IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 5

Civil Appeal No 17 of 2023

Between

Kottakki Srinivas Patnaik

… *Appellant*

And

Attorney-General

… *Respondent*

GROUNDS OF DECISION

[Administrative Law — Remedies — Prohibiting order]
[Administrative Law — Remedies — Quashing order]
[Administrative Law — Remedies — Declaration]
[Constitutional Law — Equal protection of the law]
[Constitutional Law — Attorney-General — Prosecutorial discretion]
[Constitutional Law — Judicial review]

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Kottakki Srinivas Patnaik
v
Attorney-General

[2024] SGCA 5

Court of Appeal — Civil Appeal No 17 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA, Woo Bih Li JAD
18 January 2024

1 March 2024

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 The appellant, Mr Kottakki Srinivas Patnaik ("Mr Patnaik"), brought this appeal after his application for leave to commence judicial review in relation to criminal proceedings commenced against him was dismissed (the "Appeal"). We dismissed the Appeal on 18 January 2024 after hearing counsel for Mr Patnaik, Mr Lim Tean, and gave our brief reasons for doing so.

2 The principal ground advanced by Mr Lim was that Mr Patnaik's right to equality had been violated in that, while he had been charged, others who had been named in connection with the matters that were the subject of the charges against Mr Patnaik had not been charged. Mr Lim also submitted that, on the evidence, the charges against Mr Patnaik could not be established, and, on this ground too, Mr Lim sought the cessation of the criminal proceedings brought

against Mr Patnaik. The Appeal presented us with the opportunity to more closely consider how prosecutorial discretion that is afforded to the Attorney-General (the "AG") under Art 35(8) of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") may be impacted or constrained by the right to equality before the law under Art 12(1) of the Constitution. We address this in greater detail in these grounds.

The material facts

3 Mr Patnaik faced criminal proceedings in SC-906994-2022 on charges of corruption as the alleged bribe-giver in a private sector corruption scheme between 2011 and 2016 (the "Corruption Scheme"). These charges included:

(a) five counts of corruptly giving gratification to one Harish Singhal ("Mr Singhal"), these being offences under s 6(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) read with s 124(4) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"); and

(b) one count of conspiring with Mr Singhal and three other individuals known to Mr Singhal, namely "Gaurav Gupta", "Dhiman Chodhaury" and "Sudhir Kumar Jain" (collectively, "Mr Singhal's Three Other Associates") to disguise the proceeds of Mr Singhal's criminal conduct, an offence under s 47(l)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (Cap 65A, 2000 Rev Ed) (the "CDSA"), which was punishable under s 47(6)(*a*) of the CDSA read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) and s 124(4) of the CPC.

These are collectively referred to as the "Charges".

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4 The Charges concerned Mr Patnaik's alleged gift of kickbacks to Mr Singhal in exchange for Mr Singhal securing awards of several ship handling and management services contracts by MODEC Offshore Production Systems (Singapore) Pte Ltd ("MOPS") to Neptune Ship Management Pte Ltd ("Neptune") at an inflated price. At the material time, Mr Patnaik was a director and beneficial owner of Neptune and Mr Singhal was a construction manager at MOPS.

5 The kickbacks were allegedly paid by Mr Patnaik, through Neptune, to Mr Singhal. Mr Singhal received these moneys through companies controlled by him; his colleague at MOPS, namely Mr Gopinath Kuppusamy ("Mr Kuppusamy"); and/or Mr Singhal's Three Other Associates. The said companies are identified in the Charges as Staghorn Marine Services, Staghorn Marine Services Pvt Ltd and Staghorn Marine Services Pte Ltd ("Staghorn Singapore").

6 Charges were also brought against Mr Singhal and Mr Kuppusamy for their roles in the Corruption Scheme.

7 Additional charges were also brought against Mr Singhal and Mr Kuppusamy for their roles in a separate cheating scheme. This latter cheating scheme involved a conspiracy to conceal Mr Singhal's interest in Staghorn Singapore from MOPS in order to induce MOPS to make payments to Staghorn Singapore. These additional charges do not involve Mr Patnaik or Neptune. However, they do mention one Mr Kuppusamy Parthiban ("Mr Parthiban"), who is Mr Kuppusamy's brother and a nominee director and shareholder of Staghorn Singapore at the material time.

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8 At the time of the hearing of the application, no charges had been brought against Mr Parthiban and Mr Singhal's Three Other Associates. Mr Singhal's Three Other Associates were based overseas and had been uncooperative with the Corrupt Practices Investigation Bureau.

Procedural history

9 On 10 February 2023, Mr Patnaik commenced HC/OA 122/2023 (the "Application") in the General Division of the High Court (the "GDHC"), seeking the following orders, among others:

(a) permission to apply for a prohibiting order to prohibit the AG from proceeding with the Charges ("Prayer (a)");

(b) permission to apply for a quashing order to prohibit the AG from proceeding with the Charges ("Prayer (b)"); and

(c) a declaration that the Charges are in breach of Art 35(8) of the Constitution.

Mr Lim agreed with us at the hearing that in essence, Mr Patnaik was seeking to bring the pending criminal proceedings against him to an end summarily.

10 Mr Patnaik's case before the GDHC was that the Charges were in breach of Arts 12(1) and 35(8) of the Constitution:

(a) the breach of Art 12(1) of the Constitution was said to have arisen from the Public Prosecutor's (the "PP") selective investigation and prosecution of Mr Patnaik, since other parties who had been involved in the Corruption Scheme, including Mr Parthiban, had not been investigated or charged; and

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(b) the Charges were purportedly in breach of Art 35(8) of the Constitution because the PP had acted unlawfully and irrationally in singling out Mr Patnaik based on assumptions and without an evidential foundation. According to Mr Patnaik, the PP had assumed that a crime had been committed. The PP's decision to bring the Charges on this assumption, notwithstanding that the PP had admitted to being unable to investigate Mr Singhal's Three Associates, was said to be unlawful.

11 The Application was dismissed by the GDHC for three main reasons.

12 First, Mr Patnaik had not shown that there was someone who was in a "like situation" as he was in his capacity as a bribe-giver, but who had not been charged or had otherwise been treated more favourably by the PP than Mr Patnaik had been. This was said to be in breach of the requirements of Art 12(1) of the Constitution as set out in *Xu Yuan Chen v Attorney-General* [2022] 2 SLR 1131 ("*Xu Yuan Chen*") at [1]; *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 ("*Datchinamurthy*") at [29]–[30]; *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail*") at [61]–[62]; and *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 ("*Ridzuan*") at [51]). The GDHC reached this conclusion for the following reasons:

(a) Staghorn Singapore and Mr Parthiban were intermediary parties between Neptune and Mr Singhal in the alleged Corruption Scheme, and Mr Singhal's Three Other Associates were intermediaries with control of the companies to which the kickbacks had been paid before these were eventually channelled to Mr Singhal. This was not akin to Mr Patnaik's position as the alleged giver of the bribes.

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(b) While Mr Patnaik pointed to a contract manager at MOPS (the "MOPS Contract Manager") who awarded the contracts but had not been investigated, he did not provide any evidence of that person's role or involvement in the Corruption Scheme. Even if that person had been involved, there was no suggestion at all that he or she was a *bribe-giver* as Mr Patnaik was alleged to be.

(c) Finally, Mr Patnaik pointed out that one Sudeep Shome ("Shome"), one of the signatories from Neptune, had not been investigated. But the documents adduced by Mr Patnaik did not show Shome's involvement in the Corruption Scheme and no explanation was advanced to show how Shome was in a like situation as Mr Patnaik.

That being the case, there was found to be no *prima facie* case of a reasonable suspicion that Art 12(1) of the Constitution had been breached. Consequently, one of the three requirements necessary for the GDHC to grant permission to commence judicial review proceedings, which is what Mr Patnaik, in effect, sought in Prayers (a) and (b), was not met.

13 Second, Mr Patnaik did not establish a *prima facie* case of a reasonable suspicion that the Charges were unlawful and/or irrational just because they had not yet been proved beyond reasonable doubt at a preliminary stage of the criminal proceedings. The PP was not obliged to adduce evidence sufficient to establish the Charges beyond a reasonable doubt at the pre-trial stage of the criminal proceedings, nor to disclose his reasons for making a particular prosecutorial decision. Importantly, Mr Patnaik had not advanced any basis to rebut the presumption that the AG's prosecutorial decisions were constitutional or lawful. Finally, Mr Patnaik did not identify any improper purpose or motive that was allegedly harboured by the PP in bringing the Charges.

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14 Finally, Mr Patnaik's case on the breach of Art 35(8) of the Constitution was predicated on: (a) a breach of Art 12(1); and/or (b) the Charges having been brought despite the absence of proof beyond reasonable doubt. Both assertions were not made out in that as far as the first was concerned, there was not even a reasonable suspicion of such a breach, and as far as the second was concerned, this was ill-conceived. Mr Patnaik therefore failed to show that the bringing of the Charges constituted an improper exercise by the PP of his powers under Art 35(8) of the Constitution.

The parties' cases on appeal

The appellant's case

15 Mr Patnaik advanced three main arguments in this Appeal. First, there was no evidence to show that he had been the sole bribe-giver in the Corruption Scheme. This was relevant because Mr Patnaik's main contention was that there were others involved in the Corruption Scheme who were also bribe-givers and who were similarly situated as he was. Indeed, his second argument was that the "first suspects" of corruption should have been Staghorn Singapore, Mr Parthiban and others in Staghorn Singapore instead, who, according to Mr Patnaik, would be more culpable than he allegedly was. He submitted that it was unfair and unlawful to place the entire blame on him and to protect these other parties by refraining from charging them. Mr Patnaik also claimed that there was a further breach of Art 35(8) because the MOPS Contract Manager had not been investigated. Finally, Mr Patnaik again contended that there was no evidence to warrant the charges being brought.

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The respondent's case

16 The AG submitted that the GDHC had reached the right conclusion and pointed out that Mr Patnaik did not dispute the legal principles set out and adopted by the GDHC concerning Art 12(1), advanced no allegation of any abuse of power, and did not identify any alleged improper purpose.

Issues to be determined

17 The issues which Mr Patnaik placed before us were whether the GDHC had erred in finding that:

(a) Mr Patnaik had been the only person identified as a bribe-giver in the Corruption Scheme and that Arts 12(1) and 35(8) of the Constitution had not been breached, because there was no question of any other party being similarly situated as he was;

(b) the Application should be dismissed even though there was no evidence put before the court at that stage to establish the Charges beyond a reasonable doubt; and

(c) there had been no breach of Art 35(8) of the Constitution.

18 We had no difficulty rejecting all the grounds canvassed in the Appeal and so dismissed it. We were also satisfied that any inquiry into the sufficiency of the evidence at this stage would be wholly misconceived. We develop these points below.

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The GDHC did not err in finding that there was no *prima facie* case of a reasonable suspicion that Art 12 of the Constitution had been breached

19 As we have noted above, Mr Lim accepted that the effect of his argument in the Appeal was to put into issue the question of when, if at all, a party facing criminal charges may seek the court's intervention through civil proceedings to stop the PP from proceeding with those charges. The resolution of this issue called for the court to balance the constitutional offices of the AG, in his capacity as the PP, on the one hand, and of the courts on the other. To be sure, the prosecutorial power is a constitutional power with legal limits (*Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") at [17] and [41]; *Tan Seng Kee v Attorney-General and other appeals* [2022] 1 SLR 1347 at [101]). This case invited us to consider whether those limits had been breached.

20 We have previously stated that prosecutorial decisions undertaken by the AG in his capacity as the PP to initiate prosecution against an accused person will be presumed to be lawful unless there is reason to think otherwise. This is a consequence of the high constitutional office held by the AG and the co-equal status of the prosecutorial power and the judicial power enshrined in Art 35(8) and Art 93 of the Constitution respectively (*Ramalingam* at [43]–[46] and [72]; *Ridzuan* at [36]; *Quek Hock Lye v Public Prosecutor* [2012] 2 SLR 1012 ("*Quek Hock Lye*") at [29]). At the same time, this does not mean the PP's exercise of prosecutorial discretion is immune from challenge: the presumption of lawfulness is not irrebuttable. Because the judicial power extends to the resolution of controversies including those between the State or its agencies, on the one hand, and its subjects on the other, it is the court that will decide on any challenge against the exercise of prosecutorial power. The balance between the seemingly competing pulls of co-equal constitutional offices is struck, however,

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by requiring the PP to justify the exercise of his prosecutorial discretion *only* where an appellant has raised a *prima facie* case of a reasonable suspicion that Art 12(1) of the Constitution has been breached (*Nazeri bin Lajim v Attorney-General* [2022] 2 SLR 964 ("*Nazeri*") at [34]; *Ridzuan* at [36], [39]–[40]; see also *Ramalingam* at [77]).

21 In the context of Art 12, prosecutorial discretion may not be exercised arbitrarily, for improper purposes or in bad faith, and the PP, must give unbiased consideration to every case (*Ramalingam* at [51]; *Lee Zheng Da Eddie v Public Prosecutor and another appeal* [2023] SGCA 36 at [81]). Art 12 requires not that all persons be treated equally, but that all persons in like situations are treated alike (*Nazeri* at [27], citing *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 at [54] and *Datchinamurthy* at [29]; *Syed Suhail* at [61]).

22 In considering an application for permission to commence judicial review proceedings to challenge the PP's exercise of prosecutorial discretion, the Court of Appeal in *Ridzuan* set out the following observations, which we considered helpful and applicable in the present case:

(a) it is often difficult and unrealistic to expect, and hence not necessary for, the applicant to produce direct evidence of the grounds for judicial review in such circumstances (at [40]–[41]);

(b) it will suffice for an applicant, in order to discharge their evidentiary burden in the context of such an application for permission, to prove a *prima facie* case of a reasonable suspicion that the PP's power was exercised arbitrarily (at [40] and [52]);

(c) the applicant may raise such a reasonable suspicion of the existence of grounds of judicial review by showing that others in the

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same or virtually identical situation were treated differently with no evident basis to justify this (at [41] and [51]); and

(d) the applicant may in these circumstances rely on inferences that may be drawn from the objective facts (at [43]).

23 It will be noted that the Court of Appeal highlighted the following threshold requirement for an applicant to establish a reasonable suspicion of the PP's arbitrary decision making: the applicant must show that the parties, whose cases he was comparing his with, are situated virtually identically with him (*Ridzuan* at [52]; *Ramalingam* at [24] and [26]). This is so because the different treatment of virtually identical cases is a springboard from which a case or inference may be advanced that, where several offenders are involved in the same criminal enterprise, the PP has unlawfully discriminated against one offender as compared to one or more of the others (*Ridzuan* at [41] and [43]). Furthermore, the fact that one individual faces prosecution while another, who may have committed similar actions, does not face prosecution, does not, without more, indicate a breach of Art 12 (*Xu Yuan Chen* at [27], citing *Daniel De Costa Augustin v Public Prosecutor* [2020] 5 SLR 609 at [83] and *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 4 SLR 934 at [67]–[72]). The courts have recognised that the PP may take into account a broad range of factors in assessing whether to bring charges. These include, but are not limited to, whether there is sufficient evidence against the offender and each of his co-offenders (if any), their personal circumstances, the willingness of one offender to testify against his co-offenders and other policy factors (*Ramalingam* at [52]; *Nazeri* at [29]). We would add that the discretion would generally extend to when the PP chooses to bring charges against any of the co-accused persons and in what sequence.

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24 Hence, differentiation in the charges brought against different accused persons at a given point in time does not, without more, raise an inference of a breach of Art 12(1). Instead, in the absence of *prima facie* evidence to the contrary, the inference would be that the Prosecution based its differentiation on relevant considerations (*Ramalingam* at [70]–[71]; *Nazeri* at [32]), and as we have noted, such evidence may be found in the inferences to be drawn from virtually identical situations being treated differently without any evident basis. We should add that such an inference will only be drawn where on the material before the court it is the only logical one that is open to it.

25 Three cases illustrate the application of these principles. First, the Court of Appeal decided in *Ramalingam* that the appellant had failed to make out a *prima facie* violation of Art 12(1) as he had not adduced any evidence to rebut the presumption of constitutionality with regard to the PP's decision to prosecute the Applicant for capital offences rather than for non-capital offences (*Ramalingam* at [73]). The court held that the appellant had failed to show that a co-accused person who had been charged with trafficking in a smaller amount of drugs than the appellant (*Ramalingam* at [3]–[6]), had in fact been more culpable than the appellant (*Ramalingam* at [66]–[67] and [73]).

26 Next, in *Nazeri*, the Court of Appeal held that the appellant had not discharged his evidential burden of producing *prima facie* evidence of a breach of Art 12(1). This was because the fact that other offenders had also been caught with drugs above the capital threshold did not mean that they were, in law, equally situated with the appellant. The PP was entitled to consider a range of other factors in each case (*Nazeri* at [31]).

27 Finally, in *Quek Hock Lye*, the Court of Appeal found there was no *prima facie* breach of Art 12(1) arising from the PP preferring different charges

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against two other parties to the same criminal conspiracy involving the appellant. The exercise of prosecutorial discretion resulting in differential treatment of two offenders involved in the same criminal enterprise was found not to breach Art 12, as this was but a consequence of the broader constitutionally-vested discretion in the PP in preferring charges against accused persons (*Quek Hock Lye* at [24]). The appellant had not raised evidence or arguments that could have justified the court reviewing the PP's decision to treat the appellant differently from one of the other parties to the conspiracy (*Quek Hock Lye* at [25]).

28 In our judgment, Mr Patnaik's case failed for the same reason. He was not able to establish even a reasonable suspicion that he had been treated differently in relation to others who were *similarly situated* as he was in circumstances where there was a reasonable basis for thinking that this was the result of an improper exercise of discretion in breach of Art 12.

29 Mr Patnaik's case fell at the threshold because his argument that Mr Parthiban occupied the same position as him was not correct. Mr Patnaik also submitted that any payments made to Mr Singhal could only have been made by "Staghorn", so the "first suspects" of corruption and the more culpable parties were Staghorn Singapore, Mr Parthiban and others in Staghorn Singapore, not Mr Patnaik.

30 On reviewing the evidence, such as it was, it was clear that Mr Patnaik's case stemmed from an incorrect view of the allegations made against him. The allegation against Mr Patnaik was that *he* had paid the bribes using Neptune, a company he controlled, and these were directed to Mr Singhal *through companies controlled by Mr Singhal, Mr Kuppusamy or Mr Singhal's Three Other Associates*. These intermediaries were not alleged to be bribe-givers, as

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was the case with Mr Patnaik; rather, they were the conduits through whom the alleged primary bribe-giver, Mr Patnaik, channeled the bribes to his intended recipient, Mr Singhal. These others could be agents for receiving the bribes on behalf of Mr Singhal or they could be conspiring with Mr Patnaik to convey the bribes to Mr Singhal. But, most crucially, their alleged role was simply not the same as Mr Patnaik's. In particular, they were not alleged to be the bribe-givers. Even if it was accepted that the bribes came *through* Staghorn Singapore, Mr Patnaik did not explain why the bribes must have emanated *from* Staghorn Singapore. Accordingly, Mr Patnaik's submission that the "first suspects" should have Staghorn Singapore, Mr Parthiban and others in Staghorn Singapore, and not him, was incorrect. Mr Patnaik also did not adequately explain his statement that Staghorn Singapore and Mr Parthiban were *more culpable than him*. He appeared to argue that since they were "not unknowing" and there was a "grand scheme for corruption", they must be more culpable than him. However, he provided no explanation or basis for these broad and sweeping assertions.

31 Further, Mr Patnaik's assertion that Staghorn Singapore, Mr Parthiban and other parties within Staghorn Singapore were also suspects and may have committed some other offence did not mean that they occupied a like position as him. The GDHC did not err in identifying the distinction between, on the one hand, Mr Patnaik's role as the alleged *bribe-giver* and, on the other hand, the aforesaid other parties' roles as alleged *intermediary parties*, as a key distinguishing factor.

32 Mr Patnaik's submission that he was being made to unfairly bear the "entire blame" mischaracterised his situation. Mr Patnaik need only answer for the Charges which relate to his role in the Corruption Scheme. Mr Patnaik also did not explain how the guilt of any other parties was being imputed to him.

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33 We also rejected Mr Patnaik's argument that the alleged selective prosecution of only some parties involved in the Corruption Scheme stood in the way of finding the "truth" and assessing "culpability". The non-prosecution of certain parties did not mean that they were precluded from participating in fact-finding processes, including at trial. Indeed, it was also open to Mr Patnaik to call them as witnesses. Further, it was clearly wrong to suggest that a prosecution should not or could not proceed against only some of a group of co-conspirators; and even more so the case where others in the group are not within this jurisdiction.

34 Finally, Mr Patnaik's claim that the PP had been protecting Staghorn Singapore and Mr Parthiban was made without any evidence, without advancing any motive and without any ground for excluding other inferences, such as the obvious one that they were not equally situated as Mr Patnaik.

35 We therefore rejected Mr Patnaik's submission that the GDHC had erred in finding that Art 12 of the Constitution had not been breached.

The GDHC did not err in finding that there was no *prima facie* case of a reasonable suspicion that the Charges were unlawful and/or irrational

36 Mr Patnaik also contended that the Charges were irrational because they were not grounded in evidence.

37 As we indicated in our oral remarks at the hearing, satellite litigation to forestall the trial of a criminal charge is not well-received. The discouragement of satellite litigation is evident in O 24 r 2(2) of the Rules of Court 2021, which states that "[a]n application for a prerogative order must not be made before the applicant has exhausted any right of appeal or other remedy provided under any written law." The obvious remedy which Mr Patnaik should have sought and

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exhausted before bringing the Application was the criminal trial. He could have, and, importantly, should have, raised his objections arising from the alleged lack of evidence at the trial; he should not have made the Application for prerogative orders in order to pre-empt and indeed avoid entirely the criminal trial. Furthermore, this court has stated in *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 that a civil court will, in normal circumstances, be slow to grant a declaration relating to the criminal consequences of a person's conduct. This is because such applications are likely to be dilatory in effect, fragment the criminal proceedings and detract from the efficiency of the criminal process (at [181]–[182]). This point was also made in *Xu Yuanchen v Public Prosecutor and another matter* [2021] 4 SLR 719 in relation to appeals against interlocutory orders, where the court noted that appeals against each and every interlocutory ruling in the course of a trial would cause "impossible difficulties for the expeditious conduct of the trial" (at [10]) (see also *Sim Chon Ang Jason v Public Prosecutor* [2023] 4 SLR 934 at [20]–[25] and [29]; *Amarjeet Singh v Public Prosecutor* [2021] 4 SLR 841 at [33]; and, in the context of civil trials, *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 at [37]).

38 These concerns were certainly applicable here, because Mr Patnaik was seeking orders from the court in its civil jurisdiction to restrain the PP from prosecuting a criminal matter. One of Mr Patnaik's main complaints – the alleged lack of evidence to show that he was a bribe-giver in the Corruption Scheme – was not admissible in the context of this Appeal because the Application was not the right forum to raise concerns over the sufficiency of the evidence. There was simply no obligation on, or even reason for, the Prosecution to afford Mr Patnaik a preview of its case or its evidence in order

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to overcome a pre-emptive attempt to prevent the prosecution of the Charges. It was for the Prosecution to establish its case with the requisite evidence at the criminal trial, and not be inveigled into producing it in order to defeat Mr Patnaik's Application. Both the GDHC in its decision and the AG in his submissions correctly took this point, and Mr Patnaik did not advance any ground for thinking that the GDHC had erred in this regard.

39 Indeed, any other view would be untenable. Could an applicant bring repeated applications of this sort requiring the PP to produce the evidence at a given stage of the trial or enable the Defence to bring an application such as the present to stay the criminal proceedings? Assuming the PP failed to adduce evidence that was sufficient to sustain a conviction at that stage of the criminal proceedings or in seeking to defeat a stay application, but then obtained further evidence, could he institute fresh proceedings? And could these then be challenged again? And yet again? These questions need only to be asked to demonstrate why this was an ill-conceived position.

The GDHC did not err in finding that Art 35(8) was not breached

40 Finally, Mr Patnaik submitted that there was a further breach of Art 35(8) of the Constitution arising from the fact that the MOPS Contract Manager had not been investigated.

41 This was a new argument raised in the Appeal. Before the GDHC, Mr Patnaik's case was that the absence of an investigation into Staghorn Singapore and MOPS "contravene[s] the provisions [of] Article 12 (1) and *by implication* under Article 35(8) [of the Constitution]" [emphasis added]. Consequently, the GDHC reasoned that, since Art 12(1) had not been breached, therefore Art 35(8) too had not been breached. Before us, Mr Patnaik contended

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that the failure to investigate the MOPS Contract Manager was in itself a breach of Art 35(8), independent of any question of whether this was also a breach of Art 12(1). At the outset, we observe that it was not open to Mr Patnaik to raise a new argument in the Appeal since it deprived the AG of an opportunity to respond (*Ng Bok Eng Holdings Pte Ltd and another v Wong Ser Wan* [2005] 4 SLR(R) 561 at [35]) and it deprived the Court of Appeal of the benefit of the decision and reasoning of the first instance court on the point (*Sunbreeze Group Investments Ltd and others v Sim Chye Hock Ron* [2018] 2 SLR 1242 at [27]–[28]).

42 Even setting this aside however, there was nothing before us to explain what the role of the MOPS Contract Manager was, nor how this related to the issues before us. This too, therefore, was a hopeless point.

Conclusion

43 We therefore dismissed Mr Patnaik's appeal. We also fixed costs at $20,000, inclusive of disbursements.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

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Woo Bih Li
Judge of the Appellate Division

Lim Tean (Carson Law Chambers) for the appellant; and
Gan Yingtian Andrea and Tay Jia Yi Pesdy (Attorney-General's Chambers) for the respondent.

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