IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 79

Criminal Motion No 11 of 2021

Between

Mah Kiat Seng

… *Applicant*

And

Public Prosecutor

… *Respondent*

In the matter of
Magistrate's Appeal No 9036 of 2019

Between

Mah Kiat Seng

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Criminal references] — [Leave]
[Criminal Procedure and Sentencing] — [Criminal references] — [Extension of time]

Mah Kiat Seng
v
Public Prosecutor

[2021] SGCA 79

Court of Appeal — Criminal Motion No 11 of 2021
Judith Prakash JCA, Tay Yong Kwang JCA and Belinda Ang Saw Ean JAD
8 July 2021

11 August 2021

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

Introduction

1 The present criminal motion (the "Motion") was the third filed by the applicant, Mr Mah Kiat Seng, in respect of his concluded appeal in HC/MA 9036/2019/01 ("MA 9036"). The applicant's first and second criminal motions – HC/CM 40/2020 ("CM 40") and CA/CM 24/2020 ("CM 24") – had been rejected by the High Court and the Court of Appeal respectively.

2 In the Motion, the applicant, who was in person, sought leave to raise three purported questions of law of public interest to this court. These questions, however, were actually questions of *fact*, which cannot form the subject matter of an application for leave under s 397(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). The applicant was cognisant of the purpose and scope of applications under s 397(1), and he cited in his affidavit the case

law setting out the definition of "questions of law of public interest". Yet, the applicant proceeded with the Motion. This was also despite his having already made a similarly defective application in CM 24, where he raised three *other* questions of fact reframed as questions of law.

3 After hearing the applicant's arguments on 8 July 2021, we dismissed the Motion. We now provide our detailed grounds of decision.

Background and procedural history

Factual background

4 On the evening of 30 November 2017, the applicant entered a classroom in the Mochtar Riady Building at Kent Ridge. He did so without permission. While in the classroom, the applicant was alleged to have played loud music. A complaint was made, and the situation was brought to the attention of a security officer, who was on duty at the material time ("the security officer"). The security officer then made his way to the classroom, where he found the applicant. When the security officer engaged with the applicant in the classroom, the applicant did not provide identification, but instead packed his belongings and tried to leave. The security officer attempted to detain the applicant, which led to a scuffle, during which the applicant allegedly punched the security officer multiple times. A cleaner heard the commotion and came to the security officer's assistance. The applicant then ran away.

5 The applicant was charged on 30 July 2018 with one count of voluntarily causing hurt ("VCH") punishable under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), in MAC-912400-2017 ("the VCH charge"). The VCH charge read as follows:

> You,
>
> …
>
> are charged that you on 30 November 2017, at or about 5.15pm, in room 3-3 of the Mochtar Riady Building, National University Singapore ['NUS'] Business School, located at 15 Kent Ridge Drive, Singapore, did voluntarily cause hurt to Suresh Saundrapandian, to wit, by punching the said Suresh Saundrapandian multiple times, and you have thereby committed an offence punishable under s 323 of the Penal Code (Cap 224, 2008 Rev Ed).

6 The applicant also faced one charge of criminal trespass punishable under s 447 of the Penal Code in MAC-912399-2017 ("the trespass charge"). This charge was issued on 9 October 2018.

The DJ's decision

7 The applicant claimed trial to both charges and was tried before a District Judge ("DJ"). He was represented by counsel at this time.

8 On 31 January 2019, the DJ granted the applicant a discharge amounting to an acquittal with respect to the trespass charge. The DJ, however, convicted the applicant on the VCH charge. The applicant's case had hinged on establishing private defence. The DJ found that the elements of the defence were not made out, because (a) the security officer did not commit any offence against the applicant's body; (b) the applicant did not have any reasonable apprehension of danger; and (c) the applicant's response of punching the security officer several times exceeded what was reasonably necessary to defend himself.

9 On 8 February 2019, after hearing submissions on sentence, the DJ imposed on the applicant a fine of $5,000, in default of which he would serve two weeks' imprisonment. The fine has been paid.

10 The applicant filed a Notice of Appeal on 15 February 2019. The applicant's extensive grounds explaining how the DJ had erred may be summarised as follows:

(a) The DJ made incorrect findings of fact in holding that the applicant carried out a sustained assault on the victim. The DJ placed undue weight on the testimony of the security officer and the cleaner who intervened in the scuffle.

(b) The DJ made incorrect findings of fact and/or erred in law as regards (i) the applicant's right of private defence under s 96 of the Penal Code; (ii) not acquitting the applicant under s 95 of the Penal Code (*ie*, the rule on *de minimis* harm); and (iii) imposing a fine of $5,000 on the applicant.

In light of the appeal, the DJ issued his grounds of decision on 13 January 2020: see *Public Prosecutor v Mah Kiat Seng* [2020] SGMC 4 ("the trial GD").

The High Court's decision in MA 9036

11 On 24 August 2020, MA 9036 came on for hearing before a High Court judge ("the Judge"). The applicant was represented by counsel. The hearing spanned an hour and 45 minutes, and both parties had the opportunity to make their respective submissions. Thereafter, the Judge dismissed MA 9036, giving brief reasons for his decision. The relevant portions of the hearing transcripts read as follows:

> Court: Alright. My view, the Trial Judge's finding that the appellant had punched PW6 multiple times cannot be said to be against the weight of the evidence. The Trial Judge also did [not] err in finding that PW2's evidence and PW3's evidence corroborated PW6's evidence.

> As for private defence, I have some doubts as to whether Section 66(8) applies in this case given that the appellant was acquitted of the criminal trespass charge. If I had to decide this issue, in my view, further submissions will be necessary. However, I do not have to decide this issue because I agree with the prosecution that the appellant's response in punching PW6 multiple times exceeded what was reasonably necessary. I therefore dismiss the appeal against conviction.
>
> As for sentence, I do not think the sentence can be said to be manifestly [excessive]. And accordingly, I also dismiss the appeal against sentence.

12 Seven days after the Judge's decision, on 31 August 2020, the applicant filed CM 24 in the Court of Appeal. On the same day, he also filed CM 40 in the High Court. This was an application to the High Court for leave to make a review application pursuant to s 394H of the CPC. These applications were filed well within the timeframe prescribed by s 397(3) of the CPC.

13 The Judge heard CM 40 pursuant to s 394H(6)(*b*) of the CPC. On 17 September 2020, the Judge summarily refused CM 40 pursuant to ss 394H(7) and 394H(8) of the CPC.

This court's decision in CM 24

14 In CM 24, the applicant sought leave to refer three "questions of law of public interest to the Court of Appeal" pursuant to s 397(1) of the CPC:

> i) On [CPC] s 66(6)(a), whether a suspect could be convicted of assault, which occurred when he was resisting arrest by a private person, after he was acquitted of the 'offence' mentioned in that section?
>
> ii) On [CPC] s 66(6)(a), whether a private person can arrest based upon suspected or actual commission of an offence?
>
> iii) On Penal Code, s 101(1), whether the 'danger to the body' is to be subjectively or objectively felt?

As relief, the applicant requested a rehearing of his appeal in MA 9036.

15 On 1 February 2021, this court heard CM 24. Having heard the parties' arguments, the court dismissed CM 24. Oral grounds of decision were delivered by Sundaresh Menon CJ on behalf of the coram. The Chief Justice stated:

> … A judge is only required to deal with what is essential to dispose of the matter. This is a point that Mr Mah acknowledged and accepted. The judge decided against Mr Mah on the basis that he had exceeded any possible right of private defence. In our judgment, this was amply made out on the facts. The questions framed by Mr Mah simply did not arise in the circumstances. Mr Mah kept contending that the judge found that he had exceeded what was reasonably necessary *because* the judge did not consider the right of private defence. With respect, Mr Mah has gotten this completely wrong. The inquiry into what was reasonably necessary became relevant specifically in the context of considering the right of private defence. It is because the judge found that Mr Mah had exceeded that right, and exceeded what was reasonably necessary, that the judge rejected Mr Mah's reliance on private defence and therefore dismissed Mr Mah's appeal against his conviction. We therefore dismiss the motion. [emphasis in original]

The Motion

16 Then, on 25 February 2021, some six months after MA 9036 was dismissed, the applicant filed the present Motion, along with an accompanying affidavit. The applicant sought (a) an extension of time to file the Motion; and (b) leave to raise three further questions of law of public interest to the Court of Appeal ("the three questions"). The three questions are:

> 12. My three questions are
>
> i) On Penal Code … section 98 (1), whether a doctor's findings of minor injuries sustained by the victim can be classified under the meaning of the phrase *inflicting of more harm than it is reasonably necessary*. …
>
> ii) In their findings of facts, whether judges from the State Court, and consequently the High Court in the exercise of his appellate jurisdiction, are not bounded by the Evidence Act (Chapter 97) in finding that the victim had suffered multiple punches, which was

> beyond what had been recorded in the medical report that there was only a single bruise. …
>
> iii) In their findings of facts, whether judges from the State Court, and consequently the High Court in the exercise of his appellate jurisdiction, are not bounded by section 47(1) of the Evidence Act (Chapter 97) in finding that the victim had suffered serious injuries as a result of sustaining multiple punches, which was beyond the expert's (doctor's) opinion that the victim's injuries were minor. …
>
> [emphasis in original]

We refer to each of the three questions according to their ordinal numbers in the applicant's affidavit, *ie*, "questions (i) to (iii)".

Arguments in the Motion

The applicant's case

17 The applicant levelled a slew of disjointed, scathing and at times incoherent allegations against the Judge and this court (for its treatment of CM 24) in his affidavit. Broadly, the applicant's contentions may be grouped into three categories pertaining to (a) why an extension of time should be granted for the Motion to be filed, (b) the three questions, and (c) several challenges to the Judge's *factual* findings.

Extension of time

18 The applicant sought an extension of time to file the Motion, obviously appreciating that it was out of time. He argued, nevertheless, that the time limit for filing the Motion only began running from 1 February 2021, when CM 24 was dismissed (and that therefore he was well within time). This was because the Judge's oral grounds "sorely lack[ed] details, and is incomprehensible". The Judge "did not indicate in his oral judgment that he had ignored [the applicant's]

… many grounds of appeal because they were non-essential". The applicant was "illuminated" following the hearing before this court on 1 February 2021. Any "fault due to the delay has to be attributed to [the Judge's] brief judgment which is incomprehensible".

19 The applicant contended that the Motion had good prospects of success. To him, it was "crystal clear that [the Judge] had transgressed his jurisdiction of fact-finding by disregarding the evidences [*sic*], and so this application must succeed".

Questions of law of public interest

20 On the application for leave to refer questions of law to the Court of Appeal, the applicant argued that the four requirements in *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 ("*Lam Leng Hung*") were satisfied. The first, third and fourth requirements in *Lam Leng Hung* (see [46] below) were satisfied by virtue of this court's clarification, during the first motion, of the Judge's decision. The second requirement in *Lam Leng Hung* was satisfied because the three questions were questions of law of public interest.

(a) Question (i) was a question of law of public interest, as there should be "more clarity" regarding the meaning of "reasonably necessary in the circumstances" under s 98(1) of the Penal Code. There was also a conflict in judicial authority between MA 9036 and *R v Self* [1992] 3 All ER 476 ("*R v Self*"), thus satisfying s 397(6)(*a*) of the CPC. *R v Self* involved victims who had suffered greater harm than the security officer, but the accused there was acquitted. Further, Singapore "is densely populated with more frequent interactions among its residents". Thus, "there will be a higher chance of physical conflict …

The public will be interested to know the extent of the right of private defence".

(b) Questions (ii) and (iii) were also questions of law of public interest. The public "will be intrigued to know if Singapore judges can disregard evidences [*sic*], and anyhow acquit or punish a defendant". Further, "[i]f judges' fact-finding power were not checked by the Evidence Act, they could make findings which were not borne out by the evidences [*sic*]".

Factual challenges

21 Alongside the three questions, the applicant's affidavit disclosed multiple disagreements with the findings of fact made by the DJ and the Judge. At the start of his affidavit, he asserted that "there is no evidence tendered at trial that the victim had suffered multiple bruises as a result of the multiple punches. The medical report and doctor's testimony … contradicted the multiple-punch finding". Then, in the rest of his affidavit, the applicant asserted as follows:

(a) The phrase "more harm" in s 98 of the Penal Code "must mean major (not minor) injuries". However, no major injuries were found on the security officer.

(b) In *R v Self*, the victims' injuries were more serious than those of the security officer. Despite this, the English court "did not adopt [the Judge's] slapdash strategy".

(c) The Judge was bound by the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), but contravened it "on two counts":

(i) The doctor recorded only a bruise on the security officer. The Judge found that the applicant had punched the security officer multiple times.

(ii) In finding that the applicant exceeded what was reasonably necessary, the Judge must have concluded "that the victim had sustained serious injuries". But the doctor found that the injuries were "relatively minor".

(d) The DJ and the Judge "failed to be bounded [*sic*] by the doctor's 'fact'" (*ie*, the fact that the security officer's injuries were minor), despite the Prosecution being the party that adduced the medical report.

The Prosecution's case

22 The Prosecution submitted that an extension of time was unwarranted. There was a substantial delay of five months between the expiry of the prescribed time limit and the actual filing of the Motion. The applicant's explanation for the delay was without merit. The Judge's decision did not suffer from a lack of clarity or reasoning. Even if the applicant had misinterpreted the Judge's decision, that did not justify "a third bite of the cherry" in the form of the present Motion.

23 The Prosecution also argued that no time extension should be granted because the Motion had no reasonable prospect of success. The three questions were plainly questions of fact, not law. The applicant's dissatisfaction with the Judge's decision had nothing to do with the answers to the purported questions of law, but rather dissatisfaction with the Judge's finding that he had exceeded what was reasonably necessary in private defence. This was an attempt at re-litigation.

24 The Prosecution highlighted that the Motion was "particularly egregious" in light of this court's earlier decision in CM 24. The Motion was "nothing more than a vexatious attempt to re-litigate issues of fact". In light of the above, the Prosecution submitted that the applicant should be ordered to pay costs pursuant to s 409 of the CPC. The Prosecution had written to the applicant on 19 May 2021. Therein, they invited him to withdraw the Motion and gave him notice that the Prosecution might apply for an order that he pay costs should he decide to proceed. The applicant wrote back on the same day stating his intention to proceed with the Motion.

Issues

25 The central question posed by the Motion was whether the applicant should be granted leave to refer the three questions to the Court of Appeal. To answer this question we had to deal with the following issues:

(a) whether the applicant should be granted an extension of time to file the Motion ("Issue 1");

(b) whether the three questions were questions of law of public interest which arose in MA 9036 ("Issue 2"); and

(c) whether costs should be ordered against the applicant under s 409 of the CPC ("Issue 3").

Issue 1: Extension of time

26 The applicant correctly sought leave by way of a criminal motion under ss 405 and 407 of the CPC and had fulfilled all procedural requirements after the Motion was filed. However, the Motion was not filed within the one-month timeframe stipulated under s 397(3) of the CPC which expired on 23 September

2020 but only five months later on 25 February 2021. The applicant therefore required an extension of time.

Applicable principles

27 Section 397(3) of the CPC provides that non-compliance with the one-month time limit may be cured, and that an applicant may make an application under s 397 within "such longer time as the Court of Appeal may *permit*" [emphasis added].

28 In considering whether to grant an extension of time, the following matters are relevant:

(a) **Length of and reasons for delay:** The court will "have regard to matters such as the length of the delay in making the relevant application and the reasons given for the delay". In general, "the longer the delay, the greater will be the importance accorded to the accompanying explanation": *Yuen Ye Ming v Public Prosecutor* [2020] 2 SLR 970 ("*Yuen Ye Ming*") at [7]; *Bachoo Mohan Singh v Public Prosecutor and other applications* [2010] 1 SLR 966 ("*Bachoo Mohan Singh*") at [65]–[66].

(b) **Prospects of success:** The principles under s 397(3) of the CPC "are similar to those which apply to s 380 of the CPC": see *Yuen Ye Ming* at [6]. The latter governs extensions of time for criminal *appeals* that are filed out of time. Under s 380, in addition to the length of and reasons for delay, the court will also consider "the existence of *some* prospect of success in the appeal in determining whether such an extension should be granted" [emphasis in original]: *Public Prosecutor*

v Tan Peng Khoon [2016] 1 SLR 713 at [38]; *Bachoo Mohan Singh* at [64].

(c) **No abuse of the s 397 CPC procedure:** An applicant seeking leave to refer questions of law of public interest "cannot be allowed to drip-feed his questions through *multiple applications* of this nature" [emphasis added]. The principle of finality in the judicial process "would be defeated if an accused person were allowed to spin out applications for leave to refer questions *ad infinitum*": *Yuen Ye Ming* at [9]; *Chew Eng Han v Public Prosecutor* [2017] 2 SLR 935 ("*Chew Eng Han*") at [3].

Our decision on Issue 1

29 Having considered the parties' arguments, we found that there was no basis for the applicant to be granted an extension of time to file the Motion. The Motion fell afoul of each of the three considerations listed in the preceding paragraph.

No valid reasons provided for five months' delay

30 The length of a delay is not dispositive in and of itself, and delay cannot be scrutinised without context and the reasons provided for the delay. In this case, there was one reason offered for the delay: the applicant claimed that he did not understand the reasoning behind the Judge's decision in MA 9036 at the time the decision was rendered. The applicant had filed CM 24 in timely fashion, and did not see a need, at that juncture, to file the current Motion. Following the dismissal of the first motion, the applicant then gained clarity on the Judge's reasoning in MA 9036, and consequently filed the Motion.

31 The applicant's reason was unsatisfactory. It was not the case that the Judge's oral grounds were unclear. The Judge had made it amply clear that the applicant's disproportionate assault on the security officer was the dispositive factor in MA 9036: see [11] above. On *that* basis, the Judge dismissed MA 9036. It hence could not be said that the Judge's decision would have lent itself to confusion on the part of the applicant. It cannot be forgotten that the applicant was represented at the time and his counsel would have been able to explain the decision to him.

32 The applicant nonetheless claimed that he was, in fact, unable to appreciate the reasons behind the Judge's decision until clarification was provided by this court in CM 24 (see [15] above). In our view, this claim did not justify the late filing of the Motion. In CM 24, this court not only clarified the Judge's reasons for the benefit of the applicant, but also confirmed that the Judge's decision was *correct* and "amply made out on the facts". Despite this, the applicant sought to renew his challenge of the Judge's decision by drawing from the clarification provided by this court. The applicant could not be allowed to do this. He could not use this court's words as grounds for a subsequent belated criminal reference, for that would only encourage endless protraction of proceedings. That is, if what the applicant did was deemed permissible, he would only be emboldened to use each successive court decision as grounds for his next application. That would be antithetical to the principle of finality, as emphasised in decisions such as *Yuen Ye Ming*.

33 That is not to say that an applicant who fails to understand a lower court's decision can never file a criminal reference, or that clarification by an appellate court can never be relied upon in advancing such a reference. In an appropriate case, an applicant who genuinely misunderstands the lower court's decision and has a reasonable basis for doing so, and who then, post-

clarification, files a *meritorious* criminal reference, could *perhaps* be granted an extension of time to file such application. This, however, leads us to the next point: the Motion fell far short of being a meritorious one.

Low prospects of success

34 As the Motion was being considered at the leave stage, "prospects of success" could be understood in two senses. First, whether there was a prospect of the applicant being granted leave to bring the criminal reference, and second, whether there was a prospect of the applicant succeeding in the criminal reference, should leave be granted. These two aspects are intertwined, given that the latter is to some extent considered in the former (in determining whether to grant leave, the court will consider whether the determination of the question of law by the High Court affected the outcome of the case). In our view, the applicant failed on both counts.

35 The prospect of the applicant being granted leave to bring the criminal reference was non-existent. The three questions were all, on their face and even upon closer examination, questions of *fact*. The applicant's factual contentions in his affidavit betrayed the true purpose of the application – to challenge the Judge's *factual findings*: see [21] above. Such factual challenges are impermissible in applications under s 397 of the CPC; the court will not grant leave for a criminal reference when the application in question discloses only factual grounds of contention. We explain this point in detail under Issue 2.

36 The applicant's chances of succeeding on the merits were very low. As explained below, the three questions raised by the applicant were not new issues but had obvious answers that were well-entrenched in current jurisprudence.

Abusive invocation of s 397 of the CPC

37 In determining whether an extension of time will be granted to bring a criminal reference, the court will also consider, having regard to the litigation in its entirety, whether its processes are being abused. Where such abuses are disclosed, the court will not permit the belated application to be brought.

38 As mentioned, this was the third criminal motion brought by the applicant. CM 24 had been orally dismissed by this court. CM 40 had been summarily dismissed by the Judge. Thus, viewed in context, the present Motion embodied the drip-feeding situation contemplated and eschewed by this court in *Yuen Ye Ming*. Similar sentiments were expressed by this court in *Mohammad Faizal bin Sabtu and another v Public Prosecutor and another matter* [2013] 2 SLR 141 ("*Faizal bin Sabtu*"), wherein the principle of finality was emphasised: see *Faizal bin Sabtu* at [21].

39 More egregiously, the applicant disguised questions of fact as purported questions of law. This was patent on the face of the applicant's affidavit, and the arguments he had raised. The three questions were all geared towards challenging the factual basis of the Judge's dismissal of MA 9036. It was therefore not the case that the applicant was genuinely raising any questions of law of public interest. He instead invoked s 397 of the CPC for an improper purpose: see *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 ("*Kreetharan*").

40 We use this opportunity to clarify an aspect of *Yuen Ye Ming*. We acknowledge that the present case was potentially distinguishable from *Yuen Ye Ming* on the basis that the latter involved an applicant who had the benefit of legal advice during the criminal motion. Here, the applicant, while represented

by counsel at the trial and in MA 9036, has been unrepresented since CM 24. That said, we placed little weight on this factor, for three reasons.

41 First, *Yuen Ye Ming* did not espouse any blanket rule that if an applicant was *not* represented by counsel in a prior criminal motion, he or she would be entitled to bring a subsequent motion under the aegis of fresh legal advice. The pronouncement in *Yuen Ye Ming* was phrased as it was in order to allow deserving applicants to bring a second motion in circumstances where they were ostensibly *disadvantaged* during their first motion. This is borne out in [8] of *Yuen Ye Ming*, where the court considered at length whether the applicant's legal representation during the first criminal motion was *adequate*.

42 Secondly, the applicant was not disadvantaged during CM 24 or the Motion by reason of his lack of legal representation. The arguments raised by the applicant in CM 24 were built on case law raised and canvassed *by the applicant's counsel* in MA 9036 (namely, the case of *R v Self*). This is the same case that he relied on in *the present Motion*. Thus, in this sense, the applicant did have the benefit of legal advice in CM 24 and in the Motion.

43 Thirdly, construed in totality, the applicant's conduct offends the key rationale espoused in *Yuen Ye Ming*. He cannot be allowed to drip-feed multiple questions in consecutive applications, thereby protracting the litigation process indefinitely.

44 On this basis, the applicant's application for extension of time was rejected. Consequently, the Motion was dismissed for being filed out of time.

Issue 2: Leave to bring criminal reference

45 Given our conclusion in respect of Issue 1, there was strictly speaking no need to consider Issue 2. However, we provide our views on Issue 2 to explain why the application had no merit and because there exist overlaps between Issues 1 and 2.

Applicable principles

46 Four conditions must be satisfied under s 397 of the CPC before leave is granted to bring a criminal reference to the Court of Appeal: *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") at [64]; *Lam Leng Hung* at [51].

(a) First, the reference can only be made in relation to a criminal matter decided by the High Court in the exercise of its appellate or revisionary jurisdiction.

(b) Second, the reference must relate to a question of law, and that question of law must be a question of law of public interest.

(c) Third, the question of law must have arisen from the case which was before the High Court.

(d) Fourth, the determination of the question of law by the High Court must have affected the outcome of the case.

47 Additionally, under s 397(3B)(*b*) of the CPC, where a party applies under s 397(1) for leave to refer a question to the Court of Appeal, the Court of Appeal may summarily refuse such an application if:

> (*b*) it appears to the Court of Appeal that the question is not a question of law of public interest which has arisen in

> the matter, and the determination of which has affected the case, to which the application relates, …

This provision came into force on 31 October 2018 and is a legislative enshrinement of the four requirements set out in *Faizal bin Sabtu* at [15]. The requirements in *Faizal bin Sabtu* have been affirmed and reiterated in *GCK*.

48 Pertinent in the present case was the second requirement espoused in *GCK*: that the reference must relate to a question of law and that question of law must be one of public interest. If this requirement is not satisfied, the court may summarily dismiss the Motion: see s 397(3B)(*b*) of the CPC.

49 On the issue of what constitutes a "question of law of public interest", this court in *Faizal bin Sabtu* at [19] clarified as follows:

> But it is not sufficient that the question raised is a question of law. It must be a question of law of public interest. What is public interest must surely depend upon the facts and circumstances of each case. We think that the proper test for determining whether a question of law raised in the course of the appeal is of public interest would be ***whether it directly and substantially affects the rights of the parties and if so whether it is an open question in the sense that it is not finally settled by this court or the Privy Council or is not free from difficulty or calls for discussion of alternate views***. *If the question is settled by the highest court or the general principles in determining the question are well settled and it is a mere question of applying those principles to the facts of the case the question would not be a question of law of public interest.* [emphasis in italics in original; emphasis added in bold italics]

50 We highlight two further important guidelines provided in *Faizal bin Sabtu*:

> (a) Issues of the construction of statutory provisions potentially applicable to other members of the public are not, *ipso facto*, questions of law of public interest. A question of law is not necessarily one of

public interest just because it has serious personal consequences for the applicant or is novel: *Faizal bin Sabtu* at [20]. The point of law should be of considerable difficulty or complexity, the determination of which affects the public interest rather than the narrow personal interest of an applicant who has been convicted of an offence: see also *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 859 at [20].

(b) The court should not liberally construe the leave requirement under s 397 of the CPC. The one-tier appeal in Singapore's criminal justice system should not be undermined: *Faizal bin Sabtu* at [21].

Our decision on Issue 2

51 The three questions were clearly questions of fact, not law. They were thinly-veiled attempts at challenging the DJ's *factual* finding (upheld by the Judge) that the applicant did punch the security officer multiple times, and that the applicant's act of punching the security officer multiple times exceeded what was reasonably necessary.

Question (i)

52 To reiterate, question (i) is as follows:

> On Penal Code … section 98 (1), whether a doctor's findings of minor injuries sustained by the victim can be classified under the meaning of the phrase *inflicting of more harm than it is reasonably necessary*. … [emphasis in original]

In other words, the question was whether the doctor's opinion that the security officer's injuries were "minor" contradicted the DJ's finding that the applicant's response exceeded what was reasonably necessary.

53 The applicant asserted that the medical opinion did contradict the DJ's findings. This much was clear from the applicant's affidavit. Such a *factual* challenge cannot be made in the context of a criminal reference: *Kreetharan* at [38]. Thus, in context, it was clear that question (i) had *nothing* to do with the legal intricacies of the phrase "reasonably necessary". It was a question of fact reframed as a question of law.

54 It is trite that the phrase "reasonably necessary" involves a fact-sensitive inquiry, to be determined in the circumstances of each case. There is nothing contentious about this rule, and the applicant was unable to point to any authorities suggesting otherwise. That fact-sensitive inquiry was precisely the one that the DJ and the Judge undertook. In determining that the applicant's response exceeded what was reasonably necessary, the Judge considered the specific circumstances of the case, building on the DJ's already lengthy reasoning in the trial GD. The Judge consequently found that there was no basis to disturb the DJ's factual findings and affirmed the DJ's conclusion that in "punching PW6 multiple times", the applicant had acted disproportionately.

55 If the picture had not already been clear to the applicant, this court in CM 24 then affirmed the correctness of the Judge's factual findings. We thus considered that it lay ill in the applicant's mouth to renew his challenges against factual findings (by the DJ) that had already been affirmed by superior courts twice over.

56 Even assuming, for argument's sake, that there was a legal issue that the applicant genuinely sought to raise, this issue did not present a question of law of public interest, as defined in case law.

(a) First, the question was not a novel one. The threshold of "reasonably necessary" in the context of private defence has been dealt with in numerous cases, such as *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 ("*Tan Chor Jin*").

(b) Secondly, we stress that a question of law is not necessarily one of public interest just because it has serious personal consequences for an applicant. The applicant was unable to demonstrate how question (i) was one that was particularly complex or difficult, or one that had serious wider implications for the community at large. It was apparent to us that the question was being raised solely in the context of *his* case. To be clear, we could not accept the applicant's contention that question (i) could be cast as a question of law of public interest by virtue of the fact that Singapore is densely populated, and physical conflicts may hence be more prevalent. By that reasoning, all statutory provisions concerning physical violence (such as ss 323, 325 and 326 of the Penal Code), and their interpretation, could form the basis of a criminal reference. That simply cannot be correct.

Question (ii)

57 Question (ii) reads as follows:

> In their findings of facts, whether judges from the State Court, and consequently the High Court in the exercise of his appellate jurisdiction, are not bounded by the Evidence Act (Chapter 97) in finding that the victim had suffered multiple punches, which was beyond what had been recorded in the medical report that there was only a single bruise. …

58 This is a question of fact. The applicant was suggesting that the medical report indicating a single bruise on the security officer contradicted the Judge's finding that the applicant punched the security officer multiple times. In so

doing, the applicant was challenging the Judge's *factual* finding. As noted, this is impermissible in an application under s 397 of the CPC.

59 There was no legal question to be addressed. If one were to take the applicant's question at face value, the "legal question" was whether the courts are bound by the Evidence Act. This is *not* a novel question. Rather it is one that has the obvious answer that the applicant himself furnished: the courts are bound by the statute. It would be absurd to suggest otherwise.

Question (iii)

60 Question (iii) reads as follows:

> In their findings of facts, whether judges from the State Court, and consequently the High Court in the exercise of his appellate jurisdiction, are not bounded by section 47(1) of the Evidence Act (Chapter 97) in finding that the victim had suffered serious injuries as a result of sustaining multiple punches, which was beyond the expert's (doctor's) opinion that the victim's injuries were minor. …

61 This is also a question of fact. The applicant was suggesting that the doctor's opinion that the security officer's injuries were "minor" contradicted the Judge's finding that the applicant had punched the security officer multiple times. In so doing, the applicant was challenging the Judge's *factual* finding. This, we repeat, is completely impermissible in an application under s 397 of the CPC.

Section 397(6) of the CPC

62 The applicant also sought to rely on s 397(6) of the CPC, which is a deeming provision for questions of law of public interest. The provision was inapplicable. There was no "conflict of judicial authority" in respect of the three questions, which rendered s 397(6)(*a*) inapplicable. The distinction drawn by

the applicant between *R v Self* and MA 9036 did not demonstrate any conflicting judicial authority. Each case was decided on its own *facts*, and there was no "conflict" as regards the legal test for private defence. In any event, *R v Self* is not binding on our courts; contemporary local jurisprudence on private defence is sufficiently clear and comprehensive (see for example *Tan Chor Jin*). Finally, as the Prosecution was not the party referring the questions to the Court of Appeal, s 397(6)(*b*) was also inapplicable.

Conclusion on Issues 1 and 2

63 The applicant's s 394H application (in CM 40) had been summarily refused. The present Motion involved impermissible and entirely unmeritorious challenges to the Judge's factual findings. The applicant had made similar challenges in CM 24, which were rejected. The alleged "legal questions" raised by the applicant had established answers. Also, the Motion was the *third* criminal motion and the *fourth* challenge to the DJ's decision in the trial. In these circumstances, summary dismissal was arguably warranted under s 397(3B) of the CPC.

64 Despite the above, we proceeded with the hearing to allow the applicant to explain the basis of his application, and the reasons for it, bearing in mind the fact that the applicant was unrepresented. As it turned out, the applicant could not offer any justification beyond what had already been contained in his affidavit filed in support of the Motion. As explained in the preceding sections of these grounds, the applicant's arguments were inadequate, and did not disclose a legitimate basis for the court's grant of leave.

65 We, accordingly, dismissed the Motion. We caution the applicant that if he does file further unmeritorious applications, the court may summarily

dismiss such applications under s 397(3B) of the CPC without an oral hearing. Significant time and resources have been expended on the applicant's repeated applications, and further abuses of the court's processes will not be tolerated.

Issue 3: Costs

66 This court is statutorily empowered under s 409 of the CPC to order costs against applicants who file frivolous, vexatious or abusive criminal motions:

> **Costs**
>
> **409.** If the relevant court dismisses a criminal motion and is of the opinion that the motion was frivolous or vexatious or otherwise an abuse of the process of the relevant court, it may, either on the application of the respondent or on its own motion, order the applicant of the criminal motion to pay to the respondent costs on an indemnity basis or otherwise fixed by the relevant court.

The "relevant court" is the court to which the criminal motion is made: s 405(2) of the CPC. In this case, the relevant court is the Court of Appeal.

67 In light of our observations on how the Motion was an abuse of process, a strong case could be made that costs should be ordered against the applicant. The Prosecution placed emphasis on this point in its written submissions.

68 Having considered the circumstances, we declined to order costs against the applicant. Instead, we issued a verbal caution to the applicant on the potential costs consequences should he file further ill-advised applications. The applicant, being a layperson, may not have been aware of the costs consequences of unjustified criminal motions. He was not warned specifically by the court, during CM 24 or prior thereto, of the potential adverse costs orders that could be made against him.

69 We use this opportunity to reiterate that the applicant should stop drip-feeding questions via consecutive criminal motions. There is a need to respect the finality of the judicial process. Any future unmeritorious application may well incur adverse costs consequences.

70 We understand the applicant's disgruntlement as regards the DJ's and the Judge's decisions. We know that the applicant may not agree with the outcome of his case, given what he perceives to be the existence of evidence contradicting the DJ's and Judge's findings.

71 If the applicant wished to raise challenges using the evidence that he raised in the Motion, the appropriate place to do so was in the District Court. We understand that the said evidence was in fact before the DJ. The DJ considered the evidence, and in concluding that the applicant was guilty, provided detailed reasons addressing the evidence. These reasons are captured in the trial GD, which is 35 pages long. When the trial concluded, the applicant had a further opportunity to raise his contentions – by invoking his right of appeal. The applicant did so, via MA 9036. Having considered, amongst other things, the available evidence and the trial GD, the Judge arrived at the conclusion that the DJ was correct. We make no further comment on the correctness of the DJ's and Judge's decisions on the merits because it would be incorrect for us to do so in the context of an application under s 397(1) of the CPC.

72 In other words, the applicant, then represented by competent counsel, had raised the various points (which he has raised in the Motion) before the DJ and the Judge. Those were the correct avenues for the applicant to raise those arguments. The DJ and the Judge considered the evidence and the applicant's

arguments, and they found against the applicant. And that is the end of the matter.

73 We reiterate the observations in *Faizal bin Sabtu* at [21] regarding the "system of one-tier appeal" and the "interests of finality". Our courts owe a duty to the public; that duty is to apply the law correctly, and to ensure a fair and just outcome in each case. Where litigants are dissatisfied with a decision of the puisne court, they have a right of appeal. The appellate court will do its utmost to scrutinise the lower court's decision and to ensure that the factual and legal findings made are sustainable. In the present case, that is precisely what the DJ and the Judge did. They discharged their roles and, as emphasised above and by this court in CM 24, they arrived at conclusions that do not disclose further grounds of challenge via the exceptional procedures under ss 394H and 397 of the CPC.

74 Our system of one-tier appeal must be respected, whether or not litigants are pleased with the ultimate decision of the court. We cannot afford to have litigation that continues indefinitely; that would place an unbearable strain on our legal system and would divert precious resources away from the new cases that arise every day which require attention. Endless protraction of proceedings also serves only to cause further grief for those involved. Time and resources will be needlessly expended, in futile fashion. These are time and resources that could, instead, be used in other meaningful endeavours, and to help parties move on from the bitterness of litigation.

75 A final point is worth mentioning. As may be gleaned from his affidavit, the applicant appears to be of the view that the only reason he was prosecuted was that the Prosecution disliked him and had an axe to grind with him. This is a completely unfounded belief, bereft of any substantiation. The Prosecution, in

prosecuting the applicant, had simply been responding to investigations conducted by the relevant authorities, and enforcing the law as put in place by the legislature. This is their constitutional role and mandate.

76 We hope that this Motion represents the final chapter in this long-drawn litigation. It has been more than three years and eight months since the events at the Mochtar Riady Building took place. The applicant has paid his $5,000 fine. He has had audience with the Court of Appeal on two occasions. He has expended significant time and cost in engaging lawyers (at trial and in MA 9036) and in making several applications to the High Court and Court of Appeal. We have herein sought to explain in detail to the applicant why there can and should be no further recourse as regards this matter. It would be in the applicant's interests to move past, and move on from, the unfortunate results of his visit to NUS so long ago.

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

The applicant in person;
Wong Woon Kwong and Andre Chong
(Attorney-General's Chambers) for the respondent.
