# Public Prosecutor *v* Heng Tieng Yen
# [2014] SGHC 265

**Case Number** : Criminal Revision No 15 of 2014

**Decision Date** : 18 December 2014

**Tribunal/Court** : High Court

**Coram** : See Kee Oon JC

**Counsel Name(s)** : Timotheus Koh (Attorney-General's Chambers) for the petitioner; The respondent in person.

**Parties** : Public Prosecutor — Heng Tieng Yen

*Criminal Procedure and Sentencing – Revision of proceedings – Show cause proceedings – Double-payment of fine*

18 December 2014

**See Kee Oon JC:**

1 This was the prosecution's application invoking the High Court's revisionary powers under ss 400 and 401 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") for the purpose of setting aside a fine of $400 imposed on the respondent. This fine was imposed by the court below after the respondent pleaded guilty to one charge of failing to pay road tax on her vehicle such as constituted an offence under s 15 of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the Act"). The fine was duly paid. The prosecution then sought to set this fine aside because it was subsequently discovered that the offence had already been compounded by the respondent prior to the imposition of the fine upon her plea of guilt. This fact was however not made known to the court below. Evidently, the respondent herself had not realised that she ought not to have pleaded guilty to the offence since she had already compounded it.

2 Given the circumstances, it was not in doubt that the respondent's conviction on the charge and the fine imposed should be set aside, and I so ordered. This was a straightforward matter that should not have required the attention of the High Court. That it did was due to a failure by the prosecuting agency to update its own records and provide up-to-date information to the court below. But in my view, the respondent's erroneous plea of guilt and the fine imposed on her might also have been caused by a more troubling systemic factor, *ie*, the utilisation of the show cause procedure in s 133(6)(*b*) of the Act. During the hearing before me, I mentioned in passing that the utilisation of this procedure should perhaps be reviewed as it was a potential source of confusion. In these grounds of decision, I propose to elaborate on the difficulties that this procedure could give rise to. I respectfully suggest that prosecuting agencies ought to consider reviewing their continued recourse to this procedure.

**Facts**

3 On 9 September 2012, the Land Transport Authority ("LTA") sent a letter to the respondent informing her that the licence for her vehicle, *ie*, road tax, had expired about two and a half months ago. The LTA informed the respondent that it was an offence for any person to keep or use an unlicensed vehicle, and it offered to compound the offence as it was empowered to do under s 135 of the Act read with r 2 of the Road Traffic (Composition of Offences) Rules (Cap 276, R 29, 2008 Rev

Ed). The terms of this offer were that if the respondent paid the overdue road tax and associated fees by 25 September 2012, the composition amount would be $50. If she failed to pay by 25 September 2012, an additional amount of $150 would become payable. In the event, the respondent did not pay by 25 September 2012.

4 On 30 October 2012, the respondent was served a Notice to Attend Court ("the Notice"). This required her to appear before Court 25N – a night court of the Subordinate Courts, as it was then called – on 4 January 2013 to answer to the criminal charge arising from her failure to pay road tax. The Notice also informed the respondent that if she failed to attend court on that day, a warrant of arrest might be issued and she might be required to show cause as to why she should not be punished for failing to attend court. The respondent did not attend court on 4 January 2013 and a warrant of arrest was issued.

5 The respondent eventually appeared before Court 25N at 6.00pm on 13 May 2013 to answer to the charge against her as well as to show cause as to why she should not be punished for her failure to attend court on 4 January 2013. She pleaded guilty to the charge and a total fine of $500 was imposed on her, consisting of $400 for the substantive charge and an additional $100 for the failure to attend court. What was not made known to the District Judge presiding over Court 25N on 13 May 2013 was that the respondent had, just hours ago at 3.52pm, paid the composition amount of $200 together with the overdue road tax. The LTA apparently had not updated its records in the electronic system to reflect the fact that this payment had taken place, and the respondent made no mention of that fact while she was before Court 25N.

**My decision on the criminal revision**

6 In the light of these facts, it was clear that the respondent's conviction on the charge arising out of her failure to pay road tax had to be set aside, and with it the $400 fine imposed for that charge. By paying $200 to the LTA, the respondent had compounded her offence; having done so, she could no longer be convicted on a charge arising from that offence. The imposition of the $400 fine amounted to punishing her twice for the same offence and accordingly I ordered that this fine be refunded to her. For completeness, I should add that there was no reason to disturb the fine of $100 for the respondent's failure to attend court on 4 January 2013.

7 As I have said, this was a matter that should not have had to go before the High Court. However, unless the relevant agencies make a concerted effort to eradicate such errors or omissions by ensuring that accurate and up-to-date case information is furnished, the risk of recurrence is very real. Over the years there have been a number of instances of this sort of error which necessitated putting applications for criminal revision before the High Court; one more criminal revision is simply one too many.

**The show cause provision under s 133(6)(*b*) of the Road Traffic Act**

8 In my opinion, the risk of error on the part of the prosecuting agencies is probably compounded by the fact that the LTA and the Traffic Police continue to rely routinely on the show cause provision for road traffic offences under s 133(6)(*b*) of the Act. This provision is part of the procedure by which a person who is alleged to have committed an offence under the Act is brought before the court, and that procedure is set out in s 133 of the Act.

9 The procedure is as follows. Where a police officer or an authorised LTA employee has reasonable grounds for believing that a person has committed an offence under the Act, he may, under s 133(1), serve upon that person a notice to attend court at a stipulated time on a stipulated

date. Should that person fail to attend court as required, the court may, pursuant to s 133(5), issue a warrant for his arrest. When this person is subsequently produced before the court pursuant to the warrant of arrest, s 133(6)(*b*) of the Act obliges the person to show cause as to why he should not be punished for his earlier failure to attend court in compliance with the notice to do so. For convenience, I reproduce the relevant parts of s 133 of the Act:

> **Traffic ticket notice**
>
> **133.**—(1) Where a police officer or an employee of the [LTA] authorised in that behalf has reasonable grounds for believing that a person has committed an offence under this Act, he may, in lieu of applying to a court for a summons, immediately serve upon that person a prescribed notice, requiring that person to attend at the court described, at the hour and on the date specified in the notice.
>
> ...
>
> (5) If a person, upon whom such a notice has been served as aforesaid, fails to appear before a court in person or by counsel in accordance therewith, the court may, if satisfied that the notice was duly served, issue a warrant for the arrest of the person unless in the case of an offence which may be compounded that person has before that date been permitted to compound the offence.
>
> (6) Upon a person arrested in pursuance of a warrant issued under subsection (5) being produced before it, a court shall —
>
> (*a*) proceed as though he were produced before it under section 153 of the [CPC]; and
>
> (*b*) at the conclusion of the proceedings, call upon him to show cause why he should not be punished for failing to attend in compliance with the notice served upon him, and if cause is not shown may order him to pay such fine not exceeding $2,000 as the court thinks fit or may commit him to prison for a term not exceeding 2 months.

10 It is apparent that the show cause provision is designed to penalise people who absent themselves from court without good reason in order to deter such behaviour. If good reasons can be furnished, the court may accept that they have shown cause and not order any penalty. But in most instances, defendants do not seek to show cause but merely attempt to mitigate against the potential penalty to be imposed. In many instances, no mitigation is offered. The prevailing fines imposed in respect of show cause proceedings have generally been pegged between $100 and $200. In the present case, the respondent was fined $100.

11 Show cause provisions of a nature similar to s 133(6)(*b*) of the Act are found in various other statutes as well: see for instance s 62(6) of the Central Provident Fund Act (Cap 36, 2013 Rev Ed), s 125A(6) of the Customs Act (Cap 70, 2004 Rev Ed), ss 21(7) and 42(7) of the Environmental Public Health Act (Cap 95, 2002 Rev Ed) and s 19O(6) of the Singapore Tourism Board Act (Cap 305B, 1997 Rev Ed). I note that it has been introduced even in relatively recent legislation such as s 49(7) of the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed).

***The anomalous nature of the procedure***

12 The show cause provision for failing to attend court in compliance with a notice appears to be an anomaly in the law on criminal procedure as set out in the CPC. There is no equivalent to s 133(6)

(*b*) of the Act or other similar show cause provisions found in other legislation in the CPC.

13 In the first place, the procedure by which a defendant is brought before the court under the CPC is different from that under the Act. Where the offence in question is one under the Act, any police officer or authorised LTA employee may issue a notice to attend court to the person suspected of having committed the offence. By contrast, under s 110(1) of the CPC only police officers of a certain seniority – of or above the rank of inspector – are permitted to issue such notices. The more junior police officers and all other persons must, if they wish to compel a defendant to attend court, invoke the authority of a Magistrate who will then, if satisfied that he has sufficient reason to do so, issue a summons for the defendant's attendance: see s 153 of the CPC.

14 Should the defendant fail to attend court pursuant to the summons issued by the Magistrate, s 120(*b*) of the CPC allows the court to issue a warrant for his arrest. When he is brought before the court pursuant to that warrant, there is no requirement for him to show cause as to why he should not be punished for the earlier failure to attend court. It is simply not something that the CPC provides for. But this is not to say that no consequences follow from that failure. Should he be convicted of an offence, the court will ordinarily take the failure to attend court into account as an aggravating factor which may justify an increase in the sentence to be imposed on him.

15 Given all this, one may well wonder why it is that the procedure under the Act is different from that under the CPC. It is worth keeping in mind also that the CPC governs a wide range of criminal conduct, including many offences that are more serious – and in most cases far more serious – than road traffic offences under the Act. It is curious that a person charged with a relatively minor road traffic offence must show cause as to why he should not be punished for a failure to attend court, whereas a person charged with having committed a more serious offence has no such obligation. It is also curious that the show cause provision renders a person liable to imprisonment for up to two months for failing to attend court whereas no such specific penalty exists in the CPC.

***No good reason to rely on the procedure***

16 There is of course nothing objectionable *per se* in having the show cause procedure. If it is anomalous but beneficial, its existence ought surely to be applauded. However, I am not persuaded that there are good or compelling reasons for prosecuting agencies to rely on the show cause procedure.

17 One concern may be that without it, more defendants will absent themselves from court. But there is no empirical evidence in support of this theory as far as I am aware; and the constant volume of warrants of arrest issued over the years to persons who fail to comply with notices served upon them will suggest that this argument is speculative at best. If another concern is that sources of revenue will be lost, this cannot be tenable since fines – including those imposed in respect of show cause proceedings – are meant to punish offending behaviour and not generate revenue: see *Chia Kah Boon v Public Prosecutor* [1999] 2 SLR(R) 1163 at [14], citing *R v Teo Woo Tin* [1932] MLJ 124. There should really be no genuine or legitimate concern as to loss of revenue if there is no corresponding show cause procedure in place.

18 It would seem that the primary purpose of the show cause procedure is to emphasise the seriousness of absence from court. But one may well question whether this is necessary, since even if the procedure is done away with, it does not mean that persons issued with a notice to attend court can simply absent themselves from court without consequences. First, they remain liable to be arrested on a warrant of arrest and placed on bail, which causes them inconvenience and secures their attendance in future cases – though unfortunately there are still cases where defendants

repeatedly fail to turn up. Second, the prosecution can in certain cases apply for an order that an absent defendant be disqualified from holding or obtaining a driving license under s 42A of the Act. Third, if the defendant eventually pleads guilty, the court will ordinarily take into account his initial failure to turn up in court as evidence of lack of remorse or an intention to delay proceedings, which would almost invariably result in a higher fine.

19 One further argument that may be put forward to justify the use of the show cause procedure is that it permits a defendant to explain why he should not be penalised despite having failed to attend court. For example, he may be able to demonstrate good reasons for his absence from court, including procedural irregularities such as defective service or non-service of a notice on him. But such circumstances can and should properly be brought to the attention of the prosecuting agencies or the court via representations to cancel the warrant of arrest. In practice, the overwhelming majority of defendants do not intend, or are unable, to show cause but only seek to mitigate against the potential penalty.

***Potential difficulties created by the procedure***

20 In the present case, the respondent had compounded her offence by paying the composition amount at 3.52pm on 13 May 2013. The matter could and ought to have simply ended there and then. Since her scheduled appearance before the court later that day at 6.00pm was for the purpose of dealing with that offence, her composition of the offence should have obviated the need for her to make such an appearance. This would have saved time and resources for all concerned – the respondent, the prosecuting officer and the court below; and without any proceedings below there would have been no error such as would then require the High Court to exercise its revisionary powers.

21 The nub of the problem is that the show cause provision provides an independent reason to require a defendant to attend court. Prosecuting agencies may take the view that, despite the composition of the substantive offence, the defendant should nonetheless be required to attend to explain his earlier non-compliance with the notice to attend court, with a fine or even a term of imprisonment to be imposed if the explanation is unsatisfactory. When this happens, the show cause matter becomes the sole reason for attending court and what this means is that prosecutorial and, more importantly, judicial time and resources need to be expended pursuing something that brings little, if any, countervailing good.

22 Moreover, there is a risk that the existence of a show cause matter against a defendant will assume precedence in the mind of the prosecuting agency, to the extent that the fact of the defendant's composition of the offence might escape its notice. It is at least a plausible inference that, in the present case, the fact that the respondent had compounded the offence did not feature prominently (or at all) among the LTA's concerns because there remained outstanding the show cause matter against her in any event.

23 If indeed the prosecuting agency overlooks the composition of the offence and a defendant is erroneously asked to plead to the main charge in spite of his having already compounded the offence, it is likely that the defendant will plead guilty (as the respondent did in the present case) and in ignorance pay up in respect of the same offence. In road traffic cases, as with other cases involving minor regulatory offences, defendants often appear in person and it is hardly surprising if they choose not to seek legal advice. One would not expect most unrepresented defendants to understand the complexities of criminal procedure and to realise that they are being unlawfully penalised twice. That is precisely what happened to the respondent in the present case.

**Conclusion**

**Conclusion**

24 For these reasons, I am of the respectful view that the show cause procedure in respect of a defendant's failure to attend court in compliance with a notice should be reviewed. It is questionable whether it serves any useful purpose since the same end result of a higher sentence overall for arrest cases (where there was no good reason for the defendant's absence in court) can be achieved without resort to it. Such an outcome will still appropriately signal the serious consequences of a defendant's failure to attend court.

25 Should prosecuting agencies decide to do away with show cause proceedings, this will of course require legislative change. But it appears to me that even without legislative intervention, there could be other viable options which may well merit consideration. At present, however, it would appear that most prosecuting agencies simply resort to the use of show cause proceedings as a matter of course in every case, almost perfunctorily, where a warrant of arrest is issued. If this assessment is accurate, then this practice should be seriously reconsidered.

26 As I have noted above, in many instances, the defendant does not intend, or is unable, to show cause for his failure to attend court. In such cases, the prosecuting agency could simply forgo the show cause proceedings and allow the defendant to compound the offence while increasing the composition amount to reflect the defendant's absence. If the defendant accepts the composition offer, the agency could then close the matter by seeking an order from the court for a discharge amounting to an acquittal.

27 I have ventured to make the above observations while remaining fully conscious that any potential changes are ultimately matters of policy choice. I am hopeful that the relevant agencies will grasp the nettle to undertake a careful re-examination of this issue as it appears to me that a review of the merits, purpose and practical application of the show cause procedure is long-overdue.