Public Prosecutor v Wang Ziyi Able
[2008] SGHC 37

Case Number : MA 226/2006

Decision Date : 11 March 2008

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Alvin Koh (Attorney-General's Chambers) for the appellant; Philip Fong and Samantha Ong (Harry Elias Partnership) for the respondent

Parties : Public Prosecutor — Wang Ziyi Able

Criminal Procedure and Sentencing – Sentencing – Principles – Deterrence – Whether custodial sentence warranted for reckless dissemination of false information – Section 199(b)(i) Securities and Futures Act (Cap 289, 2006 Rev Ed)

11 March 2008

V K Rajah JA:

1 The integrity of Singapore's financial markets hinges on the efficient and effective exchange of valid information, which in turn depends on how successfully a fine, if somewhat precarious, balance is struck between market stability and other critically and inextricably interwoven factors such as freedom of exchange of information, innovation and growth. Like a delicately-balanced spinning gyroscope, the equilibrium of the financial market is pivoted upon the reliability and integrity of market communications. Further, given the disclosure-based nature of our securities market regime (see [22] below), the burden of maintaining market integrity by monitoring and ensuring the security of investments no longer rests on regulatory bodies; instead it has substantially shifted to market participants who are expected to follow the rules of responsible market conduct and communications so that other interested participants may access and act confidently on all available information. It is therefore imperative that all market players comply with requirements relating to both the quality and quantity of information disclosed – not only must such information be adequate, it must also be *accurate*. It naturally follows that any conduct contravening such basic norms must and will be strictly circumscribed by effective detection, reliable prosecution and appropriate punishment; in this context, the present case provides a timely opportunity to set out the broad sentencing considerations for wrongful information offences.

2 The respondent was charged under s 199(*b*)(i) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("SFA") with disseminating information that was false in material particulars on an online forum at shareinvestor.com ("the SI forum"), without caring whether this information was true or false. He was acquitted by the district judge (*PP v Wang Ziyi Able* [2006] SGDC 282) and convicted on appeal (see the grounds of decision in *PP v Wang Ziyi Able* [2007] SGHC 204 ("the GD")), with submissions on sentencing to be heard subsequently. Having now heard the parties' submissions on sentencing, I have decided that a custodial sentence is warranted, and sentence the accused to six months' imprisonment. These are my reasons.

3 This was the first case concerning an offence under s 199 of the SFA on appeal before the High Court. It is therefore crucial now, having established the elements of the statutory offence in the GD, to survey and review all relevant sentencing decisions in the Subordinate Courts, so as to clarify and consolidate the sentencing considerations for this class of offences. The respondent was convicted

under s 199(*b*)(i) of the SFA of disseminating, via the SI forum, information that was false in material particulars and likely to induce the sale of shares in Datacraft Asia Limited ("Datacraft"), without caring whether the information was true or false. Section 199(*b*) of the SFA provides:

> **199.** No person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely —
>
> ...
>
> (*b*) to induce the sale or purchase of securities by other persons; …
>
> …
>
> if, when he makes the statement or disseminates the information —
>
> (i) he does not care whether the statement or information is true or false; or
>
> (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Salient facts of the present offence

4 A full account of the facts relating to the respondent's offence has been set out in the GD. The salient facts for sentencing purposes are, however, worthy of reiteration. On 13 February 2004, a Friday, there was a sharp fall in Datacraft's share price. The respondent, who then owned 700,000 Datacraft shares, sold them all at a loss of US$105,980 that day. According to the respondent's evidence, his sale had been prompted by a short message service ("SMS") from his friend, Sam Wong, an institutional sales dealer with OCBC Securities Pte Ltd ("OCBC Securities"), indicating that the Commercial Affairs Department ("CAD") had *raided* Datacraft's office. I have accepted that the respondent did indeed receive an SMS relating to Datacraft on 13 February 2004. However, I have discovered blatant inconsistencies in the respondent's evidence ranging from the precise contents of the SMS, to the importance of subsequent telephone conversations with Sam Wong and the respondent's reasons for selling his 700,000 Datacraft shares (see the GD at [123]). His statement that the SMS "stated something like 'CAD raid on DC' or 'CAD in DC office'", was one of many equivocations contributing to the erosion of his credibility. I am therefore unable to accept the respondent's rather dubious assertion that he had derived the word "raid" from Sam Wong and merely posted on the SI forum what he had been told. The respondent also received a report from OCBC Securities sent by Sam Wong via e-mail sometime after 5.00pm that day. This report included the following information on Datacraft: "More rumours of CAD follow up action. Speculative." Over the weekend the respondent sought unsuccessfully to verify the rumour with two other persons (see the GD at [112]–[113]); he also asserted, though Sam Wong denies this, that the latter had assured him that the news of the alleged raid was accurate.

5 Sometime before 9.00am on 16 February 2004 the respondent received yet another report by OCBC Securities forwarded by Sam Wong via e-mail, containing entirely identical information relating to Datacraft. Between 9.00am and 9.12am, as soon as the market opened, the respondent sold 111,000 Datacraft shares as "naked shorts", meaning that he was selling the shares even though he did not own them. At 9.14am, the respondent made the following posting as a member of the SI forum:

> Heard CAD raided Datacraft office last Friday again.

This prompted a posting by another user, "Papabull":

> ZK, as a frenly note, this was not carried in the local press nor reported in CNA. The word "raided" is serious. Remember giving anything unsubstantiated in a public forum is incriminating evidence to yourself as it is tantamount to giving false & misleading information. If the action was true subsequently one could be exonerated but yet again you may be brought to task for receiving illegitimate security leakage. Remember the OCBC dealer who gave a false report to induce price change? He had been brought to task. However, giving matters of opinion, even a wrong forecast inferring such is personal opinion, are matters of public opinion & in the grey area.

In response to this warning the respondent posted:

> PPB, thanks for your concern. I know what I am talking. Do you honestly think that the papers and CNA knows it all?

All three postings were made between 9.14am and 9.34am. By 9.52am, the respondent had bought 111,000 Datacraft shares to cover his earlier naked shorts, making a gross profit of US$2,830.

6 At 12.36pm, after receiving numerous inquiries from the public and analysts about the alleged CAD raid, Datacraft made an announcement over MASNET, the financial network operated by the Monetary Authority of Singapore ("MAS"), to clarify that the rumours relating to the alleged raid were totally unfounded. Over the course of that afternoon the respondent bought and subsequently sold 400,000 Datacraft shares, resulting in a gross loss of US$12,000. The transacted share price of Datacraft closed at US$1.38 per share on 16 February 2004, US$0.10 less than its opening price that day.

7 The statement of facts *agreed* between the Prosecution and the Defence prior to the trial stated that the two postings made by the respondent on 16 February 2004 "contained material false particulars in that CAD did not raid Datacraft's office on 13 February 2004 (Friday). The posting was likely to induce the sale of Datacraft shares by other persons" (see the GD at [36]). It has therefore never been in dispute that the elements in s 199(*b*) of the SFA of "false or misleading in a material particular" and "likely to induce the sale or purchase of securities by other persons" have been fulfilled. The respondent's only line of defence is that he had not made the statements recklessly.

8 Upon examining the relevant circumstances I found that the evidence unequivocally demonstrated that the respondent himself did not honestly believe in the veracity of his own postings. The rumour about the CAD investigations or raid on Datacraft stemmed from one sole source, and the respondent's attempts to verify the information from third parties over the weekend were far from conscientious and, if anything, entirely futile. I am to that extent wholly unconvinced that the respondent honestly believed in the information which he disseminated, and have accordingly convicted him under s 199(*b*)(i) of the SFA. Indeed, I am inclined to believe that the respondent had gone beyond mere recklessness in asserting the truth of the information which he disseminated, and that he must have *known* that the information about the alleged CAD raid was false and misleading when he disseminated it. In my view, the respondent's trangression would have satisfied even the first limb of s 199(*b*)(ii) of the SFA; however, since he was charged under s 199(*b*)(i) alone, he must accordingly be punished only for reckless rather than dishonest dissemination.

Sentencing decisions in the Subordinate Courts

9 Section 204 of the SFA provides that anyone convicted of an offence under Division 1 of Pt XII of the SFA shall be liable to a fine not exceeding $250,000 or imprisonment for a term not exceeding

seven years, or both. As I have already mentioned, although this is the first case before the High Court involving an offence under the re-enacted s 199(*b*)(i) of the SFA, some sentencing decisions have emanated from the lower courts. A survey of these sentencing decisions in the Subordinate Courts will therefore be helpful prior to articulating the appropriate judicial sentencing philosophy.

10 In *PP v UOB Asia Ltd* Private Summonses Nos 3812–3815 of 2000, the defendant company pleaded guilty to two charges under s 99(*b*) of the Securities Industry Act (Cap 289, 1985 Rev Ed) ("SIA") (the predecessor provision of s 199(*b*) of the SFA), with two other charges under s 97(1) of the SIA taken into consideration. The company had caused misleading newspaper announcements to be published in respect of share subscription levels for the shares of two other companies for whose initial public offerings the defendant company had been lead manager and underwriter of. Because the defendant company omitted the disclosure of material particulars relating to the share subscriptions, the announcements created the impression that the shares were oversubscribed and portrayed a higher level of investor demand than was the case. The Senior District Judge found that the company knew or ought reasonably to have known that the announcements were misleading and fined it a total of $400,000. Aggravatingly, the company had abused its primary responsibility as a privileged recipient of information and had misled investors. It had chosen to ignore the advice of the Singapore Exchange Securities Trading Limited ("SGX") encouraging full disclosure even after the latter had detected and apprised the company of a discrepancy in its statement. The misleading announcements were not the result of an accidental oversight or blind negligence, but were part of the plan that the company had set into motion, that could very well result in eroding investor confidence in the integrity of the market, thereby damaging the trust between investors and issuers.

11 In *PP v Chan Yen Yau* District Arrest Case No 41014 of 2001, the accused pleaded guilty to one charge under s 99(*b*) of the SIA. He had doctored an announcement made by a company on its own website concerning a takeover bid. The accused replaced the names of the companies concerned, deleted several paragraphs of the original announcement and changed the acquisition price from US$890m to US$1.29bn. He then posted the fabricated announcement on the SI forum. Investigations revealed that there was a surge in the volume and price of the shares of the company falsely reported to be acquired. After the market was informed that the posting was false, the company's share price plummeted. The district judge observed that the object of the legislation was to deter "persons who seek to affect the integrity of information and prices in the market by creating a false 'buzz'" (at [9]). However, she considered it important that the posting was an isolated one made on a discussion page of a website. Although the accused had given the announcement an "official look", he did not pretend to be posting the information on behalf of a financial institution. The district judge also agreed (at [10]) with counsel that:

> [R]easonable persons who obtain information from the internet are aware that such sources are rife with half-truths and falsehood. It was also plain from the general tone of the Shareinvestor.com forum pages that the content there was not subject to any supervisory or editorial control. Any sensible investor ought to be circumspect about information posted there. … [However, it was] equally important to consider that the internet is a powerful tool, with the ability to reach wide and vulnerable classes of persons. Investors *are* affected by sharp practice on the internet. [emphasis in original]

The accused was merely fined $80,000, with six months' imprisonment in default; neither he nor the Prosecution appealed. I feel compelled to observe that such a sentencing decision seems rather perplexing and unduly tilted in the accused's favour.

12 In *PP v Chen Jiulin* District Arrest Case No 23240 of 2005, the accused was convicted, *inter alia*, of two charges under s 199(*c*)(i) read with s 331(1) of the SFA of consenting to an offence by China

Aviation Oil (Singapore) Corporation Ltd ("CAO") of making two false statements relating to its half year and third quarter financial statements respectively. He was the chief executive officer of CAO and its sole executive director. He caused CAO to withhold price-sensitive information and misrepresented the viability of the company when it was in fact insolvent. Chen was fined $80,000 (in default four months' imprisonment) and $250,000 (in default 18 months' imprisonment) on the two SFA charges. This sentence, however, was imposed in the context of the accused person's conviction on a total of six charges, with nine other charges taken into consideration. In total, the accused was sentenced to four years and three months' imprisonment and fined $335,000.

13 In *PP v Wong Tai* [2006] SGDC 193, the accused was a non-executive director and chairman of the board of directors of IHL, an education services provider which, as a company listed on the SGX, was required to announce its quarterly financial results on MASNET at the end of each quarter of its financial year. In October 2003, IHL overstated its profits of $0.12m at $4.3m, and in January 2004 it misrepresented its loss of $0.24m as a profit of $0.6m. IGSPL, a major subsidiary within the IHL group, had changed its revenue recognition policy in two respects, both of which were inconsistent with IHL's internal and published revenue recognition policy. The accused himself recognised that these changes were a mismanagement issue that required review, but did not prevent IHL from substantially overstating its profits in two unaudited financial statements via MASNET. The first misleading statement led to a rise in IHL's share price, while the second enabled the price to stabilise, with the result that investors suffered large losses stemming from a surprise subsequent profit warning. The accused was eventually charged for his role in conniving with IHL in its improper disclosures. He pleaded guilty to two charges under s 199(*b*)(ii) and s 199(*c*)(ii) read with s 331(1) of the SFA and was sentenced to a fine of $120,000 on each of the two charges (or three months' imprisonment each in default). Two other charges (one similar charge under s 199(*b*)(ii) read with s 331(1), and one charge under s 330 of the SFA) were taken into consideration for sentencing purposes. The district judge noted that the sentence "must have regard to the need to protect the integrity of, and public confidence in, our financial markets" (at [27]). However, the district judge declined to impose a custodial sentence on the grounds that the accused was not the source of the misleading information, which could only be attributed to a related company's aggressive revenue recognition policy, and that there had been no fabrication of fictitious revenue or false receipts, in contrast with *PP v Tan Hor Peow Victor* [2006] SGDC 148 ("*Tan Hor Peow Victor*") and *PP v Yip Hwai Chong* [2006] SGDC 27 ("*Yip Hwai Chong*"). The accused had also "played a pivotal role in the resuscitation and revival of IHL after its share price plummeted" (at [29] of *PP v Wong Tai*). The district judge thus concluded that a substantial fine was sufficient to meet the interests of the public and address the culpability of this specific offender.

14 The cases of *Tan Hor Peow Victor* and *Yip Hwai Chong* both involved offences committed by the company Accord Customer Care Solutions Limited ("ACCS"). Tan was the chief executive officer and an executive director of ACCS, while Yip was the chief financial officer of ACCS. They were each charged with, *inter alia*, two charges under s 199(*b*)(ii) of the SFA for having connived with ACCS to release two unaudited full year financial statements for financial years 2003 and 2004 via MASNET; Tan pleaded guilty to a total of 21 charges and was sentenced to a term of imprisonment of four years and three months, including five months' imprisonment on each SFA charge. Yip pleaded guilty to 22 charges with 66 other charges taken into consideration. He was sentenced to a total of four years and four months' imprisonment, including four months' imprisonment on each SFA charge.

15 Counsel for the respondent submitted that *Chan Yen Yau* ([11] *supra*) was most factually similar to the present case, and argued that the offence committed there was in fact more egregious than that committed by the respondent. It was contended that in the instant scenario: The respondent was not in a position of official authority as opposed to Chan, who was a dealer with OCBC Securities holding a dealer's representative's licence issued by the MAS; the respondent posted that he had

"heard" that the CAD had raided Datacraft, rather than stating it as an authoritative fact; the respondent also made losses in his overall trades in Datacraft shares. The first two arguments will be addressed shortly in determining the appropriate sentence in the present case, while the last argument has already been dealt with to some extent in the GD (at [117]), where I held that the fact that the respondent ultimately made a loss from his dealings in the Datacraft shares should not be taken to indicate a benign intention on his part in making the postings. Indeed, the respondent's loss was more likely to have been the result of his own erroneous prediction of the effect of the Datacraft announcement dispelling the rumours, among other things. Accordingly, the respondent's net loss should not in itself be considered a mitigating factor; rather, it would amount to an aggravating factor if he had profited from his actions (see *Rajendran s/o Kurusamy v PP* [1998] 3 SLR 225).

16 Furthermore, the respondent was hardly alone in suffering losses as a result of his false postings. His own losses do not, by any stretch of the imagination, diminish the harm he caused to Datacraft and its investors. Therefore the fact that the respondent suffered monetary losses *caused and created by* his own behaviour, and probably due to a miscalculation of the effects that his postings and Datacraft's subsequent announcement would have, is of no mitigating value whatsoever. Nor does it diminish the seriousness of his offence in any way.

Appropriate sentence in the present case

Seriousness of the offence

17 It appears from the jurisprudence of the Subordinate Courts that a *de facto* benchmark sentence of a fine has been adopted for most offences under Division 1 of Pt XII of the SFA. This may be attributed in part to the vast majority of the cases discussed above having proceeded on charges of negligent dissemination under the second limb of s 199(*b*)(ii) rather than the higher standards of recklessness under s 199(*b*)(i) or outright dishonesty under the first limb of s 199(*b*)(ii). Considering the gravity of the factual matrices of these cases, it is somewhat bewildering that the accused persons were in some cases merely charged with having "ought reasonably to have known" that the information disseminated was false or misleading. Similarly, in the present case (as I remarked in the GD at [124]), a charge under the first limb of s 199(ii) would have been more appropriate, or should at least have been preferred in the alternative. There appears to have been some confusion by the Prosecution and possibly even the lower courts as to the different standards of *mens rea* required to bring home a conviction pursuant to s 199. The three separate and distinct mental elements of negligence, recklessness and dishonesty indicate three distinct degrees of culpability designed to cover a spectrum of proscribed conduct (see the GD at [64]); they are vastly different and it is imperative that they not be converged or conflated. Clearly the findings as to guilt and the sentence imposed on the accused must flow from and conform to the precise requisites of each particular offence. Imprecision in convictions will result in rough and arbitrary justice which ultimately serves no positive purpose either to the public or, for that matter, to the accused. It cannot be overemphasised that in every case, meticulous care must be taken to accurately frame the charge as well as determine the appropriate the sentence. In *PP v Chen Jiulin* ([12] *supra*), where the accused was convicted on two counts of reckless dissemination under s 199(*c*)(i), the total punishment amounted to a mere fine of $330,000. This should not have been the case, given the severity of such offences and the critical public interest element that demands protection through the deterrent punishment of these offences. Section 199 was drafted as a codification of the obligation to disclose, the necessary corollary of which is the obligation not to misrepresent or mislead. The present case affords a classic example of the latter form of misinformation; there is, in the final analysis, almost invariably no substantial difference in substance between withholding necessary information and making false statements.

18 The seriousness of a crime is a function of the degree of harmfulness of the conduct, coupled with the extent of the actor's culpability in committing the offence (see *PP v Law Aik Meng* [2007] 2 SLR 814 ("*Law Aik Meng*") at [32]–[33], citing Prof Andrew von Hirsch in "Deservedness and Dangerousness in Sentencing Policy" (1986) Crim LR 79 at 85). Tay Yong Kwang J emphasised in *Ng Geok Eng v PP* [2007] 1 SLR 913 ("*Ng Geok Eng*") at [42] in relation to s 197 of the SFA that:

> [T]he erstwhile reluctance to impose imprisonment for offences of market rigging should no longer prevail. Market rigging is an egregious form of disruption to the orderly conduct of our securities market and should be deterred more strongly in future cases. In appropriate cases, sentences of imprisonment can and should be imposed.

I agree wholeheartedly and venture to add that disseminating false information can equally disrupt order in the securities market, even if it may appear less devious and reprehensible than rigging the market. It is no less conspicuously serious an offence warranting appropriate punishment, including sentences of imprisonment.

19 It is well established that the type of sentence to be imposed in a given case is to be determined by the public interest to be protected. This principle has been affirmed in *Ng Geok Eng* and *PP v Tan Fook Sum* [1999] 2 SLR 523 at [21], where Yong Pung How CJ adopted the principle advocated by Prof Tan Yock Lin, *Criminal Procedure* (LexisNexis, Looseleaf Ed, Issue 18, December 2007) vol 2, ch XVIII at para 852:

> Generally speaking, only the public interest should affect the type of sentence to be imposed while only aggravating or mitigating circumstances affect the duration or severity of the sentence imposed.

As Tay J helpfully explained in *Ng Geok Eng* at [45], "[t]his proposition simply requires the type of sentence imposed for an offence to adequately cater to the needs of general deterrence". This concern is balanced by the principle that deterrence must "always be tempered by proportionality in relation to the severity of the offence committed as well as by the moral and legal culpability of the offender" (*Tan Kay Beng v PP* [2006] 4 SLR 10 ("*Tan Kay Beng*") at [31]).

20 Quoting Tay J in *Ng Geok Eng*, the Prosecution submitted that "the public interest element in cases involving layperson investors is a significant factor in favour of imposing a period of incarceration". This was perhaps taken somewhat out of context, as Tay J made this point in distinguishing "unauthorised share trading" offences under s 210(*b*) of the SFA committed by a trader involving the lack of consent of the account owner, from those involving the lack of consent of the securities trading firm with whom the trading account is opened. As between the two, the individual account owners would be more vulnerable, necessarily rendering the former offence more egregious and understandably warranting imprisonment (at [41] of *Ng Geok Eng*). Nevertheless, it does not necessarily follow that in the absence of a fiduciary relationship or the offender's position of authority over those affected, there would not be equally serious consequences.

21 In the present case, the postings were made on an online forum accessible to the general public – lay investors – and therefore also carried a significant public interest element. Just as there is no right to cry "fire" in a crowded theatre, so must false online postings be strictly sanctioned; needless to say, collective public reaction is always unpredictable and may take on a life of its own, resulting in a level of chaos exponentially greater than the sum total of many prudent individuals' isolated reactions. The plausibility of a statement made in an online forum such as the SI forum cannot *per se* determine its possible consequences; even sceptical investors who would otherwise have ignored the statement might have felt compelled to cut their losses and sell their shares when market panic drove

share prices down. Therefore while one might theoretically expect sensible investors to be circumspect about information gleaned from a public forum, a market reaction is practically inevitable, and the maker of the false statement must be held responsible for his actions and statements. More fundamentally, this conduct is punishable simply because it has been specifically proscribed by the SFA.

22 The need to penalise the dissemination of false information is especially important given the legislative and regulatory shift to a disclosure-based regime, with the public making its own decisions on how and when to invest. Responsible communication within the community of traders in the market is the paramount concern underpinning securities offences such as the present one. As the then Deputy Prime Minister, Brig-Gen (NS) Lee Hsien Loong, said during the second reading of the Securities and Futures Bill 2001 (Bill 33 of 2001) (see *Singapore Parliamentary Debates, Official Report* (5 October 2001) vol 73 at col 2162):

> The public will be reminded time and again that the primary responsibility for making investment decisions lies with themselves and, over time, they will be able to learn to be able to look out for their own interest. There is no alternative. We have to shift. We cannot go on the basis that the regulator, or MAS, or the [SGX] will make sure that every investment is safe and sure to make money. If you want to invest, you have to make your own judgment, find out your own information and make your own decisions.

Consequently, the focus of regulation must shift to protecting the free and fair transmission of information in the market. The upshot of the obligation to disclose is the concomitant prohibition on making false statements. It is precisely because information available online may be taken at face value or analysed by lay individuals, without being properly scrutinised and approved by the MAS or the SGX, that the posting of false information can do greater harm and must be punished uncompromisingly.

23 As for the respondent's culpability, the evidence amply and convincingly shows, and I have found, that he did not honestly believe in the veracity of his postings (see the GD at [120]–[124]). While the respondent was not in a position of authority and had reported that he had merely "heard" that the CAD had raided Datacraft's office, his subsequent post in reply to Papabull's warning was a strong assertion testifying to the apparent veracity of the rumour. He even audaciously went so far as to query cryptically, "[d]o you honestly think that the papers and CNA knows [*sic*] it all?" suggesting artfully that he was privy to information not publicly available or verifiable. Having gone through the motions half-heartedly to verify the rumours over the weekend on 14–15 February 2004, he nevertheless made the postings on 16 February 2004 *after* nakedly shorting 111,000 Datacraft shares, which he later bought back after the share price had duly fallen in apparent response to his postings. The respondent's adamant attempt to assert the truth of his first posting is further proof of his intention to induce a response in the investing public. Granting that he may have initially harboured some hope or expectation that the rumour would later prove to be accurate, but as of 16 February 2004 he could not have honestly believed it, and his gamble to proceed with the posting anyway was a decision the culpability of which fell squarely within the provisions of s 199(*b*)(i) of the SFA. It was hardly an innocent or negligent posting, but rather a cold and calculated measure which sought, with two mutually-reinforcing statements, to dispel their readers' well-founded scepticism. Thus the fact that the respondent was an outsider with no official position or affiliation to Datacraft and that he had used the word "heard" to qualify his post, is at best a paltry mitigating factor in the face of his bold reiteration of such a blatantly false statement. It is no excuse in law for a purveyor of false information to plead that he was merely a courier. An individual or institution that communicates or broadcasts at large to the market has a duty to assume responsibility for the accuracy of such communications.

24 A fine would be inappropriate for offences such as the present one, where the potential harm caused can be enormous and devastating. The fact that the offender stands to gain from the gamble of making a false statement of course constitutes an additionally aggravating feature. Counsel for the respondent submitted that a fine alone should be imposed because it had not been proved that the respondent's actions *per se* caused serious consequences in the market, and because the respondent did not gain or benefit personally from his trades in the Datacraft shares. As I observed in the GD (at [63]), it is not necessary for the respondent's postings to have actually affected Datacraft's share price. The test of whether the statements were likely to *induce a sale or purchase of securities by other persons* is an objective one; it is enough to reveal the potential to induce such sales or purchases. There is therefore no need to prove beyond reasonable doubt that the respondent's postings in fact triggered and caused the fall in Datacraft's share price.

25 Indeed, the respondent's conduct – particularly his blatant attempts to "short" the market – was far more telling and disturbing. The respondent's shorting of the market immediately before making the first posting, as well as his omission in disclosing his vested interest in the very shares that formed the subject matter of his postings, belied his seemingly innocent motive of creating a level playing field by sharing important information with lay investors (see the GD at [116]). Furthermore, the respondent himself was hardly an amateur dabbling in the securities market; he holds a Bachelor of Science degree in accounting and finance from New York University and was at the material time a seasoned and full-time private equities trader. As a forum member who had agreed to the terms and conditions of the SI forum (see the GD at [118]), he should and would have been amply aware that the posting of information that could embarrass or harm others was strictly prohibited and would potentially prompt swift legal action against him. Yet he proceeded to post information that was unreliable, purely speculative and in fact patently inaccurate, knowing full well that such information could harm many others financially if and when acted upon. The respondent's self-portrait of altruism or even basic good faith was thus no more than a flimsy and utterly misleading patina.

Need for deterrent sentence

26 A deterrent sentence must be founded on important public policy considerations. A deterrent sentence signifies that there is a public interest to protect over and above the ordinary punishment of criminal behaviour. Specific deterrence seeks to discourage the particular offender from reoffending and is usually appropriate where the offence is premeditated (see *Law Aik Meng* ([18] *supra*) at [21]–[22]). General deterrence aims to deter potential offenders by making an example of the particular offender, and is, *inter alia*, warranted where the offence committed falls within any of the following categories: (a) offences relating to public institutions; (b) offences against vulnerable victims; (c) offences involving professional or corporate integrity or abuse of authority; (d) offences affecting public safety, security, health, services or widely used facilities; (e) offences affecting the delivery of financial services and/or the integrity of the economic infrastructure; and (f) offences involving community and/or race relations (see *Law Aik Meng* at [24]–[25]).

27 Given that the respondent was convicted under s 199(*b*)(i) of reckless, rather than dishonest (under s 199(*b*)(ii), second limb) dissemination of information, general deterrence is perhaps a more significant consideration than specific deterrence. In this regard, the present offence falls squarely within (d) and particularly (e): "all offences threatening to undermine or impair financial systems merit consideration under another category of offences", because the "public interest vested in a secure and reliable financial system that facilitates convenient commercial transactions is extraordinary, especially in light of Singapore's reputation as an internationally respected financial, commercial and investment hub" (*Law Aik Meng* at [24(d)] and [24(e)]). As discussed above, offences involving the dissemination of false information over the Internet warrant deterrent sentencing because of the

potentially enormous impact on public confidence and the integrity of the market.

28 Counsel for the respondent submitted that a fine would suffice to deter both the respondent and other potential offenders. Indeed, Yong Pung How CJ held in *PP v Cheong Hock Lai* [2004] 3 SLR 203 that a deterrent sentence need not be custodial. However, while the proposition that a fine may be sufficiently deterrent is relatively uncontroversial, I cannot agree with counsel that this would hold true in the present case. Trading in the securities market carries an inherent element of risk, and a shrewd calculation of the potential pecuniary gains from disseminating false information weighed against the possibility of being fined *up to $250,000* could too often lead to the conclusion that this sort of crime does pay. To impose a mere fine as punishment for an offence of reckless dissemination of false information would thus in effect relegate the threat of criminal sanction to just another pecuniary liability to be casually written off by the offender.

29 Judicial attitudes towards the punishment of white-collar crime must strive to remain current and relevant and must reflect the wider public interest. It should be acknowledged that fines for the well heeled often fail to amount to either sufficient or meaningful deterrence. White-collar crimes, especially financial market-related crimes, often have wider ramifications and repercussions on many more persons and financial institutions as well as a far more significant impact on market confidence than offences against the person which by and large entail more limited consequences. Sentencing judges should painstakingly seek to ensure that the punishment adequately addresses the harm caused by the offence in these circumstances. I note with interest that this point has also been recognised and addressed in a recent survey focusing on appropriately punishing commercial crime (albeit in reference to anti-competitive corporate behaviour) in the UK, see "Economics focus: Well-dressed thieves – Why the threat of prison is necessary to deter cartels" *The Economist* (23 February 2008) at p 82:

> There is some evidence to suggest that the personal sanctions are a more effective deterrent than financial penalties. A survey carried out for Britain's Office of Fair Trading (OFT) asked executives to score the deterrent effect of five sanctions. Fines ranked fourth and private damages fifth, behind bad publicity and being disqualified from doing business. *The most feared punishment was prison*. In America trustbusters say that busted price-fixers regularly offer to pay bigger fines to try and avoid jail. [emphasis added]

In my view, the reaction in Singapore apropos the spectrum of effective deterrence against the myriad of white-collar crimes would not be dissimilar. This is not to say that fines are never appropriate in relation to securities offences; on the contrary indeed, the third division of Pt XII of the SFA, for example, provides for civil penalties in certain matters. Nor must all offences under s 199 of the SFA invariably be punished with imprisonment. Where, for example, the false statement had been made negligently, deterrence could arguably be a significantly less relevant consideration since the offence would have been committed without any reckless or dishonest intent. That said, in egregious cases, a custodial sentence (in addition to a fine) may be appropriate even when false statements are made negligently. It is in the public interest that all types of irresponsible conduct be deterred through appropriate sanctions. The decision to impose fines in *PP v Wong Tai* ([13] *supra*) may be arguably justified on the basis that there was no "intent" or "recklessness", though I must confess to entertaining serious reservations about the appropriateness of purely pecuniary punishment in that case. Where materially false information is disseminated with dishonest intent to induce other persons to purchase or sell shares, a custodial sentence should (in combination with fines) almost inevitably be imposed. This would better address and redress the differing degrees of culpability in a range of offences, serving to deter the appropriate class of potential offenders without being excessively harsh to the particular offender being convicted and sentenced.

Proportionality and mitigation

30 Of course, a deterrent sentence "must always be tempered by proportionality in relation to the severity of the offence committed as well as by the moral and legal culpability of the offender" (*Tan Kay Beng* ([19] *supra*) at [31]). The sentencing decisions in the Subordinate Courts have been generally inadequate in that they have shied away from imposing the punishment of imprisonment. Imposing a custodial sentence rather than a fine in the present case will serve to deter potential offenders who might otherwise be willing to risk a monetary slap on the wrist if and when they are apprehended. However, while grave, the respondent's offence consisted essentially of two internet postings on one forum in one morning. He cannot be said to have rigged, manipulated the market or devised an elaborate, devious scheme to defraud others. Bearing in mind the range of offences proscribed under Division 1 of Pt XII of the SFA, it is unlikely that the present offence would figure at the more egregious end of the spectrum. By way of comparison, in *PP v Chan Lye Huat* [2007] SGDC 3 ("*Chan Lye Huat*"), the accused pleaded guilty to a charge under s 97(1) of the SIA of creating a false appearance with respect to shares of a company traded on the mainboard of the SGX, which in turn created the illusion of active trading, raising and/or supporting the price and thus triggering an increased market for these shares. Another charge under s 197(1) of the SFA was taken into consideration for sentencing. Chan was sentenced to three months' imprisonment; on appeal by the accused, I upheld the sentence. It bears mention though that the Prosecution did not concurrently file an appeal. The present case would be more on par with *Chan Lye Huat* than *Tan Hor Peow Victor* ([13] *supra*) and *Yip Hwai Chong* ([13] *supra*).

31 I also considered counsel's submissions that there were no aggravating factors in the present case, since the respondent had not benefited from his offence and was not in a position of authority which he could abuse. With due respect, this does not in any way negate or detract from the compelling need to impose a deterrent sentence based on the established facts. The efficacy of deterrent sentences is largely dependent on reliable and consistent enforcement by the police in apprehending suspected offenders. Here, I considered that the respondent had been co-operative and had volunteered relevant details on how he had acquired the information and his motives in disseminating it. Nevertheless, I cannot dismiss or ignore the fact that the Internet provides a medium for *instantaneous and anonymous* mass dissemination. An important, if not overarching concern, is the possibility that offences committed online may escape detection, or that it may be impossible to identify the perpetrators of such offences. Cases such as this are inherently difficult to detect and prosecute. This is an important sentencing consideration.

32 Ultimately, while the respondent's precise motive may remain troublingly dubious, the fact remains that he has been convicted only of making the postings recklessly and not in full knowledge that they were false. That said, the strong public interest militating against mischief in the market through mass media such as the Internet dictates a custodial sentence. There is, however, in my view no need to impose a fine over and above the term of imprisonment, since he did not profit from his actions. All said and done, the respondent's decision, in this case, to claim trial cannot be held against him as he was perfectly entitled to exercise such a fundamental right; conversely, a plea of guilt does not invariably amount to a mitigating factor. Finally, while I am prepared to infer that the investing public suffered losses as a result of the respondent's offence, no evidence was led by the Prosecution as to the true extent of the harm inflicted. In the absence of such proof, I cannot properly settle on a figure that will quantify the damage for which the respondent should be held responsible for and accordingly punished. It would be trite to emphasise that the burden rests entirely on the Prosecution to lead evidence relating to the actual loss to the investing public if it intends to rely on that as an aggravating sentencing consideration. In the present circumstances, I am satisfied that justice would be adequately served with an imposition of a sentence of six months' imprisonment.