IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 8

Criminal Motion No 25 of 2022

Between

Tangaraju s/o Suppiah

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review — Leave for review]
[Criminal Law — Statutory offences — Misuse of Drugs Act]

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Introduction

1 This is an application by Tangaraju s/o Suppiah ("the Applicant") under s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") for permission to review an earlier judgment of the Court of Appeal in CA/CCA 38/2018 ("CCA 38"). This application is premised on the change in the law brought about by the decision of *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*"), as regards the Prosecution's duty to disclose a material witness' statement to the Defence. The decision in *Nabill* was delivered on 31 March 2020, after the decision in CCA 38 on 14 August 2019.

2 In the present application, the Applicant argues that following *Nabill*, the Prosecution should have, but failed to, disclose to him the statements of

certain witnesses and certain phone records. On that basis, the Applicant argues that he should be granted permission to review the Court of Appeal's decision in CCA 38.

3 To succeed in an application for permission under s 394H of the CPC, the application must disclose a legitimate basis for the exercise of this court's power of review. The court hearing such an application for permission would have to consider the requirements set out in s 394J of the CPC. In particular, under s 394J(2), there must be: (a) "sufficient material on which the appellate court may conclude" that (b) there has been "a miscarriage of justice" (*Datchinamurthy a/l Kataiah v Public* Prosecutor [2021] SGCA 30 at [21]–[22]).

4 It is important to bear in mind that a change in the law is not a licence to review concluded appeals. The Court of Appeal's decision in *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 generated multiple unsuccessful applications to obtain leave to review. Those applications failed because the applicants did not properly appreciate the statutory requirements to obtain leave to review a *concluded* appeal. Change in the law *per se* does not constitute "sufficient material".

5 In the present case, in the context of the change in the law brought about by the decision in *Nabill*, it is also crucial to bear in mind that if permission to review is granted, all that would happen is that the new material in the form of additional witness statements and phone records would be placed before the Court of Appeal to review its decision in dismissing CCA 38. However, if independent of the decision in *Nabill*, the Court of Appeal had, in dismissing the appeal, already examined the impact of the non-disclosures, then it would serve no purpose to place the same material before the Court of Appeal *again*.

Similarly, if the new material is presently not available and therefore cannot be placed before the Court of Appeal in a review application, a review application premised on that material would serve no purpose.

6 For the reasons below, I find that the non-disclosure of the witness statements and the phone records does not constitute "sufficient material" to show that there has been a "miscarriage of justice". In fact, the impact of the non-disclosure of most of the witness statements was specifically considered by the Court of Appeal when it decided to dismiss CCA 38. The Applicant has therefore failed to demonstrate any legitimate basis for the exercise of the court's power of review. Pursuant to s 394H(7) of the CPC, I dismiss this criminal motion summarily without setting it down for hearing.

Factual and procedural background

Background facts

7 The complete facts are set out in the trial judge's (the "Judge") grounds of decision in *Public Prosecutor v Tangaraju s/o Suppiah* [2018] SGHC 279 ("the GD"). I briefly summarise the salient facts below.

8 The Applicant was charged with abetting one Mogan Valo ("Mogan") by engaging in a conspiracy with him to traffic in cannabis by delivering 1017.9g of cannabis (the "Drugs") to himself, an offence under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), read with s 5(2) and s 12 of the MDA (the "Charge").

9 Mogan was the courier in this case. Sometime prior to his arrest on 6 September 2013, a Malaysian man known to Mogan as "Selva" gave Mogan the contact number of a person whom "Selva" said could help Mogan find a job

in Singapore. That person's contact number was xx39 (the "first number"), which Mogan saved as "India". Subsequently, "India" gave Mogan a second number to contact him at, xx93 (the "second number"), which Mogan saved as "India.jus".

10 On 5 September 2013, "Selva" instructed Mogan to deliver "ya lei" (which translates to "leaves" in Tamil, and which Mogan understood to mean cannabis) from Malaysia to "India" in Singapore at the carpark of PSA Vista, or, failing which, the McDonald's outlet at West Coast Park ("the McDonald cafe").

11 On 6 September 2013, Mogan collected the Drugs from a runner of "Selva" and drove into Singapore with his girlfriend, one Salina Binte Salim ("Salina"), carrying the Drugs. He cleared the Woodlands Checkpoint at around 9pm. At around 9.25pm, Mogan received a call from "India", using the first number. He informed "India" that he was on his way to PSA Vista. Before he could deliver the Drugs, Mogan was arrested by officers from Central Narcotics Bureau ("CNB") at 10.10pm.

12 Upon his arrest, Mogan agreed to assist in a follow-up operation against "India". Under the direction of Station Inspector Tay Cher Yeen ("SI Tay"), Mogan arranged to meet "India" at the toilet of the McDonald cafe through a series of phone calls with the first number.

13 On 7 September 2013 at 1.14am, Mogan received a call from "India" and was told that "India" was waiting at the toilet of the McDonald cafe. Shortly after, at around 1.19am, one Suresh s/o Subramaniam ("Suresh") was arrested whilst walking out of the toilet.

14 After Suresh's arrest, Mogan then made two further calls to "India" under the direction of SI Tay, and informed "India" that he was at the toilet of the McDonald cafe. At 1.38am, "India" told Mogan that he was no longer at the McDonald cafe, and that he had asked his friend, whom "India" described as a "fat Indian", to collect the "ya lei" from Mogan.

15 Suresh was the Applicant's childhood friend and knew him as "Appu". According to Suresh, sometime in July 2013, the two exchanged phone numbers. The Applicant gave him two phone numbers, which corresponded with the first and second numbers given to Mogan. Suresh saved the first and second numbers as "Appu bro" and "Apu2" respectively.

16 According to Suresh, sometime in the evening on 6 September 2013, he met the Applicant by chance at the void deck of Block 34 Dover Road. After the two parted ways, Suresh met his friend, one Shashi Kumar ("Shashi"), who had the use of a car. At 7.57pm, Suresh sent a text message to the Applicant at the second number, stating "car stan by [*sic*] ready".

17 On 6 September 2013 at around 8pm, using Shashi's car, Suresh and Shashi drove to Clementi to obtain medical certificates to excuse themselves from attending urine tests that they were due to go for. They then bought dinner at the McDonald cafe at around 9pm.

18 From 12.05am to 1.16am on 7 September 2013, Suresh spoke with the Applicant on the first number in a series of nine phone calls. According to Suresh, the Applicant informed him that the Applicant's friend would be arriving at the McDonald cafe, and he asked Suresh to call him if he were to see a silver car bearing a certain vehicle registration number. Over the course of the night, the Applicant called Suresh repeatedly to check if he had seen a car

matching the description. At 1.19am, Suresh received a call from the Applicant, who asked him if there was anyone in the toilet. Suresh replied in the negative and was walking out from the toilet when he was arrested by officers from CNB.

19 The Applicant was not apprehended along with Mogan and Suresh on 6 and 7 September 2013. He was first placed under arrest on 23 January 2014 for failing to report for a urine test and for drug consumption. Sometime in March 2014, the Applicant was identified as a person potentially linked to Mogan's and Suresh's arrests. By that time, the Applicant was already in remand and none of his mobile phones could be recovered for analysis.

The trial and the Judge's decision

20 At the trial, the crux of the Prosecution's case was that the Applicant used the first number to communicate with both Mogan and Suresh to coordinate the delivery of the Drugs to himself. The crux of the defence was that the Applicant had nothing to do with the first number and was not involved in the transaction at all.

21 The Judge found that the Applicant was the user of the first number on 6 and 7 September 2013 to coordinate the delivery of Drugs. The Judge relied on: (a) Suresh's testimony that the Applicant was the person who used both the first and second numbers and in particular, the person who used the first number to contact him on 6 and 7 September 2013; (b) Mogan's testimony that the first and second numbers belonged to the same person; and (c) the Applicant's own admission in his statement recorded on 24 April 2014 that he was the user of the second number. Although the Applicant sought to explain that he had lost his mobile phone bearing the second number on 7 August 2013, the Judge was not persuaded by his explanation because it was only mentioned in his statement of

23 May 2014 instead of his earlier statement which was recorded on 24 April 2014.

22 The Judge also rejected the Applicant's argument that Suresh was the person who had coordinated the transaction using the first number. Suresh's mobile phone which was seized upon his arrest at the McDonald cafe showed that his phone number was xx32. Furthermore, after Suresh's arrest at around 1.20am on 7 September 2013, Mogan spoke to "India" on five further occasions from 1.20am to 2am, which suggested that Suresh could not have been "India".

23 The Judge therefore found that the Applicant did engage in a conspiracy to traffic the Drugs by coordinating the delivery of the Drugs by Mogan and the receipt of the Drugs by Suresh. Given the large quantity of the cannabis involved (being more than twice the capital limit), and since the Applicant had not led any evidence that the Drugs were intended for his own consumption, the Judge found that the Applicant had intended to traffic in the Drugs. Accordingly, the Judge convicted the Applicant of the Charge and imposed the mandatory death sentence on him.

The appeal and the Court of Appeal's decision

24 On 18 October 2018, the Applicant filed the Notice of Appeal against his conviction. On 14 August 2019, the Court of Appeal in CCA 38 dismissed his appeal with brief oral grounds. The Court of Appeal agreed with the Judge that the objective evidence, coupled with Mogan's and Suresh's testimony and the Applicant's own admission, suggested that the Applicant was the user of the first number who coordinated the delivery of the Drugs on 6 and 7 September 2013. The Court of Appeal similarly rejected the Applicant's belated attempt to distance himself from the second number. The Court of Appeal also rejected the

Applicant's other arguments on appeal, in particular his argument that the Prosecution had failed to disclose Mogan's and Suresh's statements to him.

Subsequent events

25 On 7 November 2022, the Applicant filed the present application, CA/CM 25/2022 ("CM 25") under s 392 (on taking additional evidence) and s 407 (on form and issue of criminal motions) of the CPC for leave to adduce "further evidence". However, neither the motion nor the supporting affidavit stated that CM 25 was an application under s 394H of the CPC for permission to apply to review the concluded appeal in CCA 38.

26 Subsequently, the Applicant clarified at a Case Management Conference on 11 November 2022 that CM 25 was meant to be an s 394H application. The Applicant requested for two weeks to file the amended application under s 394H. The Prosecution did not object to the Applicant's request and the Court of Appeal granted the Applicant's request, by consent, to amend CM 25. The Applicant filed the amended criminal motion, amended affidavit and written submissions for CM 25 on 9 December 2022.

27 Under s 394H(6)(*a*) of the CPC, an application for permission is to be heard by a single judge sitting in the Court of Appeal where the appellate court in question is the Court of Appeal. It is on this basis that I am determining this application for permission.

Applicable law

28 Following the decision in *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 at [17], it is well-established that an application for permission to commence a review application under

s 394H of the CPC must disclose a "legitimate basis for the exercise of the court's power of review". To determine if such a legitimate basis exists, the court must consider the requirements for the exercise of its power of review stipulated in s 394J of the CPC.

29 Under s 394J(2) of the CPC, the applicant in a review application has to demonstrate to the appellate court that there is: (a) sufficient material on which; (b) the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made.

30 For the material to be "sufficient", it must satisfy all the requirements set out in ss 394J(3)(*a*)–(*c*) of the CPC:

> (*a*) before the filing of the application for permission to make the review application, the material has not been canvassed at any stage of the proceedings in the criminal matter in respect of which the earlier decision was made;
>
> (*b*) even with reasonable diligence, the material could not have been adduced in court earlier;
>
> (*c*) the material is compelling, in that the material is reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made.

31 Where an applicant is relying on a change in the law, s 394J(4) of the CPC provides an *additional requirement* that the legal arguments must be based on a change in the law that arose *after* the conclusion of all proceedings relating to the criminal matter in respect of which the earlier decision was made (see also *Rahmat bin Karimon v Public Prosecutor* [2021] 2 SLR 860 ("*Rahmat*") at [16]). This requirement is not in issue in this application.

32 To determine whether there was a miscarriage of justice, the appellate court has to consider if the decision in the criminal appeal that is sought to be

reopened is "demonstrably wrong" (s 394J(5)(*a*) of the CPC). The applicant must show that it is apparent, based only on the evidence tendered in support of the review application and without any further inquiry, that there is a powerful probability that the earlier decision is wrong (ss 394J(6)(*a*)–(*b*) of the CPC). Alternatively, the court may conclude that there has been a miscarriage of justice if the earlier decision is "tainted by fraud or a breach of the rules of natural justice" (see s 394J(5)(*b*) of the CPC).

The parties' cases in this application

33 The Applicant's central contention in this application is premised on the Court of Appeal's decision in *Nabill* issued on 31 March 2020, which post-dated the trial and the appeal. The Applicant argues that the Prosecution failed to comply with its disclosure obligations under *Nabill* by failing to disclose: (a) the phone records for the first number and the second number; and (b) the statements of Mogan, Shashi, Salina and Suresh. The Applicant further relies on the Court of Appeal's holding in *Nabill* at [45] that "an accused person ought to have access to all relevant information in order to make an informed choice in deciding whether to call a material witness" [emphasis in original omitted].

34 The Prosecution argues that CM 25 should be summarily dismissed under s 394H(7) of the CPC for the following reasons:

> (a) In relation to Mogan's and Suresh's statements, the Prosecution argues that these statements do not fall within the disclosure regime in *Nabill* given that the Court of Appeal left open the issue of whether the Prosecution is required to disclose the statements of material witnesses who are the Prosecution's witnesses.

(b) In relation to Salina's statements, the Prosecution argues that Salina's proximity to Mogan does not *ipso facto* render her a "material witness" especially when none of the evidence adduced shows that she had any knowledge of the Applicant's role (or lack thereof) in the trafficking.

(c) In relation to Shashi's statements, the Prosecution argues that the disclosure of Shashi's statements will not affect the outcome of the case. The Judge below had found that even if Shashi's evidence might have contradicted Suresh's evidence as regards his phone conversations with the Applicant in the car, such testimony would still be incapable of disturbing the other key planks of evidence in relation to Mogan's evidence, the Applicant's own admission, as well as the objective call records. Nonetheless, the Prosecution says that it has no objections to extending copies of Shashi's investigative statements to this court for its review.

Issues to be determined

35 The principal issue to be determined is whether there is a legitimate basis for the court to exercise its power of review. It is necessary to consider whether, under s 394J(2) of the CPC, the sufficiency and miscarriage of justice requirements have *both* been satisfied.

Sufficiency requirement

36 It bears emphasis that the requirements of sufficiency and miscarriage of justice are a *composite* requirement under s 394J(2) of the CPC (*Rahmat* at [22]). As per s 394J(3)(*c*) of the CPC, the new material is thus only sufficient if it is "capable of showing almost conclusively that there has been a miscarriage of justice".

37 Section 394J(3) of the CPC also has a relevancy threshold, which requires that the change in the law must be *prima facie* relevant to show that the appellate court's decision is demonstrably wrong (*Rahmat* at [28]). Therefore, in the present case, to determine if the decision in *Nabill* satisfies the relevancy threshold, it is vital to consider: (a) whether the undisclosed materials that the Applicant complains of fall within the Prosecution's disclosure obligations in *Nabill*; and (b) if so, whether the consequence of non-disclosure under *Nabill* *prima facie* suggests that the appellate court's decision was demonstrably wrong.

38 In my judgment, I find that none of the material that the Applicant complains was not disclosed to him satisfies the requirements of sufficiency and miscarriage of justice under s 394J(2) of the CPC. I set out my reasons below.

Non-disclosure of Mogan's and Suresh's statements

39 In relation to the non-disclosure of Mogan's and Suresh's statements, I note that both Mogan and Suresh were called as Prosecution witnesses during the trial. The Court of Appeal has expressly declined to hold that the Prosecution should be required to disclose the statement of a material witness who is a Prosecution witness, leaving this open for determination on a future occasion (*Nabill* at [50]; *Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2022] 1 SLR 535 ("*Roshdi*") at [133]). As such, on the face of the decision in *Nabill*, the Prosecution cannot be said to have breached its disclosure obligations for failing to disclose Mogan's and Suresh's statements.

40 For completeness, the Court of Appeal held in *Nabill* and *Roshdi* that if a Prosecution witness had given a statement inconsistent with his testimony at the trial, the Prosecution would generally be required to disclose such a statement to the Defence as part of its *Kadar* obligations (*Nabill* at [54]; *Roshdi*

at [133]). I note here that the Court of Appeal in CCA 38 did address a similar argument by the Applicant in the context of the Prosecution's *Kadar* obligations:

> Third, the fact that the respondent did not tender Suresh's or Mogan's contemporaneous statements or statements made close to their arrest does not assist him. Section 259 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) provides that such witness statements are *prima facie* inadmissible. In any event, the respondent had considered its *Kadar* obligations and had served one of the statements made by Suresh on the appellant.

41 As can be seen, the Court of Appeal did consider the non-disclosure of Mogan's and Suresh's statements in CCA 38 and found that there were no breaches of the Prosecution's *Kadar* obligations. More importantly, the Court of Appeal took the view that the absence of Suresh's and Mogan's statements did not affect the Applicant's conviction in light of the other evidence against him. This in turn suggests that Suresh's and Mogan's undisclosed statements cannot be said to be so compelling to "show almost conclusively that there has been a miscarriage of justice in the criminal matter", thereby failing to satisfy s 394J(3)(*c*) of the CPC.

Non-disclosure of Shashi's statements

42 Shashi was not called as a Prosecution witness because he could not be located despite the Prosecution's reasonable efforts to do so. In my view, Shashi would be considered a "material witness" given Suresh's testimony that Shashi was within hearing distance when he was on the phone with the Applicant in the car. Shashi's evidence would have been relevant as it might have corroborated or contradicted Suresh's evidence in relation to the conversations between Suresh and the Applicant at the material time. Therefore, under *Nabill*,

the Prosecution should be required to disclose Shashi's statements to the Applicant.

43 However, it should be kept in mind that the Court of Appeal in *Roshdi* at [168] and [169] clarified that a breach of the Prosecution's additional disclosure obligations would not necessarily lead to the acquittal of the accused — it would depend on the facts of the case. In the context of a review application, it is worth stressing that the applicant must show that there is new evidence or there are new legal arguments that "almost conclusively show that there has been a miscarriage of justice" (s 394J(3)(*c*) of the CPC), in the sense that the earlier decision is "demonstrably wrong" (s 394J(5)(*a*) of the CPC). In the present context, the Applicant must satisfy the court that the non-disclosure of Shashi's statements will almost conclusively show that the earlier decision is wrong. In my view, this threshold has not been met.

44 First, the Judge below did consider the absence of Shashi's evidence at the trial but found that it did not affect the correctness of the Applicant's conviction. The Judge held at [78] of the GD that:

> 78 To round off, I should deal with the Defence's argument that the prosecution ought to have called Shashi as a witness, since he was in the car with Suresh at the material time and would have been privy to the conversations (at least from Suresh's end) between Suresh and "Appu bro". **While Shashi's evidence would have been relevant in that it would have either corroborated or contradicted Suresh's evidence**, I accepted that the Prosecution had taken reasonable steps to locate Shashi, including calling him on his mobile phone and sending him letters at his registered address. The mere fact that the Prosecution had not made attempts to call on him *in person* at his registered address did not undermine the Prosecution's case. **Moreover, I should stress that in finding that the accused was the user of the first number, I had relied not just on Suresh's evidence, but also on Mogan's evidence and the accused's own admission.**
>
> [emphasis in original; emphasis added in bold]

45 As can be noted above, the Judge expressly considered that Shashi's evidence could potentially contradict Suresh's evidence, but nevertheless took the view that the absence of Shashi's evidence did not affect the correctness of the Applicant's conviction, given that the remaining evidence was sufficient to ground his conviction.

46 Furthermore, the non-disclosure of Shashi's statements was raised before this court in CCA 38 by the Applicant's appellate counsel. Specifically, the Applicant's appellate counsel argued that:

> Suresh's position is that Shashi was with him in the evening of 6 September 2013. Shashi was allegedly in the car when the telephone calls between "Appu Bro" and Suresh … occurred. Shashi would therefore be in a position to corroborate Suresh's account of what was allegedly spoken between Suresh and "Appu Bro". However, the Prosecution failed to secure Shashi's attendance at the trial. **The Prosecution has failed to even seek to admit any of the statements given by Shashi to CNB upon and after Shashi's arrest in connection with the alleged conspiracy, which the Prosecution could do under s 32(1)(*j*)(ii) of the Evidence Act (Cap 97, 1996 Rev Ed).** The effect of this is that a crucial aspect of the Prosecution's case – Suresh's allegation [that the Applicant] was the user of the First Number and Second Number – stands or falls on Suresh's credibility.
>
> [emphasis added in bold].

47 Thus, it is clear that the Court of Appeal did specifically examine the non-disclosure of Shashi's statements but nonetheless dismissed the Applicant's appeal because it found that "there [was] objective evidence, as well as Mogan's evidence, linking the [Applicant] to the first number" to establish the Applicant's guilt beyond a reasonable doubt.

48 Therefore, in my view, the non-disclosure of Shashi's statements cannot be said to show that the Court of Appeal's decision in CCA 338 was "demonstrably wrong" under s 394J(5)(*a*) of the CPC.

Non-disclosure of Salina's statements

49 Salina was not called as a Prosecution witness because Salina had already left the jurisdiction by the time of the trial and could not be located. That having been said, I find that Salina was not a "material witness" and therefore, the Prosecution is not required to disclose Salina's statement to the Applicant under *Nabill.*

50 The Court of Appeal in *Nabill* defined a "material witness" as a witness who can be expected to confirm or, conversely, contradict an accused person's defence in material respects (at [4]). In the present case, the only potential relevance of Salina's testimony in relation to the Applicant's trial is the fact that she was in the passenger seat when Mogan received the call from "India" at 9.25pm on 6 September 2013.

51 However, her physical proximity to Mogan does not *ipso facto* render her a "material witness" in respect of the Applicant's trial. During the trial, the Applicant's defence counsel, Mr Ram Goswami, did cross-examine Mogan about Salina. However, the cross-examination did not reveal any evidence suggesting that Salina overheard the conversation between Mogan and "India", or that she had any knowledge of the Applicant's role (or lack thereof) in the trafficking of the Drugs.

52 Furthermore, the Applicant's conviction did not turn on the content of the conversation between Mogan and "India" at 9.25pm (which Salina may or may not have overheard). Mogan had eight other conversations with "India" between 11.50pm on 6 September 2013 and 2am on 7 September, all of which were supervised and overheard by CNB officers who testified at the trial. In my view, Salina's potential knowledge of the content of a single phone call between Mogan and "India" at 9.25pm on 6 September 2013 does not make her a witness

who can be expected to confirm or contradict the Applicant's defence in material respects, especially when there is no evidence that she was aware of the Applicant's identity, much less his role in the trafficking. Consequently, I find that Salina is not a material witness, and the Prosecution is not required to disclose her statements to the Applicant under *Nabill*.

53 For completeness, even if Salina can be considered a material witness under *Nabill*, as I have discussed at [43], the non-disclosure of her statements does not necessarily show that the earlier decision was "demonstrably wrong". Given that the Court of Appeal upheld the Applicant's conviction on the ground that "there [was] objective evidence, as well as Mogan's evidence, linking the [Applicant] to the first number", I am of the view that the non-disclosure of Salina's statements (regardless of whether they would corroborate or contradict the Applicant's defence) cannot be said to show that there is a powerful probability that the Applicant's conviction was wrong (s 394J(5)(*a*) read with s 394J(6)(*b*) of the CPC).

Non-disclosure of phone records

54 The Applicant also complains that the phone records for the first number and the second number (the "Phone Records") were not disclosed by the Prosecution. This was despite the fact that Inspector Ng Pei Xin ("Insp Ng") had obtained the subscriber records for those numbers.

55 The Applicant's argument on this point does not engage the Court of Appeal's holding in *Nabill* since the Prosecution's disclosure obligations under *Nabill* pertain to witness statements of material witnesses who are not called by the Prosecution. This means that the change in the law brought about by *Nabill* is not relevant to show that the appellate court's decision was demonstrably

wrong, thereby failing to satisfy the relevancy threshold under s 394J(3)(*c*) of the CPC (*Rahmat* at [28]).

56 In any event, as the Prosecution had rightly pointed out, Insp Ng testified that she did apply for the call records of the first number and the second number but by then (after interviewing the Applicant), it was too late and the call records were no longer available. As such, she was only able to obtain the subscriber details. Given that there are no call records for the first and second numbers to begin with, the Phone Records will, self-evidently, not constitute sufficient material to show a miscarriage of justice under s 394J(2) of the CPC.

Conclusion

57 Accordingly, I find that the Applicant has failed to show a legitimate basis for the court to review the concluded appeal in CCA 38. The application is therefore dismissed.

Steven Chong
Justice of the Court of Appeal

The applicant in person;
John Lu and Chong Kee En (Attorney-General's Chambers) for the respondent.