IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 201

Criminal Revision No 1 of 2016

Between

Addy Amin bin Mohamed

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Enhanced punishment]
[Criminal Procedure and Sentencing] — [Revision of proceedings]

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Addy Amin bin Mohamed
v
Public Prosecutor

[2016] SGHC 201

High Court — Criminal Revision No 1 of 2016
Tay Yong Kwang JA
15 July 2016

22 September 2016

Tay Yong Kwang JA:

1 This was an application for criminal revision under s 401 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") in which the applicant, Addy Amin bin Mohamed ("the Applicant") sought to set aside his prior conviction and sentence in DAC 25009/2001 ("the 2001 conviction") for an offence of consumption of morphine under s 8(b) punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1998 Rev Ed) ("the 1998 MDA").

Introduction

2 On 22 August 2001, the Applicant pleaded guilty to the charge DAC 25009/2001 in the then Subordinate Courts. It is reproduced in full here:[1]

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[1] Tab B, Respondent's Bundle of Authorities

> You, Addy Amin Bin Mohamed, M/26, NRIC: SXXXXXXX-A, are charged that you, on or about the 4th day of April 2001, in Singapore, did consume a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Cap 185, to wit, morphine, without authorization under the said Act or the regulations made thereunder, and you have thereby committed an offence under Section 8(b) and punishable under Section 33 of the Misuse of Drugs Act, Cap 185.

3 The Applicant was sentenced to 2 years' imprisonment for this charge. He was also sentenced on a trafficking charge to 7 years' imprisonment and 6 strokes of the cane, with both imprisonment terms to run consecutively. He completed serving these sentences some years before 2014.

4 In 2014, he was charged with six charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the 2008 MDA"). The details of the charges and their corresponding outcomes are set out in the table below:

S/N	DAC No.	Charge	Outcome
1.	DAC 14823/2014	Trafficking in a controlled drug under s 5(1)(a) punishable under s 33(4A)(i) of the MDA	Granted a discharge amounting to an acquittal on 15 December 2015
2.	DAC 14824/2014	Trafficking in a controlled drug under s 5(1)(a) punishable under s 33(4A)(i) of the MDA	Convicted and sentenced to 10 years' 6 months' imprisonment and 10 strokes of the cane
3.	DAC 14827/2014	Possession of a Class 'A' controlled drug under s 8(a) punishable under s 33(1) of the MDA	Convicted and sentenced to 15 months' imprisonment
4.	DAC 14828/2014	Possession of drug utensils under s 9	Convicted and sentenced to 6

		punishable under s 33(1) of the MDA	months' imprisonment
5.	DAC 14825/2014	Consumption of a specified drug under s 8(b)(ii) punishable under s 33(4) of the MDA Drug: Morphine	Stood down
6.	DAC 14826/2014	Consumption of a specified drug under s 8(b)(ii) punishable under s 33(4) of the MDA Drug: Methamphetamine	Stood down

5 The Applicant is currently serving his sentence of 11 years' imprisonment and 10 strokes of the cane.

6 The two outstanding charges, DAC 14825/2014 and DAC 14826/2014 were stood down pending this application for criminal revision before me. These charges are reproduced in full here:[2]

> **DAC 14825/2014**
>
> You, Addy Amin Bin Mohamed, Male/40 years old, NRIC: SXXXXXXXA, DOB: 26 December 1974, Singaporean, are charged that you, on or about 14 April 2014, in Singapore, did consume a specified drug listed in the Fourth Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, morphine, without authorization under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) or the Regulations made thereunder, and you have thereby committed an offence under s 8(b)(ii) of the said Act,
>
> and further,

[2] Tab A, Respondent's Bundle of Authorities

> that you, before the commission of the said offence, were on 22 August 2001 in Subordinate Court 33, *vide* DAC 25009/2001, convicted of an offence for consumption of a controlled drug, *to wit*, morphine, under s 8(b) of the Misuse of Drugs Act (Cap 185, 1998 Rev Ed) and sentenced to 2 years' imprisonment, which conviction and sentence have not been set aside to date, and you shall now be punished under s 33(4) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).
>
> **DAC 14826/2014**
>
> You, Addy Amin Bin Mohamed, Male/40 years old, NRIC: SXXXXXXXA, DOB: 26 December 1974, Singaporean, are charged that you, on or about 14 April 2014, in Singapore, did consume a specified drug listed in the Fourth Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, methamphetamine, without authorization under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) or the Regulations made thereunder, and you have thereby committed an offence under s 8(b)(ii) of the said Act,
>
> and further,
>
> that you, before the commission of the said offence, were on 22 August 2001 in Subordinate Court 33, *vide* DAC 25009/2001, convicted of an offence for consumption of a controlled drug, *to wit*, morphine, under s 8(b) of the Misuse of Drugs Act (Cap 185, 1998 Rev Ed) and sentenced to 2 years' imprisonment, which conviction and sentence have not been set aside to date, and you shall now be punished under s 33(4) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).

7 The two outstanding charges were predicated on the Applicant's 2001 conviction. The Applicant argued that the 2001 conviction, relied upon by the Prosecution for the present consumption charges, was for an offence unknown in law, since morphine had already been classified as a "specified drug" under the 1998 MDA as at 20 July 1998. It was thus no longer a "controlled drug" for the purposes of a consumption offence.[3] However, the Applicant does not

[3] Criminal Revision Petition, para 4

dispute the fact that he did consume morphine in relation to the 2001 conviction.

8 This criminal revision thus sought to quash or set aside the 2001 conviction and the sentence imposed. If the order sought is granted, the two outstanding charges would have to be amended by deleting the reference to the 2001 conviction and altering the punishment provision to read as s 33(1) of the MDA.

9 This application was originally scheduled to be heard before me on 29 April 2016 and the parties had filed their written submissions for the hearing. As it involves a point of law, I directed the parties to file further submissions addressing the following points:

> (a) Why should the Court not exercise its powers of revision to correct the charge in DAC 25009/2001 if it invokes its revisionary powers?
>
> (b) What prejudice is there to the Applicant if the Court corrects the said 2001 charge on the basis that there was a misdescription in the charge rather than a non-existent offence, *i.e.*, that the drug was wrongly described as a "controlled" drug rather than as a "specified" drug?

10 On 15 July 2016, having heard the parties and reviewed all of their submissions, I dismissed the application to quash the 2001 conviction. I also made certain orders which will be set out later in this judgment.

Applicable legal principles

11 The legal principles governing the exercise of the High Court's revisionary powers were not in dispute. It was aceepted that revisionary powers have to be exercised sparingly and the threshold is that of serious injustice. According, not all errors in a lower court's decision are liable to be remedied by way of criminal revision. An oft-quoted description of the threshold for intervention is found at [17] of *Ang Poh Chuan v PP* [1995] 3 SLR(R) 929 where Yong Pung How CJ stated:

> … there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But generally it must be shown that *there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below.*
>
> [emphasis added in italics]

The Applicant's submissions

12 The Applicant argued that a controlled drug cannot be a specified drug and vice versa[4] from the plain reading of section 8(b) of the MDA (identical to the same section in the 1998 MDA), which states:

> 8. Except as authorised by this Act, it shall be an offence for a person to —
>
> (*b*) smoke, administer to himself or otherwise consume —
>
> (i) a controlled drug, other than a specified drug; or
>
> (ii) a specified drug.

[4] Applicant's submissions, paras 5-6; Applicant's reply submissions, para 8

13 Given that at the time of the Applicant's conviction, morphine had already been listed as a specified drug in the Fourth Schedule to the 1998 MDA, the Applicant reasoned that the consumption of morphine could only be an offence of consumption of a specified drug and not a controlled drug. Thus, the charge in DAC 25009/2001 was essentially a "charge unknown to law"[5] and defective.[6]

14 The Applicant sought to rely on *Public Prosecutor v Shaik Alaudeen s/o Hasan Bashar* [2013] 2 SLR 538 ("*Shaik Alaudeen*"), and *Public Prosecutor v Ong Gim Hoo* [2014] 3 SLR 8 ("*Ong Gim Hoo*") and sought to distinguish these cases from *Bhavashbhai s/o Baboobhai v Public Prosecutor* [2014] 2 SLR 1281 ("*Bhavashbhai*"). All these cases were heard by Choo Han Teck J in the High Court. In *Shaik Alaudeen* and *Ong Gim Hoo*, the criminal revision applications were brought by the Prosecution to revise errors similar to that in the present case. Both applications were dismissed. In *Bhavashbhai,* the criminal revision application was brought by the accused. It was also dismissed.

15 The Applicant argued that the prejudice to the accused arising from a criminal revision was apparent in *Shaik Alaudeen* but not in *Bhavashbai* because in *Shaik Alaudeen*, the pending s 33A(1) charge was premised on the defective prior consumption conviction that the Prosecution sought to amend, while in *Bhavashbai* the pending s 33A(2) charge was not premised on a defective s 33A(1) conviction.[7] In *Bhavashbai*, it was the consumption

[5] Applicant's submissions, para 8

[6] Applicant's submissions, para 14

[7] Applicant's further submissions, para 6

conviction prior to the s 33A(1) conviction that was defective. The Applicant thus sought to rely on *Shaik Alaudeen* for his case.

16 On the issue of prejudice to the Applicant if the court should amend DAC 25009/2001, the Applicant argued that it would prejudice him in that he would have to suffer a higher punishment, since he also had a previous drug rehabilitation centre admission, which if read together with the amended 2001 conviction, would render him eligible for enhanced punishment under s 33A(1) of the MDA for the two pending consumption charges. The two pending consumption charges currently state the punishment provision as s 33(4) of the MDA.

17 The Applicant acknowledged that there was delay in bringing this criminal revision[8] as 15 years had passed since the 2001 conviction and he had long completed his sentence for that conviction. However, the Applicant argued that delay in criminal matters was not a bar in itself and this was not a case where the passage of time had "buried the relevant pieces of evidence so much so that the revisionary proceedings is nothing more than an academic exercise…".[9] Further, he sought to argue that there was nothing showing that he had known or should reasonably have known that his 2001 conviction was unsafe at that time.[10]

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[8] Applicant's submissions, paras 18-19

[9] Applicant's submissions, para 20

[10] Applicant's submissions, para 21

18 For the above reasons, the Applicant sought to have his 2001 conviction quashed. He argued that the punishment provision in the pending charges should be altered to read as s 33(1) of the MDA.

The Prosecution's submissions

19 The Prosecution submitted that DAC 25009/2001 was valid as it was framed as a charge under s 8(b) of the 1998 MDA, without a specific reference to either s 8(b)(i) or s 8(b)(ii). Morphine was listed as both a controlled drug under the First Schedule and a specified drug under the Fourth Schedule to the 1998 MDA. This was reflected in the Statement of Facts that the Applicant had pleaded guilty to. Thus, the mere fact that morphine was described only as a controlled drug in the charge should not invalidate the charge. The most that could be said was that the charge was imprecise in not stating that morphine was a specified drug. The substance of the Applicant's offending, consumption of morphine, had remained unchanged whether morphine was a controlled or a specified drug.[11] In its further submissions, the Prosecution took the position that DAC 25009/2001 was only wrongly described[12] and argued that the legislative intent behind the specified/controlled drug classification put it beyond doubt that the mischief targeted was the consumption of morphine in any case. Consumption of morphine was not a non-offence in 2001. Morphine was included as a specified drug because it was an opiate drug and opiate drugs have the strongest physical and psychological hold over their users.[13]

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[11] Respondent's submissions paras 15-17

[12] Respondent's further submissions para 8

[13] Respondent's further submissions paras 11-13

20 The Prosecution submitted that there was no serious prejudice arising from the erroneous reference to morphine as a controlled drug because the Applicant was not disputing the fact that he had indeed consumed morphine in 2001. The Prosecution sought to distinguish the present case from the examples given in *Mohamed Hiraz Hassim v PP* [2005] 1 SLR(R) 622 at [9] where the Court's revisionary powers should be invoked for reasons such as the accused pleading guilty when the statement of facts did not disclose all the necessary elements of the offence or where an accused pleads guilty to a wrong charge and was erroneously convicted of a charge with a heavier punishment. In its further submissions, the Prosecution relied on s 162 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("1985 CPC") that was in force in 2001. That section provides:

> No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by that error or omission.

21 The Prosecution pointed out that the Applicant did not assert that he would have taken a different course of action if DAC 25009/2001 had stated "specified drug" in the charge"[14]. Consequently, there was no reason to treat the error as material. Similarly, even under the test for prejudice expounded in *Garmaz s/o Pakhar and another v PP* [1996] 1 SLR(R) 95 ("*Garmaz*"), there was nothing to suggest that the evidence led by the Prosecution or the Applicant's approach to his defence would have been any different if morphine was described as a specified drug.[15]

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[14] Respondent's further submissions paras 17

[15] Respondent's submissions paras 37-40

22 The Prosecution also pointed out that the Applicant's case is wholly unmeritorious as its sole purpose is to allow him to evade enhanced punishment under s 33(4) of the MDA for the pending charges, much like the situation in *Bhavashbai*. The Prosecution submitted that the present case should be decided like in *Bhavashbai*, where the High Court rejected the accused's application to set aside his s 33A(1) conviction which formed the basis for his pending s 33A(2) charge, on the basis that the accused was trying to avoid a greater punishment and to evade justice.[16] Relying on *Shaik Alaudeen*, where the inordinate delay of 10 years was a factor that weighed against the exercise of the court's revisionary powers, the Prosecution also argued that the Applicant's greater delay of 15 years should also be taken as a factor weighing against the exercise of revisionary power.[17]

23 In its further submissions, the Prosecution went further to argue that "grave and serious injustice would be occasioned" if the Court decided not to amend DAC 25009/2001 and the corresponding conviction to reflect the Applicant's consumption of a specified drug. The Prosecution submitted that the regime of enhanced punishment was enacted with the purpose of targeting hardcore drug addicts, including abusers of morphine, and Parliament's intent would be "fundamentally frustrated" if DAC 25009/2001 was left unamended such that the Applicant could not be punished under s 33A(1) of the MDA when he should be.[18] The Prosecution argued that allowing the Applicant to evade punishment under s 33A(1) when he was culpable would amount to an

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[16] Respondent's submissions para 38

[17] Respondent's submissions para 36

[18] Respondent's further submissions paras 26-29

inconsistency in sentencing among offenders with the same culpability, which would ultimately undermine the public's confidence in the administration of justice.[19]

24 I note that while the Prosecution appeared to be reconciling the approach in *Shaik Alaudeen* with *Bhavashbai* in its initial set of submissions, the Prosecution took a different position in its further submissions by asking for the *Shaik Alaudeen* approach to be departed from.[20] The Prosecution pointed out that the High Court in *Shaik Alaudeen* did appear to accept the factual premise that the accused had indeed consumed the drug for which he was convicted. Thus, it submitted that the Court erred when it held that amending the charge to reflect a conviction under s 8(b)(ii) of the MDA would "create prejudice to the respondent by placing him in a position where his potential legal liability is increased", because the accused was already liable for enhanced punishment in the first place by virtue of his consumption.[21]

The Court's decision

25 In *Shaik Alaudeen*, the accused faced six pending charges for consumption of a specified drug under s 8(b)(ii) punishable under s 33A(1) of the MDA, which was predicated on a previous drug rehabilitation centre admission and a 2002 conviction for consumption of morphine. The Prosecution brought an application for criminal revision seeking to amend the wording of the charge for the accused's 2002 conviction from one of

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[19] Respondent's further submissions paras 30-31

[20] Respondent's further submissions para 41

[21] Respondent's further submissions paras 41-43

consumption of a controlled drug under s 8(b)(i) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("the 2001 MDA") to consumption of a *specified* drug under s 8(b)(ii) of the 2001 MDA. The application was premised on the argument that the said charge was erroneous and the accused would not be prejudiced by the amendment. The application was dismissed as the court held that the 2002 conviction was for an offence unknown in law and the test for prejudice set out in *Garmaz* was not satisfied on the facts. The court also observed that there was an inordinate delay of ten years in bringing the application after the accused pleaded guilty. There, despite its holding that the 2002 conviction was for an offence unknown in law, the court did not quash the purportedly defective charge.

26 I also noted the subsequent developments after *Shaik Alaudeen.* After the conclusion of the criminal revision in *Shaik Alaudeen*, the accused subsequently pleaded guilty to the six pending charges but under the punishment provision in s 33(4) of the MDA. In Magistrate's Appeal No 98 of 2013 (*unreported*), his appeal against the sentence imposed for those convictions, the accused sought to challenge the validity of his 2002 conviction with essentially the same arguments as those made by the Applicant in the present case. The matter was heard before the same judge and was dismissed. There were no written grounds given. The same accused then filed Criminal Motion 74 of 2014 (*unreported*) for leave to refer a question of law of public interest arising out of the decision in Magistrate's Appeal No 98 of 2013 to the Court of Appeal. The question was whether it was right that he be punished under s 33(4) of the MDA given the High Court's ruling in *Shaik Alaudeen* that his prior 2002 conviction was for an offence unknown in law. Leave was not granted by the Court of Appeal.

27 In *Bhavashbhai*, the accused was charged with consumption of a specified drug under s 8(b)(ii) punishable under s 33A(2) of the MDA, which was predicated on a 2008 conviction under s 33A(1) of the MDA for consumption of a specified drug. The accused brought the application for criminal revision seeking to quash the conviction under s 33A(1) of the MDA as it was premised on another conviction in 2000 for consumption of a controlled drug under s 8(b) of the 1998 MDA. The accused there alleged that the conviction was erroneous since the drug in the charge, morphine, had already been listed as a specified drug by the material time of the offence. The Court dismissed the application on the basis that the criminal revision, if allowed, "would result in the applicant evading justice" and noted (at [7]) that if the accused were really convinced that the 2008 conviction was wrong, he ought to have appealed against the decision in 2008.

28 In *Ong Gim Hoo*, the accused faced four charges for offences under the Customs Act (Cap 70, 2004 Rev Ed) ("the Customs Act"). The Prosecution brought the application for criminal revision seeking to amend two charges for the accused's two prior convictions, from charges under s 128I(b) to s 128I(1)(b) of the Customs Act. If successful, the application would have the effect of rendering the accused liable for the enhanced punishment prescribed in s 128L(5) of the Customs Act, if he were to be found guilty of the four pending charges. The court also tried to reconcile the decisions in *Shaik Alaudeen* and *Bhavashbhai* in the following passage (at [11]):

> Had the accused in *Bhavashbhai* sought to peruse his criminal records in the midst of, or even prior to, his LT-2 proceedings, he would have understood that he had a recorded LT-1 conviction, and was hence liable to punishment on an LT-2 scale should he reoffend. Had he been troubled with the basis of the LT-1 conviction, namely the word

> "controlled" rather than "specified" in his previous conviction, he would have brought it up when convicted of the LT-1 offence. He did not. It hence cannot be said that he was caught by surprise when he then faced an LT-2 charge, and it cannot be said that prejudice would have been caused to him by refusing to amend, or set aside, the previous LT-1 conviction as he knew all along – and seemingly accepted – that he was liable to punishment on an LT-2 scale should he reoffend. In *Shaik*, if the accused were to peruse his criminal records before his LT-1 proceedings, he would not have thought that he was liable to be punished on an LT-1 scale. The LT-1 proceedings would have hence come as a surprise since his records would have revealed that he did not have the requisite convictions to make out an LT-1 charge. To amend his convictions retrospectively would have caused him prejudice. [...]

29 While the Court acknowledged that the mistake in the charges appeared to be of a "technical nature", it dismissed the application on the basis that the criminal revision could have led to complications. The decision appeared to turn on the Court's view (at [13]) that if it set aside the convictions and charged the accused on reframed charges and the accused then decided to defend himself against them, "a disproportionate amount of resources may have to be expended to resolve the matter." However, the Court also noted (at [13]):

> It is within the trial judge's powers in the ongoing proceedings, which the respondent faces, to determine whether the previous convictions should count for the purpose of enhanced sentencing in the present proceedings [...]

30 I respectfully disagree with the reasoning in *Shaik Alaudeen*. In *Shaik Alaudeen*, the accused's 2002 conviction could not be said to be for an offence that was unknown in law. The consumption of morphine has been an offence since the first version of the MDA was enacted in 1973. The reclassification of morphine as a specified drug occurred on 20 July 1998 and was a result of a

wider set of changes implemented to impose harsher punishments on repeat consumers of opiate drugs. Morphine was mentioned explicitly as one of these opiate drugs that were targeted (see *Singapore Parliamentary Debates, Official Report* (1 June 2014) vol 69, at cols 43-44 (Wong Kan Seng, Minister for Home Affairs)). The legislative intent behind the specified/controlled drug classification put it beyond doubt that the mischief targeted is the consumption of morphine. Consumption of morphine at the material time of the accused's offence was and remained an offence, so it is wrong to call it an offence unknown in law.

31 It is hard to see why the test for prejudice set out in *Garmaz* was not satisfied on the facts of that case. As pointed out by the court in *Shaik Alaudeen*, the *actus reus* and *mens reas* under ss 8(b)(i) and 8(b)(ii) of the MDA for consumption of a controlled drug and a specified drug are identical. The accused there did not appear to dispute the fact that he had consumed morphine in 2002 and there was nothing to suggest that he would not have pleaded guilty to the same charge, had it described morphine as a specified drug instead of as a controlled drug. Section 162 of the 1985 CPC, which the Prosecution relied on for the present case, would apply to *Shaik Alaudeen* equally. There was no suggestion in that case that the accused was misled by the description of morphine as a controlled drug. For that reason, the description of morphine as a controlled drug was really an immaterial error in the particulars of the charge. I disagree with the Court's comments at [5] of *Shaik Alaudeen* that to amend the charge and reflect a conviction under s 8(b)(ii) of the MDA would prejudice the accused by rendering him liable for enhanced punishment under s 33A(1) of the MDA. Regardless of the wording of the charges, the accused had consumed morphine at least twice, which was

the very action that Parliament sought to deter with the enhanced punishment regime. The accused there would have been liable for enhanced punishment under s 33A(1) of the MDA by virtue of the *actus reus* and *mens rea* requirements being fulfilled but for the error in the description. Therefore, an amendment to the 2002 charge would serve to reflect his true legal liability. In my view, any amendment made to the 2002 charge would have been a purely technical one.

32 For the same reasons as given above for disagreeing with *Shaik Alaudeen*, I also respectfully disagree with the approach in *Ong Gim Hoo* and the attempt therein to reconcile *Shaik Alaudeen* and *Bhavashbhai*. When balanced against allowing the accused to evade enhanced punishment as a result of a mistake of a "technical nature", as acknowledged by the Court in that case, the justice of the case clearly lies in favour of allowing the amendment. In any case, on the facts of *Ong Gim Hoo*, it was also not apparent that the accused disputed the fact that he did commit the previous offences.

33 The result in *Bhavashbhai* would lend authority in favour of dismissing the Applicant's petition for criminal revision. The observations by the Court in *Bhavashbhai* about the revision potentially resulting in the accused evading justice would apply equally in the present case, since the Applicant brought this application in an attempt to evade enhanced punishment. *Bhavashbhai* could have been decided on the basis that the description of morphine as a controlled drug was an immaterial error and it did not change the substance of the offence for which the accused was convicted on. It was certainly not an unknown offence.

34 Turning to the present case, it is important to note that the Applicant did not dispute at any point that he had indeed consumed morphine in 2001. Consumption of morphine at the material time in DAC 25009/2001 was an offence. Therefore, the Applicant was wrong to call it "an offence unknown to law". I preferred the Prosecution's argument that DAC 25009/2001 was only described wrongly. This is similar to a situation where an offence that exists in law is described correctly in a charge in terms of the *actus reus* and *mens rea* requirements but the wrong section in the statute was stated. This does not make it a non-offence. The present case was not one where the scientific name of the drug was wrongly stated, which would have altered the type of drug that the accused had admitted he consumed. The error was only in the legal classification of morphine. Accordingly DAC 25009/2001 was not fundamentally defective. In any case, the section of the offence in DAC 25009/2001 was stated as s 8(b) of the 2001 MDA, which could not be said to be wrong, although it was imprecise given that s 8(b) has two subsections. Section 8(b) criminalizes offences of consumption of drugs in general and the Applicant pleaded guilty to that. He was therefore aware of what he was pleading guilty to, even if the legal classification of the particular drug was wrong.

35 I was not satisfied that there was any merit in the Applicant's case to set aside his 2001 conviction. I therefore dismissed the application for criminal revision.

36 I accepted the Prosecution's argument that I should amend DAC 25009/2001 and the corresponding conviction to reflect the Applicant's consumption of a specified drug in 2001. There would be no prejudice to the

Applicant if I exercise my criminal revisionary powers to the opposite effect of what he sought, *i.e.*, to amend DAC 25009/2001 to reflect that morphine is a specified drug. Further, the Statement of Facts ("SOF") for DAC 25009/2001 stated that morphine was both a controlled drug and a specified drug under the 2001 MDA. The Applicant was under no illusion as to what he was pleading guilty to. He consumed morphine, knowing that it was an offence. He accepted the punishment imposed on him. It has been 15 years since the Applicant was convicted on the 2001 charge. There could be no prejudice to the Applicant even if he were to face s 33A(1) charges instead as a result of my amendment of DAC 25009/2001. The fact remained that he consumed morphine in 2001, accepted his conviction and sentence, and was admitted to drug rehabilitation once. Therefore, as a matter of law, he should be liable for enhanced punishment if he is found guilty of the pending charges.

37 I acknowledge that there was an error in the charge here but it was a misdescription of the legal classification rather than a fundamental defect. I therefore exercised my criminal revisionary powers to rectify the Applicant's conviction record.

Conclusion

38 I dismissed the Applicant's application to quash the 2001 conviction. Instead, I exercised my revisionary powers to order that:

(a) DAC 25009/2001 be amended by:

(i) deleting "controlled drug specified in Class A of the First Schedule" and substituting "specified drug as listed in the Fourth Schedule".

(ii) deleting "Section 8(b)" and substituting "Section 8(b)(ii)".

(b) The SOF for DAC 25009/2001 be amended by:

(i) deleting from para 9 the words "a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185) as well as".

(ii) deleting from para 10 the words "controlled drug specified in Class A of the First Schedule" and substituting them with "specified drug as listed in the Fourth Schedule".

39 The Applicant's conviction under DAC 25009/2001 is therefore to stand as a conviction under s 8(b)(ii) of the 1998 MDA.

Tay Yong Kwang
Judge of Appeal

Lau Wing Yum, Marcus Foo and Chan Yi Cheng (Attorney-General's Chambers) for the prosecution;
Udeh Kumar s/o Sethuraju (S K Kumar Law Practice LLP) for the accused.