You Xin v Public Prosecutor and Another Appeal
[2007] SGHC 120

Case Number : MA 28/2007 & 29/2007

Decision Date : 24 July 2007

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : The appellants in person; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : You Xin — Public Prosecutor

Contempt of Court – Criminal contempt – Accused persons chanting with backs to court – Summary conviction by District Court for contempt – Whether accused persons' conduct amounting to contempt "in the face of the court" – Jurisdiction of Subordinate Courts to summarily punish for such contempt – Whether procedural safeguards in relation to summary process adequately adhered to

Criminal Law – Statutory offences – Miscellaneous Offences (Public Order and Nuisance) Act – Accused persons convicted of participating in assembly without permit – Whether accused persons' convictions should be overturned – Section 5(1) Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) – Rule 5 Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules (Cap 184, R 1, 2000 Rev Ed)

24 July 2007 Judgment reserved.

V K Rajah JA:

Introduction

1 The law of contempt of court replete with its prompt and powerful sanctions is designed to uphold and enhance both the effective administration of justice as well as the standing of the courts. Its legitimacy in the final analysis, however, is predicated upon the strict observance and adherence by the courts to time-honoured and efficacious procedural safeguards. There can be no doubt that such procedural safeguards are founded upon notions of elementary justice such as natural justice concepts of a fair hearing, not least of which is the opportunity to be fairly heard, before a decision is made.

2 This case involves contempt in the face of the court and brings into sharp focus the competing imperatives of expediency, on the one hand, and fairness on the other, that inevitably prevail in decisions to summarily punish a contemnor. Apart from reviewing what constitutes "contempt in the face of the court" in the context of our statutory regime, this judgment seeks to define the circumstances *when* the summary process of contempt can be properly invoked and *how* scrupulously the procedural safeguards must be observed and applied.

3 With these broad considerations in mind, I took the opportunity to assess the summary convictions of contempt of court pronounced by the district court in its decision of *PP v You Xin* [2007] SGDC 79. My attention was drawn to these convictions in the context of the appeals filed by You Xin ("the first appellant") and Wang Yuyi ("the second appellant") (collectively "the appellants") against their convictions by the district court for contravening r 5 of the Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules (Cap 184, R 1, 2000 Rev Ed)

("Rule 5") read with s 5(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("the Act"). The appellants were convicted together with four other co-accused persons (collectively "the accused"). All the accused are Falun Gong practitioners. As the appellants did not formally articulate their desire to appeal against their convictions for contempt in their petitions of appeal, I decided to exercise my discretion and examine the record of the proceedings in the district court to satisfy myself as to correctness, legality or propriety of these convictions. This is a power I have under s 266(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") and it suffices to note at this juncture that whether I consider it appropriate to revise the convictions for contempt *after* examining the record is a separate matter governed by s 268(1) of the CPC and the applicable case law.

The appeal against convictions for participating in assembly

4 Before assessing the convictions for contempt, it would be appropriate to first address the appellants' substantive appeals against their convictions for participating in an assembly which they ought reasonably to have known was held without a permit. At the first hearing before me on 3 July 2007, the appellants disputed that there was an assembly of five or more persons. The appellants also alleged that the evidence did not conclusively prove their individual culpability. In order to assess their contentions, I directed that the video recording of the entire incident be played in court. This was eventually done at the adjourned hearing on 16 July 2007. After viewing the video recording, the accused raised several additional arguments which can economically be summarised into two main points. First, the appellants argued that as there was no specific time indicated on the video recording, it could not be said with certainty whether the alleged offences had taken place within the time frame specified in the charge. Secondly, the appellants submitted that the video recording had been tampered with to make it appear that they had appeared in an assembly when they had not in fact participated in one.

5 After viewing the video recording and considering the appellants' arguments, I am satisfied that there is no reason to disturb the district judge's detailed analysis of the facts and law. The video recording clearly showed that the appellants were aware of the presence of each other and their fellow accused. It also showed that the appellants had communicated and interacted frequently with different combinations of persons constituting the assembly. It is plain therefore that they had participated in an assembly to publicise "a cause or campaign". As no permit for such an assembly was either applied for or existed, the appellants were in contravention of Rule 5 read with s 5(1) of the Act. Although the video recording did not bear any indication of the time of recording, the appropriate timelines can be established by reference to the testimony of the prosecution witnesses as well as some of the accused themselves as recorded in the notes of evidence. Furthermore, I can see absolutely no reason to doubt that the video recording is anything but authentic and unaltered. Accordingly, I dismiss the appellants' substantive appeals against their convictions for participating in an assembly which they ought reasonably to have known was held without a permit.

Facts in relation to contempt

6 Having addressed the appellants' substantive appeals, I now address the issue of the accused's convictions for contempt. As I stated earlier, this is a matter which I decided to investigate on my own initiative. The relevant facts in relation to this matter are straightforward and can be briefly rounded up. On 22 January 2007, at the commencement of the trial, the accused, through the first appellant (identified as "B2" in the notes of evidence), complained about inadequate seating arrangements for the public and requested that the trial be moved to a bigger courtroom to permit the attendance of family members and supporters. This request was rejected by the district judge because there were no other courtrooms then available.

7 Despite the court's decision, the second appellant (identified as "B3" in the notes of evidence) continued to insist that the trial be heard in another courtroom, emphasising that the trial should not be a "secret" one. The district judge responded by stating that the proceedings were indeed open to members of the public as the door was unlocked. He declined to direct that additional chairs be placed in the courtroom. The second appellant replied that the accused would "boycott" the trial. The district judge then stood down the trial for ten minutes to allow the accused an opportunity to reconsider their decision. The second appellant, however, promptly, on behalf of the accused, unequivocally rejected the district judge's proposal.

8 Following this tense exchange, the prosecution called its first witness. Just after he began his testimony, the accused collectively disrupted the proceedings. The district judge recorded that all the accused "interrupt[ed] court proceeding [*sic*] by chanting with their backs to the Court". Although the district judge directed them to immediately cease their insolent conduct, he was ignored and the accused "continued to chant for another two minutes". What happened subsequently is a matter of vital significance, and it is crucial to set out in full the events as recorded in the notes of evidence by the district judge:

[After district judge tried to get attention but was ignored and the accused continued to chant]

Court: If you do not stop, then I will hold all of you in contempt.

(All 6 accused continue to chant for another minute.)

Court: I *find you in contempt* – officers please take them into custody.

Stand down at 10.45 to 2.30.

[emphasis added]

9 After the trial resumed at 2.34pm on the same day, the district judge gave the accused an opportunity to apologise. Specifically, the notes of evidence recorded that the following exchange between the district judge and the accused:

Court: Do you wish to apologize for disrupting the proceedings? Because I am giving you a chance to purge your contempt at this point.

B1: I didn't interrupt the proceedings this morning.

Court: Were you chanting?

B1: I was involved in the *later part of the chanting*.

Court: So I take it that you are not apologizing for interrupting.

B1: I am of the view that I cannot interrupt.

B2: I do not think that we were in the wrong.

B3: I did not do anything wrong.

B4: I did not do wrong so why should I apologize?

B5: One should not make baseless allegations. I've already answered the questions – I will not apologize because I did not do anything wrong.

B6: I'm not apologizing because we are just raising our basic rights to Your Honour's attention.

[emphasis added]

10 Thereafter, the district judge formally charged the accused with contempt:

Court: You, B1, B2, B3, B4, B5 and B6 are charged that on 22 January 2007 at about 10.45am in Court 35 of the Subordinate Courts, did intentionally interrupt a public servant, [name of district judge], myself, during judicial proceedings by chanting despite being ordered to stop, an offence under section 228 of the Penal Code Chapter 227 [*sic*], and in doing so have committed contempt in the face of the Court.

I will now ask each of you to show cause why you should not be convicted for contempt.

11 The accused, in response, proceeded to individually give reasons why they should not be so convicted. These reasons centred on their perception that they were entitled to a bigger courtroom and were therefore justified in insisting upon this "right" by chanting and "boycotting" the trial. The district judge rejected these reasons and accordingly convicted the accused of contempt:

Court: I *find* you in contempt for your actions earlier today – do you have anything to say in mitigation before I pass sentence?

[emphasis added]

12 The accused maintained that they had not done anything wrong and refused to say anything in mitigation. The district judge thereafter sentenced each of the accused to serve two days' imprisonment.

13 Before examining the correctness and propriety of these convictions, I turn first to review and explain the applicable law.

Overview of the law of contempt

Broad objectives

14 It is settled law that a single, paramount and broad principle underlines the law of contempt. It was noted by Sir John Donaldson MR in *Attorney-General v Newspaper Publishing Plc* [1988] Ch 333 ("*Newspaper Publishing Plc*") at 368 that "[t]he law of contempt is based upon the broadest of principles, namely that the courts cannot and will not permit interference with the due administration of justice". It is important to note that it is justice itself that is flouted by contempt of court, *not* the individual court or judge who is attempting to administer it. The overriding object of contempt of court is not merely to protect the dignity of the courts but essentially to protect the administration of justice. To that extent the term contempt of court is in reality a misnomer.

Forms of contempt

15 Because of the unpredictable and varied nature of human conduct, there are many forms of contempt of court. In the oft-cited words of a widely cited article (see Joseph Moskovitz, "Contempt

of Injunctions, Civil and Criminal" (1943) 43 Colum L Rev 780 at 780):

> Contempt of court is the Proteus of the legal world, assuming an almost infinite diversity of forms.

The scope of the subject was described in similar terms by Donaldson MR in *Newspaper Publishing Plc* ([14] *supra*) where he alluded to the "protean nature" of contempt. Similarly, Lord Diplock in *Attorney-General v Times Newspapers Ltd* [1974] AC 273 stated (at 307) that:

> The provision of a system for the administration of justice by courts of law and the maintenance of public confidence in it, are essential if citizens are to live together in peaceful association with one another. "Contempt of court" is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms.

The Court of Appeal referred to and endorsed these comments in the recent case of *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC* [2007] 2 SLR 518.

16 For all its varied forms, Nigel Lowe and Brenda Sufrin in *The Law of Contempt* (Butterworths, 3rd Ed, 1996) note at p 2 that contempt can be divided into two broad categories, *viz*, contempt by interference and contempt by disobedience. The former category comprises a wide range of matters such as disrupting the court process itself (contempt in the face of the court), publications or other acts which risk prejudicing or interfering with particular legal proceedings, and publications or other acts which interfere with the course of justice as a continuing process (for example, publications which "scandalise" the court and retaliation against witnesses for having given evidence in proceedings which are concluded). The second category comprises disobeying court orders and breaching undertakings given to the court.

Contempt in the face of the court

17 Notwithstanding the many varied forms of contempt, the particular form of contempt this case is concerned with is that of contempt in the face of the court. The Privy Council in *Izuora v R* [1953] AC 327 sagaciously stated (at 336) that it was not possible to particularise the acts which can or cannot constitute contempt in the face of the court. In general, contempt in the face of the court may be said to comprise the unlawful interruption, disruption or obstruction of court proceedings. As Lord Goddard said in *Parashuram Detaram Shamdasani v The King Emperor* [1945] AC 264 ("*Parashuram Detaram Shamdasani*") at 268:

> For words or action used in the face of the court, or in the course of proceedings, for they may be used outside the court, to be contempt, they must be such as would interfere, or tend to interfere, with the course of justice. No further definition can be attempted.

18 At its narrowest, the power to punish for contempt in the face of the court can only be exercised to all misconduct occurring within the courtroom within the personal view and knowledge of the court: see*McKeown v The King* [1971] 16 DLR 390 at 408. It would perhaps be prudent not to attempt to shoehorn a definition of contempt in the face of the court and leave the concept fluid. Indeed, as Zulkefli J shrewdly observed in the Malaysian High Court decision of *Koperasi Serbaguna Taiping Barat Bhd v Lim Joo Thong* [1999] 6 MLJ 38 at 55:

> … the circumstances and categories of facts which may arise and which may constitute contempt in the face of the court in a particular case are never closed. Contempt in the face of

> the court may arise from any act, any slander, any contemptuous utterance and any act of disobedience to a court order. Any of these acts in varying degrees that affects the administration of justice or may impede the fair trial of subjudice matters, whether for the time being pending in any court can be deemed to be contempt in the face of the court.

19 A court of law must be able to maintain within its confines an atmosphere conducive to orderly proceedings so that justice is seen to be conducted in a meticulous and structured manner, and most crucially, fairly and impartially to all who appear before it. The interruption or disruption of the trial process itself invariably constitute a most serious threat to and is an audacious frontal attack on the administration of justice. As such the power to punish as contempt such conduct has long been recognised as a necessary incident of courts of record. In *R v Almon* (1765) Wilm 243, Wilmot J said (at 254):

> The power which the courts in Westminster Hall have of vindicating their own authority, is coeval with their first foundation and institution; it is a necessary incident to every Court of Justice … to fine and imprison for contempt of court, acted in the face of it.

20 Some two hundred years later, Lord Denning MR influentially declared in *Morris v Crown Office* [1970] 2 QB 114 ("*Morris*") at 122:

> The phrase "contempt in the face of the court" has a quaint old-fashioned ring about it; but the importance of it is this: *of all the places where law and order must be maintained, it is here in these courts*. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offence against it. It is a great power – a power instantly to imprison a person without a trial – but it is a necessary power. [emphasis added]

As such, the law of contempt empowers the presiding judge to treat as contempt conduct which interferes with the proceedings and punish the contemnor utilising a summary process without a proper trial.

The power of the subordinate courts to deal with contempt in the face of the court

21 In Singapore, the source of the subordinate courts' jurisdiction (which is of concern in the present case) to deal with contempt merits closer consideration because of the potential simultaneous application of two statutes, namely the Subordinate Courts Act (Cap 321, 1999 Rev Ed) ("SCA") and the CPC. Their precise relationship requires careful explication. It needs also to be considered whether, notwithstanding these statutes, the subordinate courts retain an *inherent* jurisdiction to deal with contempt in the face of the court since the summary process to deal with such contempt is only *expressly* provided for in a confined statutory setting. In other words, if the inherent jurisdiction is not available, then it could be the case that the use of the summary process is necessarily restricted only to the situations spelt out statutorily. It is apposite to first examine the intent and purport of the relevant statutory provisions.

The relevant statutory provisions

22 The subordinate courts' jurisdiction to punish acts of contempt can be found principally in two statutes. First, s 8 of the SCA provides:

> **Contempt**

8.—(1) The subordinate courts shall have power to punish for contempt of court where the contempt is committed —

(*a*) in the face of the court; or

(*b*) in connection with any proceedings in the subordinate courts.

(2) Where contempt of court is committed in the circumstances mentioned in subsection (1), the court may impose imprisonment for a term not exceeding 6 months or a fine not exceeding $2,000 or both.

(3) The court may discharge the offender or remit the punishment if the court thinks it just to do so.

(4) In any case where the contempt is punishable as an offence under section 175, 178, 179, 180 or 228 of the Penal Code (Cap. 224), the court may, in lieu of punishing the offender for contempt, refer the matter to the Attorney-General with a view to instituting criminal proceedings against the offender.

"Subordinate courts" is in turn defined by s 3(1) of the SCA to mean:

3. —(1) There shall be within Singapore the following subordinate courts with such jurisdiction as is conferred by this Act or any other written law:

(*a*) District Courts;

(*b*) Magistrates' Courts;

(*c*) Juvenile Courts;

(*d*) Coroners' Courts;

(*e*) Small Claims Tribunals.

23 Secondly, s 320 of the CPC provides:

Procedure as to offences committed in court, etc.

320. When any such offence as is described in section 175, 178, 179, 180 or 228 of the Penal Code is committed in the view or presence of any civil or criminal court other than the High Court, the court may cause the offender to be detained in custody and at any time before the rising of the court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to a fine not exceeding $500 or to imprisonment for a term not exceeding 3 months or to both.

Possible interpretations of the two sections

24 A perusal of the s 8(1) of the SCA and s 320 of the CPC immediately reveals that the two sections overlap to some extent. First, it is clear that the two sections apply to the same courts, *viz*, the subordinate courts as defined by s 3(1) of the SCA since s 320 of the CPC is stated to apply only to "any civil or criminal court *other than the High Court*" (emphasis added). Secondly, the two

sections contemplate "contempt in the face of the court", albeit to varying degrees. In this respect, s 8(1) of the SCA uses the expression "in the face of the court" when referring to the certain form of contempt committed. On the other hand, the reach of s 320 of the CPC is not extended to the broader expression "contempt in the face of the court"; instead, it requires that the act constituting the act of contempt be founded upon s 175, 178, 179, 180 or 228 of the Penal Code (Cap 224, 1985 Rev Ed) and that it must be "committed in the view or presence" of the court. However, these offences, if committed in the view or presence of the court, are essentially contempt in the face of the court. Therefore, while s 8 of the SCA covers *inter alia* all possible forms of contempt in the face of the court, s 320 of the CPC is only restricted to these statutorily identified types of contempt in the face of the court.

25 Notwithstanding this apparent overlap, the two sections anomalously prescribe *different sanctions* for apparently the same manner of contempt. Section 8(2) of the SCA provides that, in respect of the offences in s 8(1), "the court may impose imprisonment for a term not exceeding 6 months or a fine not exceeding $2,000 or both". In contrast, s 320 of the CPC prescribes a lesser punishment, *viz*, "a fine not exceeding $500 or to imprisonment for a term not exceeding 3 months or … both". This gives rise to the initial presumption that the offence contemplated in s 320 of the CPC is *sui generis* or at least different from that of "contempt committed in the face of the court" as envisaged in s 8(1) of the SCA. This may then give rise to the further proposition that the summary process as expressly provided for in s 320 of the CPC is only limited to that section and specifically to the five Penal Code offences listed therein, if they were committed in the view or presence of the court.

Summary process not restricted to s 320 of the CPC

26 In my view, it would be reading too much into the two sections to regard s 320 of the CPC as signifying a legislative intent limiting the application of the summary process only to certain offences. Indeed, such an interpretation is not easily reconcilable with the *nature* of the Penal Code offences (*viz*, ss 175, 178, 179, 180 and 228) listed in s 320 of the CPC. These offences, as mentioned above, are, *in substance and effect*, essentially contempt in the face of the court if committed in the view or presence of the court, and there is no reason to think that Parliament intended to confine the summary process exclusively to these offences.

27 First, s 175 of the Penal Code concerns the omission to produce a document to a public servant by a person legally bound to produce such document. At common law, the failure to produce a document despite being subpoenaed to do so can amount to contempt: see *Jeames v Morgan* (1616) Cary 56 and *The Law of Contempt* ([16] *supra*) at p 40. Secondly, s 178 of the Penal Code relates to the refusal to take oath when duly required to do so by a public servant; s 179 in turn relates to the refusal to answer a public servant authorised to answer; and s 180 relates to the refusal to sign a statement. At common law, compellable witnesses who unjustifiably refuse to take the oath or affirm or who unjustifiably refuse to answer a question properly put by the court and which is relevant to the case may be held guilty of contempt: see *Hennegal v Evance* (1860) 12 Ves 201 and *The Law of Contempt* ([16] *supra*) at p 45. Thirdly, s 228 of the Penal Code relates to the intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding. At common law, in the case of insult, Holroyd J in *R v Davison* (1821) 4 B & Ald 329 regarded such conduct as contempt: see also *The Law of Contempt* ([16] *supra*) at p 18. As for disrupting court proceedings generally, it was recognised in *R v Stone* (1796) 6 Term Rep 527 that this was contempt: see also *The Law of Contempt* ([16] *supra*) at p 21. Therefore, the five Penal Code offences listed in s 320 of the CPC are really various statutory manifestations of contempt in the face of the court, and must therefore come within the contemplation of s 8(1) of the SCA.

28 As such, I would regard the summary process to deal with contempt in the face of the court to be available whether s 8 of the SCA or s 320 of the CPC is utilised. By this interpretation, the different sanctions prescribed under the two sections are simply an unfortunate statutory incongruence. While a court purporting to apply s 8 of the SCA would not strictly be bound to prescribe the sentences spelt out in s 320 of the CPC even if the contempt in question can be characterised as being one of the Penal Code offences in s 320, it would be prudent to bear in mind the less serious sanctions spelt out in s 320. Such a practice would promote consistency in sentencing across both sections and/or the court's inherent jurisdiction (see [29] to [31] below). Indeed, my view that the summary process is available whether s 8 of the SCA or s 320 of the CPC is employed is supported by both the existence of an inherent jurisdiction of the subordinate courts in dealing with contempt in the face of the court and settled case law, for reasons which I shall now elaborate on.

Inherent jurisdiction of the subordinate courts to deal with contempt in the face of the court

29 The learned authors of *The Law of Contempt* ([16] *supra*) note correctly at p 467 that all courts of record have an inherent jurisdiction to punish contempt committed in their face but the inherent jurisdiction to punish contempt committed outside the court resides exclusively in superior courts of record: see further *R v Lefroy* (1873) LR 8 QB 134. Such a power is indeed not derived from statute or truly from the common law but instead flows from the very *raison d'etre* for a court of law and the uncompromisable objective to uphold the proper administration of justice. Since the subordinate courts are indisputably inferior courts of record, they would be infused with the inherent jurisdiction to deal with contempt in the face of the court, whether the proceedings take place in chambers or in open court. This inherent jurisdiction would also extend to proceedings before the registrar and deputy registrars of the subordinate courts by virtue of the need to uphold the administration of justice in the discharge of their judicial duties. In any event, since the powers of the registrar and the deputy registrars are derived from those of a judge in chambers, s 8 of the SCA would apply to them as well: see O 32 rr 9(1) and (2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) read with s 34 of the SCA.

30 At the same time, it is equally true that Parliament can abrogate or modify such inherent jurisdiction in unequivocal terms. It thus remains to be considered whether Parliament intended for this inherent jurisdiction to be limited. In amending s 8 of the SCA in 1995, the Minister for Law stated that (see *Singapore Parliamentary Debates, Official Record* (5 December 1995) vol 65 at col 332 (Prof S Jayakumar, The Minister for Law)):

> Sir, the main amendment in this Bill relates to contempt of court. The provisions in the Subordinate Courts Act concerning contempt of court are unsatisfactory because contempt of court includes contempt in the face of the court and contempt not in its face. Contempt in the face of the court essentially relates to activities within the court where the court has personal knowledge of the circumstances giving rise to the contempt. *Examples would be interrupting court proceedings or refusing to answer questions before a court without lawful excuse*. Contempt of court not in its face is wider in that it renders activities both in and outside of the court punishable. This is regardless of whether it is within the court's personal knowledge. Examples would be scandalising the court or refusing to comply with a court order. Under the amendments, the Subordinate Courts presently have the power to punish a person for contempt of court only where contempt is committed in the face of the court. *Under the present provisions, the Subordinate Courts are unable to deal with matters which give rise to contempt not in its face. This is clearly inadequate. This lacuna will be remedied by an amendment which seeks to amend section 8 of the Subordinate Courts Act.* In other words, Sir, with the amendments proposed, the Courts will be able to punish for contempt both in the face as well as

not in the face of the court.

[emphasis added]

31 As is clear from this passage, Parliament has acknowledged the powers of the subordinate courts to deal with contempt in the face of the court. As it is well-settled law that the legislative intent must be unequivocal should Parliament wish to abrogate or modify the inherent jurisdiction of the courts, I see no reason to think that Parliament intended s 320 of the CPC to curtail by means of a side-wind the applicability of the summary process to deal with contempt in the face of the court to only the specifically identified Penal Code offences. Indeed, given that the power to summarily punish such contempt conceptually flows from the inherent jurisdiction of the subordinate courts and *not* the statutory provisions, I am of the view that in the absence of contrary legislative intent, the summary process is available in all instances of contempt in the face of the subordinate courts, whether or not s 8 of the SCA or s 320 of the CPC is invoked. Accordingly, when a court exercises its power to summarily punish a contemnor for contempt in its face, it is really drawing upon its inherent jurisdiction to do so, which existence has been *recognised* (and not conferred) by s 8 of the SCA or s 320 of the CPC. However, while the source of the power to *exercise* the summary process is inherent, the *sentencing options* available to the courts at the conclusion of the summary process have been clearly spelt out statutorily. As such, the courts ought to have regard to these statutory boundaries in considering the appropriate sentence. Having said that, it bears emphasis that whichever source of power one uses to justify the exercise of the summary process, the procedural safeguards (which will be elaborated on below) must be followed.

Case law

32 Case law broadly supports my view that the summary process may also be relied on when s 8 of the SCA is invoked. In the High Court decision of *Ram Goswami v PP* [1984-1985] SLR 478 ("*Ram Goswami*"), Wee Chong Jin CJ, without adverting to s 320 of the CPC, did not question the power of the subordinate courts in dealing with contempt in its face by invoking the summary process. Indeed, Wee CJ acknowledged the powers of the subordinate courts as such at [16]:

> In my view, having regard to all the circumstances of the case, the *power of summary punishment given to the judge under s 8 of the Subordinate Courts Act* should not have been exercised when the appellant apologised for his conduct.[emphasis added]

33 Given that I have come to the conclusion that the summary process is available under both s 8 of the SCA and s 320 of the CPC, it must now be considered *when* and *how* this power is to be invoked.

Overview of the summary process

34 Although contempt in the face of the court has some of the characteristics of any criminal offence, the procedure, as David LJ noted in *Morris* ([20] *supra*) at 124, is entirely different in such cases from that which applies in ordinary criminal cases. Like any other offence a criminal contempt must be proved beyond all reasonable doubt but, unlike other offences, there is no prosecution, and no summons or warrant for arrest. The punishment can be immediate and is imposed by the judge sitting in the court at the time even if the contempt is directed against the judge himself.

35 This is what has come to be known as the "summary process". By this process, the accused may be charged on the spot, the judge formulating the charge and then asking the accused to show cause why he ought not to be immediately convicted. In these cases the judge is said to be acting

brevi manu, *ie*, without the intervention of any further court proceedings. The process was well described by Mustill LJ in *R v Griffin* (1989) 88 Cr App Rep 63 (at 67):

> There is no summons or indictment, nor is it mandatory for any written account of the accusation made against him to be furnished to the contemnor. There is no preliminary enquiry or filtering procedure, such as committal. Depositions are not taken. There is no jury. Nor is the system adversarial in character. The judge himself enquires into the circumstances, so far as they are not within his personal knowledge. He identifies the grounds of complaint, selects the witnesses and investigates what they have to say … decides guilt and pronounces sentence.

Dangers of the summary process

36 At first blush, the summary process appears to go against the traditional requirements of natural justice, specifically that a person should not be a judge in his own cause, and that decisions affecting citizens should be taken only after affording an opportunity to be heard. Despite some admitted shortcomings of the process, the primary objection stated earlier (*viz*, no one should be a judge in his own cause) can be easily answered with the simple reply that it is the dignity of the judicial process that is being protected, not that of the court or the judge.

37 However, recognising that the summary process appears to be "rough justice", it is imperative that any such appearance should be countered by the adoption of strict procedures that minimise the impression of injustice. In formulating these procedures, it would be useful to understand the justification for the use of the summary process, and how this may be balanced with the need to ensure that due process is accorded to the accused.

Justification for use of the summary process

38 The justification commonly used for the summary process is that it provides a speedy and efficient means of trying the contempt which is necessary for the protection of the due administration of justice. As Wills J said in *R v Davies* [1906] 1 KB 32 (at 41):

> … the undoubted possible recourse to indictment and criminal information is too dilatory and too inconvenient to afford any satisfactory remedy. It is true that the summary remedy, with its consequent withdrawal of the offence from the cognisance of a jury, is not to be resorted to if the ordinary methods of prosecution can satisfactorily accomplish the desired result, namely, to put an efficient and timely check upon such malpractices. But they do not.

39 The Phillimore Committee in London, in the *Report of the Committee on Contempt of Court* (Cmnd 5794, 1974) at para 17, similarly concluded that the "principal merit [of the summary procedure] is that it can be set in motion rapidly in order to deal with a threat to the administration of justice". Indeed, according to Hope JA in the Australian decision of *Attorney-General (NSW) v Mundey* [1972] 2 NSWLR 887 (at 912):

> The reported decisions show that such a charge [*ie*, contempt] should be dealt with summarily only where it is established clearly and beyond reasonable doubt, and where the case can be described as exceptional. The justification for the summary disposition of contempt charges has been said to be the need to remove at once the immediate obstruction to the administration of justice.

40 Closer to home, in *Bok Chek Thou v Low Swee Boon* [1998] 4 MLJ 342 ("*Bok Chek Thou*"), the Malaysian High Court observed (at 346) that "the disposition of contempt charges which is summary

in nature, may be justified by the need to remove as quickly as possible any impediments or obstructions to the administration of justice as observed by the presiding judge" and that the judge is "to nip and suppress the problem at the earliest of stages".

The summary process to be used only if absolutely necessary

41 Balancing the dangers and justifications for the summary process, it seems right that the disruption or interruption of the trial process should be punishable summarily. However, the summary process for dealing with contempt in the face of the court is summary in the extreme and it therefore is natural that there is judicial solidarity to the effect that this summary process should not be resorted to unless absolutely necessary: see, for example, *Parashuram Detaram Shamdasani* ([17] *supra*) at 270; *R v Griffin* ([35] *supra*) at 71; *Jaginder Singh v Attorney General* [1983] 1 MLJ 71 ("*Jaginder Singh*") at 73; and *Re V Kumaraendran, An Advocate & Solicitor* [1975] 2 MLJ 45. As Stephenson LJ said in *Balogh v Crown Court at St Albans* [1975] QB 73 ("*Balogh*") at 90:

> [The procedure] must never be invoked unless the ends of justice really required such drastic means; it appears to be rough justice; it is contrary to natural justice; and it can only be justified if nothing else will do …

42 Stephenson LJ repeated, with greater emphasis, these views in the later case of *Weston v Central Criminal Court, Courts Administrator* [1977] QB 32 at 46:

> I stand by all I said in *Balogh's* case [1975] QB. 73, 90 about the sparing use of this extreme remedy and the need to resort to it only when necessary, and then under stringent conditions. But I need not decide the question whether summary procedure was necessary, or rightly conducted, in this case, because (as I have said) I am not satisfied that the appellant was in contempt. It is of course vitally important for the administration of justice that solicitors, no less than counsel, should assist the court by co-operating with its administrators and complying with the court's directions, whether they come from the judge as a request for help or as orders to be obeyed. Nowhere is co-operation more important than at the Central Criminal Court, where the enormous number of courts and cases presents special difficulties, and demands the maximum of mutual trust and goodwill if justice to all is to be done fairly and quickly.

43 These views were later unreservedly adopted by Wee CJ, in *Ram Goswami* ([32] *supra*), who in addition referred to the views of Lord Denning MR in *Balogh* ([41] *supra*) at [17]:

> The course of justice is best served if, whenever an occasion arises for a court to consider exercising its powers under s 8, to bear in mind a passage in the judgment of Lord Denning MR in *Balogh v St Albans Crown Court* [1975] QB 73, 85 which reads:
>
> > This power of summary punishment is a great power, but it is a necessary power. It is given so as to maintain the dignity and authority of the court and to ensure a fair trial. It is to be exercised by the judge of his own motion only when it is urgent and imperative to act immediately — so as to maintain the authority of the court — to prevent disorder — to enable witnesses to be free from fear — and jurors from being improperly influenced — and the like ... The reason is so that (the judge) should not appear to be both prosecutor and judge; for that is a role which does not become him well.

44 Nonetheless, it must also be accepted that judges have to make rapid decisions in such cases, and that the *exercise* of this discretionary jurisdiction will not be lightly interfered with by an appellate court, provided that the judge's conduct does not disqualify him for bias, and also provided

that he accords the person concerned the safeguards which are now regarded as essential. In *R v Logan* [1974] Crim LR 609, the appellant upon being sentenced for offences of assault occasioning actual bodily harm and possessing dangerous drugs shouted, and used expletives, protesting his conviction. A sentence of six months' imprisonment was imposed. Although this was later varied on appeal, the English Court of Appeal recognised that the judge was entitled to take into account the background of the case and the appellant's record, and that he could not be criticised for his assessment of the outburst as serious contempt.

45 Indeed, apart from laying down the general proposition that the summary process is not to be invoked unless absolutely necessary, there should not be fetters as to when the summary process can be invoked. To do so would be to tie the hands of the courts in maintaining order to further the administration of justice; the courts must be trusted to invoke the summary process only in the appropriate situations.

The procedural safeguards in the summary process

46 Where the decision to invoke the summary process is taken, the procedural safeguards developed must be followed. As I alluded earlier, given that the summary process can appear to be "rough justice", it is imperative that such a perception should be countered by the adoption of procedures that minimise the impression of injustice. In this regard, I gratefully adopt the suggested methodology articulated in *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 3rd Ed, 2005) at p 706, with appropriate modifications to cater for the statutory regime and settled legal jurisprudence in Singapore.

Proper record of facts

47 At the outset, the need for a proper record of the conduct constituting the alleged contempt must be emphasised. The witnessed conduct, remarks, act of refusal to answer, *etc*, of the alleged contemnor, as well as the stage at which the conduct took place, must be recorded to aid in the later formulation of the charge, and to furnish the details for the contemnor's potential appeal against possible conviction. Indeed, such a requirement is statutorily provided for in s 321 of the CPC (for the specific Penal Code offences stated in s 320 of the CPC), which provides as follows:

> **Record of facts constituting the offence.**
>
> **321.** —(1) In every such case the court shall record the facts constituting the offence with the statement, if any, made by the offender as well as the finding and sentence.
>
> (2) If the offence is under section 228 of the Penal Code the record must show the nature and stage of the judicial proceeding in which the court interrupted or insulted was sitting and the nature of the interruption or insult.

48 In my view, although not required for other contempt in the face of the court under s 8 of the SCA, it would nonetheless be good practice for the courts to invariably have proper records of the acts of contempt. The records should be as complete as possible, but where the situation is such that the disruptive conduct makes it difficult to maintain complete records, a less than flawless account may still be acceptable. Such was the case in *PP v Lee Ah Keh* [1968] 1 MLJ 22 ("*Lee Ah Keh*").

49 In *Lee Ah Keh* (*ibid*), before going on the bench the magistrate heard singing and shouting in the court room. While on the bench he appealed for calm but when the charge was being read out to

the 57 persons, noise was again heard and a missile was thrown at the bench by someone at the back of the court. Persons stood on benches in the gallery and the noise persisted for some time. The magistrate ordered the doors of the court to be closed and summarily ordered those found in the court, including the accused persons, to be committed to prison for contempt. The record of what had happened stated as follows:

> Chaos in court.
>
> Persons in the audience (behind the dock) convicted and sentenced to one month's imprisonment for contempt of court.
>
> Court adjourned.

In reviewing the conviction of the appellant, Ali J, referring to the record, said at [23]:

> In view of what had happened *it is not at all surprising that the record of this case has been some what meagre in the sense that it did not fully state the facts of the case*. It would be easy for me sitting in the comparatively calm atmosphere of the High Court to be wise after the event. I can only regard this as an exceptional case in which if any error had been made it was because the situation rendered it difficult, if not impossible, to exercise self restraint. [emphasis added]

50 I respectfully agree with Ali J. Therefore, while I would stress the need for complete records of the conduct constituting contempt to be kept, this requirement is not an inflexible one and in cases in which the situation makes it difficult for proper records to be kept, the degree of specificity in the record ought to be assessed by reference to the precise factual matrix.

Informing the alleged contemnor of court's desire to pursue contempt proceedings

51 Having concluded that a probable offence of contempt has been committed, the alleged contemnor should be informed of the court's desire to pursue contempt proceedings. The court should, as far as possible, avoid conveying the impression that it has already "found" the alleged contemnor "in contempt". Instead, it should promptly and plainly inform the alleged contemnor of its desire to pursue contempt proceedings and make clear that it has not yet taken cognisance of the alleged contempt and that when it does in fact chooses to do so (*ie*, take cognisance), the contempt proceedings would have begun and that the alleged contemnor would then be given a chance to be heard in response to a charge yet to be formulated against him. The court should then re-emphasise that at this point the alleged contemnor has not been charged or convicted of any offence. After so informing and if necessary, the court may order the alleged contemnor to be detained (a power derived from the court's inherent jurisdiction that is also statutorily recognised in s 320 of the CPC) or adjourn the proceedings for a "cooling-off" period. Of course, if the court decides that immediate contempt proceedings are inappropriate, it may, subject to the conditions spelt out in s 8(4) of the SCA or s 322 of the CPC, refer the matter to the Attorney-General with a view to institute criminal proceedings or direct the alleged contemnor to be prosecuted.

Cooling-off period

52 After informing the alleged contemnor of the court's desire to pursue contempt proceedings, the court may take one of three steps: (a) detain the alleged contemnor in custody; (b) adjourn proceedings; or (c) immediately take cognisance of the offence and proceed to formulate a charge against the alleged contemnor. Although a judge may need to act promptly in the midst of a trial, it is

generally recognised that it will be prudent to defer commencement of the contempt proceedings until some time has passed, both to guard against the judge from over-reacting in the heat of the moment and also to allow the alleged contemnor an opportunity for quiet reflection. This may prompt an offer of an apology as well as a promise not to repeat the disruptive conduct. As Lawton LJ said in *R v Moran* [1985] 81 Cr App R 51 at 53:

> … a decision to imprison the man for contempt of court should never be taken too quickly. The judge should give himself time for reflection as to what is the best recourse to take.

The Phillimore Committee ([39] *supra*) also noted (at para 33) that a penalty was on occasion imposed with undue haste and cautioned that the "very extensive" powers should only be exercised "after due deliberation, and without their exercise appearing to be influenced by the heat or exasperation of the moment".

53 As such, although not expressly required by statute, it is my view that it would be preferable, if practicable, for the court to allow for a "cooling-off" period between the alleged contempt and the contempt proceedings, which begins upon taking cognisance of the contempt of the alleged contemnor.

Opportunity to apologise

54 After this cooling-off period, the alleged contemnor *may (not must)* be given the opportunity to purge his contempt by apologising to the court and assuring it of his good behaviour in the future: see *Wilkinson v S* [2003] 1 WLR 1254 ("*Wilkinson*") at 1262. This is notwithstanding that neither s 8 of the SCA nor s 320 of the CPC provides for such a course of action since the decision to take cognisance of the contempt is entirely voluntary. Of course, s 323 of the CPC gives the court the power to remit punishment on an apology being made, but that section presupposes that a punishment has already been passed and necessarily that can only be so *after* the court has taken cognisance. Thus, that is different from the situation contemplated here where the alleged contemnor is given the opportunity to apologise *before* the court even takes cognisance of the contempt. It is well within the right of the court to decline to exercise its discretion to take cognisance of the contempt when an apology is given.

Taking cognisance of the contempt

55 If the court, after having given the alleged contemnor the opportunity to apologise, nonetheless decides to take cognisance of the contempt, it should then inform the alleged contemnor of this. The alleged contemnor should then be informed that contempt proceedings have been formally commenced against him. Indeed, in *Jagir Singh v Gram Panchayat Raipur Kalan* ILR 1983 (1) (P&H) 396 ("*Jagir Singh*"), it was held that the word "cognisance" means the act of the court in applying its mind towards the offence involved and initiating formal proceedings against the offender.

Rules of natural justice to be observed

56 After taking cognisance of the contempt and thereby initiating the formal contempt proceedings, the court must adhere to the rules of natural justice embodied in the procedural requirements developed by the common law. The fact that the process is so summary does not mean that there are no procedural requirements. The alleged contemnor is entitled to be informed with sufficient precision of the charge against him and to be given the opportunity to explain his conduct and advance any available defence. Indeed, as the Privy Council was at pains to point out in *In Re Pollard* (1868) LR 2 PC 106 at 120:

… no person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him …

57 In *R v Moran* ([52] *supra*), Lawton LJ summarised (at 53) these general principles in the following manner:

… the judge should consider whether the seeming contemnor should have some advice. We do not accept the proposition which was tentatively put forward on this appeal that this contemnor had a right to legal advice. Sometimes situations arise in court when the judge has to act quickly and to pass such sentence as he thinks appropriate at once; so there cannot be any right to legal advice. *Justice does not require a contemnor in the face of the court to have a right to legal advice. But if the circumstances are such that it is possible for the contemnor to have advice, he should be given an opportunity of having it*. In practice what usually happens is that somebody gives the contemnor advice. He takes it, apologises to the court and that is the end of the matter. Giving a contemnor an opportunity to apologise is one of the most important aspects of this summary procedure, which in many ways is Draconian. If there is a member of the Bar in court who could give advice, a wise judge would ask that member of the Bar if he would be willing to do so. The member of the Bar is entitled to say no, but in practice never does. [emphasis added]

58 The High Court of Australia has formulated the following procedural requirements in *Coward v Stapleton* [1953] 90 CLR 573 at 579–580:

… it is a well-recognized principle of law that no person ought to be punished for contempt of court unless the specific charge against him be distinctly stated and an opportunity of answering it given to him: *In re Pollard*; *R. v. Foster; Ex parte Isaacs*. The gist of the accusation must be made clear to the person charged, though it is not always necessary to formulate the charge in a series of specific allegations: *Chang Hang Kiu v. Piggott*. The charge having been made sufficiently explicit, the person accused must then be allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the court any explanation or amplification of his evidence, and any submissions of fact or law, which he may wish the court to consider as bearing either upon the charge itself or upon the question of punishment.

Resting as it does upon accepted notions of elementary justice, this principle must be rigorously insisted upon.

[footnotes omitted]

59 The Supreme Court of Canada reached the same broad conclusion in *BK v R* (1996) 129 DLR (4th) 500. The facts of this case were extremely deplorable, to say the least, but the quashing of the accused's initial conviction for contempt amply illustrates the law's desire to uphold the guarantee of due process to all before criminal conviction. In *BK v R*, the witness had not only refused to testify as a Crown witness on a charge of attempted murder, but had behaved in an insolent and abusive manner. Briefly, he had thrown the Bible on the floor, put his foot up on the railings of the witness box and made his position clear by saying: "F… it man, I ain't testifying". Thereupon he was found to have committed contempt and sentenced immediately to six months' imprisonment. The Supreme Court decided that the judge's decision was wrong and quashed the conviction. Lamer CJC said (at 508, [15]):

> There is no doubt in my mind that he was amply justified in initiating the summary contempt procedures. I, however, find no justification for foregoing the usual steps, required by natural justice, of putting the witness on notice that he or she must show cause why they would not be found in contempt of court, followed by an adjournment which need be no longer than that required to offer the witness an opportunity to be advised by counsel and, if he or she chooses, to be represented by counsel. In addition, upon a finding of contempt there should be an opportunity to have representations made as to what would be an appropriate sentence. This was not done and there was no need to forego all of these steps.

Clear and specific charge

60 The accused must at least be made aware that he is being charged with contempt for particular conduct. However, the degree of precision with which the charge must be stated will depend upon the circumstances. Provided that the gist of the allegation is clearly conveyed to the accused it is not always essential to formulate the charge in a series of specific allegations. The fundamental rule is that the charge must always be specific enough to leave the accused in no doubt as to what is the conduct being complained of.

61 In *Jaginder Singh* ([41] *supra*), the observations of Raja Azlan Shah Ag LP (as he then was) astutely point out how important it is to comply with this principle in dealing with a charge of contempt of court. He stated (at 74):

> *The disturbing aspect, amongst others, in this case is that no specific charges against the appellants* were distinctly stated and what is worse they were not given an opportunity to answer and defend themselves. *It is unthinkable that they should be sent to prison unless specific charges were framed and they have had an opportunity to answer them.* This is because the summary contempt procedure more often involves a denial of many of the principles of natural justice, requiring, as it did in this case, that the judge should not only be both prosecutor and adjudicator, but should also have been witness to the matters to be adjudicated upon. [emphasis added]

62 Similarly, it is important that the charge reflected the specific involvement of each of the alleged contemnor accurately. In *Bok Chek Thou* ([40] *supra*), it was noted (at 345) that charges had to be separately read as it would be against the law to agglomerate the contemnors together since the "… legal and judicial system does not recognize group punishment, hence the necessity of separate charges, with their identities established".

Opportunity to be heard

63 The failure to particularise a charge almost inevitably jeopardises the second requirement that the accused be given an opportunity to answer the charge. The very minimum is that the accused must be given an opportunity to answer the charge before a finding of guilt is pronounced. As stated earlier, in *Re Pollard*, it was held that a contempt of court being a criminal offence no person can be punished for such unless the specific offence charged against him be distinctly stated, and an opportunity given him of answering.

64 This approach was later endorsed by the Privy Council in the case of*Chang Hang Kiu v Sir Francis T Piggott* [1909] AC 312. In this case eight witnesses at the trial before the Chief Justice in the High Court of Hong Kong were committed for contempt. Addressing the eight persons the Chief Justice is reported to have said at 315:

> The eight witnesses have to my mind been guilty of the most flagrant conspiracy to defraud the alleged partner, Wong Ka Chuen. They have each one been guilty of the most corrupt perjury, and in virtue of the provisions of the law which empowers me to deal at once with such cases I commit each of them to prison for three months without hard labour.

Lord Collins delivering the judgment of the board authoritatively said at 315:

> But though, in their Lordships' opinion, the language used by the Chief Justice was quite sufficiently specific to make the appellants aware of the pith of the charge against them, they think that the Chief Justice should, before sentencing them, have given them an opportunity of giving reasons against summary measures being taken.

65 It also bears reiteration that in *Coward v Stapleton* ([58] *supra*), the Australian High Court set out the general principle as such (at 580):

> The charge having been made sufficiently explicit, the person accused must then be allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the court any explanation or amplification of his evidence, and any submissions of fact or law, which he may wish the court to consider as bearing either upon the charge itself or upon the question of punishment.

66 Similarly, in the Malaysia Federal Court case of *Zainur Bin Zakaria v PP* [2001] 3 MLJ 604, it was held at 605 that the opportunity to be heard "must necessarily include that a reasonable opportunity be given to the alleged contemnor to prepare his case".

6 7 This issue of the opportunity to be heard invariably brings forth the consideration of the concept of the necessity of representation for the alleged contemnor. One must bear in mind that as this is a summary proceeding, which usually requires a prompt response, so as to prevent the degeneration of the administration of justice, courts are not rigidly bound to follow the time-honoured "right of legal representation". In the case of *R v Moran* ([52] *supra*) at 53, Lawton LJ rejected the view that a contemnor had a right to legal advice:

> Sometimes situations arise in court when the judge has to act quickly and to pass such sentence as he thinks appropriate at once; so there cannot be any right to legal advice. Justice does not require a contemnor in the face of the court to have a right to legal advice …

Period between taking cognisance and sentencing

68 In view of the general judicial consensus on the desirability of a cooling-off period, it is also preferable that there should be a period of consideration before sentencing. Indeed, such a period could even be an overnight adjournment since, as Lawton LJ sagely noted in *R v Moran* ([52] *supra*) (at 53), "overnight thoughts are sometimes better than thoughts on the spur of the moment".

69 It is, however, pertinent to point out that s 320 of the CPC provides that "at any time before the rising of the court *on the same day*", the court "*may* … take cognizance of the offence and sentence the offender …" (emphasis added). At first blush, this seems to suggest that the sentencing must take place on the same day as when the offence was committed. Indeed, there are Indian authorities which suggest that it is not permissible for the court to hear evidence and postpone sentencing to a later date.

70 In *Emperor v Shankar Krishnaji Gavankar* (1942) 44 Bom LR 439 ("*Shankar Krishnaji Gavankar*"),

the applicant applied to the Bombay High Court for a revision of his conviction for contempt on the basis that the magistrate had failed to pass sentence on the same day as he taken cognisance of the contempt. Beaumont CJ (on behalf of the court) held that the power under s 480 of the Indian Criminal Procedure Code (Act V of 1898) ("the 1898 Code"), which is *in pari materia* with s 320 of the CPC, gives the court before which the contempt had taken place the power to rely on its own opinion of what happened, detain the offender in custody, take cognisance of the offence and sentence him. However, Beaumont CJ stressed (at 441) that "all that must be done before the rising of the Court, *ie*, on the same day" and that "[t]here is no power to act upon a subsequent day". As the magistrate in that case had heard evidence and postponed sentence until two days later, the conviction for contempt was set aside.

71 Subsequent amendments to the 1898 Code resulted in a different conclusion on the issue of whether it is permissible for the court to pass sentence on another day. In *Jagir Singh* ([55] *supra*), a more recent decision of the High Court of Punjab and Haryana, M M Punchhi J interpreted s 345(1) of the Indian Code of Criminal Procedure 1973 (Act 2 of 1974), which is slightly different from s 480 of the 1898 Code. Section 345(1) of the Indian Code of Criminal Procedure 1973 (Act 2 of 1974) reads as follows:

> **345. Procedure in certain cases of contempt.**
>
> (1) When any such offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

72 As would be apparent, s 345(1) of the Indian Code of Criminal Procedure 1973 (Act 2 of 1974) corresponds to s 480 of the 1898 Code (which, as mentioned above, is *in pari materia* with s 320 of the CPC) with the following variances: (a) the words "as it thinks fit" have been omitted after the words "on the same day"; (b) the auxiliary verb "may" has been placed between the word "and" and "at any time" instead of a later portion after the words "on the same day"; and (c) the words "after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section" have been newly inserted after the words "take cognizance of the offence and": see *Sohoni's The Code of Criminal Procedure, 1973* vol 4 (The Law Book Co (P) Ltd, 19th Ed, 1996) at p 3782.

73 It was in view of the legislative amendments to the 1898 Code that Punchhi J held in *Jagir Singh* ([55] *supra*) at 400 that "[n]owhere can it thus be spelled out from the language of [s 345] that all these proceedings had to culminate on the same day" and that "[t]aking cognizance of the offence before the rising of the Court on the same day does not mean that the proceedings have to be initiated and finalised on the same day". Punchhi J further pointed out that "section 480 of the [1898] Code finds its substitute in section 345" and that "a noticeable change has been brought about in as much as the offender has been given now the right to have a reasonable opportunity of showing cause why he should not be punished". The learned judge reasoned that the reasonable opportunity to be afforded to the alleged contemnor has to be a meaningful opportunity in which the view points of the alleged contemnor and his defence have to be taken note of. To illustrate his point, Punchhi J provided the following illustration (at 401):

> Suppose the contempt is itself committed, say five minutes before the Court is expected to rise for the day. Now to say that the offender must be dealt with within those five minutes, and he be given a reasonable opportunity of being heard in observance of the principles of natural justice within that short time, is asking the impossible. The opportunity to be afforded would then be far from being reasonable.

74 In my view, although Punchhi J in *Jagir Singh* ([55] *supra*) was interpreting a section which is not on all fours with s 320 of the CPC, the attractive, indeed compelling, force of his reasoning ought to be applied in interpreting s 320 of the CPC as well. Indeed, to give full effect to the right of the alleged contemnor to be heard, there can be no necessity for the court to sentence the contemnor on the very same day it has taken cognisance of the offence. This right of the alleged contemnor is one derived from the principles of natural justice and need not be expressly provided for by legislation.

75 In this connection, it is acknowledged that the court in *Shankar Krishnaji Gavankar* ([70] *supra*) reached a different conclusion in interpreting a section that also has similarities to s 320 of the CPC. However, with respect, the court there did not explain fully why it had come to the conclusion that the taking of cognisance and passing of sentence must occur on the same day. Reading s 320 of the CPC on its own, it seems to me that the emphasis must be on the word "may", and this suggests that the court *may* sentence the offender to a fine at any time before the rising of the court on the same day. This in turn implies that the court *may choose not* to pass sentence "before the rising of the court on the same day" and it therefore retains the discretion to pass sentence on *another day*. Such a conclusion is entirely in line with the need to accord the alleged contemnor the right to be heard.

76 Having said this, every court should guard against depriving a person of his liberty even one instant more than is necessary. Indeed, as Punchhi J remarked in *Jagir Singh* ([55] *supra*) (at 401), the matter had to be "disposed of as expeditiously as possible". Similarly, in *Wilkinson* ([54] *supra*), the English Court of Appeal decided that, as a matter of good practice, if the case cannot be heard the next day, it should be mentioned in open court in order to explain and record the reasons for the further delay. In my view, our courts should be slow to detain the alleged contemnor in custody overnight after taking cognisance of the contempt. If the contempt proceedings cannot be concluded in the same day after taking cognisance, the question of bail should be considered before the court rises for the day. As far as possible, the alleged contemnor should not be detained overnight in custody pending a judicial determination on the contempt proceedings *except in egregious cases*.

Right to be heard in mitigation

77 At the point of sentencing, the alleged contemnor should be given an opportunity to be heard in mitigation despite the absence of statutory provisions to this effect. The learned authors of *The Law of Contempt* ([16] *supra*) note at p 521 that although there is no English authority on this point, it is doubtful whether there can be any dissent from the view that an accused should be allowed, if he so desired, to make a plea in mitigation pending sentence. At any rate, there is persuasive Scottish authority (*Macara v Macfarlane* 1980 SLT (Notes) 26) advocating this approach. I entirely agree with this.

Sentence

78 Finally, it must be said that the court's power to imprison is a major sanction which should only be imposed in the most serious cases. In *R v Thomson Newspapers Ltd, ex p Attorney-General* [1968] 1 WLR 1, Lord Parker CJ said in relation to assessing the gravity of a contempt in relation to pending proceedings (at 4):

> In the opinion of this court, the question of the seriousness of a contempt of court can be looked upon from two angles: first, the seriousness of the contempt judged by the likely prejudice to the fair trial of an accused; and, secondly, the seriousness of the contempt, from the point of view of what I may call the culpability of those concerned.

In my view, Lord Parker CJ's opinion can be adopted to have general application in all cases of contempt. The seriousness of the contempt can therefore be judged by reference to the likely interference with the due administration of justice and the culpability of the offender with the latter being the key factor. As noted in *The Law of Contempt* ([16] *supra*) at p 527, terms of imprisonment are commonly imposed upon those who have interrupted court proceedings.

79 Indeed, in *Chee Soon Juan* ([29] *supra*), Lai Siu Chiu J, while noting (at [58]) that offences which involved scandalising the Singapore courts have generally been punished by fines only, aptly clarified that where such scandalising was done by the reading of the contemptuous statement *before* the court, a term of imprisonment was warranted. In Lai J's view (at [59]), citing Yong Pung How CJ in *Re Tan Khee Eng John* [1997] 3 SLR 382 at [14], such conduct was clearly "conduct calculated to lower the authority of the court" which amounted to "sheer, unmitigated contempt" sufficient to warrant a sentence of imprisonment". The same, and certainly more, must surely be said of conduct which is clearly calculated to interrupt court proceedings.

Application to the present case

Whether there was contempt in the face of the court

80 The conduct of the accused were plainly deplorable and inexcusable. They were designed not just to express the accused's acute unhappiness and extreme disapproval of the district judge's decision to proceed with the hearing in the existing courtroom but were also plainly calculated to be offensive and to disrupt the court proceedings. This was clearly *prima facie* contempt in the face of the court, and if properly convicted, the decision to imprison the accused certainly cannot be faulted. However, notwithstanding the appalling nature of the accused's conduct, like every litigant, they had an entitlement to be accorded due process.

Whether procedural safeguards sufficiently adhered to

81 In considering whether the procedural safeguards have been sufficiently adhered to, it is pertinent to acknowledge that the district judge had initially informed all the accused "I find you in contempt" *immediately after* the accused continued with their chanting (see [8]). Although it is true that the district judge later formulated a charge against the accused and afforded them an opportunity to be heard in the afternoon, it bears emphasis that the district judge again adopted precisely the same formula, *viz*, "I find you in contempt" after considering the accused's explanation in relation to the charge (see [11]). The repetition of this very formula *could have* plausibly created the impression that the district judge had decided on the accused's guilt even *before* affording the accused a chance to explain their actions. While this was plainly not what the district judge intended (see [84] below), it was rather regrettable that he expressed himself inappropriately as this could in turn have created the perception that he was subsequently merely going through the illusory motions of according the accused due process.

82 I adjourned the hearing to consider whether it would serve or achieve any immediate purpose or wider objective in setting aside the convictions for contempt. I have after mature reflection decided not to set aside the accused's convictions for a combination of reasons, prefaced by fact that I would be exercising my revisionary powers should I set aside the convictions. The exercise of such

powers, as mentioned above (at [3]), is governed by conditions which I do not think are satisfied here. Above all, I am now entirely satisfied that the *purpose* of the procedural safeguards which I have elaborated on in some detail earlier has been fully met and that the accused had clearly been afforded the opportunity to be heard in response to a particularised charge of contempt.

The threshold requirement of "serious injustice"

83 The preliminary consideration in my mind is that if I were to set aside the convictions, I would be exercising my revisionary powers under s 268(1) of the CPC. In this regard, it is trite law that this power is to be exercised sparingly. In *Ma Teresa Bebango Bedico v PP* [2002] 1 SLR 192, it was said (at [9]) that the threshold for exercising this revisionary power is the requirement of "serious injustice". The ambit of this term was described in *Ang Poh Chuan v PP* [1996] 1 SLR 326 (at 330) as such:

> [V]arious phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that there must be some serious injustice … there cannot be a precise definition of what would constitute such serious injustice for that would … unduly circumscribe what must be a wide discretion vested in the court … *But generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below.* [emphasis added]

Furthermore, in *Knight Glenn Jeyasingam v PP* [1999] 3 SLR 362, the High Court clarified the relationship between s 266(1) of the CPC and the requirement of "serious injustice". It held (at [19]) that not only must there have been some error, illegality, impropriety or irregularity, it must also have caused serious injustice for the revisionary power under s 268(1) to be exercised:

> The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. The irregularity or otherwise noted from the record of proceedings must have resulted in grave and serious injustice.

Was there serious injustice caused to the accused?

84 Returning to the present case, I am of the view that it cannot be said that there was "serious injustice" despite that district judge having informed all the accused "I find you in contempt" *immediately after* the accused continued with their chanting (see [81] above). While this could have given the impression that the district judge had already decided on the accused's guilt prior to hearing them, the notes of evidence clearly show that the district judge had in fact afforded the accused an opportunity to be heard in response to charges he later formulated. Granting that the district judge should have informed the accused of the court's desire to pursue contempt proceedings more *precisely* at the outset, his failure to do so did not, in the subject proceedings, take away the *substance* of the procedural safeguards he did in fact accord to the accused. From the notes of evidence, it is apparent that the district judge had formulated particularised charges against the accused. It is equally clear that after reading the charges to the accused, the district judge afforded each of the accused ample opportunity to be heard. He had also allowed the accused an opportunity to mitigate before passing sentence. As such, I am unable to conclude that the district judge had shut his mind as to the inevitability of the accused's guilt before according them the requisite procedural safeguards. On this basis, the district judge's failure to express himself appropriately cannot be characterised as "palpably wrong" and the threshold requirement of "serious injustice" is not met. I therefore do not think that it is appropriate to exercise my revisionary powers under s 268(1) of the CPC.

85 Furthermore, none of the accused (including the appellants) has alleged entertaining any impression of procedural impropriety with regard to the manner in which they were convicted for contempt. In fact, it was not disputed by the appellants that they had actually committed the very acts for which they were convicted of contempt, *ie*, chanting for a few minutes in court or otherwise. It is also not insignificant that four of the accused did not appeal against any of their convictions for contempt of court or otherwise. Finally, even the appellants did not even directly allude to the matters I have noted in their petitions of appeal. The appellants have not complained in these proceedings that they were not informed of the charges or denied a hearing prior to their convictions for contempt. Although not determinative, these considerations also objectively indicated that, from their perspective, the accused also did not then perceive the presence of any procedural injustice.

86 In relation to the sentence passed by the district judge, I am also satisfied that no "serious injustice" was caused to the accused. In fact, it would scarcely be out of place to observe that the sentences meted out were in reality rather lenient. It is manifestly clear from the record that certain individuals had taken on a greater role in the disruption of the court proceedings. B1, for example, only appears to have been involved in the later part of the chanting and was plainly not the instigator (see [9] above). The question could be rightly asked whether there were culprits who had prompted or instigated the others into committing this blatant affront to the administration of justice. From the manner in which the second appellant (B3), as spokesperson, persistently insisted on a move to a bigger courtroom prior to the chanting, it can be plausibly suggested that she was perhaps a prime mover of the incident, although this is by no means a finding I need or do indeed now make. While the district judge could have sentenced the accused to different sentences to reflect more accurately their individual culpability, I am satisfied that no serious injustice had in fact been occasioned *to the accused*. As mentioned above, if at all, the sentence of two days ought to be considered light, particularly for those accused who had greater involvement in the chanting; for example, the instigators or main culprits, if any, should have been sentenced to a longer term of imprisonment on the basis of the established facts.

87 Such an outcome (*ie*, longer terms of imprisonment) could materialise if the present convictions are set aside and the district judge were to refer the incident to the Attorney-General for him to consider whether to initiate criminal proceedings pursuant to s 8(4) of the SCA. Given that the accused have already spent two days in prison and that the Public Prosecutor has not appealed, there is plainly no necessity for such additional steps to be initiated and/or to expose the accused to further proceedings and sanctions. While I am troubled by the appearance of a procedural lapse by the district judge, this is, in the final analysis, not a case where any serious injustice has been occasioned so as to prompt me to exercise my revisionary powers and set aside the convictions for contempt. Indeed, if anything, I emphasise that the accused were punished only rather leniently for what I consider to be blatant and perturbing affront to the administration of justice.

Conclusion

88 The appellation "summary procedure" does not mean that contempt proceedings can be conducted on a whim without any customary legal formalities and procedural safeguards. It merely means that these peculiar and extreme disciplinary proceedings may be conducted, whenever absolutely necessary, expeditiously. The requirement to observe the fundamentals of due process remains imperative even where there has been interference with the administration of justice. Summary does not mean arbitrary.

89 In the present case, after first dismissing the appellants' substantive appeals and reviewing the proceedings below, I have concluded that notwithstanding the initial appearance of a lapse in processoral justice, no good justification exists for me to exercise my discretionary revisionary powers

to set aside the convictions of the accused for contempt of court, especially since the threshold requirement of "serious injustice" is not met.

90 To reiterate, the procedural safeguards embodied in the summary process were actually adhered to *in substance* by the district judge and the accused were in reality accorded due process prior to their convictions for contempt in the face of the court. In the light of these incontrovertible facts, I do not think that the district judge behaved arbitrarily or improperly though I must acknowledge that he ought to have been more vigilant in expressing himself. It is of vital significance that not only must justice be done; it must be seen to be so done by objective members of the community.