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

[2023] SGHC 266

Magistrate's Appeal No 9091 of 2023/01

Between

Newton, David Christopher

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Appeal]
[Criminal Procedure and Sentencing — Sentencing — Appeals]
[Criminal Procedure and Sentencing — Sentencing — Principles]

Newton, David Christopher
v
Public Prosecutor

[2023] SGHC 266

General Division of the High Court — Magistrate's Appeal No 9091 of 2023/01
Sundaresh Menon CJ
4 August 2023

20 September 2023 Judgment reserved.

Sundaresh Menon CJ:

1 Mr Newton David Christopher ("Mr Newton") conspired with two others to deceive the Health Promotion Board ("HPB") and cause it to reflect in the National Immunisation Registry ("NIR") that he had been fully vaccinated against the Coronavirus Disease 2019 ("COVID-19"). This was untrue in that Mr Newton had, in fact, received saline injections from one of his co-conspirators. He pleaded guilty to a single charge of cheating, punishable under s 417, read with s 120B of the Penal Code 1871 (2020 Rev Ed) ("Penal Code") and was sentenced by District Judge Soh Tze Bian ("the DJ") to 16 weeks' imprisonment.

2 Mr Newton appeals against the sentence that was imposed by the DJ and relies on the DJ's substantial reproduction of the Prosecution's written submissions in his grounds of decision ("GD") to contend that this would cause

a fair-minded and informed observer to harbour a reasonable suspicion that the DJ was biased against Mr Newton or had a closed mind as far as his case was concerned. In any event, Mr Newton argues that the sentence of 16 weeks' imprisonment imposed on him is manifestly excessive.

3 Having considered the parties' arguments, I decline to set aside the DJ's decision on the ground of apparent bias. Whilst the DJ's conduct in reproducing large chunks of the Prosecution's written submissions in his GD with minimal changes was wholly unsatisfactory as a matter of judicial practice, this is not, in and of itself, a basis for setting aside the DJ's decision. The question is whether the circumstances would give rise to a reasonable suspicion or apprehension of bias in the mind of a fair-minded and informed observer (*BOI v BOJ* [2018] 2 SLR 1156 ("*BOI*") at [103]). Mr Newton's case rested almost entirely on the DJ's GD and its obvious and undeniable adoption of almost the entirety of the Prosecution's written submissions. But this was to the exclusion of other relevant considerations including, in particular, the oral exchange that took place between the DJ and Mr Newton's counsel at the hearing below. This exchange demonstrated, in my judgment, that the DJ had in fact read and digested all the materials before he came to a view. While for reasons that I explain later, I disagree with the DJ's view on sentence, that goes to the *merits* of the DJ's decision rather than to the question of *apparent bias*. I accordingly reduce the sentence of 16 weeks' imprisonment that was imposed by the DJ to 12 weeks' imprisonment, principally for the reason that the DJ failed to appreciate that the harm occasioned by Mr Newton's offence as well as the culpability that may be attributed to Mr Newton were both on the low side.

Background

4 Mr Newton is a 44-year-old Australian male. His co-conspirators are Dr Jipson Quah ("Dr Quah"), a 34-year-old doctor whose registration as a medical practitioner has since been suspended, and Dr Quah's logistics supervisor, Mr Chua Cheng Soon Thomas ("Mr Chua"). They are dealt with separately and not in these proceedings. For the avoidance of doubt, nothing that I say here about Mr Newton's conduct or his culpability and the harm that his actions may have caused has any bearing at all on either Dr Quah or Mr Chua.

5 Sometime around December 2021, Mr Newton became acquainted with Mr Chua and asked him if he could arrange to falsely certify Mr Newton as having been vaccinated against COVID-19, and his wife, Ms Wonglangka Apinya ("Ms Apinya") as being medically ineligible to receive the COVID-19 vaccine. Mr Newton evidently did not wish to be vaccinated, but he had a job offer in Australia and knew that he would face difficulties entering that country if he were unvaccinated.

6 Mr Chua discussed Mr Newton's request with Dr Quah on 27 and 28 December 2021. On Dr Quah's instructions, Mr Chua then arranged for Mr Newton and Ms Apinya to be injected at Dr Quah's clinic. However, Mr Newton and Ms Apinya would not be injected with a COVID-19 vaccine; instead, they would be injected with a simple saline solution.

7 On 29 December 2021, Mr Newton and Ms Apinya consulted Dr Quah at the Mayfair Medical Clinic located in Woodlands. Dr Quah informed them that he would inject them with the Sinopharm vaccine. Mr Newton (but not Ms Apinya) knew this to be untrue. Dr Quah then injected Mr Newton and Ms Apinya with a saline solution, but recorded in his clinic's medical records that they had both received their first dose of the Sinopharm vaccine. Dr Quah's staff

then submitted the medical records of Mr Newton and Ms Apinya to the NIR, which on 7 January 2022, duly reflected Mr Newton and Ms Apinya as having received their first dose of a COVID-19 vaccine.

8 Further to Mr Newton's request that a second dose of saline injections be administered, Mr Chua arranged for Mr Newton and Ms Apinya to consult Dr Quah, this time at a second clinic, the Mayfair Medical Clinic (Yishun Chong Pang) on 15 January 2022. On this occasion, Dr Quah again falsely informed Mr Newton and Ms Apinya that he would be administering the Sinopharm vaccine to them, and proceeded to inject them with a saline solution. Ms Apinya remained unaware of the deception that had been practiced on her.

9 Dr Quah then recorded in his clinic's medical records that Mr Newton and Ms Apinya had each received their second dose of the Sinopharm vaccine. His staff sent both their vaccination records to the NIR. As a result, the NIR reflected both Mr Newton and Ms Apinya as having been fully vaccinated against COVID-19.

10 In exchange for these services, Mr Newton paid Mr Chua $6,000. Mr Chua and Dr Quah split this sum between them.

The proceedings before the DJ

11 The offence was uncovered shortly after this and Mr Newton was subsequently charged with two offences under s 417 read with s 120B of the Penal Code on 17 March 2023. The first charge averred that he had engaged in a conspiracy with Dr Quah and Mr Chua to cheat HPB into reflecting in the NIR that he had been fully vaccinated against COVID-19 when he had received only saline injections and was not vaccinated against COVID-19 at all ("First Charge"). The second charge, also under s 417 read with s 120B of the Penal

Code, pertained to the conspiracy he engaged in with Dr Quah and Mr Chua to deceive Ms Apinya ("Second Charge").

12 As Mr Newton indicated that he wished to plead guilty to the charges, the matter was fixed for mention on 27 April 2023. The Prosecution and the Defence filed written submissions setting out their positions on sentence on 17 March 2023 and 6 April 2023 respectively. The Prosecution also filed a set of Reply Submissions dated 25 April 2023. It seems to me probable that this must have been pursuant to the DJ's directions, though this was not evident on the record before me.

13 On 27 April 2023, Mr Newton pleaded guilty to the First Charge and consented to the Second Charge being taken into consideration for the purpose of sentencing. Matters then took an unexpected turn. It is the common practice and indeed the norm, that even where written submissions have been filed in advance of the hearing to take the accused person's plea of guilt, the parties would be afforded the opportunity to make oral submissions. The court is seldom assisted if the oral submissions are nothing more than a repetition of what has already been set out in writing. On the other hand, oral submissions will often be of considerable assistance to the court if counsel take the opportunity to highlight or emphasise key points, or to meaningfully respond to the arguments raised by opposing counsel. At the same time, any misunderstandings, misconceptions, doubts or questions in the mind of the judge can be cleared up and resolved. Mr Newton's counsel, Mr Paul Loy Chi Syann ("Mr Loy") clearly expected that this was how the matter would proceed and evidently came prepared for this. However, immediately upon convicting Mr Newton, the DJ asked about charges to be taken into consideration for sentencing as well as antecedents and then said as follows:

> I have read both parties' submission [*sic*] and I think they are quite comprehensive. I have prepared a grounds on decision [*sic*] but I don't propose to read them but I'll highlight to you what are the reasons for my sentence which I will impose on the accused.

14 It was immediately evident from Mr Loy's reaction that this was not what the parties had expected. Suffice it to say here that the case was not being managed appropriately by the DJ. I will return to this point later.

15 In any case, Mr Loy indicated that he wished to make some oral submissions which the DJ allowed him to do. In the course of those submissions, it has to be said in fairness to the DJ, that he appears to have engaged Mr Loy substantively on the arguments he raised. I will return to the significance of this exchange below. The Prosecution then responded to Mr Loy's oral submissions, after which the DJ made it clear that the oral submissions had not caused him to change his mind and he proceeded to sentence Mr Newton to 16 weeks' imprisonment.

16 The DJ furnished brief grounds for his decision. He explained why he thought public interest considerations called for a deterrent sentence and noted that Mr Newton's offence disclosed various aggravating factors, including a degree of sophistication. He also rejected Mr Loy's submission that mitigating weight should be placed on the fact that Mr Newton did not cause the HPB pecuniary loss, intended to leave Singapore for Australia in March 2022, and had offended out of concern for Ms Apinya.

17 In his GD that was released later that same day, the DJ elaborated on these oral grounds. He explained that a custodial sentence was warranted in the interest of general deterrence. Mr Newton had selfishly participated in a fraudulent scheme that undermined Singapore's national response to a global

pandemic. He had also committed the offence at a time when Singapore was experiencing a very sharp rise in the number of COVID-19 cases.

18 The DJ also considered that Mr Newton's offence disclosed several aggravating factors. These included Mr Newton's active participation in the criminal conspiracy, Mr Newton's selfish reasons for committing the offence, and the difficulty of detecting the offence. In the DJ's view, these aggravating factors pointed to a "substantial imprisonment term" being the appropriate sentence.

19 The DJ further explained that he derived some guidance from *Public Prosecutor v Tan Jia Yan* [2019] SGMC 60 ("*Tan Jia Yan*") in arriving at the sentence of 16 weeks' imprisonment. The offender in that case was a tuition teacher who had conspired with some staff who worked at her tuition centre to help students cheat in national examinations. She had done this by sitting for the examinations as a private candidate and providing a live feed of the examination papers to her co-conspirators using FaceTime. The offender was subsequently charged with and pleaded guilty to 26 charges of cheating under s 417 read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) (the "2008 Penal Code"), and sentenced to an aggregate imprisonment term of 36 months.

20 In the DJ's view, *Tan Jia Yan* bore some similarity to the present case in that both offenders undermined "nation-wide or international programmes that depend[ed] on the honest co-operation of every participant for their success", and displayed a degree of sophistication in committing their respective offences. That said, the DJ considered *Tan Jia Yan* to be a more egregious case as the offender there had played a more instrumental role in the dishonest scheme, and her offences had garnered international media attention.

21 Finally, the DJ gave his reasons for rejecting the submissions made by the Defence. The DJ did not think it relevant that Mr Newton had not caused the HPB to suffer pecuniary loss. He considered that the HPB had suffered reputational damage. Further, Mr Newton had also compromised the administration and effectiveness of the Singapore Government's national COVID-19 policy, and potentially undermined public trust in public institutions. The DJ also rejected the submission that Mr Newton's offence did not harm others. There was a real risk of Mr Newton infecting others with COVID-19, and the fact that he had been apprehended before he was able to take advantage of his false vaccination status being reflected on the TraceTogether application was irrelevant. In the round, the DJ considered a sentence of 16 weeks' imprisonment to be just and appropriate.

Parties' cases on appeal

Mr Newton's case

22 Mr Loy's first contention was that the DJ's decision ought to be set aside because a fair-minded and informed observer would reasonably apprehend that the DJ was biased against his client. In support of this claim, Mr Loy pointed to the DJ having already prepared his GD before either side had made oral submissions on 27 April 2023. Furthermore, Mr Loy relies on the undisputed fact that the bulk of the DJ's GD reproduced substantial portions of the Prosecution's submissions. This extended to copying the cross-references in the Prosecution's written submissions, even though these references were out of place when set out in the GD.

23 However, Mr Loy also recognises that even if he were to succeed in his primary contention, this would not assist his client unless he is able to show that the sentence imposed by the DJ was inappropriate. Mr Loy therefore goes on to

contend that the sentence imposed was manifestly excessive essentially because the DJ placed excessive weight on certain aggravating factors. He further argues that general deterrence recedes as a sentencing consideration in this case because the Vaccine-Differentiated Safe Measures ("VDSM") are no longer in force. Specific deterrence is also said not to be of great relevance here since Mr Newton's "primary motivation was to obtain a vaccine exemption for [Ms] Apinya, and he did not otherwise engage in or further anti-vaccination discussions". As for the supposedly sophisticated nature of Mr Newton's offence, Mr Loy contends that this should not be attributed to Mr Newton since the fraudulent scheme had been conceptualised and put in place by Dr Quah and Mr Chua.

24 Mr Loy also contends that the DJ did not attribute due weight to certain mitigating factors. The DJ ought to have afforded Mr Newton more credit for his cooperation with the authorities, his early plea of guilt, his lack of related antecedents, his good character, and the fact that his wrongful conduct caused "no real loss" to the authorities.

The Prosecution's case

25 The Prosecution accepts that the DJ's GD "bears obvious similarities to [its] written submissions". It therefore does not "seek to rely on the GD to defend the sentence imposed" on Mr Newton.

26 Nonetheless, the Prosecution submits that an independent appraisal of the facts of this case would lead one to essentially a similar sentence to that meted out by the DJ. In this regard, the Prosecution maintains that because Mr Newton was seeking to subvert the public health measures enacted by the Government to combat the spread of COVID-19, deterrence is the principal sentencing consideration. The fact that the VDSM were subsequently lifted or

that Dr Quah and Mr Chua had played more significant roles in the relevant conspiracy does not alter this analysis, according to the Prosecution.

27 The Prosecution also points to several factors which it contends were aggravating in nature, and submits on this basis that the sentence of 16 weeks' imprisonment is entirely apposite. These include the fact that Mr Newton had defrauded a public institution, was the progenitor of a "premeditated conspiracy", and offended for wholly selfish reasons. His offence also generated considerable public unease, and resulted in Ms Apinya being injected with saline without her consent.

28 Finally, the Prosecution also submits that the various mitigating factors Mr Newton relies on are not mitigating as a matter of law. In respect of those that I have not yet mentioned, the Prosecution contends that Mr Newton's loss of job prospects is irrelevant, as is the fact that he is presently the only person out of several others who participated in the fraudulent vaccination conspiracy to have been prosecuted.

Issues to be determined

29 Two issues arise for my determination. First, whether the DJ's decision ought to be set aside on the basis of apparent bias. Secondly, whether the sentence imposed by the DJ is manifestly excessive.

Apparent bias

30 The assertion of apparent bias was eventually abandoned by Mr Loy at the hearing before me after I invited him to consider certain points. I nonetheless set out my views on the matter so that there is a clear understanding of a judge's

role and responsibility in these circumstances and also to explain whether and how this may give rise to a remedy in favour of an accused person.

31 Before doing so, I make a preliminary point. A party alleging judicial bias must be very clear as to whether the case is mounted on the basis of actual or apparent bias on the decision maker's part. The two allegations differ in substance. An allegation of actual bias is an assertion that a judge had in fact been influenced by extraneous considerations in arriving at his decision and did so otherwise than based on the merits of the case (see *Flaherty v National Greyhound Racing Club Ltd* [2005] EWCA Civ 1117 at [28]; *CFJ and another v CFL and another and other matters* [2023] 3 SLR 1 ("*CFJ*") at [51]; *Locabail (UK) Ltd v Bayfield Properties Ltd and another* [2000] QB 451 at [3]). This is a grave allegation and the alleger carries the burden of proving the relevant facts (see *Chee Siok Chin and another v Attorney-General* [2006] 4 SLR(R) 541 at [9]). On the other hand, a claim of apparent bias is concerned with whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in a fair-minded and informed observer (*BOI* at [103(a)]). This may take various forms, including an *appearance* of:

(a) a predisposition in favour of one side or against the other; and/or

(b) the judge having a closed mind that was not open to fairly considering the merits of the submissions made by the parties.

32 These examples are plainly not exhaustive of when apparent bias may be found. But they illustrate an important difference between this type of assertion and one of actual bias in that the complaint in the former type of case is premised primarily on the notion that even if there may *in fact* be no miscarriage of justice, it is no less important to ensure that justice is *seen* to be done; whereas in the latter situation, one is concerned with whether there is in

fact evidence of bias (see *Panchalai a/p Supermaniam and another v Public Prosecutor* [2022] 2 SLR 507 at [22]; *CFJ* at [51]). But in arguing that the DJ "appeared to have a closed mind" and also that he "did in fact have a closed mind", Mr Loy conflated the two claims. While it may be permissible to run these cases in the alternative, this was not how Mr Loy seemed to me to be approaching the matter. Instead, he seemed to me, at least initially, not to distinguish between the nature of the two distinct types of the allegations being made. Upon my probing, Mr Loy clarified that his case was predicated on apparent bias.

33 Whereas the test for actual bias is concerned with whether the decision-maker's mind was in fact tainted, the test for apparent bias is objective and is applied from the perspective of an *observer* who is apprised of all relevant facts that are capable of being known by members of the public generally (*BOI* at [103(b)] and [103(d)]). The vantage point of the observer follows from the concern with the appearance of justice. However, in this inquiry, one is constrained to look at all the circumstances capable of being known to the putative observer, and these include the "interactions between the court and counsel, and such facts of the case as could be gleaned from those interactions and/or known to the general public" (*BOI* at [103(e)]).

34 I turn to Mr Loy's complaint about the DJ's reproduction of the Prosecution's written submissions. I state at the outset and in emphatic terms that this was not a satisfactory situation. Reference to other cases where judges have simply copied or reproduced the submissions of one side or the other will demonstrate why this uniformly attracts criticism.

35 Beginning with *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180, the District Judge there had reproduced material passages of reasoning he had set

out in another judgment to justify the sentence he imposed on an offender. In setting aside the District Judge's decision, I had observed that a sentencing judge runs a considerable risk when he reproduces entire passages from the submissions of the parties or from another of his decisions without attribution or explanation. It is one thing for a judge to cite submissions or cases at length while making it clear how they may be relevant to the case at hand, but quite another for him to reproduce whole passages from another case or matter without attribution or explanation. Among the main concerns is that when such similarities are discovered, the parties and other readers are potentially left with the impression that the judge did not apply his mind to the facts, arguments, and issues, and did not decide them impartially and independently (at [69]).

36 The issue of judicial copying of written submissions also arose in *Lim Chee Huat v Public Prosecutor* [2019] 5 SLR 433 ("*Lim Chee Huat*"). In convicting the appellant of an offence under s 8(*b*)(ii) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), the District Judge substantially reproduced the Prosecution's written submissions in his grounds of decision, opting only to rearrange the sequence of the paragraphs and make minor paraphrases. On appeal, the High Court Judge was not satisfied that the District Judge had exercised meaningful judgment; the District Judge had simply reproduced the structure and content of the Prosecution's written submissions in the operative part of his grounds of decision. Whilst the High Court Judge ultimately dismissed the appellant's appeal against his conviction and sentence, he took pains to denounce the practice of judicial copying. In particular, the High Court Judge observed that judicial copying raises the concern that a judge is biased or appears to be biased in favour of the party whose submissions are adopted and may also give rise to a substantial doubt about the judge's independent exercise of judgment and discernment (at [49]). Importantly, public confidence in the

fairness of the judicial process will be significantly undermined if there are doubts as to the impartiality and rigour with which a case is appraised.

37 In Canada, the Supreme Court of Canada confronted the issue of judicial copying in *Cojocaru v British Columbia Women's Hospital and Health Centre* [2013] 2 SCR 357. The court had to decide whether to set aside a trial judge's decision on the basis that he had reproduced the plaintiffs' submissions in 321 paragraphs of his 368-paragraph judgment. In so far as the trial judge did not accept all of the plaintiffs' submissions, wrote some original paragraphs, and found in favour of the defendant on some points, the Supreme Court was satisfied that he had exercised an independent judicial mind and hence declined to set aside his judgment. That said, the court criticised the practice of judicial copying and observed that it may convey the impression "that the reasons for judgment do not reflect the judge's thinking", but that of someone else's (at [35]). It is appropriate judicial practice for a judge to explain his conclusions in his own words to ensure and demonstrate to the parties and indeed, to the public, that he has fairly, meaningfully, and independently understood and considered all the relevant issues.

38 To similar effect is the Hong Kong Court of Final Appeal's observation in *Nina Kung v Wong Din Shin* (2005) 8 HKCFAR 387 that the wholesale judicial copying of one side's submissions is bound to raise doubts in the mind of the other side as to whether the judge had brought an independent mind to his judicial function and whether the points made on that other party's behalf had been adequately considered (at [448]). Though there is nothing wrong with a judge accepting submissions where he agrees with them, extensive judicial copying may raise serious questions as to whether the judge had abdicated his judicial function or at least as to whether justice has been seen to be done by an independent judicial tribunal (at [446]). This is especially so because judicial

opinions are a tangible sign to the litigants that the judge has actively wrestled with their claims and arguments and made an independent decision grounded in reason and logic (at [448]).

39 Finally, in *IG Markets Ltd v Declan Crinion* [2013] EWCA Civ 587 ("*Crinion*"), the English Court of Appeal observed that it was "thoroughly bad practice" for the first instance judge to have substantially adopted the submissions of the respondent as his judgment. This practice risked creating the impression that the judge had abdicated his core judicial responsibility to think through for himself the issues which it was his job to decide and had not performed his task of considering both parties' cases independently and even-handedly (at [13], [16]). Sir Stephen Sedley in particular stressed that to simply adopt one party's submissions – however cogent they are – overlooks what is arguably the principal function of a reasoned judgment, which is to explain to the unsuccessful party why they have lost. Even a party whose claim is without merit is entitled to the measure of respect that a properly reasoned judgment conveys (at [38]).

40 In my judgment, the following principles can be extracted from these cases and from a sensible consideration of the matter:

(a) Where a court reproduces substantial portions of the submissions of one side, it opens itself to the charge that it has failed to apply a judicious mind and has simply, and without sufficient consideration and discernment, adopted the submissions of one party.

(b) This in turn opens the court to a complaint of actual and/or apparent bias.

(c) Such a practice is especially unsatisfactory where the court has just reproduced or dealt with one side's arguments and failed to engage with the submissions of the losing side. It leaves the losing party feeling that its case has not been fairly understood or considered. Judges should note the particular importance of directing the reasons behind their decision to the losing party.

(d) Aside from the question of bias, a court that engages in such unsatisfactory conduct invites the criticism of a lack of diligence. This is so for at least the following reasons:

(i) A judgment adds to the corpus of the law in our system of law. This calls for careful consideration in the choice of language used in articulating principles or explaining reasons. This is an important part of the judicial function.

(ii) It will be a rare case where a party's submissions can readily be adopted with the most cursory of edits and reproduced as the pronouncement of the court. By definition, a party's submissions will reflect its *advocacy* for a particular viewpoint. A *judgment* on the other hand, is an expression of a considered resolution of the controversy at hand.

(iii) Such conduct invites the complaint that the judge did not even take the trouble to express his reasons in his own words and may leave an observer wondering if the judge even understood the nuances of what each party had to say.

41 All of these criticisms could fairly be levelled at the GD and I regard this as wholly unsatisfactory from the perspective of considering what would amount to acceptable judicial practice. In a sense, this was exacerbated in this

case because the DJ came to the hearing apparently intending to pronounce the sentence he intended to impose without hearing oral submissions.

42 Directions had presumably been given for written submissions on sentence to be filed ahead of the hearing. I have seen nothing to suggest that the parties were also told that the written submissions would be the only material that the court would consider. Indeed, in keeping with s 228(3) of the Criminal Procedure Code 2010 (2020 Rev Ed), which requires the court taking a plea of guilt to hear the accused person's mitigation and any reply on the part of the Prosecution, the normal practice is that oral submissions will commonly be made. Mr Loy had come prepared for that. In these circumstances, I consider that the DJ's conduct of the matter as a whole was unsatisfactory.

43 But even so, that is not sufficient in and of itself to establish a basis for setting aside his decision on the grounds of apparent bias, once regard is had to the totality of the circumstances, as I shall now explain.

44 In the present case, it is undisputed that the DJ had reproduced most, indeed almost the entirety, of the Prosecution's written submissions in his GD. The contents of the Prosecution's first set of written submissions dated 17 March 2023 essentially formed the first half of his GD, whilst the substance of its reply submissions dated 25 April 2023 constituted the second. This even extended to reproducing the Prosecution's footnotes and stylistic emphases. It is also undisputed that the DJ did not add to or reject any parts of the Prosecution's analysis in his GD but adopted it in full.

45 Mr Loy, perhaps unsurprisingly, focused on these facts. However, there are four additional points which were pertinent but which Mr Loy failed to consider. First, as noted at [12] above, the parties had filed extensive written

submissions prior to the hearing. Second, the parties would have anticipated that the DJ would have read and considered those submissions. Third, when the DJ intimated that he was ready to deliver his decision, Mr Loy at once informed the DJ that he wished to make some oral submissions. The DJ duly permitted Mr Loy to do so. And finally, there was an oral exchange between counsel and the DJ on 27 April 2023. These facts all formed an important part of the factual matrix that the fair-minded and informed observer would have considered in coming to a view on the question of apparent bias (see [33] above). Indeed, the oral exchange is especially significant because it showed that the DJ had read and digested the case materials, had considered the merits of the parties' respective submissions, and had come to a view on this. And, there is nothing to suggest that in doing so, he had not applied an independent judicial mind to bear on the materials and the dispute before him.

46 I have mentioned above that the DJ initially did not appear to think that the parties would be making oral submissions. However, the DJ did accede to Mr Loy's request to orally address some points including those that the Prosecution had raised in its reply written submissions. Whilst the DJ appeared to be surprised that the Defence wished to supplement what it had said in its written submissions (which point I have dealt with at [41]–[42] above), the fact remains that he was open to the Defence raising any new points it wished to make in support of its position.

47 In my judgment, notwithstanding the various aspects of the DJ's conduct of the matter that I found to be unsatisfactory as a matter of judicial practice, on an objective consideration of all the material, it seems to me that the reasonable and fair-minded observer would have concluded that:

(a) Although the DJ had strong views on the matter by the time he came to the hearing, those views were the result of his study and assessment of the written submissions. This much was evident from the manner in which the DJ engaged with Mr Loy's submissions. It was obvious from this that he had read and understood the written submissions.

(b) The DJ in the final analysis was not persuaded by what Mr Loy had to say. It would also have been obvious from what the DJ said during the oral arguments, *why* he was not persuaded by Mr Loy's submissions. The observer would come to this view based on the fact that the DJ was willing to allow Mr Loy to make oral submissions, as well as the manner in which he engaged with those submissions. The observer would not conclude, on a consideration of these facts, that the DJ had a closed mind and was not open to being persuaded otherwise. It is significant in this regard that in making his oral arguments, Mr Loy had relied on points that he had already mentioned in his written submissions. And when he sought to highlight some aspects of his written submissions, it was evident from the DJ's questions and observations that he had read, understood and considered those points and had come to the view that they were not persuasive for reasons which he did articulate during Mr Loy's submissions.

48 I also place some weight on the fact that the DJ had reorganised the Prosecution's written submissions in his oral and written grounds and arranged these in a way that he thought would best substantiate his position on sentence. Whilst he may not have supplemented the Prosecution's written submissions with his own thoughts, the fact that the DJ had synthesised the various arguments suggests that he had digested the material and thought about how

these influenced his view of the issues. My conclusion involves no qualification of the principle that justice must be seen to be done but in deciding whether that is so, it will often be necessary to go beyond first impressions (see *Crinion* at [17]).

49 The question at this stage is not whether the DJ was correct in his assessment but whether his conduct taken as a whole, gave rise to a reasonable apprehension of bias. Viewed in the round, I do not think this threshold was crossed and in fairness to Mr Loy, when I invited him to have regard in particular to the oral exchange, he withdrew the submission of apparent bias.

50 Before I move on to consider the merits of the appeal, I should touch on a point that was raised in the written submissions. This pertained to the fact that the DJ had already prepared his written grounds prior to this oral hearing. As to this, I have the following observations:

(a) First, this has to be seen in the context of the DJ's understanding of how the matter was to proceed. In his mind, the written submissions were exhaustive and having considered these, he had come to his initial decision. I have already said that I regard the DJ's apparent mismanagement of the proceedings to be unsatisfactory. If it was the DJ's intention to proceed without oral submissions, he ought to have made that clear to the parties. But this has nothing to do with actual or apparent bias. Rather, it has to do with unsatisfactory case management.

(b) Second, and even if it was known and anticipated that there would be an oral hearing, there is nothing inherently wrong or impermissible for a judge to come prepared with an outline or even a draft of a judgment or remarks accompanying a decision that the judge thinks he is likely to arrive at after hearing the oral arguments. The key

and mandatory requirement is that the judge must keep an open mind until the moment the decision is pronounced; and if it is the case that further arguments are permitted to be made even after the decision is first pronounced, then the judge is obliged to keep an open mind, in the sense of being willing to be persuaded to come to a different view, until those further arguments are disposed of.

(c) Third, this is an inherent feature of a system such as ours where a substantial amount of written advocacy takes place with quite extensive submissions typically having been filed in advance of an oral hearing. In such cases, it is certainly desirable and even *expected* that the judge would have read and digested the principal materials so as to be able to engage with counsel during the submissions, to test the propositions being advanced and to clear up any doubts or concerns. While the judge is required to keep an open mind, this does not mean he must come with an empty mind (*Prometheus Marine Pte Ltd v King, Ann Rita and another appeal* [2018] 1 SLR 1 at [39]). Indeed, it would be out of step with the typical demands of judicial office in the modern context for a judge to come to a hearing wholly unacquainted with the issues raised in the matter and with the submissions and supporting materials. On the contrary, a judge is often likely to come with a provisional view after having read, digested and considered the materials and in some cases, this provisional view can be quite strongly held especially if the merits are plain. In such circumstances, a judge may well come prepared with a draft or an outline of the decision. But even then, the imperative is that the judge must remain open to changing his mind depending on how the arguments are presented and received.

(d) Of course, this is always dependent on the nature of the case and the issues. The more complex or nuanced these are, the less likely a sensible judge will have formed strong provisional views.

51 In this case, the question was whether the fact that DJ had prepared his draft judgment reflected an unwillingness to consider the oral arguments or that he was closed to the possibility of being persuaded otherwise. For the reasons I have already outlined, I was not satisfied that a reasonable, fair-minded and well-informed observer would have apprehended this to be the case.

52 For these reasons, I was not inclined to set aside the DJ's decision on the basis of apparent bias, and in my judgment, Mr Loy was correct to drop the point.

The appropriate sentence to be imposed on Mr Newton

53 I now turn to the substantive merits of the DJ's decision on sentence. As I alluded to earlier, the fact that the DJ had exercised an independent judicial mind in imposing a sentence of 16 weeks' imprisonment on Mr Newton has no bearing on whether this sentence is manifestly excessive.

54 I preface this section by observing that the incidence or likely incidence of harm as a result of a deception is an element of the offence of cheating. The type of harm alleged to have been suffered by the HPB, which is the victim in this case, namely, potential reputational harm arising from the fact that the vaccination records it maintained were inaccurate for a short period of time, is not the same as harm such as the loss of money or property that typifies the usual case of cheating. It is therefore essential that the court carefully examine and assess the nature of harm occasioned by the offender, so that it may gain a proper appreciation of the severity of the offence.

55 Indeed, in *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 ("*De Beers*"), I observed that a failure by the District Judge to appreciate that the procuring of sex by cheating represented a reprehensible intrusion of bodily integrity which was wholly incommensurate with mere loss of property, led to him imposing sentences on the offender which were manifestly inadequate (at [3]). Equally, however, and as in the present case, the point can operate the other way. If the relevant offence is prosecuted as cheating, and the non-pecuniary harm alleged to have been caused is not materially significant, then that might well attenuate the severity of the sentence that should be imposed.

56 Before developing the analysis on harm and culpability, I will deal with the Prosecution's reliance on *Tan Jia Yan* as a yardstick for the appropriate sentence to be imposed on Mr Newton. I did not find *Tan Jia Yan* to be a helpful precedent and set out the facts here in some detail to underscore the qualitatively different nature of that case.

57 The offender in *Tan Jia Yan* was a tuition teacher who had conspired with some staff who worked at her tuition centre to help six students cheat in national examinations. Each student was referred to the tuition centre under a referral agreement which promised payment of approximately $9,000 to the principal of the tuition centre on the condition that the student pass the said examinations and be successfully emplaced in a local Polytechnic. To help these students pass the examinations, the offender affixed Bluetooth devices and skin-coloured earphones to their bodies. These devices allowed the staff members to communicate with the students during the examinations. The offender then attended the same examinations as the six students, but did so as a private candidate with an iPhone strapped to her chest and provided a live feed of the examination papers to her co-conspirators using FaceTime. The co-conspirators

in turn prepared answers to the questions at the tuition centre's premises and then relayed the answers to the students by way of the Bluetooth devices and earphones. The offender subsequently pleaded guilty to 26 charges of cheating under s 417 read with s 109 of the 2008 Penal Code as well as one charge under s 417 read with s 116 of the 2008 Penal Code. These charges pertained to the conspiracy she had engaged in with the other staff at her tuition centre to deceive the Singapore Examinations and Assessment Board ("SEAB") into believing that the six students were taking the national examinations without the assistance of any other person.

58 In the present case, the Prosecution submitted in its written submissions that some guidance on sentence could be gleaned from *Tan Jia Yan* because both cases "involved conspiracies to subvert a key national or international programme premised on fairness and transparency" and that the "offences in both cases were hard to detect, undermined vital institutions and prized values, and generated public outcry". This was accepted by the DJ. Before me, the Prosecution also suggested that *Tan Jia Yan* was instructive because the District Judge in that case had elaborated on various sentencing factors which are broadly relevant to other cases of cheating involving a public agency. These factors include the benefit that an offender obtained by virtue of his cheating offence, the sophistication of the deception, and the wider impact of the deceptive act on Singapore's reputation.

59 I do not find either submission convincing. The similarities between *Tan Jia Yan* and the present case suggested by the Prosecution and endorsed by the DJ are superficial at best and in any case, are cast at a high level of abstraction. Even if the national examinations and the VDSM were both "premised on fairness and transparency", the schemes were enacted for and served completely different purposes. Similarly, the fact that both sets of offences may have

resulted in some public disquiet did not smooth over the differences in the way each scheme worked, the motivations of the respective offenders, the role they each played, the number of charges they faced, and the nature of the harm they caused. It was therefore inapt to distil from *Tan Jia Yan* guidance on the appropriate sentence to be imposed on Mr Newton.

60 As for the sentencing factors set out by the District Judge in *Tan Jia Yan*, these provide little guidance on what the indicative sentence in a case like the present one might be, or how this indicative starting sentence may be derived. The District Judge in *Tan Jia Yan* had stated, without explanation, that sentences of between two and nine months' imprisonment had been imposed in similar cases of cheating (*Tan Jia Yan* at [41]). He also stated at [47] of his grounds of decision and citing *Public Prosecutor v Mikhy K Farrera Brochez* [2017] SGDC 92 ("*Mikhy*") that six months' imprisonment is "the starting point for a plea of guilt to a cheating offence involving a public agency". However, *Mikhy* did not purport to establish an indicative starting sentence for cheating cases involving a public agency. Indeed, it could not sensibly have done so given that *Mikhy* concerned a very unusual set of facts. The offender there had submitted a false HIV blood test to fraudulently induce the Ministry of Manpower to consent to him retaining a Personalised Employment Pass in breach of s 417 of the 2008 Penal Code. The gravamen of the offence in *Mikhy* lay in the offender having subverted the employment policy that was designed to mitigate the spread of communicable diseases such as HIV in Singapore, and it would be wrong to extrapolate from that case an indicative starting sentence of six months for all cases of cheating involving a public agency. Such a proposition would also run counter to the most basic requirement when deciding on sentence that a court should carefully consider and assess the facts of the case. It is also the reason a court will sometimes decline to lay down a sentencing framework or benchmark for a given offence if there is a wide variety of factual circumstances in which

that offence may be committed, which is also the case with the offence of cheating (see generally *Public Prosecutor v BPK* [2018] 5 SLR 755 at [55(a)]; *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 at [44]).

61 Aside from this, Mr Newton's role in the conspiracy is not analogous to that of the teachers in *Tan Jia Yan*. While Mr Newton asked Mr Chua if he could be falsely certified as having been vaccinated against COVID-19, he had participated in a scheme whose complexity and deception had entirely been worked out between Dr Quah and Mr Chua, who seemed on the material before me to have been far more culpable than Mr Newton. Like them, the offender in *Tan Jia Yan* had played a far more active and involved role in devising and implementing the conspiracy to cheat the SEAB. I therefore did not find *Tan Jia Yan* helpful.

62 Given the dearth of cases directly comparable to the present, and considering that the facts of the present case do not fall within any of the sentencing frameworks that have been laid down for certain types of the offence under s 417 of the Penal Code, I consider it appropriate to assess the propriety of the sentence imposed on Mr Newton with reference to: (a) the maximum punishment of three years' imprisonment carried by the First Charge; (b) the harm occasioned by the offence and the culpability of the accused person; and (c) any other aggravating or mitigating factors. This approach is in line with the High Court's recognition that the two principal parameters a sentencing court would generally consider in evaluating the seriousness of a crime are the harm caused by the offence and the offender's culpability (*Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 ("*Koh Thiam Huat*") at [41]).

63 I begin with the level of harm occasioned by Mr Newton's offence. In his attempt to persuade me that this was more than low, the learned Deputy

Public Prosecutor Mr Jiang Ke-Yue ("Mr Jiang") submitted that the notion of harm for the purpose of assessing the appropriate sentence may be broader than the type of harm that is sufficient to constitute the offence. In respect of the latter, the Prosecution's case was that the relevant harm was potential reputational damage to the HPB. However, for the purpose of sentencing, the Prosecution contended that the public disquiet arising from Mr Newton's offence and the fact that the victim of the offence was a public agency should be viewed as factors going towards the assessment of harm and not of culpability.

64 I accept the *premise* of the Prosecution's argument. The Court of Appeal held in *Public Prosecutor v Bong Sim Swan Suzanna* [2020] 2 SLR 1001 that the aim of the sentencing court is to punish the offender for the offence that has been committed in light of the harm and culpability involved, and to do so, the court should look at all the surrounding facts – even those that do not form part of the relevant charge – so long as they are relevant and proved (at [78]). It is also consistent with the way the courts have approached sentencing when the harm in question is plainly not an element of the proceeded charge. Take the case of an offender who does an act that could constitute the offence of voluntarily causing grievous hurt under s 322 of the Penal Code but who happens to be charged with the lesser offence of voluntarily causing hurt under s 321. In such a case, even though the grievous hurt that has been sustained is not an element of the offence under s 321 which is the subject of the charge, it is clear that the sentencing court may have regard to the real nature of the harm caused and therefore assess such a case as presenting a more serious instance of that offence. Going one step further, for the purpose of sentencing, harm is a measure of the injury which has been caused to society by the commission of the offence (*Koh Thiam Huat* at [41]), and this is sufficiently capacious to encompass any resulting public disquiet as well as the fact that the victim to a

cheating offence was a public agency. When the offence is targeted at such an agency and threatens to undermine its proper functioning, society as a whole stands to suffer the consequences. I also note that the case law has treated public disquiet as a harm-related sentencing factor (see *Goh Ngak Eng v Public Prosecutor* [2022] SGHC 254 at [59]; *Public Prosecutor v Wong Chee Meng and another appeal* [2020] 5 SLR 807 at [62]).

65 However, it did not follow from the above that the harm occasioned by Mr Newton in this case was more than low. The Prosecution conceded that Mr Newton was arrested before his vaccination status on the TraceTogether application was updated to a fully vaccinated status, and there is thus no question of Mr Newton having exposed the public to an increased risk of COVID-19 transmission in places he should not have had access to. Its case on harm rests, in the first place, on the *potential reputational harm* suffered by the HPB because the vaccination records it maintained were inaccurate for some time, and this was said to be amplified by the public disquiet accompanying Mr Newton's offence and the status of HPB as a public institution. Dividing harm and culpability into three bands of "low", "moderate" and "high", such harm does not, in my judgment, rise above the higher end of "low" for two reasons.

66 First, the risk of the potential harm to HPB's reputation eventuating was low. On the Prosecution's case, the HPB suffered potential reputational damage in that if word had spread amongst the public that Mr Newton's vaccination status was incorrectly reflected in the NIR, members of the public might question the HPB's ability to maintain an accurate repository of public health records.

67 However, there is nothing to suggest that the inaccuracy was publicly perceived as anything other than an isolated error. Moreover, it is a fair

inference that the NIR was only falsified for a short period of time. The NIR reflected that Mr Newton was fully vaccinated "a few days" after 15 January 2022 and presumably would have been rectified by the HPB upon or shortly after Mr Newton's arrest on 21 January 2022. Where the risk of the particular potential harm eventuating is low, that will reduce the weight the court places upon it for the purpose of sentencing (see *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [35]). This appeared to me to be the case here.

68 Second, the Prosecution relies on the fact that there was public disquiet over the incident at a time when the nation, as a whole, was dealing with the consequences of a global public health crisis. It is true also that the success of our national response to the COVID-19 pandemic depended on every person playing his or her part. But in assessing the harm caused by Mr Newton's actions in this case, this is to be seen in the light of how quickly Mr Newton's attempt to beat the system had been uncovered and thwarted. The public would quite justifiably have been upset by Mr Newton's unwillingness to play by the rules and do his bit to uphold an important communitarian effort; but that is not disquiet. On the contrary, the public would quite quickly have concluded that the safeguards in place were robust and would likely have taken heart that HPB's systems had quickly exposed Mr Newton's refusal to abide by his obligations. In my judgment, therefore, the harm engendered by Mr Newton's offence was low though I would accept it was on the higher end of that classification. I say this because the target of the offence was a public agency undertaking a very important public duty for the benefit of society as a whole. The potential harm to the public health system was significant, even though it did not materialise in this one instance.

69 Turning to Mr Newton's culpability, I situate this at the middle range of "low". At the hearing before me, Mr Jiang rightly conceded that the blame for

any sophistication associated with the conspiracy could not be attributed to Mr Newton (see [61] above). He further conceded that the difficulty of detecting the scheme should not be overstated since the scheme was uncovered quickly, and there is also no evidence that Mr Newton did anything specifically to make it difficult to detect his offence.

70 As public disquiet and the fact that Mr Newton had defrauded a public institution have been treated as sentencing factors relevant to harm, the Prosecution could only rely on the following points to underscore Mr Newton's culpability: that Mr Newton had (a) acted in a premeditated fashion and proceeded with the offence with some determination; (b) cheated his wife in the process; and (c) offended because he wished to take up a job offer in Australia.

71 I do not view the broader, selfish motivations of Mr Newton to be a meaningful consideration in assessing his culpability in the context of the First Charge. Admittedly, the law has recognised that motive may affect the degree of an offender's culpability for sentencing purposes (see *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [97]). Hence, in *Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879, the court observed that "[p]ersons who act out of pure self-interest and greed will rarely be treated with much sympathy" and conversely, "those who are motivated by fear will usually be found to be less blameworthy" (at [37]). But this is not a blanket rule and must be considered alongside the nature of the offence committed. It is inherent in some offences such as cheating that the offender seeks some form of personal benefit or monetary recompense. In these cases, absent exceptional circumstances, it is not meaningful for the sentencing court to ascribe separate weight to the offender's motivations for committing the offence (see *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [93]). I did not think Mr Newton's motivations were exceptional in the present case.

72 The remaining culpability factors (namely, premeditation and that Mr Newton cheated his wife) are not so significant as to elevate Mr Newton's culpability to a moderate or high level. I reject the Prosecution's suggestion that Mr Newton had, in combination with Mr Chua and Dr Quah, "meticulously planned the conspiracy over nearly a month". The Statement of Facts paints a very different picture. It indicated that the scheme of administering saline injections to patients and documenting instead that COVID-19 vaccines had been administered was entirely the brainchild of Mr Chua and Dr Quah, albeit that Mr Newton, of his own volition, had approached Mr Chua and asked him if he could be falsely certified as having been vaccinated against COVID-19. As for Mr Newton having deceived Ms Apinya, this formed the subject of the Second Charge that was taken into consideration for the purpose of sentencing, and I consider this when deciding whether to make any adjustments to the indicative starting sentence.

73 In that light, I refer to the harm-culpability matrix I had set out at [40] of *De Beers* to obtain a sense of the appropriate indicative starting sentence in the present case. For the avoidance of doubt, I do not purport to lay down a sentencing framework for cases of cheating under s 417 of the Penal Code involving non-pecuniary loss, much less for all forms of cheating under that provision. Rather, I consider the broad analytical approach adopted in *De Beers* to get a sense of how I should calibrate the sentence in the present case. This seems appropriate given that *De Beers* also concerned an offence of cheating (under s 417 of the 2008 Penal Code) carrying the same maximum punishment of three years' imprisonment. The indicative sentencing ranges set out in the following table reflect cases where the offender has claimed trial (*De Beers* at [40] and [41]):

		Culpability		
		Low	**Medium**	**High**
Harm	**Low**	Fine or up to 4.5 months' imprisonment	4.5 – 9 months' imprisonment	9 – 18 months' imprisonment
	Medium	4.5 – 9 months' imprisonment	9 – 18 months' imprisonment	18 – 27 months' imprisonment
	Higher	9 – 18 months' imprisonment	18 – 27 months' imprisonment	27 – 36 months' imprisonment

74 An offence disclosing harm and culpability in the high and middle range of "low" respectively would attract an indicative starting sentence of around three months or approximately 12 weeks' imprisonment.

75 In my judgment, no further adjustments need to be made to this indicative starting sentence. This balances the following factors which pull in opposite directions:

(a) *The interest of general deterrence*. I accept the Prosecution's submission that Mr Newton sought to undermine an important public health measure enacted at a time of crisis for the greater good of the population, and that there is a public interest in deterring like-minded persons from subverting such measures (see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [24(d)]). Contrary to Mr Loy's submissions, this public interest persists regardless of whether the VDSM remain in force or whether the other persons who had schemed with Dr Quah and Mr Chua to falsely represent to the HPB that they had been vaccinated against COVID-19 have yet to be prosecuted. As an

aside, the Prosecution did confirm at the hearing that it intended to prosecute these other persons subject to investigative developments and its review of the evidence, and explained that it had expedited Mr Newton's case because of his wish to travel.

(b) *The Second Charge that was taken into consideration for the purpose of sentencing*. I accord some weight to the fact that Mr Newton also conspired with Dr Quah and Mr Chua to have Ms Apinya injected with saline without her knowledge or consent. In doing so, Mr Newton had violated Ms Apinya's bodily autonomy and also perpetrated a distinct fraud on the HPB.

(c) *Mr Newton's plea of guilt*. On the other hand, I accept that Mr Newton's plea of guilt was a subjective expression of genuine remorse and contrition. Mr Newton pleaded guilty at the first opportunity and completed serving his sentence even before his appeal was dealt with. His plea had also preserved the resources of the State which would otherwise have been expended if the Prosecution had to prove the charges against Mr Newton at trial (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [66]).

76 For completeness, I accord no weight to Mr Newton's loss of job prospects (see [28] above), the fact that his plans to relocate to Australia were delayed by the investigations into his offences, or that he was unable to lease accommodation other than on a short-term basis because the authorities had cancelled his employment pass upon learning of his offences. As I indicated to Mr Loy, the law does not countenance such forms of social accounting in the sentencing of offenders (see *M Raveendran v Public Prosecutor* [2022] 3 SLR 1183 at [39], [47]).

77 In the circumstances, an appropriate sentence for the First Charge is a sentence of 12 weeks' imprisonment. The sentence of 16 weeks' imprisonment imposed by the DJ is therefore manifestly excessive, and I set it aside and impose in its place a sentence of 12 weeks' imprisonment.

Conclusion

78 For these reasons, I allow Mr Newton's appeal and reduce the sentence of 16 weeks' imprisonment that was imposed by the DJ to 12 weeks' imprisonment.

79 In closing, I wish to make it clear that while the DJ had fallen short of the standards of professionalism expected of our judicial officers, I do not regard this as reflective of the general attitude of our judicial officers who uniformly and consistently uphold the highest standards in their daily work of discharging the grave responsibility that is entrusted to them. Their efforts should not be tarnished by this incident. It seems to me that the DJ in this case did not appreciate some important points, which in my view, he ought to have. I refer, in particular, to the undesirability of reproducing a party's submissions as part of the judgment of the court. The principles I have set out in this judgment are not novel, but they bear restating. I expect that the guidance I have provided in this judgment will serve as a reminder of the need for all of us who take the

judicial oath of office, to be mindful of the importance, not only of always ensuring that justice is done, but also that it is manifestly seen to be done.

Sundaresh Menon
Chief Justice

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