IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 273

Criminal Revision No 8 of 2016

Between

Md Rafiqul Islam Abdul Aziz

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] – [Revision of Proceedings]

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v
Public Prosecutor

[2016] SGHC 273

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9 December 2016 Judgment reserved.

Chao Hick Tin JA:

Introduction

1 On 30 June 2016, the applicant, Md Rafiqul Islam Abdul Aziz ("the Applicant"), pleaded guilty to a charge of making a fraudulent claim for compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA"). The Applicant was convicted on the same day with sentencing adjourned to the next day. However, on 1 July 2016, the Applicant, through his then-counsel Ms Priscylia Wu ("Ms Wu") of Drew & Naiper LLC, informed the court that he wished to retract his guilty plea as matters which would be highlighted in mitigation would materially affect the legal conditions required to constitute the charge. The district judge ("the DJ") did not allow the Applicant to qualify or retract his plea and sentenced the Applicant to four weeks' imprisonment which was ordered to commence immediately as the

Applicant was unable to post bail. The Applicant served the sentence and was repatriated from Singapore on 22 July 2016.

2 On 25 July 2016, the Applicant filed Criminal Revision No 8 of 2016 ("the Application"). By the Application, the Applicant seeks to have his conviction set aside. The Applicant is assisted by the Humanitarian Organisation for Migration Economics ("HOME") and is now represented by Mr Tang Jin Sheng of Dentons Rodyk & Davidson LLP ("Mr Tang").

Background to the Application

3 The Applicant is a 29-year-old male Bangladeshi foreign construction worker. He claims that in or around May 2013, while he was working beside Segar LRT station, he climbed a ladder to tie rebar on the metal plates to the formwork but unfortunately slipped off the ladder and sustained an injury to his left knee as a result. Some eight months later, on 27 January 2014, he made a claim under the WICA. The Ministry of Manpower ("MOM") recorded the accident as having occurred on 30 May 2013.

4 The MOM took the view that the Applicant's claim was fraudulent. This was because on 30 May 2013 he had, allegedly, not been instructed to climb a ladder to carry out the said construction work. Instead, on that day, he was only doing light sweeping work which could not have led to the accident and the knee injury. Whilst the Applicant concedes that the incident might not have occurred on 30 May 2013, his position is that a work accident did in fact occur. In this regard, he relies on a letter by Dr Thomas Catabas ("Dr Catabas") from the Emergency Department of Tan Tock Seng Hospital addressed to Drew & Napier LLC. The Applicant saw Dr Catabas on 31 May 2013, and it was recorded by Dr Catabas that the Applicant had accidentally

sprained his left knee four days prior to the medical examination. This recording would undoubtedly have been based on information furnished by the Applicant at the consultation. Indeed, in the letter from Dr Catabas to Drew & Napier LLC, he stated that "[t]he patient did mention that he accidentally sprained his left knee, 4 days prior to exam" although he also stated that the Applicant "did not mention that the accident occurred at the workplace".

5 In the light of the view taken by the MOM, the Prosecution preferred three charges against the Applicant. The original charges read as follows:

1st CHARGE

> You … are charged that you, on 14 February 2014, did fraudulently make a claim for compensation under the [WICA] in an "Application Form for Work Injury Compensation Claim under the Work Injury Compensation Act" form made to the [MOM], which you knew to be false in order to induce your employer … in making payment of such compensation to you; to wit, you filed a claim for compensation for injuries sustained on 30 May 2013 during the course of work under the employment of the said company, which you knew was false, when you had, in fact, *been doing light sweeping work which could not have resulted in the sustained injuries, and your injury was in fact due to a pre-existing condition*, and you have thereby committed an offence ….

2nd CHARGE

> You … are charged that you, on 14 February 2014, did make a false statement to an investigating officer … which you knew was false in a material particular; to wit you stated in your statement that you had, on 30 May 2013 at about 4pm … during the course of work at a condominium site beside Segar LRT, *climbed a ladder to tie rebar on the metal plates to the formwork and slipped off a ladder from a height of 1 metre and as a result suffered injury to you knee and that your colleagues had come to your assistance and you had conveyed details of the accident to them*, when you knew this to be false, and you have thereby committed an offence ...

3rd CHARGE

> You … are charged that you on 3 October 2014 did make a false statement to an investigating officer … which you knew was false in a material particular; to wit*, you stated that you*

> *had fallen off a ladder while tying a rebar on a metal plate to formwork on 30 May 2013 under the instructions of your foreman, and had fallen from the ladder and informed your colleagues of the accident sustained in the course of work …* when you knew these to be false, and you have thereby committed an offence …
>
> [emphasis added in italics]

6 The trial of the charges was scheduled to begin on 30 June 2016. That morning, the MOM prosecutors (*ie*, Prosecuting Officer Pegan Chong ("PO Chong") and Prosecuting Officer Lee Kui Bao) handed over three amended charges to Ms Wu, the Applicant's counsel ("the Amended Charges"). The Amended Charges read as follows (referred to hereinafter as "the Amended First Charge", "the Amended Second Charge" and "the Amended Third Charge" respectively):

> **AMENDED 1st CHARGE**
>
> You … are charged that you, on 14 February 2014, did fraudulent make a claim for compensation under the [WICA] in an "Application Form for Work Injury Compensation Claim Under the Work Injury Compensation Act" form made to the [MOM], which you knew to be false in order to induce your employer … in making payment of such compensation to you; to wit, you filed a claim for compensation for injuries sustained on 30 May 2013 during the course of work under the employment of the said company, which you knew was false, when you had, in fact, been doing light work, and your injury was not caused by an accident at work on 30 May 2013, and you have thereby committed an offence …
>
> **AMENDED 2nd CHARGE**
>
> You … are charged that you, on 14 February 2014, did make a false statement to an investigating officer … which you knew was false in a material particular; to wit, you stated in your statement that you had, on 30 May 2013 … during the course of work at a condominium site beside Segar LRT, suffered an accident at work on 30 May 2013 and had conveyed information of the said accident to your colleagues, when you knew this to be false, and you have thereby committed an offence …

AMENDED 3rd CHARGE

> You … are charged that you, on 3 October 2014, did make a false statement to an investigating officer … which you knew was false in a material particular; to wit, you had informed Kanyarat Khemporm …, Perumal Manivel … and Mohammed Nur Alam Mohammed Idris Ali … of your accident that occurred on 30 May 2013, when you knew this to be false, and you have thereby committed an offence …

7 Although Ms Wu had earlier been informed by the MOM prosecutors that amendments would be made to the original charges, it appeared that the actual amendments made were quite different from the amendments which the MOM prosecutors had earlier informed Ms Wu of.

8 Ms Wu then informed the Applicant that the MOM was accusing him of attempting to cheat his employer because he did not have an accident on 30 May 2013 and he did not suffer a work injury. She informed the Applicant that, amongst other reasons, if the Applicant had given the wrong date of the incident, it might be difficult to contest the Amended Charges. She also asked the Applicant to consider pleading guilty. As a result of the Amended Charges and Ms Wu's need to discuss with the Applicant as to how he was to respond to the Amended Charges, the trial was stood down several times.

9 According to the Applicant, after hearing what Ms Wu had told him, he had the impression that the MOM was accusing him of giving the wrong date for the accident. This was an accusation that he could consider accepting. It was apparently on this understanding that the Applicant then agreed to plead guilty to the Amended Second Charge.

10 After some further discussion, the MOM prosecutors informed Ms Wu that their position was to proceed against the Applicant on the Amended First Charge, and if the Applicant would plead guilty to that charge, the Amended

Second and Third Charges would only be taken into consideration for the purposes of sentencing. The Applicant eventually chose to plead guilty to the Amended First Charge.

11 At about 11.15 am on that day, the parties went back before the DJ who was informed that the Applicant would plead guilty to the Amended First Charge. The Statement of Facts was read out. It is a matter of some dispute as to whether the Applicant informed the court interpreter that he disagreed with portions of the Statement of Facts. What is undisputed is that the court interpreter informed the DJ that the Applicant accepted the Statement of Facts without qualification. The Applicant was then convicted on the Amended First Charge.

12 After the Applicant was convicted, Ms Wu applied to adjourn the hearing on mitigation to the next day. This was granted. It appears that after the hearing on 30 June 2016, the Applicant told Ms Wu that the Statement of Facts did not state that he had a work accident and suffered a serious knee injury. According to Ms Wu, she responded by informing the Applicant that if he wished to maintain that he had suffered a work injury, she could include his version of events in the mitigation plea. However, she stated that the Prosecution might object to this version of events, and the DJ might reject his plea of guilty to the Amended First Charge.

13 In the evening of 30 June 2016, the Applicant, accompanied by Ms Desiree Leong ("Ms Leong"), a volunteer from HOME, met Ms Wu to prepare for the next day's hearing. It is not disputed that the original mitigation plea which Ms Wu prepared and presented to the Applicant and Ms Leong contained the Applicant's version of events, *viz*, that the Applicant had suffered a work accident several days before 31 May 2013. Ms Wu also

informed the Applicant that if he were to submit this mitigation plea, he might have to retract his plea of guilt. Ms Wu gave the Applicant some time to consider this while she prepared a second mitigation plea, which did *not* contain the Applicant's version of events. The Applicant signed on the second mitigation plea. According to Ms Wu, the Applicant signed the second mitigation plea on the basis that he accepted the second mitigation plea and would not contest the Amended First Charge. However, the Applicant's and Ms Leong's position is that the Applicant did not agree to the second mitigation plea, but signed it on the basis that he would have some time overnight to think about whether he wished to retract his plea.

14 At about midnight, the Applicant informed Ms Leong that he wished to retract his plea. Ms Leong conveyed this to Ms Wu at about 8.00 am on 1 July 2016.

15 At the sentencing mention on 1 July 2016, Ms Wu informed the MOM prosecutors and the court that the Applicant wished to retract his plea "on the basis that if he [were] going to proceed with it, he may have to qualify his plea". The DJ stated that he would not allow the retraction of the plea unless there were good reasons for it. Ms Wu then highlighted s 228(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), which states:

> Where the court is satisfied that any matter raised in the plea in mitigation materially affects any legal condition required by law to constitute the offence charged, the court must reject the plea of guilty.

16 Ms Wu informed the court that the Applicant maintained that the work accident did take place, except that it did not take place on 30 May 2013. Thus, the Applicant did not have the requisite *mens rea* for the offence under s 35(2)(*f*) of the WICA, and on that basis, the court ought to allow the retraction

of the plea. PO Chong objected, taking the position that the Applicant's retraction of the plea was "an afterthought". The DJ rejected the Applicant's retraction of the guilty plea, stating:

> Okay. I'm [of] the view that in the case where accused person pleads guilty and when the Statement of Facts is read, he immediately qualifies the Statement of Facts by not admitting to it or if mitigation is given immediately and he qualifies the plea, I will allow a retraction at that stage because it is in the same transaction, alright. But in the case where we have gone through the whole plea and allow[ed] an adjournment of the matter to another date for mitigation or time for mitigation to be prepared, that's a very different situation altogether and in such a situation, I'm not allowing the retraction of plea, alright.

17 In the circumstances, Ms Wu then proceeded with the mitigation plea on behalf of the Applicant. When this was concluded, the DJ returned to the question of the application to retract the plea. He queried Ms Wu as to whether she had advised the Applicant as to the "*gravamen* of the charge" [emphasis in original]. Ms Wu replied that she had explained the charge and the punishment to the Applicant and that there were other considerations, such as the weight of the evidence, which led the Applicant to plead guilty. She stated that the Applicant's state of mind at the plead-guilty mention was that "he didn't think so much and wanted to proceed with the plea". Ms Wu also informed the court that she had not explained the Statement of Facts to the Applicant prior to the plead-guilty mention. This was because the Applicant had, until the date of trial, maintained his innocence; thus, Ms Wu did not find it necessary to explain the Statement of Facts to him. When the Applicant decided to plead guilty, she was not in possession of the Statement of Facts and was not able to explain it to the Applicant prior to his plea being taken.

18 The DJ then queried the Bengali court interpreter if she had interpreted the Statement of Facts clearly to the Applicant on the preceding day. The court

interpreter confirmed that she had interpreted the Statement of Facts to the Applicant and that the Applicant had not qualified any matter in the Statement of Facts.

19 At this point, Ms Wu applied to amend the written mitigation plea to include circumstances surrounding an accident that happened sometime before 31 May 2013. The DJ stated that he did not require Ms Wu to tender a written version of the amendments.

20 The MOM prosecutors objected to the Applicant's attempt to retract the plea. Their position was that there was no accident at all involving the Applicant. PO Chong also stated that it was never raised to the Prosecution through the Applicant's statements or representations made on his behalf that the incident might have taken place on a date prior to 30 May 2013.

21 After hearing from Ms Wu, the court interpreter and PO Chong, the DJ gave brief oral grounds for his decision to disallow the retraction of the plea:

> In the case of ***Teo Hee Heng v Public Prosecutor***, it is clear that the Court must be satisfied that the plea of guilt made by the accused is valid and unequivocal before it accepts the plea. Three safeguards are to be observed. It is the accused himself who wishes to plead guilty, the accused understood the nature and consequences of the plea, the accused intends to admit to the offence without qualification. Now, the charge stated clearly the *gravamen* of the offence which is that you knew was false [*sic*] when you had, in fact, been doing light work and your injury was not caused by an accident at work on 30th of May 2013. …
>
> …
>
> The interpreter … has confirmed that the accused understood the charge and consequences and also admitted to the … statement of facts without any qualification. I have asked him yesterday and he said yes. I have also asked the counsel yesterday and she has confirmed the same. She has also explained today that she has informed the accused that to maintain that it's a work accident would [be] tantamount to

> qualifying the plea. I found this attempt to retract on the ground that the work accident did take place but on an earlier date and hence, the accused had pleaded guilty on the ground that he has stated a wrong date purely an afterthought as no such assertion has been made prior to the trial either in the representations or in the statements made by the accused with the investigation officer.
>
> Accordingly, I'm satisfied [that] … there are no valid grounds for the plea to be retracted.
>
> [emphasis in original]

22 At this juncture, Ms Wu then reiterated that her instructions would be to put in a supplement to the existing mitigation plea, stating the facts that the accident happened sometime before 31 May 2013. The DJ noted Ms Wu's submission and stated that he "would cover that". The DJ then sentenced the Applicant to four weeks' imprisonment. The Applicant completed his imprisonment sentence and was repatriated on 22 July 2016.

The issue arising from the Application and the applicable legal principles

23 The sole issue in this Application is whether the court should exercise its powers of revision to set aside the Applicant's guilty plea and, consequently, the Applicant's conviction on the Amended First Charge. In this regard, it is settled law that the High Court's powers of revision are to be exercised sparingly and would only be invoked to remedy a serious injustice: *Teo Hee Heng v Public Prosecutor* [2000] 2 SLR(R) 351 at [7].

24 In the present case, Mr Tang submits that the circumstances surrounding the Applicant's guilty plea casts serious doubt on the Applicant's conviction on the plea. Mr Tang further submits that the DJ erred when he disallowed the application to retract the plea. This thus calls into question the circumstances when a court may (or must) reject an accused's plea of guilt.

25 It is well established that a court is not obliged to accept an accused's plea of guilt. Indeed, before a court may accept a guilty plea, three safeguards must be observed. First, the court should be satisfied that it is the accused himself who wishes to plead guilty. Second, the court must ensure that the accused understands the true nature and consequences of his plea. Third, the court must establish that the accused intends to admit without qualification to the offence alleged against him. These three safeguards have been reiterated in many cases: see, for example, *Koh Thian Huat v Public Prosecutor* [2002] 2 SLR(R) 113 ("*Koh Thian Huat*") at [29] and *Ganesun s/o Kannan v Public Prosecutor* [1996] 3 SLR(R) 125 ("*Ganesun*") at [15]–[16]. These safeguards are now statutorily enshrined in s 227(2) of the CPC, which provides that:

> (2) Before the court records a plea of guilty, it must —
>
> > (*a*) if the accused is not represented by an advocate, be satisfied that the accused —
> >
> > > (i) understands the nature and consequences of his plea and the punishment prescribed for the offence; and
> >
> > > (ii) intends to admit to the offence without qualification; or
> >
> > (*b*) if the accused is represented by an advocate, record the advocate's confirmation that the accused —
> >
> > > (i) understands the nature and consequences of his plea; and
> >
> > > (ii) intends to admit to the offence without qualification.

It would follow that if any of these safeguards are not met, the court ought not to accept the accused's plea of guilt.

26 Besides these safeguards, it has also been held that an accused person would be permitted to retract his guilty plea if he is able to show "valid and sufficient grounds which satisfy [the court] that it is proper and in the interests

of justice that he should be allowed to do so": *Ganesun* at [12], citing *Public Prosecutor v Sam Kim Kai* [1960] MLJ 265 at 267. Such valid and sufficient grounds would depend on all the facts of each case: *Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 ("*Thong Sing Hock*") at [24]. This may include a situation where there was a mistake or a misunderstanding (*Ganesun* at [13]) or where the accused did not make a "voluntary and deliberate choice" to plead guilty (*Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR(R) 383 at [53]).

27 What then is the position if the accused has pleaded guilty, but raises facts in his mitigation plea that may contradict the elements of the charge? Prior to the enactment of s 228(4) of the CPC, the position was laid down in case law. In *Balasubramanian Palaniappa Vaiyapuri v Public Prosecutor* [2002] 1 SLR(R) 138, Yong Pung How CJ stated (at [29]):

> … The law in Singapore is that, if the mitigation plea qualified the earlier plea of guilt by indicating the lack of *mens rea* or *actus reus*, the accused would not be deemed to have admitted to the offence without qualification and the plea would be rejected by the court: *Ulaganathan Thamilarasan v PP* [1996] 2 SLR(R) 112.

28 However, it was also held by Yong CJ in *Toh Lam Seng v Public Prosecutor* [2003] 2 SLR(R) 346 ("*Toh Lam Seng*") that "a statement which discloses the possibility of a defence does not always qualify a plea of guilt" (at [9]). In *Toh Lam Seng*, the petitioner pleaded guilty to a charge of voluntarily causing hurt under s 323 of the Penal Code (Cap 224, 1985 Rev Ed). In his mitigation plea, the petitioner stated that the victim had "said many things to [him] that severely provoked him such that he could not control his emotions" (*Toh Lam Seng* at [12]). He also raised in detail the instances of such provocation. The petitioner's application for revision was premised on the argument that he had qualified his plea of guilt by raising facts concerning

the alleged provocation in his mitigation plea. However, as Yong CJ found, the facts raised by the petitioner fell short of satisfying the requirements of grave and sudden provocation to constitute a defence to the charge. Instead, the facts were raised merely as a mitigatory circumstance. *Toh Lam Seng* therefore demonstrates that although the accused might make statements disclosing a possible defence in his mitigation plea, this would not necessarily qualify the plea of guilt. As Yong CJ stated, the appropriate approach would be for the court to investigate the accused person's purpose in making the said statements and to satisfy itself that the accused does indeed intend to plead guilty to the charge unequivocally (at [10]).

29 In the more recent decision of *Koh Bak Kiang v Public Prosecutor* [2016] 2 SLR 574 ("*Koh Bak Kiang*"), Sundaresh Menon CJ substituted the conviction of an offender with a less serious offence because the offender had qualified his plea in mitigation. In that case, the offender was charged with trafficking in diamorphine. The offender pleaded guilty, but asserted in mitigation that he did not know the precise nature of the drug that he was trafficking. Whilst this clearly amounted to a qualification of the offender's plea, the offender's counsel maintained that the offender did not thereby intend to qualify his plea. On this basis, the district judge accepted the plea and convicted the offender. After serving six-and-a-half years of his 25 year imprisonment sentence, the offender applied by way of criminal motion for an extension of time to appeal against the trafficking charges. This led to a review of the case and the substitution of the trafficking charges with charges for attempted trafficking in a Class A controlled drug other than diamorphine. The comments made by Menon CJ in *Koh Bak Kiang* on the nature of a qualified plea of guilt are apposite (at [41]–[43]):

> 41 A qualified plea of guilt is in fact a plea of not guilty: see the decision of the English Court of Appeal in *Regina v*

> *Durham Quarter Sessions, ex parte Virgo* [1952] 2 QB 1 at 7. The plea of guilt of an accused person carries with it grave implications. By it, the accused waives his right to be convicted *only* after a full trial. In such abbreviated proceedings, the Prosecution no longer needs to adduce evidence to prove the accused person's guilt and the court may pass sentence on the accused without hearing a further word of testimony. The accused is also precluded from appealing against his conviction even if he subsequently comes to regret the plea, so long as the plea is not set aside.
>
> 42 Given these grave consequences that flow upon a plea of guilt, it is unsurprising that the law imposes a strict duty on the judge recording the plea to ensure that "the accused understands the nature and consequences of his plea and intends to admit without qualification the offence alleged against him" (see s 180(*b*) of the CPC 1985). This is not a mere technicality but a crucial procedural safeguard that is not to be taken lightly. …
>
> 43 The subjective views of the judge or of the Prosecution as to the *factual* guilt of the accused or the likelihood of the success of his potential defences are irrelevant to the propriety of the accused's plea of guilt. As V K Rajah JA (as he then was) observed in *XP v PP* [2008] 4 SLR(R) 686 at [98], the guilt of the accused is determined "on the sole basis of legal proof and not mere suspicion or intuition". What follows from this is that a court may only come to the conclusion that the accused is guilty when there is a *legal* basis for it. A qualified plea does not afford such a basis. Of course, where, as here, the accused has nonetheless been convicted, it will still be necessary to show that there has been serious injustice when invoking the court's revisionary power. Notwithstanding the defect in the plea, if there is already sufficient evidence on record that would entitle the court to convict the accused, then it is conceivable that this threshold might not be crossed. If, however, the qualified plea of guilt were made before a trial has commenced or even at the very start of trial, it would be an unusual case if the revisionary powers were not invoked in the absence of any other steps being taken to resolve the issue, such as remitting the matter for evidence to be taken, as was done in this case.
>
> [emphasis in original]

30 From the above, it may be observed that if and when a plea of guilt is in fact qualified in mitigation, the actual plea is that of "not guilty" and the court ought not to convict the accused on the charge. It should also be noted

that although the decision in *Koh Bak Kiang* came after the amendments to the legislative framework for criminal procedure in 2010 (via the Criminal Procedure Code (Act 15 of 2010)) were enacted, the applicable legislation in that case was the Criminal Procedure Code (Cap 68, 1985 Rev Ed), which did not contain a similar provision to s 228(4) of the CPC.

31 With the enactment of s 228(4) in 2010, the above approach to guilty pleas that have been qualified in the course of mitigation has been codified. Section 228(4) of the CPC is found in Division 3 (Plead Guilty Procedures) of Part XI (General Provisions Relating to Pre-trial and Plead Guilty Procedures in All Courts) of the CPC. The authors of *The Criminal Procedure Code of Singapore – Annotations and Commentary* (Jenifer Marie editor-in-chief and Mohamed Faizal Mohamed Abdul Kadir gen ed) (Academy Publishing, 2012) give the following brief commentary of s 228(4) of the CPC (at para 11.053):

> **Subsection (4)** Where the plea in mitigation qualifies the plea, notwithstanding the accused's continued stance that he wishes to plead guilty, the court must reject the plea. In *Public Prosecutor v Ng Guan Hup* [2009] 4 SLR(R) 314 at [29], it was held that an accused's plea of guilt can be retracted (in the appropriate circumstances) so long as the trial court has not passed sentence, even if the court has recorded the accused's conviction and retraction is made during a subsequent sitting of the court.

32 It is evident from the foregoing that s 228(4) of the CPC is applicable where the accused has pleaded guilty and been convicted, but has yet to be sentenced. In such a situation, the section states that where an accused raises a point during the *plea in mitigation* that may "materially affect any legal condition required by law to constitute the offence charged", the court is *mandated by law* to reject the guilty plea and allow the accused to claim trial.

33 This reflects the law's recognition that where an accused has qualified his plea during mitigation, this casts doubt on the safety of the accused's conviction based on his plea of guilt. Putting it another way, it may be said that the guilty plea in such a circumstance cannot be regarded as an unequivocal one. As was stated by See Kee Oon JC in the case of *Tan Kian Tiong v Public Prosecutor* [2014] 4 SLR 131 (at [12]), the paramount duty of the court is to ensure that the accused "knowingly and unreservedly intends to plead guilty to the charge and admit the truth of the allegations", and to that end "the court must carefully consider the circumstances surrounding his plea *and, if relevant, also properly consider the mitigation plea to see whether this qualifies his plea of guilt*" [emphasis added].

34 In this connection, the requirement in s 228(4) of the CPC, that the matter raised in the plea in mitigation should "materially affect any legal condition required by law to constitute the offence charged" before the court is mandated to reject the plea of guilty, allows the court in such an event to examine whether the point raised in mitigation has any substance. As in *Toh Lam Seng*, this ensures that not every ostensible defence raised in mitigation would prevent the court from convicting the accused on the charge to which he has pleaded guilty. The combined purport of ss 227(2) and 228(4) of the CPC is that at all stages of the plead guilty procedure – both when the plea is being taken and during mitigation – the court must be cautious to ensure that the accused intends to unequivocally admit to the offence alleged against him without qualification before convicting and sentencing the accused on the charge.

35 Thus, the legal position prior to, and after, the enactment of s 228(4) of the CPC remains broadly similar (in that a plea of guilt must be unequivocal), and s 228(4) codifies the position by making it compulsory for the court to

reject a guilty plea if it is satisfied that "any matter raised in the plea in mitigation materially affects any legal condition required by law to constitute the offence charged".

36 To summarise the above legal principles, a court ought not to accept an accused's guilty plea in the following (non-exhaustive) circumstances:

(a) where the court is not satisfied that the accused understands the nature and consequences of his plea (see s 227(2) of the CPC);

(b) where the court is not satisfied that the accused intends to admit to the offence without qualification (see s 227(2) of the CPC);

(c) where the court is satisfied that the accused has qualified his plea in mitigation (see s 228(4) of the CPC);

(d) where the accused pleaded guilty based on a mistake or misunderstanding; and

(e) where the accused did not plead guilty voluntarily.

Application of the law to the present case

37 In my judgment, s 228(4) of the CPC applies squarely to the facts of the present case. The Applicant had, during the sentencing mention on 1 July 2016, maintained that a work accident had occurred a few days before 31 May 2013 and that he might have inadvertently provided inaccurate details of the incident in his claim under the WICA. By maintaining that the work accident had occurred a few days prior to 31 May 2013, the Applicant was essentially disputing the gravamen of the Amended First Charge, *viz*, that he had made a false claim intending to defraud his employers. These assertions were

therefore matters which would materially affect a legal condition (*ie*, the *mens rea*) for the offence and consequently qualified the Applicant's plea of guilt to the Amended First Charge. Also, these matters raised by the Applicant were raised in the plea in mitigation. Not only did Ms Wu refer to these points in her submissions before the DJ during the sentencing hearing on 1 July 2016, she also appeared to have sought to amend the written mitigation plea to include these matters. The elements of s 228(4) of the CPC were therefore satisfied, and the DJ was obliged under law to reject the Applicant's guilty plea and to allow the case to proceed to trial.

38 However, the DJ declined to allow the retraction of the plea. Having reviewed the proceedings before the DJ, it appears that the DJ erred in his reasoning in the following regard. During the course of the sentencing hearing, the DJ stated that he would have been minded to allow the Applicant to retract his guilty plea if this was made "immediately" after he had pleaded guilty, but not where there had been an adjournment of the matter to another date for mitigation to be prepared (see [16] above). With respect to the DJ, the legal basis for this distinction is not evident. Section 228(4) of the CPC does not draw a distinction between a plea in mitigation that occurs immediately after conviction following a guilty plea, and a plea in mitigation which only takes place after a period of adjournment. The fact that there was an adjournment between the recording of a conviction and the sentencing process does not change the legal character of the proceeding before the court; the court is not *functus officio* until it has passed sentence. Adjournments are sometimes granted for fortuitous reasons, and there was every chance that if an adjournment were *not* granted, the Applicant might also have qualified his guilty plea in mitigation. In fact, after the hearing on 30 June 2016, the Applicant appeared to have told Ms Wu that the Statement of Facts failed to

state that a work accident did occur although that was on a different date. It was therefore speculative to say that the Applicant might not have instructed Ms Wu to qualify the plea if mitigation had proceeded immediately after the Applicant's conviction.

39 It also appears from the transcript of the hearing that the DJ was troubled by the fact that the Applicant's behaviour was tantamount to blowing "hot and cold" on the plea of guilt and appeared to be concerned that allowing the Applicant to retract his plea would delay the timely disposal of the case. While I have some sympathy for these concerns of the DJ, I think the critical questions are still whether the Applicant had understood the nature of the proceeded charge, whether he intended to plead guilty to the charge voluntarily and whether the facts as he had advanced had qualified his plea of guilt. While judicial time is precious, and I can understand the DJ's concern about the time loss, justice should not be compromised on that account. In my view, in a situation like the present, a practical way forward would have been for parties to narrow down the issue(s) in dispute and for a short trial to be held to determine only that narrow issue(s). Such a course of action would not only ensure fairness to the accused, but also provide for an expeditious disposal of the matter. Let me also add that where there is a retraction of a guilty plea prior to sentencing, it does not mean that the court may not seek to understand why the accused seeks to change his plea. Indeed, the court ought to do so, and would in fact be acting within the spirit of s 228(4) by doing that. However, having obtained the clarification, it is not for the court to substitute its views for those of the accused as to his guilt without the benefit of a trial process if the court finds that the accused has raised matters that would materially affect any legal condition required by law to constitute the offence charged.

40 At this juncture, it may be apposite to refer to the facts of two cases, *Koh Thian Huat* and *Ganesun*, which the Prosecution has brought to my attention. The facts of these cases are similar to the present case in that the accused had pleaded guilty to the charge and wished to retract the plea before sentencing, but the application had been disallowed by the district judge. In *Koh Thian Huat* and *Ganesun*, Yong CJ (sitting in the High Court) did not allow the accused persons to retract their pleas as he found that the relevant procedural safeguards had been complied with and that each of the accused persons fully understood the nature and consequences of his plea.

41 In my opinion, *Koh Thian Huat* and *Ganesun* do not govern the present situation because those cases were decided prior to the enactment of s 228(4) of the CPC. I make two points here. First, it would be speculative for me to say whether had s 228(4) been applicable then, the court would have arrived at the same conclusion in relation to those two cases. Second, the facts of *Koh Thian Huat* and *Ganesun* are not on all fours with the present. In *Koh Thian Huat*, the court placed significance on the fact that the accused, who had a string of previous convictions, had in fact written to court stating that he knew he had committed a criminal offence which he was "very regretful over" and was "willing to receive the rightful punishment" from the court (at [27]). There was therefore an unequivocal written admission from the accused that he had committed an offence which he was seeking to resile from. The court also found that the "charge sheet and the [statement of facts] were straightforward and did not raise any complex issues of law or fact" (at [25]). In *Ganesun*, the accused had indicated at an early stage that he would be pleading guilty to the proceeded charge and maintained this stance consistently, only to resile from his guilty plea after he had been convicted and prior to being sentenced (at [23]–[24]).

42 The instant case presents quite a different factual matrix. Here, the Applicant had maintained his innocence until the date of trial (*ie*, 30 June 2016). It was only after the charges were amended and the Applicant informed of the amendments that he decided to plead guilty to the Amended First Charge. There was no prolonged period of approbation and reprobation and, in any event, it is not inconceivable that the sequence of events on 30 June 2016 may have confused the Applicant, notwithstanding the fact that he was represented. Furthermore, it is plausible that the Applicant, a young Bangladeshi foreign worker unfamiliar with the Singapore legal system, could have thought that he was being charged for giving the wrong date of the incident to the MOM. The Statement of Facts and the Amended First Charge did not unequivocally state that *no work accident* had occurred. Significantly, the original charge had stated that the Applicant's injury was due to a "pre-existing condition", which was deleted from the Amended First Charge. These factors might have given the Applicant the wrong impression that he was being charged for providing the wrong date of the accident to the MOM. I also note the time pressure placed on the Applicant to decide whether to plead guilty or to contest the Amended First Charge which the Prosecution had decided to proceed against him.

43 In any case, on the day on which the Applicant was due to be sentenced, it was clear that the Applicant had alluded to facts which indicated that a work-related accident had indeed happened to him, although not on the day he stated in his claim under the WICA but a few days earlier. This fact would have been material as to his *mens rea* in relation to the Amended First Charge. It seems to me that the DJ refused the retraction because he thought this assertion of a work-related accident happening a few days earlier was an afterthought. What is undoubtedly true is that the Applicant did seek treatment

to his left knee on 31 May 2013 at Tan Tock Seng Hospital where he stated that he sustained the injury to his left knee some four days earlier (see [4] above). Although the Applicant did not tell the doctor that the injury was sustained at work, it is not disputed that the Applicant's employer paid for the medical bills. Having considered the record of the proceedings before the DJ as well as the affidavit filed by PO Chong on 16 August 2016, it is clear to me that the question of whether the Applicant had an accident at work four days before 31 May 2013 was a matter that loomed large in the mind of the Applicant and, to an extent, his counsel Ms Wu. It was something which the Applicant had mentioned to Ms Wu and which the latter had in turn mentioned to the MOM prosecutors on the morning of 30 June 2016 prior to the commencement of the scheduled trial. To be fair to the DJ, these aspects could have been better highlighted to him before he came to the view that this claim of an accident a few days prior to 31 May 2013 was something concocted by the Applicant after he had been convicted. In this regard, I feel that Ms Wu could have greatly assisted the court by pointing the DJ to the contemporaneous objective evidence which showed that there was an incident some four days before 31 May 2013. Given the circumstances, I also find it somewhat puzzling that the defence counsel did not inform the Prosecution and make representations in relation to this prior to the commencement of the scheduled trial on 30 June 2016, although I recognise that Ms Wu had only received Dr Catabas' letter just about two weeks prior to 30 June 2016.

44 In the light of s 228(4) of the CPC and all that I see as having transpired, I am of the view that the questions of whether there was an incident involving the Applicant four days before 31 May 2013, and whether it was work related, are questions which ought to have been tried in order to determine the guilt or otherwise of the Applicant on the Amended First

Charge. Therefore, I hold that the retraction should have been allowed by the DJ and that this is an appropriate case for the High Court to exercise its powers of revision.

45 Before I conclude, I would like to make one final observation. Where an accused seeks to retract his plea of guilt by way of revision *only after* he has been sentenced and the court of first instance is *functus officio*, it should follow that a higher threshold would have to be met before the court exercises its revisionary powers, bearing particularly in mind the principle of finality. An accused ought not to be allowed to mount a "back-door appeal" against a conviction and sentence just because he is unhappy with the sentence imposed.

Conclusion

46 In the premises, I allow the Application and set aside the conviction and sentence imposed on the Applicant.

Chao Hick Tin
Judge of Appeal

Tang Jin Sheng (Dentons Rodyk & Davidson LLP) for the applicant;
Ang Feng Qian (Attorney-General's Chambers) for the respondent.