IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 17

Cr Rev 2/1996

Between

Public Prosecutor

… *Petitioner*

And

Koon Seng Construction Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Criminal Procedure and Sentencing — Revision of proceedings

Version No 1: 29 Oct 2026 (23:45 hrs)

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Public Prosecutor v Koon Seng Construction Pte Ltd

[1996] SGHC 17

Cr Rev 2/1996
Yong Pung How CJ
31 January 1996

1 This was an application by the Public Prosecutor for a criminal revision in respect of a notice to attend court No 114249 (the notice). The notice was served on the respondent on 5 October 1995, requiring its attendance in a subordinate court in answer to a charge of having committed an offence under s 25(1) of the Destruction of Disease-Bearing Insects Act (Cap 79) (DDBIA). The respondent was alleged to have failed to comply with an order served on them by the Ministry of the Environment (ENV) pursuant to s 9 of the DDBIA, which requires the offender to take specified preventive measures as to premises or anything therein which is or may become favourable to the propagation or harbouring of disease-bearing insects. The maximum fine prescribed under s 25(1) DDBIA is a sum of $1,000.

2 The present application arose because of what was described by the petitioner as a `clerical error`. It appears that the offence section was inadvertently entered into a computerized data entry system as s 6(1) DDBIA instead of s 25(1) DDBIA. As a consequence, the charge sheet generated for the court`s reference in Night Court 13N of the subordinate courts recorded the charge against the respondent as being one under s 6(1) DDBIA, which states:

> *No person shall take, do or perform any act or thing which may, or be liable to, create such conditions as may be favourable to the propagation or harbouring of disease-bearing insects.*

3 The maximum fine prescribed for contravention of s 6(1) DDBIA is $1,000. In the case of a second or subsequent conviction, the maximum fine is $2,000.

4 The respondent`s case was first mentioned in Court 13N on 14 November 1995. A two-week adjournment was granted. The respondent, represented by Mr Ranjit Singh who also appeared in the present proceedings, eventually pleaded guilty to the charge under s 6(1) DDBIA on 28 November 1995. The prosecuting officer informed the presiding magistrate in Court 13N that the respondent had eight previous convictions under s 6(1) DDBIA and was last fined $1,500 on 26 September 1995. The magistrate therefore imposed a fine of $2,000.

5 The prosecuting officer subsequently discovered the error in the charge which was presented in Court 13N. The present application for criminal revision was thus filed at the instance of the Public Prosecutor, seeking an order from the High Court reversing the conviction and sentence, and directing a retrial in the subordinate courts on the intended charge of s 25(1) DDBIA. Before me, the learned DPP submitted that the High Court could amend the charge and direct a retrial pursuant to s 256(b)(i) of the Criminal Procedure Code (Cap 68) (CPC), in the exercise of its revisionary jurisdiction. Counsel for the respondent, Mr Ranjit Singh, stated that he had no objection to the DPP`s application.

6 There was clearly an administrative or clerical error. The error was compounded both by counsel`s failure to clarify the matter before the court, as well as by the ENV`s listing of eight antecedents under s 6(1) DDBIA.

Version No 1: 29 Oct 2026 (23:45 hrs)

Nevertheless, there was never any doubt which offence the respondent had committed. The respondent had been notified that it would be charged with an offence under s 25(1) DDBIA and had intended all along to plead guilty to that charge. Indeed, counsel informed me that the respondent would still plead guilty to that charge once the existing conviction and sentence were quashed. Bearing all the above matters in mind, I was doubtful of the purpose of ordering a retrial.

7 In the premises, I sought the views of the DPP and counsel as to whether I could not amend the charge to the correct one under s 25(1) DDBIA in the exercise of my revisionary powers pursuant to s 266 CPC, set aside the conviction and sentence imposed, and reduce the sentence to a fine commensurate with the prescribed maximum fine under s 25(1) DDBIA. Neither the DPP nor counsel saw any difficulty with this.

8 In ***State of Orissa v Nakula Sahu*** AIR 1979 SC 663, Jaswant Singh J, delivering the judgment of the Supreme Court of India, observed:

> *... normally the jurisdiction of the High Court under [our s 266 CPC] is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice.*

9 The revisionary jurisdiction of the High Court exists to set right serious injustice. In this connection, Dua J, in the Supreme Court decision of ***Akalu Ahir v Ramdeo Ram*** AIR 1973 A 2145, stated:

> *The High Court has been invested with this power to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that the subordinate courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power, in spite of the wide language of [the equivalent sections] Cr PC, does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice.*

Version No 1: 29 Oct 2026 (23:45 hrs)

10 As I have stated in **Ang Poh Chuan v PP** [1996] 1 SLR 326 , there is no precise definition of what constitutes serious injustice. A wide discretion is vested in the High Court, the exercise of which depends largely on the particular facts. Section 27(1) of the Supreme Court of Judicature Act (Cap 322) (SCJA) provides:

> *In addition to the powers conferred on the High Court by this Act or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts, and may in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in any subordinate court, call for the record thereof, and may remove the matter or proceeding into the High Court or may give to the subordinate court such directions as to the further conduct of the matter or proceeding as justice may require.*

11 On the facts of the present case, it was evident that there was a serious injustice. It was common ground that a clerical error was the unfortunate cause. As a consequence, the charge was wrongly stated, and the conviction and sentence which flowed from the mistaken plea of guilt could not be permitted to stand. The only question was what course of action the High Court could adopt to set right the apparent injustice. The powers of the High Court on revision are stated in s 268 CPC as follows:

> *(1) The High Court may in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers conferred by sections 251, 255, 256 and 257.*
>
> (2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by advocate in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction.

Version No 1: 29 Oct 2026 (23:45 hrs)

12 By s 256(b)(ii) CPC, the High Court has the power, in an appeal from a conviction, to:

> *alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence.*

13 Reading this provision literally, there is no express power of amendment conferred on a High Court acting in its appellate capacity. On this basis, the decisions of ***Quek Ching Kim v R*** [1956] MLJ 54 and ***Wee Toon Boon v PP*** [1976] 2 MLJ 191 have suggested that the High Court does not have any such power. On the other hand, in ***Ng Ee v PP*** [1941] MLJ 180 at p 181, Cussen J had this to say in respect of the High Court`s powers under s 256(b) to `alter the finding` of a lower court:

> *... the provisions of s 316(b) [our s 256(b)] of the Criminal Procedure Code (Cap 6) which empower this court in an appeal from a magistrate`s court to `alter the finding ... do allow of the substitution of a conviction under a different provision of law for the conviction found by the magistrate, to substitute the right section for the wrong section. It is, of course, a power to be exercised with great caution, and only where it is clear beyond all doubt, from the nature of the offence and the record of the evidence in the case, that to do so can in no way prejudice the case of the accused. It must be clear that if the substituted charge had in fact been the original charge that the proceedings at the trial would have taken the same course, and the evidence recorded been the same - that the prosecution`s evidence would have been unchanged (substantially) and the accused`s defence the same.*

14 Cussen J`s views were cited with approval by the Malaysian Federal Court in ***Sivalingam v PP*** [1982] 2 MLJ 172 . The relevant Malaysian statutory provisions on the High Court`s appellate powers are substantially similar to our s 256(b) CPC. In this case, Abdul Hamid FJ, delivering the judgment of the Federal Court, observed at p 174:

> *In our view* ***Ng Ee`s*** *case was correctly decided and to warrant a substitution there must be clear evidence that a case for the substituted offence would have been made out or established*

Version No 1: 29 Oct 2026 (23:45 hrs)

> *against the accused in the court below. To put it another way, before there can be an alteration of a finding the appellate court must be satisfied that if the substituted charge had in fact been the original charge, the proceedings at the trial would have taken the same course, and the evidence recorded have been same.*

15 In ***Lim Teck Seng v R*** [1957] MLJ 71 , the accused was charged with inconsiderate driving contrary to s 5 of the Motor Vehicles (Driving Offences) Proclamation. After hearing all the evidence, the President of the Sessions Court amended the charge to a more serious one of negligent driving contrary to s 4(2) of the Proclamation. The only issue on appeal before Rigby J was whether the substitution of the charge to a more serious one was warranted, bearing in mind the circumstances in which it was done. Rigby J adopted the judgment of Taylor J in ***PP v Salamah binti Abdullah*** [1947] MLJ 178 and held that it was unjust in those circumstances for a more serious charge to be substituted only after all the evidence had been heard. Rigby J altered the conviction to one under the original lesser charge. There was apparently no question of the evidence being insufficient to support a conviction on the more serious charge of negligent driving. Accordingly, it appears that Rigby J proceeded on the basis that he had the power to amend the charge.

16 The facts of ***Siah Ik Kow v PP*** [1968] 2 MLJ 217 may provide the closest analogy to the present case. In that case, the appellant was originally charged under `s 74(1) of the Motor Vehicles Third Party Risks, Road Traffic Ordinance 49 of 1958 and punishable s 74(2) of the same Ordinance`. Such a statute did not exist. The appellant was nonetheless convicted of the offence as charged. He did not take any objection to the charge either at the trial or on appeal. There was no dispute that what was intended was a charge under s 74(1) of the Road Traffic Ordinance, which was punishable under s 74(2). Chang Min Tat J amended the charge to bring it under the correct provision of law, having considered that the appellant was not misled by the charge and that the error had

Version No 1: 29 Oct 2026 (23:45 hrs)

not occasioned any failure of justice. Chang Min Tat J appears to have acted on the assumption that he had the power to amend the charge.

17 It must be said that in the cases referred to above, there was no actual consideration whether the High Court had the power to amend the charge. It is well-settled that the High Court as an appellate court can only act within the limits of the lower court`s powers. A subordinate court is entitled to amend the charge at any stage of the proceedings before judgment is given: s 163 CPC. It would be highly anomalous if the High Court has no similar power of amendment. This would mean that the subordinate court`s powers exceed those of the High Court. It would also mean that the High Court is powerless to correct even obvious errors in the charge. Reasoning in the abstract, and assuming that a literal and narrow construction is adopted in relation to the High Court`s powers under s 256(b) CPC, the two remaining options open for consideration are as follows.

18 First, the High Court could consider whether it could alter the lower court`s finding by substituting a conviction, having regard to ss 173, 174 or 175 CPC. These provisions indicate specific scenarios where the court may convict an accused of particular offences, although he was not charged with those offences. Under s 173 (read with s 172), the offence must be `of such a nature that it is doubtful which of several offences the facts which can be proved will constitute`. Under s 174, the accused may be convicted of attempt or abetment, despite having only been charged with commission of the offence proper. Under s 175, the accused may be convicted of a `minor` offence even though he was not charged with it, but with `an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence`. In the present case, s 25(1) and s 6(1) DDBIA specify quite different offences. The former cannot be said to be a complete minor offence in relation to the latter.

Version No 1: 29 Oct 2026 (23:45 hrs)

The actus reus of a s 25(1) offence is the refusal, failure or neglect to comply with an order served pursuant to s 9(1). In contrast, the actus reus of a s 6(1) offence is the doing or performance of `any act or thing which may, or be liable to, create such conditions as may be favourable to the propagation or harbouring of disease-bearing insects`. It will be noted that the error in the charge in the present case could not be rectified in any of the above ways.

19 In the alternative, the High Court could consider the error in the charge as being immaterial, provided that the accused was not misled by the error (s 162 CPC). The lower court`s finding need not be altered or reversed on account of the error, unless it had occasioned a failure of justice (s 396 CPC). This approach does not lend itself easily to application in the present case, where a plea of guilt was mistakenly entered to an incorrectly-framed charge. The finding that the respondent was guilty of an offence under s 6(1) DDBIA was patently wrong and would occasion a failure of justice if permitted to stand. Accordingly, the finding had to be altered.

20 The approaches adopted in both ***Siah Ik Kow*** and ***Lim Teck Seng*** provide strong support for the proposition that the High Court must at least have the implied power in s 256(b)(ii) CPC to amend a charge if the charge is incorrectly framed. Moreover, as suggested in ***Ng Ee*** and ***Sivalingam*** , the High Court may, in appropriate cases where there is no prejudice to the accused, substitute a charge and convict the accused on that charge. Substituting a charge necessarily involves amending the charge to introduce different terms. Whether the amendment introduces an entirely different offence section or not, a new and different charge is in place. The necessity to observe the safeguards against prejudice operates to ensure that the substituted charge does not stray beyond the limits imposed by ss 173 to 175 CPC. In other words, an amendment to

Version No 1: 29 Oct 2026 (23:45 hrs)

introduce a substituted charge should be no different in effect from a substituted conviction.

21 More generally, it is difficult to see why the High Court should not be able to amend the charge to reflect the fact that it has altered the finding of the lower court such that the altered finding conforms with what the correct or appropriate charge should be, having regard to the evidence adduced. If no such power exists, the intention of s 27(1) SCJA which confers upon the High Court `general supervisory and revisionary jurisdiction over all subordinate courts` would be virtually nullified. For the reasons above, I was of the view that the High Court, in its revisionary capacity, has the power to `alter the finding`, and correspondingly has the implied power to correct errors in the charge pursuant to s 256(b)(ii) CPC. This would include the power to amend the charge to introduce the appropriate offence section, such as s 25(1) DDBIA in the present case.

22 The power of amendment is clearly not unfettered. It should be exercised sparingly, subject to careful observance of the safeguards against prejudice to the defence, as laid down by Cussen J in ***Ng Ee`s*** case and subsequently endorsed by the Federal Court in ***Sivalingam*** . The court must be satisfied that the proceedings below would have taken the same course, and the evidence recorded would have been the same. The primary consideration is that the amendment will not cause any injustice, or affect the presentation of the evidence, in particular, the accused`s defence. These safeguards must be rigorously observed.

23 Quite aside from the fact that the respondent had no objections whatsoever to the proposed amendment, there was no possibility of the amendment occasioning any prejudice to the respondent. After all, the purpose

Version No 1: 29 Oct 2026 (23:45 hrs)

of the amendment was to set right the injustice to the respondent of having been erroneously convicted of a charge which would have attracted a heavier punishment, in view of the respondent`s previous convictions under s 6(1) DDBIA. There was no question of any requirement for fresh evidence, since a plea of guilty would be entered by the respondent in any event to the amended charge. I was satisfied that it would be in the interests of justice to amend the charge.

24 In my view, it would serve little purpose to order a retrial in these circumstances. I therefore set aside the conviction and sentence imposed by the magistrate and amended the charge to the intended charge under s 25(1) DDBIA. Upon counsel`s confirmation that the respondent would plead guilty to this charge, I reduced the fine to $1,000, the maximum prescribed under s 25(1) DDBIA. As the respondent had already paid the $2,000 fine imposed by the magistrate, a refund of $1,000 was ordered.

25 ***Petition allowed. Conviction and sentence set aside. Respondent convicted and sentenced on amended charge under s 25(1) of DDBIA instead.***

Yong Pung How CJ

Lee Sing Lit (Deputy Public Prosecutor) for the petitioner
Ranjit Singh (Darshan & Pnrs) for the respondent

Version No 1: 29 Oct 2026 (23:45 hrs)