IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 290

Criminal Motion No 69 of 2021

Between

Chua Yi Jin Colin

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Gag orders] — [Amendment or revocation]

Chua Yi Jin Colin
v
Public Prosecutor

[2021] SGHC 290

General Division of the High Court — Criminal Motion No 69 of 2021
Sundaresh Menon CJ
24 September 2021

24 December 2021

Sundaresh Menon CJ:

Introduction

1 The applicant, Chua Yi Jin Colin, was charged for filming voyeuristic videos of various women. At his first State Courts mention, the court granted an order under s 7(3) of the State Courts Act (Cap 321, 2007 Rev Ed) ("SCA") to prohibit the publication of any information that might lead to the identification of any witness in those proceedings. For convenience, I refer to such an order as a "gag order". As the victims of the offences were the applicant's classmates, schoolmates and friends, the gag order covered not only the victims' identities but also that of the applicant.

2 The applicant subsequently pleaded guilty to all the charges against him. The 11 victims named in the charges furnished victim impact statements in which they variously explained how the offences had affected them, and

unanimously expressed support for the gag order to be varied so that the applicant's identity would *not* be covered thereunder. The Prosecution applied for the gag order to be varied accordingly, and District Judge Tan Jen Tse ("District Judge Tan") granted the application ("District Judge Tan's Order"). The applicant then filed this application, urging the court to exercise its revisionary powers to set aside District Judge Tan's Order. He argued that District Judge Tan's Order was likely to lead to the identification of the victims and, more generally, that the victims' views were irrelevant to the imposition and scope of a gag order.

3 I dismissed the application with brief oral grounds. In essence, I held that a gag order is concerned with only the interests of the victims and *never* with the interests of the accused person. Even though the applicant purported to be acting in the victims' best interests, he was, in truth, urging the court to maintain the gag order on his identity for his *own* benefit.

4 I now provide fuller grounds for my decision.

Facts

5 The applicant was first charged in the State Courts on 2 October 2019 with two counts of insulting the modesty of a woman, which was then an offence under s 509 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"). At the first court mention, the Prosecution applied for a gag order under s 7(3) of the SCA to protect the identities of the two victims named in those charges.

6 Sections 7(3) of the SCA provides as follows:

> (3) A State Court may at any time order that no person shall —

> (*a*) publish the name, address or photograph of any witness in any matter or proceeding or any part thereof tried or held or to be tried or held before it, or any evidence or any other thing likely to lead to the identification of any such witness; or
>
> (*b*) do any other act which is likely to lead to the identification of such a witness.

7 The Prosecution did not object to the Defence's request that the gag order cover the applicant's identity. Since the two victims were the applicant's classmates and schoolmates, the disclosure of his identity would risk their identification. Furthermore, as investigations were still ongoing, the Prosecution considered that the disclosure of the applicant's identity would risk the identification of other victims in respect of whom charges might be tendered in the future. District Judge Adam Nakhoda ("District Judge Nakhoda") accordingly granted a gag order prohibiting the publication of the victims' identities as well as the applicant's identity and university.

8 On 8 January 2020, the Prosecution preferred 18 additional charges against the applicant. These comprised one charge under s 30(1) of the Films Act (Cap 107, 1998 Rev Ed) ("FA") for possession of obscene films and 17 charges under s 509 of the PC. By then, the applicant faced a total of 20 charges, all of which related to his voyeuristic filming of various women. District Judge Nakhoda similarly issued a gag order in respect of the identities of the newly identified victims (all of whom were the applicant's classmates, schoolmates and friends, whether former or current) as well as the applicant's identity.

9 On 14 January 2020, the Prosecution applied to vary the gag order to permit the disclosure of *only* the applicant's identity ("the First Application"). Of the 12 victims who had been identified by then, ten were in favour of such

disclosure. As for the two remaining victims, one had reservations over the disclosure sought ("the 11th victim") while the other was abroad and, in accordance with her family's wishes, had not been contacted ("the 12th victim"). District Judge Nakhoda dismissed the First Application on the basis that the 11th victim and the 12th victim had not unequivocally consented to the risk that they might be identified if the applicant's identity was disclosed.

10 The 11th victim subsequently changed her mind and supported the disclosure of the applicant's identity. The Prosecution also withdrew four of the charges under s 509 of the PC, one of which pertained to the 12th victim. There were no other charges involving the 12th victim.

11 On 29 July 2021, the applicant pleaded guilty before District Judge Tan to seven charges under s 509 of the PC and one charge under s 30(1) of the FA. The remaining eight charges under s 509 of the PC were taken into consideration for the purpose of sentencing. The Prosecution adduced victim impact statements from all 11 victims, with each statement containing the following sentence: "I would agree to the lifting of the gag order on [the applicant's] name, even if it increases the risk of me being identified." With the victims' unanimous consent, the Prosecution applied for the gag order to be varied to disclose the applicant's identity ("the Second Application").

12 District Judge Tan allowed the Second Application. As a result, the gag order covered the victims' identities, their relationships with the applicant, their educational institutions and the locations of the offences, but not the applicant's

identity. The applicant then filed the present application, and District Judge Tan's Order was stayed in the meantime.

The parties' submissions

The applicant's submissions

13 Counsel for the applicant, Mr Kalidass Murugaiyan ("Mr Murugaiyan"), urged this court to exercise its revisionary powers to set aside District Judge Tan's Order.

14 Mr Murugaiyan raised two preliminary objections to District Judge Tan's Order. First, he contended that a State Court was not empowered to lift, vary or rescind a gag order made under s 7(3) of the SCA. He submitted that the Prosecution should have filed a petition for criminal revision in the High Court instead of making the Second Application before District Judge Tan. Second, he argued that the Prosecution should not have used the victim impact statements to convey the victims' views on the disclosure of the applicant's identity.

15 As for the substance of this application, Mr Murugaiyan emphasised that the victims' support for the disclosure of the applicant's identity should have no bearing on whether the gag order ought to be so varied. This was because s 7(3) of the SCA did not expressly permit the court to consider the views of the victims when deciding whether a gag order should extend to an accused person's identity. According to Mr Murugaiyan, the *only* relevant factor was whether the disclosure of the applicant's identity was likely to lead to the identification of the victims, and this factor militated against such disclosure. Mr Murugaiyan also stressed that the disclosure of the applicant's identity risked the identification of the 12th victim. He argued that even though the

Prosecution had withdrawn the charge concerning the 12th victim, her interests remained a paramount consideration, and she had not consented to the heightened risk of identification.

The Prosecution's submissions

16 In respect of the two preliminary objections raised by Mr Murugaiyan, the Prosecution submitted that District Judge Tan had plainly acted within his jurisdiction in entertaining the Second Application. Furthermore, the Prosecution contended that the alternative to setting out the victims' views on the disclosure of the applicant's identity in victim impact statements – namely, by setting out those views in affidavits – would have been considerably less efficient. The Prosecution added that, in any event, the applicant was not prejudiced by the way in which the victim impact statements were used.

17 Turning to the central dispute in these proceedings, the Prosecution argued that it was entirely appropriate for the court to consider the views of the victims when imposing or fashioning a gag order. It highlighted that s 7(3) of the SCA was a derogation from the general rule of open justice and that such a derogation was only permissible when there were strong countervailing reasons – such as, in this context, the protection of victims from further trauma or embarrassment. In this case, the victims had cogently explained why (for the reasons explained at [39]–[40] and [48]–[50] below) the gag order on the applicant's identity compounded, rather than alleviated, their distress. Given the victims' unanimous support for the disclosure of the applicant's identity, the Prosecution argued that the public interest in open justice took precedence and that there was no serious injustice that warranted the exercise of this court's revisionary powers.

Issues before the court

18 The following issues arose for my determination:

(a) First, did District Judge Tan act within his jurisdiction in varying the gag order?

(b) Second, were the victim impact statements used for their proper purpose? If this question was answered in the negative, what was the effect of such an irregularity?

(c) Third, are the victims' views towards the disclosure of an accused person's identity relevant under s 7(3) of the SCA?

(d) Fourth, having regard to the relevant facts and circumstances, should the applicant's identity be disclosed?

19 Before turning to those issues, I briefly deal with the Prosecution's preliminary point that the applicant should have commenced these proceedings by way of a petition for criminal revision instead of a criminal motion. While I agreed with the Prosecution, the applicant's error was ultimately one of form and procedure and did not affect this court's substantive, revisionary jurisdiction to set aside District Judge Tan's Order (see *James Raj s/o Arokiasamy v Public Prosecutor* [2014] 3 SLR 750 at [21]–[22]). Moreover, since Mr Murugaiyan had explicitly stated in his written submissions that he was seeking to invoke this court's revisionary powers, the formal defect in this application did not prejudice the Prosecution in any way.

20 The procedural failing was therefore not fatal to this application. However, what was of greater consequence was that even though the purpose of this application was to persuade me to exercise my revisionary powers,

Mr Murugaiyan did not identify the serious injustice that warranted the exercise of those powers. I consider this point in greater detail at [46]–[55] below.

Did District Judge Tan act within his jurisdiction in varying the gag order?

21 I begin by considering whether District Judge Tan had acted within his jurisdiction in hearing and allowing the Second Application. Mr Murugaiyan submitted that a State Court did not have the power to vary or lift a gag order imposed under s 7(3) of the SCA. He argued that the Prosecution should have applied to vary the gag order issued by District Judge Nakhoda by filing a petition for criminal revision in the High Court and that District Judge Tan's Order ought to be set aside for want of jurisdiction. With respect, I found Mr Murugaiyan's argument to be untenable for three reasons.

22 First, s 27(3) of the Interpretation Act (Cap 1, 2002 Rev Ed) provides that "[w]here any Act confers a power to make subsidiary legislation, to *issue any order* or to do any act, the power shall, unless the contrary intention appears, be construed as including the power exercisable in like manner and subject to the like consent and conditions, if any, to *amend, vary, rescind, revoke* or suspend the subsidiary legislation made or *order issued or any part thereof* or to abstain from doing the act" [emphasis added]. In the absence of any legislative intention to the contrary, a State Court's power to make gag orders under s 7(3) of the SCA necessarily includes the power to amend, vary, rescind, revoke or suspend such orders.

23 Second, Mr Murugaiyan's submission that District Judge Nakhoda's refusal to vary the gag order was final and irrevocable would only be relevant if the doctrine of *res judicata* was engaged. This was plainly not the case. The doctrine of *res judicata* includes the distinct but interrelated principles of:

(a) cause of action estoppel; (b) issue estoppel; and (c) the "extended" doctrine of *res judicata* under *Henderson v Henderson* (1843) 3 Hare 100; 67 Er 313 (see *Beh Chew Boo v Public Prosecutor* [2021] 2 SLR 180 ("*Beh*") at [38]). Cause of action estoppel was clearly inapplicable since there was no previous litigation between the applicant and the Prosecution. Nor did issue estoppel arise, since District Judge Tan did not determine any question of fact or law in allowing the Second Application (see *Beh* at [38(b)]).

24 The "extended" doctrine of *res judicata* was likewise inapplicable. That doctrine is intended to limit duplicative litigation; it assumes relevance where it would be unjust for a party to argue a point that was not raised and therefore not decided in earlier proceedings between the same parties, even though the point could and should have been so raised (see *Beh* at [38(c)]). The Prosecution's conduct in the State Courts could hardly be described as abusive or duplicative. Although the issue of the disclosure of the applicant's identity was ventilated in both the First Application and the Second Application, the circumstances were materially different in both instances – it was only in the Second Application that all 11 victims expressed their support for the disclosure of the applicant's identity. There was therefore no injustice in the Prosecution's revisiting this issue and no reason why the Second Application would have been barred by the "extended" doctrine of *res judicata*.

25 As I highlighted at the hearing, the court's power to make a gag order under s 7(3) of the SCA does not engage the doctrine of *res judicata* because it does not go towards the merits of the case at hand. Instead, it is an ancillary power intended to allow the court to carry out its processes more effectively. Such ancillary powers can only serve their proper function if they can be amended or rescinded in the light of changing circumstances. This explains why orders made in applications for further security or in applications to leave

jurisdiction, for example, can be varied or revoked if new facts come to light or if the circumstances have changed materially. The power to issue a gag order under s 7(3) of the SCA is thus one in a suite of ancillary powers intended to assist the court in its ultimate task of adjudication; this ancillary power would be substantially undermined if it were as inflexible as Mr Murugaiyan contended.

26 Third, Mr Murugaiyan's argument would entail the illogical conclusion that a gag order imposed by the High Court at first instance can never be varied or revoked. Consider a case where the High Court imposes a gag order under s 8(3) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), which is *in pari materia* with s 7(3) of the SCA. That gag order cannot be amended or rescinded by invoking the High Court's revisionary powers, which can only be exercised in respect of criminal proceedings in *subordinate* courts (see ss 23 and 27(1) of the SCJA). Nor can the Court of Appeal amend or revoke the gag order in the exercise of its appellate jurisdiction, since a gag order is an interlocutory order that cannot be appealed against (see *Xu Yuanchen v Public Prosecutor and another matter* [2021] 4 SLR 719 at [10]). Mr Murugaiyan's argument would hence lead to the anomalous result that gag orders issued under s 7 of the SCA can be quashed or amended (by way of a petition for criminal revision), but *not* gag orders issued under s 8(3) of the SCJA. The court's power to amend or revoke a gag order does not lie exclusively in its revisionary jurisdiction, as Mr Murugaiyan contended, but instead lies primarily in its *original* jurisdiction, which encompasses matters incidental or ancillary to its trial jurisdiction (see *Amarjeet Singh v Public Prosecutor* [2021] 4 SLR 841 at [15]). If authority is needed for this proposition, one need only look to the case of *Public Prosecutor v BNO* [2018] SGHC 243, where the High Court, in the exercise of its original jurisdiction, dealt with the

merits of the Prosecution's application to lift a gag order on the accused person's identity (at [201]).

27 For these reasons, I found that Mr Murugaiyan's jurisdictional objection to District Judge Tan's Order was without merit.

28 Before moving on to the next issue, I briefly touch on the unreported case of *Public Prosecutor v Teo Johnboy John* (HC/CR 7/2020) ("*Johnboy*"), which Mr Murugaiyan relied on. The respondent in that case was charged in the State Courts with the murder of his daughter. About a year later, the charge against the respondent was amended to one of culpable homicide not amounting to murder, and the case was transmitted to the High Court. It was only then that a State Court issued a gag order prohibiting the disclosure of the victim's and respondent's identities, which had hitherto been made public. The Prosecution filed a petition for criminal revision, urging the High Court to quash the gag order. The High Court granted the petition. On this basis, Mr Murugaiyan argued that a gag order issued under s 7(3) of the SCA could only be amended or rescinded by the High Court.

29 *Johnboy*, however, did not buttress Mr Murugaiyan's argument because the lower court in that case was *functus officio* once the matter had been transmitted to the High Court. The Prosecution thus had no option but to file a petition for criminal revision in the High Court. In this case, the criminal proceedings against the applicant were still pending in the State Courts. District Judge Tan was therefore not foreclosed from amending the gag order in the light of the material change in circumstances between the making of the First Application and of the Second Application.

Were the victim impact statements used for their proper purpose?

30 The next issue that I consider is whether the victim impact statements were the appropriate means for conveying to the court the victims' stance on the disclosure of the applicant's identity. Mr Murugaiyan submitted that the victim impact statements had been impermissibly used for that purpose when they should only have been used to convey, at sentencing, the harm that the victims had suffered due to the applicant's offences.

31 I broadly agreed with Mr Murugaiyan that the victim impact statements should not have been used to convey the victims' stance on the disclosure of the applicant's identity. Victim impact statements are only relevant to the Prosecution's address on *sentence*, and their sole purpose is to allow victims to convey to the court any harm that they have suffered as a direct result of an offence (see ss 228(2)(*b*) and 228(7) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC")). They should be strictly confined to this purpose, lest they serve as a backdoor for the Prosecution to adduce otherwise inadmissible or irrelevant evidence (see *R v Dowlan* [1998] 1 VR 123 at 140; Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at paras 17.013 and 17.015). I therefore indicated at the hearing that the Prosecution should have conveyed the victims' stance towards the disclosure of the applicant's identity by way of affidavits rather than victim impact statements. The Prosecution did not dispute this point.

32 Nevertheless, the improper use of the victim impact statements was an arid, technical objection that did not constitute a sufficient basis for setting aside District Judge Tan's Order. Section 423(*c*) of the CPC provides that an order may not be reversed or altered on account of the improper admission of any evidence, unless the improper admission of evidence has caused a failure of

justice. Had District Judge Tan highlighted this procedural irregularity in the proceedings below, the victims would certainly have been able to file the necessary affidavits. As the improper use of the victim impact statements did not occasion any failure of justice, I declined to exercise my revisionary powers to set aside District Judge Tan's Order on this ground.

Are the victims' views towards the disclosure of an accused person's identity relevant under s 7(3) of the SCA?

33 Having disposed of Mr Murugaiyan's preliminary objections, I now turn to the central issue in this application. The parties were on common ground that the starting point of my analysis was the principle of open justice. This principle is enshrined in s 7(1) of the SCA, which states: "The place in which any State Court is held shall be deemed an open and public court to which the public generally may have access."

34 Fundamental to the principle of open justice is the notion that justice must not only be done but must also be seen to be done (see *Millar v Dickson* [2002] 1 WLR 1615 at 1639). There are two key reasons why justice cannot be hidden from the public eye and ear. First, the public administration of justice promotes transparency and "provides a safeguard against judicial arbitrariness or idiosyncrasy" (see *Attorney-General v Leveller Magazine Ltd and others* [1979] 2 WLR 247 ("*Leveller*") at 252). Open justice is thus central to the rule of law because it "keeps the judge, while trying, under trial" (see *The Works of Jeremy Bentham* vol 4 (William Tait, 1843) at pp 316–317). Second, by enabling the public to witness the operation of the rule of law, open court proceedings safeguard public confidence in the judicial system and dampen the desire for recourse to vigilante justice (see the Honourable Justice Stephen Hall,

Judge of the Supreme Court of Western Australia, "Open Justice – Seen to be Done", keynote address at the Fremantle Law Conference (19 February 2021)).

35 In the context of criminal proceedings, the principle of open justice means that accused persons are publicly tried, the verdict of the court is publicly announced, and the reporting of ongoing proceedings is permitted so long as it does not prejudice the proper administration of justice (see *Singapore Parliamentary Debates, Official Report* (14 May 2012) vol 89 at p 188 (K Shanmugam, Minister for Law) ("the 2012 Parliamentary Debates"); *Singapore Parliamentary Debates, Official Report* (10 May 2021) vol 95 (K Shanmugam, Minister for Law) ("the 2021 Parliamentary Debates")). Such is the importance of the public interest in open justice that the law permits the publication of an accused person's identity, despite the risk that he will suffer considerable reputational damage even if acquitted (see the 2012 Parliamentary Debates at p 188).

36 The court's discretion to issue a gag order under s 7(3) of the SCA is hence a derogation from the principle of open justice enshrined in s 7(1) of the SCA. Such a derogation is justified on two principal grounds. First, gag orders encourage witnesses and victims to testify candidly by shielding them from the glare of public scrutiny (see *Public Prosecutor v BPK* [2018] SGHC 34 ("*BPK*") at [105]). Second, gag orders minimise re-victimisation by sparing victims the further trauma of unwanted public scrutiny and embarrassment (see *BPK* at [105]). This, in turn, encourages victims to report offences. The *facilitative* and *protective* functions of gag orders explain why they are mostly, though not exclusively, imposed in cases involving sexual offences and minors. It also follows from the purpose of gag orders that they are imposed solely for the protection of victims or witnesses and never for the benefit of accused persons. This means that the *only* basis for extending the scope of a gag order to include

an accused person's identity is that the disclosure of his identity would likely lead to the identification of the victims or witnesses (see the 2021 Parliamentary Debates).

37 Given the strong public interest in having justice be seen to be done, any departure from the general rule of open justice is only justified "to the extent and to no more than the extent that the court reasonably believes it to be necessary in order to serve the ends of justice" (see *Leveller* at 252). The court should thus exercise its discretion under s 7(3) of the SCA only if there are strong countervailing interests that justify derogation from the general principle enshrined in s 7(1) of the SCA.

38 In my judgment, the views of the victims are an undoubtedly relevant factor that must be weighed in the balance. Where the victims consent to the disclosure of an accused person's identity and to the heightened risk of their identification, the concern over their protection carries less force, and more weight will typically be accorded to the public interest in open justice. In such cases, the balance will ordinarily tilt in favour of disclosing the accused person's identity. This is not to say that the protection of victims deserves *no* weight in such instances. After all, the publication of the victims' identities would remain prohibited under both the gag order and mandatory provisions such as s 425A(1) of the CPC.

39 More importantly, in cases where the victims are in favour of the disclosure of an accused person's identity, the continued suppression of the accused person's identity may well *compound* the victims' distress, thereby undermining the very purpose of a gag order. In the present case, for example, one of the victims expressed that she felt complicit in the applicant's offences as she had introduced others to him:

> Ever since finding out about his crime, I have been suffering through negative emotions of various kinds. *It made me feel guilty that people who had met him through my association could have been exposed to his cruel deeds*. In the days after I was told about the offence, *I kept thinking of who else might have been exposed to his deeds*. [emphasis added]

40 Other victims felt helpless that they could not warn their family and friends of the applicant's predatory conduct, which only served to exacerbate their guilt and anguish. Another victim painfully recounted as follows:

> I was approached by a former schoolmate as she suspected that she could be a victim and *I could not help her due to the gag order*. In fact, I feigned ignorance and advised her to approach the police or seek professional help if she really felt she was a possible victim. *This incident made me feel very guilty*. … I also feel a lot of guilt as I brought my best friend to the [applicant's] house. I felt that I was the one who implicated her into this. I felt that I ruined her life. I feel so sorry and I feel so much guilt towards her. [emphasis added]

41 Hence, in cases where the victims have clearly articulated their reasons for supporting the disclosure of the accused person's identity, the court's insistence on suppressing the accused person's identity may in fact add to the victims' trauma and hamper their recovery, which is wholly antithetical to the purpose of a gag order.

42 Mr Murugaiyan provided two reasons in support of his position that the court could not consider the views of the victims when deciding on the imposition and terms of a gag order under s 7(3) of the SCA. First, he made much of the fact that the SCA does not expressly permit the court to take the victims' views into account. His objection can be disposed of swiftly. There is no need for Parliament to have legislated for this because s 7(3) of the SCA is a *discretionary* provision that inherently allows the court to take the victims' views into account when exercising that discretion.

43 The discretionary nature of s 7(3) of the SCA is what distinguishes that provision from the relevant legislation in Victoria, Australia and New Zealand that Mr Murugaiyan cited at length. Mr Murugaiyan highlighted that s 4(1BA) of the Judicial Proceedings Reports Act 1958 (Vic) ("JPRA") expressly permits the victim of an offence or alleged offence to publish any matter containing any particulars likely to lead to their own identification. He also noted that ss 200(6) and 203(4) of the Criminal Procedure Act 2011 (NZ) ("CPA") explicitly provide that the court may consider the views of the victims when deciding if an accused person's identity should be suppressed by way of a gag order. In contrast, since s 7(3) of the SCA made no mention of the victims' views, Mr Murugaiyan inferred that those views could not be considered by the court. However, what he neglected to mention was that s 4(1A) of the JPRA and s 203(3) of the CPA categorically prohibit the disclosure of the identities of the complainants or the alleged victims of specified sexual offences. This explains why the exceptions to those *mandatory* prohibitions have been expressly set out in statute – it is for the same reason that s 425A(2) of our CPC likewise stipulates the circumstances under which the blanket prohibition in s 425A(1) of the CPC would cease to apply. The discretionary character of s 7(3) of the SCA, however, intrinsically permits the court to consider the victims' views in the exercise of that discretion.

44 Second, Mr Murugaiyan at times appeared to suggest that the victims should not be allowed to determine whether an accused person's identity was covered by a gag order. I agreed in so far as that was *not* at all the position that I was taking. As I explained at the hearing, the Second Application was brought not by the victims, but by the *Public Prosecutor* in the conduct of his prosecutions. The Prosecution had simply apprised the court that, in bringing the Second Application, it had consulted the victims, who had unanimously consented to the increased risk of identification. District Judge Tan was, in turn,

entitled to have regard to the views of the victims, as conveyed by the Prosecution. In this regard, a parallel may usefully be drawn to sentencing. Although the court never decides on sentencing based on the victims' wishes, the Prosecution may adduce victim impact statements to allow the court to better understand how the victims have suffered as a result of the offences. Hence, while the court is not beholden to the victims' views on whether an accused person's identity should be disclosed, those views are eminently relevant to the court's decision on whether to order such disclosure.

45 For these reasons, I held that District Judge Tan rightly took into account the victims' unanimous consent to the disclosure of the applicant's identity in allowing the Second Application. As I elaborate below, the victims' stance strongly militated in favour of the disclosure of the applicant's identity.

Should the applicant's identity be disclosed?

46 It remains for me to consider the facts of this case. As Mr Murugaiyan sought to invoke my revisionary powers, he had to demonstrate "serious injustice" and show that there was something "palpably wrong" with District Judge Tan's Order that struck at its basis as an exercise of judicial power (see *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 at [17]).

47 Mr Murugaiyan argued that the applicant's identity ought to remain suppressed because it was in the victims' best interests to remain unidentified, despite their unequivocal consent to the increased risk of identification. Aside from the fact that it was rather presumptuous of the applicant to suggest that he was better placed than the victims themselves to speak on what was in their best interests, there were two problems on the face of that argument. First, and as I pointed out to Mr Murugaiyan at the hearing, accused persons act in their *own*

interest and not in the interests of other individuals. It is the Public Prosecutor who acts in the public interest, having regard to, among other things, the interests of the victims. Second, in so far as the premise of Mr Murugaiyan's case was that the disclosure of the applicant's identity risked the identification of the victims, he failed to establish how District Judge Tan's Order had occasioned serious injustice to *the applicant*.

48 All 11 victims were in favour of disclosing the applicant's identity, despite the concomitantly heightened risk of their identification. There was nothing that suggested that their decision was the result of coercion or that they did not fully understand the implications of their decision. On the contrary, they compellingly detailed their reasons for supporting such disclosure. One victim articulated her helplessness at being legally precluded from warning other women about the applicant's predatory conduct in the following terms:

> I felt very worried and powerless when I saw the [applicant] posting on social media with other female friends. I could not warn them because of the gag order on the [applicant's] identity.

49 In the same vein, another victim stated as follows:

> I fear for others, who are not aware of what he has done, who may fall prey to him if he continues with his deeds. Clearly, it is not a one-off case and he has been doing this for a long time. I think it [*sic*] only fair that others should be warned about him and then be allowed to make their decision on whether to continue their association with him.

50 Broadly speaking, the victims' reasons for supporting the disclosure of the applicant's identity included: (a) their desire to prevent other women from falling prey to the applicant; (b) the fact that such disclosure would enable unidentified victims to come forward and seek help; (c) the fear that their friends and/or family might also be victims of the applicant's offending, which added to their own suffering; and (d) their anguish at knowing that the applicant could

hide behind a cloak of anonymity while they lived in constant fear. It was clear to me that, far from protecting the victims, the gag order on the applicant's identity only served to re-victimise them. Even though the applicant claimed to be concerned that the victims' identities might become known in the future, his true intentions in bringing this application were squarely revealed by his complete disregard for their suffering in the *present*.

51 In the light of the victims' unequivocal and unanimous support for the disclosure of the applicant's identity, there was no countervailing interest that outweighed the principle of open justice. Indeed, the tremendous irony of the *applicant* insisting on the victims' protection will not escape anyone. While Mr Murugaiyan paid lip service to the well-established principle that a gag order is imposed solely for the benefit of victims (see [3] and [36] above), this application was, in truth, brought for the applicant's benefit and advanced under the guise of protecting the victims from the possible consequences of their willingness to make the applicant's identity known. Before me, Mr Murugaiyan eventually retreated to the submission that the disclosure of the applicant's identity would discourage other victims from stepping forward. I need not explain the sheer absurdity of *the applicant's* adopting that position, beyond noting that if he is truly concerned about other presently unidentified victims, there is nothing to prevent him from making the necessary disclosures to the law enforcement authorities.

52 As his final salvo, Mr Murugaiyan argued that the applicant's identity ought to remain suppressed because the 12th victim did not consent to the increased risk of identification. He submitted that her interests merited consideration even though the charge involving her had been withdrawn before the applicant had pleaded guilty.

53 With respect, this argument was wholly misguided. Section 7(3) of the SCA is intended to prevent the identification of "any *witness* in any matter or proceeding or any part thereof tried or held or to be tried or held before it" [emphasis added]. As the 12th victim was not a witness in the pending proceedings, her interests were irrelevant to the present inquiry. She might be of relevance in relation to other proceedings or to gag orders issued under other provisions, but in so far as these proceedings were concerned, her interests did not feature in the determination of the appropriate scope of the gag order granted under s 7(3) of the SCA.

54 In my judgment, District Judge Tan was entirely correct to vary the gag order to disclose the applicant's identity. I add that, notwithstanding District Judge Tan's Order, the identities of all 11 victims and the locations of the offences remain covered by the gag order.

Conclusion

55 For the foregoing reasons, District Judge Tan's Order could not be said to be wrong, let alone palpably wrong. Accordingly, I dismissed the application.

56 The Prosecution sought a costs order of $2,000 against the applicant on the basis that the application was frivolous. It highlighted that the applicant had invoked the court's revisionary powers but had failed to even identify the serious injustice that District Judge Tan's Order had purportedly occasioned. The Prosecution also pointed out that the applicant had cast baseless aspersions against the investigating officer and had made unsubstantiated allegations that the victims had not voluntarily provided their views in the victim impact statements.

57 I agreed with the Prosecution that a costs order under s 409 of the CPC was justified. This application was wholly self-serving, and the applicant clearly had no genuine interest in protecting the victims. It was also bound to fail since the applicant could not point to any injustice, much less any serious injustice, that would befall him. I therefore ordered the applicant to pay costs of $2,000 to the Prosecution.

Sundaresh Menon
Chief Justice

Kalidass Murugaiyan, Chua Hock Lu and Ashvin Hariharan (Kalidass Law Corporation) for the applicant;
Nicholas Khoo, Tan Zhi Hao and Ng Shao Yan (Attorney-General's Chambers) for the respondent.