Public Prosecutor *v* Syed Mostofa Romel
[2015] SGHC 117

Case Number	: Magistrate's Appeal No 9019 of 2015
Decision Date	: 28 April 2015
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ
Counsel Name(s)	: Grace Lim (Attorney-General's Chambers) for the appellant; Thong Chee Kun, Ho Lifen and Muslim Albakri (Rajah & Tann Singapore LLP) for the respondent.
Parties	: Public Prosecutor — Syed Mostofa Romel

Criminal procedure and sentencing – Sentencing – Appeals

28 April 2015

Sundaresh Menon CJ:

Introduction

1 This was an appeal brought by the Public Prosecutor ("the Prosecution") against a sentence imposed by a district judge ("the DJ"). The Prosecution submitted that the concurrent two-month imprisonment sentences imposed on the respondent, Syed Mostofa Romel ("the Respondent"), for two charges of corruption under s 6(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA") was manifestly inadequate and should be increased to between six to eight months. I allowed the Prosecution's appeal and set out my reasons below. The DJ's decision can be found at [2015] SGDC 51 ("the Judgment").

Facts

The background

2 The Respondent was a 50 year-old Bangladeshi national. He was employed by PacMarine Services Pte Ltd ("PacMarine") as a trainee Associate Consultant. PacMarine was in the business of marine surveying. As an Associate Consultant, the Respondent's duties included conducting inspections of vessels seeking to enter an oil terminal. His specific responsibilities included the following (see the Judgment at [3]):

(a) certifying that the vessel had the correct documents;

(b) ensuring that the cargo was properly documented; and

(c) ensuring that the vessel was seaworthy and free from any high-risk defects.

3 Where the defects on a vessel were identified in the course of a survey but classified as low to medium-risk, the vessel would generally be allowed to dock at the oil terminal where the rectification works would be carried out. Where the defects were classified as high-risk, rectifications would have to be carried out *before* the vessel would be permitted to enter the oil terminal: see the Judgment at [3]. Regardless of how the defects were classified in any given case, after the vessel inspection

survey had been conducted, the Respondent would prepare a report and submit it to his supervisor.

The offences

4 The Respondent was charged with a total of three offences under s 6(*a*) of the PCA. Two charges were proceeded with and the remaining one was taken into consideration for the purposes of sentencing. The proceeded charges are DAC 911675/14 and DAC 916677/14. Before I set out the facts which gave rise to the respective charges, I first set out for convenience, s 6(*a*) of the PCA:

> **Punishment for corrupt transactions with agents**
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> **6**. If —
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> (*a*) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;
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> …
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> he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.

DAC 911675/14

5 On 10 March 2014, the Respondent conducted a vessel safety inspection on the "MT Torero" at Vopak Terminal Banyan Jetty. After the inspection, he spoke to the ship master, Mr Vladimir Momotov ("Mr Momotov"), and the chief engineer, Mr Noel Casumpang Janito, to highlight several high-risk observations which would likely result in the vessel not being allowed to enter the terminal until these defects had been rectified: see the Judgment at [3].

6 Mr Momotov did not agree with the observations and thought that the defects were minor ones which could be readily rectified. He also felt that they ought not even to be reflected in the inspection report. He asked the Respondent how he could resolve the situation and the Respondent informed him that money would do so. After some discussion, it was agreed that the Mr Momotov would pay the Respondent the sum of US$3,000. The Respondent in return omitted to include the "high-risk observations" in the final printed report for the MT Torero: see the Judgment at [4].

DAC 916677/14

7 Unknown to the Respondent, Mr Momotov had reported the incident. As a result, when the same vessel arrived on a subsequent occasion on 27 May 2014, the Corrupt Practices Investigation Bureau ("CPIB") was standing by and launched a sting operation. The Respondent was assigned to conduct the vessel safety inspection and unknown to him, the vessel had been prepared beforehand with high-risk defects which ought to have been highlighted in the inspection report. The Respondent proceeded to inspect the vessel and having identified the breaches, he spoke to Mr Momotov to highlight the high-risk defects that he had identified. Mr Momotov then asked him how the problem could be avoided and the Respondent reminded him of the last occasion when money had been paid to him. He asked Mr Momotov to do the same once again.

8 Mr Momotov passed the Respondent US$3,000 which had been prepared beforehand and the Respondent proceeded to print out the inspection report omitting any mention of the high-risk observations. The Respondent was then arrested by the CPIB (see the Judgment at [5]). In the subsequent investigations, a total sum of US$7,200 was recovered from the Respondent house when the CPIB searched the premises.

The charge taken into consideration: DAC 916676/14

9 DAC 916676/14 was the charge that was taken into consideration for sentencing. On 17 March 2014, the Respondent corruptly obtained the sum of US$1,200 from the ship master of the MT Topaz Express, Mr Vishal Verma ("Mr Verma"), in return for which he issued a favourable inspection report for the vessel.

Decision Below

10 The Respondent pleaded guilty to the offences he was charged with and was sentenced by the DJ to two months' imprisonment for each charge with both sentences to run concurrently. He gave the following reasons for his decision:

(a) The main sentencing considerations in corruption cases were deterrence and punishment: the Judgment at [12].

(b) While the "public service rationale" principle could be applied to the private sector (see *Ang Seng Thor v Public Prosecutor* [2011] 4 SLR 217 ("*Ang Seng Thor*")), it should not be extended to the present case as the principle would be stretched too far. Instead, causing a loss of confidence in the maritime industry should just be treated as a separate aggravating factor: the Judgment at [14].

(c) It was irrelevant that the Respondent did not have the final say on whether the vessel could dock or not: the Judgment at [15].

(d) The Respondent's mitigating factors were of little weight as they constituted personal and family hardship and did not justify a non-custodial sentence: the Judgment at [16].

11 No order was made under s 13 of the PCA as the amount that had been corruptly received by the Respondent had been fully recovered: see the Judgment at [18].

The law on corruption

12 Corruption finds its origins as an offence in the common law. In England, it has been characterised as "the product of a hesitant common law and piecemeal and overlapping statutory development": *Criminal Law: Essays in Honour of J C Smith* (Peter Smith, ed) (Butterworths, 1987) at p 92. The common law offence was later supplemented by the Public Bodies Corrupt Practices Act 1889 (c 69) (UK) and this was eventually extended to private agents under the Prevention of Corruption Act 1906 (c 34) (UK) ("the 1906 Act"). It was the 1906 Act which provided the background against which we in Singapore saw the enactment of the Prevention of Corruption Act (Ordinance 39 of 1960) ("the Ordinance"): Michael Hor, "The Problem of Non-Official Corruption" (1999) 11 SAcLJ 393 at p 393.

13 The passage of the Ordinance in 1960 was a milestone in our legal history; but even more, it was a watershed moment in our national history as the government of the day embarked on a ground-

breaking and sustained campaign to tackle the scourge of corruption in all its forms and resolved to eradicate its hold at every level in our society. In the 55 years since then, our national character has come to be defined, among other things, by an utter intolerance for corruption.

14 At the Second Reading of the Prevention of Corruption Bill, the then Minister for Home Affairs, Mr Ong Pang Boon, said that the Bill would provide more effective powers to fight bribery and corruption so as to "make its detection easier and to deter and punish severely those who are susceptible to it and engage in it shamelessly." (*Singapore Parliamentary Reports, Official Report* (13 February 1960) vol 12 at col 377 (Ong Pang Boon, Minister for Home Affairs)). It has more recently been noted by Law Minister K Shanmugam in his speech "The Rule of Law in Singapore" [2012] Sing JLS 357 at p 357, that one of the characteristics that defines Singapore is our intolerance of corruption. But as successful as we have been in tackling corruption, there remains a need for the legal framework to be reviewed periodically to ensure that it is equal to the task. One aspect of that framework is sentencing and as this case concerns an appeal against sentence, I will focus on the sentencing aspects of both public and private sector corruption.

Public sector corruption

15 Public sector corruption typically attracts a custodial sentence. This is unsurprising, and the reasons are well-known. In *Public Prosecutor v Chew Suang Heng* [2001] 1 SLR(R) 127 at [10]–[11], Yong Pung How CJ observed that:

> 10 For corruption offences under the PCA which involve government servants, the norm is a custodial sentence and it is departed from where the facts are exceptional. For example, in *Meeran bin Mydin v PP* [1998] 1 SLR(R) 522, the appellant had pleaded guilty to two charges of bribing an immigration officer and was sentenced to nine months' imprisonment on each charge.
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> 11 There is no doubt that an element of public interest exists in corruption offences involving the bribery of a public servant and that the courts have taken a stern view of such offences. *In view of this public interest in stamping out bribery and corruption in the country, especially in the public service, a deterrent sentence for such offences is justified.* The severity of the sentence imposed, however, would depend on the facts of each individual case.
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> [emphasis added]

16 Similarly, in *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515, Yong CJ said as follows at [17]–[19]:

> 17 I accepted the grave issue of public interest at stake in the present case. Eradicating corruption in our society is of primary concern, and has been so for many years. This concern becomes all the more urgent where public servants are involved, whose very core duties are to ensure the smooth administration and functioning of this country. Dependent as we are upon the confidence in those running the administration, any loss of such confidence through corruption becomes dangerous to its existence and inevitably leads to the corrosion of those forces, in the present case the police force, which sustain democratic institutions. I highlighted this in *Meeran bin Mydin v PP* ([15] supra), approving the words of the trial judge in that case (at [18]):
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> > ... Acts of corruption must be effectively and decisively dealt with. Otherwise the very foundation of our country will be seriously undermined. ...
>
> 18 In 1960, this very same position was emphasised by the then Minister for Home Affairs when

the PCA was presented before Parliament for its second reading:

> The Prevention of Corruption Bill is in keeping with the new Government determination to stamp out bribery and corruption in the country, especially in the public service. *The Government is deeply conscious that a Government cannot survive, no matter how good its aims and intentions are, if corruption exists within its ranks and its public service on which it depends to provide the efficient and effective administrative machinery to translate its policies into action.* [emphasis added]

19 Over the years, whilst we have had considerable success in keeping mainstream corruption in check, there are still instances of corruption which seep through our system. On my part, I have sought to deter corruption through harsher punishment for lawbreakers in this area, but success has not been total, and the Judiciary still hears a steady stream of such cases. In many instances, the cases involve reprehensible public servants, contrary to their responsibility of acting as instruments preserving the efficiency, peace and stability of this nation. ***This not only erodes the confidence of the general public in their duty of service, but also reflects poorly on those public servants who stick by the law.*** Specifically for police officers, their role as guardians of our streets, our crime-fighters, to police our society becomes a ridicule.

[original emphasis in italics; emphasis added in bold italics]

17 This focus on the rationale for imposing a custodial sentence in the usual case of public sector corruption has given rise to the perception that public sector corruption typically attracts custodial sentences while private sector corruption typically attracts only the imposition of a fine. In my judgment, such a perception is wrong and is not reflective of the law in Singapore. As noted in Colin Nicholls *et al*, *Corruption and Misuse of Public Office* (Oxford University Press, 2nd Ed, 2011) at para 7.159:

> There are no specific sentencing guidelines for corruption cases. Corruption invariably attracts prison sentences because of its seriousness, but the sentences vary widely according to the circumstances of the case and the offender. Important factors in determining their length include whether the defendant pleaded guilty or not guilty, and if guilty, at what stage; and the personal circumstances of the defendant. There appears to be no distinction between sentencing for corruption in the public sector and sentencing for corruption in the private sector. …

18 In any case, any such distinction, would today rest on perceived foundations that are more apparent than real, in light of modern day developments, for at least two reasons: (a) the changing manner in which the government operates; and (b) the importance of clean and transparent dealings, even in the private sector.

Private sector corruption

19 Turning then to corruption in the private sector, I would first observe that Singapore has taken private sector corruption very seriously. Indeed, at the second reading of the Prevention of Corruption Bill which I referred to at [14] above, Mr Ong also said that:

> … As stated in the Explanatory Statement, the object of this Bill is to provide for the more effective prevention of corruption by remedying various weaknesses and defects which experience has revealed in the existing Prevention of Corruption Ordinance. The Bill, while directed mainly at corruption in the public services, is applicable also to *corruption by private agents, trustees and others in a fiduciary capacity*. To those who corrupt and those who are

corrupt, the warning is clear – take heed and mend their ways. Just retribution will follow those who persist in corrupt practices. [emphasis added]

20 Where private sector agents are concerned, offences which register a lower level of culpability *can* be dealt with by the imposition of fines. Such cases are *generally* those where the amount of gratification is below $30,000 and where there is no real detriment to the interests of the principal (see *Practitioners' Library: Sentencing Practice in the Subordinate Courts* vol 2 (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice in the Subordinate Courts*") at p 1375). That, however, does not give rise to or support a presumption in favour of non-custodial sentences whenever private sector corruption is concerned. Indeed, it is critical in this context to be sensitive to the *specific nature* of corruption that one is concerned with. This was just what Yong CJ emphasised in *Lim Teck Chye v Public Prosecutor* [2004] 2 SLR(R) 525 ("*Lim Teck Chye*") at [65] when he noted:

> 65 The appellant had also cited *PP v Yeoh Hock Lam* [2001] SGDC 212, unreported judgment dated 9 July 2001. The district judge presiding in that case had juxtaposed corruption in the public arena with that in the private sector (at [22] and [24]):
>
> > This was not a typical corrupt transaction where one party obtains a bribe which rewards or conduces to unlawful conduct interfering with the administration of justice ... But in the final analysis, the transactions had taken place in a 'commercial' context.
> >
> > Where the amount of gratification received is relatively low, and where it is not in excess of $30,000, a substantial fine will *usually be adequate* punishment. The offender will have to forfeit his ill-gotten gratification as well. This is the established sentencing practice where the offenders are not public officers and there is no taint on the integrity of the public service. I did not see any justification to impose a different sentence on the accused.
> >
> > [emphasis added]
>
> ***It was clear that the district judge's statements above did not stand for the proposition that corruption in a commercial context cannot be punished with imprisonment, although it usually is adequate. Indeed, the PCA expressly provides for the imposition of imprisonment sentences regardless of whether the offence was committed in the public arena.*** Of course, whether a custodial sentence is warranted in a particular case is determined upon a careful consideration of sentencing principles such as the public interest and other policy considerations, as well as the gravity of the offence including the particular facts and circumstances thereof: *PP v Tan Fook Sum* [1999] 1 SLR 523.
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> [original emphasis in italics; emphasis added in bold italics]

21 In a similar vein, V K Rajah JA in *Ang Seng Thor* at [39] noted that there is no presumption in favour of a non-custodial sentence where private sector corruption is concerned.

22 The United Kingdom Law Commission ("the UK Law Commission") in its report, *Legislating the Criminal Code: Corruption* (Cmnd 248, 1998) (Chairperson: Dame Mary Arden), also observed at para 3.28 that while in general, corruption on the part of a public servant is likely to be more damaging to the public interest and thus to be viewed as a more serious offence than corruption in the private sector, that was not inevitably so, and that a *rigid* distinction between the two is unwarranted; some instances of private sector corruption could be very serious while some instances of public sector corruption could be less serious than private sector corruption. The UK Law Commission's view was that ultimately, the seriousness of the offence should be a matter that is considered and best

addressed at the sentencing stage. This appears to mirror the views of the Australian Model Criminal Code Officers Committee where in their report on the Model Criminal Code, *Chapter 3: Theft, Fraud, Bribery and Related Offences* (1995) at p 245, it was observed that:

> … The secret commissions paid to Johns in the Tricontinental Bank case amounted to $2 million. The corrupting effect of a secret commission of that amount on confidence in the *general* commerce and finances of the community were very serious and more harmful than many instances of bribery in the public sector. … The public needs to be able to have confidence in the integrity of both the public and the private sector. … The amount of damage in a particular case should be a question for sentencing … [emphasis in original]

23 In Singapore, it has been noted that where private sector corruption involves (a) a significant amount of gratification; (b) gratification which is received over a lengthy period of time; or (c) a compromise of one's duty or a serious betrayal of trust, the starting point is likely to be a *custodial sentence* (see *Sentencing Practice in the Subordinate Courts* at p 1375). Further, even where the private sector is concerned, corruption can sometimes involve the provision or use of public services or money. In this regard, it is important to return to a point that I have alluded to earlier, which is that the manner in which the government operates has changed significantly since the start of the 20th century. Justice Peter McClellan, a judge of the New South Wales Court of Appeal, observed extra-judicially in a conference paper titled *Corruption: A Problem for the Public and Private Sector?* (2012) that modern day governments have increased the outsourcing of services and the privatisation of public services. This does not detract from the fact that *public services* are involved. Correspondingly, the ability of private actors to influence the public interest has increased and there is an increasing need to ensure that they are held accountable for the public services that they are responsible for delivering and the manner in which public money is spent. The phenomenon of the private sector's greater involvement in public sector work was also noted by the UK Law Commission in its consultation paper, *Reforming Bribery* (Consultation Paper No 185, 2007) (Chairman: Mr Justice Etherton) at para 1.14:

> However, in our view … it is very difficult to define with sufficient clarity the distinction between public sector and private sector functions. Increasingly, what were formerly public sector functions are sub-contracted out to private companies while public bodies now frequently form joint ventures with private companies. Indeed, it has been observed that the stance adopted in our previous report:
>
> > … was especially welcome in that it recognises that in the modern world of privatisation many functions formerly carried out by public bodies are now carried out by private contractors subject to regulation.

24 Singapore deals with the intersection of public and private sector corruption by extending at the sentencing stage, the public service rationale to private agents who supply public services or handle public money. This can be seen in *Ang Seng Thor* and in *Public Prosecutor v Tee Fook Boon Andrew* [2011] SGHC 192, where Rajah JA clarified at [30] that the public service rationale is a:

> [R]estatement of the common-sense proposition that corruption offences involving public servants are especially harmful because they erode the public's confidence in the essential institutions of government.

In his view (at [33]):

(a) The public service rationale refers to the public interest in preventing a loss of confidence

in Singapore's public administration.

(b) A custodial sentence is normally justified where there is a risk that such confidence in public administration would be eroded.

(c) This sentencing principle is presumed to apply where the accused person is a government servant or an officer of a public body, *but it may also apply to private sector offenders where the subject matter of the offence involves a public contract or public service*. This includes private sector offences which concern the discharge of a regulatory or oversight role, such as marine surveying.

25 At [33(d)], Rajah JA also held that while the public service rationale is *one way* in which private sector corruption can attract a custodial sentence, it was not the only way. Other considerations that might cause the custodial threshold to be crossed are where the policy considerations and gravity of the offence as measured by the mischief or likely consequence of the corruption warranted it. The court would also consider the size of the bribes, the number of people involved in the web of corruption and the prevalence of the conduct (see *Ang Seng Thor* at [40]–[42]).

26 The ways in which private sector corruption can manifest its ugly head are diverse. But in my judgment, the factual patterns that emerge from much of the prevailing case law can, for convenient analysis, be fit into three broad and non-exhaustive categories:

(a) First, where the receiving party is paid to confer on the paying party a benefit that is within the receiving party's power to confer, without regard to whether the paying party ought properly to have received that benefit. This is typically done at the payer's behest.

(b) Second, where the receiving party is paid to forbear from performing what he is duty bound to do, thereby conferring a benefit on the paying party. Such benefit typically takes the form of avoiding prejudice which would be occasioned to the paying party if the receiving party discharged his duty as he ought to have. This also is typically done at the payer's behest.

(c) Third, where a receiving party is paid so that he will forbear from inflicting harm on the paying party, even though there may be no lawful basis for the infliction of such harm. This is typically done at the *receiving party's* behest.

27 A case falling within the first category occurs, for example, where the receiving party purchases or favourably recommends the goods or services offered by the paying party. This was what happened in *Ang Seng Thor*. In this category, whether the custodial threshold is crossed will depend on the facts.

28 A case falling within the second category occurs, for example, where the receiving party, who is under a duty to inspect the paying party's goods or work, slackens in his inspection or turns a blind eye to any deficiencies in the paying party's goods or work. This was what happened in *Lim Teck Chye*. These cases, as I have noted above at [23] above, will frequently attract custodial sentences.

29 Into the third category will fall cases where the paying party does not in fact seek a favour. Rather, the third category is characterised by the heightened culpability of the receiving party due to the presence of two factors: first, in his seeking out payment from the paying party, whether this is done implicitly or explicitly; and second, in his threat, if the bribe is not paid, to inflict harm on the paying party when there is no lawful basis for doing so. These factors will generally result in the paying party being faced with the deprivation of his legitimate rights unless he pays a bribe. Such

cases would include cases, for example, where a bribe is solicited by a person who receives applications for licences or permits, to ensure that an applicant's application is timeously processed and not somehow inexplicably misplaced.

30 In this third category of cases, where corruption involves interference with or deprivation of a person's legitimate rights unless a bribe is paid, the receiving party can generally expect a custodial sentence. In my judgment, this kind of corruption is antithetical to everything that Singapore stands for as it undermines the confidence that if a person needs something such as a permit or licence to do business in Singapore, it will be forthcoming without bribes being paid. It also destroys the notion that business in Singapore is clean and transparent and that rules are there for good reason rather than to give people in whom discretion is vested or upon whom duties are placed, opportunities to have their palms greased and their pockets lined. In such cases, all would-be offenders must be warned that such acts, which undermine legitimate rights, will not be tolerated and will be severely dealt with.

31 I should stress that these three categories are meant only as analytical tools for the very many factual scenarios in which corruption may manifest itself. These categories are not watertight; they shade into one another. They are also not intended to be determinative of any case. Instead, they serve as a reminder that sentencing, especially in the context of corruption, is an intensely factual exercise. The court must correctly locate the facts of the case, including the circumstances of the offender that is before it within the continuum of the facts in previously decided cases before coming to a conclusion as to the appropriate sentence.

32 In my judgement, the facts giving rise to the first charge fell squarely within this third category. Mr Momotov, the master of the MT Torero, wanted to gain access for his vessel to the oil terminal. He had an entitlement to do this as long as the vessel was sufficiently safe for this purpose. Yet he faced the prospect of having to pay a bribe, upon the threat of the Respondent otherwise classifying his vessel as possessing high-risk defects; a threat that the Respondent apparently had no basis for making.

33 The facts relating to the second charge may be associated with both the second and third categories. The association with the second category arises because the Respondent forbore to perform an act that he was duty bound to perform, which was his duty to identify and state the high-risk defects so that these would be rectified before berthing at the oil terminal. The association with the third category arises from the payment being solicited by the Respondent as the receiving party with a view to then breaching his duty in return for such payment.

The sentence imposed by the DJ was manifestly inadequate

34 In that light, I considered that the two-month sentence imposed by the DJ was manifestly inadequate. Although I was of the view (for reasons I elaborate on below) that the public service rationale did not apply in this case, that alone was not a sufficient reason for a non-custodial sentence. As I explained at [26] above, in considering whether a custodial sentence is warranted in cases of private sector corruption, one has to be sensitive to the *type* of corruption that has taken place and its effect on Singapore being a place where legitimate dealings will proceed, free from corruption.

The public service rationale should not apply in this case

35 I first address the issue of whether the public service rationale should apply. In the arguments before me, the Prosecution submitted that the public service rationale should be extended to the

present case on the basis that:

(a) It implicated the public interest in preventing a loss of confidence in Singapore's public administration and where the offences concern the corrupt undermining of regulatory or oversight roles.

(b) Singapore's port and maritime industry is a pillar of the economy and a strategic industry and corruption cannot be allowed to take root given the prospect of increasing competition from other regional ports.

(c) Safety was of utmost importance and Singapore's reputation as a safe port cannot be allowed to be tarnished.

36 The Prosecution submitted that the Respondent's actions had placed lives and property at risk by allowing a vessel with high-risk defects to berth at an oil terminal on one occasion and allowing another to pass an inspection with the consequence that it would have been allowed entry into the terminal. Accordingly, the Prosecution submitted that the public service rationale was triggered.

37 I did not agree. While it is true that the present case involved a strategic industry, my view was that it did not involve any regulatory or oversight considerations that warranted the extension of the public service rationale. The arrangement that had been put in place by the oil terminal was a *purely commercial* one which the terminal operator had chosen to establish. This was not imposed on the terminal by virtue of any government regulation or subsidiary legislation. Nor was it evident why the terminal in this case had implemented such a system. It was undoubtedly entitled to do so, but its motivation could have been purely private in nature. In that light, I was unable to see how the public service rationale could be extended. It is true that potentially damaging economic and physical harm could have resulted from the Respondent's actions in this case. But that goes to a separate aggravating consideration.

38 I note that the Respondent's counsel, Mr Thong Chee Kun ("Mr Thong"), submitted that the public service rationale serves to determine whether a custodial sentence was warranted in a case of private sector corruption. I set out the relevant part of his submission in full:

> … [T]he question of whether the "public service rationale" applies in a private sector corruption case, serves to determine whether the custodial threshold has been crossed such that a fine is no longer tenable as sufficient punishment and deterrence. …

39 It is clear to me that that is an erroneous view of the law. It is evident from *Ang Seng Thor* and *Lim Teck Chye* that the public service rationale is *not determinative* of whether the custodial threshold is crossed in a case of private sector corruption and the custodial threshold may be crossed whenever the facts warrant it. Hence, the inability to extend the public service rationale to this case did not in and of itself mean that a non-custodial sentence or a short custodial sentence was all that was called for. In my judgment, the DJ erred in the following four material aspects when he sentenced the Respondent.

The DJ failed to appreciate the type of corruption involved in this case

40 First, the DJ failed to appreciate the type of corruption that was involved in this case. The relevant context of this case is as follows:

(a) An oil terminal had established a system that required vessels to be inspected for safety

before a decision would be made as to whether the vessel could enter the terminal. If the vessel was found to have high-risk defects, it would generally not be allowed to enter the terminal.

(b) As part of the system, a surveyor was required to examine the vessel's condition and determine whether there were defects present that attracted a low-risk, medium-risk or high-risk classification. To this end, a surveyor would be engaged to survey the vessel and determine whether there were any defects present and how those defects should be classified.

(c) The engaged surveyor could deliberately describe the defects in question wrongly by overstating them, in which case the vessel would lose its right to enter the terminal save by incurring delay or expense, or by understating them, in which case the vessel could enter the terminal but pose a risk to the terminal and those working inside the terminal.

41 In my judgment, the relevant context here involved a system which depended on the Respondent's diligent and faithful discharge of his duties with potentially grave consequences if he failed to do so. It was in this context that the Respondent found himself in a position to exploit good faith vessel operators who wanted to enter the oil terminal. He knew that he could overstate risks and cause inconvenience as well as unnecessary expense and delay to ship masters unless a bribe was paid; that he could offer to understate the risks if he was paid a bribe even if this put others in the terminal at risk; and that he could combine the two by overstating the risks and also offering to understate them, getting some money in the process. Mr Momotov and Mr Verma were confronted by *both* these forms of behaviour stemming from the Respondent's greed. Both of them had their legitimate business interfered with unless they were willing to comply with the Respondent's requests. The DJ failed to appreciate this.

The DJ failed to appreciate the safety risks that were involved in this case

42 Second, the DJ failed to appreciate the safety risks that were involved in this case. At [17] of the Judgment, he underplayed the risks that were posed to the terminal and the workers:

> … Although in both the proceeded charges the Accused had given a high risk classification to the vessel, the statement of facts did not [detail] what were the defects or shortcomings detected in the vessel that had led to this classification. I say this because I am sure that within the classification, there would be differences in the degree of seriousness of the defects … some very critical while others not so critical. In the absence of such details, I would agree with Mr Thong that at its best, the facts before me would warrant only a short custodial sentence.

43 The same point was made to me by Mr Thong at the oral hearing and in his submissions, he cited *Public Prosecutor v Marzuki bin Ahmad and another appeal* [2014] 4 SLR 623 ("*Marzuki*") for the proposition that, as I found in that case, there was nothing to suggest that public safety was at stake. He suggested I should find the same in this case since the Prosecution's statement of facts does not identify with specificity what was the harm caused.

44 In my judgment, both the DJ and Mr Thong were wrong. It did not matter what the precise nature of the safety risks were, because the point was that *safety risks had been posed* to the oil terminal and the workers inside the terminal as a result of the Respondent's actions. That much was indisputable and in relation to the second charge, there were clearly high-risk defects that were present but which the Respondent had overlooked because of the bribe. Such facts are quite different from *Marzuki*, which involved an accused who was an assistant property executive employed by Jurong Town Corporation ("JTC") tasked to conduct inspections at a number of foreign worker dormitories at a number of JTC-owned premises. He was extended loans amounting to $31,500 to

forbear from reporting a discovered non-compliance. In my judgment in *Marzuki* at [31], I noted that although the acts of the accused had *the potential* to affect public safety, in fact no public safety issue had been brought to the court's attention. Therefore, unlike the present case, the potential for public safety issues there was purely speculative. I therefore accorded no weight to that consideration in *Marzuki*.

45 Given the evident safety risks in the present case, I considered that these should have been regarded as an aggravating factor. The DJ had failed to appreciate this.

The DJ erred in considering the Respondent as a first-time offender

46 Third, the DJ erred when he considered that the Respondent was a first-time offender. In *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [15], Yong CJ held that the court may decline to consider an offender a first-time offender if that person had been charged with multiple offences, even if he had no prior convictions. Later in *Ong Ting Ting v Public Prosecutor* [2004] 4 SLR(R) 53 at [45], Yong CJ observed:

> … I had refused to consider the accused's lack of prior convictions as a serious mitigating factor as he was convicted of seven different charges of robbery and voluntarily causing hurt. However, the facts in *Chen Weixiong* are materially different from those in the present appeal. In *Chen Weixiong*, the seven offences committed by the accused took place over several days. No less than 38 other charges were also taken into consideration for the purposes of sentencing which indicated that *the only reason the appellant had no prior convictions was because the law had not yet caught up with him for his past misdeeds*. In the present case, all seven charges against the appellant related to a single incident … [emphasis added]

47 In the case before me, I saw no reason why the Respondent should be considered a first-time offender. First, the offences that he was charged with related to three separate incidents. It was purely fortuitous that he had not been caught earlier. Second, although the court may consider an offender a first-time offender, it is *reluctant* to do so where the offender before it has committed multiple offences. The most that can be said about the Respondent in this case is *not* that he is a first-time offender, but that he did not have any prior antecedents. Therefore the DJ erred when he considered the Respondent a first-time offender when sentencing him.

The DJ erred in giving weight to the Respondent's guilty plea

48 Finally, the DJ erred in giving weight to the Respondent's guilty plea. While a guilty plea is a factor that the court would take into account in mitigation as evidence of remorse, its relevance and weight depends on the facts (see *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 ("*Philip Wong*") at [10]–[17]). In *Public Prosecutor v Lee Meow Sim Jenny* [1993] 3 SLR(R) 369 at [21], the Court of Appeal cited *Philip Wong* at [14] and said:

> ... the voluntary surrender by an offender and a plea of guilty by him in court are factors that can be taken into account in mitigation as they may be evidence of remorse and a willingness to accept punishment for his wrongdoing. However, I think that their relevance and the weight to be placed on them must depend on the circumstances of each case. I do not see any mitigation value in a robber surrendering to the police after he is surrounded and has no means of escape, or much mitigation value in a professional man turning himself in in the face of absolute knowledge that the game is up.

49 The Respondent submitted that his plea of guilt was timely and therefore was evidence of

genuine remorse. I did not agree. In my judgment, there was little if any mitigating value in the Respondent's guilty plea. The relevant circumstances were that he had been caught red-handed. Moreover, the corrupt payments that had been made to him were recovered only after CPIB officers searched his living quarters. I was therefore unable to see why any mitigating value should have been given to his plea of guilt.

A sentence of six months' imprisonment per charge was appropriate

50 I turn then to consider the appropriate sentence that is called for. In *Sundara Moorthy Lankatharan v Public Prosecutor* [1997] 2 SLR(R) 253 ("*Lankatharan*"), the accused obtained a single bribe of $4,000 bribe from a contractor so that no negative remarks would be made about the safety aspects of the contractor's company's construction work. The accused was sentenced to a term of three months' imprisonment. The present case concerned three charges, two of which were proceeded with and the other one was taken into consideration for the purposes of sentencing. Most significantly, the type of corruption here was of a particularly egregious nature where Mr Momotov and Mr Verma's legitimate business rights were interfered with. That alone was sufficient to warrant a custodial sentence.

51 The case before me also featured four aggravating factors which warranted more than just a short custodial sentence. First, the offending acts were carried out over a period of three months and involved a sum totalling US$7,200. Second, the maritime industry is a strategic one accounting for up to 7% of Singapore's gross domestic product and 170,000 jobs (see *Singapore Parliamentary Debates*, *Official Report* (11 March 2015) vol 93 (Lui Tuck Yew, Minister for Transport)); the potential loss of confidence in the maritime industry is therefore an aggravating factor (see *Wong Teck Long v Public Prosecutor* [2005] 3 SLR(R) 488 at [36]) as the economic ramifications would be considerable if corruption were allowed to take root. Third, the safety of the terminal as well as that of the workers at the terminal was compromised. Fourth, the acts were premeditated and deliberate. In my judgment, in all the circumstances a significantly longer sentence was called for than had been imposed in *Lankatharan.* I therefore sentenced the Respondent to a term of six months' imprisonment for each of the two charges, which were to run concurrently.

Conclusion

52 Corruption is an insidious evil which, if left unchecked, will seep into and infest society. On the same day I heard this case, I also disposed of another appeal in *Public Prosecutor v Tai Ai Poh* (Magistrate's Appeal No 9046 of 2014) which involved 25 proceeded charges under s 6(*a*) of the PCA. The facts were somewhat similar and I allowed the appeal and enhanced the sentences for the proceeded charges from a fine to a jail term

53 Tai Ai Poh ("Tai") was an employee of ExcelTec Property Management Pte Ltd ("ExcelTec"). ExcelTec was in the business of providing property management services, and Tai was the building manager for two properties ("the Buildings"). As the building manager, Tai had a duty to supervise the security guards, gardeners, and cleaners responsible for the maintenance and upkeep of the Buildings. His feedback to the management corporation of the Buildings had a significant bearing on whether they would choose to change their contractors.

54 A cleaning company, Cleaning Express Pte Ltd ("Cleaning Express"), was engaged to provide cleaning services for the Buildings. One of the conditions of the contract was for Cleaning Express to provide two cleaners for each night shift; Cleaning Express in turn engaged Call and Care Services ("Call and Care") to provide two cleaners for each night shift.

55 Yusof Bin Razak ("Yusof") was the sole proprietor of Call and Care and in August 2006, he met Tai. Tai was told by Yusof that he paid his second night shift cleaner between $450 and $500 each month. Tai prevailed upon Yusof to pay Tai $300 twice a month, once on the fifth and once on the 20th day of each month. In return, Tai told Yusof that he could cut down the numbers of cleaners from two to one.

56 In effect, Tai extracted from Yusof a commitment to pay Tai $600 per month, in exchange for Yusof saving $450 to $500 a month by not having to employ a second cleaner for the night shift. Of course this made no sense, but Yusof agreed because he feared that Tai would otherwise give a negative report of Call and Care's services, thus jeopardising its chances of contract renewal. The 25 proceeded charges took place between 5 August 2008 and 20 September 2009 and 51 other corruption charges were taken into consideration for the purpose of sentencing.

57 Tai was sentenced by a district judge to a fine of $1,500 and in default, 10 days' imprisonment on each corruption charge.

58 I allowed the Prosecution's appeal and imposed a custodial sentence because, in my judgment, Yusof was faced with the prospect of unfair prejudice where the renewal of his cleaning contract was concerned, unless he paid a bribe. To put it another way, Tai was able to extract payments from Yusof by the threat of inflicting harm that Tai had no lawful basis to inflict. This stemmed from his position and his seeming ability to impede or prevent Yusof from obtaining subsequent cleaning contracts with Cleaning Express if Yusof were unwilling to pay him a bribe. Yusof was made to pay a bribe in order to earn his living by carrying out a contract improperly when he had fully intended to carry it out lawfully. As I have already observed, this is a virulent form of corruption where the rights of others to access services or opportunities that they can and wish to access in all honesty are interfered with.

59 I mention this case to drive home the point that this type of corruption goes against some of the core values that we as a nation and a people stand for and it undermines the collective effort of our society to institutionalise a zero-tolerance culture towards corruption. It has been noted in a study that a 1% increase in corruption levels reduces the growth rate by about 0.72% (see Pak Hung Mo, "Corruption and Economic Growth", (2001) 29 *Journal of Comparative Economics* 66 at p 76). This has severe consequences for a country like ours that must compete globally for investments. Clean and honest dealing is one of our key competitive advantages (see *Public Prosecutor v Lo Hock Peng* [2015] SGDC 23 at [14]) and corruption compromises the predictability and openness which Singapore offers and investors have come to expect. This is a hard won prize achieved through our collective efforts as a society and we must not allow these to be undone. I echo the following observations made by Encik Zulkifli bin Mohammed, then a Member of Parliament for Eunos GRC, in 1989 (*Singapore Parliamentary Debates, Official Report* (11 July 1989) vol 54 at col 377):

> Thanks to the relentless efforts and the determination of the Government in combating corruption for the past 29 years, Singapore has now achieved international reputation as a clean, honest and efficient country. It is an achievement not easily attained, and it has brought about prosperity and peace to all our citizens.

60 For all these reasons, I allowed the Prosecution's appeal.