IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 132

Originating Summons No 294 of 2017

Between

Public Prosecutor

… *Plaintiff*

And

Rajendar Prasad Rai

… *Defendant*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Police] — [Preventive action]

[Criminal Procedure and Sentencing] — [Disputes as to immovable property]

Public Prosecutor
v
Rajendar Prasad Rai

[2017] SGHC 132

High Court — Originating Summons No 294 of 2017
Lai Siu Chiu SJ
16, 17, 20 March 2017

1 June 2017

Lai Siu Chiu SJ:

Introduction

1 The Public Prosecutor ("the Applicant") applied in this Originating Summons No 294 of 2017 ("the OS") for the following orders ("the Orders") against Rajendar Prasad Rai ("the Defendant"):

> (1) [The Defendant and his wife, Gurchandni Kaur Charan Singh @ Gurchandni Kaur d/o Charan Singh ("GK")] be restrained until further order, whether by themselves, their servants, agents or otherwise howsoever, from disposing of, transferring, assigning, pledging, distributing, charging, encumbering, diminishing the value of or otherwise dealing with any realisable property held by [the Defendant], whether in their possession, custody or power at the time of the Order to be made hereon or coming into their possession, custody or power at the time of the Order to be made heron or coming into their possession, custody or power during the period while the Order to be made hereon is in force:

a. the balance in the UOB High Yield account no. [xxxx120] in the name of [GK];

b. the balance in the UOB Savings account no. [yyyy019] in the name of [GK]; and

c. the balance in the UOB High Yield account no. [zzzz345] in the name of [the Defendant].

(2) A charge, subject to the Order to be made in Prayer (3) below, be imposed on the following realisable property (hereinafter referred to as "the properties") held by [the Defendant] to secure payment to the Government of an amount equal to the value from time to time of the property charged:

a. 36H Dunearn Road #16-45, Chancery Court, Singapore 309433 ("the Chancery Court property") which title is registered in the name of [the Defendant];

b. 44 Bedok Ria Crescent, Singapore 489860 ("the Bedok Ria property") which title is registered in the name of [the Defendant];

c. 78A Lorong K, Telok Kurau #05-10, Palm Galleria, Singapore 425702 ("the Palm Galleria property") which title is registered in the name of [the Defendant]; and

d. 80B Horne Road, Singapore 209079 ("the Horne Road property") which title is registered in the name of [GK].

(3) (a) The following mortgagees shall be at liberty to exercise their powers of sale as mortgagees over the respective properties:

(i) Standard Chartered Bank, over the [Horne Road property];

(ii) Standard Chartered Bank, over the [Palm Galleria property]; and

(iii) United Overseas Bank, over the [Bedok Ria property].

(b) The sale proceeds arising from the mortgagees' exercise of their power of sale are to be utilized as follows:

(i) to pay the legal and all other costs and expenses incurred or to be incurred in relation to the property and the sale thereof; and

(ii) to pay to the mortgagee of the property sold the balance in respect of the housing loan on the property sold;

provided that the legal and other expenses referred to in Prayer (3)(b)(i) and the balance outstanding referred to in Prayer 3(b)(ii) are proven to the satisfaction of the [A]pplicant.

(c) In the event that there are surplus sale proceeds after the sale of the properties and settlement of the foregoing amounts, the surplus sale proceeds (less any reasonable costs or expenses incurred for payment into Court) shall be paid into Court by the mortgagees of the properties and the payment of such surplus by the mortgagees shall constitute a full discharge of the payment obligation of the mortgagees to the mortgagors of the properties.

(d) No application for payment out of the monies paid into Court under Prayer (3)(c) would be made without notice to the [A]pplicant. Every application for payment out of the monies paid into Court under Prayer (3)(c) should be served on the [A]pplicant not less than [five] clear days before the date fixed for the hearing of the application for payment out.

(4) A caveat, in respect of the Order to be under Prayer (2), be lodged under the Land Titles Act [(Cap 157, 2004 Rev Ed) ("the LTA")].

(5) [The Defendant and GK] be notified of the Order to be made hereon and be served with a copy of such Order and the affidavit filed in support of this application.

(6) An officer of the Corrupt Practices Investigation Bureau, Singapore ("CPIB"), be authorised to serve the Order to be made hereon and the affidavit filed in support of this application on [the Defendant and GK] by posting the same at their last known address in Singapore and the endorsement of the said officer of such service shall be sufficient proof of such service on them.

(7) The [A]pplicant be given liberty to apply.

(8) The Order to be made hereon would have effect and remain in force until a day [had been] fixed for hearing inter-partes of the application or any adjournment thereof, whichever be the later.

(9) The costs of this application be reserved.

> (10) Such other relief or order as the Honourable Court deems fit.

2 Although the OS was an ex-parte application, it was heard inter-partes over three days after which this court granted:

(a) An order in terms of Prayer 1(a) to (c), as orally amended for Prayer 1 to read in lines 6 & 7 "dealing with the following realisable properties held by [the Defendant]" instead of "dealing with any realisable property".

(b) An order in terms of Prayers 2(a), (b), (c) and (d) in that a charge would be imposed on the following four properties held by the Defendant or GK to secure to the Government an amount equal to the net value from time to time of the properties charged (less redemption monies or money owed to mortgagee banks):

(i) The Chancery Court property, which title is registered in the name of the Defendant;

(ii) The Bedok Ria property, which title is registered in name of the Defendant;

(iii) The Palm Galleria property, which title is registered in the name of the Defendant; and

(iv) The Horne Road property, which title is registered in the name of GK.

(c) Prayers 3, 4, 5, 6 were adjourned *sine die* with liberty to restore.

(d) An order in terms of prayers 8 and 9.

(e) Parties liberty to apply under prayer 7.

(f) Costs in the cause.

(g) No order on prayer 10.

The Orders granted were to continue until further orders were made.

3 As the Defendant has appealed (in Civil Appeal No 74 of 2017) against the orders that were made, I now set out the reasons therefor.

The background

4 The genesis of the OS is Criminal Motions Nos 71 and 72 of 2016 (collectively "the Criminal Motions") which were heard by Sundaresh Menon CJ in February 2017, after which he delivered his decision on 13 March 2017 (see *Rajendar Prasad Rai and Another v Public Prosecutor and Another Matter* [2017] SGHC 49 ("the Judgment")).

5 The Defendant and his wife, GK were the applicants in Criminal Motion No 71 and 72 of 2016 respectively. They had applied for the release of bank accounts and certain immoveable properties that had been seized by the authorities in October 2015 ("the seizure order") pursuant to ss 35(7) and 370(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"). The seizure order was made after the Defendant was charged on or about 26 September 2015 with six counts of corruption under s 5(*b*)(i) (read with s 29) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("the PCA") for match fixing activities that had taken place in 2013–2014. Section 5(*b*)(i) of the PCA reads as follows:

Punishment for corruption

> **5.** Any person who shall by himself or by or in conjunction with any other person —
>
> …
>
> (*b*) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,
>
> any gratification as an inducement to or reward for, or otherwise on account of —
>
> (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; …
>
> …
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.

Trial on five of the corruption charges was on-going in the State Courts at the time of the Application with the remaining sixth charge stood down. The trial judge had called for the Defendant to take the stand after rejecting his submission that there was no case for him to answer.

6 At the hearing, this court was informed that the Defendant was being investigated for possible offences under s 47 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the CDSA") although no charges thereunder have been preferred against him.

7 The items seized pursuant to the seizure order included monies exceeding $500,000 in the three UOB bank accounts ("the UOB accounts") set out in [1] above at para (1). Caveats had also been lodged by the Registrar of the Singapore Land Authority ("the SLA") over the immoveable properties listed in [1] at para (2) (except for the Bedok Ria property) pursuant to s 7(1)(*b*) of the LTA which states:

> **General powers of Registrar**
>
> **7.**—(1) The Registrar may exercise the following powers:
>
> ……
>
> (*b*) he may enter caveats for the prevention of fraud or improper dealing whenever he has reason to think that fraud or improper dealing may occur, or for the prevention of any dealing with any registered land which has been found to be erroneous;

Another seven bank accounts seized by the Applicant were subsequently released by the Applicant and were not the subject of the extension of the seizure order to 30 June 2016 granted by the State Courts.

8 In the Criminal Motions, the Defendant and GK applied to set aside the seizure order. In the alternative, they applied under s 35(7) of the CPC for the release of certain amounts from the UOB accounts to meet their reasonable expenses, including payment of their legal fees. Section 35(7) of the CPC states:

> **Powers to seize property in certain circumstances**
>
> (7) A court may —
>
> (*a*) subsequent to an order of a police officer made under subsection (2); and
>
> (*b*) on the application of any person who is prevented from dealing w property,
>
> order the release of such property or any part of such property.

9 The Judgment only addressed the issue of whether the court below was correct in granting the seizure order under s 370 of the CPC. That section reads as follows:

> **Procedure governing seizure of property**
>
> **370.**—(1) If a police officer seizes property which is taken under section 35 or 78, or alleged or suspected to have been

> stolen, or found under circumstances that lead him to suspect an offence, he must make a report of the seizure to a Magistrate's Court at the earlier of the following times:
>
> (*a*) when the police officer considers that such property is no longer relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code; or
>
> (*b*) one year from the date of seizure of the property.
>
> (2) Subject to subsection (3), the Magistrate's Court must, upon the receipt of such report referred to in subsection (1), make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.
>
> (3) The Magistrate's Court must not dispose of any property if there is any pending court proceeding under any written law in relation to the property in respect of which the report referred to in subsection (1) is made, or if it is satisfied that such property is relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code.

10 At the hearing of the Criminal Motions, the Applicant argued that the funds in the UOB accounts were relevant to investigations under the CDSA, were the main focus of those CDSA investigations and the extension of the seizure order was necessary to prevent a risk of dissipation.

11 Menon CJ pointed out (at [34]) of the Judgment that s 35(1)(*b*) and (*c*) of the CPC concerned the seizure or the prevention of the disposal of evidence or items used or intended to be used to commit an offence. Those provisions would not extend to a seizure for the purpose of preventing the dissipation of certain property, pending a final order for the disposal of that property.

12 Menon CJ went on to consider whether s 35(1)(*a*) of the CPC would extend to a seizure for the purpose of preventing the dissipation of certain property, pending a final order for the disposal of the same. He held that it would provided that the items seized were the fruits or the traceable proceeds

of an identifiable crime. He pointed to the distinction in language between s 35(1)(*a*) and s 35(1)(*b*) and (*c*). The three subsections read as follows:

> **Powers to seize property in certain circumstances**
>
> **35.**—(1) A police officer may seize, or prohibit the disposal of or dealing in, any property —
>
> (*a*) in respect of which an offence is suspected to have been committed;
>
> (*b*) which is suspected to have been used or intended to be used to commit an offence; or
>
> (*c*) which is suspected to constitute evidence of an offence.

13 As the funds in the UOB accounts were not the fruits or the traceable proceeds of an identifiable crime, Menon CJ held that s 35(1)(*a*) of the CPC precluded the Applicant from holding onto those funds. Menon CJ inquired (at [57]) why the Applicant did not proceed under the powers of seizure contained in the CDSA as in some respects, the CDSA expanded the reach of the powers of seizure beyond those provided under s 35 of the CPC. His Honour cited in particular the power to seize under the CDSA even if the property did not form the traceable proceeds of an identifiable offence. He noted that the potential reach of a CDSA restraint order is wider than that of seizure under s 35 of the CPC.

14 Menon CJ held that the Magistrate had erred in granting the seizure order as there was no reasonable basis before her to find that the seized funds were relevant to any of the purposes listed under s 370(3) of the CPC (set out at [9] above).

15 On 13 March 2017, Menon CJ granted the Criminal Motions and set aside the seizure ("the release order"). Menon CJ rejected the Applicant's request for a stay of execution on the release order.

16 Menon CJ's refusal on 14 March 2017 to grant a stay of the release order was the catalyst for the filing of the OS. The Applicant's move was also prompted in part by the conduct of the Defendant and GK who wasted no time in attempting to withdraw their funds from the UOB accounts. Indeed, on the very same afternoon that Menon CJ refused to grant the Applicant's application for a stay, they tried to withdraw the funds. They failed as UOB required an order of court for the release. The Defendant's solicitors responded to UOB's refusal with a demand letter on 16 March 2017, stating that unless UOB released the funds in the UOB accounts by 4.00pm, the Defendant would commence proceedings against the bank. That did the trick. While counsel was before me at the hearing on 16 March 2017, the Defendant and GK withdrew almost all the funds in the UOB accounts.

The Originating Summons

The Applicant's case

17 The Application was supported by an affidavit filed by Lam Wai Chong ("Lam") who is a principal special investigator of the CPIB. Lam's affidavit contained (in exhibit LWC-4) a concealed income analysis report ("the Analysis Report") that he had prepared in relation to the Defendant's financial affairs. According to Deputy Public Prosecutor Tan Kiat Pheng ("Mr Tan"), the methodology employed by Lam is an established practice used by the CPIB and the Central Narcotics Bureau as well as by the Inland Revenue authorities of the United States.

18 In the Analysis Report, Lam computed the Defendant's net worth using 2008 as the base year, based on the Applicant's belief that the Defendant's criminal activities started in 2009. Lam's calculations were done up to 30 September 2015.

19 The Analysis Report stated the following:

(a) the Defendant was only gainfully employed for a few months between September 2008 and February 2009;

(b) GK stopped working after she conceived her first child in 2002 and was last employed by Singapore Airlines as a flight attendant;

(c) the couple had three children of school-going age and had a helper; and

(d) the Defendant paid income taxes of $11,488.96 and $8,331.32 in 2013 and 2015 respectively.

20 The 17-page Analysis Report took into account:

(a) the couple's rental income from all their properties (local and overseas) between 2008 and 2013;

(b) the Defendant's winnings from Singapore Pools of $546,840 and $790,830 (from his bets of $279,000 and $362,500) in 2013 and 2015 respectively;

(c) the Defendant's winnings of $177,200 from gambling on eleven occasions at Resort Worlds Sentosa between 2010 and 2015 although he also suffered losses of $188,900 in 2010, 2014 and 2015. He had also lost $18,000 gambling at the casino at Marina Bay Sands;

(d) the Defendant's alleged inheritance from his late father in 2010 of $1m cash and the Chancery Court property;

(e) the sale of No. 74 Duxton Road, Singapore ("the Duxton Road property") in 2010 for a gross sum of $3,350,000 and a net sum of $822,876.09 as the Defendant's share; as well as

(f) the expenses incurred between 2008 and 2015 by the Defendant and GK which included the following:

(i) household as well as their children's expenses;

(ii) payments on eleven credit cards they held;

(iii) insurance premiums totalling $404,132.52 that was on eleven insurance policies between 2008 and 2015;

(iv) road tax and insurance premium paid on their Toyota vehicle; and

(v) vacation trips to London, Cuba, Penang and Phuket.

21 The Analysis Report concluded that the Defendant had disproportionate wealth estimated at $3,811,127.30 during the period January 2009 and September 2015 which was likely to be derived from his criminal activities.

22 Mr Tan informed this court that having taken note of the comments made by Menon CJ in the Judgment, the Applicant filed the OS and the Application.

The Defendant's case

23 Not surprisingly, the Defendant disputed the findings in the Analysis Report and his counsel, Mr Sreenivasan challenged the methodology adopted by Lam in its preparation.

24 Mr Sreenivasan submitted that a restraint order is far more serious than a Mareva injunction. Further, a confiscation order under s 5(1) of the CDSA can only be made when the Defendant is convicted, for which s 5(6) first requires a presumption that the Defendant did hold property or interest in property that was disproportionate to his known sources of income and which holding cannot be explained to the satisfaction of the court. He pointed to the requirements for a charging order set out under s 15(1)(*a*), (*b*) and (*c*) in particular (*c*) that "the court must be satisfied that there is reasonable cause to believe that benefits have been derived by the defendant from drug dealing or from criminal conduct". He contended this requirement was missing in the Defendant's case.

25 Mr Sreenivasan then drew this court's attention to various passages in the Judgment, which he asserted meant that the Applicant's case against the Defendant was lacking in many respects.

26 Mr Sreenivasan was puzzled why the Applicant chose to redact from the exhibits in Lam's supporting affidavit portions of the Defendant's affidavit filed in the State Courts on 28 October 2016, portions of GK's statement recorded by the CPIB on 6 October 2015, portions of the Defendant's UOB accounts' statements as well as portions of the statement recorded on 19 August 2016 by CPIB from the Defendant's brother, Vijay Nath Rai ("Vijay"). He also questioned why the Applicant did not give this court a copy of the Defendant's as well as GK's affidavit, both filed on 2 December 2016 (jointly "the two December 2016 affidavits") in support of the Criminal Motions.

27 Mr Sreenivasan pointed out that the above omissions were significant because, had this court been apprised of the two December affidavits, the court

would have been aware that some issues before this court had already been addressed.

28 He then referred to the affidavits filed on the morning of 17 March 2017 by the Defendant and GK ("the 17 March 2017 affidavits"). GK's affidavit explained her withdrawals from the UOB accounts, the timings of those withdrawals as well as the reasons therefor. Counsel did not dispute Mr Tan's statement that the Defendant and GK wanted to make withdrawals from the UOB accounts but pointed out that prior to the seizure of her own bank account, GK had made no attempt to withdraw her funds of $500,000 that were not the Defendant's.

29 Mr Sreenivasan questioned Lam's qualifications in preparing the Analysis Report. He contended that Lam had done a "horrible job" and inquired what criminal activity the Defendant had engaged in, that prompted Lam to use 2008 as the base year for his analysis.

30 Mr Sreenivasan pointed out that in the Defendant's 17 March 2017 affidavit, he had deposed to the fact that he had sold his businesses in three bars in 2005 for which the Defendant was collecting payments by instalments. Mr Sreenivasan argued it was absurd for the Analysis Report to state that the Defendant's net worth was a negative $4.033m when the Defendant had been in business for a long time, owned three bars at one time, traded in diamonds/precious stones and held a moneylender's licence like his elder brother, Bijabahadur Rai ("Bijabahadur"). Moreover, the Applicant had not taken into account all of the Defendant's winnings from Singapore Pools as well as from his bets on European football clubs. When this court inquired, Mr Sreenivasan confirmed that the Defendant was a very successful punter.

31 I now return to the 17 March 2017 affidavits, stated above in [28]. The Defendant's 17 March 2017 affidavit elaborated on his business activities set out in [30]. He added that he also acted as a consultant to persons who wished to set up new businesses or operate food and beverage related companies, both locally and overseas. He deposed that he occasionally borrowed money from his two elder brothers who are also successful businessmen.

32 The Defendant disclosed that he was a very heavy gambler, both locally and overseas, whether in sports or in casinos. Due to his many contacts in football circles acquired over the years, the Defendant claimed he often received good betting tips from those sources.

33 Notwithstanding what Mr Tan had informed this court, the Defendant pointed out that to-date, he had neither been charged for any offences under the CDSA nor had he been interviewed by the CPIB in that regard or told what the offences were for which he was being investigated.

34 He complained that the Applicant had deliberately redacted in the copy tendered to this court, portions of the Defendant's October 2016 affidavit, despite a duty to make full and frank disclosure for applications made under ss 16 and 17 of the CDSA. The Applicant had also intentionally redacted important information pertaining to the sources of the Defendant's income as set out in the Defendant's October 2016 affidavit.

35 In the Defendant's October 2016 affidavit, he had explained how he had obtained the funding for the purchase of the four properties listed at [1](2) all of which the Applicant ignored. His source of funds were:

(a) an inheritance from his late father who passed away in November 2010;

(b) money that he obtained from his property investments;

(c) his earnings from operations of pubs that he owned; and

(d) his substantial winnings in placing bets with Singapore Pools over several years.

36 The Defendant elaborated on [355] by providing the following details:

(a) The Chancery Court property

This flat was originally purchased by his father and brother, Vijay in 1996, using in part a compensation sum of $43,500 that the Defendant had received from the Singapore Armed Forces for an injury he had sustained to his left eye while doing national service. The flat was transferred to the Defendant in November 2000 with him taking over repayment of the housing loan.

(b) Overseas property at 324 City Point, Conningham Court Kidbrooke Village London, SE9 United Kingdom ("the Conningham property")

The Defendant noted that the Analysis Report showed an increase in value from 2012 to 2015 but this was due to the increase in value of the British pound *vis-à-vis* the Singapore dollar and not an actual increase in the property's value. That increase in value however was taken by the Applicant to have contributed to his "illegal income".

(c) HDB flat at 895A, Tampines Street 81, Singapore 521895

The Defendant pointed out that this flat did not belong to him but to his cousin, Inderjit Rai. It should therefore not be included as part of his

assets. (The Applicant on the other hand maintained that the Defendant paid for and hence beneficially owned the flat).

(d) Diamond trading business

The Defendant deposed that he traded in diamonds between 2008 and 2015. In the Analysis Report, Lam stated that there were no records at the Accounting and Corporate Regulatory Authority of the Defendant's shareholdings or directorships in any registered business entities engaging in diamond trading. The Defendant deposed that was because his diamond trading was transacted in cash and carried out overseas in London, Antwerp, Panama and the Middle East and for which he travelled three to four times every month. The Analysis Report did not reflect his income from his diamond trade for which his undeclared income was estimated to be $1m between 2008 and 2015. This figure was omitted from the Analysis Report.

(e) Food and beverage business

The Defendant deposed that he met with a serious road accident in 2005 which forced him to sell his businesses. The Analysis Report failed to take into account the sum of $1.6–$1.7m that he received from selling his businesses. Consequently, the Analysis Report was inaccurate in stating that his income was approximately a negative $4m. He had in fact a few hundred thousand dollars in cash and outstanding sums owed to him.

(f) Other income sources

(i) The Defendant deposed that he had other income from acting as a business consultant in Malaysia, Latvia and

England for the opening and operation of bars, pubs and restaurants some of which assignments paid him $50,000 each. Sometimes, he had three of such assignments in a year.

(ii) The Defendant deposed that his winnings from Singapore Pools were placed in either his account with Standard Chartered Bank or in his UOB High Yield account listed above at [1(1)(c)].

37 Besides not disclosing and/or redacting the Defendant's October 2016 affidavit, the Defendant alleged that the Applicant had redacted significant portions of Vijay's statement as well as GK's statement dated 19 August 2016 and 6 October 2016 respectively, recorded by the CPIB. Further, the Applicant had deliberately omitted from disclosing to this court the Defendant's three affidavits and GK's two affidavits filed for the Criminal Motions in which he and GK had set out the sources of their income.

38 At the hearing, Mr Tan alleged that on the very day the Defendant was arrested, the Defendant had through GK withdrawn $500,000 from a UOB account. The Defendant disagreed. He explained that before his arrest, he had been in Panama. There, he received a telephone call from his brother, Vijay to whom he then owed $1.8m. Vijay had requested that the Defendant return $500,000 of that loan as Vijay needed the money for an investment. Hence, the Defendant telephoned GK and requested her to withdraw $500,000 by way of a cash cheque. The Defendant claimed he would always leave a blank signed cheque with GK whenever he travelled so that should anything happen to him, GK could withdraw money to take care of herself and the children. That was how GK could withdraw $500,000 to pay Vijay. The Defendant

emphasised he had asked GK to withdraw the sum even before his arrest by CPIB. Once arrested, he could not communicate with anyone. If indeed he intended to dissipate his money, he would have asked GK to withdraw all the funds in the UOB accounts instead of only $500,000.

39 In regard to the withdrawals from the UOB accounts, the Defendant explained that following upon the release order of Menon CJ and the dismissal of the Applicant's application for a stay of the release order, he and GK visited UOB in the afternoon of 14 March 2017. He was unable to withdraw any funds because UOB took the view that an order of court was necessary for the withdrawals to be made.

40 The Defendant's solicitors gave a deadline of 4.00pm on 16 March 2017 for UOB to release funds from the UOB accounts or action would be taken against the bank. That enabled the Defendant and GK to withdraw a total of $551,650 from the UOB accounts between 4.19pm and 4.32pm on 16 March 2017. He deposed that his other solicitor, Jason Lim called him at 4.00pm to say UOB was lifting the seizure. By the time he received Mr Sreenivasan's telephone call at 4.22pm to inform him that this court had directed that he should not dispose of the funds in the UOB accounts, the Defendant had already made the withdrawals, submitted the TT forms to UOB and he had handed cash $200,000 to GK which was later passed to Vijay at a carpark along Philip Street.

41 In the Defendant's October 2016 affidavit, he had complained that the seizure order had caused him financial hardship – he had been unable to pay for basic necessities such as his family's food and household expenses, his car's expenses, utilities, insurance premiums and his children's school and tuition fees. He had also been unable to settle his outstanding tax liabilities,

property tax on his properties, mortgage instalments on his/GK's housing loans from OCBC, credit card bills and legal fees. The total amounts he owed approximated $150,000–$200,000 which could easily be paid if his seized funds were released.

42 GK's 17 March 2017 affidavit in essence corroborated the Defendant's affidavit of the same date and it would not be necessary to dwell further on it save to say that she disclosed that between 4.28pm and 4.32pm on 16 March 2017, three telegraphic transfers totalling $351,650 02,000 were remitted to the account of Shree Rai, which is the moneylending business of the Defendant's brother, Bijabahadur. Of that amount, $302,000 and $33,700 came from her account while $15,950 was remitted from the Defendant's account.

The report of Ferrier Hodgson Pte Ltd

43 To counter the Analysis Report and Lam's affidavit, the Defendant produced in his supplementary affidavit, a report dated 16 March 2017 he had obtained from Ferrier Hodgson Pte Ltd ("the FH Report"), an accounting expert. Citing the FH report, the Defendant contended that if the Analysis Report was indeed accurate, there would not be any negative concealed income as the Applicant alleged. He contended that the fact that the Analysis Report stated there was negative concealed income meant that Lam's analysis was flawed.

44 The FH Report criticised the Analysis Report, noting that Lam's analysis of the change in net worth of the Defendant did not take into account the change in value of assets due to market conditions. The FH Report opined that the Analysis Report was essentially an analysis of cash flow which would

not be accurate at all unless all assets acquired or disposed of were identified and included in the computation. The FH Report added that it was unusual to have two negative amounts as stated in the Report of $514,440.75 and $1,375,116.33 as concealed income for 2009 and 2011 respectively as concealed income can only be categorised as income which is unaccounted for. It cannot be a negative figure (as Mr Sreenivasan contended).

45 The FH Report went on to expand in greater detail the perceived flaws in the Analysis Report. First, it was noted that the Analysis Report recorded the Defendant's opening net worth as $4,033,852.40 by subtracting his liabilities of $5,998,148.20 from his assets of $2,403,000 as at 31 December 2008. That implied that either the Defendant had incurred larger liabilities without acquiring equivalent assets (namely he had borrowed and lost/expended the monies) or, that he was holding assets which had not been identified or captured in Lam's analysis. The FH Report noted that Lam failed to take into account amounts owed to the Defendant by third parties or cash that he held.

46 As the starting net worth is critical to the entire analysis, the discrepancy calls into question the entire Analysis Report unless the reason for the large negative net worth was ascertained and considered.

47 The FH Report further noted that as at 31 December 2008, the Defendant's assets apparently comprised of bank deposits and properties while his liabilities were bank and personal loans. In that regard, the FH Report noted that personal loans to the Defendant from family members totalling $2.3m made up 60% of the Defendant's total liabilities of $3,806,295.82 as at 30 September 2015. Using the outstanding loans as at 30 September 2015, Lam had then used the figure to calculate retrospectively the amounts of

personal loans extended by the Defendant's family members for the years 2008 to 2014 without providing any explanation or banking or other supporting documents.

48 Further, the Analysis Report recorded the values of the Defendant's Singapore immoveable properties at their historical purchase prices and maintained those prices throughout the period of the analysis. Even then, the total value of the properties held by the Defendant stated to be $4,765,204.50 was inconsistent with the Appendix A figure of $4,743,204.50. There were no supporting documents to explain why the Defendant's share of the Duxton Road property was determined to be 23% of the purchase and sale prices of $2,500,000 and $3,350,000 respectively. Moreover, the rental income taken into account by Lam did not identify the properties from which the income was derived.

49 As for the Conningham property, the FH Report pointed out that the Analysis Report should not have taken into account currency fluctuations between the Singapore dollar and the British pound. The appropriate exchange rate to be used would be that at the point of purchase.

50 Another criticism in the FH Report related to the Defendant's Toyota vehicle. It noted that the Analysis Report recorded the vehicle's value consistently at $40,000 from 2009 to 2013 without taking into account depreciation, repair and running expenses.

51 The same criticism was levelled against Lam's computation of household expenses. Lam had used the same figure of $80,905 for such expenses for every year from 2008 to 2015 without taking into account fluctuations in some items such as utilities charges.

52 Lam's treatment of the Defendant's credit card expenses also attracted criticism in the FH report. It was noted that while Lam had recorded the credit card payments made by the Defendant from 2011 to 2015, he had omitted to record any outstanding liabilities owed on the Defendant's eleven credit cards for the same period.

53 The FH Report noted that Lam's figures for the Defendant's income tax payments for the years 2012 to 2015 totalling $17,303.17 were inconsistent with the payments stated in Appendix A of $19,820.28. A similar inconsistency was noted between the employment incomes received by the Defendant and GK which were recorded as $2,048 and $1,078.26 respectively in the Analysis Report but the total of $3,126.26 differed from those in Annex A which stated the figures were $12,505.04 and $6,252.52 respectively for 2008 and 2009, totalling $18,757.56.

The decision

54 It would be appropriate to first look at the provisions of the CDSA upon which the OS was grounded. Section 5(6) of the CDSA reads as follows:

> Without prejudice to section 28, for the purposes of this Act, a person who holds or has at any time (whether before or after 13th September 1999) held any property or any interest therein (including income accruing from such property or interest) disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court, shall, until the contrary is proved, be presumed to have derived benefits from criminal conduct.

55 The restraint order that the Applicant sought was pursuant to s 16(1) and (4) of the CDSA which read as follows:

> **Restraint orders**
>
> **16.**—(1) The High Court may make a restraint order to prohibit any person from dealing with any realisable property,

> subject to such conditions and exceptions as may be specified in the order.
>
> …
>
> (4) A restraint order —
>
> (*a*) may be made only on an application by the Public Prosecutor;
>
> (*b*) may be made on an ex parte application to a Judge in chambers; and
>
> (*c*) shall provide for notice to be given to persons affected by the order.

56 The application for a charging order was pursuant to s 17(1)(*a*) and (3) of the CDSA. The sections read:-

> **Charging orders in respect of land, securities, etc**.
>
> **17.**—(1) The High Court may make a charging order on realisable property for securing the payment to the Government —
>
> (*a*) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged;
>
> …
>
> (3) A charging order may be made —
>
> (*a*) only on an application by the Public Prosecutor
>
> (*b*) on an ex parte application to a Judge in chambers.

57 It can be seen from the relevant provisions in ss 5, 16 and 17 of the CDSA as set out above that the powers granted to the State are very wide indeed and do not have the restrictions contained in s 35(1) of the CPC highlighted by Menon CJ in the Judgment (see [11]–[12] above). Those sections were the basis for the comprehensive orders that were sought by the Applicant.

58 It bears mentioning from [2] above that, save for granting charging orders on the four properties listed and freezing the funds in the UOB accounts, this court declined to grant the other prayers in the Application. In the light of the substantial withdrawals made therefrom by the Defendant and GK as set out in [39]–[40] above, the freezing orders that were granted on the UOB accounts were also academic as the accounts had been largely depleted.

59 This court informed the parties at the time of making the orders that the orders granted were a temporary measure in the light of Mr Tan's assurance that the Applicant only wanted such temporary measures to be in place until such time as the State was ready to proffer charges against the Defendant under the CDSA.

60 This court was willing to accommodate the Applicant to a limited extent as reflected in the charging and freezing orders that were granted, as the court indicated that the State should expedite its intended proceedings against the Defendant under the CDSA.

61 In that regard, it is noted that the Defendant had been charged for match fixing in September 2015 and the trial took place about 18 months later. If the Defendant will indeed be charged under the CDSA, it was incumbent on the Applicant to do so promptly out of fairness to the Defendant and in the interests of justice.

62 While this court appreciates that the State must necessarily exercise caution in bringing such serious criminal charges against any individual, it behoves the Applicant not to delay such proceedings against the Defendant if so intended. The Applicant has been familiar with the facts surrounding the Defendant's case since before 27 May 2015, that being the date of the second

charge that was proffered against the Defendant under s 5(*b*)(i) read with s 29 of the PCA. Therefore, regardless of the type or nature of the charges that were brought against the Defendant, the State must have commenced investigations against the Defendant in 2015 or even earlier. Hence, the Applicant should be in a position to make a timely decision on whether and what charges should be brought against the Defendant under the CDSA.

63 As for the Analysis Report, while this court accepts that the methodology applied by Lam was/is adopted by other law enforcement agencies locally and overseas, the application of the methodology is a different consideration altogether.

64 This court noted that the criticisms in the FH Report against Lam's computations in [48]–[51] are not unfounded. There should not be discrepant figures for the total values of the immoveable properties owned by the Defendant and/or GK while the increase in value of the British pound against the Singapore dollar (up to September 2015) cannot be a basis to compute the increase in value of the Conningham property as an item of unexplained income. Moreover, the value of any motor vehicle cannot remain constant for seven years, let alone the Defendant's second-hand Toyota. Depreciation alone would have reduced its $40,000 value in 2009 to nil or a negligible sum by 2013. The same comment would equally apply to household expenses. It cannot remain a static figure of $80,905 for eight years as Lam stated in his analysis.

65 I should add that the above discrepancies were not addressed at all in Lam's second affidavit filed on 20 March 2017. Orally, Lam had at the hearing that day, amended certain figures in the Analysis Report as well as in

Appendix A. However, his oral amendments did not explain the discrepancies and shortcomings noted in the FH Report (which were accepted by this court).

66 I should point out that Mr Tan had, in response to the criticism on Lam's unjustified increase in the value of the Conningham property, submitted that even if that increase in value (approximating $45,000) over four years was discounted, it would not change the Defendant's unexplained wealth of $3,811,127.30. I agreed with this submission. This court further noted that the other discrepancies enumerated at [48], [50] and [51] would not make any *significant* dent in the disproportionate wealth figure of $3,811,127.30.

67 Leaving aside the dispute between the Applicant and the Defendant *vis-à-vis* the methodology used to calculate the Defendant's assets and liabilities, this court cannot overlook the fact that a person of the Defendant's reasonably modest means and who of late (with his wife) was not gainfully employed, possessed wealth far in excess of his known means and sources of income. In this regard, this court gave the Defendant the full benefit of the doubt that he was consistently if not always, successful in the (huge) bets he placed on football matches by European clubs.

68 Further, if as the Defendant claimed, he traded in diamond/precious stones overseas always on a cash basis, there must be some sort/form of documentation for such trades. Yet not one iota of evidence was produced by the Defendant to support this source of trade and attendant substantial income. Even if his buyers bought from the Defendant on cash terms basis and there were no acknowledgements of payment let alone paper trails, why was there no documentation from his suppliers and who were those suppliers? Surely his suppliers would have issued invoices and/or receipts.

69 In the same vein, why was there no documentation pertaining to instalment payments allegedly made to him by the buyers of his three bar businesses? Would there not be some form/sort of written agreement evidencing his sales and the instalment payments if the Defendant sold the businesses for substantial sums of around $1.6–1.7m?

70 This court therefore adopted a pragmatic approach. Even if the unexplained wealth of $3.8m was discounted by $1m, the unexplained balance of $2.8m was still a substantial figure, that called for explanations supported by credible documentation. The Defendant's explanations and his counsel's submissions could not/did not reduce this figure to zero.

71 Section 15(1)(*c*) of the CDSA stipulates that in order for the court to make a restraint order under s 16 or a charging order under s 17, the court must be satisfied that "there is reasonable cause to believe that benefits have been derived by the defendant from drug dealing or from criminal conduct, as the case may be". Looking at the Analysis Report and comparing the information therein with what was deposed to in the various affidavits of the Defendant and GK that was placed before this court, it cannot be said that the State did not have *indirect* proof (as stated in para 27 of the Analysis Report) *"that [the Defendant] had disproportionate wealth estimated to be S$3,811,127.30/- during the material period from January 2009 to September 2015 which is likely to be derived from his criminal conduct"*.

72 Consequently, this court granted the orders set out in [2] above as a temporary measure.

Lai Siu Chiu
Senior Judge

Tan Kiat Pheng, Navin Naidu, Stacey Fernandez and Loh Hui-Min (Attorney-General's Chambers) for the Applicant;
N Sreenivasan SC and Lim Wei Liang Jason (Straits Law Practice LLC) for the Defendant.

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