Public Prosecutor *v* Lim Yong Soon Bernard
[2015] SGCA 19

Case Number	: Criminal Reference No 7 of 2014
Decision Date	: 10 April 2015
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s)	: Tan Ken Hwee, Sanjiv Vaswani and Yau Pui Man (Attorney-General's Chambers) for the applicant; The respondent in person.
Parties	: Public Prosecutor — Lim Yong Soon Bernard

Criminal procedure and sentencing – Criminal references

10 April 2015 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 On 8 December 2014, the Public Prosecutor filed Criminal Reference No 7 of 2014 ("CRF 7/2014"), referring two questions to this court for determination pursuant to s 397(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). Both questions arose from Magistrate's Appeal No 124 of 2014 ("MA 124/2014") where the High Court had dismissed the Prosecution's appeal against sentence in respect of an offence of providing false information to a public servant under s 182 of the Penal Code (Cap 224, 2008 Rev Ed) for which the respondent was convicted. At the commencement of the hearing of CRF 7/2014 on 12 February 2015, the Prosecution formally withdrew one of the two referred questions and proceeded to submit only on the following question ("the Original Question"):

> In relation to an offence under section 182 of the Penal Code (Chapter 224), where an accused is convicted of providing false information in order to mislead an inquiry into a matter concerning public sector governance, when is the threshold for custodial sentence crossed?

2 During the course of the hearing, we intimated to the Deputy Public Prosecutor, Mr Tan Ken Hwee, that there were inherent difficulties with the Original Question which had, in the main, to do with the *indeterminacy* of its factual premise. In particular, we found that the scope of the Original Question as framed encompassed a diverse range of possible scenarios of varying gravities which made it difficult, if not impossible, to definitively state one way or the other whether the custodial threshold would be crossed in *all* such instances. In other words, the Original Question seemed to us to be, by its very nature, incapable of receiving any precise (and, therefore, meaningful) answer as it appeared to turn quite inescapably on a consideration of all the *facts* in each case. We therefore had serious reservations about engaging with the Original Question as it was then framed and declaring, as a matter of law, that the custodial threshold was invariably crossed whenever the scenario posited by it had surfaced. All things considered, then, we were not minded to answer the Original Question. However, we invited Mr Tan to consult further with the Public Prosecutor and, if his office thought fit, to submit a more appropriately framed question within two weeks, bearing in mind the concerns which we had aired during the hearing.

3 On 25 February 2015, the Public Prosecutor duly submitted the following reframed question for

our consideration ("the Reframed Question"):

> Is the default starting position when section 182 of the Penal Code is violated a custodial sentence when the offender is: (*a*) a public servant or an employee of a statutory board; and (*b*) the false information is given in the context of an investigation touching on improprieties relating to procurement and/or allegations of abuse of office or power?

4 While the Reframed Question is, no doubt, narrower than the Original Question, we find that it still does not frame a sufficiently certain factual premise as it remains wide enough to accommodate a myriad of hypothetical scenarios with differing degrees of seriousness. At the same time, we must also observe, from a different perspective, that the Reframed Question is too constrained in the sense that it leaves a critical mass of potentially relevant sentencing considerations unaccounted for. Simply put, the Reframed Question leaves too much to conjecture. Indeed, it seems to us that what this reference seeks to achieve is to obtain from this court a sentencing benchmark ruling for an offence under s 182 of the Penal Code with only the barest factual matrix. One has to undertake, quite unavoidably, an inquiry into the *facts* if a rational answer is to be offered and, in the result, we decline to answer the Reframed Question because the reference procedure under s 397 of the CPC is reserved only for the determination of questions of *law* of public interest. In our view, the Reframed Question is hardly a question of law and, even if it were, it is not a question of public interest.

5 Equally important, we would also wish to underscore the point that invoking the reference procedure under s 397 of the CPC for the purpose of obtaining a sentencing benchmark is clearly inappropriate. Our views are more fully elaborated upon below. At this juncture, we will begin by first setting out briefly the relevant background to this application.

The relevant background

The facts

6 The respondent, Lim Yong Soon Bernard, was an Assistant Director of the National Parks Board ("NParks") which is a statutory board under the purview of the Ministry of National Development ("MND"). In late 2011, he was assigned the task of obtaining the approval for, and arranging for NParks' purchase of, foldable bicycles. These bicycles were intended to facilitate the movement of NParks' staff along the island-wide park connector network.

7 Sometime in September or October 2011, the respondent became acquainted with one Lawrence Lim Chun How ("Lawrence") at a night cycling event. They joined the same cycling group, discussed cycling related issues, spoke to mutual friends, and began to explore business opportunities. Not long after this, when the time came for the respondent to put up an Invitation to Quote ("ITQ") for the foldable bicycles, he tipped Lawrence off about this opportunity. Lawrence was the director of a company known as Bikehop which operated a modest business of renting out bicycles to tourists at strategic locations. Bikehop had hitherto not been actively involved in any government transactions. The respondent therefore asked Lawrence to register for a *GeBIZ* account so that Bikehop could participate in the ITQ, and also inquired whether Lawrence could supply Brompton bicycles with racks at $2,200 per piece.

8 NParks subsequently issued an ITQ and the only bid it received (and which it accepted) was from Bikehop for the supply of 26 Brompton bicycles in two tranches at a price of $2,200 a piece without racks. It was established at trial that this price was not excessive as it was lower than the retail price for the same bicycle model.

9 On 22 June 2012, an article in the *Lianhe Zaobao* highlighted concerns about the procurement process for the Brompton bicycles. Online blogs also pitched in with their own allegations of impropriety. NParks proceeded to conduct an internal investigation into the matter and the respondent was thereafter summoned for an interview before the Internal Audit Unit ("IAU") of MND on 18 July 2012. Three IAU auditors, all of them public servants, were present during the interview. They questioned the respondent about the procurement process and, in particular, whether he had any prior relationship with Lawrence. Crucially, the respondent stated that his association with Lawrence began only *after* the ITQ had been awarded when they met to discuss a delay in the delivery of the second tranche of Brompton bicycles. This statement formed the subject of the first of two charges under s 182 of the Penal Code which were brought against the respondent. As the second charge is not relevant for present purposes, the facts leading up to it need not be set out.

The first instance decision

10 Section 182 of the Penal Code provides as follows:

> Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to $5,000, or with both.

11 At first instance, the District Judge found that all the elements of this offence had been made out under the first charge and convicted the respondent accordingly (see *Public Prosecutor v Bernard Lim Yong Soon* [2014] SGDC 356). The respondent had provided the IAU officers with false information since it was clearly borne out by the evidence that he had "a highly supportive and nurturing friendship" with Lawrence *prior* to the ITQ (at [25]). Further, when this false statement was considered against the backdrop of mounting public scrutiny on the procurement process, it was also apparent that the respondent had provided it so as to "throw the IAU auditors off the scent" (at [42]), hoping that they would omit to investigate his personal relationship with Lawrence.

12 Turning to the question of sentencing, the District Judge recognised that this case called for a deterrent sentence. However, he considered that, contrary to the Prosecution's submissions, a custodial term was not appropriate given the "unique circumstances" of this case (at [127]):

> (a) The respondent did not provide false information for the purpose of evading prosecution as there was no predicate offence. He had been extensively investigated but not prosecuted for any offence other than the two s 182 offences.
>
> (b) The respondent recanted a mere two days after providing his false statement, which meant that no great deal of resources had to be expended thereafter to probe into his relationship with Lawrence.
>
> (c) In suggesting a bid of $2,200 per piece to Lawrence, the respondent had encouraged Lawrence to put in a competitive bid for the Brompton bicycles which were then retailing at a higher price of $2,510. NParks therefore paid a reasonable price and there was no undue expenditure of public funds.
>
> (d) The respondent did not prevent rival bids or intercede on Lawrence's behalf when Bikehop

failed to deliver the second tranche of Brompton bicycles timeously.

(e) The respondent's false statement did not have any material impact as neither NParks nor the IAU accepted them at face value and continued to investigate his relationship with Lawrence. This case was therefore distinguishable from the sentencing precedents relied on by the Prosecution for a custodial sentence which generally involved a higher degree of actual or potential harm resulting from the false information given.

(f) The relationship between the respondent and Lawrence was not difficult to detect since the two were highly conspicuous in championing the use of foldable bicycles and left a considerable paper and electronic trial of their association that was picked up by Internet users.

13 In the result, the District Judge imposed the maximum fine of $5,000 on the respondent.

The Prosecution's appeal against sentence

14 The Prosecution appealed in MA 124/2014 against the sentence imposed, arguing, *inter alia*, that the District Judge had erred in failing to correctly assess the strong public policy considerations which were at play. In essence, the Prosecution submitted that civil servants should act with probity, particularly in respect of the expenditure of public funds, and failing to ensure this through the imposition of a sufficiently deterrent sentence may lead to the misuse of public funds and lower the public's confidence in the good governance of the public service. In this regard, it was argued that a fine was not an appropriately deterrent sentence as it amounted to little more than a slap on the offender's wrist.

15 The High Court Judge dismissed the Prosecution's appeal in MA 124/2014 without written grounds. The Prosecution then referred the Original Question to this court under s 397(2) of the CPC and, as mentioned earlier, the Reframed Question subsequently.

Our decision

16 It is now settled law that even though s 397(2) of the CPC statutorily permits the Public Prosecutor to leapfrog the *leave* stage in a criminal reference, this does not mean that the Court of Appeal is invariably bound to answer all questions referred to it under this section. When exercising its *substantive* jurisdiction under s 397, the Court of Appeal must still consider whether the case before it truly falls within the scope of that particular provision, and this in turn entails a consideration of whether *all* the requirements in s 397(1) are made out (see *Public Prosecutor v Goldring Timothy Nicholas and others* [2014] 1 SLR 586 at [26]). There are four such requirements under s 397(1) which were recently reiterated in *Public Prosecutor v Leng Kah Poh* [2014] 4 SLR 1264 at [15] as follows:

(a) the reference must be made in relation to a criminal matter decided by the High Court in the exercise of its appellate or revisionary jurisdiction;

(b) the reference must relate to questions of law and those questions of law must be questions of public interest;

(c) the question of law must have arisen from the case that was before the High Court; and

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

17 Our difficulty with the present application lies squarely with the second requirement enumerated above. Specifically, we are of the view that the Reframed Question is neither a question of *law* nor one of *public interest*; hence we do not think that it is appropriate for us to proffer an answer in the exercise of our substantive jurisdiction.

18 At this juncture, for ease of consideration, we set out again the Reframed Question:

> Is the default starting position when section 182 of the Penal Code is violated a custodial sentence when the offender is: (*a*) a public servant or an employee of a statutory board; and (*b*) the false information is given in the context of an investigation touching on improprieties relating to procurement and/or allegations of abuse of office or power?

19 Breaking the Reframed Question down into its constituent components, we observe that what it essentially asks is whether a custodial term ought ordinarily be imposed when the following two central features are present, namely, that (a) the offender is a public servant or an employee of a statutory board and (b) the wrong was committed in the context of an investigation touching on improprieties relating to procurement and/or allegations of abuse of office or power.

20 It appears plain to us that what the Prosecution seeks to obtain by way of this criminal reference is the pronouncement of a sentencing benchmark. This is because if we were to answer the Reframed Question in the affirmative, we would effectively be declaring that whenever the relevant factual matrix of a case exhibits the above set of defined features, it must follow as a matter of course that the custodial threshold has been crossed. However, we do not think that it is appropriate, as a matter of procedure, to obtain a sentencing benchmark from the court by stating a question via s 397 of the CPC. The criminal reference procedure requires the applicant to put forward a question of law but the issue that has been raised here is one of sentencing and this does not lend itself readily or naturally to the procedure prescribed in s 397. This is a point which we will return to but we would note at this moment that even if it were possible to capture all the relevant facts for an opinion to be offered by this court, we doubt that the Reframed Question is a question of law of the kind within the contemplation of s 397 of the CPC. The punishment which may be imposed by a court for an offence under s 182 of the Penal Code has already been clearly prescribed by Parliament, *ie*, imprisonment for up to one year or a fine of up to $5000 or both. That is the range.

21 Despite these considerations, as well as our related reservations regarding the Original Question (see [2] above), we thought that the Prosecution should nevertheless be given a further opportunity to review the Original Question and see whether its defects or inadequacies could be addressed, if at all. The Reframed Question was thus presented against this background but we find that it has not really addressed our concerns. In our view, the Reframed Question can hardly be regarded as being exclusively a question of *law* because, inasmuch as its determination calls into play the relevant sentencing theories and precedents, it necessarily involves an inquiry into the *facts* which remain uncertain and elastic. Ultimately, taking a broad view of matters, we consider it to be extremely difficult, if not impossible, to advance what is in essence a question of sentencing as a pure question of law, far less as a question of law of public interest. Let us elaborate.

22 We think that it is difficult to "pack", so to speak, all the factors which are relevant for sentencing into a single question. In this regard, it is readily apparent that the Reframed Question tends to suggest an affirmative answer only because it is premised on a narrower compass of selected (hypothetical) facts. But those facts are not the only facts which are germane to sentencing for a s 182 offence. There are a multitude of *other* unarticulated factors which may potentially have a bearing on the sentence to be imposed, yet the Reframed Question gives very little indication as to how these may meaningfully be weighed in the final analysis. For example, in the

recent case of *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor and another appeal* [2014] 1 SLR 756, the High Court explicitly stated at [32] that the following factors – which were first set out in *Abu Syeed Chowdhury v Public Prosecutor* [2002] 1 SLR(R) 182 – could usefully be taken into account when sentencing offenders who gave false statements to a public authority, *viz*, (a) the materiality of the false representation on the mind of the decision-maker; (b) the nature and extent of the deception; (c) the consequences of the deception; and (d) the personal mitigation factors applicable to the offender. The Reframed Question, however, does not take into account these very pertinent sentencing considerations. It says nothing about, for example, the role or motivation of the accused in giving the false information, what that false information related to, how such false information had impacted on the conduct of the investigation, whether the accused retracted the false information and, if so, how soon, or whether he had, conversely, persisted in perpetuating the falsehood. That being the case, we find that it is neither safe nor sound for us to articulate a sentencing benchmark to the effect that so long as the two central features as set out in the Reframed Question *alone* are present (see [19] above), the accused ought, as a matter of *default*, to be sentenced to serve a term in prison. That, in our view, is a conclusion which simply does not follow in the absence of other potentially relevant sentencing factors which may tilt the balance the other way. Answering the Reframed Question in the affirmative may well lead to undue hardship or unfairness to the accused in certain cases which, needless to say, would be a most unsatisfactory state of affairs.

23 There is a further problem with utilising the criminal reference procedure to obtain a sentencing benchmark, which is that the referred question will, inevitably, have to be framed based on a sufficiently broad set of facts. The referred question has to be designed purposefully in this way because, otherwise, it would run up against the stock objection of it being a veiled backdoor appeal from the decision below. This kind of manoeuvring, however, necessarily creates its own problems. This is because when the facts in the referred question are abstracted to a higher level of generality through the use of more generic terminology, it necessarily broadens the spectrum of factual scenarios that may fall within its wider definitional boundaries. Naturally, these scenarios will not all carry the same, uniform gravity. The result is that unfairness may be visited upon some accused persons if a sentencing benchmark was nevertheless recognised as being immediately applicable in *all* such instances. This was the concern which we had expressed with the Original Question during the hearing (see [2] above) and continue to have in respect of the Reframed Question, as we shall proceed to elaborate.

24 We note that the Reframed Question is based on a more circumscribed set of facts than the Original Question in the following respects:

(a) first, the *identity of the wrongdoer* has been specified – he is no longer simply any "accused" at large but must be a "public servant or an employee of a statutory board";

(b) second, the *context* in which the false information is given has also been vested with a greater sense of formality – the false information must now be made in the course of an "investigation" rather than simply an "inquiry"; and

(c) third, the *subject matter* to which the false information relates has also been fixed with greater specificity – instead of relating merely to any "matter concerning public sector governance", the false information must now be given in respect of an investigation touching on "improprieties relating to procurement" and/or "allegations of abuse of office or power".

25 These amendments by the Prosecution are clearly aimed at introducing more concrete parameters around the Reframed Question but, in our view, they still do not do enough to prevent one from speculating on the multitude of scenarios which may come within its ambit. This difficulty arises

largely because of the third of the above amendments which requires the false information by the public servant to be given in the course of an investigation into "*improprieties relating to procurement*" and/or "*allegations of abuse of office or power*".

26 First, one may easily recognise that the procurement process in the public sector can suffer from many different kinds of "improprieties" involving wide-ranging degrees of severity. To appreciate this, a good starting point is to review the Singapore Government Instruction Manual ("IM") concerning the subject of "Procurement" specifically (which is accessible at http://app.im.intranet.gov.sg/mof/Procurement/Theme.aspx). A review of the IM would demonstrate that the procurement process is comprehensively, if not minutely, regulated. It sets out eight broad stages in the entire procurement chain and, under each of these stages, there are individual sets of "Rules" (apart from other "Operating Principles" and "Good Practice Guides"). It is not difficult to imagine that, in the interests of maintaining high standards of accountability and transparency, non-compliance with *any* of these regulatory rules may trigger a formal investigation. According to the Prosecution, once such an investigation is afoot, any false information by a public servant to divert that investigation away from the true state of affairs should ordinarily be held to warrant a custodial sentence.

27 We do not agree that it is appropriate to adopt such a blanket approach against all public servants who have given false information in the context of an investigation into procurement improprieties. It is important to pause and examine the nature of the impropriety in the first place. Naturally, the more serious the impropriety, the more strongly will attempts at concealing it with false information impact on the integrity of the public service. On the other hand, there may be improprieties in the procurement process that are the result of mere technical infringements and it is in this context that we have serious reservations as to whether the provision of false information necessarily warrants a custodial sentence. Furthermore, it is also relevant to consider that some public servants may be motivated to give false information for a variety of reasons. They may do so for the purely malicious purpose of creating trouble for an adversary, or they could do so out of a sense of misguided loyalty to a fellow colleague without seeking any personal gain for themselves. Given the wide range of scenarios in which the Reframed Question can possibly play out, we would hesitate in sharing the Prosecution's view that the public servant concerned should be sentenced to an imprisonment term *regardless*. A few simple (and in no way fanciful) examples in this connection may help to crystallise the point:

(a) Rule 3.2 of Stage 7 of the Procurement IM states that all government procurement entities shall publish a "Quotation Award Notice" (which is used to inform suppliers about the outcome of a procurement exercise) on *GeBIZ* "not later than 3 working days after the date of award … unless there are practical reasons for … not being able to do so". The accused, D, is responsible for publishing such a Notice but he is a day late – he did not publish the Notice within the prescribed three day period because of an oversight. Subsequently, D's department commences an investigation into this procurement impropriety and D is questioned about how it had occurred. During the course of the questioning, D is embarrassed by his lapse and, instead of admitting readily to his error, he attempts to deflect blame from himself by falsely alleging that a technical glitch had prevented him from publishing the Notice timeously.

(b) Rule 1.2 of Stage 1 of the Procurement IM states that a document known as an Approval of Requirement ("AOR") is required as the first step of the procurement process to establish the need for procurement and that it "applies to all procurement, including small value purchases". The accused, E, is tasked with the routine procurement of low-value office consumables. He is satisfied that there is a need for such procurement but forgets to prepare an AOR. Subsequently, it is discovered that there was no AOR for the procurement and an investigation is carried out. E

is questioned and (just as with D in the previous example in (a) above) he gives a false statement to deflect blame – E tells the investigating officer that he prepared an AOR, submitted it to the relevant department, and that it must have been misplaced in the process through no fault of his own.

(c) Taking the hypothetical facts in (b) above, imagine now that E remembers that he has to prepare an AOR. However, he chooses not to prepare one because he considers getting the necessary paperwork in order too much of a hassle for such a small value, routine matter. E casually mentions this to the accused, his colleague, F, who concurs that there is no need to be bound by red tape in such a situation. F is subsequently questioned during an internal investigation and, wishing not to land his friend E in trouble, F falsely mentions that he has no knowledge of how E had handled the procurement.

28 In all of the scenarios set out above, the public servant concerned *had* given false information in the context of an investigation "touching on improprieties relating to procurement". The question is whether a custodial sentence should be imposed on each of them, *by default*, on that basis alone. In our view, that should not be so. In each of these scenarios, it should be relevant as a sentencing consideration that the underlying breach committed by the respective procurement officers was fairly administrative in nature. Each of them might not have strictly followed the relevant procurement regulations to a tee but, on the given facts, no serious consequences arose therefrom. False information was then given in each instance but it can hardly be said to have been with any malicious intent. We should not be understood as saying that this is wholly innocuous conduct that one can turn a blind eye to. Rather, the point which we would like to emphasise is that this is not conduct which so undermines the standing of the public service that the *default* punishment must necessarily be a custodial term. One should not close the possibility that a heavy fine, or for that matter just a fine, might be a sufficient deterrent in these circumstances. In this connection, it bears mention that the maximum fine under s 182 was enhanced from $1,000 to $5,000 in 2008 so as to give the courts greater flexibility to impose heavier fines in lieu of an imprisonment term if the facts warranted it (see also *Public Prosecutor v Alvin Chan Siw Hong* [2010] SGDC 411 at [8]).

29 As for the alternative scenario in the Reframed Question concerning the giving of false information in the context of investigations into "allegations of abuse of office or power", we find that this begs the more fundamental questions of what "office" or "power" the relevant public servant holds as well as the nature of his alleged "abuse". This is because, as a matter of logic and commonsense, the more lofty the public servant's position and the more serious the abuse, the more deserving he would be of custodial punishment if he had given false information in those circumstances. For example, a high-ranking public official may have orchestrated the help of others in embezzling a substantial amount of public funds. If he provides false information to investigators in order to conceal his involvement, one can quite confidently argue that a custodial sentence ought to be imposed in respect of the false information given the serious consequences which his deception will no doubt have had on the public's confidence in the public service. By contrast, we may also conceive of a situation, at the other extreme of the spectrum, where a low-level public servant tasked with collecting some form of payment from members of the public pockets for himself no more than a hundred dollars in the course of his duties. If this officer provides false information to mislead an inquiry into the whereabouts of this misappropriated sum, should he likewise be sentenced to a term of imprisonment? We would not be so quick to say that he *necessarily* should.

30 Drawing together the main threads of the foregoing analysis, we think that it is clear that the factual premise of the Reframed Question is, at once, both too narrow and too broad. It is too narrow because it fails to account for a host of potentially relevant sentencing factors (see [22] above), yet it is also too broad because its key descriptive terms can easily accommodate a wide-ranging field of

scenarios with varying degrees of severity (see [27]–[29] above). The upshot of this is that, as much as the Prosecution has sought to pin down an appropriate set of facts in the Reframed Question so as to leave this court with a pure question of law, the reality is that the facts remain very much in a state of flux. In our opinion, the Reframed Question cannot be meaningfully answered without keeping an eye firmly on the *facts* and, accordingly, any suggestion that it is exclusively a question of *law* also cannot be sustained. Indeed, if we were pressed to answer the Reframed Question, we consider that the only reply which we could sensibly give is none other than that "*it all depends on the facts*". We are not inclined to venture further by suggesting anything more than this because, as alluded to earlier (see [22]–[23] above), it would be unsound, if not even potentially dangerous, for us to do so. The truth of the matter is that a question concerning sentence, which is necessarily fact-sensitive, cannot be camouflaged as a question of law.

31 In any event, the Reframed Question is also, in our view, not a question of law of *public interest*. As we stated at [20] above, it is for all intents and purposes a question as to the appropriate sentence to be imposed. However, as we have stressed in this judgment, sentencing is necessarily a fact-sensitive inquiry and this would not ordinarily give rise to a question of law of public interest. The law is clear that a question which is referred to remedy an error of this nature would not cross the public interest threshold. As the court noted in *Abdul Salam bin Mohamed Salleh v Public Prosecutor* [1990] 1 SLR(R) 198 at [28], it is doubtful that the criminal reference procedure was intended for "questions which by their nature cannot affect the outcome of cases other than those from which they arose".

32 Before concluding we would add that this application is very much the thin end of the wedge. Under our system of criminal justice, there is only one tier of appeal – a sentence imposed by the State Courts may only be appealed to the High Court. There is no further appeal beyond that. The criminal reference procedure is clearly not meant for that and should not be invoked as a backdoor appeal. Otherwise a dissatisfied accused could also seek to do the same, although in his case he would need to first apply for leave.

33 In the premises, we decline to exercise our substantive jurisdiction to answer the Reframed Question. We dismiss the application accordingly.