IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 70

Criminal Motion No 9 of 2019

Between

LIM CHIT FOO

… *Applicant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Public Prosecutor] — [Powers]

[Criminal Procedure and Sentencing] — [Trials] — [Power to postpone or adjourn]

[Criminal Procedure and Sentencing] — [Charge] — [Stood down charges]

Lim Chit Foo
v
Public Prosecutor

[2019] SGCA 70

Court of Appeal — Criminal Motion No 9 of 2019
Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA
22 August 2019

19 November 2019 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 The applicant faces multiple pending criminal charges in relation to his alleged involvement in a large-scale fraudulent scheme perpetrated on the Inland Revenue Authority of Singapore ("IRAS") in relation to the IRAS Productivity and Innovation Credit ("PIC") Scheme. Prior to the commencement of the trial of those charges, the applicant filed the present criminal motion for (a) leave under s 396 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") to state a case directly to the Court of Appeal on questions of law relating broadly to the legality of the Attorney-General purporting to exercise his discretion to prosecute the applicant's multiple charges over the course of separate and consecutive trials; and (b) leave under s 397 of the CPC to refer questions of law of public interest to the Court of

Appeal regarding the legality of the applicant being denied bail whilst awaiting trial for those charges.

2 At the hearing of the criminal motion on 22 August 2019, we dismissed the latter application on the issue of bail. In essence, it was clear to us that the applicant was mounting a fresh attempt to obtain bail, despite having failed to obtain bail on nine previous applications, and this was an issue that did not give rise to any question of law, much less one of public interest.

3 On the former question, the focus of the applicant's arguments in his written submissions had been on whether the Prosecution's decision to proceed by way of multiple trials was contrary to the applicant's right to counsel under Art 9(3) of the Constitution of the Republic of Singapore (1999 Reprint) ("the Constitution"). This argument was abandoned during the hearing. Instead, the applicant focused on the alleged prejudice he was subject to by reason of the Prosecution's decision to stand down a number of pending charges in this case. The applicant contended that once an accused person had been charged in court, the conduct of the prosecution of those charges was subject to the overriding case management powers of the court. On this basis, the applicant contended that the decision whether to stand down pending charges was not a matter within the prosecutorial direction of the Public Prosecutor. On the contrary, the conduct of the proceedings and the decision whether to stand down, or more correctly, to permit the adjournment of the prosecution of certain charges, fell within the judicial power provided for in Art 93 of the Constitution. To resolve this, we had to consider the precise character of the act of standing down pending charges, and determine its statutory basis within the CPC.

4 This line of argument emerged at the hearing and had not been fully explored in written submissions. In fairness to the Prosecution, we accordingly

directed the parties to tender further written submissions on the following three issues:

(a) What is the statutory basis upon which one or more out of all pending charges against an accused person may be stood down pending the disposal of the remaining charges?

(b) In the absence of any other statutory basis, is s 238 of the CPC the source of the power to stand down some of the pending charges pending the disposal of the remaining charges?

(c) On any basis, is this a matter of prosecutorial discretion or a matter for the decision of the court?

5 The parties have since filed their written submissions on these issues. Having had the benefit of those submissions, we now deliver our judgment. Even though the application is for leave to state a case under s 396 of the CPC, we think it expedient to deal with the substantive issue directly.

Background facts

6 The bulk of the applicant's pending charges relate directly to his involvement in a fraud pertaining to the PIC Scheme. The PIC Scheme is a government subsidy open to all qualifying Singapore-registered companies to improve productivity using IT and automation equipment. According to the Prosecution's case against the applicant, the applicant conspired with others to submit false PIC claims to IRAS on behalf of various companies, on the basis that these companies had incurred the qualifying expenditure. In fact, the purported expenditure had not been incurred, and the documents were in respect of sham purchases of goods and services. To carry out the fraud, the applicant

allegedly also forged Accounting and Corporate Regulatory Authority ("ACRA") business profiles by amending the names of the directors reflected on the business profiles. Based on these fraudulent acts, IRAS was deceived into disbursing a total of $5.56m to 71 companies in response to some of these PIC claims. These moneys were then transferred to the applicant's bank account, and out of this, he allegedly received a total of more than $1.14m. Further, there were 84 other false PIC claims filed on behalf of 58 other companies for which IRAS did not pay out the claims, and the amount in respect of these claims would have totalled $4.36m.

7 For his alleged involvement in the PIC Scheme fraud, the applicant faces more than 400 charges of abetment by instigation or conspiracy to cheat under s 420 read with ss 109 and 116 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). Approximately half of these are against the applicant alone ("the individual cheating charges") while most of the rest are faced by the applicant jointly with two co-accused persons, Li Dan and Wang Jiao ("the joint cheating charges"). In addition, the applicant also faces eight forgery charges under s 474 read with s 466 of the Penal Code for possessing forged ACRA business profiles ("the forgery charges"), as well as not less than 23 charges under s 47(1)(*c*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA") for his receipt of approximately $1.14m from the false PIC applications ("the CDSA charges").

8 Investigations into the applicant's involvement began on 5 October 2016 and the applicant was first charged in court on 11 November 2016, which is also the date on which he was first placed in remand. In addition to the charges associated with the PIC fraud, the applicant had also been charged under s 204A of the Penal Code with tampering with or attempting to tamper with seven witnesses. In relation to each of the latter charges, the applicant had instructed

his associates to falsely inform investigators from the Commercial Affairs Department ("CAD") that a Chinese national, known as Wu Hai Jun, was involved in the fraudulent PIC applications. This was done in order to mask the applicant's own involvement in the scheme. The applicant was also found to have bribed one of his associates with a payment of $3,000 to furnish false information to the CAD. The applicant was tried on four of the seven witness tampering charges and the trial was held on various dates between August 2017 and May 2018. He was convicted of the four charges on 7 September 2018 and was sentenced on 16 January 2019 to 40 months' imprisonment, with the sentence backdated to his date of remand, 11 November 2016. He would have been eligible for release on 31 January 2019, but the applicant has remained in remand for the pending charges in relation to the PIC fraud, as well as the three remaining witness tampering charges.

9 Shortly after the applicant's conviction on and the pronouncement of sentence for the four witness tampering charges, on 24 January 2019, the Prosecution served its case for the applicant's individual cheating charges, as well as the forgery charges and the CDSA charges. The Prosecution also indicated that it would proceed against the applicant for the joint cheating charges together with the co-accused persons, Li Dan and Wang Jiao, in a separate trial, and that the joint cheating charges would accordingly be stood down for the time being. The applicant took issue with this, arguing essentially that it was unfair for him to be tried "by instalments" given that the investigation for all the pending charges had been completed. The Prosecution did not give any reasons for its decision to proceed in this manner when it served its case or at any time prior to the hearing of the present motion on 22 August 2019. At that hearing, we were informed that there were material differences between the applicant's individual cheating charges and the joint cheating charges. We were

told that while these arose out of similar circumstances, they were not part of a single continuing scheme. It was submitted on this basis that it would be inappropriate to proceed with all 400 charges at one trial.

10 At the time this application was heard, the applicant's joint cheating charges and the three remaining witness tampering charges were still stood down. However, the applicant has since informed us that the Prosecution had on 19 September 2019 applied to proceed with the joint cheating charges concurrently with the applicant's individual cheating charges. In other words, with the exception of the three remaining witness tampering charges which remain stood down, all of the pending charges against the applicant are being proceeded with in two ongoing and concurrent trials. We discuss the implications of this development on our decision at [37] below.

The parties' further written submissions

11 The applicant takes the position in his further submissions that the statutory basis for standing down pending charges must be s 238 of the CPC. He further contends that the practice of standing down pending charges, which amounts in essence to an indefinite adjournment, should be curtailed because it is not in accordance with the law. The applicant further submits that the Public Prosecutor's power to conduct proceedings under Art 35(8) of the Constitution and to control and direct criminal prosecutions and proceedings under s 11(1) of the CPC does not extend to regulating the process by which matters are to be dealt with fairly and efficiently under the supervision of the court, and certainly cannot impinge on the jurisdiction of the court. Since the only statutory provision enabling the standing down of a charge is s 238 of the CPC, which makes it clear that the power to grant an adjournment lies with the court, the Public Prosecutor cannot arrogate to himself a power to stand down any pending

charges in a manner that he deems appropriate when, in substance, this is a power that is vested exclusively in the judiciary. In support of his position that s 238 of the CPC is the statutory basis for the practice of standing down charges, the applicant relies on, among other authorities, the decision of the Malaysian High Court in *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak* (Criminal Application No: WA-44-175-07/2019) ("*Mohd Najib"*).

12 The Prosecution on the other hand contends that the statutory basis for standing down charges is not s 238 CPC, but s 6 CPC. That provision states, in essence, that where the CPC does not specify a particular criminal procedure, such procedure as the justice of the case may require, which is not inconsistent with the CPC or other law, may be adopted. In other words, where there is no prescribed procedure, s 6 CPC may be invoked to plug a gap and it is appropriate to do so here since the standing down of pending charges has been a long-standing practice. The Prosecution argues that the decision whether to grant an adjournment under s 238 should relate only to administrative matters, meaning matters that affect the ability of the court proceedings to continue. It is said that this is illustrated by the sole ground of adjournment expressly referred to in s 238 – "absence of a witness" – which is clearly an administrative consideration, as well as past cases which have interpreted what amounts to "reasonable cause" within the meaning of s 238, and all of which decisions have been concerned with practical and administrative considerations of a similar nature. In contrast, the standing down of charges is a matter of prosecutorial discretion, which is a decision not made arbitrarily, but with regard to the sort of considerations established in *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 such as "the available evidence, public interest considerations, the personal circumstances of the offender" and so on. This prosecutorial discretion is a broad one and the courts should intervene only in narrow

circumstances involving possible abuses, such as where the discretion is exercised for an extraneous purpose or in a biased manner.

Our judgment

What does it mean to stand down charges?

13 It is apposite to begin with a working definition of what it means to stand down pending charges, although this is not ultimately a matter of controversy between the parties. The term appears frequently in our local jurisprudence, but does not appear to have been judicially defined here or elsewhere. The parties have both relied on the definition found in the glossary section of a publication of the State Courts titled *Guidebook for Accused in Person: A Guide to Representing Yourself in Court,* which states:

> **Stood down charge(s)**
>
> A charge(s) temporarily put on hold, but which the Prosecution may at a later stage (1) apply to take-into-consideration (TIC) for the purpose of sentencing, (2) apply to proceed with it or (3) withdraw it.

14 This serves as an adequate working definition for our purposes, and is a definition reflected in the use of the term in local cases. The term generally refers to situations where an accused person faces *multiple* charges, and a decision is made by the Prosecution to proceed with some of these by way of trial or in a plead guilty mention, while the remaining charges are stood down or "put on hold", meaning they are temporarily held in abeyance. After the accused person pleads guilty to the proceeded charges or when those charges have been disposed of at trial, the stood down charges may then be considered. The stood down charges may typically be dealt with in one of three ways:

(a) First, where the accused person has pleaded guilty to or been convicted on the proceeded charges, the stood down charges may be

taken into consideration for the purposes of sentencing with the accused person's consent (see for example, *Public Prosecutor v Sundarti Supriyanto (No 2)* [2004] SGHC 244).

(b) Second, the Prosecution may decide to proceed with the stood down charges in separate proceedings (see for example, *Public Prosecutor v Tan Hor Peow Victor and others* [2006] SGDC 55).

(c) Third, the stood down charges may be withdrawn by the Prosecution after the proceeded charges have been dealt with. If a conviction has been secured on the proceeded charges, the Prosecution can make an application under s 147(1) of the CPC to withdraw the remaining charges and the accused person will be granted a discharge amounting to an acquittal (see s 147(2) of the CPC; *Public Prosecutor v Zainudin bin Mohamed and another* [2017] 3 SLR 317 at [100]). If the accused person is acquitted of the proceeded charges, the Prosecution can make an application under s 232(1) of the CPC to withdraw the remaining charges, and this will normally result in a discharge not amounting to an acquittal (see s 232(2) of the CPC).

15 The foregoing working definition and the typical situations where charges are stood down and then dealt with in one of the ways mentioned, are reflected to some degree in various provisions of the CPC, albeit using different language, as well as in the associated commentary of those and related provisions in *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir eds) (Academy Publishing, 2012) ("*CPC: Annotations and Commentary*"). In the first scenario, where an accused person pleads guilty to certain proceeded charges with the remaining charges stood down and then subsequently taken

into consideration for the purposes of sentencing, s 148 of the CPC empowers the court to take into consideration "any other outstanding offences that the accused admits to have committed" for the purposes of determining and passing sentence. Implicit in this, is the existence of pending charges that have not been disposed of. Relatedly, s 390(9) of the CPC provides that at the hearing of an appeal, the appellate court may, on the application of the Public Prosecutor and with the consent of the accused person, "take into consideration any outstanding offences which [the accused person] admits to have committed" for the purposes of sentencing. The reference to "outstanding offences" must again refer to pending charges that have not been disposed of. In line with this, the learned authors in *CPC: Annotations and Commentary* when discussing s 390(9) of the CPC observe (at para 20.110) that the latter provision "obviates the need for the matter to revert to the lower court purely for the purposes of dealing with the outstanding *stood down* charges upon the conclusion of an appeal" [emphasis added].

16 Likewise, in the second scenario of an accused person claiming trial to some charges while the remaining charges have been stood down and the Prosecution wishes subsequently to proceed with those in a separate trial (as in the present case), s 161(3) of the CPC provides that the Prosecution shall then serve its case only in relation to the proceeded charges. In discussing this provision, the learned authors of *CPC: Annotations and Commentary* observe (at para 09.039) that where an accused person claims trial to multiple charges, "the Prosecution will indicate which charge(s) it intends to proceed with at the trial, with the remaining charges being *stood down* for the time being. The Case for the Prosecution to be filed and served will be in relation to the charge(s) intended to be proceeded with at trial, and not in relation to any (and/or all) of the *stood down* charges" [emphasis added].

What is the statutory basis for standing down charges?

17 The working definition of "stood down" charges describes their effect in terms that these have been "put on hold". But it is necessary to then examine the statutory basis for the practice. This is the central question we are faced with and it has significant practical implications because situating the practice within the statutory framework provided by the CPC would determine whether, as the Prosecution argues, the decision to stand down charges is a matter purely within the Prosecution's discretion, or as the applicant argues, is a matter subject to the supervisory jurisdiction of the court.

18 In our judgment, the statutory basis for the standing down of charges is s 238 of the CPC, which provides as follows:

> **Power to postpone or adjourn proceedings**
>
> 238.—(1) The court may postpone or adjourn any inquiry, trial or other proceedings on such terms as it thinks fit and for as long as it considers reasonable, if the absence of a witness or any other reasonable cause makes this necessary or advisable.
>
> (2) Subject to subsection (3), if the accused is not on bail, the court may by a warrant remand him in custody as it thinks fit.
>
> (3) If it appears likely that further evidence may be obtained by a remand, the court may so remand the accused in custody for the purpose of any investigation by a law enforcement agency but not for more than 8 days at a time.
>
> (4) If the accused is on bail, the court may extend the bail.
>
> (5) The court must record in writing the reasons for the postponement or adjournment of the proceedings.

19 We observe firstly that s 238(1) of the CPC is framed broadly and permissively. It provides that the court *may* adjourn any proceedings on such terms as it thinks fit and for as long as it considers reasonable, if *any reasonable cause* makes this *necessary or advisable*. The provision sets out one example of reasonable cause, being the unavailability of witnesses, but does not otherwise

restrict what could constitute reasonable cause, or when an adjournment would be necessary or advisable. Cases interpreting s 238(1) of the CPC have largely focused on the meaning of reasonable cause, and these have generally centred on the unavailability of witnesses, of counsel or of other evidence (see for example, *Mohamed Ekram v Public Prosecutor* [1962] MLJ 129; *Public Prosecutor v Low Yong Ping* [1961] MLJ 306; *Jasbir Singh and another v Public Prosecutor* [1994] 1 SLR(R) 782 at [35]–[36]), or cases where counsel requires more time to prepare for the proceedings (see for example, *Awaluddin bin Suratman & Ors v Public Prosecutor* [1992] 1 MLJ 416; *Public Prosecutor v David Noordin* [1980] 2 MLJ 146). However, we do not think that these preclude a broader interpretation of s 238(1) which we are moved to adopt in this case. After all, it is well established that "reasonable cause" is a "term of art for lawyers and no definite ruling can be laid down; each case must be dealt with according to its own peculiar circumstances" (*Tan Foo Su v Public Prosecutor* [1967] 2 MLJ 19).

The separation of powers between the prosecutorial and judicial functions

20 The primary consideration behind our conclusion that s 238 of the CPC is the statutory basis for the practice of standing down charges, is a conceptual one, which focuses on the separation of powers and specifically on the proper demarcation between the role of the Prosecution and the role of the courts in the conduct of criminal proceedings. It is clear on the one hand that under Art 35(8) of the Constitution, it is the prerogative of the Attorney-General to "institute, conduct or discontinue any proceedings for any offence". This is echoed in s 11 of the CPC, which stipulates that the Attorney-General as Public Prosecutor shall "have the control and direction of criminal prosecutions and proceedings under [the CPC] or any other written law". On the other hand, it is equally well established that once charges have been brought before the court, criminal

proceedings are subject to the overall supervision and control of the court. This was made clear in *Goh Cheng Chuan v Public Prosecutor* [1990] 1 SLR(R) 660 (at [13]):

> […] I entirely agree with the proposition that whether to prosecute an accused on a charge, and, after the commencement of the prosecution, whether to continue it, are matters solely for the Public Prosecutor to decide. Article 35(8) of the Constitution and s 335(1) of the Criminal Procedure Code vest in the Attorney-General, as the Public Prosecutor, all such powers. There is clearly no dispute on this point. *However, once he has instituted criminal proceedings against an accused on a charge and the proceedings are before the court, the conduct of such proceedings is subject to the overall control of the court.* If a question in issue arises – whether one of fact or of law – then it is undoubtedly for the court to determine; indeed, the court is under an obligation to determine it. In determining such a question, including, where appropriate, exercising its discretion, if any, conferred by law, whether against the Public Prosecutor or otherwise, the court is not "whittling down" the authority and powers of the Attorney-General as the Public Prosecutor. [emphasis added]

21 That proposition was subsequently endorsed in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [144]–[146], where a three-judge bench of the High Court observed that while the prosecutorial and judicial functions are given equal status in the Constitution, the judicial power may circumscribe prosecutorial power in two ways (at [146]):

> First, the court may declare the wrongful exercise of the prosecutorial power as unconstitutional […] *Secondly, it is an established principle that when an accused is brought before a court, the proceedings thereafter are subject to the control of the court:* see *Goh Cheng Chuan v PP* [1990] 1 SLR(R) 660, *Ridgeway* at 32–33 and *Looseley* at [16]–[17]. Within the limits of its judicial and statutory powers, the court may deal with the case as it thinks fit in accordance with the law. [emphasis added]

22 Thus, even though the Attorney-General is said under Art 35(8) to have the power to "initiate, conduct or discontinue any proceedings for any offence" it is clear that this refers to the decision and the discretion to initiate, maintain

and terminate a criminal *prosecution*. It does not vest in the Attorney-General the power to determine how the proceedings as a whole, involving both the Prosecution and the Defence, will be managed and conducted. That, plainly, is a function and responsibility of the court.

23 The question then is whether the practice of standing down charges is something that falls within the Prosecution's discretion in its conduct of criminal prosecutions, or whether it is to be properly situated within the court's duty to supervise and fairly manage criminal proceedings. One might think, as the Prosecution has argued in this case, that the standing down of charges is the necessary corollary of the Prosecution's decision to proceed with certain charges, in that the charges that are not proceeded with at trial or during a plead guilty mention must inevitably have been stood down. However, once we consider the true effect of standing down charges in the three scenarios contemplated at [13] above, this is revealed to be a false dichotomy. Even though *the charges* that are to be stood down are necessarily the charges that are not proceeded with at trial or at a plead guilty mention, the *effect* of their being stood down goes further. Stood down charges are not merely not proceeded with, in the sense that they are not held in some state of undefined suspension. Rather, they are, in effect, postponed with the specific intent that they will be heard or otherwise disposed of at a later time. In the case of stood down charges that are taken into consideration for the purposes of sentencing or withdrawn after an accused person has been found guilty or otherwise on the proceeded charges, those stood down charges are in effect postponed and then dealt with after the accused person's conviction or acquittal on the proceeded charges, by being taken into consideration for the purpose of sentencing on the proceeded charges, or by being withdrawn and discharged at that point of time. In the case of multiple pending charges which the Prosecution intends to

proceed with in separate trials, as in the present case, the stood down charges are in effect postponed to be dealt with after the disposal of the earlier trial.

24 The fact that stood down charges are in effect postponed to be dealt with at a later time necessarily means that there is an adjournment of proceedings within the meaning of s 238 of the CPC. This is because once charges have been brought before the court, criminal proceedings are afoot in respect of those charges. The conduct of those proceedings in respect of their *management*, as opposed to in respect of their *prosecution*, are necessarily within the purview of the court and subject to its supervisory jurisdiction. It follows that while proceedings can be adjourned to a later date, s 238 of the CPC makes it clear that this is at the discretion of the court, which must be satisfied that any reasonable cause makes the adjournment necessary or advisable.

25 Once it is accepted that the effect of standing down charges is that these charges are in effect adjourned to be dealt with at a later time, it also becomes clear that it would be unsatisfactory and indeed, wrong in principle, to conceptualise the practice as falling purely within the Prosecution's discretion, for to do so would be to give the Prosecution unfettered control over the conduct of criminal proceedings that are before the court. Whilst applications to stand down charges are almost always uncontroversial and unlikely to cause any prejudice to accused persons in the vast majority of cases, it is conceivable that the Prosecution could seek to control the pace and sequence of trials by standing down charges in a manner that might objectively be oppressive to the accused person. This may especially prove to be an issue in cases such as the present where an accused person faces a large number of charges relating to different offences. In our judgment, it would be wholly unsatisfactory if the court were powerless to intervene in such cases except by resorting to narrow concepts such

as abuse of process or any allegation of improper conduct on the Prosecution's part.

The decision in Mohd Najib and s 259 of the Malaysian CPC

26 The decision in *Mohd Najib* provides some support for our interpretation of s 238 of the CPC. The respondent in that case faced multiple money laundering and corruption charges which were to be tried jointly, and trial dates were fixed ("the Tanore trial"). Subsequently, the Prosecution made two consecutive applications to postpone the commencement of the Tanore trial until the disposal of a separate trial also involving the respondent ("the SRC trial"). The court granted each of those applications by vacating the trial dates that had earlier been fixed for the Tanore trial and refixing them a few months later. A third application of a similar nature was then filed, on the apparent basis that the SRC trial was not going to be completed by the rescheduled trial dates that had been fixed for the Tanore trial. This third application for adjournment was the subject matter of the judgment in *Mohd Najib*. The Prosecution took the position that the Tanore trial should not commence until after the conclusion of the SRC trial, although it was not clear when the SRC trial would conclude. The respondent did not object to the application, and took the position that the SRC and Tanore trials should be "finished one at a time", especially since the Defence team might "become thinner" by having to conduct the two trials simultaneously (*Mohd Najib* at [30] and [31]).

27 Notwithstanding the parties' agreement on the proposed adjournment, the High Court rejected the application. After having canvassed the authorities on the discretion of the court under s 259 of the Criminal Procedure Code (FMS Cap 6) (M'sia) ("the Malaysian CPC") (which is in similar terms to s 238 of our CPC) and the importance of ensuring that criminal trials proceed expeditiously,

the High Court concluded that if the Tanore trial were to be postponed until after the resolution of the SRC trial, more than a year would have elapsed since the respondent had been charged for the offences that were to be the subject of the Tanore trial. The court further observed that by "no stretch of the imagination can that be construed to be a trial that has proceeded expeditiously" (*Mohd Najib* at [57]). The High Court then went on to observe (at [61]) that

> This is so notwithstanding that this application is supported by the defence. Section 259(1) of the CPC makes it abundantly clear that the discretion is vested with the court alone. The prosecution cannot choose to institute multiple charges and then choose to adjourn them just because they take the view that one case ought to conclude first before another begins. The courts cannot be utilized as a mere repository for criminal cases.

28 The High Court further noted that two postponements had already been granted on previous occasions, and that the difficulties imposed on the parties' schedule in having to conduct the trials concurrently could be accommodated by ensuring that the Tanore and SRC trials would not require the respondent's presence on the same day or week (at [65]).

29 Before us, the Prosecution sought to distinguish *Mohd Najib* on the basis that it pertained to the adjournment of trial dates which had already been fixed, whereas the applicant's pending charges in this case were still at the pre-trial stage, with no trial dates having been taken for the joint cheating charges at the time of the present application. We do not accept this as a valid point of distinction and think that the approach taken in *Mohd Najib* remains instructive for two reasons. First, the court in *Mohd Najib* opined that s 259 of the Malaysian CPC was triggered in a case where an accused person faced multiple pending charges which were to be proceeded with at separate trials, and one party applies for one of those trials to commence after the other. It does not matter that the judgment does not speak of the charges for the Tanore trial being

"stood down", when this was the *substance* of what the Prosecution was seeking there. One can imagine that had the same situation arisen in our courts, the Prosecution would have made an application for the charges forming the subject matter of the Tanore trial to be stood down until the disposal of the SRC trial. In fact, one might argue that it would have been more practicable to apply for the Tanore trial to be stood down, rather than making multiple and repeated applications for the Tanore trial dates to be vacated and refixed when there was little clarity as to the likely completion date of the SRC trial.

30 Second and more importantly, the crux of the court's decision in *Mohd Najib* was to emphasise that notwithstanding the parties' agreement for the Tanore trial to be adjourned, it was ultimately the *court's* duty to ensure that criminal proceedings before it proceed fairly and expeditiously. While emphasis was placed there on the significance of delay and the need for expedition, the key point for our purposes is the court's emphasis on its role and responsibility in managing the proceedings before it in a fair and efficient manner. In our judgment, that is a crucial responsibility that must be exercised where the court is satisfied that there is a real risk of injustice, whether by reason of serious delay or the oppressive effects on the accused person, if some of the pending charges were to be adjourned. In our judgment, s 238 should be construed in the way that we have, by situating it in the context of the court's broader duty to guard against injustices in the conduct of criminal proceedings that are before it. This is the setting in which the court must determine whether the adjournment of pending charges ought to be allowed. It finds expression in the stipulation in s 238 of the CPC that a court may adjourn proceedings only when satisfied that reasonable cause makes it necessary or advisable to do so.

Scope of s 238 of the CPC

31 To be clear, the conclusion that s 238 of the CPC forms the statutory basis for the practice of standing down charges does not and should not in any way impinge on the Public Prosecutor's prerogative to initiate, conduct or discontinue criminal *prosecutions* as he deems fit. In a situation where an accused person faces multiple pending charges and the Prosecution applies for some of these charges to be proceeded with at a plead guilty mention or at trial and for the remaining charges to be stood down, the court will not interfere with the decision of *which* charges are to be proceeded with and which are to be stood down. Moreover, as we have already noted, in the vast majority of cases, the accused person will agree to such a course of action. Where both parties are agreed on a course of action, we think, somewhat differently from the court in *Mohd Najib*, that this should be given considerable weight unless the court reasonably apprehends a real risk of injustice. But in cases where the accused person contends that a particular course gives rise to a risk of injustice, then it is entirely right that this be susceptible to judicial scrutiny.

32 We recognise that the practice of standing down charges has long been entrenched in our criminal jurisprudence, and that the court has almost always granted applications for charges to be stood down. We do not think that this will change just because the practice is to be understood as grounded in the court's jurisdiction to adjourn proceedings under s 238 of the CPC.

33 To illustrate this, we return once again to the three scenarios contemplated at [13] and [14] above though this is primarily for the purpose of illustration without being unduly prescriptive. In the first scenario where the Prosecution applies to stand down certain charges to be taken into consideration subsequently at the end of a plead guilty mention, the fact that this is the

contemplated course of action and that the accused person intends to plead guilty to the proceeded charges would almost invariably suffice as reasonable cause to adjourn the stood down charges until after the accused person has been convicted of the proceeded charges. Since the stood down charges are effectively adjourned only for the duration of the plead guilty mention, there would not be any concern of any injustice, even if the stood down charges were later proceeded with at trial should the plead guilty mention fall through for some reason.

34 In the second scenario where the Prosecution intends to proceed with multiple charges but in separate trials, and asks for one set of charges to be held in abeyance or stood down pending the disposal of the charges for an earlier trial, and if this is opposed by the Defence, the court would have to undertake a holistic assessment of whether an adjournment under s 238 of the CPC is necessary or advisable in the circumstances and whether there is a real risk of injustice that would weigh against such a course. Relevant considerations would include whether the earlier trial is likely to be completed within a reasonable period of time, whether the accused person is in remand or on bail, and whether the parties have sufficient resources for the trials to be conducted concurrently. It is ultimately for the accused person to advance grounds supporting his contention of a real risk of injustice should he wish to do so.

35 In the third scenario, where the Prosecution applies for certain charges to be stood down pending the disposal of the proceeded charges at trial, so that the stood down charges may later be withdrawn, there should ordinarily be no prejudice to the accused person in granting the adjournment under s 238 of the CPC. This would often be the case where the charges to be stood down are minor compared to the charges to be proceeded with at trial, and in such cases

it would be necessary and advisable to adjourn those charges so that they can be dealt with at a later time.

36 We address finally, the applicant's argument that the practice of standing down pending charges is not in accordance with the law as it amounts to an adjournment *sine die.* We do not think that this is correct. An adjournment or postponement need not be to a definite date, and an adjournment to await some specified event is not an adjournment *sine die* (see V R Manohar & W W Chitaley, *The Code of Criminal Procedure 1973 (2 of 1974)* (1982, 8th Ed, The All India Reporters) vol 3 at p 202, on the Indian equivalent of s 238 CPC). The applicant's real concern is that the practice of standing down pending charges, if not subject to the supervision of the court, could result in prolonged delays in criminal proceedings which would cause prejudice to an accused person. Given our finding that the standing down of charges is subject to the court's discretion under s 238 of the CPC, this concern has been adequately addressed.

Application of the foregoing analysis to the present case

37 In respect of the joint cheating charges faced by the applicant, given that the Prosecution has since filed its case for the joint cheating charges and both trials now appear to be proceeding concurrently (see above at [10]), it has become unnecessary for us to address this point, save to observe that any future applications to stand down any or all of the joint cheating charges would remain subject to the purview of the court under s 238 of the CPC.

38 The issue may be live in respect of the applicant's three remaining witness tampering charges, which remain stood down at the present time. Since the applicant has already been convicted of four witness tampering charges and is now facing two separate trials in relation to his involvement in the PIC

Scheme fraud, it is unclear whether the Prosecution nonetheless intends to prosecute the applicant for the remaining witness tampering charges. In the circumstances, it would be appropriate for the Prosecution to give some indication of its intention as to the remaining witness tampering charges at this time and for the applicant to respond to this before we make any further order.

Conclusion

39 We accordingly direct that the Prosecution is to write in within two weeks from the date of this judgment to inform the court of its position in respect of the three remaining witness tampering charges, and what further directions, if any, it seeks in respect of those charges. It would assist us if the Prosecution also consults the Defence and intimates its position in relation to any such directions.

Sundaresh Menon	Judith Prakash	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

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