IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 236

Criminal Revision No 4 of 2017

Between

OON HENG LYE

… Petitioner

And

PUBLIC PROSECUTOR

… Respondent

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Revision of proceedings]

[Criminal Procedure and Sentencing] — [Disposal of property]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Oon Heng Lye
v
Public Prosecutor

[2017] SGHC 236

High Court — Criminal Revision No 4 of 2017
Sundaresh Menon CJ
20 July 2017

27 September 2017

Sundaresh Menon CJ:

Introduction

1 This was a criminal revision filed by the petitioner, Oon Heng Lye, to quash an order of the Magistrate's Court ("the forfeiture order") directing that monies which had been seized from him, amounting to $266,589.69 ("the seized funds"), be forfeited to the State. In addition, he sought an order that the respondent, the Public Prosecutor, restore the seized funds to him. The funds in question had been seized from him by the police after he had been arrested on suspicion of committing an unlicensed moneylending offence.

2 After hearing the submissions of the parties, I dismissed the petition. In the oral judgment I gave, I observed that it was settled law that the court's revisionary jurisdiction is to be exercised sparingly, in circumstances where there is not only some error in the proceedings of the court below but one that

is shown to occasion substantial injustice. On the assumption that there had been some error in the making of the forfeiture order, I found that there was nevertheless no evidence of substantial injustice. This was because Oon had admitted in several signed statements made to the police – which he had never effectively challenged until the time of the hearing of the petition – that the seized funds were the proceeds of unlicensed moneylending.

3 I now furnish my detailed grounds of decision, as I said I would when I gave my judgment.

Background

4 On 18 October 2007, the police arrested Oon on suspicion of operating a business of unlicensed moneylending, an offence under s 8(1)(*b*) of the Moneylenders Act (Cap 188, 1985 Rev Ed). They seized a number of items from Oon. These included $123,020 in cash, a bank book for a POSB Bank account, and a bank transaction slip for a UOB account. Both the POSB account and the UOB account were in Oon's sole name.

5 The investigating officer, Assistant Superintendent Norlinda binte Ismail ("ASP Norlinda"), ascertained that the POSB account had a balance of $62,996.80 as of 2 November 2007 and that the UOB account had a balance of $80,572.89 as of 12 November 2007. She applied, while investigations were pending, for both accounts to be frozen pursuant to s 68 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC 1985"). Section 68 confers upon the police the power to "seize any property which is alleged or suspected to have been stolen or which is found under circumstances which create suspicion of the commission of any offence."

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6 Thereafter, Oon made a number of statements to the police. In a statement recorded by Station Inspector Clayton Tan ("SI Tan") on 18 October 2007, Oon admitted that he had worked as an unlicensed moneylender since 2005.

7 In two subsequent statements recorded by ASP Norlinda, both on 24 October 2007, Oon gave a fairly detailed history of his involvement in unlicensed moneylending. In the first of these statements, he admitted also that the said sum of $123,020 in cash and the money in the aforementioned POSB and UOB accounts were proceeds from unlicensed moneylending.

8 On 5 November 2007, a detention order under the Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) ("CLTPA") was issued against Oon.

9 While Oon was under detention and upon the police completing their investigations, SI Tan applied for and obtained on 20 May 2008 the forfeiture order from a Magistrate's Court pursuant to s 392 of the CPC 1985. Section 392(1), which obliges the police to report seized property to a Magistrate's Court, and further obliges the Magistrate to make either an order respecting the delivery of the seized property to the person entitled to the possession of it, or an order respecting its custody and production, is as follows:

> **Procedure by police on seizure of property**
>
> **392**.—(1) The seizure by any police officer of property taken under section 29 or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate's Court which shall make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.
>
> …

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10 I should mention that s 392 of the CPC 1985 has been re-enacted, with some amendments, as ss 370 to 372 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC 2012").

11 The Magistrate ordered the said sum of $123,020 in cash and the sums in the POSB and UOB accounts to be forfeited to the State. As for the other items that had been seized, the Magistrate ordered items which were said to be related to Oon's unlicensed moneylending activities (such as handphones, note books, and ATM cards) to be disposed of, and bank books for accounts held by Oon's wife (either solely or jointly with Oon) to be returned to her.

12 Oon was not thereafter charged with any offence relating to unlicensed moneylending. He was released from detention under the CLTPA on 1 November 2013.

Grounds for revision

13 Oon brought the present criminal revision pursuant to the court's revisionary jurisdiction under s 400 of the CPC 2012. Section 400(1) provides that the High Court may call for and examine the record of any criminal proceeding before any State Court to satisfy itself as to the correctness, legality or propriety of any judgment, sentence or order recorded or passed and as to the regularity of those proceedings. Section 401 sets out the powers of the High Court on revision. These would include, when s 401(2) is read with s 390(1)(*d*) of the CPC 2012, the power to alter or reverse any order made by the court below.

14 It is settled law that the revisionary jurisdiction of the court is to be sparingly exercised. Typically, this will require a demonstration not only that there has been some error but also that material and serious injustice has been

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occasioned as a result. In *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196, the High Court said as follows (at [19]):

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

15 It has also been observed that the threshold of "serious injustice" will only be crossed if there is "something palpably wrong in the decision that strikes at its basis as an exercise of judicial power" by the court below (*Rajendar Prasad Rai and another v Public Prosecutor and another matter* [2017] 4 SLR 333 ("*Rajendar*") at [24], citing *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 at [17]).

16 In his petition of revision, Oon alleged that the forfeiture order issued by the Magistrate's Court was "wrong at law" for a number of reasons. In his written submissions, and in the hearing before me, these were narrowed to three main grounds of challenge.

17 First, Oon claimed that he had not been notified of the application for forfeiture of the seized funds nor had he been allowed to be present at the hearing before the Magistrate. This, he argued, violated his right to be heard at such proceedings, as was held to exist by the Court of Appeal in *Mustafa Ahunbay v Public Prosecutor* [2015] 2 SLR 903 at [45] ("*Mustafa Ahunbay*"), albeit under s 370 of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010"), which is identical to s 370 of the CPC 2012. He claimed that he had been deprived of his property contrary to the rules of natural justice because he had not been given the opportunity to prove his entitlement to the seized funds.

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18 Second, Oon argued that s 392(1) of the CPC 1985 did not empower the Magistrate's Court to forfeit the seized funds.

19 Third, Oon submitted that he was the person "entitled to the possession" of the seized funds within the meaning of s 392(1) of the CPC 1985; therefore, the Magistrate was wrong to have ordered the seized funds to be forfeited to the State instead of being returned to him.

My decision

20 In summary, I accepted the first and second of these points. I accepted Oon's submission that he had a right to be heard under s 392 of the CPC 1985 and that he had been denied that right. I also found that under s 392(1) of the CPC 1985, the Magistrate had no power to order that the seized funds be forfeited to the State.

21 However – and this was the dispositive point in this petition – I did not think that Oon was the person "entitled to the possession" of the seized funds. In this regard, I was in agreement with the Prosecution, which submitted that a person who claims to be "entitled to the possession" of seized property must demonstrate a *lawful* entitlement to it. Given Oon's unequivocal admissions in his statements to the police that the seized funds were the proceeds of unlicensed moneylending, it could not be said that he was lawfully entitled to it. This was not affected by the fact that he was not subsequently charged for any offence relating to unlicensed moneylending. Hence, despite the errors in the making of the forfeiture order, there was no substantial injustice which would warrant the exercise of the court's powers of revision under s 401 of the CPC 2012.

22 I elaborate on each of these points in turn.

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Right to be heard

23 Oon argued that the principles established by *Mustafa Ahunbay* in relation to s 370 of the CPC 2010 were equally applicable to s 392 of the CPC 1985. The Prosecution's position on this was that under the CPC 1985, there was no legal requirement for an accused person, from whom property has been seized, to be formally notified of proceedings under s 392.

24 *Mustafa Ahunbay* was a decision of the Court of Appeal on a criminal reference brought by an applicant who claimed an interest in the monies in three bank accounts (not belonging to him) that had been seized by the Commercial Affairs Department. The applicant had not been informed of, and was not represented at, the hearing at which the Magistrate's Court had made an order extending the period of seizure of those accounts. One of the questions referred to the Court of Appeal was whether there was a right to be heard on the occasion of the reporting or subsequent reporting of a seizure under s 370 of the CPC 2010. The Court of Appeal found that there was such a right. The following principles from its judgment are relevant to the present petition:

(a) A person who claims an interest in seized property has a right to be heard when the seized property is reported to a Magistrate's Court under s 370 of the CPC 2010. The right to be heard entails being "afforded an opportunity to make representations" to the Magistrate (*Mustafa Ahunbay* at [45]).

(b) In addition, the right to be heard entails the right to be given notice of the hearing and the right to further information concerning the seized property, including the contents of the investigation report provided by the police to the Magistrate's Court (at [70] and [77]).

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(c) It is not necessary for the authorities to make inquiries as to who might possibly have an interest in the seized property and thus should be notified of the hearing. But so long as a person has informed the authorities that he has an interest in the seized property, the authorities should notify that person of any hearing under s 370 of the CPC 2010 (at [73]–[74]).

25 I was satisfied that these principles applied with equal force to s 392 of the CPC 1985. As the Court of Appeal in *Mustafa Ahunbay* said (at [45]), the right to be heard is rooted in a basic principle: as long as the interest of a party could be adversely affected by a decision of the court, it would only be fair and just that such a party be afforded an opportunity to make representations to the Magistrate. That statement of principle is broad enough, in my judgment, to extend to s 392 of the CPC 1985. Under s 392 of the CPC 1985, as under s 370 of the CPC 2010, the Magistrate is empowered to, amongst other things, make an order delivering the seized property to a person entitled to the possession of the property. The interest of any person who claims an entitlement to the possession of the property would be affected by such a decision, and such a person should, it follows, have a right to make representations to the Magistrate to prove his entitlement to the seized property. It would be counter-intuitive to think that any judicial power with the potential to adversely affect any person could be exercised without the requirements of natural justice having been met.

26 Furthermore, the requirement of notice is well established. As the authors of *Ratanlal & Dhirajlal's The Code of Criminal Procedure (Act II of 1974)* (Y V Chandrachud *et al* gen ed) (Wadhwa and Company Nagpur, 18th Ed, 2006) ("*Ratanlal*") note in relation to s 457 of the Code of Criminal Procedure 1973 (Act No 2 of 1974) (India) at p 1745 ("Indian CPC"):

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> The requirement to issue notice or affording an opportunity to any person is not expressly provided in this section. The principles of natural justice are, however, implicit in the said provision. Ordinarily a person likely to be adversely affected by an order is entitled to an opportunity before such an order is made. While disposing petition under s 457 C.P.C., for return of the property seized, notice and hearing to the accused from whose possession the goods have been seized is necessary.

27 This passage was cited by the Court of Appeal in *Mustafa Ahunbay* (at [46]–[47]) in support of its view that the right to be heard exists under s 370 of the CPC 2010. Section 457(1) of the Indian CPC is similar to s 392(1) of the CPC 1985 and s 370 of the CPC 2010, and provides as follows:

> **457. Procedure by police upon seizure of property**
>
> (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.
>
> …

28 The position stated in *Ratanlal* is based on high authority. The aforementioned passage cites a decision of the Supreme Court of India, *State Bank of India v Rajendra Kumar Singh and others*, AIR 1969 SC 401 ("*Rajendra Kumar Singh*"). That was a decision concerning s 517 of the Code of Criminal Procedure 1898 (Act No 5 of 1898) (this was the previous version of the Indian CPC which I shall refer to as "the Indian CPC 1898"), which governs the procedure for disposal of property after the conclusion of any trial or inquiry – the equivalent provisions in our legislation are s 386 of the CPC 1985 and s 364 of the CPC 2012. It is nonetheless relevant because the court similarly has the power under s 517 of the Indian CPC to make an order to deliver the property to the person entitled to its possession. And in relation to

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that provision, the Supreme Court of India held (at [4]) that although the provision did not "expressly require issue of any notice", there was "a necessary implication that the parties adversely affected should be heard before the Court makes an order for return of the seized property".

29 The Prosecution, on the other hand, relied on a passage from Bashir A. Mallal, *Mallal's Criminal Procedure* (The Malayan Law Journal Office, 4th Ed, 1957) ("*Mallal's Criminal Procedure*") which states (at 586), in relation to s 436 of the Criminal Procedure Code (Cap 68, 1955 Rev Ed), a predecessor provision to s 392 of the CPC 1985, that a Magistrate is "not bound to hold a judicial inquiry on oath" before passing an order under that section. The passage adds, further, that "[s]uch an order can be passed on police reports and papers alone without any independent inquiry with regard to the question of possession".

30 I did not think that passage in fact assisted the Prosecution. There is a difference between the requirement to offer the accused person a right to make representations and the requirement to hold a judicial inquiry before making any order affecting the possession of seized property. It is uncontroversial that there is no need to hold an inquiry before making an order affecting seized property. That is clear from the Court of Appeal's decision in *Ung Yoke Hooi v Attorney-General* [2009] 3 SLR(R) 307 ("*Ung Yoke Hooi*"), where it said at [29] that the Magistrate's Court was not bound to hold an inquiry:

> … The [Magistrate's Court's] function under s 392 is to determine who is entitled to the possession of the seized property and to return it to him, or, if such person cannot be found, to keep it in safe custody. *The [Magistrate's Court] may summarily deliver the property to the person entitled to its possession without holding an inquiry if it is satisfied that the person is so entitled. If there is a dispute, it may hold an inquiry.* …
>
> [emphasis added]

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31 However, the question whether an inquiry must be held is quite separate from the question of whether the Magistrate's Court should notify persons with possible claims to the seized property of the hearing at which the Magistrate may make an order affecting the property. Indeed, as the Court of Appeal in *Ung Yoke Hooi* went on to say (at [30]) after making the observation quoted in the previous paragraph:

> In our view, as soon as a s 68(1) seizure is reported to [a Magistrate's Court], the [Court] should take steps as soon as practicable to dispose of the property. With respect to the seized accounts in the present case, *this would have meant taking steps to notify the Appellant, the account holder, to prove his entitlement to the possession of the funds in the seized accounts* (in effect, to secure the release of the seized accounts). If the [Magistrate's Court] is satisfied with the Appellant's claim, it must then order the seized accounts to be released. …
>
> [emphasis added]

32 In my judgment, taken together, *Mustafa Ahunbay* and *Ung Yoke Hooi* suggest that there is a requirement to give notice of the hearing before the Magistrate to the following persons: (a) the person from whom the property has been seized, and (b) anyone else who has formally informed the authorities of his claim to the seized property. Those persons should then have the opportunity to make representations to the Magistrate to prove their entitlement to the property. But the Magistrate's Court need not hold a formal inquiry to determine the question of who is entitled to the possession of the property if it does not consider it necessary to do so in all the circumstances.

33 The Prosecution submitted that even if there was a right to be heard, it had been duly accorded to Oon given that it was the usual practice for the police to inform an accused person that they would apply for the forfeiture of items, and for the police to seek a disposal inquiry where any objections were raised as to entitlement. ASP Norlinda deposed in her affidavit that it had been her

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practice at that time to inform accused persons while recording their statements that exhibits seized from them that were related to the crime would be forfeited to the State, and that if they had any objection, she would have recorded it down.

34 On the facts of this case, I did not think that Oon had been afforded the right to be heard. In the first place, it was not clear if ASP Norlinda had specifically informed Oon that the cash and sums in the relevant accounts were going to be forfeited. Even if I were to accept for present purposes that ASP Norlinda did inform Oon that the cash and funds seized from him would be forfeited to the State *if* these were related to a crime, I was still not persuaded that this would have been sufficient to give effect to Oon's right to be heard at the reporting of the seized funds to the Magistrate's Court. In the first place, such an intimation did not amount to notice that the specific cash and sums in the relevant accounts were going to be forfeited. Further, and in any case, it was significant that by the time of the hearing before the Magistrate, the police had concluded their investigations and decided not to charge Oon with any offence (although he continued to be detained under the CLTPA). Even if Oon in fact had no objections at the time of the recording of the statements, that did not mean he might not have objections to the forfeiture of the seized funds at the time of the hearing, especially given that he was not subsequently charged and there had been no conviction recorded by a court. The seized funds comprised cash found in Oon's possession and monies from bank accounts held in his name. He would be the most obvious candidate to assert an entitlement to the seized funds. Yet there is no evidence that he was notified of the hearing before the Magistrate's Court. He was thus not given the opportunity to be heard on this. As I will shortly explain, I did not think, based on the evidence available before me, that Oon was indeed entitled to those funds, but that is a different matter. The point is that he was denied the right to be heard before the forfeiture order was made.

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Power of forfeiture

35 I turn to the question of whether there was a power to order forfeiture under s 392(1) of the CPC 1985 when seized property is reported to a Magistrate's Court.

36 Oon argued that s 392(1) did not empower the Magistrate's Court to forfeit the seized funds to the State because the purpose of the provision was only to ensure that the property is delivered to the person entitled to its possession. The Prosecution, however, argued that there was an "implicit power under Section 392 of the [CPC 1985] for seized items to be vested in the Government". It again relied on *Mallal's Criminal Procedure* (at 586) where it is said that "there is nothing to prevent the Magistrate from passing an order of forfeiture of property to the Government". The author of *Mallal's Criminal Procedure*, however, did not cite any authority for this view.

37 In my judgment, there is no power of forfeiture under s 392(1) of the CPC 1985. I reached that conclusion for several reasons.

38 The first was that there is no explicit mention in s 392(1) of the CPC 1985, unlike in s 386 of the CPC 1985, which deals with the disposal of property after the conclusion of an inquiry or trial, that the Magistrate has a power of forfeiture. Section 386(2) states that the power of disposal includes the power to make a forfeiture order:

> **Order for disposal of property**
>
> **386**.—(1) During or at the conclusion of any inquiry or trial in any criminal court the court may make such order as it thinks fit for the disposal of any document, livestock or other property produced before it.
>
> (2) The power conferred upon the court by this section includes power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of any property

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> regarding which any offence is or was alleged to have been committed or which appears to have been used for the commission of any offence but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction or delivery contained in the Act under which the conviction was had or in any other Act applicable to the case.
>
> …

39 On the basis of the differences in the way that both provisions had been drafted, Yong Pung How CJ observed in *Magnum Finance Bhd v Public Prosecutor* [1996] 2 SLR(R) 159 (at [18]), that "[u]nlike s 386(2), no power of forfeiture exists under s 392". The distinction between the two provisions was again highlighted in *Ung Yoke Hooi*, where the Court of Appeal said at [19(g)] that:

> [u]nlike under s 386(2) of the [CPC 1985] (where the court may make an order for forfeiture or confiscation of the property after an inquiry or a trial in relation to the property has taken place), the [Magistrate's Court] has no power under s 392 to confiscate or forfeit the seized property. …

40 Second, I was fortified in my view by comparing s 392(1) of the CPC 1985 with s 457(1) of the Indian CPC. Section 457(1) of the Indian CPC (as reproduced at [27] above) gives the Magistrate the choice between making an order "respecting the *disposal* of such property" [emphasis added] and making an order "respecting … the delivery of such property to the person entitled to [its] possession". Hence, it has been observed of s 457(1) of the Indian CPC that the Magistrate has the "widest discretion in the matter of disposal", which would include the power to order forfeiture (Sudipto Sarkar & V R Manohar, *Sarkar on the Law of Criminal Procedure,* Vol 2 (LexisNexis Butterworths Wadhwa Nagpur, 9th Ed, 2007) at 1957). By contrast, s 392(1) of the CPC 1985 contains no mention of a power to order the disposal of property.

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41 The third reason pertains to something that transpired after I had disposed of this matter, but it bears noting because it supports the view I had already formed. On 24 July 2017, shortly after the hearing of this petition, the Ministry of Law announced that it intended to introduce amendments to the CPC 2012 and sought public feedback on the proposed amendments. Among these was a proposed amendment to introduce the power of disposal under s 370(2) of the CPC 2012. The explanation given by the Ministry of Law for this proposal is that the power of forfeiture does not exist under s 370 of the CPC 2012 (see Ministry of Law, "Table of Proposed Legislative Changes to the Criminal Procedure Code ("CPC") and the Evidence Act" <https://mlaw.gov.sg/content/dam/minlaw/corp/News/AnnexB.pdf> at 36):

> Introducing the power of disposal in s 370(2) of the CPC
>
> At present, where property is seized in the course of investigations but there are no criminal charges, investigators must report the seizure to the court. In these circumstances, the court can generally only order the return of the property to the person entitled to possession of it (often the same person it was seized from), if that person can be identified. *The court is not empowered to order the disposal of the property even it was the subject of, or used in, a criminal offence, such as a weapon.*
>
> Amendments are proposed to give the court a power to dispose of property where it is satisfied that this was property in respect of which an offence was committed or which was used or intended to have been used for the commission of any offence.
> …
>
> [emphasis added]

Since the power of forfeiture does not presently exist under s 370 of the CPC 2012, by extension, it would not have existed under s 392(1) of the CPC 1985.

42 For these reasons, I was satisfied that the Magistrate had no power under s 392(1) of the CPC 1985 to order that the seized funds be forfeited to the State. At this stage, I was therefore satisfied that there were two errors in the making of the Magistrate's order: first, no notice had been given to Oon that the seized

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funds would be reported before a Magistrate's Court and an order of forfeiture sought; and second, the Magistrate made the forfeiture order even though there was no power to do so under s 392(1) of the CPC 1985.

43 However, this by itself did not necessarily mean I should exercise the powers of revision under s 401 of the CPC 2012, because, as I have noted above, those powers should only be exercised if the errors in the order made by the Magistrate resulted in grave and serious injustice to Oon. In my judgment, there would only be grave and serious injustice if Oon was the person entitled to the possession of the seized funds. So the question that remained, and which turned out to be dispositive of the matter, was whether Oon was entitled to those funds.

Entitlement to the seized funds

44 I did not think that Oon was the person entitled to the possession of the seized funds. This was because I found, as submitted by the Prosecution, that a person could only be "entitled to the possession" of seized property under s 392 of the CPC 1985 if he satisfies the precondition of being in *lawful* possession of the seized property.

45 As a matter of statutory interpretation, the CPC 1985 appeared to contemplate that a person could only be *entitled* to possession if such possession was *lawful*. It is necessary here to look at s 392 of the CPC 1985 within its broader statutory context – that is, the provisions on the disposal of property in general. Section 393(1) of the CPC 1985 is significant in this regard. It must be read with s 392(4), which establishes what is to be done when a Magistrate determines that the person "entitled to the possession" of the seized property is unknown or cannot be found. In that event, s 392(4) requires the police to issue a notification to require anyone with a claim to the seized property to come

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forward within six months to establish his claim. I set out the relevant parts of s 392(4) and s 393:

> **Procedure by police on seizure of property**
>
> **392**.— …
>
> (4) If that person is unknown or cannot be found the Magistrate's Court may direct that it be detained in police custody and the Commissioner of Police shall, in that case, issue a public notification, specifying the articles of which the property consists and requiring any person who has a claim to it to appear before him and establish his claim within 6 months from the date of the public notification …
>
> …
>
> **Procedure when no claim established**
>
> **393**.—(1) If within 3 months from the publication of a notification under section 392(4) no person establishes a claim to such property *and if the person in whose possession the property was found is unable to show that it was legally acquired by him*, the property may be sold on the order of the Commissioner of Police.
>
> (2) If within 6 months from the publication of the notification no person has established a claim to the property, the ownership of the property or, if sold, of the net proceeds of it, shall thereupon pass to and be vested in the Government.
>
> …
>
> [emphasis added]

46 The effect of s 393(1) is that even if no person comes forward to assert his entitlement to possession of the seized property, the person from whom the property is seized is not automatically assumed to be entitled to possession; he must nonetheless demonstrate that the seized property was "legally acquired by him". In my judgment, it follows from this that under s 392(1), when the Magistrate's Court makes an order "respecting the delivery of the property to the person entitled to the possession of it", the person in question must be able to show that the property was "legally acquired by him".

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47 This interpretation is supported by two cases on the Indian CPC to which the Prosecution referred me. In *Nand Lal v State of Rajasthan and another*, 1986 (1) WLN 18, the Rajasthan High Court interpreting s 457 of the Indian CPC, held (at [10]), that a person who had acquired seized property by "dishonest means" would not be entitled to its possession even though no offence was subsequently made out against him. In a similar vein, in *A.S.S. Ahmed Sahib v Commissioner of Police, Madras and another*, 1970 Cri LJ 1016, which concerned the interpretation of s 523 of the Indian CPC 1898 (the precursor to s 457 of the Indian CPC which is in similar terms to s 392 of the CPC 1985), the Madras High Court held (at [10]):

> Normally, in cases where the offence is not made out, the property should be delivered to the person from whom it is seized or taken. But it will depend upon the circumstances of each case. In such cases, the actual possession of the property at the time it was seized may be a relevant factor but not conclusive to determine the entitlement of such possession. The words used in Section 523(1) [of the Indian CPC 1898] are 'the person entitled to the possession of the property'. These words cannot be equated with actual possession. Nor can they be equated with the expression "the person from whom the property is seized or taken". A person may be in unlawful possession at the time it was seized though he has not committed the offence, and in that circumstance, it cannot be said that he is entitled to possession. It must be a lawful possession. The test, therefore, is not the mere possession of property at the time of seizure, but as to who is entitled to lawful possession. …

48 The facts of that case show why this principle must be right. The petitioner for criminal revision had come into possession of a conch because the second respondent, one Amir, had offered it for sale to him. The petitioner took the conch and handed it over to one Ibrahim. Amir alleged that the petitioner had committed theft, and so the police seized the conch from Ibrahim's possession. Subsequently, the offence was not made out, and the Magistrate ordered the conch to be returned to Amir. Dissatisfied, the petitioner applied for a criminal revision of that order. The Madras High Court dismissed the petition,

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noting that the Magistrate had found that the conch belonged to Amir since he had provided a receipt as proof that he had purchased it (at [5]). The High Court concluded that the conch had been taken away from Amir and handed over to Ibrahim, whose possession appeared to be unlawful (at [19]). Simply put, it would be wrong to assume that the person from whom the property is seized is in lawful possession simply because that person is not convicted of any offence.

49 Whether or not a person in actual possession of seized property would nevertheless be regarded as being in lawful possession therefore depends on the circumstances. It suffices to state for now that where a person admits that property seized from his possession are the proceeds of a crime, his possession cannot be regarded as lawful. This principle would be consistent with my finding in *Rajendar* that the powers of seizure under the CPC 2012 extend to the traceable proceeds of a crime because "an offender has no basis for asserting any enforceable proprietary interest in such property" (at [38]).

50 During the hearing, I asked Oon's counsel, Mr Ong Ying Ping, if there were any facts showing that his client was in lawful possession of the seized funds. Mr Ong pointed to two facts in the petition for revision. But these did not assist his submission at all.

51 The first fact was Oon's allegation in the petition that he had "repeatedly informed the investigating officer that he was not involved in moneylending at all". But this was flatly contradicted by his statements which contained unequivocal admissions about his long involvement in unlicensed moneylending. Of the four statements the PP produced in evidence, the more material were the two which he gave on 24 October 2007 which I have mentioned at [7] above. In these statements, Oon admitted that:

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(a) He had not been employed since quitting his last job in 2000;

(b) He had operated five unlicensed moneylending stalls since 2001, issuing loans ranging from $$500 to $2000 at an interest rate of 20%, repayable in weekly instalments;

(c) At the time of his arrest, he had about 500 debtors and live loans of about $200,000 in circulation;

(d) The seized funds were the proceeds of unlicensed moneylending; and

(e) In particular, he admitted to having instructed one of his associates to transfer money that had been deposited by debtors into other bank accounts, into the UOB account that was in his sole name.

52 It is true that Oon was not charged, much less convicted, for any offence relating to unlicensed moneylending. Even so, there was no basis for me to ignore Oon's admissions that the seized funds were the proceeds of unlicensed moneylending. Oon signed every page of the statements he made to ASP Norlinda. Furthermore, up to the hearing of this petition, Oon had not deposed any affidavit to challenge the veracity or voluntariness of the admissions he had made in any of the statements the Prosecution had exhibited. Since it was undisputed that the seized funds were the proceeds of unlicensed moneylending, it followed that Oon had no lawful entitlement to those funds.

53 Second, Mr Ong pointed to Oon's claim in his petition of revision that he had won money from betting on the "4D" lottery. However, as SI Tan deposed in his affidavit, Oon had confirmed to him that the winnings from the "4D" lottery were not part of the monies seized during the arrest as he had used

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those winnings to pay for a new car and to renovate his house. Oon did not dispute SI Tan's statement. In any event, as I mentioned, Oon admitted that the seized funds were proceeds from unlicensed moneylending. There was no suggestion in his statements that the seized funds were his winnings from betting on "4D".

54 Furthermore, Oon had not offered, or hinted at the existence of, any positive evidence showing how he had come to acquire the seized funds by means other than unlicensed moneylending.

Conclusion

55 In the circumstances, there was no evidence to show that Oon was in lawful possession of the seized funds. On the contrary, the available evidence established beyond reasonable doubt that the seized funds were the proceeds of his unlicensed moneylending activities. I concluded that the errors in the forfeiture order made by the Magistrate's Court occasioned no substantial injustice to Oon. There was accordingly no basis for the exercise of the court's powers of revision under s 401 of the CPC 2012.

56 There was, in any event, no basis for reversing the forfeiture order despite the absence of a power under s 392(1) of the CPC 1985 to make such an order. Had the Magistrate appreciated that there was no power to make a forfeiture order on the occasion that the seized funds were reported to her, and given that she could not order the seized funds to be delivered to Oon, she would have made an order under s 392(4) of the CPC 1985 ordering the seized funds to be detained in police custody. In that event, the police would have had to issue a public notification requiring any person with a claim to the seized funds to come forward to establish his or her entitlement. But since Oon had admitted that the seized funds were proceeds of unlicensed moneylending, it was not

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evident that there could be any other claimant with a lawful entitlement to those funds. On that basis, the seized funds would have vested in the State in any event, albeit pursuant to s 393(2) of the CPC 1985.

57 For the reasons given, I dismissed the petition.

Sundaresh Menon
Chief Justice

Ong Ying Ping, Tan Soon Meng and Chew Zijie (Ong Ying Ping Esq) for the Petitioner;
Leong Weng Tat and Victoria Ting (Attorney-General's Chambers) for the Respondent.

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