IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 40

Criminal Reference No 3 of 2018

Between

Osborn Yap Chen Hsiang

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Property] — [Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed)]

[Statutory Interpretation] — [Construction of statute]

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v
Public Prosecutor

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Andrew Phang Boon Leong JA, Judith Prakash JA and Steven Chong JA
3 May 2019

12 July 2019 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This reference concerns the interpretation of ss 47(1) and (2) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"). The overarching issue is whether the Prosecution's charging practice (which we will elaborate upon below) is consistent with the distinction which Parliament has drawn between primary offenders (someone who launders the benefits of his or her own criminal conduct) and secondary offenders (someone who does not himself or herself commit the offence from which the proceeds were originally derived but launders the proceeds of another person's crime).

2 We consider two questions in this judgment (pursuant to this Court having reframed these questions for the purpose of the present proceedings on

26 June 2018). The first, which we shall refer to as "Question 1", reads in full as follows:

> Can a secondary offender like the applicant, who does not himself commit the offence from which the proceeds were originally derived but launders the proceeds of another person's crime, be properly charged under s 47(1) instead of 47(2) of the CDSA? If not, how would the outcome be affected if the applicant were to be convicted under s 47(2) instead?

3 If the answer to Question 1 is that the applicant can be charged under s 47(1) of the CDSA, the second question, which we shall refer to as "Question 2", is as follows:

> If the answer to Question 1 is that the applicant can be charged under s 47(1) of the CDSA, do "his benefits from criminal conduct" under s 47(1) refer to the entire proceeds from the criminal conduct or the actual reward or advantage gained by him (if any)?

4 We reserved judgment after hearing oral arguments. Having considered the issues, we answer Question 1 in ***the negative*** and acquit the applicant of the CDSA charges for the reasons that follow.

Background

5 The applicant, Mr Osborn Yap Cheng Hsiang, was tried and convicted by the District Court of one charge of dishonestly receiving stolen property under s 411 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") and five charges of dealing with the stolen property under s 47(1)(*b*) of the CDSA. The District Judge sentenced the applicant to a total of 30 months' imprisonment by running the sentences for the s 411 PC charge (24 months) and one of the s 47(1)(*b*) CDSA charges (six months) consecutively.

6 The applicant committed the offences after meeting someone known only as "Laura" on an online dating website in April 2013. Over the next month

they chatted and grew intimate. In May 2013, Laura asked the applicant for help. She explained that she had incurred customs duties for goods that she had bought for a customer. She wanted to remit money to pay these taxes but she did not have a bank account or a company to receive the money as she was a foreigner. She therefore needed the applicant to help her receive about US$100,000 into his bank account. The applicant agreed.

7 On 15 May 2013, Laura requested that the applicant receive a larger amount of money for her instead – some US$420,000. She explained that her customer had ordered more goods and wanted to pay the full price instead of just half the price, and that she also needed some money to pay for a condominium apartment. Laura promised the applicant that he could retain about US$15,000 to cover any tax liabilities that arose and as an incentive. The applicant agreed.

8 The next day, the applicant received the US$420,000 (which amounted to S$520,590) into his DBS bank account. The money came from a HSBC bank account in Bermuda ("the HSBC Bermuda account"). The money was accompanied by a note stating "Condo Apartment Property". The applicant issued an invoice for this transfer.

9 The applicant then dealt with this S$520,590 according to Laura's instructions. He withdrew and transferred various sums of money on five different occasions in the following manner:

(a) On 16 May 2013, the applicant handed S$200,000 in cash to one "Mary Natha".

(b) On the same day, he handed another S$250,000 in cash to Mary Natha.

(c) On 17 May 2013, he handed yet another S$43,000 in cash to Mary Natha.

(d) On 18 May 2013, he transferred S$5,300 to a Malaysian bank account held by one "Kevin Christy Fredy Tony Christy".

(e) Finally, on 27 May 2013, he transferred S$4,200 to a Singapore bank account held by one "Jeffry Tafsir bin Zulkifli".

The transfers listed above later became the subject matter of the five CDSA charges.

10 Laura gave the applicant a different explanation for each of these transactions. They ranged from the customs duties that she had mentioned to hotel bills as well as hospital bills.

11 During this time, the owner of the HSBC Bermuda account discovered that the US$420,000 was transferred out without the owner's consent and that the transfer had been procured by fraud perpetrated on HSBC. A complaint was made.

12 The applicant did not know about this fraud. He was shocked when the Commercial Affairs Department ("CAD") contacted him to ask for more information on 5 June 2013. When Laura re-contacted the applicant on 7 June 2013, the applicant informed the CAD. Laura eventually stopped messaging the applicant on 13 June 2013. The applicant was then charged with the offences mentioned in [5] above. He claimed trial to all six charges.

The findings of the District Judge

13 The District Judge convicted the applicant on all charges. On the s 411 PC charge, the District Judge found that the charge was made out based on the following findings:

(a) The S$520,590 was stolen property (see *Public Prosecutor v Osborn Yap Chen Hsiang* [2017] SGDC 220 ("District Court GD") at [83]).

(b) While the applicant did not have actual knowledge that the property was stolen, he had reason to believe that it was. There were red flags in Laura's behaviour – she gave incredible reasons as to why she needed the applicant to receive the money, why the sum of money changed and why she did not want to document the transaction. These should have made the applicant suspicious as he was well-versed in basic commercial transactions; however, he either did not ask or was easily satisfied by Laura's explanations (District Court GD at [89]–[108], [111]).

(c) The applicant had "dishonestly" received this stolen property since he "would have caused both wrongful gain to Laura as well as wrongful loss to the owner of the property" by receiving the property. This was the definition of dishonesty under s 24 of the PC. The District Judge noted that, in coming to this conclusion, both the Prosecution and Defence agreed that s 411 read with s 24 of the PC meant that the applicant could have had an intention to cause wrongful gain or loss (*ie*, be dishonest) even if he did not have actual knowledge that the goods were stolen, but only had reason to believe that they were (District Court GD at [86]–[87]).

14 The District Judge also convicted the applicant on the five CDSA charges. He found, in this regard, as follows:

(a) The *actus reus* of transferring or removing from jurisdiction stolen property was satisfied once the applicant had been found guilty of the s 411 charge (District Court GD at [113]–[115]).

(b) The *mens rea* was also satisfied because "the objective *mens rea* [of having reason to believe under the s 411 charge] would colour all his subsequent actions in transferring or removing from jurisdiction the money" (District Court GD at [117]).

15 The District Judge "accordingly also found the [applicant] guilty" of the CDSA charges (District Court GD at [118]). He then added that it was "helpful to highlight" several red flags that the applicant should have taken note of (District Court GD at [119]–[120]). These included Laura failing to give good reasons or even providing documentation when she asked the applicant to withdraw the money. Laura also repeatedly broke her promise to meet the applicant.

16 In so far as the sentence was concerned, the District Judge noted that the applicant himself was an innocent victim, which could also explain why he had chosen to claim trial (District Court GD at [139]). The District Judge sentenced the applicant to 30 months' imprisonment in total (see above at [5]).

17 The applicant appealed against both conviction and sentence while the respondent, the Public Prosecutor, appealed against sentence. The High Court dismissed both appeals. The applicant then applied to refer various questions of law of public interest to the Court of Appeal. Leave was granted for two questions to be referred: see [2]–[3] above.

The legal framework

18 The relevant offences were committed in May 2013, ***prior to*** the *2014 amendments* to the CDSA. Sections 47(1) and (2) of the CDSA, however, were *not* affected by these amendments. These provisions read as follows:

> 47.—(1) Any person who —
>
> (*a*) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits from criminal conduct;
>
> (*b*) converts or transfers that property or removes it from the jurisdiction; or
>
> (*c*) acquires, possesses or uses that property,
>
> shall be guilty of an offence.
>
> (2) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct —
>
> (*a*) conceals or disguises that property; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> shall be guilty of an offence.

19 The phrase "criminal conduct" referred to in ss 47(1) and (2) of the CDSA is defined in s 2(1) of the same Act as "doing or being concerned in" any act constituting a "serious offence" or "foreign serious offence". A "serious offence" includes any of the offences specified in the Second Schedule to the CDSA, and this includes the offence of dishonestly receiving stolen property under s 411 of the PC (see s 2(1) of the CDSA). A "foreign serious offence" is presently defined as "an offence (other than a foreign drug dealing offence) against the law of a foreign country or part thereof that consists of or includes conduct which, if the conduct had occurred in Singapore, would have constituted a serious offence" (see s 2(1) of the CDSA).

20 The CDSA was originally enacted as the Drug Trafficking (Confiscation of Benefits) Act (Cap 84A, 1993 Rev Ed) ("DT(CB)A"). The objective of the DT(CB)A was to deny drug traffickers the enjoyment of the benefits of their crime by confiscating their assets which were derived from drug trafficking. It was described as an "additional weapon in the package of deterrents we would have in Singapore to deal with drug traffickers": see *Singapore Parliamentary Debates, Official Report* (20 March 1992) vol 59, at cols 1375 and 1379, *per* Prof S Jayakumar, Minister for Home Affairs.

21 Section 43 of the DT(CB)A, the predecessor provision of s 47 of the CDSA, provided as follows:

> **Concealing or transferring benefits of drug trafficking**
>
> **43**.—(1) Any person who —
>
> (*a*) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits of drug trafficking; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order shall be guilty of an offence.
>
> (2) Any person who, *knowing* that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits of drug trafficking —
>
> (*a*) conceals or disguises that property; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order shall be guilty of an offence.
>
> (3) Any person who, knowing that any property is, or in whole or in part directly or indirectly represents, another person's benefits of drug trafficking, acquires that property for no, or inadequate consideration shall be guilty of an offence.

…

[emphasis added in italics]

22 It is apparent from these provisions that the DT(CB)A criminalised the laundering of benefits from drug trafficking *only*. This was considered unsatisfactory because as capital flows became increasingly international and Singapore expanded its role as a financial centre, drug trafficking was no longer the primary source of funds for money laundering. Instead, other serious offences became sources of illegal wealth entering legitimate financial channels. This led to an international trend of criminalising the laundering not only of the proceeds of drug trafficking but also the proceeds of other serious crimes. Further, investigative efforts into money-laundering offences had often been hindered by the need to satisfy the courts that the suspect concerned had benefited from the proceeds of drug trafficking, which could be difficult to do when the proceeds were mixed with those of other predicate offences: see *Singapore Parliamentary Debates, Official Report* (6 July 1999) vol 70 at cols 1731–1733, *per* Mr Wong Kan Seng, Minister for Home Affairs.

23 As a result, the DT(CB)A was amended in 1999 via the Drug Trafficking (Confiscation of Benefits) (Amendment) Act (Act 25 of 1999). Amongst other amendments, the DT(CB)A was extended to cover serious crimes in addition to drug trafficking. A new s 43A (which mirrored s 43 of the DT(CB)A) relating to the laundering of benefits of criminal conduct was added. A new Second Schedule was also inserted to specify a list of serious crimes to be included in the Act. The DT(CB)A was *renamed* the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, and the Corruption (Confiscation of Benefits) Act (Cap 65A, 1990 Ed) was repealed. Section 43A of the newly-renamed CDSA ("1999 CDSA") itself read as follows:

> **Concealing or transferring benefits of criminal conduct**
>
> **43A**.—(1) Any person who —
>
> (*a*) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits from criminal conduct; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> shall be guilty of an offence.
>
> (2) Any person who, *knowing or having reasonable grounds to believe* that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct —
>
> (*a*) conceals or disguises that property; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of assisting any person to avoid prosecution for a serious offence or a foreign serious offence or the making or enforcement of a confiscation order shall be guilty of an offence.
>
> (3) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct, acquires that property for no or inadequate consideration, shall be guilty of an offence.
>
> …
>
> [emphasis added in italics]

24 Further, the *mens rea* requirement for the *secondary* money-laundering offences (*ie*, pursuant to ss 43(2) and (3) as well as 43A(2) and (3) of the 1999 CDSA, the predecessor provisions of what are presently ss 47(2) and (3) of the CDSA) were ***amended*** to that of "knowing or having reasonable grounds to believe" that the proceeds were derived from another person's benefits from drug trafficking or criminal conduct. The Prosecution thus no longer needed to prove "actual knowledge' of the relevant facts. This amendment enabled Singapore to combat money laundering and deprive criminals of their ill-gotten gains more effectively, and brought Singapore's laws in line with those of other

countries: see *Singapore Parliamentary Debates, Official Reports* (6 July 1999) vol 70 at col 1734, *per* Mr Wong Kan Seng, Minister for Home Affairs. With this amendment, s 43(1) of the 1999 CDSA now read as follows (for the *pre*-amendment version, see above at [21]):

> **Concealing or transferring benefits of drug trafficking**
>
> **43**.—(1) Any person who —
>
> (*a*) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits of drug trafficking; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> shall be guilty of an offence.
>
> (2) Any person who, *knowing or having reasonable grounds to believe* that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits of drug trafficking —
>
> (*a*) conceals or disguises that property; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or a foreign drug trafficking offence or the making or enforcement of a confiscation order shall be guilty of an offence.
>
> (3) Any person who, *knowing or having reasonable grounds to believe* that any property is, or in whole or in part directly or indirectly represents, another person's benefits of drug trafficking, acquires that property for no, or inadequate consideration shall be guilty of an offence.
>
> …
>
> [emphasis added in italics]

25 It should be noted that the provision for ***primary*** laundering (*ie*, ss 43(1) and 43A(1) (reproduced above at [24] and [23], respectively), the predecessor provisions of s 47(1) of the CDSA) remained (and still remain) ***silent*** on the *mens rea* requirement.

26 The CDSA was ***further amended*** in ***2014***. An amendment which (as will become apparent below) is ***highly pertinent*** to this reference is the definition of "foreign serious offence". ***Prior to*** 2014, this was defined as follows:

> an offence (other than a foreign drug trafficking offence) against the laws of, or of a part of, a foreign country ***stated in a certificate*** purporting to be issued by or on behalf of the government of that country and the act or omission constituting the offence or the equivalent act or omission would, if it had occurred in Singapore, have constituted a serious offence. [emphasis added in bold italics]

27 However (and notwithstanding the definition hitherto existing and as reproduced in the preceding paragraph), Parliament recognised that were serious difficulties in obtaining foreign certificates as it was not an internationally established practice to issue such certificates. The CDSA was therefore ***amended in 2014 to permit a wider range of evidence to be adduced to prove the foreign law which gives rise to the predicate offence***: see *Singapore Parliamentary Debates*, *Official Report* (7 July 2014) vol 92, *per* Mr S Iswaran, Second Minister for Home Affairs. *However*, it bears noting – for the purposes of the present proceedings – that these amendments were ***not yet in force*** when the offences that were the subject of the present proceedings were committed, and that they are therefore ***not applicable*** here. In other words, the definition of "foreign serious offence" applicable to the present matter is that which has been set out in the preceding paragraph (*viz*, in relation to the legal position ***prior to*** the 2014 amendment to the CDSA).

28 With this legal framework as well as backdrop in mind, we turn to the parties' submissions.

The parties' submissions

29 In so far as Question 1 is concerned, the ***applicant*** submits that s 47(1) of the CDSA ("s 47(1)") targets primary offenders while s 47(2) of the same Act ("s 47(2)") targets secondary offenders. This is consistent with the fact s 47(1) does not expressly provide for a *mens rea* requirement, because an offender who launders the benefits of his own criminal conduct must, *ex hypothesi*, have actual knowledge of the nature of the property he or she is dealing with. This approach is also consistent with domestic and foreign case law. As a consequence, the applicant's convictions under s 47(1) should be substituted with convictions under s 47(2), and his sentence should be reduced. In so far as Question 2 is concerned, the applicant submits that the "benefits" in s 47(1) refers to the actual reward or advantage gained by the offender. This, it is argued, accords with a plain and ordinary definition of the word and is consistent with the purpose of the CDSA, which is to strip offenders of all economic gain derived from their offences.

30 On the other hand, the ***respondent*** submits, in relation to Question 1, that a secondary offender like the applicant, who has been convicted of the s 411 PC offence, can be charged and convicted under s 47(1). It points out that the objectives of the CDSA are to deprive criminals of the ability to enjoy the fruit of their criminal conduct and to protect the good names of Singapore's financial institutions and the country's status as a financial hub. It highlights the fact that, in cases involving cross-border money laundering, its practice of charging *secondary* offenders with the s 411 PC offence *together with* the s 47(1) offence allows a conviction to be secured without having to prove a foreign predicate offence by producing a foreign certificate or otherwise relying on foreign expert evidence. In this regard, the s 411 PC offence is the local predicate offence which anchors the s 47(1) charge. This charging practice

(which is supported by a literal reading of s 47(1)) "enables the legislative objective of the CDSA to be achieved, whilst avoiding the inherent difficulties in basing CDSA charges upon foreign predicate offences". The respondent also submits that, even if it was wrong with regard to the legal position under Question 1, the applicant could have been convicted under s 47(2), and that the substitution of the convictions would not have made a difference to the sentence. In so far as Question 2 is concerned, the respondent submits that the term "benefits" refers, in s 47(2), to the *entire* sum that the offender receives from his criminal conduct, and not only to the actual reward or advantage ultimately retained by him. It argues that such an interpretation would be more effective at deterring potential offenders, and would avoid issues which entail determining the actual advantage retained by the offender. Further, such an interpretation would be consistent with various authorities from Commonwealth jurisdictions with similar legislation.

Our decision

Question 1

The conviction under s 47(1)

31 To recapitulate, the key question before this Court is whether a ***secondary*** offender such as the applicant, who does *not himself* commit the offence from which the proceeds were originally derived but launders the proceeds of another person's crime instead, can be properly charged under s 47(1) instead of s 47(2). As this is a question of statutory interpretation, it would be useful to recall the guidelines which this Court laid down in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]:

(a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.

(b) Second, ascertain the legislative purpose or object of the statute.

(c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

32 At the first step, the exhortation to interpret the provision with regard to the context of that provision within the written law as a whole is crucial. In this regard, it is trite that "Parliament shuns tautology and does not legislate in vain; the court should therefore endeavour to give significance to every word in an enactment": see *Tan Cheng Bock* at [38]; see also the decision of this Court in *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484 at [43].

33 We examine – and, indeed, contextualise – the parties' submissions with these principles in mind. The parties' respective positions are as follows:

(a) Section 47(1) applies ***only*** to primary offenders (the ***applicant's*** position).

(b) Section 47(1) applies to ***both*** primary and secondary offenders, ***provided that*** the secondary offender is convicted of the s 411 PC offence (the ***respondent's*** position).

34 The respondent accepts, in its skeletal arguments and at the hearing before us, that s 47***(1)*** is targeted at ***primary*** offenders while s 47***(2)*** is targeted at ***secondary*** offenders. We agree. This is plain from the fact that s 47***(1)*** refers to "***his*** [*ie*, the accused's] benefits from criminal conduct", while s 47***(2)*** refers

to "***another person's*** benefits from criminal conduct". Indeed, we had reached the same conclusion in *WBL Corp Ltd v Lew Chee Fai Kevin and another appeal* [2012] 2 SLR 978 at [39].

35 Nevertheless, as noted above, the respondent submits that a secondary offender who has been convicted of the s 411 PC offence (of dishonestly receiving stolen property) is also a *primary* offender liable to be convicted under s 47(1), because the s 411 PC offence is a (local) "serious offence" within the meaning of s 47(1). In other words, a secondary offender who receives stolen property dishonestly is "*transformed*" into a primary offender by virtue of his or her conviction under s 411 PC, and may therefore be charged under s 47(1). We are of the view that, whilst this interpretation is *literally* possible, it is, with respect, ***untenable because it would render s 47(2) redundant***. As we noted during oral arguments before us, if the respondent's argument is accepted, a *secondary* offender who deals with the benefits of another person's crime within the meaning of s 47(2) CDSA would *almost invariably* be liable to be convicted of the s 411 PC offence and *thus* under s 47(1) *as well*. As a result, s 47***(2)*** would be *rendered* ***redundant*** – a result which is ***diametrically opposed*** to the principle that the courts should endeavour to give meaning to every word in an enactment.

36 The respondent nevertheless submits that that the overlap between ss 47(1) and (2) is – contrary to the view we have expressed in the preceding paragraph – not fatal to its case, because it is not uncommon for the same set of facts to fall within more than one offence-creating provision. It highlights that this is envisaged by s 135 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), which states as follows:

> **Trial of offences within 2 or more definitions**
>
> **135.** If the alleged acts constitute an offence falling within 2 or more separate definitions of any law by which offences are defined or punished, then the person accused of them may be charged with and tried at one trial for each of those offences.
>
> *Illustrations*
>
> The separate charges referred to in *illustrations* (*a*) to (*d*) below respectively may be tried at one trial.
>
> (*a*) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with offences under sections 352 and 323 of the Penal Code (Cap. 224).
>
> (*b*) Several stolen sacks of rice are passed to *A* and *B*, who know they are stolen property, so they can conceal them. *A* and *B* then voluntarily help each other to conceal the sacks at the bottom of a grain pit. *A* and *B* may be separately charged with offences under sections 411 and 414 of the Penal Code.
>
> (*c*) *A* exposes her child with the knowledge that by doing so she is likely to cause its death. The child dies as a result. *A* may be separately charged with offences under sections 317 and 304 of the Penal Code.
>
> (*d*) *A* dishonestly uses a forged document as evidence to convict *B*, a public servant, of an offence under section 167 of the Penal Code. *A* may be separately charged with offences under sections 471 (read with section 466) and 196 of the Penal Code.

37 The respondent is correct in pointing out that there are many overlapping offences in the PC. However, this is because the PC contains many similar offences of differing gravity as well as correspondingly different sentences. For example, a person who kills another by breaking the other person's neck may be charged with murder, causing grievous hurt, or using criminal force. However, no one can seriously suggest that any of these offences is redundant

because the applicable sentences for those offences are different; different charges may be brought depending on the severity of the offending as embodied in the precise facts and circumstances of the case itself. This is ***unlike*** the situation we are faced with here. The offences in ss 47(1) and 47(2) have the same sentencing range: see s 47(6) of the CDSA. If a secondary offender such as the applicant could be charged under s 47(1), it is difficult to see why s 47(2) would not be redundant.

38 We also note that another key difference between ss 47(1) and (2) is that s 47(2) refers to the accused "having reasonable grounds to believe" that the relevant property represents another person's benefits from criminal conduct whereas s 47(1) does not refer to any *mens rea* requirement. In our judgment, the apparent lack of a *mens rea* requirement in s 47(1) would make eminent sense if that provision applied ***only*** to ***primary*** offenders. If so, it would be *unnecessary* to stipulate any *mens rea* requirement simply because a primary offender who benefits from his own criminal conduct *must* ***necessarily*** *know* that he is dealing with such benefits. In this regard, the respondent submits that while the offender (pursuant to the s 47(1) offence) must be shown to have known that the property is or represents his or her benefits from criminal conduct, s 47(1) only requires that the offender to know that "the *source* of the monies that he dealt with was *factually* the same as the property he had received from his own predicate [s 411] offence" [emphasis in original]; it need not be shown that the offender knew that the property was stolen. However, we find it difficult to see how someone who does not know that the relevant property was obtained illegally can be said to have known that the property is or represents his or her benefits from criminal conduct.

39 For the reasons set out above, we are of the view that, under step 1 of the *Tan Cheng Bock* framework (see above at [31]), s 47(1) ***cannot*** be

interpreted to cover a *secondary* offender, such as the applicant in this case, who has been convicted of the s 411 PC offence. In other words, the only possible interpretation of s 47(1) is that it covers ***only primary*** offenders (see [33(a)] above). This is sufficient to dispose of Question 1. Nevertheless, for completeness, we briefly address the respondent's submissions on the second and third steps of the *Tan Cheng Bock* framework (above at [31]).

40 The second step in the *Tan Cheng Bock* framework requires the court to determine the purpose of the statute. It is not disputed that the purposes of the CDSA are to deprive criminals of the ability to enjoy the fruit of their criminal conduct and to protect the good names of Singapore's financial institutions and its status as a financial hub. Moving on to the third step, the court has to determine which of two interpretations (see [33] above) would be more effective in achieving those purposes.

41 At first blush, the respondent is correct that its interpretation (see [33(b)] above) would aid the authorities to achieve the aims of the CDSA more effectively. Such an interpretation would facilitate convictions where an offender seeks to deal with the proceeds of crime committed in a foreign jurisdiction because the s 411 PC offence would form the local predicate offence which anchors a s 47(1) conviction. In contrast, if the authorities had to proceed under s 47(2), they would have to prove that a foreign crime had been committed.

42 *However*, the respondent's submissions are undermined by the fact that Parliament had amended the CDSA in 2014 to permit the Prosecution to prove foreign predicate offences more easily: see [27] above. In our judgment, this is an implicit recognition that there was a *lacuna* in the law – if the respondent were correct that secondary offenders who launder proceeds of foreign crimes

can be charged under s 47(1), *there would not have been a need to amend the law in the first place*.

43 We note that the respondent relies on the decision of the High Court in *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1 ("*Ang Jeanette*") in support of its submission that a secondary offender can be charged under s 47(1). In our view, *Ang Jeanette* can be distinguished from the present case. *Ang Jeanette* involved a conspiracy between one Tobechi Onwuhara and one Michael Walters to fraudulently wire-transfer large amounts of money from the accounts of several hundred victims. As a result of this scam, funds were transferred from bank accounts in the United States of America to bank accounts in Singapore. A few of the latter accounts were in the name of one "Aloysious".

44 The appellant in that case took instructions from one "Mike". Following those instructions, she met Aloysious on various occasions and remitted the moneys that she had received from him (*ie*, Aloysious). The appellant was charged and convicted under s 44(1)(*a*) of the CDSA, which, at the material time, provided as follows (*Ang Jeanette* at [22]):

> **Assisting another to retain benefits from criminal conduct**
>
> **44**.—(1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement, knowing or having reasonable grounds to believe that, by the arrangement—
>
> > (*a*) the retention or control by or on behalf of another (referred to in this section as that other person) of *that other person's benefits of criminal conduct* is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise); or
>
> …
>
> and knowing or having reasonable grounds to believe that that other person is a person who engages in or has engaged in criminal conduct or has benefited from criminal conduct shall be guilty of an offence.

[emphasis added]

45 Thus, the Prosecution had to prove the existence of "the other person's benefits of criminal conduct". However, there was a local intermediary in *Ang Jeanette*: Aloysious had received stolen moneys in his bank accounts. The High Court found (at [69]) that Aloysious had dishonestly received those moneys. Thus, the s 44(1)(*a*) charges were made out against the appellant because she had dealt with *Aloysious's* benefits of criminal conduct (*ie*, his s 411 PC offence). Unlike the present case, the Prosecution in *Ang Jeanette* did not seek to turn the appellant from a secondary offender to a primary offender by charging her with a s 411 PC offence. Thus, *Ang Jeanette* does not assist the respondent.

46 For the above reasons, we answer Question 1 in ***the negative***. A secondary offender such as the applicant in the present case, who does not himself commit the offence from which the proceeds were originally derived but launders the proceeds of another person's crime, cannot be charged under s 47(1).

The conviction under s 47(2)

47 The follow-up question within Question 1 is "how would the outcome be affected if the applicant were to be convicted under s 47(2) instead?". This presupposes that the applicant can be charged under s 47(2) instead. While we recognise that the parties were not expressly asked to consider whether the applicant could, as a matter of law, be convicted of the s 47(2) offence, both parties had addressed this question in their written submissions and were given a further opportunity to elaborate upon their arguments on this particular issue at the hearing before us. To recapitulate, s 47(2) (also reproduced above at [18]) states as follows:

> (2) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct —
>
> (*a*) conceals or disguises that property; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> shall be guilty of an offence.

48 As stated above, the applicant committed his offences in May 2013, ***before*** the 2014 amendments to the CDSA came into force. Since the primary offence in this case took place in Bermuda, the respondent had two options to prove that "criminal conduct" had taken place in Bermuda. First, it could adduce evidence to show that an act constituting one or another of the offences listed in the Second Schedule had been committed, provided that the offence is defined in the statute criminalising that act as having been committed when committed in a place outside Singapore: see *Ang Jeanette* at [59]. The respondent does not rely on this option. Second, the respondent could prove that a "foreign serious offence" had taken place; that term was defined at the material time as follows:

> an offence (other than a foreign drug trafficking offence) against the laws of, or of a part of, a foreign country ***stated in a certificate*** purporting to be issued by or on behalf of the government of that country and the act or omission constituting the offence or the equivalent act or omission would, if it had occurred in Singapore, have constituted a serious offence. [emphasis added in bold italics]

49 It is not disputed that no foreign certificate was tendered in the present case. And while the applicant had accepted, in the Statement of Agreed Facts, that a fraudulent transfer was made from a HSBC Bermuda account to his DBS account as a result of deception, the applicant did not expressly accept that the said conduct amounted to a "foreign serious offence". It bears emphasis that the respondent does not simply have to prove that an offence amounting to a crime under the laws of a foreign country had taken place in that country – it also has

to prove that that offence constituted a "serious" offence under the laws of that country. Since no foreign certificate had been tendered, it appears to us that the respondent had failed to do so.

50 Notwithstanding the above, the respondent submits that the applicant can be convicted of s 47(2) because s 2(1) of the CDSA defines "criminal conduct" as "doing or being concerned in, whether in Singapore or elsewhere, any act constituting a serious offence or a foreign serious offence" [emphasis omitted]. Thus, (according to the respondent) the phrase "another person" relates to the primary offender who engages in criminal conduct overseas, and that foreign criminal is "concerned in" the applicant's s 411 PC offence, which is a "serious offence".

51 We accept that such an interpretation is *literally* possible because the words "concerned in" appear to cover any form of involvement, direct or indirect (and no matter how remote), with criminal conduct. However, as alluded to in our discussion with regard to s 47(1), a literal approach to statutory interpretation is not always conclusive. We illustrate this point with the following example. Section 328(1) of the Proceeds of Crime Act 2002 (c 29) (UK) makes it an offence for a person to enter into or become "concerned in" an arrangement which he knows or suspects facilitates the acquisition, retention, use or control of criminal property. On a literal reading of this provision, ordinary conduct of litigation by legal professionals could be illegal if the lawyers suspected that the outcome of legal proceedings might have such an effect. However, the English Court of Appeal held, in *Bowman v Fels (Bar Council and others intervening)* [2005] 1 WLR 3083 at [84], that s 328 of the aforementioned Act did not cover such conduct because Parliament could not have intended to criminalise action taken by lawyers in order to determine or secure legal rights or remedies for their clients. Thus, even broadly-worded

legislative provisions must be interpreted sensibly, in a way which is consistent with Parliamentary intention and which accords with the overall context of the statute as a whole.

52 Returning to the respondent's interpretation of s 47(2), we find it untenable for several reasons. First, it would render the definition of "foreign serious offence" prior to the 2014 amendments largely redundant. As noted above, the concept of a "foreign serious offence" used to be defined in a manner which required the Prosecution to obtain a foreign certificate. If the respondent's interpretation of s 47(2) were correct, there would almost never be a need to obtain a foreign certificate because an offender could just simply be charged with an (in this case, s 411 PC) offence, and the said charge would then form the basis of the s 47(2) offence. This cannot be the case; when amending the CDSA in 2014, Parliament recognised the difficulties in obtaining foreign certificates, and thus implicitly recognised that the authorities would generally need to obtain a foreign certificate to secure a conviction under s 47(2).

53 Second, the respondent's approach is, with respect, circular. The respondent is essentially submitting that the applicant should be convicted of an offence of dealing with property which represent the benefits of the foreign criminal's conduct. The foreign criminal conduct is then defined with reference to the *applicant's* criminal offence, *ie*, being "concerned in" the latter offence.

54 Third, s 47(2) requires the "another person" (the foreign criminal in this case) to benefit from the applicant's criminal conduct. It is difficult to see how the foreign criminal has benefited from the applicant's *receipt* of stolen property, the s 411 PC offence which the applicant was convicted of. In our judgment, it is the applicant's *laundering* of the stolen property, not his mere *receipt* of the same, which may benefit the foreign criminal. For instance, if the

applicant had kept the stolen money for himself after receiving it, the foreign criminal would not have benefited.

55 The respondent's reliance on *Ang Jeanette* in relation to this point is also without merit. The facts of this case have been set out briefly above at [43]–[44]. The respondent highlights the following paragraph in the judgment:

> 69 … Thus, a compelling inference, given all the facts adduced by the Prosecution, would be that the moneys were dishonestly received into the Singapore bank accounts in question, including those opened under Aloysious's name. Dishonest receipt of stolen property is an offence under s 411(1) of the Penal Code, and is also included in the Second Schedule of the CDSA. Therefore, even without producing a foreign certificate, the Prosecution has adduced evidence that give rise to a logical inference that conduct constituting a serious offence under the Second Schedule has taken place and that the moneys handled by the Appellant represented the benefits of such criminal conduct. ***In addition, the Prosecution's evidence also established that Michael had been engaged in, or had benefited from, criminal conduct***. [emphasis added in bold italics]

56 The respondent relies heavily on the High Court's finding in *Ang Jeanette* that Michael had benefited from criminal conduct. It submits that Michael's criminal conduct had been concerned in Aloysious's 411 PC offence. Accordingly, the moneys represented Michael's "benefits" from criminal conduct, presumably because the moneys were ultimately transferred by the appellant for Michael's benefit. However, there is nothing in the judgment which suggests that the Court took the view that Michael's criminal conduct had been concerned in Aloysious's s 411 PC offence. Indeed, the High Court had accepted the evidence of a Special Agent with the US Federal Bureau of Investigation (who had testified at the trial before the District Court) that Michael was involved in a bank scam in the US: see [43] above. We recognise, as the respondent points out, that no foreign certificate was tendered in *Ang Jeanette*. Thus, the High Court could not have concluded that Michael had

engaged in "criminal conduct" on the basis of his involvement in a foreign scam. Nevertheless, as we have pointed out above, it was not necessary for the Court to find that Michael was involved in a foreign serious offence because the Court had found that Aloysious had dishonestly received stolen moneys, and since the appellant had received those moneys from Aloysious, she had dealt with the benefits of Aloysious's criminal conduct within the meaning of s 44(1)(*a*): see [45] above.

57 Accordingly, we reject the respondent's interpretation of s 47(2). The s 47(2) offence is ***not*** made out in this case because the respondent has not tendered a foreign certificate showing that the bank fraud in Bermuda amounts to a foreign serious offence. We therefore decline to convict the applicant of the s 47(2) offence in place of his convictions for the s 47(1) offence.

Question 2

58 To recapitulate, Question 2 is: If the answer to Question 1 is that the applicant can be charged under s 47(1), do "his benefits from criminal conduct" under s 47(1) refer to the entire proceeds from the criminal conduct or the actual reward or advantage gained by him (if any)? Since we have decided that a *secondary* offender such as the applicant *cannot* be charged under s 47(1), Question 2 does not arise. This is because "his" in s 47(1) can only refer to the primary offender and thus "his benefits from criminal conduct" must refer to the benefits accruing to the primary offender.

Conclusion

59 In the light of our answer to Question 1 (which we have answered in ***the negative***), we acquit the applicant of the five CDSA charges which he was convicted on. The sentences imposed in respect of those charges are therefore

also set aside. However, the applicant is to serve the 24-month sentence imposed by the District Judge for the s 411 PC offence.

Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal	Steven Chong Judge of Appeal

Thong Chee Kun and Chee Fei Josephine (Rajah & Tann Singapore LLP) for the applicant;
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