Wong Tiew Yong and Another v Public Prosecutor
[2003] SGHC 191

Case Number : MA 77/2003, 78/2003

Decision Date : 28 August 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Subhas Anandan and Melanie Ho (Harry Elias Partnership) for the first appellant; K Sivaratnam (S Ratnam & Associates) for the second appellant; Edwin San (Deputy Public Prosecutor) for the respondent

Parties : Wong Tiew Yong; Karuppiah Subramaniam — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Findings of fact – Principles applicable in appeal against findings of fact

Criminal Procedure and Sentencing – Sentencing – Sentencing – Sentencing practice Application of "clang of the prison gates" principle – Factors to consider when applying "clang of the prison gates" principle

Criminal Procedure and Sentencing – Sentencing – Sentencing practice – Taking account of contributions of appellant in sentencing

1 This was an appeal against the decision of the district judge when he convicted the two appellants on two counts each for having exhibited 'conduct to the prejudice of good order and discipline' as members of the CIAS Auxiliary Police. Such conduct is an offence under Regulation 6(c) of the Auxiliary Police Regulations (Cap 235) and is punishable under Regulation 10 of the said Regulations. The appellants were each sentenced to two weeks' imprisonment on each charge and both sentences were ordered to run concurrently. The appeal was brought against conviction and sentence. At the end of the hearing before me, I dismissed the appeals against conviction and allowed the appeals against sentence. I now give my reasons.

Charges

2 The charges against the appellants read as follows:

1. DAC 47844/2002

> You, Wong Tiew Yong, M/54 yrs NRIC No. S1049798A Director of the Changi Airport Services Auxiliary Police Force, are charged with exhibiting conduct prejudicial to the good order and discipline of the Changi Airport Services Auxiliary Police Force, to wit, you sometime from June 1998 to July 1998 at the Changi Airport, did instigate one Kong Keng Shiong, an auxiliary police officer with the Changi Airport Services Auxiliary Police Force, to absent himself from duty from 30 June 1998 to 18 July 1998 without leave or good cause, and you have thereby committed an offence under Regulation 6(c) of the Auxiliary Police Regulations punishable under Regulation 10(1) of the said Regulations.

1. DAC 47845/2002

> You, Wong Tiew Yong, M/54 yrs NRIC No. S1049798A Director of the Changi Airport Services Auxiliary Police Force, are charged with exhibiting conduct prejudicial to the good order and discipline of the Changi Airport Services Auxiliary Police Force, to wit, you sometime from July

1998 to August 1998 at the Changi Airport, did instigate one Kong Keng Shiong, an auxiliary police officer with the Changi Airport Services Auxiliary Police Force, to absent himself from duty from 30 July 1998 to 9 August 1998 without leave or good cause, and you have thereby committed an offence under Regulation 6(c) of the Auxiliary Police Regulations punishable under Regulation 10(1) of the said Regulations.

1. DAC 47842/2002

You, Karuppiah Subramaniam, M/44 yrs NRIC No. S1298462A Inspector of the Changi Airport Services Auxiliary Police Force, are charged with exhibiting conduct prejudicial to the good order and discipline of the Changi Airport Services Auxiliary Police Force, to wit, you sometime from June 1998 to July 1998 at the Changi Airport, did instigate one Kong Keng Shiong, an auxiliary police officer with the Changi Airport Services Auxiliary Police Force, to absent himself from duty from 30 June 1998 to 18 July 1998 without leave or good cause, and you have thereby committed an offence under Regulation 6(c) of the Auxiliary Police Regulations punishable under Regulation 10(1) of the said Regulations.

1. DAC 47843/2002

You, Karuppiah Subramaniam, M/44 yrs NRIC No. S1298462A Inspector of the Changi Airport Services Auxiliary Police Force, are charged with exhibiting conduct prejudicial to the good order and discipline of the Changi Airport Services Auxiliary Police Force, to wit, you sometime from July 1998 to August 1998 at the Changi Airport, did instigate one Kong Keng Shiong, an auxiliary police officer with the Changi Airport Services Auxiliary Police Force, to absent himself from duty from 30 July 1998 to 9 August 1998 without leave or good cause, and you have thereby committed an offence under Regulation 6(c) of the Auxiliary Police Regulations punishable under Regulation 10(1) of the said Regulations.

Background facts

3 The first appellant was Wong Tiew Yong ("Wong"), the Director of CIAS Auxiliary Police Force ("CIAS Police"). The second appellant was Karuppiah Subramaniam ("Subramaniam"), an Inspector and the Officer-In-Charge ("OC") of the Task Force of CIAS Police. In 1998, Wong made three unofficial trips to China. These trips were in February 1998 ("February trip"), from 30 June 1998 to 18 July 1998 ("June trip") and from 30 July 1998 to 9 August 1998 ("July trip"). On each of these trips, Kong Keng Shiong ("Kong"), then a Malaysian police constable attached to the Task Force of CIAS Police, accompanied Wong.

4 Kong was on medical leave from August 1997 to April 1998 when he went on the February trip. As for the June and July trips, Kong was supposed to have performed afternoon shift duty work at the CIAS Police. Instead, he went on the June and July trips without applying for leave of 14 days and seven days respectively. As CIAS Police was unaware of Kong's absence from work during the June and July trips, Kong was paid his full monthly salary of $1,118.34 in August and September 1998.

5 At trial, the prosecution contended that both Wong and Subramaniam had instructed Kong (i) to accompany Wong on the June and July trips and (ii) to go on these trips without applying for

leave. Additionally, the prosecution claimed that Subramaniam had separately told Kong to falsely record in his pocket book that he was working at CIAS Police during the period of the June and July trips. The prosecution's case relied heavily on Kong's testimony.

Prosecution's version of the facts

The February trip

6 Kong testified that he first came to know about the February trip while on medical leave in Malaysia. Goh Ban Peng ("Goh"), a task force colleague, had phoned to inform him that Wong wanted Kong to accompany him on a trip to China. Goh revealed that Wong was going to meet a girl called Qin Qin in China and wanted Kong to act as his bodyguard. It was Wong's desire to show Qin Qin that he was an important person. When Kong expressed his unwillingness, Goh convinced him by stating that the arrangement was Wong's idea. Goh added that if Kong were not to go, his career would be adversely affected. As such, Kong agreed to follow Wong on the February trip.

7 Before Kong left for the trip, he informed Subramaniam that he was accompanying Wong to China on an assignment at Wong's request. During this conversation, Kong did not reveal the purpose of the February trip, as he had been told by Wong to keep it confidential. Kong complied with Wong's instructions because Wong was the top man in CIAS Police. Kong was therefore afraid that any non-compliance with Wong's request would indeed adversely affect his career.

The June trip

8 Wong informed Kong about the June trip while they were in a car. Wong told Kong that his girlfriend in China had cheated him. As such, Wong wanted to go to China to clarify the matter. Wong stated that he wanted Kong to accompany him on this trip to act as his bodyguard in China. Wong also informed Kong that he was not required to apply for leave to go on this trip, adding that he would speak to Subramaniam about the matter. After this, Subramaniam called Kong to his office and told Kong that he was required to be Wong's bodyguard during a China trip. Subramaniam also advised Kong that he should comply with Wong's instructions for the sake of his career. Subramaniam then informed Kong that he was not required to apply for leave to go on the trip, adding that Kong was required to update his pocket book as though he was on duty for the relevant period.

9 Shortly before the June trip, Subramaniam asked Kong about Wong's purpose in going to China. Despite Wong's earlier caution to keep the purpose of the trip confidential, Kong told Subramaniam that Wong had some problems with a girl there. Kong testified that he assumed Subramaniam already knew of Wong's problems with the Chinese girl, as some task force colleagues and Subramaniam had gossiped and joked in the canteen about Wong's affair with the girl. Kong added that Subramaniam had also brought up the topic about the girl after the February trip. When Kong returned to Singapore after the June trip, Subramaniam reminded Kong to update his pocket book to reflect that he was at work with CIAS Police during the relevant period. Kong complied with Subramaniam's instructions.

The July trip

10 After the June trip, Wong told Kong that he needed to return to China to look up some friends. He wanted Kong to accompany him on the trip as a bodyguard. Wong again informed Kong that he was not required to apply for leave and that he would speak to Subramaniam about the matter. After this conversation, Subramaniam informed Kong that Wong required his company on a China trip. Subramaniam added that Kong was not required to apply for leave for the July trip and that

he should update his pocket book to reflect that he was performing afternoon shift duty during the period he was in China. After returning to Singapore, Kong filled up his pocket book in accordance with Subramaniam's instructions.

11 Kong also testified that at the material times, neither Wong nor Subramaniam informed him whether the June and July trips were official. Kong was only told that they were overseas assignments. Kong, however, knew that the trips were to attend to Wong's private affairs. Kong admitted that he should have applied for leave to go on such trips but had failed to do so because Wong and Subramaniam had given instructions to the contrary. Kong could also not fathom that what Wong had done was 'illegal', as he was given to understand that Wong was entitled to bring an orderly on his overseas trips because of his status.

Appellants' version of the facts

12 Both Wong and Subramaniam denied the prosecution's contentions. Wong claimed that he brought Kong on the three China trips as a Mandarin interpreter and not a bodyguard. He testified that Kong knew that the trips were unofficial and that he had only brought Kong along because Goh was not available. As for the June trip, Wong claimed that Kong had represented that he was still on medical leave at that time, but was nevertheless keen on going. Before the July trip, Wong claimed that he bumped into Kong at the CIAS Police premises when the latter came to tender a medical document. Wong ascertained that Kong was keen to follow him to China again and that Kong was on leave at the material period.

13 Wong testified that he had informed Subramaniam that he was bringing Kong on the three trips to China because it was only courteous to do so, as Subramaniam was Kong's OC. Wong, however, denied telling Subramaniam that the June and July trips were official. Further, Wong denied telling Kong that he was not required to apply for leave to go on the trips, or that he (Wong) would be speaking to Subramaniam about the matter. Wong, however, added that he neither checked when Kong's medical leave would expire nor took any step to verify whether Kong was indeed on such leave.

14 Subramaniam, on the other hand, claimed that he did not know about the February trip. As for the June and July trips, Subramaniam alleged that Wong had led him to believe that these were official trips. Subramaniam disputed that he had persuaded Kong to go on these trips for the sake of his career. He also disputed that he had told Kong that he was not required to apply for leave to go on the trips. Additionally, Subramaniam claimed that he was not present at the canteen when the task force officers joked about Wong's relationship with a Chinese girl. He also claimed that he did not even know that Wong had a relationship with a Chinese girl.

15 Further, Subramaniam denied that he told Kong to falsely record in his pocket book that he was performing afternoon shift duties at CIAS Police for the periods he was in China. According to Subramaniam, he had in fact instructed Kong to record his activities in China in the pocket book, as the trips were official. Subramaniam also intimated that Kong had the motivation to frame him due to some past differences.

The decision of the district judge

16 The district judge noted that counsel for Wong and Subramaniam had expended considerable effort in discrediting Kong, claiming that Kong had falsely portrayed himself as a hapless subordinate. Counsel had also claimed that Kong's evidence was inherently incredible, self-serving and that Kong had an interest in fabricating evidence against both Wong and Subramaniam in order to escape

possible AWOL and cheating charges, as well as breaches of the Police General Orders. The district judge considered these contentions and rejected them.

17 The district judge stated that he found Kong's evidence to be cogent and inherently plausible. Kong was a subordinate of Wong and Subramaniam; Wong was the 'number 1' man in CIAS Police and Subramaniam was Kong's OC. The instructions for Kong to go on the June and July trips and to falsify the pocket book entries had come from both of these higher-ranking men. Under the circumstances, the district judge found it understandable that Kong might have felt compelled to adhere with his superior's instructions in order to preserve his career prospects.

18 The district judge also noted that Kong's evidence could not have been fabricated. In the district judge's view, Kong could not have acted alone in going on the June and July trips without applying for leave and making the false entries in his pocket book. Additionally, Kong had not done these acts surreptitiously, but had in fact travelled to China with the full knowledge of Wong, Subramaniam and other task force colleagues. As such, there was no reason why Kong would want to record in his pocket book that he was working at CIAS Police at the material periods when both Wong and Subramaniam knew that he was in China.

19 The district judge stated that the only conceivable reason why Kong had made the false entries was because he was acting pursuant to Subramaniam's instructions. Also, Kong could not have lied to Wong and Subramaniam about his work or leave status, as both Wong and Subramaniam were separately responsible for Kong's daily work deployment and leave approval. As such, any discrepancies would have been apparent.

20 The district judge also noted that Kong's evidence was not self-serving. In his grounds of decision, the district judge stated that Kong had fully implicated himself in his testimony without seeking to magnify the involvement of both accused persons. Kong had admitted from the outset that (i) the three trips to China were unofficial, (ii) he went on these trips without leave, (iii) he should apply for leave when going on unofficial trips and (iv) he made false entries in his pocket book. Additionally, Kong had volunteered further information that implicated him in respect of other acts of misconduct. The district judge noted that it would have been more convenient for Kong not to testify on these if he were as untruthful and self-serving as the defence had alleged.

21 The district judge also disbelieved Subramaniam's evidence that Wong had told him that the June and July trips were official. Subramaniam's position was materially contradicted when considered in light of all the evidence. For instance, Wong had denied informing Subramaniam that the trips were official. Further, Kong's evidence suggested that Subramaniam knew the true nature of the two trips.

22 As for the false pocket book entries, the district judge observed that Subramaniam did not dispute the fact that he did inform Kong to update his movements during the June and July trips in his pocket book. Kong had testified that Subramaniam reminded him to reflect in his pocket book that he was working on the afternoon shift during the relevant period. The district judge elected to believe Kong's testimony in this regard and thus found Subramaniam's instructions to be improper, given that Kong did not perform any duty at the CIAS Police at the material time.

23 After arriving at the decision to convict, the district judge then considered the aggravating factors of the case in deciding on sentencing. He noted that the accused persons' misconduct fell within the higher end of the scale of disciplinary misconduct envisaged in Regulation 10. Wong was also the most senior law enforcement officer at the CIAS Police. Subramaniam was an Inspector with more than 20 years of working experience at the CIAS Police. The district judge observed that these very senior officers had grossly abused their authority by instigating a constable to absent himself

without official leave so that he could be a personal attendant and escort during Wong's personal trips.

24 The district judge noted that such misconduct not only amounted to a misuse of funds and resources but had also tarnished the image of CIAS Police. The district judge also noted that the accused persons' misconduct was not a one-off offence committed on impulse, but was perpetrated on two separate occasions resulting in Kong being AWOL for a significant period of three weeks. Additionally, the district judge stated that counsel had not cited anything exceptional in mitigation. Under the circumstances, a custodial sentence would be more appropriate than a fine. As such, Wong and Subramaniam were sentenced to two weeks' imprisonment on each charge, the sentences to run concurrently.

Wong's appeal against conviction

25 Counsel for the appellant, Wong, advanced three main grounds of appeal:

(1) that the evidence did not show that Wong instigated Kong to absent himself from duty without leave or good cause;

(2) that the prosecution had not discharged the burden of proving that Kong lacked the motive to falsely implicate Wong; and

(3) that the evidence did not reveal the requisite guilty knowledge on the part of Wong.

26 I shall now deal with these arguments in turn.

Whether the evidence showed that Wong instigated Kong to absent himself from duty without leave or good cause

27 Counsel for Wong contended that the district judge erred in law and fact by believing Kong's evidence. I did not agree with this contention. The district judge was very thorough in his examination of the evidence. He was mindful of the fact that the prosecution's case hinged on Kong's testimony and that Kong actually fell within the class of 'accomplices', as defined in *Davis v DPP* [1954] AC 378 at 400. As such, his grounds of decision were detailed and reflected much caution. He had scrutinised the testimonies of all the witnesses with care and had eventually come to the decision to believe Kong instead of Wong. Essentially, he had found that Kong was a credible witness despite the adverse contentions of counsel at the trial stage.

28 There was a further contention that the district judge erred in finding that Wong was the person who would have authorised Kong's leave application. Counsel for Wong argued that the CIAS Police Human Resource Manual allowed for Wong to delegate his leave authorising duties. That being the case, Wong need not have been the person who directly approved (or disapproved) Kong's leave. At any one point, Wong would not have known if Kong was on leave or otherwise. Therefore, counsel for Wong claimed that the district judge was wrong to conclude that Wong had actual knowledge that Kong was not on leave when he went with him (Wong) on the two (June and July) trips. I disagreed with this contention. The district judge was entitled to arrive at this conclusion from his evaluation of all the evidence before him. He had found, as a matter of fact, that Wong had *told* Kong that he was not required to apply for leave for the duration of the two trips. Therefore, counsels' contention regarding the Human Resource Manual neither added to nor altered this fact.

29 Counsel for Wong also claimed that Kong's evidence was self-serving and incredible.

However, this claim was a repetition of his contention at the trial. The district judge had already stated in his grounds of decision that this contention was not accurate and had disposed of the issue. As such, an appellate court would be slow to disturb the district judge's finding of fact, which was based on his assessment of the witnesses. At this juncture, it would be useful to refer to *PP v Azman bin Abdullah* [1998] 2 SLR 704 at 710, where I affirmed the following principle:

> It was well-settled law that in any appeal against a finding of fact, an appellate court would generally defer to the conclusion of the trial judge who had the opportunity to see and assess the credibility of the witnesses. An appellate court, if it wished to reverse the trial judge's decision, had to not merely entertain doubts whether the decision was right but had to be convinced that it was wrong

On the evidence before him, the district judge was not wrong to arrive at this conclusion with regard to Kong's credibility. Therefore, I did not disturb his findings.

Whether the prosecution had discharged the burden of proving that Kong lacked the motive to falsely implicate Wong

30 Counsel for Wong contended that, since Kong had every reason to implicate him, the burden of proving a lack of motive on the part of Kong to falsely implicate Wong lay on the prosecution. The district judge, therefore, had erred by placing the burden on the defence to prove such a motive. Counsel for Wong relied on the case of *Khoo Kwoon Hain v PP* [1995] 2 SLR 767 to buttress this point regarding the allocation of the burden of proof.

31 This contention could not be supported. The district judge had not *actually* placed the burden on the defence to prove that Kong had a motive to falsely implicate Wong. In fact, the district judge had scrutinised Kong's evidence with much caution before ascertaining that Kong had no reason (or motive, for that matter) to falsely implicate Wong. The prosecution was thus not required to prove a lack of such a motive on Kong's part, as the district judge had already found from the outset that Kong did not have such a motive.

Whether the evidence revealed the requisite guilty knowledge on the part of Wong

32 Counsel for Wong contended that there was no reason for him to instruct Kong not to apply for leave for the trips, as Wong could have asked someone else to come along for the trip to China if Kong did not wish to go there or apply for leave. With regard to this particular contention, it was notable that the district judge had already found Wong's defence to be inherently incredible. He believed Kong when he testified that Wong knew that he (Kong) had been back at work since May 1998. As such, Wong would have known that Kong would have to apply for leave to go on the June and July trips. The district judge had also found that Wong *had* informed Kong that he was not required to apply for leave during the material periods. As the district judge had found Kong's evidence to be cogent and inherently plausible, I saw no reason to disturb his well-reasoned finding.

33 On the totality of the evidence before me, and considering counsel's submissions, I found no reason to conclude that the district judge had erred in convicting the first appellant, Wong. The district judge's findings were carefully made and well supported on the evidence. As such, I dismissed the first appellant's appeal against conviction. I now turn to the second appellant, Subramaniam's, appeal against conviction before considering both appellants' appeal against sentence.

Subramaniam's appeal against conviction

34 Counsel for the appellant, Subramaniam, laid down several broad contentions. In sum, seven main grounds of appeal could be discerned:

1) that it was unclear if Kong had actually told Subramaniam that the trips were unofficial;

2) that Subramaniam had not told Kong to make false entries in his pocket book in respect of the June and July trips;

3) that Kong was Wong's accomplice;

4) that Kong was not a credible witness and that his evidence was self-serving;

5) that the district judge erred in his finding that Kong felt compelled to comply with Subramaniam's instructions;

6) that Wong and Kong worked hand in glove to implicate Subramaniam; and

7) that Kong resiled on material admissions.

35 I shall now deal with these arguments in turn.

Whether Subramaniam knew that the trips were unofficial

36 Counsel for Subramaniam contended that it was unclear if Kong had actually told him that the trips were unofficial. In this regard, counsel doubted Kong's credibility and stated that the district judge had erred in believing Kong. This argument could not be accepted. First, the district judge had found *as a matter of fact* that Kong was a credible witness. He had arrived at this finding of fact after much deliberation. He had also cautioned himself against accepting Kong's evidence without deep scrutiny, as Kong fell within the category of 'accomplices' as specified in *Davis v PP*. As he had reached a well-reasoned and careful conclusion in this respect, I saw no reason to disturb his finding. Second, the district judge had noted that Kong's evidence suggested that Subramaniam knew the true nature of the June and July trips. Third, Wong had denied informing Subramaniam that the trips were official. In this regard, the district judge had carefully weighed the evidence before him and chose to believe Wong's evidence on this. He found that Wong's evidence corroborated Kong's testimony that Subramaniam was aware that the trips were not official.

Whether Subramaniam had told Kong to make false entries in his pocket book in respect of the June and July trips

37 Counsel for Subramaniam contended that the district judge had erred in disbelieving his evidence with regard to his denial that he had asked Kong to falsify the pocket book entries. However, on the evidence before him, the district judge was entitled to make such a finding. He had found that Subramaniam's defence was contrived and artificial. He noted that Subramaniam had not disputed that he had informed Kong to update his movements for the June and July trips in his pocket book. That being the case, the district judge was only left to find if Subramaniam had indeed instructed Kong to falsely update his pocket book. In this respect, he found that Kong's evidence was more cogent and clearly showed that Subramaniam *had* given these improper instructions. Additionally, Subramaniam's lackadaisical attitude towards the inspection of pocket books cast suspicion on his contentions. In this regard, I found the district judge's reasoning to be well supported and well reasoned and, therefore declined to disturb his finding.

38 Counsel further argued that there was no necessity for Subramaniam to instruct Kong to make false pocket book entries if he knew that the trips were unofficial and that Kong was on unofficial leave. With regard to this contention, the district judge had reasoned that Subramaniam had always dutifully complied with Wong's orders. He found that in light of the relationship between Subramaniam and Wong, it was not implausible that Subramaniam facilitated Wong in his unofficial trips to China. The district judge stated that this was the reason why Subramaniam had (i) persuaded Kong to accompany Wong on the China trips without applying for leave and (ii) instructed Kong to falsify the pocket book entries accordingly.

39 Counsel also argued that Kong had made false entries on his own or on Wong's instructions. Strangely, nothing in the notes of evidence supported such a contention. Additionally, the district judge had already found that it was Subramaniam who had instructed Kong to falsify the pocket book entries. This argument, therefore, was pure speculation and had already been proven otherwise.

40 Counsel for Subramaniam also contended that Kong had been inconsistent in his evidence pertaining to the false pocket book entries. Counsel referred to a portion of Kong's testimony under cross-examination at trial. However, it is apparent from the selfsame portion of the cross-examination that Kong had actually consistently maintained that he had falsely updated the pocket book only after Subramaniam had instructed or reminded him to do so. In fact, this argument actually confirmed that Subramaniam had indeed instructed Kong to falsify the pocket book entries.

Whether Kong was an accomplice

41 Counsel for Subramaniam submitted that the district judge should have, in the interests of justice and principles of fair hearing, scrutinised and weighed carefully the evidence of Kong, since Kong was an accomplice. However, I found that the district judge *had* scrutinised Kong's evidence with much caution before deciding to rely on it. He had recognised that Kong fell within the category of 'accomplices', as laid down in *Davis v DPP*. The district judge had in fact proceeded with care when analysing and relying on Kong's evidence.

42 Subramaniam also contended that Kong had testified against him because Kong was aware that he might be charged for an offence in the future and was hoping not to be charged. However, on a perusal of the district judge's grounds of decision, it was apparent to me that the district judge had already assessed this point sufficiently. He had noted that Kong was under the impression that he would be prosecuted even if he implicated Subramaniam (and/or Wong). According to Kong, the CPIB did not promise to waive prosecution against him should he implicate Subramaniam and Wong.

Whether Kong was a credible witness and whether his evidence was self-serving

43 Several contentions were made suggesting that Kong had implicated Subramaniam in order to materially minimise his culpability. As such, counsel for Subramaniam submitted that Kong was not a credible witness and that his evidence was self-serving. These arguments were a repetition of the very same arguments that had already been dealt with at the trial stage. The district judge was entitled to find that Kong was a credible witness. As mentioned earlier, the case of *PP v Azman bin Abdullah* is authority for the proposition that an appellate court should be slow to disturb a district judge's finding of fact. Since the district judge had already adequately decided on this matter, I did not disturb his findings.

Whether the district judge erred in his finding that Kong felt compelled to comply with Subramaniam's instructions

44 Counsel for Subramaniam argued that it was untrue that Kong was compelled to comply with his instructions to falsify the pocket book entries. Further, it was contended that Kong was attempting to portray an image of a young, inexperienced junior constable who was exploited by his superiors. I disagreed with these contentions. At trial, the district judge had found that Kong was truthful when he testified that he felt some pressure to comply with his superiors' instructions (e.g. Subramaniam's instructions to falsify the pocket book) fearing that non-compliance would affect his career. To this extent, the district judge found Kong's evidence cogent and inherently plausible.

45 Additionally, counsel argued that Kong should have just complained against Subramaniam's impropriety instead of having complied with his instructions. Here, I agreed with the district judge's finding that it was naïve to expect Kong to openly complain about his superiors' misconduct without any apprehension of the repercussions. Although Kong had, on a previous occasion, complained about Subramaniam to the Deputy Director of CIAS Police, that occasion was with regard to Subramaniam overlooking Kong for a course. Here, the potential complaint was with reference to impropriety on the part of his superiors. As such, the apprehension on the part of Kong would be warranted, considering the entirely different circumstances. In any case, this argument was speculative and did not affect the district judge's finding that Subramaniam did indeed instruct Kong to falsely update his pocket book.

Whether Wong and Kong worked hand in glove to implicate Subramaniam

46 Counsel for Subramaniam theorised, here, that Wong and Kong had worked together to give Subramaniam the impression that the trips were official in nature. Subramaniam was thus fooled by Wong and Kong and ended up being implicated. I found this theory to be speculation and rejected it. For one, Subramaniam had not adduced any evidence to support this theory. Further, the district judge had already noted that Subramaniam and Wong enjoyed a close relationship and that Subramaniam would have facilitated Wong's actions. That being the case, Wong would not have needed to fool Subramaniam into believing that the trips were official. In fact, the district judge had found that Subramaniam had knowledge that the trips were not official and had in fact encouraged Kong to accompany Wong.

Whether Kong resiled on material admissions

47 Counsel contended that Kong's testimony had plenty of discrepancies within it. As such, counsel claimed that the district judge had erred in his fact-finding by relying on Kong's evidence. I dismissed this argument on the basis that the district judge had arrived at a well-reasoned decision on the selfsame issue. In fact, the district judge *had* noted that some minor discrepancies were present in Kong's testimony, indicating that the district judge had indeed thought through the issue of discrepancies. However, he had found that these discrepancies were more apparent than real and could be attributed to a genuine confusion in Kong's mind.

48 Nevertheless, the discrepancies did not relate to a material issue in contention. The district judge had accurately pointed out that the discrepancies were noted at Kong's cross-examination by counsel for Subramaniam. In that cross-examination, the manner in which the China trips were described was put to scrutiny. For instance, Kong had described the trips as being 'unofficial' as opposed to counsel for Subramaniam, who had described the trips as 'illegal'. The district judge then found that the manner in describing the China trips could not be said to be a real discrepancy. It was simply a matter of loose description and could not amount to a material discrepancy. Since this issue had been very adequately reasoned out I did not disturb this part of the district judge's findings.

49 On the whole, counsel's submissions did not give me a reason to conclude that the district judge had erred in convicting the second appellant, Subramaniam. On the contrary, I found that the district judge had weighed the evidence before him very carefully and had come to an accurate decision. As such, I dismissed the second appellant's appeal against conviction. I now deal with both the appellants' appeals against sentence.

The appeals against sentence

50 Counsel for both the appellants contended that the sentence imposed by the district judge was manifestly excessive. They argued that the district judge had failed to take into account several mitigating factors. Essentially, they disagreed that a custodial sentence was appropriate and appealed for a fine instead. Although I agreed with the appellants that a custodial sentence was not necessary, I disagreed with their arguments to this effect. I first dealt with these arguments before moving on to explain why a fine (as opposed to a custodial sentence) should have been imposed instead.

Wong's appeal against sentence

51 First, counsel for Wong contended that a breach of Auxiliary Police Regulations is dealt with internally, with disciplinary action being imposed internally as well. Second, he contended that there were exceptional mitigating factors in the case. For instance, Wong had made significant contributions to the CIAS over the last 20 years. He relied on the decision of *Harry Lee Wee v PP* [1980] 2 MLJ 56 to argue that such significant contributions should have been taken into account in sentencing. Additionally, counsel for Wong claimed that the fact that this was his first offence should be a factor to be taken into account. He relied on the case of *Tan Sai Tiang v PP* [2000] 1 SLR 439 to buttress this point.

52 I dealt, first, with the contention on internal disciplinary action. An officer in breach of Regulation 6 of the Auxiliary Police Regulations (Cap. 235) may be prosecuted in court and sentenced to a maximum fine of $500 or to imprisonment for a term not exceeding three months or to both. The provision that allows for this is Regulation 10 of the Auxiliary Police Regulations. Since the district judge had charged Wong for an offence under Regulation 6 read with Regulation 10 of the Auxiliary Police Regulations, Wong could be prosecuted in court and sentenced upon conviction. As such, Wong's contention failed.

53 Next, I dealt with the contention that there were exceptional mitigating factors in the case. Counsel for Wong contended that the case of *Harry Lee Wee* stood for the proposition that certain significant contributions by an appellant could be taken into account in sentencing. In *Harry Lee Wee*, the appellant's regular service to the Council of Law Society and his 18 years of service at the Law Faculty were taken into account in sentencing. In that case, the appellant's contributions resulted in a reduction in the amount of a fine that was imposed on the appellant.

54 It was true that the district judge had not considered the *Harry Lee Wee* case in his grounds of decision on sentencing. However, counsel for Wong was incorrect to say that the district judge had therefore not taken into account Wong's contributions. The district judge, in his grounds of decision, had stated that there were clear aggravating factors in the case that he took into account in sentencing. One of these aggravating factors was the fact that Wong was the most senior law enforcement officer at CIAS Police. Notably, the district judge had commented on the fact that Wong had actually abused his very status to commit the offences. As such, it was apparent that the district judge had indeed considered Wong's position, seniority and contributions when deciding on the sentence. I disagreed therefore with counsel's contention.

55 Counsel for Wong also relied on the 'clang of the prison gates' principle adopted in *Tan Sai Tiang* [2000] 1 SLR 439. They referred to paragraph 39 of my decision in *Tan Sai Tiang*:

> The 'clang of the prison gates' principle that was articulated by LP Thean J (as he then was) in *Siah Ooi Choe v PP* was adopted from the English decision of *R v Jones* … This principle states that when an older person in his 40s or 50s is convicted for the first time, the mere fact that he goes to prison at all is a very grave punishment indeed.

Counsel for Wong claimed that the fact that an older person like him had committed an offence for the first time should be a factor to be considered in sentencing. Notably, this case (and the 'clang of the prison gates' principle) was not brought to the attention of the district judge during the plea-in-mitigation. However, the district judge did note that Wong's misconduct was not a one-off offence committed on impulse, but one that was perpetrated *on two separate occasions*.

56 It would, therefore, be incorrect to say that what Wong had done was actually a first offence. They were actually offences committed in succession and over a period of time, albeit a short period. It is true that, generally, an offender's lack of prior convictions can be of value in mitigation. However, this is not always the case. I held in *Chen Weixiong Jerriek v Public Prosecutor* [2003] SGHC 103 that the discretion remains with the court to refuse to consider someone as a first time offender if he has been charged with multiple offences. This is the position even if the person does not have prior convictions. As such, it could not be said that Wong was a first offender and that such a consideration should be taken into account in mitigation when it came to sentencing.

57 Additionally, the benefit of the 'clang of the prison gates' principle must not be weighed in Wong's favour. Counsel for Wong had not relied on a material portion of my decision in *Tan Sai Tiang* (at paragraph 40), to which I now refer:

> Now, the underlying premise of the 'clang of the prison gates' principle is not that, where first time offenders are concerned, the mere fact that a jail sentence has been imposed is punishment enough. The actual basis for the application of this principle is that the shame of going to prison is sufficient punishment for that particular person convicted. As such, in order for the principle to be applicable, the convicted person must have been a person of eminence who had previously held an important position or was of high standing in society. In other words, it would hardly ever apply in most cases dealing with members of society who had never held an important post or were persons or sufficient standing in the eyes of society.

In the present appeal, Wong seemingly falls into this exceptional category of persons to whom the 'clang of the prison gates' principle would apply. He was the Director of CIAS Police and could, therefore, be noted to have been "a person of eminence who had previously held an important position or was of high standing in society".

58 However, the fact that Wong had abused this very position of eminence to commit the offences took him out of the exceptional category of persons to whom the principle applies. Wong could not argue that, since he fit this exceptional category very neatly, he could therefore avail himself of the principle. Such an argument mocks the rationale behind the 'clang of the prison gates' principle. As a matter of logic, such an argument must fail. A person who had abused his status of eminence to commit an offence should not then be allowed to use that very status to his advantage.

Subramaniam's appeal against sentence

59 Counsel for Subramaniam contended that the offences were minor and only carry a

maximum fine of $500, or imprisonment up to three months, or both. Additionally, counsel stated that the district judge did not consider the fact that Subramaniam had served CIAS Police for 20 years. They also claimed that Subramaniam had not initiated the offences and that the offences were also not committed for the benefit of Subramaniam. Further, counsel for Subramaniam contended that the district judge had erred in imposing the same sentence on Subramaniam as he did on Wong, as the district judge's findings revealed a greater culpability on the part of Wong. Counsel also stated that since CIAS is not a public body, the district judge's statement that public funds and resources had been misused was an error.

60 I disagreed with the contention that the district judge had failed to take into account Subramaniam's term of service with CIAS Police. The district judge had expressly stated in his grounds of decision that Subramaniam had committed the offences in his capacity as a very senior officer. In this regard, the district judge had mentioned the fact that Subramaniam had served with CIAS Police for the past 20 years. As such, consideration *was* given to Subramaniam's service status. Therefore, counsel for Subramaniam was inaccurate in his contention.

61 The district judge had also imposed the same sentence on Subramaniam as he did on Wong because he had found that *both* of them had grossly abused their authority by instigating Kong to AWOL and serve as Wong's personal escort. To this extent, there was nothing in the district judge's grounds of decision that showed that he had found Wong to be more culpable in comparison to Subramaniam. The district judge had not erred in exercising his discretion to sentence both Wong and Subramaniam similarly.

62 Subramaniam's contention that CIAS is not a public body was not a consideration that should be taken into account in sentencing. Although the district judge might have erred in stating that public funds and resources had been misused, this error did not affect his decision in sentencing. It simply reflected the fact that a waste of resources (be they public or private funds) had occurred.

My decision on sentence

63 Although I disagreed with counsel for the appellants with regard to their substantive grounds of appeal on the sentence, I did agree that a custodial sentence was inappropriate in these circumstances. What the appellants had done in this case was unbecoming of senior officers. It offended against the code of conduct which our uniformed personnel take pride in. I did not endorse their actions and severely reprimanded them for such foolish behaviour. However, to impose a custodial sentence for such behaviour was excessive, as counsel rightly contended. In my opinion, a fine would have been more appropriate.

64 Interestingly, the DPP had relied on *Public Prosecutor v Ong Teck Huat* [1993] 2 SLR 645 as an analogy to affirm the sentence that was imposed by the district judge. The accused in *Ong Teck Huat* was charged with conduct to the prejudice of good order and discipline of the Police Force under Section 27(1) of the Police Force Act (Cap. 235). Although the charges in the current case differ from those in *Ong Teck Huat*, both cases involved conduct that was prejudicial to the good order and discipline of uniformed units. In *Ong Teck Huat*, the respondent was a police officer who had received reports of a police anti-vice raid on a hotel in the course of his duty. He then tipped off an acquaintance of his, whom he knew to be involved in vice activities at the hotel, about the raid. In that case, I convicted the respondent and imposed a fine of $500 instead of a sentence of imprisonment.

65 Now, the DPP argued that the facts in *Ong Teck Huat* made out a less severe aspect of the offence than the facts in the current appeal. As such, the DPP argued that a custodial sentence

would be more appropriate in this appeal. I disagreed with this contention. To the contrary, the facts of the present appeal are less severe than those in *Ong Teck Huat*. The prejudice to the good order and discipline of the Police Force in *Ong Teck Huat* was higher and of a different level. If a fine was imposed as the appropriate sentence in *Ong Teck Huat*, I do not see how a fine would then not be appropriate in the present appeal as well.

66 However, I must add that the penalties prescribed in Regulation 10 of the Auxiliary Police Regulations are rather unsatisfactory. According to Regulation 10, a court may impose upon an offender a term of imprisonment that does not exceed three months or a fine not exceeding $500 or both. I have decided that a custodial sentence would not be appropriate in this instance. That leaves me to impose a maximum fine of just $500. For one, if sentences are prescribed to carry with them some form of deterrence value, I do not see how a fine of $500 can achieve maximum deterrence. Further, requiring the appellants to only pay a paltry sum for their offences would be too light a punishment for their unbecoming behaviour.

67 I, therefore, question the sufficiency of the maximum fine prescribed in Regulation 10. In my opinion, the maximum fine prescribed should have been far higher than what it is currently. In that way, it will have some value of deterrence about it. Additionally, people like the appellants fall in the 'in-between' categories of offenders; they need not be imprisoned and yet should not be let off with too light a fine as well. With the existence of provisions such as Regulation 10, courts remain tied by the strict letter of the law.

68 However, since this is a matter best left to the legislature, I accordingly altered the appellants' sentence and imposed a fine of $500 on each charge, in default of which a sentence of two weeks of imprisonment on each charge was imposed.

Appeals against conviction dismissed; appeals against sentence allowed.