

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

[2022] SGHC 28

Criminal Motion No 55 of 2021

Between

Suresh s/o Krishnan

... Applicant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Law] — [Criminal Review] — [Application to review High Court's decision] — [Whether leave should be granted]

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Suresh s/o Krishnan

v

Public Prosecutor

[2022] SGHC 28

General Division of the High Court — Criminal Motion No 55 of 2021

Vincent Hoong J

24 November 2021

8 February 2022

Judgment reserved.

Vincent Hoong J:

Introduction

1 This is an application by Suresh s/o Krishnan (“the applicant”) under s 394H of the Criminal Procedure Code 2010 (2020 Rev Ed) (“CPC”) seeking leave to have his concluded appeal in HC/MA 9791/2020 (“MA 9791”) reviewed.

2 Having considered the applicant’s affidavits and the respondent’s written submissions, pursuant to s 394H(7) read with s 394H(8) of the CPC, I refuse the applicant’s leave application in Criminal Motion No 55 of 2021 (“CM 55”), and provide the reasons for my decision.

Factual and procedural background

Joint-trial

3 The applicant had claimed trial to one charge under s 7 read with s 12 of the Misuse of Drugs Act 1973 (2020 Rev Ed) (“MDA”) for abetting by engaging in a conspiracy with Adaikalaraj a/l Iruthayam (“Adai”) to import not less than 402.7 grams of vegetable matter which was analysed and found to be cannabis (“the Drugs”), an offence punishable under s 33(1) of the MDA. The grounds of decision of the applicant’s joint trial with Adai can be found in *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 (“the Judgment”), and I will only recount the pertinent facts here.

4 On 22 November 2014, Adai was arrested at Woodlands Checkpoint for having the Drugs in his possession.¹ On 26 November 2014, the applicant was arrested at his residence, for having conspired with Adai to import the Drugs.² At trial, the Prosecution proceeded against the applicant on the basis that he had possessed the drugs under s 18(4) of the MDA, and had actual knowledge of the nature of the Drugs.³

5 During the course of the trial, the applicant’s first counsel discharged himself from representing the applicant on 26 September 2017. The applicant subsequently absconded on the day of closing submissions. Adai was convicted and sentenced on 22 November 2017. The applicant was only re-arrested in

¹ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [29] – [36].

² *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [40] and [53].

³ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [54] – [56].

2018.⁴ After the applicant was re-arrested, the trial against him resumed with a new counsel. At that juncture, the applicant's new defence counsel sought to recall Adai as a witness for further cross-examination on the basis that the applicant was not represented when he cross-examined Adai on the stand.⁵ However, the district judge ("DJ") disallowed the application to recall Adai⁶ as he found that the applicant had the opportunity to put his case clearly to Adai,⁷ that the significance of cross-examination was explained to him,⁸ and had ample time to conduct the cross-examination.⁹

6 At the conclusion of the trial, the district judge ("DJ") found that Adai's possession of the Drugs was with the "knowledge and consent" of the applicant, as the applicant had a) ordered the Drugs, b) transferred the \$1000 to Adai, and c) instructed Adai on where to deliver the Drugs. Accordingly, the Drugs were deemed to have been in the applicant's possession under s 18(4) of the MDA.¹⁰

7 The DJ found that the applicant had actual knowledge of the nature of the Drugs and that he had also failed to rebut the presumption of knowledge under s 18(2) of the MDA.¹¹ Notably, the DJ had found that Adai's long

⁴ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [10] – [12].

⁵ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [163].

⁶ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [171].

⁷ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [165] – [166].

⁸ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [167].

⁹ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [168].

¹⁰ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [72] – [73].

¹¹ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [114].

statements were voluntarily given,¹² and held that they were sufficiently compelling as to incriminate the applicant.¹³ Further, the DJ also found that the applicant had an agreement with Adai, for Adai to import the Drugs into Singapore and to deliver the Drugs to the applicant.¹⁴

8 The applicant was convicted on the proceeded charge.¹⁵ Following his conviction, he decided to plead guilty to four other charges, and consented to having another two charges taken into consideration for the purposes of sentencing.¹⁶ The applicant was sentenced to a term of imprisonment for 25 years and 16 months (backdated to 21 February 2018), 15 strokes of the cane, and disqualified from holding or obtaining all classes of driving licences for a period of 12 years from the date of his release from prison.¹⁷

MA 9791

9 In MA 9791, the applicant appealed against both his conviction and sentence. The applicant's position at the appeal was that:

- (a) the DJ had erred in not recalling Adai;¹⁸
- (b) the DJ had erred in finding that the applicant had possessed the Drugs under s 18(4) of the MDA;¹⁹

¹² *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [128]

¹³ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [143].

¹⁴ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [115].

¹⁵ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [172].

¹⁶ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [173] – [174].

¹⁷ *Public Prosecutor v Adaikalaraj a/l Iruthayam and another* [2020] SGDC 141 at [292].

¹⁸ Appellant's Submissions in MA 9791/2020 at paras 27(a), 30 – 68.

¹⁹ Appellant's Submissions in MA 9791/2020 at paras 27(b), 69 – 75.

- (c) the DJ had erred in relying on the evidence of the Central Narcotics Bureau officers,²⁰ and the evidence of Adai;²¹
- (d) the DJ had erred in finding that the applicant had ordered the Drugs rather than cigarettes,²² and placed too much weight on the fact that the applicant had failed to mention the alleged loans to Adai in his long statement;²³
- (e) the applicant did not have actual knowledge of the nature of the Drugs, nor was the presumption of knowledge under s 18(2) of the MDA triggered;²⁴
- (f) there was no conspiracy to import the Drugs in Singapore;²⁵
- (g) the sentence was manifestly excessive,²⁶ and that the sentence of 22 years' imprisonment and 15 strokes of the cane was appropriate considering the amount of cannabis involved,²⁷ the applicant's culpability,²⁸ and the application of the parity principle;²⁹ and

²⁰ Appellant's Submissions in MA 9791/2020 at paras 27 (c), 76 – 100.

²¹ Appellant's Submissions in MA 9791/2020 at paras 27(d) – 27(e), 101 – 152.

²² Appellant's Submissions in MA 9791/2020 at paras 27(g), 153 – 169.

²³ Appellant's Submissions in MA 9791/2020 at paras 170 – 176.

²⁴ Appellant's Submissions in MA 9791/2020 at paras 177(b) – 177(c).

²⁵ Appellant's Submissions in MA 9791/2020 at para 177(d).

²⁶ Appellant's Submissions in MA 9791/2020 at para 188.

²⁷ Appellant's Submissions in MA 9791/2020 at para 204.

²⁸ Appellant's Submissions in MA 9791/2020 at para 205.

²⁹ Appellant's Submissions in MA 9791/2020 at paras 208 – 220.

(h) the DJ had not taken into account the six months the applicant had spent in remand from 27 November 2014 to 19 May 2015.³⁰

10 Having heard MA 9791 on 24 February 2021, I affirmed the DJ’s decision and dismissed the applicant’s appeal against his conviction and sentence.

The present application

11 On 2 June 2021, the applicant filed the present application supported by a handwritten affidavit (“Application Affidavit”). On 13 July 2021 and 16 July 2021, the applicant made requests for an adjournment of CM 55, pending the hearing of Adai’s appeal in MA 9358/2017 (“MA 9358”). Following a case management conference (“CMC”) conducted by an assistant registrar on 19 July 2021, I allowed an adjournment of CM 55 and granted leave to the applicant to file a further affidavit.

12 On 19 October 2021, the applicant filed his first set of additional submissions (“First Additional Submissions”). On 29 October 2021, Adai’s appeal was heard and allowed in part, with his sentence reduced from 25 years’ imprisonment and 15 strokes of the cane to 24 years’ imprisonment and 15 strokes of the cane. At a CMC conducted on 5 November 2021, the applicant requested to file another set of additional submissions based on the outcome of Adai’s appeal (“Second Additional Submissions”). I granted the applicant leave to rely on his First Additional Submissions and leave to file his second additional submissions, as well as leave for the Prosecution to file further reply submissions. The applicant filed his Second Additional Submissions on 10 November 2021.

³⁰ Appellant’s Submissions in MA 9791/2020 at para 222 – 227.

13 The applicant is not represented in the present application.

The parties' arguments

The applicant's case

14 In his Application Affidavit, First Additional Submissions, and Second Additional Submissions, the applicant raises seven arguments in his application for leave to review: First, that he was not afforded a fair trial as he was not allowed to recall Adai as a witness and did not receive assistance from the court in lieu of his own counsel. Second, that the Prosecution had breached its obligations under *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 (the “Kadar obligations”) in that he was denied disclosure of Adai’s statements. Third, that he was wrongly convicted as he had ordered illegal cigarettes, not cannabis. Fourth, that the sentence was manifestly excessive as the Court had failed to consider the offence-specific and offender-specific factors, as well as the sentencing guidelines laid down by the Court of Appeal in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115. Fifth, that the Prosecution’s refusal to disclose the psychiatric report of Adai was in breach of its *Kadar* obligations. Sixth, that his Adai’s statements could not be relied upon. Seventh, that Adai’s culpability was higher than his, and as the former had received a reduction in sentence on appeal, he should similarly be afforded a review of his appeal and sentence.

The respondent's case

15 The Prosecution’s case is that the applicant’s arguments have not met the cumulative requirements laid out in s 394J of the CPC³¹ in that:

³¹ Respondent’s Submissions (CM 55) at paras 17 – 18.

- (a) the applicant’s argument that he was treated unfairly at trial by the DJ’s decision not to allow him to recall Adai, is being raised for the third time, and is also wholly unmeritorious;³²
- (b) the applicant’s allegation that he did not receive assistance from the DJ is false and premised on a misconception on the DJ’s role in court;³³
- (c) the applicant’s allegation that the Prosecution had breached its *Kadar* obligations is unfounded;³⁴
- (d) the applicant’s arguments against his conviction had been canvassed before, and considered both by the DJ and this court;³⁵ and
- (e) that the applicant’s arguments against his sentence had been canvassed before, and considered both by the DJ and this court;³⁶

My Decision

Applicable principles

16 In *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 (“*Kreetharan*”) at [17] – [20], the Court of Appeal stated that under s 394J(2) of the CPC, in order for leave to be granted under s 394H of the CPC, the applicant in a review application must satisfy the appellate court that there is sufficient material, whether evidence or legal arguments, on which

³² Respondent’s Submissions (CM 55) at paras 20 – 29.

³³ Respondent’s Submissions (CM 55) at paras 31 – 34.

³⁴ Respondent’s Submissions (CM 55) at paras 35 – 44.

³⁵ Respondent’s Submissions (CM 55) at paras 46 – 49.

³⁶ Respondent’s Submissions (CM 55) at paras 50 – 55.

the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made.

17 For arguments based on evidence, “sufficient” material is defined in s 394J(3) of the CPC, under which the following requirements must be *cumulatively* satisfied (see *Kreetharan* at [18]):

- (a) before the filing of the application for leave to make the review application, the material has not been canvassed at any stage of the proceedings in the criminal matter in respect of which the earlier decision was made (s 394J(3)(a) of the CPC);
- (b) even with reasonable diligence, the material could not have been adduced in court earlier (s 394J(3)(b) of the CPC);
- (c) the material is compelling, in that the material is reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made (s 394J(3)(c) of the CPC).

18 For legal arguments, under s 394J(4) of the CPC, in addition to satisfying the three requirements in s 394J(3) of the CPC, the arguments must be based on a change in the law that arose from any decision made by a court after the conclusion of all earlier proceedings relating to the criminal matter in respect of which the earlier decision was made (see *Kreetharan* at [20]). As stated in *Murugesan a/l Arumugam v Public Prosecutor* [2021] SGCA 118 at [9], “[i]f an application for leave fails to meet *any* of the cumulative requirements above (as set out in s 394J(3) of the CPC and, in respect of new legal arguments, the

additional requirement in s 394J(4) of the CPC), leave will not be granted” [emphasis added].

19 These stringent requirements reflect the fact that ss 394H and 394I of the CPC procedure do not provide a second tier of appeal, and are meant to ensure applicants do not raise arguments which have been already been raised at least twice in concluded proceedings (see *Kreetharan* at [19]). As the Court of Appeal explained, “the introduction of a leave stage for applications to reopen concluded appeals would better balance the rights and interests of all persons who made use of scarce judicial resources and allow unmeritorious applications for review to be weeded out at an early stage. This would allow only those applications which disclosed a legitimate basis for the exercise of the court’s power of review to proceed” (see *Kreetharan* at [17]).

20 I now turn to consider the arguments raised by the applicant *seriatim*.

Argument regarding not being fairly treated at trial

21 The applicant’s first argument concerns the refusal of the DJ to allow him to recall Adai as a witness. This argument was already canvassed by the applicant’s then counsel in MA 9791,³⁷ and accordingly would not meet the requirement under s 394J(3)(a). As regards the allegation that the applicant had not received assistance from the court during the trial, while this was not specifically canvassed on appeal, there was no reason why it could not have been reasonably addressed at the appeal, and it was clearly an issue the applicant (through his counsel) was aware of, as indicated by the reference in the

³⁷ Appellant’s Submissions in MA 9791/2020 at paras 30 – 68.

applicant’s appeal submissions to the guidance provided by the DJ to the applicant during cross-examination.³⁸

Argument regarding the Prosecution’s Kadar obligations

22 The applicant’s second argument concerns an alleged breach of the *Kadar* obligations by the Prosecution. While this was not an argument that had been canvassed earlier, it appears that the applicant had admitted a contemporaneous statement from Adai as “D1”, which was provided to the applicant as part of the Criminal Case Disclosure bundles. Accordingly, while the Prosecution has candidly admitted that it no longer retains record of the service of those documents,³⁹ this does not in and of itself show that there had been a miscarriage of justice such as to satisfy the requirement under s 394J(3)(c).

Argument regarding the applicant’s wrongful conviction

23 The applicant’s third argument alleges his wrongful conviction by the DJ, as he had ordered illegal cigarettes not cannabis. This was an argument that had already been fully canvassed in MA 9791,⁴⁰ and would not meet the requirement under s 394J(3)(a).

³⁸ Appellant’s Submissions in MA 9791/2020 at para 58.

³⁹ Respondent’s Submissions (CM 55) at para 45.

⁴⁰ Appellant’s Submissions in MA 9791/2020 at paras 153 – 169.

Argument regarding the applicant's sentence

24 The applicant's fourth argument is that the sentence was manifestly excessive. This was similarly fully canvassed in MA 9791,⁴¹ and would not meet the requirement under s 394J(3)(a).

Argument regarding the non-disclosure of Adai's psychiatric report

25 The applicant's fifth argument is that Adai's psychiatric report was not disclosed to him. As stated in *Lee Siew Boon Winston v Public Prosecutor* [2015] 4 SLR 1184 at [167] – [175], there is a presumption that the Prosecution has complied with its *Kadar* obligations owed to the court, and the onus is on the Applicant to show reasonable grounds for belief that the Prosecution had failed to comply with its *Kadar* obligations. After which, the burden would shift to the Prosecution to show that it had not in fact breached those obligations. In the present case, the applicant has not pointed to any reason why Adai's psychiatric report would have been exculpatory for him, such that it fell within the scope of the Prosecution's *Kadar* obligations. Furthermore, the Prosecution has stated that Adai's psychiatric report does not provide anything additional in terms of information already available in Adai's long statements which were admitted into evidence at trial, and does not contain any information which would undermine its case or strengthen the applicant's case.⁴²

26 As such, while this particular argument was not canvassed at the trial below or in MA 9791, I do not see how this report would have been capable of showing that there has been a miscarriage of justice in the applicant's criminal matter.

⁴¹ Appellant's Submissions in MA 9791/2020 at paras 185 and 205.

⁴² Respondent's Submissions (CM 55) at para 44.

Argument regarding the DJ's reliance on Adai's statements

27 The applicant's sixth argument is that Adai's statements cannot be relied upon. This was extensively covered in MA 9791,⁴³ and would not meet the requirement under s 394J(3)(a).

Argument regarding Adai's sentence on appeal

28 The applicant's seventh argument is that he was less culpable than Adai, and that he should similarly receive a reduction in his sentence, especially given that Adai had his sentence reduced on appeal.

29 While the relative culpability of the applicant and Adai was canvassed in MA 9791,⁴⁴ I accept that the fact that Adai received a one year reduction in sentence on appeal was a fact that would not have been available to the applicant at any stage of the criminal proceedings prior to the hearing of CM 55.

30 Nonetheless, I do not see how this latest development would have been capable of showing that there had been a miscarriage of justice. First, in Adai's appeal (*ie*, MA 9358), Sundaresh Menon CJ had specifically revised Adai's sentence downwards on account of the assistance Adai had extended to the authorities. There is no evidence that the applicant had provided any similar assistance. Second, as I had found in the applicant's appeal, the DJ was justified in having found that the applicant's culpability was higher than that of Adai on account of how the applicant had exerted significant control over Adai and had provided the latter with the funds to purchase the Drugs. Third, an uplift in the sentence of the applicant over Adai would also be appropriate, considering the

⁴³ Appellant's Submissions in MA 9791/2020 at paras 101 and 152.

⁴⁴ Appellant's Submissions in MA 9791/2020 at para 207.

fact that the applicant had absconded whilst on bail, and had pleaded guilty to four other charges with another two taken into consideration. In my view, the difference in sentences between the applicant and Adai does not occasion a miscarriage of justice, even after accounting for the further reduction that Adai had received on appeal.

Conclusion

31 Before I conclude, I would make a brief observation that the applicant had filed numerous arguments in this application, many of which attempt to rehash the same issues canvassed both in the trial below and the appeal before me. In this regard, the observations of Tay Yong Kwang JCA in *Mohammad Yusof bin Jantan v PP* [2021] SGHC 82 at [30] are instructive:

... Applicants in recent applications for leave to make review applications appear to have misunderstood altogether what the new review provisions in the CPC are meant to achieve. They seem to perceive the CPC review provisions as giving them a *second chance to appeal* and, as suggested by the applicant's request in this application, perhaps an *opportunity also to re-argue their case before another Judge*. Such perceptions are obviously wrong and lead to unnecessary wastage of time and effort in reviving and reviewing concluded cases ...

[emphasis added]

While the courts would generally afford a litigant-in-person a certain amount of latitude, it does not mean that he is allowed to revisit every contention with impunity.

32 For the reasons set out above, I dismiss the application.

Vincent Hoong
Judge of the High Court

Applicant in person;
Regina Lim and Samuel Yap (Attorney-General's Chambers) for the
respondent.