Song Meng Choon Andrew *v* Public Prosecutor
[2015] SGHC 180

Case Number	: Magistrate's Appeal No 229 of 2014
Decision Date	: 14 July 2015
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Calvin Liang and Geraint Kang (Tan Kok Quan Partnership) for the appellant; Sanjiv Vaswani and Asoka Markandu (Attorney-General's Chambers) for the respondent.
Parties	: Song Meng Choon Andrew — Public Prosecutor

Criminal procedure and sentencing – Sentencing – Appeals

14 July 2015 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The appellant, Song Meng Choon Andrew, a 52-year-old male, pleaded guilty to two charges under s 5(*b*)(i) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("the PCA"). With the consent of the appellant, three similar charges were taken into consideration for the purposes of sentencing ("the TIC charges"). The district judge ("the Judge") sentenced the appellant to a global term of imprisonment of eight months (four months' imprisonment per charge to run consecutively). The appellant now appeals against the sentence meted out by the Judge.

The Facts

Background

2 The appellant was the owner of Bonski Karaoke Pub ("Bonski") which was located at 272 River Valley Road, Singapore. The appellant employed Filipino females, who had entered Singapore on a Visit Pass, to work at Bonski as free-lance hostesses.

3 On 8 June 2011, the Corrupt Practices Investigation Bureau ("CPIB") received information that Immigration & Checkpoints Authority of Singapore ("ICA") officers had been assisting foreigners to perform "U-Turns". A "U-Turn" occurs when a foreigner on a Visit Pass intentionally exits to a nearby country just before the expiry of the Visit Pass and re-enters Singapore either on the same day or a few days later in order to obtain a fresh Visit Pass. This has the effect of extending the validity period of the foreigner's stay in Singapore.

4 Prior to this, in either September or October 2010, an ICA officer attached to Tuas Checkpoint, Mohammed Mustaffa Bin Mohabat Ali ("Mustaffa"), became acquainted with an unidentified Filipino female at a pub located in Paramount Hotel, Singapore. Mustaffa agreed to help this Filipino female extend her Visit Pass in return for an undisclosed fee.

5 After successfully extending her Visit Pass through the "U-Turn", the same unidentified Filipino

female introduced one Philibert Tng Hai Swee ("Philibert") to Mustaffa. Philibert told Mustaffa that he knew of several foreigners who were willing to pay a fee in order to extend their Visit Passes. Both Philibert and Mustaffa hatched a scheme to facilitate the "U-Turn" of these foreigners in return for a standard fee payable to Mustaffa. Mustaffa charged somewhere from $250 to $550 for each extension of a Visit Pass, depending on the number of previous extensions he granted to the same foreigner. After each successful transaction, Philibert would collect payment from all the foreigners concerned and retain for himself a referral fee of about $50 to $75 for each foreigner. Within the same day or the day after, Philibert would meet Mustaffa to hand him the cash bribes.

6 In early 2011, Philibert proposed to the appellant that he could assist the hostesses working at Bonski to perform "U-Turns". Philibert told the appellant that he would assist by transporting the hostesses from Singapore to Malaysia and then back to Singapore after making "U-Turns". Philibert also informed the appellant that he had a contact in ICA who would grant the extensions for the Visit Passes during the return trip after each "U-Turn". From this conversation, the appellant understood that Philibert would have to pay his ICA contact in order to obtain the extension for the Visit Passes.

Facts relating to DAC 11108 of 2014

7 Bandalan Rosalie Layese ("Sally") and Manon-Og Charity Suan ("Charity") arrived in Singapore on 25 December and 31 December 2010, respectively. They were each given a Visit Pass for 30 days. The appellant employed Sally as a hostess at Bonski knowing full well that she was in Singapore on a Visit Pass. Sally eventually got to know Charity while working at Bonski.

8 In early March 2011, the appellant arranged with Philibert for both Sally and Charity to perform "U-Turns". This was the second time that the appellant had assisted Sally and Charity to perform "U-Turns" through Philibert. After checking with Philibert, the appellant informed Sally and Charity that the cost of the "U-Turn" for each of them was $450 and $550, respectively. On 16 March 2011, Philibert drove Sally and Charity to Johor, Malaysia. On the same day, Philibert drove both of them back to Singapore via the Tuas Checkpoint where Mustaffa was on duty at the car arrival clearance lane. Mustaffa granted a fresh Visit Pass to both Sally and Charity for an additional 30 days stay in Singapore. Subsequently, the appellant paid $1,000 to Philibert for arranging the "U-Turn". The appellant understood that Philibert would use some of these monies to pay his ICA contact. The appellant then deducted $450 from Sally's salary while Charity gave him $550 directly. Of the $1,000, Philibert retained $150 and gave the remaining $850 to Mustaffa.

9 The appellant admitted to corruptly giving a gratification of $1,000 to Philibert as a reward for the latter arranging a "U-Turn" into Singapore for Sally and Charity.

Facts relating to DAC 11110 of 2014

10 Jerusalem Alyn Malig-On ("Alyn") and Llenos Janice Asentista ("Janice") arrived in Singapore on 29 January 2011. They were each given a Visit Pass for 30 days. Shortly after arrival, they were introduced to the appellant whom they agreed to work for.

11 In late March 2011, the appellant arranged with Philibert for both Alyn and Janice to perform "U-Turns". This was the second time that the appellant had assisted Janice to perform a "U-Turn" through Philibert. On 24 March 2011, Philibert drove Alyn and Janice to Johor. Philibert checked Alyn and Janice into a hotel in Johor Bahru because on that particular day, Mustaffa was not on duty. Two days later, Philibert fetched them from Johor Bahru and returned to Singapore via the Tuas Checkpoint. Mustaffa, who was on duty at the car arrival clearance lane, granted both Alyn and Janice a 30-day extension to their respective Visit Passes. Alyn and Janice both had to pay $450

each for the arrangement. Alyn paid Philibert directly in cash. The appellant paid Philibert on behalf of Janice and later deducted the same sum from her salary. The appellant understood that Philibert would use some of the monies to pay his ICA contact. Of the $900, Philibert retained $150 and gave the remaining $750 to Mustaffa.

12 The appellant admitted to corruptly giving a gratification of $450 to Philibert as a reward for the latter arranging a "U-Turn" into Singapore for Janice.

Decision of the Judge

13 In sentencing the appellant, the Judge noted that Philibert had made clear to the appellant that the money given to him was meant for his contact in ICA who would grant the extensions for the Visit Passes. The Judge held that there were various aggravating factors present. These included the bribing of a public officer, premeditation on the part of the appellant and difficulty in detecting such offences.

14 The Judge also held that there was a risk to security of the state when ICA officers manning the checkpoints compromised on their duty and extended social Visit Passes on the basis of bribes received instead of ensuring that it was safe to allow the entry of persons into Singapore.

15 Next, the Judge cited *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217 ("*Ang Seng Thor*") and held that even though the appellant was charged under s 5 of the PCA and not s 6, the public service rationale applied. According to the Judge, there was also no inordinate delay in prosecution warranting a reduction in sentence.

16 The Judge found that the appellant's role in the scheme was not insignificant since he had approached Philibert on a number of occasions to have the Visit Passes of the various hostesses extended through the "U-Turn" scheme. The Judge stressed that the appellant knew that the bribe handed to Philibert was for the ICA contact, which in turn meant that he knew it would lead to the compromise of the ICA officer's duty.

17 The Judge also explained that the appellant benefitted from the arrangement because it resulted in the extension of the Visit Passes of the hostesses in his employment. This would enable the hostesses to continue working for the appellant during the extended period. The Judge took note of the fact that while the hostesses were on Visit Passes instead of Work Permits, the appellant would not have to pay levy or take care of their accommodation.

18 In determining the appropriate sentence, the Judge found that the most relevant case was *Public Prosecutor v Ong Chin Huat* [2008] SGDC 76 ("*Ong Chin Huat*"). The Judge decided that the appropriate sentence was four months' imprisonment per charge. Since the charges involved different Filipino hostesses on different dates, he also ordered that the imprisonment sentence for each charge run consecutively, making it a global term of 8 months' imprisonment.

Arguments of the parties

19 The arguments of counsel for the appellant, Mr Calvin Liang ("Mr Liang"), can be summarised as follows:

(a) The Judge erred in assessing the relative culpability of the appellant vis-à-vis the other individuals involved in the "U-Turn" scheme. According to Mr Liang, the appellant did not approach Philibert. It is clear from the statement of facts ("SOF") that it was Philibert and

Mustaffa who hatched the "U-Turn" scheme without the appellant.

(b) The Judge failed to apply the relevant sentencing precedents under ss 5(*a*)(i) and 5(*b*)(i) of the PCA which established that a fine should be imposed for small sums of gratification notwithstanding that the impugned transaction affects a public service. The Judge failed to appreciate that the appellant was charged under s 5(*b*)(i) of the PCA for corrupting Philibert, a private sector individual. Mr Liang submits that this is a key distinguishing factor from the ICA officers whom Mustaffa recruited since they were charged for more serious offences under s 6(*a*) of the PCA.

(c) The Judge erred in taking into account the purported risk to national security as an aggravating factor because it was not particularised in the SOF.

(d) The Judge erred in not applying a discount to the sentence due to the inordinate delay in prosecution and the prejudice suffered by the appellant.

(e) The sentence imposed by the Judge violates the totality principle. According to Mr Liang, had the Judge taken a "last look" at the sentence, it would have been apparent that the sentence was excessive.

20 The arguments by the prosecution are as follows:

(a) The Judge had correctly identified and accorded appropriate weight to the aggravating factors present. This includes the application of the public service rationale, the high degree of premeditation shown by the appellant, the fact that the appellant had benefited from the offences, the difficulty in detection of such offences and the risk to security of the state.

(b) The Judge had also correctly noted the high degree of culpability displayed by the appellant given his role in the "U-Turn" scheme. The appellant had played a significant role in supporting and propagating a criminal scheme that involved the bribery of a public servant.

(c) Had it not been for the appellant creating a demand for such illegal services, the "U-Turns" would not have taken place for the Filipino hostesses working at his pub and there would be no need to pay any bribes to the ICA officer. But for the appellant's participation, this criminal scheme could not and would not have taken place. In that respect, the appellant played a direct role in corrupting a public servant in the performance of his duties.

(d) The sentences imposed by the Judge for each charge are in line with the sentencing precedents. The Judge had correctly applied the case of *Ong Chin Huat*. The prosecution tendered the following table to show the sentences received by five ICA officers implicated in receiving cash bribes from Philibert:

Accused	Date Sentenced	No. of Charges	Sentence
Mustaffa	9 December 2013	35 charges (proceeded on eight charges under s 6(*a*) PCA and four charges under s 6(*b*) PCA)	Seven months' imprisonment per charge with three charges running consecutively (21 months in total)

Mohd Nazrul bin Noor Mohd	6 February 2014	Two charges (proceeded on one charge under s 6(*a*) PCA	Four months' imprisonment
Lukmanulhakim bin Samsun	6 February 2014	One charge [note: 1]	Four months' imprisonment
Nor Hidayat bin Mohd Hussain	15 April 2014	Two charges (proceeded on one charge under s 6(*a*) PCA	Four months' imprisonment
Ezhar bin Kamis	9 May 2014	Two charges (proceeded on one charge under s 6(*a*) PCA	Four months' imprisonment

It is well established that generally, the giver of gratification is equally as culpable as the receiver. On the facts, the culpability of the appellant is greater, if not at least on par with the four other ICA officers, besides Mustaffa. Accordingly, the appellant should similarly receive a sentence of at least 4 months' imprisonment.

(e) Finally, the Judge had correctly applied the one transaction rule and the totality principle when he ordered the sentence for the two charges to run consecutively.

My decision

Principles of appellate intervention

21 When it comes to appeals against sentence, it is trite that appellate intervention is only warranted in specific limited circumstances (see *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12]–[13]). Here, the appellant argues that the sentence imposed on him is manifestly excessive. It suffices at this stage to point out, by way of reminder, what Yong Pung How CJ had said in *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 (at [22]):

> When a sentence is said to be manifestly inadequate, or conversely, manifestly excessive, it means that the sentence is unjustly lenient or severe, as the case may be, and requires substantial alterations rather than minute corrections to remedy the injustice…

Relationship between ss 5 and 6 of the PCA

22 I begin with the relationship between ss 5 and 6 of the PCA as much of the submissions of Mr Liang focus on this. Mr Liang submits that the PCA establishes a dual-rung ladder of criminal liability with s 6 of the PCA as the top rung and s 5 as the bottom. For ease, I set out both ss 5 and 6 in full:

> **Punishment for corruption**
>
> **5.** Any person who shall by himself or by or in conjunction with any other person —
>
> (*a*) corruptly solicit or receive, or agree to receive for himself, or for any other person; or
>
> (*b*) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or reward for, or otherwise on account of —

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or

(ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.

Punishment for corrupt transactions with agents

6. If —

(*a*) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;

(*b*) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(*c*) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.

23 Mr Liang refers to Tan Boon Gin, *The Law on Corruption in Singapore: Cases and Materials* (Academy Publishing, 2007) ("*The Law on Corruption in Singapore*") (at p 3):

1.1

The paradigm of corruption is a situation involving three parties – A, the briber; B, the recipient of the bribe; and C, the person to whom B owes a *duty* [and] [t]he purpose of A bribing B is to cause B to act in A's interest, and against the interest of C, in breach of B's duty.

1.2

This is found in s 6 of the [PCA] where B is referred to as the agent (whether in the public or private sector), C as the principal and the bribe as a gratification…

[emphasis in original]

Mr Liang also refers me to the following passage at p 30:

> **3.29**
>
> Whereas s 6 of the PCA is restricted to the paradigm of corruption by virtue of the agent-principal relationship requirement, s 5 is not so constrained and, if it is not to be otiose, must extend beyond agent-principal corruption, and … deviate from the paradigm.

24 Mr Liang further submits that within the bottom rung of the ladder, there are two separate sub-tiers. Sections 5(*a*)(i) and 5(*b*)(i) ("Limb 1 of s 5") deal with the scenario where the giver bribes the recipient to do or forbear to do anything in respect of any matter or transaction whatsoever, actual or proposed. On the other hand, ss 5(*a*)(ii) and 5(*b*)(ii) ("Limb 2 of s 5") deal with the more egregious scenario where the bribe is given to a member, officer or servant of a public body to do or forbear to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned.

25 Mr Liang, in his written submissions, summarises his rationale for differentiating between the rungs of criminal liability as follows [note: 2] :

(a) Criminal liability attaches under Limb 1 of s 5 of the PCA because there is a duty owed to the public not to pervert the course of justice. He cites *The Law on Corruption in Singapore* (at p 30) for this proposition.

(b) Criminal liability attaches under s 6 of the PCA (where the agent *is not* a public servant) because a *double duty* is owed, first, to the public not to pervert the course of justice and, second by the agent to the principal.

(c) The highest degree of criminal liability attaches under s 6 of the PCA (where the agent *is* a public servant) because a *triple duty* is owed, first to the public not to pervert the course of justice, second by the agent to the principal, and third, by the agent *qua* public servant to the principal *qua* public body.

(d) Criminal liability under Limb 2 of s 5 of the PCA would be situated along the continuum between Limb 1 of s 5 and s 6.

26 Mr Liang then points out that the appellant was charged under s 5(*b*)(i) of the PCA. According to him, the Judge was in error when he sentenced the appellant on the basis that the SOF disclosed a graver charge and when he applied the sentencing precedents for the more aggravated offences.

27 I think it is neither necessary nor desirable for me to deal with the precise conceptual relationship between ss 5 and 6 of the PCA. It is an exceedingly thorny and vexing process to identify and categorically rank in terms of culpability the different types of corruption and the exact breach of duties involved which result in the imposition of criminal liability and further to determine for each type of corruption whether s 5 or s 6 or both are equally applicable depending on how the charge is framed. This is because corruption may manifest itself in a myriad of ways and I may not have the prescience to foresee them all. However, I will make a few broad observations which I think will be sufficient for the purposes of this appeal.

28 The first thing to appreciate is the breadth of Limb 1 of s 5. This has been noted by Michael Hor in his article "The Problem of Non-Official Corruption" (1999) 11 SAcLJ 393 at p 394. He writes:

> There is one other crime of corruption, and it finds its source in section 5(i) of the PCA. One is immediately struck by the breadth of this provision…
>
> Here, there is no attempt to define, specify or even describe the kinds of duties which are potentially protected by the criminal law. Of course, one solution is to read it literally to mean any duty whatsoever. Indeed there is language in one recent judgment that this is how it should be interpreted. A moment's reflection will show that this interpretation is unlikely, and there is language in other recent judgments that our courts realise this. One example will suffice. Most law schools give prizes to its students for doing well in their studies. Students are under a duty (either to their parents or society) to do their best. The law school giving the prize is rewarding the student for doing what he is duty bound to do anyway. This may well have the effect of corrupting the student's duty to do well (independently of the prize). A literal interpretation of this provision will compel us to conclude that the law school has engaged in criminal corruption… It would be a gross over-extension of the criminal law if every conceivable legal, contractual and ethical duty were held to be within the meaning of the section. Yet the existence of section 5(i) must mean that at least some non-official duties are not covered by section 6 (agent-principal corruption) are to be protected by the criminal law — otherwise it would mean nothing at all. The problem is this — how is the line to be drawn between non-official duties protected by the criminal law under section 5(i) and non-official duties not within the purview of that section.

29 The breadth of s 5(*b*)(i) has been recognised judicially resulting in the circumscribing of s 5 by requiring both an objective corrupt element in the transaction impugned and a subjective corrupt intent. These requirements find expression through the word "corruptly" in s 5. In *Chan Wing Seng v Public Prosecutor* [1997] 1 SLR(R) 721, Yong Pung How CJ said:

> 17 An instructive case to begin with was that of *PP v Khoo Yong Hak* [1995] 1 SLR(R) 769 where this court, in considering some of the English statutory provisions, held that the acts discountenanced by the law in those provisions were carefully circumscribed and a corrupt intent was almost inherent in each of those acts so prohibited. There was thus no need to search further for a corrupt intent, be it in the transaction or in the state of mind of the accused.
>
> 18 This court further held that (at [15]):
>
> > [T]o accept and apply the general English position here [to s 5(b)(i) PCA], the preposterous effect would be that any intentional gratification given to any person as an inducement or reward in relation to any matter or transaction would be sufficient to constitute a criminal offence, subject to the Prosecution's discretion to prosecute. It is clear that s 5(*b*)(i), albeit drafted in wide terms, is not intended to have such an effect … .
>
> 19 It was concluded that, in deciding whether the element "corruptly" had been satisfied in s 5(*b*)(i), the court must be "satisfied beyond a reasonable doubt that there is a corrupt element in the transaction and a corrupt intent present on the part of the person giving".
>
> 20 Whether a transaction has a corrupt element is an objective inquiry that is essentially based on the ordinary standard of the reasonable man. This question is to be answered only after the court has inferred what the accused intended when he entered into the transaction. The contravention of some rules or laws can also assist the court in deciding whether the intended transaction is corrupt according to the objective criteria. This is done by looking at the purpose behind the rules or laws. For example, if they are specifically designed to prevent bribery, then breaking them will invariably lead to the finding of a corrupt element.

21 However, I must emphasise that a corrupt element is not constituted merely because there has been a contravention of some rules or laws. Even if the gratification or reward is made for an illegal purpose, that does not *per se* make it corrupt. I recall having given the following example in *Kannan s/o Kunjiraman v PP* [1995] 3 SLR(R) 294 at [17]–[18]:

> [I]f A gives $5,000 to B to assault C, it would have been quite clear that, without more, the $5000 was neither corruptly given by A nor corruptly received by B. As I have said in *Sairi bin Sulaiman v PP*, it might have been for an illegal purpose, but that did not *per se* make it corrupt. …
>
> In my view, a line must be drawn between a reward for doing something merely illegal, and a reward for doing something which is not just illegal but is in itself corrupt. The latter is corrupt, but the former is not necessarily so. This, of course, is a very fine distinction. However, there comes a point when fine distinction must be drawn and such distinctions are not unknown even in the criminal law.

Hence, illegality alone is not always conclusive as to the existence of a corrupt element.

…

25 Thus, there must first be a corrupt element in the transaction according to the ordinary and objective standard, followed by the accused's guilty knowledge that what he was doing was, by that standard, corrupt. Both limbs must be fulfilled beyond a reasonable doubt. And, the question of "corrupt" would be determined on the facts of the individual case.

26 I have been very hesitant to define what "corrupt" means because the factual permutations of corruption can be endless. Any definition may thus unnecessarily circumscribe the effect of the section. However, as a starting point, it is useful to keep in view the natural and ordinary meaning of the word "corrupt" as a working guide. In this regard, one of the meanings of "corrupt" as given in *The New Shorter Oxford Dictionary* (1993 Ed) is:

> Induce to act dishonestly or unfaithfully; bribe.

And, in further ascribing a meaning to "corruption", it states:

> Perversion of a person's integrity in the performance of (especially official or public) duty or work by bribery etc.

27 The above is probably already what most laypersons understand by corruption. However, I stress once again that this is no more than a preliminary guide to what "corrupt" means and is clearly not definitive or exhaustive. Each case must still be examined on its own facts.

30 Sections 6(*a*) and 6(*b*) are not beset with the same difficulties found in s 5. In fact, on my reading of ss 5, 6(*a*) and 6(*b*), it seems that a charge brought under ss 6(*a*) and 6(*b*) can in most cases, if not all, be reframed as a charge under s 5 simply because of the sheer breadth of the latter.

31 Moving on to my second observation, I do not think that an offence framed under s 6 must necessarily be a more serious or aggravated offence when compared to one framed under s 5. Both s 5 and s 6 prescribe their own range of punishment and the range provided is the same in both sections. Given this and the considerable overlap between s 5 and s 6, in the sense that s 5 may well be broad enough to encompass all the cases under s 6, I do not think it is the intention of Parliament

that an offence framed under s 6 should necessarily be regarded as more serious or aggravated as compared to one framed under s 5 or *vice versa*. Much must depend on the nature and factual circumstances of the offence. Furthermore if on the *same* facts, the charge may be framed under either s 5 or s 6 (assuming that it falls within the area of overlap), can one then say that the choice of charging an accused under s 5 or s 6 should have a marked effect on the severity of the sentence in light of the fact that the maximum sentence prescribed for both s 5 and s 6 are identical?

32 I accept that the considerable overlap and the fact that they prescribe the same range of punishment may allow one to make the case that ss 6(*a*) and 6(*b*) are actually otiose as they may both be subsumed under s 5. The reason for the present situation is purely historical. As Mr Liang points out, the Prevention of Corruption Ordinance 1937 (No 41 of 1937) (Laws of the Straits Settlements) only contained the equivalent of s 6 of the PCA. The Prevention of Corruption Ordinance 1960 (No 39 of 1960) ("PCO 1960") then introduced only the equivalent of Limb 2 of s 5 of PCA. At the Second Reading of the Prevention of Corruption Bill (*Singapore Parliamentary Reports, Official Report* (13 February 1960) vol 12 at col 377 (Ong Pang Boon, Minister for Home Affairs)), it was stated that:

> … Therefore, this Government is determined to take all possible steps to see that all necessary legislative and administrative measures are taken to reduce the opportunities of corruption, to make its detection easier and to deter and punish severely those who are susceptible to it and engage in it shamelessly.
>
> **Therefore, in this Bill, the Government is asking for new and wider powers to fight bribery and corruption.** As stated in the Explanatory Statement, the object of this Bill is to provide for the more effective prevention of corruption by remedying various weaknesses and defects which experience has revealed in the existing Prevention of Corruption Ordinance. The Bill, while directed mainly at the corruption in the public services, is applicable also to corruption by private agents, trustees and others in a fiduciary capacity. To those who corrupt and those who are corrupt, the warning is clear - take heed and mend their ways. Just retribution will follow those who persist in corrupt practices.
>
> [emphasis added]

33 Subsequently, the Prevention of Corruption (Amendment) Act 1966 (Act 10 of 1966) introduced the equivalent of Limb 1 of s 5. During the Second Reading of the Prevention of Corruption (Amendment) Bill (*Singapore Parliamentary Reports, Official Report* (21 April 1966) vol 25 col 80 (Yong Nyuk Lin, Minister for Law and National Development)), it was only stated that the amendments to s 5 offered a more succinct phrasing of s 5 of the PCO 1960.

34 The historical context shows that s 6 was first to find footing in the corpus of the criminal law of Singapore. Section 5 was then introduced as a means of providing "wider powers to fight bribery and corruption". Section 6 was retained and it has not lost its efficacy, as over the years the prosecution has continued to prefer charges under s 6 whenever it is specifically applicable. This demonstrates the pragmatic approach Parliament has taken in legislating wide powers in the PCA as part of its unrelenting effort to eradicate corruption. In *Public Prosecutor v Syed Mostofa Romel* [2015] SGHC 117 ("*Syed Mostofa Romel*"), Sundaresh Menon CJ observed the following (at [13]):

> The passage of the Ordinance in 1960 was a milestone in our legal history; but even more, it was a watershed moment in our national history as the government of the day embarked on a ground-breaking and sustained campaign to tackle the scourge of corruption in all its forms and resolved to eradicate its hold at every level in our society. In the 55 years since then, our national

character has come to be defined, among other things, by an utter intolerance for corruption.

35 As to Mr Liang's submission that s 5(*b*)(i) is a lesser offence than one under s 5(*b*)(ii), again I do not agree. At first blush, this argument has force since s 5(*b*)(ii) deals with the situation where a member, officer or servant of a *public body* is involved. However, Mr Liang assumes that where a public body is involved, the charge *must necessarily* be framed under s 5(*b*)(ii) and that a charge cannot be preferred under s 5(*b*)(i) even if s 5(*b*)(i) is broad enough to encompass the fact situation, and that further if a charge is framed under s 5(*b*)(i), the fact that it involves a public body then cannot be taken into account in sentencing. This assumption is not correct because s 5(*b*)(i) is not limited in its application to only situations that involve a non-public body but may also apply where a public body is involved. It appears that s 5(*b*)(ii) is in essence a sub-set of s 5(*b*)(i). If that is the case, then it cannot be said that s 5(*b*)(i) is necessarily a lesser offence than one under s 5(*b*)(ii) since again they both have the same range of punishment. As a matter of practice, the prosecution may prefer to frame a charge under the more specific provision, s 5(*b*)(ii), should it be specifically applicable rather than the more general and wider provision, s 5(*b*)(i). Of course, if on a given set of facts only s 5(*b*)(i) is applicable, the prosecution has no alternative but to prefer a charge under s 5(*b*)(i). This may create the erroneous impression that Limb 1 of s 5 and Limb 2 of s 5 are mutually exclusive in their application when in fact that is not necessarily the case.

36 Locally, it has been pointed out that public sector corruption typically attracts a custodial sentence (*Syed Mostofa Romel* at [15]). While it is not the law that private sector corruption typically attracts a fine (*Syed Mostofa Romel* at [17]), "[w]here private sector agents are concerned [in the context of s 6 of the PCA], offences which register a lower level of culpability *can* be dealt with by the imposition of fines" (*Syed Mostofa Romel* at [20]) [emphasis in original]. Regardless of whether a charge is framed under Limb 1 or Limb 2 of s 5, I can accept that, generally speaking when all other things are equal, corruption which involves a public body would be "more egregious" than one which does not. However, I do not accept that a factual scenario involving a public body *must necessarily* be brought under Limb 2 of s 5.

37 My conclusion, that neither Limb 2 of s 5 nor ss 6(*a*) and 6(*b*) are necessarily more serious or aggravated offences when compared to Limb 1 of s 5, leaves one with the final question – what should the approach to sentencing be when an accused is charged under Limb 1 of s 5 instead of s 6? I think that a pragmatic approach should be adopted – one that is in line with the pragmatic approach taken by Parliament in providing wide powers as part of its unrelenting effort to eradicate corruption. I am of the opinion that in each case the court has to be more concerned with the *specific nature* of the corruption, and sentence on that basis taking into account the specific aggravating and mitigating factors present. Existing precedents may provide the court with some guidance on the appropriate sentence to impose. A court should not be overly concerned with whether a charge is brought under s 5 or s 6 but should focus on the *specific nature* of the corruption in the particular case. Similar sentiments were expressed by Menon CJ in *Syed Mostofa Romel* where he said (at [20]):

> … Indeed it is critical in this context to be sensitive to the *specific nature* of corruption that one is concerned with. [emphasis in original]

Menon CJ was speaking in the context of deciding when to impose a custodial sentence for cases of private sector corruption under s 6 of the PCA. However, I think that passage is of wider application. In the final analysis, it is the *specific nature* of the corruption involved which is of importance and not so much whether a charge is brought under s 6 or under Limb 1 or Limb 2 of s 5 of the PCA.

38 In this case, the appellant was charged for corruptly giving a gratification to Philibert as a reward for Philibert to arrange "U-Turns" for hostesses to obtain a 30-day extension to their Visit

Passes. I must point out that here the appellant was charged with corruptly giving a gratification to Philibert, who is a private individual. More pertinently, the appellant was not charged with corruptly giving gratification to Mustaffa, the ICA officer. The gravamen of the particular charges in this case is the corruption of Philibert and not Mustaffa. The Judge was therefore in error when he said that the case "involve[d] the bribing of a public officer from ICA in providing a public service" (at [6] of the Judge's grounds of decision). The prosecution submits that the appellant "had corruptly transacted with an ICA officer, with Philibert acting as the middleman". [note: 3] But this is not what the appellant was charged for and neither is this factually accurate because the appellant had intended to deal directly with Philibert. He did not know Mustaffa nor did he know what were the terms that Mustaffa had set out to approve the Visit Passes during the "U-Turns". The appellant cannot be said to have corruptly transacted with Mustaffa. The prosecution has exercised its discretion to charge the appellant for corruptly giving a gratification to Philibert, not Mustaffa. Accordingly, the appellant should be sentenced for corruptly giving a gratification to Philibert, the private individual who operated and facilitated the "U-Turn" scheme and who had corruptly transacted with Mustaffa. This is the *specific nature* of the corruption involved in this particular case and the Judge was in error by failing to appreciate this. What the Judge did was to equate the appellant's understanding that some money would be given by Philibert to his own ICA contact to "the appellant corruptly giving gratification to Mustaffa". This is impermissible as it amounts to sentencing the appellant based on a charge he did not plead guilty to.

39 In *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185, Yong CJ said (at [15]):

> … Once an accused has pleaded guilty to (or been convicted of) a particular charge, it cannot be open to the court, in sentencing him, to consider the possibility than an alternative – and graver – charge might have been brought and treat him as though he had been found guilty of the graver charge.

Similarly in *Knight Glenn Jeyasingam v Public Prosecutor* [1992] 1 SLR(R) 523, L P Thean J (as he then was) said (at [13]):

> … The more serious misrepresentations – so the statement of fact said – were those contained in the hotel business plan which was made available and delivered to Ng in mid-December 1990 or thereabouts. But these were not part of the charge preferred against the appellant, and these misrepresentations fell outside the scope of the charge. The omission to include the misrepresentations made in December 1990 does not render the charge defective; it merely reduces the gravity of the charge. *The appellant can only be punished for the offence with which he was charged and of which he was convicted.* In my opinion, these misrepresentations cannot be taken into account in determining the appropriate sentence as they were not part of the charge.
>
> [emphasis added]

40 Thus, by sentencing the appellant as if he had corrupted Mustaffa, the Judge had in my opinion meted out a sentence which is manifestly excessive in the circumstances. However, as I shall explain below, I am of the view that the custodial threshold is still crossed. I now turn to the factors which affect the sentence and the relevant sentencing precedents before setting out the appropriate sentence.

Factors relevant to sentence

Public service rationale

41 In *Syed Mostofa Romel*, it was stated (at [24]) that "[s]ingapore deals with the intersection of public and private sector corruption by extending at the sentencing stage, the public service rationale to private agents [under s 6(*a*)] who supply public services or handle public money". Here, Philibert neither dealt with public services nor public money.

42 However, what cannot be ignored is that in corruptly giving gratification to Philibert, the appellant understood that it would have resulted in the bribery of a public officer from ICA. Though the appellant was not expressly informed by Philibert that an ICA officer would have to be bribed, the appellant was intelligent enough to understand that Philibert would not have been able to operate the "U-Turn" scheme without having to bribe his ICA contact in the process. In *Ang Seng Thor*, V K Rajah JA said (at [30]) that the public service rationale is a "restatement of the common-sense proposition that corruption offences involving public servants are especially harmful because they erode the public's confidence in the essential institutions of government".

43 In *Public Prosecutor v Marzuki bin Ahmad* [2014] 4 SLR 623 ("*Marzuki bin Ahmad*"), Menon CJ provided a non-exhaustive list of factors to take into account when sentencing an offender under s 6(*a*) of the PCA. Some of these factors are applicable to the present case. Menon CJ said (at [28]):

> … From these precedents, it became apparent that when sentencing an offender for such offences, it would be relevant to have regard to a number of factors as follows:
>
> (a) Whether the offence was committed by a public servant.
>
> (b) What the value of the gratification was.
>
> (c) The nature of the offender's corrupt acts and the seriousness of the consequences of those acts to the public interest. In this regard, corrupt acts that have the object and/or effect of perverting the course of justice or affecting public health and safety stand out as egregious. The different nature and consequences of each corrupt act will attract different degrees of disapprobation. …

44 Cutting through to the kernel of the present case, the appellant understood that part of the money used to bribe Philibert would be used by Philibert to bribe a public officer. In fact, when I consider the TIC charges which were bribes for previous successful "U-Turns" carried out, it clearly shows that in committing the acts which form the bases of the proceeded charges, the appellant would have known that a public officer had to be bribed somewhere down the line, although not by him.

45 In sentencing the appellant for corruptly giving a gratification to Philibert, I take into account the fact that he had knowingly partook in a criminal scheme which would lead to an erosion of public confidence in the "essential institutions of government". In *Ang Seng Thor* (at [33(b)]), Rajah JA stated that a custodial sentence would be the norm where there was a risk that confidence in public administration would be eroded. It is because of this particular aggravating factor that I am of the opinion that a custodial sentence is warranted in this case.

46 I must also add that had the appellant been charged for directly bribing Mustaffa, the custodial sentence meted out by the Judge would have been justifiable since the very acts which undermine public confidence (*ie* the bribery of a public official) would have been done by the appellant. However, in this case I have taken notice of the fact that the appellant was charged for corruptly giving a gratification to Philibert, a private individual and not Mustaffa directly. To me, the public service rationale would have applied more strongly had he directly and corruptly given a gratification to

Mustafa, and a stiffer sentence than the one I ultimately impose in this case would have been justified.

Risk to security of the state

47 I turn next to the contention by Mr Liang that the Judge erred in assessing the risk to security of the state since this was not set out in the SOF. For this proposition, the appellant relies on *Marzuki bin Ahmad*. To me, this submission is misconceived. In *Syed Mostofa Romel*, Menon CJ said:

> 43 The same point was made to me by Mr Thong at the oral hearing and in his submissions, he cited *Public Prosecutor v Marzuki bin Ahmad and another appeal* [2014] 4 SLR 623 ("*Marzuki*") for the proposition that, as I found in that case, there was nothing to suggest that public safety was at stake. He suggested I should find the same in this case since the Prosecution's statement of facts does not identify with specificity what was the harm caused.
>
> 44 In my judgment, both the DJ and Mr Thong were wrong. It did not matter what the precise nature of the safety risks were, because the point was that *safety risks had been posed* to the oil terminal and the workers inside the terminal as a result of the Respondent's actions. That much was indisputable and in relation to the second charge, there were clearly high-risk defects that were present but which the Respondent had overlooked because of the bribe. Such facts are quite different from *Marzuki*, which involved an accused who was an assistant property executive employed by Jurong Town Corporation ("JTC") tasked to conduct inspections at a number of foreign worker dormitories at a number of JTC-owned premises. He was extended loans amounting to $31,500 to forbear from reporting a discovered non-compliance. In my judgment in *Marzuki* at [31], I noted that although the acts of the accused *had the potential* to affect public safety, in fact no public safety issue had been brought to the court's attention. Therefore, unlike the present case, the potential for public safety issues there was purely speculative. I therefore accorded no weight to that consideration in *Marzuki*.

48 This makes clear that the court can take into account the effect on public safety or security when it is not purely speculative, despite it not being mentioned in the SOF. Therefore the Judge was entitled to take into account the effect on security of the state as an aggravating factor.

49 Having said that, I do not think significant weight should be attached to the risk to security of the state in this case. The Judge had opined that "there is a risk of security… if [ICA] Officers manning the Checkpoints compromise on their duty in extending Social Visit Passes on the basis of bribes received instead of ensuring that it was safe to allow the entry of persons into Singapore". The risk to security of the state has to be assessed based on the specific facts of the case. For example, ICA officers who are bribed to let in wanted felons or potential terrorists pose a much higher threat to security of the state than ICA officers bribed to let in Filipino females who work as hostesses. I am of the view that the risk is overstated in this case and to consider it an aggravating factor of significant weight may be going too far. I therefore do not attach much weight to the risk posed to the security of the state as an aggravating factor on the particular facts of this case.

Relative culpability and the principle of parity of sentencing

50 Mr Liang submits that the role played by the appellant in the syndicate which saw multiple ICA officers being bribed was a minor or insignificant one when compared to the other ICA officers. In *Marzuki bin Ahmad*, Menon CJ said (at [45]):

> … [T]he principle of parity of sentencing as between the giver and recipient of gratification

cannot be viewed or applied as an inflexible and rigid rule. Although the general principle is that the giver and the recipient of gratification are equally culpable, many other factors must also be considered when deciding on the sentence to be imposed on the particular accused who is before the court. These factors may relate to the degree of culpability of each individual offender in committing the corrupt acts, as well as circumstances unique to each offender…

51 Mr Liang therefore submits that because the appellant is of relatively lower culpability than the other ICA officers (excluding Mustaffa), who each received four months' imprisonment per charge (see the prosecution's table in [20] above), he should be entitled to a discount in sentence.

52 I must first point out that strictly speaking, the counterparty in the transactions for which the appellant was charged is Philibert, not the ICA officers. In Mr Liang's written submissions, he states that Philibert died before he could, presumably, be charged. This is not disputed by the prosecution. Therefore, the actual counterparty for the ICA officers to which the principle of parity should apply is Philibert and this for the transaction between Philibert and the ICA officers. It would be erroneous to apply, as the prosecution seeks to do, the principle of parity of sentencing in this case as if the corrupt transaction was between the appellant and the ICA officers when it is not the case. As I have explained, to do so completely disregards what are in the charges and what are the actual facts.

53 I have already taken into account the fact that the appellant was charged for corruptly giving gratification to Philibert and not Mustaffa in coming to my conclusion that the four months' imprisonment sentence meted out is manifestly excessive. However, in order to address the appropriate sentence that ought to be imposed, I will consider Mr Liang's submissions on the culpability of the appellant.

The appellant's role in the "U-Turn" scheme

54 First, Mr Liang submits that the "U-Turn" scheme was conceived, planned and executed without the appellant's involvement. Mustaffa was the "mastermind" and Philibert was the one would refer foreigners who needed their Visit Passes extended. The appellant was thus not part of the syndicate.

55 Second, it was Philibert who proposed to the appellant that he could assist the Filipino hostesses working at Bonski to perform "U-Turns". It was not the appellant who initiated or hatched the arrangement between Philibert and himself. Moreover, it was Philibert who determined the cost of each "U-Turn" and arranged the logistics for the "U-Turns". This submission is closely related to the first submission. I agree with Mr Liang's submissions that these two sets of facts do have the effect of reducing the appellant's culpability. The appellant had been approached to take advantage of an existing arrangement between Mustaffa and Philibert which he agreed. In this regard, I do not agree with the prosecution's submission that but for the appellant's participation, the "criminal scheme could not and indeed would not have taken place". The facts clearly show otherwise. Granted that I accept that the appellant's culpability is reduced due to the above points, it is incontrovertible that at the end of the day the appellant is still blameworthy for making use of a scheme he knew to be illegal and corrupt in nature.

56 Mr Liang next submits that the appellant was only briefly entangled in the "U-Turn" scheme. According to him, the arrangements were only meant as a stop-gap measure before the hostesses obtained proper work permits. He had obtained valid work permits for Charity, Sally and Janice on 13 April 2011, 14 April 2011 and 28 April 2011 respectively. [note: 4] This was also done prior to his arrest on 8 June 2011.

57 I do not accept this submission. The prosecution correctly points out that the documents tendered as part of the appellant's mitigation plea in the court below show that the Filipino hostesses had managed to obtain their work permits on the same day or the very next day of application. This was also noted by the Judge in his grounds of decision. Mr Liang refers me to the Ministry of Manpower website where it clearly shows than an "in-principle-approval" for a work permit can be obtained within one day of application for a foreign worker who intends to work as a performance artiste in a pub and subject to certain requirements, a work permit will be issued within two weeks (see http://www.mom.gov.sg/passes-and-permits/work-permit-for-performing-artiste/apply-for-a-work-permit (accessed on 11 June 2015)). None of this was done by the appellant until after he used the "U-Turn" scheme to obtain extensions for his hostesses. It is clearly not the case that the appellant was forced to turn to the illegal "U-Turn" scheme while waiting for approval of the work permits such that some mitigating value might be ascribed to his actions.

Multiple offences and premeditation

58 The charges (including the TIC charges) show that the appellant had used the "U-Turn" scheme for Sally, Charity and Janice to obtain at least two extensions of their Visit Passes while they remained in his employment at Bonski. I regard the fact that he had committed the offences on multiple occasions as an aggravating factor.

59 In my opinion, the circumstances surrounding the commission of the offence show that there was premeditation on the part of the appellant. It is particularly damning that he had recourse to the "U-Turn" scheme as a way of extending the period in which Sally, Charity and Janice could work for him without the need to obtain a valid work permit. It is clear from the submissions of Mr Liang that the appellant partook in the "U-Turn" scheme so he could have a longer period of assessing the performance of the hostesses without having to apply for a valid work permit. The premeditation shown is also another aggravating factor.

The gratification involved

60 The gratification given by the appellant to Philibert was a relatively small amount. Considering the TIC charges, a total of $2,800 was given to Philibert who arranged five "U-Turns". On the proceeded charges alone, a total of $1,450 was given as gratification to Philibert.

61 The prosecution submits that the size or quantum of the gratification is an insignificant consideration when the subject matter of the corrupt offences involves the corruption of a public officer. As I have explained, this submission is not entirely accurate since the gravamen of the particular charges in this case is the corruption of Philibert. In any event, no authority was cited to me by the prosecution for the above proposition.

62 In fact in *Marzuki bin Ahmad* (see [43] above), it was said that the value of gratification involved was a relevant factor when it came to sentencing under s 6(*a*). This is a relevant consideration alongside whether or not a public servant is involved. I therefore do not accept the prosecution's submission and I take into account the fact that the total value of gratification given by the appellant to Philibert is relatively low.

Benefit derived by the appellant

63 I turn next to Mr Liang's argument that the Judge had erred in finding that the appellant had benefited from the "U-Turn" scheme. The reasons provided by the Judge have been set out (see [17] above) and I will not repeat them here. I am in agreement with the Judge that the appellant did

benefit from the "U-Turn" scheme. It also seems pertinent to me that the appellant was paid back by Charity after the "U-Turn" scheme and had deducted the relevant amounts from Sally's and Janice's salary. Thus, the appellant benefited from the "U-Turn" with absolutely no cost to himself unlike the archetypal corruption case where the giver of gratification usually pays the gratification out of his own pocket.

Delay in prosecution

64 In *Chan Kum Hong Randy v Public Prosecutor* [2008] 2 SLR(R) 1019, Rajah JA explained as follows:

> 23 From the point of view of fairness to the offender, where there has been an inordinate delay in prosecution, the sentence should in appropriate cases reflect the fact that the matter has been held in abeyance for some time, possibly inflicting under agony, suspense and uncertainty on the offender. …
>
> …
>
> 29 In cases involving an inordinate delay between the commission of an offence and the ultimate disposition of that offence via the criminal justice process, the element of rehabilitation underway during the interim cannot be lightly dismissed or cursorily overlooked. If the rehabilitation of the offender has progressed positively since his commission of the offence and there appears to be a real prospect that he may, with time, be fully rehabilitated, this is a vital factor that must be given due weight and properly reflected in the sentence which is ultimately imposed on him. Indeed, in appropriate cases, this might warrant a sentence that might otherwise be viewed as "a quite undue degree of leniency"…
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> …
>
> 3 8 *At the end of the day, it must be appreciated that every factual matrix is infused with myriad imponderables and subject to its own singular permutation of variable factors, and is, to that extent, unique. Not every instance of a long and protracted investigative process warrants a reduction in sentence.* The weight to be attached to fairness and/or rehabilitation as attenuating sentencing considerations in the event of inordinate prosecutorial delay must necessarily vary from case to case.
>
> [emphasis added]

65 Mr Liang submits that there was an inordinate delay of prosecution of about three years in the present case. Accordingly, the Judge erred when he did not take the delay into account and appropriately discount the sentence meted out on the appellant.

66 Regarding this submission, there is some paucity of facts. The SOF merely states that on 8 June 2011, "the Corrupt Practices Investigations Bureau received information alleging that ICA officers had been assisting foreigners to perform 'U-Turns'". According to the Prosecution, investigations in the present case commenced in June 2011 and statements were recorded from witnesses in October 2011. The appellant avers that he was arrested on 8 June 2011 and his last statement was recorded on 10 October 2011. As to the date that the appellant was first charged, the appellant in his submissions states it was 16 June 2014. Three years had therefore elapsed since investigations commenced and the charging of the appellant. About two years and eight months had elapsed since the appellant gave his last statement and the charges were preferred against him.

67 I do not think that there is an inordinate delay in prosecution on the particular facts of this case. The Judge noted the following in his grounds of decision (at [8]):

> … The prosecution stated that investigations in the present case commenced in June 2011 and although statements were recorded from witnesses in Oct 2011, there were other investigations which had to be carried out before the various accused persons could be charged. The prosecution stated that the CPIB had to co-ordinate with several agencies such as the Philippine Embassy, MOM and ICA to retrieve details of the employment history and travel records of the Filipino hostesses, all of which took considerable amount of time. The prosecution pointed out that the 5 ICA officers connected to this case had to be dealt with first between September 2013 to May 2014. *The accused was charged in June 2014, within a month of the 5th and final ICA officer being dealt with.* …
>
> [emphasis added]

I do not think there is an inordinate delay in prosecution given that the investigations involved collaboration among many agencies, some foreign. Pertinently, the appellant was charged within one month of the conclusion of the cases against the ICA officers, who were the receivers of the bribes from Philibert. This cannot be said to be an inordinate delay. Mr Liang submits that the appellant was charged with bribing Philibert which meant that there was therefore no need to obtain travel records of the Filipino females since the charges would be made out whether or not the "U-Turns" were in fact carried out. Although Mr Liang is correct in pointing out that the appellant was charged for corruptly giving gratification to Philibert, which as I have explained is of significance in the present case, the entire "U-Turn" scheme must be viewed as a composite whole from the perspective of investigators when determining whether or not there was an inordinate delay in prosecution. It is completely understandable that the investigators want to obtain all the relevant information pertaining to the entire "U-Turn" scheme so as to be better informed when making the individual charging decisions.

Cooperation and plea of guilt

68 A guilty plea is a factor that the court takes into account in mitigation as evidence of remorse (see *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [14]). The prosecution submits that little weight should be attached to the appellant's plea of guilt since the prosecution would have had no difficulty in proving its case against the appellant had the matter proceeded to trial. I do not agree.

69 The date of the last offence, considering even the TIC charges, was 26 March 2011. This was about two and the half months before investigations commenced on 8 June 2011. I give the appellant the benefit of the doubt that he had stopped engaging in the "U-Turn" scheme of his own accord, before getting wind that the relevant authorities were investigating into the matter. This, taken together with his guilty plea, does point to a significant degree of remorse shown by the appellant.

70 Furthermore, I accept Mr Liang's assertion that the appellant has fully cooperated with the authorities from the very beginning and has been completely candid in his interviews. I thus attach some weight, by way of mitigation, for the remorse and cooperation shown by the appellant.

Relevant sentencing precedents

71 I turn first to *Ong Chin Huat*, a case the Judge placed considerable reliance on. In that case, the accused pleaded guilty to two charges under s 6(*b*) of the PCA for corruptly giving, through one

Lim Ang Luck ("Lim"), a gratification of a sum of $300 to an ICA officer who facilitated the granting of 14-day Social Visit Passes to three Vietnamese females through another ICA officer. In this case, Lim was the head of a syndicate which provided "U-Turn" services to Vietnamese women. Lim had an arrangement with an ICA officer who would assist in the granting of Social Visit Passes. The accused was the one who arranged for drivers to perform the "U-Turns". The accused then paid the bribes to the ICA officer through Lim. The accused was sentenced to four months' imprisonment per charge and the sentences were ordered to run consecutively for a global term of eight months imprisonment.

72 The next case of relevance is *Meeran bin Mydin v Public Prosecutor* [1998] 1 SLR(R) 522 ("*Meeran*"). The accused pleaded guilty to two charges under s 6(*b*) of the PCA for corruptly giving money to an immigration officer as a reward for assisting him to obtain Social Visit Passes for Indonesian nationals. The accused was sentenced to nine months' imprisonment for each charge and the sentences were ordered to run consecutively. His appeal was dismissed by the High Court. The accused had acted as an intermediary between the syndicate leader and the ICA officers involved in the scheme. The ICA officers were recruited by the accused's cousin and details of their shifts and counter duties were provided to the accused who would inform the syndicate leader. It was also the accused who handed over the bribe money, a total of $3,060, on two separate occasions, to an ICA officer. The two charges the accused pleaded guilty to involved the clearance of a total of 51 Indonesian nationals at the checkpoint.

73 In *Public Prosecutor v Tan Kian Meng Winston* [2009] SGDC 426 ("*Winston Tan*"), the accused pleaded guilty to two charges under s 5(*b*)(i) of the PCA for corruptly giving, on two occasions, sums of $2,000 to the managing director of a private company, Raja, to help the accused quash a case against him for employing a prohibited immigrant. The accused's case was being investigated by the ICA. It turned out that the middleman, Raja, had lied about his contacts in the ICA and made off with the money given to him by the accused. The accused was sentenced to pay a fine of $5,000 for each charge (ten weeks' imprisonment in default). The district judge noted that it was Raja who solicited the bribe and that there was little planning involved. Furthermore, the district judge noted that the desired outcome to undermine the administration of justice was not achieved since Raja had clearly taken advantage of the accused's vulnerable position and deceived him into believing that he had committed an offence of employing an illegal immigrant and that Raja could use his "police contact" to quash the matter.

74 In *Public Prosecutor v Yeoh Hock Lam* [2001] SGDC 212, ("*Yeoh Hock Lam*"), the accused was a former employee of the Building and Construction Authority ("BCA"). He pleaded guilty to corruptly receiving a gratification of a sum of $10,000 from an operator of a coffee shop on account of his proposed act to procure the BCA to delay enforcement action against the operator of the coffee shop. Another similar charge was taken into consideration where the sum of the bribe was $5,000. The operator of the coffee shop had received a notice to vacate the building coupled with a notice of intended prosecution. The accused told the operator that he could arrange for a delay in the enforcement action by the BCA. The accused informed the operator of the coffee shop that he knew a lot of staff in the BCA and was familiar with the rules and regulations. He further elaborated that money could be used to pay BCA staff to help in obtaining the extensions. The district judge sentenced the accused to a fine of $40,000. He also ordered the accused to pay a penalty of $15,000. The district judge had explained that he did not impose a custodial sentence because the corrupt transactions had taken place in the context of commercial dealings. There was also no suggestion in the statement of facts that the accused had in fact approached the BCA officers to solicit their assistance or that the accused had proceeded to bribe any BCA officers. The district judge was also of the opinion that the bribe was of a relatively low amount.

75 Mr Liang also relies on a few other cases which involved offences under Limb 1 of s 5 of the

PCA where according to him fines were meted out. These cases are of peripheral relevance given the vastly different facts. Nevertheless, for the sake of completeness, I set them out in brief as follows:

(a) In *Public Prosecutor v Weng Yong Yi* [2007] SGDC 160, a fine was ordered for an accused who corruptly received a gratification of $300 as a reward for helping another as a sponsor in her application for an extension of a Visit Pass. However, on appeal by the prosecution, Rajah JA increased the sentence for the corruption charge to a term of imprisonment of one week (see Magistrate's Appeal No 96 of 2007 (unreported)).

(b) In *Public Prosecutor v Tan Chin Gee* [2009] SGDC 229, the accused claimed trial to single charge under s 5(*b*)(i) of the PCA for corruptly offering a gratification of a sum of $1,000 to one Din Na, for her not to testify against the accused in a court hearing for a Personal Protection Order which his wife had applied against him and for Din Na to lie to the court by saying that she did know anything and that everything she said was taught to her by the accused's wife. The district judge sentenced the accused to 12 month's imprisonment. On appeal, Choo Han Teck J set aside the custodial sentence and imposed a fine of $5,000 (see Magistrate's Appeal No 157 of 2009 (unreported)).

(c) In *Yap Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855, the accused was convicted of two charges for corruptly offering a gratification of an unspecified sum to two people as an inducement for forbearing to report him to the police for running away from a traffic accident. The trial judge imposed a fine of $15,000 in respect of each charge. The accused appealed to the High Court only against conviction and his appeal was dismissed.

(d) In *Public Prosecutor v Howe Jee Tian* [1998] 3 SLR(R) 587, the accused was acquitted of, *inter alia*, ten charges under s 5(*b*)(i) of the PCA for corruptly giving a gratification of $900 to one Gay Ping Eng for the latter to recommend persons, namely, proprietors or partners of registered local businesses who were prepared to act as a front for subcontractors awarded work by a company and to assume liability for offences under the Immigration Act (Cap 133, 1997 Rev Ed) and the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) on behalf of the subcontractors in the event the subcontractors were found to have employed foreign workers contrary to the two Acts mentioned. On appeal by the prosecution, the High Court set aside the acquittal and convicted the accused on all ten counts of corruption under s 5(*b*)(i). The High Court then sentenced the accused to a fine of $10,000 on each of the ten charges under s 5(*b*)(i) of the PCA.

Appropriate sentence

76 Turning to the appropriate sentence in the present case, I have explained in my judgment that the custodial threshold has been breached because the appellant clearly understood that at least part of the money used to bribe Philibert would be used by Philibert to bribe an ICA officer, although he might not have known the full details of Philibert's corrupt arrangements with the ICA officer. Considering the TIC charges which were also for *successful* "U-Turns" done before those acts which formed the bases for the proceeded charges had taken place, the appellant was clearly aware that an ICA officer would have compromised his duty on account of the bribes that he had given to Philibert to arrange for each of the "U-Turns". It is because of this that a fine is an inadequate sentence and a custodial sentence is warranted. The cases of *Yeoh Hock Lam* and *Winston Tan*, where fines were ordered, can be distinguished because in those cases, the judge had, in sentencing, taken into account that the desired outcome of bribing public officers was not achieved.

77 Having decided that a custodial sentence is warranted, in my view the sentence meted out in

Meeran, of nine months' imprisonment per charge, is not appropriate on the present facts. In that case the accused had a much greater degree of involvement in the criminal syndicate than the appellant had in this case. Furthermore, the syndicate there was on a larger scale which saw the clearance of 51 Indonesian nationals. Finally, the accused in *Meeran* was charged for the bribery of an immigration officer.

78 In this regard, the accused in *Ong Chin Huat* was also charged with the bribery of an ICA officer, albeit through a third party Lim. The accused in *Ong Chin Huat* had also played a more involved role in the syndicate since he was the one who arranged for drivers to perform the "U-Turns". Therefore, the sentence of four months' imprisonment per charge meted out in *Ong Chin Huat* is also not appropriate on the present facts as the appellant here was charged with corruptly giving a gratification to Philibert, a private individual.

79 Bearing in mind the relevant aggravating and mitigating factors which I have discussed above (at [41]–[70]), I am of the view that an appropriate sentence in this case is an **imprisonment term of six weeks per charge**. To my mind, this appropriately reflects the need for deterrence in cases where public confidence in the institutions of government is compromised. It also reflects the degree of culpability of the appellant in the "U-Turn" scheme, the fact that multiple offences were committed and that there was premeditation on the part of the appellant. In reaching the appropriate sentence, I also consider that the bribe amount was relatively small and the appellant cooperated with the authorities and had demonstrated remorse.

80 Considering the overall criminality of the appellant's actions, it is also appropriate to order the two imprisonment sentences to run consecutively which results in a global term of **12 weeks' imprisonment**. In all the circumstances, I consider this to be a just sentence. This calibration does not offend the one-transaction principle and is in line with the totality principle (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [81] for an analytical framework in deciding when to order concurrent or consecutive sentences).

Conclusion

81 Fighting the scourge of corruption is a continuous struggle. The courts have to play its part in the sustained campaign to stamp out corruption in Singapore by ensuring that a measure of deterrence is calibrated into the sentences meted out on the corrupt. Nevertheless, fairness to the appellant dictates that he be sentenced for the very criminal acts done by him and for which he is charged.

82 The Judge had sentenced the appellant to a term of imprisonment which I consider to be manifestly excessive. I therefore set aside the consecutive sentence of four months' imprisonment per charge imposed by the Judge and sentence the appellant instead to a **term of imprisonment of six weeks per charge**. I also order the two imprisonment terms to run consecutively which results in a **global term of 12 weeks' imprisonment**.

83 In closing, I would like to express my gratitude to Mr Liang for his detailed and well-researched submissions.

[note: 1] The table tendered by the prosecution does not state which section the accused was charged under.

[note: 2] Appellant's written submissions at para 60.

[note: 3] Respondent’s written submissions at para 30.

[note: 4] Record of Proceedings at pp 402–406.

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