Bachoo Mohan Singh v Public Prosecutor
[2009] SGHC 125

Case Number : MA 134/2007, Cr M 5/2009

Decision Date : 25 May 2009

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Michael Hwang SC, Charis Tan En Pin (instructed), Ang Cheng Hock SC, Eugene Thuraisingam and Jacqueline Lee (Allen & Gledhill LLP) for the appellant; Lee Sing Lit and Kan Shuk Weng (Attorney-General's Chambers) for the respondent

Parties : Bachoo Mohan Singh — Public Prosecutor

Criminal Law – Offences – False claim – Cash back arrangement between seller and buyer – Accused lawyer acting for seller knew that price stated in statement of claim was false and inflated – Whether claim was a false one – Whether seller took part in cash back arrangement – Whether accused lawyer had actual or constructive knowledge that claim was a false one

Criminal Procedure and Sentencing – Sentencing – Whether three months' imprisonment appropriate sentence

Criminal Procedure and Sentencing – Reference to Court of Appeal – General principles in determining questions were well-settled – Mere construction of words in statutory provisions – Whether questions of law of public interest

Criminal Procedure and Sentencing – Reference to Court of Appeal – Whether there was further appeal or other recourse after High Court dismissed application under s 60 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) – Whether accused could file such application to the Court of Appeal under its "inherent jurisdiction" or "equity jurisdiction"

25 May 2009

Tay Yong Kwang J:

Magistrate's Appeal No 134 of 2007

1 The appellant was charged under s 209 read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed) and convicted at the conclusion of a trial which took place from the end of March 2006 to 18 September 2007 before the district court. This offence is punishable with mandatory imprisonment for a maximum of 2 years and a discretionary fine. The appellant was sentenced to three months imprisonment by the district judge ("the DJ") (see *PP v Bachoo Mohan Singh* [2008] SGDC 211) ("GD"). He appealed against the conviction and sentence. I dismissed the appellant's appeal against conviction but partially allowed his appeal against sentence by reducing the original sentence of three months imprisonment to one month imprisonment and adding on a fine of $10,000.

The Charge under Section 209 and its elements

2 For easy reference, I shall first set out Section 209 of the Penal Code. It reads as follows:

> Whoever fraudulently, or dishonestly, or with intent to injure or annoy any person, makes before a court of justice any claim which he knows to be false, shall be punished with imprisonment for a term which may extend to 2 years, and shall also be liable to fine.

3 The charge against the appellant is as follows:

You, Bachoo Mohan Singh, M58 years old, NRIC S1079825F, are charged that you, sometime on or about the 12th day of April 2004, in Singapore, did abet by intentionally aiding one Koh Sia Kang to dishonestly make before a court of justice a claim which the said Koh Sia Kang knew to be false, to wit, by instructing Messrs KK Yap & Partners to file a writ of summons (engrossed with a statement of claim), on behalf of Koh Sia Kang and Kan Siew Guek, in the Subordinate Courts of the Republic of Singapore, against one Hong Swee Kim and Bong Yung Hua Elizabeth, which suit was duly filed by Messrs KK Yap & Partners vide DC Suit 1592/2004, which offence was committed in consequence of your abetment, and you have thereby committed an offence under section 209 read with section 109 of the Penal Code (Cap 224).

The prosecution's case

4 In 2003, Hong Swee Kim ("Francis Hong") and his wife, Elisabeth Bong, (collectively "the Hongs") engaged a property agent, Teo Pei Pei ("Teo"), to sell their flat located in the Jurong West housing estate. Due to a miscalculation by Teo, after the interest on their loan paid with CPF funds was factored in, the entire sale proceeds had to be credited into the CPF accounts of the Hongs. As a result, the Hongs did not receive any cash from the sale proceeds of their flat.

5 At the same time, the Hongs also engaged Teo to look for a suitable flat for them to buy. Teo promised to assist the Hongs find a seller who would be prepared to engage in a "cash back" arrangement. Under such an arrangement, the selling price of a flat would be stated at an amount higher than the actual price agreed between seller and buyer. The inflated false price would then be declared by the buyer to the bank for the purpose of getting a higher housing loan. The bank, in reliance on the inflated price, will be misled into disbursing a larger amount of money to the seller who will in turn return the difference between the two prices, either in whole or in part, to the buyer. The buyer will have to pay back a higher loan amount to the bank eventually but, in the meantime, he will enjoy the benefit of having ready cash from the larger amount of the housing loan for his own use, whether for furnishing the purchased flat or for any other purpose.

6 Subsequently, Teo brought the Hongs to view the flat at Blk 82 Redhill Lane #02-75 which was jointly owned by Koh Sia Kang ("Koh") and his wife, Kang Siew Guek (collectively "the Kohs"). The Hongs agreed to purchase the flat and Teo informed the Kohs that the Hongs wanted to have a cash back arrangement. The Kohs agreed to go along with such an arrangement. It was agreed between the Hongs and the Kohs that the sale price would be $390,000.

7 On 30 September 2003, Teo visited the Kohs at their flat and explained to the Kohs the cash back scheme. The evidence was that since the amount to be inflated was to be subject to the bank's valuation of the flat, which was not available as at 30 September 2003, no price was inserted in the Option to Purchase ("Option"). Nevertheless, the Kohs duly signed the Option, knowing that the actual sale price of their flat was $390,000. Koh told Teo that he wanted to sell the flat as soon as possible and therefore agreed to participate in the cash back arrangement.

8 Subsequently, the Hongs signed the Option after being informed that the Kohs had agreed to the cash back scheme. Eventually, the bank valued the flat at $490,000 and that figure was inserted as the purported price in the Option. Under the cash back arrangement, the Hongs would therefore have $100,000 in cash after completion of the sale (inflated price of $490,000 minus the actual agreed price of $390,000).

9 On 2 December 2003, at the first appointment at HDB, Teo informed the Kohs that the inflated amount was $490,000. Koh was surprised and unhappy over the fact that the inflated amount was a figure higher than what he had expected. He grumbled that the buyers would stand to gain more than

him financially. Notwithstanding his displeasure, the Kohs did not pull the plug then. Instead, they proceeded to declare to an HDB officer that the sale price of the flat was $490,000. Teo and the Hongs did likewise.

10 After the appointment at HDB, Teo brought the Kohs to the law firm of M/s Rayney Wong and Eric Ng to execute some documents in relation to the distribution of the sale proceeds. There, the Kohs signed a document which was exhibited as P11, item 2 of which states that the amount of $100,000 from the sale proceeds was to be paid to Kang, Koh's wife. According to the original plan, upon receiving the sale proceeds, Kang would withdraw this $100,000 and pass the money to Teo, who in turn would hand it over to the Hongs. However, after the appointment at HDB on 2 December 2003, Koh decided that he wanted a cut of the $100,000 which represented the cash back proceeds.

11 Koh then approached the appellant, someone Koh admired greatly as a lawyer, for legal advice and explained the facts of the case to him. The appellant was at that time working as a consultant at the law firm of M/s KK Yap and Partners. The appellant advised Koh to let him take over the matter from the law firm of M/s Rayney Wong and Eric Ng.

12 In the meantime, Teo and her supervisor, Tony Ho ("Tony") attempted to convince Koh to proceed with the original cash back scheme. Koh, however, informed Teo that he would only proceed if he was paid $20,000. The Hongs, however, were not agreeable to Koh being paid this amount. Koh had also wanted the law firm of M/s Rayney Wong and Eric Ng to change the payee for the said $100,000 to his name but was told that it could not be done.

13 On the advice of the appellant, Koh proceeded to make a number of complaints to various authorities. The appellant also prepared statutory declarations for Koh and Kang to sign. Koh's statutory declaration, dated 12 January 2004, clearly stated that Koh had agreed to sell the flat at the price of $390,000.

14 Teo, meanwhile, made a number of desperate attempts to dissuade the Kohs from abandoning the cash back scheme. As a result, a meeting was held at the premises of M/s KK Yap and Partners on 15 January 2004 (the "KK Yap meeting"). This meeting was attended by the Kohs, the Hongs and the appellant. Teo was not allowed to be present at the meeting. A solicitor, Ms Ong Bee Lay ("Ong"), also attended the meeting at the request of the Hongs. Ong was acting for the mortgagee (DBS Bank), the CPF Board and the HDB in the sale transaction of the flat. The final person at the meeting was someone else from M/s KK Yap and Partners. Prior to this meeting, Ong had no knowledge at all about the cash back scheme.

15 At the KK Yap meeting, Francis Hong specifically informed the appellant that there was an agreement between him, his wife and the Kohs to purchase the flat for $390,000 and that the $100,000 in excess of the agreed price was to be handed over to the Hongs. The appellant replied that he did not care about the arrangement and informed the Hongs that he would sue on the price stated on the Option.

16 There was no agreement reached at the KK Yap meeting. After the meeting was over, Ong advised the Hongs of the illegal nature of the cash back scheme and informed them that they should not proceed with the transaction and that she would not act for them in completing the sale. The buyers sensibly accepted her advice and pulled out from the transaction.

17 Meanwhile, the appellant told Koh that he could sue the Hongs. However, in order to do so, Koh must first sell his flat. The appellant introduced Koh to a new housing agent so that the flat could be sold within the shortest possible time. The appellant also advised Koh that there was no need for him

to purchase the Bukit Purmei flat which Teo had found for him.

18 In or around February 2004, the appellant signed and sent two letters (exhibited as P16 and P17) to the HDB and Inland Revenue Authority of Singapore ("IRAS") respectively. P16 and P17 contain clear references to the $100,000 being returned to the Hongs and to the transaction price for the flat being $390,000. Indeed, in the second last paragraph of both letters, this statement appears:

> Our clients [i.e. Koh and Kang] are concerned that Ho and Teo have induced our clients to unknowingly make false statements to HDB, assist the purchasers in cheating the bank and CPF Board in obtaining a larger loan and larger amounts of withdrawals respectively and Teo in making a false Statutory Declaration to HDB."

19 Eventually, the Kohs could only sell their flat for $380,000 to some other buyer. They signed an option dated 21 March 2004. This amount was $10,000 less than what was agreed between them and the Hongs earlier. In a letter dated 29 March 2004, the Kohs explained to the HDB that the main reasons why they were selling their flat below valuation price were that their flat was located on the second floor and the communal rubbish chute was very close to their flat.

20 The appellant subsequently sent a letter of demand dated 2 April 2004 to the Hongs. In this letter, the appellant demanded the payment of $120,000 within seven days. This figure was the sum of $110,000 (being the difference between the amount of $490,000 stated in the Option and $380,000, the eventual sale price of the flat) and $10,000 (being related expenses).

21 On 10 April 2004, a report on the cash back deal was published in the Straits Times. That led to a meeting at the Marina Mandarin Hotel in the evening of the same day ("the Marina Mandarin meeting"). This meeting was attended by the appellant, Teo, Tony, Koh, KK Yap and Mohd Ismail who was the CEO of PropNex. During this meeting, Tony offered to pay $20,000 to the Kohs (being the sum of $10,000 (the difference between $390,000 and $380,000) and another sum of $10,000 (as expenses). The appellant mocked him and threatened to sue the Hongs and should the Hongs be unable to pay up, he would sue the agents, Tony and Teo, and their agency, PropNex. The appellant remarked that the brand name of PropNex was definitely worth more than $120,000. Similar to the KK Yap meeting, no settlement was reached during this meeting.

22 On 12 April 2004, the appellant filed a writ of summons and statement of claim against the buyers. The statement of claim was in the following terms:

> 1. The Plaintiffs are the lessees of a Housing and Development Board apartment known as Block 82, Redhill Lane, #02-75, Singapore 150082 (hereinafter referred to as the "Premises").
>
> 2. On the 30th September 2003, the Plaintiffs granted the Defendants an Option to Purchase the said (sic) at a price of $490,000.
>
> 3. On the same day, the Defendants exercised the said option.
>
> 4. The consent / approval of the Housing Board for the sale and purchase was duly obtained. The sale and purchase was fixed for completion on 5th January 2004.
>
> 5. The Defendants failed, refused and / or neglected to complete the sale and purchase on 5th January 2004 or thereafter despite a Notice to Complete issued pursuant to Clause 29 of the Singapore Law Society's Conditions of Sale 1999 being served on their solicitors.

6. The Plaintiffs thereafter put the said Premises up for sale. In or about late March 2004, the Plaintiffs received an offer for $380,000, for the said premises. The said offer was the highest that was received. The Plaintiffs thereafter, granted an option to the offerors to sell the said premises to them at the price of $380,000.

7. By reason of the aforesaid, the Defendants have been in breach of agreement and the Plaintiffs have suffered loss and damage.

And the Plaintiffs claim against the Defendants, jointly and severally for:-

i. damages and loss;

ii. Interest;

iii. Costs.

As a result, the Hongs and the agents yielded to the pressure exerted by the appellant and decided to settle the claim as they were worried that their involvement in the cash back scheme would come to light. Their plan, in order to salvage the situation, was to settle the claim in the hope that they could create an impression that the agreed price for the flat was indeed $490,000 and that there was no cash back scheme involved. The settlement figure was eventually agreed at $70,000, of which $65,000 was paid by Teo and Tony while $5,000 was paid by the Hongs. The appellant persuaded Koh to accept this settlement amount. The appellant also demanded full payment, denying their request for instalment payments.

23 Apparently encouraged by this, the appellant proceeded to send letters of demand to the agents and the law firm of Rayney Wong & Eric Ng through another law firm, Chung Tan & Partners. When those parties responded robustly to the said letters of demand, the appellant dropped the matter and did not pursue compensation from them.

The appellant's case

24 The facts in the prosecution's case as set out above are largely not disputed by the appellant, save for the matters listed below.

25 On 2 December 2003, at the first HDB appointment, Teo told the Kohs for the first time that they had to declare the sale price of $490,000 to the HDB officers. The Kohs questioned Teo as to why the price stated in the Option was $490,000 when they had agreed to sell for $390,000. However, Teo did not provide any explanation.

26 Sometime on or around 29 December 2003, the Kohs appointed M/s KK Yap and Partners to act for them in the sale of their flat in place of Rayney Wong & Eric Ng, their then solicitors.

27 On 2 or 3 January 2004, the appellant met the Kohs. During this meeting, the Kohs complained to the appellant that the agents, Teo and Tony, had tried to cheat them. They also complained that Tony and a money lender known as AKB Moneylenders had extended loans to them at an exorbitant interest rate of 10% per month.

28 The Kohs' complaint about the agents was that they had been told by Tony that a couple was interested in purchasing the flat for $390,000. The Kohs then agreed to sell the flat for $390,000 and were told by the agents to sign the Option in blank. Subsequently, the Kohs found out that all the

documents relating to the sale and purchase of the flat indicated that the purchase price was $490,000. The Kohs therefore suspected that Teo and Tony were making a secret profit of $100,000.

29 When the appellant questioned the Kohs as to whether they had agreed to inflate the price to $490,000, they denied this. The appellant was then of the view that the Hongs could well be legally bound by the Option to complete the sale at $490,000. The Kohs therefore instructed the appellant that they wanted the Hongs to complete the purchase of the flat for $490,000.

30 When the Hongs failed to complete the purchase of the flat on the completion date, the appellant advised Koh that the Hongs had breached the agreement to buy the flat for $490,000 and that he could sue the Hongs for damages.

31 KK Yap & Partners, representing the Kohs, then issued a notice to the Hongs' solicitors demanding that they complete the transfer of the flat within 21 days. The Hongs failed to complete the purchase within the stipulated time and the Kohs therefore accepted the Hongs' repudiatory breach and terminated the agreement.

32 Subsequently, in or around March 2004, the Kohs sold their flat for $380,000 to another buyer. On 2 April 2004, KK Yap & Partners sent the Hongs a letter of demand for the sum of $120,000, which was made up of $110,000 (being damages for the Kohs' losses) and $10,000 (being the estimated expenses incurred). On 12 April 2004, KK Yap & Partners filed a Writ of Summons endorsed with a statement of claim. On or around 29 April 2004, the Hongs settled the claim for $70,000.

33 The appellant's case was built primarily on Koh's testimony while the prosecution's case relied on the testimony of Teo, Tony and Francis Hong. The material difference was that Koh strenuously denied that there was any discussion as to the cash back scheme in his flat. Koh also alleged that Teo and Tony failed to explain the Option and the Service Commission agreement between Teo and the Hongs.

Elements of the Charge and Issues

34 There are seven essential elements of the charge which the Prosecution has to prove beyond a reasonable doubt:

(a) the claim in question was made in a Court of Justice;

(b) that Koh made such a claim;

(c) that the claim was false;

(d) that Koh when making such a claim knew it to be false;

(e) that Koh made the claim dishonestly;

(f) that the appellant knew that Koh was dishonestly making a false claim; and

(g) that the appellant abetted Koh in making the claim by intentionally aiding him.

35 Elements (a) and (b) above are not in dispute. It is, however, the appellant's case that:

(a) the claim was not a false one;

(b) as the Kohs did not agree to participate in the 'cash back' scheme, the Kohs were legally entitled to ratify the Option for $490,000 procured by the agents and insist that the Hongs complete the purchase of the flat at $490,000, despite having agreed orally to sell the flat for $390,000; and

(c) even if the Kohs had agreed to participate in the cash back scheme, there was no dishonest intention on the part of the appellant in pleading the Option as the Kohs' instructions to the appellant were that they had not agreed to participate in the cash back scheme.

36 The appeal against conviction therefore turns on three principal issues. The first issue is whether the claim itself is a false one in the circumstances. The second issue is whether the Kohs agreed to participate in the cash back scheme. The final issue is whether the appellant knew that the Kohs had agreed to participate in the cash back scheme.

The decision below

37 In respect of the first issue, the DJ held that the claim was false because the selling price of the flat was $390,000 and not $490,000. The price of $490,000 was stated in the Option in order for the Hongs to execute the cash back scheme.

38 In addressing the second issue, the DJ began by examining the evidence of the agents, Teo and Tony. He found that both Teo and Tony were truthful and credible witnesses. Further, Teo's evidence was corroborated by the testimony of Tony and Francis Hong. After examining Koh's evidence, the DJ found that Koh had tailored his evidence to try to exonerate himself and the appellant. The DJ therefore held that the prosecution had established beyond a reasonable doubt that Koh knew that the claim was false and was dishonest in making the claim.

39 With regard to the third issue, the DJ held that the appellant had either been expressly told the truth by Koh or, even if he had not been so informed, he must have known what the truth was but had deliberately shut his eyes to the obvious. The inference, therefore, was that the appellant had the requisite guilty knowledge. To support the inference, the following pieces of evidence were replied upon, in addition to the documentary evidence: (a) The accused must have known the truth from Koh; (b) The accused must have known the truth from the KK Yap meeting; (c) The accused must have known the truth from the Marina Mandarin meeting.

The appeal against conviction

Was the claim false in the circumstances

40 The first issue is whether the claim was false in the circumstances. This is apparently the first time a person has been charged in Singapore under s 209 of the Penal Code. Hence, there is no reported local case of a prosecution under s 209, let alone the abetment of such an offence. This issue is related to the other two issues because falsity depends on the facts in issue.

41 The appellant argues that the Option created rights and could be sued upon. The exercised Option therefore created an equitable interest and obligated the Hongs to purchase the flat for $490,000.

42 The appellant also argues that even though a contract may be illegal, once a proprietary interest passes under it, rights are created and both parties can sue on it. Hence, if a party can

plead a contract, which in this case is an option, and succeed without having to refer to a collateral oral contract for a reduced price, he is entitled to succeed as long as he does not have to rely on an illegality.

43 The prosecution submits that the Option was a sham and that both the Kohs and the Hongs never intended the Option to bind their relationship. The Option was prepared solely for the purpose of misleading the bank, the HDB and the CPF Board.

44 The word "false" is defined in *Black's Law Dictionary* (Thomson West, 8th Ed) as (i) untrue; (ii) deceitful; and (iii) not genuine. The phrase "false claim" is defined in P Ramanatha Aiyar, *The Law Lexicon* (1997, 2nd Ed) as "a claim by one of more than his due, and amercement and punishment therefore" or "the undue assertion of a right to something".

45 The evidence adduced by the prosecution clearly shows that the sale price of the flat was agreed at $390,000. The claim was therefore contrary to the undeniable fact that there was an agreement for the flat to be sold and purchased at $390,000 and nothing more. The true amount of damages, if any, could only be $10,000, the difference between the true agreed price ($390,000) and the final sale price that the Kohs obtained for the flat ($380,000). The crucial issue is whether the appellant was aware of the true agreed price and the cash back agreement between the Kohs and the Hongs. As will be demonstrated subsequently, the appellant clearly knew what the true bargain was but decided to file the claim anyway. This he dared to do obviously because he knew that the Hongs would be in a real legal dilemma – pay up on the false claim for an extra $100,000 damages or plead the truth about the cash back transaction and admit to an offence.

46 The case of *Bulaki Ram* (1889) 10 AWN 1 ("*Bulaki Ram*") is instructive. In that case, the accused person sued a person to recover Rs. 88-11-00, alleging that the whole amount was due from the defendant. The defendant produced a receipt for a sum of Rs. 71-3-3 and this amount was proved to have already been paid to the accused person. The accused person was convicted under section 209 of the Indian Penal Code. On appeal, his conviction was upheld by Straight J who held that the conviction was correct notwithstanding the fact that part of the accused person's claim was due and owing. On the face of the suit, the claim of Rs. 88-11-0 was clearly false because the accused person was only owed the difference between Rs 88-11-0 and Rs. 71-3-3.

47 Following from *Bulaki Ram*, the claim in the present case is therefore false because Koh had agreed to sell the flat at $390,000 and the only reason why the price in the Option was stated as $490,000 was because of the illegal cash back scheme. In my view, the impact of Koh and Francis Hong agreeing to the cash back scheme and Koh's subsequent blatant attempt to enforce the agreement without the scheme by way of court proceedings is pivotal to the prosecution in the present case. A contextual interpretation of a claim should be made in order to determine if it is false. One cannot argue that just because the Option on its face plainly states $490,000, Koh, with the knowledge that the actual transaction price was $390,000 and that the $490,000 was a false price, could file a writ of summons endorsed with a statement of claim averring the inflated price of $490,000 without any mention of the cash back scheme or the fact that the actual sale price was $390,000.

48 With regard to the appellant's arguments on illegality, it is trite that where both parties are equally culpable in an illegal contract, the court will assist neither and the loss lies where it falls. Since the inflated price of $490,000 was declared in the statement of claim, the Kohs would have to rely on the illegality itself to substantiate their claim against the Hongs. In my view therefore, the claim is bound to fail. Further, as observed by Steyn J in *Mitsubishi Corporation v Aristidis I Alafouzos* [1988] 1 Lloyd's Rep 191 at 194, the court will also refuse to allow a party to rely on a contract that

was drafted to deceive third parties:

> … in an age in which commercial fraud is increasing, it seems imperative that the Court should refuse to allow a party to rely on a contract which was drafted or structured to deceive third parties.

49 The appellant's argument that it was the duty of the Hongs to plead the collateral contract in their defence and not the duty of Koh to raise it in his statement of claim is irrelevant when determining whether the claim was genuine. The prosecution's case is simply that the agreement was for the flat to be sold at $390,000, not $490,000, and the Kohs were well aware of this fact. Hence, the claim was patently false as it stood as Koh was claiming more than his due under the agreement. The appellant's arguments in addressing this issue of whether the claim was a false one have obfuscated the true issue in this case. As the DJ rightly stated in his GD at [245], the appellant's arguments ignored a basic point – "[t]he issue here is not whether the claim presented in the Statement of Claim is one that may be properly pleaded or an illegal claim. The issue is whether the accused with the knowledge of the cash back transaction and the fact that there was no sale of the flat for the sum of $490,000 abetted Koh in the commission of an offence under section 209 in pursuing such a claim in court".

50 Let us consider the circumstances leading to the filing of the claim in court. The appellant, on behalf of the Kohs, sent a letter of demand dated 2 April 2004 to the Hongs. In this letter, the appellant demanded payment of $120,000 within seven days. This figure was indisputably the sum of $110,000 (being the difference between $490,000 and the subsequent sale price of $380,000) and $10,000 (being related expenses). Subsequently, at the Marina Mandarin meeting on 10 April 2004, Tony offered the Kohs $20,000 as a settlement. The appellant, however, mocked Tony and threatened to sue the Hongs, the agents (Tony and Teo) and PropNex. The appellant remarked that the brand name of PropNex was definitely worth more than $120,000.

51 On 2 April 2004, the appellant sent the Hongs the letter of demand for $120,000. Eight days later, on 10 April 2004, the appellant rejected the offer of $20,000 as a settlement amount at the Marina Mandarin meeting. Two days later, on 12 April 2004, the appellant filed the writ of summons endorsed with the statement of claim. Some 17 days later, the claim was settled at $70,000. The only inference is that the appellant, by stating the price of $490,000 in the statement of claim, was claiming more than what the Kohs were legally due. In the light of the events outlined above, I cannot accept the argument that the appellant, even with the knowledge that the price of $490,000 was an inflated one as part of the cash back scheme, was entitled to take the view that the Kohs could make a claim for unliquidated damages for the difference between the price stated in the Option and the price at which the flat was sold subsequently, leaving the court to assess the precise quantum at the appropriate juncture, without any allusion whatsoever to the actual agreed price or the cash back agreement. Clearly, the statement of claim as filed was making a claim for the difference between the false price of $490,000 and the subsequent sale price of $380,000 and was accordingly a patently false claim in law. If further proof is needed that the claim was not for $10,000, the difference between the true agreed price ($390,000) and the final sale price that the Kohs obtained for the flat ($380,000), there is the fact that the claim was lodged in the District Court (whose jurisdictional limit is $250,000) and not in the Magistrate's Court (whose jurisdictional limit is $60,000). Out of the settlement amount of $70,000, KK Yap & Partners rendered the Kohs a bill for $21,470.80 on 3 May 2004.

52 The appellant also argues that the Kohs did not have the duty to raise a potential defence for the Hongs. The appellant insists that it was for the Hongs to raise the cash back agreement as a defence, after which the Kohs could then apply to strike it out on the basis that the Hongs were not

entitled to lead evidence as to an illegality. In my view, this argument is unsustainable on the facts of both the present case and in the light of *Bulaki Ram*. In *Bulaki Ram*, which has already been touched on earlier (se [46] above), the accused person failed to mention that the sum of Rs.71-3-3 had already been paid by the defendant to him. Instead, the accused person there sued for the entire amount of Rs. 88-11-00 and was duly charged and convicted under section 209 of the Indian Penal Code. To argue that it was the duty of the Hongs to aver that the actual agreed price was $390,000 and that the price in the Option was inflated to $490,000 pursuant to the cash back scheme would be akin to the accused person in *Bulaki Ram* arguing that it was the duty of the defendant there to aver and prove that the amount of Rs.71-3-3 had already been paid when he (the accused person) knew it to be so and that if the defendant did not do so, the accused person in that case could obtain judgment for the larger amount that was clearly not due to him.

53 The appellant further submits that section 209 of the Penal Code only applies if the entire Option is a fiction. In my view, as supported in Ratanlal & Dhirajlal's Law of Crimes (Vol. 1, 26th ed) at p 989, section 209 is not limited to cases where the whole claim is false. This view is also amply supported in the *Bulaki Ram* case and is sound in logic. A claim which is false in a material particular (whether by way of an outright lie or through deliberate omission or suppression of material facts) is still a false one for the purposes of s 209. It cannot be disputed that the amount of damages here (computed on the pleaded false basis that the actual price was $490,000) was the essence of the claim filed in court. It is as untrue as a claim averring that A agreed to sell a Rado watch knowing that the truth is that A agreed to sell a Rolex watch, notwithstanding the fact that an agreement for the sale of a watch does exist in law.

54 The other legal contention is that a conviction under s 209 can be sustained only if the pleading is verified as the truth by the party making the claim. The appellant relies on the fact that Indian civil procedure requires pleadings to be verified while our civil procedure does not and that Indian authorities must therefore be read with this important difference in mind.

55 In my opinion, the clear wording of s 209 imposes no such condition. To lodge a statement of claim in court according to the prevailing procedural rules is to make a claim in court, whether or not such claim is verified by affidavit or by some other means. Our civil procedure does not require a statement of claim to be supported by affidavit at the point of filing. The offence envisaged is complete once the claim is filed in court (provided of course that the other elements of s 209 are satisfied) and not only when evidence on the claim is adduced. In ordinary language, it would be absurd for a plaintiff to assert that he has not made a claim in court so long as he has not produced evidence in support of his statement of claim. That appears to be confusing a claim with the evidence in support thereof. If an assertion of fact is attested to by oath or affirmation and found to be false, that would give rise to another offence of giving false evidence. Similarly, a claim once lodged in court does not cease to be such because it is subsequently discontinued, settled or otherwise terminated without advancing to the evidence stage. There is also no requirement that a claim must succeed in whole or in part for it to come within the purview of s 209. Should there be a change of heart and an amendment be effected to the claim to remove all falsehood, a false claim would still have been made but the gravity of the offence is now mitigated by the amendment. In the instant case, the falsehood was carried to the point of no return when the settlement was effected.

56 Coming back to the point raised in [40] above that there has no prosecution under s 209 before the present case, perhaps it could be because previous false claims (in the sense indicated in [53] above) proceeded to the evidence stage (which the DC Suit in issue here did not) and prosecution was grounded on giving false evidence rather than on making a false claim. Alternatively, it could well be that previous false claims never came into the legal light for the simple reason that the defendants in those cases, like those in the DC Suit in question here, did not wish to implicate themselves in

some wrongdoing and had to pay up on the false claims on pain of undergoing prosecution on their own admissions.

Did the Kohs agree to participate in the cash back scheme

57 At the trial, the agents testified that the Kohs had on 30 September 2003 agreed to participate in the cash back scheme. Koh, on the other hand, testified that he never agreed to participate in the cash back scheme but was instead requested during the HDB First Appointment on 2 December 2003 to declare the price as $490,000 instead of $390,000.

58 The DJ held that the only material difference between the evidence of the agents and that of Koh was whether Koh had agreed to participate in the cash back scheme on 30 September 2003. The Kohs have all along denied that they agreed to inflate the selling price of the flat. The appellant claims that he did not know whether the Kohs had agreed to participate in the cash back scheme. On this basis, the appellant argued that the prosecution failed to prove beyond reasonable doubt that the Kohs had agreed to participate in the cash back scheme. The Kohs were therefore entitled to ratify their agents' actions in procuring for them the higher price of $490,000.

59 On this point, the appellant's main argument is that there were major discrepancies between Francis Hong's and Teo's evidence at the trial. Teo testified that on the same night that the Kohs signed the Option in blank (i.e. 30 September 2003), she took the Option to the Hongs and obtained their signatures. On the other hand, Francis Hong's evidence was that it was only after the bank had valued the flat at $490,000 (which was some weeks after 30 September 2003) that Teo told Francis Hong that she would get the Kohs to fill up the Option and insert the figure of $490,000, provided that the Kohs agreed. The appellant asserts that what Teo then did was to state the figure of $490,000 in the Option which was previously signed in blank by the Kohs. Teo then took the Option (with $490,000 stated) to the Hongs and told them that the Kohs had agreed to participate in the cash back scheme.

60 I am unable to accept the appellant's argument that the discrepancy between Francis Hong's evidence and Teo's evidence at the trial was a major and material one. In my view, the discrepancy is immaterial to the DJ's finding that the credibility of the agents as Prosecution witnesses was not undermined in any way. In this regard, it is instructive to refer to *Sundara Moorthy Lankatharan v Public Prosecutor* [1997] 3 SLR 44 where Yong Pung How CJ endorsed the view expressed in *Chean Siong Guat v Public Prosecutor* [1969] 2 MLJ 63:

> Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognised by the court. Being a question of fact, what a magistrate need do is to consider the discrepancies and say whether they are minor or serious discrepancies. If, after considering the discrepancies, if a magistrate finds that the discrepancies do not detract from the value of the testimony of the witness or witnesses, it would then be proper for him to regard the discrepancies as trivial and ignore them.

61 I accept the prosecution's argument that the DJ, having considered the fact that the agents

had already been convicted for cheating in respect of the present case by the time they gave evidence in court, was entitled to make a finding that the agents had no reason to lie or to exaggerate about the appellant's or Koh's role in the cash back scheme. The finding by the judge is well supported by the principles enunciated in *Loo See Mei v Public Prosecutor* [2004] 2 SLR 27 (at [39]):

> . . . It must be remembered that in *Khoo Kwoon Hain v PP*, my main criticism levelled against the district judge was his reliance on the fact that the accused could not venture any reasons why the complainant would lie in court to falsely implicate him. That was clearly wrong because by focusing on that, he failed to consider whether there was credible evidence to show that the complainant could not have been lying. The same criticism cannot be levelled against the trial judge in the present case. He had expressly considered the undisputed fact that Limbu had been dealt with under the law, having been convicted and having served his sentence for overstaying in Singapore without a valid permit. The trial judge was entitled to rely on this, as he did, as a basis for finding that Limbu had no reason to falsely implicate the appellant here.

62 I also agree with the prosecution's submission that the judge rightly drew a distinction between lying in one's personal capacity and lying in court (*Lim Ek Kian v Public Prosecutor* [2003] SGHC 58 at [22]). Just because Teo had lied to the police previously, that did not necessarily mean that she was also untruthful when testifying in court.

63 An appellate court should be slow to disturb the findings of facts by the trial judge unless they were clearly reached against the weight of the evidence. This has been reiterated in numerous cases. For instance, in *Cheong Siat Fong v Public Prosecutor* [2005] SGHC 176 at [12], the court said:

> "It is settled law that an appellate court does not review the findings of fact made by the trial judge *de novo*. In fact, it will be very slow to overturn such findings unless they are obviously against the weight of the evidence looked at in the round . . . This is especially so where the findings are *based on the credibility of the witnesses whom the trial judge had the opportunity to observe* …" (emphasis added)

64 It should be noted that the findings of fact by the DJ were amply supported by the evidence of the agents. It was the evidence of the agents that the Kohs had agreed to participate in the cash back scheme. There is nothing in the present case which shows that the findings of fact made by the DJ were perverse in any way. It cannot therefore be said that the DJ erred in finding that Koh had agreed to participate in the cash back scheme.

Did the appellant know that the Kohs had agreed to participate in the cash back scheme

65 The appellant's main argument here is that he knew that the Kohs had orally agreed to sell the flat for $390,000. However, his position is that the Kohs instructed him subsequently that the price stated in the Option was $490,000 instead. In essence, there were therefore two prices: the orally agreed price of $390,000 and the price inserted in the Option of $490,000. The appellant submits that the DJ misinterpreted Koh's admission in Court that he had told the appellant that the price of $490,000 was false. In particular, the appellant argues that the admission must be read in context, which is that Koh was told that the flat was to be sold at $390,000 but he subsequently discovered that the documents stated the selling price to be $490,000.

66 In my view, the events that transpired in both the KK Yap meeting and the Marina Mandarin meeting constituted clear evidence that the appellant had actual knowledge or, at the very least, constructive knowledge that there was a cash back scheme between the Kohs and the Hongs and

that the true transaction price for the flat was $390,000.

67 An examination of the documentary evidence also leads to the irresistible inference that the appellant was indeed aware that there was a cash back scheme. The two letters, signed by the appellant and sent to HDB and IRAS, contained clear references to the amount of $100,000 being returned to the Hongs and to the transaction price for the flat being $390,000.

68 It is also the evidence of Koh, as seen in his statements given to the CPIB, that the appellant was fully aware that the amount of $490,000 was false and that he was told by the appellant that he could sue the Hongs nevertheless for breaching the contract of $490,000. The following extracts from a statement made by Koh to the CPIB on 2 March 2005 show clearly that the appellant had the knowledge that the amount of $490,000 stated in the Option was false:

> 12. ... Mohan Singh then told me that the buyers had breached a contractual agreement to buy the house at $490,000 and told me that I can sue them.. .
>
> 15. ... Mohan Singh told me that I should start suing the buyers and based on the price that I sold my flat at, which was later $380,000, Mohan Singh told me that I can get the difference of $110,000 which is a loss to me since had I sold my flat to the buyers, I would have gotten the amount...
>
> …
>
> 18q. Do you know if the contract for the sales of your Blk 82 Redhill flat is illegal? Did Mohan Singh tell you so?
>
> 18a. I did not know at first until Mohan Singh told me that it is wrong and illegal. Even the friends I asked around told me that the deal is illegal.
>
> …
>
> 31q. Did you tell Mohan Singh that all these documents are false?
>
> 31a. Yes, I did tell him that the amount is wrong and the documents with prices showing that the price is $490,000 is either false or misled by Kereen. He said that I should make a police report.
>
> 32q. So you informed Mohan Singh of KK Yap to sue the buyers over them breaching a contract of $490,000?
>
> 32a. It was told to me by Mohan Singh that I can do so. I did not tell him to do so but he suggested to me and as my lawyer, I trust him to do all the necessary things for me.

69 It is clear that the Prosecution has proved beyond a reasonable doubt that the appellant had the requisite guilty knowledge and aided Koh in pursuing a false claim dishonestly. They knew that the Hongs would be pressurized into paying up on (or settling) the false claim or face the prospect of exposing themselves to criminal charges should they choose to plead the truth in their defence. The false claim would cause wrongful loss to the Hongs (by claiming the additional $100,000) and, consequently, wrongful gain to the Kohs (see the definition of "dishonestly" in s 24 of the Penal Code).

70 In *Awtar Singh s/o Margar Singh v Public Prosecutor* [2000] 3 SLR 439 at [50], the court made the following observations:

50 The test of knowledge has been comprehensively defined in a number of cases: *PP v Koo Pui Fong* [I996] 2 SLR 266; *Chiaw Wai Onn v PP* [I 997] 3 SLR 445 and *Nomura Taiji v PP* [I998] 2 SLR 173, The upshot of these cases is that *actual knowledge of certain facts can be inferred from the evidence that the defendant had deliberately or wilfully shut his eyes to the obvious or that he had refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed. Where the facts obviously pointed to one result, and the accused must have appreciated it but shut his eyes to the truth, then together with the other evidence adduced, it could have formed a very compelling part of the evidence to infer the requisite guilty knowledge*: *Chiaw Wai Onn v PP*. However, it has to be remembered that there is a vast difference between a state of mind which consists of deliberately shutting the eyes to the obvious, the result of which a person does not care to have, and a state of mind which is merely neglecting to make inquiries which a reasonable and prudent man would make: *PP v Koo Pui Fong*. (emphasis added)

71 Therefore, even if the appellant did not have actual knowledge that Koh had agreed to inflate the transaction price of the flat to $490,000 as reflected in the Option, there was certainly more than sufficient evidence at hand to show that the appellant had deliberately shut his eyes to the obvious. The evidence includes the admission by the appellant that he was aware that the amount of $490,000 as depicted in the Option was not the true price at which Koh had agreed to sell the flat, Koh's Statutory Declaration, the two letters (see [67]) and the events which transpired at the KK Yap meeting and the Marina Mandarin meeting. On the totality of the evidence, it could and should be inferred that the appellant had the requisite guilty knowledge at least from the fact that he deliberately shut his eyes to the obvious.

The appeal against sentence

72 I turn now to address the appeal pertaining to the sentence of three months' imprisonment imposed on the accused. The appellant, having been convicted of an offence punishable under section 209 read with section 109 of the Penal Code, faced a mandatory term of imprisonment which may extend to 2 years, together with a discretionary fine.

73 The appellant highlighted the following mitigating factors. He is a 61 year old lawyer who is a first offender. The appellant has also contributed significantly to charity, community work and his profession. A number of senior members of the legal profession, including Mr Sant Singh SC, have provided testimonials about his good character and professionalism. It was also brought to my attention that the appellant had acted for some of his clients *pro bono*.

74 In view of the fact that section 209 provides for mandatory imprisonment, Mr Michael Hwang, SC urged me to impose a one-day imprisonment term. In this regard, the "clang of prison gates" principle was brought up in mitigation. The "clang of prison gates" principle has been applied in *Siah Ooi Choe v Public Prosecutor* [1988] SLR 402 and further explained in *Tan Sai Tiang v Public Prosecutor* [2000] 1 SLR 439. In essence, for the "clang of prison gates" principle to apply, the accused must be an older person in his or her 40s or 50s, is convicted for the first time, and must have previously held an important position or was of high standing in society. The underlying rationale for the application of the "clang of prison gates" principle is that the shame of going to prison is sufficient punishment for the convicted person. The closing of the prison gates behind him or her, regardless of the duration of imprisonment, is sufficient punishment by itself.

75 The offence of presenting a false claim in court is a serious one that strikes at the root of justice and the gravity of the offence is compounded by the fact that the appellant is an officer of

the court and a very senior lawyer. I therefore cannot accept the contention that one day's imprisonment would suffice in this case. On the other hand, with such a conviction, it is obvious that disciplinary action by the Law Society will follow shortly and that the appellant's livelihood as a lawyer, both here and abroad (he currently practises in Australia), is going to be severely affected. Bearing this and the other mitigating factors in mind, I am of the view that a short term in prison with a fine added would be sufficient punishment in this case. I therefore set aside the sentence of three months' imprisonment and replaced it with a sentence of one month's imprisonment coupled with a fine of $10,000 (the maximum that the DJ could have imposed).

Summary

76 I dismissed the appeal against conviction and partially allowed the appeal against sentence by substituting the original sentence of three months' imprisonment with a sentence of one month's imprisonment together with a fine of $10,000. Upon the request of the appellant, he was given up to 4pm the next day to pay the fine (he has since done so) and his imprisonment sentence was suspended until after the determination of an application under s 60 of the Supreme Court of Judicature Act ("SCJA") (Cap 322, 2007 Rev Ed) which the appellant intended to take out. The existing bail terms were extended.

Criminal Motion No 5 of 2009

77 This is the application by the appellant under s 60 SCJA to reserve certain questions to the Court of Appeal. As modified in counsel's submissions before me, the questions are:

1 Where: -

(a) a lawyer acts for a seller of a flat in a claim against a buyer for damages for breach of contract to purchase that flat;

(b) the lawyer knows that:

(i) the parties orally agreed on a sale price of $390,000,

(ii) a written contract was later executed stating the price at $490,000,

(iii) the parties intended that, on completion, the buyer would pay $490,000 and the seller would repay the buyer $100,000,

(c) by reason of the buyer's failure to complete the purchase, the seller is obliged to resell the property and thereby suffers loss, and consequently has a valid clam for damages for breach of contract;

(d) the lawyer prepares and files the Statement of Claim, claiming general damages for breach of contract and pleads the written contract and the purchase price of $490,000 and does not mention the price of $390,000; and

(e) no evidence has yet been led in court;

is there an offence under s 209 read with s 109 of the Penal Code (Cap 224)?

Alternatives

2 In s 209 read with s 109 of the Penal Code (Cap 224):

(a) does "claim" mean:

(i) an unsworn pleading filed in court; or

(ii) a court proceeding that has been completed?

(b) does "false claim" mean:

(i) an unsworn pleading which is manifestly without merit; or

(ii) a completed court proceeding which is manifestly without merit?

(c) does "false claim" include:

(i) a pleading which is founded on a valid cause of action but (to the drafter's knowledge) includes an incorrect statement of fact;

(ii) a pleading which (to the drafter's knowledge) contains an incorrect price which will form the reference sum for calculation of damages but no specific sum is claimed by way of damages;

(iii) a pleading which is substantially correct but (to the drafter's knowledge) omits a relevant fact in terms of the factual matrix;

(ix) a pleading which (to the drafter's knowledge) bases a claim on an illegal contract which the drafter reasonably believes could be enforced;

(v) all or any of the above cases if the drafter reasonably believes that the true and complete facts will be brought to the court's attention at or before the trial of the action?

(d) in the premises set out in (c)(v) above, can the drafter's conduct be described as "dishonestly"?

78 The principles pertaining to an application under s 60 SCJA have been set out in many cases and I need not repeat them here (see, for example, *Abdul Salam bin Mohamed Salleh v Public Prosecutor* [1990] SLR 301, *Wong Sin Yee v Public Prosecutor* [2001] 3 SLR 197, *Ong Beng Leong v Public Prosecutor (No 2)* [2005] 2 SLR 247 and *Cigar Affair v Public Prosecutor* [2005] 3 SLR 648). If the general principles in determining the questions raised are well settled and it is a mere exercise of applying those principles to the facts of the individual case, those questions would not qualify as questions of law of public interest. Likewise, the mere construction of words in statutory provisions in their application to the facts of a case does not satisfy the requirement of public interest. If it were otherwise, prosecution under any new statutory provision would always have to end up before the highest court of law.

79 Although the present case may be the first prosecution under s 209, I do not see any difficult point of construction where the words of this section are concerned. Indeed, several terms in that section are defined by the Penal Code itself (see s 20, s 24 and s 25). The other terms are easily understood using commonsense and applying general principles of law. Whether or not a claim is false naturally depends on the factual matrix of a case and how the claim is pleaded. That is patently a question of fact in each case.

80 Counsel for the appellant appears to be portraying s 209 as a legal trap which may cause many an unwary lawyer to falter and fall afoul of the law by the simple act of lodging a claim which the lawyer reasonably believes to be justified in law. In my view, such fear is totally unfounded. The provision does not make a false claim the only ingredient of the offence – the claimant must "know" that it is false and must also make the claim "fraudulently, or dishonestly, or with intent to injure or annoy any person". In the present case, all the elements of the offence are satisfied – this is not a case of an unwary lawyer seeking to pursue an honest claim, as the findings set out earlier clearly show. A lawyer who is not aware of the falsity of his client's claim has no cause at all to worry about s 209. The provision is not about making a wrong claim with no dishonest intention.

81 The decision in this case does not impose on a lawyer the duty to verify facts stated by his client and it certainly does not hold that a lawyer must do so even when such facts are contained in a statutory declaration. It concerns a lawyer's duty to act honestly when he knows about or is imbued with knowledge of some wrongful act.

82 I am therefore of the view that no questions of law of public interest have arisen in the course of the appeal from the DJ. Accordingly, I dismissed Criminal Motion No 5 of 2009.

83 Upon the dismissal of his application, the appellant sought to address the court personally and was permitted to do so. He requested an opportunity to file an application to the Court of Appeal under its "inherent jurisdiction" or its "equity jurisdiction" to refer the questions set out above to that court. For this purpose, he asked that his imprisonment sentence (of one month) be further stayed and said that he would file his application to the Court of Appeal and the supporting affidavit by the next day.

84 Mr Lee Seng Lit, DPP pointed out that my decision in *Ong Boon Kheng v Public Prosecutor* [2008] SGH 1999 has made it clear that there is no further recourse after the High Court dismisses an application under s 60 SCJA. He also informed me on 17 April 2009 (see [87] below) that the Court of Appeal has informed the parties in that case by a letter from the registry of the Supreme Court that it would not list the appeal (against my decision in refusing to reserve certain questions for the decision of the Court of Appeal) for hearing, reiterating what the Court of Appeal held in the case of *Ng Chye Huey v Public Prosecutor* [2007] 2 SLR 106.

85 I agreed with the prosecution that there is no further appeal or other recourse after the dismissal of Criminal Motion No 5 of 2009. However, since this case involves the imprisonment of an advocate and solicitor, I decided to grant the appellant's unusual application for a further stay of the imprisonment sentence pending his application to the Court of Appeal. As the next day (a Friday) was a public holiday, I directed the appellant to file his application to the Court of Appeal by 12 noon on Monday, 13 April 2009, failing which he would have to surrender to begin serving his sentence. I also directed that should the Court of Appeal reject his application without a hearing, he would have to surrender himself within 24 hours of being so notified by the registry of the Supreme Court. Bail was extended pending any decision of the Court of Appeal in this matter.

86 On the same day of the hearing (9 April 2009), the appellant filed :

(1) Criminal Motion No 14 of 2009 (essentially to ask the Court of Appeal to review and set aside the dismissal of Criminal Motion No 5 of 2009); and

(2) Criminal Appeal No 6 of 2009 (to appeal against the dismissal of Criminal Motion No 5 of 2009).

87 On 17 April 2009, at the appellant's request, I heard him urgently on his application for permission to leave the jurisdiction and made the following orders:

(1) Before Mr B Mohan Singh leaves Singapore, he is to notify the Registry by letter of his personal mobile phone number, his Australian office phone number and email address, his personal email address and fax number.

(2) If the Court of Appeal declines to hear the Criminal Motion and appeal, the Registry will inform Mr B Mohan Singh by any one or all of the above contacts and Mr B Mohan Singh will return to Singapore to surrender himself within 7 days of such notification.

The existing bail of $125,000 (with the appellant's sister as bailor) was extended accordingly.

88 On 15 May 2009, the appellant submitted further arguments in writing and requested that his appeal against conviction be re-opened for such further arguments to be made. I have already heard his counsel make all possible arguments on his behalf and have made a final decision in the appeal. There is no room for further arguments to be made.