Chee Soon Juan and another *v* Public Prosecutor
[2011] SGHC 17

Case Number : Magistrate's Appeals Nos 133 & 134 of 2008; 279 & 273 of 2009; 233 & 234 of 2010

Decision Date : 20 January 2011

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : Appellants in person; Mr Chia Ti Lik @ Xie ZhiLi (Chia Ngee Thuang & Co) for appellant in MA 133/2008); Mr Sellakumaran Sellamuthoo, Mr Han Ming Kuang and Mr John Lu Zhuoren (Attorney General's Chambers) for the respondent.

Parties : Chee Soon Juan and another — Public Prosecutor

Constitutional Law – Fundamental Liberties – Freedom of Speech

Constitutional Law – Equal Protection of the Law – Executive Licensing Policy

Constitutional Law – Collateral challenges in subordinate court proceedings – Reference of constitutional questions to the High Court – Analytical approach to s 56A of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) and s 395 of the Criminal Procedure Code 2010 (No. 15 of 2010)

Criminal Law – Statutory Offences – Offences under the Public Entertainments and Meetings Act (Cap 257, 2001 Rev Ed) – Making an address in a public place without a licence

20 January 2011 Judgment reserved.

Steven Chong J:

The Facts

1 The appellants were each convicted of four charges for providing public entertainment by way of making an address in a place to which the public has access without a licence under s 19(1)(a) the Public Entertainments and Meetings Act (Cap 257, 2001 Rev Ed) ("PEMA"). The offences were committed on four different occasions (in particular, on 16 November 2005, 8, 12 and 15 April 2006) at separate locations. A fine of $5,000 (in default five weeks' imprisonment) for each charge was imposed on Chee Soon Juan ("Dr Chee") while a fine of $2,000 was imposed on the other appellant, Yap Keng Ho ("Mr Yap") for each of the offences (with 10 days' default imprisonment for the offences committed on 16 November 2005, 8 April 2006, 12 April 2006, and 14 days' default imprisonment for the offence committed on 15 April 2006).

2 The trial in respect of the offences committed on 8 April 2006 was heard by District Judge Jasvender Kaur over 10 days (MA 133 and 134 of 2008). The trial in respect of the offences committed on 16 November 2005 and 12 April 2006 lasting 33 days was heard by District Judge Thian Yee Sze (MA 273 and 279 of 2009), while District Judge Jill Tan heard the 15-day trial in respect of the offences committed on 15 April 2006 (MA 233 and 234 of 2010). The appellants appealed against all the convictions and the respective sentences. The three District Judges are hereinafter collectively referred to as "the trial Judges".

3 It is provided under s 3 of the PEMA that no public entertainment shall be provided unless it is in an approved place and in accordance with a licence issued by the Licensing Officer. Section 19(1)(a) of the PEMA stipulates that any person who provides any public entertainment without a licence issued under the PEMA shall be guilty of an offence and liable to a fine not exceeding $10,000 upon conviction. Section 2(m) of the Schedule to the PEMA defines public entertainment to include, *inter alia*, any "lecture, talk, address, debate or discussion…in any place to which the public or any class of the public has access whether gratuitously or otherwise." [note: 1]

4 It is undisputed that the appellants were physically present at the scene where the offences were committed, and that the offences took place at the locations where the public had access. It was also not disputed that the appellants did not apply for a licence.

5 The appellants raised four main arguments in the appeals before me:

(a) First, the appellants asserted their right to freedom of speech under Art 14 of the Constitution of the Republic of Singapore ("the Constitution").

(b) Second, the appellants argued that the police, the Executive, and the Public Entertainments Licensing Unit's ("PELU") blanket policy of not granting licences under the PEMA to political parties was discriminatory and therefore unconstitutional, in contravention of the appellants' right to equal protection of the law, under Art 12 of the Constitution.

(c) Third, the appellants contended that they were victims of bad faith and discriminatory enforcement of the PEMA. The appellants claimed to have modelled their activities to be similar to those conducted by hawkers and stall-owners at public places, but were singled out and targeted by the police. The appellants argued that their prosecution was discriminatory and a denial of equality contrary to the law enshrined in Art 12 of the Constitution.

(d) Fourth, the appellants contended that they were only making a sales pitch which did not amount to an "address" within the meaning of s 19 of PEMA. I shall consider each of the arguments in turn.

The Court's decision

Whether the PEMA contravenes the appellants' asserted right to freedom of speech under Art 14 of the Constitution

6 Mr Chia Ti Lik ("Mr Chia") represented the appellant, Dr Chee in MA 133/2008. However, his role as counsel for Dr Chee was limited to advancing the legal submission that the provisions of the PEMA are in violation of the freedom of speech enshrined in Art 14 of the Constitution. It is not denied that the same legal issue was raised and resolved in two earlier High Court decisions, *Jeyaretnam Joshua Benjamin v Public Prosecutor and another appeal* [1989] 2 SLR(R) 419 ("*JBJ v PP*") and *Chee Soon Juan v Public Prosecutor* [2003] 2 SLR(R) 445 ("*Chee Soon Juan v PP*"). In both decisions, the High Court held that the freedom of speech under Art 14 of the Constitution is not an absolute right. Specifically, in both decisions, the High Court held that the enactment of the PEMA was permitted under Art 14(2)(a) of the Constitution. The High Court in *Chee Soon Juan v PP* made the following pertinent observations:

> 19 The right to freedom of speech is enshrined in art 14(1)(a) of our Constitution. However, this right is expressly made subject to the limitation in art 14(2)(a) of the Constitution, which reads as follows:

(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; ...

20 In any society, democratic or otherwise, freedom of speech is not an absolute right. Broader societal concerns such as public peace and order must be engaged in a balancing exercise with the enjoyment of this personal liberty. This is embodied in art 14(2)(a). I did not find the provisions of PEMA to be in any way contrary to our Constitution. Indeed, it seemed eminently clear that the enactment of PEMA was fully within the power of the legislature pursuant to the power granted to it by art 14(2)(a).

7 Dr Chee and Mr Yap both adopted Mr Chia's submission on the alleged unconstitutionality of the PEMA for their respective appeals. Before me, Mr Chia's legal submission was essentially the same arguments which were raised and subsequently rejected in the two earlier High Court decisions. In addition, Mr Chia drew my attention to the recent decision of the Court of Appeal of British Columbia in *Vancouver (City) v Zhang* [2010] BCCA 450 ("*Vancouver v Zhang*") to mount a fresh challenge against the constitutionality of PEMA. The case concerned an application by the City Council of Vancouver for an injunction compelling Falun Gong practitioners to remove their billboards containing political expressions from a grassy portion of the city street in front of the Chinese consulate because they were in contravention of s 71 of the Street and Traffic By-Law (Revised By-law No 2849) ("the by-law"). The Court of Appeal of British Columbia held that s 71 of the by-law was unconstitutional as it was inconsistent with the freedom of expression guaranteed under s 2(b) of the Canadian Charter. A close examination of *Vancouver v Zhang* would reveal that it provides no assistance to the appellants in the appeals before me. First, the provisions of the Canadian Charter are quite different from that found in the Constitution of Singapore. Section 2(b) of the Canadian Charter provides the following:

2. Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication…

8 The freedom of expression under s 2(b) is, however, qualified by s 1 of the Canadian Charter which provides as follows:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[emphasis in original]

9 The restriction under s 1 of "such reasonable limits prescribed by law" has been interpreted by the Canadian case law *R v Oakes* [1986] 1 SCR 103 to refer to the "minimal impairment requirement". Therefore, under the Canadian regime, the freedom of expression guaranteed under s 2(b) of the Charter is subject only to restrictions prescribed by law provided it meets the minimum impairment

requirement. The position in Singapore is, however, quite different. Art 14 is expressly made subject to the right of Parliament to impose such restrictions as it may consider necessary or expedient by reasons of, *inter alia*, interest of the security of Singapore or "public order". Unlike the position in Canada, there is no requirement in Singapore for such restrictions to meet the minimal impairment requirement. Furthermore, there is no dispute that the PEMA was validly passed by Parliament pursuant to Art 14(2)(a) of the Constitution.

10 In *Vancouver v Zhang*, the court was persuaded to find that s 71 was unconstitutional because the City Council chose to maintain a *complete* ban against the use of structure for political expression. In the appeals before me, there is simply no evidence that a *complete* ban exist. The very fact that the PEMA specifically provides for a procedure to apply for a licence to provide public entertainment, which by definition includes making an address, would negate the existence of such a *complete* ban. As such, there is no merit whatsoever in the appellants' renewed submission as regards the alleged unconstitutionality of the PEMA.

Whether the alleged discriminatory licensing policy provides a defence to the appellants

11 The appellants argued that, as members of a political party, they were subjected to an alleged discriminatory application and enforcement of the PEMA by the police authorities, the Executive and the PELU. The appellants contend that there exists an Executive policy to impose a blanket ban on the issuance of licences to political parties to make speeches, and that such a policy contravenes their right to equal protection under the law as guaranteed by Art 12(1) of the Constitution.

12 I find the appellants' contentions to be wholly misconceived. First, during the appeal, I questioned Dr Chee as to how such a policy, even assuming that it exists, could translate into a defence against his convictions under s 19(1)(a) of PEMA. In particular, I asked Dr Chee whether such a policy would render the PEMA unconstitutional. Dr Chee was unable to provide a clear explanation. However, he accepted that the policy did not affect the constitutionality of the PEMA (see Notes of Evidence of the present appeal ("N/E") at p 75):

> Court: And if you say, if you succeed in persuading me that this policy was in place and this policy was unconstitutional, are you therefore saying that PEMA is unconstitutional?
>
> Chee: No, your Honour.

13 The logical effect of Dr Chee's clarification is that the PEMA remains valid and if so it continues to be an offence under the PEMA to make an address without a licence.

14 Second, it is undisputed that the appellants did not apply for the requisite licence to make an address. Given that there was *no application* for the licence under the PEMA, there is no decision that the Court can review. Without an application for a licence by the appellants, any alleged discriminatory *licensing* policy would have *no effect* on the appellants and would therefore be irrelevant to the appellants' offences under the PEMA. Indeed, s 13 of the PEMA expressly provides for the proper procedure to be adopted in the event that the PELU rejects an application for a licence:

> **Refusal of licence**
>
> **13**.—(1) The Licensing Officer may, in his discretion, refuse to issue or renew any licence.
>
> (2) The Licensing Officer shall, if so required by the applicant or the licensee, as the case may

be, furnish the applicant or the licensee within 7 days of being so required with the *grounds of such refusal in writing*.

(3) Any applicant or licensee who is aggrieved by the refusal of the Licensing Officer may, within 14 days of the furnishing to him of the grounds of the refusal, *appeal in writing to the Minister whose decision shall be final*.

(4) Where the Minister decides to grant the appeal for the issue or renewal of a licence, he may impose such conditions as he thinks fit.

[emphasis added]

15 The proper remedy for a complainant whose licence application was refused, is to seek grounds for such refusal in writing under s 13(2) and to appeal in writing to the Minister under s 13(3). This was elaborated by Chan J (as he then was) in *JBJ v PP*:

23 Under s 13(2) of the Act, the first appellant was entitled to ask the licensing officer for the reasons for rejecting his application. He omitted to exercise this right at that stage. He contended that he was still entitled to exercise it at the trial. In my view, he was wrong. The purpose of s 13(2) is not to enable a person charged for an offence under the Act to ask for the reasons at the trial. The purpose is to enable an aggrieved applicant to appeal to the Minister under s 14 of the Act. There was no question of an appeal to the Minister in this case….

...

26 The soundness of the first appellant's submission may be tested by assuming that the licensing officer wrongfully refused the licence. What were his legal rights? The court would have quashed the decision if the appellants had commenced proceedings for judicial review. The licensing officer would then have to consider the application afresh. If he refused, the court would have the power to direct him to do so. But, the court would not have been able to grant a licence to the first appellant or direct the licensing officer to do so, as the power of court is exercisable by way of supervisory jurisdiction in these matters. Therefore, the invalidity of the decision of the licensing officer would result in nothing more than the appellants' *status quo ante* the application. They would still have had no licence when they provided the public entertainment. The law was that no public entertainment might be provided without a licence under the Act and except in accordance with the terms of the licence. The law was not that public entertainment might be provided subject to such restrictions as might be imposed under the Act. It must follow that the answers of the licensing officer, whatever they might have been, could not have provided any defence to the appellants on the charges against them.

16 The appellants tried to explain away their omission to apply for the licence. They claimed that there would have been no point in applying for a licence as they believed that the PELU or police authorities would in any event not consider and reject applications by political parties. I am unable to accept this contention. First, it has been decided in *Tan Khee Wan Iris v Public Prosecutor* [1995] 1 SLR(R) 723 ("*Tan Khee Wan Iris*") that the offence of providing public entertainment without a licence under the PEMA is one of strict liability. There is no burden on the Prosecution to establish any *mens rea* as regards the absence of a licence. Second, the truth of the matter is the appellants had never intended to apply for a licence because such a requirement had not operated on their minds before and during the commission of the offences; the appellants did not believe that the licence was required since, according to their own case, *they had only intended to make a sales pitch*. Indeed, Dr Chee testified that he did not apply for a licence because he believed that none was

required (see N/E at pp 265–266 for MA 133/2008):

> Q: On that day, you did not have a licence to speak to the crowd as shown in the video. Agree?
>
> A: No. We were selling the newspaper. As I made it abundantly clear, I have been doing so for years and never had a permit to do what we were doing on 8 April 2006.
>
> Q: You agreed you were the person talking in the video. All I am asking is did you on that day have a licence?
>
> A: We have a permit on the newspaper to sell the newspaper which we have been doing it for years. There is a separate licence which we can apply to the PELU and do it online but because we were not giving a speech we did not apply for a licence.

17 Dr Chee reiterated the same position subsequently (see N/E at p 593 for MA 233/234 of 2010):

> Q: But you were certain of one thing, which is that you did not need a public entertainment licence because your purpose in engaging in these sort of activities was to sell your publications and raise funds?
>
> A: That's correct.
>
> Q: And what was the basis of this belief?
>
> A: I am not sure what you mean.
>
> Q: What was the basis of your certainty that you did not need a licence under PEMA?
>
> A: I suppose because our intention was to go out and sell the newspaper, as far as I understand it, that doesn't fall under PEMA. Only if you want to make a speech. So it's not something that seemed to be congruent, I guess.

18 It is also noteworthy that District Judge Jill Tan observed in her judgment, *Public Prosecutor v Chee Soon Juan & another* [2010] SGDC 298 ("*PP v Chee Soon Juan & anor*"), the same:

> 21 [Chee] did not apply for a public entertainment licence because he considered it to be unnecessary as he only intended to sell the publications, not make a speech. He contended that all his utterances that day were to further the sale of the publications, and that if the exhortations to the public to buy the publications were removed, his remaining words would have no meaning

19 In light of the above, it is misleading for the appellants to submit that they did not obtain a licence because of their belief that a policy existed to deny licences to political parties for making public addresses and that such a policy is unconstitutional. The truth is that the appellants made a wrong judgment call that no licence was required.

20 I further note that there is no evidence of the alleged discriminatory policy. The appellants attempted to suggest that the lack of evidence of the discriminatory policy was due to the trial Judges' refusal to allow the appellants to cross-examine the police officers and officers from the PELU on the parliamentary statements made by Minister Wong Kan Seng. [note: 2] In particular, the appellants contended that the trial court was the appropriate forum to consider the constitutional

challenge of the discriminatory licensing policy, and submitted that the trial Judges should have allowed the appellants to conduct the cross-examination. In the oral submissions before me, the appellants argued that they were entitled to raise the issue on the unconstitutionality of the discriminatory licensing policy before the trial Judges, and submitted that if the policy was indeed found to be unconstitutional, it would have provided a complete defence to the offence under the PEMA. The appellants relied on the decision of *Boddington v British Transport Police* [1992] 2 AC 143 ("*Boddington"*) to support their position that such collateral challenges are permitted in criminal proceedings, and argued that it was not necessary for such constitutional challenges to be dealt with by way of a separate judicial review. Dr Chee made the following submissions in the appeal (see N/E at pp 69 and 70):

> Chee: …on the point of the judicial review and whether…it is a must that the questions that we had raised during the trial itself could not be addressed by the Courts but only by way of a judicial review, your Honour, I want…to bring your attention to the decision again in *Boddington.*.
>
> …
>
> Chee: Page 13. Fourth paragraph from the top, your Honour…Line 6 of that paragraph, Lord Slynn, he writes that:
>
> [Reads] "It is not a realistic or satisfactory riposte that defendants can always go by way of a judicial review. In any event although the procedural advantages of raising such damages by way of judicial review have long been recognised, an application for judicial review is not a straight-jacket which must be put on before rights can be asserted. The decisions in cases in your Lordships' House sighted [*sic*] by Lord Steyn had made this clear"…
>
> Court: And you were referring this passage to support which argument?
>
> Chee: The fact that, your Honour, because---in response to the DPP's point that these questions can only be dealt with at a judicial review, your Honour, and *I am trying to point out that that is not necessarily so…*
>
> [emphasis added]

Dr Chee further asserted that (see N/E at p 76):

> Chee: I referred you to *Boddington*, your Honour... the House of Lords have ruled that it is open to a defendant to raise in a criminal prosecution the contention of a byelaw or an administrative act, in this case, we are referring to the administrative act, which is equivalent to the policy…that we are talking about, undertaken pursuant to it is *ultra vires*… and unlawful.

21 In *Boddington*, a railway company exercised its powers pursuant to s 67(1) of the UK Transport Act 1962 to create a by-law to ban smoking in all carriages. In his defence to a conviction of smoking in a carriage, the appellant argued that the railway company's decision to create the relevant by-law was *ultra vires* the UK Transport Act. The House of Lords held that such an argument could be raised as a defence to criminal proceedings and need not be brought by way of a separate enquiry for judicial review. The decision of *Boddington* can be understood in its context; if the by-law was found to be *ultra vires*, it would have been declared invalid, and there would have been no offence for which the appellant in that case could have committed. This is in contrast to the present case,

where, as already emphasised above at [12], the existence of the unconstitutional licensing policy, if any, would have *no effect* on the constitutionality of the PEMA. The statute which creates the offence would still remain valid. Furthermore, as highlighted above at [14], the purported existence of the unconstitutional licensing policy would, in the absence of an application for a licence, be irrelevant to the appellants' case in any event. Moreover, I have serious doubts that the principle in *Boddington* would apply similarly for *constitutional* challenges raised in subordinate court proceedings, given the subordinate court's lack of powers to grant public law remedies such as *certiorari* and *mandamus*. Indeed, it has been emphasised in *Chan Hiang Leng Colin and others v Public Prosecutor* [1994] 3 SLR(R) 209 ("*Chan Hiang Leng*") that the position in England is quite different from the local position, given that our Subordinate Courts have the guidance of s 56A of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) ("the Subordinate Courts Act"), or more recently, of s 395 of the Criminal Procedure Code 2010 (No. 15 of 2010) (" the CPC 2010"). Both provisions are dealt with in greater detail below at [26]–[37]. The Court in *Chan Hiang Leng* pointed out that the principle in *Boddington* may apply to an *ultra vires* challenge of the relevant Order in question, but *constitutional* challenges should properly be governed by applications under s 56A (at [32]):

> There is no provision in England similar to our s 56A. The English position can therefore be distinguished in this respect. However, in the context of this case, I am of the view that the English principles are relevant. Section 56A can be read as being confined to constitutional issues alone. The issues raised here include challenges to the validity of orders on the basis that they are *ultra vires*. *Ultra vires* issues are not necessarily issues arising out of or with respect to an interpretation of the Constitution and therefore cannot be referred to the High Court under s 56A. As I have stated earlier, the district judge's ruling on these preliminary issues was correct. I would add however that it should also be subject to the refinement enunciated by Woolf LJ in *Bugg v Director of Public Prosecutions*. It is clearly not proper to raise *ultra vires* issues which extend beyond substantive validity, in the sense of being clearly wrong on the face of it, in Subordinate Court proceedings.

22 In any event, the trial Judges' decisions not to allow the appellants to cross-examine the police or officers from PELU on the Parliamentary reports made by the Minister were plainly correct for the simple reason that the reports had *no bearing or relevance* to the appellants' case. The Minister's statements related to the prohibition of *outdoor and street demonstrations and protests*; the statements relied upon by the appellants say nothing about prohibiting political parties from making addresses (under the PEMA) in public places. The Minister's statements are reproduced below for ease of reference; see *Singapore Parliamentary Debates* (28 February 2008) vol 84 (Mr Wong Kan Seng, Deputy Prime Minister and Minister for Home Affairs):

> We have also evolved our policies in relation to different forms of expression. To recapitulate, in the year 2000, we created the Speakers' Corner as an outdoor venue for political speeches. In 2004, we liberalised its use to include performances and exhibitions. In addition, we exempted all indoor public talks from the licensing requirement under the Public Entertainments and Meetings Act, so long as the organisers and speakers are Singapore citizens. The only content restriction to all these is that the speeches must not touch on race or religion, and Members know why.
>
> ***We have stopped short of allowing outdoor and street demonstrations*** . However, we allow demonstrations if they take place indoors or within the confines of stadiums, as the Police assess that any disorder will be better contained in such venues. We are presently reviewing how we can further liberalise the use of Speaker's Corner as an outdoor venue for more political activities including demonstrations.
>
> Our experiences in the past have taught us to be ***very circumspect about outdoor and street***

protests . The 1950 Maria Hertogh riots and the 1964 race riots, both started as peaceful assemblies, but eventually ended up with 54 dead, 736 injured…

…we constantly review our assumptions by monitoring the developments in other countries. And what we learn tells us that our concerns remain valid. In many supposedly mature societies, we see cases where ***peaceful protests*** do degenerate into riots and violence. ***Protest organisers*** do not typically declare that they want to hold a violent protest. And although most people involved in a demonstration may have no intention of using violence, a handful of agitators can spark off mob violence quite easily. So, for young people in their exuberance, they may think that it is fun to demonstrate for whatever the cause. They have no control of the situation should agitators choose to exploit it.

The question for Singaporeans is ***whether we should accept the risk and permit a culture of street protests.*** That is the key question. In my view, one riot is one riot too many. The scars of violence in a community take a long time to heal. Once lost, public confidence in our stability and security will take a long time to re-build.

[emphasis added in bold italics]

23 Evidently, there is nothing in the Minister's parliamentary speech to suggest any alleged blanket ban on the issuance of permits to political parties to make addresses at public places. The parliamentary statements pertained to the prohibition of outdoor and street demonstrations and protests. The appellants' contention in the context of the offences before me was therefore devoid of any merit.

24 Dr Chee had also relied on some parliamentary statements made by Associate Professor Ho Peng Kee. These statements are reproduced below; see *Singapore Parliamentary Debates* (27 August 2007) vol 83, col 1337 (Associate Professor Ho Peng Kee for the Deputy Prime Minister and the Minister for Home Affairs):

Ms Sylvia Lim asked the Deputy Prime Minister and Minister for Home Affairs if he will provide reasons for the rejection of a police permit to hold the Workers' Party 50th Anniversary Cycling Event on 9th September 2007 at the East Coast Park.

Assoc. Prof. Ho Peng Kee (for the Deputy Prime Minister and Minister for Home Affairs): Mr Speaker, Sir, the reason why political parties are not allowed to organise outdoor activities has been explained in Parliament before.

Police does not allow political parties to ***organise outdoor gatherings*** because such activities have the potential for public disorder and mischief, and may disrupt community life. Police's requirement is that such party activities be held indoors or within stadiums, so that any law and order problems would be contained. ***This policy applies to all political parties*** .

The Workers' Party had applied to the Police to organise a ***mass cycling event*** to celebrate the party's 50th anniversary at the East Coast Park. The East Coast Park is a recreational park for Singaporeans and their families.

It is not meant to be used by a political party to promote its cause. Apart from displacing the usual recreational users of East Coast Park, it is an open area where there is greater potential for a breach of the peace, public disorder and unruly behaviour. As I have explained, Police takes a more cautious approach towards outdoor activities organised by political parties. In line with this

approach, Police rejected Workers' Party's application.

…the Workers' Party may wish to consider organising its celebrations at an indoor venue or in a sports stadium.

[emphasis added in bold italics]

25 It is unclear why Dr Chee had sought to rely on these parliamentary statements. There is nothing in them to suggest that a policy exists to impose any blanket ban on all applications for licences by political parties under the PEMA to make addresses in a public place. The statements were made in the specific context of a cycling event, and are relevant only to the broader context of ***outdoor gatherings*** organised by political parties. They have no relevance to the present appeals. I should add that Dr Chee, in his submissions, had omitted to mention Associate Professor Ho's clear statement that the policy against outdoor gatherings applies to *all* political parties.

Reference of constitutional questions to the High Court

26 In the proceedings before District Judge Thian, [note: 3] the appellants applied for issues on the constitutionality of the PEMA, the constitutionality of the alleged Executive licensing policy, and the alleged discriminatory enforcement by the police, to be referred to the High Court under s 56A of the Subordinate Courts Act (hereinafter referred to as "s 56A"). Ordinarily, if there arises, in the course of the criminal proceedings, a serious or novel constitutional question relevant to the determination of the proceedings, the proper course of action would be for the Subordinate Court to stay the criminal proceedings and refer the constitutional question to the High Court. Section 56A provides for the procedure for the reference of constitutional challenges to the High Court:

Reference of constitutional question to High Court

56A. —(1) Where in any proceedings in a subordinate court a *question arises as to the interpretation or effect of any provision of the Constitution*, the court hearing the proceedings may stay the proceedings on such terms as may be just to await the decision of the question on the reference to the High Court.

(2) An order staying proceedings under this section may be made by the court of its own motion or on the application of any party and shall be made at such stage of the proceedings as the court may see fit having regard to the decision of such questions of fact as may be necessary to be settled to assist the High Court in deciding the question which has arisen and to the speedy and economical final determination of the proceedings.

(3) Where an order for stay of proceedings has been made under this section, the court shall state the question which in its opinion has arisen as to the interpretation or effect of the Constitution in the form of a special case which so far as may be possible shall state the question in a form which shall permit of an answer being given in the affirmative or the negative.

(4) The court shall cause the special case to be transmitted to the High Court and the High Court shall hear and determine the constitutional question arising out of the case in the exercise of its original jurisdiction.

(5) Notice of the hearing of the special case by the High Court under this section shall be given to the Attorney-General who shall have a right to be heard.

[emphasis added]

27 Section 56A was recently deleted from the Subordinate Courts Act with effect from 2 January 2011. The new version is now found in s 395 of the CPC 2010 which is reproduced as follows:

> **Power of court to state case 395**. —(1) A trial court hearing any criminal case, may on the application of any party to the proceedings or on its own motion, state a case to the relevant court on any question of law.
>
> (2) Any application or motion made —
>
> (a) on a *question of law which arises as to the interpretation or effect of any provision of the Constitution* may be made at any stage of the proceedings after the question arises and must set out the question to be referred to the relevant court;
>
> (b) on any other question of law must be made in writing within 10 days from the time of the making or passing of the judgment, sentence or order by the trial court and set out briefly the facts under deliberation and the question of law to be decided on them.
>
> (3) The trial court shall —
>
> (a) upon an application or motion made *on a question of law which arises as to the interpretation or effect of any provision of the Constitution*, state the case to the relevant court by setting out the question which in its opinion has arisen as to the interpretation or effect of the Constitution, which question shall, so far as may be possible, be in a form which shall permit of an answer being given in the affirmative or the negative; and
>
> (b) upon an application or motion made on any other question of law, state the case to the relevant court by briefly setting out the facts that it considers proved and the question of law to be reserved for the opinion of the relevant court.
>
> (4) Notwithstanding subsection (3), the trial court ***may refuse to state a case upon any application if it considers the application frivolous or without any merit*** , *but it must state a case if the application is made by the Public Prosecutor*.
>
> (5) If a trial court refuses to state a case under subsection (4), the applicant may apply to the relevant court for an order to direct the trial court to state the case.
>
> (6) The trial court in stating any case under subsection (3) shall cause the case to be transmitted to the Registrar of the Supreme Court.
>
> (7) The relevant court shall hear and determine the question of law or constitutional question arising out of the case stated.
>
> (8) Before stating any case to the relevant court under subsection (3)(*a*), the trial court may make an order to stay the proceedings which shall be made at such stage of the proceedings as the court may see fit, having regard to —
>
> (a) the decision of such questions of fact as may be necessary to assist the relevant court in deciding the question which has arisen; and

(b) the speedy and economical final determination of the proceedings.

(9) The trial court making an order to stay the proceedings under subsection (8) may impose any terms to await the opinion and order, if any, of the relevant court on any case stated under subsection (3)(*a*).

(10) The trial court stating a case to the relevant court under this section may make such orders as it sees fit for the arrest, custody or release on bail of any accused.

(11) When the Registrar of the Supreme Court receives a case stated, he must send a copy to every party to the proceedings and to the Public Prosecutor (if he is not a party), and fix a date for the hearing of the case stated.

(12) The Public Prosecutor shall have a right of hearing at the hearing of the case stated.

(13) Where the High Court is hearing the case stated, it shall ordinarily be heard by a single Judge, but if the Chief Justice so directs, the case stated must be heard before a court comprising 3 or any greater uneven number of Judges.

(14) Where the Court of Appeal is hearing the case stated, it shall ordinarily be heard by 3 Judges of Appeal, but if the Chief Justice so directs, the case stated must be heard before a court comprising 5 or any greater uneven number of Judges of Appeal.

(15) In this section, "relevant court" means —

(a) the High Court where the trial court which stated the case is a Subordinate Court; and

(b) the Court of Appeal where the trial court which stated the case is the High Court.

[emphasis added]

28 Section 395 of the CPC 2010 represents a consolidated provision which governs the process in which *any* question of law is referred from the trial court to a higher court. The Explanatory Statement to the *Criminal Procedure Code Bill (Bill No 11/2010)* (27 April 2010) at p 432 provides a concise description of s 395:

[Section] 395 relates to the power of a trial court to state a case on *any* question of law to a superior court.

[emphasis added]

29 In this regard, a reference of a question of law which relates to the interpretation or effect of any constitutional provision, which was previously governed by the standalone provision under s 56A, is now *subsumed* under s 395 (in particular, s 395(2)(a)) of the CPC 2010. Indeed, with the enactment of s 395 of the CPC 2010, s 56A is no longer required and has *consequently* been repealed (see Sixth Schedule, *Consequential and Related Amendments to Other Written Laws*, *Criminal Procedure Code Bill (Bill No 11/2010)* (27 April 2010) at p 390, paragraph 105(c)). I further observe that s 395 of the CPC 2010 (in particular, s 395(2)(b)) encapsulates aspects of the repealed s 263 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), a provision which had previously governed the procedure of reserving points of law from a Subordinate Court acting in summary jurisdiction in any criminal cause or matter to the High Court.

30 In my view, both s 56A and s 395(2)(a) (read with s 395(4)) of the CPC 2010 propound a two stage test. First, the Subordinate Court has to determine from the facts and submissions presented by the accused (or in certain cases, by the Prosecution), whether a *relevant* question concerning the *interpretation* or *effect of any provision of the Constitution* has arisen for determination by the High Court ("the first stage"). This requirement is evident from the language of s 56A(1) and s 395(2)(a) of the CPC 2010, and was alluded to in the decision of *Chan Hiang Leng*, where the Court decided that the lower court was correct *not* to make any reference to the High Court since no constitutional issue had arisen in that case:

> 32 Section 56A can be read as being *confined to constitutional issues alone*. The issues raised here include challenges to the validity of orders on the basis that they are *ultra vires*. *Ultra vires* issues are not necessarily issues arising out of or with respect to an interpretation of the Constitution and therefore cannot be referred to the High Court under s 56A.
>
> [emphasis added]

31 The first stage requires the Subordinate Court to characterise the factual matrix and arguments presented by the party asserting the constitutional challenge so as to determine whether a question has arisen on the interpretation or effect of a constitutional provision. The burden is on the party asserting the constitutional challenge to satisfy the Court that such a relevant question has arisen for determination. The mere assertion or allusion to a contravention of a provision of the Constitution is insufficient.

32 The second requirement of s 56A and s 395(2)(a) (read with s 395(4)) of the CPC 2010 ("the second stage") arises for consideration once the Subordinate Court decides that the proceedings does give rise to a question relating to the interpretation or effect of a provision in the Constitution which is relevant to the determination of the criminal proceedings. The Subordinate Court would thereafter have to decide whether it is a proper case to be referred to the High Court. As is evident from the phrase "the court hearing the proceedings *may* stay the proceedings" under s 56A(1), this is a matter of judicial discretion as was observed in *Johari bin Kanadi and another v Public Prosecutor* [2008] 3 SLR(R) 422 (at [9]):

> 9 A subordinate court has the discretion whether or not to stay proceedings when an application is made before it under s 56A of the [Subordinate Courts Act]. This discretion, properly exercised after judicious consideration of the *merits* of the application, will *prevent unnecessary delay and possible abuse* every time a party in the proceedings purports to raise an issue of constitutional interpretation or effect. To merit a reference under s 56A, the applicant must show that there are new and difficult legal issues involving the Constitution which have not been previously dealt with by the superior courts. It is not sufficient merely to set out a new factual situation because new factual permutations will always arise. *Where questions of law have already been decided or principles relating to an article in the Constitution have been set out by the superior courts, a subordinate court need not stay proceedings* under s 56A but should proceed to apply the relevant case law or extrapolate from the principles enunciated to reach a proper conclusion on the facts before it.
>
> [emphasis added]

33 The pertinent question governing the second stage is, *how* should the Subordinate Court exercise this discretion? It should, at the outset, be stressed that the judicial discretion is necessarily a *limited* one. The Subordinate Court has to exercise this discretion with caution and judicious sensitivity to its own lack of jurisdiction to deal with the substantive issues of the constitutional

challenge. Unlike the powers conferred on the High Court by way of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), the Subordinate Courts are *not* conferred the powers to grant *certiorari* or *mandamus* orders. Without such powers, the Subordinate Court has no jurisdiction to determine the substantive issues of any constitutional challenge. The Subordinate Court can however, properly exercise its discretion *not* to refer constitutional challenges which are frivolous, or which are made for collateral purposes or to delay proceedings, or if they otherwise constitute an abuse of process. In this regard, the Subordinate Court may consider the merits of the case *in so far as* to determine whether the constitutional issue raised is a genuine or serious one and not a frivolous one merely to delay proceedings. If the constitutional question raised has already been resolved by a superior court, such that the position in that area is settled and uncontroversial, no reference to the High Court should be permitted. Indeed, as compared to s 56A, these considerations are now *expressly* provided by statute: s 395(4) of the CPC 2010 expressly confers on the trial court the discretion to *refuse* an application (unless it is an application made by the Prosecution) to refer the purported constitutional question to the High Court, if the trial court considers the application to be frivolous or without any merit. Nevertheless, I emphasise the importance that the Subordinate Court should apply its mind to the facts of each case to determine if it indeed involves a constitutional question which has decidedly been resolved by a superior court, or whether a different, unresolved, constitutional question has arisen from the unique facts of the particular case at hand. If a serious or novel constitutional question does arise, the Subordinate Court should ordinarily stay the proceedings and refer the question to the High Court. In these circumstances however, the Subordinate Court should also be mindful that s 56A and s 395 of the CPC 2010 is not misused as a backdoor approach to evade the leave requirement for applications for judicial review under Order 53 of the Rules of Court.

34 Turning the analysis to the present case, I am of the view that the trial Judges made the correct decisions not to stay the respective criminal proceedings in the courts below in order to refer the purported constitutional challenges to the High Court. I make no specific observation on the reasoning relied upon by the trial Judges to come to their respective decisions. I will however explain why there was indeed no necessity to stay the criminal proceedings to refer the purported constitutional questions to the High Court for determination.

35 First, as explained above at [11]–[25], the appellants' assertion of the alleged discriminatory policy of the police, the Executive and the PELU in imposing a blanket ban on the issuance of permits, even if taken as true, does not give rise to any question concerning the interpretation or effect of any provision of the Constitution that would have any bearing on the Prosecution's case or the appellants' defence. The alleged discriminatory policy to deny political parties the licence to make an address, even assuming *arguendo* that it exists, is wholly irrelevant to the present appeals as the appellants admitted that they had no intention to apply for a licence in the first place. The requirement of a licence had never operated on the appellants' mind before and during the commission of the offences since they claimed that they had no intention to make a speech or to make an address. The appellants allegedly only had the intention to make a sales pitch of the newsletters. In effect, the first stage of s 56A is not satisfied as the appellants' allegations do not give rise to any relevant question concerning the interpretation or effect of any provision of the Constitution, and as such, does not warrant any reference to the High Court.

36 With regard to the constitutional challenge based on Art 14, the second stage of s 56A is not satisfied. It has already been shown above at [6] that the law in this area is well settled by the High Court.

37 The appellants further argued in the alternative that they had modelled their conduct and activities to be the same as hawkers and stall-owners, and that by singling the appellants out, they were the target of discriminatory prosecution in contravention of Art 12 of the Constitution. This

contention is *in effect* a substantive defence framed in the guise of a constitutional challenge. If the appellants' conduct was indeed the same or similar to that of hawkers or stall-owners, the appellants would merely be selling goods, and that would operate as a defence to the offence of making an address without a licence. The proper analysis for this question therefore hinges on whether what was said by the appellant was a sales pitch. If the appellants' conduct was found to be making only a sales pitch and nothing more, that would translate into a defence on the merits. However, as will be shown in the succeeding paragraphs below, the appellants' conduct was manifestly different from those of hawkers and stall-owners; and was shown to have gone patently beyond that of merely making a sales pitch.

Whether the appellants did make an "address"

38 To constitute an offence under s 19(1)(a) of the PEMA, the burden is on the Prosecution to satisfy the following elements:

(a) the appellants were present at the scene of the offence;

(b) the place where the offence took place was one to which the public had access;

(c) each of the appellants had made an address at the material time; and

(d) each of the appellants did not have the requisite licence issued under the PEMA to make the address.

39 There is no dispute that the appellants were at the locations at the material time, and that each of the locations was a place to which the public had access. It was also undisputed that the appellants did not have the requisite licence at the material time.

40 In addition, there was no dispute that the appellants did speak to a crowd of people at each of those public places. The dispute before the trial Judges in the proceedings below was whether those instances constituted "addresses" within the meaning of the PEMA. After each of the lengthy trials, the trial Judges reached their respective conclusions, having the benefit of the oral testimony of the various witnesses as well as the transcripts of the video recordings, that the appellants did make addresses on each of the four occasions.

41 It is trite that an appellate court will only disturb findings of fact made by the trial judge when they are clearly against the weight of the evidence or plainly wrong: See *Lim Ah Poh v Public Prosecutor* [1992] 1 SLR(R) 192. Having examined the evidence, I can see no reason to disturb their findings. From my review, as explained below, the evidence supports the findings.

42 As a starting point, there is no dispute on the content of what was said as recorded in the transcripts. Before me, the appellants dealt with this issue only at the threshold level, that is, they simply disagree with the trial Judges' *interpretation* of what was said. No specific submission was made by the appellants in relation to each of the four incidents as to why, given the contents of what was said, they nonetheless did not constitute "addresses" within the PEMA. The appellants maintained that they were merely making a *sales pitch* to promote the sale of The New Democrat. As

such, the only issue here is whether *what was actually said* amounted to an "*address*" under the PEMA. Specifically, Mr Yap claimed in the appeal before me that his subjective *purpose* at the material time was to sell the New Democrat, as opposed to making an address (see N/E Day 2 at p 15):

> Your Honour…the difference, I think, I like the first angle to be drawn to … what's the purpose. If it was an address, I think the person making the address would have just the *objective* of delivering its content…but for---for sales, *the purpose was to promote the sales and get the revenue. So the purpose, the main content being delivered is to tell people this is $2*… If the contents were all relating towards the promotion purpose and the sales purpose and …gaining the attention and get[ting] the revenue, it will not be the same as [an] address…
>
> [emphasis added]

43 Mr Yap's self-declared subjective intent must be considered in the context of his actual objective conduct at the material time. In this regard, the *actual words* said by the appellants are material in determining whether an "address" was made. The law in this area is clear. The intention or purpose of the accused is irrelevant. In *JBJ v PP*, the Court explained the meaning of the word "address" in s 2(m) as follows:

> …by reason of the statutory definition, *whether an activity is 'public entertainment' is not determined by its purpose* or its nature and/or effect but simply by its form.
>
> …The ordinary meaning of the word "address" is a speech made to a group of people, usually on a formal occasion.
>
> [emphasis added]

44 This position was endorsed in *Chee Soon Juan v PP*, where the Court observed that:

> 13 …for an activity to come within the scope of PEMA, the activity must be directed at the public; in the sense of procuring their involvement whether actively or passively. This should be read implicitly into the activities listed in s 2 of the Schedule, and is an objective test to be satisfied on the facts of the case...

45 The appellants also submitted that they did not make any address since their "*speeches*" were short and they were made at informal settings. However as rightly pointed out by the Prosecution, the length of the "*speech*" is not *per se* determinative of the issue. The contents of the "*speeches*", the manner in which they were made and the audience to which they were addressed are all relevant factors for consideration.

46 I turn my attention now to the actual words said by the appellants on each of the four occasions to examine whether they constitute as *addresses* within the meaning of the PEMA.

Incident on 16 November 2005

47 What Mr Yap said on 16 November 2005 clearly went beyond that of making a sales pitch. He addressed the public on social issues, and attempted to advance his party's political agenda by persuading members of the public to "refuse to be deceived" and to protect their own interests: [note: 4]

> …our Lee Kuan Yew and his relatives are controlling and monopolizing totally…Drawing the highest

salaries in the world…It is difficult for us to lead our lives. The system is not fair and reasonable. Nobody is allowed to speak out.

…PAP has monopolized the mass media and tried to control the minds of the people. *Refuse to be manipulated, refuse to be deceived, suppressed, exploited, threatened and betrayed. Protect our own interests*.The people must make full use of their civil rights, protect their civil rights, know their civil rights, not neglect their civil rights, not become slaves. Only then your own future and the future of your family will be safeguarded …

…Why are homeless people sleeping on the roadside, putting up at the HDB void deck and in the parks? Why are they so miserable? Why do the old folks have to make a living by selling tissue papers?... [note: 5]

[emphasis added]

48 Dr Chee's speech on 16 November 2005 was in effect a political rally, much less a sales pitch: [note: 6]

We are the Singapore Democratic Party…the general election is around the corner…[w]e know and understand your hardships. We know our lives are getting harder and harder, because…the cost of living is high. However, *we are unable to help you if you do not lend your support*. *The General Election is coming soon, you have an opportunity to relate to the Government, telling them that we disagree…you are bullying the people – working people*.

[emphasis added]

Incident on 8 April 2006

49 As for the offences committed on 8 April 2006, District Judge Kaur's finding (see [74]–[76] of her Judgment, *Public Prosecutor v Chee Soon Juan & anor* [2008] SGDC 131) that Dr Chee had made an address to the public is likewise supported by the transcripts. [note: 7] Dr Chee addressed members of the public on a wide range of social issues: the income gap between the rich and the poor, the salaries of Ministers, the homeless in Singapore, the NKF saga and the need for an opposition. As for Mr Yap, he attempted to draw the public's attention to an alleged wrongdoing on the part of the government in allegedly using taxpayers' money to invest and co-operate with drug traffickers, despite having strict laws in Singapore against drug trafficking. [note: 8] This clearly went beyond promoting the sale of the New Democrat. Mr Yap also attempted to advance his political agenda by stating that the PAP was "putting on a pretence of being morally superior". [note: 9]

Incident on 12 April 2006

50 On 12 April 2006, Mr Yap again tried to advance his party's political agenda and attempted to garner support from members of the public: [note: 10]

…*Don't be afraid*. The more you are afraid, the more government will bully you.

…Help us make the government accountable! Help us make the system transparent! The only way we can do so is get into the parliament. The only way we can get into parliament is when we are strong enough to fight the election. The only way we can be strong enough during election is that you support us... [note: 11]

[emphasis added]

51 On 12 April 2006, Dr Chee addressed members of the public in telling them *how* to cast their votes: [note: 12]

> The General Election is coming. Buying and selling of votes is a shameless crime and illegal…Is it only the PAP can buy votes? What type of funds does the PAP make use of to buy your votes? They did not give you money. *The money is yours. Everyone, think properly. Don't sell your votes to Lee Hsien Loong…Don't sell away your votes. Don't sell away your country…You can take the money and go ahead and spend it. Don't feel grateful to them*. You don't have to repay them. The money is yours. The money belongs to the country. The money does not belong to the PAP.
>
> [emphasis added]

Incident on 15 April 2006

52 As for the offences committed on 15 April 2006, District Judge Jill Tan made the following observations on the speeches made by Mr Yap (see *PP v Chee Soon Juan & anor*):

> 36 ...In the first phase, when referring to an article on casinos in Singapore, he added information concerning the history of gambling activities in Singapore and a claim that the casino policy was due to certain investment losses. In the third phase, he spoke of exposing a scandal that the government was trying to cover up. In the fifth phase, he read out the doggerel referring derisively to persons in "white shirt and white trousers". He then concluded by saying (in Mandarin):
>
> > "Well, *the message will be sent to all of you to share*. *Those in white shirt and white trousers in Singapore are drawing the highest salary in the world*. They dare not dress white shirt and white trousers now, as they know that people are disgusted with the sight of white shirt and white trousers. Their candidates dare not dress white shirt and white trousers during walk around. *They suck our blood to pay their salaries*. Read our New Democrat for elaborations. Come buy a copy. Don't leave it aside after reading it. It is hope[d] that you would pass it on to your friends and relatives, to let more people learn about the facts and political scandals that PAP has been doing it[s] utmost … to cover up."
> >
> > [emphasis added]

53 In his own words, Mr Yap was trying to send a *message* to the public, in particular relation to the alleged high salaries drawn by people in government. Dr Chee was observed by District Judge Jill Tan to have repeatedly given advice to members of the public to take certain actions, where Dr Chee also gave forewarnings of the consequences of not heeding his advice:

> 37 As for Chee, he spoke only on one occasion, in Mandarin, from 10:17:13 to 10:21:01. His words as reflected in the transcript were as follows:
>
> > "Come read more and understand more by buying a copy of The New Democrat to support democracy. Chances are not many. *The voting opportunity is only once in 4 to 5 years for you [to] express your views to the government*. But, if you are afraid, it is a secret. If you dare not tell PAP that we need an opposition in our parliament, I guarantee that your life will

not be that easy after the general election.

You have to be a bit smart as the citizens. Look at the people in other countries like Taiwan, Hong Kong, Japan and Korea, [their] government dare not deal with them in such a manner. *Lee Kuan Yew has said, "There is no retirement hope for you old folks. You have to continue working for a longer time. Don't hope for a higher salary. You have to go for a pay cut*.

…

It is a different world in Singapore where our old folks are required to work for the government. *When you have a chance, tell the PAP government that you have had enough and you don't want it to bully the people anymore*. Come and buy a copy of The New Democrat to help us speak on your behalf. This is an opportunity. The funds raised by us will be used in the general election. Buy a copy of The New Democrat with lots of information inside. Or else, the government will cover up. The front page tells the laughing story of Mr Lee Hsien Loong while he was in Germany … Such photograph will not appear on PAP newspaper, as it will not be published. The photograph appears on The New Democrat because we are brave to publish such matter for the viewing of our people. Come buy a copy of The New Democrat to give us your support. Thank you."

[emphasis added]

54 The above analysis merely illustrates some obvious *examples* on each of the four occasions where the appellants went beyond making a sales pitch. The totality of the evidence presents a compelling case that the appellants were indeed making addresses to members of the public on each of the four occasions, primarily to raise several issues of social concern, as well as to advance their party's political agenda in highlighting several alleged shortcomings of the government and by advising members of the public on how to cast their votes. Many a time, the speeches resemble that of a political rally. In the face of such overwhelming objective evidence, it is no defence for the appellants to merely highlight from the transcripts that they did ask members of the public at certain instances to purchase the New Democrat. In the circumstances, I have no doubt that the offence of making an address without a licence was made out under the PEMA in respect of each of the four incidents.

55 Before concluding, I should add that Mr Yap did raise a completely new point during his oral submission before me. He purported to rely on s 79 of the Penal Code (Cap 224, 1985 Rev Ed), which states as follows:

Act done by a person justified, or by mistake of fact believing himself justified by law

79. Nothing is an offence *which is done* by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, *in doing it*.

[emphasis added]

56 Mr Yap acknowledged that this submission was not raised in the courts below or in any of his petitions of appeal. In any event, Mr Yap's submission is sorely misconceived. He is precluded from relying on s 79 because he does not even admit to have committed the relevant act – he does not admit to making an address under the PEMA. As explained above, his defence is that he did not make nor did he intend to make any address in breach of the PEMA. There was therefore no question of "mistake" which is a prerequisite to invoke the defence under s79 of the Penal Code. I should add

that it has been decided in *Tan Khee Wan Iris* that a defendant who seeks to rely upon s 79 of the Penal Code as a defence to the offence of providing public entertainment without a licence under the PEMA has the burden to show on a balance of probabilities that he had acted under a mistake, and by reason of that, *he believed in good faith that he had a valid licence at the material time*. Mr Yap has clearly failed to discharge this burden.

The sentences

57 In the appeals before me, the appellants did not make any submission on the sentences imposed. The appellants did not explain how and why the sentences were manifestly excessive. Indeed, they did not even make the assertion that the sentences were manifestly excessive. No mitigating factors were adduced, and no sentencing precedents or benchmarks were submitted to the court. I am of the view that the sentences imposed were appropriate and fair. A higher fine and a higher corresponding default sentence were rightly imposed on Dr Chee in view of his similar antecedents under the PEMA.

Conclusion

58 For the reasons set out above, the appeals against both convictions and sentences are accordingly dismissed.

[note: 1] Section 2(m) of the Schedule to the PEMA has been deleted by Act 15/2009, wed 09/10/2009. See s 2 of Public Order Act 2009 (No. 15 of 2009).

[note: 2] See N/E p 92.

[note: 3] See MA 273 and 279 of 2009, Record of Proceedings, vol 2 at p 1040.

[note: 4] MA 237 and 239 of 2009, Exhibit PC at 13.21.

[note: 5] *Ibid* at 13.54.

[note: 6] *Ibid* at 14.01.

[note: 7] MA 133 and 134 of 2008, Exhibit D.

[note: 8] *Ibid* at 16.10.

[note: 9] *Ibid*.

[note: 10] MA 237 and 239 of 2009, Exhibit PD at 11.51.

[note: 11] *Ibid* at 12.40.

[note: 12] *Ibid* at 11.59.