IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 92

Community Justice and Tribunals Appeal No 1 of 2016

Between

BENBER DAYAO YU

… *Appellant*

And

JACTER SINGH

… *Respondent*

In the Matter of DC/PHA No 70060 of 2015

In the matter of an application under section 12(1) of the Protection from Harassment Act 2014 (Act 17 of 2014)

Between

BENBER DAYAO YU

… *Applicant*

And

JACTER SINGH

... *Respondent*

GROUNDS OF DECISION

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See Kee Oon J:

1 This was an appeal against the decision of the District Judge dismissing an application for a protection order under s 12 of the Protection from Harassment Act (No 14 of 2014) ("POHA").[1] The District Judge's grounds of decision are set out in his Notes of Evidence dated 29 February 2016 ("the GD").[2]

2 Before the District Judge, the appellant sought a protection order in relation to a web page posted on the Internet ("the Web post") by the respondent. The appellant also sought a protection order prohibiting the respondent from approaching him under any circumstances. In this appeal, the

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1 The present edition of the POHA is (Cap 256A, 2015 Rev Ed).

2 Record of Appeal ("ROA") Vol 1 pp 106–140.

appellant focused his case on the District Judge's findings in relation to the Web post and did not challenge the District Judge's finding in relation to the alleged physical harassment.

3 After hearing the parties, I allowed the appeal and granted a protection order under s 12 of the POHA in favour of the appellant in relation to the Web post. I granted an order in terms of prayers 1 to 3 of the originating summons with the exception of prayer 1(c) which related to the protection order against the respondent approaching the appellant:[3]

> 1. Jacter Singh whether in his personal capacity or trading as JS Athletics (Business Registration No. 5310554L) be prohibited from doing the following [acts] in relation to Benber Dayao Yu:
>
> > a) Remove all publications relating to Benber Dayao Yu that is currently set out in the webpage at http://js-athletics.com/notice-of-termination.
> >
> > b) Desist from publishing further insulting or abusive communications about Benber Dayao Yu, including but not limited to publishing in any form whatsoever, the allegations set out in the webpage at http://js-athletics.com/notice-of-termination.
>
> …
>
> 2. No person shall publish or continue to publish the following offending communication(s):
>
> > a) the allegations set out in the Webpage found at http://js-athletics.com/notice-of-termination.
>
> 3) That Jacter Singh shall pay [Benber Dayao Yu] the costs of this application.

4 I directed that the respondent remove the Web post within two weeks of my judgment and fixed costs for the appeal and the proceedings below at

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[3] ROA Vol 1 p 2.

S$12,000, with reasonable disbursements in addition. I now set out the full grounds of my decision.

Background facts

5 The appellant was a former employee of the respondent, who ran a sports coaching company known as JS Athletics. JS Athletics was in the business of conducting sports training at schools and stadiums and selling sports accessories. The appellant worked for the respondent from 2008 to 2009. The parties disputed the circumstances under which the appellant left the employment of the respondent. The appellant claimed that he resigned while the respondent claimed that the appellant was summarily dismissed.

6 The Web post in question was posted on the respondent's business website on 8 November 2009 after the appellant left the respondent's employ. The respondent updated the Web post thereafter at various points. He did so after the hearing before the District Judge and pending the outcome of the present appeal, though not in wholly accurate terms, to record the District Judge's order made in his favour and subsequent proceedings. Before the District Judge, the appellant took issue with the following allegations contained within the Web post:

(a) The appellant's employment had been terminated by the respondent.

(b) The appellant had misrepresented to others that he was a Philippines national team coach and/or a Philippines national athlete.

(c) The appellant had a molest case against him in the Philippines and had molested the athletes he coached.

(d) The appellant's training methods had caused injuries to the athletes that he coached.

On appeal, the aspects of the Web post which the appellant took objection to were those that referred to the appellant as an incompetent coach and a molester who molested the athletes he coached.

7 The basis for the respondent's assertion that the appellant was a molester was an incident in the Philippines that occurred in April 2006 when a 15 year- old female athlete made a private complaint against the appellant for molesting her. It is undisputed that the complaint was dismissed for lack of probable cause by the Provincial Prosecutor in the Philippines and no further actions were taken against the appellant. The respondent was fully aware that the Philippines Provincial Prosecutor had dismissed the complaint.

8 Besides the Web post, the appellant claimed that the respondent had behaved in an insulting, abusive and harassing manner towards him during various encounters at the sports stadiums.

9 The appellant subsequently requested the respondent to remove the Web post but the respondent refused. Consequently, the appellant filed an application under DC/PHA 70060 of 2015 for a protection order pursuant to s 12 of the POHA seeking an order for the respondent to take down the Web post. The appellant also sought a protection order in relation to the alleged physical harassment.

Decision below

10 The hearing of DC/PHA 70060 of 2015 took place before the District Judge on 16 and 17 November 2015. Before the District Judge, the appellant

contended that the Web Post contravened ss 3 and 4 of the POHA and that it was just and equitable to grant a protection order against the respondent.

11 The respondent's contentions were as follows:

(a) The appellant could not avail himself of the remedy under s 12 of the POHA because the POHA was not intended to have retrospective application to the Web post which was made before the POHA came into effect.

(b) With regard to the Web post, the respondent contended that he was telling the truth and that his conduct was reasonable.

(c) With regard to the physical harassment, the respondent denied that the incidents of alleged harassment had occurred.

12 The District Judge found that the Web post had remained on the JS Athletics website after the POHA came into force and that the appellant could apply for a protection order on the Web post.[4]

13 With respect to the Web post, the District Judge found that the respondent had conducted himself reasonably and thus was able to avail himself of the defences in ss 3 and 4 of the POHA. This turned on the District Judge's findings that the Web post contained either true statements or reasonable expressions of the respondent's personal point of view. Specifically, the District Judge found that the respondent had made acceptable statements pertaining to:

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[4] ROA Vol 1 at p 112 at 103D.

(a) the reasons for his termination of the appellant's employment in 2009;

(b) the false claims by the appellant to be a Philippines national coach and/or national athlete;

(c) the appellant's 2006 molest case in the Philippines; and

(d) the appellant's improper training methods causing injuries to his trainees.

14 In the premises, the District Judge did not think that it was just and equitable to issue a protection order. A summary of the District Judge's findings is found at [114E]–[115A] and [128D]–[128E] of the GD:[5]

> In summary, in relation to the allegations in the affidavit, the court's decision is that it was reasonable for the [respondent] to say his viewpoint on his web post that the [appellant's] employment at JS Athletics was terminated, the [appellant] was not a Philippines national coach or Philippines national athlete, the [appellant] had a molest case in Philippines and that the [appellant's] training of young athletes was not proper.
>
> …
>
> In conclusion, in our factual context, the choice of words by the [respondent] in the web post may appear harsh against the [appellant]. But the [respondent] had reasons for saying so, and the web post has not stopped the [appellant] from working as an athletics coach and growing his coaching business.

15 The appellant's allegations of physical harassment were premised on various alleged incidents involving face-to-face confrontations between the appellant and respondent as set out in the appellant's second affidavit. The

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[5] ROA Vol 1 at pp 123–124 and p 137.

District Judge found that the appellant had not proved that these incidents had occurred. He further found that the appellant had not shown that he was distressed to such a degree as to justify the grant of a protection order against the respondent.[6]

16 The District Judge awarded the respondent costs of S$8,000 before Goods and Services Tax with reasonable disbursements to be agreed or taxed. The appellant subsequently applied for and was granted leave to appeal to the High Court.[7]

The parties' cases on appeal

17 The appellant raised four arguments on appeal, contending that the District Judge erred in:

(a) First, finding that the respondent did not contravene s 3(1) and s 4(1) of the POHA.

(b) Secondly, finding that the respondent had a defence of reasonable conduct under s 3(3) and s 4(3) of the POHA.

(c) Thirdly, finding that it was not just and equitable to grant a protection order under s 12 of the POHA.

(d) Fourthly, admitting affidavits that were inadmissible by law, in particular the affidavits filed by the respondent to prove that the appellant was a molester.

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6 ROA Vol 1 at p 137 at [128A]–[128C].

7 ROA Vol 1 at p 149.

I noted that the appellant did not challenge the District Judge's findings in relation to the alleged physical harassment.

18 In response, the respondent did not seriously dispute that the Web post contained statements which, objectively understood, were abusive or insulting. He relied on the two main defences which had been canvassed before the District Judge. The first was that the Web post pre-dated the enactment of the POHA and thus the legislation should not have retrospective application ("the retrospective POHA defence").[8] The second was that he had conducted himself reasonably in putting up the Web post ("the reasonable conduct defence").[9]

My decision

19 Section 12 of the POHA provides that a victim of harassment under ss 3 to 7 of the POHA can apply for a protection order subject to certain conditions:

> **Protection order**
>
> 12.—(1) Subject to subsection (9), the victim under section 3, 4, 5, 6 or 7 may make an application to the District Court for a protection order.
>
> (2) A District Court may make a protection order if it is satisfied on the balance of probabilities that —
>
> > (a) the respondent has contravened section 3, 4, 5, 6 or 7 in respect of the victim;
> >
> > (b) the contravention referred to in paragraph (a) is likely to continue, or the respondent is likely to commit a contravention of section 3, 4, 5, 6 or 7 in respect of the victim; and

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8 Respondent's Submissions at pp 4–9.

9 Respondent's Submissions at pp 10–25.

(c) it is just and equitable in all the circumstances.

20 In the present case, to justify the grant of protection pursuant to s 12 of the POHA, the appellant was required to show that:

(a) the respondent had contravened ss 3 or 4 of the POHA;

(b) the said contravention was likely to continue, or the respondent was likely to commit a contravention of ss 3 or 4; and

(c) it was just and equitable in all the circumstances to issue a protection order.

21 Section 3 of the POHA provides for the offence of acting with intent to cause harassment, alarm or distress to any person by the use of threatening, abusive or insulting words or behaviour; or making any threatening, abusive or insulting communication thereby causing harassment, alarm or distress. Under s 3(3), it is a defence for the accused person to prove that his conduct was reasonable.

22 Section 4 of the POHA lays down the offence of using threatening, abusive or insulting words or behaviour; or making any threatening, abusive or insulting communication which is heard, seen or otherwise perceived by any person ("the victim") likely to be caused harassment, alarm or distress. Under s 4(3)(a), it is a defence for the accused person to prove that he had no reason to believe the victim would hear, see or otherwise perceive the word or behaviour used, or the communication made. Similar to s 3(3), s 4(3)(b) also states that it is a defence for the accused person to prove that his conduct was reasonable.

23 The difference between the offences in ss 3 and 4 of the POHA is the requirement of intention, which is found in s 3 but absent from s 4 (see Goh Yihan and Yip Man, "The Protection From Harassment Act 2014: Legislative Comment" (2014) 26 SAcLJ 700 at p 710):

> The distinction between ss 3 and 4 of [the POHA] can seem rather thin. *Chee Siok Chin* [*v Public Prosecutor* [2006] 1 SLR(R) 582] highlights two important differences between ss 13A and 13B of the [Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA")], which will be relevant to understanding ss 3 and 4. First, s 13A (and s 3 [of the POHA]), unlike s 13B (and s 4 [of the POHA]) *does not require the offence to take place within the hearing or sight of any person likely to be caused harassment, alarm or distress.* Secondly, a plain reading of s 13B of the MOA reveals that an intention for the conduct to be "threatening, abusive or insulting" is not even a necessary criterion. It has been said that objectivity is the touch stone for assessing the conduct in question and that threats, abuses and insults embraced by s 13B may constitute an offence whether or not they were so intended. *This is likely applicable to s 4 of the [POHA].*
>
> [emphasis added]

24 As stated by the Minister for Law, Mr K Shanmugam, during the Second Reading of the Protection from Harassment Bill, ss 3 and 4 of the POHA were adapted from s 13A and s 13B of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA") with minor changes and modifications so as to extend to words, behaviour or communications made by *any means* including electronic means as in the present case (see *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91):

> Clauses 3 to 6 re-enact and update sections 13A to 13D of the MOA respectively, and therefore, sections 13A to 13D of the MOA will be repealed once this Bill goes through. Thus, clauses 3, 4, 5 and 6, which deal with harassment, in fact are taken from the MOA, with some minor changes. The penalties are increased quite substantively.

> … First, the Bill makes clear that harassment and related antisocial behaviour are offences, whether committed in the physical world or online; and that must be so. It must be the consequence of the conduct, not where and how that conduct was carried out, that is important. Clauses 3 to 6 are medium neutral. *They extend to words, behaviour or communication used or made by "any means", which will obviously include electronic means.*
>
> The second of my five points is that illustrations have been introduced in clauses 3 and 4. These illustrations reiterate and signal that the Bill will cover a wide range of anti-social behaviour, such as: cyber bullying; bullying of children; and sexual harassment. This will be an offence, wherever it takes place, including of course in the workplace.
>
> [emphasis added]

25 Accordingly, harassing conduct on the Internet, such as those in the Web post in the present case would be covered by ss 3 and 4 of the POHA.

The retrospective POHA defence

26 I was of the view that the District Judge rightly rejected the retrospective POHA defence. The Web post had remained on the JS Athletics website all along and there had thus been ongoing publication. At the time of the appeal, it remained freely accessible on the Internet. In fact, the respondent had updated the Web post after the hearing before the District Judge and pending the outcome of the present appeal. Accordingly, I agreed with the District Judge that it was open to the appellant to apply for a protection order under s 12 of the POHA.

The Web post

27 I agreed with the appellant that there is essentially a two-stage test to adopt when deciding whether to grant a protection order under s 12 of the POHA.

(a) The first stage is to establish whether the respondent had contravened ss 3(1) and 4(1) of the POHA by examining the nature of the words or behaviour in question.

(b) If the conduct complained of is found to fall within ss 3 or 4, the court then proceeds to the second stage to consider whether any defence can apply. At this point, the inquiry is into whether what has been found to be harassing conduct was nonetheless reasonable conduct in the circumstances.

Finally, the court considers whether it is just and equitable in all the circumstances to grant the protection order under s 12.

28 From the GD, it appeared that the District Judge might have conflated the two stages. He did not make it clear if he made any findings in respect of the first stage of the inquiry. But this was not a major source of error, let alone a fatal flaw. Evidently, he had adopted a holistic approach since the words in the Web post could, to some extent, be said to speak for themselves. He examined the reasonableness of the respondent's conduct to satisfy himself as to whether the words contained any truth or justification such that it could be inferred that there was lack of any malicious intent. It would be needlessly pedantic to fault his reasoning on this score. It sufficed to note that he was conscious that the burden was on the respondent to prove that he could rely on the "reasonable conduct" defence.

29 The District Judge accepted that the respondent's choice of words "may appear harsh" but found that the respondent had reasons for saying so.[10]

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[10] ROA Vol 1 p 137.

He did not expressly mention whether he found these reasons to be *bona fide*, valid or justifiable but this could perhaps be inferred from his eventual decision to dismiss the application.

Stage 1: nature of conduct

30 At the first stage, the inquiry related to whether the respondent had used threatening, abusive or insulting words or behaviour with the intent to cause harassment, alarm or distress (under s 3 of the POHA) and whether they were likely to cause harassment, alarm or distress (under s 4 of the POHA).

31 The terms "abusive", "insulting", "threatening", "harassment", "alarm", and "distress" found in ss 3 and 4 are not defined in the POHA. In my judgment, these terms ought to be accorded their common-sense meaning. This is in line with V K Rajah JA's approach in *Chee Siok Chin v Public Prosecutor* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*") at [124] in considering the absence of definitions for similar terms found in ss 13A and 13B of the MOA:

> The fact that Parliament did not define the word 'harassment' in ss 13A and 13B of the MOA is a strong indication that this word, like the words 'insult' and 'abusive', is intended to be accorded a common-sense meaning. Harassment describes determined conduct which is directed at persons and is calculated to produce discomfort and/or unease and/or distress: see *Malcomson Nicholas Hugh Bertran v Mehta Naresh Kumar* [2001] 3 SLR(R) 379. Persistent or prolonged conduct that is directed at causing distress in those responsible for discharging their duties would amount to harassment for the purpose of the subject provisions. The essence of harassment is not just repetitive conduct but includes prolonged or persistent or sustained conduct.

32 At [72] and [76] of *Chee Siok Chin*, the Court also held that:

> 72 … [I]n so far as the interpretation of a similar combination of words in the MOA is concerned, it would be correct to

> conclude that "Parliament has given no indication that the word is to be given any unusual meaning. Insulting means insulting and nothing else"… By the same token, the words "harassment", "alarm" and "distress" should be given common-sense everyday meanings.
>
> 76 … Threatening, abusive or insulting words or behaviour are simply words or behaviour that are threatening, abusive or insulting in character…

33 The illustration to s 4 of the POHA also offers some guidance as to the type of words that may fall within the ambit of ss 3 and 4 of the POHA:

> Illustration
>
> X and Y are classmates. X posts a *vulgar tirade* against Y on a *website accessible to all* of their classmates. One of Y's classmates shows the message on the website to Y, and Y is distressed. X is guilty of an offence under this section.
>
> [emphasis added]

34 Objectively understood and as a matter of common sense, I found that there were abusive and insulting words used in the Web post. The Web post contained serious and unfair allegations of criminal conduct. The words used in the Web post were, in my view, akin to a vulgar tirade mentioned in the illustration to s 4 of the POHA cited above even though no profanities were used. They were cast in highly pejorative terms, clearly calculated to abuse and insult the appellant and vilify him as a recalcitrant sex offender who takes advantage of his trainees by deceptive or manipulative means. The Web post also contained other allegations that the appellant's training methods were improper or unethical and had "caused" injuries to his trainees. The various allegations were purely accusatory in nature and intended to portray the appellant as a coach who abused the student athletes under his care and adopted improper training methods.

35 In respect of the accusations of the appellant's sexual misconduct, it was particularly troubling that the respondent openly acknowledged during cross-examination that the Web post alleging molest was "intended to give the reader the impression that the applicant is guilty of molest" despite being aware that such a complaint had been dismissed by the Provincial Prosecutor in the Philippines:[11]

> Q: You agree with me that your website is intended to give the reader the impression that the [appellant] is guilty of molest?
>
> A: Yes.
>
> Q: You also agree with me that you are aware that the Philippines provincial prosecutor had dismissed the complaint by Joy Erhra, correct?
>
> A: Yes.
>
> Q: You agree with me that nowhere in your website do you say that the [appellant] or the case against the [appellant] has been dismissed, correct?
>
> A: Yes.

36 It was clear that the respondent showed no interest in or inclination to provide the full context to the 2006 molest allegations, let alone mention the undisputed fact that the appellant had neither been charged nor convicted of any molest charges. The molest case, which had been initiated as a private complaint, was dismissed by the Provincial Prosecutor in the Philippines but the respondent chose not to regard this as an important fact.

37 The Web post contained a link to an article published by the New Paper in April 2011 ("New Paper article"). The New Paper article provided a slightly more balanced account than the respondent's Web post and does in fact mention the dismissal of the complaint. Nevertheless, the article went on

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[11] ROA Vol 1 p 87.

to mention that the victim was not contacted by the relevant prosecuting authorities for follow-up which suggested that her complaint was wrongly dismissed. The District Judge opined that the respondent had provided the link so that readers could draw their own conclusions. The link to this article did suggest an effort towards moderation but the difficulty was that the article itself was pure hearsay, and the respondent's intent in drawing attention to the article was self-serving: it was to support his own belief and claims that the respondent was at least factually guilty of molest. The article made no mention of anyone having approached the appellant for his side of the story.

38 To my mind, the New Paper article would probably lead readers to agree with the respondent. However it cannot be relied upon as evidence of the truth of the matter. It was no different from all the hearsay material that the respondent had amassed from his witnesses to support his allegations of the appellant being an inveterate molester who is a "wolf in a sheep's skin". These witnesses included:

(a) Ms Amelia Dantis Francisco (RW1) who was a Physical Education Teacher at the University of the East in the Philippines. Ms Francisco testified that the complainant had informed her that the appellant had molested her (the complainant).

(b) Ms Mona Liza Evangelista Mendoza (RW2) who was a Physical Education Professor in Bulacan State University in the Philippines and a Coach with the Women's Athletics Team. Ms Mendoza claimed that the complainant had told her that the appellant had molested her (the complainant).

(c) Ms Maria Lydia De Vega Mercado (RW3) who claimed that she had conversations over Facebook with persons who had interacted with the complainant.

39 The District Judge ought not to have admitted the respondent's witnesses' affidavits in support of the molest allegations. They were of no assistance to the court if all they purported to show was that conversations had taken place between the witnesses and various other persons including the complainant.

40 More alarmingly, the respondent had propagated half-truths or outright lies to persuade readers to see (and shun) the appellant not only as a liar, fraudster and cheat, but as an incorrigible serial molester. He was adamant on conveying the false impression that the appellant was both factually and legally guilty of molest despite the fact that he has neither been charged nor convicted for any such offence.

41 In this connection, the respondent's claim to have "court documents" to support his allegations was clearly a fabrication. It was not disputed that no charges were preferred in court as the complaint was "dismissed for lack of probable cause". Curiously, the District Judge considered that the respondent's reference to the purported "court documents" showed that the respondent had made "genuine and substantial efforts to support the statement he was making".[12] With respect, there was no basis for such a finding. It was common ground that the respondent was never prosecuted in any court, hence the idea that there can be any supporting "court documents" was a complete fiction.

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12 ROA Vol 1 p 122 at [113D].

42 In my judgment, the Web post, when read as a whole, was intended to show that the appellant was *guilty* of molest and was a repeat offender who somehow managed to evade detection and prosecution for other numerous unreported cases. It was therefore clear to me that the respondent's conduct fell within both ss 3 and 4 of the POHA, having used abusive and insulting words with the intent to cause harassment, alarm or distress, and these words were seen and perceived by the appellant.

Stage 2: reasonable conduct defence

43 Moving to the second stage of the inquiry, this pertained to whether the respondent had shown that his conduct was reasonable. It must be said that what amounts to reasonable conduct is heavily fact-specific and dependent on the unique circumstances of each case. In responding to questions from the members of the House on the Protection from Harassment Bill, Minister for Law Mr K Shanmugam outlined some factors that should be considered when determining the reasonableness of conduct (see *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91):

> … Reasonableness of conduct is a defence to all of the offences under the Bill and the Court will have to consider, inter alia: *the nature of the allegedly offending act in question; the context in which those acts occurred; and the effect of those actions on the victim* …
>
> [emphasis added]

I found these factors, namely the nature and context of the offending acts along with their effect on the victim, to be apposite to consider in the present case.

44 This was not a straightforward case where all the statements were either true and fact-based or all pure fabrication. I agreed with the District

Judge's finding that the Web post was not xenophobic. But it was patently a vituperative post. The respondent's motive was to "name and shame" the appellant. He was out to disparage and denigrate the appellant, while ostensibly seeking to warn readers about the appellant's bad character and criminal proclivities. The nature and context of the respondent's actions clearly showed that they could not be regarded as reasonable conduct by any measure.

45 The District Judge found that in the context of the Web post, having a molest "case" would also mean "complaint" to a reasonable reader.[13] I respectfully disagreed. Not every reasonable reader would be so discerning as to be able to appreciate a clear and objective distinction between a molest "case", a "complaint" and a "conviction", especially when the alleged molest case dates from 2006 and there were strongly-worded allegations of "numerous" other "unreported" cases. It was more likely that most readers would not be able to make such fine distinctions. The respondent must have recognised this, since his boldly undisguised intent was to persuade readers to agree that the appellant was *guilty* of molest (see [35] above).

46 There were also allegations in the Web post to the effect that the appellant was continually "taking advantage of the situation" when purportedly helping his athletes/clients to stretch. The District Judge accepted the respondent's explanation that this merely reflected his viewpoint.[14] The statement in question intimated that the appellant's "victims" did not know that he was taking advantage of them and touching them inappropriately on the pretext of helping them to stretch. The respondent was plainly not open to

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13 ROA Vol 1 p 122 at [113B].

14 ROA Vol 1 p 122 at [113D].

other less sinister or more reasonable interpretations. I was unable to see why this should be considered reasonable conduct on his part if all he could really see was his own viewpoint which he was insistent on putting across.

47 The District Judge came to the conclusion that it was reasonable for the respondent to state that the appellant had a molest case against him in the Philippines. For the reasons mentioned above, this conclusion was against the weight of the evidence.

48 As for the allegations that the appellant's training methods were improper or unethical and had "caused" injuries, there was no factual basis for these allegations. There could be room for differences in approach and differences of opinion on the effectiveness of various training methods. It would not be reasonable in my view to proclaim that the appellant's allegedly flawed training methods were the direct cause of injuries to his athletes. With regard to these allegations, I found that the respondent had once again gone too far in his statements. The statements in his Web post reflected the degree of animosity behind his conduct that went beyond mere criticism. In my view, the Web post read as a whole constituted a personal attack on the appellant on all fronts. This was manifestly not reasonable conduct.

49 I should add that having "reasons" for saying what the respondent said does not *ipso facto* mean that his conduct was "reasonable". Clearly it could not be so. His posts went well beyond harsh comment or vocal criticism. They were highly derisive. Driven by his personal agenda, he harboured bad blood and was actuated by bad faith. Acting in the name of self-righteous affront or indignation does not automatically equate to acting in good faith. A person who has conducted himself reasonably would not resort to personal attacks on another's character on his business webpage.

50 I found that the respondent's conduct was therefore not reasonable even if there may have been some truth in certain assertions he had made. In this regard, I accepted that the respondent's version of how the appellant left the employment of JS Athletics, *ie*, that he was terminated by the respondent, to be more consistent with the overall probabilities. I also agreed that the appellant had no reasonable basis to lay claim to any involvement with the Philippines national team whether as a coach or athlete. Having said that, his JS Athletics name card carried his purported "national" credentials. This was in all likelihood because the respondent had hastily printed them based on the strength of the appellant's representations, without going further to verify those claims. It was plausible that the respondent was eager to market his company's trainers' credentials which he assumed quite reasonably to be genuine.

51 With respect to the effect on the appellant, the respondent argued that there was no proven detrimental effect *ie*, no harm, damage or injury to the appellant's reputation. There was also no apparent serious impact on his employability since he remained gainfully employed. However, this would not preclude protection under the POHA if the elements of s 12 are satisfied, unless the case was clearly *de minimis* or so minor, frivolous or trifling that it would not warrant the issuance of a protection order.

52 Was the appellant over-reacting or being oversensitive or thin-skinned? I did not think so, given the gravity of what was posted and the context of the posts which were made on a business webpage that was openly accessible to anyone on the Internet. It was sufficient that one would expect the appellant to be distressed, applying the objective standard of a reasonable person. The degree of distress may affect the extent of protection sought and whether it is

indeed just and equitable to make the order. This is the inquiry to which I now turn.

Whether it was just and equitable to grant the protection order

53 When the appeal was heard on 11 May 2016, my decision in *Ting Choon Meng v Attorney-General and another appeal* [2016] 1 SLR 1246 was pending hearing before the Court of Appeal. In the event, the judgment of the majority dealt with the range of relevant factors to be considered when deciding whether it was just and equitable to grant a s 15 POHA order (see *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*")). In this regard, the majority of the Court of Appeal in *Ting Choon Meng* held at [43] that:

> In summary, the following is a non-exhaustive list of factors which the court may consider when confronted with an application under s 15 to decide if it is just and equitable to grant a s 15 order:
>
> (a) the nature of the false statement and the seriousness of the allegation made;
>
> (b) the purpose of the false statement, for example, whether it is said in jest or for the purposes of satire;
>
> (c) the impact of the statement on the subject and the degree of adverse emotional or psychological harm suffered;
>
> (d) the degree to which the false statement has been publicised to the public;
>
> (e) whether the subject has the means to publicise his or her own version of the truth (and on a channel that is accessible to the readers of the false statement);
>
> (f) whether the author and/or publisher of the statement has made genuine efforts to point out that the veracity of the statement is not undisputed; and
>
> (g) the ordinary instances of daily living that may be expected to be tolerated by reasonable persons.

54 The present case concerned a different remedy under the POHA from what was sought in *Ting Choon Meng*, which was a s 15 order. Notwithstanding the difference in remedy sought, I found the key considerations which are pertinent to the issue of whether it was just and equitable to grant a s 15 order to be broadly similar to those where a s 12 protection order is sought. In my view, these factors would include:

(a) the nature and seriousness of the harassing conduct;

(b) the purpose and motive behind the conduct in question;

(c) the impact of the conduct on the victim and the degree of adverse emotional or psychological harm suffered;

(d) the degree to which the harassing conduct had been made known to the public;

(e) whether the victim had the means to mitigate or avoid the harassing conduct;

(f) whether the person behind the conduct had made genuine efforts to ensure that the conduct would not be misconstrued or misunderstood; and

(g) the ordinary instances of daily living that may be expected to be tolerated by reasonable persons.

55 Having considered the factors as applied in the present case, I was satisfied that the necessary threshold was met and that it was just and equitable to make the protection order.

Protection order against physical harassment

56 For completeness, I turn finally to the allegations of physical harassment. The appellant must first persuade the court that the harassment had occurred. The difficulty here was that the versions were in conflict. The District Judge made specific findings of fact in respect of the conduct complained of and he found that the degree of distress had not been satisfactorily proved. The appellant also seemed to have abandoned his pursuit of an order on this ground on appeal. He did not mount any challenge to the District Judge's finding. I therefore deferred to the District Judge's finding on this aspect and declined to issue a protection order in respect of physical harassment.

Conclusion

57 In summary, the respondent had not succeeded in establishing a defence of reasonable conduct. Although I have noted that there was some truth in certain assertions made by the respondent, I was of the view that the Web post understood as a whole was harassing to the appellant and the respondent should not be permitted to maintain its presence on the Internet. I also found it just and equitable to provide the remedy sought by the appellant.

58 I ordered costs to the appellant here and below fixed at S$12,000 with reasonable disbursements in addition. This comprised the reversal of the costs order of S$8,000 made by the District Judge in favour of the respondent (see [16] above) and the costs of the present appeal fixed at S$4,000 with reasonable disbursements in addition.

[Afternote]

59 At the time of preparing this grounds of decision, the appellant applied for additional costs to be awarded on account of counsel having overlooked to bring certain matters to my attention in the course of the hearing on 3 March 2017. The respondent registered his objections to the application.

60 The appellant's claims for additional costs mainly relate to the following events:

(a) The parties' further written submissions to address *Ting Choon Meng*;

(b) The appellant's application to the District Judge for leave to appeal wherein leave was granted and an order was made for costs to be in the cause; and

(c) The respondent's application to the District Judge for security for costs which the appellant claims was dismissed with costs in the cause.

61 I dismiss the application for costs in relation to the parties' further written submissions addressing *Ting Choon Meng*. The costs incidental to the further submissions had already been factored into my costs order of S$4,000 for the appeal.

62 As for the applications for leave to appeal and security for costs, these were heard together by the District Judge on 23 March 2016 and 4 April 2016 and were scheduled for half-day sessions on each day. Having perused the notes of the District Judge, I observe that the security for costs application was adjourned to 20 April 2016 and that application was eventually withdrawn

with *no order as to costs* (contrary to the appellant's assertion) because parties had managed to come to an agreement.

63 In the light of the foregoing, I allow the appellant only a further S$800 in costs for the application for leave to appeal since it appears that a substantial portion of the hearings on 23 March 2016 and 4 April 2016 had centred on the security for costs application.

See Kee Oon
Judge

Earnest Lau and Joseph Tham (Chancery Law Corporation) for the appellant;
Ranjit Singh (Francis Khoo & Lim) for the respondent.