# Mustafa Ahunbay *v* Public Prosecutor
# [2015] SGCA 10

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| **Case Number** | : Criminal Reference No 1 of 2014 |
| **Decision Date** | : 11 February 2015 |
| **Tribunal/Court** | : Court of Appeal |
| **Coram** | : Chao Hick Tin JA; Andrew Phang Boon Leong JA; Tay Yong Kwang J |
| **Counsel Name(s)** | : N Sreenivasan SC, Rajaram Muralli Raja and Chong Wei-En Lisa (Straits Law Practice LLC) for the applicant; Mavis Chionh, Kevin Yong, Lynn Tan and Eugene Sng (Attorney-General's Chambers) for the respondent. |
| **Parties** | : Mustafa Ahunbay — Public Prosecutor |

*Criminal Procedure and Sentencing – Disposal of Property*

11 February 2015 Judgment reserved.

**Chao Hick Tin JA (delivering the judgment of the court):**

**Introduction**

1 This is a criminal reference filed by Mustafa Ahunbay ("the Applicant"), referring three questions of law of public interest to this court. They concerned the proper interpretation of s 370 of the Criminal Procedure Code (Act No 15 of 2010) ("the CPC"), which relates to how property seized for the purposes of criminal investigations should be dealt with.

2 The reference originates from an application for revision in Criminal Revision No 13 of 2013 ("CR 13") brought by the Applicant to quash an order made by District Judge Sarah Tan ("DJ Tan") on 20 May 2013 ("the 20 May 2013 Order"). [note: 1] CR 13 was heard by Choo Han Teck J ("the Judge"), who gave judgment on 27 September 2013, declining to exercise his revisionary jurisdiction in *Mustafa Ahunbay v Public Prosecutor* [2013] 4 SLR 1049 ("the Judgment").

***The statutory framework of s 370***

3 In order to understand the context of this reference, it is imperative that we briefly introduce s 370.

4 Section 370 is a provision setting out the procedure as to how a property seized by the police, which is alleged or suspected to have been stolen, or found under circumstances that lead to the suspicion of an offence, or pursuant to their powers to seize property under ss 35 or 78 of the CPC, should be dealt with.

5 Under s 370, the police officer must make a report of the seizure to a Magistrate's Court upon the occurrence of certain events:

(a) when one year has elapsed since the property was seized (s 370(1)(*b*)); or,

(b) when the police officer considers that such property is no longer relevant for the purposes of any investigation, inquiry, trial or other proceeding ("any investigation *etc*") under the CPC

(s 370(1)(*a*))

whichever is earlier.

6 The Magistrate's Court must, upon the receipt of such a report, consider whether the property seized is relevant for the purposes of any investigation *etc* under the CPC (s 370(3)). If the seized property is found to be relevant, the matter will be reassessed again at a later date when another report will be filed. On the other hand, if it is found that the seized property is not relevant for any of the aforesaid purposes, the Magistrate's Court *must make such order as it thinks fit* to deliver the seized property to the *person entitled to the possession of it*, or if such a person cannot be ascertained, an order respecting the custody and production of the property (s 370(2)).

7 It is clear from the plain wording of s 370 of the CPC that the provision is meant as a statutory check to hold the police accountable for seized property; if property is seized, its continued seizure must be for a good reason. On the other hand, so long as the seized property is relevant to any investigation *etc*, the property *must* be retained by the police. The Magistrate's Court does not have the power to order the disposal of the seized property in such a situation.

8 Sections 371 and 372 of the CPC set out further procedures as to how such property is to be delivered where the person entitled to possession of the property is known, or how the property should be dealt with where the person so entitled is not known.

9 We should also point out that s 370 does not operate where any inquiry or trial under the CPC has commenced as the relevant provision for disposal of property under those circumstances is s 364 instead. Section 370 is operative only at the stage of investigations, and no further action is taken by the police to commence an inquiry or a trial (see the case of *Sim Cheng Ho and another v Lee Eng Soon* [1997] 3 SLR(R) 190 ("*Sim Cheng Ho*") analysing the old s 392 (see [11]–[13] below)).

**The evolution of s 370 of the CPC**

10 Section 370 of the CPC, as it now stands, reads as follows:

> **Procedure governing seizure of property**
>
> **370.—**(1) If a police officer seizes property which is taken under section 35 or 78, or alleged or suspected to have been stolen, or found under circumstances that lead him to suspect an offence, he must make a report of the seizure to a Magistrate's Court at the earlier of the following times:
>
> (*a*) when the police officer considers that such property is no longer relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code; or
>
> (*b*) one year from the date of seizure of the property.
>
> (2) Subject to subsection (3), the Magistrate's Court must, upon the receipt of such report referred to in subsection (1), make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.
>
> (3) The Magistrate's Court must not dispose of any property if there is any pending court proceeding under any written law in relation to the property in respect of which the report

referred to in subsection (1) is made, or if it is satisfied that such property is relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code.

11 The previous incarnation of s 370 was s 392 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the old CPC"). Section 392 of the old CPC was never amended since the original Criminal Procedure Code (Ordinance 13 of 1955), and is *in pari materia* with s 523 of the repealed Code of Criminal Procedure 1898 (Act No 5 of 1898) (India) ("the old Indian CPC"). In 1973, the Indian legislature enacted the Code of Criminal Procedure 1973 (Act No 2 of 1974) (India) ("the Indian CPC"), which replaced s 523 with s 457. Section 392 of the old CPC read as follows:

**Procedure by police on seizure of property**

**392.**—(1) The seizure by any police officer of property taken under section 29 or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence shall be ***forthwith reported*** to a Magistrate's Court which shall make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.

(2) If the person so entitled is known, the Magistrate's Court may order the property to be delivered to him on such conditions, if any, as the Magistrate's Court thinks fit.

(3) The Magistrate's Court shall, on making an order under subsection (2), cause a notice to be served on that person, informing him of the terms of the order, and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than 48 hours) as the Magistrate's Court may in the notice prescribe.

(4) If that person is unknown or cannot be found the Magistrate's Court may direct that it be detained in police custody and the Commissioner of Police shall, in that case, issue a public notification, specifying the articles of which the property consists and requiring any person who has a claim to it to appear before him and establish his claim within 6 months from the date of the public notification:

Provided that, where it is shown to the satisfaction of the Magistrate's Court that the property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate's Court, to render impracticable the sale, as hereinafter provided, of the property, or as to make its detention in police custody unreasonable in view of the expense or inconvenience that would thereby be involved, the Magistrate's Court may order the property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification above referred to as it may determine, or forthwith, as it thinks fit.

(5) Every notification under subsection (4) shall be published in the *Gazette* if the value of the property amounts to $100.

[emphasis added in bold italics]

12 The enactment of s 370 of the CPC resulted in two main changes being made to s 392 of the old CPC:

(a) The procedure for reporting was modified to include a more certain timeline. Under the old s 392, the time for the police to report the seizure to the Magistrate's Court was to be

"forthwith". This was interpreted to mean that the report should be made "as soon as practicable, as the circumstances permit" (see *Ung Yoke Hooi v Attorney-General* [2009] 3 SLR(R) 307 ("*Ung Yoke Hooi*") at [22]). There was, however, no clear guidance on the timelines for making the report, and this "invariably engendered confusion and uncertainty" (see *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir gen eds) (Academy Publishing, 2012) ("*Marie & Faizal*") at para 19.031).

(b) A new restriction on the powers of the Magistrate to dispose of property was introduced. Under the old s 392, there was no equivalent requirement for the Magistrate's Court to make a determination on the relevance of seized property to any investigation *etc*, like that under s 370(3) of the CPC. The Magistrate's Court was simply under a duty to dispose of the seized property upon receiving the report. This was the basis for commentators suggesting that the rationale of s 392 was to "inquire into the ownership of the property seized by the police and to deliver it to the person entitled to possession of it, instead of to the person from whom it was taken" (see *Butterworths' Annotated Statutes of Singapore* vol 3 (Butterworths Asia, 1997 Issue) at p 447).

This second change is especially important in the context of this reference, since it does not expressly provide that a party who has an interest in the seized property has a right to be heard by the Magistrate when the latter makes a determination on whether the seized property is relevant to any investigation *etc*.

13 The old s 392 is, however, similar to s 370 in one particular aspect, *viz*, where the Magistrate's Court makes an order for the delivery up of the seized property, this will be made to the person *entitled to the possession* of the property (where the identity of that person is known).

**The background to this reference**

***The background facts***

14 On 23 June 2011, moneys in three bank accounts were seized by the Commercial Affairs Department ("CAD"). The CAD seized the moneys pursuant to s 35(1) of the CPC, which reads:

> **Powers to seize property in certain circumstances**
>
> **35.—**(1) A police officer may seize, or prohibit the disposal of or dealing in, any property —
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> (*a*) in respect of which an offence is suspected to have been committed;
>
> (*b*) which is suspected to have been used or intended to be used to commit an offence; or
>
> (*c*) which is suspected to constitute evidence of an offence.

We will hereinafter refer to these three bank accounts collectively as "the Seized Accounts".

15 Two of the bank accounts were registered under JJ Venture Ltd, and another bank account was registered under Blue Lagoon Holdings Ltd. The moneys in the three bank accounts totalled US$13,686,741.93. JJ Venture Ltd and Blue Lagoon Holdings Ltd were special purpose vehicles set up to hold the Seized Accounts. There were another two companies, Optimum Finance Limited and Double Group Happiness Holding, set up as special purpose vehicles which held assets worth

US$25,734,963.24. These assets were subject to a later seizure by the authorities but they do not directly concern CR 13. We will hereinafter refer to these four special purpose vehicles as "the Companies".

16 The Companies were previously owned by Mr Mohamed Masood Sayed ("Mr Sayed"), an Indian national, and his wife. Mr Sayed is related to the Applicant through his marriage. Sometime in 2009, My Sayed asked the Applicant whether the Applicant could buy over his shares in the Companies at a proposed price of US$49m. The reason for this was because Mr Sayed needed liquid assets but the moneys in the bank accounts were tied up due to certain issues he faced with the regulatory authorities in India. Mr Sayed told the Applicant that the value of the assets held by the Companies was in excess of US$49m.

17 The Applicant agreed to buy the shares in the Companies, but he did not have the money. He approached a friend and business associate, one HH Sheikh Saoud Faisal Sultan Al Qassimi ("Sheikh Faisal"), for help. [note: 2] Sheikh Faisal loaned the Applicant the money through Suisse Financial Services Limited ("Suisse Financial"), a company incorporated in the United Arab Emirates. On 9 November 2011, the Applicant paid Mr Sayed the purchase price of US$49.6m. Mr Sayed and the Applicant then executed four promissory notes in favour of Suisse Financial for the loans, [note: 3] and also executed four sale and purchase agreements for the transfer of shares in the Companies from Mr Sayed to the Applicant. [note: 4] Suisse Financial was given security over the assets in the Companies, which included the moneys in the Seized Accounts.

18 In the meantime, the Indian authorities who were investigating Mr Sayed for cheating, criminal conspiracy and money laundering offences in India contacted the CAD in February 2011 to ask for assistance in its investigations. Later on, the CAD suspected Mr Sayed of committing offences under Singapore law, *viz*, the offence of acquiring, possessing, using, concealing or transferring benefits of criminal conduct under s 47(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed), and the offence of dishonestly receiving stolen property under s 411 of the Penal Code (Cap 224, 2008 Rev Ed).

19 As a result, when Mr Sayed wanted to effect the share transfers to the Applicant sometime in 2012, this was refused by the relevant banking institutions in Singapore. At the same time, Suisse Financial called on the loan to the Applicant. The Applicant could not pay. After some discussions, the Applicant, Mr Sayed and Suisse Financial entered into a settlement deed on 21 March 2012 ("the Settlement Deed"), whereby the Applicant agreed to take such steps as were necessary to release the assets of the companies to repay the loan, including the Seized Accounts. [note: 5] More importantly, the Settlement Deed contains a clause to the effect that the Applicant was irrevocably appointed by Suisse Financial to (a) procure the release of the moneys; and (b) appoint Straits Law Practice LLC ("Straits Law") to help in that regard. [note: 6]

20 Accordingly, Straits Law wrote to the relevant banks and was informed on 27 April 2012 that the accounts had been seized. Straits Law then wrote to the CAD in May 2012 to enquire about the seizure of the accounts and the status of the investigations involving the Seized Accounts. On 12 July 2012, the CAD furnished a redacted copy of their latest investigation report dated 6 September 2011. This was the same report which CAD had tendered before DJ Eugene Teo and upon which CAD had obtained an order of court dated 7 September 2011 ("the 7 September 2011 Order") permitting the continued retention by CAD of the Seized Accounts for another year. [note: 7]

***The various hearings before CR 13***

21 By way of Criminal Motion No 60 of 2012 ("CM 60"), Straits Law applied on the Applicant's behalf to quash the 7 September 2011 Order. Chao Hick Tin JA heard CM 60 on 22 August 2012, and dismissed the application. The reason for the dismissal was a practical one. The context of the decision was that another report was due to be made to the Magistrate's Court on 6 September 2012, which was only some two and a half weeks away. Counsel for the Applicant, Mr N Sreenivasan SC (who is also counsel for the Applicant in this reference) ("Mr Sreenivasan"), took the view that notwithstanding that the next hearing would take place shortly, he had to proceed with his application because his client had no *locus standi* to appear before the Magistrate's Court. The Prosecution, however, reassured Mr Sreenivasan that the Applicant would have standing for the *purposes of showing that he was entitled to possession of the Seized Accounts*. Mr Sreenivasan accepted that position, and was happy to take his case before the Magistrate's Court in September 2012. [note: 8]

22 Straits Law wrote to the Prosecution the following day, asking to be kept informed of any applications to extend the period of seizure. The Prosecution obliged and Straits Law attended on the Applicant's behalf at the hearings on 13 September, 6 November and 23 November 2012. Both parties made submissions before DJ Mathew Joseph ("DJ Joseph") at those hearings. Straits Law was also given copies of two further investigation reports dated 13 September 2012 [note: 9] and 23 November 2012. [note: 10]

23 At the hearing on 13 September 2012, the issues before DJ Joseph were: (a) whether the Applicant was entitled to possession of the Seized Accounts and therefore had *locus standi* to *challenge the seizure*; and (b) whether the Seized Accounts were still relevant for the purposes of investigations. [note: 11] After two subsequent hearings, DJ Joseph on 23 November 2012, made an order that the seizure of the Seized Accounts be continued for a further six months. If necessary, parties were to appear before DJ Joseph again on 22 May 2013.

24 Two days before the expiry of the six-month extension, a CAD officer appeared before DJ Tan and obtained a further extension (*ie*, the 20 May 2013 Order). Straits Law was not informed of this hearing and did not attend. The Prosecution realised that they had made an error due to the oversight of the DPP in charge of the case, and therefore arranged for a hearing before DJ Tan again on 6 August 2013. At that hearing, the Prosecution submitted that the Applicant, who was not the legal owner of the Seized Accounts, did not have *locus standi* to make submissions on the continued seizure of the Seized Accounts. The Applicant insisted that the only way the matter could proceed was by way of criminal revision to quash the 20 May 2013 Order. DJ Tan did not make any changes to the 20 May 2013 Order. [note: 12]

***The decision below in CR 13***

25 The Applicant accordingly filed CR 13 to set aside the 20 May 2013 Order on the ground that there was something palpably wrong in the decision which thus undermined the exercise of judicial power (see *Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR(R) 383 and *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929), with the Prosecution:

(a) making the application before DJ Tan when the matter had been fixed for hearing before DJ Joseph a mere two days after;

(b) failing to notify Straits Law of the application before DJ Tan, thus denying the Applicant the opportunity to be heard; and

(c) failing to notify Straits Law of the 20 May 2013 Order.

26 The Judge characterised the basis for the revision as concerning the deprivation of the Applicant's right to be heard, a component of natural justice. The revision depended on whether the failure to hear the Applicant during the 20 May 2013 hearing was a breach of natural justice. This in turn depended on whether the Applicant in fact had such a right to be heard in the first place, which was based on "the character of the decision-making body, the kind of decision it has to make, and the statutory or other framework in which it operates" (at [9] of the Judgment; referring to *Lloyd and others v McMahon* [1987] 1 AC 625).

27 The Judge then proceeded to analyse ss 35 and 370 of the CPC. After doing so, the Judge concluded that the Applicant had no right to be heard, and gave three reasons. The first two reasons were premised on the fact that the statutory framework of s 370 did not provide for such a right to be heard, while the third was based on a finding of fact.

28 First, the Judge held that only the person who was entitled in law to possession of the property seized could have a right to be heard. However, the person who was so entitled is determined not by the Magistrate, but by the investigation report tendered to the Magistrate by the police under s 370(1)(*b*). The Judge took the view that no one can say that he or she is entitled to the seized property until the investigation report says so. It would follow, therefore, that until such time, no one has a right to be heard by the Magistrate when he decides on the relevance of seized property for the purposes of any investigation *etc* pursuant to s 370(3).

29 Second, the Judge went further to say that an order for a return of the seized property by the Magistrate under s 370(2) may be made simply on perusal of the police report stating that the seized property is no longer relevant to investigations *etc*. In other words, the investigation report is conclusive on the issue of the relevance of the seized property. The role of the Magistrate's Court takes on a ministerial flavour, and it does not make sense for someone to dispute the finding of relevance before the Magistrate. Therefore, s 370 does not accord the person entitled to possession of seized property with a right to be heard.

30 Third, the Applicant's claim to the property was an ambiguous one which was based on the Settlement Deed. The Settlement Deed could not operate to effect a transfer of the shares in the Companies to the Applicant, nor could it effect a transfer of ownership of the Seized Accounts from the Companies to the Applicant. At most, the Settlement Deed was an agreement allowing the Applicant to deal with the Seized Accounts as Mr Sayed's agent.

31 The Judge also compared ss 35 and 370 of the CPC, using the difference as to how the two provisions operated to reinforce his reasoning. The Judge held that ss 35 and 370 governed different aspects of the process of seizure of property for investigation. The former dealt with the police's powers to seize property in certain circumstances, while the latter dealt with how and when that property should be returned to whoever is *entitled to the possession* of that property. Section 35 is more comprehensive and takes into account the needs of those who may be affected by the seizure. Specifically, ss 35(7) and 35(8) allow persons *prevented from dealing* with seized property pursuant to s 35(2) to apply for the release of property where it was necessary for the payment of basic expenses, legal fees, *etc*. The class of persons who could apply for such relief is a broad one, which could conceivably include the possessor of the seized property at the time of seizure or any person with a contingent claim to that property. However, s 370 operated differently and the only relief available was when the Magistrate ordered a return of seized property under s 370(2). The reason for this difference was that the statutory scheme under s 370 did not envisage that there would be a dispute as to the person entitled to possession under s 370 because the investigation report was to

be conclusive on this, whereas there could be a dispute regarding the persons prevented from dealing with property under s 35 as there would be no such investigation report under the latter provision.

***The criminal motion***

32 As a result, the Applicant proceeded to file Criminal Motion No 63 of 2013 ("CM 63") to refer questions of law of public interest to the Court of Appeal. Before the hearing of CM 63, however, there was a further hearing before the Magistrate's Court in November 2013. The reason for this hearing was that the 20 May 2013 Order was soon to expire, and so the investigation officer went before the Magistrate to get a further extension. The Prosecution clarified at the hearing of CM 63 that they did not notify the Applicant or Mr Sreenivasan about this further hearing before the Magistrate's Court in November 2013 because it took the position that as a matter of law, the Applicant did not have a right to be heard at a reporting under s 370. [note: 13]

33 When the Court of Appeal asked the Prosecution to clarify the reasons for taking such a position, they confirmed that this was based on their reading of the Judgment that nobody had a right to be heard before the Magistrate's Court at a s 370(3) hearing. The court further questioned the Prosecution on whether there was good authority to support the Judge's decision. The Prosecution replied that there were no authorities directly on point, but sought to rely on the *dicta* in *Ung Yoke Hooi* at [25]: [note: 14]

> … In our view, although ss 68 and 392 do not require the police to inform the account holder of the seizure of his bank account, there is no reason why, operationally, the police should not inform the account holder of the seizure of his account. This is a matter of good governance as it will avoid causing the account holder (who may be the lawful owner of the funds) any embarrassment, if not harm to his reputation, should it result in his having to explain to third parties why he cannot use the accounts. Furthermore, once the seizures were reported under s 392(1), there was again no reason why the Appellant could not have been informed of the same as soon as practicable since his address was known to the police.

34 Thereafter, the court directed parties to come to an agreement as to the questions of law to be referred to the Court of Appeal. After the three questions were approved by the court, the Applicant proceeded to file Criminal Reference No 1 of 2014.

**The questions referred**

35 The following are the questions of law of public interest to be referred for the decision of the Court of Appeal pursuant to s 397 of the CPC:

> Question 1
>
> (a) Whether any person may claim a right to be heard on the occasion of the reporting or subsequent reporting of the seizure under Section 370 of the Criminal Procedure Code 2010?
>
> (b) If so, the categories of persons who may claim such a right, and what such persons must show in order to be entitled to be notified of and/or to be heard at such reporting (or subsequent reporting); and
>
> (c) Whether it is for the Magistrate's Court to decide whether a person claiming to be entitled to possession of seized property is entitled to be notified of and/or to be heard at such reporting.

Question 2

Under what circumstances (if at all) would a person who has the right to be heard at the reporting or subsequent reporting of a seizure under Section 370 of the Criminal Procedure Code 2010 be entitled to know the contents of the Investigation Report provided by the police to the Magistrate's Court under Section 370 of the Criminal Procedure Code 2010; and how (if at all) such contents are to be brought to his knowledge?

Question 3

What are the considerations to be taken into account by a Magistrate's Court when exercising its discretion under Section 370(3) of the Criminal Procedure Code 2010 in determining whether the property seized and reported pursuant to Section 370(1) is relevant for the purposes of any investigation, inquiry, trial or other proceeding under the Criminal Procedure Code 2010?

**Issues before this court**

36 The issues which arise from the three questions referred may be reduced more plainly to the following:

(a) Issues relating to Question 1:

(i) Is there a right to be heard under s 370 of the CPC?

(ii) Who may claim such a right?

(b) Issues relating to Question 2:

(i) What does the right to be heard entail?

(ii) How should the right to further information be balanced against the need to ensure that police investigations are not prejudiced?

(c) Issues relating to Question 3:

(i) What does the Magistrate have to decide in a s 370(3) determination?

(ii) What are the considerations for the Magistrate to take into account in determining whether seized property is relevant for the purposes of any investigation *etc*?

**Issues relating to Question 1**

37 Both parties, quite rightly, take the position that there is a right to be heard on the occasion of the reporting or subsequent reporting of the seizure under s 370 of the CPC (Question 1(a)). Parties also agreed that the Magistrate's Court should decide whether a person claiming to be entitled to possession of seized property is entitled to be notified of and/or to be heard at such reporting (Question 1(c)). The parties, however, appear to disagree on the categories of persons who may claim such a right to be heard (Question 1(b)).

38 However, given the findings of the Judge with regard to s 370, we will first discuss whether a person who claims to have an interest in the seized property has a right to be heard under s 370.

***Is there a right to be heard?***

*Does the statutory framework of s 370 suggest that there is no right to be heard?*

39 As mentioned above, the first two reasons given by the Judge as to why the Applicant does not have a right to be heard is premised on the Judge's interpretation of the statutory framework of s 370. The Judge found that the investigation report was determinative of who is entitled to possession of the seized property, and was also conclusive on the issue of the relevance of the seized property to any investigation *etc*.

40 With respect, we do not agree that the investigation report is meant to be determinative of those matters.

41 We accept that the statutory scheme under s 370 requires that the investigation report should state:

(a) whether the police officer considers that the seized property is no longer relevant for the purposes of any investigation *etc* under the CPC and if so, the details relating to the seizure of the property, and the reasons as to how the property seized is connected to any investigation *etc*; and

(b) the date the property was seized.

42 The information to be furnished in the investigation report, as alluded to in [41(a)] above, will enable the Magistrate's Court to determine the relevance of the seized property to any investigation *etc*, and in turn whether the property should be disposed of. However, it is not necessary for the investigation report to provide information on whether the original possessor of the property at the time of seizure is entitled to the property, or for that matter, the identity of the person entitled to possession of the seized property. Nevertheless, as a matter of common sense, it seems to us that the investigation report should indicate from whom the property was seized.

43 As regards the second finding of the Judge, a plain reading of s 370(3) suggests that the Magistrate's Court cannot simply adopt the opinion of the police officer as to the relevance of the seized property for the purposes of any investigation *etc*. Section 370(3) expressly provides that if the Magistrate's Court "is satisfied that [the] property is relevant for the purposes of [any investigation *etc*]", it must not dispose of the property. The word "satisfied" would necessarily connote consideration and judgment. Moreover, as a matter of logic and good sense, by interposing the Magistrate in the process, Parliament must have intended the Magistrate to exercise some judgment on the matter. After all, by the nature of his office, a Magistrate is expected to examine what is placed before him. If Parliament had intended the Magistrate to simply rubber-stamp the process, it would make no sense to involve a person of such an office. Furthermore, if that was the intention, why did Parliament provide that the Magistrate's Court must be "satisfied"?

*Should anyone have a right to be heard at the reporting or subsequent reporting of the seizure under s 370?*

44 We next move to consider whether a person who claims to be entitled to the possession of the property should have a right to be heard under s 370 at the reporting, and subsequent reporting, to the Magistrate's Court in relation to the seized property.

45 A fundamental principle of natural justice is the maxim *audi alteram partem*, which requires that

"no man shall be condemned unless he has been given notice of the allegations against him and a fair opportunity to be heard, and in particular, to make oral or written representations to the body making a decision affecting him" (see *Halsbury's Laws of Singapore* vol 1 (LexisNexis, 2012 Reissue) ("*Halsbury's Administrative and Constitutional Law*") at para 10.059). We would make two points in this regard. First, while we note that s 370 does not expressly provide that the person who claims to be entitled to the possession of the property should have a right to be heard, it is of significance that s 370(3) requires the Magistrate's Court to be satisfied that the property "is relevant for the purposes of [any investigation *etc*]". This implicitly suggests that the court, which is exercising a judicial function here, is expected to hear all relevant parties. Ordinarily, unless there is some other information before the Magistrate's Court, there would be less likelihood for the court to come to any conclusion other than what is recommended in the investigation report. Second, apart from s 370(3), even on general principles, where the interests of a party would be affected by the decision of the court, it is a matter of fairness and justice that the affected party should be afforded an opportunity to make representations.

46 The Indian courts have also held that in the context of a hearing concerning the disposal of seized property under s 457 of the Indian CPC (or s 523 of the old Indian CPC), there is a right to be heard notwithstanding that the legislation does not expressly provide for it. This was explained in the case of *Shyam M Sachdev v The State and another* (1991) 97 Cri LJ 300 ("*Shyam*") at [9] as follows:

> The requirement to issue notice or affording an opportunity to any person is not expressly provided in Section 457 of the Code. The principles of natural justice are, however, implicit in the said provision. Ordinarily a person likely to be adversely affected by an order is entitled to an opportunity before such an order is made. …

47 The learned editors of *Ratanlal & Dhirajlal's The Code of Criminal Procedure (Act II of 1974)* (Y V Chandrachud *et al* gen ed) (Wadhwa and Company Nagpur, 18th Ed, 2006) (at p 1745) further elaborated on this after reproducing the above citation in *Shyam* verbatim, that:

> … While disposing petition under 457 CPC, for return of the property seized, notice and hearing to the accused from whose possession the goods have been seized is necessary.

Although the abovementioned authorities relate to the right to be heard when the Magistrate is deciding on the question as to whom the seized property should be delivered to, *ie*, the person entitled to possession of the property, rather than the right to be heard at a determination of the relevance of seized property to any investigation *etc*, the general principle should still apply as it cannot be gainsaid that the person who claims to be entitled to the possession of the property has a direct interest in having the property released to him. His interest will clearly be prejudiced if the Magistrate's Court were to order the continued detention of the property. It should be borne in mind that the police officer who seized a property for investigation is not required to report the seizure to a Magistrate's Court for the first 12 months. That grace period cannot be regarded by any measure as being too brief. The nature of each case is different and so are the problems which may be encountered during investigations. This explains why Parliament thought it fit that the police officer should be given one year to carry out investigations undisturbed. It is only after this grace period has expired that the police officer is required to explain why the continued detention of the property is still needed. This is the balance which Parliament thought is fair, bearing in mind the interest of the individual and the needs of society to prevent crime. As a matter of logic, the longer the period of seizure, the greater will be the justification needed to show that it is still relevant for the purposes of any investigation *etc*. The court will certainly want to know an estimate of the further time required before investigations will end and whether actual proceedings will be commenced in court or otherwise.

*Do the dicta in Ung Yoke Hooi suggest that there should be no right to be heard?*

48 For completeness, we will deal briefly with the position taken by the Prosecution in CM 63. We note that the Prosecution then took the stand that the person entitled to the possession of the seized property had no right to be heard under s 370. However, the Prosecution did not seriously pursue this position in this reference.

49 We only wish to clarify that the *dicta* in *Ung Yoke Hooi* (set out above at [33]) in no way lends support to the proposition that no one should have a right to be heard on the occasion of the reporting, or subsequent reporting, of a seizure under s 370. That passage in the judgment simply states that s 392 of the old CPC did not require the person whose property is seized to be informed of the seizure.

50 The Prosecution had also relied on *Marie & Faizal* (at para 19.032), which interprets the *dicta* in *Ung Yoke Hooi* as follows:

> In relation to the seizure of funds in bank accounts, the Court of Appeal in *Ung Yoke Hooi v Attorney-General* [2009] 3 SLR(R) 307 had commented that although section 392 of the old CPC did not require the police to inform the account holder of the seizure, this ought to be done as a matter of good governance in order to avoid causing embarrassment to the account holder. Further, once the seizures were reported under section 392(1) of the old CPC, there was, again, no reason why the account holder could not have been informed of the same as soon as practicable. Whilst the same reasoning may apply to section 370 of the Code as well, as it would be good practice *generally* for the police to notify the account holder when an order has been made for the freezing of a bank account under section 35, as well as when the freezing of the account is reported to a Magistrate's Court, this may not be appropriate in every case, particularly where doing so might tip off the accused or jeopardise the ongoing investigations. In such circumstances, a persuasive argument can be made that the notification process *can*, and indeed, *should* be delayed.
>
> [emphasis in original]

51 While the general opinion expressed in *Marie & Faizal* is relatively uncontroversial, it should not be taken out of context. At its highest, it only states that there might be reasons why the person whose property is seized should not be notified of the seizure. It certainly does not go so far as to suggest that no one should have the right to be heard at the occasion of reporting, or subsequent reporting, of seized property under s 370. Again, we would emphasise that reporting under s 370 is only required where one year has elapsed since the property was first seized and we do not think that the concern about tipping off can be real anymore.

***Who may claim such a right to be heard?***

52 There are two elements to this issue. The first relates to what kind or type of interest must a claimant assert before he can be said to possess a right to be heard. The second relates to the extent to which the person asserting such an interest must prove his claim.

*What kinds of interest in the seized property should give rise to a right to be heard?*

53 Both parties take the position that an entitlement to possession should give rise to a right to be heard. The Applicant took this stand by relying on the wording used in s 370(2), which provides that where the property seized is no longer needed for investigation, the court is to make delivery of it "to

the person entitled to the possession of it".

54 The Prosecution also relies on the wording of s 370(2), but makes a different point. The Prosecution submits that it is undesirable to accord a right to be heard at a s 370 reporting to every person who claims the most tenuous of interest in the seized property because it might result in the Magistrate's Court being inundated with requests by persons clamouring to be heard, particularly where the seized property is of significant value.

55 It is clear, at least on the face of s 370 itself, that the decision of the Magistrate's Court as to the relevance of seized property for the purposes of any investigation *etc* under the CPC will affect, at the very least, the interests of the person to whom the seized property would be delivered pursuant to s 370(2), *viz*, the person entitled to possession of the seized property. The person entitled to possession of the seized property would rightly have an interest in the proceeding, and should be accorded the right to be heard.

56 However, we think there is good reason for a wider class of interests to be considered. This is because the person entitled to possession of the seized property might not be the only person who has an interest in having the property released. In fact, it is not uncommon for the person entitled to possession of property to have a lesser interest in the property as compared to another person. For example, in a typical situation involving a bailment, the bailee might have the immediate right to possession, but it is the bailor who has the ownership interest in the property. Another possible scenario would be where the seized property is the subject matter of a trust. In that case, the person with beneficial title to the property is often not the person entitled to the possession of the property. Furthermore, the property might be the subject matter of a security interest, and the holder of the security interest would have an interest in being able to deal with the seized property.

57 If such a person is not given a right to be heard at the reporting before the Magistrate's Court, it could result in him suffering prejudice. Of course, the prejudice suffered by such a person could perhaps be alleviated by him instituting civil proceedings against the person entitled to possession of the property who does not actively participate in the s 370 proceedings. This, however, is speculative, and would depend very much on the private duties and obligations owed between those parties.

58 We find that the wording of s 370(2) does not necessarily restrict the right to be heard to only persons who are entitled to possession of the seized property. In considering the disposal of property, it is sensible for the Magistrate's Court to order the property to be delivered to the person who is entitled to *possession* because that is the person who rightfully has physical dominion over the property at that time (although it should be noted that the Indian cases have interpreted entitlement to possession to mean entitlement to lawful possession and not simply mere possession of the property at the time of seizure: see *Sohoni's Code of Criminal Procedure 1973* vol V (R Gopal gen ed) (LexisNexis Butterworths, 20th Ed, 2005) ("*Sohoni's*") at p 5834. But there is no reason why this should remain the sole standard for deciding who the Magistrate's Court should hear for the purposes of determining whether a seized property is relevant to any investigation *etc* under s 370(3).

59 Support for this approach can also be found in the Indian jurisprudence, albeit that the Indian authorities relate to the disposal of seized property (under s 457 of the Indian CPC and s 523 of the old Indian CPC) and not to the question of relevance of seized property to any investigation *etc*. The court in *Shyam* (at [9]) described persons who have a right of being heard as "person[s] likely to be adversely affected by an order". So too in *State Bank of India v Rajendra Kumar Singh and ors* (1969) Cri LJ 659 ("*Rajendra Kumar Singh*") (which was cited in *Shyam*), the court stated at [4] that "the party adversely affected should be heard before the Court makes an order for return of the seized

property". Therefore, it is not just persons who are entitled to possession of the seized property that should be heard by the Magistrate. The category of persons who would be affected by the disposal order is wide enough to cover other persons, such as those with a security interest in the property.

60 While we understand the concerns raised by the Prosecution, we do not seriously think that expanding the interest which a claimant asserts to possess in order to be eligible to be heard will likely cause the Magistrate's Court to be inundated with claims by various bounty seekers. In our view, this concern is more theoretical than real. In any event, this problem will be better addressed under the second element – to what extent must a claimant prove the existence of his interest in the seized property.

*To what extent must a person claiming such an interest prove that interest?*

61 As mentioned above, the parties take different views on this issue. The Applicant submits that such persons must meet the standard of a *prima facie* case, whereas the Prosecution submits that such persons must show that there is reason to believe that they have the requisite interest in the seized property.

62 In support of his submission, the Applicant quotes the definition of "*prima facie* case" from the fifth edition of *Mozley and Whiteley's Law Dictionary* (F G Neave and Grange Turner) (Butterworth, 1930), which can be found in identical wording in its 12th edition (J E Penner) (Butterworths, 2001) at p 272:

> A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side.

Essentially, the Applicant's submission is that a *prima facie* standard does not require a person to conclusively prove entitlement. However, it is at the same time not satisfied by the mere assertion of a claim.

63 The Prosecution submits that the standard of reason to believe falls somewhere in between mere suspicion and that of conclusive proof. Elaborating further, this standard requires the court to look into the circumstances of the case to see if any reasonable man could see sufficient cause to believe or whether there are good and cogent reasons which supports the belief, to ensure that the information laid before the court is credible, and to assess critically the case made by a claimant and his motivations as well. In particular, the Prosecution submits that the need to assess the motivations of the claimant is important because this will allow the Magistrate's Court to sieve out, at an early stage, *mala fide* claims so as to prevent people from fishing for information on the pretext of having an interest in the seized property.

64 However, the parties are in agreement that the proof of interest in the seized property need not be conclusive proof. We agree that this must be the case, since it would be difficult for the Magistrate's Court to determine conclusively any person's interest in the seized property at such an early stage (see also the cases of *Sim Cheng Ho*, *Thai Chong Pawnshop Pte Ltd and others v Vankrisappan s/o Gopanaidu and others* [1994] 2 SLR(R) 113, and *Sohoni's* at p 5833, which explain that even an order for disposal of seized property is not conclusive as to who has title over the property).

65 The parties also do not suggest that the standard lies on the opposite end of the spectrum

such that a mere assertion of a claim is sufficient. Upon clarification at the hearing of this reference, it appears that the main source of disagreement between the parties is perhaps a matter of terminology.

66 The Prosecution takes the position that it is imperative for evidence relating to the motivations and credibility of the person claiming an interest in the seized property to be considered by the court. The Prosecution is concerned that if the standard is only one of a *prima facie* case, this might cause the Magistrate not to examine whether a claim is good and with cogent reasons, and could lead to a greater number of people being regarded as having an interest in the seized property.

67 The Applicant's interpretation of what constitutes a *prima facie* case, however, does not seem to preclude the Magistrate from undertaking that scrutiny. Our view is that the standard of a *prima facie* case does in fact allow for an assessment of the credibility of the evidence on its face by the Magistrate. The evidence must also not be inherently incredible. In fact, it appears to us that the standard of a *prima facie* case is the legal standard, whereas the standard of a reason to believe is the practical application of that legal standard.

68 What is perhaps the more crucial issue is what needs to be shown by the claimant in order to prove a *prima facie* interest in the seized property. It is obvious that this is not a matter which is amenable to a formulaic approach as much would depend on the character of the property and the particular facts and circumstances of each case. However, as a general guideline, the court should take into consideration these factors, where applicable:

(a) the nature and type of interest claimed in the seized property;

(b) where there are claims by multiple parties, the relationship between each party claiming an interest in the property; and

(c) whether documentary evidence of the interest in property is normally available, and if so, whether such evidence is produced.

**Issues relating to Question 2**

***What does the right to be heard entail?***

69 Both parties acknowledge that where there is a right to be heard, it would follow that there should be a right to be given access to information required for the right to be heard to be effective, which in the present context, refers primarily to the investigation report. However, this right to information is not absolute, and must be weighed against any potential prejudice to the public interest which disclosure of information may cause. This position is borne out by both authority and good sense.

70 Specifically, the right to be heard in this context entails the right to notice of the hearing, and the right to further information concerning the seized property. Unless access to the information is available to the claimant, the right of the claimant to be heard would be seriously undermined.

*Notice of the hearing*

71 As succinctly put by Prof Paul Craig in *Administrative Law* (Sweet & Maxwell, 7th ed, 2012) ("*Administrative Law*") (at para 12-023), "[n]otice is central to natural justice", and as eloquently explained by Lord Denning in *B Surinder Singh Kanda v Government of the Federation of Malaya*

[1962] AC 322 (at 337) ("*Kanda v Malaya*"):

> If the right to be heard is to be real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them …

72 Therefore, where a person has the right to be heard before the Magistrate's Court for the purposes of a determination on whether seized property is relevant to any investigation *etc* pursuant to s 370(3), that person must be given notice of the hearing (see also the Indian authorities of *Shyam* and *Rajendra Kumar Singh* cited above, where the giving of notice was discussed alongside the right to be heard).

73 Where the person whose interest in the seized property may be affected is not known to the authorities, notice obviously cannot be given to him. It would not be practical for the authorities to make inquiries as to who might possibly have an interest in the seized property. As explained above, there could be a great variety of interests in the seized property and it would be difficult to identify who might possibly have a claim to the property. However, where the authorities know of such a person, *eg*, where the person makes enquiries with the police officer and asserts an interest in the property, notice should be given to him.

74 Therefore, so long as a person has informed the authorities that he has an interest in the seized property, the authorities should notify that person of any hearing concerning the reporting or subsequent reporting under s 370. We should add that this does not mean that the authorities acknowledge the claim by notifying the person as such, but such notification is imperative to enable the person asserting the claim to attend before the Magistrate's Court, which is the proper forum to decide whether that person has a right to be heard or not.

75 As to the details of how and when such notice should be given, this must depend on the particular facts and circumstances of each case. As explained by Geoffrey A Flick in *Natural Justice: Principles and Practical Application* (Butterworths, 1979) at pp 25–26:

> In the absence of some statutory or regulatory requirement specifying the amount of time which should be given, an administrative notice must be served at a time sufficiently prior to the hearing to enable a party to prepare his case and to answer the case against him. That notice which will satisfy these requirements will obviously vary with the facts of each particular case but will involve a consideration of such factors as the need to secure legal representation; the ability of an unrepresented party to appreciate what action he must take to effectively answer the case against him; the complexity of the legal or policy issues involved; the amount of time needed to analyse the factual grounds of the case to be met; the availability of evidence; the need for prompt action; and so on. ...

*The right to further information concerning the seized property*

76 As already alluded in the passage in *Kanda v Malaya* cited above, the notice must also be accompanied by the necessary particulars concerning the matter. This is explained in *Halsbury's Administrative and Constitutional Law* at para 10.060:

> Compliance with the *audi alteram partem* rule requires that parties likely to be directly affected by the outcome be given prior notification of the action proposed[,] of the time and place of any hearing to be conducted, and of the charge or case they will be called upon to meet. Notice

includes notice of any evidence to be put before the tribunal. It is a breach of natural justice for evidence to be received behind the back of a party. The particulars set out in the notice should be sufficiently explicit to enable a party to understand the case they have to meet and to prepare their answer and their own case.

77 In the context of a hearing for the purposes of s 370(3), the party who is to be heard before the Magistrate's Court must be informed as to how the seized property is connected with the pending investigation. Invariably, the information will be provided in the investigation report tendered by the police officer to the Magistrate. There is therefore a *prima facie* right for parties who have shown that he has an interest in the seized property to be provided with the investigation report.

78 However, we would hasten to add that it may not be appropriate for the investigation report to be furnished to all concerned. This is especially the case where the investigation report could contain sensitive information, and the revealing of that information could prejudice police investigations, or even jeopardise foreign criminal proceedings.

79 Although expressed in the context of administrative review, Prof Paul Craig (at para 12-023 of *Administrative Law*) explains that the individual's right to notice might be circumscribed in certain situations:

> While the courts have jealously protected an individual's right to notice, they have on occasion interpreted it in a limited manner. In the *Gaming Board* case the Court of Appeal held that applicants for a gaming licence should have the opportunity to respond to the negative views formed by the Gaming Board. The Board did not however have to quote "chapter and verse", nor did it have to disclose the source of its information if it would be contrary to the public interest, nor did the reasons for the refusal have to be given. In *Breen* a majority of the Court of Appeal held that a disciplinary committee of a trade union did not have to tell a shop steward why they had refused to endorse his election. In *McInnes* it was held that the council of the Boxing Board of Control did not have to give an applicant for a manager's licence an outline of its objections to him. The test adopted in both cases was that the decision-maker should not capriciously withhold approval.

80 There is therefore a need to balance between two competing considerations, *viz*, the right of an interested person to be informed of the case he has to meet, and the public interest in maintaining the integrity and confidentiality of police investigations. Such balancing of competing considerations by the courts is not uncommon (see *Conway v Rimmer and another* [1968] 1 AC 910 and *Public Prosecutor v Goldring Timothy Nicholas and others* [2014] 1 SLR 586).

***How should the right to further information be balanced with the need to ensure that police investigations are not prejudiced?***

81 There is no guidance from the statutory provision or case law on this issue. But generally, the court and the authorities should take a practical approach having regard to the particular facts and circumstances of the case. To that end, the Prosecution has proposed a framework for determining whether and to what extent the investigation report should be disclosed. Having regard to the Prosecution's suggestion as well as certain concerns raised by the Applicant, we find the following procedure appropriate:

(a) The police officer should take a view as to whether the disclosure of the investigation report will prejudice investigations.

(b) Where there is no such prejudice, the police officer should extend the investigation report to the persons entitled to the right to be heard. Thereafter, if objection is taken by such persons as regards the continued seizure of the property, the Magistrate may, if he thinks it necessary, direct those persons to state the basis of their objections by way of affidavit.

(c) If the police take the view that there will be prejudice, the police (or the Prosecution) must first attend an *ex parte* hearing before the Magistrate to satisfy the Magistrate that the balance of the two competing interests militates against full disclosure of the investigation report. Persons with the right to be heard will be informed that such an *ex parte* hearing is taking place (see *Regina v Davis* [1993] 1 WLR 613).

(d) The police will need to show that there is a reasonable basis for denying disclosure, by furnishing cogent evidence that disclosure of the investigation report carries a reasonable prospect of prejudice to the proper administration of criminal justice.

(e) At the *ex parte* hearing, the Magistrate can make three possible orders:

(i) The Magistrate may take the view that the public interest does not prevent the investigation report (or any information asked of the police) from being disclosed. The matter should then be dealt with as set out in [81(b)].

(ii) The Magistrate may take the view that the public interest prevents some, but not all, of the contents of the investigation report from being disclosed. The Magistrate may then order appropriate redactions to be made to the investigation report before it is disclosed to the persons with the right to be heard. The same procedure as set out in [81(b)] will apply, save for the redactions made.

(iii) The Magistrate may take the view that the public interest prevents the entire investigation report from being disclosed. In such a situation, the persons with the right to be heard must be notified of this decision.

(f) Where the Magistrate takes the position that either some or all of the investigation report should not be disclosed to the parties, the following information should nevertheless be disclosed:

(i) a description of the property seized;

(ii) the date the property was seized;

(iii) the person from whom the property was seized, and the person's connection to the seized property; and

(iv) a brief explanation of the basis of the seizure.

(g) Where persons with the right to be heard are dissatisfied with the Magistrate's decision at the *ex parte* hearing, it is open to them to challenge that decision by way of criminal revision. However, the investigation report should not be disclosed to such persons for the purposes of the criminal revision.

(h) At any stage of the proceeding where the police and/or the Prosecution believe that an *ex parte* hearing is no longer necessary, an *inter partes* hearing should be conducted.

**Issues relating to Question 3**

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***What does the Magistrate have to decide in a s 370(3) determination?***

82 The Prosecution submits that the only matter that the Magistrate has to decide is whether the seized property is relevant for the purposes of any investigation *etc* under the CPC.

83 The Applicant, on the other hand, submits that the discretion of the Magistrate extends wider than that. The Applicant argues that where the continued seizure of property amounts to an abuse of process, the court should not countenance the extension of such a seizure. The Magistrate must therefore conduct a balancing exercise between the loss of use of the seized property and the interests of the administration of justice. In other words, the Magistrate needs to apply his mind to wider considerations apart from the issue of relevance.

84 Having regard to the express wording of s 370(3), and while we agree with the Prosecution that the only matter which the Magistrate's Court should consider and decide upon is whether the "property is relevant for the purposes of [any investigation *etc*]", it must follow as a matter of common sense and justice that what is recommended in the investigation report is not binding on the court. The court is entitled to take into account, *inter alia*, the period which has elapsed since the property was first seized and the nature of the wrongdoing which gave rise to the investigation or inquiry. The longer the period the property has been seized and detained, the greater will be the justification needed to show that it is still relevant to the investigation or inquiry. Where the police does not make any headway in the investigation after a prolonged period of time, the court could well be justified in arriving at the conclusion that the investigation or inquiry is no longer subsisting. It would then follow that the seized property is no longer relevant for the purposes of any investigation *etc*. The court cannot be expected to approve of dilatory conduct on the part of the investigators at the expense of those who have an interest in the seized property. But given the varied nature of such proceedings, what would amount to undue delay is necessarily fact sensitive.

**Conclusion**

***The questions answered***

85 In summary, the answers to the questions referred are as follows:

(a) Question 1(a): There can be a right to be heard on the occasion of the reporting or subsequent reporting of the seizure under s 370 of the CPC.

(b) Question 1(b): The persons who may claim such a right are any person who can show a *prima facie* interest in the property.

(c) Question 1(c): It is for the Magistrate's Court to decide whether a person claiming to be entitled to possession of the seized property has shown sufficient proof of that interest and is entitled to be notified of and/or to be heard at such reporting.

(d) Question 2: A person with the right to be heard would *prima facie* have the right to know the contents of the investigation report provided by the police to the Magistrate's Court under s 370 of the CPC. However, this is subject to the wider public interests not being prejudiced by such disclosure.

(e) Question 3: The matter which the Magistrate's Court should decide is whether the seized property is relevant to any investigation *etc*. In making that decision, the Magistrate's Court

should take into account the nature of the seized property and the length of time which has elapsed since the property was first seized.

***Further orders***

86 In the light of our answers given above, and if the property which is the subject of CR 13 is still being seized by the police, notice of the next reporting to the Magistrate's Court should be given to the Applicant, who will have to satisfy the Magistrate that he has an interest in the property and ought to be heard before the court pronounces on whether the property should continue to be held by the police.

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[note: 1] Record of Proceedings ("ROP") Vol 1 at pp 22–38.

[note: 2] ROP Vol 1 at p 25, para 9.

[note: 3] ROP Vol 1 at pp 40–47.

[note: 4] ROP Vol 1 at pp 49–60.

[note: 5] ROP Vol 1 at pp 63–75.

[note: 6] ROP Vol 1 at p 68.

[note: 7] ROP Vol 1 at pp 121–122.

[note: 8] ROP Vol 2C at pp 118–163.

[note: 9] ROP Vol 2C at pp 173–176.

[note: 10] ROP Vol 2C at pp 198–201.

[note: 11] ROP Vol 2C at pp 177–183.

[note: 12] ROP Vol 2C at pp 232–240.

[note: 13] ROP Vol 2 at pp 638–643.

[note: 14] ROP Vol 2 at pp 676–677.

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