Public Prosecutor *v* Syamsul Hilal bin Ismail
[2011] SGHC 272

Case Number	: Magistrate's Appeal No 94 of 2011
Decision Date	: 30 December 2011
Tribunal/Court	: High Court
Coram	: Chao Hick Tin JA
Counsel Name(s)	: Leong Wing Tuck and Nicholas Khoo (Attorney-General's Chambers) for the appellant; K Sathinathan (M/s Sathi & Co) for the respondent.
Parties	: Public Prosecutor — Syamsul Hilal bin Ismail

Criminal Law – offences – property – cheating

30 December 2011

Chao Hick Tin JA:

Introduction

1 This was an appeal against the sentence imposed by a Senior District Judge ("the SDJ") in *PP v Syamsul Hilal bin Ismail* [2011] SGDC 147 ("the GD"), where the Respondent pleaded guilty to 18 charges. Fifteen of those charges were for cheating offences (punishable under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC")) and the remaining three involved criminal breach of trust ("CBT") (punishable under s 406 of the PC). The cheating offences related, *inter alia*, to a car rental scam ("the car rental scam offences") and a loan scam ("the loan scam offences"), while the three CBT offences involved the misappropriation of school laptops ("the laptop CBT offences"). Another 72 charges were admitted and taken into consideration for the purpose of sentencing. [note: 1]

2 The Respondent was sentenced to two months' imprisonment for each car rental scam offence, three months' imprisonment for each laptop CBT offence and five months' imprisonment for each loan scam offence. One imprisonment term from each set of offences was ordered to run consecutively, making a total of 10 months' imprisonment. The prosecution appealed on the ground that the overall sentence imposed by the SDJ was manifestly inadequate. I allowed the prosecution's appeal and enhanced the total sentence to 15 months' imprisonment by ordering one additional five month imprisonment term (for a loan scam offence) to run consecutively. I now set out the reasons for my decision.

The factual background

3 The Respondent committed four broad categories of offences. He admitted to the Statement of Facts (which pertained to the first three categories only) without qualification. The four categories are briefly described below.

(a) Car rental scam offences

4 In July 2010, the Respondent posted online advertisements on websites such as www.gumtree.sg and www.cars.sg-rentals.com named "Hari Raya Cars 2010 Specials (Last Minute Cars)", offering car rental deals. From mid-August 2010, he met interested parties and entered into

rental agreements with them which he signed using a fictitious name. He even gave one complainant a test drive. [note: 2] The victims handed deposits, ranging from $50 [note: 3] to $550 [note: 4], over to him. He later became uncontactable.

(b) Laptop CBT offences

5 Between April and June 2010, the Respondent misappropriated 14 Temasek Junior College ("TJC") laptops which were entrusted to him as a technical assistant attached to the school. He sold them to pay off his debts. Earlier in March 2010, the Respondent had also misappropriated a laptop from Jurong Secondary School. The 15 laptops were individually valued at between $1,504 to $2,201.

(c) Loan Scam offences committed while on bail

6 The Respondent was charged in court on 13 September 2010 pursuant to complaints relating to the car rental scam offences. While on bail between December 2010 and February 2011, he committed the loan scam offences. These offences largely involved advertisements on online fora such as www.gumtree.com.sg and flashloan.sgpsg.com where he purportedly offered to arrange loans (expressly including loans to low-income earners). [note: 5] To add credibility to his ruse, the Respondent also created an online form for the victims to fill up. [note: 6] The victims were asked to make advance payments ranging from $40 to $2,000 to the Respondent. Again, he later became uncontactable.

(d) Remaining offences committed while on bail

7 In the same period in which he committed the loan scam offences, the Respondent also committed what I will refer to as the "employment scam" and the "Paypal credits scam" offences. The charges pertaining to these offences were not proceeded with but were admitted by the Respondent to be taken into consideration. The Statement of Facts did not elaborate on these charges. Briefly, from the charge sheets, [note: 7] the employment scam saw the Respondent pretending to offer his victims employment as Information Technology store assistants or technicians. He then dishonestly induced his victims to pay sums of between $50 to $70 to him as deposit payments for uniforms. As for the Paypal credits scam, the two relevant charge sheets [note: 8] stated that the Respondent deceived his victims into believing he was able to offer them Paypal credits. He then dishonestly induced his victims to pay him $234 and $354 (on the two charges respectively) as payment for the Paypal credits which he could not provide.

8 The amounts involved in each set of the offences are enumerated in the following table:

	s 420 Car rental scam (SDJ's sentence: two months per charge)		
	Proceeded	**Taken into consideration ("TIC")**	**Total**
No. of Charges	12	49	61
Amount involved	$3,435	$2,740	$6,175
Average amount per charge	**$286**	$56	$101

	s 406 Laptop CBT offences (SDJ's sentence: three months per charge)		
	Proceeded	**TIC**	**Total**
No. of Charges	3	12	15
Amount involved	$6,603	$19,248	$25,851
Average amount per charge	**$2,201**	$1,604	$1,723
	s 420 Loan scam (SDJ's sentence: five months per charge)		
	Proceeded	**TIC**	**Total**
No. of Charges	3	5	8
Amount involved	$4,000	$1,800	$5,800
Average amount per charge	**$1,333**	$360	$725
	Employment scam		
	Proceeded	**TIC**	**Total**
No. of Charges	0	4	4
Amount involved	0	$220	$220
Average amount per charge	0	$55	$55
	Paypal credits scam		
	Proceeded	**TIC**	**Total**
No. of Charges	0	2	2
Amount involved	0	$588	$588
Average amount per charge	0	$294	$294

9 Therefore, the total amount involved in the 18 charges proceeded with was $14,038; the total amount involved in the remaining 72 charges taken into consideration was $24,596; and the grand total sum involved in both the proceeded charges and the charges taken into consideration was $38,634.

The statutory provisions

10 As stated above at [1], the car rental scam and the loan scam offences were punishable under s 420 of the PC. For ease of reference, I set out the salient portions of ss 415 and 420 of the PC here:

Cheating

415. Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to "cheat".

...

Cheating and dishonestly inducing a delivery of property

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

11 The laptop CBT offences were punishable under s 406 of the PC. Accordingly, I likewise set out the salient portions of ss 405 and 406 of the PC here:

Criminal breach of trust

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, commits "criminal breach of trust".

…

Punishment of criminal breach of trust

406. Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

12 Therefore, the maximum custodial sentence which could be imposed for each of the car rental scam and the loan scam offences was 10 years' imprisonment; and the maximum custodial sentence which could be imposed for each of the laptop CBT offences was 7 years' imprisonment.

The Senior District Judge's decision

13 The SDJ noted that the key aggravating factors were that the Respondent had reoffended (*ie*, referring to the loan scam offences) soon after being charged in court, the large number of offences and victims and the premeditation and planning involved (GD at [21]). While the SDJ did not accord the Respondent's unrelated antecedents (pertaining to traffic offences) any weight (GD at [20]), he gave the Respondent's plea of guilt minimal credit since the Respondent made no restitution and had reoffended while on bail (GD at [16]). Nevertheless, it would appear that he did accord a small measure of credit to the Respondent's plea of guilt for the resources and inconveniences which that

plea had saved (GD at [31]). The SDJ also found it immaterial whether the Respondent's offences were motivated by his desire to clear his debts (GD at [18]).

14 Although the SDJ accepted that it was relevant to consider the fact that the Respondent targeted low-income earners in the loan scam, he rejected the Deputy Public Prosecutor's ("the DPP's") submission that the victims of the loan scam were "in debt and in genuine need of help", which assertion was not reflected in the Statement of Facts (GD at [19]). As for the fact that the car rental and loan scams involved Internet advertisement postings, the SDJ found that fact "neither here nor there" (GD at [32]) since the same scams could have been perpetrated through other channels such as traditional print media.

15 Moving on to sentencing precedents, the SDJ considered *Choong Swee Foong v PP* (MA 152/94/01 – unreported, cited in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) ("*Sentencing Practice*") at p 424) as relevant to the laptop CBT offences (GD at [24]); and *Goh Siew Buay v PP* (MA 54/99/01 – unreported, cited in *Sentencing Practice* at pp 477 – 478) in relation to the cheating offences. As *Goh Siew Buay* involved a sum of $200,000 and the total amount obtained by the Respondent was only $38,000, the SDJ took one-fifth of the sentence in *Goh Siew Buay* (28 months' imprisonment) as the starting point for determining the appropriate sentence for the Respondent which meant four to five months' imprisonment [note: 9] (GD at [24] to [27]). It seemed to me that here the SDJ had made an arithmetic mistake as one-fifth of 28 months' imprisonment would be between five to six months' imprisonment and not four to five months.

16 The SDJ noted, quite rightly, that an aggregate sentence of four to five months' imprisonment was manifestly inadequate and that he was minded to scale up the sentences. He then, having stated that his provisional view was that the total sentence range would have to be closer to nine to 10 months' imprisonment (GD at [28]), went on to determine the sentences for the individual charges. In determining the sentences for the loan scam charges, the SDJ considered that they merited a higher sentence as they were committed while the Respondent was on bail (GD at [30]).

17 Finally, I noted that at [8] of the GD, the SDJ stated that "[f]ourteen victims fell prey to the loan scam and they were cheated of $6,609 in all." I should, however, point out that that was inaccurate as the schedule of offences and charge sheets show that there were only eight charges in respect of the loan scam. Of the six charges remaining, four were in respect of the employment scam and two related to the Paypal credits scam. In any case, nothing turned on this.

The appellant's case

18 First, Deputy Public Prosecutor Leong Wing Tuck ("DPP Leong") submitted that the Respondent's use of the Internet in relation to the car rental scam and the loan scam was an aggravating factor and that the SDJ was mistaken in failing to consider it as such. Second, he argued that the SDJ gave insufficient consideration to the extent of pre-meditation involved. In relation to the car rental scam, the Respondent had gone so far as to set up a test drive and to use fictitious names and addresses in rental agreements which he entered into with the victims. Third, DPP Leong averred that the SDJ had erred in failing to consider as aggravating the fact that the Respondent had specifically targeted persons celebrating Hari Raya. The impact of the offences on the victims and their families went beyond the mere loss of their rental deposits and included the severe disruption of familial arrangements and expectations. Fourth, regarding the laptop CBT offences, DPP Leong submitted that the SDJ had failed to sufficiently consider the number of the laptops misappropriated and the ensuing consequences for the relevant schools and their students. Fifth, DPP Leong contended that the SDJ had failed to sufficiently consider the magnitude and aggravated impact the loan scam would have on the low income victims whom the Respondent had specifically targeted.

Finally, he emphasised that the SDJ, in determining the aggregate sentence, had failed to sufficiently consider the aggravating factors, *ie*, the large number of victims and the sentencing objectives of deterrence and retribution.

19 In this regard, DPP Leong clarified that in making the aforesaid submissions the prosecution was not taking issue with the sentences passed for each of the individual offences. What the prosecution sought was that more of the sentences passed should have been ordered to run consecutively so that a longer aggregate custodial sentence would be imposed having regard to the total culpability of the Respondent for the charges proceeded against him as well as those taken into account.

20 As an illustration, DPP Leong pointed out that had the prosecution proceeded only on the three charges for the loan scam offences, the Respondent would also have received an imprisonment sentence of 10 months. This is because s 307(1) of the Criminal Procedure Code 2010 states that at least two of the Respondent's imprisonment sentences for those offences would have to run consecutively. DPP Leong also highlighted the trajectory of the Respondent's criminal conduct. Although his *modus operandi* for the car rental scam involved him meeting his victims, his *modus* for some of the loan scam offences which he committed while on bail did not require him to meet the victims at all and allowed him to cheat the victims under the cloak of anonymity.

21 In summation, DPP Leong submitted that given the aggravating factors, the aggregate sentence should have been in the region of 18 months' imprisonment. [note: 10] He also highlighted the fact that there was an apparent dearth of appellate court authority on cases involving the cheating of relatively modest amounts of money from a large number of victims. [note: 11] He asked that guidance be given to the lower courts.

The Respondent's case

22 Counsel for the Respondent, Mr Sathinathan, submitted that the SDJ had sufficiently considered all the factors and points raised by the prosecution, including the extent of premeditation involved and the large number of victims. In respect of the car rental scam, Mr Sathinathan argued that the Internet advertisements only served as a lure for the victims. It was the Respondent's persuasiveness at his meetings with the victims that caused them to part with their monies and it was at these meetings that the "actual cheating" occurred.

23 Mr Sathinathan also emphasised that no special computer background was required to adopt the Respondent's *modus operandi* of posting Internet advertisements and online forms to lure victims. In addition, he pointed out that the first of the loan scam offences in fact arose from an Internet advertisement placed by the victim (and not the Respondent) who was looking for a loan. This was what alerted the Respondent to the presence of such loan seekers on the Internet and led him to put up fake Internet advertisements and online forms to take advantage of them.

Principles governing appellate intervention

24 It is trite law that an appellate court should only intervene in the sentence imposed by a lower court where (i) the judge below erred with respect to the proper factual basis for sentencing; (ii) the judge below failed to appreciate the materials placed before him; (iii) the sentence was wrong in principle; or (iv) the sentence was manifestly excessive or manifestly inadequate, as the case may be: *PP v UI* [2008] 4 SLR(R) 500 at [12]. As will be made clear below, factors (iii) and (iv) were particularly germane for this appeal.

The SDJ's approach

25 Before I move on to explain my perception as to the appropriate sentence for the offences in question, some observations should be made of the SDJ's sentencing approach. It was apparent from the GD that the SDJ first took the provisional view that a global sentence of around nine to 10 months' imprisonment would be appropriate for all the offences which the Respondent had committed and on that basis worked backwards to determine the sentence per charge for each of the three categories of offences proceeded on (see [28]–[30] and [34] of the GD). Undoubtedly, his provisional view on the global sentence to be imposed on the Respondent had directly influenced his determination of the appropriate sentence for each of the individual offences.

26 In my view, the better and more logical approach would have been to first determine the sentences for the individual offences by having regard to the respective sentencing precedents, before stepping back for a holistic perspective in order to determine which sentences should be ordered to run consecutively to make for an appropriate global sentence. This two-stage approach was alluded to by V K Rajah JA in *ADF v PP and another appeal* [2010] 1 SLR 874 ("*ADF v PP*") at [92]:

> ... Where multiple distinct offences have been committed, sentencing is a two-stage process. First, the sentence for each individual offence had to be determined. Second, the court has to determine whether the sentences for these multiple offences ought to run concurrently or consecutively and if consecutively, which combination of sentences ought to be made and whether the overall sentence properly comprehends the criminality of the multiple offender ...

27 Keeping the two stages distinct would allow for a more principled approach in determining the appropriate sentence to be imposed for each individual offence than if the court were to determine the same by working backwards from a pre-conceived global sentence. This is because a court would generally not be able to properly comprehend the overall criminality of the multiple offender (so as to determine an appropriate global sentence) unless it first comes to grips with the individual offences by going through the exercise of determining the appropriate sentence for each offence (in this case, due to the large number of charges, beginning by determining an appropriate sentence per charge for each of the categories of offences would have been acceptable), having regard to the applicable sentencing precedents. To begin by first considering and determining the appropriate global sentence would be like putting the cart before the horse.

28 In any case, as stated above at [19], the prosecution did not challenge the adequacy of the individual sentences passed for each of the charges proceeded with. However, it challenged the global sentence of ten months' imprisonment imposed by the SDJ. It is to this challenge that I now turn.

Determination of the number of sentences to run consecutively

The law

29 Having distinguished between the first and second stages of the sentencing process for an offender who has committed multiple distinct offences (see above at [26]), the court in *ADF v PP* went on to distinguish "sentence specific aggravating factors" and "cumulative aggravating features" (also at [92]):

> ... If sentence specific aggravating factors are present, the sentence for each particular offence should be appropriately enhanced. *Cumulative aggravating features, on the other hand, are features that ordinarily have primary relevance at the second stage of sentencing, particularly as regards to the issue of whether the global sentence should be enhanced by consecutive*

sentencing, when multiple distinct offences have been committed. ...

[emphasis added]

Therefore, cumulative aggravating factors are key considerations for the second stage, when the court has to determine how many of the sentences imposed for the individual offences should be ordered to run consecutively.

30 This is an appropriate juncture to refer to s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the old CPC"), which states that where at least three imprisonment sentences are imposed for distinct offences, at least two of those imprisonment sentences must run consecutively:

Consecutive sentences in certain cases.

18. Where at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.

This provision of the old CPC applied for charges proffered before 2 January 2011 (see r 2 of the Criminal Procedure Code (Transitional Provisions – Further Proceedings and Joint Trials) Regulations 2011). For charges proffered on or after 2 January 2011, the equivalent provision is at s 307(1) of the Criminal Procedure Code 2010 (as stated above at [20]) which reads:

Consecutive sentences in certain cases

307. —(1) Subject to subsection (2), if at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted must order the sentences for at least 2 of those offences to run consecutively.

It would be seen that, in substance, there is no real difference between what was provided in the earlier s 18 and the current s 307(1).

31 Therefore the court has the discretion, where at a trial a person is sentenced to imprisonment for at least three distinct offences, to order that more than two imprisonment sentences should run consecutively. In *ADF v PP*, the court discussed some cumulative aggravating factors and how they should guide the exercise of this discretion (at [146]):

... A decision to impose more than two consecutive sentences ought not to be lightly made and, indeed, should usually only be imposed in compelling circumstances. ... Multiple wrongdoing by a multiple wrongdoer as a general rule must be viewed more severely than single offending involving similar offences. The community (and the victim(s)) have suffered more because of the greater harm done. Often the exercise of this discretion will involve intuitive (and not mathematical) considerations and calibration that takes into account the totality of the criminal behaviour. There is no rigid linear relationship between the severity of the offending and the length of the cumulative sentence. In my view, an order for *more than* two sentences to run consecutively ought to be given serious consideration in dealing with distinct offences when one or more of the following circumstances are present, *viz*:

(a) dealing with persistent or habitual offenders (see [141] above);

(b) there is a pressing public interest concern in discouraging the type of criminal

conduct being punished (see [143]-[144] above);

(c) there are multiple victims *; and*

(d) other peculiar cumulative aggravating features are present (see [92] above).

In particular, where the overall criminality of the offender's conduct cannot be encompassed in two consecutive sentences, further consecutive sentences ought to be considered. I reiterate that the above circumstances are non-exhaustive and should not be taken as rigid guidelines to constrain or shackle a sentencing court's powers. Beyond this, I do not think that it will be helpful to spell out how this discretion must be exercised. Myriad permutations of offending can take place and too dogmatic or structured an approach would constrain effective sentencing. ***In the ultimate analysis, the court has to assess the totality of the aggregate sentence with the totality of the criminal behaviour.***

[original emphasis in italics; emphasis added in bold italics]

The large number of victims

32 The third cumulative aggravating circumstance identified in *ADF v PP* was that of multiple victims. As this case involved a large number of victims, it was not surprising that the SDJ imposed three consecutive sentences. The question which the prosecution raised, however, was whether, even though three sentences were ordered to run consecutively, the total sentence so imposed was adequate punishment for the overall criminality of the Respondent's conduct so as to reflect society's abhorrence of the same.

33 In support of his submission that the foregoing question should be answered in the negative, DPP Leong cited the case of *PP v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando*"), which involved credit card fraud. In that case, Rajah JA set out various factors to be considered in the sentencing of credit card offences (see [38]–[54] of *Fernando*). One of these factors was the number of offences committed, which the court elaborated on at [46]-[48]:

> 46 As both a matter of common sense and general principle, it can be said that the larger the number of offences committed, the longer the custodial sentence. The application of this principle in credit card offences is amply illustrated by *Mihaly Magashazie* ([19] *supra*), where the court concluded that the numerous fraudulent purchases made by the accused justified the imposition of longer custodial sentences. The massive number of charges in *Rohaazman bin Ali* ([24] *supra*) also proved to be a relevant consideration for the court in sentencing.
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> ...
>
> 48 The nexus between the number of offences and quantum involved was also discussed in the *Law Gazette Article*. Lee Teck Leng observed:
>
> > [T]he total sentence imposed on an offender convicted of multiple charges would still bear some semblance to the sentence that may be passed in a case where an offender is convicted of a *single* cheating offence involving the same sum of money. This is due to the fact that from the victim's view point, the sentences to be imposed should not, logically speaking, depend greatly on whether the victim was cheated a hundred times amounting to a total of $250,000 or cheated once to the tune of $250,000. Having said that, it is also quite clear that an offender who has cheated a victim of small amounts a hundred times over is a

> serial offender and he would rightly be regarded as being more culpable than an offender who cheated only once, albeit of a large sum. ***Amalgamating both perspectives, it would appear that the total sentence imposed on the serial cheat would probably be slightly higher than the sentence imposed on an offender convicted of a single cheating offence, if the total quantum is identical in both instances*** . [emphasis added in bold italics]
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> To this, I would add that sentences meted out in serial cheating cases should not be only "slightly higher" as compared to that assigned to a single offender for the same quantum. The sentence could in the appropriate circumstances be *significantly* higher. *A serial offender would be hard put to credibly submit that his conduct was the result of a momentary indiscretion*.
>
> [emphasis in original]

I agreed with the prosecution that those statements were equally applicable in the present case even though it did not involve credit card fraud. In the circumstances of this case, the Respondent had demonstrated himself to be a serial cheat by resorting to the car rental and loan scams. It stands to reason that his sentence should be significantly higher than if he were convicted of only a single cheating offence, albeit that the total amounts involved in both scenarios are the same or similar.

34 In the present case, there was a total of 75 charges brought against the Respondent for cheating. Notwithstanding that some of those 75 charges were for offences which involved the same victim, the fact remained that the Respondent had cheated and caused much distress and inconvenience to some 70 people. While I appreciate that determining a proportionate punishment for a crime involved an exercise of discretion by the lower court which the appellate court should not lightly interfere with, it seemed to me that the SDJ did not focus sufficiently on the total criminality of the Respondent. As stated above at [20], the prosecution had quite rightly pointed out that had the prosecution proceeded only on the three charges for the single category of the loan scam offences, the Respondent would already have received an imprisonment sentence of 10 months. In my view, this was a clear indicator that the number of consecutive sentences imposed by the SDJ was not adequate to encompass the overall culpability of the Respondent's conduct (see *ADF v PP* at [146], [31] *supra*). In *PP v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [16], Yong Pung How CJ ("Yong CJ") held:

> ... The essence of the retributive principle, then, is that the offender must pay for what he has done. The idea is that punishment restores the just order of society which has been disrupted by his crime. It follows that the punishment must reflect and befit the seriousness of the crime. ...

To my mind, the global sentence imposed by the SDJ was clearly insufficient to address the harm caused to the Respondent's various victims.

The use of the Internet

35 I should now turn to address the significance of the Respondent's use of the Internet to perpetrate his crimes. In this regard, the prosecution submitted the following:

> The learned SDJ had erred in law and in fact, in failing to consider as an aggravating factor, the fact that by posting the rental and loan advertisements on the internet websites and forums, the Respondent was able to reach a much wider pool of potential victims. [note: 12]

36 In *ADF v PP*, another identified cumulative circumstance which militates for the imposition of

more than two consecutive sentences is a pressing public interest in discouraging the type of criminal conduct being punished (see *ADF v PP* at [146], [31] *supra*). I also note that in *PP v Huang Hong Si* [2003] 3 SLR(R) 57 ("*Huang Hong Si*"), Choo Han Teck J stated (at [11]) that the public interest was one of the four major distinctive aspects of the degree of seriousness of a crime. In relation to the prosecution's submission, I accept that the use of the Internet is a relevant sentencing consideration in that there is a strong public interest to deter potential offenders from using that medium to reach a larger number of potential victims. In *PP v Law Aik Meng* [2007] 2 SLR(R) 814, Rajah JA held at [27]:

> 2 7 *General deterrence is derived from the overarching concept of "public interest".* In *Angliss* ([16] *supra*), I had specified that public interest in sentencing is tantamount to the court's view of how public security can be enhanced by imposing an appropriate sentence. *A sentencing judge should apply his mind to whether the sentence is necessary and justified by the public's interest in deterring and preventing particular criminal conduc*t: *Angliss* ([16] *supra*) at [17]. This context should form the backdrop for the interpretation of my decision in *Tan Kay Beng*. *The types of offences and offenders for which punishment will be "certain and unrelenting" would therefore depend upon the corresponding interest of the public in preventing that kind of conduct and in restraining particular offenders.* For example, given the current climate where international and domestic terrorist security threats are more prevalent than before, bomb hoaxers must inexorably be visited with draconian sentences. (See *PP v Mohammad Farhan bin Moh Mustafa* District Arrest Case No 1808 of 2004 where the accused was sentenced to three and a half years' imprisonment for a bomb hoax; the senior district judge correctly declared at [14] that "it [was] clear that the sentencing of [such] offences ... must be treated seriously and that a strong deterrent be sent to those whose idle minds might otherwise turn to creating false alarms".) Such offences are easy to commit and difficult to detect and could become rampant if not firmly dealt with. *A clear signal must be unequivocally sent by the sentencing court, through an appropriate sentence, that such behaviour will be perennially viewed with grave and unrelenting disapprobation.*
>
> [emphasis added]

37 In my view, insufficient consideration was given by the SDJ in respect of the public interest element which was that like-minded potential offenders should be deterred from following the Respondent's footsteps in using the Internet to prey on a large pool of potential scam victims.

38 In this regard, I must deal with the case of *Rupchand Bhojwani Sunil v PP* [2004] 1 SLR(R) 596 ("*Rupchand Bhojwani*"), which was helpfully highlighted to me by Mr Sathinathan. In that case, Yong CJ reduced the offender's sentence for cheating (punishable under s 417 of the Penal Code (Cap 224, 1985 Rev Ed)) from 12 months' imprisonment to six months' imprisonment for the reason, *inter alia*, that the district judge had over-emphasised the fact of Internet misuse. There, the offender had intercepted an Internet order for certain products and proceeded to collect US$42,000 *via* telegraphic transfer from the person who made the order. He did not deliver the products and eventually pleaded guilty to cheating.

39 In sentencing the offender to 12 months' imprisonment, which was the maximum sentence at the time, the district judge relied on dicta from *Tay Kim Kuan v PP* [2001] 2 SLR(R) 876 and *PP v Muhammad Nuzaihan bin Kamal Luddin* [1999] 3 SLR(R) 653. However, Yong CJ held that the reasoning in those two cases was not applicable to the case of *Rupchand Bhojwani*. Regarding the former case, the reasoning behind the deterrent sentence was the protection of the young and gullible from the sexual perils of the Internet (at [22] of *Rupchand Bhojwani*). As for the latter case, it was distinguished on the basis that it involved pure Internet misuse, as opposed to a cheating offence as was the case in *Rupchand Bhojwani* (at [24]).

40 Significantly, Yong CJ held (at [23] of *Rupchand Bhojwani*) that the court's stance against Internet abuse should not be applied *carte blanche* whenever an Internet or computer resource is misused; rather, the court must look at the role of such misuse in the commission of the offence. In Yong CJ's view, the role of Internet misuse in *Rupchand Bhojwani* was "peripheral" (see *Rupchand Bhojwani* at [23]) and he said at [25]:

> 25 As such, I found that the district judge, although not wrong in emphasising the need to control Internet misuse by imposing deterrent sentences in the appropriate cases, had over-emphasised the fact of Internet misuse in this instance. Therefore, the reasoning process towards her decision adopted conclusions and considerations from cases that were not directly applicable here. *As a result, her decision did not take into account the fact that this was a case of pure cheating, with the slight involvement of Internet misuse along the way.* As such, I found that although the district judge was correct in convicting Sunil on the charge, she had imposed a sentence that was manifestly excessive.
>
> [emphasis added]

Thus, the question which arose in the present case was whether, in relation to the numerous offences of cheating committed by the Respondent, was the use of the Internet likewise nothing more than "peripheral".

41 When the Respondent's individual offences are viewed in isolation, the Internet misuse in this case might seem "peripheral" because they could have been committed even without the medium of the Internet (*eg*, by traditional print media, as the SDJ noted at [32] of the GD). However, it becomes clear that Internet misuse was not merely "peripheral" in this case when one views the Respondent's numerous offences in their totality. Indeed, the most significant aggravating circumstance in this case was the large number of offences committed, which was largely facilitated by the Respondent's use of the Internet to effectively publicise his scams. As the prosecution submitted, the geographical reach of his criminal enterprise was remarkable. [note: 13] The Respondent collected monies from victims of his car rental scam in car parks and void decks all over Singapore – from Pasir Ris, to Jurong West and to Woodlands. He might have been able to achieve a similar reach with an advertisement in the newspapers, but it was unlikely that that would have been as cost-effective. I should also state my disagreement with Mr Sathinathan's submission that the Internet advertisements served only as lures and for most of the offences, the "actual cheating" occurred when the Respondent successfully persuaded his victims to part with their monies (see above at [22]). To my mind, the "actual cheating" began with the Respondent's Internet advertisements.

42 Returning to the facts of *Rupchand Bhojwani*, it must be recognised that that case involved only one cheating offence through the use of the Internet and that occurred when the offender intercepted an Internet order. He did not use the Internet, as the Respondent did here, to publicise a scam with a view to reaching out to a large number of potential victims. That explains the court's view that the role of Internet misuse in that case was nothing more than peripheral. In juxtaposition, the present case involved 75 cheating offences, most of which arose from the Respondent's Internet advertisements which were calculated precisely to cheat many people of small sums of money. Leaving aside the laptop CBT offences, it seemed to me that the Respondent had gone on a cheating spree using the medium of the Internet. As I have stated above (at [36]–[37]), would-be criminals should be deterred from using the Internet as a cheap, convenient and effective publicity platform to reach large numbers of potential victims in a targeted manner as the Respondent did. Therefore, in determining an appropriate overall sentence for this case, I took the Respondent's misuse of the Internet (which led to a large number of victims being cheated) into account as a circumstance which warranted the imposition of a deterrent sentence. One of the four established principles for

sentencing is deterrence: R *v James Henry Sargeant* (1974) 60 Cr App R 74 at 77.

Conclusion

43 In my view, the sentence passed by the lower court was wrong in principle as it did not give sufficient weight to the aggravating circumstance of the large number of people who fell victim to his scams. Further, I considered that the SDJ should also have taken into account the Respondent's use of the Internet to prey on a large pool of potential scam victims as a circumstance warranting, in the public interest, the imposition of a deterrent sentence. There was a need to prevent copycats. Therefore, I held that the overall sentence passed by the SDJ was manifestly inadequate.

44 In the result, bearing in mind the numerous cheating charges which the Respondent had pleaded guilty to and admitted to be taken into consideration, I was of the view that a total sentence of 15 months' imprisonment was called for. Accordingly, I allowed the prosecution's appeal and enhanced the Respondent's total sentence from 10 months to 15 months. To give effect to that, I ordered that an additional five-month imprisonment sentence for a loan scam offence (DAC 8580/2011, which involved a loan scam victim who was cheated of $2,000) be ordered to run consecutively with the sentences originally ordered by the SDJ to run consecutively.

[note: 1] The GD states incorrectly at [1] that 75 counts were taken into consideration for the purpose of sentencing.

[note: 2] Statement of Facts at para 9. Record of Proceedings ("ROP") at p 135.

[note: 3] See for *eg*, 45th to 50th charges (amended). ROP at pp 70-75.

[note: 4] 51st charge (amended). ROP at p 26.

[note: 5] Statements of Facts at paras 88 and 95. ROP 152 and 154.

[note: 6] Statements of Facts at paras 88 and 95. ROP 152 and 154.

[note: 7] 77th and 79th to 81st charges (amended). ROP pp 96-99.

[note: 8] 87th and 88th charges (amended). ROP pp 104-105.

[note: 9] I noted that 28 months divided by 5 is 5.6 months.

[note: 10] Prosecution's Skeletal Submissions at para 80.

[note: 11] Prosecution's Submissions at para 71.

[note: 12] Prosecution's Skeletal Submissions at p 6.

[note: 13] Prosecution's Skeletal Submissions at para 38.