IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 281

Criminal Revision No 4 of 2019

Between

Ng Siam Cheng Sufiah

… *Petitioner*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Revision of proceedings] — [Threshold for exercise of revisionary powers] — [Section 400(1) Criminal Procedure Code (Cap 68, 2012 Rev Ed)]
[Criminal Procedure and Sentencing] — [Revision of proceedings] — [Section 370(1) Criminal Procedure Code (Cap 68, 2012 Rev Ed)]
[Criminal Procedure and Sentencing] — [Seizure of property]

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See Kee Oon J:

1 The petitioner, Ms Sufiah Ng Siam Cheng, filed this application for criminal revision requesting the High Court to exercise its revisionary powers to declare that a sum of $406,933.02 was improperly seized by the Commercial Affairs Department of the Singapore Police Force ("the CAD"), and to grant her liberty to make a claim on the seized monies.

2 The application was premised primarily on a number of alleged procedural irregularities or improprieties, which were said to impugn the validity and legality of CAD's seizure of the monies. These included alleged failures to communicate with her, and alleged non-disclosure or non-compliance by the CAD with court directions. The petitioner contended that these irregularities resulted in injustice to her, as she was denied her right to be heard and right to information at various junctures.

3 After hearing the parties' submissions, I dismissed the petitioner's application on 18 September 2019. In doing so, I delivered brief oral remarks. The reasons for my decision are now set out in full as follows.

Facts

APB and TGG

4 The seized monies are currently the subject matter of an ongoing Disposal Inquiry in the State Courts *vide* No 900020-2018.

5 The petitioner claimed that sometime around November 2012, she had encountered an advertisement posted by a company by the name of Asia Pacific Bullion Pte Ltd ("APB"). APB offered various investment opportunities that promised periodic returns and the repayment of capital amounts invested in either cash or an equivalent amount of gold or silver.

6 The petitioner responded to the advertisement and subsequently handed over 4kg of gold to APB. She was given a certificate by an entity known as The Gold Guarantee Pte Ltd ("TGG"), which functioned as a warrant that TGG undertook to deliver to her 4,720g of gold at the expiry of the warrant dated 21 November 2013. The petitioner was also entitled to various payments under the contract that she had entered into with APB; specifically, she was to receive $19,257.60 every three months starting from 21 February 2013.

7 Unknown to her, both APB and TGG were owned and controlled by one Lee Song Teck ("Lee").

8 Lee was using a number of companies, including APB and TGG, to operate several complex investment schemes between 2012 to 2013. Lee's

modus operandi for APB involved the use of a warrant issued by TGG, which "guaranteed" that TGG would serve as a guarantor for APB, to entice potential investors to invest in Lee's purportedly fraudulent schemes. Lee left Singapore on 18 January 2013, before the CAD commenced their investigations, and remains at large.

The judgment debt owed to the petitioner

9 On 23 January 2013, the petitioner lodged a Police Report at the CAD against both APB and TGG. She did not receive any payment from APB or TGG for the 4kg of gold that she deposited with APB.

10 On 30 January 2013, the petitioner commenced Suit No 83 of 2013 ("Suit No 83/2013") against APB for the sum of $320,960 (being the value of the gold bars delivered to APB).

11 By this time, the CAD had already commenced investigations against Lee for a number of offences, including criminal breach of trust and cheating under ss 409 and/or 420 of the Penal Code (Cap 224, 2008 Rev Ed), as well as statutory offences under the Banking Act (Cap 19, 2008 Rev Ed), the Companies Act (Cap 50, 2006 Rev Ed), and the Securities and Futures Act (Cap 289, 2006 Rev Ed).

12 On 1 February 2013, the CAD seized APB's account with United Overseas Bank (Singapore) Limited ("the UOB account") pursuant to s 35(1)(*a*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"). The UOB account contained a sum of $406,933.02 ("the UOB funds"). The seizure was reported to the Magistrate as required under s 370(1) of the CPC on 12 March 2013. The Magistrate subsequently directed that the UOB funds be retained for

the purposes of investigations.

13 On 5 March 2013, as APB had not entered appearance, the petitioner was granted default judgment in Suit No 83/2013, pursuant to O 13 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC"). She was awarded the sum of $320,960.00 as well as interest on the judgment sum at the rate of 5.33% per annum from the date of the writ to the date of the judgment, and costs of $2,300.00.

14 As APB failed to pay the judgment sum, the petitioner took out garnishee proceedings against UOB, aiming to satisfy the judgment debt owed to her through the UOB funds. She was, however, informed that the CAD had already seized APB's UOB account.

15 The petitioner's then-counsel wrote to the CAD on 11 July 2013 requesting for the release of the judgment sum to her. The CAD replied on 16 July 2013, stating that, pursuant to s 35(8)(*d*) of the CPC, they could not release the UOB funds to the petitioner, as the CAD had seized the said account by an order dated 1 February 2013, which pre-dated the petitioner's judgment which was obtained on 5 March 2013.

The Magistrate's orders

16 As stated above at [12], the Magistrate had initially directed the CAD to retain the UOB funds for the purposes of investigations. From 2013 to 2018, the CAD continually reported to and updated the Magistrate on the status of its investigations. The following table reflects the various reports provided pursuant to s 370 of the CPC ("the s 370 reports").

Date on which s 370 report was filed	Date of s 370 hearing	The Court's Order
12 March 2013	-	Continued retention; review on 11 September 2013
2 July 2013	-	Continued retention; review on 1 January 2014
7 March 2014 (refiled on 13 March 2014)	-	Continued retention; review on 12 September 2014
12 September 2014	-	Continued retention; review on 12 March 2013; CAD to file report 2 weeks before
27 March 2015 (refiled on 15 July 2015)	15 July 2015	Continued retention; review within 6 months from 18 July 2015; CAD to file report 2 weeks before
29 December 2015	2 March 2016	Continued retention; review by 2 December 2016; CAD to file report 2 weeks before
22 November 2016	4 January 2017	Continued retention; review by 4 July 2017; CAD to file report 2 weeks before
20 June 2017	1 August 2017	Continued retention; review by 1 February 2018; CAD to file report 2 weeks before
18 January 2018	-	On 2 February 2018, the court ordered CAD to apply for a Disposal Inquiry

17 On 2 February 2018, the Magistrate ordered the CAD to apply for a Disposal Inquiry ("DI") to dispose of the UOB funds. The CAD thus prepared for an application for a DI, taking steps to:

(a) Ascertain, from a list of more than 500 complainants, the persons who appeared likely to have an interest in the UOB funds.

(b) Contact and notify 146 potential claimants who lodged reports against APB.

(c) Inform the 146 potential claimants to submit claim forms to indicate their interest in laying claim to the UOB funds.

(d) Review claim forms submitted by approximately 138 potential claimants, as well as the supporting documentation.

(e) Conduct funds tracing analysis of payments made to and from APB.

(f) Attend to queries from potential claimants.

(g) Consult the Attorney-General's Chambers ("the AGC") on the method of distribution of the UOB funds amongst the potential claimants.

18 On 16 July 2018, the CAD applied for a DI to be held in October 2018. The DI was fixed for hearing on 26 November 2018.

19 On 26 November 2018, the court directed the CAD to conduct a "townhall" session, for the potential claimants to discuss and potentially agree on a method of distribution of the UOB funds. The DI hearing was thus adjourned to 22 February 2019. The petitioner's counsel attended the DI hearing on 26 November 2018, with no objections being recorded from the petitioner. A total of 112 other claimants were present and/or represented at the DI hearing.

20 Sometime in December 2018 or early January 2019, in consultation with the AGC, the CAD included in the pool of assets nine yellow-coloured rectangular blocks (presumed to be gold bars) and six silver-coloured rectangular blocks (presumed to be silver bars) ("the seized blocks") that were seized from APB but could not be traced to any particular investor. The CAD did so as they were of the view that the seized blocks and the UOB funds had a common pool of potential claimants.

21 Pursuant to a request by the CAD, the DI hearing that was originally fixed for 22 February 2019 was adjourned to 31 May 2019.

22 On 8 May 2019, the CAD's application for a DI in respect of the seized blocks was approved and fixed for hearing together with the UOB funds on 31 May 2019.

23 On 17 May 2019, the "townhall" session was convened for the potential claimants in respect of both the UOB funds and the seized blocks. The petitioner's counsel, again, attended this session. The potential claimants were however unable to reach a consensus as to the distribution of the UOB funds and seized blocks.

24 On 31 May 2019, during the course of the DI hearing, the Petitioner's lawyer informed the court that the present application had been filed on 14 May 2019. The court ordered that the DI proceedings be stayed.

25 In support of her application, the petitioner filed two affidavits dated 14 May 2019 and 17 July 2019 respectively. The matter was first scheduled for hearing on 31 July 2019 but was adjourned pursuant to the petitioner's request to consider whether to file a reply affidavit to the respondent's affidavit (dated

25 July 2019). The parties eventually appeared before me on 11 September 2019 to present their respective oral arguments.

The parties' positions

26 The petitioner sought three main orders:

(a) that the continued seizure of the UOB account by the CAD after 1 February 2018 was invalid, illegal and illegitimate;

(b) that the UOB funds should not be mixed with monies from Lee's other companies; and

(c) that she ought to be given liberty to make claim on the UOB funds to satisfy the judgment debt owed to her.

27 The petitioner's complaints related primarily to allegations that the CAD had failed to comply with the provisions of s 370 of the CPC, including the timely provision of reports to the Magistrate as required under s 370(1) of the CPC, that the continued seizure of the UOB funds was illegal, and that her right to be heard and her right to information in the context of s 370 had been infringed. She also took issue with various purported procedural irregularities that arose in the course of her correspondence with the CAD.

28 The respondent, on the other hand, took the position that this case did not fall within the High Court's revisionary jurisdiction. It was also argued that, pursuant to the CAD's reporting to the Magistrate on 12 March 2013, legal control and custody of the UOB funds had vested with the Magistrate. On that basis, there was no continued seizure of the UOB funds by the CAD. Finally, the respondent argued that the petitioner was guilty of an abuse of process in

bringing the application for criminal revision.

Issues to be determined

29 Having summarised the parties' positions and argument, three issues fell for determination:

(a) whether this case fell within the High Court's revisionary jurisdiction;

(b) whether legal control or custody of the UOB funds had vested with the Magistrate from the date that the seizure was reported; and

(c) whether the petitioner had made out her case for criminal revision.

The High Court's revisionary jurisdiction

30 Section 400(1) of the CPC, which concerns the High Court's revisionary jurisdiction, provides the following:

> Subject to this section and section 401, the High Court may, on its own motion or on the application of a State Court, the Public Prosecutor or the accused in any proceedings, call for and examine the record of any criminal proceeding before any State Court to satisfy itself as to the correctness, legality or propriety *of any judgment, sentence or order* recorded or passed and as to the regularity of those proceedings. [emphasis added in italics]

31 The respondent submitted that the present application for revision was improperly brought because criminal revision proceedings applied only to judgments or orders of finality. According to the respondent, since there was no existing order that finally disposed of the rights of the parties (a final disposal order for the UOB funds has not yet been made), the petition was seriously

defective.

32 In support of its argument, the respondent relied on the observation of Chao Hick Tin JA in *Soh Guan Cheow Anthony v Public Prosecutor* [2015] 1 SLR 470 ("*Soh*") at [34] – that there was a presumption that the phrase "judgment, sentence or order" in s 395(2)(*b*) of the CPC should apply to decisions which have an element of finality in them." Reference was also made to my decision in *Lee Chen Seong Jeremy and others v Public Prosecutor* [2019] 4 SLR 867 ("*Jeremy Lee*") at [107], where I affirmed Chao JA's position.

33 Section 395(2) of the CPC, which concerns the ability of a trial court to state a case to the relevant court on a question of law, states:

> (2) Any application or motion made –
>
> …
>
> (*b*) on any other question of law must be made in writing within 10 days from the time of the making or passing of the judgment, sentence or order by the trial court and set out briefly the facts under deliberation and the question of law to be decided on them.

34 I disagreed with the respondent's submission as s 395(2)(*b*) and s 400(1) of the CPC were meant for use in very different contexts. The respondent's point appears to arise from a misunderstanding of the observation I made in *Jeremy Lee* at [107]. I had stated that:

> Before proceeding further, and although neither party specifically raised this in their submissions, it is best to be clear that the present petition did not fall afoul of the prohibition in s 400(2). There had clearly been no judgment nor sentence rendered. And there had also been no order made by the Magistrate, because the phrase "judgment, sentence or order" in the CPC has been judicially interpreted to mean judgments, sentences and orders which have an element of finality …

35 I had observed that s 400(2) of the CPC, which prohibits a party from making an application for criminal revision if he or she failed to file an appeal, did not apply since there was no final judgment, sentence or order. My emphasis was on how the revision process should not be allowed to be used as a backdoor appeal. An application for criminal revision was validly filed in that case and there was no reason why it should be any different in the present situation: this should have been clear from a reading of [109] in *Jeremy Lee*.

36 In contrast, Chao JA's guidance in *Soh* was directed at how the word "order" in the phrase "judgment, sentence or order" in s 395(2)(*b*) of the CPC should be construed to refer only to final orders, so that the reference of non-constitutional questions of law may be made only after a final judgment, sentence or order has been rendered, or whether an "order" encompassed interlocutory orders made in the course of a criminal trial.

37 With respect, both cases cited by the respondent appeared to have been read outside of their proper contexts. In any event, the applicable case law on s 370, including my earlier decision of *Jeremy Lee*, supports the view that the High Court's revisionary jurisdiction is wide and not limited to final orders.

38 In *Public Prosecutor v Sollihin bin Anhar* [2015] 2 SLR 1, Tay Yong Kwang J (as he then was) considered that the revisionary powers of the High Court were sufficiently broad to allow it to reverse a decision by the State Courts to grant bail to an accused. In reaching this decision, Tay J noted at [14] that both parties had agreed that a decision arrived at in relation to a bail application was interlocutory in nature and did not amount to a judgment or order of finality from which an avenue for appeal arises. The lack of finality in the State Courts' decision was of no significance.

39 In *Rajendar Prasad Rai and another v Public Prosecutor and another matter* [2017] 4 SLR 333 ("*Rajendar*"), Sundaresh Menon CJ was faced with the question of whether the Magistrate had appropriately exercised her discretion to extend seizure under s 370 of the CPC. He was similarly unconcerned with the lack of finality in the Magistrate's orders – it did not serve as an obstacle for the court's exercise of its revisionary jurisdiction.

40 Finally, the broader scope of the High Court's revisionary jurisdiction may be seen from the plainly different wording of the applicable sections themselves. Section 395(2)(*b*) uses the phrase "*the* judgment, sentence or order", which may be contrasted with the broader wording of s 400(1), which refers to "*any* judgment, sentence or order".

41 I thus found that there was no merit to the respondent's submission that the present case fell outside of the High Court's revisionary jurisdiction.

Whether legal control or custody vested in the Magistrate

42 The respondent further suggested that the petitioner lacked any legal basis to argue that the continued seizure of the UOB funds by the CAD was illegal. It was argued that there was, in fact, no continued seizure – or order for continued seizure – of the seized monies, since legal control and custody over the seized monies vested in the Magistrate from the time of the s 370 report of 12 March 2013.

43 Reliance was placed on *Ung Yoke Hooi v Attorney-General* [2009] 3 SLR(R) 307 ("*Ung Yoke Hooi*") and *Mustafa Ahunbay v Public Prosecutor* [2013] 4 SLR 1049 ("*Mustafa Ahunbay (HC)*") for this proposition.

44 Section 370(1) states:

> (1) If a law enforcement officer seizes any property in the exercise of any power under section 35 or 78, the law enforcement officer must make a report of the seizure to the relevant court at the earlier of the following times:
>
> (*a*) when the law enforcement officer considers that the property is not relevant for the purposes of any investigation, inquiry, trial or other proceeding under any written law;
>
> (*b*) one year after the date of seizure of the property.

45 There is nothing in the text of s 370(1) suggesting that once a s 370 report is made to the Magistrate, the property should no longer be considered as being under continued seizure. Notwithstanding what has been set out in *Ung Yoke Hooi* at [26] and the *Mustafa Ahunbay (HC)* at [15], that once a s 370 report is made, the Magistrate obtains legal control and custody of the seized properties, in my view there is a valid distinction that should be maintained between legal custody and control, and continued seizure by the CAD. Even though a DI had already been convened and the court exercises judicial oversight over the UOB funds, I did not see why it must logically follow that there is no continued seizure by the CAD. The seized monies in the UOB account remain seized and have yet to be disposed of.

46 This is supported by the High Court's approach in *Rajendar* at [42]–[43]. Menon CJ stated:

> 42 Leaving that to one side, in the normal case, after a seizure has been made under s 35, the process then shifts to s 370. Specifically, s 370(1)(*b*) of the CPC imposes a long-stop date of one year from the date of seizure, within which the Police must report the seizure to the Magistrate. …
>
> 43 At this stage, *assuming the Police wish to extend the seizure beyond the one-year period, judicial oversight is imposed.* …

[emphasis added]

47 Thus, while legal custody and control may have vested in the Magistrate, the UOB funds continued to be under seizure by the CAD. This distinction is not inherently inconsistent or illogical. Conversely, it would be illogical to contend that there is no continued seizure of the monies by the CAD when no final disposal order has been made by the court.

48 As the respondent could not point to any other consideration that rendered this case unsuitable for criminal revision proceedings, I proceeded to consider the substance of the petitioner's claim proper.

Whether the petitioner made out her case for criminal revision

49 As stated in *Rajendar* at [24], the High Court's revisionary powers under s 400 of the CPC are to be exercised "sparingly". The threshold that must be crossed before the court will act to grant any relief is that of "serious injustice"; it must be demonstrated that not only was there "some error", there must have been material and serious injustice occasioned as a result. The law on this matter was subsequently affirmed in *Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064 at [15], as well as in *Jeremy Lee* at [110].

50 In an attempt to meet this threshold requirement, the petitioner mounted a number of arguments and levied various accusations against the CAD. I dealt with each in turn.

The petitioner's rights to be heard and informed

51 The Court of Appeal in *Mustafa Ahunbay v Public Prosecutor* [2015] 2 SLR 903 ("*Mustafa Ahunbay (CA)*") made clear that there is a key right for

interested parties on the occasion of the reporting or subsequent reporting of the seizure under s 370 of the CPC – the right to be heard.

52 In determining the persons that were extended this right, the Court of Appeal opined that a wide class of interests should be considered; any person who could show an interest in the property would be able to claim a right to be heard, not only persons who are entitled to possession of the seized property (see *Mustafa Ahunbay (CA)* at [56]–[58]). As a general guideline, in determining whether a potential claimant has a *prima facie* interest in the seized property, the court should consider (see *Mustafa Ahunbay (CA)* at [68]):

(a) the nature and type of interest claimed in the seized property;

(b) where there are claims by multiple parties, the relationship between each party claiming an interest in the property; and

(c) whether documentary evidence of the interest in property is normally available, and if so, whether such evidence is produced.

53 I was satisfied that the petitioner possessed such a *prima facie* interest. She had obtained judgment against APB and would hence have an interest in satisfying the said judgment debt from the UOB funds. This would be so notwithstanding the fact that there were other potential claimants to the UOB funds. I thus turned to consider whether the petitioner's right to be heard was infringed.

Whether the petitioner's right to be heard was infringed

54 According to the petitioner, both parties attended a hearing at the State Courts on 1 August 2017, where the CAD sought to convince the court that an

extension for seizure should be granted. However, in the midst of said hearing, the court allowed the CAD to address it on an *ex parte* basis, following which, an extension for seizure was granted. This purportedly infringed the petitioner's right to be heard, as the petitioner was prevented from addressing the court.

55 The respondent conceded that this occurred, but argued that at the time, the law was unclear that it would be procedurally inappropriate for *ex parte* hearings to be held after *inter partes* hearings had commenced for s 370 matters.

56 In *Jeremy Lee*, I opined *obiter* at [89]–[90] that *ex parte* hearings should not take place once an *inter partes* hearing has commenced. I stated that:

> 89 … in order to ensure certainty, finality, and fairness, there should be no further *ex parte* hearings once the *inter partes* hearing had commenced. If there was information that was sufficiently important and material to the inquiry that the Magistrate would reasonably have been expected to ask for it, that information should have been presented in the s 370 report. If there were concerns as to the sensitivity of the information, the prosecution should have gone before the Magistrate *ex parte* to ask that that part of the report not be disclosed in advance of the *inter partes* hearing. …
>
> 90 To sum up … the Magistrate cannot … hear the prosecution *ex parte* once the *inter partes* hearing has commenced.

57 Prior to my decision, however, it is fair to say that such a practice of having *ex parte* hearings interposed during *inter partes* hearings was not uncommon and was not invariably deemed objectionable. This is further reflected by the fact that there was no challenge made by the petitioner nearly two years ago when the *ex parte* hearing took place on August 2017. Her argument was mounted only with the benefit of hindsight having regard to my subsequent observations in *Jeremy Lee* in 2019. In any event, it still fell on the petitioner to show how this had prejudiced her and caused substantial injustice

to warrant revision. To my mind, the petitioner was unable to demonstrate this.

58 The petitioner also accused the CAD of infringing her right to be heard by "always advis[ing]" her not to attend court proceedings. This was vigorously disputed by the CAD, who argued that the Petitioner's allegation was "completely baseless".

59 I was of the view that this was indeed a bare allegation devoid of any merit. The CAD adduced a number of exhibits demonstrating that the petitioner had indeed been invited to attend court proceedings if she wished to do so, and that the CAD would only apply to vacate the hearing if there were no claimants appearing for said hearing.

60 The right to be heard, however, also entails "a right to be given access to information required for the right to be heard to be effective", which includes the right to notice of the hearing, as well as the s 370 reports prepared by the CAD (see *Mustafa Ahunbay (CA)* at [69]).

Whether the petitioner's right to notice of the hearing was infringed

61 In the absence of any statutory or regulatory requirement specifying the amount of time that should be given, a notice should be served at a time sufficiently prior to the hearing to enable a party to prepare his case and to answer the case against him (see *Mustafa Ahunbay (CA)* at [75]).

62 The petitioner's main contention was that she was, essentially, kept out of the loop as the CAD had failed to inform her of the details of various proceedings. This amounted to a purported breach of natural justice. I was of the view however that there was little merit to these allegations.

63 For instance, the petitioner alleged that the CAD had taken a "unilateral decision" to vacate a "hearing date" on 4 July 2017 without informing her. The respondent contested this, explaining that the CAD had filed a s 370 report on 20 June 2017 (two weeks before 4 July 2017), upon which the Magistrate fixed the s 370 hearing on 1 August 2017. The CAD subsequently informed the petitioner on 11 July 2017 of the updated hearing date. I found the respondent's version of events to be correct after reviewing the relevant exhibits – there was never any "hearing date" formally set down for 4 July 2017. Instead, the CAD was merely obligated to provide an update to the courts by filing a s 370 report *by* 4 July 2017.

64 A similar allegation was made by the petitioner with regard to the CAD purportedly excluding her counsel from a hearing on 2 February 2018, during which the court ordered the CAD to apply for a DI. While the order to apply for a DI was given to the CAD on 2 February 2018, there was no s 370 hearing on that day. As the respondent explained during oral submissions, the date of 2 February 2018 merely served as a deadline for CAD to file its s 370 report – the CAD complied with this deadline by filing its report on 18 January 2018.

65 There was hence little basis for the Petitioner's complaint in this regard.

Whether the petitioner's right to the s 370 reports was infringed

66 The petitioner mounted further allegations that the CAD had not been forthcoming with the provision of the s 370 reports. She maintained that her counsel was denied "full knowledge and materials".

67 Specifically, the petitioner claimed that despite her counsel sending a request for the s 370 reports, the CAD had neglected to provide the s 370 reports

dated 12 March 2013, 2 July 2013, 7 March 2014, 12 September 2014, and 27 March 2015. The remainder of the s 370 reports were obtained by the petitioner either from the CAD, or through the Integrated Criminal Case Filing and Management System ("ICMS"). She highlighted that despite her counsel writing to the CAD on 4 January 2017 to request for copies of the s 370 reports preceding the report dated 29 December 2015, the CAD refused to provide the same.

68 The CAD however, explained that they had not denied the petitioner the relevant s 370 reports. After receiving the request from the petitioner's counsel, the CAD had, on 3 February 2017, furnished two s 370 reports (for 2 March 2016 and 4 January 2017). The CAD also requested her to state her purpose in seeking the s 370 reports, in order to decide whether to extend the remaining reports. However, no reasons were offered by counsel in relation to their request for the reports and counsel did not further respond.

69 I took the petitioner's case at its highest in accepting that the CAD could arguably have been more forthcoming in providing disclosure and information beyond the two s 370 reports that were furnished in February 2017. However, if there had been legitimate concerns and reasonable suspicion all along as to the legality or propriety of continued seizure, the proper recourse for the petitioner would have been to seek a direction from the Magistrate for all the relevant reports to be produced. If that had been refused, the petitioner could have then applied to the High Court (whether by way of criminal revision or criminal motion) for an appropriate order. The petitioner saw no need to do so for more than two years after the CAD responded in February 2017. Instead, she chose to file the application for criminal revision only in May 2019, well after the DI had commenced. Seen in context, the application, and its ostensible

grounds in support, would appear very much to have been an afterthought.

Procedural improprieties on the part of the CAD

70 The petitioner had two main complaints about procedural improprieties on the part of the CAD.

71 She first took issue with the lack of signatures on several s 370 reports that had been uploaded by the CAD onto the ICMS, as well as the presence of two s 370 reports that were dated 29 December 2015 ("the first Dec 2015 report" and "the second Dec 2015 report" respectively). These improprieties, according to the petitioner, "severely compromised" the "legality and legitimacy of the continued seizure of the [UOB] account".

72 As explained in the affidavit filed on behalf of the CAD, the filing of the second Dec 2015 report in ICMS was only done because the first Dec 2015 report had been erroneously uploaded. The CAD had rectified its mistake by filing the second Dec 2015 report within a mere minute after the first Dec 2015 report was filed. I was satisfied that there had been a genuine mistake on the part of the CAD, and that there was no attempt to mislead the petitioner or her counsel.

73 With regard to the lack of signatures on several of the s 370 reports that had been filed in ICMS, it was also explained by the CAD that there is simply no requirement, for the purpose of ICMS filing, for documents in Microsoft Word format to be signed. The petitioner did not seek to dispute the legitimacy of the CAD's statement in this regard, nor did she have any basis to question the authenticity of the s 370 reports that were unsigned.

74 In any event, as mentioned above at [57], the petitioner failed to demonstrate why these purported improprieties had caused her substantial injustice to warrant revision.

75 The petitioner's final complaint was that the CAD "were not expeditious in the conduct of the [petitioner's] matter". In support of this ground, the petitioner's counsel referred me to a long list of correspondence between them and the CAD that purportedly demonstrated CAD's lack of cooperation. The petitioner did not particularise specific instances of CAD's conduct in the matter, nor did she explain where this purported duty to act expeditiously stemmed from.

76 Taking the petitioner's right to be heard as a starting point, however, the CAD was obligated to provide sufficient information to the petitioner, within a reasonable period of time before the s 370 hearing, such that she could make an informed decision whether to attend. The petitioner's counsel was not able to convince me that, based on the adduced correspondence, the CAD had not fulfilled this obligation.

77 I noted, however, that several s 370 reports had been filed out of time (see above at [16] for a table documenting the s 370 reports). Three reports were filed late: the 7 March 2014 report (which was to be filed on 1 January 2014), the 27 March 2015 report (which was to be filed on 26 February 2015), and the 22 November 2016 report (which was to be filed on 18 November 2016). This was not disputed by the respondent.

78 *Ung Yoke Hooi* provides useful guidance in determining the legal effect of delays in reporting seizure (albeit in the context of non-compliance with s 392

of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)). The Court of Appeal stated at [27]–[28]:

> 27 In our view, non-compliance with s 392 has different legal consequences, depending on the nature of the non-compliance. *If the non-compliance is confined to a delay in reporting the seizure, as in the present case, then the delay would cease to have legal consequences for judicial review once the seizure is reported to [a Magistrate's Court].* But if the non-compliance is a complete and total failure to report at all, then it would have given rise to a right to judicial review as CPIB would then be in wrongful control or custody of the seized property from the time it failed to comply with s 392(1) of the CPC. In the present case, CPIB's delay in reporting the seizures to [a Magistrate's Court] (the delay was from about one to three months) gave rise to a period of time when it had ceased to have any power to exercise legal control or custody of the seized accounts. In our view, *if the Appellant had applied for leave for judicial review in this intervening period, there would have been no reason why such leave would not have been granted to the Appellant for the purpose of setting aside the seizures*.
>
> 28 In view of the *eventual reporting of the seizures to [a Magistrate's Court], the Appellant's case was a non-starter* …
>
> [emphasis added]

79 I was of the view that similar considerations applied in the present case. As the CAD had reported the seizures to the Magistrate's Court well before the petitioner commenced her application for criminal revision, the CAD's delay would have ceased to have legal consequences.

Clarifications regarding the s 370 reporting process

80 At this juncture, it would be apposite to clarify several points regarding the scope of the s 370 reporting process. I should add however that the observations which will follow on aspects of the s 370 reporting process did not necessarily arise from submissions made in the course of this hearing. As such, the ensuing discussion is merely set out *obiter*.

81 In *Jeremy Lee*, apart from holding that *ex parte* hearings should generally not take place after *inter partes* proceedings had commenced, I had decided that there was to be only a "single, entire report" to be filed within the one-year mark (see *Jeremy Lee* at [49]), which I term for convenient reference as the "one report" rule for present purposes. In addition, any questions posed by the Magistrate to the CAD were not to be taken as an invitation for the CAD to tender fresh material; the exercise of the Magistrate's judicial function should be confined to inspecting, examining and asking questions of the material already adduced (see *Jeremy Lee* at [54]).

82 The purpose of the "one report" rule in the context of contested s 370 applications for continued seizure is to ensure finality as to whether the seized property should be retained by law enforcement and fairness to those with a right to be heard (see *Jeremy Lee* at [53]). It prevents the Prosecution from extending the statutory reporting deadline at will by filing a bare-bones initial report within the one-year mark, and using it as an anchor for ancillary documents or reports to latch on to (which would only be filed after the one-year mark).

83 The "one report" rule, however, is a rule of substance rather than form, and is not to be interpreted so rigidly as to impose a blanket ban on obtaining any information whatsoever after a report is filed. The introduction of additional material should not be prohibited where the interests of finality and fairness are not compromised.

84 I will elaborate further. First, the rule does not constrain the CAD from adducing – or the Magistrate from requesting – fresh material after a report is filed, but prior to the one-year mark. For instance, if the CAD were to report a

seizure four months ahead of the one year mark, the Magistrate may request for updated information by the one year deadline.

85 Additionally, the rule does not interfere with what I understand to be the Magistrate's existing practice of rejecting and directing the re-filing of reports where the initial reports have not stated or misstated material information (*eg*, whether notice has been given to interested parties), as long as the report is re-filed ahead of the one year mark. Equally, it would not operate to prevent re-filing ahead of the one year deadline where administrative or clerical errors have been made, resulting, for instance, in the wrong document(s) being filed.

86 Further, given its purpose, the "one report" rule does not prohibit the introduction of fresh material *if the material is not used to justify the continued seizure of property*. In a situation where the Magistrate is not satisfied that the further retention of the seized property is necessary, the Magistrate must make an order to either deliver the property to the lawfully entitled owner, or to address the proper custody and production of the property. The Magistrate would certainly be justified in requesting for additional material from the CAD in order to ascertain the appropriate order to be made, especially if the s 370 report that was previously filed was focused solely on the necessity of continued seizure.

87 Finally, there remains a question of whether the "one report" rule applies to subsequent s 370 reports filed after the one year mark, for the purposes of further reporting and continued seizure. The plain wording of s 370(1) on which the rule is based, as seen above at [44], does not appear to prescribe any statutory deadline for reports filed after the one year mark.

88 There is hence a question as to whether the "one report" rule would apply to all deadlines imposed by the court for further reporting, such that only one substantive report may be filed ahead of the designated court review date.

89 I am of the view that the rule should similarly apply. While s 370(1) is silent on this, the same considerations of finality and fairness continue to be relevant even after the one year mark. The risk of delay and prejudice to an applicant remains a distinct possibility, even after the initial s 370 report has been filed. There are hence compelling reasons for the scope of the "one report" rule to be extended past the one year mark.

Decision on the merits of the petitioner's application

90 Returning to the present application, I found that there was patently no merit or basis for the application for revision. A DI was already underway and I agreed with the respondent that the petitioner's application was filed to subvert the ongoing DI proceedings.

91 Apart from mounting a barrage of allegations of procedural irregularity or impropriety, the petitioner had not shown why there was palpable injustice or serious prejudice to her arising from the continued seizure and impending DI. As stated above at [49], this is necessary before the court will exercise its revisionary powers. She was certainly not the sole claimant in the DI and she was not in any position different from the numerous other potential claimants. Other claimants had in fact obtained judgments ahead of her. The difficulties in investigation and tracing given the large number of other potential claimants could not be disregarded.

92 This was thus a very different situation from that of *Jeremy Lee*, where

I was of the view that the threshold of serious injustice was crossed. There, serious injustice arose because the seized property was wrongfully retained where there was no basis in law for its continued seizure. The Prosecution could not adduce any proper basis for the seized property to be retained past the one-year deadline provided under s 370(1)(*b*) of the CPC. Crucially, there was no doubt that the petitioners were the persons entitled to the possession of the seized property (see *Jeremy Lee* at [114]–[115]). In contrast, the petitioner in the present case was but one of many potential claimants. There was also no cogent reason to invalidate the prior extensions of seizure that were ordered as the material before me did not show that the continued seizure was improper.

93 I was not persuaded, contrary to counsel's strenuous assertions, that any *mala fides* was involved on the CAD's part. There was in my view no breach of natural justice as alleged. The petitioner was not denied her right to be heard or to be kept informed of the status of proceedings. Even if it could be said that the CAD ought to have acted more expeditiously and efficiently in keeping all claimants informed and updated more regularly at each stage of the proceedings, it was not at all clear that real prejudice had been occasioned to the petitioner in the circumstances.

94 It was unfortunate that much time had elapsed since the seizure took place in February 2013. Innocent claimants, including the petitioner, were understandably unhappy, not only with their predicament as victims of what would appear to have been a complex scam, but also with the length of time taken for matters to head towards some form of resolution. Steps to convene a DI were finally afoot from 16 July 2018 when the CAD applied for a DI to be held, pursuant to the Magistrate's direction on 2 February 2018. However, the petitioner's application derailed the DI process, and was evidently motivated

purely by self-interest. It has resulted in yet more delay as the DI had been stayed pending the outcome of the application.

Conclusion/Costs

95 I dismissed the petitioner's application for criminal revision. For the reasons I have set out above, it was plainly unmeritorious.

96 The respondent urged me to consider that the petitioner's conduct amounted to an abuse of process as she commenced these proceedings despite being aware of the ongoing DI proceedings – this amounted to an impermissible attempt to "bypass the other potential claimants".

97 I was disinclined to find that this was a clear and obvious case of abuse of process. As stated by the Court of Appeal in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 at [131], albeit in the context of civil procedure, the "threshold for abusive conduct is very high". I was of the view that this applied also to a situation of criminal revision; as stated by Tan Siong Thye JC (as he then was) in *Arun Kaliamurthy and others v Public Prosecutor and another matter* [2014] 3 SLR 1023 at [31], what is an abuse of process of the court "should not differ between civil and criminal proceedings". I therefore declined to order costs against the petitioner.

98 However, I disallowed 50% of the costs as between the petitioner and her counsel, having regard to O 59 r 8(1)(*a*) of the ROC. Under this provision, the court may disallow the costs as between a client and his or her counsel if (see *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] 2 SLR 532 ("*Bintai*") at [66]):

(a) the counsel acted improperly, unreasonably or negligently;

(b) the counsel's conduct caused his or her client to incur unnecessary costs; and

(c) it is in all the circumstances just to order the counsel to compensate his or her client for the whole or any part of the relevant costs.

99 I was satisfied that costs were incurred unreasonably and improperly by counsel in advising her to proceed with the application even after the respondent's affidavit had been filed and all the relevant s 370 reports sought had been furnished. The petitioner requested and was given time to consider whether to reply to the respondent's affidavit. She was advised to do so, and she proceeded to file an additional affidavit in reply on 13 August 2019.

100 I note that in both the petitioner's affidavits and in counsel's submissions, various speculative assertions and sweeping allegations were made. Without entering into a detailed examination of them for present purposes, it would suffice to state that I saw these efforts as evidencing a predisposition to see many shadows at play where none existed. At any rate, the petitioner herself had no personal knowledge of a fair number of these matters, particularly those that surfaced in her additional affidavit that was filed in response to the respondent's affidavit.

101 To cite but one illustration, both the petitioner and counsel attempted to suggest that the CAD and the courts had somehow colluded to avoid or delay disclosing information such as hearing dates, or to exclude counsel from hearings. I found absolutely no basis for them to cast these aspersions. I was

unable to see any reason whatsoever why the CAD or the courts would have deemed it acceptable or necessary to do so. There was nothing to be gained nor any incentive to engage in such pointless tactics. Moreover, given the sheer number of claimants involved, it would be reasonable to accept that the CAD would need time to make administrative preparations for the DI hearing.

102 The petitioner was advised to proceed with her application for criminal revision even after the respondent's affidavit had been filed. Such a course was, with respect, "thoughtless and undiscerning": *Bintai* at [68]. It was no longer advisable, reasonable or necessary once the requisite clarifications had been set out in the respondent's affidavit. As such, I made an order disallowing 50% of the costs as between the petitioner and her counsel.

See Kee Oon
Judge

Mahadevan Lukshumayeh (Lukshumayeh Law Corporation) (Instructed) and Loh Chong Yong Thomas (TL Law Corporation) for the petitioner;
Magdalene Huang and Koh Mun Keong (Attorney-General's Chambers) for the respondent.