Arun Kaliamurthy and others *v* Public Prosecutor and another matter [2014] SGHC 117

Case Number	: Criminal Motion Nos 32 and 36 of 2014
Decision Date	: 23 June 2014
Tribunal/Court	: High Court
Coram	: Tan Siong Thye JC
Counsel Name(s)	: Eugene Thuraisingam (Messrs Eugene Thuraisingam) and Ravi s/o Madasamy (Messrs L F Violet Netto) for the applicants; Hui Choon Kuen, Tai Wei Shyong and Sarah Ong (Attorney-General's Chambers) for the respondent.
Parties	: Arun Kaliamurthy and others — Public Prosecutor

Criminal Procedure and Sentencing – Compensation and costs

23 June 2014 Judgment reserved.

Tan Siong Thye JC:

Introduction

1 The applicants ("the accused persons") in Criminal Motion No 32 of 2014 ("CM 32") are five Indian nationals who face criminal charges of rioting under the Penal Code (Cap 224, 2008 Rev Ed) for their participation in the riot at Little India on 8 December 2013. They are represented by their counsel, Mr Ravi s/o Madasamy ("Mr Ravi"). Due to the unprecedented scale of the riot, the Minister for Home Affairs appointed a Committee of Inquiry ("COI") under s 9 of the Inquiries Act (Cap 139A, 2008 Rev Ed) to inquire into events surrounding the riot on 8 December 2013. For the purposes of the inquiry, the COI conducted a hearing which commenced on 19 February 2014 and concluded on 26 March 2014 ("the COI hearing").

2 On 2 April 2014, Mr Ravi filed CM 32 seeking to quash the criminal charges faced by the accused persons. This was on the basis that the inquiry violated the *sub judice* rule as it would prejudice the accused persons' rights to a fair trial. The prosecution subsequently filed Criminal Motion No 36 of 2014 ("CM 36") to strike out CM 32 on the grounds that CM 32 was frivolous and vexatious and that it was an abuse of the court process. Mr Ravi then applied to withdraw CM 32 on 14 April 2014 and, in response, the prosecution applied to withdraw CM 36 on 23 April 2014.

3 Parties appeared before me on 23 May 2014 and I granted leave to withdraw both CM 32 and CM 36. During the course of the hearing, the prosecution also applied for a personal costs order against Mr Ravi, who was represented by his own counsel, Mr Eugene Thuraisingam ("Mr Thuraisingam"), pursuant to s 357(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). The costs order sought by the prosecution is one to the effect that Mr Ravi shall personally bear the costs of the prosecution amounting to $1,000. I must therefore decide whether the circumstances of this case justify the making of such a personal costs order. However, before I proceed to analyse the factual matrix of this case, I shall first examine the powers of this court in making a personal costs order against a defence counsel.

Powers of the court in making a personal costs order against a defence counsel

4 Pursuant to s 357(1) of the CPC, this court may make the following orders relating to costs against a defence counsel:

> **Costs against defence counsel**
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> **357.-(1)** Where it appears to a court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by a failure to conduct proceedings with reasonable competence and expedition, the court may make against any advocate whom it considers responsible (whether personally or through an employee or agent) an order —
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> (*a*) disallowing the costs as between the advocate and his client; or
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> (*b*) directing the advocate to repay to his client costs which the client has been ordered to pay to any person.

5 Section 357(1)(a) deals with solicitor and client costs between the defence counsel and the accused. This provision is not relevant in this case as Mr Ravi acted pro bono for the five accused persons. The pertinent provision is s 357(1)(b) which empowers a court to order a defence counsel to repay to the accused costs which the accused has been ordered to pay to any party such as the prosecution. It appears from the wording of s 357(1)(b) that it can only be made upon a costs order being made against the accused. Otherwise, there would be nothing for the defence counsel to repay to the accused and any order made under s 357(1)(b) will be, in effect, useless. This then raises the issue of whether this court can order a defence counsel to bear the prosecution's costs personally in the absence of any costs order being made against the accused. To address this point , I shall have to consider the following issues:

(a) Whether s 357(1) can be interpreted as implicitly allowing this court to order a defence counsel to pay the costs of the prosecution directly in the absence of a costs order being made against his client; and

(b) Whether this court has the inherent power to make such personal costs orders against a defence counsel even if it cannot do so under s 357(1).

Powers of the court in making a personal costs order against a defence counsel under s 357(1) of the CPC

6 Section 357(1) of the CPC clearly allows for only two types of orders that may be made against a defence counsel. This court may either disallow solicitor and client costs between a defence counsel and the accused or order a defence counsel to repay the accused any costs the accused is ordered to pay to others. This provision does not permit the court to order a defence counsel to pay the costs of the prosecution directly without the client being ordered to pay costs first.

7 Nonetheless, the purposive approach to statutory interpretation is not confined to a provision that is ambiguous or inconsistent: *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 1 SLR(R) 669 at [22]. I must still consider the object and purpose of s 357(1) when interpreting it pursuant to s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed). In this regard, I note the decision of V K Rajah JA in *Zhou Tong v Public Prosecutor* [2010] 4 SLR 534 ("*Zhou Tong v PP*") where he observed at [25] that:

> The court's inherent jurisdiction to make personal costs orders against solicitors was first codified in O 59 r 8 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC") in respect of civil

proceedings, and more recently in s 357 of the Criminal Procedure Code Act 2010 (No 15 of 2010) ("the CPC Act 2010") in respect of criminal proceedings. It is to be noted that the CPC Act 2010 was passed by Parliament on 19 May 2010 and assented to by the President on 10 June 2010 but has yet come into force. I now turn to both provisions so as to elaborate on the court's jurisdiction to make personal costs orders against solicitors in proceedings such as the present one. Ultimately, in determining the scope of the court's inherent jurisdiction in this respect, it must be borne in mind that both O 59 r 8 of the ROC and s 357 of the CPC Act 2010 are based on the very same practical and ethical considerations (see *Tan King Hiang v United Engineers (Singapore) Pte Ltd* [2005] 3 SLR(R) 529 ("*Tan King Hiang*") at [15]):

> (a) the law imposes a duty on solicitors to exercise reasonable care and skill in conducting their clients' affairs although an advocate enjoys immunity from claims for negligence by his clients in respect of his conduct and management of a case in court and the pre-trial work immediately connected with it; and
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> (b) a litigant should not be financially prejudiced by the unjustifiable conduct of litigation by his opponent or his opponent's solicitor.

Thus the underlying principle behind the court's power to make a costs order against a defence counsel, which is codified in s 357(1) of the CPC, is that "the court has a right and duty to supervise the conduct of its solicitors and in so doing, penalise any conduct which tends to defeat justice": *Zhou Tong v PP* at [23]. Rajah JA then further elaborated on the reason for introducing s 357(1) at [34]:

> … Parliament had enacted [s 357(1)] to remind solicitors of their obligation to ensure that they properly discharge all their professional responsibilities to their clients in all criminal proceedings, including magistrate's appeals. The provision should be viewed as a timely reminder to all who practice at the criminal bar. Unfortunately, at present, a small number of solicitors do not conscientiously discharge their professional responsibilities in court proceedings. Their cases are inadequately prepared and their research usually barren. These solicitors often file frivolous appeals because they do not think it will result in any personal downside. Section 357 unequivocally signals to this small number of solicitors that they will have to immediately haul themselves up by their own bootstraps.

8 The prosecution submitted that a liberal interpretation of s 357(1) which allows for the court to order a defence counsel to pay the costs of the prosecution in the absence of a costs order against the accused may further enhance the supervisory powers of the court over the conduct of its solicitors. It may also serve as a stronger reminder to defence counsel of their obligation to ensure that they properly discharge all their professional responsibilities to the accused in all criminal proceedings. However, aside from the submissions made by the prosecution, I must also bear in mind the principle against doubtful penalisation when interpreting s 357(1). As stated by the Court of Appeal in *Shorvon Simon v Singapore Medical Council* [2006] 1 SLR(R) 182 at [31]:

> … It is trite law that the exercise of and the ambit of statutory powers in a penal context ought to be construed narrowly and/or strictly as the case may be (*per* F A R Bennion, *Statutory Interpretation*, *A Code* (Butterworths, 4th Ed, 2002) at pp 705-706:
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> > It is a principle of legal policy that a person should not be penalised except under clear law. ... *Whenever it can be argued that an enactment has a meaning requiring infliction of a detriment of any kind, the principle against doubtful penalisation comes into play*.

[emphasis added]

9 To allow s 357(1) to be interpreted as allowing this court to make an additional form of costs order would subject defence counsel to an additional form of detriment in the event of misconduct that is not apparent from the express wording of s 357(1). The principle against doubtful penalisation would accordingly demand that I refrain from adopting such an interpretation. Furthermore, I note that there is no evidence of parliamentary intention in Hansard in support of such an interpretation. In the absence of such evidence, I am not convinced that there exists sufficient premise for a court to effectively insert words into s 357(1) which are absent from the provision. This is especially so when such words seem to have been purposely omitted by the drafters of the provision. Such a deliberate omission can be observed if one closely scrutinises O 59 r 8(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) which was introduced before s 357(1) and from which s 357(1) is derived from:

> **Personal liability of solicitor for costs (O. 59, r. 8)**
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> **8.-(1**) Subject to this Rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may make against any solicitor whom it considers to be responsible (whether personally or through an employee or agent) an order -
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> (*a*) *disallowing the costs as between the solicitor and his client*; and
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> (*b*) directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
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> (*c*) *directing the solicitor personally to indemnify such other parties against costs payable by them*.
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> [emphasis added]

10 Section 357(1) utilises wording that is nearly identical to that used in O 59 r 8(1). However it clearly omits the third type of order which a court may make in civil proceedings under O 59 r 8(1)(c). Order 59 r 8(1)(c) allows a court to order a solicitor to indemnify another party in the absence of any costs order against his client. This means that a solicitor in a civil proceeding may be ordered to pay the costs of another party directly without the court ordering his client to pay costs to that other party. If the drafters of s 357(1) intended for a court to be able to make such an order in criminal proceedings, why did they not include a provision similar to that in O 59 r 8(1)(c) in s 357(1)? The fact that s 357(1) utilises nearly identical wording would indicate that the drafters had considered O 59 r 8(1) when they drafted s 357(1). The drafters, if they so wished, could have included in s 357(1) a provision which mirrors O 59 r 8(1)(c) such that the court may order a defence counsel to indemnify the prosecution for costs incurred by the prosecution. They did not do so. Although the reasons for such an omission are not apparent, it must be taken to be a deliberate omission in the absence of evidence indicating otherwise. I must therefore respect the decision of the drafters. I cannot usurp their role and insert words into s 357(1) which they have decided to omit. If any insertion should be made, it should only be made through amendments to s 357(1) introduced by the legislature in the future. It is thus clear that the current s 357(1) cannot be interpreted as implicitly allowing a court to order a defence counsel to pay the costs of the prosecution directly without making a costs order against the accused.

Powers of the court in making a personal costs order against a defence counsel under its

inherent power

11 In *Zhou Tong v PP*, Rajah JA stated at [22] that:

> It appears to me that the court may always order a solicitor to personally bear the costs of litigation by exercising its inherent jurisdiction …

In light of the later Court of Appeal decision in *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258, such "inherent jurisdiction" should be more accurately described as this court's inherent power. If this court cannot make an order for a defence counsel to pay to the prosecution costs incurred by the prosecution in the absence of a costs order against the accused under s 357(1) of the CPC, can it do so pursuant to an exercise of its inherent power instead? The prosecution submitted that the court can do so pursuant to an exercise of its inherent power and relied on Rajah JA's decision in *Zhou Tong v PP*.

12 In *Zhou Tong v PP*, Rajah JA contemplated making an order disallowing costs between the defence counsel in that case and his clients such that the defence counsel was to refund the costs paid to him by his clients (no such order was made eventually since the defence counsel voluntarily undertook to refund his clients). Such a costs order is allowed for under s 357(1)(a). However, s 357 was not yet in force at the time the case was heard. Rajah JA was therefore concerned with whether he may nonetheless make such a costs order without relying on s 357(1)(a). He found that he could do so. In that context, Rajah JA's statement means nothing more than the fact that this court may always make such a costs order even if s 357(1)(a) is not in force by exercising its inherent power. Therefore, it cannot support the proposition that the court may, in the exercise of its inherent power, make an order requiring a defence counsel to pay the costs of the prosecution in the absence of a costs order being made against the accused.

13 The issue is what types of costs orders the court can make pursuant to its inherent power. There has been no local decision that has discussed the types of costs orders this court may make against defence counsel before or after *Zhou Tong v PP* pursuant to its inherent power. The introduction of s 357(1) provided much needed certainty in this regard. The prosecution, however, argued that s 357(1) gives rise to a lacuna as it does not provide for a power of the court to order a defence counsel to pay the costs of the prosecution directly without making a costs order against the accused. The prosecution then suggested that this lacuna can be bridged by finding that the court can nevertheless rely on its inherent power to make such an order. According to the prosecution, this would widen the supervisory power of the court over defence counsel which will then ensure that defence counsels do not frivolously and unnecessarily escalate costs in criminal proceedings. I do not agree with the prosecution. I do not think that the inherent power of this court grants it *carte blanche* to devise any costs order it thinks fit when s 357(1) clearly delineates the types of orders this court may make. To hold otherwise would appear that this court can re-write provisions within the CPC to fit the "justice" of each case.

14 Furthermore, in Goh Yihan, "The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise" [2011] SJLS 178, Professor Goh made the following observation at 201–202:

> Most of the time Parliament does not *expressly* indicate its intent in statutes. Assuming no express prohibition, the second stage of the test is then to ask whether Parliament has impliedly excluded the courts' inherent jurisdiction or power in the matter concerned. This approach reflects the constitutional point that the courts are bound by the legislative intent as embodied in statutes.

I agree with this approach. Although there is no express intention of parliament to limit this court's inherent power, there seems to be an implied intention to do so. As I have explained above (at [10]), there appears to be a deliberate omission on the part of the draftsmen of s 357(1) to include a provision equivalent to O 59 r 8(1)(c) of the Rules of Court. This would indicate a deliberate move to limit the power of this court by restricting the costs orders it may make to the two types of orders provided for under s 357(1). It would then be contrary to legislative intent to nonetheless hold that this court may exercise its inherent power to make costs orders not provided for by s 357(1).

15 I therefore find that this court cannot order a defence counsel to pay the costs of the prosecution in the absence of a costs order being made against the accused either under s 357(1) or pursuant to an exercise of its inherent power. The only recourse this court may have is s 357(1)(b). However, before I proceed to examine the operation of s 357(1)(b), I would first like to make some observations as to the difference between costs in civil and criminal proceedings.

Costs in civil proceedings versus costs in criminal proceedings

16 Rajah JA noted that the powers of this court under O 59 r 8(1) of the Rules of Court and s 357(1) of the CPC share the same practical and ethical considerations in *Zhou Tong v PP* at [25]. However, one must still appreciate the differences between civil and criminal proceedings. I am of the opinion that the more limited powers of this court under s 357(1) as compared to O 59 r 8(1), as evidenced by the omission to include a provision similar to O 59 r 8(1)(c) in s 357(1), is a result of the differences between costs ordered in civil proceedings and costs ordered in criminal proceedings.

17 In civil proceedings which involve disputes between private parties advancing their own private interests, costs orders are usually made in the course of proceedings. The general principle that "costs follow the event" governs such orders. This means that the costs of an action are usually awarded to the successful litigant. However, in criminal proceedings, costs orders are usually not made. Costs orders against the defence or the prosecution are made only in very limited circumstances and are not premised upon who is the successful litigant. For example, under s 355(1) of the CPC, a court may only order costs against the defence after a conviction if it is found that the defence was conducted in an "extravagant and unnecessary" manner. In the case of the prosecution, s 355(2) of the CPC allows a court to order costs against a prosecution after an acquittal if it is found that the prosecution was "frivolous or vexatious".

18 The reason behind limiting ground for the award of costs in criminal proceedings is the public interest element in criminal litigation. Criminal proceedings are not initiated for the purpose of advancing private interests. Proceedings are brought by the prosecution in exercise of its largely unfettered and lightly regulated prosecutorial responsibility, acting in the public interest and for the sake of the maintenance of law and order. It would, thus, not be right to expose prosecutors to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful unless there is dishonesty or malice. Conversely, the defence acting honestly and reasonably must be encouraged to advance the cause of justice without fear of financial prejudice. Both the prosecution and the defence are discharging public functions in the interests of justice by securing convictions and acquittals of criminals and innocents respectively. Neither should be deterred from performing such public functions out of fear of a likely adverse costs order. As a result, adverse costs orders are only provided for in limited circumstances.

19 From this, it is clear that costs orders in criminal proceedings are limited such that the defence is able to perform its public function without fear of costs sanction. In this regard, a defence counsel also constitutes part of the defence together with the accused. It then follows that the public interest element in litigation should also apply in the case of a defence counsel who conducts the

defence on behalf of the accused. A defence counsel should also not be deterred from performing his functions in advancement of the public interest as a result of fear of financial prejudice. This then, perhaps, explains why the orders that can be made against a defence counsel under s 357(1) are more limited than those under O 59 r 8(1). This may also be what the draftsmen of s 357(1) were considering when they omitted the inclusion of a provision similar to O 59 r 8(1)(c).

20 By limiting the amount of costs a defence counsel can be ordered to pay to the amount of costs his client has to pay, there is less fear of financial prejudice on the part of the defence counsel when he conducts the defence on behalf of the accused. This is achieved by restricting the court's power such that it may only make a defence counsel indirectly pay the costs of the prosecution via s 357(1)(b). However, I would like to end with a reminder to defence counsel that this does not mean that a defence counsel guilty of misconduct does not have to bear any consequences in the event that no costs order is made against the accused. This court may nonetheless make an order disallowing solicitor and client costs between the defence counsel and the accused pursuant to s 357(1)(a) in such a case.

Can an order under s 357(1)(b) be made against Mr Ravi?

21 From my findings above, Mr Ravi can only be ordered to pay the costs of the prosecution indirectly via a costs order under s 357(1)(b). Consequently, for the prosecution's application to succeed, they must show:

(a) that this court should order the accused persons to pay the costs of the prosecution ; and

(b) that Mr Ravi's conduct falls under that described in s 357(1) such that this court should order Mr Ravi to reimburse the accused persons.

However, before I proceed to deal with these two issues, I must satisfy myself that, as a matter of natural justice, all parties have had the opportunity to be heard.

Have all parties been given the opportunity to be heard?

The accused persons

22 The issue of whether this court should order the accused persons to pay the costs of the prosecution directly affects the interest of the accused persons. It is therefore necessary that they be given a chance to submit on this issue. Although three accused persons and Mr Ravi were absent from the first hearing on 23 May 2014, all parties were present at the further hearing on 2 June 2014. During the further hearing on 2 June 2014, Mr Thuraisingam made submissions on behalf of the accused persons in relation to the issue as to whether they should be ordered to pay costs. There were no objections made to Mr Thuraisingam submitting on behalf of the accused persons by the accused persons or Mr Ravi. I am therefore satisfied that all the accused persons have been adequately represented and have been given a fair opportunity to be heard.

Mr Ravi

23 Section 357(2) of the CPC provides that:

No order under this section shall be made against an advocate unless he has been given a reasonable opportunity to appear before the court and show cause why the order should not be

made.

This procedural provision is a mandatory requirement that must be complied with to safeguard the principles of natural justice. Mr Ravi must be given reasonable opportunity to explain to the court why the costs order sought by the prosecution should not be made against him.

24 The prosecution, in its letter dated 23 April 2014, informed Mr Ravi that it would apply for a costs order against him under s 357 of the CPC. In the same letter the prosecution provided its detailed reasons why a costs order should be made against Mr Ravi. I am therefore satisfied that proper notice has been given to Mr Ravi as to the prosecution's intention to apply for a costs order against him.

25 Mr Ravi was not present at the first hearing on 23 May 2014. He was instead represented by his legal counsel, Mr Thuraisingam, who urged the court to allow him to argue the case in Mr Ravi's absence. Mr Thuraisingam also acknowledged that s 357(2) of the CPC had been complied with. In consideration of the representations made by Mr Thuraisingam, I proceeded to hear parties' submissions on the matter. In any event, Mr Ravi was present at the further hearing on 2 June 2014. Mr Thuraisingam made submissions on his behalf and Mr Ravi did not object to this. Based on these circumstances, I am satisfied that s 357(2) of the CPC has been complied with and that Mr Ravi has been given a reasonable opportunity to be heard. With this established, I proceed to deal with the first issue regarding the making of a costs order against the accused persons.

Can the accused persons be ordered to pay the costs of the prosecution?

What are the applicable provisions of the CPC?

26 As I have mentioned above (at [17]), an accused person can only be ordered to pay the costs of the prosecution in limited circumstances as laid out by certain provisions in the CPC. The first issue is to determine which provision is applicable in this case. Section 355(1) of the CPC is clearly not applicable here as it only deals with costs orders which can be made against an accused after a conviction. I am then left to consider s 409 and s 356(1) of the CPC.

Section 409 of the CPC

27 The prosecution submitted that s 409 of the CPC, which deals with the making of a costs order upon the dismissal of a criminal motion, is the applicable provision in this case. Section 409 of the CPC states that:

> **409.** If the High Court *dismisses* a criminal motion and is of the opinion that the motion was frivolous or vexatious or otherwise an abuse of the process of the Court, it may, either on the application of the respondent or on its own motion, order the applicant of the criminal motion to pay to the respondent costs on an indemnity basis or otherwise fixed by the Court.
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> [emphasis added]

Mr Thuraisingam however pointed out that this case involved the withdrawal of CM 32. He argued that s 409 is not applicable because a withdrawal does not amount to a dismissal. The question to be dealt with is then whether a withdrawal of a criminal motion by the party who filed the motion can be deemed to be a dismissal of the criminal motion by this court under s 409.

28 *Black's Law Dictionary* (Bryan A Garner gen ed) (West Group, 9th Ed, 2009) defines "dismiss" at

p 537 as "[t]o send (something) away; specif., to terminate (an action or claim) without further hearing, esp. before the trial of the issues involved." Such a definition was considered by the Indian High Court in *Premier Enterprises and Ors v The State of Meghalaya and Ors* AIR 1992 Gau 98 and the court proceeded to explain at [11]:

> In our opinion the word "dismiss" suggests *stopping or terminating a legal proceeding or an action without a final judgment determining the rights of the parties in controversy* … "dismissal" may or may not be a final decision on merits of the rights in controversy, but the *dismissal puts an end to the suit* or terminates the suit by disposing of. …
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> [emphasis added]

29 I agree that it does not require a determination of the merits of an action after a hearing for this court to dismiss the action. An action may be stopped in many ways. It could be discontinued or withdrawn or it could end after a hearing and a decision in favour of the respondent. It could also end before a hearing if, for example, there is a default of appearance, or if a party fails to proceed in accordance with the direction of the court. I am therefore of the opinion that withdrawing a criminal motion, which effectively stops or terminates the motion, amounts to dismissing the criminal motion. Once CM 32 was filed it triggered off an action. In this case, without the court's order granting leave to withdraw the criminal motion, CM 32 will remain in the court's docket. It is this order granting leave to withdraw the criminal motion that terminates CM 32 and brings closure to the proceedings. By making such an order, the court effectively "dismisses" the criminal motion.

30 Furthermore, I do not think that there should be a distinction drawn between a withdrawal and a dismissal in the context of s 409. The purpose of s 409 is to provide this court with supervisory powers over the conduct of both accused persons and the prosecution in filing criminal motions. Its power to order costs against an applicant who files a frivolous or vexatious criminal motion, or abuses the process of the court by doing so, should not be limited to instances where they are dismissed after a hearing on the merits of the criminal motion. An applicant should not be able to escape the scope of s 409 by withdrawing a frivolous or vexatious criminal motion which causes the respondent to incur unnecessary costs. This is especially so if one considers the fact that a costs order under s 409 is also compensatory, and not merely punitive, in nature. Therefore, considering the rationale behind s 409, I am convinced that by making an order granting leave to withdraw a criminal motion, this court "dismisses" the criminal motion under s 409.

31 In light of the applicability of s 409, I can order costs against the accused persons in this case if I find that CM 32 is frivolous or vexatious, or an abuse of process of the court. Section 409 is a relatively new provision and has never been considered before and there has been no discussion of what is frivolous or vexatious, or an abuse of process of the court, in the context of s 409. However, what is frivolous or vexatious, or an abuse of process of the court has been discussed extensively in the context of civil proceedings, especially under O 18 r 19(1)(b) of the Rules of Court. I do not think there should be any difference between the definitions under the Rules of Court and the CPC in this regard. Different standards should not be imposed on the conduct of court proceedings, whether they are civil or criminal proceedings. Accordingly, what is frivolous or vexatious, or an abuse of process of the court, should not differ between civil and criminal proceedings.

32 What amounts to a frivolous or vexatious proceeding, or one that is an abuse of process of the court, has been explained by the Court of Appeal in *Riduan bin Yusof v Khng Thian Huat and another* [2005] 2 SLR(R) 188. Lai Siu Chu J who delivered the judgment of the court held at [29]–[30]:

> 29 In *Afro-Asia Shipping Co (Pte) Ltd v Haridass Ho & Partners* [2003] 2 SLR(R) 491 I had

defined (at [22]) the words "frivolous or vexatious" under O 18 r 19(1)(b) of the Rules to mean "cases which are obviously unsustainable or wrong, [and where] the words connote purposelessness in relation to the process or a lack of seriousness or truth and a lack of *bona fides*". The definition as held by Yong Pung How CJ in *Goh Koon Suan v Heng Gek Kiau* [1990] 2 SLR(R) 705 at [15], also included proceedings where a party "is not acting *bona fide* and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result".

30 Similarly, the phrase "abuse of process" under O 18 r 19(1)(d) of the Rules was explained by the Court of Appeal in *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649 at [22] thus:

> ... It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used *bona fide* and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose, as was raised by the respondents. In *Lonrho plc v Fayed (No 5)* [1993] 1 WLR 1489, Stuart-Smith LJ stated that, if an action was not brought *bona fide* for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the court.

33 Accordingly, CM 32 is frivolous or vexatious, if the motion is obviously unsustainable or wrong, or if there is a lack of *bona fides* in the filing of the CM 32. It will also be an abuse of process if it is not brought *bona fide* for the purpose of obtaining relief but for some other ulterior or collateral purpose. To determine whether CM 32 is frivolous or vexatious, or an abuse of process of the court, I must therefore have regard to the merits of CM 32, the conduct of proceedings in relation to CM 32 and the surrounding facts.

Section 356 of the CPC

34 In any event, s 356 of the CPC is also applicable in this case. It states that:

> **Costs ordered by Court of Appeal or High Court**
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> **356.-(1**) The Court of Appeal or the High Court in the exercise of its powers under Part XX may award costs to be paid by or to the parties as it thinks fit.
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> (2) Where the Court of Appeal or the High Court makes any order for costs to be paid by the prosecution to an accused, the Court must be satisfied that the conduct of the matter under Part XX by the prosecution was frivolous or vexatious.
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> (3) Where the Court of Appeal or the High Court makes any order for costs to be paid by an accused to the prosecution, the Court must be satisfied that the conduct of the matter under Part XX by the accused was done in an extravagant and unnecessary manner.

The exercise of this court's power in relation to criminal motions falls under Division 5 of Part XX of the CPC. Therefore, I have the power to award costs to be paid by the accused persons to the prosecution in this case even though the parties had applied to withdraw CM 32 and CM 36. However,

in accordance with s 356(3), such a costs order can only be made if I am satisfied that the conduct of the matter by the accused persons was done in an "extravagant and unnecessary manner." In this regard, I would like to note that as the legal counsel of the accused persons, anything done by Mr Ravi on behalf of the accused persons constitutes the conduct of the matter by the accused persons.

35 In *Abex Centre Pte Ltd v Public Prosecutor* [2000] 1 SLR(R) 598 (*Abex Centre v PP*), Yong Pung How CJ exercised his power to order the accused person to pay the costs of prosecution in the appeal pursuant to s 262(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), the equivalent of the current s 356(1) of the CPC. In doing so, he considered whether the conduct of the matter was extravagant and unnecessary. Yong CJ also elaborated on this test at [15]:

> It should be emphasised that although the strength of the defence, whether at trial or on appeal, is a relevant factor to be considered by the court in awarding costs, it is by no means conclusive. The important test is whether the accused had conducted his defence or appeal "extravagantly and unnecessarily". In applying this test, *the facts of the case, the strength of the defence and course of conduct of the defence must be closely scrutinised*. [emphasis added]

The matters to be assessed in determining whether CM 32 is frivolous or vexatious, or an abuse of process of the court, are similar to those *vis-à-vis* determining whether the accused persons had conducted the matter in an extravagant and unnecessary manner. I shall therefore proceed to assess the merits of CM 32, the course of conduct in relation to CM 32 and the facts surrounding CM 32 in determining whether costs should be ordered against the accused persons under s 409 and s 356(1) of the CPC.

Should costs be ordered against the accused under s 409 and s 356(1) of the CPC?

The merits of CM 32

Allegation of *sub judice*

36 CM 32 is an application for this court to "quash" the criminal charges currently faced by the accused persons. The premise of this application is that the inquiry conducted by the COI offended the *sub judice* rule as it would prejudice the accused persons' rights to a fair trial. I would first like to point out that it is trite law that the *sub judice* rule deals with acts that amount to contempt of court. Therefore, breach of the *sub judice* rule may only result in a fine or a term of imprisonment for the contemnor.

37 In any event, the joint affidavit made by the accused persons in support of CM 32 discloses no grounds for making out a breach of the *sub judice* rule. All that it contains are mere assertions. For example, para 4 of the affidavit states that:

> The rights guaranteed under natural justice, and the proper conduct of a criminal trial, requires that the matter awaiting the Court's disposal not be rendered *sub judice*. The COI and its public inquiry, has already offended the principles of natural law, and has undermined the due process of law, whereby it caused for the proceedings underway in a criminal trial to be prejudiced, by way of its own action, and whereby it purported to reveal evidence, and thereby injure the rights of the accused to be heard fairly and without prejudice in a proper court of law. The matter has thus been rendered *sub judice*.

38 There is nothing in this paragraph, or in any other part of the affidavit, that points to any act

of the COI that offended the *sub judice* rule. No specific comments made by the COI pursuant to the inquiry were referred to much less how these comments related to the criminal cases of each of the accused persons. It is claimed that the COI "purported to reveal evidence" without any mention of what this evidence is. No reason was provided as to why the COI has "caused for proceedings underway in a criminal trial to be prejudiced, by way of its own action". The affidavit then went on to state at para 5 that:

> We submit that the COI posited a real danger and that it was not some fanciful conjecture, and that the inquiry being conducted by the COI, while there also subsisted a criminal trail emanating from the same matter and same set of circumstances, necessarily prejudiced the one criminal trial by way of the public disclosure of purported findings of the other Inquiry. The COI has thus violated our right to a fair trial and hearing.

39 Once again assertions are made without any meaningful substantiation. While it is asserted that the COI posed "a real danger" and that this was not based on "some fanciful conjecture", there is nothing in the affidavit that suggests that it was not based on "fanciful conjecture". Even though the affidavit made reference to the "public disclosure of purported findings" of the inquiry, it did not point towards any particular disclosure. Such vague assertions made it impossible to identify any breach of the *sub judice* rule.

40 The application by the accused persons made under CM 32 is therefore clearly devoid of merit. The relief pleaded for does not correspond with the *sub judice* claim. Further, the accused persons did not adduce an iota of evidence to support such a *sub judice* claim.

Request to quash the charges against the accused persons

41 In any event, the court also has no power to "quash" the charges at this juncture of the criminal proceedings when the trials of the accused persons have not even begun. Such a relief sought under CM 32, which should have been properly described as an application for this court to quash the criminal proceedings faced by the accused persons, is impossible to grant at such an early stage of criminal proceedings. It is well established that criminal proceedings against an accused person can only be "quashed" in the event that the court finds that the charges are not made out and that the accused should be acquitted. Such a finding cannot be made before a trial. The power to discontinue criminal proceedings before trial is exercisable at the sole discretion of the Attorney-General and not the court. This is clearly spelt out in Article 35(8) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint):

> The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

This position is also reiterated under s 11(1) of the CPC:

> The Attorney-General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code or any other written law.

42 This position was also affirmed by Yong CJ in *Arjan Singh v Public Prosecutor* [1993] 1 SLR(R) 542 at [8]:

> When the Public Prosecutor ("the PP") decides to inform the court that he will not further prosecute a defendant upon a charge, he does so in the exercise of this discretionary power vested in him by the Constitution and the CPC. There can be no suggestion that the court may

interfere with the prosecutorial discretion to make such a decision.

43 Therefore, not only is the *sub judice* allegation without merit, the relief sought by CM 32 is something beyond the powers of this court to grant. Nonetheless, I recognise that the fact that an application is unmeritorious may not be sufficient ground for this court to find that the conduct of the matter falls under s 356(3) and s 409 CPC.

The course of conduct in relation to CM 32

44 I note that Mr Ravi applied to withdraw CM 32 immediately after the prosecution applied to strike out CM 32 by way of CM 36 on 11 April 2014. He did so on the basis that he realised that CM 32 would not succeed in light of CM 36. Nonetheless, the fact that a criminal motion was withdrawn does not prevent a finding that the conduct of the matter was extravagant and unnecessary. In *Abex Centre v PP*, the fact that the appeal by the accused was withdrawn did not prevent Yong CJ from finding that the filing of the notice of appeal by the accused was extravagant and unnecessary and ordering costs against the accused. Thus it cannot be the case that an accused person can file all sorts of frivolous or vexatious criminal motions while avoiding adverse costs orders so long as he made sure to withdraw the applications.

45 The filing of a criminal motion is a serious matter. One cannot file a criminal motion without serious consideration of the merits of his case and whether the filing of such a criminal motion is worthwhile. Even if withdrawn, there may be costs that have already been incurred by other parties. In this case, although the wastage of the court's time and resources are minimal as CM 32 and CM 36 were withdrawn, the prosecution incurred unnecessary costs by having to file CM 36 in response with supporting affidavits. Such costs would not have been incurred if the accused persons had not filed CM 32 in the first place.

The facts of the case

46 Mr Ravi had previously written to the secretariat of the COI on 20 January 2014, requesting to represent his clients, which included the accused persons, at the COI hearing. This was more than two months before the filing of CM 32. The secretariat replied to Mr Ravi's letter on 27 January 2014 asking him to identify his clients and to provide an outline of the representation or evidence which he intended to put forth on behalf of each client. Mr Ravi then sent another letter to the secretariat of the COI on 4 February 2014. The letter contained the names of his clients. The letter also stated, *inter alia*, that:

> We believe that no fair and objective assessment can be made without considering the views and experiences of those accused for the disruption of peace and harmony within our shores …

47 The secretariat of the COI subsequently replied on 6 February 2014 declining Mr Ravi's request to represent his clients at the COI Hearing. The letter provided reasons why Mr Ravi's request was refused. One of the reasons provided at para 5 of the letter was that:

> As stated in the Press Release, the COI is restrained by law from ruling on or determining the civil or criminal liability of any person. In addition, your clients who are charged have claimed trial. In addition, their guilt or innocence has no relevance to the Terms of Reference of the COI.

It is clear from this that in rejecting Mr Ravi's request, the COI was concerned with the potential breach of the *sub judice* rule, the very rule alleged to be breached in CM 32. In consideration of this, they refused to accede to Mr Ravi's request to represent his clients at the COI hearing. Why then did

Mr Ravi request to represent his clients at the COI hearing in the first place if the concern of the accused persons was the potential breach of the *sub judice* rule? If his request had been allowed, the accused persons' testimonies which are directly related to their criminal proceedings would have been scrutinised during the COI hearing. Mr Ravi must have been aware that this would have probably prejudiced the criminal proceedings the accused persons are involved in which would have resulted in the *sub judice* rule being breached.

48 Even if the accused persons and Mr Ravi were unaware of the *sub judice* rule, they must have been alerted of it by para 5 of the letter sent by the secretariat of the COI on 6 February 2014. Yet they were not concerned with the *sub judice* rule and did not raise the issue with the COI before the COI hearing began on 19 February 2014. In fact, they did not see fit to raise the issue up until 1 April 2014 when Mr Ravi wrote to the secretariat of the COI requesting the COI to discontinue the inquiry in light of the alleged potential violation of the *sub judice* rule. Furthermore, this was only done after the COI hearing had already ended on 26 March 2014 despite the fact that the COI hearing dates were a matter of public knowledge. If the accused persons and Mr Ravi were truly concerned with a breach of the *sub judice* rule, I do not see any reason for such an inordinate delay.

49 From these circumstances, the reasons for the filing of CM 32 on 2 April 2014 appear dubious. The complaint was in effect an unsupported allegation of a breach of the *sub judice* rule. Furthermore, this is a rule which the accused persons themselves nearly induced the COI to breach if not for the COI's decision to reject Mr Ravi's request to represent the accused persons at the COI hearing.

50 In light of these circumstances and the fact that CM 32 is entirely unmeritorious, I am satisfied that the conduct of the proceedings by the accused persons in relation to CM 32 was extravagant and unnecessary under s 356(3) of the CPC. CM 32 itself is also frivolous and vexatious, and an abuse of process of the court, (within the meaning of s 409) since it is obviously unsustainable. Furthermore, there seems to be a lack of *bona fides* in the filing of CM 32 based on the circumstances of the case. I do note, however, that Mr Ravi was primarily in charge of the conduct of the proceedings. Nonetheless, as legal counsel of the accused persons, what Mr Ravi did on their behalf is attributable to them. I therefore find that the facts disclosed a strong case under s 356(3) and s 409 to justify making an order against the accused persons to bear the costs of the prosecution. Following from this, I must proceed to decide whether I should order Mr Ravi to reimburse the accused persons under s 357(1)(b) of the CPC.

Should Mr Ravi be ordered to reimburse the accused persons

51 Mr Ravi should only be ordered to reimburse the accused persons under s 357(1)(b) of the CPC if I find Mr Ravi to be responsible for costs that have been:

(a) incurred unreasonably or improperly in any proceedings; or

(b) wasted by a failure to conduct proceedings with reasonable competence and expedition.

52 It is the prosecution's submission that Mr Ravi had conducted himself unreasonably and had failed to conduct proceedings with reasonable competence and expedition. The following issues must therefore be addressed:

(a) Whether Mr Ravi conducted himself unreasonably;

(b) Whether Mr Ravi failed to conduct proceedings with reasonable competence and

expedition;

(c) Whether costs were incurred as a result; and

(d) Whether in the circumstances of the case it is just to order Mr Ravi to reimburse the accused persons.

Did Mr Ravi conduct himself unreasonably?

53 Although fewer types of orders may be made against a defence counsel than those which may be made against a solicitor in a civil proceeding, the standard of conduct to be upheld by both should be the same. In this regard, s 357(1) of the CPC mirrors O 59 r 8(1) of the Rules of Court in laying down the circumstances whereby the court should make a costs order against a solicitor. Reference can therefore be made to decisions that describe what unreasonable conduct is even though it was discussed in the context of O 59 r 8(1) of the Rules of Court. In *Tan King Hiang v United Engineers (Singapore) Pte Ltd* [2005] 3 SLR(R) 529, the majority of the Court of Appeal held at [18] that:

> In *Ridehalgh*, the English Court of Appeal had the occasion to consider the meaning and scope of the three terms "improper", "unreasonable" and "negligent". While we acknowledge that such terms are, by their very nature, not amenable to precise definition, the court there did provide some very useful guidelines. Sir Thomas Bingham MR, delivering the judgment of the court, said (at 232-233):
>
> …
>
> ... *The expression ["unreasonable"] aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive*. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. *The acid test is whether the conduct permits of a reasonable explanation*. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.
>
> [emphasis added]

54 Mr Ravi's filing of CM 32 does not permit a reasonable explanation in light of his prior conduct. He had first exposed the accused persons to the risk of prejudice by requesting to represent them at the COI hearing. If the COI had allowed this, it might have prejudiced the fair conduct of their criminal trials by being in breach of the *sub judice* rule. Furthermore, after Mr Ravi was informed by the COI of such risks in its letter rejecting his request, he only raised the *sub judice* issue at a much later date. If he was truly concerned with the *sub judice* rule as he appears to be in filing CM 32, why then was he willing to risk breaching the rule before filing CM 32? If he was genuinely safeguarding the interests of the accused persons, why did he only raise this issue after the COI hearing had ended? There does not appear to a reasonable and logical explanation for such behaviour. The lack of such an explanation leads me to question the *bona fides* of Mr Ravi when he filed an entirely baseless CM 32.

55 Nonetheless, whatever the actual motives of Mr Ravi were, the conduct of Mr Ravi surrounding the filing of CM 32 is not a *bona fide* attempt on his part to advance the interests of the accused persons. This is despite the fact that solicitors owe a duty to further the best interests of their clients. This duty is expressly enshrined in the Legal Profession (Professional Conduct) Rules (Cap 161,

R 1, 2010 Rev Ed) and are reproduced below:

> **Application**
>
> **2**. ...
>
> (2) In the interpretation of these Rules, regard shall be had to the principle that an advocate and solicitor shall not in the conduct of his practice do any act which would compromise or hinder the following obligations:
>
> ...
>
> (*c*) to act in the best interests of his client and to charge fairly for work done ...
>
> ...
>
> **Diligence and Competence**
>
> **12**. An advocate and solicitor shall use all reasonably available legal means consistent with the agreement pursuant to which he is retained to advance his clients' interest.
>
> ...
>
> **Conduct of proceedings in client's interest**
>
> **54**. Subject to these Rules, an advocate and solicitor shall conduct each case in such a manner as he considers will be most advantageous to the client so long as it does not conflict with the interests of justice, public interest and professional ethics.

56 Mr Ravi, by volunteering to represent the accused persons at the COI hearing, placed them at risk *vis-à-vis* the *sub judice* rule. He also failed to conduct the cases of the accused persons in such a manner as he considers will be most advantageous to them. He wanted to involve himself with the affairs of the COI hearing even though it does not appear to offer any benefit to the defence of the accused persons in their criminal proceedings. Such participation might have even prejudiced the accused persons in their criminal proceedings

57 Lastly, the affidavit in support of CM 32 also appears to support the conclusion that Mr Ravi did not prioritise the interests of the accused persons. Although CM 32 was allegedly filed on behalf of all the accused persons, only three of the accused persons who were on bail affirmed and signed the affidavit. The other two accused persons who were and still are in remand did not do so. This raises a question of whether these two accused persons were even consulted in the first place. Furthermore, it would appear that as individuals in remand who have been deprived of their liberty, their interest should be of greater concern to Mr Ravi. Despite being in such a position, no affidavit was obtained from them in support of CM 32. One can only wonder why Mr Ravi did not do so. For these reasons, I find that Mr Ravi had conducted himself unreasonably.

Did Mr Ravi fail to conduct the proceedings with reasonable competence and expedition?

58 In relation to the term "reasonable competence and expedition", Rajah JA held in *Zhou Tong v PP* at [31]–[32] that:

> 31 As for the meaning of the phrase "reasonable competence and expedition", *Tan King Hiang*

suggests at [14] that because the phrase replaced the previous requirement (under the old O 59 r 8 of the Rules of Court) that costs be incurred "improperly or without reasonable cause or wasted by undue delay or by any other misconduct or default" and there was therefore no longer any reference to "misconduct or default", a lower degree of impropriety would suffice to render a solicitor personally responsible for costs. Further, it was also suggested in *Ridehalgh* (at 229) that the reference to "reasonable competence" suggested "the ordinary standard of negligence and not a higher standard requiring proof of gross neglect or serious dereliction of duty". Indeed, the Court of Appeal observed in *Tan King Hiang* at [21] that although the term reasonable competence "need not in every instance imply that where reasonable competence is not demonstrated there will be negligence, in most cases it will probably be so".

32 At this point, it is to be noted that "negligence" in the present context is not used as a term of art requiring proof of duty, breach, causation and damage. As Sir Thomas Bingham MR rightly pointed out in *Ridehalgh* ([22] *supra*), the expression "reasonable competence" does not invoke "technical concepts of the law of negligence" (at 232). There is hence no need to prove that the solicitor's conduct involved an actionable breach of his duty to his client. Be that as it may, the solicitor must still be proved to have given "advice, [done] acts or omissions in the course of their professional work which no member of the profession who was reasonably well-informed and competent would have given or done or omitted to do" (see *Ridehalgh* at 233, citing *Saif Ali v Sydney Mitchell & Co* [1980] AC 198). Thus, negligence should be understood to denote a "failure to act with the competence reasonably to be expected of ordinary members of the profession" (see *Ridehalgh* at 233 and *Tan King Hiang* at [18]).

59 Mr Ravi also failed to act reasonably as a competent solicitor would. As a solicitor Mr Ravi should be well aware of the standards to be met when drafting an affidavit. However, CM 32 was supported by an affidavit drafted by Mr Ravi that only contained bare assertions. Furthermore, this is not a matter of Mr Ravi inheriting a bad case from the accused persons which resulted in a poorly drafted affidavit. Rather, it is Mr Ravi who initiated an unmeritorious motion on behalf of the accused persons on his own accord. I therefore find that Mr Ravi had failed to meet the standards of competence that should guide a solicitor's conduct.

Were costs incurred?

60 Mr Thuraisingam informed me that Mr Ravi is representing the accused persons on a *pro bono* basis. *Pro bono* work is important because it enhances access to justice by all members of the community and I appreciate Mr Ravi's efforts in contributing to such a cause. However, the advocate and solicitor's duties to his client and to the court apply with as much force to *pro bono* work as they do to the most lucrative retainer. The requisite standard to be met for legal services provided *pro bono* should not differ from that *vis-à-vis* a fee-based retainer. The fact that Mr Ravi is not charging the accused persons is no justification for filing a frivolous and vexatious CM 32 which is extravagant and unnecessary.

61 In this case, it is clear that prosecution incurred costs as a result of the filing of CM 32 which I have found to be part of Mr Ravi's unreasonable conduct. Costs were incurred in the process of filing CM 36 in response to CM 32 which could have been avoided if he had conducted himself with reasonable competence and expedition.

Will it be just to make a costs order against Mr Ravi?

62 I am aware that the "overarching rule with regard to ordering costs against a non-party in court proceedings is that it must, in the circumstances of the case, be *just* to do so": *DB Trustees (Hong*

Kong) Ltd v Consult Asia Pte Ltd [2010] 3 SLR 542 at [29]. Therefore, I can only make a costs order against Mr Ravi if I am thoroughly satisfied that this is a just case to do so. In this case, Mr Ravi's behaviour was a complete abuse of the legal process which evidenced scant regard for his clients' best interests. I am satisfied that the prosecution has made out a strong case against Mr Ravi who has not, through his counsel, shown cause why this court should not order personal costs against him. I further bear in mind the fact that it is Mr Ravi's behaviour itself that endangered his clients. He not only put them at risk of having to pay the costs of the prosecution here, he also nearly induced them to commit contempt of court by requesting to represent them at the COI hearing. Thus this is a just case to make a costs order against Mr Ravi.

Conclusion

63 For the reasons stated, I order that the accused persons pay the costs of these proceedings to the prosecution. I also order that Mr Ravi is to reimburse the accused persons for the costs so paid. The costs will be agreed or taxed.