition, the limits of the right to criticise set out in *The Queen v Gray* also have to be read in conjunction with the Privy Council decision in *Ambard v Attorney-General for Trinidad and Tobago* [1936] AC 322. In delivering the judgment in that case, Lord Atkin had this to say (at 335):

> But [where] the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: *provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune*. [emphasis added]

43 These limits to the right of fair criticism as expressed by Lord Atkin were reiterated in *AG v*

Wong Hong Toy ([29] *supra*), in *Wain*'s case ([26] *supra*) and in *AG v Lingle*. The Respondent, by accusing the Judiciary of treating opposition politicians unfairly, had evidently imputed "improper motives" to all Singapore judges. By so doing, he had exceeded his right of fair criticism and entered the realm of contempt.

Fair comment and justification

44 The defamation defences of fair comment and justification have no application in offences of scandalising the court. In *Wain*'s case (at 397–398, [52]), Sinnathuray J unequivocally stated:

> … I *do not accept* the submission … that [the needs of the administration of justice] should prevail only in cases where the criticism is *dishonest or false* … In this context the defence of *fair comment* analogous to the defence in the law of defamation which was raised for the respondents *is not a defence available to them in contempt of court proceedings*. [emphasis added]

45 It is imperative that the integrity of our judges is not impugned without cause. The overriding interest in protecting the public's confidence in the administration of justice *necessitates* a rejection of the defences at law for defamation, particularly where accusations against a judge's impartiality are mounted. In the words of the authors of *Borrie & Lowe* ([21] *supra*) at p 351, "[a]llegations of partiality are treated *seriously* because they tend to undermine confidence in the basic function of a judge" [emphasis added].

46 Allowing the defence of fair comment would expose the integrity of the courts to unwarranted attacks, bearing in mind that a belief published in good faith and not for an ulterior motive can amount to "fair comment" even though the belief in question was not reasonable (see *Slim v Daily Telegraph Ltd* [1968] 2 QB 157). Singapore judges do not have the habit of issuing public statements to defend themselves (as some UK judges have been prone to do). Our judges feel constrained by their position not to react to criticism and have no official forum in which they can respond. That does not mean that they can be attacked with impunity.

47 In a similar vein, admitting the defence of justification would, in effect, allow the court hearing the allegation of contempt to "sit to try the conduct of the Judge": (see *Attorney-General v Blomfield* (1914) 33 NZLR 545 at 563). Recognising the defence of justification would give malicious parties an added opportunity to subject the dignity of the courts to more bouts of attacks; that is unacceptable.

48 There are more appropriate channels through which genuine concerns regarding the Judiciary can be ventilated. The Constitution has, by way of Art 98, established a means of recourse to deal with judges undeserving of their office. The proper course for anyone who believes that he has evidence of judicial corruption or lack of impartiality is to submit it to the proper authority. The following *dictum* of Wilmot J, in *The King v Almon* ([7] *supra*) at 259; 101 is apposite in this regard:

> *The constitution* has provided very apt and proper remedies for correcting and rectifying the involuntary mistakes of Judges, and *for punishing and removing them for any voluntary perversions of justice*. But if their authority is to be trampled upon by pamphleteers and news-writers, and the people are to be told the power, given to the Judges for their protection, is prostituted to their destruction, the Court may retain its power some little time, but *I am sure it will instantly lose all its authority; and the power of the Court will not long survive the authority of it* … [emphasis added]

49 In any event, the question whether the defences of justification and fair comment were applicable were irrelevant since the Respondent had been unable to provide any credible support for his statements. In the Privy Council case of *Ahnee v Director of Public Prosecutions* ([25] *supra*), Lord Steyn gave an illustration of what would be considered fair criticism that would not amount to scandalising the court. He said (at 306):

> For example, if a judge descends into the arena and embarks on extensive and plainly biased questioning of a defendant in a criminal trial, a criticism of bias may not be an offence. The exposure and criticism of such judicial misconduct would be in the public interest.

The Respondent's comments in the bankruptcy statement cast aspersions on the Singapore judiciary as a whole; he was not criticising the conduct of any particular judge presiding over, or who had presided over, a particular case. Aside from making the blanket assertion that the judges were biased against him because he had lost his cases, the Respondent was unable to point to any *specific* conduct by any judge of the kind envisaged by Lord Steyn.

50 Before me, the Respondent made copious reference to Ross Worthington's article entitled "Between Hermes and Themis: An Empirical Study of the Contemporary Judiciary in Singapore" (2001) 28 Journal of Law & Society 490, to support that what he had set out in the bankruptcy statement *was the truth*. That article expressed the views of an individual who had made erroneous assumptions based on his own beliefs and inaccurate and/or wrong information. I could not accept the speculative conclusions, which the author arrived at, as the truth.

51 In the bankruptcy statement itself, the Respondent relied on foreign publications, his defamation case and a few cases involving opposition politicians who were unsuccessful litigants for his attacks on the Judiciary. However, neither he nor his counsel made any attempt to answer the point-by-point rebuttal made by the SSG to some of the allegations contained in the bankruptcy statement, despite my prompting.

52 Firstly, the SSG pointed out that the Respondent was unsuccessful in his application to admit two Queen's Counsel (see *Re Nicholas William Henric QC* [2002] 2 SLR 296) because the requirements of *ad hoc* admissions under s 21 of the Legal Profession Act (Cap 161, 2001 Rev Ed) were not satisfied. The Respondent did not appeal against the decision of Tay Yong Kwang JC (as he then was) in dismissing his two applications.

53 Secondly, his allegation of defamation without trial was untrue. The plaintiff in the defamation suit instituted against the Respondent was entitled to apply for summary judgment under O 14 of the Rules. As the Respondent could not raise triable issues, the court entered judgment against him, a common outcome in summary proceedings.

54 The Respondent alleged that the Privy Council in *Jeyaratnam JB v Law Society of Singapore* [1988] SLR 1 had concluded that Jeyaretnam and Wong Hong Toy had "suffered a grievous injustice" (at 17, [59]). The SSG referred to a decision of Brooke J in the case *Jeyaretnam v Mahmood* (reported in *The Times* (21 May 1992)) where the judge expressed reservations on the comments made by the Privy Council on the convictions of Jeyaretnam and Wong Hong Toy.

55 Thirdly, his allegation that the Chief Justice abused his position by suing his former remisier, Boon Suan Ban ("Boon"), for defamation and causing the man to be arrested and remanded at the Institute of Mental Health ("IMH") was totally untrue. Although the Chief Justice did commence a civil suit against Boon, it was the Public Prosecutor who preferred a charge of criminal defamation against Boon. The District Court ordered Boon to undergo a psychiatric examination after which, being found

to be of unsound mind, Boon was acquitted of the charge. Boon was remanded at the IMH for treatment and was recently released therefrom. I would add that Boon was a former remisier of OCBC Securities Pte Ltd, and not the Chief Justice's remisier.

56 The Respondent had referred to the submissions tendered to the Ontario Court of Appeal in *Oakwell Engineering Limited v Enernorth Industries Inc* by Enernorth Industries Inc ("Enernorth") in resisting registration of the Singapore judgment obtained by Oakwell Engineering Ltd prior to enforcement. Enernorth lost before the court of first instance and its appeal is pending before the Ontario Court of Appeal. As AR Low rightly pointed out below, the allegations made by Enernorth's counsel were only submissions and from my own cursory glance of the document, the submissions were either unsubstantiated or based on hearsay.

The sentence

57 An offence of contempt is punishable with either a fine or imprisonment, and unlike a criminal offence, it is not subject to any limits on the duration of imprisonment or the amount of fine. In deciding whether an act of contempt is serious enough to warrant imprisonment, two factors are determinative: first, the likely interference with the due administration of justice, and second, the culpability of the offender (*R v Thomson Newspapers, Ltd* [1968] 1 All ER 268 at 269).

58 Sentences of imprisonment tend to be more common in cases which involve a blatant refusal to adhere to an order of court: *OCM Opportunities Fund II, LP v Burhan Uray* [2005] 3 SLR 60; *Lim Meng Chai v Heng Chok Keng* [2001] SGHC 33. In contrast, offences which involved scandalising the Singapore courts have generally been punished by fines only. In the case of *AG v Zimmerman* ([29] *supra*), which was said to be "one of the worst of its kind" (at 816, [4]), T S Sinnathuray J imposed fines of up to $4,000 on persons who scandalised the court by publishing statements in an international newspaper alleging that the courts were not impartial. In that case, Sinnathuray J identified the following considerations which are relevant when considering the appropriate penalty to impose for an offence of scandalising the court:

(a) the nature of the contempt;

(b) who the contemnor is;

(c) the degree of culpability;

(d) how the contempt was published; and

(e) the kind of publication and the extent of the publication.

The object of imposing the penalty for the offence of scandalising the court is to ensure that the unwarranted statements made by the contemnor about the court or the judge are repelled and not repeated: *Gallagher v Durack* (1983) 45 ALR 53.

59 It appeared at first sight that the present offences of contempt *in facie curiae* by insulting the Judiciary as a whole before AR Low, and of contempt by scandalising the court, warranted a fine rather than a term of imprisonment. However, the present case can also be distinguished from all previous cases in which fines were imposed for acts scandalising the court. None of those cases involved situations where the contemptuous statements were actually read *before* the court. This factor, coupled with the unfounded allegations made against the Judiciary, clearly rendered the acts of the Respondent as "conduct calculated to lower the authority of the court" which amounted to

"sheer, unmitigated contempt" sufficient to warrant a sentence of imprisonment: (*per* Yong CJ in *Re Tan Khee Eng John* ([27] *supra*) at [14]).

60 The Respondent's conduct leading up to the present proceedings was clearly reprehensible. In addition, he was not contrite nor did he make any attempt to withdraw his offending remarks. Instead, he repeatedly maintained that he spoke the truth. As the SSG had submitted, a jail sentence was necessary so as to deter the Respondent from repeating, and like-minded persons from committing, similar acts in future.

61 For the reasons stated, I decided to and did impose a jail sentence of one day on the Respondent. It was to serve as a warning to others who chose to go down the Respondent's path that, henceforth, similar offenders can expect to be incarcerated and perhaps fined as well and, if the circumstances warranted it, sent to jail for longer periods too. Fines as the penalty for contempt of court of this nature will no longer be the norm.

62 I was mindful of the fact that the Respondent had been adjudicated a bankrupt on 10 February 2006. The fine I imposed on him should not therefore be a crippling sum which would render it well nigh impossible for him to pay so that, by default, he would inevitably serve extra time in prison. Hence, I set the fine at $6,000 using, as a yardstick, the fines imposed in previous cases of contempt proceedings, in particular *AG v Lingle* ([31] *supra*), where the fines imposed on the defendant and other contemnors ranged from $5,000 to $10,000. In default of payment of the fine, I ordered the Respondent to serve seven days' jail.

63 Despite the reasonableness of the fine, the Respondent chose not to pay. Consequently, he would have to serve a sentence of eight days' imprisonment.

[note: 1] Summons dated 20 February 2006 at [1].