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

[2024] SGHC 323

Criminal Motion No 42 of 2024

Between

Public Prosecutor

… *Applicant*

And

(1) Sentek Marine & Trading Pte Ltd
(2) Pai Keng Pheng
(3) Ng Hock Teck
(4) Pai Guat Mooi

… *Respondents*

JUDGMENT

[Criminal Procedure and Sentencing — Charge — Joinder of same or similar offences — Whether offences form the same transaction]
[Criminal Procedure and Sentencing — Joint trial of offenders — Whether offences committed in the same transaction — Whether joinder causes prejudice to defendant]

Version No 1: 16 Dec 2024 (17:42 hrs)

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Public Prosecutor
v
Sentek Marine & Trading Pte Ltd and others

[2024] SGHC 323

General Division of the High Court — Criminal Motion No 42 of 2024
Valerie Thean J
28 October, 25 November 2024

16 December 2024 Judgment reserved.

Valerie Thean J:

Introduction

1 In April 2017, the police commenced investigations into a series of offences linked to the misappropriation of gasoil from Shell Eastern Petroleum Pte Ltd's ("Shell") Pulau Bukom facility. The charges against the four respondents (collectively, the "Respondents") arise out of these investigations.

2 Sentek Marine & Trading Pte Ltd ("Sentek") faces 42 charges under s 47(3) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) (the "CDSA"). The charges against Sentek allege that, between August 2014 and January 2018, Sentek had received on board its vessels Sentek 22 and Sentek 26 a total of about 118,131 mt of marine gasoil (valued at over US$56m) which had been

dishonestly misappropriated from Shell, knowing that the marine gasoil was another person's benefits from criminal conduct.

3 The Prosecution's case is that the third respondent, Mr Ng Hock Teck ("Mr Ng"), an employee of Sentek at the material time, was first approached with the opportunity to make illegal purchases of marine gasoil. Mr Ng then approached the second respondent, Mr Pai Keng Pheng ("Mr Pai"), Sentek's Managing Director ("MD") at the material time, for approval.[1] Mr Pai gave the requisite consent for Sentek to commit the offences.[2] Furthermore, Mr Ng obtained the funds to pay for the marine gasoil from the fourth respondent, Ms Pai Guat Mooi,[3] who was working as a cashier in Sentek at the time.[4] Following this, Mr Ng's role was largely in "operating things on the ground" in relation to the purchases and transfers of the marine gasoil onto Sentek's vessels[5] − in particular, by managing and giving instructions to the bunker clerks of Sentek 22 and Sentek 26 to load the marine gasoil onto those vessels.[6]

4 Mr Ng faces 42 charges for offences under s 47(3) of the CDSA, and punishable under s 47(6)(*a*) of the CDSA read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"), for his role in abetting Sentek to carry out Sentek's alleged offences under the CDSA.

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1 Transcript at 17:14−19.

2 2nd Respondent's Bundle of Documents dated 18 October 2024 ("2RBD") at 72−150.

3 Transcript at 17:21−24, see also List of Ms Pai Guat Mooi's charges filed on 28 October 2024 at 13−17.

4 List of names for HC/HC 900068/2023 dated 9 October 2020.

5 Transcript at 10:1−3.

6 See charges in HC/HC 900214/2023.

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5 Mr Pai faces 42 charges for offences under s 47(3) of the CDSA, read with s 59(1)(*a*) of the CDSA and punishable under s 47(6)(*a*) of the CDSA, for his role in providing the requisite consent to Sentek's alleged offences under the CDSA.

6 Ms Pai Guat Mooi faces five charges for offences under s 47(3) of the CDSA, and punishable under s 47(6)(*a*) of the CDSA read with s 109 of the Penal Code for her role in providing funds for Sentek to carry out Sentek's alleged offences under the CDSA.

7 In addition, the Prosecution contends that Mr Pai instructed and bribed three bunker clerks to leave Singapore, and remain outside of Singapore, so as to make them unavailable for police investigations.[7] These allegations are the subject of 36 charges for offences punishable under s 5(*b*)(i) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (the "PCA"), which are read with s 29(*a*) of the PCA, s 37(1) of the PCA and/or s 124(4) of the Criminal Procedure Code 2010 (2012 Rev Ed) (the "CPC").

8 Relevant to Mr Pai's PCA charges, Ms Pai Guat Mooi is alleged to have abetted Mr Pai in passing the particular sums of money to the three bunker clerks and faces 12 charges for offences punishable under s 5(*b*)(i) of the PCA, which are read with s 29(*a*) of the PCA and s 124(4) of the CPC for her role in abetting Mr Pai's offences under the PCA.

9 Lastly, Mr Pai is charged with ten charges under the Penal Code (the "Penal Code Charges") for the obstruction of justice involving the three bunker clerks and one Wong Wai Seng ("Wong"). These comprise seven charges for

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7 2RBD at 57−62 and 153−188.

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offences punishable under s 204A of the Penal Code, and three charges for offences punishable under s 204A(*b*) of the Penal Code.[8] These allege that Mr Pai intentionally obstructed the course of justice by:[9]

> (a) arranging for the three bunker clerks to leave and/or remain away from Singapore between January 2018 and January 2021, with the intention of making the three bunker clerks unavailable for investigations by the Singapore Police Force;
>
> (b) instructing Wong, in or around January 2018, to tell the three bunker clerks to dispose of their respective handphones, knowing that those handphones were likely to contain evidence relevant to investigations by the Singapore Police Force into the suspected involvement of Sentek and others in the receipt of misappropriated marine gasoil from Shell's facility; and
>
> (c) instructing Wong, sometime before November 2018, to lie to the Police that the three bunker clerks were deployed in the high seas and were uncontactable, with the intention of concealing their true location from the Police to obstruct investigations by the Singapore Police Force into the suspected involvement of Sentek and others in the receipt of misappropriated marine gasoil from Shell's facility.

Issues

10 This is the Prosecution's application for an order that the Respondents be jointly tried, on their respective charges, in one trial.

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8 Affidavit of Ryan Lim Yi Hern dated 26 July 2024 ("Prosecution's Affidavit") at para 4(c).

9 Prosecution's Affidavit at para 36.

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11 Section 132(1) of the CPC provides that every charge should be tried separately unless the exceptions in s 132(2) apply:

> **Separate charges for distinct offences**
>
> **132.**—(1) For every distinct offence of which any person is accused, there must be a separate charge and, subject to subsection (2), every charge must be tried separately.
>
> (2) Subsection (1) does not apply —
>
> (*a*) in the cases mentioned in sections 133 to 136, 138, 143, 144 and 145;
>
> (*b*) to charges to which the accused pleads guilty; or
>
> (*c*) to charges which the accused and the prosecutor consent to be taken into consideration under section 148.

12 In the present case, the Prosecution relies on the exception in s 132(2)(*a*), in particular, ss 133, 134, 143 and 144.[10] The four respondents contest this, and also argue that I should in any event exercise my discretion under s 146 of the CPC to order separate trials on the ground of prejudice.

13 The parties' arguments engage three issues:

(a) Whether Mr Ng's charges under the CDSA should be jointly tried with Sentek's, Mr Pai's and Ms Pai Guat Mooi's charges under the CDSA (collectively, the "CDSA Charges"), at one trial.

(b) If so, whether Mr Pai's and Ms Pai Guat Mooi's charges under the PCA and the Penal Code should be jointly tried at one trial together with these CDSA Charges faced by the four respondents.

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[10] Applicant's Submissions dated 18 October 2024 ("AWS") at para 7.

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(c) Lastly, whether there is prejudice such that I should in any event order separate trials under s 146 of the CPC.

14 I deal with each issue in turn.

Should the CDSA Charges be tried together

The charges

15 Sentek, Mr Pai and Mr Ng's CDSA Charges allege that, on multiple occasions between August 2014 and January 2018, at Pulau Bukom, Singapore, Sentek acquired property, namely, marine gasoil, which had been dishonestly misappropriated from Shell's facility, by receiving the same on board marine vessels Sentek 22 and Sentek 26, when Sentek, Mr Pai and Mr Ng knew that the said marine gasoil was another person's benefits from criminal conduct.[11] Sentek, Mr Pai and Mr Ng each face 42 charges arising from the same set of events. As for Ms Pai Guat Mooi, her five CDSA charges also pertain to the same set of events, but in relation to a fewer number of occasions.[12] Each of the charges under the CDSA faced by Mr Pai, Mr Ng and Ms Pai Guat Mooi correspond to charges against Sentek.

The parties for trial

16 The four respondents, save for Mr Ng, have no objection to the CDSA Charges being tried together. Mr Ng takes the view that he does not claim trial to the charges but should be permitted to plead guilty.[13] Mr Ng maintained that

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11 Prosecution's Affidavit at para 25.

12 Prosecution's Affidavit at para 26.

13 Affidavit of Ng Hock Teck dated 20 September 2024 ("Ng's Affidavit") at paras 9−13; 3rd Respondent's Written Submissions dated 18 October 2024 ("3RWS") at para 10.

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his only point of contention is in respect of the quantity of misappropriated gasoil in the CDSA Charges,[14] which should be resolved at an ancillary hearing after his plea of guilt, in the context of sentencing.

17 I do not agree. At law, a plea of guilt must signify the admission by the accused not only to all the ingredients of the offence, but also all the averments of the charge (*Balasubramanian Palaniappa Vaiyapuri v Public Prosecutor* [2002] 1 SLR(R) 138 at [21]):

> Before an accused's plea of guilty is accepted, the trial judge must ensure that the plea is valid and unequivocal. A plea must be unequivocal in the sense that *it must signify without doubt and qualification the admission by the accused to all the ingredients of the offence and all the averments of the charge*: *Rajeevan Edakalavan v PP* [1998] 1 SLR(R) 815.
>
> [emphasis added]

18 The quantity of the misappropriated gasoil is a material fact in the CDSA Charges. By disputing the quantity of misappropriated gasoil, Mr Ng is also disputing the dollar value of the misappropriated gasoil, and by extension, the monetary value of the property and criminal benefits forming the subject matter of the CDSA Charges.[15] It would therefore not be appropriate to accept a plea of guilt where this material particular of the charge and statement of facts is not agreed.

Joinder of the CDSA Charges

19 Having decided that Mr Ng must be heard in trial, the issue then arises whether the four respondents may be tried together regarding all their CDSA

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14 3RWS at paras 13−20.

15 AWS at para 35.

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charges. Sentek, Mr Pai, Ms Pai Guat Mooi and the Prosecution agree that the Respondents should be jointly tried at one trial in respect of the CDSA Charges.

20 In my view s 133 permits each respondent's CDSA charges to be tried together, and s 143(*c*) permits all the Respondents' CDSA charges to be tried together. The sections provide as follows:

> **Joining of similar offences**
>
> **133.** When a person is accused of 2 or more offences, the person may be charged with and tried at one trial for any number of those offences if the offences form or are a part of a series of offences of the same or a similar character.
>
> **Persons who may be charged and tried jointly**
>
> **143.** The following persons may be charged and tried together or separately:
>
> …
>
> (*c*) persons accused of 2 or more offences which form or are a part of a series of offences of the same or a similar character;

All the CDSA Charges are brought under s 47(3) of the CDSA. All arise out of the same set of facts alleged in Sentek's CDSA charges. In short, all are "a part of a series of offences of the same or similar character".

Should the CDSA, PCA and Penal Code Charges be tried together?

The charges

21 Amongst the Respondents, only Mr Pai and Ms Pai Guat Mooi have been charged with offences under the PCA (collectively, the "PCA Charges"): see [7]−[8]. None of the Respondents aside from Mr Pai has been charged under the Penal Code: see [9].

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Parties' positions

22 The Prosecution's position is that all the charges, including the CDSA Charges, the PCA Charges and the Penal Code Charges, should be tried at one trial. First, Mr Pai's CDSA, PCA and Penal Code Charges should be tried at one trial pursuant to s 134 as they constitute "one series of acts connected so as to form the same transaction".[16] Likewise, Ms Pai Guat Mooi's CDSA and PCA Charges should be tried at one trial pursuant to s 134.[17] This is because, where an offender commits a primary offence (the subject of the CDSA Charges) and subsequently commits a secondary offence to avoid and/or obstruct the investigations into the primary offence (the subject of the PCA and Penal Code Charges), jointly trying the primary and secondary offences is appropriate.[18]

23 Further, the Prosecution is of the view that the PCA and Penal Code Charges should be tried together with Sentek's and Mr Ng's CDSA Charges. It relies on s 143(*b*) of the CPC which provides that "persons accused of different offences committed in the same transaction" may be jointly tried;[19] or alternatively, s 144 of the CPC which allows the joinder of different offences arising from "the same series of acts", whether or not those acts form the same transaction.

24 In the light of the extensive factual overlap between the charges, not jointly trying the CDSA Charges with the PCA and Penal Code Charges would result in unnecessary duplication of costs and wastage of time and resources, and create the risk of two or more courts arriving at inconsistent judicial findings

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16 AWS at para 57; Prosecution's Affidavit at para 37.

17 AWS at para 57; Prosecution's Affidavit at para 38.

18 AWS at para 59.

19 AWS at para 80(a).

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in relation to the same issues, the credibility of the same witnesses, or the reliability of the same exhibits across different trials.[20] These factual overlaps are: (a) whether Mr Pai was aware that Sentek acquired dishonestly misappropriated gasoil from Shell's facility; (b) the same background facts; (c) that Mr Pai committed all the CDSA Charges, and the bulk of the PCA and Penal Code Charges, in his capacity as Sentek's MD; and (d) the same witnesses are relevant to the charges – for instance, the three bunker clerks who received the dishonestly misappropriated gasoil on board marine vessels Sentek 22 and Sentek 26 were the same individuals who received corrupt monetary gratification from Mr Pai as an inducement to remain out of Singapore.[21]

25 The Respondents object to a joint trial of the PCA and Penal Code Charges with the CDSA Charges. They argue that the requirements for a joint trial under the CPC have not been satisfied.

26 Sentek's primary objection is that ss 143 and 144 of the CPC have not been satisfied because, while the CDSA Charges pertain to the period from August 2014 to January 2018, the PCA and Penal Code Charges concern the subsequent time period of February 2018 to January 2021.[22] Sentek also did not have knowledge of, and was not involved in, the alleged events relating to the PCA and Penal Code Charges.[23]

27 Mr Pai objects on several grounds. First, there is no legal similarity between the offences as their legal ingredients are completely different, neither

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20 AWS at paras 73 and 75.

21 AWS at para 75.

22 1st Respondent's Written Submissions dated 18 October 2024 ("1RWS") at paras 16−17.

23 1RWS at para 18.

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is there factual similarity,[24] with the result that s 133 of the CPC is not satisfied. Second, there is no unity of purpose, proximity of time, unity of place, and continuity of action between the offences underlying Mr Pai's CDSA, PCA and Penal Code Charges, and as a result, s 134 of the CPC is not satisfied.[25] Next, Mr Pai submits that s 143 of the CPC is not satisfied as the offences were not committed in the same transaction.[26] As for s 144, Sentek's and Mr Ng's CDSA Charges cannot arise from the same series of acts as Mr Pai's PCA and Penal Code Charges because the former precede the acts that constitute the latter.[27] The only offences that arise from the same series of acts for all the Respondents are those alleged in the CDSA Charges.[28] He further submits that the arguments regarding the duplication of costs and wastage of time and effort relied upon by the Prosecution are irrelevant. Either ss 143 and 144 are made out or they are not, and in the present case the relevant criteria are not satisfied.[29]

28 Mr Ng's main objection is that "he has no nexus with the PCA and the [Penal Code] [C]harges".[30] He asserts that the offences were committed by different accused persons and "[did] not form part of a series, nor are [these charges] of similar character".[31]

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24 2nd Respondent's Written Submissions dated 18 October 2024 ("2RWS") at paras 43−50.

25 2RWS at para 81.

26 Transcript at 118:5−9.

27 Transcript at 86:8−18.

28 Transcript at 86:25−29.

29 2RWS at para 73. Transcript at 22:4-6, 38:28.

30 3RWS at para 7.

31 3RWS at para 9.

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29 As for Ms Pai Guat Mooi, she makes the following objections. First, the allegations in her CDSA Charges and PCA Charges do not form and/or are not part of a series of offences of the same or similar character, and are not so connected as to form the same transaction.[32] This is for a few reasons: (a) the mischief that the relevant CDSA and PCA provisions seek to remedy are dissimilar; (b) the legal defences relevant to each provision are materially dissimilar; and (c) the witnesses likely to be called by Ms Pai Guat Mooi in the trials of the CDSA Charges and the PCA Charges do not overlap.[33] Furthermore, the CDSA Charges and PCA Charges concern chronologically different time frames, with a three-month gap between the alleged offending behaviour in each category of charges.[34] Ms Pai Guat Mooi reserved her position as to whether the PCA Charges and Penal Code Charges could be tried together, given that she was not charged with any offences under the Penal Code.[35] At the same time she did not substantially advance the point that her PCA Charges should be tried separately from the Penal Code Charges, instead focusing her submissions on the argument that the CDSA Charges should be tried separately from the other charges.[36]

Joinder of charges for each offender

30 Again the issue is first the joinder of charges concerning each offender. This is governed by s 134 of the CPC:

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32 4th Respondent's Written Submissions dated 18 October 2024 ("4RWS") at para 15.

33 4RWS at para 21; Affidavit of Khoo Hui-Hui Joyce dated 20 September 2024 ("PGM's Affidavit") at para 20.

34 PGM's Affidavit at para 22.

35 Transcript at 56:19−29.

36 Transcript at 57:8−19.

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> **Trial for more than one offence**
>
> **134.** If, in one series of acts connected so as to form the same transaction, 2 or more offences are committed by the same person, then the person may be charged with and tried at one trial for every such offence.

31 The section mandates that in order for an accused person's charges to all be tried at the same trial, the offences giving rise to those charges must be "in one series of acts connected so as to form the same transaction".

32 Parties do not dispute that the Court of Appeal's guidance on the meaning of "in the same transaction" in *Tse Po Chung Nathan and another v Public Prosecutor* [1993] 1 SLR(R) 308 ("*Nathan Tse*") applies. In *Nathan Tse*, two Hong Kong nationals arrived in Singapore on the same flight from Phuket and were arrested in the transit lounge. In holding that their joint trial on similar but separate drug importation charges was appropriate, the Court of Appeal pointed specifically to three extracts at [30]−[32]. I set out the paragraphs here in view of their relevance to various parts of this judgment:

> 30 Of course Tse and Cheuk were not charged for the same offence. So the question is whether their offences were committed "in the same transaction". *Ratanlal on Criminal Procedure Code* (1985) at p 225 states that:
>
> > … *the real and substantial test* for determining whether several offences are connected together so as to form the same transaction *depends upon whether they are so related to one another in point of purpose*, or cause and effect, or as principal and subsidiary acts as to constitute one continuous action.
>
> 31 *Mitra on the Code of Criminal Procedure* (16th Ed, 1987) at p 1385 states the tests in similar vein as follows:
>
> > The tests to decide whether different acts are part of the same transaction are proximity of time, unity of place, unity of purpose or design and continuity of action. It is not necessary that all of them should be present to make the several incidents parts of the same transaction. *Unity of place and proximity of time are not important tests at all, but the main test is unity of purpose.* If the

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> various acts are done in pursuance of a particular end in view and as accessory thereto, they may be treated as parts of the same transaction. As to what is the same transaction must depend upon the facts and circumstances of each particular case. It is not the distance nor the proximity of time which is so essential in order to consider what is 'the same transaction' as the *continuity of action and purpose*. The expression 'same transaction' must be understood as including both the immediate cause and effects of an act or event, and also its collocation, or relevant circumstances, the other necessary antecedents of its occurrence, connected with it, at a reasonable distance of time space, cause and effect. *For a joint trial under s 239, identity of purpose is sufficient.* Community of purpose in the sense of conspiracy is not in any way necessary, though if it is present, its presence will be a further element supporting a finding that the offences are committed in the same transaction. Where the prosecution case alleges association and community of purpose among the accused, their joint trial is permissible. For s 223 it is enough if the different offences are committed in the course of the same transaction. The criterion which makes a joint trial allowable is what the prosecution case is, not what the result may be.

32 Under common law the position seems to be similar and we would just quote a passage of the Court of Criminal Appeal in *R v Assim* [1966] 2 QB 249 at 261:

> Where, however, the matters which constitute the individual offences of the several offenders *are upon the available evidence so related, whether in time or by other factors, that the interest of justice are best served by their being tried together*, then they can properly be the subject of counts in one indictment and can, subject always to the discretion of the court, be tried together.
>
> [emphasis added]

33 *Nathan Tse* was applied recently in *S Iswaran v Public Prosecutor* [2024] 4 SLR 965 ("*Iswaran*"). There, one charge concerned the alleged obtaining of a flight for the accused from Doha to Singapore. Another charge concerned the re-paying of the cost of that flight. Vincent Hoong J held that the

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acts constituting the two charges "ha[ve] a clear continuity of action" (at [29]), such that they could be tried at the same trial.

34 Mr Pai attempts to distinguish the case of *Iswaran* from the present facts, arguing that the continuity of action in *Iswaran* arose from the fact that one offence related to the obtaining of the trip, and the other offence related to repayment for the same trip.[37] Implicitly, he submits that continuity of action should be narrowly construed, and only be applicable to offences that are as tightly linked as those outlined in [29] of *Iswaran*, such as where an offence relating to the receipt of a gift is sought to be tried in the same trial as an offence relating to the repayment of that same gift.

35 I do not agree. The extracts referred to by the Court of Appeal in *Nathan Tse* from *Ratanlal*, *Mitra* and *R v Assim* reflect a much wider test, as do the facts of that case. The Court of Appeal there held (at [33]) that "[t]here was a common or identity of purpose" in the two separate acts of the two offenders.

36 Mr Pai further argues that there was no continuity in action because, unlike in other cases such as *Iswaran*, the acts alleged in the Penal Code and PCA Charges were not aimed at frustrating investigations into Mr Pai's own offences, but *Sentek's* offences instead.[38] Furthermore, it was Sentek and not Mr Pai who received the gasoil.[39] For instance, Mr Pai's PCA Charges allege that:[40]

> [Mr Pai]… did corruptly give gratification… in order to avoid investigations by the Singapore Police Force into the suspected

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37 Transcript at 25:6−13.

38 Transcript at 27:4−11.

39 Transcript at 27:12−19.

40 2RBD at 153−184.

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> involvement of Sentek Marine and Trading Pte Limited *and others* in receipt of misappropriated gasoil from Shell Pulau Bukom…
>
> [emphasis added]

Similarly, the Penal Code Charges allege that:[41]

> [Mr Pai]… did intentionally obstruct the course of justice, by arranging for [person] to leave and remain away from Singapore, intending to make him unavailable for investigations by the Singapore Police Force into the suspected involvement of Sentek Marine and Trading Private Limited *and others* in receipt of the misappropriated gasoil from Shell Pulau Bukom…
>
> [Mr Pai]… did intentionally obstruct the course of justice, by instructing [person] to tell [person] to dispose of his handphone, which you knew was likely to contain evidence relevant to investigations conducted by the Singapore Police Force into the suspected involvement of Sentek Marine and Trading Private Limited *and others* in receipt of the misappropriated gasoil from Shell Pulau Bukom…
>
> [Mr Pai]… did intentionally obstruct the course of justice, by instructing [person] to tell [person] that [the three bunker clerks] were deployed in the high sea and were uncontactable intending… to obstruct investigations by the Singapore Police Force into the suspected involvement of Sentek Marine and Trading Private Limited *and others* in receipt of the misappropriated gasoil from Shell Pulau Bukom…
>
> [emphasis added]

37 I disagree. The charges refer to "others" apart from Sentek, and these "others" must include *any* others aside from Sentek who participated in Sentek's misappropriation, including Mr Pai in the event that he is guilty of his CDSA charges.[42] Sentek is named because it is the entity whose vessels were in receipt of the misappropriated marine gasoil. Therefore, Mr Pai's PCA and Penal Code Charges have continuity of action with his CDSA Charges, in that the former were allegedly committed to cover up his (and others') involvement in the latter.

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41 2RBD at 57−66.

42 Transcript at 73:13−23 and 73:31−74:12.

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38 As for Sentek's and Ms Pai's argument regarding the gap in time between the acts alleged in the CDSA Charges and the PCA Charges, illus (*d*) to s 134 of the CPC reflects that offences need not be closely connected in time:

> The separate charges referred to in *illustrations* (*a*) to (*g*) below respectively may be tried at one trial.
>
> …
>
> (*d*) Intending to cause injury to *B*, *A* falsely accuses *B* of having committed an offence knowing that there is no just or lawful basis for the charge. At the trial, *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with offences under sections 211 and 194 of the Penal Code 1871.

In illus (*d*), A's false accusation occurred at two different points of time, consistent with the extract from *Mitra* (see [32] above), that the main test is unity of purpose. When a second offence is that of concealment or continuation of an earlier offence, some gap in time is necessarily involved.

39 In my view, all of Mr Pai's charges are connected so as to form the same transaction. If the PCA and Penal Code Charges were committed, they were committed in order to frustrate investigations into the CDSA Charges. There is unity of purpose and continuity of action, and Mr Pai's knowledge and intent is central to the various charges. While the PCA and Penal Code Charges are necessarily subsequent in time, there is sufficient proximity of time.

40 The same analysis applies to Ms Pai Guat Mooi's PCA Charges concerning her abetment of Mr Pai and her CDSA Charges. There is unity of purpose and continuity of action; there is also sufficient proximity of time. Section 134 of the CPC is also satisfied in relation to Ms Pai Guat Mooi.

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Joint trial of offenders involving all their offences

41 This leads then to the issue of the joint trial of the four offenders for all their various charges. For this, the Prosecution must satisfy either s 143 or s 144 of the CPC:

Is s 143 of the CPC satisfied?

42 Section 143 of the CPC reads as follows:

> **Persons who may be charged and tried jointly**
>
> **143.** The following persons may be charged and tried together or separately:
>
> (*a*) persons accused of the same offence committed in the same transaction;
>
> (*b*) persons accused of different offences committed in the same transaction;
>
> (*c*) persons accused of 2 or more offences which form or are a part of a series of offences of the same or a similar character;
>
> …

43 As a matter of statutory interpretation, the words "same transaction" ought to have the same meaning across ss 134 and 143 of the CPC. Counsel for Mr Pai argued at the hearing before me that this was not the case, because s 134 deals with offences that "form the same transaction", while s 143 focuses on offences that were "in the same transaction".[43] Nevertheless, when submitting on s 134, counsel for Mr Pai referred to *Nathan Tse*, and stated that both the Prosecution and he agreed this was the leading case on s 134.[44] In fact, the Court of Appeal in *Nathan Tse* was interpreting "in the same transaction", and the test

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43 Transcript 117:28 – 118:15.

44 Transcript 23:11-14.

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set out by the Court of Appeal was formulated in the context of the joinder of *two offenders*. The Court of Appeal was discussing s 176 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) (the "Previous CPC") (at [29]), *the predecessor section to, and worded in the same terms as, s 143 of the CPC* (the predecessor section to s 134 of the CPC is s 170 of the Previous CPC). In *Iswaran*, parties applied *Nathan Tse* to s 134 of the CPC, it was not alleged there that "form the same transaction" should not be interpreted in like vein to "in the same transaction"; nor was that point taken in the present case in relation to s 134 of the CPC.

44 I apply *Nathan Tse* to both s 134 and 143(*b*) of the CPC. In this context my views above on s 134 of the CPC remain relevant. In my judgment, the main difference between ss 134 and 143(*b*) of the CPC is that for s 143(*b*), there must be unity of purpose *between the different offenders' offences* for s 143(*b*) to be satisfied, such that the various offences by the offenders form the "same transaction". Thus, in *Nathan Tse*, the Court of Appeal found, at [33], "a common or identity of purpose in the separate acts of the appellants", and also "unity of place and proximity of time" between them.

45 In the present case, illus (*b*) to s 143 suggests that different offenders who commit distinct offences, even if significantly different in severity or character, may still be jointly tried if those offences were committed in the same transaction:

> *A* and *B* are accused of a robbery during which *A* commits a murder with which *B* has nothing to do. *A* and *B* may be tried together, where both will be tried for robbery and *A* tried also for the murder.

46 "Same transaction" therefore may refer to multiple actors in a series of actions. They need only be linked by continuity of action and purpose. In the

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same way that the different offences of robbery and murder are linked by a common context, there is continuity of action and purpose between the CDSA offences and the PCA and Penal Code offences, which are aimed at concealing detection of the CDSA offences. In the same way that B, in illus (*b*), would not have contemplated that A would murder the victim, Sentek and Mr Ng need not have intended or be party to Mr Pai and Ms Pai Guat Mooi's subsequent alleged offences. These illustrations dispose of Sentek's argument that there is no continuity of purpose as Sentek did not have knowledge of the PCA and Penal Code offences (see [26] above).[45] Continuity of action and unity of purpose may abide notwithstanding an absence of knowledge.

47 In this context I return to Mr Pai's arguments made in the context of s 134 (see [36]), that his PCA and Penal Code charges were not sufficiently connected to his CDSA charges. To the contrary, these PCA and Penal Code charges as framed reflect the relation between Mr Pai's PCA and Penal Code Charges, his CDSA charges *and the CDSA charges of the other respondents*.

48 I turn, then, to illus (*c*) and (*d*) to s 143 of the CPC, which the Prosecution also relies upon. Illustration (*c*) does not assist, as the "same transaction" criteria is mentioned as an assumption:

> *A* and *B* are both charged with a theft and *B* is charged with 2 other thefts *B* committed during the same transaction. *A* and *B* may both be tried together, where both will be tried for the one theft and *B* alone for the 2 other thefts.

49 As for illus (*d*), it reads as follows:

> *A* commits theft of a computer. *B*, knowing that the computer was stolen, receives it from *A*. *B* then passes it to *C* who,

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[45] 1RWS at para 18(a).

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> knowing that the computer was stolen, disposes of it. *A*, *B* and *C* may all be tried together.

50 In *The Criminal Procedure Code of Singapore – Annotations and Commentary* (Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir gen ed) (Academy Publishing, 2012) ("Marie & Faizal") at para 7.154 state that "[i]llustration (*d*) is new and explains subsection (*e*)". While there is no explanation for their attribution (aside from a reference in the Preface to the authors as members of the Review Committee whose proposals resulted in the 2010 CPC), the statement is logical as subsections (*a*) to (*d*) and (*g*) were derived from the former s 176 of the CPC, whereas both subsection (*e*) and illus (*d*) were new provisions. And the facts of illus (d) sit well with s 143(*e*):

> (*e*) persons accused of offences under sections 411 and 414 of the Penal Code 1871 [offences of receiving or concealing stolen property, respectively], or either of those sections, in respect of the same stolen property, the possession of which has been transferred as a result of the original offence of theft, extortion, robbery, criminal misappropriation, criminal breach of trust or cheating;

51 Therefore, neither illus (*c*) or (*d*) have direct interpretive bearing on s 143(*b*) of the CPC. Notwithstanding, because legislative provisions are generally read in context, these illustrations and subsection (*e*) may be taken to be complementary to other illustrations and subsections under s 143 of the CPC, each being a specific provision under the s 143 chapeau. Seen in this light, they reflect that Parliament did envisage joinder under s 143 where accused's persons' offences contain different factual elements, so long as there is sufficient factual nexus, which may arise in different ways. In relation to s 143(*b*), that factual nexus is provided by continuity of action or purpose.

52 In holding that s 143(*b*) is satisfied, I distinguish the High Court decision of *Loh Shak Mow and another v Public Prosecutor* [1985−1986] SLR(R) 875

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("*Loh Shak Mow*"), raised by Sentek.[46] In *Loh Shak Mow*, the first appellant was involved in a conspiracy with one Lee Kwong Fai to incorporate a company and use that company to cheat clients of various sums of money. Subsequently, the second appellant was invited to become a director and chairman of that company. The first and second appellants were jointly tried on various charges, with the first appellant being convicted of six charges of abetment of cheating under ss 420 and 109 of the Penal Code (Cap 103, 1970 Rev Ed) and 14 charges of criminal breach of trust under s 409 of the same act, and the second appellant being convicted of three charges of criminal breach of trust and one charge of dishonestly retaining stolen property in the possession of the company under s 411 of the same act.

53 The High Court held in *Loh Shak Mow* that the second appellant should not have been jointly tried with the first appellant and Lee Kwong Fai (at [190]). Sentek relies on *Loh Shak Mow* to argue that a joint trial should likewise not be ordered in the present case. However, each case turns on its own facts. In *Loh Shak Mow*, the High Court emphasised that the second appellant's charges for criminal breach of trust were not dependent upon the cheating, or the conspiracy to cheat (at [186]). This is because, even if the company's funds had been acquired perfectly legitimately (in other words, had there been no cheating), the second appellant, as director of the company, could still have been charged with criminal breach of trust for dishonestly misappropriating any part thereof (at [186]). The High Court in *Loh Shak Mow* was saying that the first appellant and second appellant's offences were not related. In contrast, in the present case the PCA and Penal Code Charges are dependent upon the acts and events underlying the CDSA Charges; the various offences are related. For

46 1RWS at para 22.

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completeness, F A Chua J found in that case that prejudice had been occasioned because the trial judge did not consider the evidence admissible against each accused separately (at [187]). I deal with this related point of prejudice at a later stage of this judgment.

Is s 144 of the CPC satisfied?

54 In any event, s 144 extends the ability to join offenders wherever they are "connected", beyond the limitations of s 143. It states:

> **Joint trials for connected offences**
>
> **144.** Despite section 143, persons accused of different offences, whether under the same written law or under different written laws, may be charged separately and tried together, if either or both of the following apply:
>
> (*a*) those offences arise from the same series of acts, whether or not those acts form the same transaction;
>
> (*b*) there is any agreement between those persons for each person to engage in conduct from which arises the offence that person is charged with.

55 Here, the relevant subsection is (*a*), where persons accused of different offences "arise from the same series of acts *whether or not* those acts form the same transaction" [emphasis added]. These words expressly extend the scope for joint trials. Section 144 was added in the 2010 revised edition of the CPC (see Marie & Faizal at para 07.157; and also para 17 of the *Consultation Paper on the Criminal Procedure Code Bill,* Ministry of Law (11 December 2008)).

56 Illustrations (*a*) to (*f*) specify offences that "arise from the same series of acts". Illustration (*a*) makes clear the offenders may be charged with offences under different sections:

> (*a*) *A* agrees to let *B* keep *B*'s benefits of drug trafficking in *A*'s bank account to avoid detection. *A* and *B* may be separately charged and tried together for offences under sections 50(1)(*a*)

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> and 53(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992, respectively, as the offences arise from the same series of acts.

57 Illustration (*b*) makes clear there is no requirement that the subject matter of the various offences be identical, nor that the offences that the accused persons are charged with share all of their elements. There is also no strict requirement of temporal or even physical proximity. There is no indication of how soon the sale from B to C took place after the sale from A to B took place, or even that the sales took place in the same, or even nearby, locations:

> (*b*) *A* sells 10 grams of diamorphine to *B*. Out of the 10 grams of diamorphine, *B* sells 5 grams to *C*. *A*, *B* and *C* may be separately charged and tried together for offences under section 5(1)(*a*) of the Misuse of Drugs Act 1973 as the offences arise from the same series of acts.

This disposes of Sentek's, Mr Pai's and Ms Pai Guat Mooi's arguments (see [27] and [29] above) that the CDSA Charges are not part of the same series of acts as the PCA and Penal Code Charges by virtue of their temporal separation.

58 Illustration (*c*) reveals that there is no requirement for unity of purpose or intent under s 144(*a*) of the CPC. Here, the code word came into the possession of B *not* through any deliberate intention by A to leak the code word, but through A's *failure to take reasonable care*. There is no unity of purpose between A and B:

> (*c*) *A* has in *A*'s possession a secret official code word which has been entrusted in confidence to *A* by a person holding office under the Government and fails to take reasonable care of the secrecy of the information. As a result of *A*'s failure, *B* comes into possession of the secret official code word and retains it for a purpose prejudicial to the safety of Singapore when *B* has no right to retain it. *A* and *B* may be separately charged and tried together for offences under sections 5(1)(*i*) and 6(2)(*a*) of the Official Secrets Act 1935, respectively, as the offences arise from the same series of acts.

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59 Illustrations (*d*) and (*e*) allow accused persons who participate in criminal activities in opposite or opposing capacities to be charged together:

> (*d*) *A* gives *B* a gratification as an inducement for awarding a contract by *B*'s company to *A*. *A* and *B* may be separately charged and tried together for offences under section 6(*b*) and (*a*), respectively, of the Prevention of Corruption Act 1960 as the offences arise from the same series of acts.
>
> (*e*) Members of opposing factions in an unlawful assembly or a riot may be separately charged and tried jointly as the offence of unlawful assembly or rioting arises from the same series of acts.

60 In particular, illus (*e*) was expressly intended by Parliament to be wider in scope than s 176 of the Previous CPC. As Marie & Faizal observe at para 07.157, illustration (*e*) to s 144 of the CPC represents a change in position from illustration (*d*) to s 176 of the Previous CPC. From the Previous CPC:

> **What persons may be charged jointly**
>
> 176. …
>
> *Illustrations*
>
> …
>
> (*d*) *A* and *B* being members of *opposing factions in a riot should be charged and tried separately*.
>
> [emphasis added]

From the CPC:

> **Joint trials for connected offences**
>
> 144. …
>
> *Illustrations*
>
> …
>
> (*e*) Members of opposing factions in an unlawful assembly or a riot *may be* separately charged and *tried jointly* as the offence of unlawful assembly or rioting arises from the same series of acts.
>
> [emphasis added]

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Whereas members of opposing factions in a riot could not be charged and tried jointly under s 176 of the Previous CPC (and by extension, s 143 of the CPC), members of opposing factions in a riot can now be charged and tried jointly under s 144 of the CPC.

61 Finally, illus (*f*) makes clear there is no requirement of communication between all the offenders, for the court to find that the offences arise from the same series of acts:

> (*f*) *A*, *B* and *C* are present when officers from the Corrupt Practices Investigation Bureau conduct a search of certain premises during an investigation into an offence under the Prevention of Corruption Act 1960. *A* states to the officers that there is no evidence of the offence in those premises, when *A* knows the statement is false. *B* overhears *A*'s statement and, knowing *A*'s statement is false, tells *C* to repeat the same false account to the officers. *A* and *B* are charged separately with an offence under section 28(*b*) of the Prevention of Corruption Act 1960 and an offence under section 204A of the Penal Code 1871, respectively. *A* and *B* may be tried together for those offences, as those offences arise from the same series of acts.

62 It is clear from the breadth of the illustrations that this series of offences of the four respondents are "connected" as envisaged by s 144 of the CPC. Mr Pai, Mr Ng and Ms Pai Guat Mooi's CDSA charges are linked to Sentek's CDSA charges, which form the factual context for Ms Pai Guat Mooi and Mr Pai's PCA and Penal Code charges. For the purposes of s 144, it does not matter that the charges contain different elements to be proved, nor is any communication needed between the various offenders. The offences may nevertheless be considered to arise from "the same series of acts". I hold that s 144 of the CPC is satisfied.

63 Having dealt with the legislative provisions, it is apposite to deal with Mr Pai's argument that the arguments regarding the duplication of costs and wastage of time and effort relied upon by the Prosecution are irrelevant. These

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issues are not irrelevant. To the contrary, these matters identify the rationale behind the need for joinder and explain why it is in the public interest for accused persons in connected offences to be jointly tried; they are necessary in any consideration whether to order joint or separate trials. An illustration is provided in the case of *PP v Ridhaudin Ridhwan bin Bakri and others* [2019] SGHC 105 ("*Ridhaudin*"), where three accused persons were jointly tried for separate sexual offences committed against a single victim. Woo Bih Li J (as he then was), explained at [46]:

> 46 As for the appropriate exercise of discretion in this case, I was of the view that the following factors supported the ordering of a joint trial:
>
> (a) I agreed with the Prosecution that given the close proximity in time and place of the alleged offences, and the significant overlap in witnesses and evidence against each of the accused persons, it was in the public interest for the court to conduct a holistic examination of the entire sequence of events that transpired in the early morning of 26 January 2014 rather than to attempt to segregate and confine the evidence to very specific and isolated instances in that morning. This would be done subject to the caveat that a confession by any of the accused persons would not be used against another accused person since the accused persons were not charged for the same offence, thereby precluding s 258(5) of the CPC from being satisfied.
>
> (b) If a joint trial had not been ordered, common witnesses for the trial for each accused person would have to attend separate trials to testify repeatedly about the same background facts as well as the condition of the Complainant at different points in time. This would apply to the witnesses for both the Prosecution and the Defence, including the expert witnesses who would have to repeat their evidence at each trial. This would cause unnecessary delay and expense, and there would likely also be discrepancies in the minute details which might distract the court from the material facts.
>
> (c) Importantly, the Complainant would have to repeat much of her evidence more than once. Whether or not the Complainant was telling the truth, it would be unjust to require her to attend court and repeat most

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> of her evidence for the trial of each accused person, with the difference being the evidence for the occasion when each offence was allegedly committed.

64 In my judgment, the interests of justice make a joint trial appropriate in this case for similar reasons. There is continuity in purpose and action, and sufficient proximity in time. Common witnesses and evidence are inextricably linked, which would mean that separate trials will otherwise result in delay, wasted expense, and worse, the threat of inconsistent findings on foundational factual issues. The safeguards lie in the rules of evidence and the burden of proof.

Prejudice

65 Notwithstanding that I hold s 132(2)(*a*) of the CPC to be applicable, I retain the discretion to order separate trials if joinder occasions prejudice or embarrassment to an accused's defence. Section 146 of the CPC reads as follows:

> **Separate trial when accused is prejudiced**
>
> **146.** Despite any other provision in this Code, where before a trial or at any stage of a trial, a court is of the view that an accused may be prejudiced or embarrassed in the accused's defence because —
>
> (*a*) the accused is charged with and tried at one trial for more than one offence under section 133, 134, 135, 136 or 145(1)(a); or
>
> (*b*) the accused is charged with and tried at one trial with one or more other co-accused under section 143, 144 or 145(1)(b),
>
> the court may order that the accused be charged and tried separately for any one or more of the offences.

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Parties' positions on prejudice

66 The Prosecution makes two alternative arguments on prejudice. First, there is no prejudice, because the evidence on the PCA and Penal Code Charges is admissible on the CDSA Charges, and *vice versa*. In the alternative, the discretion afforded to the court under s 146 of the CPC is broad,[47] such that prejudice is only one factor in a multi-factorial balancing exercise in determining whether the court should exercise its discretion.[48] A joint trial would promote the efficient administration of justice as it would avoid the unnecessary repetition of evidence and witnesses, and save time and costs.[49] The charges are not so complex that they would lead to a confusion of issues, and other courts have successfully navigated complex factual matrices.[50] In *Public Prosecutor v Soh Chee Wen and another* [2023] SGHC 299 ("*Soh Chee Wen*"), for example, charges faced under s 204A of the Penal Code that were unique to Soh were part of the offences tried in a joint trial of the two offenders, Soh and Quah. As for the other grounds of prejudice raised by the Respondents, namely the toll on the Respondents' health, the difficulties occasioned to trial strategy, and the length of trial, these are not sufficient to outweigh the benefits to the efficient administration of justice to be gained by a single, joint trial.[51]

67 Sentek agrees that the court is entitled to take into account "all the relevant factors" in the exercise of its discretion pursuant to s 146 of the CPC,[52]

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47 Applicant's Further Submissions dated 25 November 2024 ("AFWS") at para 6.

48 AFWS at paras 7−11.

49 AFWS at para 15.

50 AFWS at para 14(a).

51 AFWS at para 16.

52 1st Respondent's Further Written Submissions dated 25 November 2024 ("1RFWS") at para 2.

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although it argues that prejudice to the accused's defence is of "overriding importance".[53] Further, it submits that not all evidence that is relevant and admissible for the PCA and Penal Code charges would also be relevant and admissible for the CDSA Charges pursuant to s 8 of the Evidence Act 1873 (2020 Rev Ed) (the "Evidence Act") – for instance, statements made by any of the parties or witnesses relating to the PCA and Penal Code Charges in the course of investigations would not be admissible for the CDSA Charges.[54] In any event, the limited applicability of s 8 in a hypothetical joint trial would not be determinative.[55] In this case, the relevant factors in the exercise of the court's discretion would be: (a) the multiplicity and complexity of the offences involved;[56] (b) the risk that the trial judge may be unduly influenced by evidence on the PCA and Penal Code Charges when deciding on liability for the CDSA Charges;[57] and (c) the time, expense and pressure occasioned to Sentek by an even longer trial which may threaten the health of its bunkering business.[58] Duplication of costs and wastage of time and resources in separate trials cannot justify dismissing the prejudice that would be caused to Sentek by a joint trial.[59]

68 Mr Pai points out that the issue of prejudice was not argued in *Soh Chee Wen*,[60] and submits that if there is *any possibility* of prejudice or embarrassment

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53 1RFWS at para 6.

54 1RFWS at para 9.

55 1RFWS at para 13.

56 1RFWS at para 18.

57 1RFWS at para 21.

58 1RFWS at para 24.

59 1RFWS at para 25.

60 Transcript 44:24.

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to the accused's defence, the court must reject a joinder application.[61] In his view, there is no balancing exercise.[62] He submits that prejudice and embarrassment can arise in the following ways in the present case: (a) the risk that the court may not be able to separate the evidence for other charges when considering its verdict on a particular charge;[63] and (b) the risk of confusion of issues.[64] In particular, he points out that in the event that the trial judge decides that the evidence relating to the PCA and Penal Code Charges is not relevant or admissible to the CDSA Charges, it would be too late, and the Judge's mind would already be affected by the evidence.[65] Regarding the Evidence Act, Mr Pai submits that s 8(2) can only be invoked if the Prosecution is relying on a fact that is not the subject of any charge.[66] This is because, if the fact sought to be relied upon is the subject of a charge, then that fact has not yet been proven by the Prosecution beyond a reasonable doubt, and thus to use that unproven fact to prove another charge tendered by the Prosecution would be circular.[67]

69 Mr Ng submits that a joint trial of all the Respondents of all the charges would be unfair and prejudicial due to the length of the trial, the heavy expenses that would be incurred, and the resulting toll on his physical and mental health.[68]

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61 2nd Respondent's Further Written Submissions dated 25 November 2024 ("2RFWS") at paras 29 and 34.

62 2RFWS at paras 35−36 and 63.

63 2RFWS at para 45.

64 2RFWS at para 59.

65 2RFWS at para 54.

66 2RFWS at para 75.

67 2RFWS at paras 84−85.

68 3RWS at para 22.

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70 Ms Pai Guat Mooi submits that a joinder would allow evidence from her PCA Charges to potentially influence the court's findings on the CDSA Charges without first being proven beyond a reasonable doubt.[69] She argues that the evidence related to the PCA Charges, even if admissible under s 8 of the Evidence Act, should not be admitted into a trial of the CDSA Charges because its prejudicial effect on the accused would significantly outweigh its probative value.[70] The prejudicial effect arises from the following: (a) admitting the evidence related to the PCA Charges presupposes Ms Pai Guat Mooi's guilt in the CDSA Charges by allowing potentially prejudicial inferences from unrelated allegations under the PCA Charges;[71] (b) there may be uncertainty as to whether the guilt of the accused persons in one set of charges presupposes their guilt in another set of charges and *vice versa*;[72] and (c) in any case, even if Mr Pai was attempting to arrange for the three bunker clerks to remain away from Singapore, as is alleged under the Penal Code Charges, this evidence should not be regarded as probative of the other respondents' guilt as to their respective charges.[73] Allowing the application would remove the court's discretion to exclude irrelevant or prejudicial evidence, and allow all evidence pertaining to the CDSA and PCA Charges to be admitted indiscriminately in a joint trial.[74]

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69 4th Respondent's Further Written Submissions dated 25 November 2024 ("4RFWS") at para 10.

70 4RFWS at paras 12 and 19.

71 4RFWS at para 23.

72 4RFWS at para 24.

73 4RFWS at para 25.

74 4RFWS at para 27.

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My decision on s 146 of the CPC

Whether the court has any discretion

71 The first issue is the effect of any prejudice, as Mr Pai's argument is that the court is obliged to order separate trials once there is prejudice.

72 In my judgment, because of the express use of the word "may" in the provision, s 146 of the CPC confers on the court not only the power to order separate trials, but also the discretion to determine whether to order separate trials when prejudice arises. Judicial discretion, nevertheless, is exercised on principle and precedent.

73 Mr Pai highlighted several cases where the courts had not exercised their power under s 146 because they held that no prejudice was occasioned to the accused: see *Lee Teck Wah and another v Public Prosecutor* [1998] 1 SLR(R) 726 at [27] and [39], *Iswaran* at [31], and *Public Prosecutor v Azlin bte Arujunah* [2020] SGHC 168 at [10]. These cases do not go so far as to show that the court has no discretion wherever there is prejudice, but simply that it was unnecessary to consider or exercise that discretion in the particular cases because there was no prejudice. Such an approach was also taken in *Lee Kwang Peng v Public Prosecutor and another appeal* [1997] 2 SLR(R) 569 ("*Lee Kwang Peng*"), where Yong Pung How CJ considered the predecessor provision to s 146 of the CPC had no operation because there was no prejudice or embarrassment, at [60]:

> As this was a case in which it would have been appropriate for the district judge to consider similar fact evidence, in the absence of some other source of prejudice or embarrassment other than the rule against similar facts, *s 171 has no operation* and I therefore found that the district judge rightly refused defence counsel's application for separate trials…
>
> [emphasis added]

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74 Yong CJ then explained (at [60]) that whether the discretion is ultimately exercised would depend on the degree of prejudice caused by a joint trial:

> … I wish to reiterate, however, that, even if I had come to the conclusion that similar facts could not rightly be admitted in the present case, *that would not have conclusively necessitated separate trials*. For *even* where similar facts must not be considered in determining liability, *because their prejudicial effect exceeds their probative force*, the trial judge *retains the discretion under s 171 to decide whether the degree of prejudice presented by a single trial justifies an order for separate trials. In such cases, the judge must ask himself whether he would be so influenced by the evidence presented by both victims that he would be unable to preserve the sanctity of the rule against similar facts*.
>
> [emphasis added]

75 This discretion is also made plain in the Court of Appeal's opening words of [45] in *Yong Yow Chee v Public Prosecutor* [1997] 3 SLR(R) 243 ("*Yong Yow Chee*"), a case that Mr Pai cites for the contrary proposition using the last two lines:[75]

> We feel that ***in every case***, depending on the circumstances, ***it is for the trial judge to use his discretion as to whether to order separate trials or to order a joinder of the offences***. This is provided for in s 171 of the Criminal Procedure Code (Cap 68) ("CPC"). There are express provisions in the CPC to guide the exercise of the trial judge's discretion. They are ss 169, 170 and 172. Therefore in all cases, the trial judge should bear in mind the rule of practice that a capital charge should not generally speaking be coupled with a non-capital charge in the same trial. *However, if the trial judge feels that the circumstances of the case before him falls within one of the provisions of the CPC relating to the joinder of offences in the same trial and thinks that no prejudice is caused to the accused, it is open to him to allow the offences to be tried together even if one is a capital offence and the other is non-capital. It is of utmost importance that the trial judge must determine that no prejudice is caused to the accused.*
>
> [emphasis added in bold italics; text used in Mr Pai's submissions emphasised in italics]

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[75] 2FRWS at para 28.

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Exercise of my discretion

76 The issue, then, is how I should exercise my discretion, in the light of all the relevant circumstances of the case.

77 The prejudice contended by the Respondents highlighted fell broadly into two categories. The first were general assertions as to age, health, length of trial and complexity. I did not think that any of these factors occasioned particular prejudice that warranted the exercise of my discretion. Length of trial and complexity were inherent in the overlapping and related factual matrix of the various charges and would be envisaged in the scenarios in illus (*b*), (*c*) and (*d*) of s 143 and illus (*a*) to (*f*) of s 144 of the CPC.

78 Secondly, the Respondents made various arguments that a joint trial of the CDSA Charges and the PCA and Penal Code Charges might result in the trial judge not being able to separate the evidence for each of these charges. In this context, Mr Pai cited various cases from Australia (*Sutton v R* (1984) 51 ALR 435) and the Supreme Court of Kentucky (*Hammond v Commonwealth* 366 SW 3d 425), which linked the joinder of charges to the admissibility of evidence. In his view, the principle illustrated by these cases is that where evidence in relation to one charge is not admissible in relation to another, there is a real risk of impermissible prejudice to the accused and separate trials should therefore be ordered.[76] Nevertheless, the House of Lords decision of *Ludlow v Metropolitan Police Commissioner* [1971] AC 29 ("*Ludlow*"), while cited by Mr Pai in support of his proposition[77], endorsed the opposite approach. Lord Pearson explained that the discretion under s 5(3) of

[76] 2RFWS at para 55.

[77] 2RFWS at para 62.

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the Indictments Act 1915 (c 90) (UK), a provision *in pari materia* to s 146 of the CPC, should *not* be exercised *simply* because a joinder entailed counts relating to different transactions (at 41):

> In my opinion, this theory—that a joinder of counts relating to different transactions is in itself so prejudicial to the accused that such a joinder should never be made cannot be held to have survived the passing of the Indictments Act, 1915. … *I think the experience of judges in modern times is that the verdicts of juries show them to have been careful and conscientious in considering each count separately.* Also *in most cases it would be oppressive to the accused, as well as expensive and inconvenient for the prosecution*, to have two or more trials when one would suffice. At any rate, in my opinion, the manifest intention of the Act is that charges which either are founded on the same facts or relate to a series of offences of the same or a similar character properly can and normally should be joined in one indictment, and a joint trial of the charges will normally follow, although the judge has a discretionary power to direct separate trials under section 5 (3). If the theory were still correct, it would be the duty of the judge in the proper exercise of his discretion under section 5 (3) to direct separate trials in every case where the accused was charged with a series of offences of the same or a similar character, and the manifest intention appearing from section 4 and rule 3 would be defeated. *The judge has no duty to direct separate trials under section 5 (3) unless in his opinion there is some special feature of the case which would make a joint trial of the several counts prejudicial or embarrassing to the accused and separate trials are required in the interests of justice.* In some cases the offences charged may be too numerous and complicated (Reg. v. King; Rex v. Bailey [1924] 2 K.B. 300, 306), or too difficult to disentangle (Rex v. Norman [1915] 1 K.B. 341), so that a joint trial of all the counts is likely to cause confusion and the defence may be embarrassed or prejudiced. In other cases objection may be taken to the inclusion of a count on the ground that it is of a scandalous nature and likely to arouse in the minds of the jury hostile feelings against the accused.
>
> [emphasis added]

79 Furthermore, Australian, American and English cases are not apposite in this particular context. In Singapore, the position is dependent upon ss 143 and 144 of the CPC. Each of the joint trials envisaged in illus (*b*), (*c*) and (*d*) of s 143 and illus (*a*) to (*f*) of s 144 of the CPC would have necessitated the

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adduction of evidence relevant to all the various offences in the course of trial. For the various offenders in those illustrations, proving the additional offences in the same transaction or series of acts would also have involved introducing evidence related to at least one, *but not all*, of each accused person's charges. In such cases, in line with the approach taken by Woo J at [46(a)] of *Ridhaudin* (see [63] above), the trial judge would consider whether the burden of proof is met on each particular charge.

80 A similar position was taken by Yong CJ in *Lee Kwang Peng* at [57]:

> As an important preliminary consideration, I wish to highlight that English law and Singapore law diverge on this point. In our law, the question whether a judge should order a joinder is governed by wholly different considerations from the question whether similar fact evidence should be admitted. It is entirely possible for a judge to order a joinder but with a view to treating that the evidence of the two victims separately. The trier of fact in our system is endowed with the judicial ability to preserve and apply the rule against similar facts. In England, the difficulties faced by a jury in preserving that rule where evidence of two victims is adduced at one trial almost invariably justifies separate trials. It is only where there are striking similarities or similarities sufficient to create a probative nexus between the evidence of the two victims that a single trial is appropriate – this is the result of the decision in *R v P*.

81 Therefore, the last line at the end of [45] from *Yong Yow Chee* cited by Mr Pai – "[i]t is of utmost importance that the trial judge must determine that no prejudice is caused to the accused" − must be understood in the context of that paragraph's opening lines (see [75] above) and *Lee Kwang Peng*. Judges are endowed with the judicial ability to preserve and apply the appropriate rules of evidence. On each charge, only evidence admissible on that charge may be considered in assessing whether the Prosecution has proved its case beyond a reasonable doubt.

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82 In this context, I deal with the Prosecution's first alternative argument (see [66] above) that no prejudice is occasioned by a joint trial because the evidence on the PCA and Penal Code Charges would be admissible in any event in a trial on the CDSA Charges under s 8(2) of the Evidence Act and *vice versa*. However, the issue of prejudice is of wider scope than the issue of admissibility. And, as explained above, the issue of joinder is not dependent upon the issue of admissibility.

83 Having considered all the circumstances, I am of the view that it is not appropriate to exercise my discretion under s 146 of the CPC to order separate trials.

Conclusion

84 In conclusion, I grant the application for the accused persons to be jointly tried on their respective charges.

Valerie Thean
Judge of the High Court

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