Tan Lai Kiat *v* Public Prosecutor
[2010] SGHC 145

Case Number : Criminal Revision No 2 of 2010

Decision Date : 07 May 2010

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Rajan s/o Sankaran Nair (Rajan Nair & Partners) for the petitioner; Jaswant Singh, Gillian Koh-Tan and Lee Jwee Nguan (Attorney-General's Chambers) for the respondent.

Parties : Tan Lai Kiat — Public Prosecutor

CRIMINAL PROCEDURE AND SENTENCING – Arrest – Release

CRIMINAL PROCEDURE AND SENTENCING – Attorney-General

CRIMINAL PROCEDURE AND SENTENCING – High Court

CRIMINAL PROCEDURE AND SENTENCING – Irregularities in proceedings

CRIMINAL PROCEDURE AND SENTENCING – Public Prosecutor – Powers

CRIMINAL PROCEDURE AND SENTENCING – Revision of proceedings

7 May 2010

V K Rajah JA:

Introduction

1 This matter involves a petition for criminal revision filed by Tan Lai Kiat ("the Petitioner"), who is now 58 years old. On 20 April 2010, I heard his petition and allowed it. Consequently, I varied the original sentences which the Subordinate Courts had imposed on him in respect of two charges (referred to hereafter as, respectively, "MAC 11701/1998" and "MAC 11702/1998"). I now give the detailed reasons for my decision.

Factual background

2 More than a decade ago, on 18 September 1998, officers from the Gambling Suppression Branch of the Criminal Investigation Department conducted a raid on a property located in Tampines, where illegal gambling activities were being conducted. The Petitioner was arrested during the raid. Subsequent investigations revealed that the Petitioner was involved in an illegal lottery scheme. The documents seized during the raid contained records of stakes amounting to approximately $22,682. A second raid was conducted at about the same time on a property at Surin Lane. A number of exhibits relating to the Petitioner's illegal lottery operation were seized during the second raid, including records of stakes amounting to $2,918.80.

3 On or about 28 January 1999, the Petitioner pleaded guilty to and was convicted of

MAC 11701/1998 and MAC 11702/1998 (collectively, "the two CGHA charges"). Both of these charges were brought under s 5(*a*) of the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) ("the CGHA") read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed). The Petitioner also consented to two other charges (one under s 4(1)(*a*) of the CGHA and one under s 4(1)(*b*) of the CGHA) being taken into consideration for the purposes of sentencing.

4 Section 5(a) of the CGHA, which sets out (*inter alia*) the offence of "assist[ing] in the carrying on of a public lottery", provides for the following punishment:

> **Assisting in carrying on a public lottery, etc**.
>
> **5**. Any person who —
>
> (*a*) assists in the carrying on of a public lottery;
>
> …
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 and shall also be punished with imprisonment for a term not exceeding 5 years.

5 The same sentence was imposed on the Petitioner in respect of each of the two CGHA charges, *ie*:

Charge	Sentence
MAC 11701/1998	Nine months' imprisonment and a fine of $70,000, with six months' imprisonment in default of payment
MAC 11702/1998	Nine months' imprisonment and a fine of $70,000, with six months' imprisonment in default of payment

The two sentences of nine months' imprisonment were ordered to run concurrently. This resulted in an aggregate sentence of nine months' imprisonment ("the 9-month imprisonment sentence") and a cumulative fine of $140,000 ("the $140,000 fine"), with a total of 12 months' imprisonment in default of payment of the fine (for convenience, I will hereafter refer to imprisonment of this nature – *ie*, imprisonment in default of payment of a fine – as "default imprisonment"). Dividing the sum of $140,000 by 12 months, which I took to be 360 days (rather than 365 days) so as to work with a round figure, it can be seen that each day of the Petitioner's 12-month default imprisonment sentence was (loosely speaking) "worth" approximately $389.

6 The Petitioner commenced serving the 9-month imprisonment sentence on 22 February 1999. As a result of a remission of one third of that sentence for good conduct, he completed serving the sentence on 22 August 1999. In other words, the 9-month imprisonment sentence has been fully served, and it is not an issue in this petition.

7 As the Petitioner could not afford to pay the $140,000 fine, he commenced serving his 12-month default imprisonment sentence on 23 August 1999. At the time he started serving this default sentence, he was informed by the Singapore Prison Service that his due date of discharge *vis-à-vis* this default sentence would be 22 April 2000. This date was derived on the basis that the Petitioner would be entitled to a remission of one third of his 12-month default imprisonment sentence for good

conduct (see reg 113(1)(*a*) of the Prisons Regulations (Cap 247, Rg 2, 1990 Rev Ed) ("the 1990 Prisons Regulations"), which was the revised edition in force at the time the Petitioner commenced serving his default imprisonment sentence).

8 After the Petitioner had served 124 days (*ie*, approximately four months) of his 12-month default imprisonment sentence from 23 August 1999 to 24 December 1999, he requested Mdm Foo Tiew Jiak ("Mdm Foo"), who currently shares the same address in Hougang as him, to ascertain what I will term "the Outstanding Sum" – *ie*, the outstanding amount which the Petitioner had to pay in respect of the $140,000 fine as at 24 December 1999 (after taking into account the 124 days of default imprisonment already served) in order to secure his immediate release from prison. According to the Petitioner, he had all along been resigned to completing the balance of his 12-month default imprisonment sentence if his family could not afford to pay the Outstanding Sum. Mdm Foo in turn contacted the court clerk attached to Court 37 of the Subordinate Courts ("the Court Clerk") and ascertained by telephone the quantum of the Outstanding Sum.

9 Later that same day, Mdm Foo and the Petitioner's daughter, Delphine Tan ("Delphine"), after being informed of the amount due, proceeded to the Subordinate Courts to make payment. Mdm Foo obtained a receipt dated 24 December 1999 ("the Receipt") from the Court Clerk and was requested to return with the Receipt after making payment at the Subordinate Courts' payment counter and getting the Receipt stamped. Upon payment of the sum of $44,306 ("the $44,306 payment") by Mdm Foo, the Receipt was duly stamped by the Subordinate Courts. The handwritten remarks on the Receipt stated:

> Total fine: $140,000
>
> Given 246 days [*sic*] rebate of $95694 at $389 per day.
>
> [the word "therefore" in symbol] Fine: $44306

10 The above handwritten remarks were in fact *wrong* as the Petitioner had served only 124 days of his 12-month default imprisonment sentence as at 24 December 1999. He should therefore have been given a rebate which was the monetary equivalent of only 124 days of default imprisonment, *ie*, a rebate of $48,236 (taking 124 multiplied by $389, which (as stated at [5] above) was the approximate "value" of each day of the Petitioner's 12-month default imprisonment sentence). The Outstanding Sum was thus $91,764 ($140,000 minus $48,236), and not merely $44,306. This in turn meant that, after deducting $44,306 from $91,764, there was in reality still a balance of $47,458 ("the $47,458 balance") to be paid in respect of the $140,000 fine.

11 When Mdm Foo returned to Court 37 of the Subordinate Courts with the Receipt after getting it stamped, she saw Delphine conversing with the Court Clerk. She cannot now remember precisely what was discussed between Delphine and the Court Clerk. Nevertheless, both Mdm Foo and Delphine are adamant that they were not at any point in time on 24 December 1999 informed that there was any amount still outstanding *vis-à-vis* the $140,000 fine. Mdm Foo left the Subordinate Courts with Delphine that day believing that the $44,306 payment constituted full payment of the Outstanding Sum and sufficed to fully discharge the Petitioner's legal obligation in respect of the $140,000 fine.

12 Later that day, an Order to Release a Prisoner ("OTR") numbered 10142 ("OTR No 10142"), which was prepared by the Court Clerk and signed by a district judge ("the District Judge"), was issued. It directed the Superintendent of Prisons to release the Petitioner. At the bottom of this OTR was an annotation ("the OTR No 10142 annotation"), the material part of which stated:

Paid $ **44306** vide Receipt No **288681**

Dated **24.12.99**

Given **246** days [*sic*] rebate of $ **95694** at $ **389** per day.

[underlining in original; handwritten text in original in bold]

The handwritten figures "44306", "246" and "95694" on this annotation were wrong for the same reason that the handwritten remarks on the Receipt were wrong (see [10] above). Furthermore, this annotation was signed by the Court Clerk alone. The District Judge did not sign against it, so it is unclear whether she was aware of it when she signed OTR No 10142.

13 Oddly, an OTR numbered 10144 ("OTR No 10144"), which likewise directed the Petitioner's release from prison and which bore the same date as OTR No 10142 (*ie*, 24 December 1999), was also issued. It has not been made clear when OTR No 10144 was issued even though it was dated 24 December 1999. As in the case of OTR No 10142, OTR No 10144 was prepared by the Court Clerk and signed by the District Judge.

14 OTR No 10144 contained the following handwritten note, which was signed by the Court Clerk:

After rebate, total amt of fine: $ ~~91764~~ 92542

Paid: $44306

Balance of $47458 to be paid by instalment. Starting on 24th Jan 2000 – $4,000 each month until balance is paid.

[deletion mark in original]

It should be noted that the figure "91764" stated in this note should not have been deleted as the sum of $91,764 was in fact the correct quantum of the Outstanding Sum.

15 The material part of the OTR No 10142 annotation (see [12] above) also appeared at the bottom of OTR No 10144, *but with the following amendments*:

Paid $ **44306** vide Receipt No **288681**

Dated **24.12.99**

Given **~~246~~ 124** days [*sic*] rebate of $ **~~95694~~ 48236** at $ **389** per day.

[underlining in original; handwritten text and deletion marks in original in bold]

16 The District Judge did not sign against either the annotation at the bottom of OTR No 10144 ("the OTR No 10144 annotation") or the handwritten note in that OTR. It is thus similarly unclear whether the District Judge was aware of the presence of these two items when she signed OTR No 10144.

17 At the hearing before me, the deputy public prosecutor ("the DPP") was unable to clarify what led to the issuance of OTR No 10144. Nevertheless, it seems reasonable to infer that this OTR was

issued in a misguided effort to rectify the error in the Outstanding Sum as stated in OTR No 10142. It is also likely that OTR No 10144 was issued only after the contents of OTR No 10142 had already been communicated to the Superintendent of Prisons; if not, OTR No 10142 could have been corrected without any attempt to supersede it by issuing OTR No 10144.

18 The Petitioner was duly released from prison on 24 December 1999. It is now common ground that he was not personally informed then that there was any balance of the $140,000 fine still outstanding (in actual fact, as mentioned at [10] above, the $47,458 balance was still outstanding as at 24 December 1999 after taking into account the $44,306 payment made by Mdm Foo), or that a court order had been made directing that the balance of the $140,000 fine (*ie*, the $47,458 balance) be paid by way of monthly instalments (*cf* the contents of the letter dated 7 March 2000 from the Subordinate Courts ("the Instalment Letter") as reproduced at [20] below). At the hearing before me, the Petitioner vigorously maintained that he had all along believed that the $44,306 payment was sufficient to secure the full discharge of his legal obligation *vis-à-vis* the $140,000 fine. He unequivocally asserted that he would not have asked Mdm Foo to make the $44,306 payment merely to reduce his 12-month default imprisonment sentence by less than one third (taking the sum of $44,306 divided by $389, the $44,306 payment covered only about 113 days of the Petitioner's default imprisonment term).

19 The DPP accepted at the hearing of this petition that there had been a miscalculation of the Outstanding Sum on the part of the Subordinate Courts: while the Petitioner had served only 124 days of his 12-month default imprisonment sentence as at 24 December 1999, both the Receipt and OTR No 10142 stated that the rebate given was the monetary equivalent of 246 days of default imprisonment. On the basis of that erroneous calculation, the Petitioner was deemed to have discharged the $140,000 fine in full. In reality, the correct rebate at that point of time should have been the monetary equivalent of only 124 days of default imprisonment, *ie*, the sum of $48,236 (see [10] above).

20 On 7 March 2000, the Subordinate Courts sent the Instalment Letter (as defined at [18] above) to the Petitioner. (It should be noted that the Petitioner confirmed in his petition that he did receive this letter (*cf* the uncertainty as to whether he received the letters of advice mentioned at [25]–[26] below).) The Instalment Letter was not signed by either a district judge or some other judicial officer of the Subordinate Courts. Instead, it was signed by the Court Clerk, *ie*, the same clerk who had been involved in the earlier error concerning the rebate to be given to the Petitioner and the quantum of the Outstanding Sum ("the Error"). The Instalment Letter asserted that Delphine had, on 24 December 1999, made an application to pay the $47,458 balance by way of instalments of $4,000 per month, and that "*the Court ha[d] granted*" [emphasis added] this application. The material portions of the letter read as follows:

> 3. On the 24th December 1999, your daughter made an application to pay the **balance fine** of **$47458** (*after deduction of [rebate – number of days in prison after the impt* [*sic*] *term]*) by installment *and the Court granted the application* ***by paying*** [*sic*] ***$4,000 every month*** *until the balance of [the] fine is settle* [*sic*]*). As the Court has granted the application*, you were then released from prison on that day itself.
>
> 4. *I would be very grateful if you could pay the first month* [*sic*] *payment of $4,000 as soon as possible*. …
>
> [emphasis in bold in original; emphasis added in italics]

21 As can be seen from the above quotation, the Instalment Letter omitted to mention the number

of days of rebate given. This is curious because both the Receipt and the two OTRs prepared by the Court Clerk on 24 December 1999 (*ie*, OTR No 10142 and OTR No 10144) mentioned this. It is also pertinent to note that, *contrary* to what was represented in the Instalment Letter (a point which the DPP acknowledged at the hearing before this court), there was *no order of court dated 24 December 1999* stipulating that part of the $140,000 fine was still outstanding and that the outstanding amount (*viz*, the $47,458 balance) was to be paid in instalments. Further, it bears mention that no attempt was made by the Subordinate Courts to expressly draw the attention of the Superintendent of Prisons to this alleged instalment scheme prior to the Petitioner's release.

22 The Petitioner emphatically denied that either Mdm Foo or Delphine had made an application for instalment payment of any balance still outstanding in respect of the $140,000 fine as at 24 December 1999 (after taking into account the $44,306 payment made by Mdm Foo). I pause to reiterate that there is no evidence to show that, when Mdm Foo made the $44,306 payment, either she and/or Delphine knew that such payment was not in full satisfaction of the true quantum of the Outstanding Sum, which was $91,764 (see [10] above). Further, there is also no evidence to show that either of them made any application on the Petitioner's behalf to pay the balance of the Outstanding Sum (*ie*, the $47,458 balance) in instalments.

23 Upon his release from prison, the Petitioner resumed his former business of purchasing and importing sand from Southeast Asian countries for reclamation works in Singapore. He continues to be in the same line of business today.

24 Some three years after the Petitioner failed to respond to the Instalment Letter, a warrant of arrest numbered WA-102708/2000 ("the Warrant of Arrest") was issued against him on 11 July 2003 on the basis that he had failed to pay the first instalment of $4,000, which had allegedly been due on 29 February 2000. The Warrant of Arrest was eventually forwarded to the Warrant Enforcement Unit ("the WEU") sometime between 23 July 2003 and 30 July 2003, and was activated on 30 July 2003.

25 The DPP contended that the first letter of advice from the WEU was sent to the Petitioner on 4 August 2003. This letter was not, however, produced in the course of the present proceedings. On 12 August 2003, the Petitioner's sister allegedly informed the WEU that the Petitioner was then overseas on business. The WEU advised the Petitioner's sister to inform the Petitioner to contact it soon. According to the DPP, a year later, a second letter of advice was purportedly sent to the Petitioner on 6 September 2004. This letter was likewise not produced.

26 Similarly, although the DPP stated that further letters of advice were sent to the Petitioner on, respectively, 27 October 2004, 3 February 2005, 8 March 2006, 27 April 2006, 13 March 2007 and 3 September 2008, these letters were not made available. Further, the DPP could not confirm the address to which the various letters of advice issued by the WEU to the Petitioner (collectively, "the Letters of Advice") were supposedly sent and whether all of these letters were in fact delivered. In this regard, I note that the Petitioner's address changed from the address in Tampines stated in the Warrant of Arrest to his present address in Hougang at some point in time. It also bears mention that neither the correspondence between the Petitioner's counsel on the one hand and the Subordinate Courts and the Singapore Prison Service on the other hand nor the Petitioner's affidavit filed on 25 March 2010 made any mention of the Letters of Advice. In short, there was no satisfactory evidence that the Petitioner ever received those letters.

27 The Petitioner was eventually arrested pursuant to the Warrant of Arrest only on 21 October 2008. This, to his great consternation, happened while he was at a police station making a police report about a foreign worker in connection with a matter related to his sand-importation business. I pause to note that the fact that the Petitioner was arrested at a police station indicates that he was

not making any effort to evade the consequences of the Warrant of Arrest. The Petitioner was subsequently released after putting up a personal bond for the sum of $1,000.

The relief sought by the Petitioner

28 In his petition, the Petitioner requested, *inter alia*:

(a) that the Warrant of Arrest be quashed and that he be released unconditionally;

(b) that, taking into account all the circumstances of the case, any balance of the $140,000 fine or any balance of the 12-month default imprisonment sentence be reduced or varied in such manner as this court saw fit; and

(c) alternatively, if this court decided not to reduce or vary the $140,000 fine or the 12-month default imprisonment sentence, that the sum of $44,306 paid to the Subordinate Courts be refunded to him with interest at such interest rate and for such period as this court deemed fit.

The DPP's original position

29 At the outset of the proceedings, the DPP, somewhat puzzlingly, contended that, despite the lapse of time since the Error was made on 24 December 1999, no serious injustice would be occasioned if the Petitioner's default imprisonment sentence were not reduced. After all, the DPP submitted, there had been no undue delay on the part of the WEU in enforcing the Warrant of Arrest as assiduous efforts had been made to contact the Petitioner. Any delay in enforcement had been contributed to by the Petitioner, and he was now merely being called to fulfil "his *existing* penal obligations" [note: 1] [emphasis added]. The DPP also insisted that, after the Petitioner was released from prison on 24 December 1999, he subsequently learnt of the Error when he received the Instalment Letter, but did not take any follow-up action. Because of this, the DPP maintained, the Petitioner should not complain about the delay in the enforcement of the Warrant of Arrest.

30 I found the initial stance taken by the DPP difficult to comprehend (see also [65] below). The DPP's focus should not have been on the Petitioner's failure to take steps to address the situation resulting from the Error, but, rather, on the cause of this error. The right question to ask in the present case was this: *had the Petitioner or those acting on his behalf contributed in any way to the Error?* If neither the Petitioner nor his representatives (*ie*, Mdm Foo and Delphine) had a hand in that error, it would not be either right or just to penalise the Petitioner for it, whether at an earlier point in time or now. At the conclusion of the parties' oral arguments, I invited the DPP to reconsider his opposition to the petition, and indicated that I had grave reservations about the reasonableness of his position. I also indicated that I was prepared to adjourn the matter for instructions to be obtained, if necessary. On hearing this, the DPP, to his credit, immediately indicated that he was dropping all opposition to the petition and would instead support it.

My assessment of the merits of the petition

31 In setting out my reasons for allowing the present petition, I will first deal with the Petitioner's inaction *vis-à-vis* the Instalment Letter and the Letters of Advice, followed by the Petitioner's alleged knowledge of the Error. I will then go on to explain why, on the facts of this case, I found that the exercise of the High Court's revisionary power was justified. In the process, I will also discuss the ambit of the statutory provisions on remission.

Irrelevance of the Petitioner's inaction

32 Before this court, the DPP placed great emphasis on the Petitioner's inaction in respect of the Instalment Letter and the Letters of Advice. With respect, the DPP's approach was misguided. The Instalment Letter had no legal standing as there was, in the first place, no court order directing that the $47,458 balance be paid by instalments. That letter purported to set out a curial order when, in truth, there was no such order. The Petitioner's inaction *vis-à-vis* that letter is thus irrelevant.

33 The DPP initially submitted that the Warrant of Arrest was issued by the Subordinate Courts on 11 July 2003 "*as the Petitioner had failed to [make] his first instalment payment* of $4,000 on 29 February 2000" [emphasis added]. [note: 2] However, since there was, in the first place, *no order of court* directing that such payment be made, it must follow that there was *no legal obligation* for the Petitioner to pay the $47,458 balance by instalments. This in turn meant that the Warrant of Arrest, which was issued on the basis of the Petitioner's failure to pay the instalment allegedly due on 29 February 2000, was entirely without legal foundation or effect – it was, in short, a mere *brutum fulmen*.

34 Since the Warrant of Arrest was a nullity, the Petitioner's inaction in relation to the Letters of Advice (if those letters were indeed received by the Petitioner) is entirely irrelevant. The Petitioner had no legal obligation to submit to a nullity. Indeed, the DPP was unable to explain how the Petitioner's arrest on 21 October 2008 could ever have been justified in these circumstances. As an aside, what the Attorney-General's Chambers should have done to regularise the situation resulting from the Error was to make an application to set aside the two OTRs dated 24 December 1999 which were issued in respect of the Petitioner (*viz*, OTR No 10142 and OTR No 10144). As such an application was not made, I need not comment further on this point save to say that it is highly unlikely that this court would have been favourably disposed towards such an application (if it had been made) for all the reasons given in these grounds of decision.

35 Although the Warrant of Arrest was obviously a patent nullity, I nevertheless made an order to quash it so as to ensure that the Petitioner would not be inadvertently confronted at some future point in time with an order of ostensible effect. The objective of a quashing order (albeit in a different context) has been succinctly highlighted in Clive Lewis, *Judicial Remedies in Public Law* (Sweet & Maxwell, 4th Ed, 2009) at para 6-007 as follows:

> The purpose of granting a quashing order is to establish invalidity and, once established, to make it clear that the decision [which is the subject matter of the quashing order] is devoid of legal effect.

36 I now address the crucial issue of the Petitioner's actual knowledge of the Error.

Did the Petitioner know about the Error?

37 I found that the Petitioner had no actual knowledge of the Error. He had sound reasons to believe, when he was released from prison on 24 December 1999, that he had been accorded the benefit of a one-third remission of his 12-month default imprisonment sentence and only had to satisfy two thirds of that sentence (*ie*, a period of eight months' default imprisonment). Following from this, he honestly believed that his release from prison on 24 December 1999 was unconditional because (as he saw it) the $44,306 payment made by Mdm Foo sufficed to settle in full his legal obligation *vis-à-vis* the $140,000 fine. These are my reasons for coming to this conclusion.

38 First, the Petitioner stated that, at the commencement of his 12-month default imprisonment sentence, he had been informed by the Singapore Prison Service that his due date of discharge in respect of that sentence, after taking into account remission for good conduct, would be 22 April

2000 (see [7] above; in this regard, *cf* the date stated in the Singapore Prison Service's letter dated 18 February 2010 (at [41] below)). This was not disputed by the DPP. The standard one-third remission granted for good conduct (see reg 113(1)(*a*) of the 1990 Prisons Regulations) would have reduced the Petitioner's 12-month default imprisonment sentence to eight months. Since the Petitioner had served approximately four months of his default imprisonment sentence from 23 August 1999 to 24 December 1999, he had a reasonable expectation, as things stood on 24 December 1999, of having a balance of about four months of default imprisonment left to serve. In this regard, it is significant that the $44,306 payment made by Mdm Foo covered approximately 113 days of default imprisonment (taking the sum of $44,306 divided by $389), which is just slightly less than four months. Viewed from this perspective, it is understandable why the Petitioner thought that the 124 days of default imprisonment which he had already served as at 24 December 1999, coupled with the $44,306 payment, was sufficient to fully discharge his legal obligation in respect of the $140,000 fine. He could not have been familiar with the technical legal rules about fines, default imprisonment sentences and remission (these will be discussed below at [44]–[49]).

39 Second, there was no evidence to indicate that the Petitioner had ever agreed or intended to procure the $44,306 payment on condition that the balance of the Outstanding Sum (*ie*, the $47,458 balance) would be paid in instalments. It was common ground that the Petitioner was not brought to the Subordinate Courts prior to his release. Further, neither the Subordinate Courts' records nor the Singapore Prison Service's records indicate that the Petitioner was informed on 24 December 1999 that he was being released conditionally. Indeed, crucially, the only document given to the Petitioner's representatives (*ie*, Mdm Foo and Delphine) on that day was the Receipt (see [9] above). This indicates that it was not brought to their attention at all then that the $44,306 payment was, in truth, only part payment of the Outstanding Sum and that a further $47,458 (*ie*, the $47,458 balance) still had to be paid. As such, I accepted the contention by the Petitioner that he would not have procured the $44,306 payment if he had known that it would not have secured his immediate and unconditional release from prison, but would only have relieved him of serving part of his 12-month default imprisonment sentence.

40 Third, contrary to the DPP's assertion, there was nothing in the Instalment Letter which "specifically" [note: 3] pointed out that an administrative error (*ie*, the Error, as defined at [20] above) had been made. That letter merely contained a bare assertion that Delphine had made an application on 24 December 1999 to pay the $47,458 balance by way of instalments. On this point, the DPP failed to adduce any court records or other evidence to show that either Mdm Foo or Delphine had indeed made such an application. If an application of that nature had indeed been made, was it made to the Court Clerk or the District Judge (or some other officer of the Subordinate Courts), and who granted it? The Subordinate Courts' records are entirely silent on this. While it would, of course, have been preferable if the Petitioner had, upon receiving the Instalment Letter, immediately taken issue with the statement therein that Delphine had applied to pay the $47,458 balance by instalments and that the application had been granted, it is not altogether surprising that he decided to ignore this statement on the basis that (as he saw it) it was not correct and was thus of no consequence.

41 The frame of mind of the Petitioner at the time he received the Instalment Letter is now indirectly corroborated by a letter dated 18 February 2010 from the Singapore Prison Service, which states that, if there had been no payment at all of any part of the $140,000 fine, the Petitioner's earliest date of release *vis-à-vis* the 12-month default imprisonment sentence would have been 23 April 2000 (which is just one day later than the date originally communicated to the Petitioner when he started serving that default imprisonment sentence (see [7] above)). This statement presupposes that the Petitioner was entitled to be granted remission in respect of his default imprisonment sentence. This raises an interesting legal point that has not been discussed in any prior decision, *viz*: does remission apply to *default imprisonment* sentences? For completeness, I will deal

with this issue now so as to put to rest any remaining doubts about the current legal position on remission.

Whether remission applies to default imprisonment sentences

42 The relevant provisions on remission of imprisonment sentences are currently contained in the Prisons Regulations (Cap 247, Rg 2, 2002 Rev Ed) ("the current Prisons Regulations"), and read as follows:

> **Application of regulations 117 to 124**
>
> **116**. Regulations 117 to 124 shall apply to remissions of *all sentences of imprisonment* other than sentences of imprisonment for life.
>
> **Calculation of period of remission**
>
> **117**. For the purpose of earning remission the total of consecutive periods of *imprisonment of whatever nature* shall be deemed to be one sentence and remission shall be calculated upon such total.
>
> **Remission — how granted**
>
> **118**.—(1) With a view to *encouraging good conduct and industry and to facilitate reformative treatment*, prisoners sentenced to imprisonment shall be entitled to be granted remission as follows:
>
> > (*a*) convicted prisoners sentenced to a term of imprisonment exceeding 14 days shall be granted as remission *one third of their sentences*, except that in no case shall any remission granted result in the release of [a] prisoner until he has served 14 days …
> >
> > …
>
> **Remission — how awarded**
>
> **119**. Remission of sentence or aggregate of sentences shall be awarded on the admission of a prisoner.
>
> **Day of release**
>
> **120**. A prisoner shall be entitled to release on the day after he has completed earning his remission.
>
> …
>
> **When remission not permitted**
>
> **123**.—(1) Prisoners in hospital through their own fault or [through] malingering shall not be allowed to earn any remission in respect of the period [while] they are so confined.
>
> (2) Similarly, prisoners undergoing punishment shall not be allowed to earn remission in respect of the period [while] they are undergoing punishment.

(3) Prisoners transferred to a mental hospital shall be allowed the full remission permissible under these Regulations.

Cancellation of remission

124.—(1) The remission earned by any prisoner may, on commission of any grave offence, be cancelled in whole or in part by the authority of the President; and conversely remission without limit may be given for special services by his authority.

(2) The Superintendent [ie, the Superintendent of Prisons] may, in his discretion, restore to any prisoner a period of remission or any portion thereof, up to a maximum of 7 days, which had previously been forfeited by such prisoner on the order of the Superintendent or of the order of any person exercising the powers of the Superintendent.

[emphasis added]

43 It should be noted that, although it was the 1990 Prisons Regulations (and not the current Prisons Regulations) which applied at the time the Petitioner served his 12-month default imprisonment sentence, there is, for the purposes of these grounds of decision, no material difference between the provisions on remission in the former (*viz*, regs 111A–119 of the 1990 Prisons Regulations) and the corresponding provisions in the latter (*viz*, regs 116–124 of the current Prisons Regulations). The analysis below of the provisions on remission in the current Prisons Regulations is thus equally applicable to the corresponding provisions in the 1990 Prisons Regulations.

44 The question is whether the phrase "all sentences of imprisonment" in reg 116 of the current Prisons Regulations includes default imprisonment sentences. In my view, the answer is "yes" in the light of reg 116 read with regs 117 and 118. This is because the current Prisons Regulations do not draw a distinction between a term of imprisonment which is imposed by the court as the "direct" (so to speak) sentence for an offence and a term of imprisonment which is imposed by the court as an indirect means of enforcing the "direct" sentence of a fine – *ie*, it appears to be of no consequence whether the offender is serving an imprisonment term as a "direct" or an "indirect" punishment for his offence. One of the key objectives of the current Prisons Regulations is "to [encourage] good conduct and industry" (see reg 118(1) of the current Prisons Regulations) on the part of offenders. From this perspective, it would be arbitrary and absurd to deny remission to an offender (assuming he satisfies the requisite criteria for being granted remission) on the tenuous basis that he was imprisoned for failing to pay a fine, which was the "direct" punishment imposed on him by the court.

45 This view is fortified if the position of an offender serving a default imprisonment sentence as the "indirect" punishment for his offence is compared with that of an offender serving a mandatory sentence of imprisonment as the "direct" punishment for his offence. If remission does not apply to default imprisonment sentences, the former will be worse off than the latter. Why, however, should that be the case? Indeed, the view that remission should apply to default imprisonment sentences becomes even more compelling when consideration is given to the phrase "periods of imprisonment *of whatever nature*" [emphasis added] in reg 117 of the current Prison Regulations. Further, on a plain reading of reg 116, the phrase "*all* sentences of imprisonment" [emphasis added] would embrace default imprisonment sentences.

46 What I have said at [44]–[45] above relates to the scenario where the offender serving the default imprisonment sentence does not pay any part of the fine imposed on him at all. The position (*vis-à-vis* whether or not remission is available) is, however, quite different where the offender pays part of the fine *in monetary form* and satisfies the rest of the fine by serving the corresponding

period of default imprisonment. This scenario may take on one of two alternative factual permutations, namely:

(a) the "pay later" scenario, *ie*, the offender, *after* serving part of his default imprisonment sentence, pays (in monetary form) the sum which corresponds to the remainder of his default imprisonment sentence so that he can be released from prison immediately (this scenario is analogous to that in the present case); and

(b) the "pay first" scenario, *ie*, the offender, realising that he has insufficient funds to pay the entire fine in monetary form, pays part of the fine in monetary form *and then* "pays" the balance of the fine by serving the requisite period of default imprisonment.

The key difference between these two scenarios is that, in the "pay later" scenario, payment in monetary form of part of the fine is made *after* the offender has already served a portion of his default imprisonment sentence, whereas, in the "pay first" scenario, payment in monetary form of part of the fine is made *before* the offender begins serving his default imprisonment sentence.

47 In a "pay later" scenario, the offender *is not* entitled to any remission of that part of the fine which corresponds to the period of default imprisonment yet to be served. For instance, if the offender, after serving a period of default imprisonment which corresponds to 20% of the fine imposed on him, decides to pay in monetary form the remaining 80% of the fine so that he can be released from prison immediately, he must pay the sum which represents 80% of the fine *without any discount*. This is implied from the wording of reg 116 of the current Prisons Regulations, which refers to remission of "sentences of *imprisonment*" [emphasis added] only, and not to remission of any other kind of sentence such as a fine or caning – *ie*, the wording of reg 116 indicates that remission applies *only* to sentences of *imprisonment*.

48 In contrast, in a "pay first" scenario, the offender *is* entitled to be granted remission when, after paying part of the fine in monetary form, he "pays" the balance of the fine by serving the corresponding period of default imprisonment. Varying the example given in the preceding paragraph, if the offender *first* pays (in monetary form) 20% of the fine imposed on him *and then* "pays" the remaining 80% of the fine by serving a period of default imprisonment which corresponds to that portion of the fine, he is entitled to a one-third remission of the corresponding period of default imprisonment (assuming he satisfies the criteria for remission). This is because reg 119 of the current Prisons Regulations states that "[r]emission of sentence … *shall* be awarded *on the admission of a prisoner*" [emphasis added]. This regulation, given its wording, is wide enough to include an offender who is admitted to prison to serve a period of default imprisonment as the "indirect" punishment for his offence after first satisfying part of his "direct" punishment (*viz*, a fine) by paying in monetary form a portion of the fine imposed on him.

49 At first glance, the dichotomy between the "pay later" scenario (where remission *is not* applicable when calculating the amount to be paid (in monetary form) in respect of the fine after taking into account the period of default imprisonment already served) and the "pay first" scenario (where remission *is* applicable when calculating the period of default imprisonment which corresponds to the unpaid portion of the fine) may appear to be unfair, but there is in fact a sound rationale for it. Remission is a benefit which is conferred on an offender for good conduct while serving a sentence of imprisonment, and it has to be *earned* (see, *inter alia*, regs 120 and 123 of the current Prisons Regulations, which refer to the earning of remission). In a "pay later" scenario (and taking, in this regard, the example outlined at [47] above), the offender has served a period of default imprisonment which corresponds to only 20% of the fine imposed on him. He has not served any part of the period of default imprisonment which corresponds to the remaining 80% of the fine, and thus, he would not

have earned any remission in respect of that period. It follows that, if he chooses to "serve" that period of default imprisonment (*ie*, the period of default imprisonment which corresponds to 80% of the fine imposed) by paying 80% of the fine *in monetary form* instead, he is not entitled to any discount on the quantum which represents 80% of the fine.

The High Court's exercise of its revisionary power

50 I now turn to my reasons for ruling that the circumstances of this case warranted the exercise of the High Court's revisionary power. To begin with, I will set out the relevant legal principles on criminal revision.

The relevant legal principles

51 The High Court's power of criminal revision is provided for in s 23 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which states:

> **Revision of criminal proceedings of subordinate courts**
>
> **23**. The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with the provisions of any written law for the time being in force relating to criminal procedure.

52 This provision is supplemented by ss 266–270 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC"), which are as follows:

> **Power to call for records of subordinate courts**.
>
> **266**.—(1) The High Court may call for and examine the record of any criminal proceeding before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of that subordinate court.
>
> (2) Orders made under sections 105 and 106 and proceedings under Chapter XXX are not proceedings within the meaning of this section.
>
> **Power to order further inquiry**.
>
> **267**. On examining any record under section 266 or otherwise the High Court may direct the Magistrate to make, and the Magistrate shall make, further inquiry into any complaint which has been dismissed under section 134 or into the case of any accused person who has been discharged.
>
> **Power of court on revision**.
>
> **268**.—(1) The High Court may in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers conferred by sections 251, 255, 256 and 257.
>
> (2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by advocate in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise the High Court to convert a finding of

acquittal into one of conviction.

Permission for parties to appear.

269. No party has any right to be heard either personally or by advocate before the High Court when exercising its powers of revision:

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by advocate, and that nothing in this section shall be deemed to affect section 268(2).

Orders on revision.

270. When a case is revised under this Chapter by the High Court it shall certify its decision or order to the court by which the finding, sentence or order revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

53 In addition, s 256 of the CPC is relevant as it sets out some of the powers which the High Court may exercise in respect of its revisionary jurisdiction (see s 268(1) of the CPC; for the purposes of the present proceedings, it is not necessary for me to consider the High Court's powers under ss 251, 255 and 257 of the CPC, which (along with s 256) are also mentioned in s 268(1)). Section 256 of the CPC reads as follows:

Decision on appeal.

256. At the hearing of the appeal the 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, reverse the order and direct that further inquiry shall be made or that the accused shall be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*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 committed for trial;

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence; or

(iii) with or without the reduction or enhancement and with or without altering the finding, alter the nature of the sentence;

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

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

54 The High Court's revisionary power is discretionary in nature and is to be exercised sparingly; not all errors by a lower court should lead to a revision of that court's decision. To warrant the

exercise of the High Court's revisionary power, the threshold of serious injustice must be met. This principle was stated by this court in *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 ("*Ang Poh Chuan*") at [17] and subsequently affirmed in (*inter alia*) *Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR(R) 383 ("*Yunani*") at [47] as follows:

> The starting point in Singapore, according to Yong Pung How CJ in *Bedico Ma Teresa Bebango v PP* [2002] 1 SLR(R) 122, is that the High Court's power of revision is to be exercised "sparingly" (at [8]), *viz*, not all errors by a lower court should lead to a revision of that court's decision. The threshold requirement, according to Yong CJ, is that of "serious injustice" (at [8]). This proposition was earlier stated in *Ang Poh Chuan* … at [17] as follows:
>
> > … [V]arious phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that there must be some *serious injustice*. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. *But generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below*. …
>
> [emphasis in original]

55 In this regard, the following passage from [45] of *Yunani* is also relevant:

> Essentially, the High Court's revisionary jurisdiction can be described as a kind of paternal or supervisory jurisdiction. In Tan Yock Lin, *Criminal Procedure* (LexisNexis, Looseleaf Ed, Issue 18, December 2007), vol 2, ch XIX, para 3904, the object of this jurisdiction is described as such:
>
> > [T]he revisionary jurisdiction, which otherwise functions to all intents and purposes as an appeal, is a paternal jurisdiction. The High Court exercises the jurisdiction as the guardian of … criminal justice, anxious to right all wrongs, regardless [of] whether [they are] felt to be so by an aggrieved party.

Why the exercise of the High Court's revisionary power was warranted in the present case

56 Returning to the facts of the present case, the relevant question before me was whether the circumstances of the case amounted to such serious injustice as to warrant the exercise of the High Court's revisionary power. I had no doubt that this question should be answered in the affirmative. In my view, this case was a textbook case that unequivocally called out for this court's intervention in favour of the Petitioner because of the following factors.

57 First, the objective evidence strongly suggested that the presence of the Error was discovered only recently by the Subordinate Courts and the Singapore Prison Service – apparently, only after the Petitioner filed this petition. Second, the significance of there being *two purportedly original* OTRs (*ie*, OTR No 10142 and OTR No 10144) was not appreciated when the Warrant of Arrest was issued. The mere fact that there were two OTRs which directed the release of the same offender on the same date (*viz*, 24 December 1999) and which related to the same charges (*viz*, the two CGHA charges) ought to have immediately given rise to a reasonable suspicion that something was seriously amiss. Third, the patent irregularities readily apparent from a comparison of the two OTRs (had they been examined) should have been a cause for real concern.

58 As mentioned earlier (see [15] above), the OTR No 10144 annotation contained the following

handwritten amendments:

> Given ~~**246**~~ **124** days [*sic*] rebate of $ ~~**95694**~~ **48236** at $ **389** per day. [underlining in original; handwritten text and deletion marks in original in bold]

In what appeared to be a feeble attempt to brush aside the reasons for the deletion of the figures "246" and "95694", there was, as mentioned at [14] above, a handwritten note in OTR No 10144, which stated:

> After rebate, total amt of fine: $ ~~91764~~ 92542
>
> Paid: $44306
>
> Balance of $47458 to be paid by instalment. Starting on 24th Jan 2000 – $4,000 each month until balance is paid.
>
> [deletion mark in original]

As I pointed out earlier (at [14] and [16] above), this handwritten note was signed by the Court Clerk, but it was not countersigned by the District Judge. In addition, this handwritten note and the deletion of the figures "246" and "95964" in the OTR No 10144 annotation did not appear in the other purportedly *original* OTR, *ie*, OTR No 10142. As can be seen from [12] above, the material portion of the OTR No 10142 annotation read as follows:

> Given **246** days [*sic*] rebate of $ **95694** at $ **389** per day. [underlining in original; handwritten text in original in bold]

59 Both the OTR No 10142 annotation and the OTR No 10144 annotation were signed by the Court Clerk alone. There is nothing to indicate whether OTR No 10142 or OTR No 10144 was issued first (although it was presumably the former which was issued first for the reason stated at [17] above) and why two purportedly original OTRs were issued. Further, while the Singapore Prison Service received both OTRs, it is far from clear how and when it received them. It is, however, obvious that the Singapore Prison Service must have received only one of these OTRs (in all likelihood, OTR No 10142) at the time the Petitioner was released.

60 Subsequently, the Instalment Letter was sent to the Petitioner requesting him to pay "the balance fine of $47458" [emphasis in original omitted] by instalments. As highlighted at [20] above, this letter was signed *only* by the Court Clerk (as opposed to a district judge or some other judicial officer of the Subordinate Courts). More importantly, contrary to what was represented in that letter, there was in fact no order of court granting permission for the $47,458 balance (which did indeed remain outstanding after the $44,306 payment was made by Mdm Foo on 24 December 1999) to be paid by instalments. As mentioned earlier (see [40] above), the Subordinate Courts could not adduce any documentation to show that an application was made by either Mdm Foo or Delphine on 24 December 1999 to pay the $47,458 balance by instalments.

61 I therefore determined that an error had been made by the Subordinate Courts in calculating the Outstanding Sum. Crucially, I was also satisfied that neither the Petitioner nor his representatives had contributed to or caused this error. When the Petitioner was released from prison on 24 December 1999, he believed – with good reason – that the $44,306 payment made by Mdm Foo was all that was necessary to settle the Outstanding Sum in full and, in turn, secure his immediate and unconditional release.

62 Given these circumstances, the issue before me became a simple one: *who should take responsibility for the consequences of the Error, which was made by the Subordinate Courts?* Undeniably, a mistake was made by the Subordinate Courts in sanctioning the release of the Petitioner on 24 December 1999 after Mdm Foo made the $44,306 payment. This is irrefutably established on an objective assessment of the Receipt, the two purportedly original OTRs (*ie*, OTR No 10142 and OTR No 10144) and the Instalment Letter. The cumulative effect of the administrative mistakes and/or misstatements made in these documents was not only grave, but also profoundly prejudiced the Petitioner. In his desperation to seek redress, the Petitioner has been literally driven from pillar to post at no small cost and at great inconvenience. Not only was he wrongfully arrested on 21 October 2008, he has also been severely embarrassed and subjected to a prolonged period of anxiety, with the sword of Damocles (in the form of a further period of default imprisonment) hanging precariously above him. Further, he has incurred legal costs which are not insubstantial. Viewed in this context, the DPP's original stance in opposing the present petition certainly did not ameliorate the Petitioner's unfortunate predicament.

63 In short, I found this an exceptional case that went far beyond the narrow considerations of an individual's travails with legal processes gone awry. This case has brought into focus an important facet of the administration of criminal justice, which is this: if serious administrative lapses by the courts are left unacknowledged or unchecked or – even worse – concealed, confidence in the administration of justice will be corroded and eventually eroded. Fortunately, giving the prevailing judicial culture in Singapore, there does not seem to me to be any danger of this situation materialising here. A culture of openness has long since taken firm root in our courts, with mistakes being acknowledged openly rather than being papered over.

64 As I indicated at [56] above, I held that the question of whether the circumstances of the present case warranted the exercise of the High Court's revisionary power should be unhesitatingly answered in the affirmative. The High Court is duty bound to rectify errors of this nature made by the lower courts and remedy as best as it can any prejudice suffered by an aggrieved party. In this regard, the earlier observations made in *Yunani* at [49] *vis-à-vis* the exercise of the High Court's revisionary power merit reiteration:

> [I]t … has to be kept in mind that Parliament has conferred this power [*ie*, the power of revision] on the High Court so as to ensure that no potential cases of serious injustice are left without a meaningful remedy or real redress. A court would fail in its constitutional duty to oversee the administration of criminal justice if it remains impassive and unresponsive to what may objectively appear to be a potentially serious miscarriage of justice.

65 Turning now to the specific order which I made in respect of the fines imposed for the two CGHA charges, I was of the view that to send the Petitioner back to prison for another 122 days (taking the sum of $47,458 divided by $389) would plainly be to perpetrate a serious injustice on him. He did no wrong in arranging for Mdm Foo to make the $44,306 payment on 24 December 1999 so as to secure his immediate release from prison. He had a legitimate basis to believe, when he was released, that he was leaving his past mistakes behind him and could begin a new phase of his life. His unhappy predicament was precipitated by the Error, for which he (and, likewise, Mdm Foo and Delphine) bore no responsibility. In the circumstances, no public interest would be served, nor would any sentencing objective be satisfied, by sending the Petitioner back to prison to serve the period of default imprisonment which corresponds to the $47,458 balance. This is why, as indicated at [30] above, I found the DPP's initial stance in opposing the present petition difficult to comprehend.

66 I therefore exercised the High Court's revisionary power and varied the fines imposed on the Petitioner in respect of the two CGHA charges as follows:

Charge	Variation made
MAC 11701/1998	Fine of $70,000 reduced to $46,271
MAC 11702/1998	Fine of $70,000 reduced to $46,271

As a result, the aggregate fine imposed on the Petitioner for the two CGHA charges was reduced from $140,000 to $92,542. In making this order, my reasoning was as follows: the Petitioner served 124 days of default imprisonment, which was (loosely speaking) "worth" $48,236 (taking 124 multiplied by $389). Payment of $44,306 was also made on his behalf. This meant that the Petitioner effectively "paid" a total of $92,542 ($48,236 plus $44,306). I thus reduced the aggregate fine for the two CGHA charges to $92,542 (which translated into a fine of $46,271 for each charge), such that the Petitioner would have effectively discharged in full his legal obligation *vis-à-vis* the aggregate fine imposed for these two charges.

The Petitioner's request for a refund of the $44,306 payment

67 Given that I allowed this petition and varied the aggregate fine payable by the Petitioner as described in the preceding paragraph, there was no need for me to deal with his alternative prayer for the sum of $44,306 to be refunded in the event that this court did not vary the $140,000 fine or reduce the 12-month default imprisonment sentence (see sub-para (c) of [28] above). I will nevertheless address the issue of refunding paid-up fines so as to address any existing doubts on this point.

68 There is no statutory provision which confers on the court the power to order a refund of fines which have been paid. Neither s 224 of the CPC, which sets out the provisions relating to fines, nor the provisions on criminal revision in the CPC provide for such a power. Furthermore, a refund of fines already paid goes against the core rationale of default imprisonment sentences. As alluded to earlier (at [44] above), a default imprisonment sentence is, in effect, an indirect means of enforcing the "direct" punishment (*ie*, the fine) imposed by the court on an offender. Once part of the fine is paid, the corresponding portion of the offender's default imprisonment sentence (*viz*, "the 'paid-up' portion of the default imprisonment sentence") is effectively served and no longer exists. This is clear from s 224(*e*) of the CPC, which states:

> **Provisions as to sentence of fine**.
>
> **224**. Where any fine is imposed under the authority of any law for the time being in force then, in the absence of any express provision relating to the fine in such law, the following provisions shall apply:
>
> …
>
> (*e*) the imprisonment which is imposed in default of payment of a fine shall *terminate whenever that fine is either paid* or levied by process of law …
>
> [emphasis added]

Once the "paid-up" portion of the default imprisonment sentence ceases to exist, the offender no longer has the option of serving that part of the default imprisonment sentence in lieu of paying the corresponding portion of the fine (which portion has in fact already been paid by the offender). That

portion of the fine cannot, therefore, be refunded to the offender.

Conclusion

69 In the present case, a misguided attempt to remedy the Error (on the quiet, so it appears) led to a series of unfortunate events with grave consequences for the Petitioner. If the Error had been acknowledged promptly and openly from the beginning, the Petitioner would not have had to wait for more than ten years before that error was remedied. I should, however, emphasise that I have not made any conclusive findings on the motives or reasons behind the various acts (and/or omissions) leading to and resulting from the Error, nor have I pinned responsibility for this unfortunate sequence of events on any one single individual. A more robust system of checks and balances, which I believe is now in place, would have ensured that matters were not allowed to proceed as far as they eventually did. I must add that many problematic questions remain unanswered because of the limited ambit of the evidence presented to me. For the purposes of ruling on this petition, I drew only what I considered to be permissible inferences from the context and the evidence placed before me, and I drew such inferences only to the extent necessary for me to decide the issues pertaining to this case. As inquiries to ascertain the truth of what else might have occurred are currently afoot, more facts may emerge in due course.

70 I should add that the unfortunate events which occurred in this case highlight the importance of having in place a systemised and transparent process for calculating the period of remission which an offender is entitled to. This is particularly important where default imprisonment sentences are concerned, not least because of the dichotomy between the "pay later" scenario and the "pay first" scenario outlined at [46]–[49] above. In cases involving default imprisonment sentences, it is necessary for there to be clear communication between the Subordinate Courts and the Singapore Prison Service as to: (a) the period of remission which the offender is entitled to when serving the period of default imprisonment that corresponds to the unpaid portion of the fine (in a "pay first" scenario); and (b) the quantum of that part of the fine which corresponds to the period of default imprisonment yet to be served (in a "pay later" scenario).

71 For the reasons given above, I allowed the petition, quashed the Warrant of Arrest and reduced the Petitioner's aggregate fine for the two CGHA charges to $92,542. Both parties were given liberty to apply for consequential orders.

[note: 1] See the respondent's written submissions dated 15 April 2010 ("the Respondent's Written Submissions") at para 54.

[note: 2] See the Respondent's Written Submissions at para 21.

[note: 3] See the Respondent's Written Submissions at para 50.