Public Prosecutor v Ng Guan Hup
[2009] SGHC 170

Case Number : MA 132/2008

Decision Date : 24 July 2009

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Lau Wing Yum and Lee Jwee Nguan (Attorney-General's Chambers) for the appellant; Harold Seet and Raymond Lim (Harold Seet & Indra Raj) for the respondent

Parties : Public Prosecutor — Ng Guan Hup

Criminal Procedure and Sentencing – Charge – Withdrawal – Accused pleading guilty to charge – District judge convicting accused and adjourning trial for sentencing – Whether Prosecution may exercise discretion not to further prosecute accused – Whether judge should exercise discretion to grant a discharge amounting to acquittal

Criminal Procedure and Sentencing – Judgment – Accused pleading guilty to charge – District judge convicting accused and adjourning trial for sentencing – Prosecution attempting to not prosecute accused further – Criminal Procedure Code (Cap 68, 1985 Rev Ed) allowing for this only "before judgment has been delivered" – Whether "judgment" included pronouncement of sentence – Section 184 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

24 July 2009 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 The respondent was charged in the district court with mischief under s 425 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). He pleaded guilty to the charge, admitted to the statement of facts and was duly convicted of the charge. He agreed for two other charges of mischief to be taken into consideration for the purpose of sentencing. After hearing the mitigation plea, the district judge adjourned the trial to 15 April 2008 for sentencing. However on the adjourned date, the prosecution informed the court that fresh evidence had been uncovered which cast doubt on the truthfulness of the respondent's admissions and plea of guilt. The prosecution applied under s 184 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC") for the respondent to be given a discharge not amounting to an acquittal on the three charges. The district judge refused the application and the prosecution appealed before me against the refusal.

Background

2 The offence of mischief under s 425 is punishable under s 426 of the Penal Code. Sections 425 and 426 provide as follows:

> **Mischief**
>
> **425**. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

…

Punishment for committing mischief

426. Whoever commits mischief shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

3 The three charges stated that sometime in July 2007, at the Singapore Turf Club, the respondent had used a syringe to administer a drug, 2-(1-hydroxyethyl)-promazine-sulphoxide ("the banned substance"), to three racehorses belonging to one Charles Leck ("Charles"). As a result of the injections, the horses underperformed during a race on 20 July 2007.

4 On 8 April 2008, before the district judge, the respondent pleaded guilty to the charge and admitted to the statement of facts without qualification. He was duly convicted of mischief under s 425 of the Penal Code. The respondent also admitted and consented to the court taking into consideration the other two charges for the purpose of sentencing.

5 According to the statement of facts, the respondent was working as a stable hand at the Singapore Turf Club. On 12 September 2007, he was detained in the vicinity of the Singapore Turf Club and found in possession of two unused syringes, which he had no authority to bring onto the premises. In his locker, a vial was found. The respondent admitted to having administered the banned substance, via a syringe, to a racehorse named "Arabian Star" sometime in July 2007 at 9am, as he wanted it to underperform during a race on 20 July 2007. This racehorse was under the charge of Charles, a racehorse trainer. A letter from the Malayan Racing Association to Charles, dated 7 August 2007, states that the racehorses, "Arabian Star", "Kingtrap" and "Justohelp", tested positive for the banned substance for races on 20 July 2007. During the mitigation submissions, it was also revealed that Charles was the respondent's nephew.

6 On 15 April 2008, before the district judge could pronounce sentence, the prosecution informed him that it had uncovered evidence which cast doubt on the truthfulness of the respondent's admissions and plea of guilt, and required further investigation. In particular, the prosecution informed the district judge that the closed-circuit television ("CCTV") recording disclosed that the respondent had not entered the stables at the material time, contrary to his admission. Moreover, the vial which the respondent claimed to have contained the banned substance used to inject the three horses was analysed and found not to contain the said substance. The prosecution proceeded to apply under s 184 of the CPC for the respondent to be given a discharge not amounting to an acquittal on the three charges. Counsel for the respondent objected to the application and, after hearing the submissions from both sides, the district judge refused the prosecution's application, resulting in this appeal.

The district judge's decision

7 The prosecution's application is under s 184 of the CPC, which provides as follows:

(1) *At any stage of any summary trial before judgment has been delivered*, the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the defendant upon the charge and thereupon all proceedings on the charge against the defendant shall be stayed and he shall be discharged from and of the same.

(2) Such discharge shall not amount to an acquittal unless the court so directs except in cases

coming under section 177.

[emphasis added]

8 According to the district judge (see *Public Prosecutor v Ng Guan Hup* [2008] SGDC 168 ("the GD")), this discretion of the prosecution to not further prosecute a defendant may only be exercised *before judgment has been delivered*. The question, in his view, was whether judgment was delivered the moment the court convicts the accused even though the sentence has not yet been pronounced.

9 The district judge held that once he had recorded a conviction against the respondent, judgment was delivered and as such, s 184 of the CPC could not apply.

Whether "judgment has been delivered"

10 In *Arjan Singh v PP* [1993] 2 SLR 271 ("*Arjan Singh*"), it was held that when the Public Prosecutor informs the court that he will not further prosecute an accused upon a charge, the court has no discretion on the matter and must order a stay of all proceedings on that charge and discharge of the accused from and of the same; however under s 184(2) of the CPC the court has the discretion to direct that the discharge shall or shall not amount to an acquittal.

11 The issue in this case – and it is the sole issue – is whether, for the purpose of s 184 of the CPC, judgment has or has not been delivered when the district judge has convicted an accused person but before the sentence is pronounced. This turns on the meaning to be attributed to the word "judgment" in s 184 of the CPC.

The prosecution's position

12 The prosecution pointed out that the word "judgment" appears in various parts of the CPC, and submitted that its meaning depends on the context in which it appears. In the case of s 184 of the CPC, the prosecution contended that the meaning of the words "judgment has been delivered" encompasses the passing of the sentence. Accordingly, the powers of the public prosecutor under s 184 of the CPC may be exercised at any time up to the passing of the sentence.

The respondent's position

13 The respondent, on the other hand, argued in the main that the CPC draws a distinction between "judgment" and "sentence", and referred to authorities which suggest that "judgment" means a final order in a trial terminating in a conviction or acquittal of the accused. This would mean that the "sentence" is merely a corollary of the conviction, and judgment is delivered the moment an accused is convicted even if sentence has not yet been passed.

Meaning of "judgment" in the CPC

14 The word "judgment" appears in numerous parts of the CPC. Besides s 184, the term is also used in ss 134, 163, 212, 215, 216, 217, 218, 219, 220, 241, 243, 247, 251, 252, 258, 259, 261, 263, 314, 318, 396, and 400. Unfortunately, as the district judge noted, the word "judgment" is not defined in the CPC (see GD at [5]). However, the prosecution pointed out that "judgment" carries different meanings in different parts of the CPC; if this is so, then it would come as less of a surprise that the word is nowhere defined in the CPC.

Where "judgment" and "sentence" may have different meanings

15 To support the assertion that the legislature intended to ascribe different meanings to the words "judgment" and "sentence", the respondent pointed me to s 247(1) of the CPC, which states:

> Subject to sections 242, 244 and 245 any person who is dissatisfied with *any judgment, sentence or order* pronounced by any District Court or Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against that *judgment, sentence or order* in respect of any error in law or in fact or, in an appeal against sentence, on the ground that the sentence imposed is manifestly excessive or inadequate by lodging, within 10 days from the time of *the judgment, sentence or order* being passed or made, with the Registrar of the Subordinate Courts at the court house at which the trial was held, a notice of appeal in triplicate addressed to the High Court. [emphasis added]

16 I was also referred to the Malaysian case of *Marzuki Bin Mokhtar v PP* [1981] 2 MLJ 155 ("*Marzuki*"), where Tan Chiaw Thong J ("Tan J") found himself having to interpret the word "judgment" in s 307(i) of the Malaysian CPC, which is *in pari material* with our s 247(1). He concluded thus:

> [T]he word "judgment" is not defined in the [Malaysian CPC] but in the Commentaries on the Code of Criminal Procedure 1973 by *Sarkar*, in dealing with the matter of judgment in a trial under s 353 of the Indian Code of Criminal Procedure, it was stated at page 823 that the word "judgment" in criminal proceedings *indicates the final order in a trial terminating in the conviction or acquittal of the accused*. I would respectfully adopt the definition of judgment therein defined for the purposes of the instant appeal. [emphasis added]

17 With respect however, the definition preferred by Tan J lends us little assistance in our dilemma; it only serves to beg the further question, *ie* whether "the final order in a trial terminating in the conviction or acquittal of the accused" includes the sentencing of the accused, and one which the learned judge did not need to answer in that case.

18 Nonetheless, the manner in which s 247 (and similarly ss 241, 261 and 263) of the CPC is drafted supports the view that the terms "judgment" and "sentence" bear different meanings. Indeed, the prosecution did not contend otherwise. Instead, it accepted that in certain parts of the CPC (*eg* ss 241, 247, 261 and 263), "judgment" may not include sentencing, but maintained that "judgment" *must* include sentencing when used in other sections, or absurdity would result.

Where "judgment" may include "sentence"

19 To illustrate how "judgment" might include "sentence", the prosecution referred to s 258 of the CPC, which states:

> On the termination of the hearing of the appeal the High Court shall, either at once or on some future day which is then appointed for the purpose or of which notice is subsequently given to the parties, deliver judgment in open court.

20 By the prosecution's reckoning, "judgment" in s 258 of the CPC must necessarily *include* "sentence". For instance, in an appeal by the prosecution against the acquittal of an accused, if the High Court decides finally to set aside the acquittal and convict the accused, the "judgment in open court" must also include the pronouncement of a sentence for the accused. It would be absurd, the prosecution submitted, if in such cases the delivery of a "judgment" meant only a verdict on the conviction or acquittal of the accused, but did not include "sentence".

21 Having considered the arguments from both the prosecution and the respondent, the district judge concluded that the legislature had intended to ascribe different meanings to the words "judgment" and "sentence" (see the GD at [10]). He relied first on the distinction drawn between "judgment" and "sentence" in various sections of the CPC, *eg* ss 241 and 247 (see above at [17] to [20]). The district judge also cited the definition used by Yong Pung How CJ ("Yong CJ") in *Lim Teck Leng Roland v PP* [2001] 4 SLR 61 ("*Roland Lim*") in support of his decision.

22 In *Roland Lim*, the word "judgment" was considered by Yong CJ in the context of s 217 of the CPC. Section 217 of the CPC reads:

> **Judgment not to be altered**.
>
> 217.—(1) No court other than the High Court, when it has recorded its judgment, shall alter or review the judgment.
>
> (2) A clerical error may be rectified at any time and any other mistake may be rectified at any time before the court rises for the day.

23 Yong CJ observed (at [13]):

> The word 'judgment' is not defined in the Criminal Procedure Code. The *Halsbury's Laws of England*, Hailsham Ed, Vol IX, paras 260–265 explains it as *a final order in a trial terminating in the conviction or acquittal of the accused*. In *Chhotey Lal v Tinkey Lal* (1935) AIR 815, the court regarded that an order in the nature of a judgment is one which is passed on full enquiry and after hearing both parties.
>
> [emphasis added]

The district judge inferred that since a "judgment" is "a final order in a trial *terminating* in a conviction" [emphasis in original], the sentence is merely a corollary of the conviction (see [11] of the GD). While such an interpretation is, in my view, entirely plausible, it should be noted that the issue of whether a "judgment" includes "sentence" was not considered by Yong CJ. I am thus not persuaded that the district judge's interpretation is inevitable on the basis of the decision in *Roland Lim*.

24 On this point, the prosecution referred me to *Wong Hong Toy v PP* [1994] 2 SLR 396 ("*Wong Hong Toy*"), where the Court of Criminal Appeal examined s 216 of the CPC (the present s 217) and opined (at [57]):

> A plain reading of [s 217 of the CPC] shows that the High Court can alter or review its judgment. There is no reason to compel a restrictive interpretation, especially since we are concerned with a superior court of record, which is also the highest court of trial in criminal cases. We must give effect to the plain meaning of the words in the section. To ignore the words 'other than the High Court' would be to render them otiose. In our opinion, *[s 217 of the CPC] gives sanction to Lai Kew Chai J to alter the fine*. It was necessary for him to do so to correct a mistake as to the maximum fine that could be imposed.
>
> [emphasis added]

According to the prosecution, this demonstrates clearly that the court interpreted the word "judgment" in s 217 of the CPC to *include* "sentence". Presumably (since the prosecution did not

explain its case fully), what the prosecution meant was this – since the court held that s 217 of the CPC conferred on the appellate judge the power to alter or review the sentence, then the court necessarily understood the use of the word "judgment" in s 217 to include "sentence" as well.

25 The district judge also relied on the case of *PP v Oh Hu Sung* [2003] 4 SLR 541 ("*Oh Hu Sung*"). He explained at [12] to [14]:

> 12 The comments made by Yong CJ in *PP v Oh Hu Sung* [2003] 4 SLR 541 serves to further fortify this conclusion. In that case, counsel for the accused sought to have his client's plea of guilt rejected after the court has passed sentence earlier on the same day. The district judge rejected the plea of guilty. Subsequently, upon doing his own research into the law on the issue, the district judge was of the opinion that he should not have rejected the plea of guilty as he was already *functus officio* the matter as sentence has been passed. He then applied for criminal revision to the High Court. Yong CJ stated that although he agreed that the district judge was *functus officio* when he passed sentence, s 217 CPC is an exception to the general prohibition against alteration of judgments. The section provides -
>
> > (1) No court other than the High Court, when it has recorded its judgment, shall alter or review the judgment.
> >
> > (2) A clerical error may be rectified at any time and any other mistake may be rectified at any time before the court rises for the day.
>
> 13 The relevant observations made by Yong CJ is found at para 22 at page 547 of the judgment. Yong CJ commented –
>
> > "Therefore I was unable to agree with the district judge when he took the view that s 217(2) of the CPC had no application because he was *functus officio* after sentence was pronounced. On the contrary, if the requirements of s 217(2) were satisfied, the court was fully entitled to alter or review its judgment, whether or not sentence was pronounced."
>
> 14 In other words, under s 217 CPC so long as the requirements in subsection 2 are met, the court is entitled to alter its judgment. *The pronouncement of sentence is irrelevant to the consideration. More importantly, the highlighted portions of the above remarks fortifies the conclusion that I arrived at that "judgment" in s 184 and the other provisions in our CPC does not necessarily include the sentence but that the sentence is a mere corollary to conviction*.
>
> [emphasis added]

26 I am afraid I must disagree with the district judge; I do not think Yong CJ's remarks in *Oh Hu Sung* can be relied upon in any meaningful way in the matter before us. First, in *Oh Hu Sung*, Yong CJ was dealing primarily with the second limb of s 217 of the CPC, which is an exception to the general prohibition against the alteration of judgments in s 217(1). That case turned on the interpretation of s 217(2), in particular what is meant by "before the court rises for the day" and "any other mistake", and not the definition of "judgment".

27 Second, Yong CJ stated clearly (at [22] of *Oh Hu Sung*):

> [I]f the requirements of s 217(2) were satisfied, the court was fully entitled to alter or review its judgment, *whether or not sentence was pronounced*.

[emphasis added]

While the district judge chose to interpret this passage to mean that "judgment" under the CPC does not necessarily include the "sentence", and that the "sentence" is a mere corollary to conviction, Yong CJ could equally have meant that in his view, the term "judgment" in s 217(1) of the CPC may or may not encompass a "sentence", *ie* a "judgment" *can* include a sentence. This was also the interpretation urged upon me by the prosecution, and one that the prosecution claimed, conformed to the court's decision in *Wong Hong Toy*.

28 The prosecution sought further support from a number of other cases dealing with the issue of when a court is *functus officio*, and can no longer allow an accused to retract his plea of guilt (even in the appropriate circumstances). These same cases had been cited to the district judge, who dismissed the analogy the prosecution tried to draw (at [17] and [18] of the GD):

> 17 All the cases that [discuss] *functus officio* are within the narrow factual matrix of a retraction of a plea of guilty by an accused person. The principle established is that as long as the court is not *functus officio* i.e. where sentence has not been passed, the court still has the discretion to allow a retraction of plea by the accused. The rationale for this can be explained by the principles guiding the courts when the accused person enters a plea of guilty. Before the court can accept a plea of guilty, a series of factors must be present. See for example *Lee Weng Tuck v PP* [1989] 2 MLJ 143. Firstly, the plea must be valid and unequivocal. The accused himself must plead guilty by his own mouth and he must understand the nature and consequence of his plea. He must admit to the offence without any qualification. If any one of these elements is not present, then the court must reject the plea of guilty. In [practice], it is quite common for an accused person to plead guilty and admit the facts without qualification, and yet during his mitigation plea present facts which qualifies his previous plea of guilty. Or the accused may change his mind at any stage before sentence and decides to retract his plea of guilt. Therefore, so long as sentence has not been passed, the court may exercise his discretion to reject the plea of guilty and send the case for trial.
>
> 18 The court's discretion must be judicially applied and for valid reasons. Unlike s 184 CPC, there is no discretion given to the court. If the Public Prosecutor informs the court that he will not further prosecute the accused, the court must grant the accused a discharge. The only discretion that the court can exercise is in its consideration whether to grant a total discharge or a discharge not amounting to an acquittal. Therefore, the *functus officio* principle is clearly not applicable nor is it relevant to the operation of s 184. As such, it would be inaccurate to rely on that principle as a tool in ascertaining the meaning of "judgment" in s 184.

29 In my view, the district judge may have misunderstood the prosecution's arguments. The cases, *eg Ganesun s/o Kannan v PP* [1996] 3 SLR 560 ("*Ganesun*") , *Cheng Siah Johnson v PP* [2002] 2 SLR 481 ("*Johnson Cheng*"), *Koh Thian Huat v PP* [2002] 3 SLR 28 ("*Koh Thian Huat*"), all establish the principle that an accused's plea of guilt can be retracted (in the appropriate circumstances) so long as the trial court has not passed sentence, *even if* the court has recorded the accused's conviction and retraction is made on a subsequent occasion *after* the court has risen for the day. Since s 217 of the CPC clearly renders a lower trial court *functus officio* once it has recorded its judgment and risen for the day, the cases of *Ganesun*, *Johnson Cheng* and *Koh Thian Huat* would make sense only if the word "judgment" in s 217 of the CPC encompasses "sentence". Otherwise, the court in all these cases would have been *functus officio* (and hence unable to exercise its discretion to allow retraction of the accused's plea of guilt) once it had recorded the conviction of the accused.

30 Against the backdrop of these cases which have touched upon s 217 of the CPC and the

functus officio principle, I am persuaded that at least in the context of certain sections of the CPC, *viz* ss 217 and 258, the meaning of the word "judgment" may include "sentence".

Rule of presumption in statutory interpretation rebuttable

31 It is worth mentioning that while there is a rule of interpretation that the same word bears the same meaning throughout the same statute, this is merely a rule of presumption that can be rebutted. The following passage from Guru Prasanna Singh, *Principles of Statutory Interpretation*, seventh edition (1999) p 263 was cited to me by the prosecution to support this proposition:

> When the Legislature uses the same word in different parts of the same section or statute, there is a presumption that the word is used in the same sense throughout. *The presumption is, however, a weak one and is readily displaced by the context*. It has been said that *the more correct statement of the rule is that "where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning"*.
>
> [emphasis added]

32 To my mind, the various cases demonstrate unequivocally that the term "judgment" is capable of bearing different meanings in different parts of the CPC. The examples raised by the prosecution (set out in [20] above) show that the adoption of one singular definition of "judgment" will lead to absurdity in the interpretation of certain provisions in the CPC. In these circumstances, it may well be the lesser of two evils to prefer an approach whereby the meaning of the word "judgment" depends on the context in which it appears. It is this approach that I favour.

Meaning of "judgment" in s 184

33 Adopting the view that "judgment" may bear different meanings in different parts of the CPC, what then is the meaning of that word in the context of s 184 of the CPC? It is necessary to consider the legislative history of s 184 of our CPC, as well as its equivalent provision in the Malaysian CPC.

Legislative history of the Malaysian equivalent of s 184

34 Section 214 of the Criminal Procedure Code, 1903 of the Laws of the Federated Malay States (1877-1920) ("FMS") contains a provision which outlines the powers of the prosecution to stay proceedings. It states as follows:

> (i) At any stage of any trial before the Senior Magistrate's Court before the delivery of judgment, the officer conducting the prosecution may, if he thinks fit, inform the Court that he does not propose to further prosecute the accused upon the charge, and thereupon all proceedings on such charge against the accused may be stayed by leave of the Court, and if so stayed he shall be discharged of and from the same.
>
> (ii) Such discharge shall not amount to an acquittal unless the Court so directs, except in cases coming under Section 168.

35 In the 1926 CPC of the FMS, s 214(i) (now renumbered as s 254(i)) was amended as follows:

> At any stage of any trial *before the delivery of judgment, or in the case of a trial by jury before the return of the verdict*, the officer conducting the prosecution may, if he thinks fit, inform the Court that he does not propose to further prosecute the accused upon the charge, and

thereupon all proceedings on such charge against the accused may be stayed by leave of the Court and if so stayed he shall be discharged of and from the same.

[emphasis added]

36 After the Malayan Union was formed, this provision took the form of s 254 of the Criminal Procedure (Amendment) Ordinance, Ordinance 13 of 1947:

(i) At any stage of any trial, *before the delivery of judgment, or in the case of a trial by jury before the return of the verdict*, the Public Prosecutor may, if he thinks fit, inform the Court that he will not further prosecute the accused upon the charge and thereupon all proceedings on such charge against the accused shall be stayed and the accused shall be discharged of and from the same.

(ii) At any stage of any trial before a District Court or Court of a Magistrate before the delivery of judgment, the officer conducting the prosecution may, if he thinks fit, inform the Court that he does not propose further to prosecute the accused upon the charge, and thereupon all proceedings on such charge against the accused may be stayed by leave of the Court and, if so stayed, the accused shall be discharged of and from the same.

(iii) Such discharge shall not amount to an acquittal unless the Court so directs.

[emphasis added]

37 The provision remained unchanged until the CPC (Amendment) Act 1995 came into force, in which the phrase "or in the case of trials by jury before the return of the verdict" was deleted. Today, s 254 of the Malaysian CPC (Act 593, 2006 Rev Ed) reads:

(1) At any stage of any trial, before the delivery of judgment, the Public Prosecutor may, if he thinks fit, inform the Court that he will not further prosecute the accused upon the charge and thereupon all proceedings on the charge against the accused shall be stayed and the accused shall be discharged of and from the same.

(2) At any stage of any trial before a Sessions Court or a Magistrates Court before the delivery of judgment, the officer conducting the prosecution may, if he thinks fit, inform the Court that he does not propose further to prosecute the accused upon the charge, and thereupon all proceedings on the charge against the accused may be stayed by leave of the Court and, if so stayed, the accused shall be discharged of and from the same.

(3) Such discharge shall not amount to an acquittal unless the Court so directs.

38 The earlier variations of s 254 of the Malaysian CPC provide an insight into how the word "judgment" should be interpreted, at least in the context of the Malaysian equivalent of s 184 of the CPC. Based on the legislative history of s 254 of the Malaysian CPC, we know that previously, a public prosecutor in Malaysia could only inform the court that he will not further prosecute the accused upon the charge before the delivery of judgment, or *in the case of a trial by jury before the return of the verdict*.

39 Thus, under s 254 of the Malaysian CPC, the natural inference is that the meaning of "judgment" must *exclude* sentence; otherwise, it would create an anomaly whereby in a trial before a judge, a prosecutor could wait till after the trial judge had sentenced the accused before making an

application to stop prosecution, whereas in a jury trial, the prosecutor had to make an application before the jury returned its verdict, *ie* before the conviction or acquittal of the accused. Unless a reasonable distinction can be drawn between jury trials and trials before a judge, it made sense that "judgment" in s 254 of the Malaysian CPC should be interpreted to similarly *exclude* "sentence", thereby maintaining consistency within the provision.

Legislative history of s 184

40 Prior to 1870, Singapore (being part of the Straits Settlement) adopted Indian Act XVI of 1852 for the purposes of criminal procedure. A perusal of this piece of legislation reveals that there was no provision similar to s 184 of the CPC. Subsequently, the Straits Settlement passed Ordinance V of 1870 to take the place of Indian Act XVI of 1852. This was later replaced by a more comprehensive Ordinance VI of 1873. There was however, still no equivalent of s 184 of the CPC.

41 The first manifestation of s 184 finally emerged in the form s 182 of the CPC, Ordinance X of 1910:

> (1) At any stage of any summary trial before a Police Court or District Court before judgment has been delivered, the Public Prosecutor may, if he thinks fit, inform the Court that he will not further prosecute the defendant upon the charge and thereupon all proceedings on such charge against the defendant shall be stayed and he shall be discharged from and of the same.
>
> (2) Such discharge shall not amount to an acquittal unless the Police Magistrate or District Judge so directs except in cases coming under section 176.

The provision reappeared in substantially the same form in s 187 of the CPC (Cap 21, 1936 Rev Ed).

42 The CPC, in its current form, emanates from Ordinance 13 of 1955, the Colony of Singapore. Section 175 (as s 184 was then numbered) of the CPC of 1955 reads:

> (1) At any stage of any summary trial before judgment has been delivered, the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the defendant upon the charge and thereupon all proceedings on such charge against the defendant shall be stayed and he shall be discharged from and of the same.
>
> (2) Such discharge shall not amount to an acquittal unless the court so directs except in cases coming under section 170.

In Singapore, jury trials were abolished for non-capital offences in 1959. All jury trials were finally abolished in 1969. Nonetheless, s 184 of the CPC today remains the same as s 175 was in 1955; clearly, our s 184 does not share the same legislative history as the Malaysian equivalent.

43 Since s 184 of the CPC has never included the words "or in the case of a trial by jury before the return of the verdict", it does not appear that the legislative history of its Malaysian counterpart has any relevance in its interpretation.

Whether "judgment" in s 184 may include "sentence"

44 My attention was drawn to a rule of interpretation which pertains specifically to the construction of penal statutes – the strict construction rule. The history and evolution of the rule was examined in *PP v Low Kok Heng* [2007] 4 SLR 183 ("*Low Kok Heng*") (at [31] to [38]). This rule

can be summarised simply as follows: where there is ambiguity and two reasonable constructions of a statute are possible, the statute should be strictly construed to lean in the accused's favour.

45 The modern local position on the construction of penal statutes is encapsulated by Yong Pung How CJ in *Forward Food Management v PP* [2002] 2 SLR 40 (at [26]) in the following terms:

> [T]he strict construction rule is only applied to ambiguous statutory provisions *as a tool of last resort. The proper approach to be taken by a court construing a penal provision is to first consider if the literal and purposive interpretations of the provision leave the provision in ambiguity*. It is only after these and other tools of ascertaining Parliament's intent have been exhausted, that the strict construction rule kicks in in the accused person's favour.
>
> [emphasis added]
>
> Clearly, the strict construction rule is a measure of last resort.

46 However it is not clear which construction will favour an accused person. One would have thought that an interpretation which allows the prosecution to withdraw the charges (albeit with the view of pressing other charges in the future) would be the one preferred by the accused. Indeed, in the present case we are faced with the somewhat bizarre situation where the respondent is pushing for an interpretation which will result in him being convicted (and punished) for an offence which the prosecution now believes he did not commit.

47 Since I am unconstrained by authority in the interpretation of this aspect of s 184 of the CPC, and its legislative history offers no insight as to the parliamentary intent, I am left to discern the scope of the provision from first principles. The word "judgment" is capable of bearing the two meanings contended by both sides: (a) up to the point that the court convicts the accused person; and (b) up to the point that the court pronounces the sentence. Adoption of the first meaning would narrow the scope of application of s 184 of the CPC in that the prosecutor may only inform the court that he will not further prosecute the accused before conviction and may not do thereafter even though the sentence has not yet been pronounced. This, in my view, unnecessarily limits the prosecutor's power in circumstances where it would serve no purpose to do so. I see no reason why, even if a conviction has already been recorded but before sentence has been pronounced, the prosecutor should not retain the power to terminate prosecution of the accused if he has reason for so doing. Indeed, to disallow this would result in an absurdity: it would require the court to proceed with the sentencing of the accused person in circumstances where the prosecution no longer believed that he should be punished and compel an application for criminal revision in the High Court.

48 Accordingly, I would hold that the word "judgment" in s 184(1) of the CPC includes the pronouncement of sentence where there is a conviction and therefore the power of the prosecution under this provision may be exercised any time before the accused person is sentenced. I therefore allow the prosecution's appeal against the decision of the district judge and discharge the respondent from and of the three charges concerned.

Whether respondent's discharge should amount to an acquittal

49 I turn now to the next issue – whether or not the discharge is to amount to an acquittal.

Discretion is unfettered

50 In *K Abdul Rasheed and Another v PP* [1984-1985] SLR 561 ("*K Abdul Rasheed*"), Lai Kew Chai J

("Lai J") held (at 564) that the discharge shall not amount to an acquittal unless there are sufficient reasons to find otherwise:

> If an accused applies for a discharge amounting to an acquittal, a court must bear in mind that the legislature has in the opening words of [s 184(2)] set down the principle that *the discharge 'shall not' amount to an acquittal*. There must be circumstances in the proceedings so far on record or the accused must show sufficient reasons to displace the principle that the discharge shall not amount to an acquittal. [emphasis added]

51 However, the discretion of the court to grant a discharge amounting to an acquittal is an unfettered one. In *Goh Cheng Chuan v PP* [1990] SLR 671 ("*Goh Cheng Chuan*"), LP Thean J ("Thean J") observed (at [14]) as follows:

> The words are unambiguous and clear, and effect must be given to them: *they give to the court an unfettered discretion to direct, in appropriate circumstances, that the discharge shall amount to an acquittal*. Section 184 subsists independently on its own, and its scope or operation is not limited by s 180 or other provision of the Criminal Procedure Code. There is therefore no justification for holding that the court can only exercise such discretion in the instances enumerated in s 180 of the Criminal Procedure Code or when the prosecution informs the court that it will not further prosecute the accused and, in addition, formally withdraws the charge against the accused or has signified its consent to an acquittal of the accused.
>
> [emphasis added]

52 These principles have been repeatedly affirmed by Singapore courts, *eg Ranjit Kaur d/o Awthar Singh v PP* [1999] 1 SLR 836 ("*Ranjit Kaur d/o Awthar Singh*"), *TS Video and Laser Pte Ltd v Lim Chee Yong and another appeal* [2002] 1 SLR 68 ("*TS Video*").

The authorities

53 In *K Abdul Rasheed*, Lai J directed an acquittal in one of the appeals, explaining (at 564-565):

> In the course of the appeal, it was disclosed to me and it was not challenged by the learned deputy public prosecutor, who had not appeared before the learned district judge, that one of the two witnesses had died and that the other, a foreigner, was unavailable and likely to remain unavailable for an indefinite period. I was further told that the appellant had been reinstated in the Singapore Police Force after he had faced certain disciplinary proceedings and had emerged unscathed. Through his counsel, he asked that he be afforded the opportunity of a trial to clear his name and indicated that he was prepared to stand trial if the prosecution could indicate if it was able to proceed. The learned deputy prosecutor was unable to give the court any such indication. *I was accordingly persuaded that it would be unfair to subject him to any further agony and I directed that the discharge should amount to an acquittal*.
>
> [emphasis added]

It appears that Lai J's chief concern was the inability of the prosecution to indicate a determinate time when it could proceed with the charges against the appellant. In the circumstances, he was persuaded that it would be unfair to subject the appellant to further agony for an indeterminate period.

54 In *Goh Cheng Chuan*, the charge in question was brought in July 1985 and related to an offence

alleged to have taken place in December 1983. The case was set down for trial on 21 April 1986. On that day, it was stood down pending the trial of the accused on a separate charge. The charge in question was then set down for further mention on 12 May 1986. There followed two postponements: one from 12 May 1986 to 13 October 1986 and the other from the latter date to 2 February 1987. On both occasions, the postponement was requested by the prosecution on the ground that a material witness was not available, and efforts were being made to trace such a witness. Finally, on 2 February 1987, the prosecution asked for a discharge not amounting to an acquittal under s 184 of the CPC as steps were being taken to trace the missing witness. The defence argued that the court had a discretion to direct a discharge amounting to an acquittal and should do so. The court ruled that it had no discretion in the matter and was bound to order as requested by the prosecution. The accused appealed. Thean J allowed the appeal, and said (at 679-680):

> Even at the hearing before me, ie on 31 May 1990, I was informed by the deputy public prosecutor that the position remained as it was: the material witness was still not available and could not be traced. There was also the information, which was communicated to the district judge on 2 February 1987 and which was not disputed by the prosecution, that one of the complainants had passed away. Up to this date approximately five years have elapsed since the charge was first brought against the appellant, and the charge relates to an offence alleged to have taken place some six and a half years ago. Clearly, the prosecution has had ample time to trace this witness, and the witness still cannot be found, notwithstanding the efforts made; the prospect of tracing this witness does not appear to have improved. The deputy public prosecutor informed me that the prosecution intended to proceed with the charge against the appellant and the charge would be proceeded with the moment the witness is found. However, this has been the position since the charge was first brought. *While I accept that the charge against the appellant is a serious one and that the right of the prosecution to proceed against the appellant on the charge should be preserved, I also have to bear in mind that it is unfair to have a charge hanging over his head indefinitely. The court has to consider both public interest and fairness to an accused person, and having regard to both these factors and all the relevant circumstances of this case it is only fair to the appellant that the charge should not be left hanging over his head any longer*. In my judgment, the discharge should amount to an acquittal, and I so order …
>
> [emphasis added]

Similarly, in this case, Thean J was concerned with the prosecution's delay in proceeding against the appellant, and he ultimately granted a discharge amounting to an acquittal.

55 In *Loh Siang Piow v PP* [1998] 2 SLR 384 ("*Loh Siang Piow*"), the appellant was not granted a discharge amounting to an acquittal despite the unavailability of a witness. Yong CJ agreed with the trial judge's decision, and elaborated (at [13], [14] and [33]):

> 13 Lastly, the deputy public prosecutor informed the court that the CPIB had lost contact with a material witness, Philip Soh, since March 1997 and that they were still trying to locate his whereabouts. The trial judge held that the non-availability of Soh was, in this case, not a factor that militated in favour of the court granting a discharge amounting to an acquittal. Soh was a Singapore citizen, the CPIB had indicated that the assistance of the police had been sought in tracing him and a check with the Singapore Immigration Department did not indicate that he had left the state.
>
> 14 In addition, arrangements had been made for the investigator to be informed if the Singapore Immigration Department came across the witness should he attempt to leave the state. *This was not a case where the witness could not be found even after much effort and*

time had been expended. The trial judge stressed that the loss of contact was only recent. Moreover, both appellants faced serious charges and the prosecution did not intend to leave matters suspended indefinitely. On the other hand, should the appellants be granted a discharge amounting to an acquittal, they could not be charged again for the same offence. Thus, the trial judge ordered that both appellants be discharged, such discharge not amounting to an acquittal.

…

33 This was not a case in which the prosecution was not making sufficient effort to trace a witness, nor where the witness could not be found even after much effort and time had been expended. The loss of contact was fairly recent. Moreover, it did not appear that the prosecution had intended to leave matters suspended indefinitely.

[emphasis added]

56 In his grounds in *Loh Siang Piow*, Yong CJ distinguished the cases of *K Abdul Rasheed* and *Goh Cheng Chuan*; he was persuaded not to grant a discharge amounting to an acquittal by: (a) the likelihood that the material witness would be found; and (b) the seriousness of the offences the appellants were being charged with. However Yong CJ cautioned that the court should be kept informed of all relevant matters, particularly the likelihood of future prosecution of the accused of the charge (at [25]):

[A]lthough it is for the prosecution to decide whether or not it will further prosecute the accused on the charge in question, if it decides not to do so, it ought to inform the court in clear terms. *In addition, and for the purpose of s 184(2) of the CPC, the public prosecutor ought to inform the court of all relevant matters as early as possible, for example, the difficulty of tracing a material witness and his intention as to the likelihood of future prosecution of the accused on the charge*.

[emphasis added]

In *Ranjit Kaur d/o Awthar Singh*, Yong CJ again emphasised the need for the prosecution to indicate that it intends to prosecute in the near future, stating as follows at [12]:

In summary, the prosecution should give an indication of its intention to prosecute at some foreseeable point of time; and, substantiate reasons for its inability to proceed immediately. These requirements remain today.

57 In *TS Video*, Yong CJ affirmed the decision of the trial judge not to direct an acquittal because he was convinced the trial judge had carefully considered all the relevant issues and competing interests, *viz*: (a) the charges were serious and on matters relating to public interest and public rights; (b) there were no improper motives behind the prosecution's application; and (c) the delay in prosecution of six months would not be unconscionable.

Principles underlying exercise of discretion

58 From the above authorities, it can be discerned that the underlying theme is that it is a fine balance between the public interest in ensuring that criminal acts are punished and fairness to the accused person. The public interest factor is given more weight where it pertains to a serious offence because the more serious the charge, the greater is the public interest in ensuring that an offender is punished for the offence. Conversely, where the offence involved is relatively minor, the accused

should not be faced with a disproportionate delay.

59 On the other hand, fairness to the accused dictates that he be acquitted if the suspension in the prosecution is indefinite or likely to be long. The trial of any person accused of an offence should be conducted expeditiously so that he does not suffer the trauma of lengthy proceedings. If there is an adjournment, it should be as short as possible. However where there is a discharge not amounting to an acquittal, the accused person faces uncertainty as to whether the charge against him will resume. Where the delay is likely to be short, the court will naturally be slow to grant a discharge amounting to an acquittal. Where, as in *K Abdul Rasheed* and *Goh Cheng Chuan*, the testimony of the witnesses cannot be procured in the foreseeable future and prosecution of the accused appears likely to be delayed for an indeterminate period, a discharge amounting to an acquittal will be granted. However, it does not necessarily follow that in all cases where an indefinite delay may occur, an accused will be granted a discharge amounting to an acquittal. As Yong CJ elucidated in *Low Siang Piow* (at [39]):

> *It is invariable that some prejudice will be caused to an accused person who has been granted a discharge not amounting to an acquittal, particularly where he may be interdicted indefinitely*. In as much as the prosecution should prosecute its cases with due diligence, it would be an unwarranted restriction of the court's discretion to demand an assurance from the prosecution that it will commit itself to a deadline for recommencing the case against an accused. As I had stated in *Arjan Singh v PP, an indefinite apprehension of criminal proceedings being recommenced cannot be conclusive but simply a factor to be weighed in the balance with all the other circumstances of the case*.
>
> [emphasis added]

60 Finally, I should emphasise that the factors I have set out above are derived from the authorities referred to. It would be reckless to say that it is a comprehensive statement of the law and I need only refer to Lai J's words in *K Abdul Rasheed*, at [6]:

> In exercising its power under [s 184(2)] of the Code, a court must bear in mind and give due regard to the dot of the prosecution to proceed at a later stage: *Seet Ah Ann v PP* [1950] MLJ 293. On the other hand, there is ample persuasive authority for the proposition that unless some good ground is shown it would not be right to leave an individual saddled with a charge in which proceedings are stayed for an indeterminate period: see *Goh Oon Keow v R* [1949] MLJ 35, the dicta of J Spenser Wilkinson J in *PP v Suppiah Pather* reported in the Editorial Note to *Arifin bin Cassim Jayne v PP* [1953] MLJ 126 which were approved in *Koh Teck Chai v PP* [1968] 1 MLJ 166, 167 by Ong Hock Sim J (as he then was). *It is not desirable to set down any principle which a court must follow when acting under [s 184(2)] of the Code as if it is writ in stone and thereby fetter the discretion of the court which has to be judicially exercised. Circumstances do vary from case to case. Each case has to be dealt with on its merits, with the court bearing in mind the public interest and the right of the individual to which I have alluded*.
>
> [emphasis added]

Decision on the discharge

61 I now turn to a consideration of the circumstances in this case.

62 Firstly, the prosecution has been quite candid in explaining its reasons not to proceed. Based on

the new evidence, which calls into question the respondent's admissions, it is right and proper for the prosecution to make this application. The prosecution has also stated that it will proceed with the appropriate charges against the respondent once it has ascertained, after further investigations, the involvement of the respondent. Again this is an entirely proper position to take.

63 Secondly, although the initial investigation can only be described as shoddy, the respondent, by pleading guilty to the charge appears to have some role, still unascertained, in the whole affair. This case is therefore extremely peculiar. In any event, unless there is likely to be an indeterminate delay, I do not think that the respondent would suffer great prejudice in having his case delayed pending further investigations.

64 Thirdly, although mischief is not usually a serious offence, in the present case the subject matter of the offences were race horses. There are often high pecuniary stakes associated with horse racing and therefore a strong public interest in getting to the root of the matter and ensuring the guilty are appropriately punished.

65 Lastly and most importantly, I am persuaded by the prosecution that there will not be an indeterminate delay in the resolution of this case. The prosecution has endeavoured to investigate quickly and will proceed once the respondent's role is revealed. Any delay on the part of the prosecution is likely to be short, and unlikely to cause much prejudice to the respondent. It was also not a situation where the defendant had pleaded not guilty and the prosecution had only made an application for discharge not amounting to acquittal after a long trial. In that situation, it could be extremely prejudicial to the defendant especially if there is no indication as to the length of the delay. Where this is the case, the court would be inclined to grant a discharge amounting to an acquittal.

Conclusion

66 In my view the circumstances of the present case justify granting the prosecution's application for a discharge not amounting to acquittal. Accordingly, I allow the prosecution's appeal and grant its application under s 184 of the CPC for a discharge not amounting to an acquittal against the respondent.