Ng Chye Huey and Another v Public Prosecutor
[2007] SGCA 3

Case Number : Cr M 24/2006

Decision Date : 24 January 2007

Tribunal/Court : Court of Appeal

Coram : Kan Ting Chiu J; Andrew Phang Boon Leong JA; Tay Yong Kwang J

Counsel Name(s) : M Ravi (M Ravi & Co) for the applicants; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Ng Chye Huey; Erh Boon Tiong — Public Prosecutor

Courts and Jurisdiction – Jurisdiction – Court of Appeal – Criminal motion filed in and heard by High Court – Whether Court of Appeal having jurisdiction to hear criminal motion as appeal against High Court's finding on criminal motion – Whether Court of Appeal having jurisdiction to hear criminal motion in exercise of Court of Appeal's supervisory or revisionary jurisdiction

Criminal Procedure and Sentencing – Criminal motion – Abuse of process – Criminal motion filed in and heard by High Court – Applicant seeking Court of Appeal's hearing of the matter as appeal against High Court's finding or in exercise of Court of Appeal's supervisory or revisionary jurisdiction – Whether application amounting to abuse of court's process

Criminal Procedure and Sentencing – Criminal motion – Whether omission to make reference to remedy sought sufficient grounds for disposing of motion – Whether applicants' notice of motion legally adequate – Applicable principles

24 January 2007

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

1 The present proceedings concerned a criminal motion brought by two applicants. At the time this motion was filed, the applicants were standing trial in the Subordinate Courts for criminal charges brought against them. In this motion, the applicants sought an order from this court, directing the trial judge in the Subordinate Courts ("the trial judge") to make a number of orders to facilitate the adduction of certain United Nations ("UN") reports in evidence.

2 After hearing parties' arguments, we dismissed the applicants' motion as being misconceived and now give the detailed grounds for our decision.

Background to proceedings

3 The events leading up to the present motion are briefly as follows. On 20 July 2006, the applicants were arrested and charged under s 13B(1)(*b*) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA") read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed) for displaying insulting writing that was likely to cause harassment in furtherance of their common intention. They both claimed trial, and their joint trial in the Subordinate Courts commenced before the trial judge on 28 August 2006.

4 The present motion before us was preceded by Criminal Motion No 23 of 2006 in the High Court ("the High Court motion"). This motion was filed on the third day of the applicants' joint trial in the Subordinate Courts, *ie*, 30 August 2006. The applicants' central contention, both here and in the High Court, related to events that had allegedly occurred on the second day of the trial.

5 On that day, the investigating officer in charge of the applicants' case ("the IO") took the stand as a prosecution witness. According to the applicants, the IO conceded under cross-examination that the applicants' display would *not* have been "insulting" if its contents were true. This supposed concession led the applicants' counsel, Mr M Ravi, to refer the IO to a UN report that purportedly affirmed the truth of the applicants' allegedly "insulting" display. Mr Ravi then asked that the IO be given leave to verify the report, which formed the intended subject of his (Mr Ravi's) subsequent line of questioning. He additionally suggested that the trial judge direct the Attorney-General's Chambers to assist in this task. The Deputy Public Prosecutor ("the DPP") objected to the applicants' reliance on this document, contending that it was hearsay and therefore inadmissible. To address the DPP's concerns, Mr Ravi then asked that he be given some time to arrange for the maker of this report to be called as a witness. The *applicants* averred that the trial judge had refused this application for an adjournment, insisting instead that cross-examination of the IO continue. The alleged objectionability of this order formed the basis of the applicants' motion in both the High Court and before us.

6 We pause here to clarify that in dismissing the applicants' motion, we make *no* pronouncement on what had actually happened before the trial judge. Whilst these events would have significantly impinged on the *substantive* merits of the applicants' motion, the fundamental and incurable jurisdictional defects that plagued the motion made it unnecessary to proceed to a consideration of these substantive issues.

7 The High Court motion was heard by Choo Han Teck J on 31 August 2006. Counsel for the applicants sought to convince Choo J to grant three orders in the exercise of the High Court's "supervisory and appellate jurisdiction" pursuant to s 27 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA"). First, he asked that the IO be given some time to verify the report since it would be the subject of his subsequent line of questioning. Second, and in the alternative, he asked that the Attorney-General's Chambers be ordered to ascertain its veracity and authenticity. Third, and in the further alternative, counsel asked that the trial judge be directed to give the applicants sufficient time to call the maker of the report.

8 At the end of the hearing, Choo J dismissed the High Court motion. According to Choo J, the application had to be considered in its broader context, including as part of what he referred to as the "independence of the judiciary" principle and the "rule of law". First, Choo J held that the principle of judicial independence required that the subject matter of the motion be left to the discretion of the trial judge. It would not be right for anyone, whether the Attorney-General or the High Court, to interfere and tell the trial judge how he should rule on the evidence. Secondly, the rule of law required that the trial process be completed. Regardless of what the trial judge might have said and whatever intermediate rulings he might have made, there was still a chance that he might ultimately acquit both the applicants at the end of the trial. Based on these reasons, Choo J dismissed the High Court motion and directed that the trial should resume in the Subordinate Courts. Later, *and on that very same day*, the applicants filed the present motion before this court.

The issues

9 The applicants' motion before this court raised a number of novel issues. An extremely important – and threshold – issue related to *the legal adequacy* (or rather the lack thereof) of the present application. The second main issue related to the issue of *jurisdiction*. Finally, a related issue pertained to a possible abuse of the process of the court. We turn now to consider these issues *seriatim*.

The legal adequacy of the application

10 The applicants' motion suffered from a fundamental procedural defect on a preliminary, yet highly fundamental, issue. This defect concerned the documents which the applicants tendered in support of their motion, which were woefully lacking in any detail whatsoever. Taken at face value, the language of the applicants' notice of motion shed little, if any, light on the orders sought in the present proceedings. According to the notice of motion, the applicants' counsel, Mr Ravi, was supposed to "move this Honourable Court … for an order that the trial … be *stayed immediately pending* the hearing of this Criminal Motion … on the ground that *the Applicants have been denied a fair trial*" [emphasis added]. Though it was apparent from this that the *basis* for the present motion was the alleged violation of the applicants' right to a fair trial, it remained unclear what *remedies* were actually sought as a consequence of this violation. Whilst the language of the notice of motion reflected the fact that the applicants were seeking a stay of the trial, the contemporaneous use of the words "*pending* the hearing of this Criminal Motion" indicated that a stay was only an *interlocutory* measure, rather than the primary form of relief sought before us.

1 1 The affidavit filed by the applicants was of little assistance in advancing this inquiry. In this document, the applicants only went so far as to claim that the trial judge's insistence that the trial should carry on without the UN document being admitted was "a serious violation of [their] right to a fair trial", leaving "counsel [to] address the court on the legal aspects".

12 When parties appeared before us, counsel for the applicants clarified that he was in fact seeking an order from this court either directing that the maker of the UN document need not be called, or, alternatively, directing the trial judge to allow the applicants sufficient time to call this person as a witness. Significantly, when confronted with the express terms of the applicants' notice of motion, Mr Ravi himself recognised that the notice of motion was misconceived in so far as it suggested that the substantive relief sought before this court was an interim stay of the proceedings *pending the hearing of this application before us*. This concession was implicit from the following excerpt of the transcript of the proceedings:[note: 1]

> Phang JA: Looking at your application, it's not entirely clear to us…what remedies are being sought in the present application.
>
> …
>
> You see, [your notice of motion] says here, you want an order that the trial in [the subordinate court] be stayed immediately pending the hearing of this criminal motion which we are hearing today…on the ground that the applicants have been denied a fair trial. That's all---
>
> …
>
> Ravi: ---I would say that I am asking this Court of Appeal right now to direct that the UN document---the United Nations rapporteur be called---and need not be called if the learned Deputy Public Prosecutor accepts that these supposed allegations in these reports, whatever compilations or extracts, are in fact resolutions passed by not only just the United Nations but also by the Congress…
>
> I would urge this Court…to direct that this document be directed to be by way of motion---that's why I didn't stay the proceedings because I'm going by motion, not by appeal---that this Court, Court of Appeal, direct that the Subordinate Court give some appropriate directions at the pre-trial conference…that the maker of the document need not be called, need

not come to Singapore because unless the DPP is saying that Singapore takes objections to this document, the maker, then give us the opportunity for the maker of the document who has always been available, but the DPP is saying neither this nor that. The judge is confused. I am confused and that's why I came via a criminal motion. I am not confused. I am not asking for a stay of the proceedings.

[emphasis added]

13 Both the applicants' notice of motion and their affidavit before us clearly omitted to make any reference to the relief that was *in fact* being sought according to counsel's submissions in the above excerpt. This ambiguity in their court papers was itself sufficient ground to dispose of their motion before us. In the Singapore High Court decision of *Ng Ai Tiong v PP* [2000] 2 SLR 358 ("*Ng Ai Tiong*"), the applicant filed an application to the High Court under s 60 of the SCJA, seeking to refer four questions of law to the Court of Appeal. Though the applicant referred to these four questions in his motion before the High Court, he omitted to elaborate the *exact court order* that was being sought. Yong Pung How CJ expressed the view that this lack of particularity *was itself* an adequate reason to dismiss the application. According to Yong CJ (at [3]–[5]):

At the outset, I am compelled to point out a *critical procedural error* made by counsel for the applicant in bringing this motion. …

… It is a fundamental requirement in applications made to the court that the court receives proper notice of what exactly is being asked from it. *This necessitates that counsel enunciates clearly in the relevant court papers, such as in the motion paper in this case, the precise order that is being requested*.

In the present case, this *basic requirement* was evidently not satisfied. A careful perusal of both the motion paper as well as the notice of motion filed showed that nowhere in either of the documents was it stated that the applicant was seeking to refer the four questions to the Court of Appeal for consideration. *The blatant oversight by counsel for the applicant would have been sufficient reason for me to dismiss this application*.

[emphasis added]

14 In a similar vein, the manifest inadequacies of the applicants' motion papers and affidavit themselves sufficed to warrant a disposal of the present motion. Parties would do well to remember that applications before this court have to be sufficiently detailed so as to give both the court, as well as the opposing party, adequate notice of what is being sought by way of the proceedings. Despite these blatant insufficiencies in their supporting documentation, in the interests of achieving substantive justice, we nevertheless proceeded to hear the applicants. Whilst this irregularity was not the sole basis for our ultimate decision to dismiss the motion, it did, at the same time, reflect a consistent theme that ran throughout the entire application before us. As will be seen further below, much of the applicants' case before this court was grossly misconceived and plagued by fundamental and irreconcilable inconsistencies.

The issue of jurisdiction

15 Apart from these somewhat more procedural considerations, the present application additionally raised a number of more important issues relating to the jurisdiction of this court. First, what was the nature of the present application? Did it constitute an appeal against Choo J's decision? Or did it constitute a separate application in itself? This initial question itself raised further – but no

less important – issues. If the present application indeed constituted an appeal against Choo J's decision, *what* was the nature of the order being appealed against? In other words, what was the legal basis for the applicants' purported right of appeal against Choo J's decision? Alternatively, if the present application was a *discrete* set of proceedings independent from those commenced before Choo J, what imbued this court with the jurisdiction to hear such an application?

16 These questions raised fundamental issues of broader import and significance for the orderly conduct of criminal proceedings. At the heart of our present decision lay the need for parties and counsel to have greater regard for the established hierarchy of our courts in criminal matters. Given this broader context, it would be appropriate to preface our present analysis of the jurisdictional issues with an important preliminary point.

This court's jurisdiction

17 It has been emphasised time and again that our Court of Appeal is a creature of statute and is hence only seised of the jurisdiction that has been conferred upon it by the relevant provisions in the legislation creating it: see, for example, the Singapore Court of Appeal decisions of *Microsoft Corporation v SM Summit Holdings* [2000] 2 SLR 137 ("*Summit Holdings*") at [17] and *Abdullah bin A Rahman v PP* [1994] 3 SLR 129 at 132, [7]. A jurisdiction-conferring provision, whether derived from the SCJA or elsewhere, is an essential and indispensable prerequisite that an applicant before this court *must* have as a legal basis upon which to canvass the substantive merits of his or her application. These jurisdictional rules are essential to the orderly conduct of litigation in our courts. Without a sufficiently clear delineation of the respective spheres of dominion of each level of our hierarchy of courts, chaos would inevitably result as parties seek, willy-nilly and solely for their own advantage, to bring their applications before different levels of court in an instrumental, haphazard and legally unprincipled fashion.

An appeal against Choo J's decision?

18 As stated above (at [15]), the first jurisdictional issue which arose related to whether the applicants' present motion was in the nature of an attempt to invoke: (a) this court's *supervisory or revisionary* criminal jurisdiction to regulate the trial proceedings; or (b) its *appellate* criminal jurisdiction over Choo J's decision. Whilst the answer to this question may be self-apparent in many, if not most, cases, it was far from clear in the present proceedings. The difficulties arising from this seemingly simple question were undoubtedly the result of the applicants' unorthodox approach to criminal procedure.

19 Various aspects of the applicants' motion before us tended to suggest that they were attempting to invoke this court's supervisory or revisionary jurisdiction in respect of the orders sought. First, the present proceedings were commenced by way of a *fresh notice of motion*, rather than through a notice of appeal against Choo J's dismissal of the High Court motion. In addition, the applicants used the *exact* same notice of motion and affidavit in the High Court motion as they had in the present application before us. This act alone suggested that the applicants intended to commence a *distinct* and *parallel* set of proceedings that were *unrelated* to the High Court motion. This consequently indicated that the applicants sought to invoke some form of supervisory or revisionary jurisdiction which they must have thought existed *independently* in this court *over the Magistrate's Court*.

20 On the other hand, however, the *headings* in the cover sheet to the applicants' notice of motion tended to suggest otherwise. According to this heading, the present motion was expressed as being "In the Matter of Criminal Motion Number 23 of 2006". This reference to the *High Court* motion

conflicted with the preceding observations and indicated that the applicants' intention in the present proceedings was in fact to bring *an appeal* against Choo J's earlier decision.

21 The indeterminacy of the applicants' motion was most clearly demonstrated by Mr Ravi's evasive approach when asked to clarify whether or not the present application constituted an appeal against Choo J's decision. When he was first asked this question, Mr Ravi unequivocally stated that the present motion was *not* in the nature of an appeal. The relevant parts of the transcript of the proceedings read as follows:[note: 2]

Phang JA: Mr Ravi, this matter was brought before Justice Choo in the High Court?

Ravi: Yes.

Phang JA: Yes?

Ravi: Yes.

Phang JA: All right. Take it a step at a time.

> ….
>
> As I mentioned a moment ago, this matter was brought before Justice Choo by way of a criminal motion in the High Court.

Ravi: Yes.

Phang JA: *Are you appealing against Justice Choo's decision?*

Ravi: *Nay.*

Phang JA: *You are not?*

Ravi: *I am filing a criminal motion just like in the matter of Vignes Moorthy [Mourthi] v the Public Prosecutor.*

Phang JA: Right. So the next step, Mr Ravi, is to look at section 29A---

> …
>
> ---of the Supreme Court of Judicature Act, in particular, section 29A subsection (2) which relates to the criminal jurisdiction of the Court of Appeal---

Ravi: Yes.

Phang JA: --- because you are before the Court of Appeal now.

Ravi: Sure, Sir.

Phang JA: Okay. Section 29A(2) says this: [s 29A(2) read]. Shall I read that to you again?

Ravi: *Sir, I am not appealing.*

…

Ravi: You know, Sir, what I am clutching before this Court and the Courts together that have constituted under the Constitution is this vital point, and the vital point being that, first of all, this Court is always independent of---its independent of the Judiciary. The separation of powers under [Dicey's] rule of law is very clear. Under the Constitution of the Republic of Singapore, the Constitution says very clearly that the Courts are always independent without fear or favour at all times and that have been constituted very clearly in the Constitution, [the] Constitution being the supreme law of this land.

Phang JA: Mr Ravi, I don't think anyone in this Courtroom disagrees with that statement, but the issue for us now is this: does this Court have the jurisdiction to hear this criminal motion under section 29A subsection (2) of the Supreme Court of Judicature Act?

Ravi: Yes.

Phang JA: *Perhaps you can address us on this because section 29A(2) states that the criminal jurisdiction of this Court shall consist of appeals against any decision of the High Court in the exercise of its original criminal jurisdiction. The difficulty we have is that you've just stated a moment ago that you are not--- this is not an appeal against Justice Choo's decision.*

Mr Ravi: *Yes, that is right, I am going under section 27.*

Phang JA: *But, Mr Ravi, we can look at section 27.*

Ravi: *Yes.*

Phang JA: *Section 27, the heading says, "General supervisory and revisionary jurisdiction of the High Court", not the Court of Appeal.*

….

Ravi: *Yes, and the High Court must mean that the Court of Appeal has also --- that was what Mr Yong Pung How stated very clearly.*

Phang JA: *No, Mr Ravi, how can the High Court and the Court of Appeal be the same?*

[emphasis added]

2 2 Based on the above responses, one would reach the inevitable conclusion that the present proceedings were founded on the alternative premise, *viz*, that the present application was a discrete and separate one. However, this was not to be. A little later on in the proceedings, Mr Ravi appeared to change his mind, albeit proffering a proposition that was as ambiguous as it was confusing. The relevant part of the transcript reads as follows:[note: 3]

Phang JA: Yes. What was the nature of the proceedings before Justice Choo? It was a criminal motion, right? Yes?

Ravi: Yes.

Phang JA: *Yes. Now, you brought a separate---what you're saying is you're not appealing*

against Justice Choo's decision? This is a separate criminal motion but now brought before the Court of Appeal, yes?

Ravi: *Yes, that's right.*

Phang JA: *So you're saying there's no relationship between Justice Choo's---the proceedings, rather, before Justice Choo and the proceedings before this Court today?*

Mr Ravi: *No, I don't say that.*

Phang JA: Okay.

Ravi: No, no, Sir---Sir, no, no, no, there is a relationship. Of course there is a relationship. The relationship---I mean, I don't want to go into the theory of relativity, but the relationship is this, Sir, that---

Phang: Yes.

Ravi: --- Justice Choo, unlike Justice Woo Bih Li, had not written any decision---grounds of decision. You know why I am saying this? Justice Lai Kew Chai and Justice Woo Bih Li wrote their [grounds of] decisions when the Court of Appeal was summoned by me on behalf of Vignes [Mourthi] when he was hanged on 26th.

Phang JA: *But you see, Mr Ravi, if this had been an appeal before us today*---

Ravi: *No, no, no*.

Phang JA: ---then there would have---

Ravi: Just bear with me, Sir.

Phang JA: *Is this an appeal from Justice Choo's decision? No?*

Mr Ravi: *Yes*.

Phang JA: *It is?*

Ravi: *It is. It's somewhat---it is to the*---

Phang JA: No, but you just---I thought you just said---

Ravi: No, can I just clarify, Sir?

Phang JA: ---a moment ago---

Ravi: Can I just clarify that slowly. First point, first of all, in the---under section 27 of the Supreme Court of Judicature Act, when I appeared before Justice Choo Han Teck, I was quite clear that I was certainly going under section 27 of the supervisory, appellate and the---

Phang JA: All right.

Ravi: --- criminal jurisdiction ---

Phang JA: Okay.

Ravi: --- of the High Court.

Phang JA: *But which was it? Before Justice Choo? You're saying section 27, we are with you. Was it under the Court's supervisory or revisionary jurisdiction?*

Mr Ravi: *The Court's---all three. Either---I was---supervisory jurisdiction, I would say.*

Phang JA: No, there's only two. There are only two in section 27.

Ravi: Yes.

Phang JA: Supervisory or revisionary. Which one was it?

Ravi: It says supervisory---

Phang JA: Mm-hm.

Ravi: ---revisionary---"or", isn't it? It's disjunctive?

…

Ravi: Sir, if you were to just look at---clearly, I mean, with respect Sir, I'm not---don't, you know, mean to be, you know---

Phang: Mm-hm.

Ravi: ---impudent in any sense of the matter. If you look at clearly section 27 of the Supreme Court of Judicature Act, a close scrutiny of the section would say that---clearly I'm not talking about the general ambit of the section. But if you look at section 27, it's clear that the High Court, and I would also argue that the Court of Appeal too, has general supervisory, original---I mean, supervisory and revisionary jurisdiction. And in the High Court when I filed the criminal motion, I was arguing that the High Court had them when I appeared before---

Phang JA: Yes.

Ravi: ---and I stand guided by the Constitution of the Republic of Singapore, not only just---Sir, what is more important, substantive justice or procedural justice?

Phang JA: Both, Mr Ravi.

…

Phang JA: *All right, Mr Ravi, don't mean to interrupt but we need to be clear about where you're at. What was the nature of the proceedings before Justice Choo?*

…

Phang JA: *Just the nature of the proceedings before Justice Choo - not before us, before*

Justice Choo.

Ravi: *Nature of proceedings before Justice Choo---*

Phang JA: *Yes.*

Ravi: *---was to exercise supervisory and appellate and revisionary jurisdiction over the Subordinate Court's lack of independence.*

Phang JA: *You're saying supervisory and---*

Ravi: *Revisionary---*

Phang JA: *---revisionary---*

Ravi: *---and appellate---*

Phang JA: *---and appellate.*

Ravi: *---jurisdiction---*

Phang JA: *Okay, all right.*

Ravi: *---constructed within and constituted and drafted clearly under section 27 of the SCJA*. Sir, you must understand, and I don't mean to be impudent about that fact also, that Supreme Court Judicature Act is just an Act. It is subordinate to the Constitution. And what does the constitution says? The Constitution is very clear. The Constitution says that the Court of Appeal has powers over all matters, Subordinate or High Court or whatever stage. …

And the Courts have---Wee Chong Jin's Courts, as well as Mr Yong Pung How's Court, have made it very clear that the Court of Appeal has all the powers.

Phang JA: *All right, Mr Ravi.*

…

Okay, now, are these proceedings an appeal against Justice Choo's decision or are these proceedings a separate application on your client's part?

…

Phang JA: *You're not answering yet, right? Are these proceedings an appeal against Justice Choo's decision? Yes or no?*

Ravi: *It is "yes"---*

Phang JA: *Yes.*

Ravi: *--and it is a "no".*

Phang JA: *No, you can't---*

Ravi: *It is a "yes" and a "no".*

Phang JA: *---you can't have it both ways, Mr Ravi. Either it's an appeal or it's not.*

[emphasis added]

23 With respect, we found Mr Ravi's general (and rather protracted) reasoning, as well as (more importantly) his ultimate proposition, to be incoherent. Either the present application constituted an appeal against Choo J's decision, or it did not. It could not, as he asserted, partake of the nature of both opposing qualities at one and the same time.

24 Nevertheless, notwithstanding the fact that Mr Ravi refused to address this issue clearly, we gave the applicants the benefit of the doubt and considered the present application on two alternative bases – first, on the basis that it *did* constitute an appeal against Choo J's decision and, secondly, on the basis that it did *not*. We should pause to observe that this in effect gave the applicants the best of both worlds but, in the interests of justice, we were prepared to do so.

Appellate jurisdiction over the High Court motion

25 If, in fact, the present application constituted an appeal against Choo J's decision, the question that then needed to be asked was whether this court had the jurisdiction to hear such an appeal. Before addressing this particular question, a preliminary procedural issue had first to be resolved. This antecedent consideration arose in the following manner. The present application was precisely that, *ie*, an *application* by way of *criminal motion*. It was thus not in the *form* of an *appeal* as such. However, once again, we were prepared to give the applicants the benefit of the doubt and overlook the fact that, *if* the application indeed constituted an appeal against Choo J's decision, it was not in fact brought in the proper form. That said, it should nevertheless be pointed out that this irregularity was far from being an isolated oversight. Based on the earlier analysis, as well as for the reasons which follow hereafter, the innumerable procedural and jurisdictional defects that permeated the present proceedings reflected nothing less than a blatant attempt on the part of the applicants to disrupt and frustrate the orderly progress of the proceedings before the trial judge. To allow such conduct to proceed unchecked would be, in effect, to condone (and even encourage) what is, in substance and effect, the very *antithesis* of justice itself.

26 However, even if this court were prepared to overlook the procedural irregularities in the applicants' motion, we could not overlook the problems arising from the *substance* of their application. If, in fact, this application constituted an appeal against Choo J's decision, it could only be heard by this court if the applicants did possess a legitimate right of appeal in the first instance. In this regard, it is trite law that there is no *inherent* right to appeal from judicial determinations made by our courts: see, for example, the Straits Settlements Supreme Court decision of *Chop Sum Thye v Rex* [1933] MLJ 87 and the Malaysian Federal Court decision of *Kulasingam v Public Prosecutor* [1978] 2 MLJ 243. A right of appeal has hence been said to be a "creature of statute" which requires legislative authority: in addition to the analysis above (at [17]), see also, for example, the Singapore High Court decision of *Knight Glenn Jeyasingam v PP* [1999] 3 SLR 362 at [13] and the Malaysian Supreme Court decision of *Ting Sie Huong v State Attorney-General* [1985] 1 MLJ 431. According to Lord Goddard CJ in the English decision of *R v West Kent Quarter Sessions Appeal Committee* [1951] 2 All ER 728 at 730:

> It is most elementary that no appeal from a court lies to any other court unless there is a statutory provision which gives a right to appeal. The decision of every court is final if it has jurisdiction, unless an appeal is given by statute.

27 This general proposition is also embodied in s 241 of our Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"), which provides that "*[n]o appeal* shall lie from a judgment, sentence or order of a criminal court *except as provided for by this Code or by any other law for the time being in force*" [emphasis added]. In the present case, there was no question that this appeal (if that was indeed what it was) arose out of criminal proceedings; Choo J's decision was based on proceedings commenced by way of a *criminal motion*. The applicants' purported appeal before this court would therefore only be well founded if they were able to point to an *express statutory provision* conferring this court with appellate *criminal* jurisdiction over such proceedings.

28 In this regard, s 29A(2) of the SCJA, which deals with the *criminal appellate* jurisdiction of the Court of Appeal, is crucial. Section 29A(2) itself reads as follows:

> The criminal jurisdiction of the Court of Appeal shall consist of *appeals* against any decision made by the High Court in the exercise of its *original criminal jurisdiction*, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought. [emphasis added]

2 9 The words italicised in s 29A(2) of the SCJA were crucial in the context of the present proceedings. These words demonstrated that the applicants' right to appeal before us depended on whether Choo J's decision was in exercise of the High Court's "*original* criminal jurisdiction". If, in other words, Choo J was *not* exercising the power of the High Court in the context of its *original criminal jurisdiction*, this court had neither the jurisdiction nor the power to hear an *appeal* against his decision, unless any other provision of the SCJA or any other written law applied to permit an appeal against this determination.

30 It was clear, in our view, that Choo J had *not*, in hearing the High Court motion, exercised his "original criminal jurisdiction". The scope of the High Court's "original criminal jurisdiction" was the subject of discussion in this court's earlier decision in *Summit Holdings* ([17] *supra*), where L P Thean JA held (at [27]) that "the words 'original criminal jurisdiction' in s 29A(2) of the SCJA, on [their] true construction, refer to '*trial jurisdiction*'" [emphasis added]. This interpretation of s 29A(2) is supported by the legislative history behind this provision: see, generally, the Singapore Court of Appeal decision of *Mohamed Razip v PP* [1987] SLR 142 ("*Mohd Razip*") at 143–144, [8]–[12].

31 Section 29A(2) of the SCJA originated from s 44(1) of the 1969 Supreme Court of Judicature Act (Cap 15, 1970 Rev Ed), which came into force on 9 January 1970. Section 44(1) in its original form, provided as follows:

> The Court of Criminal Appeal shall have jurisdiction to hear and determine *any appeal by a person convicted by the High Court in the exercise of its original criminal jurisdiction*, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought. [emphasis added]

32 The original reference in s 44(1) to "any appeal by a person *convicted* by the High Court in the exercise of its original criminal jurisdiction" [emphasis added] made it patently clear that a litigant's right of appeal to the Court of Appeal was limited to situations where the High Court's decision had been made following a completed trial. This phrase was subsequently removed in 1973 by way of the Supreme Court of Judicature (Amendment) Act 1973 (Act 58 of 1973) ("the 1973 Amendment Act"), and was substituted by the phrase "any appeal against any decision by the High Court in the exercise of its original criminal jurisdiction", which continues, in substance, to form part of the current s 29A(2) of our SCJA.

33 The impetus behind the 1973 Amendment Act was usefully summarised by the then Minister for Law, Mr E W Barker. The Minister observed (see *Singapore Parliamentary Debates, Official Report* (30 November 1973) vol 32 at col 1333):

> Sir, the Bill seeks to introduce certain amendments to the Supreme Court of Judicature Act (Chapter 15) *in order to enable the Public Prosecutor to appeal against judgments of the High Court made in the exercise of its original jurisdiction*.
>
> As the law now stands, the Public Prosecutor is only empowered to refer points of law to the Court of Criminal Appeal for the Appellate Court's review and, where a person has been acquitted by the High Court, only a declaratory judgment of the Court of Criminal Appeal may be sought which will not have the effect of reversing the order. Furthermore, there can be no appeal by the Public Prosecutor in respect of sentence imposed.
>
> Whereas there are these restrictions on the Public Prosecutor, *there are no corresponding restrictions on the accused person who, upon conviction by the High Court, is entitled as of right to take his case on appeal to the Court of Criminal Appeal*; and in every case where he is dissatisfied with the sort of punishment meted out on him by the Court, lodge an appeal against sentence. *In order to correct this imbalance as it were, the changes contemplated by the Bill have been introduced*.
>
> [T]here is a need to allow the Public Prosecutor in any given case, a freer hand than the law now allows, *so that he would be in the same position, not less or more advantageous than counsel for the defence*, in regard to exercising a discretion whether to appeal against an order of the High Court or not.
>
> [emphasis added]

34 The Minister's statement makes it evident that the 1973 amendments were not intended to expand or modify the scope of the phrase "original criminal jurisdiction" as it previously existed in the original s 44(1). They only sought to give the Prosecution equal rights *in situations where the accused had previously been given the right to appeal but the Prosecution had been denied such a right*. The original reference in s 44(1) to "an appeal by a person convicted in the High Court" should therefore continue to guide and qualify our understanding and interpretation of the phrase "original criminal jurisdiction". The Court of Appeal's appellate criminal jurisdiction under s 29A(2) accordingly remains limited to judicial determinations by the High Court that result in *a final verdict of conviction and sentence, or acquittal*. As Wee Chong Jin CJ confirmed in *Mohd Razip* ([30] *supra* at 144, [12]):

> It is plain from the legislative history of all these sections that the words 'any decision made by the High Court' in s 44(1) [the predecessor to s 29A(1)] … were inserted to accommodate appeals by the Public Prosecutor, thereby enlarging the jurisdiction of the Court of Criminal Appeal in that respect. *The words were, in our opinion, not inserted as a 'catch-all' phrase. They must be read in the context of the other provisions*. In s 44(2), the appellant is the 'person convicted' and the appeal is against conviction, or sentence, or both. In s 44(3), the appellant is the Public Prosecutor and the appeal is against acquittal, or sentence. … *The only logical conclusion, therefore, is that the jurisdiction of the Court of Criminal Appeal is to hear appeals against orders of finality, ie, those resulting in conviction and sentence, or acquittal*. [emphasis added]

35 According to the Singapore Court of Appeal decision of *Ang Cheng Hai v PP* [1995] 3 SLR 201 at 205, [18], the scope of the High Court's "trial"– and therefore its "original criminal"– jurisdiction is set out in s 15 of the SCJA. Sections 15(1) and 15(2) of the SCJA variously provide that the High

Court is to have jurisdiction to "try … offences" and "pass … sentence allowed by law". These provisions make it clear beyond all doubt that Choo J's decision did *not* fall within the ambit of the High Court's "original criminal jurisdiction" under s 29A(2) of the SCJA. The original criminal jurisdiction to "try" and "sentence" the applicants was, in the present case, being exercised by the *subordinate court instead*.

36 As can be seen from the excerpts of the transcripts above, during the hearing before us, Mr Ravi stated more than once that the High Court motion had been filed pursuant to *s 27 of the SCJA*. Section 27 of the SCJA reads as follows:

> **General supervisory and revisionary jurisdiction of High Court**
>
> **27.**—(1) In addition to the powers conferred on the High Court by this Act or any other written law, the High Court shall have *general supervisory and revisionary jurisdiction over all subordinate courts*.
>
> (2) The High Court may in particular, but without prejudice to the generality of subsection (1), if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in any subordinate court, call for the record thereof, and may remove the matter or proceeding into the High Court or may give to the subordinate court such directions as to the further conduct of the matter or proceeding as justice may require.
>
> (3) Upon the High Court calling for any record under subsection (2), all proceedings in the subordinate court in the matter or proceeding in question shall be stayed pending further order of the High Court.
>
> [emphasis added]

37 As I pointed out to Mr Ravi during the hearing (see [22] above), this particular provision relates to the general *supervisory and revisionary jurisdiction of the High Court*, and *not* to its *original criminal jurisdiction*. In other words, Mr Ravi's *own* reliance upon s 27 underscored the conclusion that Choo J was *not* exercising the original criminal jurisdiction of the High Court as such. This factor, coupled with the other considerations highlighted above, precluded the applicants from relying on s 29A(2) of the SCJA to found their present application before us.

Appeals from determinations under s 27(1) of the SCJA

38 However, the fact that Choo J's decision fell outside the scope of s 29A(2) of the SCJA was not itself conclusive evidence that the applicants had no legitimate right to bring the present proceedings before us. As implicitly recognised by s 241 of the CPC (see [27] above), Choo J's dismissal of the High Court motion was nevertheless appealable if there was some *other* statutory provision conferring the applicants with the requisite right of appeal.

39 In particular, Mr Ravi's submission that the motion before Choo J had invoked the High Court's jurisdiction under s 27(1) of the SCJA gave rise to two further (and closely related) questions: first, was Choo J's decision in the High Court motion truly an exercise of his jurisdiction under s 27(1) of the SCJA? If so, is there any statutory provision conferring this court with appellate jurisdiction over High Court determinations under s 27(1) of the SCJA? We now turn to address each of these questions *seriatim*.

The "general supervisory and revisionary jurisdiction" of the court

40 To ascertain whether the High Court motion amounted to an exercise of jurisdiction under s 27(1) of the SCJA, the exact nature and ambit of the High Court's "general supervisory and revisionary jurisdiction" under this subsection would first have to be delineated. To the best of our knowledge, the meaning of the phrase "general supervisory and revisionary jurisdiction" has not been the subject of express pronouncement by any local court thus far.

41 A literal reading of s 27(1) of the SCJA suggests that the section confers *two* different forms of jurisdiction upon the High Court, *ie*, "supervisory" and "revisionary" jurisdiction, respectively. However, this *prima facie* position is not entirely consistent with the erstwhile approach adopted by our courts. A significant proportion of the jurisprudence on s 27(1) of the SCJA relates to the High Court's powers of *revision*: see, for example, the Malaysian High Court decision of *Public Prosecutor v Muhari bin Mohd Jani* [1996] 3 MLJ 116 and the Singapore High Court decision of *PP v Koon Seng Construction Pte Ltd* [1996] 1 SLR 573 at 579, [20]. Little attention has been accorded to the concurrent reference to *supervisory* jurisdiction. References to the High Court's powers of "supervision" and "revision" have also, on a number of occasions, been used interchangeably: see, for example, the Singapore High Court decision of *Chan Hiang Leng Colin v PP* [1994] 3 SLR 662 at 671–672, [15]. In particular, a number of authorities have justified the scope of the High Court's revisionary jurisdiction using the language of "supervision". For instance, in the Singapore High Court decision of *PP v Shaifudin* [2005] SGHC 66, Yong Pung How CJ observed (at [10]) that "[t]he High Court's revisionary powers are to facilitate its *supervisory and superintending jurisdiction* over criminal proceedings before a subordinate court" [emphasis added].

42 These aspects of our case law suggest that the High Court's "general supervisory and revisionary jurisdiction" in fact comprises one composite basis of jurisdiction, *ie*, its revisionary jurisdiction. One possible explanation for the predominance of the High Court's revisionary jurisdiction lies in the general emphasis that our statutory provisions have placed on this form of jurisdiction. To begin with, ss 23 to 28 of the SCJA are grouped under the express title of "Revision". The inclusion of s 27 within this part of the SCJA suggests that s 27(1) and its reference to the "general supervisory and revisionary jurisdiction" are themselves but *facets* of the High Court's powers of *revision*. This suggestion is exacerbated by the concurrent *lack* of any part titled "Supervision" in the same Act. The emphasis on revision has additionally been reinforced by our CPC, which makes reference solely to the powers of revision, and not supervision.

43 However, an approach that *subjects* the High Court's supervisory jurisdiction under the umbrella of a purportedly *broader* revisionary jurisdiction is *not* entirely consistent with the legislative history behind the revisionary jurisdiction. Our High Court's present powers of revision originated from the Straits Settlement's Criminal Procedure Code 1900 (Ordinance 21 of 1900) ("the 1900 Code"). This Code was largely modelled on the Indian Criminal Procedure Code. One of the provisions adopted from India was s 312, which is materially similar to s 266 of our current CPC. Section 312 of the 1900 Code provided:

> **312.**(1)—The Supreme Court may call for and examine the record of any proceeding before any inferior Criminal 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 such inferior Court.
>
> (2)—Orders made under sections 104 and 105 and proceedings under Chapter XXX are not proceedings within the meaning of this section.

44 The impetus for the adoption of this new statutory form of jurisdiction was explained during the parliamentary debates on the 1993 amendments to the SCJA. In the words of Prof Walter Woon (see *Singapore Parliamentary Debates, Official Report* (12 April 1903) vol 61 at col 108):

> [T]here is [a] sort of jurisdiction that [the High Court in Singapore has] that does not exist in England, and that is revisionary jurisdiction. A High Court Judge can call for the record of a case heard in the courts below, Subordinate Courts, and change the decision or correct any misimpressions. This revisionary jurisdiction was necessary because *in the old days there were lay magistrates who might not necessarily have proper training and this kind of revisionary jurisdiction we actually inherited from India*. [emphasis added]

The above view is, in fact, confirmed by the following observations in the Objects and Reasons to the Bill of the Criminal Procedure Code in *The Straits Settlements Government Gazette* (4 February 1892) at p 442, where it was stated that "[a]n important result" of the change in the then law via this particular Bill "will be *that the Magistrates, who in this Colony, have, as a rule, no legal training*, will find the whole of the ordinary practice that they have to administer in one Ordinance instead of having to look for it, as they now have, through a number of English text-books" [emphasis added]. Indeed, the power of revision was itself contained in ch XXIX of this particular Bill, which was described as follows (see *id* at p 446):

> This Chapter in addition to laying down the procedure to be observed with reference to points of law reserved for the consideration of the Supreme Court makes provision under which that Court may, where it has any reason to suspect that irregularities have taken place or that any injustice has been done in any inferior Court, of its own motion, send for the proceedings and examine into them and do what justice requires thereupon.

This Bill was in fact passed as the Criminal Procedure Code 1892 (Ordinance 7 of 1892). However, it was never brought into operation (for the relevant background, which is of no immediate relevance to the present proceedings, see the Objects and Reasons to the Bill in *The Straits Settlements Government Gazette* (26 February 1900) at pp 607–608). It was further streamlined before it was finally re-enacted (with modifications) as the 1900 Code. Nevertheless, this in no way detracts from the more general observation as to the situation with regard to magistrates noted above and the power of revision was not only included in this last-mentioned piece of legislation (it, in fact, passed muster without any comment: see *Proceedings of the Legislative Council of the Straits Settlements, 1900, Shorthand Report* (23 October 1900) at p B272) but also continues right to the present day.

45 According to Prof Tan Yock Lin, this new form of statutory revisionary jurisdiction was in fact a statutory variation of a *pre-existing* form of jurisdiction at common law. According to Prof Tan (see Tan Yock Lin, *Criminal Procedure*, vol 2 (LexisNexis, 2006) at paras 3904–4000):

> The revisionary jurisdiction is an important qualification not so much to the principle of one-tier appeal but to the very concept of an appeal. … [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 the criminal justice, anxious to right all wrongs, regardless whether felt to be so by an aggrieved party.
>
> *This jurisdiction evolved out of the supervisory jurisdiction of the High Court*. Prior to its introduction, the control and supervision of inferior courts in the exercise of their summary jurisdiction was by way of judicial review. … Unlike an appeal, judicial review did not extend to a scrutiny of the merits, nor was it concerned with the weight of the evidence and the credibility of the witnesses. …

…

Instead of all these complexities and intricacies, a simpler jurisdiction was desired; hence the revisionary jurisdiction. …

But apparently, the legislature was not content to abolish the supervisory jurisdiction of the High Court. *In the judicature Acts therefore, both are mentioned*.

[emphasis added]

46 Viewed against this historical context, the High Court's revisionary jurisdiction should more properly be regarded as a statutory *hybrid* of the pre-existing supervisory and appellate jurisdictions. On this approach, whilst the scope and ambit of the High Court's supervisory and revisionary jurisdictions *overlap* to a considerable degree, there remain sufficient areas of difference to warrant their treatment as *distinct* bases of jurisdiction. According to Prof Tan in another of his works (see Tan Yock Lin, "Appellate, Supervisory and Revisionary Jurisdiction" in ch 7 of *The Singapore Legal System* (Walter Woon ed) (Longman, 1989) at pp 233–234), the supervisory and revisionary bases of jurisdiction admit of the following differences:

(i) supervision extends to all administrative tribunals but revision is *confined to subordinate courts*;

(ii) supervision depends upon party initiative in seeking relief but *revision may occur on a judge's initiative*;

(iii) supervision generally is confined to questions not touching the merits of the case but revision will lie on *errors of law and fact*;

(iv) supervision is effected by way of prerogative writs but revision is marked by *complete flexibility of remedies*.

[emphasis added]

47 Each of these differences underscores the *broader* point that the revisionary jurisdiction was a *creature of statute* formulated to remedy perceived inadequacies in the High Court's inherent supervisory jurisdiction over inferior courts. This pre-existing *inherent supervisory jurisdiction* is well recognised in the case law. According to Denning LJ (as he then was) in the English Court of Appeal decision of *Rex v Northumberland Compensation Appeal Tribunal* [1952] 1 KB 338 at 346–347:

[T]he Court of King's Bench has an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that the inferior tribunals keep within their jurisdiction, but also to seeking that they observe the law. The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it, offends against the law. … *When the King's Bench exercises its control over tribunals in this way, it is not usurping a jurisdiction which does not belong to it. It is only exercising a jurisdiction which it has always had*. [emphasis added]

48 Similarly, according to G P Selvam JC (as he then was) in the Singapore High Court decision of *Haron bin Mundir v Singapore Amateur Athletic Association* [1992] 1 SLR 18 at 24–25, [18]–[19] (this particular point was not, apparently, controverted on appeal: see *Singapore Amateur Athletic Association v Haron bin Mundir* [1994] 1 SLR 47, especially at 59, [57]):

The law makes a distinction between private law liability and public law illegality. The following is a lucid statement of the distinction between the two regimes: *An Introduction to Administrative Law* by Peter Cane (1985) at p 40:

> …
>
> *The public law activities of public bodies are subject to scrutiny and control by the High Court in the exercise of what is called its 'supervisory' jurisdiction*. Under this jurisdiction (which is 'inherent', that is, the product of common law rather than statute) the High Court has power to 'review' the activities of public authorities and, in some cases, of private bodies exercising functions of public importance such as licensing. To be contrasted with the supervisory jurisdiction is the court's appellate jurisdiction. The common law never developed mechanisms for appeals as we understand them today, and all appellate powers are statutory.

The expression 'supervisory jurisdiction' is a term of art. It is the inherent power of the Superior Courts to review the proceedings and decisions of inferior courts and tribunals or other public bodies discharging public functions.

[emphasis added]

49 The *inherent basis* of the High Court's supervisory jurisdiction provides a credible explanation why there was no need for Parliament to enact any express legislative provision regulating the High Court's powers of *supervision*. As Prof Tan has pointed out (see [46] above), this *supervisory* jurisdiction traditionally found expression in the High Court's power to exercise its power of judicial review over inferior tribunals through the issuance of the prerogative writs (reference may also be made to the observations of Lai Kew Chai J in the Singapore High Court decision of *Re Mohamed Saleem Ismail* [1987] SLR 369 at 372, [7]). The distinction between these powers of judicial review and the court's newly-found power of *revision* was affirmed by Lord Phillimore in the Indian Privy Council decision in *Annie Besant v Advocate General of Madras* AIR 1919 Privy Council 31, where his Lordship opined thus (at 35):

> The appellant based her demand partly upon the Code of Criminal Procedure and partly upon the supposed common law power to grant a writ of *certiorari*. She did not rely upon the power of revision given by the Code of Civil Procedure.
>
> …
>
> As to *certiorari* it was contended on behalf of the respondent in the High Court, that there is no power in the High Court to issue a writ of *certiorari*, or alternatively that the provisions of Section 22 forbid recourse to this writ in cases which come under the Press Act.
>
> …
>
> Supposing that this power [of issuing a writ of *certiorari*] once existed, has it been taken away by the two Codes of Procedure? *No doubt these Codes provide for most cases a much more convenient remedy*. But their Lordships are not disposed to think that the provisions of Section 435 of the Criminal Procedure Code [the equivalent of our current s 266] … are exhaustive. Their Lordships can imagine cases, though rare ones, which may not fall under … [this section]. For such cases, *their Lordships do not think that the powers of the High Courts, which have inherited the ordinary or extraordinary jurisdiction of the Supreme Court to issue writs of*

certiorari*, can be said to have been taken away*.

But assuming that the power to issue the writ remains, and that it might be exercised notwithstanding the existence of procedure by way of revision [the effect of] Section 22 [which purports to exclude any proceeding under the Police Act from being called into question by any Court, absent certain exceptional situations,] has still to be considered.

…

However that might be according to English Law, where there is no such revision procedure as in India, their Lordships see no reason for narrowing the express words of the Indian Act. *Certiorari* according to the English rule is only to be granted where no other suitable remedy exists. If the order of the magistrate were a judicial order, it would have been made in the exercise either of a civil or of his criminal jurisdiction, and procedure by way of revision would have been open.

[emphasis added]

50 The attribution of powers of judicial review to the courts' supervisory jurisdiction does, however, come up against a number of difficulties. In particular, a number of cases have treated the prerogative writs as being manifestations of the High Court's *revisionary*, and not supervisory, jurisdiction. In *In re Applications of Chong Fye Lee & Toong Hing Loong Tin Mining Co Ltd* [1965] 1 MLJ 29 ("*Chong Fye Lee*"), Azmi J held (at 31):

In order to dispose of this matter I think *I must further decide whether "a proceeding by way of revision" would include the exercise of powers in* certiorari.

…

In my opinion section 34 [the equivalent of s 27 of our SCJA] should be read with sections 32 and 33 [the equivalent of our ss 25 and 26].

… I would say that the proceedings referred [to] in these two sections are proceedings by way of revision. Having regard to the provisions of sections 32 and 33, I would be inclined to think that they include proceedings in *certiorari* for the purpose of inquiring into the legality of the decision of an inferior court. *For those reasons I am of the opinion that proceedings by way of revision referred to in section 34 would include revision under* certiorari.

[emphasis added]

51 A similar approach was adopted locally by our High Court in *Tan Hock Chuan v Tan Tiong Hwa* [2002] 3 SLR 145 ("*Tan Hock Chuan*"), which was a case involving a petition for criminal revision over district court proceedings seeking personal protection orders in the context of family violence. The respondent raised the preliminary objection that the petitioner was not entitled to take out a petition for criminal revision, alleging that the proceedings in the district court had not been in the nature of "criminal proceedings". Yong Pung How CJ agreed with the respondent, holding (at [8]–[9]) thus:

I agreed that [the petitioner] was not entitled to take out a petition for criminal revision. Under s 266 of the CPC, the High Court's power of criminal revision is clearly restricted only to examining the record of criminal proceedings. This section was inapplicable in the present case because *the orders made by [the district judge] arose out of civil proceedings for family violence governed by the Women's Charter.* …

> While s 266 of the CPC and s 23 of the SCJA were inapplicable, [the petitioner] was not left without recourse. By ss 24 and 25 of the SCJA, the High Court also has the power to call for and examine the records of any civil proceedings and give such orders thereon to secure substantial justice. *The proper mode for invoking the High Court's revisionary jurisdiction over civil matters is to apply for judicial review under O 53 of the Rules of Court and comply with the specific requirements in that Order*.
>
> [emphasis added]

52 The *dicta* in *Chong Fye Lee* and *Tan Hock Chuan*, if taken to their logical conclusion, would appear to suggest that the High Court's statutory revisionary jurisdiction has *completely superseded* the scope of its erstwhile supervisory jurisdiction. However, with respect, the approaches in these two cases failed to consider the considerable body of Indian jurisprudence which has explained that the Indian High Court's jurisdiction to issue the prerogative writs is derived from a source *distinct from and independent of* its appellate or revisionary jurisdictions. In *State of Uttar Pradesh v Dr Vijay Anand Maharaj* [1963] 1 SCR 1 ("*Dr Vijay*"), the Supreme Court of India considered the *type* of jurisdiction that had been conferred upon the Indian High Courts by way of Art 226 of the Indian Constitution, which gave these courts the discretion to issue prerogative writs. This Article is, in all material respects, to the same effect as s 18(2) of our SCJA read with para I of the First Schedule. According to the Supreme Court in *Dr Viyay* (at 14–16):

> This leads us to the consideration of the question of the scope of the proceedings under Art. 226 of the Constitution.
>
> Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. *This is neither an appellate nor a revisional jurisdiction of the High Court*. *Though the power is not confined to the prerogative writs issued by the English Courts, it is modelled on the said writs mainly to enable the High Courts to keep the subordinate tribunals within bounds*. Before the Constitution, the chartered High Court, that is, the High Courts at Bombay, Calcutta and Madras, were issuing prerogative writs similar to those issued by the King's Bench Division, subject to the same limitations imposed on the said writs. In *Venkataratnam* v. *Secretary of State for India*, a division Bench of the Madras High Court, consisting of Venkatasubba Rao and Madhavan Nair, JJ., held that the jurisdiction to issue a writ of certiorari was original jurisdiction.
> …
>
> *The Calcutta High Court, in* Budge Budge Municipality*v.* Mangru*, came to the same conclusion, namely, that the jurisdiction exercised under Art. 226 of the Constitution is original as distinguished from appellate or revisional jurisdiction; but the High Court pointed out that the jurisdiction, though original, is a special jurisdiction and should not be confused with ordinary civil jurisdiction under the Letters Patent*. The Andhra High Court in *Satyanarayanamurthi* v. *I. T. Appellate Tribunal* described it as an extraordinary original jurisdiction. It is, therefore, clear from the nature of the power conferred under Art. 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Art. 226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. *This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described as extraordinary original jurisdiction*.
>
> [emphasis added]

53 The *dictum* above makes it clear that the system of revisionary jurisdiction that Singapore inherited from India did *not* include the power to issue prerogative writs. Instead, to use the language of the court in *Dr Vijay*, this jurisdiction stemmed from the "extraordinary original jurisdiction" of the High Court to "keep the subordinate tribunals within bounds". In this context, the term "extraordinary original jurisdiction" was clearly just an alternative means of referring to the High Court's "supervisory" jurisdiction over inferior tribunals. That being the case, we ultimately formed the view that the High Court's inherent *supervisory* jurisdiction which existed historically at common law is *still* very much a part of our judicial system, *and* remains *distinct* from the statutory revisionary jurisdiction subsequently adopted by way of the 1900 Code (although it has been held, in the Singapore High Court decision of *Tan Eng Chye v The Director of Prisons (No 2)* [2004] 4 SLR 521, that an application for an order of (the prerogative writ) of *certiorari* would not be granted where the *appeal process* was the appropriate mode of redress). It therefore follows that the reference in s 27(1) of the SCJA to the High Court's "general supervisory and revisionary jurisdiction" should be treated as a *composite* reference to *two separate and distinct, albeit* related, bases of jurisdiction (*cf* also the Malaysian High Court decision of *Public Prosecutor v Muhari bin Mohd Jani* ([41] *supra*) at 124). Whilst it may be the case that s 27(1) will continue to be relevant *primarily* for its reference to the High Court's powers of *revision*, it would nevertheless do well for future courts to approach the language of "supervision" and "revision" in a more cautious manner *to avoid any unnecessary conflation or equation* of these two spheres of jurisdiction. Greater clarity in the use of terminology will encourage further consideration and reflection on the degree and areas of interaction between these two areas.

54 Although the historical evidence as well as arguments of principle and logic point to the distinction drawn above between supervision on the one hand and revision on the other, the time might well be right for the Legislature to consider clarifying the nature and scope of both doctrines in the context of the SCJA.

The High Court motion: Supervision or revision?

55 Turning now to consider whether Choo J was exercising his *revisionary* or *supervisory* powers under s 27(1) of the SCJA, we again found the applicants' conduct in this respect to be somewhat equivocal. Their filing of a *criminal motion* before Choo J was procedurally inconsistent *vis-à-vis both* the High Court's supervisory and revisionary bases of jurisdiction. To begin with, applications for criminal revisions are generally filed by way of a *petition*. This practice was noted with approval in the Singapore High Court decision of *Heng Lee Handbags Co Pte Ltd v PP* [1994] 2 SLR 760 at 766, [24], where MPH Rubin J observed that "though the CPC itself does not prescribe the form of application for revision, the mode employed by practitioners in criminal law, had always been by way of petition" (see also *Cigar Affair v PP* [2005] 3 SLR 648 at [9]–[10]). In contrast, attempts to invoke the High Court's *supervisory* jurisdiction by seeking judicial review are generally brought by way of an application under O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC") rather than a criminal motion. Once again, the applicants' procedural non-compliance in this area is reflective of a *deep-rooted confusion* as well as a lack of *conceptual clarity* as to what their applications, both before the High Court as well as before us presently, were in fact founded upon.

56 The differing procedural forms required to invoke the High Court's supervisory and revisionary jurisdiction are illustrated by the facts in the Malaysian High Court decision of *Re Muhamad Ali bin Hamid* [1999] 2 MLJ 703. In that case, the petitioner had originally sought to invoke the court's powers of revision by filing a *criminal application for revision*. Midway through the proceedings, upon realising that the court was not seised of such powers, he then sought to "transform" his application into an attempt to invoke the court's *supervisory* jurisdiction by way of judicial review instead. According to Zaleha Zahari J (at 719–720):

> Case law on this Act has shown that a magistrate's decision under the Act for the purpose of a rehabilitation decision is liable to be reviewed by way of judicial review. … The superior courts have an inherent jurisdiction to review the exercise by public bodies or officers of statutory powers impinging on legally recognized interests as well as the additional powers conferred by s 25(2) read with the Schedule to the Courts of Judicature Act 1964 [the equivalent of s 18(2) and the First Schedule of our SCJA]. ...
>
> *Counsel for the applicant has now conceded that the decision of the magistrate in question is not reviewable under [the powers of revision]. He instead now invites this court to exercise its power of supervisory jurisdiction pursuant to the powers conferred by s 25(2) of the Courts of Judicature Act 1964*. In the light of my ruling, that a magistrate has no power or jurisdiction to grant bail, the decision dated 18 March 1999 of the magistrate is liable to be set aside by an order of certiorari to quash, or by way of a declaratory order. Be that as it may the exercise of the power under s 25(2) however 'shall be exercised in accordance with any written law or rules of court relating to the same' of which [O] 53 of the Rules of the High Court 1980 applies*. I am of the view that it is not appropriate for this court to hop from its criminal jurisdiction over to its civil jurisdiction by converting this criminal application for revision into an application for judicial review without the need on the part of the applicant to comply with O 53 Rules of the High Court 1980*.
>
> [emphasis added]

57 Similarly, in the present case, in so far as the applicants had chosen to bring *criminal* proceedings in the High Court by way of their *criminal* motion, they could *not* now be heard to say that these *criminal* proceedings were in fact in the nature of *civil* proceedings to seek judicial review. To permit the applicants to successfully make this argument would involve an unacceptable degree of adventitious extrapolation. Litigants should not be allowed the luxury of "switching" their cases between the criminal and civil realms with complete impunity. To allow parties to successfully mount such arguments would encourage future resort to unorthodox and objectionable manoeuvres in the hope of circumventing onerous procedural requirements (here, those in O 53 of the ROC).

58 For these reasons, we rejected Mr Ravi's submission that the proceedings before Choo J related to his *supervisory* jurisdiction. Though the applicants *should* have filed a petition for criminal revision, their filing of the *criminal motion* itself led us to conclude that they had *effectively* sought to invoke the High Court's *criminal revisionary* jurisdiction under the relevant provisions of the SCJA read with the CPC. It followed from this that the present proceedings before *this court* were, in effect, attempted *appeals* against decisions of the High Court made in exercise of its criminal revisionary jurisdiction.

59 In our view, it was patently evident that this court does *not* have the jurisdiction and power to entertain such appeals. The *absence* of any *appellate* jurisdiction over the *High Court's revisionary* jurisdiction is (as we have already pointed out) clear from the express language of s 29A(2) of the SCJA itself. This has been confirmed in the jurisprudence, which has unequivocally rejected any right of appeal against a determination of the High Court made in the exercise of its revisionary jurisdiction: see, example, *Summit Holdings* ([17] *supra*) at [20].

60 More importantly, the absence of any right to appeal *from an exercise of the High Court's powers of revision* has been confirmed by the Singapore Parliament. The parliamentary debates on the 1993 amendments to the SCJA are evidence that the *lack* of any reference to such a right of appeal is an *intentional* one. During these debates, Prof Walter Woon had in fact suggested inserting the words "or revisionary" between the words "original" and "jurisdiction" in s 29A(2) so as to confer this

court with appellate jurisdiction over cases involving the High Court's revisionary jurisdiction: *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at cols 108 to 109. This suggestion was unequivocally rejected by the Minister of Law, Prof S Jayakumar, in the following terms (see *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at cols 109–111):

> … I would say that these … amendments … cannot be agreed to for the following reasons. *First of all, there is no need to provide for an appeal to the Court of Appeal from the decision of the High Court in exercise of its revisionary jurisdiction*. Revisionary jurisdiction of the High Court is, in practice, normally exercised in favour of the accused, not the prosecution. This has been the practice. In practice, the sentences are never enhanced on revision as opposed to appeal, except where the court below was unaware of a mandatory minimum sentence. The objective of revision is not to enhance sentences, but to correct obvious mistakes of a court below, especially where appeals are not available. … Therefore … this amendment is, in my view, not necessary.
>
> …
>
> *[T]here are many things which the courts in the development of the law are dependent on practice and evolution of precedents and this is one of the areas*. As Assoc. Prof. Walter Woon pointed out earlier, there is a background to the origins of the power of revision. It dates back to the days where there were non-professionals, non-lawyers, who were magistrates and judges. That taken together with the other amendment which this House has approved, that is, the Courts can look at the debates and proceedings of this House to ascertain the intention of the legislature, I think today's proceedings should not leave anyone any doubt as to what the intent of this amendment is.
>
> [emphasis added]

61 It is patent from this excerpt that the Court of Appeal does *not* have appellate jurisdiction over decisions made by the High Court pursuant to its revisionary jurisdiction. In the circumstances, therefore, the present application, *if* it indeed constituted an *appeal* against Choo J's decision, was misconceived because this court did not have the requisite appellate jurisdiction to hear it.

The Court of Appeal's supervisory and revisionary jurisdiction

62 Apart from suggesting that the present proceedings constituted an appeal against Choo J's decision, Mr Ravi also suggested before us that the present proceedings were in the nature of being a *discrete* application brought *directly* before this court. This line of argument was, unfortunately, as ill-founded as the other arguments made before us. Most of the objections to this argument have already been addressed when dealing with the applicants' other arguments above. We will therefore confine ourselves to highlighting the most fatal deficiencies in the applicants' purported reliance on this particular basis of jurisdiction.

63 It is clear from the SCJA that the Court of Appeal's criminal jurisdiction is generally of an *appellate* nature. This is clear from s 3(*b*) of the SCJA, which provides that "the Court of Appeal … shall exercise *appellate* civil and criminal jurisdiction" [emphasis added]. Once again, s 29A(2) of the SCJA (reproduced above at [28]) is the pertinent provision. An even cursory reading of this last-mentioned provision will reveal that this court has no jurisdiction or power under the provision to hear any proceeding *other than an appeal* against a decision made by the High Court in the exercise of *its* (*viz*, the *High Court's*) *original jurisdiction*. This, by necessary implication, excludes any possibility of *this court* possessing the jurisdiction and power to entertain applications for the *revision* or

supervision of a decision made by a *subordinate court*. Such jurisdiction and power are, if at all, to be exercised *only* by the *High Court* pursuant to s 27 of the SCJA (reproduced above at [36]). There are, in fact, *no provisions whatsoever* in the SCJA which confer on the *Court of Appeal* the power to exercise *revisionary or supervisory* jurisdiction over the *subordinate courts*.

64 To our minds, it was incontrovertible that we did not have the power to issue any directions to the trial judge by way of *revisionary or supervisory* jurisdiction over the proceedings *in the Magistrate's Court*. Accordingly, it is our view that if the present criminal motion indeed represented an attempt, as Mr Ravi submitted, to invoke these non-existent forms of jurisdiction, we found ourselves with no option but to dismiss the application *in limine* for a blatant want of jurisdiction.

Abuse of the process of the court

65 Our discussion thus far sufficed to dispose of the applicants' motion before us. For the various reasons considered above, the present proceedings suffered from innumerable procedural and jurisdictional defects, *each* of which constituted a sufficient reason, in itself, to warrant the dismissal of the motion. Upon further reflection, these egregious and blatant flaws which plagued the applicants' motion led us to form the view that the present application was not only misconceived, but might also even be considered to be bordering on – if not actually constituting – an abuse of the process of the court. The applicants' attempt to obtain a further hearing before us amounted, at its heart, to an unmitigated and illegitimate attempt to relitigate what had already transpired before Choo J as well as before the trial judge. The objectionable nature of such conduct was exacerbated by the fact that the applicants in the present proceedings would, *in any event*, have been afforded with the opportunity to seek redress for this perceived and alleged injustice through *a substantive appeal* following the conclusion of the trial before the Subordinate Courts. The applicants' commencement of these proceedings before us therefore amounted to a wholly improper attempt to ultimately secure themselves with no fewer than *three "bites"* of the proverbial cherry.

66 Indeed, when presented with this issue, Mr Ravi's response was as follows:[note: 4]

> Phang JA: [B]ut Mr Ravi, do you realise that by that time you'd have had three bites at the cherry with respect to this issue - one before Justice Choo, another before us, and yet another on appeal? Is that right? Can that be right?
>
> …
>
> > I am asking this with all due seriousness. You would have had one bite of the cherry at the---before Justice Choo, another before us, and yet another you say perhaps if---on appeal against the Sub Court's decision if the decision goes against your client. How can that be right, Mr Ravi?
>
> Ravi: Is it my fault?
>
> Phang JA: *How can that be fair?*
>
> R a v i : *Sir, it's not my fault. That is how the law is drafted, had been drafted by Stephen's Digest. …*
>
> [emphasis added]

67 Counsel's responses in the face of these questions were extremely telling. Despite having extolled the virtues of substantive justice and the need to ensure that our rules of criminal procedure accorded with the dictates of fairness, he seemed completely unfazed when faced with the contrary argument that it was *his clients* who had, in effect, attempted to *unjustly* secure a *procedural* advantage for themselves. The dexterity with which Mr Ravi alternated between his arguments advocating substance over procedure, and this comparably more "black-letter" law approach, indicated nothing if not the applicants' determination to manipulate legal principle and upset established procedure to secure any (and every) possible advantage to themselves.

68 Indeed, in our view, the applications before Choo J and before this court ought not to have been brought in the first instance. Issues such as that which constituted the basis of the application in the present proceedings ought to have been raised as part of the grounds of *appeal* if the decision in the substantive proceedings (here, before the subordinate court) had in fact gone against the applicants. If issues such as the present were taken up through *separate* proceedings at *any* and *every* opportunity (or at the whim of the party concerned or even occasionally), the conduct of a criminal trial would be seriously impeded and delayed. Regardless of the intentions of the party raising such issues, this would itself be a consequence which is wholly undesirable. On a broader (but no less important) level, this also serves as a paradigm illustration of how "*abuse* of process" often results from actions taken in the ostensible name of "*due* process".

69 In the recent case of *Yap Keng Ho v PP* [2006] SGHC 201, the applicant had, in a manner not unlike that adopted by the present applicants, filed a criminal motion to the High Court seeking a declaration that his trial in the Subordinate Courts was a "mistrial". As in the present case, the application was filed in the High Court *even before* the trial in the Subordinate Courts had come to a close. In our view, the remarks made by Choo J, in dismissing the application, are of broader purport and apply equally to the present case. According to Choo J (at [6]–[7]):

> The term "justice" sometimes connotes desert, and sometimes, fairness, and, sometimes, some vague intuitive notion of what was right in the circumstances. In the present case, the applicant's complaint of injustice was really directed against the trial judge's refusal to "abort" the trial. Trial judges do not "abort" the trials which they are trying. If there has been any wrong done which the judge has the power to correct, then he must do his duty accordingly. *If any party to those proceedings is dissatisfied with the ruling or direction that the judge so made, then the proper recourse should be for that party to reserve his objections until an appeal is brought against the final decision of the judge. It would be inappropriate and, in many instances, wrong, for a party to seek recourse to a higher court before judgment has been handed down*. This is because the judge might ultimately agree with counsel in his submission, and rule in that party's favour. This is precisely the situation here. The Prosecution had not closed its case and the judge had not ruled as to whether there was a case for the Defence to answer. *In these inchoate circumstances, there was no basis upon which I could determine what the nature and extent of the injustice was. Justice and its mirror image, injustice, are often determined by the consequences or imminent consequences of the act in question, and the interests of all parties must also be taken into account*. Where a conflict of the respective interests arises such that one might have to accommodate or give way to another, the judge will have to decide which takes precedence. There was nothing imminently fatal to the applicant's case at the point when this motion was filed. If the trial judge were to subsequently find that the facts were in the applicant's favour or discharge and acquit him, the presence of the investigating officer in the courtroom would not have occasioned any injustice to the applicant. The applicant's complaint about the presence of the investigating officer was one that a judge is routinely expected to deal with. Among other such matters would be decisions relating to the admissibility of evidence.

> The rule of law operates within the framework of the legal system and that, in turn, is built not only around the institutions of law but also the laws. One of the merits of the rule of law is the uniformity and predictability of the law which is essential for people to know what it is that they can or cannot do in that society. The procedure for trial and the rules of evidence are among matters over which the trial judge has full control. He makes all the rulings and decisions that arise in the course of the trial such as he thinks will help him conduct the proceedings rightly and justly, and, ultimately, to help him arrive at the verdict. Where a party is dissatisfied with the verdict, he may resort, by way of the appeal process, to bringing his case before a superior court. The High Court's revisionary jurisdiction over a subordinate court's proceedings is one way through which matters that do not normally fall within the appeal process might nevertheless be brought before the High Court. *Where the appeal process is available, as is the case here, the High Court's revisionary jurisdiction should not liberally be invoked. The filing of a criminal motion certainly cannot be used to interrupt a trial each time a party is unhappy with any ruling that the trial judge makes in the course of a trial. A trial judge would have to make numerous rulings in the course of a trial; each ruling would be adverse to one if not the other party, and sometimes to both. The trial will be constantly interrupted if every ruling is challenged before the trial has ended. The flow and dignity of a trial interrupted in such fashion tarnishes the image of the rule of law*. There may, of course, be exceptions to any law; otherwise, equity would have no role in shaping justice in areas where the law is inadequate. The question then is: did the applicant's case fall within any exception? He made no reference to any exceptional circumstances. And I found nothing exceptional in his [case] – apart from the applicant's attempt to disrupt the trial at the incipient stage for the reason that the investigating officer was present in court when three witnesses were giving their evidence.
>
> [emphasis added]

70 Of similar effect were the same judge's observations in the related decision of *Chee Soon Juan v PP* [2006] SGHC 202 at [4]:

> One of the most important principles of fairness in a trial is that no judgment should be passed until the trial has been completed. We generally conceive of this principle as applying to the trial judge's determination of the merits of the litigants' cases. *The present motion before me made me think that it is time to issue a reminder that this principle applies also to persons sitting in judgment over the trial judge's conduct of the proceedings. No one ought to judge any of his rulings until the trial is over*. The proper procedure in this case was for the applicant to take his case on appeal in accordance with the rules and law of appeals. Unfortunately, that was not done. [emphasis added]

71 And, in the Singapore High Court decision of *Koh Thian Huat v PP* [2002] 3 SLR 28, Yong Pung How CJ observed thus (at [17]):

> *The High Court must therefore jealously guard its revisionary jurisdiction from being abused by frivolous and unmeritorious applications.* The revisionary powers should never be misused as an avenue for litigants to commence a 'backdoor appeal'. [emphasis added]

72 These judicial *dicta* serve as a valuable reminder to future litigants that the avenue of criminal revision should not be liberally resorted to as a means of securing an additional (and wholly unjustified as well as unprincipled) "tier" of appeal against subordinate court proceedings. Our comments in this regard are in part directed towards the increasingly prevalent practice in recent months of filing criminal motions before the High Court at *every available juncture*. Indeed, the present proceedings constitute an excellent illustration of how such criminal motions have even been

filed before the *Court of Appeal*. This is *even more* unjustified in the light of the reasons we have set out in detail above. It is clear that, in similar circumstances, *no* criminal motions *or* appeals ought henceforth to be brought before this court. A general (but very important) word of caution should be given: Although there could possibly have been an abuse of the process of the court by the present applicants, we were (once again) prepared to give them the benefit of the doubt simply because, prior to this decision, it was not entirely clear that the applications before Choo J and (in particular) before this court ought not to have been brought. However, there is now *no excuse* for *future* litigants to adopt a course of action similar to those adopted by the applicants in the present proceedings. Litigious parties who are found to have commenced duplicitous proceedings may find themselves (or, in appropriate cases, their counsel) the subject of sanctions, not least of which may be an order of costs: see, generally, the observations in the Malaysian High Court decision of *PP v Tanggaah* [1972] 1 MLJ 207, *per* Sharma J. The court can – and must – prevent the improper use of its process and machinery (and see the Singapore Court of Appeal decision of *Salwant Singh s/o Amer Singh v PP (No 2)* [2005] 1 SLR 632 at [18]). We frankly find it quite astounding – and wholly unacceptable – that litigants who ostensibly extol and advocate the need to uphold rights and fairness could so blatantly indulge in conduct which *contradicts* the very ideals they purportedly espouse and stand for.

73 Indeed, it is trite law that the revisionary powers of the High Court conferred by both the SCJA and the CPC are to be exercised sparingly (see, for example, the Singapore High Court decisions of *Ang Poh Chuan v PP* [1996] 1 SLR 326 ("*Ang Poh Chuan*") at [13]; *Knight Glenn Jeyasingam v PP* ([26] *supra* at [22]); *Ngian Chin Boon v PP* [1999] 1 SLR 119 at [7]; *Teo Hee Heng v PP* [2000] 3 SLR 168 at [7]; and *Mohamed Hiraz Hassim v PP* [2005] 1 SLR 622 at [11]). In *Knight Glenn Jeyasingam v PP*, Yong Pung How CJ observed thus (at [22]):

> The authorities demonstrate that the revisionary jurisdiction of the High Court is not to be ordinarily invoked merely because the court below had taken a wrong view of law or failed to appreciate the evidence on record. Even if a different view is possible, there will be no revisionary interference where the court below has taken a view of the evidence on record and no glaring defect of procedure or jurisdiction has taken place …

74 We have, in fact, seen that the *original rationale* for the revisionary powers of the High Court was rooted in a context that is *radically different from that which obtains at the present day* (see generally above at [45] and [60]), when magistrates and judges are all legally trained – and to a generally high level of legal proficiency we would now come to expect not only in the Singapore context but across the Commonwealth as well. Indeed, in a similar vein, one writer has even queried whether this particular jurisdiction has "outlived its usefulness" and whether it might "become an embarrassment" (see Tan Yock Lin ([45] *supra* at para 4552). The same author proceeds to observe thus (see *id*):

> The revisionary jurisdiction was intended and designed to be simpler because not many lower court judges were legally trained. And it might also have been thought unfair to allow injustice to be perpetrated by inferior judges. In short, when the training and experience of inferior judges could not be taken for granted, revision served as a cheap and assured means of interference. When subordinate judges are as well-qualified as they are nowadays, the system begins to look anachronistic. To some, its continuance can scarce be justified.

75 Despite these comments, we remain acutely aware that the fate of revisionary jurisdiction lies, in the final analysis, in the hands of the Legislature as a matter of policy. It should, nevertheless, be noted that although the context against which doctrines (such as revision) apply can evolve over time, that very evolution might not, in fact, render the doctrine concerned redundant. Indeed,

revision can – and does – continue to serve a useful purpose, especially in egregious situations where serious injustice would otherwise result. However, that having been said, the exercise of this jurisdiction must necessarily continue to be administered in accordance with established principles. In this regard, a comprehensive rendition of these principles (which should always be borne in mind and, more importantly, be closely followed) may be found in the oft-cited Singapore High Court decision of *Ang Poh Chuan* ([73] *supra*), where Yong Pung How CJ observed thus (at 329–330, [13]–[20]):

> The governing principle of revision was stated by Hepworth J in *Re Radha Krishna Naidu* [1962] MLJ 130:
>
> > [The court] should only exercise revisional powers in exceptional cases when there has been a denial of the right of a fair trial or it is urgently demanded in the interest of public justice [at p 131].
>
> Though that was said in the context of an application by a party involved in a private prosecution, it applies generally in all situations. Similar sentiments were expressed in Indian cases. In *State of Orissa v Nakula Sahu* AIR 1979 SC 663, Jaswant Singh J delivering the judgment of the Supreme Court of India said:
>
> > [It] is now well settled that normally the jurisdiction of the High Court under [the equivalent section] is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. [666]
>
> Earlier in *Akalu Ahir v Ramdeo Ram* AIR 1973 A 2145, Dua J, delivering the judgment of the Supreme Court, stated:
>
> > Now adverting to the power of revision conferred on a High Court by [the equivalent sections] it is an extraordinary discretionary power vested in the superior court to be exercised in aid of justice; in other words, to set right grave injustice. The High Court has been invested with this power to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that the subordinate courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power, in spite of the wide language of [the equivalent sections] Cr P C, does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice [at p 2147].
>
> In *Amar Chand Agarwala v Shanti Bose* AIR 1973 SC 799, it was noted that:
>
> > Even assuming that the High Court was exercising jurisdiction under [the equivalent section], in our opinion, the present was not a case for interference by the High Court. The jurisdiction of the High Court is to be exercised normally under [the equivalent section], Criminal Procedure Code, only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice [at p 804].
>
> *Thus various 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.

The petitioner quoted a statement from the case *of Emperor v Nasrullah & Ors* AIR 1928 A 287:

> [The] object of this revisional legislation was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice, arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals [at p 288].

Taken as a whole, there is nothing wanting in that statement. However, it is possible to misconstrue it as importing a requirement of something less than serious injustice, particularly in its last reference to undeserved hardship to individuals. A misconception of law may undoubtedly cause undeserved hardship. Be that as it may, revision cannot without more always be invoked to remedy that for, if it were otherwise, such jurisdiction would be little more than another form of appeal, and that is clearly not the intention of the statute, nor is it the conclusion that can be reached after considering all of the cases cited. This court was aware that the statement was cited with approval in *Heng Lee Handbags Co Pte Ltd & Anor v PP* [1994] 2 SLR 760 by Rubin J, but that was in the context of whether a procedural defect in the petition would affect the jurisdiction.

Locally, the revisionary jurisdiction has been considered a number of times, including in *Heng Lee*. But in all cases where applications for revision have been allowed, there is little doubt that there was injustice, for example, because a plea of guilty was taken when it should not have been or, as recently, when a judge exceeded his powers: *PP v Nyu Tiong Lam* [1996] 1 SLR 273. Indeed, *Heng Lee* itself is instructive, for in that case, though it would appear that there was irregularity in the exercise of a power by a magistrate, the reason the application was dismissed was that no serious injustice was caused to the petitioner.

[emphasis added]

Conclusion

76 In the premises, we dismissed the present application as being misconceived.

[note: 1] See the transcript of the proceedings ("Transcript") at pp 25, 28 and 42.

[note: 2] See Transcript at pp 12–15.

[note: 3] See Transcript at pp 20–25.

[note: 4] See Transcript at pp 39–40.