IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 187

Criminal Motion Nos 71 and 72 of 2016

Between

(1) Rajendar Prasad Rai
(2) Gurchandni Kaur Charan Singh

… *Applicants*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Disposal of Property] — [Temporary Stay Order]

Rajendar Prasad Rai and another
v
Public Prosecutor and another matter

[2017] SGHC 187

High Court — Criminal Motion Nos 71 and 72 of 2016
Sundaresh Menon CJ
13, 14 March 2017

31 July 2017

Sundaresh Menon CJ:

Introduction

1 After I delivered my judgment in *Rajendar Prasad Rai and another v Public Prosecutor and another matter* [2017] SGHC 49 ("the Judgment"), the Prosecution applied for a temporary stay of the orders I had made, pending an application that it intended to make for a restraint order under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"). I had ordered that certain funds, which had been seized by the Corrupt Practices Investigation Bureau ("CPIB"), be released to the applicants. As to this, the Prosecution's primary concern was over the risk of dissipation in that it might not be able to attach those funds even if an order were subsequently made under the CDSA. The background facts leading to the orders I made are set out in the Judgment at [2]–[11], and terms defined there are used here in the same way unless I state otherwise.

2 The Prosecution's application raised the following issues:

(a) whether I had the power to stay the orders I had made for the applicants' funds to be released or to suspend the operation of those orders pending the filing of proceedings by the Prosecution under the CDSA; and

(b) if I had such power, whether it ought to be exercised.

The Prosecution indicated that the application raised novel points of law and there were no direct authorities on the subject. I therefore granted a short adjournment for further argument.

3 The next day, I heard the parties' further submissions. In the Prosecution's submission, the power of the court to temporarily stay the effects of its order was to be found in s 390(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC 2012"). The Prosecution submitted that I ought to exercise my power under that provision, in essence, to prevent dissipation of the seized funds. At the conclusion of the hearing, I dismissed the Prosecution's application and gave brief reasons for my decision. I now issue these grounds to explain my decision more fully.

Whether the court has the power to stay its orders or suspend their operation

The Prosecution's submissions

4 The first issue I had to consider was whether it was open to the court as a matter of law to stay its orders or suspend their operation. The present application was made in the course of revisionary proceedings, and the powers of the High Court in that context are set out in s 401 of the CPC 2012. Section

401(2) extends to the High Court in the exercise of its revisionary jurisdiction the powers conferred by s 390 of the CPC 2012, which are the powers of the court when hearing an appeal. Section 390(1)(*d*), in turn, states that where the proceedings relate to "any other order", the court may "alter or reverse the order". This was the provision pursuant to which I had exercised the power to set aside the Magistrate's Order at the earlier hearing. Section 390(2) of the CPC 2012 then provides that:

> (2) Nothing in subsection (1) shall be taken to prevent the appellate court from making such other order in the matter as it may think just, and by such order exercise any power which the trial court might have exercised.

5 Section 390(2) was the critical provision on which the Prosecution sought to rely in the present application. In particular, the Prosecution submitted that the words in s 390(2) of the CPC 2012 are wide enough to permit the court to temporarily stay the effects of its earlier decision.

6 In its submission, the Prosecution also referred me to the decisions in *Li Weiming v Public Prosecutor and other matters* [2013] 2 SLR 1227 ("*Li Weiming*"), *Ong Beng Leong v Public Prosecutor* [2005] 2 SLR(R) 247 ("*Ong Beng Leong*") and *Pittis Stavros v Public Prosecutor* [2015] 3 SLR 181 ("*Pittis Stavros*"), which in its view supported its position that the existence of such a power to temporarily stay the effects of the court's decision was uncontroversial. The common thread running through each of these cases was the recognition that the High Court has the power to stay its own orders pending a possible application for criminal reference, and in some of these cases proceedings had in fact been stayed in such circumstances. This was despite the fact that neither the previous nor the present editions of the Criminal Procedure Code contained an express provision that empowered the court to do so. The

Prosecution urged me to find that s 390(2) read with s 401(2) of the CPC 2012 furnished the basis for this.

My decision

7 After hearing the parties, I rejected the Prosecution's submission. I did not accept that s 390(2) read with s 401(2) of the CPC 2012 conferred me with a general power to make such orders as I thought just including the power to stay my earlier orders. On the contrary, the power conferred was a limited one that was circumscribed by the terms of s 390(2) itself, and this did not extend to the present situation. Furthermore, I was satisfied that the authorities cited by the Prosecution did not assist its argument, since in each of these cases the court's power to stay the effects of its decision had been considered in very different contexts.

The ambit of the court's powers under s 390(2) of the Criminal Procedure Code

8 I began by analysing s 390(2) of the CPC 2012, which, in my judgment, consists of two distinct limbs. Under the first limb, an appellate court is conferred the power to make any order in the matter as it may think just; while under the second limb, the appellate court may exercise any power that the trial court could have exercised. The Prosecution's submissions rested on the premise that the two limbs are to be read disjunctively so that the second limb is not to be read as a limitation on the first but each is to be read as independent of the other. On this basis, the first limb of s 390(2) confers upon the court a free-standing power to make any order on appeal that it deems just, and this need not fall within the ambit of the powers which the trial court might have exercised. With respect, this seemed to me to be counterintuitive for at least two reasons:

(a) It seemed unnatural to first vest the court with such a wide and general power to do whatever it deemed just and after that, to add a specific jurisdiction that is both narrower in scope and confined to the powers that the trial court has, since the latter would, almost by definition, have already been encompassed within the former; and

(b) It seemed improbable that the legislation was intended to confer a general discretion on the appellate court to do whatever it deemed just without regard to the powers that the trial court would have had. To put it another way, it seemed to me counterintuitive that an appellate court would have powers to make orders which the trial court could not have made, when the scope of its review was the proceedings before the trial court, whose decision it was reviewing.

9 On the other hand, it seemed to me that a more natural reading of the provision supported a conjunctive result. For convenience, I set out again the words of s 390(2):

> (2) Nothing in subsection (1) shall be taken to prevent the appellate court from making such other order in the matter as it may think just, ***and by such order*** *exercise any power which the trial court might have exercised.*
>
> [emphasis added in italics and bold italics]

10 In my judgment, on a true construction of s 390(2), any order the appellate court may make under that provision must be one that was within the power of the trial court to make. This is made plain in my view by the words "and by such order" in the provision, the effect of which is to limit the orders that the appellate court may deem just to those which may be made in the exercise of the trial court's powers. I therefore rejected the Prosecution's submission that s 390(2) read with s 401(2) of the CPC 2012 conferred upon me

a general power to make *any* order I thought just on revision. Insofar as the Prosecution wished to rely on these provisions to argue that I had the power to stay my orders in the situation I was presented with, it would have to show that this was a power which the trial court could have exercised.

The case authorities relied on by the Prosecution

11 I now turn to the authorities, to which the Prosecution referred in its submissions, and explain why these were not of assistance. Before examining the facts of each of these cases, I pause to observe that in each of them, the *source* of the court's power to stay its orders was not identified even though the courts in question did consider that they were vested with such a power. In my judgment, it becomes evident on examining these authorities that those courts had exercised powers pursuant to particular statutory provisions in the relevant version of the Criminal Procedure Code and that those provisions had no application in the present case.

Li Weiming

12 I first consider *Li Weiming*, which was decided in the context of a criminal revision. The petitioners faced charges under the Penal Code (Cap 224, 2008 Rev Ed) and the CDSA. They each brought an application under s 162(*b*) read with s 169(2) of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010"), seeking either a discharge not amounting to an acquittal or an order for further particulars, on the basis that the Prosecution's summary of facts did not comply with the requirements of the pre-trial criminal case disclosure conference process under s 162 of the CPC 2010. The applications were dismissed by the District Court, albeit with an acknowledgment that valid issues had been raised that should be dealt with by the trial judge. The petitioners then applied to the High Court for a revision of the District Court's order. The High

Court in exercising its revisionary jurisdiction under s 404 of the CPC 2010 granted the applications in part, and ordered the Prosecution to disclose certain information to the petitioners. The Prosecution applied for a stay of the High Court's order pending its reference to the Court of Appeal on questions of law of public interest arising from those applications, and this was granted.

13 On the facts of *Li Weiming*, it was evident to me that the applicable provision pursuant to which the High Court must have exercised its power to stay its order in that case was s 383 of the CPC 2010, which is the general provision providing for execution in any case to be stayed pending an appeal. Section 383(1) of the CPC 2010, which provides for the discretion of the trial court and the appellate court to stay the execution of a judgment, sentence or order pending appeal, states as follows:

> **Stay of execution pending appeal**
>
> **383.** —(1) An appeal shall not operate as a stay of execution, but the trial court and the appellate court may stay execution on any judgment, sentence or order pending appeal, on any terms as to security for the payment of money or the performance or non-performance of an act or the suffering of a punishment imposed by the judgment, sentence or order as to the court seem reasonable.
>
> …

14 By virtue of s 401(2), this power is extended to the High Court exercising its revisionary jurisdiction. Further, although s 383 on its terms applies only in the context of a pending *appeal* as opposed to a pending *criminal reference*, in my judgment it is just that criminal reference proceedings fall within the ambit of the provision as well, since such proceedings can also result in the order of the court being revised. To put it in another way, it is within the power of the court to stay the orders that it has made pending a criminal reference pursuant to s 383. It would be unjust if there were no mechanism for such orders to be stayed pending the disposal of the reference proceedings.

15 Therefore, although, as I have noted above, the judgment does not explicitly identify the source of its power to stay its order, I did not agree with the Prosecution's suggestion that the High Court in *Li Weiming* would have stayed its order pursuant to s 390(2) of the CPC 2010.

Ong Beng Leong

16 The Prosecution next referred me to *Ong Beng Leong*. There, the offender, whose appeal against conviction on various charges under the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) had been dismissed by the High Court, filed a criminal motion for his sentence of imprisonment to be further stayed pending a possible application for criminal reference to the Court of Appeal. The High Court refused the stay on the basis that there were no pressing questions of public interest. Similarly, the anterior question of whether it had the power to grant a stay in that instance was not discussed in the court's grounds of decision, although once again it was clear on the facts that the power would have been available pursuant to s 251 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC 1985") had the court been satisfied that there were grounds for invoking this. Section 251 of the CPC 1985 was the predecessor provision to s 383(1) of the CPC 2010 and CPC 2012, and was worded in substantially similar terms:

> **Stay of execution pending appeal**
>
> **251.** No appeal shall operate as a stay of execution, but the courts below and the High Court may stay execution on any judgment, order, conviction or sentence pending appeal on such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering of any punishment ordered by or in the judgment, order, conviction or sentence as to the court seem reasonable.

17 Indeed, there was no provision that corresponded to s 390(2) of the CPC 2012 at the time *Ong Beng Leong* was decided, because that was first enacted

in the CPC 2010. *Ong Beng Leong* therefore could not stand as authority for the existence of a power for the court to stay its decision pursuant to s 390(2).

Pittis Stavros

18 The final case on which the Prosecution relied was *Pittis Stavros*. There, the offender appealed to the High Court against his conviction under s 408 of the Penal Code and his sentence of 18 months' imprisonment. The High Court allowed his appeal in part by convicting him on an amended charge under s 406 of the Penal Code and reducing his sentence to 14 months' imprisonment. The offender then sought a stay of execution of his sentence of imprisonment pending a possible application for a criminal reference to the Court of Appeal, and this was granted. The court's decision on the stay was not reported but it seems clear to me that the power would have been exercised pursuant to s 383(1) of the CPC 2012 (which is identical to s 383(1) of the CPC 2010, reproduced at [13] above). The circumstances in *Pittis Stavros* were essentially the same as in *Li Weiming*.

19 In my judgment, the cases cited by the Prosecution therefore do not advance its argument that s 390(2) confers upon me a broad power to make any order that I think just in the present circumstances.

Whether the order sought fell within the ambit of the court's powers under s 390(2) of the CPC 2012

20 I now return to what was, in my judgment, the correct interpretation of s 390(2) of the CPC 2012, which is that the provision confers upon me powers to make such other orders in the matter as I may think just *subject to the restriction that those are powers which the trial court could have exercised*. As set out above at [9]–[10], this was the more natural reading of the provision. On

this basis, I considered whether the present order sought was one which I could make.

21 In the present case, the Prosecution was asking me to stay what was in effect an order for the disposal of property, pursuant to which the funds that had been seized by the CPIB were to be released to the applicants. The basis of the application was to allow the Prosecution to file proceedings under the CDSA and its primary concern was that if the funds were released, they would be dissipated and impossible to attach even if an order under the CDSA were subsequently sought and obtained. Two possible bases were identified, on the grounds of which, it was submitted, the Magistrate might have exercised powers to continue the seizure. I note that if I found it permissible and appropriate to draw on these powers to authorise the continued retention of the seized funds, this would seem to have had the effect of prospectively validating the Magistrate's Order, which I had already found to be irregular and set aside. Having considered the matter, it was clear to me that neither of those two options that were identified were properly applicable in the present situation.

Whether this was a power which the trial court might have exercised pursuant to s 370(3) of the CPC 2012

22 The first possible source of such a power was s 370(3) of the CPC 2012, which was the provision under which proceedings were first brought before the Magistrate. For ease of reference, I reproduce s 370 below with added emphasis on s 370(3) in particular:

> **Procedure governing seizure of property**
>
> 370.—(1) If a police officer seizes property which is taken under section 35 or 78, or alleged or suspected to have been stolen, or found under circumstances that lead him to suspect an offence, he must make a report of the seizure to a Magistrate's Court at the earlier of the following times:

> (*a*) when the police officer considers that such property is no longer relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code; or
>
> (*b*) one year from the date of seizure of the property.
>
> (2) Subject to subsection (3), the Magistrate's Court must, upon the receipt of such report referred to in subsection (1), make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.
>
> (3) *The Magistrate's Court must not dispose of any property* ***if there is any pending court proceeding under any written law in relation to the property*** in respect of which the report referred to in subsection (1) is made, *or* ***if it is satisfied that such property is relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code****.*
>
> [emphasis added in italics and bold italics]

23 Section 370(3) confers upon the Magistrate the powers to continue the seizure of property in two situations:

> (a) The first is if there are pending court proceedings under any written law in relation to the seized funds, in which case the funds should not be released as a matter of course; and
>
> (b) The second is where the property is thought to be relevant to any investigation, inquiry, trial or other proceeding under the Criminal Procedure Code.

24 The question I had to consider was whether the Magistrate might have exercised the powers to continue the seizure under s 370 had the Prosecution's present application been before her. I have set out in some detail how s 370 is to be understood and applied in the Judgment at [43]–[48]. In essence, there are

three things which the Magistrate must consider in succession to determine whether the powers under s 370 are to be exercised (at [46] of the Judgment):

(a) The legislative basis on which an order for the continued seizure of the property is sought and in particular whether the property was originally seized pursuant to ss 35 or 78 of the CPC 2012;

(b) The purpose for which the extension is sought; and

(c) The factual basis on which it is sought.

25 For the reasons which I set out at [65]–[69] of the Judgment, it seemed clear to me that continuing the seizure in the present case was not within the powers which the Magistrate could have exercised. I restate the relevant points briefly in the context of the present inquiry:

(a) First, it seemed apparent on the evidence before the Magistrate that the funds could not have been seized pursuant to s 35 (or s 78, for that matter) of the CPC 2012. The Magistrate's powers under s 370 were thus not engaged and there was no basis for the Magistrate to make any order thereunder.

(b) Second, even assuming for the sake of argument that the funds could have been seized pursuant to s 35 as the Prosecution claimed, I was not convinced that the purpose for which the extension was sought was relevant to either of the two situations envisaged under s 370(3).

(c) Third, and in connection with my second point, the facts simply did not show that either of the two situations envisaged under s 370(3) applied.

In the circumstances, there was no occasion for the Magistrate to even consider the application of the powers contained in s 370(3).

26 The question then turned on whether I should revisit the position by permitting further evidence to be adduced. The Prosecution submitted that it in fact had sufficient evidence at the time of the s 370 Hearing to warrant the extension of the seizure pursuant to s 370(3), although it also accepted that this evidence had not been put before the Magistrate. The Prosecution indicated that it was now prepared to put forth the evidence so that I may be satisfied that my order should be stayed and the seizure extended.

27 In my judgment, leaving aside the point that the Magistrate's powers under s 370 were not even engaged to begin with, there was a conceptual difficulty with drawing on this power *at this stage of the proceedings*. By this stage, I had already determined that there was no basis at law, on the evidence led by the Prosecution, to justify extending the seizure. By definition, I had already determined that there was no basis for invoking the powers in s 370(3). What the Prosecution was seeking, in effect, was to cause me to reopen my decision on the basis of putting additional evidence before me. I did not think this was either permissible or appropriate. It was incumbent on the Prosecution to put forward its evidence at the appropriate time and not to litigate the matter in a piecemeal fashion by bringing on its evidence in stages, especially given that the Prosecution's case was that it already had this evidence by the time of the s 370 Hearing.

28 Further and in any case, it was necessary to establish the relevant date by reference to which the position should be assessed before proceeding any further; and I considered the relevant date to be the date on which the parties appeared before the Magistrate. This is because, as I explained in the Judgment

(at [50]), the scheme for seizure under the CPC 2012 is that the Police has a broad remit to enable it to make a seizure that will be valid for up to a year. But at the end of that year, the seizure is subject to judicial oversight and review in accordance with the provisions of s 370. The position on whether the seizure should be continued should therefore be considered by reference to the position as it stood on that date. In the present case, for whatever reason, the Prosecution had chosen not to put forward the additional material before the Magistrate, which might have enabled it to obtain the order which it now sought from me. Having made that choice, I thought it would be unfair now to allow it to mount a fresh attempt to seize the assets by adducing additional evidence, in effect, to retrospectively validate the retention of the applicants' funds. In the circumstances, I declined to receive further evidence on the issue.

Whether this was a power which the trial court might have exercised pursuant to s 383 of the CPC 2012

29 The second of the two possible options was under s 383 of the CPC 2012 which gives the Magistrate the power to stay the execution of a disposal order pending an appeal. This was the power upon which I consider that the courts in *Li Weiming*, *Ong Beng Leong*, and *Pittis Stavros* had likely acted to stay their decisions. At the hearing, however, the Prosecution had indicated in no unclear terms that the basis of its application was not to challenge the correctness of my decision (as was the case in *Li Weiming*, *Ong Beng Leong*, and *Pittis Stavros*) but to ensure that the assets would not be dissipated before they could file proceedings under the CDSA. In the circumstances, it was immediately apparent that s 383 had no application.

30 For these reasons, I found that the stay sought by the Prosecution was not within the scope of the powers which the Magistrate might have exercised and, by extension, was not an order which I could have made under s 390(2).

If there was power, whether the power ought to be exercised to grant a stay

31 Although I have found that there was no power under s 390 of the CPC 2012 to make the order sought by the Prosecution, and although this was sufficient to dispose of the matter, I briefly considered whether such a power ought to have been exercised, had it existed, because this was the focal point of parties' submissions, and more importantly because of the broader principle which underpinned my decision.

The Prosecution's submissions

32 Assuming that the power under s 390(2) was wide enough to confer a general power to stay the order if it were "just" to do so, the Prosecution submitted that three issues must be considered in determining whether a stay was "just" on the facts.

33 First, the CPC seizure provisions and the CDSA restraint order provisions should apply together seamlessly throughout the lifecycle of investigations and criminal proceedings, so that there would be no temporal gap between an order for the release of the monies being made under the CPC and the granting of the restraint order under the CDSA. Otherwise, there would be an unsatisfactory risk of dissipation, and this would undermine the purpose and effectiveness of these provisions. The Prosecution cited the Court of Appeal's decision in *Ung Yoke Hooi v Attorney-General* [2009] 3 SLR(R) 307 ("*Ung Yoke Hooi*"), which in its view supported this analysis. According to the Prosecution, the Court of Appeal in *Ung Yoke Hooi* had recognised that if the CPC and CDSA provisions did not operate seamlessly, a situation might arise where different courts were approached by different parties to deal discretely with what may in substance entail the consideration of the same legal issues,

albeit pursuant to different legislative provisions, without reference to each other. This would be unsatisfactory.

34 The second consideration was the possible prejudice to the public interest, compared to that occasioned to the applicants, if a temporary stay was not granted. In this regard, the Prosecution indicated that the temporary stay, if granted, would endure only for a few days at most because it expected to be in a position to commence CDSA proceedings against the applicants by the end of the week. Should the funds be dissipated, however, the prejudice to the public interest could be irreparable if, as might well be the case, the monies could not subsequently be easily traced and recovered. Moreover, the court would also be setting a bad precedent for future cases where parties would have to commence multiple proceedings whenever the continued seizure of property is challenged. This may be contrasted with the prejudice to the applicants, which would be much less significant considering that the stay requested was a short one. For these reasons, the Prosecution argued that it would be "just" to stay the order under s 390(2).

35 Finally, the Prosecution also submitted that it would be unjust to deny a temporary stay because the CDSA proceedings could not have been filed before the s 370 Hearing in this case. While the chronology of investigations might permit the Prosecution to bring proceedings expeditiously in certain cases, there were instances such as the present where it would be impracticable or impossible for proceedings to be filed on or by the date on which the seizure of property must be reported. According to the Prosecution, it could not be the case that there was no provision at law to permit an extension of time to enable the authorities to conclude their investigations in such situations, and it seemed arbitrary to deny them the right to continue the seizure of property just because

the evidence available at the time of reporting was insufficient to enable them to do so.

My decision

36 After considering their arguments, I held that there was no basis for me to exercise the power in favour of continuing the seizure, even if such a power did exist under s 390(2).

37 In my judgment, the critical point was that to make such an order would be to go a step beyond what was contemplated and permitted by *Ung Yoke Hooi*. In *Ung Yoke Hooi*, the appellants' bank accounts had been seized by the CPIB pursuant to s 68 of the CPC 1985, which confers powers to seize property in respect of which it is suspected that an offence had been committed. However, the seizures in that case were not reported to a Magistrate's Court as required by s 392(1) of the CPC 1985. Thereafter, the CPIB intimated its intention to proceed with confiscation orders under the CDSA. The appellant commenced an action seeking leave to apply for judicial review, specifically to obtain a mandatory order directing the CPIB to release his accounts on the basis that the seizures were illegal, unreasonable and procedurally improper. One of the grounds relied on was that the CPIB's intention to proceed with confiscation orders under the CDSA would amount to an abuse of process. The High Court judge dismissed the application and held that it could not be an abuse of process for the CPIB to take out confiscation proceedings under the CDSA after invoking s 68(1) of the CPC 1985 to seize the appellant's accounts, because s 68(1) was only an interim means used to preserve evidence while investigations were ongoing (see *Ung Yoke Hooi* at [14]). On appeal, the Court of Appeal agreed that the commencement of confiscation proceedings under the CDSA would not be an abuse of process, although it observed that the CPIB's

decision to initiate such proceedings showed it had concluded that there was no legal basis for it not to return the seized funds to the appellant (*Ung Yoke Hooi* at [34]).

38 While *Ung Yoke Hooi* did contemplate the possibility of commencing CDSA proceedings following the seizure of property pursuant to CPC provisions, it is crucial to note that the facts of that case were quite different. As I mentioned in the preceding paragraph, the case of *Ung Yoke Hooi* concerned an action for judicial review, which sought to compel the CPIB to release seized properties on the basis that the seizures were illegal, unreasonable and an abuse of process. It was not dealing with an application such as the present, where the Prosecution was seeking to continue the seizure of the applicants' property under the CDSA *after the order which allowed it to do so was found to be invalid*. Indeed, in *Ung Yoke Hooi*, the issue of whether the seizures were in fact unsustainable at law to begin with had not been decided at the time of the proceedings (see *Ung Yoke Hooi* at [26]). By contrast, in the present application, the Magistrate's Order had already been found to be unsustainable and was set aside on that ground, and in these circumstances, the Prosecution was asking me to stay the effects of that decision before any CDSA proceedings had even been commenced. In other words, unlike the situation in *Ung Yoke Hooi*, it was clear that the legal basis for the seizure of property in the present case had already been extinguished at the time the Judgment was delivered and there was nothing else at law to undergird the continued seizure of applicants' funds. On the facts, the Prosecution was asking for what was in essence an anticipatory order before CDSA proceedings had even been commenced, and the effect of which was to retrospectively validate an order that had already been found to be invalid. In my view, there was nothing in *Ung Yoke Hooi* which supported such a course.

39 I was also not persuaded by the Prosecution's second argument, which was that it was "just" to stay the orders on account of the possible prejudice to the public interest occasioned by the release of the funds as compared to the prejudice that would be suffered by the applicants. To my mind, the policy interest in avoiding the risk of dissipation must be weighed against other important considerations such as that against depriving persons of their property without any justification. To ask the court, in essence, to uphold an order which it had already found to be without legal basis seemed contrary to the fundamental principle that persons should not be deprived of their property except in accordance with the law, which must be the overriding imperative here.

40 Finally, I turn to the last argument raised by the Prosecution, which was that they should not be denied a stay just because the progress of investigations did not permit them to bring proceedings before the s 370 Hearing was held. With respect, the argument raised by the Prosecution misses the point, which brings me to the broader principle that should be drawn in the present case. Here, the purpose of a long-stop date by which the seizure of property under s 370 of the CPC 2012 must be reported is underpinned by the philosophy that, while the rights of all individuals are subject to being curtailed by the powers of the state, those powers are in turn subject to limits which exist to prevent their abuse. In the present case, these limits are found in the express provisions of the CPC 2012, which only permit the seizure of funds without judicial oversight for a one-year period. As I mentioned in the Judgment, should the Prosecution wish to retain the property beyond the one-year period, this is subject to judicial oversight and the seizure will only be permitted to continue upon the fulfilment of certain conditions.

41 It follows from this that it would not be correct to say that there was no provision at law to allow the Prosecution an extension of time to complete investigations and retain the property in the interim where the progress of the investigations made it impracticable for proceedings to be filed on or before the long-stop date. This is because it is possible for the court to permit the continued retention of property seized under s 370 in at least three situations: (a) on the basis of the three-stage inquiry set out at [46] of the Judgment; (b) where the court is satisfied on the evidence that the seized property should be retained pursuant to s 370(3); and (c) where the court is satisfied that there is basis to adjourn the proceedings under s 238 of the CPC 2012 and to make its decision on the return of the seized property only at a later date. That none of these situations was found to arise on these facts simply means that there was no basis for continuing to seize the funds; that in itself does not warrant the conclusion that it would be unjust to refuse a stay.

42 In the circumstances, I was amply satisfied that there were no grounds to extend the seizure, even assuming I had the power to do so.

Conclusion

43 I therefore concluded that the Prosecution's application to temporarily stay the orders which I had made should be dismissed, and that the orders were to be carried out with immediate effect.

Sundaresh Menon
Chief Justice

N Sreenivasan SC and Lim Wei Liang Jason (Straits Law Practice LLC) for the applicants;
Tan Ken Hwee, Zhuo Wenzhao, Navindraram Naidu and Tan Zhongshan (Attorney-General's Chambers) for the respondent.
