



Singapore
Institute of Legal Education

Private Client Practice Criminal Litigation Practice

Appeals, Criminal Revisions, and Criminal Motions

Areas of Coverage

- (1) Overview
- (2) Appeals
- (3) Criminal Revisions
- (4) Criminal Motions

(1) Overview

Part XX of the CPC

15 CAP. 68 *Criminal Procedure Code* 2012 Ed.

PART XX

APPEALS, POINTS RESERVED, REVISIONS AND
CRIMINAL MOTIONS



(Criminal) Appeals

Division 1 — Appeals

Section

- 373. Interpretation of this Part
- 374. When appeal may be made
- 375. Limited right of appeal against plea of guilty
- 376. Appeal against acquittal and sentence in private prosecutions
- 377. Procedure for appeal
- 378. Petition of appeal
- 379. Records of court proceedings to be sent to appellate court and respondent
- 380. Appeal specially allowed in certain cases
- 381. Procedure when appellant in prison
- 382. Bail pending appeal
- 383. Stay of execution pending appeal
- 384. Summary rejection of appeal
- 385. Notice and time of hearing
- 386. Appeal to be heard by one or more Judges
- 387. Procedure at hearing
- 388. Non-appearance of respondent
- 389. Arrest of respondent in certain cases
- 390. Decision on appeal
- 391. Omission to frame charge
- 392. Taking additional evidence
- 393. Death of party to appeal
- 394. Grounds for reversal by appellate court

Division 1A — Review of sentence of death when no appeal filed

- 394A. Public Prosecutor to file petition for confirmation
- 394B. Court of Appeal to review sentence of death
- 394C. Powers of Court of Appeal in petition for confirmation
- 394D. Permission for parties to be heard
- 394E. Orders on review



(Criminal) Revisions

Division 3 — Revision of proceedings before State Courts

- 400. Power to call for records of State Courts
- 401. Powers of High Court on revision
- 402. Orders on revision
- 403. Permission for parties to appear

Division 4 — Revision of orders made at criminal case disclosure conference

- 404. Power to revise orders made at criminal case disclosure conference



Criminal Motions

Division 5 — Criminal motions

- 405. Motion
- 406. Notice of motion
- 407. Form and issue of notice of motion
- 408. Adjournment of hearing
- 408A. Dealing with motion in absence of parties, etc.
- 408B. Decision or order affecting lower court
- 409. Costs



Criminal Appeal and Criminal Motion

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SINGAPORE LAW REPORTS

[2018] 3 SLR

Public Prosecutor

v

Yeo Ek Boon Jeffrey and another matter

[2017] SGHC 306

High Court — Magistrate's Appeal No 9112 of 2017/01 and Criminal Motion No 45 of 2017

Sundaresh Menon CJ, Tay Yong Kwang JA and See Kee Oon J

15 September; 29 November 2017

It is not uncommon for criminal motions to be heard together with appeals. Key point: Criminal motions are supportive of a primary action and serve as a vehicle for ancillary relief (e.g. To adduce fresh evidence in an appeal).

(2) Appeals

Appeals: Key Points

- Statutory framework for appeals
- Types of appeals
- When can appeals be made?
- Who can appeal?
- Procedure – see especially:
 - Notice of appeal
 - Petition of appeal
 - Stay of execution of sentence pending appeal
 - Admission of fresh evidence on appeal



Statutory framework for appeals

Appellate Jurisdiction of the High Court

Appellate criminal jurisdiction

19. The appellate criminal jurisdiction of the High Court shall consist of —

- (a) the hearing of appeals from District Courts or Magistrates' Courts before one or more Judges according to the provisions of the law for the time being in force relating to criminal procedure;

[Act 27 of 2014 wef 01/10/2014]

- (b) the hearing of points of law reserved by special cases submitted by a District Court or Magistrate's Court before one or more Judges according to the provisions of the law for the time being in force relating to criminal procedure;

[Act 27 of 2014 wef 01/10/2014]

- (c) the hearing of appeals from Family Courts when exercising criminal jurisdiction; and

[Act 27 of 2014 wef 01/10/2014]

- (d) the hearing of appeals from Youth Courts.

[Act 27 of 2014 wef 01/10/2014]



Statutory framework for appeals

29. Constitution of Court of Appeal

29A. Jurisdiction of Court of Appeal

(2) The criminal jurisdiction of the Court of Appeal consists of the following matters, subject to the provisions of this Act or any other written law regulating the terms and conditions upon which those matters may be brought:

- (a) any appeal against any decision made by the High Court in the exercise of its original criminal jurisdiction;
- (b) any petition for confirmation under Division 1A of Part XX of the Criminal Procedure Code (Cap. 68);
- (c) any review of a decision of the Court of Appeal, or a decision of the High Court, under Division 1B of Part XX of the Criminal Procedure Code;
- (d) any case stated to the Court of Appeal under section 395 or 396 of the Criminal Procedure Code;
- (e) any reference to the Court of Appeal under section 397 of the Criminal Procedure Code;
- (f) any motion to the Court of Appeal under Division 5 of Part XX of the Criminal Procedure Code.

[Act 19 of 2018 wef 31/10/2018]



Statutory framework for appeals

Division 1 — Appeals

Section

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- 392. Taking additional evidence
- 393. Death of party to appeal
- 394. Grounds for reversal by appellate court

Types of appeals

- Section 374(1), CPC
 - Appeal “against any judgment, sentence, or order of a court”.
- Section 2(1), CPC
 - “court” includes the:
 - High Court;
 - District Court; and
 - Magistrate’s Court.



Magistrate's Appeals (before High Court)

- Appeal against a “judgment, sentence, or order” of a District Court or a Magistrate Court
 - An appeal from a Magistrate's Court and/or a District Court is known as “Magistrate's Appeal (“MA”) – this is a term of art; do not be confused by the “Magistrate” reference.
 - Such an appeal is heard before the High Court.



Magistrate's Appeals before High Court

Appeal to be heard by one or more Judges

386.—(1) An appeal before the High Court may ordinarily be heard by a single Judge, but if the Chief Justice so directs, the appeal must be heard before a court consisting of 3 or any greater uneven number of Judges.

MAs are usually heard by one judge but the CJ can direct three or more judges (must be an uneven number) to hear an appeal if it involves an important point of law (e.g. novel sentencing framework or issue) – see the following examples.



Magistrate's Appeals before High Court

[2014] 2 SLR

SINGAPORE LAW REPORTS

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Public Prosecutor

v

Saiful Rizam bin Assim and other appeals

[2014] SGHC 12

High Court — Magistrates' Appeals Nos 76, 78 and 79 of 2013

Chao Hick Tin JA

31 July; 21 August 2013; 15 January 2014

Criminal Procedure and Sentencing — Sentencing — Appeals — Whether to impose reformatory training when bulk of imprisonment sentence appealed against had already been served — Principle of proportionality in sentencing in relation to reformatory training



Magistrate's Appeals before High Court

[2014] 4 SLR

SINGAPORE LAW REPORTS

661

Public Prosecutor

v

Hue An Li

[2014] SGHC 171

High Court — Magistrate's Appeal No 287 of 2013

Sundaresh Menon CJ, Chao Hick Tin JA and Tan Siong Thye J

19 May; 2 September 2014

Appeals before Court of Appeal

- Appeal against a “judgment, sentence, or order” of a High Court in the exercise of its original criminal jurisdiction
 - Heard before the Court of Appeal
- Note 7th column of the First Schedule to the CPC
 - Certain offences are only triable in the High Court and it logically follows that an related appeals are heard in the Court of Appeal.



Appeals before Court of Appeal

Appeal to be heard by one or more Judges

386.—(1) An appeal before the High Court may ordinarily be heard by a single Judge, but if the Chief Justice so directs, the appeal must be heard before a court consisting of 3 or any greater uneven number of Judges.

(2) An appeal before the Court of Appeal may ordinarily be heard by 3 Judges of Appeal, but if the Chief Justice so directs, the appeal must be heard before a court consisting of 5 or any greater uneven number of Judges.

Appeals before the CA are usually heard by three judges but the CJ can direct five or more judges (must be an uneven number) to hear an appeal if it involves an important point of law – see following examples.



Appeals before Court of Appeal

[2018] 2 SLR

SINGAPORE LAW REPORTS

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Public Prosecutor

v

Chia Kee Chen and another appeal

[2018] SGCA 30

Court of Appeal — Criminal Appeals Nos 40 and 41 of 2017

Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA

9 April; 27 June 2018



Appeals before Court of Appeal

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SINGAPORE LAW REPORTS

[2015] 2 SLR

Public Prosecutor

v

Kho Jabing

[2015] SGCA 1

Court of Appeal — Criminal Appeal No 6 of 2013

Chao Hick Tin JA, Andrew Phang Boon Leong JA, Woo Bih Li J, Lee Seiu Kin J and
Chan Seng Onn J

20 March 2014; 14 January 2015



When can appeals be made?

When appeal may be made

374.—(1) An appeal against any judgment, sentence or order of a court, or any decision of the High Court mentioned in section 149M(1), may only be made as provided for by this Code or by any other written law.

[Act 19 of 2018 wef 31/10/2018]

- Term “judgment” refers to a decision convicting or acquitting an accused person.
- Term “sentence” includes a sentence of death, imprisonment, fine, or caning.

When can appeals be made?

- Term “order” refers to one which finally disposes of the rights of the parties
 - *Ang Cheng Hai v Public Prosecutor* [1995] 3 SLR(R) 151
- Such final orders or “orders of finality” include
 - a compensation order; and
 - a driving disqualification order.

When can appeals be made?

- No standalone appeal against
 - an order refusing a stay in proceedings
 - Knight *Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196
 - interlocutory rulings or orders:
 - Order that two accused persons be jointly tried
 - Ruling that there is a case to answer at the close of the Case for the Prosecution
 - Order that an accused's statement be admitted into evidence

Who can appeal?

- Only a party in a criminal case or matter may appeal against any judgment, sentence, or order:

Procedure for appeal

377.—(1) Subject to sections 374, 375 and 376, a person who is not satisfied with any judgment, sentence or order of a trial court **in a criminal case or matter to which he is a party** may appeal to the appellate court against that judgment, sentence or order in respect of any error in law or in fact, or in an appeal against sentence, on the ground that the sentence imposed is manifestly excessive or manifestly inadequate.

Who can appeal?

- Victim of an offence has no right of appeal.
 - Family members of victim also have no right of appeal:
 - *Huang Meizhe v Attorney-General* [2011] 2 SLR 1149
 - High Court struck out an application for a declaration by family members of the deceased victim that the Public Prosecutor had acted improperly in not appealing against the sentence imposed on the accused person.



Appeal by accused person

Limited right of appeal against plea of guilty

375. An accused who has pleaded guilty and has been convicted on that plea in accordance with this Code **may appeal only against the extent or legality of the sentence.**

Appeal by Public Prosecutor

When appeal may be made

374.—(1) An appeal against any judgment, sentence or order of a court, or any decision of the High Court mentioned in

(3) An appeal by the Public Prosecutor shall be against the acquittal of an accused or the sentence imposed on an accused or an order of the trial court.

Appeal by Public Prosecutor

- Where merited, the Public Prosecutor usually appeals against an acquittal or a sentence on the ground it is manifestly excessive.
- No restriction to Public Prosecutor appealing against a sentence on the ground it is manifestly excessive (this is VERY unusual):
 - *Public Prosecutor v Lim Choon Teck* [2015] 5 SLR

Issues of Procedure

- Procedure for filing an appeal
- Stay of execution pending appeal
- Summary rejection of appeal
- Procedure during appeal

Procedure for filing an appeal

- Two documents to be filed:
 - Notice of Appeal
 - Petition of Appeal
- Same procedures and timelines apply whether the case is tried:
 - in the State Courts (District Court or Magistrate's Court); or
 - in the High Court

Notice of Appeal

- Section 377(2):

(2) A notice of appeal against any judgment, sentence or order of the trial court must be lodged by the appellant with the Registrar of the Supreme Court (if the trial court is the High Court) or the Registrar of the State Courts (if the trial court is a District Court or a Magistrate's Court) —

- (a) in the case of an appeal against conviction, or an appeal against conviction and sentence, within 14 days after the date of the sentence; and
- (b) in any other case, within 14 days after the date of the judgment, sentence or order.

Notice of Appeal

- Section 377(3), CPC:

(3) Every notice of appeal must —

- (a) state shortly the substance of the judgment, sentence or order appealed against;
- (b) contain an address at which any notice or document connected with the appeal may be served upon the appellant or upon his advocate; and
- (c) unless it is given orally under section 381, be signed by the appellant or his advocate.



Sample Notice of Appeal

- Form 66, Criminal Procedure Rules 2018

FORM 66
NOTICE OF APPEAL
(SECTIONS 374 TO 377)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Magistrate's Appeal No. of 20 .

State Court No.

Case No.

Between

[*Name of Appellant*] ... Appellant

And

[*Name of Respondent*] ... Respondent

To:
The Honourable the Justices
of the High Court of the
Republic of Singapore.

NOTICE OF APPEAL

Take Notice that the abovenamed appellant, being dissatisfied with [his conviction (*or* sentence)] [*or* the acquittal of or the sentence imposed on, the

Sample Notice of Appeal

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Magistrate Appeal No.

Case No. DAC 2xx/2010

Between

xxx
(NRIC No: SxxH)

... Appellant

And

PUBLIC PROSECUTOR

... Respondent

To: The Honourable Justices and Judicial Commissioners
Of the High Court of the Republic of Singapore

NOTICE OF APPEAL

TAKE NOTICE that the Appellant named xxxU, hereby appeals against the conviction by the Honourable District Judge in Subordinate Court No.16 on the 12th day of March 2012 and the sentence imposed by the Honourable District Judge in Subordinate Court No. 16 on the 16th day of March 2012.

Dated this 16th day of March 2012

APPELLANT

The address for service of the abovenamed Appellant is care of M/s [insert name and address of the Appellant's counsel(s)].

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Magistrate Appeal No.

Case No: DAC 2x/2010

Between

xx
(NRIC No: SxxH)

... Appellant

And

PUBLIC PROSECUTOR

... Respondent

NOTICE OF APPEAL

[Insert name of Appellant's defence counsel(s)]

[Insert name and address of the Appellant's
counsel(s)]

Tel: [insert number]

Fax: [insert number]

(File Ref: SUA/SUS/xxx)

Filed this 16th day of March 2012



Grounds of Decision and Record of Proceedings

- Notice of Appeal triggers the preparation of:
 - the Grounds of Decision; and
 - the Record of Proceedings.

Notification and/or Service

- Sections 377(5)-(7), CPC:

(5) After the notice of appeal has been lodged in accordance with subsection (2) by an appellant who is an accused or a complainant, the Registrar of the Supreme Court (if the trial court is the High Court) or the Registrar of the State Courts (if the trial court is a Magistrate's Court or District Court) must, as soon as possible, serve on the appellant or his advocate at the address mentioned in the notice of appeal, a notice that a copy each of the **record of proceedings and the grounds of decision** are available and can be had on applying for the same.

[Act 5 of 2014 wef 07/03/2014]

(6) Subject to subsection (6A), where an appellant makes an application pursuant to subsection (5), he shall be served with a copy each of the record of proceedings and the grounds of decision upon the payment of the prescribed fee.

[2/2012]

(6A) The Registrar of the State Courts or the Registrar of the Supreme Court, as the case may be, may, as he thinks fit, furnish copies of the record of proceedings and the grounds of decision free of charge in any specific case or category of cases.

(7) After the notice of appeal has been lodged in accordance with subsection (2) by an appellant who is the Public Prosecutor, the Registrar of the Supreme Court (if the trial court is the High Court) or the Registrar of the State Courts (if the trial court is a Magistrate's Court or District Court) must, as soon as possible, serve on the Public Prosecutor a copy each of the record of proceedings and the grounds of decision free of charge.

[Act 5 of 2014 wef 07/03/2014]

Petition of Appeal

- Section 378(1), CPC:

Petition of appeal

378.—(1) Within 14 days after service of the record of proceedings and the grounds of decision under section 377(6) or (7), the appellant or his advocate must lodge a petition of appeal with the Registrar of the Supreme Court (if the trial court is the High Court) or Registrar of the State Courts (if the trial court is a Magistrate's Court or District Court).



Petition of Appeal

- Section 378(2), CPC:

(2) The petition of appeal must be signed by the appellant or his advocate and must state briefly the substance of the judgment, sentence or order appealed against and must contain sufficient particulars of any points of law or of fact in respect of which the appellant claims the trial court was in error.

Sample Petition of Appeal

- Form 67, Criminal Procedure Rules 2018

THE SCHEDULE — *continued*

FORM 67
PETITION OF APPEAL
(SECTION 378)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Magistrate's Appeal No.

State Court No.

Case No.

Between

[*Name of Appellant*] ... Appellant

And

[*Name of Respondent*] ... Respondent

To:

The Honourable the Justices
of the High Court of the
Republic of Singapore.

Sample Petition of Appeal

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Magistrate's Appeal No. 0xx/2010/01

In the Matter of DAC 8xx of 2010

Between
xx)
(NRIC No: S xx B) ... *Appellant*
And
PUBLIC PROSECUTOR ... *Respondent*

PETITION OF APPEAL

To the Honourable the Justices of the High Court of Singapore.

The humble Petition of xx of Block
xx Singapore xx,

SHOWETH as follows:-

1. Your Petitioner, the above named xx, claimed trial on 27 December 2010, 3-7 January 2011, 14-16, 21-22 February 2011, 5 April 2011 and 20 September 2011 to a charge punishable under Section 375(2) of the Penal Code (Chapter 224) before the Honourable District Judge xx in Court No. 1x of the Subordinate Courts;
2. Your Petitioner was convicted on 5 April 2011 and sentenced to 7 years' imprisonment and 8 strokes of the cane. Your Petitioner, being dissatisfied with the decision of the learned Trial Judge, filed a Notice of Appeal against conviction and sentence on 5 April 2011. The Grounds of Decision ("GD") and the Record of Proceedings ("RP") were released on 20 September 2011.

3. Your Petitioner is dissatisfied with the said judgement on the grounds following:
4. First, that the learned District Judge's conviction of Your Petitioner is unsafe for the following reasons:
 - (a) The learned District Judge erred in law and in fact when she found that all elements of the charge were established beyond a reasonable doubt;
 - (b) The learned District Judge erred in fact and law when she accepted the incriminating evidence of the material Prosecution witnesses as unusually compelling or convincing;
 - (c) The learned District Judge erred in fact and law when she found that the forensic evidence corroborated the testimony of the Prosecution witnesses. In particular, the learned District Judge erred in fact and in law in accepting the evidence of xx);
 - (d) The learned District Judge erred in fact and law when she rejected the evidence of Your Petitioner and other evidence in favour of Your Petitioner;
5. Second, that the learned District Judge's imposition of 7 years' imprisonment and 8 strokes of the cane is manifestly excessive for the following reasons:
 - (a) The learned District Judge erred in placing excessive weight on the purported gravity of Your Petitioner's actions;
 - (b) Insufficient weight was placed on all the factors in favour of Your Petitioner;
 - (c) Insufficient weight was placed on all the remaining mitigating



Sample Petition of Appeal

factors surrounding the circumstances of the case;

6. That in all the circumstances of the case, the conviction against Your Petitioner is unsafe and the sentence of 7 years' imprisonment and 8 strokes of the cane is manifestly excessive; and
7. Your Petitioner prays that such judgement or sentence may be reversed or annulled or that such order may be made thereon as justice may require.

Dated this 30th day of September 2011

SOLICITORS FOR THE PETITIONER
RHT LAW LLP
[Insert name(s) of petitioner's counsel(s)]

The address for service of the above-named Petitioner is care of RHT Law LLP, Six Battery Road, #10-01, Singapore 049909.

IN THE HIGH COURT
OF THE REPUBLIC OF SINGAPORE

Magistrate's Appeal No. 0x/2010/01

In the Matter of DAC xx of 2010

Between

x
(x)
(NRIC No: S x B)
... Appellant

And

PUBLIC PROSECUTOR
...Respondent

PETITION OF APPEAL

[Insert name(s) of petitioner's counsel(s)]

RHT LAW LLP
Six Battery Road
#10-01
Singapore 049909
Tel: 6381 6888
Fax: 6381 6869
File Ref: SUA.SUS.x

Dated this 30th day of September 2011

Petition of Appeal

- Section 378(6), CPC:

(6) Except with the leave of the appellate court, the appellant shall not be permitted, on the hearing of the appeal, to rely on any ground of appeal other than those set out in the petition of appeal.

A Petition of Appeal must be drafted with care. The appellant cannot raise extraneous grounds of appeal not specified therein without leave of the appellate court.

NB: In practice, the courts adopt a more practical approach especially if the appellant is unrepresented.

*Also note, the appellant can also choose not to go ahead with the appeal after filing the initial notice (see next two slides).

Petition of Appeal

- Section 378(4), CPC:

(4) At any time before the petition of appeal is lodged, the appellant may file with the Registrar of the Supreme Court (if the trial court is the High Court) or the Registrar of the State Courts (if the trial court is a Magistrate's Court or District Court), a notice of discontinuance of the appeal, and if he does so, he must serve the notice on the other party to the appeal on the date of the filing.

[Act 5 of 2014 wef 07/03/2014]

Petition of Appeal

- Section 378(5), CPC:

(5) The appellant may, after he had lodged a petition of appeal within the time provided under this section, in a notice in writing to the Registrar of the Supreme Court seek leave of court to withdraw the appeal.

14-day time limit

- Notice of Appeal must be lodged within 14 days after the date of the judgment/sentence/order.
- Petition of Appeal must be lodged within 14 days after service of the record of proceedings and the grounds of decision.

14-day time limit

- In general, the appellate process does not start if no Notice of Appeal is filed within the 14-day time limit.
- See also section 378(3), CPC:

(3) Subject to section 380, if a petition of appeal is not lodged within the time provided under this section, the appeal will be treated as withdrawn.

14-day time limit

- Section 50, Interpretation Act:

Computation of time

50. In computing time for the purposes of any written law, unless the contrary intention appears —

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
- (b) if the last day of the period is a Sunday or a public holiday (which days are referred to in this section as excluded days) the period shall include the next following day not being an excluded day;
- (c) when any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

Extension of time to file appeal

- Section 380(1), CPC:

Appeal specially allowed in certain cases

380.—(1) The appellate court may, on the application of any person debarred from appealing for non-compliance with any provision of this Code, permit him to appeal against any judgment, sentence or order if it considers it to be in the **interests of justice**, subject to such terms and conditions as the court thinks fit.

PP v Tan Peng Khoon, relating to the threshold for granting extensions of time, **will NOT be tested** owing to recent developments in the Court of Appeal in September 2022. These developments took place after the course outline was finalised.



Stay of execution pending appeal

- Section 383(1), CPC:

Stay of execution pending appeal

383.—(1) An appeal shall not operate as a stay of execution, but the trial court and the appellate court may stay execution on any judgment, sentence or order pending appeal, on any terms as to security for the payment of money or the performance or non-performance of an act or the suffering of a punishment imposed by the judgment, sentence or order as to the court seem reasonable.

Stay of execution pending appeal

- *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 at [29]:

29 Where a convicted person appeals against his conviction or sentence, the grant of a stay of execution pending appeal and the continuance of bail arrangements are fairly straightforward matters. The key concern is the interest of the accused person in retaining his freedom until his appeal against conviction or sentence has been resolved. Hence considerable emphasis is placed on factors that go towards the likelihood of absconding, including the accused person's flight risk, his ties with Singapore, and the character, means and standing of the accused person. Other factors that would be taken into account include the accused person's criminal record, the possibility of the accused person offending or reoffending whilst at liberty and whether the security imposed is sufficient to ensure the attendance of the accused person before the appellate court: see *Ralph v PP* [1971–1973] SLR(R) 365 at [6] and *Loh Kok Siew v PP* [2002] 2 SLR(R) 186 at [10].



Stay of execution pending appeal

- *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 at [32]:

Principles governing stay applications where the prosecution brings an appeal against sentence

32 In these circumstances, in my judgment, the court determining such a stay application should weigh the following factors:

- (a) the interests of a fair and just prosecution, including the interest of ensuring that the Prosecution's appeal against the sentence is not prejudiced;
- (b) any comparative prejudice to the convicted person in having to await the outcome of the appeal before serving his sentence;
- (c) the nature and gravity of the offence;
- (d) the length of the term of imprisonment or probation in comparison with the length of time which it is likely to take for the appeal to be heard; and
- (e) whether any possible prejudice to the convicted person can be ameliorated through simple measures such as requesting that the appeal be heard on an urgent basis.

Procedure during appeal

- Generally:

Procedure at hearing

387.—(1) At the hearing of an appeal, the appellate court shall hear the appellant or his advocate, if he appears, and if it thinks fit, the respondent or his advocate, if he appears, and shall hear the appellant or his advocate in reply.



Admission of fresh evidence in an appeal

Taking additional evidence

392.—(1) In dealing with any appeal under this Part, the appellate court may, if it thinks additional evidence is necessary, either take such evidence itself or direct it to be taken by the trial court.

Admission of fresh evidence in an appeal

- 3 cumulative conditions for admission of fresh evidence in an appeal:
 - non-availability of the evidence at trial: must be shown that the evidence could not have been obtained with reasonable diligence for use at trial or proceedings below
 - relevance of the evidence
 - reliability of the evidence
- *Factors balance 2 opposing considerations: Seek to avoid miscarriage of justice vs ensuring finality in proceedings.

Admission of fresh evidence in an appeal

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SINGAPORE LAW REPORTS

[2018] 1 SLR

Public Prosecutor
v
Mohd Ariffan bin Mohd Hassan

[2018] SGCA 10

Court of Appeal — Criminal Motion No 24 of 2017
Sundares Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
9, 22 November 2017; 14 February 2018

Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence — Respondent charged with committing rape of complainant in prime mover — Employer testifying that prime mover driven by another employee during material time — Judge finding no reasons to account for complainant's failure to promptly complain of alleged offences — Judge acquitting respondent — Prosecution appealing and seeking to adduce further evidence on appeal — Whether Ladd v Marshall conditions for adducing further evidence on appeal should apply unattenuated to applications by Prosecution — Whether evidence not reasonably thought to be necessary at trial satisfied condition of non-availability — Whether relevant to consider procedural implications of adducing further evidence on appeal — Section 392(1) Criminal Procedure Code (Cap 68, 2012 Rev Ed)



Admission of fresh evidence in an appeal

- Admission of fresh evidence in an appeal, where the application is by the convicted person:
 - non-availability of the evidence at trial
 - **relevance of the evidence**
 - **reliability of the evidence**
- *Threshold is more liberal when appeal/application is brought by offender – criteria of non-availability not enforced as strictly



Admission of fresh evidence in an appeal

- Admission of fresh evidence in an appeal, where the application is by the Prosecution
 - non-availability of the evidence at trial
 - relevance of the evidence
 - reliability of the evidence
- *Threshold is stricter when appeal/application is brought by Prosecution – all three criteria will apply strictly in an unattenuated manner.



Appeal against acquittal

Decision on appeal

390.—(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering dismiss the appeal, or may —

- (a) in an appeal from an order of acquittal —
 - (i) reverse the order and direct that further inquiry shall be made or that the accused shall be retried, or remit the matter, with the opinion of the appellate court, to the trial court; or
 - (ii) find him guilty and pass sentence on him according to law;



Appeal against conviction

Decision on appeal

390.—(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering dismiss the appeal, or may —

(b) in an appeal from a conviction —

- (i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction, or remit the matter, with the opinion of the appellate court, to the trial court;
- (ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or enhance the sentence; or
- (iii) with or without reducing or enhancing the sentence, and with or without altering the finding, alter the nature of the sentence;

Appeal against conviction

- Sections 390(4)-(8), CPC:
 - Amendment of charge by appellate court

(4) Notwithstanding any provision in this Code or any written law to the contrary, when hearing an appeal against an order of acquittal or conviction or any other order, the appellate court may frame an altered charge (whether or not it attracts a higher punishment) if satisfied that, based on the records before the court, there is sufficient evidence to constitute a case which the accused has to answer.

(5) If the offence stated in the altered charge is one that requires the Public Prosecutor's consent under section 10, then the appeal must not proceed before such consent is obtained, unless the consent has already been obtained for a prosecution on the same facts as those on which the altered charge is based.

(6) After the appellate court has framed an altered charge, it must ask the accused if he intends to offer a defence.

Appeal against conviction

- Sections 390(4)-(8), CPC:
 - Amendment of charge by appellate court

(7) If the accused indicates that he intends to offer a defence, the appellate court may, after considering the nature of the defence —

- (a) order that the accused be tried by a trial court of competent jurisdiction; or
- (b) convict the accused on the altered charge (other than a charge which carries the death penalty) after hearing submissions on questions of law and fact and if it is satisfied that, based on its findings on the submissions and

the records before the court, and after hearing submissions of the accused, there is sufficient evidence to do so.

(8) If the accused indicates that he does not intend to offer a defence, the appellate court may —

- (a) convict the accused on the altered charge (other than a charge which carries the death penalty) if it is satisfied that, based on the records before the court, there is sufficient evidence to do so; or
- (b) order that the accused be tried by a trial court of competent jurisdiction, if it is not satisfied that, based on the records before the court, there is sufficient evidence to convict the accused on the altered charge.

Appeal against conviction

- Amendment of charge by appellate court
 - Section 390(4)-(5)
 - ***See comments made by the High Court recently in *GDC v PP* [2020] 5 SLR 1130 at [29]
 - Power should be exercised with great caution and not to the prejudice of the accused.
 - In practical terms, this commonly results in a reduction of a charge (i.e. less severe punishment) when the appellate court sees fit to amend the charge in the course of an appeal.

Appeal against conviction

- *GDC* at [29]:

Section 390(4) of the CPC permits an appellate court to frame an altered charge (whether or not the charge attracts a higher punishment) if it is satisfied that, based on the material before the court, there is sufficient evidence to constitute a case which the accused person has to answer. This is a power that should be exercised cautiously, subject always to careful observance of the safeguards against prejudice to the defence. In particular, the court must be satisfied that the proceedings below would have taken the same course and that the evidence led would have been the same had the amended charge been presented at the trial (see *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 at [12]). The concern over such potential prejudice is all the more acute where the conviction is arrived at after a trial as compared to where the accused person had pleaded guilty. This is so because the accused person may have conducted his defence in a particular way in response to the charge on which he was tried and this would likely have impacted the evidence led before the court.



Appeal against sentence

Decision on appeal

390.—(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering dismiss the appeal, or may —

- (c) in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence; or

(3) Notwithstanding section 375 and without prejudice to the generality of subsections (1) and (2), where an accused has pleaded guilty and been convicted on such plea, the appellate court may, upon hearing, in accordance with section 387, any appeal against the sentence imposed upon the accused —

- (a) set aside the conviction;
- (b) make such order in the matter as it may think just; and
- (c) by such order exercise any power which the trial court might have exercised.

Appeal against sentence

- Appellate court can enhance accused person's sentence even if it is hearing the accused person's appeal against the sentence imposed (with no cross appeal by the Prosecution):
 - *Wong Tian Jun De Beers v Public Prosecutor* [2021] SGHC 273 is a recent example of this.

Appeal against any other order

Decision on appeal

390.—(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering dismiss the appeal, or may —

(d) in an appeal from any other order, alter or reverse the order.

- Includes an appeal by the Prosecution against the refusal of a lower court to impose a compensation order
 - *Public Prosecutor v Donohue Enilia* [2005] 1 SLR(R) 220



Threshold for appellate intervention

Grounds for reversal by appellate court

394. Any judgment, sentence or order of a trial court may be reversed or set aside only where the appellate court is satisfied that it was wrong in law or against the weight of the evidence or, in the case of a sentence, manifestly excessive or manifestly inadequate in all the circumstances of the case.

(3) Criminal Revisions



Criminal Revisions

Division 3 — Revision of proceedings before State Courts

- 400. Power to call for records of State Courts
- 401. Powers of High Court on revision
- 402. Orders on revision
- 403. Permission for parties to appear

Division 4 — Revision of orders made at criminal case disclosure conference

- 404. Power to revise orders made at criminal case disclosure conference



Criminal Revisions

Power to call for records of State Courts

400.—(1) Subject to this section and section 401, the High Court may, on its own motion or on the application of a State Court, the Public Prosecutor or the accused in any proceedings, call for and examine the record of any criminal proceeding before any State Court to satisfy itself as to the correctness, legality or propriety of any judgment, sentence or order recorded or passed and as to the regularity of those proceedings.

[Act 5 of 2014 wef 07/03/2014]

(2) No application may be made by any party under this section in relation to any judgment, sentence or order which he could have appealed against but had failed to do so in accordance with the law unless the application is made —

- (a) against a failure by a court to impose the mandatory minimum sentence or any other sentence required by written law; or
- (b) against a sentence imposed by a court which the court is not competent to impose.

Criminal Revisions

- The key provision is section 400, which confers on the High Court an **overarching supervisory jurisdiction to correct miscarriages of justice**, arising from a misconception of law, irregularity of procedure, neglect of proper precautions, or apparent harshness of treatment, which has resulted in some injury to the due maintenance of law and order, or some underserved hardship to individuals.
- Under subsection (1) to section 400, there 4 ways in which a matter can be brought to the attention of the High Court for it to exercise its powers of revision. The High Court can call for the record of proceedings on its own motion. The State Court may inform the High Court about a case for revision. Finally, either the Public Prosecutor or the accused may petition for revision.
- A criminal revision is filed for the High Court to examine the correctness, legality, or propriety of any judgment, sentence, or order recorded or passed by a State Court as well as the regularity of the proceedings before the State Court.

Criminal Revisions

- ***While appeals can be pursued as of right, a criminal revision can be pursued only where serious injustice or palpable wrong is shown.
- To this end, subsection (2) to s 400 provides that a criminal revision cannot be filed by any party in relation to any judgment, sentence, order which he could have appealed against but had failed to do so, unless the criminal revision is:
 - (a) against a failure by the State Court to impose the mandatory minimum sentence or any other sentence required by written law; or
 - (b) against a sentence imposed by a State Court which the court is not competent to impose.
- Subsection (2) codifies the long-standing principle that the court's powers of revision are to be exercised sparingly, and a criminal revision should not serve as a convenient form of a "backdoor appeal" for aggrieved parties to appeal.

Criminal Revisions

- High Court's revisionary jurisdiction may be invoked at any time:
 - Before trial
 - In the course of a trial
 - As an appeal is ongoing
- However, in practice, such applications are usually pursued at the conclusion of first instance proceedings.

Criminal Revisions

- *Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064:

14 It is settled law that the revisionary jurisdiction of the court is to be sparingly exercised. Typically, this will require a demonstration not only that there has been some error but also that material and serious injustice has been occasioned as a result. In *Knight Glenn Jeyasingam v PP* [1998] 3 SLR(R) 196, the High Court said as follows (at [19]):

... The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. The irregularity or otherwise noted from the record of proceedings must have resulted in grave and serious injustice.

15 It has also been observed that the threshold of "serious injustice" will only be crossed if there is "something palpably wrong in the decision that strikes at its basis as an exercise of judicial power" by the court below (*Rajendar Prasad Rai v PP* [2017] 4 SLR 333 ("*Rajendar*") at [24], citing *Ang Poh Chuan v PP* [1995] 3 SLR(R) 929 at [17]).

One common example of "serious injustice": Lower court imposes a sentence outside the prescribed punishment. This triggers the exercise of revisionary powers.



Criminal Revisions

FORM 70
PETITION FOR REVISION
(SECTION 400)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Criminal Revision No. _____ of 20 ____

IN THE MATTER OF _____

And

IN THE MATTER OF SECTION 400 OF
THE CRIMINAL PROCEDURE CODE
(CAP. 68)

Between

... Applicant

And

... Respondent

PETITION FOR REVISION



Criminal Revisions

Powers of High Court on revision

401.—(1) On examining a record under revision in this Division, the High Court may direct the lower court to make further inquiry into a complaint which has been dismissed under section 152 or into the case of an accused who has been discharged.

(2) The High Court may in any case, the record of proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers given by sections 383, 389, 390 and 392.

(3) The High Court may not proceed under subsection (1) or (2) without first giving the parties adversely affected by the High Court so proceeding an opportunity of being heard either personally or by advocate.

(4) This section does not authorise the High Court to convert an acquittal into a conviction.

Section

- 373. Interpretation of this Part
- 374. When appeal may be made
- 375. Limited right of appeal against plea of guilty
- 376. Appeal against acquittal and sentence in private prosecutions
- 377. Procedure for appeal
- 378. Petition of appeal
- 379. Records of court proceedings to be sent to appellate court and respondent
- 380. Appeal specially allowed in certain cases
- 381. Procedure when appellant in prison
- 382. Bail pending appeal
- 383. Stay of execution pending appeal
- 384. Summary rejection of appeal
- 385. Notice and time of hearing
- 386. Appeal to be heard by one or more Judges
- 387. Procedure at hearing
- 388. Non-appearance of respondent
- 389. Arrest of respondent in certain cases
- 390. Decision on appeal
- 391. Omission to frame charge
- 392. Taking additional evidence
- 393. Death of party to appeal
- 394. Grounds for reversal by appellate court



Criminal Revisions

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SINGAPORE LAW REPORTS

[2015] 2 SLR

Public Prosecutor

v

Yang Yin

[2015] SGHC 3

High Court — Criminal Revision No 18 of 2014

Sundaresh Menon CJ

10, 11 November 2014; 8 January 2015

Criminal Procedure and Sentencing — Revision of proceedings — Foreign national facing multiple charges granted bail — Whether order granting bail should be revoked

This is an example of a case in which the High Court exercised its powers of revision to revoke an order of bail that had been made by the lower court.



Criminal Revisions (CCDC orders)

When appeal may be made

374.—(1) An appeal against any judgment, sentence or order of a court, or any decision of the High Court mentioned in

(5) No appeal may lie against any order made by a Magistrate, a District Judge, the Registrar of the State Courts or the Registrar of the Supreme Court in any criminal case disclosure conference held under Part IX or X.



Criminal Revisions (CCDC orders)

Division 4 — Revision of orders made at criminal case disclosure conference

Power to revise orders made at criminal case disclosure conference

404.—(1) The High Court may, on its own motion or on the application of the Public Prosecutor or the accused in any criminal case disclosure conference, call for and examine the record of any criminal case disclosure conference held under Part IX or X before a Magistrate, a District Judge, the Registrar of the State Courts or the Registrar of the Supreme Court to satisfy itself as to the correctness, legality or propriety of any order recorded or passed at the criminal case disclosure conference, and as to the regularity of the criminal case disclosure conference.

[Act 5 of 2014 wef 07/03/2014]

(2) Any application by the Public Prosecutor or the accused under subsection (1) must be made within 7 days from the date of the order so recorded or passed at the criminal case disclosure conference to which the application relates.



Criminal Revisions (CCDC orders)

Power to revise orders made at criminal case disclosure conference

(3) On examining a record under revision in this Division, the High Court may affirm, vary or set aside any of the orders made by the Magistrate, District Judge, Registrar of the State Courts or Registrar of the Supreme Court, as the case may be, who presided over the criminal case disclosure conference.

[Act 5 of 2014 wef 07/03/2014]

(4) The High Court may not proceed under subsection (3) without first giving the parties adversely affected by the High Court so proceeding an opportunity of being heard either personally or by advocate.



Criminal Revisions (CCDC orders)

FORM 71

PETITION FOR REVISION
(CRIMINAL CASE DISCLOSURE CONFERENCE)
(SECTION 404)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Criminal Revision No. _____ of 20 ____

IN THE MATTER OF _____

And

IN THE MATTER OF SECTION 404 OF
THE CRIMINAL PROCEDURE CODE
(CAP. 68)

Between

... Applicant

And

... Respondent

PETITION FOR REVISION
(CRIMINAL CASE DISCLOSURE CONFERENCE)



Criminal Revisions (CCDC orders)

[2014] 2 SLR

SINGAPORE LAW REPORTS

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Public Prosecutor

v

Li Weiming and others

[2014] SGCA 7

Court of Appeal — Criminal Reference No 1 of 2013

Andrew Phang Boon Leong JA, V K Rajah JA and Lee Seiu Kin J

25 July; 17 September 2013; 23 January 2014

(9) The High Court's revisionary powers under s 404 of the CPC 2010 were to be construed consistently with the general revisionary jurisdiction under ss 400–403 of the CPC 2010. The court's powers of criminal revision were statutorily conferred, and when reference was made to powers of revision, Parliament had to have intended this to be subsumed under the umbrella of the court's general revisionary jurisdiction and for the same judicially imposed threshold for intervention to apply: at [67] and [68].

(10) Accordingly, Question 3 was answered as follows: the threshold for intervention under the general revisionary jurisdiction, viz, serious injustice, also applied to the powers of revision under s 404: at [70], [71] and [98(c)].

The threshold for revision in relation to CCDC orders is the same as that when the High Court is called to exercise its more general powers of revision. Read [67] to [71] of *Li Weiming* for a better appreciation of the salient considerations.

(4) Criminal Motions



Criminal Motions

Division 5 — Criminal motions

- 405. Motion
- 406. Notice of motion
- 407. Form and issue of notice of motion
- 408. Adjournment of hearing
- 408A. Dealing with motion in absence of parties, etc.
- 408B. Decision or order affecting lower court
- 409. Costs

Criminal Motions

Common Criminal Motions include applications for (but not limited to) the following: Applications to the High Court to:

- grant bail where a lower court has refused bail
- adduce additional evidence on appeal
- extend time for filing
 - Notice of Appeal
 - Petition of Appeal

Criminal Motions

- Important: *Amarjeet Singh v PP* [2021] 4 SLR 841 clarifies the ambit of a criminal motion (see [27] – [28] and [33] in particular).
- Usually brought for the purpose of seeking ancillary relief in support of a primary action. Such applications are fundamentally tethered to the conduct of the main trial, appeal or application for revision.
- Primary criminal action: being a proceeding or action that invokes the original, appellate or revisionary criminal jurisdiction of the court.
- ***Cannot be a means for parties to circumvent the general rule against appeals for interlocutory or procedural rulings.



Criminal Motions

Notice of motion

406.—(1) No motion shall be made without previous notice to the other party to the proceedings.

(2) There must be **at least 7 clear days** between the service of the notice of a criminal motion and the day named in the notice for hearing the motion, unless —

(a) the relevant court gives leave to the contrary; or

(b) each party required to be served with the notice consents to the relief or remedy that is sought under the motion.

[Act 19 of 2018 wef 31/10/2018]

Criminal Motions

- Use of Forms 72-75 for Notice of Motion
 - Form 72: General
 - Form 73: Variation of Bail
 - Form 74: Extension of time
 - Form 75: Adduction of further evidence

Notice

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