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

[2023] SGHC 137

Originating Application No 72 of 2023

Between

Han Li Ying, Kirsten

… *Applicant*

And

Attorney-General

… *Respondent*

JUDGMENT

[Administrative Law — Remedies — Quashing order]
[Administrative Law — Remedies — Mandatory order]
[Criminal Procedure and Sentencing — Offences affecting administration of justice]
[Criminal Procedure and Sentencing — Public Prosecutor — Powers]
[Criminal Procedure and Sentencing — First information report]
[Contempt of Court — Criminal contempt]

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Han Li Ying Kirsten
v
Attorney-General

[2023] SGHC 137

General Division of the High Court — Originating Application No 72 of 2023
Kwek Mean Luck J
10 April 2023

12 May 2023 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 Originating Application No 72 of 2023 ("OA 72") is an application by Ms Han Li Ying, Kirsten ("Ms Han") for permission pursuant to O 24 r 5 of the Rules of Court 2021 ("ROC") to apply for (the "Prayers"):[1]

> (a) a quashing order to quash the conditional warning administered by Deputy Superintendent Seet Hui Li ("DSP Seet") dated 21 October 2022 in respect of police report number F/20221018/2089 (the "Warning") ("Quashing Order");

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[1] Originating Application 72 of 2023 filed on 26 January 2023 ("Originating Application").

(b) a declaration that the Singapore Police Force (the "SPF" or the "Police") had no power to compel Ms Han's physical attendance in order to issue her the Warning (the "Declaration"); and

(c) a mandatory order for Ms Han to be furnished with the First Information Report ("FIR") in respect of the Warning ("Mandatory Order").

2 In relation to Prayer (a) above, Ms Han is effectively applying for permission to commence judicial review of the Warning. This requires a consideration of, amongst other things, whether the Warning is susceptible to judicial review, *per* the first requirement set out in *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 ("*Gobi a/l Avedian*") at [44]. If the Warning does not have any legal effect, it is not susceptible to judicial review. After careful consideration of the parties' submissions, I found that the Warning does not have legal effect. Accordingly, it is not susceptible to judicial review. I hence dismiss Prayer (a).

3 Prayer (b), which is ancillary to Prayer (a), is also necessarily dismissed. In any event, I find that Prayer (b) would also be dismissed for lack of *locus standi*, as Ms Han was not in fact compelled to physically attend and there is no "real controversy" for the court to resolve: see *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") at [72(b)] reproducing the second requirement in the test set out in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR(R) 112 ("*Karaha Bodas*").

4 Finally, I dismiss Prayer (c) on the basis that there is no FIR in respect of the Warning. Consequently, Ms Han's OA, comprising of the three Prayers contained therein, is dismissed.

Facts

Background to the dispute

5 On 10 May 2022, Ms Han published a Facebook post (the "FB Post") stating:[2]

> Such staggering cost orders against lawyers who were merely trying to fight for their clients [*sic*] lives (literal, not figurative) are acts of intimidation that deter other lawyers from taking on late-stage death row cases.
>
> …
>
> When we create a climate of fear that deters lawyers from representing death row prisoners, we create an ever more brittle system in which it will become even more likely that wrongful executions and miscarriages of justice will occur.

6 The Attorney-General's Chambers (the "AGC") found that Ms Han's FB Post amounted to contempt of court under s 3(1)(*a*) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AOJPA").[3] Notwithstanding, the AGC decided to issue Ms Han a conditional warning in lieu of prosecution.[4] The AGC informed the SPF on 14 July 2022 of its decision and requested the SPF's assistance to convey the conditional warning to Ms Han.[5]

7 After the SPF processed the AGC's request, DSP Seet contacted Ms Han via phone call on 11 October 2022.[6] DSP Seet requested Ms Han to meet her at the Ang Mo Kio Police Division Headquarters ("AMK Div HQ") the following week, in relation to the FB Post. In response to queries from

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2 Han Li Ying, Kirsten's Affidavit dated 26 January 2023 ("Han's Affidavit") at p 15.

3 Han's Affidavit at p 30.

4 Respondent's Submissions dated 3 April 2023 ("Respondent's Submissions") at para 2; Seet Hui Li's Affidavit dated 10 February 2023 ("Seet's Affidavit") at para 7.

5 Respondent's Submissions at para 2; Seet's Affidavit at para 7.

6 Seet's Affidavit at para 8.

Ms Han, DSP Seet explained that more details would be provided during the in-person meeting.[7] During a second phone call on the same day, Ms Han agreed to meet DSP Seet at AMK Div HQ on 21 October 2022.[8]

8 Three days later, on 14 October 2022, Ms Han called DSP Seet to request a written letter stating that she was required to present herself at the police station.[9] DSP Seet informed Ms Han that there was no need for a letter as, under police power, there was no need for a letter for her to come down to the police station.[10] DSP Seet explained that she meant that the Police could request Ms Han to come down to the police station without the issuance of the letter. She was not suggesting that the Police could compel Ms Han to attend at a police station in the absence of a written order.[11] Notwithstanding, DSP Seet acceded to Ms Han's request and sent her via email a letter dated 19 October 2022 referring to their phone conversation on 14 October 2022 regarding the Police's request for Ms Han's attendance at AMK Div HQ on 21 October 2022 in relation to the FB Post.[12]

9 Ms Han went to AMK Div HQ on 21 October 2022.[13] During their meeting, DSP Seet handed Ms Han the Warning.[14] The Warning was issued on the SPF letterhead and signed by DSP Seet.[15]

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7 Seet's Affidavit at para 9.

8 Seet's Affidavit at para 9; Han's Affidavit at para 9.

9 Seet's Affidavit at para 10; Han's Affidavit at para 10.

10 Seet's Affidavit at para 10; Applicant's Submissions at para 6.

11 Seet's Affidavit at para 11.

12 Seet's Affidavit at para 12 and p 22; Han's Affidavit at para 13 and p 21.

13 Seet's Affidavit at para 15; Han's Affidavit at para 16.

14 Seet's Affidavit at para 15; Han's Affidavit at para 16.

15 Seet's Affidavit at pp 28-29; Han's Affidavit at pp 30-31.

10 Ms Han asked whether she could challenge the Warning and which part of the FB Post constituted the contempt of court.[16] DSP Seet informed Ms Han that she could seek legal advice and send any enquiries to the Police, who would then convey them to the AGC.[17]

11 Later that evening, Ms Han applied online for a copy of the FIR.[18] She followed up on this request via emails to DSP Seet on 2 November 2022 and 7 November 2022.[19] In her 7 November 2022 email, Ms Han stated she would commence legal proceedings if she did not receive the FIR by 5pm on 10 November 2022.[20] The SPF did not respond to her application for a FIR by this deadline. On 11 November 2022, Ms Han filed an originating application for permission to commence judicial review in Originating Application No 765 of 2022 ("OA 765").[21] The SPF informed Ms Han via email on 14 November 2022 that they were unable to supply her with the documents she had requested.[22]

12 In relation to OA 765 and Ms Han's request for the FIR, the AGC sent a letter to Ms Han's lawyers on 11 January 2023 stating that no FIR had been

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16 Seet's Affidavit at para 16; Han's Affidavit at paras 17-18.

17 Seet's Affidavit at para 16; Han's Affidavit at para 17.

18 Applicant's Submissions dated 3 April 2023 ("Applicant's Submissions") at para 12; Han's Affidavit at para 19.

19 Applicant's Submissions at para 12; Seet's Affidavit at pp 34-36.

20 Seet's Affidavit at pp 34-35.

21 Han's Affidavit at para 20; Originating Application No 765 of 2022 filed 11 November 2022.

22 Han's Affidavit at p 36.

filed with the police in connection with the Warning.[23] Ms Han's lawyers wrote to the AGC requesting elaboration on this point.[24] The AGC replied stating:[25]

> [t]here was no First Information Report ('FIR') filed in connection with the conditional warning issued to your client. As stated at paragraph 2 of the conditional warning, the Attorney-General's Chambers ('AGC') had decided to issue the conditional warning in lieu of instituting proceedings against your client for contempt of court. The Singapore Police Force's ('SPF') role was to convey AGC's conditional warning to your client. For this purpose, SPF created the case reference number 'F/20221018/2089' on 18 October 2022 for its internal administrative records. This reference number was in turn cited as 'Report No: F/20221018/2089' in the conditional warning. We trust that the foregoing makes clear that there is no basis for your client to bring a claim for production of a non-existent FIR.

13 Ms Han applied to court and was granted leave on 13 January 2023 to withdraw OA 765 and file a new application.[26] This new application, the present OA 72, was filed on 26 January 2023.[27]

Issues to be determined

14 Of the three orders which Ms Han seeks permission to apply for, the Quashing Order and Mandatory Order are, effectively, applications for permission to commence judicial review. A party who wishes to commence judicial review must first apply for leave pursuant to O 24 r 5(1) of the ROC in accordance with the procedure set out in O 24 r 5(3) of the ROC. Additionally, these prayers require a consideration of whether the three requirements set out

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23 Han's Affidavit at pp 38-39.

24 Han's Affidavit at p 40.

25 Han's Affidavit at p 41.

26 Minute Sheet for the hearing on 13 January 2023 in relation to HC/OA 765/2022.

27 Originating Application.

by the Court of Appeal in *Gobi a/l Avedian* at [44] are established (the "Requirements"):

> (a) the subject matter of the complaint has to be susceptible to judicial review;
>
> (b) the applicant has to have a sufficient interest in the matter; and
>
> (c) the materials before the court have to disclose an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant.

As emphasised by the court in *Gobi a/l Avedian*, the leave requirement for judicial review is intended to filter out groundless or hopeless cases at an early stage, to prevent the waste of judicial time and protect public bodies from harassment.

15 Ms Han also seeks permission to apply for a declaration that the SPF had no power to compel her physical attendance in order to issue the Warning and for a mandatory order that the FIR in relation to the Warning be furnished to Ms Han.

16 Although the requirements to be established for Ms Han's prayers for leave to apply for the Quashing Order and Mandatory Order are the same, they relate to different actions. Both Prayers (a) and (b) relating to the Quashing Order and the Mandatory Order, respectively, require a consideration of the Requirements in relation to the Warning. However, on the facts, Prayer (b) raises the preliminary issue of whether there was a FIR in respect of the Warning. As for the Declaration, the question of whether the SPF did compel

her attendance to issue her the Warning arises. I will hence address Ms Han's Prayers in turn.

Prayer 1: Quashing Order to quash the Warning

17 The Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") empowers the High Court to issue a quashing order pursuant to para 1 of the First Schedule to the SCJA.

18 In relation to Ms Han's prayer for leave to apply for the Quashing Order, all three Requirements set out in *Gobi a/l Avedian* are disputed. The following three issues therefore arise:

(a) whether the Warning is susceptible to judicial review;

(b) whether Ms Han has a sufficient interest in the matter; and

(c) whether the materials before the court disclose an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by Ms Han.

Whether the Warning is susceptible to judicial review

19 Relying on *Wham Kwok Han Jolovan v Attorney-General* [2016] 1 SLR 1370 ("*Jolovan Wham*"), the Attorney-General (the "AG") submits that the Warning does not have legal effect and thus is not susceptible to judicial review.[28]

20 In *Jolovan Wham*, the applicant sought leave to commence judicial review proceedings to quash a warning administered to him. The court held at

[28] Respondent's Written Submissions at paras 4, 21-22(a).

[25] that (citing, in part, *Comptroller of Income Tax v ACC* [2010] 2 SLR 1189 ("*ACC*") at [21]):

> … 'a quashing order will only lie against decisions which have some form of actual or ostensible legal effect, whether direct or indirect'. *A decision has legal effect when it is capable of altering the legal rights, interests or liabilities of the individual.* …
>
> [emphasis added]

21 The court in *Jolovan Wham* then went on to hold at [33]–[34] that:

> 33 … *a warning is not binding on its recipient such that it affects his legal rights, interests or liabilities*. It is, as its name suggests, nothing more than a warning, *ie*, a communication to its recipient that if he were to subsequently engage in conduct prohibited by a particular statutory provision, or any criminal conduct for that matter, leniency may not be shown to him and he may be prosecuted for it. … It also adopts language such as 'in lieu of prosecution' and 'the same leniency may not be shown towards you' which suggests that the relevant authority is of the view that the recipient has committed an offence and that he could have been charged for it.
>
> 34 However, in my view the warning is still no more than an expression of the opinion of the relevant authority that the recipient has committed an offence. It does not bind the recipient. It does not and cannot amount to a legally binding pronouncement of guilt or finding of fact. …
>
> [emphasis added]

22 The AG also relies on *GCO v Public Prosecutor* [2019] 3 SLR 1402 ("*GCO*") for the proposition that conditional warnings do not have legal effect.[29] There, the court found at [70]-[71] that the holding in *Jolovan Wham* at [33] and [34] applies equally to stern warnings and conditional stern warnings, and that a conditional stern warning cannot bind the alleged offender because it is only an expression of the authority's opinion coupled with a statement of intent. Both cases were considered by the Court of Appeal in *Teo Seng Tiong v Public*

[29] Respondent's Written Submissions at para 22(b).

Prosecutor [2021] 2 SLR 642 at [82]–[87]. There, the Court of Appeal affirmed at [88] that both cases established that stern warnings, whether conditional or not, have no legal effect.

23 Ms Han accepts that *Jolovan Wham* and *GCO* held that the part of a warning that states that the recipient committed an offence is an expression of opinion that is not legally binding. She also accepts that the AG is not bound to consider prior warnings in deciding whether to prosecute for *new and separate* conduct.

24 However, Ms Han submits that when the court in *Jolovan Wham* held at [37] that the AG is not bound to consider whether a prior warning has been given before deciding whether to prosecute, the court there did not consider whether the AG is bound in relation to the *conduct that is the subject of a warning*. She submits that the court did not consider the full extent of the warning. In particular, the element of assurance in the warning in *Jolovan Wham* as the phrase "in lieu of prosecution" in the warning in *Jolovan Wham* was considered by the court at [33] together with the phrase "the same leniency may not be shown towards you". She submits that the AGC's decision here to issue the Warning instead of initiating criminal proceedings amounts to an assurance not to prosecute for the conduct that is the subject of a stern or conditional warning, if she complies with the conditions set out in the Warning (*ie*, to remain crime-free for 12 months). This assurance is reinforced at Note 1 of the Warning, which states "… a decision has been taken not to prosecute you in court for the offence(s)." Based on this, Ms Han submits that the Public Prosecutor is estopped from initiating legal proceedings against her for that conduct if she complies with the condition. Therefore, the Warning affects Ms Han's legal rights and is susceptible to judicial review.

25 In my view, this submission misconstrues a warning for an assurance, both in terms of the nature of a stern warning, conditional or otherwise, and also in terms of the language of the Warning here.

26 The court in *Jolovan Wham* at [33]-[34] and *GCO* at [70]-[71] had examined the nature of a warning. Further, the court in *Jolovan Wham* had, in doing so, set out the material terms of the warning at [9] and explicitly recognised at [33] that the warning included the phrase "in lieu of prosecution", which Ms Han relies on as an assurance.[30] I am therefore unable to agree with Ms Han that the court in *Jolovan Wham* did not fully consider the elements of a warning in that case.

27 I agree with the analysis in *Jolovan Wham* and *GCO* on the nature of a warning and summarise below the characteristics of a warning that were identified therein:

(a) A warning is not binding on its recipient such that it affects his or her legal rights, interests, or liabilities.

(b) As its name suggests, a "warning" is nothing more than a communication to the recipient that if he or she were to subsequently engage in conduct prohibited by a particular statutory provision, or any criminal conduct for that matter, leniency may not be shown to him or her and he or she may be prosecuted for it.

(c) A warning is no more than an expression of the opinion of the relevant authority that the recipient has committed an offence. It does

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30 Minute Sheet for the hearing on 10 April 2023 in relation to HC/OA 72/2023 ("Minute Sheet") at p 7.

not bind the recipient. A conditional stern warning is no more than an expression of opinion coupled with a statement of intent.

(d) A warning does not and cannot amount to a legally binding pronouncement of guilt or finding of fact.

(e) Both stern warnings and conditional stern warnings do not have legal effect.

28 As can be seen from the above, there is nothing in the characteristics of a warning that involves an assurance that there would not be any prosecution for past conduct. Indeed, the very nature of a warning is to focus on warning the recipient not to commit any misconduct in the future rather than to provide assurance against prosecution of past misconduct.

29 There is also nothing in the language of the Warning that makes the assurance to Ms Han that she would not be prosecuted for the conduct of the Warning, if she remains crime-free for 12 months. The Warning states:

> 1. We refer to the Facebook post published on 10 May 2022 on your Facebook account under the name "Kirsten Han". The post amounts to contempt of court under s 3(1)(*a*) of the AOJPA.
>
> 2. Having taken into account the circumstances of the case, the Attorney-General's Chambers has decided that you should be issued a **12**-month conditional warning in lieu of instituting proceedings against you for contempt of court. You are warned to refrain from any criminal conduct for a period of 12 months from the date stated on this warning ("crime-free period").
>
> 3. If you commit any offence(s) within this crime-free period, you may be prosecuted for the offence(s) you commit during this crime-free period and proceedings may be commenced against you for the contempt of court referred to at paragraph 1." [*sic*]
>
> [emphasis in original]

30 Paragraph 2 of the Warning emphasises that the AGC has decided that Ms Han should be issued a 12-month conditional stern warning in lieu of instituting proceedings against her for contempt of court. This simply conveys AGC's decision to proceed with a warning instead of instituting proceedings. That does not extend to AGC making an assurance to Ms Han that it would not prosecute her for the conduct that is the subject of the Warning, if she remains crime-free for 12 months.

31 Ms Han submits that the assurance is reinforced by Note 1 of the Warning:

> 1. This conditional warning is issued to you because while an assessment that you have committed the offence(s) listed in paragraph 1 has been made, a decision has been taken not to prosecute you in court for the offence(s).

However, this part of the Note merely states that a decision has been taken not to prosecute her in court for the offence. There is no assurance made that the AGC would not revisit that decision subsequently, for example, if further information about that misconduct came to the AGC's attention.

32 Moreover, in so far as Ms Han accepts that the Notes to the Warning are relevant by relying on Note 1 of the Warning, there is a corresponding need to also consider Note 2(d) of the Warning:

> 2. This conditional warning:
>
> …
>
> (d) *does not affect any of your legal rights, interests, or liabilities*.
>
> [emphasis added]

The Note hence explicitly reiterates that the conditional warning does not affect any of Ms Han's legal rights, interests, or liabilities. In other words, the Warning

expressly states that it does not affect any of Ms Han's legal rights or interests of Ms Han.

33 Furthermore, the foreign authorities which Ms Han cite do not support her submission that the Warning is susceptible to judicial review.

34 In the Malaysian case of *Harun bin Abdullah v Public Prosecutor* [2009] 3 MLJ 337 ("*Harun*"), the court found that the prosecution had not made any assurances not to prosecute. On the contrary, the court found at [12] that the prosecution did not state that whatever the outcome of the appeal of the first case, the matter under appeal would not be proceeded with. The court subsequently expressed at [19] that *if* there was a declaration or promise made by the prosecution not to prosecute, that could be binding. Hence, this case does not assist with the question here of whether there was an assurance in the Warning against prosecution of Ms Han for her past misconduct.

35 In the English cases of *R v Croydon Justices, ex parte Dean* [1993] QB 769 ("*Croydon*") and *R v Bloomfield* 1 Cr App R 135 ("*Bloomfield*"), the prosecution had made assurances that it would not prosecute. In *Croydon*, the suspect was invited by the police to provide evidence as a prosecution witness and assured that, if he did so, he would not be prosecuted. In *Bloomfield*, the counsel for the Crown indicated to the defence counsel "in the clearest of terms" that the prosecution wished to offer no evidence against the defendant, as it accepted that the defendant was the victim of a set up. The prosecution also conveyed to the court that it would be offering no evidence against the defendant. The English Court of Appeal in *R v Abu Hamza* [2007] 2 WLR 226 ("*Abu Hamza*") noted at [54] that these representations were "unequivocal assurances" from the prosecution that the defendant would not be prosecuted.

36 Ms Han also seeks to rely on *Abu Hamza* for the proposition that it could be an abuse of process to prosecute someone who relied on an unequivocal assurance that no prosecution would be brought against that person, especially if the person relied on that assurance and acted to their detriment.[31] However, as with the cases of *Croydon* and *Bloomfield*, *Abu Hamza* was decided on the basis that there had been assurances given by the prosecution that no prosecution would be brought. The English authorities cited hence do not assist in the question of whether the Warning here contains an assurance not to prosecute Ms Han.

37 Moreover, the decision in *Abu Hamza* undermines Ms Han's submission. The English Court of Appeal in *Abu Hamza* stated at [50], affirming the *dicta* of the judge below:

> As the judge held, circumstances can exist where it will be an abuse of process to prosecute a man for conduct in respect of which he has been given an assurance that no prosecution will be brought. … The judge expressed reservations as to the extent to which one can apply the common law principle of 'legitimate expectation' in this field, and we share those reservations. That principle usually applies to the expectation generated in respect of the exercise of an administrative discretion by or on behalf of the person whose duty it is to exercise that discretion. *The duty to prosecute offenders cannot be treated as an administrative discretion, for it is usually in the public interest that those who are reasonably suspected of criminal conduct should be brought to trial. Only in rare circumstances will it be offensive to justice to give effect to this public interest.*
>
> [emphasis added]

38 Such rare circumstances can arise "if police, who are carrying out a criminal investigation, give an unequivocal assurance that a suspect will not be prosecuted and the suspect, in reliance upon that undertaking, acts to his detriment": *Abu Hamza* at [51]. Following its examination of the English

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[31] Applicant's Written Submissions at para 22.

authorities, including *Croydon* and *Bloomfield*, the court in *Abu Hamza* found at [54] that the English authorities suggest that:

> … it is not likely to constitute an abuse of process to proceed with a prosecution unless (i) there has been an *unequivocal representation* by those with the conduct of the investigation or prosecution of a case that the defendant will not be prosecuted and (ii) that the defendant has acted on that representation to his detriment. Even then, if facts come to light which were not known when the representation was made, these may justify proceeding with the prosecution despite the representation.
>
> [emphasis added]

39 Here, Ms Han seeks to rely on an assurance that she would not be prosecuted, which she alleges was given *indirectly* in the Warning, to establish that the Warning had legal effect. Even taking her case at its highest, there is no evidence in the present case of an "unequivocal representation" from the prosecution, which *Abu Hamza*, that Ms Han relies on, requires.

40 In summary, in my view, the Warning does *not* have any form of legal effect. The Warning does not contain an assurance not to prosecute, much less any such unequivocal assurance. Note 2(d) of the Warning also expressly states that it does not affect Ms Han's legal rights or interests. I thus find that the Warning is not capable of altering Ms Han's legal rights, interests and liabilities. In other words, the Warning does not contain a decision for the court to quash. In light of this finding in relation to the first Requirement to obtain leave for judicial review (*ie*, susceptibility to judicial review), the other issues relating to the other two Requirements set out in *Gobi a/l Avedian* do not arise. This was accepted by Ms Han's counsel at the hearing.[32]

41 I thus dismiss Prayer (a) for permission to apply for a Quashing Order.

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[32] Minute Sheet at p 4.

Prayer 2: Declaration that the SPF has no power to compel physical attendance

42 Ms Han also seeks permission to apply for a Declaration that the SPF had no power to compel the Applicant's physical attendance at AMK Div HQ to issue her the AGC's conditional warning. During the hearing, Ms Han submitted that this prayer was ancillary to the Quashing Order and accepted that if the Quashing Order did not meet the requirements for permission to be granted, then the issue of the Declaration does not arise.[33] Consequently, as I have denied the application for permission to apply for the Quashing Order, no permission for the Declaration is granted.

43 In any event, Ms Han has also not met the requirement that there must be a "real controversy" between the parties. One of the requirements to obtain leave for judicial review is that the applicant must have sufficient interest in the matter, or what has been termed "*locus standi*". One of the elements that must be met for an applicant to possess *locus standi* is that there must be a "real controversy" between the parties to the action for the court to resolve: *Tan Eng Hong* at [72(b)] referencing *Karaha Bodas* at [19]. The court in *Tan Eng Hong* explained at [132] that:

> [t]he need for the existence of a *real controversy* between the parties to an action stems from the function of the courts to adjudicate on and determine disputes between parties. Without a *lis*, the courts may find themselves being called on to give advisory opinions on abstract, hypothetical and/or academic questions instead of deciding on real disputes. …
>
> [emphasis added]

44 However, it is clear that on the facts of this case, there is no "real controversy" for the court to resolve in relation to the declaratory relief sought,

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[33] Minute Sheet at p 4.

as the SPF *did not compel* Ms Han's physical attendance at the AMK Div HQ to receive the Warning.

45 Ms Han has not pointed to any communication from the SPF compelling her physical attendance. Also, she did not tell DSP Seet that she would not physically attend unless it was mandatory under the law. Indeed, in Ms Han's email of 19 October 2022, Ms Han expressed that she was aware that physical attendance was not mandated. She said, "there is no ongoing investigation being conducted, the proposed appointment is not required under any powers of the Criminal Procedure Code, and [her] attendance is neither required nor compulsory".[34]

46 During the hearing, Ms Han submitted that she *felt* compelled to attend the police station because of the power imbalance between herself and DSP Seet.[35] It was not the SPF's position that her attendance was compulsory under the law and Ms Han conceded that her position was *not* that she was compelled *by law* to physically attend.[36] This concession highlights that there is "no real controversy" in relation to the declaratory relief sought.

47 In summary, Ms Han is not entitled to declaratory relief given that this application is ancillary to her dismissed application for permission to apply for a Quashing Order. In any event, there is also no "real controversy" in the present case to be resolved by a grant of declaratory relief. I hence dismiss the application for the Declaration.

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34 Han's Affidavit at para 14 and Tab 5.

35 Minute Sheet at pp 4 and 10; Applicant's Submissions at para 47.

36 Minute Sheet at pp 4 and 10.

Prayer 3: Mandatory order to provide the FIR

48 Ms Han's third prayer is for permission to apply for a Mandatory Order that she be furnished with the FIR in respect of the Warning. In summary, she submits that the definition of FIRs in the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC") does not only include first information received by the Police. She submits that the first information received by the AGC or the AGC's initial communication to the Police also constitutes the FIR and seeks to be provided with such.

49 Ms Han submits that while s 14(1) of the CPC describes FIRs as "information … first received at a police station about an offence", this description is not exhaustive.

50 Ms Han submits that other forms of FIRs, such as complaints made to the Magistrate, are recognised in law. She relies on the Malaysian case of *Husdi v Public Prosecutor* [1979] 2 MLJ 304 ("*Husdi*") where the court observed at p 184:[37]

> … a first information need not necessarily be to the police. It can be made to the Magistrate, who in most cases would refer it to the police for investigation. Magistrate Courts do supply copy of the first information (which is called [a] complaint) on request as a matter of course. I cannot see why a first information should be treated any different when made to the police.

51 In response, the AG submitted that this observation merely states that FIRs made to Magistrates may be treated the same as FIRs made to the police.[38] This was not the case here as there was no FIR made to a Magistrate. Further,

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37 Applicant's Submissions at para 53.

38 Minute Sheet at p 11.

the AG highlighted that this observation was *obiter* as *Husdi* concerned police statements, not FIRs.[39]

52 I find that *Husdi* does not assist Ms Han's case. *Husdi* does not stand for the general proposition that any initial report made in relation to an offence, even if not made to the Police, can constitute a FIR under the CPC. There is nothing in *Husdi* that states this. What the Malaysian court did hold there, at p 185, was that it found no statutory provision which gives a right to inspect a police statement. Notably, where the court in *Husdi* made an observation about FIRs, it was made in relation to Magistrates, and even then, in *obiter*.

53 More importantly, taking into consideration the definition and explanation of FIR in the CPC, it is clear that what Ms Han submits as qualifying as a FIR is not what the CPC describes as a FIR, nor were they used in the manner contemplated by the CPC for FIRs.

54 "FIR" is described in s 14 of the CPC as "information [that] is first received at a police station about an offence" and recorded by the "recording officer", namely the officer in charge of a police station or any other police officer whose duty includes receiving reports relating to the commission of any offence. As explained in *The Criminal Procedure Code of Singapore - Annotations and Commentary* (Jennifer Marie (editor-in-chief) and Mohamed Faizal Mohamed Abdul Kadir (general editor) (Academy Publishing, 2012) at para 04.006, the "primary *raison d'être* of a first information report is to serve as notice to the police of the possible commission of a cognisable offence so as to set the wheels of investigation in motion". Under s 16 of the CPC, where the information filed or recorded relates to a non-arrestable offence, the case must

[39] Minute Sheet at p 11.

be investigated by a police officer; the informant must be referred to a Magistrate; or the case must be referred for mediation. Under s 17 of the CPC, where the police officer has reason to suspect that an arrestable offence has been committed at any place, the Police must, amongst other things, go as soon as practicable to the place to investigate.

55 The Warning issued here relates to an instance of contempt of court under s 3(1)(*a*) of the AOJPA. Section 22(1)(*b*) of the AOJPA states where that where the AG has reasonable grounds to suspect that contempt of court has been committed, and that it is in the public interest to do so, the AG *may* by order in writing authorise a police officer to investigate the alleged contempt as if it were an arrestable offence. It is the AG's position that, in this case, he decided not to order the police to investigate but to instead issue a warning.

56 Viewed in light of the aforementioned statutory provisions in the CPC and the AOJPA, it is clear that the evidence here discloses no FIR in respect of the Warning. The first information received by the AGC (if any) is not a FIR. It is not information that is first received *at a police station*, as defined by s 14 of the CPC. The initial communication from the AGC to the Police requesting that the Police to convey the AGC's warning to Ms Han is also not a FIR. Given that it was a request for the Police to convey AGC's warning, it could not be said to "serve as notice to the police of the possible commission of a cognisable offence so as to set the wheels of investigation in motion". This is reinforced by the AG's decision not to authorise the Police to investigate the alleged contempt by an order in writing, *per* s 22(1)(*b*) of the AOJPA.

57 I find that, on the facts of this case, there is no FIR in respect of the Warning. There is hence no FIR that could be the subject of a Mandatory Order. Hence, the application for permission to commence judicial review for the

mandatory order for Ms Han to be furnished with the FIR in respect of the Warning is misconceived, and dismissed.

Alternative prayer: Mandatory order to backdate the Warning

58 In her written submissions, Ms Han seeks, in the alternative, for permission to apply for a mandatory order for the Warning to be backdated to 14 July 2022, or any other appropriate date, and for the "crime-free period" set out in the Warning to be backdated to this date.[40] In view of my finding that the Warning is not justiciable, the issue of whether the Warning should be backdated does not arise. For completeness, I observe that Ms Han's submission for a mandatory order to backdate the Warning also fails on the basis that she did not include this alternative prayer in her pleadings.

59 As stated in *Ho Soo Tong and others v Ho Soo Fong and others* [2023] SGHC 90 at [43], "[i]t is trite law that parties are bound by their pleadings, and the court is precluded from deciding on matters that have not been put into issue by the parties" (referencing *V Nithia (co-administratix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [38] and *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [21]).

60 Ms Han had only raised this alternative prayer in her written submissions. During the hearing, the AG submitted that the court should not consider this alternative prayer which would, in effect, be an amendment of Ms Han's pleadings, without complying with the requirements set out in the ROC.[41] In response, Ms Han accepted that she could have applied to amend the

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40 Applicant's Submissions at paras 2, 48 – 51.

41 Minute Sheet at p 11.

pleadings but did not do so due to costs concerns. Ms Han further submitted that it is within the court's power to make an order even where it was not pleaded by the parties where such an order would be meritorious.[42]

61 Order 9 rule 14(1) read with (7) of the ROC empowers the court to allow parties to an originating application to amend their pleadings. Generally, such amendment is either by application to the court for leave to amend or by written agreement between the parties. In exceptional circumstances, such as that in *Tan Keaw Chong v Chua Tiong Guan and another* [2010] 2 SLR 374, the court may make an order on an unpleaded claim without an amendment of pleadings. There, the first defendant was dead and unable to provide instructions on an amendment. Further, the court found that, on the facts, an amendment of pleadings would have merely been a formality.

62 I do not find exceptional circumstances on the present facts. In the absence of any application or agreement for the amendment of Ms Han's pleadings pursuant to O 9 r 14 of the ROC, there is no basis to consider her alternative prayer for a mandatory order to backdate the Warning.

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42 Minute Sheet at p 13.

Conclusion

63 For the reasons above, I dismiss OA 72. Parties are to file their submissions on costs within seven days of this Judgment.

Kwek Mean Luck
Judge of the High Court

Too Xing Ji (BMS Law LLC) for the applicant;
Sivakumar s/o Ramasamy and Dan Pan Xue Wen (Attorney-General's Chambers) for the respondent.