IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 74

Criminal Reference No 1 of 2022

Between

Poh Yuan Nie

… *Applicant*

And

Public Prosecutor

… *Respondent*

And

Criminal Reference No 2 of 2022

Between

Poh Min, Fiona

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Criminal references]
[Statutory Interpretation — Construction of statute — Purposive approach]
[Statutory Interpretation — Interpretation Act — Purposive approach]

[Statutory Interpretation — Penal statutes — Section 415 and Explanation 1 to Section 415 Penal Code (Cap 224, 2008 Rev Ed)]

Poh Yuan Nie
v
Public Prosecutor and another matter

[2022] SGCA 74

Court of Appeal — Criminal References Nos 1 and 2 of 2022
Sundaresh Menon CJ, Judith Prakash JCA and Steven Chong JCA
16 September 2022

21 November 2022

Judith Prakash JCA (delivering the grounds of decision of the court):

Introduction

1 The present criminal references raised the interesting question of whether the offence of cheating as defined by s 415 of the Penal Code (Cap 224, 2008 Rev Ed) (the "PC" and where appropriate, the "2008 version") requires, in a case where the deception of the victim involves a dishonest concealment of facts, the offender to have had the intention to cause wrongful loss or wrongful gain of property.

2 The applicants, Ms Poh Yuan Nie ("PYN") and Ms Poh Min, Fiona ("PMF") were, respectively, the principal and a teacher at a private tuition centre. Along with two other teachers, they planned and executed an elaborate scheme to abet six of their students in cheating while sitting for five examination papers of the 2016 GCE 'O' Level Examinations. PMF and another teacher

registered for the examinations as private candidates so that they could provide a live video stream of the examination questions to the other conspirators at the tuition centre, who would then communicate the answers to the students during the examinations. Such remote communication was possible because the conspirators had provided the students with mobile phones, wireless receivers and earpieces concealed under their clothes. The cheating scheme was uncovered and stopped only when one of the students was caught cheating by the invigilators.

3 The applicants were charged with 26 counts of abetment by way of conspiracy to cheat, punishable under s 417 read with s 109 of the PC and one count of attempted conspiracy to cheat punishable under s 417 read with s 116 of the PC. They claimed trial, but at the end of the Prosecution's case the applicants chose to remain silent when called to give their defence. They also did not call any witness to testify on their behalf. Instead, they submitted that they had no case to answer and relied entirely on legal arguments in support of their stand. The District Judge convicted PYN and PMF on the charges and sentenced them, respectively, to 48 months' and 36 months' imprisonment: see *Public Prosecutor v Poh Yuan Nie and others* [2021] SGMC 5. They appealed against their convictions and sentences, but the appeals were dismissed by the General Division of the High Court with grounds delivered orally (the "Judgment"). In their appeals against conviction, the applicants again relied solely on legal arguments. They then sought to have this court determine a question of law of public interest, which led to the applications before us.

4 From the way that the applicants conducted their case during the trial and on appeal, it appeared to us that even they themselves recognised – at least implicitly – that it was a foregone conclusion that any reasonable layperson

would consider what they did to be dishonest, and to be cheating. However, they claimed that *the law* did *not* or should *not* regard their conduct as being cheating as the offence is delineated in s 415 of the PC. The crux of their submissions was that their conduct was not dishonest within the meaning of s 24 of the PC because it did not involve the wrongful gain or loss of property and therefore it could not be encompassed by the offence of cheating under s 415. We were unable to accept that submission and were of the view that their conduct indeed amounted to cheating within the scope of s 415 of the PC notwithstanding the lack of any wrongful loss or gain of property. Thus, we dismissed their applications. We now set out the grounds of our decision.

Relevant provisions of the Penal Code

5 For ease of reference, we will at the outset reproduce the provisions of the PC with which the present criminal references were concerned. We highlight that the PC provisions referred to below are from the version in force prior to the 2020 amendments effected by the Criminal Law Reform Act 2019 (Act 15 of 2019) (the "2020 amendments"), *ie*, the 2008 version. These are the following:

> **"Wrongful gain" and "wrongful loss"**
>
> **23.** "Wrongful gain" is gain by unlawful means of property to which the person gaining it is not legally entitled; "wrongful loss" is loss by unlawful means of property to which the person losing it is legally entitled.
>
> *Explanation.*—A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when

> such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.
>
> "**Dishonestly**"
>
> **24.** Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly.
>
> **Cheating**
>
> **415.** Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to "cheat".
>
> *Explanation 1.*—A dishonest concealment of facts is a deception within the meaning of this section.
>
> *Explanation 2.*—Mere breach of contract is not of itself proof of an original fraudulent intent.
>
> *Explanation 3.*—Whoever makes a representation through any agent is to be treated as having made the representation himself.

6 Section 415 of the PC may be broken down into two alternative limbs (see *Knight Glenn Jeyasingam v Public Prosecutor* [1992] 1 SLR(R) 523 at [14] and [15], cited with approval in *Chua Kian Kok v Public Prosecutor* [1999] 1 SLR(R) 826 at [19]) to wit:

> (a) First limb: whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, is said to "cheat".

> (b) Second limb: whoever, by deceiving any person, whether or not such deception was the sole or main inducement, intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to "cheat".

We note that the two cases cited above referred to s 415 of the Penal Code (Cap 224, 1985 Rev Ed). That version of s 415 has a slightly different wording from the version of the provision which the present case was concerned with (see [5] above). Nevertheless, the general point that s 415 may be broken down into the two limbs set out above still stands.

7 We also note that in the present case, the charges against the applicants involved the second limb of s 415 and were also explained by *Explanation 1*; that is, that the applicants' conduct was a deception because it involved a dishonest concealment of facts.

The application

8 CA/CM 33/2021 and CA/CM 34/2021 were, respectively, the applications of PYN and PMF for leave to refer questions of law of public interest to this court pursuant to s 397(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). PYN sought to refer one question while PMF sought to refer three, one of which was similar to PYN's sole question. After hearing the applications, we granted leave to the applicants to refer one question albeit in a reframed form. As far as PMF's other two questions were concerned, we refused leave for the same to be referred.

9 The reframed question (the "Question"), which became the subject of the present criminal references, reads:

> For the purposes of an offence of cheating under s 415 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), where the accused is charged with committing a "dishonest concealment of facts" within the meaning of Explanation 1 to the same provision, must the meaning of "dishonest" be determined with reference to the definition of "dishonestly" under s 24 of the Penal Code?

10 What perhaps triggered the present applications is that the charges preferred against the applicants involved a description of them "dishonestly concealing the fact" that the students would be receiving assistance from the conspirators. A sample charge reads as follows:

> You [Poh Yuan Nie] are charged that you, on or around 19 October 2016, in Singapore, did abet an offence of cheating, by engaging with Chen Yi, Feng Riwen, Poh Min Fiona, Tan Jia Yan, and others unknown ("the conspirators"), in a conspiracy to cheat the Singapore Examinations and Assessment Board ("SEAB"), by deceiving SEAB into believing that Chen Yi was taking the GCE 'O' Level Science Physics/Chemistry Revised Practical Paper ("the examination") without assistance from any other person, to wit, by ***dishonestly concealing the fact*** that Chen Yi would be receiving assistance from the aforementioned conspirators, in order to intentionally induce SEAB to accept Chen Yi's answer script as a legitimate submission for marking, an act SEAB would not do were it not so deceived, which act was likely to cause harm to SEAB's reputation, and in pursuance of the conspiracy and in order to the doing of that cheating, an act took place, to wit, Chen Yi sat for the GCE 'O' Level Science Physics/Chemistry Revised Practical Paper on 19 October 2016 at 252 Tampines Street 12, Tampines Secondary School, Singapore, while receiving assistance from the aforementioned conspirators, which offence of cheating was committed in consequence of the abetment, and you have thereby committed an offence under section 417 read with section 109 of the Penal Code (Cap. 224, 2008 Rev. Ed.).
>
> [emphasis added in bold italics]

11 The applicants contended that the Question had to be answered in the affirmative. Such a response would mean that the applicants would only be liable for acts of deception arising from a concealment of facts that was done "dishonestly" within the meaning of the definition given to that word in s 24 read with s 23 of the PC. We shall refer to this definition as the "s 24 requirement". Accordingly, their acts could only be considered to have been done dishonestly if they had intended to cause the Singapore Examinations and Assessment Board or another person wrongful gain or wrongful loss of *property*. Clearly, no such gain or loss of property was aimed at in the present case. Therefore, on this view, the abetment charges were not made out and there would have been no legal basis for the conviction of the applicants.

12 Asst Prof Benny Tan ("Prof Tan") was appointed as independent counsel to assist this court with the determination of the Question. He submitted that the Question should be answered in the affirmative. In his view, if the Prosecution had framed a s 415 charge which involved an allegation that the accused had acted dishonestly, the s 24 requirement must be proved. However, he clarified that it is not necessary for a concealment of facts to satisfy the s 24 requirement for the accused to be convicted of an offence under s 415 of the PC. A fraudulent or intentional concealment of facts could suffice as well, if that was the Prosecution's case.

13 The applicants also, naturally, submitted that the Question should be answered in the affirmative. In contrast to Prof Tan's position, however, their position was that, in respect of a s 415 charge involving deception by concealment of facts, the s 24 requirement would have to be established for the accused to be held liable.

14 The respondent, the Public Prosecutor (the "PP"), submitted that the Question should be answered in the negative. The PP argued that a plain or ordinary meaning of "dishonest" in the phrase "dishonest concealment of facts" in Explanation 1 to s 415 should be adopted instead. We will refer to this meaning of "dishonest" as "dishonest" in the ordinary meaning/sense or "ordinary dishonesty". The PP further submitted, if the Question were to be answered in the affirmative, the charges against the applicants should be amended by, *inter alia*, deleting the reference to the dishonest concealment of facts. The applicants should then be convicted on those amended charges.

Our decision

15 We were of the view that the answer to the Question was "No". In other words, the offence of cheating under s 415 of the PC can be constituted by a deception that is a concealment of facts which was not made dishonestly within the meaning of s 24; that is, that the concealment was not intended to result in anyone wrongfully gaining or losing property. The basic reason for this conclusion is our view that the word "dishonest" in the phrase "dishonest concealment of facts" in Explanation 1 to s 415 must be interpreted as being used in the ordinary sense of the word rather than in the special sense given to it by s 24. We now go on to explain how the interpretation exercise was carried out.

16 The starting point was that s 415 (including Explanation 1 thereof) should be interpreted purposively as mandated by s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) (the "IA"). In this regard, the three-step framework set out by this court in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37] applied. The steps are:

(a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision, but also to the context of that provision within the written law as a whole.

(b) Second, ascertain the legislative purpose or object of the statute.

(c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

The possible meanings of "dishonest" in Explanation 1 to s 415 of the PC

17 In the first step, the court ascertains the possible meanings of the disputed provision by examining the ordinary meaning of the words of the legislative provision. The court may be aided by rules and canons of statutory construction: see *Tan Cheng Bock* at [38].

18 It sufficed, for our purposes, to consider the following possible interpretations of "dishonest" under Explanation 1 to s 415 of the PC:

(a) First Interpretation: a concealment of facts which satisfies the s 24 requirement amounts to a deception under s 415 of the PC, but other types of concealment of facts may suffice as well, such as an intentional or fraudulent concealment of facts. Prof Tan advanced this view.

(b) Second Interpretation: only a concealment of facts which satisfies the s 24 requirement amounts to a deception under s 415 of the PC. The applicants advanced this view.

(c) Third Interpretation: a dishonest concealment of facts is one where the *character* of the concealment is dishonest, in the ordinary sense of the word. On this view, the adjective "dishonest" describes the

quality of the *act* of concealment, rather than the accused's state of mind. In other words, "dishonest" applies to the *actus reus* and not the *mens rea* of the offence under s 415 of the PC. The PP advanced this view, which was also was the view of the court below (see the Judgment at [11]–[12]).

(d) Fourth Interpretation: a dishonest concealment of facts is one which is done with a *state of mind* that amounts to an intention to deceive. On this view, the adjective "dishonest" describes the *mental state* of the accused when committing an offence under s 415 of the PC, so as to differentiate those concealments of facts which would attract liability under s 415 from those which do not, such as negligent or innocent concealments of facts. We stress that such a mental state on the accused's part would be regarded as present whenever the *mens rea* of either limb of s 415 is proven. This interpretation therefore does not introduce an *additional mens rea* which would need to be separately proven.

19 We move on to the second step of the *Tan Cheng Bock* framework.

The purpose of s 415 of the PC and Explanation 1 to the same

20 At the second step, the court identifies the legislative purpose of the provision: see *Tan Cheng Bock* at [39]. Such purpose may be ascertained from three main textual sources: the long title of the statute, the words of the disputed provision and, thirdly, other legislative provisions within the statute: see *Tan Cheng Bock* at [44]. Resort to extraneous material may only be had in certain situations (set out in *Tan Cheng Bock* at [54(c)(iii)]). Primacy should be

accorded to the text and context of the provision over any extraneous material: see *Tan Cheng Bock* at [43].

Section 415 of the PC and its statutory context

21 The first source which the court may draw on to discern the purpose underlying a legislative provision is the text of the provision itself and its statutory context: see *Tan Cheng Bock* at [42]. As we have noted above, s 415 of the PC may be broken down into two alternative limbs and the elements required to prove each limb differ.

22 Section 415 is found in Chapter XVII of the PC, which is titled "Offences Against Property". This may appear to suggest that the offence under s 415 is necessarily related to property. Nevertheless, the High Court (*per* Sundaresh Menon CJ) in *Wong Tian Jun De Beers v Public Prosecutor* [2021] SGHC 273 has held that the wording of the second limb of s 415 indicates that the offence extends beyond penalising offences relating *only* to property (at [31]):

> 31 Even though the offence of cheating is situated in Chapter XVII of the Penal Code, which pertains to offences *against property*, it is nonetheless broad enough to capture the present offences. In particular, there are two ways in which the wording of s 415 indicates that it extends beyond penalising offences relating *only* to property:
>
> (a) First, the reference to inducing a person to "do or omit to do anything which he would not do or omit to do if he were not so deceived" is in itself broad enough to cover acts which are not related to property. This may be contrasted with the other clauses used in s 415, which make reference to the "deliver[y]" of property and the "re[tention]" of property.
>
> (b) Second, and in addition, the reference to the act or omission being likely to cause "damage or harm to any person in body, mind, reputation **or** property" is

> significant because it illustrates that the harm envisaged as falling under s 415 relates to *more than* property. In fact, harm relating to property is seen as a *separate and distinct* category from harm caused to a victim in "body, mind, or reputation". Thus, the acts in question in this appeal, which were specifically acknowledged in the SOF and the proceeded charges as causing harm to the victim's mind (see for example, SOF at [10]), would fall within the broad ambit of cheating under s 415.
>
> [emphasis in original]

We agree with the above holding and elaborate on our reasoning below.

23 Between the two limbs of s 415, the *actus reus* requirements differ. Under the first limb, the accused must have induced the delivery or retention of *property*. Under the second limb, it suffices that the accused induced the victim to do (or omit to do) something which the victim otherwise would not have done (or omitted to do), which action or omission "causes or is likely to cause damage or harm to any person in body, mind, reputation ***or*** *property*" [emphasis added in italics and bold italics]. Hence, while an offence under the first limb must involve property, an offence under the second limb need not: the second limb could concern damage or harm to any person in body, mind or reputation as well.

24 The *mens rea* requirements of the two limbs of the provision also differ. The first limb requires the accused to have behaved "fraudulently" or "dishonestly" (*ie*, the s 24 requirement). The second limb, however, requires the accused to have committed the act of deception "intentionally". Prof Tan and the PP agreed that the *mens rea* of "intentionally" is a less stringent fault element than that called for by the s 24 requirement and "fraudulently" deceiving. This is because the latter two fault elements require proof of specific intention: respectively, that of causing the victim to experience wrongful loss of property

or the fraudster to wrongfully gain property from the victim and that of defrauding the victim. As Prof Tan rightly noted, while there is a less stringent fault element in the second limb, to establish the offence, the Prosecution has to prove an additional element not found in the first limb. This is that the act or omission of the person deceived caused, or is likely to cause, damage or harm to any person in body, mind, reputation or property.

25 In our view, the differences between the two limbs of s 415 showed that the second limb is intended to apply to a wide range of harm and is not restricted to loss of property.

26 We compared the possible interpretations set out above against the purpose of s 415, this being the third step of the *Tan Cheng Bock* framework. For the reasons stated below, we were of the view that it could not be the case that the Prosecution must prove the s 24 requirement where the dishonest concealment of facts relates to conduct covered by the second limb of s 415.

27 First, such an interpretation would be contrary to the purpose of s 415. Under this interpretation, the s 24 requirement necessarily ties the offence in s 415 to the wrongful gain or loss of property but, as we have noted, the *actus reus* of the second limb does not necessarily involve property. Also, the second limb involves a different type of intention from that in the s 24 requirement. If the legislature had intended for that type of intention to be proven under the second limb, it would have expressly stated so, as it did in the first limb. Hence, reading the s 24 requirement into Explanation 1 to s 415 would be introduce the very requirement that the legislature had specifically omitted from the second limb.

28 Such an interpretation would mean that an offence committed under the second limb of s 415 by way of a dishonest concealment of facts could never be established if no transfer of property is involved. This would lead to an absurd state of affairs that ignores the clear legislative intention of criminalising such acts of deception. Consider, for example, a candidate who submits a forged university degree to support his successful application for an unpaid internship. There is clearly no transfer of property involved whatsoever here, especially since the candidate receives nothing but experience in return for his work. However, any reasonable layperson would agree that that candidate had dishonestly concealed the fact that he did not graduate from the university shown on the forged degree and had thereby cheated or deceived the employer into taking him on as an intern. It could not have been the draftsman's intention to undermine the wide scope of the second limb by importing the requirement of wrongful gain and loss of property through the application of the s 24 requirement.

29 Relatedly, we also agreed with Prof Tan's submission that, in many cases, a deception can be arbitrarily framed either as a concealment of fact or a positive action. He raised the hypothetical example set out in illustration (*e*) to s 415: "*A*, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives *Z*, and thereby dishonestly induces *Z* to lend money. *A* cheats." A could be said to have *concealed* the fact that the articles were not diamonds by failing to inform Z of the same; A could equally be said to have committed the *act* of lying to Z that the articles were diamonds when they were not. We illustrate this point using the example in the preceding paragraph. The candidate who successfully deceived his employers by using a forged university degree could equally be said to have dishonestly concealed the fact that he did not in fact graduate from that university and to have actively falsely represented

that he graduated from that university. Hence, in our view, Prof Tan rightly concluded that it is difficult to conceive of an instance of deception without a concomitant concealment of facts.

30 Additionally, we noted that "Explanations" in the PC are generally intended to clarify the provision they seek to explain; they are not inserted to limit the scope of the provision: see *Nur Jihad bin Rosli v Public Prosecutor* [2018] 5 SLR 1410 at [40] and *Shaikh Farid v Public Prosecutor and other appeals* [2017] 5 SLR 1081 at [25]. If a dishonest concealment of facts under Explanation 1 to s 415 requires proof of the s 24 requirement, this would limit the scope of the second limb of s 415 to property damage and completely undercut the width of the section. This would be an incorrect application of Explanation 1.

31 Considering the above points, the legislature could not have intended the application of Explanation 1 to s 415 to introduce an additional requirement of an intention to cause wrongful loss or wrongful gain of property as provided in s 24 to the second limb. The Second Interpretation – which was advanced by the applicants – must therefore be wrong.

32 We also rejected the First Interpretation, that advanced by Prof Tan. In his view, Explanation 1 merely states an instance of a concealment of facts that attracts liability under s 415, *viz*, one where the s 24 requirement is proven. However, there are *other* concealments of facts which could also attract liability under s 415, such as intentional or fraudulent concealments. In our view, the First Interpretation was equally untenable as it rendered Explanation 1 to s 415 otiose. As we have stated, an explanation is meant to clarify. Explanation 1 would not serve to clarify s 415 if it merely states one type of concealment of

facts which would attract liability under s 415 but omits to state other such types.

33 We considered that the Judge below had got it fundamentally correct when he noted that a "dishonest" concealment of facts in Explanation 1 should be read in terms of clarifying what amounts to a "deception" under s 415 (see the Judgment at [11]). This is the Third Interpretation set out above, which relies on "dishonest" in its ordinary meaning. However, we would not go as far to hold that, because deception forms part of the *actus reus* of s 415 and "dishonest" used in the ordinary sense describes the quality of that deception, such dishonesty therefore forms part of the *actus reus*. The *Oxford English Dictionary Online* (Oxford University Press, 2022) defines "dishonest" as "behaving or prone to behave in an untrustworthy, deceitful, or insincere way" when describing the quality of a person (*eg*, a dishonest person) and "intended to mislead or cheat" when describing the quality of a person's conduct (*eg*, a dishonest account of events). In the former context, "dishonest" describes the person's propensity for conduct aimed at deception, *ie*, his character. In the latter context, "dishonest" describes the person's intention to deceive when behaving in a certain way. A "dishonest concealment of facts" falls into the latter context. Hence, in our view, the plain meaning of "dishonest" connotes a description of an accused's *mental state* when he concealed the material facts in question. It would therefore be inaccurate to describe the *act* itself as "dishonest". We therefore preferred the Fourth Interpretation over the Third Interpretation.

Extraneous material

34 The second source on which the court may draw to discern the purpose underlying a provision is extraneous material, which is "any material not forming part of the written law" (see ss 9A(2)–9A(3) of the IA and *Tan Cheng Bock* at [42]). In *Tan Cheng Bock*, this court set out three situations in which the court may consider extraneous material (at [54(c)(iii)]):

> (a) If the ordinary meaning of the provision (taking into account its context in the written law and the purpose or object underlying the written law) is clear, extraneous material can only be used to confirm the ordinary meaning but not to alter it.
>
> (b) If the provision is ambiguous or obscure on its face, extraneous material can be used to ascertain the meaning of the provision.
>
> (c) If the ordinary meaning of the provision (taking into account its context in the written law and the purpose or object underlying the written law) leads to a result that is manifestly absurd or unreasonable, extraneous material can be used to ascertain the meaning of the provision.

35 This court further stated that the court should have regard to, *inter alia*, (a) whether the material is clear and unequivocal; (b) whether it discloses the mischief aimed at or the legislative intention underlying the statutory provision; and (c) whether it is directed to the very point of statutory interpretation in dispute: see *Tan Cheng Bock* at [53(c)(iv)]. In light of our analysis above, we considered that the legislative purpose of s 415 and Explanation 1 to the same provision to be clear, such that extraneous material can only be used to confirm the ordinary meaning of this provision and not to alter it.

36 The progenitor of s 415 of the PC is s 392 of the draft Indian Penal Code, which was prepared by the Indian Law Commission and submitted to the Governor-General of India in Council on 14 October 1837: see *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [127], citing Thomas Macaulay, *Indian Penal Code* (Reprinted: The Lawbook Exchange, Ltd, 2002) at p viii. That provision defines the offence of cheating as follows:

> 392. Whoever, by intentionally deceiving any person, *fraudulently* induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or to affix a seal to any substance, or to make, alter, or destroy the whole or any part of any document which is or purports to be a valuable security, is said to "cheat".
>
> [emphasis added]

As seen above, the term "dishonestly" was not used in the provision; the fault element of "fraudulently" was used instead. We also noted that Explanation 1 did not exist at that time.

37 Section 415 of the Indian Penal Code 1860 (Act XLV of 1860), which came into force on 6 October 1860, provided as follows:

> Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to "cheat".
>
> Explanation. – A dishonest concealment of facts is a deception within the meaning of this Section.

Evidently, the Indian legislature had opted to expand the definition of cheating by including the second limb, which was expressly based on the fault element of "intentionally" instead of "dishonestly" or "fraudulently", and also covered

deception that causes actual or potential harm to body, mind, reputation or property. Section 415 of the Indian Penal Code 1860 was eventually ported over as s 415 of the Straits Settlement Penal Code (Ordinance No IV of 1871) in 1871.

38 In 2007, the Singapore legislature further expanded the definition of cheating when amending s 415 of the PC to the 2008 version. Among other changes, it made clear that: (a) the deception need not be the sole or main inducement; and (b) under the second limb, the act or omission by the person deceived must have caused or is likely to cause damage or harm to *any* person (*ie*, not necessarily only to the person deceived) in body, mind, reputation or property.

39 As the PP rightly pointed out, the import of the legislative history set out above was limited, save to show that there has been a consistent expansion of the ambit of s 415. In our view, applying *Tan Cheng Bock*, this *expansive* development provides some confirmation that s 415 was not intended to be *restricted* to instances of deception involving property. We were therefore fortified in our view that the Fourth Interpretation should be preferred to give effect to the purpose of s 415 of the PC.

"dishonest" and "dishonestly"

40 We turn to address Prof Tan's submissions regarding the definitions of "dishonest" and "dishonestly". With respect, we could not accept those submissions. Instead, our view is that "dishonest" in Explanation 1 to s 415 does not bear the same meaning that "dishonest*ly*" bears in s 24 of the PC.

41 Prof Tan relied on s 7 of the PC, which provides as follows:

> **Expression once explained is used in the same sense throughout this Code**
>
> **7.** Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

In his view, s 7 implied that the definition of "dishonestly" in s 24 must apply to "dishonest" in Explanation 1 to s 415 of the PC. He stressed that ss 7 and 24 of the PC do not contain any qualifications, as compared to other provisions such as ss 9 and 32, which state that they are to apply throughout the PC unless a contrary intention appears from the context.

42 While we agreed that ss 7 and 24 of the PC do not admit of any qualification, we respectfully disagreed that they implied that Explanation 1 to s 415 bears the meaning of "dishonestly" given by s 24. A strict provision such as s 7 must be construed strictly. The word "dishonest" is a cognate form of the word "dishonestly". The former is an adjective and the latter is an adverb. They are different words, relating respectively to nouns and verbs.

43 There was no basis for concluding that the definition of "dishonestly" in s 24 must extend to the word "dishonest" in Explanation 1 to s 415, except, perhaps, by virtue of s 2(2) of the IA. This provision states as follows:

> **Interpretation of certain words and expressions**
>
> **2.**— ...
>
> ...
>
> (2) Where a word or expression is defined in a written law, then, *unless the contrary intention appears, other parts of speech and grammatical forms of that word or expression, and cognate expressions, have corresponding meanings in that law.*
>
> [emphasis added]

This provision thus specifically addresses whether the s 24 definition of dishonestly could apply to a cognate form of "dishonestly", *viz*, "dishonest". We were of the view however, that, for the reasons we have set out above, a "contrary intention" appears in s 415 such that "dishonest" should not bear the meaning of its cognate form.

44 We also note s 6A of the Penal Code 1871 (2020 Rev Ed), which was enacted by the 2020 amendments. This section that provides for the consistent application of some words or expressions defined in the PC, expressly does *not* apply to "dishonestly" in s 24, as seen below:

> **Definitions to apply to this Code and other written law**
>
> **6A.** Every definition of a *word or expression* which is explained in sections 22A to 26H (*except the definitions of "dishonestly"* and "fraudulently" in *sections 24* and 25, respectively) applies to any offence in this Code or in any other written law unless that written law expressly provides for a definition or explanation of that *same word or expression*.
>
> [emphasis added]

Although s 6A of the PC was not in force at the material time, we were of the view that this provision clarifies the underlying legislative intent that the s 24 requirement was not meant to be applied to cognate expressions such as "dishonest". There are two points to note here. First, s 6A concerns the words or expressions in their exact form, which can be seen from its strict reproduction of the words, "dishonestly" and "fraudulently". This shows that in considering the use of a word or expression throughout the PC, as provided by s 6A, the PC is concerned with such words or expressions in their exact form. Second, there is an express carve out for "dishonestly" in s 24, which additionally militates against its application to cognate forms.

45 We therefore concluded that "dishonest" in Explanation 1 to s 415 does not bear the same meaning as its cognate form, "dishonestly", under s 24 of the PC.

46 We add a point of clarification. As stated earlier, the charges brought against the applicants in the present case stated that they had committed the offence by "*dishonestly* concealing the fact that [one of the students] would be receiving assistance from the aforementioned conspirators" [emphasis added]. The charges used the cognate form of "dishonest", "dishonestly". However, the use of this cognate form does not therefore mean that the Prosecution had elected to prove the s 24 requirement. There was no reference to s 24 of the PC anywhere in the charges. The description of the applicants' act of dishonestly concealing the material facts related to the facts and not to the applicable statutory provisions, which were stated at the end of the charges.

The amended s 24 of the PC

47 The 2020 amendments have expanded the scope of s 24 of the PC by the addition of a second definition of "dishonestly". Section 24 now reads as follows:

> **"Dishonestly"**
>
> **24.** A person (*A*) is said to do an act dishonestly if —
>
> (*a*) *A* does that act with the intention of causing wrongful gain to *A* or another person, or wrongful loss to another person, regardless of whether such gain or loss is temporary or permanent; or
>
> (*b*) *that act done by A is dishonest by the ordinary standards of reasonable and honest persons and A knows that that act is dishonest by such standards.*

[emphasis added]

48 PYN submitted that this expansion "*by itself*" indicates that there was a lacuna in the PC prior to the 2020 amendments, because Parliament does not legislate in vain. According to PYN, "[h]ad any common law concepts of dishonesty with reference to ordinary persons been already part of the criminal law", there would surely have been no need to amend s 24 to include the definition in s 24(*b*). She further suggested that Parliament "had noticed a potential lacuna in s 415, and made the necessary amendments accordingly". This submission was not phrased very clearly, but we read it as follows: Parliament had noticed that "dishonest" in its ordinary meaning should have been – but was not – part of the s 24 definition of dishonestly, and had therefore sought to include the ordinary meaning by way of s 24(*b*) through the 2020 amendments.

49 We disagreed. The *bare fact* that s 24 has been amended to stress the ordinary meaning of dishonest does not definitively imply that there was a such a lacuna, in that ordinary dishonesty did not form part of our criminal law at all. Prior to the 2020 amendments, ordinary dishonesty was, as we have explained, part of our law in the operation of s 415 and Explanation 1 to the same. Now that Parliament has added the second limb of s 24, there can be no more room for time consuming quibbles over the meaning of "dishonestly" in any section of the PC. From our perspective, the amendment was made out of an abundance of caution and was not intended to change the law.

Conclusion

50 For the above reasons, we were of the view that the answer to the Question was "No". The outcome of the criminal references, therefore, could have no effect on the convictions of the applicants.

51 We would like to express our thanks to Prof Tan for taking on the role of independent counsel and giving us his learned views on the possible answers to the Question. Although we did not, ultimately, agree with his submissions, they provided useful material and approaches and contributed substantially to the analysis.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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