IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 48

Criminal Revision No 9 of 2018

Between

(1) Lee Chen Seong Jeremy
(2) Agnes Elizabeth So Siong Guat
(3) Khong Choun Guan

… *Petitioners*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Revision of proceedings] — [Section 370(1) Criminal Procedure Code]

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v
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See Kee Oon J:

1 Where a person or persons are suspected of having committed an offence, it is commonplace for the police or the relevant law enforcement agencies to seize property belonging to them for the purposes of assisting with those investigations. The law enforcement agency does not, however, have the right to hold on to the property indefinitely. Instead, s 370(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") regulates the procedure to be taken by a law enforcement agency in reporting the seizure of the property to a Magistrate. The relevant officer must either make a report to the Magistrate once he considers that the property is not relevant for the purposes of any investigation, pursuant to s 370(1)(*a*) CPC, or, if he considers the property still to be relevant to ongoing investigations, he must make a report to the Magistrate one year after the seizure, pursuant to s 370(1)(*b*) CPC. In the latter case, the Magistrate may convene a hearing of the reporting if necessary, permitting

persons who have an interest in the property (the "interested persons") to attend and make representations. The Magistrate would have to be satisfied that the property was indeed relevant for the purposes of investigations in order for the continued seizure by the law enforcement agency to be justified.

2 In this case, the property in question was considered to be relevant to ongoing investigations which were not complete even after the one-year deadline stipulated under s 370(1)(*b*) CPC ("the one-year deadline") had lapsed. The law enforcement officer made the relevant report pursuant to s 370(1)(*b*) CPC ("the s 370 Report") to the Magistrate within the one-year deadline. The petitioners indicated that they did not consent to the continued seizure of the property. At the ensuing *inter partes* hearing, the Magistrate was not persuaded that the s 370 Report was sufficient to justify the continued seizure of the property. The law enforcement agency, assisted by the Public Prosecutor, then sought to place additional material before the Magistrate to supplement the report. I will refer to the law enforcement agency and the Public Prosecutor collectively as "the prosecution". When the additional material still proved to be insufficient, the prosecution asked to be heard *ex parte* to place yet more material before the Magistrate, even though the *inter partes* hearing before the Magistrate had already commenced.

3 The petitioners argued that the Magistrate erred in admitting the additional material, and also in indicating that she was prepared to hear the prosecution *ex parte*. The thrust of the petitioners' arguments was that if the Magistrate was not satisfied by the material in the s 370 Report, she should have ordered the release of the seized property. The petitioners therefore filed this criminal revision, seeking this Court's intervention in the proceedings.

4 This criminal revision raised novel questions of law relating to the

reporting procedure for seized property under s 370(1)(*b*) CPC, in particular, whether fresh material could be admitted to supplement the report put before the Magistrate, and whether the prosecution was entitled to be heard *ex parte* after the *inter partes* hearing had begun. As regards the specific facts of this case itself, the parties also agreed that the High Court could, in the exercise of its revisionary jurisdiction, step into the shoes of the Magistrate and determine whether the property seized here was indeed relevant for the purposes of investigations.

5 I allowed the criminal revision, and ordered that the seized property be released to the petitioners, being the persons entitled to their possession. I indicated at the time of giving my oral decision that full grounds would be furnished in due course. These grounds are set out below.

Facts

6 The petitioners are three individuals who were involved in the management of certain companies, in particular, companies in the "Sourcelink" and "Canaan" groups of companies.

7 The property in question, chiefly comprising company files and various electronic devices, was seized by the police on 6 June 2017[1] pursuant to investigations commenced by the Commercial Affairs Department of the Singapore Police Force ("CAD") into offences committed under the Penal Code (Cap 224, 2008 Rev Ed) and the Companies Act (Cap 50, 2006 Rev Ed).[2] Although there were three petitioners involved in this case, the investigations

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1 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at para 5.

2 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at p 17–18.

were substantively directed at only the first petitioner, Mr Lee Chen Seong Jeremy ("Mr Lee").[3]

8 On 5 April 2018, the CAD wrote to Mr Lee, asking for his consent to CAD's continued seizure and retention of the seized property.[4] Mr Lee responded through his solicitors, M/s Rajah & Tann Singapore LLP, who wrote on behalf of all the petitioners on 12 April 2018 and 17 April 2018 to inform the CAD that the petitioners did not give consent.[5]

9 On 6 June 2018, the CAD filed the s 370 Report pursuant to s 370(1)(*b*) CPC.[6] It appeared that no charges had been brought against any of the petitioners by this time. The prosecution took the position that the property was still relevant for the purposes of investigations. The s 370 Report stated that "CAD is investigating into possible offences under Sections 406 and 420 of the Penal Code (Cap 224), Section 148(1) of the Companies Act (Cap 50) and Section 35(1) of the Business Names Registration Act by Jeremy Lee Chen Seong", and further stated that "[i]nvestigations are on-going".[7]

10 The CAD amended the s 370 Report on 2 July 2018 ("the amended s 370 Report"). The amendments were mostly of a clerical nature,[8] and involved the correction of some typographical errors in the s 370 Report, the removal of five

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3 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at p 38, see para 1 of the s 370 Report.

4 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at para 6.

5 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at paras 7–8.

6 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at p 38.

7 S 370 Report at para 1.

8 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at para 9; see also p 44 for the Report.

items wrongly included in the tables of items seized, and the inclusion of five items the s 370 Report failed initially to describe.

11 The reporting of the seizure under s 370 CPC was heard *inter partes* by the Magistrate on 19 July 2018. Before the hearing, the prosecution filed a fresh Annex to the amended s 370 Report ("the Annex") which gave more details as to how the items seized were relevant to the criminal investigations. This Annex should not be confused with the annex that was part of the s 370 Report or the amended s 370 Report. The Annex stated that "[between] 9 June 2014 and 8 March 2016, CAD received complaints against Jeremy Lee Chen Seong, alleging that he had contravened offences under the Companies Act and Penal Code".[9] The specific allegations were that he had (1) "cheated an investor into investing in Canaan Medical Pte Ltd"; (2) "misappropriated monies from Mobdown Pte Ltd"; and (3) "managed companies/businesses while being an undischarged bankrupt."[10] The Annex reiterated that investigations were ongoing.

12 The Magistrate indicated at the hearing on 19 July 2018 that she had "difficulty" determining the relevance of the seized property to the investigations on the material before her, *ie*, the amended s 370 Report and the fresh Annex.[11] The prosecution then asked to be heard *ex parte*.[12] The petitioners objected to this because the parties were already being heard *inter partes*.[13] The

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9 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at p 58, para 2.

10 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at p 58, para 3.

11 NE, 19 July 2018 at p 16 line 4 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 24).

12 NE, 19 July 2018 at p 16 lines 9–10 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 24).

13 NE, 19 July 2018 at p 17 lines 1–10 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 25).

Magistrate decided to adjourn the proceedings, allow the prosecution to prepare the *ex parte* report, and then hear the parties again on whether the prosecution should be allowed to be heard *ex parte* at this stage in the proceedings.[14] The proceedings were adjourned to 17 August 2018.

13 Before the adjourned hearing, the prosecution decided of its own accord to file an addendum to the amended s 370 Report ("the Addendum") on 15 August 2018.[15] This Addendum was made available to the petitioners. The Addendum furnished yet more information concerning the CAD investigations. In particular, paragraph 3 of the Addendum gave more details of the offences Mr Lee was being investigated for, while paragraph 4 specified that the items were seized because "they are believed to constitute evidence of the above offences and therefore relevant to [CAD's] investigations". The original annex to the amended s 370 Report was also updated to "show the relevance of each item to the offence that is being investigated"; a new column was inserted to the right of the tables attributing the items seized to offences committed under the Penal Code, Business Names Registration Act 2014 (No 29 of 2014) or the Companies Act.

14 At the adjourned hearing on 17 August 2018, the petitioners vigorously objected to the prosecution having filed the Addendum on its own motion. The petitioners also argued that the Magistrate was not entitled to have reference to either the Annex or the Addendum, as both had been filed outside the one-year deadline. The Magistrate decided that she could have sight of the Addendum.[16] She made it explicitly clear, however, that she had not requested for information

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14 NE, 19 July 2018 at p 19 lines 5–18 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 27).

15 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at p 65.

16 NE, 17 August 2018 at p 9 lines 9–12 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 43).

to be put in on an *ex parte* basis, and that she had instead indicated at the hearing on 19 July 2018 that the prosecution should consider whether it could provide information on an *inter partes* basis, thus obviating the need for an *ex parte* hearing.[17]

15 The prosecution, for its part, indicated that it had placed all relevant material before the court, and was content for the matter to proceed on an *inter partes* basis.[18] The Magistrate was not persuaded that even the amended s 370 Report with its Annex and Addendum was sufficient to satisfy her of the continued relevance of the seized property to the CAD's investigations.[19] The prosecution then made an application to place additional information before the Magistrate on an *ex parte* basis.[20] The petitioners also objected to this, not only on the basis that the prosecution had no right to make *ex parte* applications once the *inter partes* hearing had begun, but also because it had forsaken any such right, having stated its willingness for the matter to proceed *inter partes*. The Magistrate ultimately decided that she could hear the prosecution *ex parte* even though the *inter partes* hearing had begun.[21] The petitioners then indicated that they would be applying to the High Court for a criminal revision of the proceedings below.

16 The petitioners duly filed the petition for criminal revision on 27 August 2018.

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17 NE, 17 August 2018 at pp 9 line 32 to 10 line 9 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at pp 43–44).

18 NE, 17 August 2018 at p 14 lines 3–9 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 48).

19 NE, 17 August 2018 at p 28 lines 10–29 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 62).

20 NE, 17 August 2018 at p 29 lines 3–4 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 63).

21 NE, 17 August 2018 at pp 35 line 31 to 36 line 6 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at pp 69–70).

17 The parties appeared before me on 21 November 2018 for the hearing of the criminal revision.

The parties' cases

18 I will now summarise the parties' cases as drawn from both their written and oral arguments as they stood at the time of the hearing before me on 21 November 2018. Some additional material was placed before me after 21 November 2018, of which I shall elaborate further below at [33] to [38].

The petitioners' arguments

19 The petitioners made five arguments in this criminal revision.

20 First, they argued that the Magistrate erred as a matter of law when she decided to admit and consider the Annex and Addendum, seeing as both were filed out of time. Their position was that s 370 of the CPC imposed a long-stop one-year deadline, or, as they more colourfully put it, a one-year "guillotine".[22]

21 Second, they argued that the Magistrate erred when she failed to immediately order the release of the seized property even though she was not satisfied that the prosecution had demonstrated a sufficient basis for their continued seizure.[23] Instead, she had surrendered her judgment and pre-judged the matter in favour of the prosecution by repeatedly asking the prosecution for "a way forward".[24]

22 Third, the petitioners argued that Magistrate erred when she held that the prosecution was entitled to attend before the court on an *ex parte* basis.[25]

22 Petitioners' Submissions at para 33.

23 Petitioners' Submissions at para 38.

24 Petitioners' Submissions at para 39.

There was no room for the prosecution to be heard on an *ex parte* basis once the *inter partes* hearing had commenced, because the procedure for s 370 hearings set out by the Court of Appeal in *Mustafa Ahunbay v Public Prosecutor* [2015] 2 SLR 903 ("*Mustafa Ahunbay*") contemplated *ex parte* hearings being allowed *only* if they took place before the *inter partes* hearing.[26]

23 Fourth, they argued that the Magistrate's decision was tainted by apparent bias.[27] In essence, it was submitted that the Magistrate displayed apparent bias or prejudgment when she refused to order the release of the seized property even though she was not satisfied that the amended s 370 Report taken together with the Annex and Addendum provided a sufficient basis for continued seizure of the property. The petitioners also argued that the circumstances in which the Annex was placed before the Magistrate were suggestive of apparent bias, because it had been put forward pursuant to queries made by the Magistrate in advance of the 19 July hearing itself, and the prosecution had initially refused to make those queries available to the petitioners, although they ultimately did so after this Court asked for the queries to be disclosed (see [33]–[36] below).

24 Fifth, the petitioners invited the High Court to step into the shoes of the Magistrate and substantively determine whether the CAD should be allowed to retain the seized property. The petitioners submitted that this Court should only look at the s 370 Report in doing so, and should find that the report was too bare to support the continued retention of the property. Even if this Court also considered the Report with the Annex and Addendum, however, it was the

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25 Petitioners' Submissions at para 43.

26 Petitioners' Submissions at para 43.

27 Petitioners' Submissions at paras 48–50.

petitioners' case that those three documents collectively would still be insufficient to support the continued retention of the property.

The prosecution's arguments

25 The prosecution's arguments are set out below.

26 First, the prosecution submitted that the Magistrate was correct to admit and consider the Annex and the Addendum.[28] The essential point was that the Magistrate, in discharging her judicial function, was entitled to make enquiries. The prosecution would have to answer those queries, if need be, by placing fresh information before her. The prosecution also pointed out that in previous cases dealing with s 370 CPC applications, additional reports beyond the initial s 370 report had been filed, apparently without comment or criticism by the High Court or the Court of Appeal.[29]

27 Second, the prosecution submitted that the Magistrate was correct in finding that she had the discretion to permit the prosecution to be heard *ex parte* even though the second hearing on 17 August 2018 had proceeded on an *inter partes* basis.[30] The prosecution could attend before the Magistrate *ex parte* where the public interest required that sensitive information which might prejudice criminal investigations should not be disclosed.[31] Following from their first argument, if the Magistrate's questions necessitated the prosecution providing fresh information of a sensitive nature in response, then it naturally followed that the prosecution would present that information to the Magistrate, but only in an *ex parte* setting.

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28 Prosecution's Submissions at paras 33–34.

29 Prosecution's Submissions at paras 35–37.

30 Prosecution's Submissions at para 43.

31 Prosecution's Submissions at para 42.

28 Third, the prosecution submitted that the discretion to hear the prosecution *ex parte* was exercised correctly in the instant case.[32] The Magistrate had posed queries, and the prosecution had done their best to answer those queries, first by furnishing the Annex and Addendum, and when that proved not to be enough, by requesting to place additional information before her *ex parte*.

29 Fourth, the prosecution argued that the Magistrate did not display any apparent bias. Her decisions to admit the Annex and Addendum were correct in law, as was her decision to exercise her discretion to hear the prosecution *ex parte*.[33]

30 Fifth, the prosecution disputed that the High Court's revisionary jurisdiction was properly invoked.[34] The mere fact that the petitioners did not have access to their seized property did not meet the relevant threshold of "serious injustice". The injustice the petitioners might have suffered was in not having copies of company documents to make their tax filings.[35] The prosecution, however, had offered the petitioners the opportunity to make copies and the petitioners had declined,[36] which showed that they had not truly suffered injustice to begin with.

31 Sixth, if this Court did find that the threshold for its revisionary jurisdiction had been crossed, then the prosecution agreed that this Court ought to substantively determine in the revision itself whether the CAD ought to be allowed to retain the seized property.

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32 Prosecution's Submissions at para 49.

33 Prosecution's Submissions at para 50.

34 Prosecution's Submissions at para 51.

35 Prosecution's Submissions at para 52.

36 Prosecution's Submissions at para 53.

32 In this regard, the prosecution's case was that the material in the amended s 370 Report, Annex and Addendum was sufficient to demonstrate the relevance of the seized property to investigations.[37] In substantively determining this application, the Court should also have regard to the fact that the seized property was suspected to constitute *evidence* of an offence and, on that premise, must necessarily be relevant to the investigations.[38] In any event, the prosecution relied on a further affidavit by Mr Neo Tzu Yang Eugene ("Mr Eugene Neo"), the Head of CAD's Private Institutional Fraud Branch I, which gave an update on the status of the investigations following the hearings before the Magistrate on 19 July and 17 August respectively. Mr Neo stated that the property seized from the petitioners continued to be relevant for the purposes of investigations.[39] Thus, this Court should hold that the seized property was indeed relevant to those investigations and not order their release.

Events after the 21 November 2018 hearing

33 Having adjourned after the hearing and in the course of reviewing the parties' submissions, I was of the view that insufficient explanation had been given by the prosecution as to the nature or extent of the queries made that led to the prosecution putting in the Annex in advance of the 19 July hearing. The prosecution did not dispute that the queries were made, but offered no elaboration on this point during the hearing before me.

34 I therefore directed by a letter to the prosecution on 28 November 2018 that clarifications be provided as to who had sent the queries to CAD, the

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37 Prosecution's Submissions at para 56.

38 Prosecution's Submissions at para 60.

39 See Affidavit of Neo Tzu Yang Eugene (9 November 2018) at para 5.

medium through which the queries were made, and precisely what queries had been made.[40]

35 The prosecution replied by letter on 3 December 2018 indicating that the queries were sent by a court officer from the State Courts, via Skype direct message over the government intranet to a CAD officer. The queries stated:[41]

> *there is no facts stated in the report*
> *the report only states the items to be retained*
> *but not background information of the case*
> *is it possible to upload it before 1030 and inform me?*

36 The prosecution's letter was also made available to the petitioners. By a letter dated 3 December 2018,[42] the petitioners' counsel wrote to the High Court arguing that this was further evidence supporting the petitioners' case on apparent bias. These were private communications between the court and the prosecution, which the petitioners were not privy to, and which therefore attracted suspicions of bias. Moreover, these communications showed that the Magistrate had pointed out the inadequacies of the s 370 Report to the prosecution in advance of the hearing where she would have to decide the very question whether the Report was adequate. This suggested that she was not disinterested in the matter.

37 The prosecution replied by way of a letter dated 4 December 2018.[43] The prosecution argued that the queries were consistent with the concerns that the Magistrate had openly expressed at the 19 July hearing itself, so no reasonable

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40 See Court's Letter to AGC dated 28 November 2018.

41 See AGC's letter dated 3 December 2018.

42 See R&T's Letter to the Court dated 3 December 2018.

43 See AGC's Letter to the Court dated 4 December 2018.

fair-minded and informed observer would have thought that the Magistrate had pre-judged the matter in the prosecution's favour. The Magistrate was simply asking whether the facts and background information of the case could have been included; she could not have known how the prosecution would respond.

38 I took these arguments into account in arriving at my decision in this criminal revision.

Issues to be determined

39 Having regard to the issues stated in the Petition for Criminal Revision, and also to the parties' arguments, five issues fell for determination by this Court:

(a) First, what is the significance of the one-year deadline? In particular, can the Magistrate receive additional information in the form of further documents and other material being filed out of time to supplement a s 370 report filed within the one-year deadline?

(b) Second, is the Magistrate entitled to hear the prosecution *ex parte* once the hearing on the reporting of the seizure under s 370 CPC has proceeded on an *inter partes* basis?

(c) Third, did the Magistrate err in this case when she admitted and considered the Annex and Addendum, and consented to hear the Prosecution *ex parte*, if the s 370 Report itself was insufficient to justify the continued retention of the seized property? A related issue was whether she had demonstrated a closed mind or prejudged the issue thus tainting her decision with apparent bias, although as I shall explain subsequently, it became unnecessary to make findings on this issue.

(d) Fourth, has the threshold for the exercise of this Court's revisionary jurisdiction been crossed?

(e) Fifth, if the Court's revisionary jurisdiction has been properly invoked, what is this Court's determination as to the continued retention of the seized property?

40 Issues (a) and (b) are questions of law and general principle, whereas issues (c), (d) and (e) concern the specific facts of this particular case.

Issue 1: whether fresh material can be admitted to supplement the s 370 report after the one-year deadline has passed

41 The first and most important issue in this application concerns the significance to be given to the one-year deadline spelt out in s 370(1)(*b*).

42 The relevant sections of s 370 CPC provide:

> **Procedure governing seizure of property**
>
> **370.**—(1) If a law enforcement officer seizes any property in the exercise of any power under section 35 or 78, the law enforcement officer must make a report of the seizure to the relevant court at the earlier of the following times:
>
> (*a*) when the law enforcement officer considers that the property is not relevant for the purposes of any investigation, inquiry, trial or other proceeding under any written law;
>
> (*b*) one year after the date of seizure of the property.
>
> (2) Subject to subsection (3), and to any provisions on forfeiture, confiscation, destruction or delivery in any other written law under which property may be seized, the relevant court must, upon receiving a report mentioned in subsection (1), make such of the following orders as may be applicable:
>
> …
>
> (*b*) in any case where the relevant court is satisfied that an offence was committed in respect of the property, or that the property was used or intended to be used to

> commit an offence – such order as the relevant court thinks fit for the disposal of the property;
>
> …
>
> (*e*) in any other case, an order relating to –
>
> (i) the delivery of the property to the person entitled to the possession of the property; or
>
> (ii) if that person cannot be ascertained, the custody and production of the property.
>
> (3) The relevant court must not dispose of the property if –
>
> (*a*) there is any pending court proceeding under any written law in relation to the property; or
>
> (*b*) the relevant court is satisfied that the property is relevant for the purposes of any investigation, inquiry, trial or other proceeding under any written law.

43 It has been noted in case law that s 370 CPC itself does not set out the procedure for the reporting of a seizure to the Magistrate's Court. The Court of Appeal in *Mustafa Ahunbay* has instead provided guidance at [81] as to the procedure, although most of the questions in the criminal reference in *Mustafa Ahunbay* do not concern us. The relevant paragraph is reproduced here:

> 81 There is no guidance from the statutory provision or case law on this issue. But generally, the court and the authorities should take a practical approach having regard to the particular facts and circumstances of the case. … [W]e find the following procedure appropriate:
>
> (a) The police officer should take a view as to whether the disclosure of the investigation report will prejudice investigations.
>
> (b) Where there is no such prejudice, the police officer should extend the investigation report to the persons entitled to the right to be heard. Thereafter, if objection is taken by such persons as regards the continued seizure of the property, the Magistrate may, if he thinks it necessary, direct those persons to state the basis of their objections by way of affidavit.
>
> (c) If the police take the view that there will be prejudice, the police (or the Prosecution) must first attend an *ex parte* hearing before the Magistrate to satisfy the

Magistrate that the balance of the two competing interests militates against full disclosure of the investigation report. Persons with the right to be heard will be informed that such an *ex parte* hearing is taking place (see *Regina v Davis* [1993] 1 WLR 613).

(d) The police will need to show that there is a reasonable basis for denying disclosure, by furnishing cogent evidence that disclosure of the investigation report carries a reasonable prospect of prejudice to the proper administration of criminal justice.

(e) At the *ex parte* hearing, the Magistrate can make three possible orders:

(i) the Magistrate may take the view that the public interest does not prevent the investigation report (or any information asked of the police) from being disclosed. The matter should then be dealt with as set out in [81(b)].

(ii) The Magistrate may take the view that the public interest prevents some, but not all, of the contents of the investigation report from being disclosed. The Magistrate may then order appropriate redactions to be made to the investigation report before it is disclosed to the persons with the right to be heard. The same procedure as set out in [81(b)] will apply, save for the redactions made.

(iii) The Magistrate may take the view that the public interest prevents the entire investigation report from being disclosed. In such a situation, the persons with the right to be heard must be notified of this decision.

(f) Where the Magistrate takes the position that either some or all of the investigation report should not be disclosed to the parties, the following information should nevertheless be disclosed:

(i) a description of the property seized;

(ii) the date the property was seized;

(iii) the person from whom the property was seized, and the person's connection to the seized property; and

(iv) a brief explanation of the basis for the seizure.

> (g) Where persons with the right to be heard are dissatisfied with the Magistrate's decision at the *ex parte* hearing, it is open to them to challenge that decision by way of criminal revision. However, the investigation report should not be disclosed to such persons for the purposes of the criminal revision.
>
> (h) At any stage of the proceeding where the police and/or the Prosecution believe that an *ex parte* hearing is no longer necessary, an *inter partes* hearing should be conducted.

44 The Court of Appeal's guidance does not address the question before the Court now, which concerns how material sought to be admitted after the one-year deadline should be treated by the Magistrate. But this is not surprising because this question was not before the Court of Appeal. I turn now to the parties' arguments.

45 The petitioners placed heavy emphasis on the text of s 370(1)(*b*) CPC itself, where it is stated that "the law enforcement officer must make *a report* of the seizure to the relevant court … one year after the date of seizure of the property". The petitioners submitted that the statutory framework envisions one comprehensive report being submitted by that time, not an initial report that serves purely as a temporary makeweight filed in time to meet the statutory requirement, with the prosecution then being free to supplement that anchor report with fresh material as and when required or asked to do so. The petitioners argued that such an approach permitting information to be drip-fed to the Magistrate would allow the law enforcement authority to circumvent the one-year deadline.[44] In the interests of justice and fairness, there must be finality at some point in time, and statute has only specified one point in time: the one-year mark.

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[44] Petitioners' Submissions at para 35.

46 The prosecution's case, on the other hand, was that where the Magistrate has queries, the prosecution should be allowed to meet those queries by filing additional material. It is part of the Magistrate's judicial function under s 370 CPC to make "sufficient enquiry" as to the relevance of the seized property to investigations.[45] If the prosecution were to be denied the opportunity to present fresh material that meets the Magistrate's concerns and answers the Magistrate's queries, that would effectively disregard the Magistrate's judicial function under s 370 CPC.[46] There would then be no purpose in the Magistrate asking for clarification. Additional reports were filed out of time in the earlier s 370 decisions in *Mustafa Ahunbay* and *Rajendar Prasad Rai and another v Public Prosecutor and another matter* [2017] 4 SLR 333 ("*Rajendar Prasad*") without adverse comment; that practice should be upheld here.[47] Further, an analogy may be drawn with a Mandatory Treatment Order ("MTO") suitability report filed by an IMH psychiatrist in the context of s 339 CPC.[48] The CPC provides that such reports are "final and conclusive", but the High Court has since clarified that this does not mean that the courts are precluded from seeking clarifications of the report if it is unclear. Similarly, if the Magistrate finds the material in the s 370 report to be insufficient, the Magistrate can ask questions and the prosecution can provide answers, utilising fresh material if it must.

47 In my view, the petitioners' arguments were persuasive. The language of s 370 CPC is clear that there is only to be "a report". The plain meaning of that phrase is that there is only to be *one* report. The prosecution did not challenge this before me. Indeed, by the very way it labelled the documents it subsequently filed as an "Annex" and an "Addendum" to the s 370 Report, it

45 Prosecution's Submissions at para 28.

46 Prosecution's Submissions at para 34.

47 Prosecution's Submissions at paras 35–37.

48 Prosecution's Submissions at para 39.

was clear that the prosecution at least accepted – even if only implicitly – that there could ultimately only be *one* report considered by the Magistrate.

48 The question that followed was what was to comprise that "one report". Could an "annex" or "addendum" filed out of time conveniently latch on to the s 370 report that was filed in time and be considered as part of the whole? In my view, this could not be allowed. There were two reasons for this.

49 First, the statutory language is clear that a single, entire report was to be filed within the one-year mark. This could only be right, because to accept a bare-bones initial or "holding" report to be filed in time, and thus serve as an anchor for ancillary documents or reports to latch on to, would be to allow the prosecution to effectively extend the statutory deadline at their will. This would make a mockery of the exercise of judicial oversight by the Magistrate.

50 Second, whether a report is substantively complete is a matter of substance and not form. To call something a report and something else an "annex" or "addendum" to that report is merely a matter of labelling. To allow annexes and addenda to be added to flesh out bare initial reports would completely dilute the requirement that the report be filed within one year. A report in name only might be filed before that one-year deadline, only to be fleshed out subsequently in other documents like an annex or addendum that may be filed at the prosecution's discretion. This, too, would undermine the statutory framework, and effectively allow the prosecution to extend the deadline, subject only to the court's stipulation of some further deadline(s).

51 I note that to its credit the prosecution did not submit that as a matter of general principle it was entitled to file any amount of additional material at any such time as it pleased. The nuance the prosecution introduced, however, was

that it was the Magistrate who had asked for further information, and that it had merely responded to those queries by adducing fresh material. On this view, it was not the prosecution that had sought to extend any deadlines. I will examine this argument in greater detail now.

52 The prosecution suggested that the Magistrate in the exercise of her judicial function must be able to make "sufficient enquiry" and receive a satisfactory response, which response might entail the prosecution putting in fresh material. Hence the extension of time to file the additional documents or provide fresh information was a natural and unavoidable consequence of the Magistrate discharging her duty to make sufficient enquiry. There was an intuitive appeal to this argument, but I must first pause to note that nowhere in *Mustafa Ahunbay* did the Court of Appeal say that the judicial function of the Magistrate involved the making of "sufficient enquiry": see [43] above.

53 I accepted, however, that it was part of the ordinary exercise of consideration and judgment that a judge might seek clarification on some matters in the report, and that this was properly within her judicial function. The tension that arose in the s 370 CPC context was whether permitting the Magistrate to ask further questions and receive fresh material was consistent with two competing and important interests; first, in having finality as to whether the seized property should be retained by law enforcement, and second, fairness to those with a right to be heard. Finality was a consideration chiefly because of the one-year reporting deadline mandated by s 370(1) CPC. And fairness was a concern because each new delay would be at the expense of the rights of interested persons, and also because the right of such persons to be informed of the case they had to meet would be undermined if the case for the prosecution kept shifting, and in all likelihood, expanding.

54 I determined that the interests of finality should prevail in the s 370 context, and the Magistrate should not be permitted to ask such further questions as would elicit the introduction of fresh material by the prosecution. This qualification was important because it was not the case that the Magistrate was not entitled to ask *any* questions; instead, whatever questions that were asked ought not to be viewed as an invitation or basis for the prosecution to tender fresh material. The exercise of the Magistrate's judicial function should be confined to inspecting, examining, and asking questions of the material already before her.

55 To accept the prosecution's approach would potentially result in unjustifiable delay. On the prosecution's approach, the prosecution would have the option of responding orally, or of putting in fresh documentation, as long as the Magistrate finds that the s 370 report is inadequate. The s 370 hearing itself tends to take place one or two months after the filing of the report, as was the case in *Mustafa Ahunbay* and *Rajendar Prasad*, and in this case as well. Even assuming for the sake of argument that it is only a "routine" or straightforward case that is being investigated and reported, and that the information is not sensitive and does not require the prosecution to be heard *ex parte* (a procedure which would require additional time, on which more will be said below at [87]), the new material that is introduced would nevertheless have to be considered afresh, and presumably also be addressed by the interested persons. This would take yet more time, with the real prospect of the hearing being adjourned. And there would be nothing to stop the Magistrate from asking yet more questions at the adjourned hearing. So a hearing that would already take place sometime after the filing of the report could be delayed yet again: there would be considerable uncertainty as to when the s 370 application will be fully and substantively determined.

56 This concern as to delay was particularly acute because even where extensions of time are given for s 370 CPC cases, the normal extension asked for and granted is a six-month extension. So delay in the matter of months, as has occurred here and would likely occur if the prosecution's approach was adopted, could not lightly be condoned. After all, as the Court of Appeal noted in *Mustafa Ahunbay*, the grace period of one year for the law enforcement agency to make sufficient progress in its investigations "cannot be regarded by any measure as being too brief": at [47].

57 The prosecution's response was to emphasise the concern that criminal investigations not be unduly hampered. The prosecution emphasised that a reporting of a seizure under s 370 CPC is unlike the determination of the rights of the parties in a civil trial, or the determination of guilt in a criminal matter. In the case of a s 370 CPC reporting, there would be an ongoing criminal investigation undertaken by a law enforcement authority. A Magistrate ought to be allowed to make enquiries and receive fresh material to have the fullest sense of how the investigations are proceeding, otherwise ongoing criminal investigations would be hampered and obstructed.

58 In my view, however, this reasoning was somewhat circular. The question whether or not the seized property was relevant to an ongoing criminal investigation is *precisely* the question at the heart of the s 370 reporting procedure. The prosecution had to *satisfy* the Magistrate that this was the case. If the prosecution failed to include sufficient material in the s 370 report, this would mean that the Magistrate was not satisfied, which logically carried the implication that she did not think there were ongoing investigations to which the seized property was relevant. It is obviously not the court's objective to hamper or curtail ongoing criminal investigations. But it is the prosecution's obligation and burden to satisfy the Magistrate, after the one-year deadline is

up, that there are indeed investigations which have taken place for which the seized property is relevant, and for which purposes continued seizure is therefore justified.

59 I would also make the separate point that adopting the prosecution's approach would be to incentivise the making of only a bare s 370 report. Faced with such a report, the Magistrate would obviously ask for more information. If that information still does not prove to be enough, the Magistrate may well ask again for more information. This can lead to an undesirable situation where material would be surfaced *ad hoc* through a piecemeal approach, with no definite end point in sight. To my mind, this would not be consistent with the reporting procedure set out by the Court of Appeal in *Mustafa Ahunbay*.

60 A possible solution might be to administratively specify a deadline beyond which no new material might be received. This would have been fairly obvious and logical, but it could not be satisfactorily adopted here for two reasons.

61 First, as a matter of principle, any deadline the Magistrate imposed in this context would be arbitrary. It finds no basis in the statute, and indeed, amounts to judicially working around the one-year deadline for *reporting* the seizure. I accepted that there was no statutory deadline for a *hearing*, but if fresh material was added to supplement the initial report it was difficult to see that otherwise than as extending the *reporting* deadline.

62 Second, in practical terms, any fresh deadline would in all likelihood be after the first hearing of the matter, because that would be the first occasion on which the Magistrate would comment on the adequacy of the report. As noted earlier, this hearing typically takes place a month or two after the report is filed.

Even assuming that at most one month more was permitted for the fresh material to be provided, this still has the effect of prolonging a *reporting* deadline of one year into something akin to one year and three months. This duration will have come about not because the Magistrate was satisfied that an extension of time was warranted; in fact, it is precisely the opposite as it will have come about because she was not satisfied. Viewed in this light, an effectively automatic extension in this nature should not be adopted.

63 Further, another important objection to allowing the Magistrate to ask further questions or to receive further information from the prosecution that required fresh material being put in was that this would effectively amount to the Magistrate shifting the timeline solely for the benefit of the prosecution. If the Magistrate had questions for the prosecution that necessitated the introduction of fresh material, that logically meant that the material before her was insufficient. The prosecution would effectively be able to have a second, third, or fourth bite at the cherry, and so on. After all, any augmentation of material by the prosecution would only be done with the intention of fortifying its case. But this was overly generous to the prosecution, bearing in mind the substantial period of one year that had elapsed. And it correspondingly prejudiced the interested persons' rights to be heard, because the case they would have to meet would always be shifting. In this sense, the timeline would be indeterminate, and only ever shifting in the prosecution's favour.

64 Indeed, under such an approach, the one-year deadline would become superfluous: so long as the Magistrate keeps asking questions, and the prosecution keeps surfacing fresh material apparently in response to those questions, the proceedings could be extended indefinitely. This was not satisfactory. The reporting procedure under s 370 CPC is an area of the law where statute is less than comprehensive. The court must therefore be all the

more acutely sensitive to the principles of natural justice. In this light, the prosecution's approach would undermine the principle that justice must not only be done, but must be *seen* to be done. The Magistrate by admitting fresh material in the manner suggested by the prosecution – even in response to her queries or concerns – would create the unfortunate appearance of the court bending over backwards, possibly more than once in each case, to extend the prosecution a lifeline and plug the gaps each time they are found. The result is not only a possible spiral into delay, but also an unjust extension of time purely for the purposes (both real and perceived) of helping the prosecution make its case.

65 It could be said that one way to stem this spiral would be to permit fresh material to be placed before the Magistrate *only* where she asks for specific material. But the obvious deficiency with this approach is that the Magistrate cannot know what to ask for in the first place. If the s 370 report is inadequate and lacking in details, the most the Magistrate can do – as the Magistrate did here – is to ask for more details. And as the Magistrate here rightly pointed out, she could not ask the prosecution to put in specific material because she did not have enough information about the investigations on which to form a basis to ask specific questions, or ask for specific material, in the first place.[49] So placing the burden on the Magistrate to ask for specific material is an illusory safeguard. The better approach would be for the Magistrate to confine her questions, and the prosecution confine its responses, to information that is either present in or closely connected to the material in the s 370 Report.

66 A different point might be made that in the intervening time between the report being filed and the hearing, additional progress might have been made in investigations further justifying the retention of the seized property. The

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[49] NE, 17 August 2018 at pp 26 lines 14–30 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 60).

Magistrate should be entitled to have the most updated information about the progress of investigations at the hearing, which thus justifies the admission of fresh material to supplement the report. The problem, however, is that this could be used to sidestep the statutory reporting deadline. Such reasoning supports what would be, in effect, a reporting deadline on a rolling basis, tied to the date of the hearing, or, if additional questions are asked that necessitate the introduction of further material, the adjourned hearing, and so on and so forth. This is not what the statutory framework contemplates.

67 The question might then be asked – how can the prosecution adequately respond to the Magistrate's queries? The short point is that the prosecution can still respond and elaborate orally, and thereby seek to persuade the Magistrate of its case. The limitation it faces, however, is that it would not be allowed to tender fresh material, whether as an "annex" or "addendum" or whatever other label might be used. Viewed objectively, interested persons might similarly face a challenge in responding to new points raised by the prosecution in oral submissions before the Magistrate. I considered, however, that the new points would not be outside the realm of reasonable contemplation if the inquiry was confined to the material in the s 370 report. Interested persons should thus have been prepared to respond accordingly in any event.

68 In my view, the approach I have adopted conduces towards greater certainty and finality, and is fairer both to those with a right to be heard and to law enforcement. The relevant law enforcement agency will have had one year to make progress in its investigations. It is not too onerous to expect that after one year, enough information ought to have been obtained and sufficient material included in the s 370 report for the Magistrate to be satisfied of the need for the continued retention of the property for the purposes of investigations. Interested persons would also have been deprived of the property

for a year, which is not a brief period at all. They are entitled to have certainty that when the s 370 application finally comes to be heard before the Magistrate, there will be an expeditious hearing and decision on the question whether the property should continue to be retained by the law enforcement agencies.

69 For the foregoing reasons, I took the view that in the interests of finality and fairness, there should be one comprehensive report filed within the one-year deadline, with no fresh material to be admitted thereafter. I will now also address each of the prosecution's arguments to show why they do not undermine my approach.

70 The prosecution's first argument, that the Magistrate should be entitled to make sufficient enquiry and the prosecution to put in new material to address those queries, has already been addressed above.

71 The prosecution's second argument was that the High Court and the Court of Appeal had not previously expressed disapproval or criticism of the prosecution's "practice" of putting in new material. In this connection, the prosecution referred me to the cases of *Mustafa Ahunbay* and *Rajendar Prasad*.[50] I have reviewed both these cases and accept that this is true. But this was not a persuasive argument. This question was never raised or argued before the High Court or the Court of Appeal in those cases. One might surmise that the petitioners in previous criminal revisions or criminal references concerning s 370 CPC were content not to object to the introduction of additional material. Moreover, it is difficult to say that a "practice" has formed based on only two decisions. Hence actual authority that any such "practice" existed was tenuous at best. There was no cogent basis to say that this "practice" had coalesced into legally binding custom.

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[50] Prosecution's Submissions at paras 35–38.

72 The prosecution's third argument was that an analogy should be drawn between an s 370 report and the psychiatric report filed by an Institute of Mental Health ("IMH") psychiatrist under the MTO regime in s 339 CPC. The prosecution relied on my decision in *Low Gek Hong v Public Prosecutor* [2016] SGHC 69 ("*Low Gek Hong*"), where I held that the court was not precluded from seeking clarifications from a psychiatric report if the report was unclear, even though s 339(9) CPC specified that the psychiatrist's report was to be "final and conclusive". Thus, although the s 370 report had been submitted to the Magistrate, the Magistrate was entitled to make enquiries, and the prosecution would equally be entitled to put in fresh material in response to those enquiries.

73 In my view, *Low Gek Hong* did not assist the prosecution. In the context of the MTO suitability report in *Low Gek Hong*, I indicated that clarifications could be asked of the report. But such clarifications would clearly have to be confined to the *material* in the report, on the basis that it was "unclear and particularly where it [drew] manifestly wrong, illogical or absurd conclusions": at [11]. I considered that there was a fine but appreciable distinction between asking for clarifications concerning ambiguities in a report, which must be permissible, and clarifications asking for more information because the report was lacking in information. The latter category was a different type of "clarification" entirely. Indeed, I was not convinced that the term "clarification" was even appropriate to describe such questions – there was nothing ambiguous or patently wrong, absurd or illogical to clarify; there was simply an absence of information.

74 I was also of the view that an analogy might be drawn to *Low Gek Hong* in quite a different way. At [15] of *Low Gek Hong*, I indicated that if a "psychiatrist does *not* state clearly in his MTO report that any psychiatric

condition is 'one of the contributing factors' of the offending conduct in question… then as far as the court is concerned it must mean that he has made *no* such finding". The same could be said of a s 370 report that is bereft of details. In such a scenario, the court is entitled *not* to seek clarifications, but instead to determine that there is insufficient material to support the relevance of the seized property to investigations that would justify their continued retention by the law enforcement agency.

75 In any event, the reasons why a court ought to be more cautious about seeking clarifications or having more material adduced to address its queries were quite different in the context of s 370 CPC, as compared to the MTO regime, as my analysis above has demonstrated. Parliament has expressly provided for an element of time sensitivity in the former context but not in the latter, by virtue of the one-year reporting deadline. It was therefore not helpful to attempt an analogy to the court's treatment of a psychiatric report in the MTO regime.

76 Before I leave this issue, I wish to address one final point, which relates to amendments which are not substantive in nature but which are made out of time. For example, the prosecution may seek to amend the s 370 report, but such changes are purely clerical or cosmetic in nature. In my view, it would not do violence to the statutory framework for such limited amendments to be allowed. The changes would only be minor, and the substance of the report would be left unchanged. So long as this takes place prior to the hearing before the Magistrate, and notice is given to the interested persons, prejudice will not be caused to them because they will have been given sufficient opportunity to prepare a response. Further, it is unlikely that the interested persons will object in the vast majority of cases to amendments of a clerical nature, and it would be difficult to see the basis for such an objection in any event.

77 The question whether the changes are merely clerical or spill over into having substantive effects is, of course, a fact-specific inquiry. To take the present case as an example, if the prosecution had sought to change or substitute the vast majority of the items listed in the annex to the Report, that could well be taken to be a substantive change.

Issue 2: whether the prosecution has the right to be heard *ex parte* after *inter partes* proceedings have commenced

78 Another conceptual issue raised by the parties was whether the prosecution had the right to attend *ex parte* before the Magistrate when the *inter partes* hearing had already commenced. The petitioners relied on the procedure set out by the Court of Appeal in *Mustafa Ahunbay* at [81], which the petitioners argued was complete and comprehensive, and nowhere contemplates additional *ex parte* hearings once the *inter partes* hearing has commenced. The prosecution's response was that the Court of Appeal's decision did not address the specific situation where fresh information would have to be provided to the Magistrate after the commencement of the *inter partes* hearing. Rather, the Court of Appeal in *Mustafa Ahunbay* at [80] recognised the public interest in maintaining the integrity and confidentiality of police investigations, which might be prejudiced from the disclosure of sensitive information. That consideration still applied each time fresh material was sought to be admitted, and militated in favour of additional *ex parte* hearings in respect of the fresh material.

79 In my view, the petitioners were, strictly speaking, correct that the framework set out in *Mustafa Ahunbay* does not contemplate fresh *ex parte* hearings after the *inter partes* hearing has commenced. Instead, under that framework, the prosecution should decide at the outset whether there are parts of the report which it would be prejudicial to criminal investigations to disclose,

and attend *ex parte* before the Magistrate to submit on those parts of the report. But I also agreed with the prosecution that the question never arose in *Mustafa Ahunbay* because it appeared that the Court of Appeal proceeded on the assumption that no additional information would be given by the law enforcement agency after the investigation report, or the s 370 report, had been filed. In my view, the prosecution was correct in saying that the key consideration in favour of an *ex parte* hearing – that the public interest might be prejudiced by the disclosure of sensitive information – nevertheless remained.

80 I considered that the first step towards resolving this tension was to look to the answer given in respect of the first question whether the prosecution would be entitled to admit fresh material in the first place. After all, if the prosecution was not entitled even to admit fresh material, there would be no need to have *ex parte* hearings to admit fresh *sensitive* material.

81 I have held above that the prosecution should not be allowed to admit fresh material past the one-year reporting deadline. It follows that there is no need to decide whether the prosecution should be allowed to attend *ex parte* to present that fresh material to the Magistrate.

82 This, however, would only be a partial answer to the question concerning the prosecution's right to attend *ex parte* before the Magistrate. There was yet another nuance to be considered. The point could also be made that although the prosecution cannot attend *ex parte* to justify the non-disclosure of fresh *material*, it may still attend *ex parte* to explain or clarify the material that has already been disclosed in the s 370 report, which explanations or clarifications are of such a sensitive nature that disclosing them to interested persons might prejudice criminal investigations. So the latter possibility

contemplates the prosecution attending *ex parte* to give fresh *information*, but not to admit fresh *material*, so to speak.

83 I concluded, however, that this too should be considered impermissible. The framework set out by the Court of Appeal in *Mustafa Ahunbay* addresses the situation where only one report is filed, and the Court of Appeal has indicated that the *ex parte* procedure is to be used only where the prosecution does not wish to disclose *parts of, or the entire, report.* In other words, the *ex parte* procedure is to be used only in respect of material *in the report*, not other as yet undisclosed information the prosecution might have. *Ex parte* hearings cannot be used by the prosecution to answer questions or offer clarifications on the s 370 report which has been already been disclosed to interested persons anyway.

84 An objection might be made that the framework in *Mustafa Ahunbay* does not quite address the distinction between material which has been disclosed because it is not prejudicial, and explanations, elaborations, and clarifications concerning that same material which might be prejudicial. I appreciated that there could be such a distinction, and that it was possible to argue that *Mustafa Ahunbay* did not cover precisely this question. Further, I was aware of the difficulties the prosecution might face in that it could not always predict what material the Magistrate might ask for. I also acknowledged that seeing as no fresh material was being adduced, an *ex parte* hearing could take place fairly expeditiously, perhaps even on the same day as the s 370 hearing.

85 I considered, however, that the interests of certainty and finality also prevailed in this instance, and that there should not be any further *ex parte* hearings to provide additional information to the Magistrate. There were three reasons for my decision.

86 First, there was the potential to undermine the right of interested parties to be heard if the prosecution could still attend *ex parte* to address the Magistrate with fresh information, but not fresh material, once the *inter partes* hearing had commenced. The prosecution would have the right to interrupt the *inter partes* hearing at any time to employ the *ex parte* procedure. Interested parties would then be made literally to answer and respond to a case that was evolving and bifurcating into distinct parts – *ex parte* and *inter partes* – as the hearing unfolded. They would likely face significant difficulty in assembling an adequate response to a constantly shifting case.

87 Second, although the *ex parte* hearing itself might take place expeditiously, there would likely be consequential delays arising from the interested parties having to prepare responses to meet the prosecution's evolving case. It would not be right to deny them the time to respond and recalibrate their case when they could truly have been caught by surprise by the prosecution's spontaneous decision to apply to be heard *ex parte.* But the reporting procedure is a time-sensitive one, and delays ought not to be lightly contemplated or accepted.

88 Third, drawing a distinction between fresh material and fresh information would incentivise the making of only a perfunctory s 370 report, because the prosecution could still make good any deficiencies in the report by seeking to give explanations before the Magistrate *ex parte*, on the basis that although it is not fresh *material* that they seek to put in, there are answers to the Magistrate's questions which are sensitive and qualify as fresh *information*. It was difficult to see, however, what the distinction between fresh "material" and fresh "information" was that would justify this approach. If the only distinction was that "material" is in a written form and supplements the report, but "information" is something stated orally in the hearing, there appeared to be no

good reason why the information should not have been included in the report in the first place.

89 I concluded, therefore, that in order to ensure certainty, finality, and fairness, there should be no further *ex parte* hearings once the *inter partes* hearing had commenced. If there was information that was sufficiently important and material to the inquiry that the Magistrate would reasonably have been expected to ask for it, that information should have been presented in the s 370 report. If there were concerns as to the sensitivity of the information, the prosecution should have gone before the Magistrate *ex parte* to ask that that part of the report not be disclosed in advance of the *inter partes* hearing. I appreciated that this would, in most cases, lead to the prosecution erring on the side of caution and disclosing more material in the s 370 report. It may also lead to the prosecution attending more frequently before the Magistrate *ex parte* in advance of the *inter partes* hearing to ask that portions of the s 370 report not be disclosed. But I considered that this struck the more appropriate balance between the competing considerations outlined above. I was mindful of the concern that sensitive information concerning criminal investigations not be disclosed to the petitioners. This concern would be allayed by the fact that sensitive information would only be revealed *ex parte* to the Magistrate who would ultimately have to exercise judicial oversight over the seized property anyway.

90 To sum up, the result of my analysis on Issues 1 and 2 is that the Magistrate cannot admit or consider fresh material to supplement the s 370 report. Further, she cannot hear the prosecution *ex parte* once the *inter partes* hearing has commenced.

91 The s 370 hearing before the Magistrate is confined therefore to the s 370 report. The Magistrate remains entitled, of course, to ask questions and seek clarifications, but this exercise should be confined to the material contained within the s 370 report. This, however, should not be taken as an invitation to put in fresh material. More crucially, the Magistrate is not *bound* to ask questions or seek clarifications if the report is a bare one. In such a case, it must follow that the report should be found to be inadequate, and she must order the delivery of the property to the persons entitled to possession of the property. This conclusion, in my view, is what s 370(2) and 370(3) CPC read together require.

Issue 3: whether the Magistrate erred

92 I come now to the third issue, which is whether the Magistrate erred in this specific case. I will first address the petitioners' submission that the Magistrate failed to apply the plain language of s 370 CPC. I will then touch very briefly on the petitioners' arguments on bias because it became unnecessary to make specific findings on that issue.

(1) Failure to apply s 370 CPC

93 Applying the principles distilled from my analysis above, I concluded that the Magistrate did fail to apply s 370 CPC, specifically s 370(2) read with s 370(3) CPC. This was because she was not satisfied with the sufficiency of the material in the s 370 Report, but failed to order the release of the property.

94 That the Magistrate did not consider the material sufficient is clear from the Notes of Evidence at the first hearing:[51]

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[51] NE, 19 July 2018 at pp 15 line 20 to 16 line 4 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at pp 23–24).

Court:	I think the objection is not really that – okay, I think whether or not there is sufficient evidence to satisfy the Prosecution is quite another point. The point really here is, is there any – are there facts before us to enable me to decide whether the property is still relevant for investigations. I mean, given the staturies – statutory scheme, you've had 1 year –
Sng:	Yes.
Court:	alright –
Sng:	Yes.
Court:	before your 1st reporting. So now you are really asking for more time, and the question really is, why is this still necessary? I think – I think, regardless of whether the relevant link is 35(1)(a) or 35(1)(c) of the CPC, I still need to be satisfied. And the – the reason why I had to ask for facts earlier on is –
Sng:	Yes.
Court:	is precisely because, I myself have difficulty.

95 When the Magistrate expressed her difficulties with the material before her, she was referring not only to the amended s 370 Report, but *also* the Annex, which had been admitted by her by that point.[52] The relevant Notes of Evidence specifically indicate that the prosecution furnished the Annex "pursuant to queries from the Court" before the first hearing.[53] Flowing from my holdings above, it would have been impermissible for the Magistrate to admit and refer to the Annex. But putting that aside for the moment, it was apparent that the Magistrate had difficulty with the adequacy of the material put before her in both the amended s 370 Report with the Annex. Hence she should have ordered the release of the seized property.

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52 NE, 19 July 2018 at p 4 lines 21–26 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 12).

53 NE, 19 July 2018 at p 4 line 24 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at p 12).

(2) No bias or prejudgment

96 For completeness, I address the parties' submissions on bias, although this issue did not strictly require determination having regard to my finding that the Magistrate had erred in failing to apply s 370 CPC. The petitioners submitted that the Magistrate's refusal to order the release of the seized property was evidence of bias and prejudgment, given her indications that the material before her was insufficient to justify the continued seizure of the property.

97 The argument on prejudgment can be readily dismissed. In *BOI v BOJ* [2018] 2 SLR 1156 ("*BOI*"), the Court of Appeal held that in order for prejudgment to amount to apparent bias, it must be established that the fair-minded, informed and reasonable observer would "suspect or apprehend that the decision-maker had reached a *final and conclusive decision* before *being made aware of all relevant evidence and arguments which the parties wish to put before him or her*, such that he or she approaches the matter at hand with a closed mind" [emphasis added]: at [109].

98 Here, the Magistrate did not reach a decision whether the seized property should continue to be retained by the prosecution, or whether they should be released. The proceedings below ended inconclusively with the Magistrate adjourning the hearing pending the decision of this Court on the criminal revision.[54] There was no final, conclusive decision on the matter in which the Magistrate had demonstrated prejudgment.

99 Further, and in any event, the petitioners were given ample opportunity to present arguments and were fully heard on the admission of the documents, and the permissibility of the prosecution being heard *ex parte*. The Magistrate

[54] NE, 17 August 2018 at pp 35 line 31 to 36 line 6 (Lee Chen Seong Jeremy's 2nd Affidavit, 7 November 2018, at pp 69–70).

was made aware of all relevant evidence and arguments which the petitioners sought to place before her. This undermined the contention that the Magistrate's mind was closed and that she had prejudged the matter.

100 The petitioners further argued that the Magistrate's decision was tainted by apparent bias. The petitioners pointed to various factors, including the Magistrate's remarks at the 17 August 2018 hearing; her decisions to admit and consider the Annex and Addendum; her refusal to order the release of the seized property; and the queries made to the CAD in advance of the 19 July 2018 hearing.

101 The test for apparent bias is whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer: *BOI* at [103(a)]. A reasonable suspicion or apprehension arises when the observer would think, from the relevant circumstances, that bias is possible. This cannot be a mere fanciful belief, and the reasons for suspicion must be capable of articulation by reference to the evidence presented: *BOI* at [103(c)].

102 In my view, the Magistrate's decisions to admit the Annex and Addendum could not be said to be evidence of apparent bias. There is a dearth of case law addressing the legal question whether and how a Magistrate should admit additional material that supplements a s 370 report. Indeed, there has been no considered judgment or analysis in academic commentary that has addressed the scenario which has arisen here. The Magistrate's decisions cannot thus be said to have been so against the grain of the law that they must have been borne of bias.

103 Similarly, with respect to the Magistrate's comments in the hearing, once those comments were read in context, it was apparent that they were made with the purpose of inviting the prosecution to make submissions, and not with any preconceived outcome in mind. The petitioners in turn were not shut out from responding. A fair-minded and informed observer would not consider them as giving rise to a reasonable suspicion of bias.

104 I was also not persuaded that the pre-hearing queries to the CAD could be said to be evidence of apparent bias. The limited content of the queries made in this case went against a finding of bias. While the queries could only have been conveyed on the Magistrate's directions, I did not read them as "directing" the CAD to file additional materials, contrary to the petitioners' arguments. In any event, the Magistrate demonstrated her openness to the arguments of both sides during the hearing itself, thus dispelling any doubts a reasonable and fair-minded observer might have.

105 On the whole, I found that there was insufficient evidence to support a finding that the Magistrate had been biased, or had appeared to be biased, against the petitioners.

Issue 4: whether the threshold for the High Court's revisionary jurisdiction has been crossed

106 The petitioners brought the present criminal revision pursuant to the High Court's revisionary jurisdiction under s 400 CPC. Section 400(1) CPC 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 400(2) provides, however, that no applicant may apply for a criminal revision in relation to "any judgment,

sentence or order which he could have appealed against but failed to do so in accordance with the law", subject to two exceptions, neither of which apply here.

107 Before proceeding further, and although neither party specifically raised this in their submissions, it is best to be clear that the present petition did not fall afoul of the prohibition in s 400(2). There had clearly been no judgment nor sentence rendered. And there had also been no order made by the Magistrate, because the phrase "judgment, sentence or order" in the CPC has been judicially interpreted to mean judgments, sentences and orders which have an element of finality: *Soh Guan Cheow Anthony v Public Prosecutor* [2015] 1 SLR 470 at [34]; *Azman bin Jamaludin v Public Prosecutor* [2012] 1 SLR 615 at [41]–[52].

108 It is also necessary to be clear that this criminal revision was not brought pursuant to the procedure set out in *Mustafa Ahunbay* at [81(e)-(g)], although it appeared that both parties assumed that this procedure applied. The relevant paragraphs have been set out above at [43] and I do not propose to repeat them here. The Magistrate had not made any decision at an *ex parte* hearing, because the criminal revision was brought before such a hearing could take place. The procedure in *Mustafa Ahunbay* at [81(g)] therefore did not apply; there was simply nothing for the petitioners to challenge.

109 That being said, the parties did not suggest that the present criminal revision fell outside the statutory language in s 400(1) CPC. I took the view that this must be right; there was nothing that should have been appealed which would have fallen within the prohibition in s 400(2) CPC, and the High Court was entitled here to examine the regularity of the proceedings below.

110 The prosecution did, however, mount a challenge to the existence of this Court's revisionary jurisdiction, on the basis that no "serious injustice" had been caused to the petitioners. This submission was based on the High Court's recent pronouncement of the law in *Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064 ("*Oon Heng Lye*") that the revisionary jurisdiction of the court is to be sparingly exercised, and that this will typically "require a demonstration not only that there has been some error but also that material and serious injustice has been occasioned as a result": at [14]. In addition, the High Court in *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 stated that "the irregularity or otherwise noted from the record of proceedings must have resulted in *grave and serious injustice*" [emphasis added]: at [19]. The prosecution submitted that the petitioners had only been deprived of company documents and some electronic devices; and the only complaint they had made was that this had hindered the filing of their taxes.[55] The prosecution argued that this did not amount to serious injustice. Further, the prosecution emphasised that it had allowed the petitioners to make copies of the necessary documents, but the petitioners had refused to do so. Thus, if there was any serious injustice, the petitioners had inflicted that injustice upon themselves.

111 The petitioners, for their part, argued that the prosecution's arguments missed the point. They had suffered serious injustice because of the Magistrate demonstrating a closed mind to their case, as evidenced by her wrongful admission of the Annex and Addendum and willingness to hear the prosecution *ex parte*. The Magistrate's refusal to apply the plain language of s 370 CPC was a "serious irregularity" justifying the exercise of the High Court's revisionary jurisdiction.[56]

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55 Prosecution's Submissions at paras 52–53.

56 Petitioners' Submissions at para 36.

112 I was of the view that the petitioners had indeed suffered material and serious injustice in this case, although not entirely for the reasons advanced by the petitioners. I have already outlined above why I found no bias – real or apparent – in this case. So that was not a ground for finding serious injustice. Instead, I considered that there was serious injustice because property which indisputably belonged to the petitioners was being retained by the CAD without any legal basis for its retention.

113 The prosecution emphasised that the injustice suffered by the petitioners here did not reach the level of the injustice suffered by the petitioner in *Rajendar Prasad*. I agreed. The seized property in *Rajendar Prasad* amounted to the vast majority of the petitioner's financial assets in that case: see [68]. Here, the prejudice occasioned to the petitioners was indeed less draconian. But that did not mean the petitioners had not suffered serious injustice.

114 The Magistrate had indicated that she was not satisfied on the basis of the s 370 Report that the seized property was relevant to criminal investigations: see [94]–[95] above. The injustice caused to the petitioners lay in the wrongful retention of the seized property where there was no basis in law for its continued seizure. It was no answer to say that the petitioners could have made copies of the documents for the purposes of filing their income tax returns. The onus was on the prosecution first to justify the continued retention of the property once the one-year deadline was up. If there was no proper basis for the seized property to be retained, it must be released. I therefore concluded that the threshold for this Court's revisionary jurisdiction to be exercised had been crossed.

115 I wish to make clear, however, that there was serious injustice here only because there was no doubt that the petitioners were the persons entitled to the

possession of the seized property. The question who has that entitlement is relevant to determining the issue of serious injustice. As the High Court held in *Oon Heng Lye*, a petitioner who is not lawfully entitled to the possession of the seized property because the property was in fact the proceeds of his criminal activity could not be said to have suffered serious injustice from having that property seized: at [42]–[44]. The question whether persons who have an interest in the seized property, which does not amount to a legal entitlement to the possession of the property, could be said to suffer serious injustice if the property was seized was not before me. I therefore make no observations on that question.

Issue 5: this Court's substantive determination of the s 370 CPC application

116 Both the petitioners and the prosecution agreed that if this Court found that there were grounds for the Court to exercise its revisionary jurisdiction, it should substantively determine the s 370 application. I agreed that this Court had the power to take such action. As the High Court in *Rajendar Prasad* has ruled, the High Court, having determined that the threshold for the exercise of its revisionary jurisdiction has been crossed, has the power to consider the matter afresh. Instead of remitting the matter to the Magistrate, the court can step into the place of the Magistrate and make a fresh order: at [27]. I turn then to describe the analysis I undertook in substantively determining this application.

117 I first acknowledged that the s 370 Report in this case was the subject of some clerical amendments on 2 July 2018. Consistently with my observations above at [76] to [77], I considered that these clerical and editorial amendments did not so radically alter the substance of the Report or introduce new material

that it would do violence to the statutory framework to admit the amended s 370 Report of 2 July 2018. I therefore admitted the amended s 370 Report.

118 Also consistently with my analysis above, however, I did not rely on the Annex or the Addendum in coming to my decision. I also made no reference to Mr Eugene Neo's Affidavit.

119 The question that remained was whether the amended s 370 Report was satisfactory. This turned on the question of how much material or information the police or prosecution must disclose in the report.

120 The law is clear that at the bare minimum, the information specified in [81(f)] of *Mustafa Ahunbay* must be given, because that is the information expected to be given to persons with the right to be heard where the full s 370 report cannot be disclosed to protect the sensitive information within. The Court in *Mustafa Ahunbay* indicated at [81(f)(iv)] that "a brief explanation of the basis for the seizure" must always be disclosed, even where the relevant portion of the report itself can only be disclosed in *ex parte* proceedings before the Magistrate.

121 This point has since been touched on and further developed in the High Court's decision in *Rajendar Prasad* at [46]. Menon CJ indicated that the Magistrate when exercising her power under s 370 must apply her mind to (a) the legislative basis on which an order for the continued seizure of the property is sought; (b) the purpose for which it is sought; and (c) the factual basis on which it is sought, and in that light the Magistrate must determine whether she is satisfied that the seizure should be extended. Although this was framed from the Magistrate's perspective, it was evident also that such material as is provided

to the Magistrate must therefore be sufficiently detailed as to allow the Magistrate to do the three things identified above.

122 Further, Menon CJ in *Rajendar Prasad* also cautioned at [48] that although investigations might not be completed within a year, "this does not mean that a bland assertion from the [Investigation Officer] to the effect that investigations are continuing and that the seized assets are relevant will suffice". The Magistrate "should be provided with such information as would enable her to be satisfied that there is a *reasonable basis* for thinking that the seized property is 'relevant for the purposes of any investigation, inquiry, trial or other proceeding under [the CPC]'", where that is the basis on which the extension of the seizure is sought.

123 I turn then to the amended s 370 Report. After examining the Report, I found myself facing the same difficulty as was experienced by the Magistrate. The amended s 370 Report lacked sufficient information to justify the continued retention of the seized property by the CAD. The only paragraph in the amended s 370 Report that suggested any links at all between the seized property and criminal investigations was paragraph 5. But all paragraph 5 said was that "[the] items seized continue to be relevant to investigations and will be required by the police as they are suspected to constitute evidence of offences under Section 406, 420 of the Penal Code (Cap 224), Section 148(1) of the Companies Act (Cap 50) and Section 34(1) of the Business Names Registration Act".[57] This was plainly insufficient, and was truly nothing more than a bland assertion from the IO which Menon CJ in *Rajendar Prasad* indicated would not be enough. There was also an annex to the amended s 370 Report, but it added nothing to the inquiry into the relevance of the seized property to criminal investigations. All the annex contained was a laundry list of the items seized.

57 Lee Chen Seong Jeremy's 1st Affidavit (27 August 2018) at p 44–45.

124 The prosecution emphasised that the seized property was "evidence" of an offence seized pursuant to s 35(1)(*c*) CPC and proposed that as a distinguishing factor in this case. In this sense, this case was different from earlier cases concerning s 370 CPC, where the items were seized pursuant to s 35(1)(*a*) CPC. The submission appeared to be that because the seized property qualified as "evidence", it must immediately be relevant to investigations, because evidence is necessarily relevant to investigations.[58] As the prosecution put it: "*evidence* must necessarily be relevant for the purposes of investigations", and "where property suspected to constitute evidence of an offence is seized under section 35(1)(c), it also follows that such property is relevant to investigations."[59] The prosecution also appeared to capitalise on the "nature" of the seized property as evidence to downplay Menon CJ's comments in *Rajendar Prasad* that a bland assertion from the IO would not suffice. Instead, the argument was made that the information that must be placed before the court varied depending on the nature of the seized property, and Menon CJ's comments should be restricted to cases where the seized property was suspected to be the proceeds of crime, rather than evidence of an offence.[60]

125 With respect, I failed to see how characterising the seized property as "evidence" of an offence made any difference to the analysis. I accepted, of course, that evidence should generally (though not invariably) be relevant to investigations into any offence. But the prior question was whether the seized property was "evidence" in the first place. The fact remained that no information had been given at all to support even this contention as to how the seized property was evidence of any offence. The offending conduct had not been particularised to any degree, so far as the s 370 Report was concerned, because

58 Prosecution's Submissions at para 60.

59 Prosecution's Submissions at para 60.

60 Prosecution's Submissions at para 64.

all that was said was that there were alleged offences under the Penal Code, or Companies Act, or Business Names Registration Act. And because it was impossible to tell what the offending conduct was, it in turn became impossible to determine if the documents and devices seized were indeed evidence of an offence falling within the provisions identified.

126 It must be borne in mind that in *Rajendar Prasad* at [50], Menon CJ was explicitly clear that "the threshold for *continued* seizure under s 370 of the CPC should be and is more stringent than the threshold for *initial* seizure under s 35 of the CPC". Whatever details the prosecution had given in the amended s 370 Report were no more, or barely more, than what could have been given at the stage of initial seizure. After all, stating that the computers and phones were relevant to the Penal Code, Companies Act and Business Names Registration Act charges was something that could have been asserted a year ago. In my view, the court was entitled to have more specificity now that an entire year had passed.

127 One possibility that arose for consideration, although the parties did not make specific submissions on it, was whether this Court should exercise its powers under ss 401(2) and 392 of the CPC to receive additional evidence where "necessary" in coming to make a fresh order, or to alter or reverse the order made by the Magistrate. This possibility was alluded to by Menon CJ in *Rajendar Prasad* at [27]. Menon CJ ultimately declined to exercise those powers in *Rajendar Prasad* itself, however, because the prosecution's case there had evolved dramatically from the initial assertion that the seized property was relevant to Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) offences to the ultimate position that they were instead relevant as the suspected proceeds of Prevention of Corruption Act (Cap 241, 1993 Rev Ed) offences: see [6] and [69]. Menon

CJ observed that the case that was eventually presented to him was "so substantially different" from the case presented to the Magistrate, that "it would not be just to enable the Prosecution to attempt to remedy the flawed proceedings in this way": at [69].

128 I decided that the Court should not exercise its powers to receive additional evidence, even though such powers are statutorily provided for and undoubtedly exist. I considered that it would be inconsistent with the analysis on the operation of the statutory framework for the High Court to admit fresh material to supplement the report. The reasons I identified above similarly apply here – to do so would effectively provide the prosecution with an avenue to sidestep the one-year reporting deadline, and thus undermine the interests of certainty, finality and fairness. It must be recalled that the High Court was being invited to step into the shoes of the Magistrate to decide the matter. If the Magistrate had no powers to admit fresh material and hear fresh information, as I have determined, then the High Court in the position of the Magistrate also should not have such powers. I recognised, of course, that ss 401(2) and 392 of the CPC have conferred such powers on the High Court, but not on the Magistrate. My considered view, however, was that the High Court, although having such powers, should exercise them only sparingly, so as to preserve the conceptual consistency of the overall approach. There was nothing exceptional about this case, however, that warranted this Court exercising those powers.

Conclusion

129 For the foregoing reasons, I was not satisfied in the circumstances that the seized property remained relevant to criminal investigations. What s 370(2) and (3) CPC required, therefore, was that the seized property be released to the persons entitled to the possession of them. Accordingly, I allowed the criminal

revision, and ordered that the property be released to the petitioners.

See Kee Oon
Judge

Adrian Wong and Ang Leong Hao (Rajah & Tann Singapore LLP) for the petitioners;
Peter Koy, Sng Yi Zhi Eugene and Ben Mathias Tan (Attorney-General's Chambers) for the respondent.