

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

[2022] SGHC 171

Criminal Motion No 31 of 2022

Between

Muhammad Hisham bin
Hamzah

... Applicant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review]

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Muhammad Hisham bin Hamzah

v

Public Prosecutor

[2022] SGHC 171

General Division of the High Court — Criminal Motion No 31 of 2022

Vincent Hoong J

12 July 2022

19 July 2022

Judgment reserved.

Vincent Hoong J:

Introduction

1 Convicted persons may avail themselves of only one tier of appeal. The review mechanism encapsulated in ss 394H and 394I of the Criminal Procedure Code 2010 (2020 Rev Ed) (“CPC”) does not carve out an exception to this principle. Instead, it seeks to balance the respect for finality of judgments with the interest in preventing a miscarriage of justice.

2 The present criminal motion, which seeks leave to make an application to review my decision in HC/MA 9870/2020/01 (“MA 9870”), is unfortunately an attempt by an applicant to relitigate issues that were considered and rejected on appeal. For the following reasons, I dismiss it summarily pursuant to s 394H(7) of the CPC.

Background

The trial

3 The applicant, Mr Muhammad Hisham bin Hamzah (“Hisham”), claimed trial to a charge of possession of diamorphine for the purpose of trafficking in common intention with his co-accused person, Nurul Shahida binte Mohamed Razhik (“Nurul”) under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) and s 34 of the Penal Code (Cap 224, 2008 Rev Ed) and punishable under s 33(4A)(i) of the MDA (“the Charge”).

4 Officers from the Central Narcotics Bureau (“CNB”) had, on 12 September 2018, arrested Hisham and Nurul in a hotel room on suspicion that the duo had committed drug-related offences and recovered, *inter alia*, one packet and six straws found to collectively contain not less than 0.12g of diamorphine (“the Diamorphine Exhibits”) from the hotel room.

5 At first instance, Hisham did not dispute that he was in possession of the Diamorphine Exhibits and knew that these exhibits contained diamorphine. His defence was that he did not possess the Diamorphine Exhibits for the purpose of trafficking, but merely for his own consumption.

6 The District Judge (“the DJ”) convicted Hisham on the Charge. She found that the Prosecution had proved the chain of custody of the Diamorphine Exhibits beyond a reasonable doubt and disbelieved Hisham’s defence as it flew in the face of his prior statements (in which he expressed his intention to sell the Diamorphine Exhibits) and negative urine results. The DJ imposed the mandatory minimum sentence of ten years’ imprisonment and ten strokes of the

cane. Her grounds of decision can be found at *Public Prosecutor v Muhammad Hisham bin Hamzah* [2020] SGDC 268 (“GD”).

MA 9870

7 Hisham appealed against his conviction on the Charge in MA 9870. He contended that there was a break in the chain of custody of the Diamorphine Exhibits for the following two reasons (“the Two Grounds”).

8 First, Hisham suggested that there was a discrepancy in the description of one of the methamphetamine exhibits (“the Methamphetamine Exhibit”) in the First Information Report (Exhibit P1) and in his contemporaneous statement (Exhibit P3A) (“the First Ground”). This exhibit was marked “D2B1” in Exhibit P1 and “B2B1” in Exhibit P3A. Whereas the Methamphetamine Exhibit was noted to be “[t]wo packets of crystallised substances” in Exhibit P1, it was described as “one packet of crystallised substances” in Exhibit P3A.

9 Second, Hisham submitted that Exhibit P1 inaccurately detailed the colours of an envelope and two pouches respectively marked C1, F and H (“the Other Exhibits”) as seen in the photographs appended to Exhibit P5 (*ie*, Hisham’s statement recorded under s 22 of the CPC on 13 September 2018 at 1.00am) (“the Second Ground”).

10 On 17 March 2021, I affirmed the DJ’s decision and dismissed Hisham’s appeal against his conviction on the Charge.

The present application

11 More than a year later, on 21 June 2022, Hisham filed the present criminal motion. This was accompanied by his handwritten affidavit repeating his contentions at [8] and [9] above.

12 The Prosecution submits that none of the arguments raised by Hisham satisfies the cumulative requirements in s 394J of the CPC:

(a) The points raised by Hisham in the present application have been canvassed (and rejected) at the trial and on appeal. They do not satisfy the requirements set out in ss 394J(3)(a) and 394J(3)(b) of the CPC.

(b) Hisham’s contentions are not compelling within the meaning of s 394(3)(c) of the CPC. The purported discrepancies in description and colour pertain to exhibits that are not subject of the Charge.

My decision

Legal principles

13 An application for leave to make a review application must disclose a legitimate basis for the exercise of the court’s power of review: *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 (“*Kreetharan*”) at [17]. In short, an applicant must demonstrate that there is sufficient material (being evidence or legal arguments) on which the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made (s 394J(2) of the CPC). For the material to be sufficient, it must satisfy *all* the requirements set out in ss 394J(3)(a) to (c), namely, that: (a) before the filing of the application for leave to make the review application, the material has not been canvassed at any stage

of the said criminal matter; (b) the material could not have been adduced in court earlier even with reasonable diligence; and (c) the material is compelling, in that it is reliable, substantial, powerfully probative and capable of showing almost conclusively that there has been a miscarriage of justice in the said criminal matter. Where the material consists of legal arguments, s 394J(4) of the CPC imposes an additional requirement that it must be based on a change in the law that arose from any decision made by a court after the conclusion of all proceedings related to the criminal matter.

14 As repeatedly stressed by the Court of Appeal, leave will not be granted if an application for leave fails to meet any of the cumulative requirements set out in s 394J(3) of the CPC (and, in respect of new legal arguments, the additional requirement in s 394J(4) of the CPC): *Murugesan a/l Arumugam v Public Prosecutor* [2021] SGCA 118 at [9]. These requirements reflect the fact that the ss 394H and 394I procedure “does not provide a second-tier appeal, but, instead, concerns the distinct situation where the case, by this point, has been heard at least twice”: *Kreetharan* at [19].

Application to the present case

15 I find that Hisham fails to satisfy any of the cumulative requirements set out in s 394J(3) of the CPC.

16 To begin, the Two Grounds had been canvassed and considered in prior proceedings. The First Ground was ventilated in the course of the trial (see GD at [55] – [59]) while the Two Grounds were raised and rejected in MA 9870 (see [7] – [10] above). Indeed, in claiming that the Prosecution’s explanation of the First Ground had “misle[d] the [c]ourt” and that he had “highlight[ed] [the

Second Ground] in [c]ourt”,¹ Hisham acknowledges as much. Section 394J(3)(a) of the CPC is accordingly unsatisfied.

17 Next, flowing from the above, in so far as the Two Grounds were in fact adduced in court, Hisham fails to satisfy s 394J(3)(b) of the CPC.

18 Finally, neither of the Two Grounds can be said to be compelling within the meaning of s 394J(3)(c) of the CPC. I am cognisant that the present application is not an appeal and I thus do not propose to revisit the chain of custody of the Diamorphine Exhibits in granular detail. It suffices, for present purposes, to note the following. For one, neither the Methamphetamine Exhibit nor the Other Exhibits was the subject of the Charge. Hisham has not shown how any discrepancy in the descriptions of the Methamphetamine Exhibit or the Other Exhibits casts doubt on the chain of custody of these exhibits, let alone the Diamorphine Exhibits. Additionally, at trial, Hisham himself accepted that he was in knowing possession of the Diamorphine Exhibits. The sole plank of his defence was that he did not possess the Diamorphine Exhibits for the purpose of trafficking (see [5] above). It does not lie in Hisham’s mouth to now assert to the contrary.

Conclusion

19 Sections 394H and 394I of the CPC are exceptional provisions that do not (ordinarily) grant litigants a third bite of the cherry. They give expression to the idea that finality of legal proceedings is not a mere logistical concern but one with profound implications for access to justice by the large number of other litigants: *Public Prosecutor v Pang Chie Wei and other matters* [2022] 1 SLR

¹ Affidavit of Muhammad Hisham bin Hamzah filed on 20 June 2022 at paras 11 and 18.

452 at [10]. While litigants-in-person are generally accorded a degree of latitude, this does not extend to rehashing arguments that have been considered and rejected on appeal with impunity: *Suresh s/o Krishnan v Public Prosecutor* [2022] SGHC 28 at [31].

20 For these reasons, I dismiss this application summarily without setting it down for hearing.

Vincent Hoong
Judge of the High Court

The applicant in person;
Gail Wong and Niranjan Ranjakunalan (Attorney-General's
Chambers) for the respondent.