IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 27

Criminal Reference No 5 of 2018

Between

PUBLIC PROSECUTOR

… Applicant

And

DINESH S/O RAJANTHERAN

… Respondent

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Criminal references]

[Criminal Procedure and Sentencing] — [Plead guilty procedure] — [Qualification of plea]

Public Prosecutor
v
Dinesh s/o Rajantheran

[2019] SGCA 27

Court of Appeal — Criminal Reference No 5 of 2018
Sundaresh Menon CJ, Judith Prakash JA and Steven Chong JA
5 March 2019

23 April 2019

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 This was a criminal reference brought by the Public Prosecutor ("the Prosecution") to refer two questions concerning the interpretation of s 228(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to the Court of Appeal. Section 228(4) of the CPC, which was enacted as part of a suite of changes to the CPC in 2010, provides as follows:

> Where the court is satisfied that any matter raised in the plea in mitigation materially affects any legal condition required by law to constitute the offence charged, the court must reject the plea of guilty.

2 The Prosecution contended that s 228(4) of the CPC did not apply to an accused person who, having pleaded guilty to an offence, then wished to change his mind. According to the Prosecution, such a person would be obliged to apply to the court to be allowed to retract his guilty plea and to set aside his conviction.

If the court declined to allow the application, then the accused person would not be permitted to advance anything in his mitigation plea that would be inconsistent with his guilty plea. Were it otherwise, an accused person would be able, in effect, to circumvent the need to make an application for leave to retract his guilty plea by simply asserting facts in mitigation which were inconsistent with his earlier plea of guilt. The Prosecution contended that this should only be permitted if the accused person had valid and sufficient reasons for retracting his guilty plea. The High Court Judge ("the Judge") who heard the respondent's petition for criminal revision in this case disagreed with this position, and held that the unambiguous language of s 228(4) of the CPC made it clear that the court was compelled to reject a guilty plea as long as matters raised in the mitigation plea materially qualified the earlier plea of guilt.

3 After hearing the submissions of the parties, we reformulated and answered the two questions referred in the manner set out below at [71]–[72]. We agreed with the Judge that the respondent's conviction should be set aside and the matter remitted to the State Courts for trial. We now give the reasons for our decision.

Background facts

4 The respondent in this case faced 63 charges under s 22A(1)(*a*) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed), for having received from foreign employees a sum of $2,000 (per employee) as a condition for their employment by two marine companies, of which the respondent was a senior executive. The respondent initially claimed trial to these charges, and the trial commenced in the State Courts before the District Judge.

5 On the second day of the trial, the respondent's counsel at that time, Mr Kalidass Murugaiyan, sought an adjournment to consider a plea offer communicated by the Prosecution. The respondent subsequently pleaded guilty to 20 proceeded charges, and admitted to the statement of facts without qualification after some clarifications were made at the request of Mr Kalidass. The respondent was accordingly convicted on his plea.

6 The Prosecution then made its submissions on sentence before the District Judge, following which Mr Kalidass sought a further adjournment for the respondent's mitigation and sentencing submissions to be made on another date. This was done notwithstanding the fact that Mr Kalidass had already prepared a written mitigation plea highlighting the respondent's personal mitigating circumstances, such as the fact that he had a pregnant wife and aging parents to support. This first mitigation plea did not contain any assertions that in any way qualified the original guilty plea.

7 The District Judge adjourned the sentencing hearing to be heard on another date. Following the respondent's conviction, the Prosecution allowed several foreign witnesses who had been scheduled to testify at the trial to return to Myanmar.

8 Before the adjourned sentencing hearing took place, Mr Peter Fernando took over conduct of the defence from Mr Kalidass, and he informed the court that he had been instructed by the respondent to make an application at the next hearing for permission to retract his guilty plea. On the District Judge's directions, the parties furnished written submissions in connection with the intended application.

9 The respondent's submissions for retraction stated that he "disputes the following material allegations against him":

> I. that he received directly from each of the foreign employees named in Table A of the Statement of Facts a sum of SGD$2,000 each, as a condition for their employment as reclamation workers by the respective companies as stated in Column E;
>
> II. that the accused knew that each of the named 20 foreign employees had each paid a sum of about 4 million kyat (equivalent to about SGD$4,000) as agent fees to an employment agent in Myanmar known as "Soe Hla" in order to get their jobs as seaman in Singapore;
>
> III. that the accused had any knowledge that Soe Hla passed envelopes to the said foreign employees stating that there were sums of monies in the envelopes and that they were to pass the envelopes to the accused upon their arrival in Singapore;
>
> IV. that the accused knew that the said envelopes contained money that were from the foreign employees' agent fees which were paid to Soe Hla;
>
> V. that the accused knew that each of the said foreign employees had contributed SGD$2,000 out of the SGD$4,000 in agency fees to be paid to the accused in order for them to secure their jobs with the companies and to come over to Singapore to work; and
>
> VI. that the accused had collected the sums of money as a condition for the employment of the said foreign employees and that he (the accused) was aware that he was not to do so.

According to the submissions, these assertions "materially affect the legal conditions of the alleged offences", and hence the court was "obliged under law to reject the [respondent's] guilty plea" pursuant to s 228(4) of the CPC. There was evidently some confusion in the position taken by Mr Fernando who cited s 228(4) even though he did not appear to be making any mitigation submissions.

10 The Prosecution's written submissions on the other hand referred exclusively to the principles governing an application to retract a guilty plea as laid down in *Ganesun s/o Kannan v Public Prosecutor* [1996] 3 SLR(R) 125 ("*Ganesun*"). The Prosecution argued that the application should be disallowed because the respondent's plea had been validly taken, entirely in compliance with the three procedural safeguards: the respondent had pleaded guilty in his own voice and words; he had understood the nature and consequences of his plea; and he had done so intending to admit the commission of the offences without qualification. No mention of s 228(4) was made in the Prosecution's written submissions.

11 When the parties returned to court, the District Judge sought clarification from Mr Fernando as to whether he was putting forth an application to retract the guilty plea, or whether the respondent was in fact putting forward matters in mitigation that would qualify his guilty plea. The District Judge indicated that he would not be minded to allow the application if Mr Fernando was pursuing the former course but that he might be compelled to reject the guilty plea in the event the position was the latter. Mr Fernando informed the District Judge that even though the application was termed as one to retract the guilty plea, in fact, his intention was indeed to raise matters in mitigation that would effectively qualify the respondent's guilty plea. The matter was then adjourned for Mr Fernando to prepare a written mitigation.

12 A written mitigation plea was subsequently tendered on the respondent's behalf, in which the respondent once again disputed the six material allegations against him that had been mentioned in the submissions for retraction of plea (see [9] above).

13 The District Judge refused to reject the respondent's guilty plea, noting that the procedural safeguards relating to his plea had been observed. The District Judge opined that the mitigation plea in reproducing the six grounds of dispute "was not done in good faith and was done with the view to compelling [the] Court to reject the plea of guilty" pursuant to s 228(4) of the CPC, and as such this was an abuse of process on the respondent's part and a "backdoor way to turn back the clock" and resile from his guilty plea. The District Judge sentenced the respondent to a fine of $12,000 (in default one month's imprisonment) for each of the 20 proceeded charges, for a total fine of $240,000 (in default 20 months' imprisonment). He also made an order requiring the respondent to disgorge the sum of $40,000 (in default 40 days' imprisonment), which was the aggregate amount he was found to have received in respect of the 20 charges.

14 Dissatisfied with the District Judge's decision, the respondent filed a petition for criminal revision (HC/CR 8/2018) to the High Court on the basis that the District Judge had erred in law "in rejecting [the] application for retraction of plea of guilt and/or the qualification of [the] plea of guilt".

Decision of the Judge

15 At the hearing of CR 8/2018, the respondent confirmed that he was no longer pursuing the application to retract the guilty plea. The focus of the hearing was thus on the qualification of the guilty plea by reason of matters advanced in the respondent's mitigation and sentencing submissions.

16 The Judge set aside the conviction and in his written grounds of decision in *Dinesh s/o Rajantheran v Public Prosecutor* [2018] SGHC 255 noted that while the language in s 228(4) of the CPC appeared unambiguous, the

controversy in this case had arisen out of a line of cases holding that an accused person could not retract his plea of guilty except where valid and sufficient grounds were advanced to satisfy the court that it was proper and in the interest of justice that he be allowed to do so.

17 The Judge disagreed with the Prosecution's position that since the respondent's mitigation submissions were in essence an application for the retraction of his guilty plea, s 228(4) of the CPC was inapplicable. The Judge considered that this was contrary to the language of s 228(4), and further rested on an impossible distinction being drawn between a mitigation plea that was tantamount to a retraction of plea and a mitigation plea that was not. After all, a guilty plea that was qualified in any way was effectively a plea of not guilty and it could not be that a court was obliged by s 228(4) of the CPC to reject a plea of guilty where the mitigation submissions qualified one or more (but not all) of the elements of the offence, but not where the mitigation submissions disputed *all* the elements of the offence.

18 Accordingly, given that the respondent's mitigation submissions did qualify his plea of guilt, the Judge found that the District Judge ought to have rejected the respondent's plea. The Judge accordingly set aside the respondent's conviction and remitted the matter to the State Courts for trial.

The questions referred

19 The Prosecution then filed the present criminal reference to refer the following questions of law of public interest to us pursuant to s 397(2) of the CPC:

(a) Question 1: Does s 228(4) of the CPC apply to a case where an accused person seeks to retract his plea of guilty at the mitigation stage of sentencing?

(b) Question 2: Must an accused person seeking to retract his plea of guilty at the mitigation stage of sentencing satisfy a court that he has valid and sufficient grounds for his retraction before the court can reject his plea of guilty?

The parties' cases

The Prosecution's case

20 The Prosecution took the position that s 228(4) of the CPC applied only when an accused person makes a *genuine* "plea in mitigation", which is a plea for a lower sentence. In such circumstances, the accused person does not intend to challenge the validity of his prior plea, but rather raises facts for the purposes of seeking leniency, and these facts happen incidentally to cast doubt on the validity of the guilty plea despite the accused person's intention to stand by that plea and to be sentenced accordingly. On the other hand, where an accused person changes his mind about pleading guilty and seeks to retract his guilty plea during the mitigation stage, he no longer wishes to be sentenced on the basis of his earlier plea of guilt and does not in fact enter a submission that is directed towards mitigation at all; and s 228(4) would accordingly not be engaged in such circumstances.

21 Further, the Prosecution argued that the Judge's interpretation of s 228(4) had the effect of reversing the position established in *Ganesun*, that an accused person seeking to retract his guilty plea must establish valid and sufficient grounds for doing so. This was said to be an essential position that

should continue to be maintained in order to guard against abuses of process, and facilitate the efficient administration of criminal justice. For example, this would prevent an accused person from undertaking tactical ploys by effectively forcing the court to reject his guilty plea in the hope that witnesses might become unavailable. There was no indication that Parliament intended this position to be overturned when s 228(4) of the CPC was enacted.

22 On the Prosecution's case, the literal text of s 228(4) was capable of accommodating the foregoing interpretation, in that the court should not be "satisfied" that a "legal condition required by law to constitute the charge" was "materially affect[ed]" unless the accused person had provided valid and sufficient reasons to explain why his earlier plea should be set aside. We observe that the effect of this seemed to be to disentitle an accused person who disputed material elements of the offence to which he had pleaded guilty, from relying on s 228(4). When probed, the Prosecution appeared to maintain that would be so, unless such an accused person nonetheless *wished* to plead guilty. In sum, s 228(4) would prevent an accused person who subjectively wished to plead guilty from doing so, if he disputed any element of the offence, so that such an accused person would have to go to trial; however, the section would not apply at all to an accused person who no longer wished to plead guilty because he disputed a material element of the offence, so that such a person could not go to trial without first showing valid and sufficient reasons to set aside his guilty plea. Seen in this way, s 228(4) appeared to us to be a provision that must have been designed to frustrate the subjective wishes of any accused person who had pleaded guilty but then, before sentence, wished to dispute a material element of the offence. This seems to us an improbable way to construe the provision; and it also does not seem to be in line with the plain meaning of the words used in s 228(4).

23 In any case, the Prosecution accordingly took the position that Question 1 should be answered in the negative, and Question 2 should be answered in the affirmative.

The respondent's case

24 The respondent on the other hand emphasised that the language in s 228(4) of the CPC was unambiguous and did not leave room for us to accept the Prosecution's position. Cases that were decided before the enactment of s 228(4) of the CPC, such as *Ganesun*, were readily distinguishable on that basis. Thus, Question 1 should be answered in the affirmative.

25 Given the mandatory language of s 228(4) which required the rejection of a guilty plea where any matter raised in the course of mitigation materially affected any legal condition constituting the offence, it was not for the judge to limit the accused person's right to advance whatever grounds he might wish in his mitigation submissions, or to first require that sufficient grounds or valid reasons be advanced by the accused person to justify his mitigation being advanced in this way. The court could certainly seek to understand why the change of position came about, but having obtained such clarification it could not limit the accused person's right to advance his mitigation as he thought fit; and if that qualified the guilty plea, then s 228(4) would apply and prevent the court from convicting the accused person. Thus, according to the respondent, Question 2 should be answered in the negative.

26 Further, where an application to retract a plea was made prior to sentencing, the court would not be *functus officio*, and thus concerns such as finality carried far less importance. In such circumstances, where a guilty plea

had been qualified, the court should as a matter of course remit the case for the trial to proceed on a contested basis.

Our decision

The literal and logical interpretation of s 228(4) of the CPC

27 The first port of call in any exercise of statutory interpretation is clearly the words of the relevant provision, and here it is important to recall the text of s 228(4) of the CPC as well as, for context, the preceding and subsequent subsections which we reproduce here for easy reference:

> *Division 3 – Plead guilty procedures*
>
> **Procedure if accused pleads guilty, etc.**
>
> **227.**—(1) If the accused pleads guilty to the charge after it has been read and explained to him, whether as originally framed or as amended, his plea must be recorded and he may be convicted on it.
>
> (2) Before the court records a plea of guilty, it must —
>
> (*a*) if the accused is not represented by an advocate, be satisfied that the accused —
>
> (i) understands the nature and consequences of his plea and the punishment prescribed for the offence; and
>
> (ii) intends to admit to the offence without qualification; or
>
> (*b*) if the accused is represented by an advocate, record the advocate's confirmation that the accused —
>
> (i) understands the nature and consequences of his plea; and
>
> (ii) intends to admit to the offence without qualification.
>
> …

> **Address on sentence, mitigation and sentence**
>
> **228.**—(1) On the conviction of the accused, the prosecution may where it thinks fit address the court on sentence.
>
> (2) The address on sentence may include —
>
> (*a*) the criminal records of the accused;
>
> (*b*) any victim impact statement; and
>
> (*c*) any relevant factors which may affect the sentence.
>
> (3) The court must then hear any plea in mitigation of sentence by the accused and the prosecution has a right of reply.
>
> (4) Where the court is satisfied that any matter raised in the plea in mitigation materially affects any legal condition required by law to constitute the offence charged, the court must reject the plea of guilty.
>
> (5) After the court has heard the plea in mitigation, it may —
>
> (*a*) at its discretion or on the application of the prosecution or the accused hear any evidence to determine the truth or otherwise of the matters raised before the court which may materially affect the sentence; and
>
> (*b*) attach such weight to the matter raised as it considers appropriate after hearing the evidence.
>
> (6) The court must then pass sentence according to law immediately or on such day as it thinks fit.
>
> …

28 It is important to note at the outset, as the Judge correctly pointed out, that the literal words of s 228(4) leave very little room for any exercise of judicial discretion. Simply put, once the provision is properly invoked, the court *must* reject the plea of guilty. It is true that the relevant condition is that the court must first be "satisfied that any matter raised in the plea in mitigation materially affects any legal condition required by law to constitute the offence charged". Admittedly, the court might not be so satisfied in a given case. But the court's role in this context is confined to considering whether what is said in the plea in mitigation in fact "affects any legal condition required by law to constitute the

offence." In our judgment, the effect of this is clear: the court may only consider whether the averments in the mitigation submissions have the effect of materially affecting the validity of any essential element or ingredient of the offence. Once this is answered in the affirmative, the plain words of s 228(4) lead to the conclusion that, at least as a general rule, the court *must* then reject the guilty plea, and by extension, terminate the mitigation stage of the proceedings. We briefly consider the limits of this general rule at [67] below.

29 However, we are not satisfied that the plain text of s 228(4) permits the introduction of requirements which are not otherwise found in the words of the provision, and the effect of which would be to wholly undermine the mandatory nature of s 228(4). Yet, this was the effect of the Prosecution's submissions. This was also the position taken by the High Court in *Public Prosecutor v Mangalagiri Dhruva Kumar* [2018] SGHC 62 at [23]:

> If there were indeed no valid or sufficient reasons for retraction, then the legal conditions to constitute the offence were unaffected, let alone "materially affect[ed]" under s 228(4) CPC.

30 With respect, this position cannot be correct. It is clear that the legal conditions required by law to constitute the offence refer to the elements of the offence, specifically the *mens rea* and *actus reus* of the offence. It would not cohere with the clear words and ordinary meaning of s 228(4) to find that the court in determining whether or not the elements of the offence have been materially affected by matters raised in the mitigation plea, may have regard to circumstances *external* to the mitigation plea, such as the accused person's reasons for advancing a mitigation plea that is inconsistent with the elements of the offence to which he had earlier pleaded guilty.

31 In that light, we turn to consider the relevant case law on the point. Yong Pung How CJ in *Toh Lam Seng v Public Prosecutor* [2003] 2 SLR(R) 346 ("*Toh*

Lam Seng") (at [9]) observed that "a statement which discloses the possibility of a defence does not always qualify a plea of guilt." Likewise, Chao Hick Tin JA (as he then was) in *Md Rafiqul Islam Abdul Aziz v Public Prosecutor* [2017] 3 SLR 619 ("*Md Rafiqul"*) at [34] suggested that the court might examine whether the point raised has any substance:

> …the requirement in s 228(4) of the CPC, that the matter raised in the plea in mitigation should "materially affect any legal condition required by law to constitute the offence charged" before the court is mandated to reject the plea of guilty, allows the court in such an event to examine whether the point raised in mitigation has any substance. As in *Toh Lam Seng* ([28] *supra*), this ensures that not every ostensible defence raised in mitigation would prevent the court from convicting the accused on the charge to which he has pleaded guilty.

32 In *Toh Lam Seng*, the accused person had pleaded guilty to a charge of voluntarily causing hurt under s 323 of the Penal Code (Cap 224, 1985 Rev Ed), but stated in mitigation that the victim had "severely provoked him such that he could not control his emotions" (at [12]). On a petition for criminal revision, Yong CJ found that the facts advanced by the accused person fell short of satisfying the requirements for the defence of grave and sudden provocation, but merely gave rise to mitigating circumstances. In other words, the court considered whether, as a matter of law, the assertions in the mitigation submission could amount to a defence such that it might qualify the guilty plea and concluded that they did not. Thus the notional defence in that case, was found to be without substance.

33 Similarly, in *Balasubramanian Palaniappa Vaiyapuri v Public Prosecutor* [2002] 1 SLR(R) 138 ("*Balasubramanian Palaniappa"*), Yong CJ did not agree that the accused person's assertion in his mitigation plea that he "had a lot to drink" meant the *mens rea* for the offence had been negated. In both these cases, the accused person's assertions in mitigation were found, in

fact, not to qualify his earlier plea of guilt, and the question of setting aside his conviction on that basis simply did not arise. If these cases had been decided after the enactment of s 228(4), the court would not have been "satisfied" that what was raised in mitigation had materially affected the legal conditions of the offence, and thus would not have been compelled by s 228(4) to reject the plea. This in fact was the point made by Chao JA in *Md Rafiqul* in the passage we have cited at [31] above.

34 This interpretation of s 228(4) is also consistent with the observations of the High Court in *Koh Bak Kiang v Public Prosecutor* [2016] 2 SLR 574 ("*Koh Bak Kiang*") (at [19]), that the question of whether a plea has been qualified cannot be determined based on the assertions of counsel during the hearing, but "must be a conclusion drawn from an analysis of the *substance* of what was said by or on behalf of the accused person at the time he pleads guilty" [emphasis in original]. In other words, the inquiry is an objective one, to be undertaken by comparing what was accepted by the accused person in the charge and statement of facts, with the substance of what he subsequently asserted in the course of his mitigation. The subjective intention of the accused person, or the court's opinion as to the factual guilt of the accused person, simply do not enter into consideration at all. In *Koh Bak Kiang*, the accused person had pleaded guilty to a charge of trafficking in diamorphine. In mitigation, counsel for the defence submitted that the accused person did not know the precise nature of the drugs. This plainly affected a material ingredient of the offence but the court proceeded to accept the guilty plea upon counsel's assurance that the accused person did not intend to qualify his guilty plea. This was incorrect and the conviction was later set aside by the High Court.

The correct philosophical approach

35 The Prosecution's narrow interpretation of s 228(4) seemed to us to rest on the supposed sanctity of the conviction which is obtained upon the accused person's plea of guilt, and which should not be disturbed unless there was a flaw in the procedure by which that conviction had been obtained. Not only did this narrow interpretation render s 228(4) otiose or ineffectual, as we explain at [44] below, we also considered that this reflected an erroneous understanding of the relevant procedure and indeed of the court's special responsibility and function throughout this phase of the proceedings.

36 The relevant part of the CPC in which s 228 is found is entitled "plead guilty procedure". It is noteworthy that in the course of the plead guilty procedure, the taking of the plea of guilt and the conviction of the accused person on this basis necessarily precedes the sentencing of the accused person. However, this does not entail the conclusion that the pronouncement of the conviction gives rise to a strict separation or bifurcation in the proceedings. In our judgment, the whole plead guilty procedure should be seen as a continuum that begins with the taking of the accused person's plea to the charge and his admission of the statement of facts, and continues through the conviction and the mitigation submissions and finally culminates in the pronouncement of the appropriate sentence. It is the continuing duty of the court to be vigilant and to ensure that the accused person maintains the intention to plead guilty throughout this process. The court's duty does not change between the pre-conviction stage and the sentencing stage of the proceedings. Rather, the court must oversee the entire procedure right up to the point that the accused person is sentenced at which point the case is disposed of. Only then is the court *functus officio*.

37 Understanding this fundamental philosophical point has significant implications on the interpretation of s 228(4). The Prosecution's primary argument against the Judge's interpretation of s 228(4) of the CPC was that it would undermine a line of authorities most commonly attributed to *Ganesun*, which stood for the proposition that an accused person will not be allowed to retract his plea of guilt unless he can show valid and sufficient grounds for doing so, such as where the three procedural safeguards (now entrenched in s 227(2) of the CPC) concerning the validity of the plea have not been complied with. It is also well-established in the case law that the validity of a plea may be undermined where, despite formal compliance with these procedural safeguards, there may be "real doubts as to the applicant's guilt or that the applicant had been pressured to plead guilty in the sense that he or she did not genuinely have the freedom to choose how to plead" (*Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR(R) 383 ("*Yunani bin Abdul Hamid"*) at [50], [55]–[56], [59]; *Chng Leng Khim v Public Prosecutor and another matter* [2016] 5 SLR 1219 ("*Chng Leng Khim*") at [8]).

38 However, once the mitigation and sentencing process is regarded as part and parcel of the plead guilty procedure as a whole in the manner outlined above, it becomes clear that the Prosecution's concerns are not valid. Section 228(4) does not displace or undermine the existing case law pertaining to the validity of plea, but rather crystallises a further safeguard which would need to be complied with before the plea can be safely accepted by the court as the legal basis for a conviction. This is not an additional or hitherto unknown safeguard or requirement but rather is one that has long been entrenched in this area of the law. This was explained as follows in *Koh Bak Kiang* at [41]–[43]:

> 41 A qualified plea of guilt is in fact a plea of not guilty: see the decision of the English Court of Appeal in *Regina v Durham Quarter Sessions, ex parte Virgo* [1952] 2 QB 1 at 7. The plea of

> guilt of an accused person carries with it grave implications. By it, the accused waives his right to be convicted *only* after a full trial. In such abbreviated proceedings, the Prosecution no longer needs to adduce evidence to prove the accused person's guilt and the court may pass sentence on the accused without hearing a further word of testimony. The accused is also precluded from appealing against his conviction even if he subsequently comes to regret the plea, so long as the plea is not set aside.
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> 42 Given these grave consequences that flow upon a plea of guilt, it is unsurprising that the law imposes a strict duty on the judge recording the plea to ensure that "the accused understands the nature and consequences of his plea and intends to admit without qualification the offence alleged against him" (see s 180(*b*) of the CPC 1985). This is not a mere technicality but a crucial procedural safeguard that is not to be taken lightly. …
>
> 43 The subjective views of the judge or of the Prosecution as to the *factual* guilt of the accused or the likelihood of the success of his potential defences are irrelevant to the propriety of the accused's plea of guilt. As V K Rajah JA (as he then was) observed in *XP v PP* [2008] 4 SLR(R) 686 at [98], the guilt of the accused is determined "on the sole basis of legal proof and not mere suspicion or intuition". What follows from this is that a court may only come to the conclusion that the accused is guilty when there is a *legal* basis for it. A qualified plea does not afford such a basis. …

39 The Prosecution was right to say that s 228(4) of the CPC was not intended to introduce drastic changes to the law. Yet, it is established law that if a mitigation plea qualifies the earlier plea of guilt by indicating the lack of either the necessary *mens rea* or *actus reus,* the accused person would not be taken to have admitted to the offence without qualification and the plea would be rejected by the court (*Ulaganathan Thamilarasan v Public Prosecutor* [1996] 2 SLR(R) 112; *Balasubramanian Palaniappa* at [29]). In this connection, we respectfully agree with and endorse the observations of Chao JA sitting in the High Court in *Md Rafiqul* at [27]–[31]:

> 27 What then is the position if the accused has pleaded guilty, but raises facts in his mitigation plea that may contradict the elements of the charge? Prior to the enactment

> of s 228(4) of the CPC, the position was laid down in case law. In *Balasubramanian Palaniappa Vaiyapuri v PP* [2002] 1 SLR(R) 138, Yong Pung How CJ stated (at [29]):
>
> > …The law in Singapore is that, if the mitigation plea qualified the earlier plea of guilt by indicating the lack of *mens rea* or *actus reus*, the accused would not be deemed to have admitted to the offence without qualification and the plea would be rejected by the court: *Ulaganathan Thamilarasan v PP* [1996] 2 SLR(R) 112.
>
> …
>
> 30 From the above, it may be observed that if and when a plea of guilt is in fact qualified in mitigation, the actual plea is that of "not guilty" and the court ought not to convict the accused on the charge. …
>
> 31 With the enactment of s 228(4) in 2010, the above approach to guilty pleas that have been qualified in the course of mitigation has been codified. …

Thus, both before and after the 2010 CPC amendments, a qualified plea of guilt, including one that is qualified at the mitigation stage, is effectively a plea of not guilty, and the court simply cannot regard such a plea as a legal basis for a conviction.

40 In our judgment, the Judge's interpretation of s 228(4) did not undermine *Ganesun* and the related authorities, but restated the position correctly in the light of the case law which establishes that the court's duty in a plead guilty procedure is a continuing one which persists until the accused person is both convicted *and* sentenced. In this regard, we again gratefully adopt the observations of Chao JA in *Md Rafiqul* (at [34]–[38]), which in our view correctly interprets s 228(4) of the CPC in the proper context of the plead guilty procedure as a whole:

> 34 …The combined purport of ss 227(2) and 228(4) of the CPC is that at all stages of the plead guilty procedure – both when the plea is being taken and during mitigation – the court must be cautious to ensure that the accused intends to

> unequivocally admit to the offence alleged against him without qualification before convicting and sentencing the accused on the charge.
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> 35 Thus, the legal position prior to, and after, the enactment of s 228(4) of the CPC remains broadly similar (in that a plea of guilt must be unequivocal), and s 228(4) codifies the position by making it compulsory for the court to reject a guilty plea if it is satisfied that "any matter raised in the plea in mitigation materially affects any legal condition required by law to constitute the offence charged".
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> 36 To summarise the above legal principles, a court ought not to accept an accused's guilty plea in the following (non-exhaustive) circumstances:
>
> > (a) where the court is not satisfied that the accused understands the nature and consequences of his plea (see s 227(2) of the CPC);
> >
> > (b) where the court is not satisfied that the accused intends to admit to the offence without qualification (see s 227(2) of the CPC);
> >
> > (c) where the court is satisfied that the accused has qualified his plea in mitigation (see s 228(4) of the CPC);
> >
> > (d) where the accused pleaded guilty based on a mistake or misunderstanding; and
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> > (e) where the accused did not plead guilty voluntarily.
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> …
>
> 38 … The fact that there was an adjournment between the recording of a conviction and the sentencing process does not change the legal character of the proceeding before the court; the court is not *functus officio* until it has passed sentence.

Problems with the Prosecution's position

41 The Prosecution's position, that s 228(4) was only applicable where an accused person actually intended to be sentenced on his earlier plea and put forth a plea for a more lenient sentence, was also unsatisfactory for three other reasons. First, we repeat the observation we have made at the end of [22] above, as to the effect of the Prosecution's submission as we understood it. We consider

it implausible that this is the correct interpretation of s 228(4) for the reasons stated there.

42 Secondly, the Prosecution's argument that a purported mitigation plea that does not evince a genuine intention to seek a lower sentence is not a mitigation plea at all, places undue emphasis on the intention of the accused person, and sits uneasily with the procedural emphasis of the CPC. It is evident that Division 3 of the CPC, the relevant portions of which have been cited at [27] above, relates to "plead guilty *procedures"* [emphasis added], and that the purpose of these provisions is to establish the procedure that is meant to be followed where an accused person pleads guilty. Interpreting s 228(4) as being circumscribed in its application by whether the accused person harboured a *genuine intention to plead for a lighter sentence*, as opposed to being applicable where the proceedings are *at the stage where the accused person was meant to be pleading for a lighter sentence*, is incongruent with the procedural nature of these provisions and of the CPC in general.

43 There is also no principled basis for such an undue focus on the subjective intentions of the accused person. The emphasis in the case law both prior to and following the enactment of s 228(4) of the CPC has been on whether relevant matters that were raised *during mitigation*, that is, the stage of the plead guilty procedure that follows the conviction but before an accused person is sentenced, had the effect of qualifying the earlier guilty plea. This is evident from the paragraphs of *Md Rafiqul* we have cited above, and also in *Ganesun* (at [14]):

> Moreover, the discretion [to allow a retraction of plea] exists so long as the court is not *functus officio*. Since the court is not usually *functus officio* until sentence is passed, a withdrawal of the plea of guilt, even though unequivocal, can be entertained

> *at the stage of mitigation* or at any time before the case is finally disposed of by sentence [emphasis added]

44 Thirdly, the effect of the Prosecution's interpretation of s 228(4) of the CPC is to render it either otiose or ineffectual. If the Prosecution is correct in its contention, then it would follow that whenever the accused person raises a point in his mitigation submission that has the effect of qualifying his guilty plea, he would first need to apply for and obtain the permission of the court to retract his earlier guilty plea. But once such permission was obtained, the matter would proceed to trial on a contested basis and s 228(4) would no longer apply, rendering it otiose. On the other hand, if such permission was denied, the court would presumably ignore the point that the accused person wished to make in his mitigation plea, or prohibit him from making it, which would be flatly contrary to the terms of s 228(4) and render it wholly ineffectual.

45 On either basis, s 228(4) would have no real function at all, which would render it redundant and also be impossible to reconcile with the mandatory language of the provision itself.

A categorical analysis of the precedents

46 The Prosecution relied on a variety of precedents stemming from *Ganesun* as consistently standing for the broad proposition that an accused person does not have a right to change his mind about a guilty plea at any stage after a conviction, unless he can prove that the earlier plea of guilt was in some manner or form invalid. From this, the Prosecution reasoned that since an accused person cannot retract his plea except by showing valid and sufficient grounds for doing so, he must therefore be prohibited from achieving the same outcome indirectly by qualifying his guilty plea in the course of mitigation. We

have explained above why this reasoning was incorrect as a matter of principle and statutory interpretation.

47 Upon closer inspection of the cases, it became clear that these too, when properly understood, do not support the Prosecution's interpretation of s 228(4). Notably, none of the cases brought to our attention involved a situation where an accused person qualified his plea during mitigation by asserting inconsistent facts, and the court nonetheless upheld the plea and conviction. The only cases that concerned s 228(4) were *Koh Bak Kiang* and *Md Rafiqul*, which we consider at [61]–[64] below, and the guilty plea and conviction were set aside in both cases. To explain this, we analyse the cases in three different categories.

First category – post-sentence retraction of plea

48 In the first category, which encompasses the bulk of the cases cited by the Prosecution, the accused persons had pleaded guilty to the offences in question and had subsequently been convicted *and sentenced* on that basis. At the *post-sentence stage*, the accused persons had then sought to retract their guilty pleas, whether by casting doubt on the validity of the plead guilty process or by otherwise denying their guilt. Such cases would typically be dealt with by an appellate court presented with a petition for criminal revision against the conviction, although such assertions have at times also arisen as incidental attacks on the conviction during an appeal against sentence (see, for instance, *Sukla Lalatendu v Public Prosecutor and another matter* [2018] 5 SLR 1183 ("*Sukla Lalatendu"*)).

49 In our judgment, these cases may be readily explained. At the *post-sentence stage*, the court will almost inevitably take a dim view of the accused

person's assertions, for the more obvious inference to be drawn in such circumstances will commonly be that the accused person had simply come to regret his decision to plead guilty, *after* the specific sentence had been imposed, and therefore wished to take his chances at trial. To put it bluntly, disappointment over a sentence different from one that was hoped for is never an acceptable basis for allowing an accused person to seek belatedly to retract a plea of guilt (*Chng Leng Khim* at [12]; *Sukla Lalatendu* at [47]). The court rightly acts to safeguard the integrity of the conviction and sentence in these cases, having regard to the fact that this variety of cases and the allegations that underpin them will almost necessarily impinge on the integrity and finality of the judicial process. As Yong CJ noted in *Public Prosecutor v Oh Hu Sung* [2003] 4 SLR(R) 541 (in discussing the statutory prohibition against the alteration of judgments in s 217 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) which in modified form can now be found in s 301 of the CPC), the "principle of finality of proceedings, as encapsulated in s 217(1), should generally be observed unless it is clear that a miscarriage of justice will otherwise result" (at [28]).

50 Thus, in this category of cases, the court will take pains to guard against improper attempts to mount a criminal revision as a form of "backdoor appeal" against a conviction by accused persons who had pleaded guilty to the charges brought against them. The court's revisionary powers will only be exercised in cases of serious injustice (*Balasubramanian Palaniappa* at [35]; *Sun Hongyu v Public Prosecutor* [2005] 2 SLR(R) 750 at [9]; *Md Rafiqul* at [45]).

51 In this category of cases, it will be rare for an accused person's conviction to be set aside at the post-sentence stage, whether he seeks to achieve this by challenging the regularity of the plead guilty procedure or by asserting facts inconsistent with the elements of the offence and maintaining his

innocence. This has only been allowed in exceptional cases, such as where the court was satisfied on the evidence that the accused person did not have the genuine freedom to plead guilty (see, for example, *Chng Leng Khim* and *Yunani bin Abdul Hamid*).

Second category – pre-sentence retraction of plea by challenging the validity of the plead guilty procedure

52 In the second category of cases, an accused person after having been convicted on a guilty plea but before he has been sentenced, puts forth assertions or allegations attacking the integrity of the plead guilty procedure, and seeks on this basis to retract his guilty plea. In such cases, given the seriousness of any allegations that aim to cast doubt on the legality and propriety of legal proceedings, the court will take steps to ascertain the truth of the matter. This duty is particularly heightened when allegations of impropriety are made against judicial officers, for reasons which were made clear in *Sukla Lalatendu* (at [1]):

> In criminal appeals, it is unfortunately the case that allegations of impropriety are sometimes made against the judges and judicial officers who had presided over the matters in question in the courts below. Occasionally, the allegations may have some basis and, in such cases, it may be found that they have arisen out of some genuine miscommunication or misunderstanding or conceivably even from improper conduct of the matter. More commonly, however, such allegations are borne out of desperation and are contrived efforts on the part of the accused to avoid a conviction and/or sentence that was appropriately imposed. Whatever the case may be, appellate courts need to be especially careful in dealing with these allegations. While due weight should be given to the policy of finality and the need to prevent an abuse of the court's processes, the prudent approach in dealing with such cases is to carefully consider the allegations and their basis to assess whether they merit closer scrutiny, so that any miscarriage of justice may be promptly corrected if the allegations are borne out, or if they are not, then the relevant appeal or application may be dismissed, if necessary with appropriate observations. It is only in this way that the hard-won reputation and standing of our judiciary can be vigorously protected.

53 Similarly, where grave allegations are made against counsel, such as in alleging that the defence counsel had in any way induced or pressured the accused person into pleading guilty against his will, there is a strong public interest in investigating these claims unless these are inherently unbelievable, and to ensure that counsel is given an opportunity to respond to the allegations (see *Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 at [1], [32]). In any case, the court should satisfy itself as to whether what has been asserted is factually true. Depending on the nature of the allegations grounding the accused person's application, the court would usually require the adduction of sworn or affirmed evidence by the relevant persons, to assist the court in its inquiry into the veracity of the accused person's allegations (*Sukla Lalatendu* at [20]).

54 In this category of cases, the onus will be on the accused person to adduce sufficient evidence to convince the court that his plea of guilt was invalid. This is simply a consequence of the fundamental rule of evidence that he who asserts a fact bears the burden of proving it. *Ganesun* is a case that falls into this category, and since the Prosecution placed great reliance on it in support of its position, we consider it more closely.

55 The appellant in *Ganesun,* a hawker who operated a food stall, was charged with employing a foreign national who had overstayed his visit pass. The appellant pleaded guilty to one charge under s 57(1)(*e*) of the Immigration Act (Cap 133, 1995 Rev Ed), with a second similar charge being taken into consideration for the purposes of sentencing. The appellant admitted to the statement of facts without qualification. The matter was then adjourned for sentencing and bail was extended. When parties reappeared in court for the sentencing hearing, the appellant informed the court through his new counsel that he wished to retract his earlier plea on the basis that (a) the appellant was not the employer but an employee of the stall's licence-holder, and (b) the

appellant had pleaded guilty because he was not confident that the documents he needed for his defence would arrive in time for the trial. The trial judge rejected the appellant's application to retract his plea, and sentenced the appellant accordingly. The appellant then appealed against the trial judge's refusal to retract his plea.

56 On appeal, Yong CJ opined that the trial judge did not err in refusing to allow the retraction, because the procedural safeguards assuring the validity of the plea had been complied with. There was no doubt that the appellant himself had wished to plead guilty, and nothing to suggest that he had failed to appreciate the material facts of the case. There was no mistake or misunderstanding, and no ground on which the appellant should be allowed to retract his plea. The appellant's purported reason for pleading guilty on the basis that he was not confident of getting the relevant documents in time for trial was not credible, as it was a reason that had been advanced for the first time on the day of sentencing, and in any case any such concern ought to have been dealt with by an application for adjournment.

57 It should be noted that nothing was said in *Ganesun* in respect of any question of *qualification* of the guilty plea by reason of matters raised *in the course of the mitigation submissions*. Even though there was some mention before the trial judge that the appellant was not an employer but rather an employee of the stall's licence-holder, there was no discussion in the judgment as to whether this was something that would have amounted to a qualification of plea. We would imagine that if the appellant in *Ganesun* had actually asserted in mitigation that he in fact had no ability to employ the Sri Lankan national and did not do so, this would have amounted to a qualification of his plea as it materially affected the legal condition of an offence under s 57(1)(*e*) of the Immigration Act; and on the view we have taken of the relevant legal position,

the trial judge would have been compelled in these circumstances to reject the earlier guilty plea. There was, however, no discussion on this point in *Ganesun*, and the case was dealt with on the basis that the appellant was seeking to retract his earlier plea despite his earlier admission to the relevant facts, and this failed because the court disbelieved his central assertion as to why he had admitted those facts.

58 A similar analysis could be applied to *Koh Thian Huat v Public Prosecutor* [2002] 2 SLR(R) 113 ("*Koh Thian Huat*"). The accused person in that case had pleaded guilty to a charge of theft in dwelling, and was convicted accordingly. During the sentencing hearing, the accused person indicated that he wished to retract his guilty plea, explaining that he did not have the intention to steal and had simply forgotten to pay for the goods. The judge asked the accused person why he had pleaded guilty, and he replied that he had been prevented by the court interpreter from communicating his lack of intention to steal to the court. The judge rejected the application to retract his plea. Upon the accused person's petition for criminal revision, Yong CJ noted that a revisionary court must guard its revisionary jurisdiction from abuse, and rejected the accused person's version of facts due to the various inconsistencies that it was affected by (at [21]–[22]). Significantly, Yong CJ rejected the allegation that the accused person had been prevented from communicating his version of events to the court by the court interpreter, and observed that the ordinary safeguards had been complied with (at [24]–[30]). Again, there was no discussion in the judgment pertaining to the qualification of a guilty plea in the context of mitigation submissions.

59 Although the accused persons in both *Ganesun* and *Koh Thian Huat* made factual assertions during the sentencing hearing which appeared to be inconsistent with facts contained in the respective statement of facts and which

were material to the offence, it would appear that the central point being made was that the plea-taking process had been undermined in a material way and this was rejected on the facts. To the extent factual averments were advanced that might have qualified the guilty plea, this seems to have been done to explain the case they would be running if they succeeded in setting aside their respective convictions, rather than to advance mitigation submissions that qualified the earlier guilty pleas. There was simply no discussion in either case on the effect of a mitigation plea that contained such a qualification of an earlier guilty plea. These cases therefore cannot be relied on as authority for the proposition that accused persons who qualify their plea in the course of mitigation would have to first apply for permission to retract their guilty plea with valid and sufficient grounds. In any case, both these cases pre-date the enactment of s 228(4) of the CPC, and may be distinguished on that basis as well (see *Md Rafiqul* at [41]).

60 It is evident from the foregoing that the first two categories of cases, which cover the vast majority of cases that were cited by both parties, stand apart from cases that would properly fall within the ambit of s 228(4). The principles stated in these cases should be understood in their proper context and should not affect the analysis concerning the application of s 228(4), which is a distinct third category that we now discuss.

Third category – qualification of plea during mitigation

61 The third category of cases is what we would consider to be true cases of a qualification of plea during mitigation, where an accused person puts forth assertions in mitigation that qualify his guilty plea because they are inconsistent with material elements of the offence. It is unsurprising that reported judgments on cases in this category, as distinct from the earlier two categories, are few and far between. We would imagine that in the majority of cases, a qualification in

the mitigation plea would simply have led to the trial judge rejecting the plea and fixing the matter for trial. This is undoubtedly the right approach, and one that is ordinarily mandated by s 228(4) of the CPC.

62 In our judgment, only two of the cases cited to us fall within this third category. The first is *Koh Bak Kiang,* although the analysis in that case took place in a very different context. As outlined above, the accused person had pleaded guilty to two charges of trafficking in diamorphine, and asserted in mitigation that he did not know the precise nature of the drug that he was trafficking in, having been led to believe that it was a drug other than diamorphine. The accused person nonetheless maintained that he was not qualifying his plea of guilt, and was convicted and sentenced on his plea. Some six and a half years after pleading guilty, the accused person filed a criminal motion before the High Court seeking an extension of time to appeal against his conviction. By the time the matter came for hearing, the Prosecution and Defence were agreed that the convictions were wrongful because the accused person had in fact qualified his plea of guilt, and that the convictions should be substituted with reduced charges of attempted trafficking in a controlled drug other than diamorphine. The High Court accepted that the proposed course of action was fair and just in the circumstances and so ordered.

63 In *Koh Bak Kiang*, the accused person had in fact tendered a mitigation plea that contained details as to how he had been deceived by a third party into carrying diamorphine, and how he had actually seen customers take ice, ketamine and ecstasy from the packages he delivered but never diamorphine. This was clearly a case where the accused person had in fact qualified his plea of guilt when he maintained in mitigation that he did not know he had been carrying diamorphine. In effect, he was asserting that he did not have the requisite *mens rea* for the trafficking charges. The subjective views of the judge

or the Prosecution of the factual guilt of the accused person, or the likelihood of success of his potential defence, were irrelevant to the propriety of the accused person's plea of guilt (at [43]). The proper course of action for the trial court in *Koh Bak Kiang* ought to have been to reject the plea on the basis that it had been qualified in mitigation, and to proceed to try the accused person on the charges faced (at [48]). This would have been the inevitable consequence of the qualifications contained in the accused person's mitigation plea, and there would be no further need for the accused person to demonstrate valid and sufficient grounds to retract his plea before his mitigation plea was allowed to have this effect. Notably, both the Prosecution and Defence in *Koh Bak Kiang* accepted that this was the proper course, and the decision of the High Court to set aside the conviction is wholly consistent with the view we have taken in these grounds.

64 *Md Rafiqul* was another case which fell within the third category. The accused person in that case pleaded guilty to and was convicted of a charge of making a fraudulent claim for compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed), on the basis that he had claimed compensation for a work accident that had not in fact occurred. When he returned to court for the sentencing hearing, his counsel at that time informed the court that he wished to retract his guilty plea as matters which would be highlighted in mitigation would materially affect the legal conditions required to constitute the charge. Specifically, the accused person wished to maintain that the work accident did in fact take place, although on a different date as stated in his claim for compensation, and thus that he did not have the requisite *mens rea* for the offence. In other words, the accused person intended to qualify his plea in mitigation. The District Judge did not allow this, and reasoned that the accused person ought not to be allowed to qualify his plea on the basis that he

had not done so immediately after the statement of facts was read, but rather at the adjourned hearing scheduled for the purpose of making submissions on sentence. Upon the accused person's petition for criminal revision, the conviction was set aside. Chao JA held that it was evident that where an accused person had pleaded guilty but then raised a point in mitigation which materially affected any legal condition required by law to constitute the offence charge, s 228(4) is engaged and the court is mandated by law to reject the guilty plea and allow the accused person to claim trial (at [32]). Chao JA considered that this was precisely what had happened in that case, and s 228(4) therefore applied "squarely to the facts" of the case such that the District Judge ought to have rejected the plea (at [37]).

65 The preceding analysis of the cases based on the three identified categories further addresses the Prosecution's submissions, which we do not accept, that the Judge's interpretation of s 228(4) was inconsistent with case authority. Rather, the majority of the cases relied on dealt with scenarios that did not concern the application of s 228(4).

Abuse of process

66 It would have become abundantly clear from the foregoing that we disagreed with the Prosecution's position that s 228(4) of the CPC does not compel the court to reject a plea that has been materially qualified in mitigation unless the accused person is able to demonstrate valid and sufficient reasons for a retraction of his plea. Rather, we are satisfied that where an accused person asserts facts in mitigation, which do qualify his guilty plea in the sense that these undermine a legal condition which constitutes a material element or ingredient of the offence, the court, at least as a general rule, is bound to set aside the earlier guilty plea.

67 We frame this as a general rule because we would add one qualification to this interpretation of s 228(4). The court has an inherent jurisdiction to ensure the observance of the due process of law, and to prevent the abuse of its processes (see *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [30]–[34]; *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [22]). Thus, where a court is satisfied that an accused person's conduct amounts to an abuse of process, it is not compelled to reject a qualified plea notwithstanding s 228(4). Whether or not the accused person's conduct amounts to an abuse of process would necessarily be a fact-sensitive inquiry. In the context of the present application and the questions that were referred, there was no basis or reason for us to say more.

Operational difficulties

68 The Prosecution raised concerns that the Judge's interpretation of s 228(4) would present various obstacles to the effective administration of justice in future cases. For example, the Prosecution in this case had allowed the foreign witnesses to return to Myanmar following the respondent's conviction. We were told this might impede the Prosecution at any subsequent trial if the return of the witnesses to Singapore could not be procured. We were also told that in a separate ongoing case, a foreign witness had flown to Singapore to testify against the accused person and had thereafter returned home after the accused person pleaded guilty on the first day of trial, only to have the accused person apply to retract his plea after having seen the statement of facts. This, the Prosecution argued, resulted in wasted expenses in securing the foreign witness' attendance in Singapore, and also allowed the accused person to gain an unfair tactical advantage by having sight of the Prosecution's case, since the statement of facts might contain details that had not been revealed during the

pre-trial disclosure stage. Further, an accused person might otherwise prolong and delay proceedings for tactical reasons, to avoid just punishment or even to force a change of judge. We were unpersuaded by these concerns.

69 To the extent that an accused person's actions reveal an abuse of process, this will not be tolerated, as we have already made clear at [67] above. We would only add that some of the difficulties raised by the Prosecution are capable of being addressed by the adoption of appropriate practices. For example, witnesses should not be released after conviction but rather only after an accused person has been sentenced, for it is at that stage that one can be certain that the plea and conviction would not be set aside unless there were good reasons to do so. Where there is a concern over securing the attendance of foreign witnesses who are unable to remain in Singapore for a prolonged period, the Prosecution might consider making an application to expedite the timelines for the plead guilty procedure.

70 Further, to the extent that there are concerns over wastage of public resources because of the need for foreign witnesses, the incidence of abortive guilty pleas might be reduced by ensuring as far as possible that the taking of the plea is followed immediately by the sentencing hearing. Once it is communicated that the accused person wishes to take a certain course of action, both parties should be ready to make submissions on sentence and in mitigation before the start of the plead guilty procedure. If for any reason the sentencing hearing has to be adjourned, then it would be prudent for the plead guilty mention to be adjourned as well and re-fixed on the same date immediately before the sentencing hearing.

Conclusion

71 For the foregoing reasons and in consultation with the parties, we reformulated the questions referred by the Prosecution as follows:

(a) Does s 228(4) of the CPC apply to a case where an accused person seeks to qualify his plea of guilt, at the mitigation stage of sentencing, to such an extent that it amounts to a retraction of his plea of guilt?

(b) Must an accused person seeking to qualify his plea of guilt in the manner aforesaid, at the mitigation stage of sentencing, satisfy the court that he has valid and sufficient grounds for doing so, before the court may reject his plea of guilt?

72 We answered the reformulated questions as follows:

(a) Yes, it does, save where the court is satisfied that the conduct of the accused person amounts to an abuse of the process of the court.

(b) No, because it is sufficient that the mitigation plea materially affects a legal condition of the offence.

Sundaresh Menon Chief Justice	Judith Prakash Judge of Appeal	Steven Chong Judge of Appeal

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