Idya Nurhazlyn bte Ahmad Khir *v* Public Prosecutor and another appeal [2013] SGHC 238

Case Number	: Magistrate's Appeal No 134 of 2013 and Magistrate's Appeal No 135 of 2013
Decision Date	: 11 November 2013
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ
Counsel Name(s)	: Derek Kang Yu Hsien (Rodyk & Davidson LLP) for the appellants; DPP Jiang Ke-Yue (Attorney-General's Chambers) for the respondent.
Parties	: Idya Nurhazlyn bte Ahmad Khir — Public Prosecutor

Criminal Procedure and Sentencing

11 November 2013 Judgment reserved.

Sundaresh Menon CJ:

1 These appeals are brought by Ms Idya Nurhazlyn binte Ahmad Khir ("Idya") and her husband Mr Zunaidi bin Jaafar ("Zunaidi") against the decision of the District Judge in *Public Prosecutor v Idya Nurhazlyn binte Ahmad Khir and another* [2013] SGDC 217. Idya pleaded guilty to two charges of making false statements under s 39(1) of the Passports Act (Cap 220, 2008 Rev Ed) and two charges of cheating under s 417 of the Penal Code (Cap 224, 2008 Rev Ed). She was sentenced to an aggregate term of 5 months' imprisonment. Zunaidi pleaded guilty to one charge of making a false statement under s 39(1) of the Passports Act and was sentenced to 6 weeks' imprisonment.

2 Having considered the arguments presented, I am of the view that the sentence imposed for one of the cheating offences and the sentences imposed for the false statement offences were manifestly excessive. Accordingly, I allow the appeal and reduce the first appellant's aggregate sentence to a term of imprisonment of 4½ months and the second appellant's sentence to a term of imprisonment of 3 weeks. To be fair to the District Judge, I note that she did not have the benefit of any guidance on the question of the appropriate sentences to be imposed in relation to convictions under s 39(1) of the Passports Act given the dearth of reasoned precedents.

Background Facts

The False Statement Offences

3 The Appellants are a married couple. Sometime in 2010, they were staying at the Lotus Desaru Hotel in Malaysia with three of their children as well as Idya's mother, grandmother and aunt. The Statement of Facts, which was admitted without reservation by both accused, indicated that because the Appellants were unable to pay the hotel bill at the time of checking-out, the hotel retained the passports of all eight of them as security. The Appellants and their accompanying relatives left and never returned to settle the bill or retrieve the passports. Instead, they went to the home of Idya's uncle in Subang Jaya, Malaysia, where they stayed a further period of around three weeks. This was plainly not tenable as a long term solution and at some point, a scheme was hatched.

4 Pursuant to this scheme, on 21 July 2010, Idya lodged a police report at a police station close

to her uncle's home, stating that she and her family members had lost their passports. Later on that same day, Idya and her family went to the Singapore High Commission in Kuala Lumpur to apply for documents of identity to be issued in lieu of passports ("DOIs"). Idya completed a declaration form stating that she had lost her passport in Kuala Lumpur. She also helped her mother, grandmother and aunt to complete declaration forms in similar terms.

5 Zunaidi, in the meantime, had been remanded by the Malaysian authorities for unlawfully overstaying in Malaysia. He was released on 28 July 2010. Two days later, on 30 July 2010, Zunaidi applied for a DOI at the Singapore High Commission. He too completed a declaration form stating that he had lost his passport. The Appellants and their family subsequently used the DOIs to return to Singapore, whereupon the DOIs were surrendered to the authorities.

The Cheating Offences

6 Sometime in January 2011, Idya told her relatives that she was able to purchase Apple products at a low price from a supplier and offered to place orders for them. Her aunt, Norizah binte Md Noor, duly placed an order for two Apple MacBooks and three Apple iPhones. On 24 January 2011, Norizah transferred $1,800 to Idya's bank account in accordance with her instructions. Idya never delivered the promised items. A police report was made on 17 February 2011. Idya eventually made full restitution to Norizah.

7 Some time later, in early June 2011, Idya ordered $10,509 worth of Sony products from ITIS Pte Ltd ("ITIS"). ITIS is an authorised dealer of Sony products and Idya had been directed to ITIS after she first called the head office of Sony Corporation (Singapore) to inquire into purchasing some products ostensibly for her business. A sales executive from ITIS then contacted Idya to follow up on her inquiry. Idya placed her order with the sales executive and subsequently issued a cheque for $10,509 and collected the Sony products at ITIS' premises. The cheque was dishonoured when presented. A police report was made on 17 June 2011. Investigations revealed that Idya knew that the cheque would be dishonoured as it was drawn on a bank account that had insufficient funds. Sony products worth $2,922.42 were recovered and Idya eventually made restitution of the balance of $7,586.58.

The Decision Below

8 Idya pleaded guilty to two charges under s 39(1) of the Passports Act for making false statements in respect of her own ("the first false statement offence") and her aunt's ("the second false statement offence") applications for DOIs. Two charges relating to her mother and grandmother's applications were taken into consideration. Idya also pleaded guilty to two charges under s 417 of the Penal Code for cheating Norizah ("the first cheating offence") and ITIS ("the second cheating offence"). Idya had separately deceived two other members of her family into paying her $550 each for iPads which she never delivered. Two charges in respect of these offences were taken into consideration.

9 The District Judge sentenced Idya to two months' imprisonment for each of the false statement offences, 2 months' imprisonment for the first cheating offence and 3 months' imprisonment for the second cheating offence. The sentences for the first false statement offence and the second cheating offence were ordered to run consecutively, resulting in an aggregate sentence of 5 months' imprisonment.

10 In the same proceedings, Zunaidi pleaded guilty to one charge under s 39(1) of the Passports Act for making a false statement in his application for a DOI. He was sentenced to 6 weeks'

imprisonment.

The Appellants' Case

11 The Appellants appeal on the basis that the sentences imposed were manifestly excessive. They were represented by Mr Derek Kang under the Criminal Legal Aid Scheme ("CLAS") before me and in the court below.

12 Insofar as the offences under the Passports Act are concerned, Mr Kang submitted that Idya was in a delicate state of mind at the time of the false statement offences owing to a number of alleged events which I consider below at [16] – [22]. Mr Kang submitted that this was part of the essential context in which Idya's false statements to obtain DOIs to return to Singapore are to be assessed. Mr Kang also submitted that both the Appellants were first time offenders and their offences were not premeditated. It was further contended that s 39(1) of the Passports Act was intended to target those who made false statements in order to obtain passports with a view to then misuse or abuse them and not to target Singapore citizens whose passports had been stolen, destroyed or were, for some reason, temporarily unavailable while abroad and who needed a travel document in order to return home. In any event, Mr Kang submitted, the Appellants' false statements were not material as in all likelihood, the DOIs would have been issued even if Idya, Zunaidi and the others had made accurate declarations.

13 As regards Idya's cheating offences, Mr Kang submitted that she was affected by a psychiatric condition at the material time which she apparently continues to suffer from. It was said that this reduced her culpability and made it appropriate to impose a mandatory treatment order instead of a custodial sentence. Finally, it was submitted that a custodial sentence was not warranted as the prevailing sentencing benchmark in the District Court for a first offence under s 417 was a fine.

The Respondent's Case

14 The learned Deputy Public Prosecutor Mr Jiang Ke-Yue submitted that false statement offences under s 39(1) of the Passports Act are serious and should in principle warrant a custodial term. Further, the fact that the false statements were made to a public institution and difficult to detect, given that they were made overseas, called for a deterrent sentence. Notwithstanding the admitted dearth of direct sentencing precedents, Mr Jiang submitted that the District Judge was correct to have relied on the sentencing approach adopted for analogous offences in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 ("*Kathleen Luong*"), *Abu Syeed Chowdhury v Public Prosecutor* [2002] 1 SLR(R) 182 ("*Abu Syeed Chowdhury*") and *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 ("*Jenny Lai*").

15 As regards the cheating offences, Mr Jiang submitted that Idya had abused the trust of her family by cheating them and had demonstrated a marked lack of repentance by committing the second cheating offence even while she was under investigation for the first. Finally, the sentence imposed by the District Judge was said to be in line with the precedents.

My Decision

The False Statement Offences

Mitigation

16 In relation to the false statement offences, it is appropriate to begin with the alleged

background that Mr Kang put forward on Idya's instructions. According to Mr Kang, Idya was said to have been in a delicate state of mind at the material time because of a series of events that began when the Appellants were allegedly cheated of an unspecified "large proportion" of their life savings in 2007. They had been offered employment in Dubai but evidently, this was all part of a scam to cheat them. Moreover, on 30 January 2009, Idya gave birth to a premature baby girl named Izzlyn. Despite this, the Appellants said that they had to leave Izzlyn in a hospital and head off to Malaysia on 2 March 2009 as they had been told to do so by someone claiming to be a lawyer from a leading Malaysian firm and by someone else claiming to be from the Embassy of the United Arab Emirates ("UAE") if they wished to recover the money they had been cheated of. The Appellants claimed that they were easy prey for a scam artist because they needed money to pay for Izzlyn's medical bills.

17 The venture apparently turned out to be unsuccessful and it appears that they returned to Singapore for a period of time in April 2009, during which they were contacted by the then Ministry of Community Development, Youth and Sports ("MCYS") regarding Izzlyn. Idya claims that the spectre of losing Izzlyn to foster care, which was raised at this time, contributed to her delicate state of mind. Nonetheless, it appears that they left for Malaysia yet again sometime after this, and again they left Izzlyn behind. It was not clear in whose care the child was placed on this occasion. Mr Kang submitted that the Appellants and some other accompanying family members moved from one hotel to another over the next year. It appears this was being orchestrated by the mysterious lawyer in Malaysia who told them they had to follow his directions in order to recover their lost money. He apparently also paid their hotel bills along the way. This bizarre sequence of events allegedly continued until their passports were retained by the Lotus Desaru Hotel. By this time, in July 2010, Idya was more than 8 months' pregnant with another baby and under pressure to return to Singapore to deliver the baby. Zunaidi was taken into remand for overstaying in Malaysia at about this time and Idya herself had to spend a night in prison. Mr Kang submitted that it was in such circumstances that she made the false statements.

18 The District Judge found this account bizarre and doubted its veracity. The truth might at times be stranger than fiction but in the absence of any shred of credible corroborating evidence, I could only agree with the District Judge that this was a fabrication without any substance. In the first place, no evidence was put forward in support of the tale that that they had been defrauded of a large proportion of their life savings. The only documents produced were some emails exchanged with a person purporting to offer the Appellants employment in Dubai. These showed nothing else. Although the Appellants claimed to have transferred various sums of money to the fraudsters, no proof of any such transfers was provided. No evidence was put forward as to how much they lost, or when, or how they had this money to begin with.

19 Equally unbelievable was the tale of their itinerant living in various hotels in Malaysia in the vain attempt to recover their lost savings. No light was shed on their communications with the Malaysian law firm or the UAE embassy. Further, no attempt was even made to explain why the endeavour to recover their lost money would entail such a bizarre journey through various parts of Malaysia for such a long period of time; nor how they spent their time directed at this goal while they were there. It was said that all their bills were being paid by the mysterious lawyer. If this were so, why did he not just pay them their lost money? And why would he lead them on this trail in the first place given that it did not appear that there was anything in it for him? In my judgment, this was a tall tale without substance.

20 This weakens the basic claim that Idya was under pressure. But there is a second string to that bow. Mr Kang submitted that she was also under pressure because of the impending birth of her baby. However, this rings hollow when one considers that the Appellants waited for three weeks after their passports had been retained, before Idya lodged the false police report following which they made the

false statements. The crux of Mr Kang's submission on this was that the Appellants, who until then had been the beneficiary of an unknown person's generosity in settling their hotel bills, had been taken by surprise at the Lotus Desaru Hotel when they were asked to pay up. I put it to Mr Kang that if this were so, the most natural thing for them to do would have been to promptly approach the Singapore High Commission. Yet, they never did this. Finally, Idya cannot rely on her overnight stay in remand to support her claim to have been in a delicate state of mind. She was remanded on 28 July 2009, a week *after* the false statements were made.

21 While Zunaidi's remand commenced before Idya's offence, this also cannot possibly be considered a mitigating factor. The Appellants had been in Malaysia for a lengthy period of time and should have known that they would have to answer to the Malaysian authorities for overstaying before being allowed to leave the country. This was not the first time that they had overstayed in Malaysia. In her correspondence with the MCYS in April 2009 regarding her having left Izzlyn at the hospital, Idya mentioned that they had been stopped in Johor at the end of their first sojourn in 2009 and had been required to pay a fine for overstaying. They had been in Malaysia for 50 days on that occasion. The Appellants must have known that the consequences would be more severe on this occasion since they had apparently already been in Malaysia for around a year.

22 In the final analysis, there was no basis whatsoever for me to place any credence on Idya's claim that she committed the false statement offences while under some acute strain. Whatever the nature of the predicament the Appellants found themselves in, it appears to have been entirely of their own making. I therefore do not accept that there was any mitigating factor in relation to the factual circumstances in which the offences were committed.

The legal submissions

23 I turn to the law. Mr Kang candidly conceded that a custodial sentence is the norm for offences relating to false declarations. However, he sought to distinguish the present case on two grounds. First, he pointed out that the false statements were not made in order to obtain new passports that could subsequently be abused. Instead, they were made to obtain single-use DOIs to enable the Appellants and their families to return to Singapore. Therefore, the harm that resulted from the false statements was not as serious as in other such offences. Second, Mr Kang argued that the Appellants' false statements were not material to the issuance of the DOIs. He relied on s 16 of the Passports Act, which states:

> **Issue of Singapore document of identity, etc.**
>
> **16.**—(1) Except as otherwise provided in Part III, *the Controller may issue a Singapore document of identity or other emergency travel document to any person where* —
>
> (a) the Controller has reasonable cause to believe that the person is a citizen of Singapore;
>
> (b) the Controller has reasonable cause to believe that —
>
> (i) *the person's Singapore passport has been lost or stolen or destroyed or is* ***temporarily unavailable*** ; or
>
> (ii) an emergency has affected the availability of the information necessary to ascertain whether or not that person is already the holder of a Singapore passport; and
>
> (c) the person wishes to travel immediately, but, for reasons of passport security and integrity,

the Controller considers that it is not desirable to issue that person with a Singapore passport.

[emphasis in italics and in bold italics added]

Since the passports belonging to their Appellants and their family were in fact temporarily unavailable, it was contended that they would have received DOIs had they told the truth.

Legislative objects

24 At the outset, I must displace any notion that the offences committed in this case were merely technical offences that did not result in any appreciable harm. The gravity of the offence is to be seen in the context of the legislative considerations which led to the enactment of this offence. I shall turn to this momentarily. Nor is it helpful or appropriate to speculate on whether the Appellants would or would not have been issued DOIs had they come clean. This misses the point. The question is not just whether they would have been issued a DOI. It is also a question of what else might have ensued had they made a truthful declaration.

25 At the Second Reading of the Passports Bill (*Singapore Parliamentary Debates, Official Report* (16 July 2007) vol 83), the then Deputy Prime Minister and Minister for Home Affairs, Mr Wong Kan Seng, prefaced his remarks by noting that the strong reputation of the Singapore passport enables Singaporeans to enjoy visa-free entry in many countries (at col 1089). He noted that this made the passport an attractive document for abuse by criminal and terrorist elements (at col 1090). Such abuse would cause inconvenience to Singaporeans travelling overseas as foreign immigration authorities might start to doubt the authenticity of Singapore passports, or impose additional restrictions on their holders (at col 1094). Further, the Deputy Prime Minister noted that Singapore had to do its part to minimise the abuse of its passports so as not to provide terrorist elements opportunities to slip in and out of the country easily using forged or stolen passports.

26 The rationale for the offences created by the Passports Act is discernible from the Deputy Prime Minister's speech as a whole. Although in the context of his discussion of s 39(1) he refers to the need to guard against the danger of a genuine passport being issued on the basis of false information, this cannot be the extent of the application of the section. One of the points that permeates the entire speech is the Deputy Prime Minister's emphasis on the reputation and standing of the Singapore passport and the need to safeguard this. The appellants' actions in this case allowed a hotel employee to retain eight genuine Singapore passports and created the opportunity for these passports to be abused. Indeed, the statement of facts recites that the appellants were unable to pay the hotel's bill and that the passports were retained as security. This is not unlike selling a passport for commercial reward. It is true that the only offences with which the Appellants were charged were that of making a false statement; but this context is helpful to make the point that this was not some technical offence.

The appropriate sentence

27 Section 39(1) of the Passports Act states as follows:

Making or giving false or misleading statements or information

39.—(1) If —

(a) a person makes a statement (whether orally, in writing or any other way) or gives information to another person;

(b) the statement or information —

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement or information, as the case may be, is misleading;

(c) the person knows that the statement or information is as described in paragraph (b); and

(d) the statement is made or the information is given in, or in connection with —

(i) an application for a Singapore passport or a Singapore travel document (whether for that person or for another);

(ii) an application for an endorsement or extension of a Singapore passport or a Singapore travel document (whether for that person or for another); or

(iii) a report of the loss, theft or destruction of a Singapore passport or a Singapore travel document (whether or not belonging to that person),

the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 10 years or to both.

28 What then, ought the appropriate sentence to be? I accept as a starting point that a custodial sentence should be the sentencing norm for an offence under s 39(1). It is apparent from the severity of the maximum sentence available under the section as well as from the Deputy Prime Minister's speech that the legislature intended for such offences to be dealt with severely. This is so for good reason. All Singapore citizens bear the consequences when a false statement enables a Singapore passport to be misused or creates the opportunity for abuse and a key benefit of our rigorous crime control regime is undermined.

29 The only precedent directly on point is the decision of the District Court in *Public Prosecutor v Steve Segar Selva* ("*Steve Segar Selva*"). The offender in that case pleaded guilty to and was convicted of one false statement offence under s 39(1) of the Passports Act and was sentenced to 6 weeks' imprisonment. He had falsely declared in an application for a replacement passport that he had lost his passport. In fact, the passport had been deposited with another person as assurance for a debt owed. Although the facts in *Steve Segar Selva* seem very similar to the present case, the decision is of limited utility as it was not reasoned.

30 The District Judge accordingly relied on *Abu Syeed Chowdhury* and *Jenny Lai*. However, in my view these cases also shed limited light on what the appropriate sentence should be. While *Jenny Lai* did involve a case of providing a false information to a public servant concerning the loss of a Singapore passport when the accused had in fact sold the passport, she was charged and convicted under s 182 of the Penal Code (Cap 224, 2008 Rev Ed), an offence punishable with imprisonment for a term which may extend to one year, or with fine which may extend to $5,000, or with both. In contrast, section 39(1) of the Passports Act is punishable with a fine not exceeding $10,000 or to imprisonment for a term not exceeding 10 years or to both. As Chan Sek Keong CJ observed in *Kathleen Luong* (at [14]):

In assessing the value of sentencing precedents based on an offence *different* from that for which the court is to pass sentence, care must be taken to ensure that the two offences (*ie*, the

offence which is the subject matter of the sentencing precedents and the offence for which the court is to pass sentence), although different, are still analogous in terms of both policy and punishment. ***Now that offences relating to the misuse of foreign travel documents have been consolidated and exhaustively set out in s 47 of the current Passports Act, sentencing precedents for other unrelated offences would be of limited guidance in prosecutions for the offence under s 47(3) of that Act*** . For the above reasons, I did not think that the sentencing precedents cited by the Appellant *vis-à-vis* ss 419 and 471 of the Penal Code were applicable.

[emphasis in italics in original; emphasis in bold italics added]

31 These observations are equally applicable in the present case. Section 39(1) of the Passports Act is a distinct offence that carries its own considerations and one should be slow to refer to the sentences meted out for ostensibly similar offences under other provisions. Similarly, *Abu Syeed Chowdhury* involved an offence under s 57(1)(*k*) of the Immigration Act (Cap 133, 2008 Rev Ed). The offender in that case had applied for and renewed his employment pass on five occasions by falsely declaring that he was a university graduate. He sought to substantiate his claim with a forged graduation certificate. The offence in that case implicated the interest of safeguarding Singapore's ability to maintain its territorial sovereignty by punishing foreigners who gain entry or remain under false pretences. It also has the ancillary objective of protecting the integrity of our workforce. That is quite different from the present case. I therefore do not regard the sentence imposed in that case as instructive.

32 However, what is useful in *Abu Syeed Chowdhury* is the analytical framework put forward by Yong Pung How CJ for assessing the culpability of an offender for false statement offences (see *Abu Syeed Chowdhury* at [27] – [31]). Yong CJ set out four considerations to guide the court in ascertaining what the appropriate sentence ought to be:

(a) the materiality of the false representation on the mind of the decision-maker;

(b) the nature and extent of the deception;

(c) the consequences of the deception; and

(d) the personal mitigation factors applicable to the offender.

33 In my judgment, this framework can usefully be applied for offences even under other statutes where these involve false statements being made to a public authority, in order to enable the sentencing court to gauge how serious the particular offence is and where in the sentencing range the case should fall.

34 Turning to the facts of the present case, Mr Kang's principal argument was that a DOI is a single use document that enables a Singapore citizen to return home. He submitted that a false statement made in connection with an application for such a DOI in such circumstances is quite unlike the situation of a person making a false statement to apply for a passport to which he is not entitled. I might be prepared to accept that the Appellants may have been issued a DOI had they told the truth. But this does not mean the false statement was not material. Had they told the truth at least two other consequences might have ensued: first, the Singapore authorities would have been able to initiate immediate action to recover the passports; and second, the Appellants might have opened themselves to a charge under some other provision for furnishing their passports improperly to some other person who could then have abused them. Hence, while I accept that a Singaporean who

makes a false statement for the purpose of obtaining a single use DOI to return home is in a different position and has less culpability than one who does so for the purpose of obtaining a passport, this does not render it a technical offence or deprive it of gravity. Moreover, the false statements had been made *in order to* secure the issuance of the DOIs. It ill lies in the mouths of the appellants to now say that the statements were not material to the very outcome they had been seeking in making it.

35 In relation to (d) above, I have rejected the personal mitigation factors advanced. I turn to factor (b). I note that a considered decision was made to present falsehoods to the Singapore High Commission and that some degree of preparation was involved. This is apparent from the fact that Idya went to the extent of making a false police report to the Malaysian police in order to support their intended applications for DOIs. I regard this as an aggravating factor.

36 As to factor (c) above at [32], while the consequences in this case are not as serious as in other cases, they are nonetheless serious. The Appellants made no attempt to inform the authorities about the whereabouts of their passports immediately upon their being retained, allegedly without their permission. Nor did they do so upon reaching the immigration checkpoint in Singapore; nor even did they volunteer the information when first contacted by an Investigating Officer from the Immigration and Checkpoints Authority ("ICA") about a week after they returned. Instead, it was only at an interview with the ICA several weeks later that they informed the authorities about what had happened to their passports. The passports were subsequently recovered by the Johor Bahru police and then returned to ICA. Because they had not come clean at the earliest possible occasion, the appellants had created an opportunity for their passports to be abused

37 In my judgment, the starting point for an offence under s 39(1) should be a term of between 4 and 8 weeks. Where the statement is made in connection with a view to applying for a passport, a sentence at the higher end of that range would be appropriate; if it is in connection with a single use DOI for the purpose of returning home to Singapore a sentence at the lower end of that range would be appropriate. In either case, the starting point may then be adjusted up or down having regard to the considerations set out in the analytical framework prescribed in *Abu Syeed Chowdhury*.

38 In the present case, having regard to the fact that Idya was evidently the driving force who procured all the others to commit similar offences, seemingly while Zunaidi was in prison, and having regard also to the fact that she went to the extent of lodging a false police report in an attempt to substantiate the false declaration, in my judgment the appropriate sentence would be a term of imprisonment of 1½ months on each of the two charges. I so order.

39 Zunaidi had been in remand at the time Idya had launched the plan and he was not party to the offences of any of the others. In a sense, he was going along with what had already been done. He appears very much to have been the follower in this incident. I therefore consider a term of imprisonment of 3 weeks would be appropriate and I so order.

The Cheating Offences

Mitigation

40 I turn to Idya's cheating offences. The primary mitigating factor that Mr Kang relied on is Idya's psychiatric condition. Reliance was placed specifically on two medical reports from the Institute of Mental Health ("IMH") dated 15 August 2011 and 25 September 2013 respectively. The first medical report states that Idya was first seen at the IMH on 13 July 2011 for having "low mood for a few months". She was admitted to the IMH but was discharged the next day with a diagnosis of

"Adjustment Disorder with Depressed Mood". The report states that Idya's depressive symptoms appeared to have been triggered by financial problems and that she had poor sleep and was irritable and frustrated because of the second cheating offence. The second medical report states that Idya suffers from "Major Depression (moderate depressive episode)" that was triggered by the consequences of her conviction by the District Judge for the cheating offences. Her condition was evidently affected by the long period of uncertainty about her situation and the consequences of her conviction, which included the prospect of imprisonment, the loss of employment and stigmatisation by her community.

41 At the outset, it may be noted, as is apparent from these reports, that Idya's psychiatric condition had no causal connection with the cheating offences. She was first seen some months *after* the offences and it is clear from the reports that her psychiatric condition stemmed from her inability or unwillingness to face the consequences of her crimes. I therefore do not accept that her condition can be considered a mitigating factor. As I pointed out to Mr Kang, the prospect of facing a term of imprisonment is almost uniformly a depressing one but that cannot be a sufficient basis to warrant not imposing a sentence of imprisonment if that is otherwise called for.

42 Although the second medical report notes concerns that Idya's "mental state may worsen if she receives a prison sentence", I make two observations. First, the equivocal nature of this statement equally suggests that her condition may *not* worsen. Further, I am unwilling to accept that such a risk can be a valid reason for not meting out a custodial sentence. It has been held that the psychological impact of incarceration on a particular offender is generally not a relevant sentencing consideration. In *R v Joseph Brian Kay* (1980) 2 Cr App R (S) 284, the Court of Appeal (Criminal Division) of England and Wales accepted that prison life was a very harsh experience for the applicant in question and that he had to be seen by a psychiatrist and to be supported by medication. However, it held that "how a man reacts to prison life is not a matter which should affect the principle of the sentence. When sentencing a man the court is concerned with the character of his crime and with his individual circumstances as revealed in his criminal background, if any".

43 Similarly, in *R v Hans de Vroome* (1989) 38 A Crim R 146, a case involving a claustrophobic offender, it was held that:

> An offender's psychological or medical condition which would render imprisonment a greater hardship to him than to another person, is a relevant consideration in determining the length of a term of imprisonment and whether it should be suspended. Nevertheless an offender cannot be allowed to escape punishment for serious crime simply because he possesses a claustrophobic temperament. It is the responsibility of the Correctional Services system to manage prisoners in a way which minimises any harm to them which might result from abnormal psychological or medical conditions. The courts can make some adjustment to sentences to take account of the additional hardship caused to an offender by his condition, but they are necessarily limited in the extent of such adjustment by the necessity of maintaining proper standard of punishment.

44 I agree with these observations. To hold otherwise would result in unfair inconsistency in the sentencing of offenders who have committed similar offences and demonstrated similar culpability.

45 Mr Kang also submitted that the District Judge had failed to give appropriate weight to the fact that full restitution had been made. The District Judge noted that restitution was made at a very late stage, about two weeks before she pleaded guilty to the charges, and saw "little worthy mitigating factors" in the appellants' pleas. I agree with Mr Kang that Idya should be given credit for having made restitution. Although it has been established that credit will not be given for restitution made on the advice of counsel with a calculated purposefulness in the hope of receiving a lighter sentence and

that the timing of such restitution is a consideration to be taken into account (*Soong Hee Sin v Public Prosecutor* [2001] 1 SLR(R) 475 at [10]), I am not persuaded that that is the case here. Mr Kang rightly pointed out that the appellants' eligibility for CLAS representation indicated their impecuniosity. I also note that Idya received a gross salary of $1,600 a month and that she and Zunaidi, a taxi driver, had five children to support. In such circumstances, it is probable that Idya would have needed time to accumulate enough savings to make restitution. I therefore consider that appropriate consideration must be given for her restitutionary efforts.

The appropriate sentence

46 I turn to the precedents. As noted above, Mr Kang submitted that the prevailing sentencing practice is that a fine will be imposed for a first offence punishable under s 417. He explained that this practice was not apparent from the reported decisions because written grounds tend not to be issued in such cases as the parties do not usually appeal. Whatever might be the "practice", I do not accept that it would be an appropriate to visit every first conviction punishable under s 417 with a fine. The offence of cheating under s 415 read with s 417 of the Penal Code embraces a wide range of conduct with varying consequences. It is not in every case of cheating that loss will be occasioned and perhaps in such a case, where no loss was ever suffered, a fine might be appropriate. For example, in *Lim Choon Kang v Public Prosecutor* [1993] 3 SLR(R) 254, the offender had deceived a company into believing that another person had applied for some shares in the company when in fact he was to be the beneficial owner of the shares applied for. Although the High Court upheld the sentence of three weeks' imprisonment and a fine of $10,000, Yong CJ observed that fines could be imposed instead of custodial sentences where the offence involved misleading share applications unless the operation in question was of a considerable or substantial scale.

47 In my judgment, a custodial sentence will generally be appropriate as long as the offence in question causes a victim to part with property that has more than negligible value. This is the case here, as Idya caused Norizah and ITIS to part with the significant sums of $1,800 and $10,509 respectively. The cases cited in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice*") indicate that custodial sentences have been imposed where the s 417 offence in question was committed for financial gain. For example, in *Willie Tay v PP* (unreported), the offender cheated two victims of $9,000 and $15,000 each by deceiving them into believing that new cars would be purchased for them. No restitution was made. He was sentenced to four months' and eight months' imprisonment on two charges under s 417, with both terms to run consecutively. In *Low Sze Sze v PP* (unreported), the offender deceived a victim into accepting as repayment for a loan forged cheques for $1,300 and $1,100. She was sentenced to six months' imprisonment on one charge under s 417. In *Chew Im v PP* (unreported), the offender cheated property agents of $19,000 in total by offering to give them the exclusive right to sell a house on condition that they extended loans to her. Full restitution was made. She was charged under s 417 for two of the instances of cheating relating to sums of $5,000 and $3,000 and was sentenced to eight months' imprisonment on each charge, with both terms to run concurrently. These cases indicate that custodial sentences for terms of between four and eight months' imprisonment have been imposed for cheating offences that resulted in losses of between $1,000 and $15,000.

48 As observed in *Sentencing Practice*, there are numerous factors that must be taken into account in every case. The primary yardstick will often be the value of the property involved. However, where the offence entails the misuse of a financial instrument or facility which threatens the conduct of legitimate commerce, the need for general deterrence is likely to take centre stage: see *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando Payagala*") at [88] in relation to the misuse of credit cards. Other factors such as the number and vulnerability of victims and the level of premeditation and deception involved will also feature to

varying degrees in different cases: see *Sentencing Practice* at p 834 to 838.

49 It was also argued on Idya's behalf that the District Judge erred in failing to appreciate that the two cases she relied upon were distinguishable: *Public Prosecutor v Jai Shanker s/o Muniandi* [2006] SGDC 43 ("*Jai Shanker*") and *Public Prosecutor v Vimlesh Kumar Lakhi Khemani* [2006] SGDC 278 ("*Vimlesh Kumar*"). *Jai Shanker* concerned an offender who had conspired with an accomplice to cheat a bank of $13,230 by taking out a loan that he had no intention of repaying. The offender was sentenced to two months' imprisonment. It was argued that the offender in *Jai Shanker* was more culpable as he had cheated a financial institution, and it is well established that that is an aggravating factor: *Fernando Payagala* at [88]. However, in my judgment, it would be unduly technical and mechanistic to conclude that *Jai Shanker* has no relevance just because Idya was not cheating a bank. Idya's perpetration of the second cheating offence involved the use of a dud cheque. In my judgment, more important than the question of whether the victim was a financial institution, was the fact, as was observed by the District Judge, that this entailed the use of a financial instrument and so had the potential to "[undermine] the confidence in the use of cheques and the financial system" (at [14]). If cheques become a common vehicle for cheating, no one would be willing to provide goods or services on faith of a cheque. Immediate payment would always be demanded, and a facility vital to commerce will be undermined. There is thus a legitimate interest in deterring such offences.

5 0 *Vimlesh Kumar* involved an offender who on three separate occasions deceived the staff of duty free shops at Changi Airport to sell him duty free liquor on the basis that he would be departing Singapore. He was sentenced to 2 months' imprisonment for each offence, with two of the sentences to run consecutively. Although it was contended that the offender in *Vimlesh Kumar* was more culpable as he had committed the same crime thrice, I find this argument unconvincing. Idya herself committed two cheating offences, the second while already under investigation for the first. Further, the offender in *Vimlesh Kumar* did not cause loss to any person, his prospect for gain being limited to the amount of tax he was hoping to avoid. As I have already noted above, Idya did cause financial loss by her offences.

51 Moreover, Idya displayed considerable audacity and disregard for the law in committing the second cheating offence even after Norizah had made a police report and investigations had commenced. In my view, in relation to the second cheating offence, the use of a dud cheque, the careful planning that preceded the actual commission of the offence and the fact that this was a second instance of cheating and one that was committed at a time when Idya knew she was under investigation for the first cheating offence are all aggravating factors that negate the mitigating value of Idya's having made restitution. On balance, in my judgment, the sentence imposed by the District Judge for the second cheating offence is not manifestly excessive.

52 However, in relation to the first cheating offence, having regard to the fact that the offence did not involve the use of cheques or financial instruments and that it was Idya's first offence and there was full restitution, the imposed sentence of 2 months' imprisonment was manifestly excessive. In my judgment, a sentence of 1 month's imprisonment would be appropriate. I accordingly dismiss the appeal as far as the sentence for the second cheating offence is concerned and allow the appeal as far as the sentence for the first cheating offence is concerned.

Conclusion

53 Idya's appeal against the sentence imposed for the false statement offences is allowed, and each sentence is reduced to 1½ months' imprisonment. The sentence imposed by the District Judge for the second cheating offence is upheld. The sentence imposed by the District Judge for the first

cheating offence is allowed and that is reduced to 1 month's imprisonment.

54 Since Idya has been convicted and sentenced to imprisonment for more than two distinct offences, s 307 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) requires that at least two of the sentences be ordered to run consecutively. The false statement offences were part of the same transaction and the sentences imposed in respect of these offences should therefore be concurrent rather than consecutive: *Maideen Pillai v Public Prosecutor* [1995] 3 SLR(R) 706 at [8]. In contrast, both cheating offences are wholly separate and consecutive sentences are *prima facie* appropriate: *Public Prosecutor v Hirris anak Martin and another* [2010] 2 SLR 976 at [18]. However, in my judgment, the totality principle militates against imposing three consecutive sentences in the present case. In the premises, I uphold the District Judge's decision to order that the sentence for the first false statement offence and the second cheating offence run consecutively and a cumulative sentence of 4½ months' imprisonment is therefore imposed.

55 Zunaidi's appeal against the sentence imposed for his false statement offence is also allowed, and his sentence is reduced to 3 weeks' imprisonment.