IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 235

Criminal Motion No 30 of 2022

Between

Jason Sim Chon Ang

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Trials — Taking and recording of evidence in]
[Criminal Procedure and Sentencing — Criminal review]

TABLE OF CONTENTS

Sim Chon Ang Jason
v
Public Prosecutor

[2022] SGHC 235

General Division of the High Court — Criminal Motion No 30 of 2022
Tay Yong Kwang JCA
19 August 2022

26 September 2022

Tay Yong Kwang JCA:

1 HC/CM 30/2022 ("CM 30") was an application to the General Division of the High Court ("High Court") "to exercise its powers under section 283 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") by granting the Applicant permission to adduce further evidence at the hearing of DAC 924315 to 942319 of 2018 in the form of oral testimony from Mr Alexander Chua Hock Yew" ("the Witness").[1] The said hearing referred to a trial that was ongoing in a District Court ("the Trial"). After considering the parties' written and oral submissions, I dismissed the application. I now set out my reasons.

---

[1] HC/CM 30/2022 filed on 15 June 2022.

Background facts

Charges faced by the applicant in the Trial

2 At the Trial, the applicant faced five charges under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for perpetrating a scheme to cheat three banks – DBS Bank Ltd ("DBS"), Standard Chartered Bank (Singapore) Limited and Malayan Banking Berhad (together, "the banks") – by causing them to extend loans to one Jason Parquet Specialist (Singapore) Pte Ltd ("JPS") under invoice financing facilities between 7 September 2012 and 16 March 2015. At the material time, the applicant was a director, the Chief Executive Officer and founder of JPS. JPS was in the business of supplying and installing a range of timber flooring products.[2]

3 JPS was alleged to have submitted fictitious invoices and delivery orders prepared by one of its timber suppliers, Tati Trading Pte Ltd ("Tati"), in support of invoice financing applications. These invoices and delivery orders purported to show that certain goods had been delivered in good order and condition by Tati to JPS. However, the goods stated in the fictitious documents bore no relation to any genuine supply of goods from Tati to JPS. It was alleged that because of these fictitious documents, funds were disbursed by the banks to Tati.[3] A co-accused, Tjioe Chi Minh ("Tjioe"), the managing director and shareholder of Tati, was charged with five similar charges for intentionally aiding the applicant to commit the cheating offences.

---

2 Appellant's Written Submissions dated 11 August 2022 ("AWS") at para 3; Respondent's Written Submissions dated 8 August 2022 ("RWS") at para 6; Phipps Jonathan's affidavit dated 14 January 2022 ("Phipps' Affidavit") at para 5.

3 RWS at para 7.

4 The applicant also faced one charge under s 76(1)(*a*)(ii)(B) punishable under s 76(5) read with s 408(3)(*b*) of the Companies Act (Cap 50, 2006 Rev Ed). The basis of this charge was the usage of the loan monies disbursed in the first cheating charge to give financial assistance to Tjioe to purchase shares in Jason Parquet Holdings Limited ("JPH"), the parent company of JPS.[4] JPH was publicly listed on the Singapore Exchange's Catalist board on 25 September 2012.[5]

Status of the Trial

5 The Trial began on 30 September 2020 and took place over 27 days. On 23 April 2021, the Prosecution closed its case.[6] By 18 May 2022, both the applicant and Tjioe had closed their cases for the defence.[7] On 18 May 2022, the District Judge ("DJ") directed the parties to file and exchange closing submissions by 17 June 2022 and to file and exchange their replies, if any, by 24 June 2022.[8] When CM 30 was filed by the applicant on 15 June 2022, the DJ stayed the Trial indefinitely pending the conclusion of CM 30.[9] The DJ has therefore not heard closing submissions yet.[10]

Previous applications in the Trial for the Witness to give evidence

6 Before CM 30 was filed, the applicant made several applications to the DJ for the Witness to give evidence at the Trial. The Witness appeared to reside

---

4 AWS at para 3(b); RWS at para 9; Phipps' Affidavit at para 5.

5 RWS at para 6.

6 RWS at para 4(iii).

7 AWS at para 6; RWS at para 1.

8 Notes of Evidence ("NE"), 18 May 2022, p 17:8–10 (Respondent's Bundle of Documents ("RBOD") 66).

9 RWS at para 23.

10 Phipps' Affidavit at para 6.

in the People's Republic of China ("China").[11] The applicant stated that the Witness was JPS' former relationship manager at DBS.[12] Some applications were for the Witness to give evidence by video link, while others were for the Witness to testify physically in Singapore. The first of these applications was made on 3 August 2021.[13] The final application was brought on 18 May 2022.[14] For reasons that are not relevant to CM 30, the DJ rejected those applications. None of those applications to the DJ was based on the change in circumstances on which the applicant now relies in CM 30 to seek an order under s 283 of the CPC. The DJ was therefore not apprised of the asserted change in circumstances (see [10]–[11] below).

CM 30

7 CM 30 seeks an order:

> … for the Honourable Court to exercise its powers under section 283 of the Criminal Procedure Code 2010 by granting the Applicant permission to adduce further evidence at the hearing of [the Trial] in the form of oral testimony from [the Witness].

8 Section 283 of the CPC states:

> **Power of court to summon and examine persons**
>
> **283.**—(1) A court may, on its own motion or on the application of the prosecution or the defence, at the close of the case for the defence, or at the end of any proceeding under this Code, summon a person as a witness or examine a person in attendance as a witness, whether or not summoned, or recall and re-examine a person already examined.

---

11 Phipps' Affidavit at para 16; RWS at para 12.

12 NE, 3 August 2021, p 87:7–9 (RBOD 11); see also AWS at para 28.

13 NE, 3 August 2021, p 84:3–5 (RBOD 8).

14 RWS at para 22; NE, 18 May 2022, pp 15:17–27, 17:2–3 (RBOD 64 and 66).

> (2) The court must summon and examine or recall and re-examine such a person if it thinks the person's evidence is essential to making a just decision in the case.
>
> (3) The exercise by a court of its power under subsection (1) is not a ground for appeal, or for revision, unless the appellant or the applicant (as the case may be) shows that the examination has led to a failure of justice.

Applicant's submissions

9 The applicant's counsel submitted that it was unclear if the "court" in s 283 CPC referred only to the trial court or included the High Court. He believed that it was open to him to apply by way of criminal motion for an order from the High Court to direct the DJ to allow the Witness to be called at the Trial. In support of this, he cited the example of accused persons being able to apply to the High Court in bail matters.

10 The applicant's counsel also submitted that there was a material change in circumstances. Previously, the Witness was not able to travel to Singapore because of the pandemic travel restrictions imposed in China. However, China may be "calibrating [its] approach to COVID-19 with the rest of the world. On 18 May 2022, China announced that it would be lifting some of the COVID-19 test requirements and shorten the departure quarantine for some inbound travellers."[15] The applicant's counsel asserted that the Witness has agreed to come to Singapore from 7 to 21 November 2022 to testify at the Trial.

11 The applicant's counsel accepted that he did not apply under s 283 CPC ("s 283 application") before the DJ based on the asserted change in circumstances (see [6] above). Instead, he brought this s 283 application directly to the High Court.

---

15 Phipps' Affidavit at paras 20–21.

Prosecution's submissions

12 The Prosecution submitted that the applicant appeared to be invoking the High Court's revisionary jurisdiction in seeking an order summoning the Witness.[16] However, the Prosecution argued that the applicant had not shown that there was "serious injustice" in the present case.[17] It submitted that CM 30 was procedurally flawed because the applicant should have applied to the DJ to summon the Witness under s 283(1) CPC. By applying directly to the High Court, the applicant was circumventing the trial court.[18] Since the trial court had not made any determination in this matter, there was no basis to invoke the High Court's revisionary jurisdiction.

13 The Prosecution also argued that CM 30 concerned an interlocutory matter and that the proper time to refer such a matter to the High Court was after the DJ's determination at the conclusion of the Trial.[19] Procedurally, therefore, CM 30 was an abuse of process that disrupted the Trial.[20]

14 The Prosecution submitted that there was no "serious injustice" substantively because the evidence of the Witness was not essential to reaching a just decision at the Trial. It argued that as the name and the role of the Witness in the applicant's defence were mentioned by the applicant only when he was being re-examined by his defence counsel at the Trial, the inference must be

16 RWS at para 29.

17 RWS at para 33.

18 RWS at para 34.

19 RWS at para 35.

20 RWS at para 37.

that the Witness was an afterthought in the applicant's defence.[21] The Prosecution went on to discuss the evidence adduced at the Trial.

The court's decision

15 I dismissed CM 30 on the procedural ground. I will not comment on the substantive issue of whether the Witness' intended testimony is "essential to making a just decision in the case" within the meaning of s 283(2) of the CPC as this is an issue that should be determined by the trial court.

16 It was obviously procedurally improper for the applicant to ask the High Court to intervene in an ongoing trial in the District Court by making a s 283 CPC application directly to the High Court. The applicant's analogy between s 283 CPC and the High Court's powers in s 97 CPC regarding bail – to show that an accused person was entitled to make a s 283 application directly to the High Court while proceedings were ongoing in the District Court – was flawed. Section 97 reads as follows:

> **Powers of General Division of High Court regarding bail**
>
> **97.**—(1) Subject to section 95(1) and subsection (2), at any stage of any proceeding under this Code, the General Division of the High Court may —
>
> (*a*) release any accused before the General Division of the High Court on bail, on personal bond, or on bail and on personal bond;
>
> (*b*) vary the amount or conditions of the bail or personal bond required by a police officer or a State Court, or impose such other conditions for the bail or personal bond as the General Division of the High Court thinks fit;
>
> (*c*) where a State Court orders the release of a person on bail, on personal bond, or on bail and on personal bond, stay execution on the order pending a

[21] RWS at paras 38 and 39.

> review of the order by the General Division of the High Court; or
>
> (*d*) direct that any person who has been released on bail, on personal bond, or on bail and on personal bond, under this Division be arrested, and commit that person to custody.
>
> (2) Where —
>
> (*a*) a State Court orders the release on bail, on personal bond, or on bail and on personal bond, of a person accused of a non-bailable offence; and
>
> (*b*) the prosecution applies to the General Division of the High Court to stay execution on the order pending a review of the order by the General Division of the High Court,
>
> the General Division of the High Court must stay execution on the order pending a review of the order.

17 Section 97(1) permits the High Court to intervene in bail matters "at any stage of any proceeding" under the CPC. For instance, Choo Han Teck J in *Christanto Radius v Public Prosecutor* [2012] 3 SLR 749 at [6] referred to s 97 of the Criminal Procedure Code 2010 (Act 15 of 2010) as a "statutory power of review" over the District Judge's decision in that case to refuse the grant of bail (see also s 93(3C) CPC).

18 However, s 283(1) CPC does not empower the High Court to summon a person as a witness in proceedings which are pending before a lower court. Section 283(1) states that "[a] court may, on its own motion or on the application of the prosecution or the defence, at the close of the case for the defence, or at the end of any proceeding under this Code, summon a person as a witness or examine a person in attendance as a witness, whether or not summoned, or recall and re-examine a person already examined." It is plain from the language of s 283(1) that the provision contemplates the tail end of a trial or other proceedings before a court of original jurisdiction and that any application under the provision is made in the ongoing proceedings to that court. The power to "recall

and re-examine" witnesses indicates that the provision concerns the trial court making the finding of facts. This is reinforced by the Court of Appeal in *Sim Cheng Hui and another v Public Prosecutor* [1998] 1 SLR(R) 670 at [28],[22] which stated that s 399 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), the predecessor of s 283 CPC, was "for a trial judge" to exercise. Clearly, s 283 does not contemplate an application being made to a higher court, whether by invoking its appellate or its revisionary jurisdiction, while the proceedings in the trial court are still going on.

19 In this application, the applicant could not be invoking the High Court's original jurisdiction as this resided with the District Court which is still hearing the ongoing Trial. The applicant also could not be invoking the High Court's appellate jurisdiction as no s 283 application based on the change in circumstances was made to the DJ and there was no decision to appeal against at all. If the applicant was seeking to invoke the High Court's revisionary jurisdiction, this was similarly a non-starter. As Sundaresh Menon CJ stated in *Xu Yuanchen v Public Prosecutor and another matter* [2021] 4 SLR 719[23] ("*Xu Yuanchen*") at [20], "revisionary jurisdiction may only be invoked when two conditions are fulfilled. First, there must be some error in the decision or order made by the judge below and second, material and serious injustice must have been occasioned as a result." As the matter stood, there was no decision made by the DJ and therefore there could not have been any material and serious injustice to complain of. As the Prosecution pointed out, the "correct procedure would therefore be for the Applicant to inform the trial judge of the change in

22 Respondent's Bundle of Authorities ("RBOA") 94.

23 RBOA at Tab 7.

circumstances, and seek a fresh ruling on the issue under s 283(1) of the CPC."[24] CM 30 was therefore fundamentally flawed as a matter of procedure.

20 Even if the applicant had first made the present s 283 application to the DJ and the DJ had refused to summon the Witness, there could still be no appeal against that ruling made in the course of a trial. In *Xu Yuanchen*, Menon CJ summarised the position with regard to appeals in interlocutory matters in these terms:

> 10 Generally, directions and orders given on interlocutory matters are not appealable. This broad prohibition was stated in our jurisprudence by Sir Alan Rose CJ in *Public Prosecutor v Hoo Chang Chwen* [1962] MLJ 284, who considered that appeals against interlocutory rulings would stifle the course of criminal trials 'on points which are in their essence procedural', and that the proper time to take those points would be upon appeal 'after determination of the principal matter in the trial court'. After all, in the course of a typical trial, the trial judge can be expected to make numerous interlocutory rulings and it would pose impossible difficulties for the expeditious conduct of the trial if each and every one of these could be appealed.
>
> 11 This is also an expression of the law's concern with curbing unreasonably litigious behaviour. In the criminal context, this is a serious concern, not just as a matter of practical policy but as a matter of justice as well. As Choo Han Teck J has observed, frequent interruptions of a trial disrupt 'the flow and dignity of a trial' and '[tarnish] the image of the rule of law': *Yap Keng Ho v Public Prosecutor* [2007] 1 SLR(R) 259 ('*Yap Keng Ho*') at [7]. In a similar vein, Chan Sek Keong CJ cautioned against 'disrupted and fractured criminal trials' which create 'unacceptable delays in their final disposal': *Azman bin Jamaludin v Public Prosecutor* [2012] 1 SLR 615 ('*Azman*') at [44].
>
> 12 Moreover, it is difficult to justify appellate intervention in 'inchoate circumstances' where there is little basis for a judge to evaluate what the nature and extent of any alleged injustice is: *Yap Keng Ho* at [6]. If there are any errors, those may be corrected on appeal: *Azman* at [44] and [51]. Barring something 'imminently fatal to the applicant's case' (*Yap Keng Ho* at [6]), the law does not countenance such premature applications in

[24] RWS at para 34.

> the middle of trial. In short, such appeals are not absolutely barred though they must clear a high hurdle before they will be entertained.

21 If the applicant makes the s 283 application to the DJ and the DJ does not grant it and eventually convicts the applicant, it is open to the applicant to challenge the correctness of that ruling in an appeal against conviction. If the High Court on appeal holds that the DJ was wrong to have refused to summon the Witness, the High Court will then make the appropriate orders based on the justice of the entire case.

22 In similar vein, the High Court will not exercise its revisionary jurisdiction over a State Court's procedural rulings in the course of ongoing proceedings. This principle prevents the same mischief that would arise in appeals against interlocutory rulings. Menon CJ stated that a court hearing an application for revision should consider three factors (*Xu Yuanchen* at [16]):

> First, it should consider whether the application is in truth and in substance nothing more than an interlocutory appeal disguised as an attempt to invoke the revisionary jurisdiction in order to circumvent the general and presumptive prohibition against interlocutory appeals. Second, it should examine the nature of the relief sought and consider whether the application implicates the sort of mischief that the prohibition against interlocutory appeals was designed to avoid. Applications pertaining to bail or the seizure of property may be less directly connected with the continuing conduct of a trial, as compared to an application for discovery of documents (as in the applications before me) or to admit or exclude evidence or to permit lines of cross-examination. The former may not always disrupt or interfere with the proper conduct of the trial whereas the latter almost invariably will. Further, the former may not always concern matters that can appropriately be taken up in the substantive appeal whereas the latter almost always will. Third, the court should remind itself that the revisionary jurisdiction is concerned with errors that are so serious as to give rise to grave and serious injustice that strikes at the relevant act as an exercise of judicial power.

23 *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 also cautions against revisionary intervention at the interlocutory stage.[25] There, the applicant filed a criminal motion to the Court of Appeal seeking an order directing the trial judge in the then Subordinate Courts to make a number of orders to facilitate the adduction of some United Nations reports in evidence (at [1]). The motion was dismissed as the Court of Appeal held that it lacked the power to exercise revisionary or supervisory jurisdiction over the Subordinate Courts (at [63]). The court added that "[i]f 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" [emphasis in original in italics] (at [68]).

24 It is also difficult to justify appellate or revisionary intervention in interlocutory matters because "in 'inchoate circumstances' ... there is little basis for a judge to evaluate what the nature and extent of any alleged injustice is" (*Xu Yuanchen* at [12], citing *Yap Keng Ho v Public Prosecutor* [2007] 1 SLR(R) 259 at [6]). While Menon CJ made this statement in *Xu Yuanchen* in relation to appellate intervention, I think it applies equally to revisionary applications.

25 For s 283 applications such as CM 30 here, the High Court will face great difficulty in determining whether to exercise the discretion in s 283 at an interlocutory stage, as if it were the trial court. The High Court is not the court which is hearing the evidence and which has to make the decision in the ongoing trial based on the totality of the evidence. Asking it to undertake the assessment under s 283 therefore places it in an invidious position. For these reasons, even if the DJ conducting the Trial had heard and dismissed a s 283 application, the

---

[25] RBOA at Tab 2.

High Court would not exercise its appellate or revisionary jurisdiction to grant CM 30 while the Trial is ongoing. The DJ might eventually decide to acquit the applicant because the charges against him were not proved beyond a reasonable doubt, in which case there would be no need to adduce evidence from the Witness at all. However, should the DJ convict the applicant, the applicant may appeal against conviction and seek to persuade the High Court that the Witness' evidence was necessary and that his absence has resulted in a miscarriage of justice.

Costs

26 The Prosecution asked for costs of $2,000 to be paid by the applicant on the ground that CM 30 was frivolous and has resulted in a delay in the progress of the Trial.

27 The applicant's counsel claimed that he had misunderstood the import of s 283 CPC. In any case, he argued that costs should be limited to $1,000 because the Prosecution was not called upon to reply orally and the hearing before me lasted for about 30 minutes only.

28 Section 409 CPC sets out the court's power to impose costs if a criminal motion is dismissed:

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

29 In my judgment, CM 30 was frivolous and was bound to fail. It is clear from a proper reading of s 283 CPC that the power relating to witnesses is for the court hearing the substantive matter to which the evidence relates to exercise. The power is not meant for a superior court exercising appellate or revisionary jurisdiction. No application was made to the DJ based on the asserted change in circumstances in this case but, as explained earlier, even if the DJ had heard and dismissed a s 283 application in the course of the ongoing Trial, it is clear that the High Court would not exercise its appellate or its revisionary jurisdiction to intervene in interlocutory matters such as the admission or rejection of evidence while the Trial is ongoing.

30 Accordingly, I dismissed CM 30 and ordered the applicant to pay the Prosecution costs of $2,000.

Tay Yong Kwang
Justice of the Court of Appeal

Phipps Jonathan (LegalStandard LLP) for the applicant;
Kevin Yong and Tan Zhi Hao (Attorney-General's Chambers) for the respondent.