Ung Yoke Hooi v Attorney-General
[2009] SGCA 15

Case Number : CA 56/2008

Decision Date : 13 April 2009

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Mohd Sadique bin Ibrahim Marican, Anand Kumar s/o Toofani Beldar and Krishna Morthy SV (Frontier Law Corporation) for the appellant; Eric Chin and Stanley Kok (Attorney-General's Chambers) for the respondent

Parties : Ung Yoke Hooi — Attorney-General

Administrative Law – Judicial review – Whether court had power to grant leave for judicial review

Courts and Jurisdiction – Magistrates' courts – Criminal jurisdiction – Duties of Magistrates' Courts relating to seized property – Sections 392, 393 and 394 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Seizures of property under s 68(2) Criminal Procedure Code (Cap 68, 1985 Rev Ed) – Failure to report seizures "forthwith" under s 392(1) Criminal Procedure Code was a breach and amounted to procedural impropriety

13 April 2009 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This appeal arises from the decision of a judge of the High Court ("the Judge") in refusing to grant leave to Ung Yoke Hooi ("the Appellant") to apply under O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) for judicial review in order to unfreeze certain bank accounts in his name which had been seized by a police officer pursuant to s 68 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") (see *Ung Yoke Hooi v Attorney-General* [2008] SGHC 139 ("the GD")).

2 Specifically, the application for leave also sought various declaratory orders and a mandatory order to direct the Attorney-General ("the Respondent") to release the said accounts and render the same operable by the Appellant. The declaratory orders sought, which had arisen out of the seizures, were struck out by the Judge on the ground that the court had no jurisdiction under O 53 to grant such orders. This appeal is concerned only with the application in respect of the mandatory order.

Facts

3 The facts are as follows. The Appellant is a Malaysian citizen and has a family in Singapore. At the material time, he had business dealings in waste metals, and was operating, in so far as these proceedings are concerned, four bank accounts at AA Bank ("Account Nos 1 to 4") and one account at BB Bank ("Account No 5").

4 In 2002, the Appellant purchased 29% of the shares in a Malaysian company called Citiraya Technologies Sdn Bhd ("CTM") which was 60% owned by a Singapore company called Citiraya Industries (Singapore) Ltd ("SIM"). The other 8% and 3% of CTM were owned by two minority shareholders, *viz*, one Soon Ah Lan and one Ung Yoke Khim.

5 Sometime in 2003, one Ng Teck Lee ("NTL") took over control of SIM and, at the end of December 2003, offered to buy the Appellant's 29% shareholding and the shareholdings of the other two minority shareholders in CTM at $1.00 per share, amounting to $4m to be paid in ten instalments of $400,000 each. The Appellant claimed that the negotiations (at which he also represented the other two shareholders) were done at arm's length. The first instalment was paid on 19 April 2004, followed by another five instalments on 27 May, 27 July, 27 October, 30 November and 30 December of 2004. Other than the first payment, which was made by way of a bank cheque, the subsequent five instalments were paid by the transfer of moneys from bank accounts in the name of Pan Asset International ("Pan Asset"), a British Virgin Islands company, into one of the Appellant's bank accounts in Singapore.

6 In January 2005, the Appellant learnt that the Corrupt Practices Investigation Bureau ("CPIB") was investigating the affairs of SIM. However, he was not aware of the nature of the investigations. In December 2006, the Appellant was called upon by CPIB to assist in these investigations. He gave them his fullest co-operation. In December 2006, he found that he was unable to operate Account No 1 at AA Bank. Shortly after that, he was notified by BB Bank that Account No 5 was frozen by CPIB. He sought an explanation from CPIB and was informed by a letter dated 13 June 2007 that both Accounts Nos 1 and 5 had been frozen pursuant to s 68 of the CPC. This was not quite correct as Account No 1 was not seized by CPIB (although it was not clear why the Appellant was unable to operate it). Subsequently, by a letter dated 4 February 2008, CPIB informed the Appellant that Accounts Nos 2 and 3 had also been seized. Although only three accounts had been seized by CPIB, the Appellant's case was that all his five accounts (collectively "the Accounts") had been seized. His application for leave was accordingly made on that basis.

Grounds of the Appellant's application to the High Court

7 The grounds of the Appellant's application to the High Court were as follows:

(a) The seizure of the Accounts was illegal and an abuse of process as, first, the Appellant had not been charged with any offence nor was he the subject of any investigation; second, there was no evidence that the funds in the Accounts came from Pan Asset; and third, CPIB's intention to proceed with confiscation orders under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA") was also an abuse of process.

(b) The seizures were unreasonable as CPIB had done nothing with the Accounts since the first account (Account No 2) was seized more than a year ago (on 17 November 2006).

(c) There was procedural impropriety in the seizure in that the procedures set out in ss 68(2) and 392(1) of the CPC were not followed.

The Respondent's evidence

8 The Respondent filed two affidavits to rebut the Appellant's allegations. The first affidavit dated 5 November 2007, that of Alvin Cheang Chee Hou ("Alvin Cheang"), an investigation officer of CPIB, disclosed, *inter alia*, that NTL was being investigated for criminal breach of trust for misappropriating computer chips from "Citiraya (S) Ltd" (presumably this was a reference to SIM). He claimed that the proceeds of the sale of the misappropriated computer chips were paid into the bank accounts of Pan Asset, a company "beneficially owned" by NTL and that five of the aforementioned payments made to the Appellant's Account No 2 were made out from one of Pan Asset's bank accounts. He also confirmed that the aggregate payments the Appellant received from the bank

accounts of Pan Asset exceeded the total amounts in the Appellant's bank accounts which CPIB had frozen.

9 The second affidavit dated 16 January 2008, that of Fong Wai Kit, CPIB's Principal Special Investigator, disclosed, *inter alia*, the following:

(a) that NTL was under investigation for having committed, *inter alia*, criminal breach of trust by a servant under s 408 of the Penal Code (Cap 224, 1985 Rev Ed), which is defined as a "serious offence" under the CDSA;

(b) that NTL had left the jurisdiction, and the case was complex and involved documentary evidence from financial institutions, company records and many witnesses;

(c) that the misappropriated funds were paid into the accounts of Pan Asset which was beneficially owned by NTL and that the five payments to the Appellant were paid from these accounts;

(d) that criminal proceedings would be instituted against NTL should he be brought back to the jurisdiction; and

(e) that, in the absence of NTL, it was CPIB's intention to proceed with the confiscation order under the CDSA.

The Judge's decision

10 The Judge dismissed the Appellant's application on the ground that the Appellant had not established an arguable case, which is the minimum standard of proof required for leave to be given under O 53 of the Rules of Court (see the GD at [23]). He found that the Appellant had not shown sufficient evidence to prove that there might be an arguable case that the seizure of his accounts was in any way illegal or unreasonable or procedurally improper.

Whether the seizures were illegal

11 With respect to ground (a) (see [7] above), the Judge held that s 68(1) of the CPC did not require the Appellant to be investigated or charged for an offence or to have knowledge that the property was stolen before the section could be invoked. Section 68(1) only required an allegation or suspicion that the property was stolen or that it was found in circumstances which created the suspicion of the commission of an offence. As for the argument that CPIB did not have evidence linking Pan Asset's funds to the moneys in the seized accounts, the Judge found that it was not for the Respondent to show that the moneys came from a tainted source, but for the Appellant to show that they did not come from a tainted source (see the GD at [26] and [27]). Accordingly, there was no abuse of process even if CPIB had not produced any evidence that the funds in the seized accounts came from Pan Asset. The Judge relied on the statement of Andrew Phang Boon Leong J in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2006] 3 SLR 507 ("*Teng Fuh Holdings*") that, in judicial review cases, abuse of power would not be assumed and that there must be sufficient evidence of a *prima facie* case of "reasonable suspicion" of bad faith (at [36] of *Teng Fuh Holdings*).

Whether the seizures were unreasonable since CPIB had done nothing with the Accounts

12 The Judge rejected ground (b) (see [7] above), as the Appellant had not suffered any hardship or prejudice as he had no pressing need to use the funds and did not even know that the Accounts

had been frozen. The Judge held, further, that the freezing of the Appellant's first account (Account No 2) for more than a year (since 17 November 2006) was not unreasonable as the case was a complex one involving foreign companies, foreign bank accounts and foreign financial institutions. Also, the disappearance of NTL made the investigations more difficult.

Whether there was procedural impropriety

13 With respect to ground (c) (see [7] above), the Judge held that there was no procedural impropriety as CPIB had reported the seizure to a Magistrate's Court on 8 February 2007 and that the "slight delay" (from about one to three months in the reporting) (see the GD at [39]) was immaterial as it had caused no hardship or prejudice to the Appellant.

14 The Judge also rejected a submission by the Appellant that the intention of CPIB to eventually take out confiscation proceedings under the CDSA would also amount to an abuse of process. He held that the proper remedy in such a case was a prohibitory and not a mandatory order, but that, in any case, it could not be an abuse of process for CPIB to take out confiscation proceedings after using s 68(1) of the CPC to seize the Appellant's accounts, as s 68(1) was merely an interim measure used to preserve evidence while investigations were ongoing.

Issues on appeal

15 The Appellant raised the following issues for the determination of this court:

(a) whether CPIB had breached s 392 of the CPC;

(b) if so, whether it amounted to procedural impropriety;

(c) whether the Respondent had placed any material for the Judge's review;

(d) whether, in the circumstances, the Judge ought to have granted leave for judicial review of the seizure of the Accounts.

We consider these issues below.

Whether there was breach of section 392 of the CPC

16 With respect to issue (a) (see [15] above), the Appellant has argued that the failure by CPIB to report the seizure of the Accounts "forthwith" to a Magistrate's Court ("MC"), as expressly required by s 392(1) of the CPC, was a non-compliance that amounted to a procedural impropriety which justified the granting of leave for judicial review. The Judge had rejected this argument on the ground that the legality of the seizure was determined by whether there was a legal basis for the seizure as provided for in that section, and not whether there was a subsequent failure to report the seizures forthwith to an MC. We agree with the Judge's reasoning in this respect.

17 However, we are also of the view that, whilst non-compliance with s 392(1) in reporting a seizure forthwith to the MC may not affect the legality of the seizure, it could have provided the Appellant with a legal basis for judicial review of the seizure had he made his application in a timely manner, that is to say, at least before the seizures were reported to an MC (see [26] and [27] below). The reason for this is that a failure to make the report in accordance with s 392 may render the *continuing seizure* invalid in so far as the police officer would no longer have any power to retain legal control or custody of the seized property. It is important that the police and the MC understand

the rationale of the legislative scheme constituted by ss 392 to 394 of the CPC in order to appreciate the reasons why a police officer seizing property must comply strictly with the requirement of reporting the seizure forthwith. We will now examine what the legislative scheme is.

18 Sections 392 to 394 of the CPC provide as follows:

> **Procedure by police on seizure of property**.
>
> **392**.—(1) The seizure by any police officer of property taken under section 29 ***or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate's Court*** which shall make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.
>
> (2) If the person so entitled is known, the Magistrate's Court may order the property to be delivered to him on such conditions, if any, as the Magistrate's Court thinks fit.
>
> (3) The Magistrate's Court shall, on making an order under subsection (2), cause a notice to be served on that person, informing him of the terms of the order, and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than 48 hours) as the Magistrate's Court may in the notice prescribe.
>
> (4) If that person is unknown or cannot be found the Magistrate's Court may direct that it be detained in police custody and the Commissioner of Police shall, in that case, issue a public notification, specifying the articles of which the property consists and requiring any person who has a claim to it to appear before him and establish his claim within 6 months from the date of the public notification:
>
> Provided that, where it is shown to the satisfaction of the Magistrate's Court that the property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate's Court, to render impracticable the sale, as hereinafter provided, of the property, or as to make its detention in police custody unreasonable in view of the expense or inconvenience that would thereby be involved, the Magistrate's Court may order the property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification above referred to as it may determine, or forthwith, as it thinks fit.
>
> (5) Every notification under subsection (4) shall be published in the *Gazette* if the value of the property amounts to $100.
>
> **Procedure when no claim established**.
>
> **393**.—(1) If within 3 months from the publication of a notification under section 392(4) no person establishes a claim to such property and if the person in whose possession the property was found is unable to show that it was legally acquired by him, the property may be sold on the order of the Commissioner of Police.
>
> (2) If within 6 months from the publication of the notification no person has established a claim to the property, the ownership of the property or, if sold, of the net proceeds of it, shall thereupon pass to and be vested in the Government.

(3) Where any property detained in police custody on an order of a Magistrate's Court made under section 392(4) is subject to speedy and natural decay or is, in the opinion of the Commissioner of Police, of less value than $50, or where its custody involves unreasonable expense or inconvenience, the property may be sold at any time, and section 392 and this section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

Procedure where owner is absent.

394.—(1) If the person entitled to the possession of such property is absent from Singapore and the property is subject to speedy and natural decay or the Magistrate's Court to which its seizure is reported is of opinion that its sale would be for the benefit of the owner or that the value of the property is less than $50 the Magistrate's Court may, at any time, direct it to be sold and section 393(2) shall apply to the net proceeds of the sale.

(2) If the person to whom property has been ordered to be delivered under section 392(2) neglects or omits to take delivery of the property within the period prescribed, the Magistrate's Court may, where the property is subject to speedy and natural decay or where, in the opinion of the Magistrate's Court, its value is less than $50 direct that the property be sold, and the net proceeds of the sale shall, on demand, be paid over to the person entitled.

[emphasis added in bold italics]

19 The following points may be noted in connection with these provisions, read with s 68(1) of the same Act:

(a) The italicised words "alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence" in s 392(1) replicate the relevant words in s 68(1), and therefore refer to property seized under the same section (see *Magnum Finance Bhd v PP* [1996] 2 SLR 523 ("*Magnum*") at 528; [17]). Section 68 provides as follows:

> **68**.—(1) Any police officer may seize any property which is alleged or suspected to have been stolen or which is found under circumstances which create suspicion of the commission of any offence.
>
> (2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(b) Section 392(1), read with s 68(1), covers only two items of property, *viz*: (i) property alleged or suspected to have been stolen; and (ii) property which is found under circumstances which create suspicion of the commission of any offence.

(c) Under s 68(1), a police officer has the power to seize property (which may belong to a known or any unknown person) in the circumstances provided, but he has no power to retain control or custody longer than it is necessary to report the seizure to an MC under s 392. This is so that the MC is enabled to exercise its powers to deal with the property in accordance with that section, *ie*, to determine who is entitled to the possession of the property and to deliver the property to him as soon as practicable. Section 68(2) emphasises the need for immediate reporting in requiring that the seizure must be reported forthwith to a superior officer who must also forthwith report it to an MC. By virtue of s 392(1), the reporting of a seizure has the effect of vesting legal control and custody of the seized property in the MC which has the duty to

dispose of it in accordance with the procedure set out in ss 392 to 394. Once a report is made to the MC, the police may not deal with the property except with the permission of the MC. Any such dealing with the seized property would be wrongful.

(d) As s 392(1) only empowers the court to make orders respecting the *delivery* of the property to the person entitled to its possession or respecting its *custody and production* if that person cannot be found (see *Magnum* at 528; [18]), it is not concerned with ownership of the seized property, but only with the right to its possession. The function of the court is to ascertain who the person entitled to the possession of the seized property is and deliver the property to him. If the person entitled to its possession is known, the MC may order the delivery of the property to him on such conditions, if any, as the magistrate thinks fit (s 392(2)).

(e) Under s 392(4), if the person entitled to the possession of the seized property is unknown or cannot be found, the MC may direct that the property be detained in the custody of the police and the Commissioner of Police must then issue a public notification ("the s 392(4) notice") requiring any person who has a claim to make his claim before the Commissioner of Police within six months thereof, unless the amount is insubstantial.

(f) Under s 393, if within three months from the publication of the s 392(4) notice no person establishes a claim to such property and *if the person in whose possession the property was found* is unable to show that it was legally acquired by him, the property may be sold on the order of the Commissioner of Police. Under s 393(2), if no person has established a claim to the property within six months from the publication of the s 392(4) notice, the ownership of the property or of the net proceeds, if the property is sold, shall thereupon pass to and be vested in the Government.

(g) Unlike under s 386(2) of the CPC (where the court may make an order for forfeiture or confiscation of the property after an inquiry or a trial in relation to the property has taken place), the MC has no power under s 392 to confiscate or forfeit the seized property. In *Magnum* at 528, [18], this court reasoned that "[t]his must be because s 392 was intended to apply only to situations where no prosecution has commenced, or where no prosecution will commence".

(h) Given this scheme in ss 392 to 394, it is our view that the Judge has misinterpreted s 68 as an interim measure for preserving evidence while investigations are underway (see the GD at [29]). Section 68(1) is not a measure to preserve evidence, but a provision to empower a police officer to seize property found in suspicious circumstances and to require the police officer to report the seizure to an MC so that it may dispose of the property by delivering it to the person entitled in law to have possession of it.

Was seizure of the Accounts reported "forthwith" under section 392(1) of the CPC?

20 Although the Appellant was informed of the seizure of three of the Accounts before he filed his action for judicial review on 21 September 2007, it would appear that he had never been informed by CPIB as to *when* the seizures were reported to an MC under s 392(1). In our view, this is a relevant consideration in determining liability for costs in the present proceedings should the Appellant's appeal be dismissed. In the present case, it was only at the hearing before the Judge that State Counsel disclosed, for the first time, a copy of the report made on 8 February 2007 by Alvin Cheang to an MC of the seizures of the Appellant's bank accounts (*viz*, Accounts Nos 2, 3 and 5). The essential parts of the report were as follows:

4. It is suspected that the above assets [the Appellant's bank accounts] are derived from the

proceeds of crime committed by [NTL] and his accomplices.

5. Pursuant to my powers under Section 68 of the [CPC], including those powers vested in me under Section 125 and 58 of the [CPC], I have seized the above-mentioned properties under Section 68 of the [CPC] pending the completion of our investigation.

6. Meanwhile, I am reporting the seizure to you as required under Section 392(1) of the [CPC].

7. A separate application will be made in due course for an order respecting the delivery of the property to the person entitled to the possession … of the property.

21 Although the report was made on 8 February 2007, it is not clear when the magistrate first read the report. However, the report bears the following notation of a magistrate made on 8 March 2007:

> I have taken note of your report under Section 392(1) of the [CPC]. You have to address the court in due course respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.

In our view, this notation suggests that the MC might not have fully appreciated its own functions and duties under s 392, which were to take the actions stated therein to dispose of the seized property. The notation shows that the MC left it entirely to Alvin Cheang to decide when he was ready to address the MC on what to do with the property. In our view, this approach is inconsistent with what the MC has to do under s 392. The MC is not an adjunct of the investigating authorities, but an independent judicial body vested with the power to dispose of the seized property as soon as practicable.

22 Alvin Cheang's report also showed that he had reported the seizures to the MC about three months after the earliest seizure (on 17 November 2006) and about one month after the latest seizure (on 11 January 2007). In our view, this was undue delay in breach of the requirement of reporting "forthwith" under s 392(1). The expression "forthwith" in s 392 means as soon as practicable, as the circumstances permit. The investigations might be complex or difficult, as they undoubtedly were in the present case, but that could not be a good reason for the late reporting of the seizures since, having regard to the matters to be reported, it should not have taken longer than a few days.

23 The requirement of reporting forthwith is made mandatory under s 392 for sound policy reasons. Property seized under s 68(1) belongs to someone and should be returned to the owner or the person entitled to the possession of it. Mandatory and prompt reporting ensures the safe custody of the property once the MC takes cognisance of the seizure. It also fulfils a second, equally important purpose: it prevents such property from being wrongfully detained, used, appropriated or disposed of. This is why s 68(2) requires the police officer, if subordinate to the officer in charge of a police station, to forthwith report the seizure to that superior officer. In *In re B Dasappa* AIR 1916 Mad 1109, the Madras High Court held that the police officer who had retained a piece of gold he had seized, without reporting the seizure to his superior officer, was guilty of an offence under s 217 of the Penal Code (Act No 45 of 1860) (India) (corresponding to s 217 of our Penal Code). For these reasons, we do not accept State Counsel's argument that s 392 is a directory, and not a mandatory, provision (in that, as argued, it is merely a property disposal provision with respect to items no longer relevant to police investigations or court proceedings). In our view, a failure to comply with s 392(1) altogether would deprive the police of the power to retain legal control and/or custody of the seized property, except with the consent of an MC.

Whether the delay in reporting was a procedural impropriety

24 The Judge held that, although the seizures had not been reported forthwith to an MC as required under s 392(1), it was not a procedural impropriety that entitled the Appellant to judicial review as the Appellant had not suffered any hardship or prejudice (in that he had no need to use the funds in the Accounts during that period). In our view, this holding is erroneous, as the failure to report forthwith as required under s 392(1) is not a procedural impropriety in the administrative law sense. It is, rather, a failure to comply with a statutory requirement resulting in the police being in wrongful control and custody of the seized property from the time it was reasonable to have reported the seizure until the time the report was actually made. In our view, the element of absence of hardship or otherwise is irrelevant to the duty of the police officer to make a report forthwith to an MC under s 392(1) with respect to a seizure under s 68(1) of the CPC.

25 In the present case, the Appellant did not know about the seizures until he found out he could not use Account No 1 in December 2006. Account No 2 was seized on 17 November 2006; there was no reason why the Appellant could not have been informed of this seizure within a week. In January 2007, he was notified by BB Bank that Account No 5 (which was reported as being seized on 11 January 2007) had been frozen and it was only on 29 March 2007, in response to the Appellant's letter dated 26 March 2007, that CPIB rejected the Appellant's request to unfreeze Accounts Nos 1 and 5 (although it subsequently turned out that Account No 1 was not seized by CPIB). Furthermore, he was only informed of the seizures of Accounts Nos 2 and 3 on 4 February 2008. In our view, although ss 68 and 392 do not require the police to inform the account holder of the seizure of his bank account, there is no reason why, operationally, the police should not inform the account holder of the seizure of his account. This is a matter of good governance as it will avoid causing the account holder (who may be the lawful owner of the funds) any embarrassment, if not harm to his reputation, should it result in his having to explain to third parties why he cannot use the accounts. Furthermore, once the seizures were reported under s 392(1), there was again no reason why the Appellant could not have been informed of the same as soon as practicable since his address was known to the police.

26 As we have said earlier, the delay in reporting the seizures of the Appellant's bank accounts to an MC was an instance of non-compliance with s 392(1) and would have affected the power of the police to continue to exercise control or custody of the seized property. However, once the seizures were reported to an MC, no matter that the report was unduly late, this meant that the MC had taken cognisance of the report and, thenceforth, the legal control and custody of the property had passed to the MC under s 392. For this reason, as far as the present proceedings before us are concerned, the High Court had no power since 8 February 2007 (when Alvin Cheang reported the seizures to the MC) to grant a mandatory order to direct CPIB to unfreeze the bank accounts as they were then in the control and custody of the MC. The only recourse now open to the Appellant is to apply to the MC to exercise its powers under s 393(1) to determine whether the Appellant is entitled to have the seized accounts released. On this ground alone, this appeal is misconceived and has to be dismissed.

27 In our view, non-compliance with s 392 has different legal consequences, depending on the nature of the non-compliance. If the non-compliance is confined to a delay in reporting the seizure, as in the present case, then the delay would cease to have legal consequences for judicial review once the seizure is reported to an MC. But if the non-compliance is a complete and total failure to report at all, then it would have given rise to a right to judicial review as CPIB would then be in wrongful control or custody of the seized property from the time it failed to comply with s 392(1) of the CPC. In the present case, CPIB's delay in reporting the seizures to an MC (the delay was from about one to three months) gave rise to a period of time when it had ceased to have any power to

exercise legal control or custody of the seized accounts. In our view, if the Appellant had applied for leave for judicial review in this intervening period, there would have been no reason why such leave would not have been granted to the Appellant for the purpose of setting aside the seizures.

28 In view of the eventual reporting of the seizures to an MC, the Appellant's case was a non-starter from the time it was commenced on 21 September 2007. However, the Appellant was not aware that Alvin Cheang had reported the seizures to an MC on 8 February 2007. He only knew of this fact at the hearing on 11 April 2008 when State Counsel produced a copy of the report in court. Furthermore, when the Appellant requested CPIB to unfreeze Accounts Nos 1 and 5, CPIB rejected the request without informing him that one of these accounts was then under the control and custody of the MC. This rejection would have led the Appellant to reasonably believe that CPIB was still in legal control or custody of the Accounts, and therefore the proper party to be made the respondent in his application. In our view, these two omissions have a direct bearing on the allocation of costs in these proceedings.

Functions and duties of the MC under section 392 of the CPC

29 In view of the confusion that seemed to have arisen in this case as to the respective duties of the police and the MC with respect to property seized under s 68(1) in the course of a police investigation, it is desirable that we clarify the functions and duties of an MC under s 392 of the CPC. The MC's function under s 392 is to determine who is entitled to the possession of the seized property and to return it to him, or, if such person cannot be found, to keep it in safe custody. The MC may summarily deliver the property to the person entitled to its possession without holding an inquiry if it is satisfied that the person is so entitled. If there is a dispute, it may hold an inquiry. But it cannot put off the disposal of the property indefinitely (see *In re Shroff Bodanna* AIR 1942 Mad 319(1), where the Madras High Court directed the magistrate to deal with the application of the petitioner under s 523 of the Criminal Procedure Code (Act No 5 of 1898) (India) "in accordance with law" (at 319)). The MC must discharge its duty to dispose of the property within a reasonable time, in the circumstances of the case. Sections 393 and 394 set out the procedure and a statutory timetable for the MC to return the property to the person entitled to its possession.

30 In our view, as soon as a s 68(1) seizure is reported to an MC, the MC should take steps as soon as practicable to dispose of such property. With respect to the seized accounts in the present case, this would have meant taking steps to notify the Appellant, the account holder, to prove his entitlement to the possession of the funds in the seized accounts (in effect, to secure the release of the seized accounts). If the MC is satisfied with the Appellant's claim, it must then order the seized accounts to be released. If it were necessary for the seized property to be used as evidence in an investigation or in court proceedings, the MC has the power to impose conditions in relation to the release in order to safeguard the evidence. In the present case, there was arguably nothing to safeguard as evidence since all the particulars relating to the opening of the accounts must have already been investigated by the police.

31 In the present case, the MC appeared to have misapprehended its functions when it left it entirely to Alvin Cheang to decide when it could deal with the seized accounts (see [21] above). As a result of this misapprehension, these accounts have remained seized up to today, to the detriment of the Appellant.

32 In the present case, Alvin Cheang has in his report expressly stated that he had reason to believe that the funds in the seized accounts were tainted moneys which came from the accounts of Pan Asset (which was believed to be controlled by NTL). That may well be the case, but, even then, it does not necessarily mean that the moneys do not legally belong to the Appellant. The Appellant's

case is that the moneys in the Accounts were the proceeds of the sale of his shares in CTM. CPIB has not accepted this explanation, but whatever the truth is, the factual matrix is that the moneys in the seized accounts could only belong to either the Appellant or Pan Asset/NTL, and no other person. Furthermore, as far as the law is concerned, as between the Appellant and Pan Asset/NTL, the Appellant has a better right to possession (and also ownership) simply because *the money was in his possession* before the accounts were seized. Section 112 of the Evidence Act (Cap 97, 1997 Rev Ed) provides that where the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. In the present case, there has been no evidence to the contrary up to now. CPIB has not alleged that the moneys in the seized accounts were stolen (and they could not have been stolen, on the evidence before us). CPIB is only able to allege that the money had belonged or still belonged to Pan Asset/NTL, but that is as far as it can go on the basis of its investigations.

33 Having seized the Appellant's accounts pursuant to s 68(1) and having reported the seizures to an MC under s 392(1), CPIB has nothing more to do with the fate of the accounts which is now in the hands of the MC. Under s 68(1), CPIB has the power to seize any property (including bank accounts) which may have been stolen or obtained under suspicious circumstances, but it has no claim or interest in the property as the investigative arm of the State.

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34 We have mentioned earlier (see [14] above) that, at the hearing, the Judge had rejected the Appellant's argument that the stated intention of CPIB to commence proceedings under the CDSA to confiscate the moneys in the seized accounts would lead to an abuse of process. In our view, although any such proceedings by CPIB would not be an abuse of process, the fact that it had decided to initiate such proceedings showed that CPIB had concluded that it had no legal basis upon which to prevent the moneys in the seized accounts from being returned to the Appellant in due course. Accordingly, the stated intention of CPIB to proceed under the CDSA was not unexpected, which the Public Prosecutor had since carried out by filing Originating Summons No 785 of 2008 ("OS 785/2008") on 10 June 2008 (*after the Appellant had filed this appeal*) for an order under s 5 of the CDSA to confiscate NTL's assets, including the moneys in the Appellant's seized accounts, on the ground that they were derived from NTL's criminal conduct.

35 These proceedings by the Public Prosecutor will impinge on the MC's jurisdiction and powers to deal with the seized accounts under s 392(2) of the CPC. They raise an issue of competing jurisdiction between the MC under s 392 of the CPC and the High Court with respect to s 5 of the CDSA. Presumably, the MC will defer to the authority of the High Court to dispose of the matter first. On this basis, it is desirable that the claims of the Appellant to the moneys in the seized accounts be brought to the attention of the High Court so that the relevant issues of fact and law can be disposed of together. During argument before us, counsel for the Appellant did not seem to be aware of the pending confiscation proceedings in OS 785/2008. We hasten to add, in this regard, that we express no view on whether the Appellant is entitled to intervene in OS 785/2008 since the matter is not before us. We make these points only because we wish to avoid a situation where the different courts are being asked by different parties to deal discretely with what may be the same legal issues, without reference to each other. We are concerned that such an approach may lead to a failure to determine comprehensively all the related issues at the same time, as well as result in a multiplicity of proceedings and appeals on these issues. Such an outcome would be best avoided in the interests of efficiency and economy in the conduct of court proceedings.

Conclusion

36 In view of our decision on issues (a) and (b) (see [15] above), it is not necessary for us to consider issues (c) and (d) (see [26] and [27] above). The appeal is dismissed on the ground that, since CPIB has no legal control or custody of the Accounts, the court is not in a position to direct CPIB to release them. No doubt the Appellant will seek the necessary advice from his counsel on what to do next to get the Accounts released to him.

37 In the circumstances, and having regard to our observations at [19] above, the appeal is dismissed. Each party will bear its own costs here and below.