IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 70

Magistrate's Appeal No 9018 of 2020/01

Between

Public Prosecutor

… *Appellant*

And

Chua Wen Hao

… *Respondent*

Magistrate's Appeal No 9018 of 2020/02

Between

Chua Wen Hao

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Magistrate's Complaint Notice No 901601 of 2018

Between

Public Prosecutor

And

Chua Wen Hao

GROUNDS OF DECISION

[Criminal Law] — [Offences]
[Criminal Procedure and Sentencing] — [Sentencing]

Public Prosecutor
v
Chua Wen Hao and another appeal

[2021] SGHC 70

General Division of the High Court — Magistrate's Appeals Nos 9018 of 2020/01 and 9018 of 2020/02
Sundaresh Menon CJ
5 November 2020, 10 February 2021

26 March 2021

Sundaresh Menon CJ:

Introduction

1 These were cross-appeals by the Prosecution and the accused person, Chua Wen Hao ("Mr Chua"), against the ten-day short detention order ("SDO") imposed by the district judge ("the District Judge") in respect of a charge under s 182 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") as it stood prior to the amendments effected by the Criminal Law Reform Act 2019 (Act 15 of 2019) ("the Criminal Law Reform Act 2019") of giving false information to a public servant, with intent to cause the public servant to do something which he ought not to do if the true state of facts were known to him: see *Public Prosecutor v Chua Wen Hao* [2020] SGMC 30 ("GD") at [53]. The charge, to which Mr Chua pleaded guilty in the court below, read as follows:

> You,
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> …
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> are charged that you, on 12 September 2017, at or about 11.00 pm, at Hotel 81 Violet at No. 97 Lavender Street ('the Hotel'), Singapore, did give false information to a public servant, namely, one Investigation Officer Sunny Foo Shanyi ('IO Foo') of the Singapore Police Force, *to wit*, you told IO Foo that you did not know the identity of the male subject who had entered Room 301 of the Hotel at about 9.25pm and had not allowed him to enter the room, which information you knew to be false, knowing it to be likely that you would thereby cause IO Foo to use his lawful power to investigate into the identity of the said male subject, which such public servant ought not to do if the true state of facts respecting which such information was given were known by him, and you have thereby committed an offence punishable under Section 182 of the Penal Code (Cap 224).

2 The Investigation Officer named in the charge, Sunny Foo Shanyi ("the IO"), had asked Mr Chua whether he knew one Lau Sheng Shiun ("B1"), who was Mr Chua's friend and direct supervisor in the Navy. B1 had set fire to some towels belonging to a hotel at which Mr Chua had, for a brief period, occupied a room. Mr Chua stated falsely that he did not know B1 and had not allowed B1 to enter his room at the hotel. Because the parties took different positions as to whether, as stated in para 9 of the Statement of Facts, the IO had informed Mr Chua that B1 had set fire to the hotel's towels, a Newton hearing was held to resolve this factual dispute, which went towards determining whether Mr Chua's plea of guilt could be accepted. At the end of the Newton hearing, the District Judge found that before recording a statement from Mr Chua, the IO had in fact informed Mr Chua that B1 had set fire to the hotel's towels, and that such conduct constituted a serious offence. The District Judge therefore accepted Mr Chua's plea of guilt. He convicted Mr Chua of the offence under s 182 of the Penal Code as it stood prior to the amendments effected by the Criminal Law Reform Act 2019 (referred to hereafter as "s 182" for short) and imposed the ten-day SDO ("the SDO sentence") on him.

3 In its appeal, the Prosecution sought an imprisonment term of at least two weeks. In contrast, in his cross-appeal, Mr Chua submitted that the SDO sentence imposed by the District Judge should be set aside in favour of either a conditional discharge or a fine. He also contended that in any event, the s 182 charge that had been preferred against him was defective because he had not known at the material time that the false information he had provided was likely to cause the IO to do something which he ought not to do if the true state of facts were known to him, namely, to investigate the identity of B1. At the hearing of these appeals on 5 November 2020, I directed the Prosecution to reconsider its position in respect of Mr Chua's conviction on the s 182 charge as it was not clear to me that the facts before me supported the charge. I also directed the parties to confer and apprise the court of their respective positions thereafter. The Prosecution subsequently sought to set aside Mr Chua's conviction on the s 182 charge and to bring an amended charge under s 177 of the Penal Code as it stood prior to the amendments effected by the Criminal Law Reform Act 2019 (referred to hereafter as "s 177" for short) of furnishing false information to a public servant without more. Mr Chua intimated that he would not object to this and would not offer a defence to the amended charge.

4 In these written grounds, I explain why the original charge under s 182 was defective and also explain my sentencing decision on the amended charge under s 177.

The law

5 It is helpful at the outset to set out s 182 of the Penal Code, which provides as follows:

> **False information, with intent to cause a public servant to use his lawful power to the injury of another person**
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> **182.** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to $5,000, or with both.
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> *Illustrations*
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> (*a*) *A* informs a superintendent of police that *Z*, a police officer subordinate to such superintendent, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the superintendent to dismiss *Z*. *A* has committed the offence defined in this section.
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> (*b*) *A* falsely informs a public servant that *Z* has contraband opium in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of *Z*'s premises, attended with annoyance to *Z*. *A* has committed the offence defined in this section.
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> (*c*) *A* falsely informs a policeman that he has been assaulted and robbed by a person whose identity he does not know. *A* also mentions that he often sees that person going in and out of a block of flats, knowing it to be likely that in consequence of this information, the police will make inquiries and institute searches in the block of flats to the annoyance of the flat dwellers or some of them. *A* has committed an offence under this section.

The material facts

6 The material facts are as follows. On 12 September 2017, Mr Chua and B1 met a Vietnamese lady ("B2") at W KTV ("KTV"), and the three of them later left for Hotel 81 Violet ("the Hotel"). Mr Chua and B2 checked into the Hotel and were given the keys to Room 301 ("the Room"). They entered the Room at 9.23pm, followed by B1 a minute later. Through the Hotel's closed

circuit television ("CCTV") system, the employee at the front desk of the Hotel ("the Employee") noticed B1 entering the Room. This was contrary to the Hotel's occupancy policy that only two people could be accommodated in a room. The Employee tried to call the Room using the telephone. As she received no answer, the Employee went up to the Room and knocked on the door. Mr Chua answered the door, and the Employee informed him of the occupancy limit. Mr Chua, however, denied that B1 was in the Room. A few minutes later, B1 exited the Room and approached the Employee to ask whether he could book a room for three people. The Employee told him that he could not do so. Angered by the Employee's response, B1 left the Hotel by the rear door. He stopped to smoke a cigarette at the rear of the Hotel, where he noticed some of the Hotel's towels in a crate. At 9.49pm, B1 set fire to the towels and left the scene. Subsequently, a passer-by informed the Hotel's staff of the fire and the police were called.

7 Thereafter, the IO arrived at the Hotel and learnt that B1, the person who had set fire to the towels, had been in the Room where Mr Chua was staying. The IO approached Mr Chua and asked him "whether he knew the male subject [meaning B1] who had earlier entered [the Room] at about 9:25pm". The IO informed Mr Chua that B1 "had set fire to Hotel towels" and showed him a screenshot from the Hotel's CCTV footage capturing B1's presence. Mr Chua replied that he did not know B1. The IO then informed Mr Chua that he would record a statement from him. He told Mr Chua to speak the truth, and warned him that providing false information was an offence. Mr Chua acknowledged this. The IO then recorded a statement from him ("the First Statement") under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). In the First Statement, Mr Chua maintained that he did not know the identity of the person who had entered the Room at about 9.25pm, and further claimed that he had not allowed that person to enter the Room. Mr Chua also stated that he had

visited KTV on his own. In making these assertions, Mr Chua intentionally provided false information to the IO.

8 Given Mr Chua's lack of assistance, the IO proceeded to commence investigations into the identity of B1. Police officers reviewed the Hotel's CCTV footage and conducted ground inquiries there. They also made inquiries at KTV and reviewed the CCTV footage recorded there. Five police officers spent a combined total of 21.9 man-hours in their efforts to uncover the identity of B1. On reviewing the CCTV footage recorded at KTV, the police officers realised that Mr Chua and B1 had arrived at KTV together and had left within three minutes of each other. B1's identity was eventually established through the credit card and phone details that had been used to pay for the room charges incurred at KTV. The police then made arrangements to interview Mr Chua again on 20 September 2017. On that day, Mr Chua gave a further statement under s 22 of the CPC ("the Second Statement"), in which he recanted the false information that he had provided in the First Statement. He claimed (among other things) that he did not tell the police that he knew B1 on the day of the incident because he had been "afraid … [he] would say the wrong things", but he was later advised by his supervisor to tell the truth. By that time, the police had already established B1's identity.

The decision below

9 As indicated at [2] and [7] above, the Prosecution's position, as set out in para 9 of the Statement of Facts, was that "[the IO had] informed [Mr Chua] that [B1] had set fire to Hotel towels". The Defence, however, took the contrary position in its submissions on mitigation, maintaining that Mr Chua either had not been told of this fact, or had not heard or understood what the IO had said. As Mr Chua's plea of guilt would have to be rejected if he did not accept para 9

of the Statement of Facts (GD at [10]), the District Judge convened a Newton hearing to determine whether Mr Chua had been aware, when he informed the IO that he did not know B1, that B1 had set fire to the Hotel's towels. At the end of the Newton hearing, the District Judge found that before recording the First Statement from Mr Chua, the IO had informed Mr Chua – and Mr Chua had heard and understood the IO – that B1 had set fire to the Hotel's towels, and that such conduct constituted a serious offence: GD at [31]–[34]; see also [2] above.

10 On the question of sentence, the District Judge referred to *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447 ("*Koh Yong Chiah*"), where the High Court held (at [50]) that as a starting point, a custodial sentence should be imposed "if *appreciable harm* may be caused by the s 182 offence" [emphasis in original]. The District Judge considered that a custodial sentence was warranted for three reasons: GD at [46]. First, actual harm, namely, the wastage of investigative resources, had been occasioned as a result of the false information provided by Mr Chua. Second, Mr Chua had known that he was making false assertions from the outset, and despite having been warned that providing false information was an offence, had in fact gone to great lengths to furnish an untruthful account in the First Statement so as to protect B1's identity and thereby shield B1 from investigation. Third, Mr Chua had not promptly recanted the false information that he had provided. The District Judge also noted, however, that a custodial sentence need not necessarily take the form of an imprisonment term, and that under the CPC, a community-based sentence ("CBS") such as an SDO could be imposed instead in appropriate cases: GD at [48]. In the event, the District Judge meted out to Mr Chua the SDO sentence, having regard to: (a) his lack of antecedents; (b) his very low risk of reoffending; (c) his general good character and conduct; (d) the likelihood that in providing the false information to the IO, he had acted out of character and

"out of a misguided sense of loyalty towards [B1]"; (e) his stable educational and job prospects, which merited protection from the disruption that a sentence of imprisonment would cause; and (f) the fact that an SDO would nonetheless "signal that what he [had done] was serious and deserving of a custodial sentence": GD at [51].

The parties' arguments on appeal

11 The Prosecution appealed against the SDO sentence imposed by the District Judge on the grounds that it was "both wrong in principle and manifestly inadequate", and, as mentioned at [3] above, sought a sentence of at least two weeks' imprisonment:

(a) The SDO sentence was contended to be wrong in principle because the District Judge had failed to consider that a term of imprisonment was warranted, especially since deterrence was the dominant sentencing consideration. Moreover, the District Judge had erred in law by failing to consider the test laid down in *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 for ascertaining the propriety of imposing a CBS. Under this test, it had to be shown that "the offender's capacity for rehabilitation was so demonstrably high that a CBS would suffice" (at [38]). Applying this test, the Prosecution argued that Mr Chua's capacity for rehabilitation was not so demonstrably high.

(b) The SDO sentence was contended to be manifestly inadequate because the District Judge had failed to consider or give due weight to such aggravating factors as: (i) the fact that Mr Chua had known that he was making false assertions in the First Statement from the outset; (ii) the degree of deliberation and the extent of deception involved in the

commission of the offence; (iii) Mr Chua's undue delay in recanting the false information provided in the First Statement; (iv) Mr Chua's repetition of the false information, in that he had said, twice, that he did not know B1, first when he was shown the screenshot from the Hotel's CCTV footage capturing B1's presence, and again when he gave the First Statement; and (v) the seriousness of the predicate offence of mischief by fire under s 435 of the Penal Code. Furthermore, the Prosecution argued that the District Judge had accorded undue weight to the mitigating factors raised by Mr Chua.

12 The Defence likewise appealed against the SDO sentence imposed by the District Judge on two bases, namely, that it was wrong in principle and manifestly excessive, and sought either a fine or a conditional discharge:

(a) The SDO sentence was contended to be wrong in principle because, among other things: (i) the Prosecution had not proved the disputed facts that were the subject of the Newton hearing (see [2] and [9] above); and (ii) the IO had not misused his lawful powers or acted in breach of his duties as a public servant as a result of the false information provided by Mr Chua, which called into question whether the s 182 charge against Mr Chua had even been made out.

(b) The SDO sentence was contended to be manifestly excessive because, among other things: (i) Mr Chua had provided some useful information that led to the identification of B1 and had not caused any harm; (ii) the only false information that Mr Chua had conveyed was that he did not know B1 and had not allowed B1 to enter the Room; (iii) Mr Chua had a low culpability owing to his consumption of alcohol prior to the offence and the pressure arising from his having a sailing

exercise the following day; (iv) Mr Chua had a clean record and a low risk of reoffending; and (v) there had been no premeditation, and Mr Chua had not derived any personal benefit from committing the offence.

The issues on appeal

13 Two issues arose for my consideration. First, as the Defence pointed out, a preliminary issue arose as to whether the charge under s 182 of the Penal Code had even been made out, a question that went towards the legality of Mr Chua's conviction. Second, I had to consider the appropriate sentence to impose on Mr Chua. However, as the second issue turned on whether the s 182 charge ought to be maintained, set aside and/or reframed, I provided my preliminary views on the first issue at the hearing on 5 November 2020 before inviting the parties, in the light of the foregoing, to address me further on this and also to make submissions on sentence. On 10 February 2021, the parties came before me again, having agreed to proceed on an amended charge under s 177 of the Penal Code instead (see [3] above). As to the appropriate sentence to impose, the parties maintained their positions on the respective sentences that they had previously sought at the hearing on 5 November 2020 (see [11] and [12] above), save that the Defence now contended that if a fine were imposed, the quantum of the fine should be $1,500.

Mr Chua's conviction

14 Dealing first with Mr Chua's conviction, it may be noted that between the filing of his notice of appeal on 5 February 2020 and the filing of his petition of appeal on 13 July 2020, Mr Chua discharged his counsel in the proceedings below and engaged Ms N K Anitha ("Ms Anitha") to represent him in his appeal. Before me, and in accordance with Mr Chua's petition of appeal,

Ms Anitha contended that the SDO sentence imposed in the court below was wrong in principle because the District Judge "[f]ailed to examine whether [Mr Chua] had intended or known that his false information will likely cause the public servant to *misuse his lawful powers or act in breach of his duties* as a public servant" [emphasis in original]. Given that a finding in favour of Mr Chua on this point would affect the legality of his conviction, Ms Anitha invited me to exercise the inherent powers of the court and examine whether the offence under s 182 of the Penal Code had been made out. Notwithstanding that s 375 of the CPC would ordinarily have foreclosed Mr Chua, who had pleaded guilty, from challenging his conviction, there was no dispute that under s 390(3) of the CPC, a court exercising appellate criminal jurisdiction has the power to set aside the conviction of an accused person who has pleaded guilty and make such order as it considers just in the circumstances. I was therefore prepared to consider Ms Anitha's arguments in this regard.

15 Ms Anitha contended, first, that the purpose of s 182 of the Penal Code was to prevent public servants from being given false information that might *mislead* them. She accordingly submitted that s 182 only made punishable "the positive act of giving false information and not the withholding of information". Second, Ms Anitha asserted that in providing the false information in the First Statement, Mr Chua had not intended the IO to abuse his powers in any way. It was contended that the gravamen of the s 182 offence was the misuse or abuse of the lawful powers of a public servant to whom false information had been given. As this "essential element" was not established in this case, the s 182 charge against Mr Chua had to fail. In contrast to the Defence's submissions, the Prosecution's submissions focused on the SDO sentence imposed by the District Judge and did not directly address the question of whether the elements of the s 182 charge had been made out and, in particular, whether the allegation therein that Mr Chua had "[known] it to be likely that [he] would … cause [the

IO] to use his lawful power to investigate into the identity of [B1], which [the IO] ought not to do if the true state of facts … were known by him", had been proved.

16 In my judgment, there was no doubt that Mr Chua made assertions that he knew were false. The Statement of Facts disclosed that in the First Statement, Mr Chua said that "he did not know [B1]" [underlining in original] and "had not allowed [B1] to enter [the Room]". Mr Chua made these assertions despite knowing that they were false, as can be seen from his subsequent admission in the Second Statement that: (a) "[w]hen B1 came up [to the Room], I opened the door for him to come in"; and (b) "on the day of the incident, I did not tell the police that I know [B1]". The Statement of Facts also disclosed that Mr Chua "*intentionally* told the false information to [the IO]" [emphasis added], a point which went towards establishing the *mens rea* of the offence under s 182 of the Penal Code. There was no merit in the argument that when Mr Chua made the First Statement, he did not know that the IO was investigating an offence of mischief by fire, as the form on which that statement was recorded expressly stated that the IO was conducting an "investigation into an offence of mischief by fire". It was also clear from the Second Statement that Mr Chua knew that the IO was conducting such an investigation as he expressly stated there that "I was a witness to a case of mischief by fire".

17 Notwithstanding the above factors, the s 182 charge set out at [1] above was, in my judgment, defective. The central issue turned on identifying the gravamen of the offence under s 182, which is reproduced again below for ease of reference:

> **False information, with intent to cause a public servant to use his lawful power to the injury of another person**
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> **182.** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to $5,000, or with both.
>
> …

18 In *Siew Yit Beng v Public Prosecutor* [2000] 2 SLR(R) 785, Yong Pung How CJ, sitting in the High Court, summarised the elements or limbs of the offence under the then version of s 182 (namely, s 182 of the Penal Code (Cap 224, 1985 Rev Ed), which is substantially the same as the version of s 182 that was the subject of the original charge against Mr Chua) as follows (at [28]):

> … [T]he Prosecution must establish that: (a) the accused person gave information to a public servant; (b) such information was false; (c) the accused person knew or believed that such information was false; and (d) the accused person intended or knew it to be likely that the information would be acted upon by the public servant in the manner contemplated by the provision. …

19 Section 182 spells out three alternative scenarios in which the fourth limb of the s 182 offence – namely, that the accused person intended or knew it to be likely that the false information provided would be acted upon by the public servant in the manner contemplated by the provision – may be satisfied. To restate the elements of the s 182 offence with reference to these three alternative scenarios, the Prosecution must show that: (a) the accused person gave information to a public servant; (b) such information was false; (c) the accused person knew or believed that such information was false; and (d) the accused person intended thereby to cause, or knew it to be likely that he or she

would thereby cause, the public servant to: (i) use his or her lawful powers to the injury or annoyance of another person; or (ii) do something which he or she ought not to do if the true state of facts were known to him or her; or (iii) omit to do something which he or she ought not to omit if the true state of facts were known to him or her.

20 Having regard to the three alternative scenarios in which the fourth limb of s 182 may be satisfied, it is evident that s 182 is not concerned with simply *any* false statement made to a public servant, nor with simply *any* effect caused by a false statement made to a public servant. Rather, it is concerned with the situation where a public servant *abuses, misuses or improperly withholds the use of his or her lawful powers* as a result of a false statement made to him or her. It is helpful here to note what is meant by "lawful powers". In my judgment, that means powers that are conferred by the law and to be exercised in conformity with the purposes of the law. In this light, what brings a fact situation within the ambit of s 182 is the abuse, misuse or improper withholding of the use of these powers, meaning their deployment or the withholding of their deployment otherwise than for the purposes for which they have been conferred. It follows that the making of a false statement or the furnishing of false information is a necessary but insufficient predicate to constitute the offence under s 182. At the core of this offence lies the exercise by a public servant of lawful powers that *ought not* to have been exercised, or (as the case may be) the omission by a public servant to exercise lawful powers that *ought* to have been exercised, if the false information had not been provided to him or her. There is a normative element in this because s 182 is designed to safeguard members of the public from the improper exercise of lawful powers by a public servant, or (as the case may be) the improper omission by a public servant to exercise such powers, as a result of false information provided to him or her, rather than to protect a public servant from the inefficient exercise of his or her lawful powers.

The latter connotes a public servant doing things that *would not or might not* have had to be done, as opposed to things that *ought not* to have been done. It follows that s 182 would not cover the situation where, as a consequence of false information provided to him or her, a public servant exercises the powers conferred upon him or her that would and should have been exercised in any event, but in a way or to a degree that entailed or might have entailed greater expense or effort than what would otherwise have been necessary.

21 In the present case, once one appreciates the distinction between: (a) powers that the police *ought not* to have exercised if all the true facts had been known to them; and (b) powers that the police were entitled or obliged to exercise but that they exercised in a manner which entailed or might have entailed greater expense and/or which was or might have been more extensive than what would otherwise have been the case, it will be evident that the s 182 charge against Mr Chua could not be made out. Certainly, but for the false information provided by Mr Chua, the police might not have had to conduct investigations into B1's identity for as long a period as they did. But there is no question that the police were exercising their lawful powers in carrying out such investigations. There was no misuse of these powers, and in any event, the police would have had to investigate the setting of fire to the Hotel's towels even if Mr Chua had not provided any false information. The distinction that I have drawn between the *misuse* and the *inefficient use* of lawful powers by a public servant as a consequence of false information provided to him or her is consistent with the gradation of offences that is reflected in Chapter X of the Penal Code (which deals with offences involving contempt of the lawful authority of public servants) and that seems to me to exist for the very purpose of giving effect to this distinction. Section 177 of the Penal Code, for example, expressly deals with the less serious offence of furnishing false information to a public servant without more. To make out this offence, all that is required is

that a person who is legally bound to furnish information to a public servant furnishes, as true, information which he or she knows or believes to be false; s 177 does not incorporate any element of misuse of powers or breach of duties by the public servant as a consequence of the false information provided. The distinction that I have drawn between false information causing a public servant to carry out acts which he or she *would not or might not* have had to carry out – as opposed to acts which he or she *ought not* to have carried out – if the true state of facts had been known to him or her is also consistent with the following observations of the High Court in *Koh Yong Chiah* at [2]:

> … [I]t may generally be said that at the heart of the [s 182] offence lies the *harm* that would be caused from lying to a *public servant* (as opposed to any other ordinary person) because of the *unique powers and duties* that a public servant generally has – as the provision specifies, the offender must *intend* or *know* that his false information will likely cause the public servant to ***misuse his lawful powers or act in breach of his duties as a public servant***. [emphasis in original in italics; emphasis added in bold italics]

22 In a similar vein, the High Court in *Koh Yong Chiah* went on to note (at [52]) that s 182 of the Penal Code "ultimately seeks to protect the public against the potential harm that may result from a public officer *misusing his/her powers, or failing to perform his/her duties*" [emphasis in original omitted; emphasis added in italics]. This theme of misuse of powers or breach of duties arises from the words "ought not to do or omit" in s 182, and coheres with the alternative scenario of a public servant exercising his or her lawful powers "to the injury or annoyance of any person". The illustrations to s 182, which are reproduced again below, are likewise consistent with this common thread of a wrongful exercise by a public servant of the powers conferred upon him or her, or (as the case may be) a wrongful omission by a public servant to exercise such powers, with resultant prejudice or detriment to a third party:

Illustrations

(*a*) *A* informs a superintendent of police that *Z*, a police officer subordinate to such superintendent, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the superintendent to dismiss *Z*. *A* has committed the offence defined in this section.

(*b*) *A* falsely informs a public servant that *Z* has contraband opium in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of *Z*'s premises, attended with annoyance to *Z*. *A* has committed the offence defined in this section.

(*c*) *A* falsely informs a policeman that he has been assaulted and robbed by a person whose identity he does not know. *A* also mentions that he often sees that person going in and out of a block of flats, knowing it to be likely that in consequence of this information, the police will make inquiries and institute searches in the block of flats to the annoyance of the flat dwellers or some of them. *A* has committed an offence under this section.

23 Finally, I note that in *Koh Yong Chiah* at [22]–[32], the High Court conducted an extensive review of cases involving s 182 of the Penal Code and identified six broad categories of cases falling within the provision, namely, cases where the accused person: (a) falsely reported innocent persons to the police; (b) gave false information to shield himself or herself from investigation or prosecution; (c) gave false information to shield another person from investigation or prosecution; (d) gave false information to subvert a public institution's screening process; (e) gave false information to facilitate fraud on a third party so as to gain some personal benefit; and (f) provided false information regarding his or her employment. These six categories are not exhaustive; but what underlies all of them, and, indeed, all cases falling within s 182, is, as I highlighted at [22] above, the wrongful exercise by a public servant of the powers conferred upon him or her, or (as the case may be) the wrongful omission by a public servant to exercise such powers, with resultant

prejudice or detriment to a third party. Herein lies the sharp distinction that I have drawn at [21] above between lawful powers that a public servant *ought not* to have exercised if the true state of facts had been known to him or her, and lawful powers that a public servant *would not or might not* have had to exercise. A mere wastage of public resources arising from a public servant's exercise of his or her powers in the latter scenario will not suffice to satisfy the misuse of powers/breach of duties element of a s 182 charge, although it may well be a consideration relevant to sentence.

24 I outlined these concerns to the parties when they came before me on 5 November 2020, and directed that: (a) the Prosecution should reconsider its position in relation to Mr Chua's conviction on the charge under s 182 of the Penal Code; and (b) thereafter, the parties should confer and apprise the court of their respective positions in the light of the Prosecution's reconsideration of the matter. As mentioned earlier (see [3] and [13] above), after reconsidering its position, the Prosecution agreed that the offence under s 182 of the Penal Code was not made out and proposed instead to proceed on an amended charge under s 177 of the Penal Code as defined at [3] above. Section 177 reads as follows:

> **Furnishing false information**
>
> **177.** Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with imprisonment for a term which may extend to 6 months, or with fine which may extend to $5,000, or with both; or, if the information which he is legally bound to furnish respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment for a term which may extend to 3 years, or with fine, or with both.

25 Mr Chua intimated that he would not object to the Prosecution's proposal to reframe the original charge under s 182 of the Penal Code and would

not offer a defence to the amended charge (see [3] above). Thus, on the Prosecution's application, and pursuant to the power conferred by s 390(3) of the CPC on a court exercising appellate criminal jurisdiction, at the hearing on 10 February 2021, I set aside Mr Chua's conviction on the s 182 charge as well as the SDO sentence imposed by the District Judge for that charge. I also considered the Prosecution's proposed amended charge under s 177 of the Penal Code and framed the amended charge as follows:

> You,
>
> …
>
> are charged that you, on 12 September 2017, at or about 11.00 pm, at Hotel 81 Violet at No. 97 Lavender Street ('the Hotel'), Singapore, being legally bound to furnish information on the identity of the male subject who entered Room 301 of the Hotel at about 9.25pm on 12 September 2017 to a public servant, Investigation Officer Sunny Foo Shanyi of the Singapore Police Force, in a statement recorded from you under s 22 of the Criminal Procedure Code (Cap 68), did furnish, as true, information which you knew to be false, *to wit*, you denied knowing the identity of the male subject and denied allowing the male subject to enter Room 301, and you have thereby committed an offence punishable under the first limb of s 177 of the Penal Code (Cap 224).

26 In this regard, I noted that the requisite consent of the Public Prosecutor under s 10(1)(*a*) of the CPC did not, at least initially, appear to have been obtained in respect of Mr Chua's prosecution on the amended charge. Section 10(1)(*a*) of the CPC states that "[a] prosecution for … an offence under section[s] 172 to 188 … of the Penal Code … must not be instituted except with the consent of the Public Prosecutor". The Prosecution informed me that due to an oversight, the Public Prosecutor's consent had not been filed yet; the requisite consent was, however, at hand, and the Prosecution undertook to file the same by the end of the day. Ms Anitha confirmed that Mr Chua was prepared to proceed on this basis, and the Public Prosecutor's consent was subsequently filed.

27 Although the Defence did not object to the Prosecution's reframing of the original charge against Mr Chua and intimated that Mr Chua would not offer a defence to the amended charge, Ms Anitha nevertheless submitted that the following allegation in the amended charge was not supported by the First Statement that had been recorded from Mr Chua:

> … [B]eing ***legally bound*** to furnish information on the identity of the male subject who entered Room 301 of the Hotel at about 9.25pm on 12 September 2017 to [the IO], in a statement recorded from you under s 22 of the [CPC], [you] did furnish, as true, information which you knew to be false, *to wit*, ***you denied knowing the identity of the male subject and denied allowing the male subject to enter Room 301*** … [emphasis added in bold italics]

I disagreed and pointed out to Ms Anitha that the form on which the First Statement had been recorded had explicitly put Mr Chua on notice that "*[y]ou are bound* to state truly the facts and circumstances with which you are acquainted concerning the case" [emphasis added]. Further, Mr Chua had asserted in the First Statement that (among other things): (a) "I … told [the Employee] that I do not have 3 person [*sic*] [in the Room]"; (b) "I … saw a male Chinese close to 40 years of age [in the Room]"; and (c) "I asked [the male Chinese] who he was in Chinese". It was clear from these assertions that the version of events put forward by Mr Chua in the First Statement was that he did not know B1 and had not allowed B1 to enter the Room. In these circumstances, Ms Anitha accepted that the elements of the amended charge were made out.

28 In view of the reframing of the original charge against Mr Chua, the Prosecution and the Defence consented to have the original Statement of Facts amended by deleting the following sentence from para 11:

> … The accused knew that in giving this false information, he would thereby cause [the IO] to use his lawful power to investigate into the identity of the male subject, which [the IO]

> ought not to do if the true state of facts respecting which such information was given by the accused were known by him.

After some initial reservations by Mr Chua over the finding made at the end of the Newton hearing in the court below that he knew that B1 had set fire to the Hotel's towels and that such conduct constituted a serious offence (see [2] and [9] above), and after consulting Ms Anitha, Mr Chua admitted without qualification the facts in the amended Statement of Facts and confirmed that he pleaded guilty to the offence disclosed in the amended charge under s 177 of the Penal Code. Accordingly, I convicted Mr Chua of the amended charge pursuant to s 390(8)(*a*) of the CPC.

The appropriate sentence to impose

29 The parties were then invited to make their submissions on sentence in the light of Mr Chua's conviction on the amended charge. As Mr Chua is an individual, it was not disputed that he was liable to be punished with "imprisonment for a term which may extend to 6 months, or with fine which may extend to $5,000, or with both" under s 177 of the Penal Code.

30 The Prosecution maintained its position that a sentence of at least two weeks' imprisonment was warranted for the amended charge (see [13] above). It contended that deterrence remained the dominant sentencing consideration since an offence under s 177 "is serious as it involves intentional interference with public administration": *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) at p 1093. Given that similar principles undergird both s 177 and s 182 of the Penal Code, the Prosecution contended that the High Court's pronouncements in *Koh Yong Chiah* on the offence under s 182 remained instructive in relation to the offence under s 177. Thus, where there was appreciable harm, the court should, as a starting point, likewise impose a

custodial term for the latter offence. In this regard, the Prosecution submitted that Mr Chua's falsehoods were serious and had caused actual harm, in that as a result of these falsehoods, the police had to spend 21.9 man-hours trying to establish B1's identity by carrying out "a variety of unnecessary investigative work", such as making ground inquiries at KTV and the Hotel, reviewing the CCTV footage recorded at both places, as well as tracing credit card transactions and phone details. Furthermore, all these investigations had caused inconvenience to the staff of both the Hotel and KTV. Potential harm had also been occasioned because Mr Chua's falsehoods had needlessly tied up investigative resources and "could have frustrated the progress of other genuine investigations and unnecessarily diverted public resources away from deserving cases". In addition, there were, according to the Prosecution, several aggravating factors, including: (a) a high degree of premeditation, as evidenced by Mr Chua's carefully fabricated account of events; (b) Mr Chua's attempt to shield B1 from investigation; (c) Mr Chua's undue delay in recanting his falsehoods; and (d) the serious nature of the predicate offence of mischief by fire under s 435 of the Penal Code, which had in fact been highlighted to Mr Chua by the IO. The Prosecution submitted that there were "no real mitigating factors in this case", and that "[t]he sole mitigating factor in [Mr] Chua's favour [was] his clean record". The Prosecution accepted that the latter consideration "[might] warrant a sentencing discount", but emphasised that Mr Chua's plea of guilt was not evidence of genuine remorse as it was entered in the face of "overwhelming evidence". The Prosecution also tendered a summary of cases where the sentencing court had imposed custodial sentences or fines for the offence under s 177 of the Penal Code.

31 The Defence, on the other hand, pleaded for a conditional discharge and, in the alternative, a fine of $1,500 (see [13] above). The following points were raised in mitigation: (a) Mr Chua's offence was not a deliberate or calculated

infraction, in that the decision by Mr Chua to lie was an impulsive one made while he was inebriated and stressed over a sailing exercise that he was to participate in the next day; (b) the circumstances in which the offence was committed suggested a low degree of culpability on Mr Chua's part; (c) the 21.9 man-hours that the police spent on investigations were expended by a total of five officers, which worked out to about 4.38 man-hours per officer, and since this number of man-hours was "neither unusual nor excessive, and certainly not unnecessary", it did not amount to actual harm; (d) Mr Chua had in fact provided some relevant and accurate information that led to B1's identification, such as the name and location of KTV, and even if Mr Chua had told the truth, the IO would in any event have had to take the same or similar investigative steps to verify what Mr Chua would have said; (e) Mr Chua had a clean record and positive testimonials from his superiors; and (f) a term of imprisonment could result in Mr Chua's discharge from the Navy, which would severely affect his future. Given these circumstances, the Defence submitted, "[r]ehabilitation should be the dominant and only applicable sentencing consideration". Relying on information gathered from the State Courts Sentencing Information and Research Repository, the Defence pointed out that only one offender had been convicted and sentenced for an offence under the present iteration of s 177 of the Penal Code, which came into force on 1 January 2020. In that case, a fine of $1,500 had been imposed. In respect of s 177 of the Penal Code as defined at [3] above, 13 cases involving that provision had been decided. Fines had been imposed in four cases, with the median fine being $2,000. In eight cases, custodial sentences had been imposed, with the median term of imprisonment being 2.5 weeks' imprisonment; and in one case, 24 months' probation had been ordered. However, no information on the nature and circumstances of the s 177 offence in these cases was available.

32 After hearing the parties on the appropriate sentence to impose, I sentenced Mr Chua to a fine of $2,500 for the amended charge. These are my reasons.

33 It was clear to me that in the circumstances of the present case, deterrence was, as the Prosecution rightly submitted, the dominant sentencing consideration. The offence under s 177 of the Penal Code cannot be said to be trivial as it can, in serious cases, hamper the ability of law enforcement agencies to investigate crimes under exigent circumstances. In this regard, I rejected the Defence's submission that rehabilitation should be "the dominant and only applicable sentencing consideration" (see [31] above). It is well established that in respect of offenders over the age of 21, "the law … takes the view that rehabilitation would typically *not* be the operative concern … *unless* the particular offender concerned happens to demonstrate an extremely strong propensity for reform or there exist other exceptional circumstances" [emphasis in original]: *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 at [44], cited in *Public Prosecutor v Siow Kai Yuan Terence* [2020] 4 SLR 1412 at [42]. On the evidence before me, there was no basis to conclude that Mr Chua had such a strong propensity for reform that could displace the need for deterrence.

34 It was also clear to me that in the present circumstances, contrary to what the Defence submitted, it was not appropriate to order a conditional discharge. Section 8(1) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("POA"), which governs the granting of discharge orders, states:

> **Absolute and conditional discharge**
>
> **8.**—(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion, *having regard to the circumstances including* the *nature of the offence* and the *character of the offender*, that it is *inexpedient to inflict punishment* and that *a probation order is not appropriate*, the

> court may make an order discharging him absolutely, or if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding 12 months from the date of the order, as may be specified therein:
>
> Provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make an order discharging a person absolutely or an order for conditional discharge if the person —
>
> > (*a*) has attained the age of 16 years but has not attained the age of 21 years at the time of his conviction; and
> >
> > (*b*) has not been previously convicted of any such offence referred to in this proviso, and for this purpose section 11(1) shall not apply to any such previous conviction.
>
> (2) An order discharging a person subject to such a condition is referred to in this Act as 'an order for conditional discharge', and the period specified in any such order as 'the period of conditional discharge'.
>
> (3) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.
>
> (4) Where, under the following provisions of this Act, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.
>
> [emphasis added]

35 The principles as to when a discharge, whether absolute or conditional, may be granted were set out by the High Court in *Kalaiarasi d/o Marimuthu Innasimuthu v Public Prosecutor* [2012] 2 SLR 774 ("*Kalaiarasi*"). In essence, based on a plain reading of s 8(1) of the POA, the court must be satisfied of three matters before ordering an absolute or conditional discharge for offenders who have attained the age of 21 (at [23]): (a) first, it must be inexpedient to inflict punishment; (b) second, a probation order must be inappropriate; and (c) third, the offence must not be one for which a specified minimum sentence

or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law. The High Court in *Kalaiarasi* also provided a summary of the relevant considerations for determining whether it would be appropriate to grant an absolute or conditional discharge (at [33]):

> As provided in s 8(1) of the [POA] (see [23] above), having been satisfied that the offence in question is one [for] which [the sentence] is not fixed by law, the overriding considerations for determining whether to order an absolute or conditional discharge are twofold. The court must consider if it is inexpedient to inflict punishment and whether probation is inappropriate. In considering these factors, the court should pay close attention to the *nature of the offence* and the *interests which the offence seeks to protect*. In addition, some of the factors that the court should consider include:
>
> > (a) the particular circumstances of the *offender*: for example, a relatively minor offence committed by an offender with a mental illness might warrant an order for a discharge; it is also relevant to consider the character of the offender;
> >
> > (b) the particular circumstances of the *offence*: for example, the context in which an offence was committed (say, in a situation of an emergency) may suggest a low degree of culpability on the part of the offender; and
> >
> > (c) factors independent of the offender: for example, a delay in the prosecution of an offence, may justify some form of a discharge.
>
> [emphasis in original]

36 In the present case, there was nothing that could fairly be described as exceptional either about Mr Chua or the nature of his offence. In so far as Mr Chua's character was a relevant consideration, Mr Chua's superior, one Mr Jonathan Ng ("Mr Ng"), provided a testimonial dated 30 July 2018 that Mr Chua had a positive work history and had demonstrated exceptional performance and good character. However, I accorded no weight to this testimonial given that Mr Ng also disclosed therein that he had worked with Mr Chua for only eight months, which, based on the date of the testimonial, was only since December 2017, some three months after Mr Chua's arrest in

September 2017 for the present offence. As for the Defence's suggestion that the present case was akin to *Kalaiarasi*, this was, in my judgment, misguided because *Kalaisarasi* concerned a wholly different fact situation involving offences under s 82(1)(*a*) of the Bankruptcy Act (Cap 20, 2009 Rev Ed). In that case, the High Court allowed the appellant's appeal against the eight-week imprisonment term imposed on her by the lower court and ordered a conditional discharge for a period of 12 months as it found that the appellant's offences were "an instance of inadvertent omission" rather than a deliberate infraction, and as the appellant had demonstrated good character: at [41]. In contrast, Mr Chua had not shown demonstrably good character; but, perhaps even more fundamentally, his offence was, by its nature, simply not one that could be said to be the result of inadvertent oversight. In these circumstances, it was not appropriate to order a conditional discharge.

37 Having regard to the foregoing, the relevant sentencing options before me were therefore either a fine or a term of imprisonment or both. In these circumstances, I had to consider whether the threshold for imposing a custodial term had been crossed. In *Koh Yong Chiah* at [50], which was cited by the District Judge in his GD (see [10] above), the High Court held that "if *appreciable harm* may be caused by the s 182 offence, the courts should, as a starting point, impose a custodial term" [emphasis in original]. However, the High Court also highlighted that "[o]ther relevant sentencing factors should then be taken into account to determine (a) if the starting point should be departed from, and (b) what the appropriate quantum of fine and/or length of imprisonment should be": at [56]. In my judgment, these principles apply with equal force to the offence under s 177 of the Penal Code.

38 Given the dearth of cases on s 177, in deriving some broad guidance as to the offence-specific and offender-specific factors that were relevant to my

sentencing decision, I considered some of the unreported lower court decisions that were placed before me.

39 In *Public Prosecutor v Ahmad Ghuzaili Bin Ismail @ Ahmad Ghuzaili Bin Abdullah* (SC-911234-2018), the offender, aged 27, was asked by a police officer for his particulars following a report that he had been sleeping on the back seat of an unlocked car with the car doors open. The offender provided the police officer with his twin brother's name and NRIC number. Upon screening the offender based on the particulars provided, the police officer realised that those particulars were false. The offender was then arrested, whereupon he provided his true particulars. It transpired that the offender was wanted for being absent from National Service without official leave, and had provided the false particulars to prevent the police officer from arresting him in accordance with the Police Gazette issued by the Singapore Armed Forces. He pleaded guilty to a charge under s 177 of the Penal Code, in respect of which he was sentenced to a fine of $1,000 and one week's imprisonment in default. The offender, who was traced for unrelated offences, was also sentenced to: (a) three years' imprisonment for drug consumption; (b) one year's imprisonment for drug possession; and (c) a fine of $1,000 and one week's imprisonment in default for a charge of dishonest misappropriation of property under s 403 of the Penal Code. In total, the offender was sentenced to three years' imprisonment as well as a fine of $2,000 and two weeks' imprisonment in default. One charge of possession of drug utensils was taken into consideration.

40 In *Public Prosecutor v Zailani Bin Madnam* (SC-910273-2015) ("*Zailani*"), the offender, aged 47, was asked by police officers for his particulars after he was spotted loitering in a public place. The offender handed over a piece of paper containing his brother's name, NRIC number and address. He claimed that he had lost his NRIC, but he had actually hidden it in his shoe

and was attempting to evade police detection. In fact, he kept the piece of paper containing his brother's particulars with him, just so that he could furnish those particulars in case he was ever checked by the police. The police officers screened the particulars provided, and found that the associated photograph did not match the offender. The offender, however, insisted that the particulars were his. Two other persons who were with the offender informed the police officers that the particulars provided in fact belonged to the offender's brother. The offender, who was traced for unrelated offences, pleaded guilty to a charge under s 177 of the Penal Code. He was sentenced to a fine of $2,000 and two weeks' imprisonment in default.

41 *Public Prosecutor v Lim Puay Kwang* (SC-903534-2018) ("*Lim Puay Kwang*"), *Public Prosecutor v Lau Xuanhong, Louis* (SC-903532-2018) and *Public Prosecutor v Chew Hoe Soon* (SC-904726-2017) were three related cases. Chew Hoe Soon ("Mr Chew") was the director and beneficial owner of a company carrying on a ship bunkering business; Lim Puay Kwang ("Mr Lim") was a bunker clerk in Mr Chew's company; and Lau Xuanhong, Louis (Mr Lau") was the demise charterer of a tanker. All three men gave false information to two Police Coast Guard ("PCG") officers to the effect that the tanker chartered by Mr Lau had been hijacked while on its way to unload cargo in Thailand, when it had in fact been hijacked in Malaysian territorial waters for crude oil that it had illegally received from a passing vessel in the Straits of Malacca. The trio conspired to give false information to the PCG to conceal the fact that they had been purchasing oil illegally outside Singapore territorial waters, and that US$200,000 had been taken out of Singapore for such purchase without the requisite declaration having been made. Mr Chew and Mr Lau devised the plan to provide the false information and hammered out the details to be conveyed to the PCG, while Mr Lim agreed to communicate the false account to the PCG. The offenders retracted the falsehoods only about three months later after being

confronted with the truth. In the interim, the PCG wasted resources trying to determine the identity of the alleged Thai buyer of the cargo on the hijacked tanker. The trio were charged, convicted and sentenced as follows:

(a) Mr Lim, aged 41 and traced for unrelated offences, was sentenced to a fine of $3,000 and three weeks' imprisonment in default after pleading guilty to a charge under s 177 read with s 109 of the Penal Code.

(b) Mr Lau, aged 35 and traced for a drink driving offence, was sentenced to two weeks' imprisonment after pleading guilty to a charge under s 177 read with s 109 of the Penal Code. In respect of the drink driving charge (the second time he faced such a charge), Mr Lau was sentenced to three weeks' imprisonment, a fine of $4,000 (in default, two weeks' imprisonment) and three years' disqualification from holding all classes of driving licences ("DQAC"). In total, Mr Lau was sentenced to five weeks' imprisonment, a fine of $4,000 (in default, two weeks' imprisonment) and three years' DQAC.

(c) Mr Chew, aged 55 and traced for traffic offences, was sentenced to two weeks' imprisonment for a charge under s 177 read with s 109 of the Penal Code. He also pleaded guilty to nine charges under s 6(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"), with the sentence for each charge ranging from two to twenty weeks' imprisonment. This made for an aggregate sentence of 38 weeks' imprisonment. Thirty-six other charges under s 6(*b*) of the PCA were taken into consideration.

42 In *Public Prosecutor v Mugin Mariaras* (SC-910624-2017), the offender was a police officer holding the rank of Staff Sergeant. While he was

at a Neighbourhood Police Post ("NPP"), he received a lost-and-found wallet. He started preparing a police report on the wallet, but aborted the report before completing it. He then put the wallet in his bag and discarded the piece of paper containing the particulars of the person who had handed in the wallet. The offender's superior subsequently asked the offender whether any unclaimed lost-and-found property had been received at the NPP. The offender falsely represented that there had been none. He was confronted the next day, and the wallet was eventually found and returned to the victim. The offender, aged 39 and untraced for other offences, was sentenced to two weeks' imprisonment for one charge under s 177 of the Penal Code.

43 In *Public Prosecutor v Muhammad Danial Bin Jalaludin* (SC-901589-2018), the offender was asked to provide his particulars by police officers on patrol. He claimed that he had lost his NRIC and wrote down a name, NRIC number and address that in fact belonged to his cousin. The police officers noticed that the offender looked nervous and asked for his wallet. The offender handed over his wallet, but became uncooperative when the police officers started checking it. The offender then tried to run away, but was eventually pinned down and detained. His NRIC was found in his wallet. Screening later revealed that he was wanted for an offence of failing to report for a urine test ("FRUT"). The offender, aged 28 and traced for unrelated offences, pleaded guilty to one charge under s 177 of the Penal Code, for which he was sentenced to two weeks' imprisonment. He also pleaded guilty to: (a) two FRUT charges; (b) one drug consumption charge; (c) one charge of failing to comply with the signal of a police officer; and (d) one charge of driving without a licence. Four FRUT charges, one charge of driving without the consent of the vehicle owner and one charge of driving without the requisite insurance were taken into consideration. In aggregate, the offender was

sentenced to imprisonment for five years, eight months and 50 days, as well as three strokes of the cane and 12 months' DQAC.

44 In *Public Prosecutor v Woo Tat Meng William* (SC-904871-2016), a summary of which can be found in *Tan Gek Young v Public Prosecutor and another appeal* [2017] 5 SLR 820 at [56], the offender was a 58-year-old pharmacist who, under the Poisons Rules (Cap 234, R 1, 1999 Rev Ed) ("Poisons Rules"), was not permitted to sell more than two bottles of codeine cough preparation to a single customer. A regulatory inspector with the enforcement branch of the Health Sciences Authority ("HSA") received information that the offender had sold 14 bottles of codeine cough preparation to an individual. She requested the offender to produce information regarding his latest customer sales of codeine cough preparation. The offender produced one ledger to the inspector. While the inspector was checking the ledger, the offender admitted that he had made 14 fictitious entries of persons' particulars or re-entered previous customers' details to account for the aforesaid sale of 14 bottles of codeine cough preparation. This was to enable him to sell more than the maximum permitted amount of codeine cough preparation to his customers while avoiding detection by the HSA. The offender pleaded guilty to three charges: (a) one charge of selling 1.68*l* of codeine cough preparation in breach of r 17(*a*) of the Poisons Rules; (b) one charge of failing to record the particulars of sales of codeine cough preparation in breach of r 17(*d*) of the Poisons Rules; and (c) one charge under s 177 of the Penal Code of furnishing false information to a public servant by providing falsified records of sales of codeine cough preparation. Another charge under s 177 of the Penal Code was taken into consideration. The district judge sentenced the offender to: (a) two months' imprisonment for the offence under r 17(*a*) of the Poisons Rules; (b) eight months' imprisonment for the offence under r 17(*d*) of the Poisons Rules; and (c) three weeks' imprisonment for the offence under s 177 of the

Penal Code. The sentences for the offence under r 17(*d*) of the Poisons Rules and the offence under s 177 of the Penal Code were ordered to run consecutively, resulting in an aggregate sentence of eight months and three weeks' imprisonment.

45 What can be gleaned from the foregoing cases, as well as the observations of the High Court in *Koh Yong Chiah* at [25], [40], [41] and [43], is that there are certain offence-specific and offender-specific factors, both aggravating and mitigating, that may tilt the sentencing court's decision towards either a lighter or a more severe sentence for the offence under s 177 of the Penal Code. I set out below a non-exhaustive list of these factors:

(a) Offence-specific factors: (i) the complexity of the deceptive scheme employed to deceive the public servant concerned (for example, whether other persons were asked to corroborate the false information provided, and whether the offence was planned and premeditated or committed on the spur of the moment); (ii) the seriousness of the predicate offence that the offender sought to conceal; (iii) the extent to which public resources were wasted as a result of the false information provided; and (iv) the offender's culpability (including his or her motive).

(b) Offender-specific factors: (i) the offender's antecedents; (ii) the offender's plea of guilt; and (iii) charges taken into consideration.

46 In the present case, I was satisfied that the threshold for imposing a custodial sentence had not been crossed for the following reasons:

(a) First, I accepted that some harm was occasioned by Mr Chua's offence, in that if Mr Chua had not provided the false information in the

First Statement, the police might not have had to spend as many as 21.9 man-hours attempting to establish B1's identity. From this perspective, some public resources were wasted as a result of Mr Chua's false assertions. However, I did not think that the harm occasioned was of a high degree. It was, for example, difficult to see how the police's investigative inquiries at the Hotel and KTV could be said to be a complete waste of time and public resources since the police officers concerned would have had to obtain evidence of the predicate offence of mischief by fire even if Mr Chua had told the truth from the outset. In any event, as the High Court pointed out in *Koh Yong Chiah* at [56], after applying the test of "appreciable harm" to ascertain whether a custodial term should be imposed as a starting point, "[o]ther relevant sentencing factors should then be taken into account to determine … if the starting point should be departed from" (see [37] above). Even if the custodial threshold of "appreciable harm" had been crossed in this case, I was satisfied that the other considerations set out below would ultimately have displaced this in favour of a fine.

(b) Second, the offence was not premeditated or planned. Mr Chua's version of events was not particularly sophisticated. It should be noted that after B1 left the Room, Mr Chua would, in all likelihood, have thought that was the end of the matter. When confronted with the IO's presence a short while later, and faced with the prospect of exposing his friend to potentially serious criminal sanctions, Mr Chua decided, plainly on the spur of the moment and quite impulsively, to lie.

(c) Third, the circumstances of the offence suggested that Mr Chua's culpability was, on the whole, low. It may be noted, from the High Court's observations in *Koh Yong Chiah* at [22]–[24] in respect of

the offence under s 182 of the Penal Code, that cases involving an offender giving false information to shield *himself or herself* from investigation tend to attract more onerous sentences than cases involving an offender giving false information to shield *another* from investigation. The reason for this must be that in the latter situation, the only duty that the offender has is to tell the truth when asked by a public servant since there is, in general, no legal duty to report the offence of another. In contrast, in the former situation, the offender will in most cases already have committed a crime and is seeking to shield himself or herself from the attendant consequences flowing from that. In my judgment, it was therefore less aggravating that Mr Chua lied in order to shield his friend, as opposed to himself, from investigation.

(d) Fourth, Mr Chua was untraced and a first-time offender.

47 While I do not minimise the gravity of Mr Chua's offence, given the confluence of the considerations set out above, I was satisfied that a fine of a suitable quantum would serve the purposes of both general deterrence and specific deterrence. Although deterrence was the principal sentencing consideration in this case (see [33] above), it would be wrong to think that whenever this is so, a term of imprisonment must be imposed. A fine can, in suitable circumstances, have a sufficient and effective deterrent effect. As Yong CJ stated in *Chia Kah Boon v Public Prosecutor* [1999] 2 SLR(R) 1163 at [15], "fines [can be] fixed at a level which would be sufficiently high to achieve the … [objective] of deterrence".

48 Furthermore, deterrence must be applied with due regard for proportionality between the gravity of the offender's conduct and the punishment that is imposed as a result. In line with this, I noted that the

precedents in which a custodial sentence was imposed for the offence under s 177 of the Penal Code (see [41(b)], [41(c)] and [42]–[44] above) involved far more egregious circumstances than those in the present case.

49 Turning to the quantum of the fine to impose on Mr Chua, I did not find the precedents discussed at [39]–[44] above especially helpful. First, none of them were accompanied by detailed grounds of decision explaining the relevant sentencing considerations that were applied. Further, the sentence imposed for the s 177 offence in most of these precedents took the form of an imprisonment term rather than a fine. Second, as I explained to Ms Anitha, cases that involve other offences (such as the precedents cited at [39], [41(b)], [41(c)], [43] and [44] above) might tend to result in the sentencing judge's focus being directed towards the more serious offences. It may not, therefore, be appropriate to place much weight on the sentence imposed for the s 177 offence in these cases. Third, as the Court of Appeal observed in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 at [171] (see also *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [73(d)]), in cases where the offender faces two or more charges and the court is required to order multiple sentences to run consecutively, it may calibrate the individual sentences downwards to ensure that the aggregate sentence is not excessive, save that it should then also "expressly [say] that it has adjusted the individual sentences in this way so that those adjusted individual sentences are not relied upon in future cases". Many of the precedents that were placed before me involved multiple offences, but the absence of any written grounds of decision meant that it was not clear whether and to what extent the individual sentences there, particularly those in respect of the s 177 offence, had been adjusted downwards.

50 There were only two precedents that I was aware of where the only offence concerned was the s 177 offence, and where the sentence imposed was

a fine. The first was *Zailani*, where a fine of $2,000 (in default, two weeks' imprisonment) was imposed (see [40] above). The second was *Lim Puay Kwang*, where the sentence imposed was a fine of $3,000 and three weeks' imprisonment in default (see [41(a)] above).

51 Dealing first with *Zailani*, while there were insufficient facts before me to help me assess its relevance as a precedent, on the face of it, it seemed to me that the present case was more serious because Mr Chua knew that a grave offence (namely, mischief by fire) had been committed and was being investigated, and it was in that context that he lied to the IO. In *Zailani*, on the face of what is known to me, it is not evident why the offender lied about his particulars. Further, as the offender's lie was immediately exposed by the other two persons who were with him, in truth, no harm ensued at all. In contrast, there was at least some harm in the present case in terms of the additional investigative efforts that seemed to have been necessitated as a result of the false information provided by Mr Chua (see [46(a)] above).

52 Turning to *Lim Puay Kwang*, although there were again no written grounds explaining the sentencing decision, that case seemed to me to be a more egregious case because Mr Lim in fact abetted the commission of a more serious instance of the offence under s 177 of the Penal Code by engaging with Mr Chew and Mr Lau in an elaborate conspiracy to cover up an illegal fuel purchasing scheme carried out in territorial waters, which scheme was then the subject of an equally elaborate false report to the PCG.

53 As the present case seemed to fall in between these two precedents, I sentenced Mr Chua to a fine of $2,500. In arriving at this quantum, I took into account the High Court's observation in *Koh Yong Chiah* at [49], in the context of the offence under s 182 of the Penal Code, that the factors that are relevant

in assessing whether the threshold for imposing a custodial sentence has been crossed may also be used to determine "if the starting point [of a custodial sentence] should be departed from and/or *what the appropriate quantum of fine … should be*" [emphasis added]. In my judgment, the same is true of the offence under s 177.

54 Finally, I accepted the Prosecution's submission that in those precedents cited to me where fines were imposed for the offence under s 177 (see [39]–[41(a)] above), the quantum of the fines seemed to cluster at the lower end of the permitted range, instead of utilising the full permitted range. It seems to me that sentencing judges should, in future, consider calibrating the sentences for this offence in a way that would better utilise the full sentencing range provided for in s 177.

Conclusion

55 For the foregoing reasons, I set aside Mr Chua's conviction on the original charge under s 182 of the Penal Code as well as the SDO sentence imposed for that charge. I then convicted Mr Chua of the amended charge under s 177 of the Penal Code and sentenced him to a fine of $2,500 for that charge. Accordingly, I dismissed the Prosecution's appeal and allowed the Defence's cross-appeal.

Sundaresh Menon
Chief Justice

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