IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 112

Criminal Motion No 6 of 2020

Between

Daniel De Costa Augustin

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Criminal Motion]
[Constitutional Law] — [Equality before the law]

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Introduction

1 The Applicant filed this criminal motion pursuant to s 395(5) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"),[1] for an order requiring the State Court to refer a question of constitutional law to the High Court. The Applicant named the Attorney-General ("AG") as the Respondent in the Notice of Motion;[2] however, given that these were proceedings under the CPC arising from a prosecution pursued by the Public Prosecutor ("PP") in the State Courts below, the proper Respondent should have had been the PP. Hence, although the parties' arguments refer to the AG, the title of the judgment and

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1 Applicant's Submissions dated 6 March 2020 ("AS") at para 1

2 Notice of Motion dated 28 January 2020

the text of the judgment will refer to the PP, but no substantive difference results from this.

2 Having considered the submissions, I am of the view that the motion should be denied.

The Facts

3 The Applicant faces two charges in the State Courts. The first charge is for defamation under s 500 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") ("Defamation Charge"),[3] and the second is for an offence under s 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed) ("CMA Charge") for logging into an email account to send an email without the consent of its owner.[4]

4 The Prosecution's case in the State Courts is that the Applicant accessed another person's email account without consent and sent an email to The Online Citizen, alleging that there was corruption at the highest echelons, and signing off the email in the name of the email owner ("Email").[5] The Email is alleged to have had defamed members of the Cabinet.[6]

5 The Applicant contends that his email merely repeated allegations made by Mr Lee Hsien Yang and Dr Lee Wei Ling, siblings of the Prime Minister ("PM's siblings").[7] His email was based on the PM's sibling's statements ("Statements"), which had been ventilated in public and discussed in

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3 Respondent's Submissions dated 6 March 2020 ("RS") at para 3; AS at para 12

4 RS at para 3

5 RS at para 3

6 RS at para 3

7 AS at para 14

parliament.[8] Hence, the Applicant takes issue that he was prosecuted while the PM's siblings were not prosecuted.[9]

6 The Applicant thus filed an application in the State Court under s 395(2)(*a*) of the CPC to refer to the High Court a question relating to Art 23 and 24 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("Constitution").[10] The question was revised by the Applicant without leave of court, but this revised question was dismissed.[11]

7 A second application under s 395(2)(*a*) CPC was made to the State Court, this time raising an issue concerning Art 12 of the Constitution ("the second application").[12]

8 The Applicant then subsequently amended the question in the second application without leave of court. The original question intended to be posed to the High Court in the second application was ("Original Question"):[13]

> Whether the prosecution of [the Applicant] contravenes the Constitutional provision for 'equal[ity] before the law' enshrined in Article 12(1) of the Constitution of the Republic of Singapore, in light of the non-prosecution of [the PM's siblings] for a similar offence, pertaining to a similar subject matter, and having regard to the decision of the Court of Appeal in *Ramalingam Ravinthran v Attorney General* [2012] 2 SLR 49.

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8 RS at paras 15 to 16

9 AS at para 17

10 RS at para 5

11 RS at para 5; RBOA at Tab 25

12 RS at para 5

13 Respondent's Bundle of Authorities ("RBOA") at Tab 24, p 677

9 This was then subsequently revised to read ("Revised Question"):[14]

> Whether the prosecution of [the Applicant] contravenes Article 12(1) of the Constitution of the Republic of Singapore, in light of the non-prosecution of [the PM's siblings], for allegations of a similar, if not more serious nature (that puts them in the position of potential defendants), pertaining to similar subject matter.

10 The learned District Judge made his decision based on the Revised Question, dismissing the second application, finding that the Revised Question was based on a question of fact, not law, and that in any event, the issue had been determined by the Court of Appeal in *Ramalingam Ravinthran v Attorney General* [2012] 2 SLR 49 ("*Ramalingam*").[15]

11 The question before the court in this present s 395(5) CPC application is the Revised Question.[16]

The Applicant's Arguments

12 The Applicant argues that the court should grant the order and allow the motion for the following reasons.

13 The AG's prosecutorial discretion must be exercised in accordance with the Constitution;[17] there was *prima facie* breach of Art 12(1) of the Constitution due to the choice of prosecuting the Applicant but not the PM's siblings, who had made similar or more severe allegations;[18] and given the *prima facie* breach,

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14 RBOA at Tab 27 para 4; RS at para 7

15 RS at para 9

16 RS at para 8

17 AS at para 29

18 AS at para 30

the evidential burden is on the AG to justify the exercise of his prosecutorial discretion (*Ramalingam*).[19]

14 *Chee Soon Juan and another v Public Prosecutor and other appeals* [2011] 2 SLR 940 ("*Chee Soon Juan*") had set down a two-stage test to determine when constitutional questions can be referred to the High Court.[20] First, a constitutional question must have had arisen; and second, it must be proper to state the case to the High Court.[21] The requirements are fulfilled in this case.

15 First, the Revised Question concerns the interpretation or effect of a constitutional provision (Art 12) which has arisen in the State Court proceedings, and this question must be decided in order to decide if the prosecution in the State Court was constitutional.[22] The Applicant argues relying on *Gujarat Ginning and Manufacturing Company Limited v Motilal Hirabhai Spinning and Manufacturing Company Limited* LNIND 1935 BOM 164 ("*Gujarat*") that inferences to be drawn from admitted or proved facts is a question of law, and hence the Revised Question should be characterised as a question of law.[23]

16 Second, the judicial discretion should be exercised in favour of the application as the State Court lacks the jurisdiction to deal with this

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19 AS at para 54

20 AS at para 58

21 AS at para 59

22 AS at paras 62 to 64

23 Applicant's supplementary submissions titled "Expansion of arguments as to why the Revised Question is a question of law which arises as to the effect of Article 12 of the Constitution" ("ASS") at para 1

constitutional issue,[24] and the issue is novel and has not been dealt with before.[25] The question of whether it is unconstitutional to prosecute one person when another person involved in a similar offence has not been prosecuted has only arisen in *obiter* and not been directly addressed by the courts:[26] *Ramalingam* ([10] above) was distinct from this case as it dealt with the different issue of whether charging persons engaged in the same criminal conduct with different offences contravened Art 12(1) of the Constitution;[27] *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 ("*Phyllis Tan*") was also distinct as it dealt with the issue of the limits to prosecutorial power, specifically as to whether adducing of entrapment evidence by the AG was an abuse of prosecutorial power;[28] and *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50 ("*Teh Cheng Poh*") was also distinct as it only considered the question of whether the AG had the discretion to choose which offence to charge the accused with.[29]

17 Further, it is the first time that an issue on such facts has arisen (a novel issue), raising the question of whether the Statements made by the PM's siblings should be seen as a family dispute or a criminal matter; it cannot be regarded as a family dispute in relation to the PM's siblings but a criminal matter in relation to the Applicant.[30]

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24 AS at paras 65 to 71

25 AS at paras 72 to 79

26 AS at para 74

27 AS at para 76

28 AS at para 78

29 AS at para 77

30 ASS at para 2

18 In any case, the prohibition against questions that are not novel would not operate in respect of questions concerning the effect of the Constitution, as such question would have to take into account the unique nexus between the effects of that provision to that set of facts.[31]

19 Finally, this application is not meant to circumvent the leave requirements of judicial review.[32] The caution against using a s 395 CPC criminal motion as a backdoor to judicial review, laid down in *Chee Soon Juan* ([14] above), was due to the factual circumstances of that case, and do not apply to the present application.[33] In any case, the Applicant has a right to state a case under s 395 CPC, and the process of judicial review should not be an exclusive means by which the Applicant can pursue his constitutional rights.[34]

The Respondent's Arguments

20 The Respondent argues that the criminal motion should be dismissed.

21 Section 395 CPC only allows a trial court to state to a superior court a question of law.[35] The Revised Question is not a question of law, but is factual in nature, targeted to the facts of the case.[36] The Applicant through a sleight of hand raises the new argument that *Ramalingam* ([10] above) had not considered the issue of what constitutes a "relevant factor" or an "unbiased consideration".[37]

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31 AS at para 79

32 AS at paras 80 to 90

33 AS at paras 82 to 86

34 AS at paras 87 to 88

35 RS at para 19

36 RS at paras 20 to 21

37 RS at para 27

However, this is necessarily a fact specific exercise.[38] It is not sufficient to just set out a new factual situation as different factual matrices will always raise new factual issues,[39] but the same legal principles should apply.[40]

22 Even if there is a question of law, the principles governing the exercise of prosecutorial discretion have been conclusively enunciated by the Court of Appeal in *Ramalingam* and apply to every prosecution.[41] They are settled and uncontroversial and no reference should be permitted (*Chee Soon Juan* at [33]).[42]

23 In any event, the Applicant has failed to meet his burden of proof of showing *prima facie* that the AG had breached Art 12 of the Constitution in prosecuting him.[43] The burden is on the Applicant to show that the AG failed to give unbiased consideration to all relevant factors or took into account irrelevant considerations such that no valid grounds exist for deciding to prosecute him and not the PM's siblings (*Ramalingam* at [51] and [70]).[44] Without such *prima facie* evidence, the presumption would be that the AG's discretion was constitutionally exercised (*Ramalingam* at [44]).[45] Here, no evidence was produced by the Applicant to show that the AG considered irrelevant factors.[46]

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38 RS at para 27

39 RS at para 30

40 RS at para 30

41 RS at paras 22 to 26

42 RS at para 23

43 RS at para 32

44 RS at paras 32 and 33

45 RS at para 33

46 RS at para 34

Further, even if the Applicant has the same culpability as the PM's siblings, there are many other legitimate reasons to differentiate them; the mere fact of different treatment of persons committing similar offences does not *ipso facto* amount to *prima facie* unconstitutionality (*Ramalingam* at [70]).[47]

24 In any case, clear differentiating factors exist between the Applicant and the PM's siblings.[48] The Respondent raises these by way of illustration but they were not necessarily the factors that were determinative in the AG's charging decision, as there is no general duty on the part of the AG to disclose the reasons for its prosecutorial discretion.[49] The differentiating factors are that: first, the Applicant had used another person's email account without consent, and signed off in that person's name, in sending the Email, hiding behind the cloak of anonymity;[50] and second, the Applicant's allegations related to the members of the Cabinet whereas the PM's siblings' Statements centred on the family displeasure between them and the Prime Minister.[51]

25 Finally, the Respondent takes issue with the actions of the Applicant in these proceedings. The Respondent argues that the claims here were unmeritorious, frivolous and amounts to an abuse of process.[52] The Original Question was altered just two weeks after filing, into the Revised Question, without obtaining leave of court.[53] This amendment conspicuously removed

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47 RS at para 35

48 RS at para 36

49 RS at para 36

50 RS at para 37

51 RS at para 38

52 RS at paras 40, 42

53 RS at paras 6, 7

mention of the Court of Appeal decision in *Ramalingam*.[54] The Respondent argues that this must have been because the Applicant knows full well that any reference to *Ramalingam* would be a concession that the question had been conclusively resolved in that case.[55] This highlights the absence of *bona fides* in the present application.[56] The criminal proceedings in the State Court below remain stuck due to successive unmeritorious applications and the Applicant should not be permitted to abuse court process to delay and frustrate proceedings any further.[57]

The Decision

26 I am satisfied that the application should be dismissed, as the Revised Question only raises a factual question. Further, no novel constitutional issue arises requiring the determination of a higher court, as the matter has been well settled by *Ramalingam.*

The Statutory Framework

27 The direction before me is sought under s 395(5) CPC which states:

> (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.

28 This requirement was fulfilled as the State Court refused the second application pursuant to s 395(4) CPC. Hence, the Applicant has a right to seek a direction from the High Court under s 395(5) CPC.

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54 RS at para 10

55 RS at para 10

56 RS at para 11

57 RS at para 12

29 The State Court's determination was made under ss 395(1), 395(2)(*a*) and 395(4) CPC, and they are set out here for ease of reference:

> 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; …
>
> …
>
> (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.

The Standard of Review to be applied

30 The High Court's approval of a s 395(5) CPC application to direct the State Court to refer a constitutional question effectively reverses the State Court's decision under s 395(4) CPC. This raises the issue of whether any deference should be accorded to the State Court's decision, and if so, what the standard of review should be. There appears to be no clear pronouncement in Singapore on the standard of review to be applied.

31 The parties do not submit on this issue. The Respondent submits that the principles which guide the trial court in deciding whether to state a case under s 395(2)(*a*) should equally apply under s 395(5) CPC.[58] The Applicant does not take issue with this, and the parties both rely on the case of *Chee Soon Juan* ([14] above) which had set out the framework for an application under s

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58 RS at para 15

395(2)(*a*) ([14] and [22] above). However, these submissions do not directly address the issue of standard of review, and this was also not explicitly addressed by *Chee Soon Juan*.

32 The jurisdiction exercisable by the High Court in a s 395(5) CPC application appears to be a *sui generis* statutory jurisdiction; it is neither part of the court's revisionary nor appellate jurisdiction, as these are specifically dealt with in other divisions of the CPC: under Part XX Division 1 labelled "Appeals" and Part XX Divisions 3 and 4 labelled "Revision…". In contrast, s 395 CPC falls under Part XX Division 2, labelled "Points reserved". Indeed, this present proceeding was filed as a criminal motion and not as a criminal revision or appeal. The court's jurisdiction under s 395(5) CPC is hence best characterised as a form of supervisory jurisdiction, similar to that for bail applications.

33 A *de novo* standard of review should be applied. This was implicit in the approach taken by the High Court in *Chee Soon Juan*, although the court did not explicitly address the issue of standard of review. There, the High Court considered the similar issue of whether the District Court had correctly refused an application under s 56A of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) ("SCA") to refer a question of constitutional law to the High Court. The High Court found that s 56A SCA was the predecessor to s 395(2)(*a*) CPC, and went on to lay down a two-step framework on how the State Courts should decide s 395(2)(*a*) applications (*Chee Soon Juan* at [29] to [33]). The High Court then went on to apply the two-step framework and concluded that the District Court in that case had correctly refused the s 56A SCA application (at [34]). Importantly, the High Court stated:

> … I am of the view that the trial [j]udges 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 [j]udges 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.

34 This passage shows that the High Court did not give any weight to the reasoning of the trial judge in its decision to deny the s 56A SCA application. Instead, the High Court reached its own independent decision on its own reasons, applying the two-step framework that it had proposed.

35 I adopt the approach of *Chee Soon Juan* in the present case. The issue should be decided *de novo*, applying the same two-step framework that the trial court should have had applied. The standard of review applicable for criminal revisions (grave and serious injustice) and for criminal appeals (such as wrong decision as to factual matrix; error in appreciating the material; wrong in principle; or manifest error) would not apply in the present case.

Procedural Irregularity

36 I briefly address a procedural irregularity before going into the merits of the application. The Respondent emphasises that the Applicant had amended the question intended to be referred from the Original Question to the Revised Question, without leave of court, removing the reference to *Ramalingam* (above at [25]).

37 The reference question submitted to the court should not be amended without leave of the court. While this is not expressly stated in s 395 CPC, there should not be any confusion or doubt about what it is the court should consider, and what the other side is to respond to. Once submitted, any amendment or variation should be raised to the court first. The court should generally allow such change unless injustice or prejudice would occur, such as undue or

prolonged delay, or if there has been constant vacillation in the reference question. The merits and likely success of the question posed will also be material.

38 The Applicant's unauthorised amendment in this case did not cause substantial injustice as the State Court had been content to proceed on the Revised Question, and this is the same question before me now ([10] and [11] above). However, in future cases, the court's leave should be sought before any such amendment. Any unpermitted amendment may lead to the application for reference being dismissed on grounds of abuse of process.

39 This irregularity seems to be brought up by the Respondent primarily in order to seek costs against Applicant's counsel, by arguing that he lacks *bona fides*.[59] The impact on costs will be considered further below.

Analysis of the Revised Question

40 The two-step framework in *Chee Soon Juan* ([14] above) (at [30] to [33]) was as follows:

> (a) First, the court should characterise the factual matrix and arguments to determine whether a question (of law) concerning the interpretation or effect of a constitutional provision arises, and whether it is relevant to the determination of the criminal proceedings. The burden is on the party seeking the reference to show that such a relevant question has indeed arisen.

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[59] RS at para 11

(b) Second, the court should assess if the question is appropriate to be referred. The question should be a novel legal issue which has not been settled by a superior court. A new factual situation would not be sufficient as new fact permutations will always arise, and in such cases the settled principles can just be applied or extrapolated. The court should also consider the merits of the reference question to determine if it is a genuine one, or a frivolous one meant merely to delay proceedings. The discretion of the court is properly exercised by not referring questions which are frivolous, made for collateral purposes, to delay, or are otherwise an abuse of process. The reference should also not be used as a backdoor to circumvent the leave requirements for judicial review.

41 The *Chee Soon Juan* framework can be further distilled down into the following issues which will be discussed in turn:

(a) Whether the question is relevant;

(b) Whether the question raises a novel question of law concerning the interpretation or effect of a constitutional provision;

(c) Whether the application lacks merit; and

(d) Whether the application is frivolous or to delay proceedings;

Whether the question is relevant

42 The Revised Question appears to be relevant. The Respondent does not take issue with this. A positive answer to the Revised Question, finding that the prosecution of the Applicant contravened Art 12(1) of the Constitution, will affect the determination of the case against the Applicant.

Whether the question raises a novel question of law

43 I find that the Revised Question does not raise any new legal question concerning the interpretation or effect of a constitutional provision.

(1) The legal distinction between fact and law

44 The distinction between fact and law has been laid down by the Court of Appeal in *Public Prosecutor v Teo Chu Ha* [2014] 4 SLR 600 ("*Teo Chu Ha*") (at [31] to [32]):

> 31 …As a matter of principle, the courts must determine whether there is sufficient generality embedded within a proposition posed by the question which is more than just descriptive but also contains normative force for it to qualify as question of law; a question which has, at its heart, a proposition which is descriptive and specific to the case at hand is merely a question of fact…
>
> 32 …one useful way of testing the substance of the question is to consider the arguments in support of an answer to the proposition posed in a particular question…

45 In sum, questions which are sufficiently generic are questions of law whereas questions which are descriptive and specific to the case at hand are questions of fact.

46 In addition, the application of established principles of law to the specific facts of the case is a question of fact. For example, the Court of Appeal in *Yeo Hwee Hua and others v Public Prosecutor* [1995] 2 SLR(R) 515 ("*Yeo Hwee Hua*") held that the application of established standards of proof to the facts of the case, to determine whether the Prosecution had met their standard of proof, was not an issue of law but was essentially a question of fact (at [8] to [9]). Similarly, in *James Raj s/o Arokiasamy v Public Prosecutor* [2014] 3 SLR 750 ("*James Raj*"), the Court of Appeal held that what amounts to a "reasonable

time" within which the constitutional right to counsel can be exercised is a question of fact, as it requires a factual inquiry of all the relevant considerations, which is evidence that it is not a question of law that can be answered in the abstract (at [39]).

(2) Characterisation of the Revised Question

47 In the present case, the Revised Question essentially inquires whether Art 12(1) has been breached by the PP's decision to prosecute the Applicant but not the PM's siblings. Similar to the findings in *James Raj* and *Yeo Hwee Hua*, this is essentially a question of fact asking whether, applying the principles of Art 12(1) in relation to prosecutorial discretion, the PP had on the facts of the case breached Art 12(1).

48 Further, as stated in *Teo Chu Ha* (above at [44]), it is important to assess the level of generality at which the question is phrased. The phrasing of the question is critical in determining whether it is meant to address a legal or factual issue. In the present case, the Revised Question was pitched very narrowly and was specific to the present case, showing that it was a factual issue.

49 *Teo Chu Ha* also stated that the nature of the question can be distinguished by looking at the arguments made. Here, the arguments raised by the Applicant focused on whether the Prosecution had *prima facie* breached Art 12(1) by taking into account irrelevant factors.[60] The question of whether the PP had or had not taken into account these alleged factors is a question of fact, being specific only to this case.

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60 AS at paras 40 to 53

50 As stated above at [40], only questions of law pertaining to the interpretation and effect of the Constitution may be raised under s 395(2)(*a*) CPC. This factual question hence has to be dismissed.

51 However, it may be said that there is an inherent question of law in the factual question. Inherent in the factual question of whether the PP has breached Art 12(1) by prosecuting the Applicant and not the PM's siblings, is the antecedent question of how Art 12(1) operates in relation to prosecutorial discretion, and what the relevant principles are. In other words, it is not possible to determine the fact of whether the PP has breached Art 12(1), without first understanding the law on Art 12(1). If this inherent legal question was what the Applicant had intended to refer, the Applicant should have phrased the Revised Question in more generic terms. In any case, as will be seen below, this inherent legal question also has to be dismissed, as it is settled law and does not raise any novel questions (see [40] above).

(3) *Ramalingam*

52 Even assuming, as explained above, that the Revised Question raises an antecedent inherent legal question concerning the interpretation and effect of Art 12(1) in relation to prosecutorial discretion, this has been settled by the principles laid down in *Ramalingam* ([10] above).

53 The principles established in *Ramalingam* are explained here for ease of reference. In *Ramalingam*, the Appellant argued that the Prosecution's decision to charge him with the full amount of drugs, whilst charging a related accused person with a reduced amount of drugs, was in violation of Art 12(1) and unconstitutional.

54 *Ramalingam* embarked on a detailed and comprehensive consideration of the law pertaining to the constitutional ambits of prosecutorial discretion under Art 12(1). It considered numerous authorities (at [19] to [42]), including *Ong Ah Chuan v Public Prosecutor* [1979-1980] SLR(R) 710; *Sim Min Teck v Public Prosecutor* [1987] SLR(R) 65; *Teh Cheng Poh* (above at [16]); *Thiruselvam s/o Nagaratnam v Public Prosecutor* [2001] 1 SLR(R) 362 ("*Thiruselvam*"); and *Phyllis Tan* ([16] above). It also considered the constitutional basis of prosecutorial power; its nature; the presumption of constitutionality; as well as the approach in other jurisdictions, including US (at [43] to [53]).

55 After the lengthy discussion, the Court of Appeal established that: all things being equal, like cases must be treated alike with respect to all offenders involved in the same criminal conduct (at [24], [51]); there must be no bias on the Prosecution's part and irrelevant considerations must not be taken into account (at [51]); the Prosecution is entitled to take into account many factors in its exercise of prosecutorial discretion, and where the factors apply differently to different offenders, it may justify different treatment between them (at [24], [52]); the burden of proof lies on the offender to show a *prima facie* breach of prosecutorial discretion (at [70] to [72]); and if such *prima facie* breach is proven, the Prosecution must justify its prosecutorial decision to the court (at [28]).

(4) Whether the Applicant disputes *Ramalingam*

56 The Applicant accepts these established principles, taking great length in his written submissions to set out the legal principles pertaining to

prosecutorial discretion under Art 12.[61] The Applicant specifically cites *Ramalingam* in his written submissions at paras 38 and 39, explaining the legal principles set out in *Ramalingam*, and then goes on to apply them to the Applicant's case, stating at paras 40 to 41:[62]

> 40 Applying the aforesaid principles to the present facts, it is humbly submitted that the Attorney General has *prima facie* breached Art 12(1) in his application of his discretion…
>
> 41 In the alternative, the Applicant submits that the Attorney General has, with the utmost respect, applied an irrelevant consideration in respect of his differing prosecutorial discretion…

57 The foregoing paragraphs clearly show that the Applicant accepts and is indeed applying the established legal principles set out in *Ramalingam*. The Applicant makes no submission to expand, amend, or narrow the principles in *Ramalingam*. Hence, any potential inherent antecedent question of law is settled and not novel, and is hence also dismissed (see above at [40]). This suffices to deal with the application; however, it is necessary to address some of the Applicant's arguments.

The Applicant's competing characterisations of the Revised Question

58 The Applicant argues that the Revised Question raises the following novel questions of law:

(a) First, it raises the issue of what is a "relevant factor" or "unbiased consideration" that the PP is entitled to consider.[63]

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61 AS at paras 25 to 39

62 AS at paras 40 to 41

63 Affidavit of Daniel De Costa Augustin dated 28 January 2020 at para 20

(b) Second, it raises the question of whether the Statements made by the PM's siblings is a matter of family dispute or a criminal matter.[64]

(c) Third, there is an issue of what principles apply when the PP chooses to prosecute one party but not prosecute another party, despite them committing similar criminal conduct. *Ramalingam* is to be distinguished from this generic fact pattern because in *Ramalingam*, both parties involved in the same criminal conduct were prosecuted, albeit with different charges (see above at [16]).[65]

(d) Fourth, even if the legal principles are established, there is a question of whether, applying these established principles to the proved facts, the PP had been discriminatory in his prosecution.[66] The Applicant argues relying on *Gujarat* ([15] above) that this is to be regarded as a question of law.

59 As explained in *Teo Chu Ha* ([44] above), the nature of a question depends on how it is phrased. If these questions are indeed what the Applicant intends to raise, he should have phrased them in this way from the beginning. It is not open to an applicant to phrase a question one way and then argue later that the question he intends is another question. In any case, as will be seen, these questions do not satisfy the requirements of s 395 CPC. These contentions will be dealt with in turn.

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64 ASS at para 2

65 AS at paras 63 and 76

66 ASS at para 1

(1) Whether the definition of a "relevant factor" is a question of law

60 The question of what is a "relevant factor" or "unbiased consideration" is a question of fact, not law. As stated above at [46], the Court of Appeal in *James Raj* found that the determination of what constitutes "reasonable time" is a fact specific inquiry that has to be addressed by considering all the relevant considerations, and cannot be addressed in the abstract. It was held to be a factual question. Similarly, what constitutes a "relevant factor" or "unbiased consideration" must depend on the specific circumstances of each case, and is an issue of fact.[67]

(2) Whether the characterisation of the Statements is a relevant question

61 This question of whether the Statements should be characterised as a family matter or a public/ criminal matter is not a question that can be referred under s 395(2)(*a*) CPC, as it is not relevant to the determination of the criminal proceedings (above at [40]). The Applicant argues that this is relevant because the Applicant should not be charged for commenting on a family dispute.[68] However, this is not the legal test. The legal test for showing a breach of Art 12(1) is that the Applicant needs to show a *prima facie* case that the PP had considered irrelevant factors. As explained, whether the PP had indeed done so is a question of fact ([46] above). The court's legal characterisation of the Statements as either family or criminal in nature does not have any relevance to the factual question of whether the PP had considered irrelevant factors.

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67 RS at para 27

68 RS at para 2

(3) Whether *Ramalingam* can be distinguished from the present case

62 The Applicant's contention that *Ramalingam* ([10] above) can be distinguished from the present facts is a tenuous one. As shown above, the Applicant himself explicitly applies *Ramalingam* to the facts of the present case (at [56] to [57]), showing that he accepts that *Ramalingam* applies in this case. I also note the Respondent's point that the Applicant had initially explicitly mentioned in the Original Question that *Ramalingam* should be considered in the present case (at [8] and [25] above).

63 In any event, I find that the established legal principles in *Ramalingam* apply to the present case. The Applicant argues that the distinction between *Ramalingam* and the Applicant's case is that in *Ramalingam*, both accused were prosecuted, albeit with different charges, whereas in the Applicant's case, only the Applicant was charged while the PM's siblings were not prosecuted. This is a tenuous distinction. The crux of the issue in *Ramalingam* was the question of whether the Prosecution's actions of treating two accused persons in the same criminal enterprise differently, was a breach of Art 12(1). The same principle is involved whether the Prosecution chooses not to charge someone, or chooses to prefer a different/ reduced charge.

64 A similar distinction was attempted but rejected in *Ramalingam*. This argument was in fact made by the present Applicant's counsel, who was the accused's counsel in that case. There, he argued that the facts of *Ramalingam* should be distinguished from *Thiruselvam* ([54] above) because in *Ramalingam*, the accused persons were charged with the same offence, but merely with different quantities of drugs, whereas in *Thiruselvam*, the accused persons were charged with different offences. The court dismissed this distinction, finding

that all these cases similarly concerned the Prosecution charging two offenders involved in the same criminal acts with offences of unequal gravity (at [64]):

> Having regard to these matters, we are unable to accept the Applicant's alternative argument that *Thiruselvam* should be distinguished on the basis that while the co-offenders in that case were charged with different offences (*viz*, abetment of drug trafficking and drug trafficking), in the present case, they were both charged with drug trafficking, but with the charges against one offender (*viz*, Sundar) based on a quantity of drugs much less than the actual quantity of drugs trafficked (as forensically determined)… In our view, there is no meaningful distinction between the scenario in *Thiruselvam* and that in the present case as the underlying prosecutorial decision in each case was the same. On the facts of *Thiruselvam*, Katheraven was, like Sundar in this case, charged with offences based on a quantity of drugs less than the actual quantity of drugs trafficked. In substance, *Thiruselvam* and the present case (and, for that matter, *Sim Min Teck* ([18] supra)) are all concerned with the Prosecution charging two offenders involved in the same criminal acts with offences of unequal gravity. Article 12(1) would apply to all of these cases in exactly the same way.

65 Nevertheless, even accepting the Applicant's argument that *Ramalingam* can be distinguished from the present case, and that the principles there would not be strictly binding in the Applicant's case, no novel question of law is raised. As stated in *Johari bin Kanadi and another v Public Prosecutor* [2008] 3 SLR(R) 422 ("*Johari*") at [9] and cited in *Chee Soon Juan* ([14] above) at [32], it is not sufficient to set out a new factual situation as new fact permutations will always arise, and in such cases the settled principles can just be applied or extrapolated ([40] above):

> … 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.

66 Small differences in fact, such as the one in the present case as compared to *Ramalingam*, do not raise a novel legal issue because the lower court is expected to either apply the law or extrapolate from it. The lower court does not operate only in a mechanical way in applying decided principles or rules.

67 In other words, a s 395 CPC application does not require that the principles laid out be strictly binding to the present case, but is only concerned whether sufficient guidance has been laid down in respect of the law. If there is sufficient guidance putting the issue beyond dispute or controversy such that there is no necessity for the matter to require the attention of a superior court in the midst of the first instance proceedings, the s 395 CPC application should not be granted.

68 Further, as explained above at [54], *Ramalingam* had undertaken a comprehensive review of the authorities and policy before laying down the framework for prosecutorial discretion. The framework was meant to be broad ranging and not limited only to the facts of *Ramalingam;* it hence provides sufficient guidance for the present case.

69 The Applicant also argues that questions concerning the effect of the Constitution do not need to be novel, as such question would have to take into account the unique nexus between the effects of that provision to that set of facts (see [18] above). He does not cite any authority for this proposition and I do not accept this as it contradicts the findings in *Johari* and *Chee Soon Juan* ([65] above) that issues raised by new factual permutations fall outside the reference mechanism in s 395 CPC and s 56A SCA.

(4) Whether application of established principles to the facts is a question of law

70 The Applicant argues relying on *Gujarat* that inferences to be drawn from admitted or proved facts is a question of law, and hence the Revised Question should be characterised as a question of law (above at [15]).

71 The Privy Council in *Gujarat* had to deal with two issues: first, whether the respondents were entitled under an easement statute to an irrevocable licence, which depended on the satisfaction of various statutory provisions (at [19]); and secondly, whether the respondents could rely on an equitable doctrine instead to claim the licence (at [21]). The resolution of both questions required the court to determine what the proper inference to be drawn was, based on proved facts. For the first question, the court needed to decide whether the proved facts properly led to the inference that the respondent had executed works on the land while "acting upon the license", such that an irrevocable licence should be granted (at [20]). For the second question, the court had to decide if the proved facts were sufficient to justify the inference that the appellant had by conduct implied a perpetual licence to the respondent. Importantly, the appellate court held that the proper legal effect of proved facts is a question of law (at [18]), and hence that they were not bound by the decision of the first instance court on the issues. The Privy Council then went on to answer both questions in the negative, allowing the appeal (at [25]).

72 The approach taken in *Gujarat* seems to go against the Court of Appeal authorities set out above at [44] to [46]. Under the rule set out in *Teo Chu Ha* (at [44] above), the two issues in *Gujarat* should have been characterised as questions of fact. As stated, the test is whether the question is phrased in generic terms or is only specific to the particular case. In *Gujarat*, the questions were

not phrased in generic terms, but were only specific to the facts of that particular case. The issue of what specific inference of fact can be drawn from specific proved facts, is ultimately also a question of fact. It may be that the question of what inferences can be drawn from facts, phrased generically, could possibly be a question of law. However, this was not so in *Gujarat* as there was no dispute about the general principles relating to the drawing of inferences from proved facts.

73 In addition, *Gujarat* also contradicts the Court of Appeal authorities at [46] above, which established that the application of established principles of law to the specific facts of the case is a question of fact. In *Gujarat*, in relation to the first issue, there was some discussion about the law where the court discussed the definition of what it means for the putative licensee to be "acting upon the license", which was a statutory requirement to grant an irrevocable licence (at [20]). This was correctly characterised as a question of law since it was a general question and not tied to the facts of that case. However, after reaching a conclusion as to the meaning of this requirement, its application to the facts was a question of fact. There was no question of law pertaining to the second issue, since the court found that the grounds were decided in earlier authorities (at [21]), and the question was only one of application, which should be characterised as factual.

74 Hence, *Gujarat* seems to contradict the Court of Appeal authorities stated above, and to the extent they are contradictory, I do not follow it, as it is less persuasive as a foreign case.

75 For completeness, I note that the Respondent relies on *Lee Siew Boon Winston v Public Prosecutor* [2015] SGCA 67 ("*Lee Siew Boon*") to argue that every application of an objective test in a specific context is not a question of

law.[69] However, this does not seem to be the proper interpretation of the case. *Lee Siew Boon* concerned an application under s 397(1) CPC for leave to refer to the Court of Appeal questions concerning the disclosure of unused materials. The established rule was that the Defence had to show reasonable grounds for the court to believe that the Prosecution has in its possession material which should be disclosed (at [10]). The Applicant in that case raised the reference question of how this established test should apply in the context of sexual offences (at [13]). The Court of Appeal held at [13] that:[70]

> The third question is put forward on the basis of the suggestion that a question of law of public interest arises in relation to the application of the test… specifically in the context of sexual offences. In our judgment, every test that rests on objective criteria, such as the existence of reasonable grounds, will necessarily be contextual in its application. In other words, what is reasonable will necessarily depend on the context. There is no need, therefore, to add to the "reasonable grounds" formulation in the specific context of sexual offences.

76 Contrary to the Respondent's interpretation, the court did not state that the reference question was not a question of law. The holding was only that the "reasonable grounds" test was already an established generic test, and that there was no need to elaborate on how it should be applied specifically in the context of sexual offences, since the general rule was already expressed to be contextual.

77 Nevertheless, *Lee Siew Boon* can be used to support the proposition at [65] to [68] above that the generic test set out in *Ramalingam* is sufficient guidance and there is no need for a reference question to explain how it should specifically apply on the facts of the present case.

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69 RS at para 29

70 RS at para 29

78 The above is sufficient to dismiss the application as the requirements set out under s 395 CPC and explained in *Chee Soon Juan* ([40] above) are not met. The other requirements below are only discussed for completeness.

Whether the application is frivolous, to delay, or is an abuse of process

(1) The lack of merits

79 The merits of the application, *i.e.* that a constitutional breach is likely to be made out, or is in fact made out, will not generally be a relevant consideration, save only that the absence of any merit may help establish that the application is frivolous, or is made for some collateral purpose, including delay, or is otherwise an abuse of process.

80 I am satisfied that the substantive application would not have succeeded, and that it therefore lacks merit.

81 The Applicant argues that there was *prima facie* breach of Art 12(1) of the Constitution due to the PP's decision of prosecuting the Applicant but not the PM's siblings, who had made similar or more severe allegations ([13] above). He argues that the allegations made by him pertain to the same subject matter and impugn the PM in the same way as the Statements made by the PM's siblings.[71]

82 The Respondent argues that clear differentiating factors exist between the Applicant and the PM's siblings ([24] above).[72] These are by way of illustration but were not necessarily the factors that were determinative in the

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71 AS at paras 14 to 16

72 RS at para 36

AG's charging decision, as there is no general duty on the part of the AG to disclose the reasons for its prosecutorial discretion.[73] The differentiating factors are that: first, the Applicant had used another person's email account without consent, and signed off in that person's name, in sending the Email, hiding behind the cloak of anonymity;[74] and second, the Applicant's Email related to the members of the Cabinet whereas the PM's siblings' Statements centred on the family displeasure between them and the PM.[75]

83 I am satisfied that the Applicant has not proven a *prima facie* breach of Art 12(1) to displace the presumption of constitutionality in respect of the PP's decision. Applying the principles in *Ramalingam* at [70] ([10] above), the fact that one offender faces prosecution, while others who may have committed similar actions do not, does not *ipso facto* indicate breach of Art 12 or the improper exercise of discretion:

> … the mere differentiation of charges between co-offenders, even between those of equal guilt, is not, *per se*, sufficient to constitute *prima facie* evidence of bias or the taking into account of irrelevant considerations that breaches Art 12(1). Differentiation between offenders of equal guilt can be legitimately undertaken for many reasons and based on the consideration of many factors… It is for the offender who complains of a breach of Art 12(1) to prove that there are no valid grounds for such differentiation. In the absence of proof by the offender, the court should not presume that there are no valid grounds in this regard.

84 In addition, there are differentiating factors in the present case relating to the circumstances of the commission of the offence, such as the unauthorised use of another person's email and impersonation of that person's identity. These

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73 RS at para 36

74 RS at para 37

75 RS at para 38

are relevant considerations in the exercise of prosecutorial discretion, assuming that they were considerations. The present case is clearly within the scope of the PP's prosecutorial discretion, and thus no *prima facie* breach of Art 12 is made out.

(2) Whether the application is frivolous, for collateral purposes, or to delay

85 While the application lacks merit, this does not necessarily mean that the application is frivolous, or for collateral purpose or to delay. The Respondent argues that the application is clearly frivolous and vexatious as the Applicant is aware that the principles of law were conclusively resolved in *Ramalingam*,[76] and that the Applicant knows that the matter is not controversial and settled, but embarked on the application despite knowing this.

86 I do accept that given the clear state of the law, both on Art 12, as well as on the operation of the reference procedure under s 395 CPC, it was clear that the arguments were not likely to persuade any court at all, pointing against the likelihood of success of any application. However, it does not follow that the proceedings were vexatious, rather than being the product of a misunderstanding of the law or failure to appreciate its application.

87 As the Respondent notes, *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582, in the context of discussing the principles of striking out, defined the terms frivolous and vexatious as such (at [33] and [37]):[77]

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[76] RS at para 40

[77] RS at para 52

> 33 Proceedings are frivolous when they are deemed to waste the court's time, and are determined to be incapable of legally sustainable and reasoned argument. Proceedings are vexatious when they are shown to be without foundation and/or where they cannot possibly succeed and/or where an action is brought only for annoyance or to gain some fanciful advantage.
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> …
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> 37 These words have been judicially interpreted to mean "obviously unsustainable": *Attorney-General of the Duchy of Lancaster v London and North Western Railway Company* [1892] 3 Ch 274 at 277. In *Goh Koon Suan v Heng Gek Kiau* [1990] 2 SLR(R) 705 at [15], Yong Pung How CJ opined that an action would be vexatious "when the party bringing it is not acting *bona fide*, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result". It has also been suggested that "frivolous" and "vexatious" connote purposelessness in relation to the process or a lack of seriousness or truth and a lack of *bona fides*: see Jeffrey Pinsler, *Singapore Court Practice 2005* (LexisNexis, 2005) at para 18/19/12, p 482.

88 In my view, the Applicant's pursuit of the application does not fall to that level of being obviously unsustainable or purposeless; there is sufficient substance to the arguments made, though these ultimately fail before me.

89 I cannot also on present evidence before me conclude that the application is made for a collateral purpose, or that it amounts to abuse of process. There is nothing before me to show that the Applicant does not *bona fide* pursue this application for legitimate purposes.

Whether the application was a backdoor to judicial review

90 The Applicant argues (at [19]) above) that the caution against using a s 395 CPC criminal motion as a backdoor to judicial review, laid down in *Chee Soon Juan* ([14] above), was due to the factual circumstances of that case, and do not apply to the present application. This argument is not made out: the concern in *Chee Soon Juan* was expressed generally (at [33]), and it is clear that

it was intended to generally guard against the use of such references as a backdoor to judicial review.

91 I make no finding on whether the present application was a backdoor to judicial review, since this was not contended to be the case by the Respondent.

Conduct of the Criminal Proceedings

92 The Respondent raises the concern that the Applicant has tried and continues to try to delay proceedings, and may do so again by way of an application for judicial review ([25] above). The Applicant denies any desire to delay but asserts his right to pursue remedies as appropriate.[78]

93 I note that given the state of proceedings, it will be odd for a judicial review application to be pursued so late in the day. In such circumstances, where applications for reference have been denied, it will be an abuse of process to institute judicial review on the same allegations or assertion. The State Court will in such circumstances be justified in proceeding with the criminal matter regardless of the state of any late judicial review application, and no doubt the Respondent will pursue the appropriate remedies to deal with such an application.

94 Such action would also attract, in the absence of any cogent explanation, the strong inference that the Applicant's counsel is indeed party to an attempt to delay matters, and may attract personal costs orders and other consequences.

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[78] AS at para 81;

Costs

Parties Submissions

Respondent

95 The Respondent seeks costs against the Applicant's counsel personally. The Respondent argues that the court has the inherent power to order counsel to pay costs to the Prosecution directly (*Abdul Kahar bin Othman v Public Prosecutor* [2018] 2 SLR 1394 ("*Abdul Kahar*") at [71] to [80]).[79] Such an order should be made where: the conduct of the matter by the accused through his counsel was extravagant and unnecessary; costs have been incurred unreasonably or improperly or have been wasted by counsel's failure to conduct proceedings with reasonable competence and expedition; and the court is satisfied that costs should not be ordered against the accused instead.[80]

96 The Respondent argues that these requirements are fulfilled here. First, the proceedings are extravagant and unnecessary as the Applicant's counsel must have had known that the motion cannot pass muster, since the Revised Question is one of fact and not law, and because the issue had already been decided in *Ramalingam* ([10] above).[81] Second, the pursuit of an unmeritorious application with no prospect of success has caused the Respondent to incur costs unreasonably.[82] The application has no legal merit and is clearly an abuse of process.[83] The Applicant's counsel failed in his overriding duty to the court and

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79 RS at para 43

80 RS at para 45

81 RS at paras 46 to 48

82 RS at para 49

83 RS at para 50

the administration of justice, and abused the administration of justice, by preparing and arguing unmeritorious applications (*Prometheus Marine Pte Ltd v King, Ann Rita and another appeal* [2018] 1 SLR 1 at [72]; *D'Orta-Ekenaike v Victoria Legal Aid and another* [2006] 1 LRC 168 at [111]).[84] Third, the Applicant's counsel failed to act with reasonable competence by failing to properly advise the Applicant of the lack of merit in the motion, and by filing a fatally flawed application.[85] Further, he has facilitated vexatious and frivolous litigation designed to unnecessarily prolong the matter, and has even intimated that he would take out further applications by judicial review to pursue the same question.[86]

97 The Respondent also argues that it is just to make the Applicant's counsel bear the costs since these unmeritorious legal arguments could only have come from him and not the Applicant.[87] In *Bander Yahya A Alzahrani v Public Prosecutor* (CA/CM 20/2017 and CA/CM 3/2018, unreported),[88] the Court of Appeal ordered costs against the solicitor as the High Court had already told the solicitor in an earlier application that the questions raised in the criminal reference were not of law but of fact, and was unlikely to succeed, but the solicitor had persisted unreasonably in the application.[89] This case was noted and explained by the Court of Appeal in *Abdul Kahar* at [70]. Similarly, in the present case, the Applicant's counsel had already been told by the District Judge

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84 RS at para 50

85 RS at para 51

86 RS at paras 53 to 55

87 RS at para 56

88 RBOA at Tab 5 (Certificate of result of Magistrate's Appeal)

89 RS at paras 57 to 58

below that the Revised Question is not a question of law, nor one that engages any novel or difficult issues.[90] Further, it is already the second application to state a case, the first one having also been dismissed by the State Courts.[91]

98 Finally, the Respondent argues that no basis exists for the ordering of costs against the Respondent as sought by the Applicant.

Applicant

99 The Applicant's counsel argues against the imposition of costs against him personally as this should only be done in rare and exceptional cases.[92] O 59 r 8(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") only allows costs to be ordered against the solicitor personally if costs have been incurred unreasonably, improperly or wasted by failure to conduct proceedings with reasonable competence and expedition.[93] This threshold set out is consistent with ss 355(1), 356 and 357(1) of the CPC which set out similar situations where an accused and/or his defence counsel may be ordered to pay costs to the Prosecution.[94] It must also be just in all the circumstances for costs to be ordered: *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] 2 SLR 532.[95] The conduct in question must amount to an abuse of the court's process: *Ridehalgh v Horsefield and another* [1994] Ch 205.[96] If there is any doubt about whether the

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90 RS at para 59

91 RS at para 60

92 Application's costs submissions titled "Skeletal Arguments on Costs against Applicant's Counsel" dated 2 April 2020 ("ACS") at para 3

93 ACS at para 6

94 ACS at para 7

95 ACS at para 8

96 ACS at para 10

case is hopeless or whether there was abuse of process, the benefit of the doubt must be accorded to the counsel.[97]

100 Here, there has been no lack of expedition, unreasonableness, impropriety or lack of reasonable competence in conducting the present proceedings.[98]

101 In addition, judicial review and public law proceedings protect the public interest and seek to hold to account those who exercise powers, and should not be impeded by the threat of adverse cost orders.[99] Further, the Respondent's failure to strike out the proceedings supports that it is unjust to award costs against the Applicant's counsel on the basis that the proceedings are inherently hopeless.[100]

102 The Applicant's counsel counter-argues that if anything, the court should order cost against the Prosecution under s 358(1) CPC for making a frivolous and vexatious costs application against him.[101] The State and PP are seeking these cost orders and making these attacks as a distraction from the substantive issues.[102] *Ad hominem* attacks were previously made by the Prosecution against the Applicant's counsel; this was the third time in a few weeks that such costs applications had been made against him by the State.[103]

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97 ACS at para 11

98 ACS at para 15

99 ACS at para 21

100 ACS at para 22

101 ASS at para 11

102 ASS at para 9

103 ASS at paras 5 to 6

103 It is therefore not just to order costs against the Applicant's counsel.

Decision

104 I do not find that the circumstances are such as to require the imposition of costs against the Applicant's counsel personally. Such orders should be ordered only in exceptional circumstances. It may be that here, the Applicant faced an uphill task given the state of the law, but I do not find that the case was so hopeless that it could be inferred that the application was launched with recognition that there was no possibility of success. It may have been misplaced optimism, but that is not enough to order costs personally against the Applicant's counsel.

105 However, if further applications are sought on the same or related matter, a different conclusion may be reached, and costs may indeed be ordered against counsel. The future conduct of the case remains of concern, and any delay arising from the pursuit of similar issues by other means should not be tolerated, and will likely result in substantial cost sanctions against the Applicant's counsel and any other counsel who takes the matter over.

106 I do not order costs against the Respondent either.

Conclusion

107 The motion is hence dismissed.

Aedit Abdullah
Judge

Ravi s/o Madasamy (Carson Law Chambers) for the Applicant;
Mohamed Faizal Mohamed Abdul Kadir SC, Ho Lian-Yi and Sheryl Yeo Su Hui (Attorney-General's Chambers) for the Respondent.
