IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 53

Criminal Motion No 28 of 2020

Between

Syed Suhail bin Syed Zin

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Compensation and costs]

TABLE OF CONTENTS

Syed Suhail bin Syed Zin
v
Public Prosecutor

[2021] SGCA 53

Court of Appeal — Criminal Motion No 28 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Judith Prakash JCA
13 April 2021

14 May 2021

Andrew Phang Boon Leong JCA (delivering the judgment of the court):

1 CA/CM 28/2020 ("CM 28") was an application by the applicant, Syed Suhail bin Syed Zin, to this court for it to review its earlier decision in CA/CCA 38/2015 ("CCA 38"), in which this court had dismissed the applicant's appeal against his conviction under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") and the mandatory death penalty that was imposed. After hearing parties, we dismissed CM 28 on 16 October 2020 in a written judgment reported as *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 ("the Judgment"). After the dismissal of CM 28, the Prosecution wrote to court on 17 October 2020 indicating its intention to seek a personal costs order against the applicant's counsel, Mr Ravi s/o Madasamy ("Mr Ravi"). We invited Mr Ravi to respond to the Prosecution's submissions. Having considered parties' written submissions, we find that this is an appropriate case in which to make a personal costs order against Mr Ravi.

Background

2 We begin with a summary of the background facts, which are set out in greater detail in the Judgment at [4]–[10]. The applicant had been found in possession of not less than 38.84g of diamorphine. Despite his initial account in his statements, the applicant's defence at trial was that all of the drugs found in his possession were for his personal consumption. His defence therefore focused on his consumption habits, his financial means, and attempts to explain his inconsistent statements (see the Judgment at [6]).

3 The trial judge ("Trial Judge") rejected the applicant's contentions on his financial means. In the circumstances, he found that the applicant had failed to prove on a balance of probabilities that the drugs were for his personal consumption, and hence failed to rebut the presumption of trafficking under s 17 of the MDA. In terms of sentencing, the Trial Judge held that the applicant was not a mere courier and that s 33B(3)(*b*) of the MDA did not apply as the applicant had not claimed that he was suffering from the requisite abnormality of mind. In addition, no certificate of substantive assistance was issued. Hence, the Trial Judge imposed the mandatory death penalty (see the Judgment at [7]–[8]). On 18 October 2018, in CCA 38, this court affirmed the Trial Judge's decision (see the Judgment at [9]).

CM 28

4 On 17 September 2020, the applicant applied for leave in CA/CM 27/2020 ("CM 27") under s 394H of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to make a review application. He raised two grounds, which we quote from the Judgment at [11]:

> … (a) that the issue of whether he had suffered from an abnormality of mind under s 33B(3)(*b*) of the MDA had not been

> sufficiently canvassed at the trial or appeal stages ('the Abnormality of Mind Ground'); and (b) that his trial counsel did not make the necessary inquiries to adduce evidence in relation to his uncle, in particular, on the alleged $20,000 advance which would have shown that he had the financial means to sustain his alleged level of consumption ('the Inheritance Ground'). …

5 Leave to commence the review application was granted on 19 September 2020. CM 28, the review application, was filed on 21 September 2020 and was heard on 22 September 2020. We summarise the key aspects of the hearing before us as follows:

(a) Mr Ravi argued first that Mr Francis Ng SC ("Mr Ng") and his team should be disqualified from representing the Prosecution because the Prosecution had come into contact with a letter from the applicant to Mr Ramesh Tiwary ("Mr Tiwary") (his then-counsel) and four letters from the applicant to his uncle ("the Disqualification Application"). We declined to disqualify Mr Ng and his team from representing the Prosecution, finding that "Mr Ravi had failed to show the court any basis" for his application especially given that neither Mr Ng nor any member of his team in this matter had sight of any such letters (see the Judgment at [12]).

(b) Mr Ravi confirmed that he would not be relying on the Inheritance Ground, acknowledging that "he had no real basis to advance this ground" (see the Judgment at [13]). We observed that if that was the case, then the point should not have been advanced at all, and that "as officers of the court, counsel are bound not to advance grounds that are without reasonable basis, for if they do, they face the prospect of being sanctioned for abusing the process of the court" (see the Judgment at [13]).

(c) In relation to the Abnormality of Mind Ground, after we pointed out that the applicant's involvement needed to be restricted to being a courier in order to qualify for the alternative sentencing regime, Mr Ravi sought permission to address the court on this issue, which we granted. Mr Ravi filed further submissions on 25 September 2020 accordingly to raise his argument on the point ("the Courier Argument"), which necessitated a written response from the Prosecution.

6 Having considered the arguments, we held that there was no merit to CM 28 and dismissed the application. As our findings on the arguments have a significant bearing on whether a personal costs order is appropriate, we summarise them briefly here.

7 In relation to the Abnormality of Mind Ground and the Courier Argument, we found that all of these were materials that could have been adduced previously with reasonable diligence (see s 394J(3)(*b*) of the CPC) as ample opportunity had been afforded to the applicant to introduce materials relating to the alternative sentencing regime (see the Judgment at [23]–[24]). Further, there was no change in the law since the prior criminal proceedings which would give rise to new legal arguments (see the Judgment at [25] and [28]). We also found that these materials were not compelling, as defined by s 394J(3)(*c*) of the CPC. First, the applicant's involvement had to be restricted to being a courier to qualify for the alternative sentencing regime, but the Courier Argument could not be sustained given the language of the provision and the Trial Judge's finding of fact (which was not reversed on appeal) that the applicant was *not* a mere courier and intended to repack the drugs for sale to third parties. Further, his argument that he was merely a courier would have been inconsistent with the defence of personal consumption he ran at trial. The applicant had also confirmed in the prior proceedings that he was not pursuing

that argument. There was no evidence at trial, and no new evidence was adduced, to support any argument that the applicant was a mere courier (see the Judgment at [32]). Second, the evidence at trial suggested that the applicant was not in fact suffering from such abnormality of mind that would have substantially impaired his mental responsibility for the offence (see the Judgment at [33]). Hence, we found at [37] of the Judgment that "the Abnormality of Mind Ground and the Courier Argument [*did*] *not come close* to fulfilling the requirement of compellability under s 394J(3)(*c*) of the CPC" [emphasis added].

8 We also dealt briefly with the Inheritance Ground, finding that it was a "*non-starter* as it [was] neither a legal argument nor evidence that [fell] within the ambit of s 394J(2) of the CPC" [emphasis added]. Ample opportunity had been given to the applicant to pursue this route of inquiry and to adduce further evidence on appeal, but the applicant had chosen not to take the opportunity (see the Judgment at [39]). Again, we cautioned counsel "against raising points or arguments that they do not have a reasonable basis to submit upon as to do so would be an abuse of the process of court" (see the Judgment at [40]).

9 Subsequent to the release of the Judgment, on 17 October 2020, the Prosecution wrote to court stating its intention to seek a personal costs order against Mr Ravi. On 22 October 2020, we issued timelines for submissions to be filed to deal with that issue. At Mr Ravi's request, determination of the issue of costs was deferred pending disposal of another application in which the applicant was involved, HC/OS 975/2020 ("OS 975"). We observe here that Mr Ravi again made reference to OS 975 in his arguments on costs, and we deal with the relevance of the allegations therein below. OS 975 was disposed of by the General Division of the High Court on 16 March 2021 and, on 29 March 2021, the Prosecution sought directions for Mr Ravi to file reply submissions.

Directions were issued and Mr Ravi filed his reply submissions on 13 April 2021.

Parties' arguments on the issue of costs

The Prosecution's arguments

10 The Prosecution sought a personal costs order of $10,000 against Mr Ravi, on the basis that his conduct in acting for the applicant in CM 28 was "plainly unreasonable and improper". In this regard, the Prosecution emphasised the duty of defence counsel under Division 1B of Part XX of the CPC, especially in the light of the requirement that counsel must file an affidavit if the applicant is represented. Given this requirement, defence counsel are under particular obligations to review the record of proceedings and evidence, to make "full and frank disclosure", and to give counsel an opportunity to respond if negative imputations are made on the conduct of previous counsel (in accordance with r 29 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ("PCR") and the decision of this court in *Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 907 ("*Farid*") at [137]). In the light of these obligations, Mr Ravi's conduct fell far short of the standards expected.

11 The Prosecution made three arguments in particular. First, Mr Ravi had misrepresented or materially omitted facts concerning what had taken place in prior proceedings in his affidavit and raised legally unsustainable arguments. Second, Mr Ravi had made unjustified allegations against the applicant's previous counsel, without notifying them that he was going to make those allegations and giving them a chance to respond. Third, Mr Ravi's real purpose in bringing the review application "appears to have been to frustrate the lawful

process of the execution of the sentence provided by law", and he had adopted a "blunderbuss approach" that amounted to an abuse of the court's process.

Mr Ravi's arguments

12 Mr Ravi argued that no personal costs order should be made against him. Leave was granted under s 394H of the CPC for CM 28 to be filed, even though it could have been summarily dismissed. When leave was granted, Mr Ravi was therefore of the view that there might be some merit to one or more grounds raised in CM 28. At the time, he had a reasonable basis to believe in good faith that CM 28 was not bound to fail. In any event, no unnecessary costs were incurred by the Prosecution because the court had taken the opportunity to hear the full arguments as the statutory regime was "relatively new" (see the Judgment at [16]). If the matter had been summarily dismissed at the leave stage, the costs incurred by the Prosecution would have been substantially lower. Mr Ravi also referred to the allegations that the Prosecution had come into possession of privileged communications (which allegations were related to the litigation in OS 975), arguing that the Prosecution's failure to disclose the names of prosecutors involved in the alleged misconduct made it unfair for him to be disciplined when prosecutors were beyond the reach of the court or a disciplinary tribunal.

13 In response to the Prosecution's allegations, Mr Ravi contended that the insinuation that he had chosen not to invite the applicant's prior counsel to respond because he knew that they would contradict his case was a baseless one. Further, he was instructed only after the warrant of execution was issued on 8 September 2020, and there was limited time to assess every piece of material in the applicant's case. When it became clear that there was no merit to certain arguments, specifically the Inheritance Ground, he conceded the point. Mr Ravi

also noted that this court did not go so far as to find in the Judgment that there was an abuse of process in raising the Inheritance Ground.

14 We observe here that the applicant has also written a letter to the court dated 13 April 2021, in which he requested that the court "waive the personal costs" incurred by Mr Ravi, on the basis that Mr Ravi has provided services to him without seeking any payment. We take it that the applicant was urging the court not to make a personal costs order against Mr Ravi, and deal briefly with the question of whether *pro bono* representation ought to affect our analysis below.

Applicable law

15 We begin by setting out the legal principles which apply to the question of when a court which has heard an application in a criminal matter would make an order against an applicant's counsel for that counsel to pay costs personally to the Prosecution.

16 In *Abdul Kahar bin Othman v Public Prosecutor* [2018] 2 SLR 1394 ("*Abdul Kahar*") at [77]–[80], this court held that the court hearing criminal proceedings had the power under s 357(1)(*b*) of the CPC or its inherent powers to order that defence counsel pay costs directly to the Prosecution. There is no dispute about the existence of this power. The relevant part of s 357(1) of the CPC reads as follows:

> **357.**—(1) Where it appears to a court that *costs have been incurred unreasonably or improperly in any proceedings (for example, by commencing, continuing or conducting a matter the commencement, continuation or conduct of which is an abuse of the process of the Court) or have been wasted by a failure to conduct proceedings with reasonable competence and expedition*, the court may make against any advocate whom it considers responsible (whether personally or through an employee or agent) an order —

> …
>
> (*b*) directing the advocate to repay to his client costs which the client has been ordered to pay to any person.
>
> [emphasis added]

As this court observed in *Abdul Kahar*, the intention behind an order under s 357(1)(*b*) of the CPC is "to penalise and discipline the solicitor in question for the sort of conduct set out in that provision" (at [77]) and "to show disapproval of the solicitor's conduct in the proceedings in question" (at [80]).

17 Further, there is an additional formal requirement under s 357(1A) of the CPC for matters under Division 1B of Part XX of the CPC, which applies to the present proceedings:

> If the Court of Appeal or the High Court makes an order under subsection (1)(*a*) or (*b*) in respect of any proceedings for a matter under Division 1B of Part XX, and the prosecution has applied to the Court for an order for the costs of that matter to be paid to the prosecution on the ground that the commencement, continuation or conduct of that matter was an abuse of the process of the Court, the Court must state whether it is satisfied that the commencement, continuation or conduct of that matter was an abuse of the process of the Court.

We observe here that the Prosecution has contended that the commencement and conduct of CM 28 amounted to an abuse of process. If we choose to make a costs order, therefore, this formal requirement will apply. We return to this as part of our findings below.

18 In determining how to exercise the power under s 357(1)(*b*) of the CPC or the court's inherent power, we find that the principles developed in the context of civil cases are of general application here as well. This is so given the clear similarity in language between s 357(1) of the CPC and O 59 r 8(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). We also respectfully agree with the pronouncements made by V K Rajah JA in *Zhou Tong and others v*

Public Prosecutor [2010] 4 SLR 534 ("*Zhou Tong*") at [25] that these two provisions "are based on the very same practical and ethical considerations", and with his apparent adoption, in a criminal case, of the principles derived from civil cases at [28]–[30] of *Zhou Tong*. Indeed, Mr Ravi also adopted the same principles in structuring his submissions to us.

19 As summarised most recently by this court in *Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2021] SGCA 23 ("*Munshi Rasal*") at [17]:

> … The applicable test in deciding whether to order costs against a solicitor personally is the three-step test set out by the English Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205 at 231, which has been endorsed by this court in *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 at [71] and *Ho Kon Kim v Lim Gek Kim Betsy and others and another appeal* [2001] 3 SLR(R) 220 at [58]:
>
> > (a) Has the legal representative of whom complaint is made acted improperly, unreasonably or negligently?
> >
> > (b) If so, did such conduct cause the applicant to incur unnecessary costs?
> >
> > (c) If so, is it in all the circumstances just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?

20 Our courts have also repeatedly adopted the following observations by Sir Thomas Bingham MR (as he then was) in the English Court of Appeal decision of *Ridehalgh v Horsefield* [1994] Ch 205 ("*Ridehalgh*") at 232–233 concerning the approach to be taken to each of the words, "improper", "unreasonable" and "negligent" (see the decisions of this court in *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 at [71]; *Tan King Hiang v United Engineers (Singapore) Pte Ltd* [2005] 3 SLR(R)529 ("*Tan King Hiang*") at [18]; and *Zhou Tong* at [29] and [32]):

> 'Improper' … covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty.

> It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgment limited to that. Conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.
>
> 'Unreasonable' … aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.
>
> …
>
> … [The term] 'negligent' should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession.

21 As long as it is recognised that these are not mutually exclusive categories (see *Tan King Hiang* at [19]) and that the ultimate question must be whether it is just to make such a personal costs order, we respectfully consider that these observations are helpful in guiding the court's analysis of whether a personal costs order should be made in any given case. We also observe that this court held in *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] 2 SLR 532 at [67] that one situation where a personal costs order may be appropriate "is where the solicitor advances a wholly disingenuous case or files utterly ill-conceived applications even though the solicitor ought to have known better and advised his client against such a course of action".

Issues before this court

22 We adopt the three-step approach in this case (see [19] above). The issues for our determination are therefore as follows:

(a) Has Mr Ravi acted improperly, unreasonably or negligently? In this regard, the specific allegations give rise to the following questions:

(i) Did Mr Ravi omit material facts, misrepresent facts or advance arguments which were factually or legally unsustainable?

(ii) Did Mr Ravi make unsustainable allegations against the applicant's previous counsel without giving them a chance to respond?

(iii) Did Mr Ravi act in such a manner to frustrate the lawful process of execution in abuse of the court's process?

(b) If so, did such conduct cause the Prosecution to incur unnecessary costs?

(c) If so, is it in all the circumstances just to order Mr Ravi to compensate the Prosecution for the whole or any part of the relevant costs?

23 If such an order is to be made, the secondary issue is what the quantum of costs should be.

Step 1: Improper, unreasonable or negligent conduct

24 We find that Mr Ravi had acted improperly in the manner in which he commenced and conducted CM 28. In this regard, we deal with each of the Prosecution's allegations in turn.

Omissions, misrepresentations and unsustainable arguments

The Abnormality of Mind Ground and Courier Argument

25 In relation to the Abnormality of Mind Ground, the Prosecution first argued that Mr Ravi had omitted to mention in his supporting affidavit in CM 28 that the applicant's trial counsel had confirmed in court that the applicant was not relying on s 33B(3)(*b*) of the MDA and that there was unchallenged evidence in the form of a report produced upon the applicant's psychiatric examination which found that he had "been free of psychotic symptoms for many years" and "was not of unsound mind at the time of the alleged offence".

26 With respect, we do not agree with the Prosecution's view of Mr Ravi's affidavit. It is true that the applicant's trial counsel had confirmed in court that the applicant was not relying on s 33B(3)(*b*) of the MDA. In fairness to Mr Ravi, however, his assertions in his affidavit did not contradict that fact, nor was that point material to the way in which he had approached the case. His point appears to have been that the counsel had failed to *properly* consider whether s 33B(3)(*b*) of the MDA applied to the applicant and had failed to pursue the inquiry, thus *leading to* the position taken in court that the applicant would not rely on s 33B(3)(*b*) of the MDA. In other words, Mr Ravi sought to argue that it was the previous counsel's, and not the applicant's, decision not to pursue the issue of whether the applicant suffered from the requisite abnormality of mind (see para 6.2 of Mr Ravi's affidavit). Hence, the mere fact that the applicant's trial counsel had confirmed in court that the defence was not pursuing s 33B(3)(*b*) of the MDA was not, strictly speaking, material to Mr Ravi's point, since he was seeking to go behind the counsel's confirmation. Whether these were sustainable allegations or arguments that should have been made at all is, of course, a separate matter, which we deal with below.

27 As for the omission to refer to contrary evidence, the Prosecution's argument appears to be predicated on its view that there is a duty to make "full and frank disclosure" in the affidavit. No authority was cited for that proposition, and we doubt that such a duty exists in this context. Such a duty generally arises in the context of *ex parte* applications: see the decision of this court in *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [83]. CM 28, being the substantive review application, is clearly not an *ex parte* application. The leave application was also not determined *ex parte* as s 394H(4) of the CPC gives the respondent the right to file written submissions. In the circumstances, we do not think that counsel in filing such a supporting affidavit is under such a duty to make full and frank disclosure in the sense in which it is traditionally understood. That said, the fact that counsel makes certain allegations or arguments in the face of contrary evidence and without dealing with that contrary evidence is a relevant consideration, which we also deal with below.

28 The Prosecution was on very much firmer ground, however, when it argued that a reasonable defence counsel would have known that there was no basis for the Abnormality of Mind Ground and Courier Argument. First, in order to get around the fact that trial counsel had expressly confirmed *twice* that the applicant was not alleging that he suffered an abnormality of mind for the purposes of s 33B(3)(*b*) of the MDA, Mr Ravi had to allege that the trial and appellate counsel had simply failed to pursue the inquiry. However, Mr Ravi provided no basis for these allegations. As is clear from the Judgment, these allegations found no traction with us. At [23] of the Judgment, we proceeded on the basis that the applicant had in fact confirmed to the Trial Judge through his counsel that he was not relying on an argument based on an abnormality of mind as that was the only plausible approach on the facts. Once the applicant's confirmations to the Trial Judge were taken at face value, it was clear beyond

doubt that the applicant had failed to take what was an ample opportunity afforded to him to introduce materials to argue that he could rely on s 33B(3)(*b*) of the MDA. This was also true on appeal as this court had also given the applicant the opportunity to consider whether a further psychiatric report was required on appeal, but he chose not to adduce any such evidence (see the Judgment at [24]).

29 Second, in formulating the grounds for review, Mr Ravi did not appreciate the legal requirements under s 33B(3) of the MDA and the fact that the requirements of abnormality of mind and of being a courier were *conjunctive* requirements. Although the issue of whether the applicant was a courier was noted in passing in one paragraph in the applicant's written submissions in CM 27, this was not a *ground* for seeking a review of CCA 38 and appeared instead to be a description by the applicant of the prejudice he had suffered as a result of his alleged abnormality of mind not being pursued at trial. Apart from the fact that we had to point out to Mr Ravi at the hearing that these were conjunctive requirements – a point which we think should have been apparent to any reasonably diligent defence counsel – the Courier Argument itself was wholly without merit. There was no basis for raising any new legal argument in that regard (see the Judgment at [25]). There was also no basis for any factual argument – the Trial Judge had made a clear finding that the applicant was not a mere courier, and once the Inheritance Ground was abandoned, there was no factual basis for interfering with the Trial Judge's finding of fact (see the Judgment at [24] and [32]). This, in turn, meant that any application based on s 33B(3)(*b*) of the MDA was fatally flawed from the outset. There was never any chance that the applicant could have succeeded on the review application since he could never have shown a miscarriage of justice given the facts of this case – even if he were suffering from the requisite abnormality of mind, he

would not have qualified for the alternative sentencing regime under s 33B(3) of the MDA.

30 Third, the Abnormality of Mind Ground itself was without merit, and this would have been clear from the outset. The argument could have been made with reasonable diligence at trial or the appeal – Mr Ravi's arguments on the scope of *Mohammad Azli bin Mohammad Salleh v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 1374 at [34] were misconceived (see the Judgment at [28]), and, in any event, would not have applied to the facts given the express confirmation by the trial counsel that the applicant was *not* advancing a case of abnormality of mind. As to whether that argument was compelling, we found that none of the medical evidence in the case supported the allegations of abnormality of mind, or even suggested that the applicant "*might* have any mental or behavioural disorder, or any other related disorder that *might possibly* have supported the finding of an abnormality of mind which had substantially impaired his mental responsibility for the offence" [emphasis in original] (see the Judgment at [34]). Both Dr Kenneth Koh's report and Dr Munidasa Winslow's ("Dr Winslow's") report (which the applicant also relied on) clearly stated that there were no psychotic symptoms at the material time.

The Inheritance Ground

31 Coming to the Inheritance Ground, we agree with the Prosecution that Mr Ravi had misrepresented certain facts in his affidavit. At para 5.22 of his affidavit, in particular, Mr Ravi deposed as follows:

> 5.22 Counsel on appeal also did not address this issue of the decision of the trial counsel to not address some issues and only challenged the 'adverse inference' by the trial judge from the failure by trial counsel to produce a key witness to testify in

> relation to the Applicant's claim to have received the $20,000 through his uncle.

32 This gave a false impression of the applicant's previous counsel's conduct of the matter. The history of the proceedings demonstrated that counsel had in fact pursued the inquiry as to the uncle's evidence. We observed in the Judgment at [39] that on 3 May 2018, an adjournment was granted to allow the applicant to adduce evidence from his uncle, by way of a statutory declaration to be filed within two weeks. In fact, it was Mr Tiwary, the applicant's appellate counsel at the time, who communicated the applicant's desire for such evidence to be adduced on appeal. No such evidence was filed within that time. Subsequently, on 16 August 2018, when Mr Amarick Gill had taken over conduct of the appeal, the court gave the applicant a *further* opportunity to file a statutory declaration or affidavit by the uncle. This opportunity was not taken. This was not a situation where counsel had failed to seek opportunities for further evidence to be adduced. Instead, this was a case where counsel *had* communicated the applicant's intent to adduce further evidence, but, for reasons best known to the applicant, no steps were ultimately taken to do so in court. Mr Ravi's attempt to cast the blame on the applicant's counsel was not just without basis, but was clearly contradicted by the record and amounted to a misrepresentation of the facts. We find this lack of candour to be particularly worrying.

33 For similar reasons, it ought to have been clear from the outset that the Inheritance Ground would have failed. Opportunity was given (as evidenced by the multiple adjournments of CCA 38) for the applicant to adduce the necessary evidence. No proper steps were taken to do so in the prior proceedings. Mr Ravi himself conceded this when he confirmed that he was no longer relying on the Inheritance Ground. Indeed, this had led us to observe that counsel should not

raise "points or arguments that they [did] not have a reasonable basis to submit upon as to do so would be an abuse of the process of court" (see the Judgment at [40]). In this regard, Mr Ravi's attempt to argue that his acts were not in abuse of process because we did not go so far as to come to that conclusion in the Judgment is wholly misconceived. If anything, we were hoping to avoid making unnecessary pronouncements against Mr Ravi. However, in the circumstances and given the application for a personal costs order, this cannot be avoided. We do indeed find that in bringing this argument without reasonable basis, Mr Ravi had acted in abuse of the process of court.

34 On a related note, we find Mr Ravi's attempt to characterise his concession of the Inheritance Ground at the hearing as a point in his favour to be entirely implausible. This was not a matter of potentially contradictory evidence, or material that was difficult to assess without detailed investigation or inquiry. Neither was this a case where Mr Ravi initially had some basis for advancing the argument which was then rebutted by the Prosecution. This was a case where there was simply *no basis at all* for advancing the argument in the first place. His concession is *not* a point in his favour.

Allegations against the applicant's previous counsel

35 The allegations against the applicant's trial and appellate counsel formed a central pillar of CM 28 and Mr Ravi's arguments. However, as is clear from the Judgment, the allegations against counsel were baseless and advanced without any evidence or factual basis. Rather, it seems clear to us that the allegations against counsel were only made because the applicant had, in truth, confirmed through his counsel that he was not pursuing certain grounds before the Trial Judge and the Court of Appeal. As an attempt to get around inconvenient facts, however, such allegations were entirely inappropriate.

36 Further, in making these allegations, Mr Ravi had failed to abide by his professional duty to give counsel whose conduct he was criticising in court an opportunity to respond. Rule 29 of the PCR reads:

> **29.** A legal practitioner (*A*) must not permit an allegation to be made against another legal practitioner (*B*) in any document filed on behalf of *A*'s client in any court proceedings, unless —
>
> > (*a*) *B* is given the opportunity to respond to the allegation; and
> >
> > (*b*) where practicable, *B*'s response (if any) is disclosed to the court.
>
> [emphasis in original]

37 Similarly, in *Farid* at [137], this court observed, in relation to complaints against previous counsel:

> Natural justice applies to the previous counsel … and so, like anyone else accused of some wrong, he must be given notice of the allegations made against him and must have a reasonable opportunity to respond in writing and, where necessary, to attend and make submissions at the hearing where his conduct as counsel is an issue …

38 Mr Ravi never gave the applicant's trial and appellate counsel an opportunity to respond to what were very serious allegations. In doing so, he had breached r 29 of the PCR and had failed to abide by this court's guidance in *Farid*.

39 We find that Mr Ravi's failure in this case was particularly egregious. First, the making of unsubstantiated allegations in this case was a significant factor in the commencement of an unmeritorious case. As this court observed in *Farid* at [136], such attacks on counsel are "collateral" and the court must be particularly careful to prevent abuse of its process arising from such allegations:

> … It must be remembered that allegations made against previous counsel could subsequently also be made against present counsel if the present counsel are not able to secure the

> desired outcome for the client. In this manner, such collateral attacks against court decisions could go on almost indefinitely. They are collateral attacks because they do not engage the merits of the court decisions on the evidence or the submissions made but seek to impugn the decisions indirectly by alleging that the court did not have the full evidence before it or was given wrong information because of inept counsel. *The court must therefore be astute to ensure that its processes are not abused by incessant applications to retry or to re-open concluded matters by using such collateral attacks on court decisions through the device of complaints against previous counsel for alleged incompetence and/or indifference.* [emphasis added]

In the context of reopening concluded criminal matters, the making of unsubstantiated allegations that previous counsel had failed to pursue the necessary inquiries is particularly egregious conduct. As is clear from the Judgment, such allegations in this case were ultimately distracting and gave rise to arguments based on false premises – once the baseless allegations in Mr Ravi's affidavit were disregarded, it became clear that there was simply no merit to the contention that the decision in CCA 38 had to be reviewed.

40 Second, counsel's explanation for their conduct in the prior proceedings would have been essential to assessing the truth of the account that Mr Ravi was ultimately putting forward in his affidavit. In failing to seek counsel's explanations, we find that Mr Ravi had failed to take reasonable care to ensure that he presented the truth to the court. In other words, his failure in relation to his fellow lawyers also led to a failure in his duty to the court. If Mr Ravi had given counsel an opportunity to respond to his allegations before filing the affidavit, he might have been able to present a more accurate picture of what had happened in the prior proceedings.

Collateral purpose

41 We turn then to the final allegation by the Prosecution, which was that "the real purpose of the review appears to have been to frustrate the lawful

process of the execution of the sentence provided by law". This was effectively an allegation of collateral purpose. While this inference may be drawn in the appropriate case, we do not go so far here. In this case, as the Prosecution itself highlighted to us in its written submissions on costs, the applicant was separately involved in legal proceedings in HC/OS 891/2020 in which a stay of execution was granted on 17 September 2020, before CM 28 was heard. Therefore, it does not strike us that CM 28 was brought simply to postpone the applicant's execution. In so far as the Prosecution's argument was that the application was brought to prevent the applicant from suffering the death penalty, that much is obvious in this context, in that the desired outcome was a successful application to set aside the conviction and/or the death penalty. It seems to us that more would be needed to suggest that intended outcome was in itself an abuse of process. The more pertinent question is whether the attempt to reach that desired outcome was conducted in such a manner as to amount to an abuse of process.

Conclusion on step 1

42 Having regard to the findings above, we find that Mr Ravi has acted improperly and that CM 28 was brought in abuse of process. Mr Ravi had acted improperly as his conduct fell short of what is expected of reasonable defence counsel, and was "[c]onduct which would be regarded as improper according to the consensus of professional (including judicial) opinion" (see *Ridehalgh* at 232). He had brought an application without any real basis and without due regard to the statutory requirements for the alternative sentencing regime and for the review application process, lacked candour in misrepresenting what the applicant's prior counsel had done to pursue the inquiry relating to the Inheritance Ground, and failed to comply with the PCR and principles of natural justice in relation to giving the applicant's prior counsel a chance to respond.

43 None of Mr Ravi's counter-arguments warrants drawing a different conclusion. Mr Ravi's argument that he was instructed only after the warrant of execution was issued on 8 September 2020 and had limited time to assess the applicant's case is not, with respect, a compelling one. The problems with the case did not concern issues that required a significant amount of time to assess. The central problem with the Abnormality of Mind Ground was one that would have been apparent from a plain reading of s 33B(3) of the MDA. A reading of the record would also have shown that counsel had repeatedly confirmed that the applicant was not relying on an argument based on an abnormality of mind, and a reading of the psychiatric reports (which Mr Ravi did manage to do as evidenced by para 5.4 of his affidavit where he referred to Dr Winslow's report) would have made it clear that there was no evidence to support the applicant's new claim. In relation to the Inheritance Ground, there was no attempt to identify what the evidence was, and it would also have been clear from a reading of the record that the issue was already considered but that the applicant had chosen not to pursue the matter further. All of this could have been properly assessed between 8 September 2020 and the filing of CM 27 on 17 September 2020.

44 The fact that this is a capital case and that the applicant faces the death penalty does not warrant a relaxation in the standards expected of counsel. In fact, as we go on to discuss at [56] below, maintaining rigorous standards in this context is particularly important. While it may appear tempting to treat Division 1B of Part XX of the CPC as one final chance to reopen a concluded case, the review application process is not, in truth, something that every accused person should avail himself or herself of. It bears repeating that a review application is not an appeal. In the context of the death penalty, the accused person would have already had his or her case considered at least twice (even if

there is no appeal: see Division 1A of Part XX of the CPC). If counsel concerned assesses the case for review and considers that it lacks merit, then no application should be brought, even if the applicant would face imminent execution. If counsel chooses to bring such an application despite its lack of merit in an attempt to stave off execution or on the off chance that it might somehow succeed, then a personal costs order is all the more appropriate. We recognise that in this emotive context, these decisions are not easy, and adverse costs orders will generally not be visited upon counsel who make errors of judgment which do not amount to improper or negligent conduct. However, standards must be upheld and we do expect counsel, as professionals, to be able to exercise self-discipline, and to act with reason and not just on the basis of emotions.

45 Further, Mr Ravi's reference to his good faith belief that CM 28 was not bound to fail is, with respect, misplaced. First, Mr Ravi argues that because leave was granted in CM 27, he had a reasonable basis to believe that CM 28 was not bound to fail. We do not accept this argument as it is based on an incorrect understanding of the responsibility of counsel, who cannot be a merely passive agent acted upon by his client and the court. It was *Mr Ravi's* case that leave should be granted, and in CM 28, *his* case that the review should succeed. Further, the fact that leave was granted in CM 27 should not have significantly affected Mr Ravi's assessment of the merits of his case. If the case had merit, then that would have been independent of the court's determination in CM 27. If the case did not have merit, and Mr Ravi's assessment was based merely on the fact that leave was granted in CM 27, that suggests to us that he was simply raising arguments to see what would stick – a "blunderbuss approach", as the Prosecution characterised it. Far from being an argument in his favour, that

would seem to us to make it an appropriate case in which to consider a personal costs order.

46 Indeed, these were the circumstances under which leave was granted in CM 27 (see the Judgment at [16]) (Andrew Phang Boon Leong JA was the judge who heard this particular application):

> As the judge hearing the application for leave in these proceedings under s 394H(6)(*a*) of the CPC, I was of the view that this was, based on the relevant materials before me, an application that ought to have been dismissed. What tipped the scales in favour of the grant of leave (and, hence, the present review hearing before a full *coram* of judges) was the fact that the current statutory regime was relatively new and there was some benefit to be had in having a full *coram* set out the stringent nature of the criteria for allowing any such application after considering the arguments. Indeed, it seemed to me that if the court concluded that the present application was one that was so lacking in merit, then having set out the position in this judgment, it would afford a principled basis for similar applications in the future to be dismissed at the leave stage (perhaps even summarily), thus remaining true to the spirit as well as substance of the statutory regime …

Granted that Mr Ravi was not privy to the perspective of the court as set out in the above quotation. However, it will be seen that the preliminary views of the court in CM 27 demonstrate that the mere granting of leave was *not* ***necessarily*** *correlated with* and, therefore, did not necessarily support a belief (which Mr Ravi claims to have held) that CM 28 was not bound to fail. In any event, regardless of what the court thought of Mr Ravi's case, as already emphasised in the preceding paragraph, it was his duty as defence counsel to consider the merits of his case. In these circumstances, the grant of leave could not be treated as an *encouragement* to bring CM 28 – it only meant that the matter would proceed to be determined by a full *coram* and nothing more. If anything, the grant of leave in CM 27 was a *boon* to the applicant as it had actually permitted Mr Ravi to take his case forward to a hearing before a full *coram* of judges in

CM 28, despite the reservations that the judge hearing the leave application had about the merits of the case. However, that brings us back full circle to the crucial issue at hand – which is that Mr Ravi should only have proceeded if he had a reasonable basis for advancing his case. Instead (and as we have already noted), he chose to raise arguments to see what would stick.

47 Second, regardless of what Mr Ravi believed in good faith (assuming that he did in fact hold such a good faith belief), we are unable to conclude that he had a reasonable basis to believe that the application had merit. In this regard, we do not think that a mere good faith belief in the merits of the case, without reasonable basis, will necessarily preclude a personal costs order from being made. Otherwise, entirely negligent solicitors who genuinely believe their own faulty arguments would always escape the consequences of their conduct. Mr Ravi's reference to this court's observation at [70] of *Abdul Kahar* does not assist him, as we are unable to read that paragraph as setting out a general principle concerning good faith. Rather, the court appears to have been describing fact-specific reasons against making a personal costs order in that particular case, which reasons do not apply here.

48 We state here clearly that such haphazard and irresponsible attempts at reopening concluded appeals will be looked upon with disfavour. In this context, the manner in which such an unmeritorious application was brought gives rise to the conclusion that the application was brought in abuse of the process set out in Division 1B of Part XX of the CPC. This is so because the statutory requirements reflect the principle that *finality* is an important aspect of justice, upheld by the high threshold for review. The arguments raised by Mr Ravi lacked any merit in this context because they were effectively attempts to relitigate what had already been conceded or determined in prior proceedings, or for which there was simply no new evidence or argument to be raised. In that

regard, it was entirely contrary to the very rationale of the statutory requirements for the application to have been brought. We therefore have no hesitation in finding that the application was brought in abuse of process, a finding which we make explicit pursuant to s 357(1A) of the CPC.

Step 2: Incurring of unnecessary costs

49 The lack of merit in CM 28 should have been apparent to Mr Ravi from the outset. It follows that the application ought never to have been brought. Hence, we find that the improper conduct led to the incurring of unnecessary costs by the Prosecution.

50 Mr Ravi argued, however, that the costs would have been lower if the court had not decided to grant leave in CM 27 for CM 28 to be heard by a full *coram*. We do not find this to be a sustainable argument. It was Mr Ravi's position at all times that the matter should go on for a full hearing in CM 28. Since that was his position and he maintained CM 28 despite the inadequacies in his case, he cannot now turn around to argue that this court should have dismissed the matter at the leave stage. As observed above at [46], this argument also incorrectly attempts to foist his responsibility to assess his client's case onto the court. We find that unnecessary costs were incurred as a result of Mr Ravi's improper conduct.

Step 3: Whether it is just to make the order

51 Turning to the final step, we also find that it is just to make a personal costs order against Mr Ravi.

52 First, this is justified by the particular context of a review application. The strict requirements before a review application will even be entertained

reflect the interests of justice – finality itself is, as has been repeatedly stated, a principle of justice as well. As we observed in the Judgment at [1]:

> Finality is a fundamental part of the legal system … Indeed, it cannot be the case that a dissatisfied litigant could bring repeated applications until the desired outcome is achieved. If so, that would be the very *perversion* of justice and fairness and would make a *mockery* of the rule of law. Counsel should act in the best traditions of the Bar and discourage litigants from repeatedly bringing patently unmeritorious applications before the court. [emphasis in original]

53 In the context of criminal proceedings, "an extremely limited legal avenue" has been provided to review even a concluded appeal (see the Judgment at [2]):

> … However, such review will only be granted in rare cases … Put simply, even a right to review in this context will be the exception rather than the rule. This is one end of the spectrum. At the other (and extreme) end of the spectrum, dissatisfied convicted persons may be tempted to (and, in all probability would succumb to the temptation to) utilise this legal process to bring repeated applications for review which will not only undermine the spirit and substance of the review process, but also bring us back full circle by undermining the very finality that we referred to at the outset of this judgment. …

The prescribed statutory procedure under Division 1B of Part XX of the CPC reflects and puts into operation these principles.

54 Defence counsel have a very important role to play in this context, both in relation to their general duties as well as in relation to their duties in the context of specific statutory requirements. As r 14(1)(*a*) of the PCR states: "A legal practitioner who represents an accused person in any criminal proceedings is under a *fundamental duty* to assist in the administration of justice" [emphasis added]. Part of the administration of justice, as noted at [52] and [53] above, lies in the maintenance and preservation of finality in the legal system. In the context of review applications, the role of defence counsel is specifically highlighted by

r 11(2)(*a*) of the Criminal Procedure Rules 2018 (S 727/2018) which sets out the requirements for an affidavit by the applicant's advocate, if the applicant is represented. The affidavit is not merely a matter of formality, but must include specific averments about the *advocate's* belief as to the merits of the review application. We must emphasise this point. This is an exceptional requirement in criminal procedure – in no other instance under the CPC is the advocate *required* to file an affidavit as to his or her belief in the merits of the application. The requirement underscores the principles that (a) review applications are to be exceptional; (b) the threshold for review is high; and (c) defence counsel are expected to play their part in the administration of justice by ensuring that unmeritorious applications are not brought. In the present case, Mr Ravi stated in his affidavits for both CM 27 and CM 28 at para 6.14:

> As set out in the above, I verily believe that this review application for criminal motion is based wholly on meritorious points of law that seek to clarify and engage constitutional protections provided by the Constitution of the Republic of Singapore.

55 Where counsel brings a patently unmeritorious application in the face of these principles, the case for a personal costs order is particularly strong. In particular, where an advocate deposes a belief that the application has merit despite the clear absence of merit, that can be viewed in one of two ways. On the one hand, that advocate could be lying in his affidavit, in which case, he or she would be dishonestly trying to bring an application when he or she knows that the requirements are not satisfied. On the other hand, even if the advocate possessed such an honest belief, if the application was objectively without merit *and* that would have been clear to any reasonable defence counsel (as opposed to being merely a weak case on the merits), then the advocate in question would have failed in his or her professional duty to act with reasonable competence. In either instance, that advocate would have failed to play the role expected of him

or her in the criminal process, and this would be a very significant factor in favour of making a personal costs order against that advocate. It is also important to underscore the fact that these observations are being made in the context of a *review application* and *not* an appeal (which is given as of right to every convicted accused person and for which the threshold for an adverse costs order to be made against defence counsel may well be higher).

56 Second, in the context of such review applications, a personal costs order would be a salutary reminder to defence counsel that they have a responsibility to their clients to advise them properly. Accused persons who have been sentenced in particular to the death penalty should be protected from having their hopes unnecessarily raised and then dashed because of inaccurate or incompetent legal advice. This is especially so where, as in the context of a review application, the legal threshold for a successful application is very high. Failing to advise their clients appropriately at a sufficiently early stage may result in unrealistic expectations that are inflated by counsel (see also *Munshi Rasal* at [15] and *Zhou Tong* at [13]). Lawyers should be aware that their advice must be accurate, measured, and serve the interests of justice, and that they should not simply encourage last-ditch attempts to reopen concluded matters without a reasonable basis. Due consideration should be given to the high threshold for a successful review application and the fact that it is a limited avenue of recourse which is not intended to simply allow anyone to relitigate their case.

57 Third, on the facts of this case, we find that the improper conduct was particularly egregious. We would even go so far as to characterise much of Mr Ravi's conduct as grandstanding, which is wholly inappropriate in a court of law. We found the complete absence of merit in the application worrying, to say the least. As detailed above, the Abnormality of Mind Ground was brought

on the basis of a complete misapprehension as to the requirements of s 33B(3) of the MDA, and in complete disregard of the evidence that was presented in the record of proceedings. The Inheritance Ground, as well, was brought without reasonable basis. Mr Ravi also misrepresented the efforts made by prior counsel in relation to the Inheritance Ground. Further, Mr Ravi failed to abide by his professional duties in relation to allegations against prior counsel. This was not merely a weak case on the merits (which counsel cannot generally be faulted for trying to pursue), but a case that was completely misconceived from the outset *and* improperly conducted.

58 We find none of Mr Ravi's arguments against a personal costs order to be convincing. Mr Ravi's references to the issue of the applicant's correspondence, which was litigated in part in OS 975, are irrelevant. It is not clear how those allegations affect CM 28 at all. Indeed, at the outset of the hearing of CM 28, when Mr Ravi raised the Disqualification Application, we were not satisfied that there was any basis for disqualifying the Prosecution's team from proceeding. Further, we state in no uncertain terms that we do not entertain Mr Ravi's allegation that prosecutors are "couched [*sic*] under the AGC's umbrella" and are beyond the reach of the courts and tribunals, and we caution him against making such broad, sweeping, as well as unsubstantiated allegations, especially where they have no relevance at all to the case at hand.

59 We also find that the mere fact that Mr Ravi represented the applicant *pro bono* to be irrelevant. There is no reason why a lawyer who represents a client *pro bono* should be held to any lower standard than a lawyer representing a paying client (see the High Court decision in *Arun Kaliamurthy and others v Public Prosecutor and another matter* [2014] 3 SLR 1023 at [60], where Tan Siong Thye JC (as he then was) observed that "[t]he requisite standard to be met for legal services provided *pro bono* should not differ from that *vis-à-vis* a fee-

based retainer"). In fact, there is ample reason to consider that a client who is particularly vulnerable and entirely dependent on counsel requires representation of a sufficiently high standard. In saying this, we recognise that there is a public interest in ensuring access to justice, and we reiterate that counsel who conduct themselves properly, even in advancing weak cases, will not be subject to adverse costs orders. We also continue to encourage counsel to take up opportunities to conduct cases *pro bono* for needy clients, a practice that exemplifies the best traditions of the Bar. However, there is no public interest in withholding criticism and adverse costs orders against counsel whose improper conduct amounts to an abuse of the court's process. Put another way, there is a public interest in maintaining standards at the Bar, and it is that interest that a personal costs order in the present case aims to advance.

60 In coming to our decision that a personal costs order is just in the present case, we are cognisant of the fact that the Judgment was one of the first few decisions of this court concerning the review provisions under Division 1B of Part XX of the CPC. At the time of filing of CM 27 (17 September 2020) and CM 28 (21 September 2020), the decisions in *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 (released on 21 September 2020) and *Moad Fadzir bin Mustaffa v Public Prosecutor* [2020] 2 SLR 1364 (released on 12 October 2020), which appear to have been the first two written decisions dealing with these provisions in this court, had not yet been released.

61 However, we do not find this consideration to be significant in the final analysis. Mr Ravi's improper conduct is not being assessed according to a new standard that was introduced in the authorities referred to above. What he did was improper on the basis of principles and standards that had already been made clear in various statutes, rules, and authorities. The high threshold for

applications under Division 1B of Part XX of the CPC would have been apparent from decisions of this court such as *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135; indeed, much of the statutory language was based on the principles enunciated in those decisions. Further, his improper conduct also went to the fundamental duties of a solicitor as an officer of the court and as a member of the legal profession. On the basis of these facts, it would be wholly inappropriate for Mr Ravi to escape the consequences of his conduct just because of the timing of the application.

62 We are also aware that no decision had addressed the potential for adverse costs orders against counsel specifically for applications under Division 1B of Part XX of the CPC. This was similar to an argument which had found favour with this court in *Huang Liping v Public Prosecutor* [2016] 4 SLR 716 ("*Huang Liping*") at [22] in the context of costs orders against applicants for applications under s 397(1) of the CPC. However, that decision can be distinguished. The context of *Huang Liping* was different as the court in that case was concerned with a costs order against the *applicant* and not *counsel* – in that context, more weight can be given to the absence of a prior decision on the point given that lay applicants may not be aware of the potential for such adverse costs orders (and they may not have been advised about that possibility). Counsel, however, would be well aware of the court's power to make a personal costs order, and should also be well aware of the standards to which they are held. We therefore do not place much weight on the absence of a prior decision on the use of personal costs orders in applications such as the present.

63 Finally, we also do not give weight to the fact that leave was granted in CM 27 to enable a full *coram* to provide guidance in future cases. CM 27 and CM 28 were Mr Ravi's applications. The responsibility for bringing the

application remains on the applicant and his counsel. We have already rejected this argument at steps 1 and 2, and find no more merit to this argument in step 3.

64 In the final analysis, Mr Ravi's conduct was egregious. The need for a personal costs order to reflect our firm disapproval of his conduct of this matter far outweighed any countervailing considerations. We wish to make it clear to counsel that we will not tolerate such misconduct and find that it is just to make a personal costs order in this case.

Quantum of costs

65 The Prosecution proposed a costs order of $10,000, explaining that this was an amount inclusive of reasonable disbursements. Reference was also made to *Bander Yahya A Alzahrani v Public Prosecutor* CA/CM 3/2018 (8 February 2018), where a personal costs order of $5,000 was made against counsel. The Prosecution argued by reference to this that Mr Ravi's conduct was far more egregious than counsel's in that case.

66 In this case, we do not give much weight to a comparison with precedent, since the breakdown of costs incurred in each case has not been provided. The central question here is the amount of costs incurred by the Prosecution in this specific case and the extent to which defence counsel should be made responsible for those costs. Even if the personal costs order is used to express disapproval of counsel's conduct, this exercise is not one of sentencing (which the Prosecution's submissions on the relative egregiousness of Mr Ravi's case come close to asserting), but of properly apportioning costs of proceedings between parties. In this case, having assessed the circumstances in the round, including the length of the hearing and facts of the case, and considering Mr Ravi's conduct, we find that a personal costs order of $5,000 is appropriate.

Conclusion

67 We therefore order that Mr Ravi be personally liable to pay costs of $5,000 to the Prosecution for CM 28. We hope that Mr Ravi, and indeed all counsel who may be involved in similar proceedings, will take this decision in the spirit in which it is intended, and recognise that the order reflects the fact that defence counsel are indispensable for the proper administration of justice and that the requisite standards have therefore to be rigorously enforced.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Ravi s/o Madasamy (Carson Law Chambers) for the applicant;
Francis Ng Yong Kiat SC, Wuan Kin Lek Nicholas and Chin Jincheng (Attorney-General's Chambers) for the respondent.