IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 174

Originating Application No 122 of 2023

Between

Kottakki Srinivas Patnaik

… *Applicant*

And

Attorney-General

… *Respondent*

GROUNDS OF DECISION

[Administrative Law — Remedies — Prohibition order]
[Administrative Law — Remedies — Quashing order]
[Administrative Law — Remedies — Declaration]
[Constitutional Law — Equal protection of the law]
[Constitutional Law — Attorney-General — Prosecutorial discretion]
[Constitutional Law — Judicial review]

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Introduction

1 The Applicant, Kottakki Srinivas Patnaik, faces criminal proceedings for charges set out in SC-906994-2022 ("Criminal Proceedings"). In Originating Application No 122 of 2023 ("OA 122"), the Applicant applied for:[1]

(a) permission to apply for a prohibiting order to prohibit the Attorney-General ("AG") from proceeding with the charges against the Applicant ("Prayer (a)");

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[1] Originating Application No 122 of 2023 filed on 10 February 2023 at para 2.

(b) permission to apply for a quashing order to prohibit the AG from proceeding with the charges against the Applicant ("Prayer (b)"); and

(c) a declaration that the charges against the Applicant were in breach of Art 35(8) of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") ("Prayer (c)").

2 After careful consideration of the parties' submissions, I dismissed OA 122 and provided my oral grounds of decision. The Applicant has appealed against the dismissal. I set out my full grounds of decision below.

Facts

Background to the dispute

3 The Applicant was a director and beneficial owner of Neptune Ship Management Pte Ltd ("Neptune").[2] Incorporated in Singapore, Neptune provided ship management and handling services.[3]

4 The Criminal Proceedings against the Applicant relate to his involvement as a bribe-giver in a private sector corruption scheme between 2011 and 2016 (the "Corruption Scheme"). The charges stated in SC-906994-2022 (the "Charges") include:[4]

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2 Affidavit of Muhd Nur Hidayat Bin Amir dated 28 March 2023 ("DPP's Affidavit") at para 6.

3 Affidavit of Kottakki Srinivas Patnaik dated 10 February 2023 ("Applicant's Affidavit") at para 6; DPP's Affidavit at para 6.

4 DPP's Affidavit at pp 12–17.

(a) five counts of corruptly giving gratification to one Harish Singhal ("Harish") under s 6(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"), read with s 124(4) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"); and

(b) one count of conspiring with Harish and three other individuals known to Harish, namely "Gaurav Gupta", "Dhiman Chodhaury" and "Sudhir Kumar Jain" (collectively, "Harish's Three Other Associates") to disguise the proceeds of Harish 's criminal conduct under s 47(l)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (Cap 65A, 2000 Rev Ed) ("CDSA"), punishable under s 47(6)(*a*) of the CDSA read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") and s 124(4) of the CPC.

5 The Applicant and the AG disputed the facts upon which the Charges are founded.

The AG's position on the facts

6 The AG's factual position was as follows. The Applicant caused Neptune to enter several ship handling and management services contracts (the "Contracts") with MODEC Offshore Production Systems (Singapore) Pte Ltd ("MOPS"), an oil and gas company incorporated in Singapore. At the material time, Harish was a Construction Manager at MOPS.[5]

7 Investigations by the Corrupt Practices Investigation Bureau ("CPIB") revealed that the Applicant had agreed to give kickbacks to Harish, in exchange

[5] DPP's Affidavit at paras 6–7.

for Harish securing MOPS's award of the Contracts to Neptune at an inflated price.[6]

8 The kickbacks were paid by the Applicant, through Neptune, to Harish. Harish received these moneys through companies controlled by him; his colleague at MOPS, namely one Gopinath Kuppusamy ("Gopinath"); and/or Harish's Three Other Associates. These companies are identified in the Charges as:

(a) Staghorn Marine Services, incorporated in Dubai ("Staghorn Marine Dubai");

(b) Staghorn Marine Services Pvt Ltd, incorporated in India; and

(c) Staghorn Marine Services Pte Ltd, incorporated in Singapore ("Staghorn Singapore").

Fictitious invoices were also issued to Neptune to disguise some of the bribes.[7]

9 From 2011 to 2016, the total amount of gratification given by the Applicant (in his capacity as a director of Neptune) to Harish was more than US$1m.[8]

10 The Public Prosecutor ("PP") also brought charges against Harish and Gopinath for their roles in the Corruption Scheme.[9] Additional charges have also been brought against Harish and Gopinath for their roles in a separate cheating scheme (the "Additional Charges"). This cheating scheme involved a

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6 DPP's Affidavit at para 7.

7 DPP's Affidavit at para 7.

8 DPP's Affidavit at para 7.

9 DPP's Affidavit at paras 10(a)(i), 10(a)(iii), 10(b)(i) and pp 19–23, 28, 30–32.

conspiracy to conceal Harish's interest in Staghorn Singapore from MOPS, in order to induce MOPS to make payments to Staghorn Singapore.[10] The Additional Charges do not involve the Applicant or Neptune. However, they do mention one Kuppusamy Parthiban ("Parthiban"), who was a nominee director and shareholder of Staghorn Singapore at the material time in relation to the Charges.[11]

11 As of the hearing of this case, no charges had been brought against Parthiban and Harish's Three Other Associates. The latter are based overseas and have been uncooperative with the CPIB.

The Applicant's position on the facts

12 The Applicant denied that he had given kickbacks to Harish.[12] He insisted that Harish had not received any moneys from himself or Neptune.[13]

The parties' case

13 Pursuant to O 24 r 5(3)(*a*) of the Rules of Court 2021 ("ROC 2021"), the Applicant filed a statement setting out, among other things, the relief he sought and the grounds on which it was sought (the "Applicant's Statement").[14] In the Applicant's Statement, he stated that the Charges brought against him were in breach of Arts 12(1) and 12(2) of the Constitution.[15] Additionally, the Charges were unlawful and irrational as the PP had "singled out [the Applicant]

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10 DPP's Affidavit at paras 10(a)(ii), 10(b)(ii) and pp 24–27, 33.

11 DPP's Affidavit at para 12.

12 Applicant's Affidavit at para 8.

13 Applicant's Affidavit at para 7.

14 Applicant's Statement dated 10 February 2023 ("Applicant's Statement").

15 Applicant's Statement at paras 27 and 28.

based on assumptions, without taking the evidence and having an assumptive causation."[16] The PP had hence acted unlawfully and/or irrationally and, consequently, was in breach of Art 35(8) of the Constitution.[17]

14 In the Applicant's Written Submissions, the Applicant also submitted that Art 12(1) of the Constitution had also been breached by the PP's selective investigation – *ie*, that other parties who were involved in the Corruption Scheme which founded the Charges had not been investigated.[18]

15 The AG submitted that the burden was on the Applicant to prove a *prima facie* case of reasonable suspicion, in line with the presumption of constitutionality afforded to executive actions: *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") at [44]–[47]; *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 ("*Ridzuan*") at [36].[19] As the Applicant was unable to establish a *prima facie* case that there was an abuse of power or a breach of Arts 12(1), 12(2), and/or 35(8), OA 122 should be dismissed.[20]

Issues to be determined

16 The Applicant's Prayers (a) and (b) for permission to apply for a prohibiting order and quashing order pursuant to O 24 r 5(1)(*b*) of the ROC 2021 were, in effect, applications for permission to commence judicial

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16 Applicant's Statement at para 26.

17 Applicant's Statement at para 29.

18 Applicant's Written Submissions dated 15 May 2023 ("Applicant's Written Submissions") at paras 3–6.

19 Defendant's Written Submissions dated 15 May 2023 at para 14.

20 Defendant's Written Submissions at para 4.

review. As such, the requirements that must be satisfied for the court to grant such permission guide the issues to be determined in OA 122.

17 These requirements were set out by the Court of Appeal in *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 ("*Gobi*") at [44] (referencing *Lee Pheng Lip Ian v Chen Fun Gee and others* [2020] 1 SLR 586 at [24] and *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223 at [85]) (the "Requirements"):

(a) the subject matter of the complaint has to be susceptible to judicial review;

(b) the applicant has to have a sufficient interest in the matter; and

(c) the materials before the court have to disclose an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant.

18 In the present case, the first two Requirements were not in dispute. Based on the Applicant's Statement, the key issue which arose in relation to Prayers (a) and (b) pertained to the third Requirement – *ie*, whether the materials before me disclosed an arguable or *prima facie* case of reasonable suspicion that the exercise of prosecutorial discretion to bring the Charges against the Applicant was:

(a) a breach of Arts 12(1) and 12(2) of the Constitution; and

(b) unlawful and/or irrational as it was not based on any conclusive proof.

19 In relation to (a), although the Applicant stated that there was a breach of both Arts 12(1) and 12(2) of the Constitution in the Applicant's Statement,

no written or oral submissions on the breach of Art 12(2) were presented by the Applicant. There was hence no submission for the AG to respond to in relation to a breach of Art 12(2) and no submissions were made by the AG. As the Applicant did not take up this issue, it was not necessary to consider whether there was a *prima facie* case of a breach of Art 12(2) of the Constitution.

20 In considering this third Requirement, it is useful to bear in mind, that as the Court of Appeal in *Ridzuan* held at [36], the burden is on the "person who challenges an executive decision based on an alleged breach of one or more of the fundamental liberties enshrined in the Constitution or based on other grounds of review established in administrative law". While the threshold of proof for an application for leave to commence judicial review is "a very low one of a *prima facie* case of reasonable suspicion … this does not mean that the evidence and arguments placed before the court can be either skimpy or vague and bare assertions will not suffice": *Gobi* at [54], referencing [44] therein.

21 Prayer (c) was an application for a *declaration* that the bringing of the Charges against the Applicant amounted to a breach of Art 35(8) of the Constitution. Order 24 rule 5(1) of the ROC 2021 provides that:

> **5.**—(1) An application for a Mandatory Order, Prohibiting Order or Quashing Order —
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> (a) may include an application for a declaration which is ancillary to or consequential upon the Order; but
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> (b) must not be made, unless permission to make the application for the Order has been granted.

In other words, the success of Prayer (c) was consequential upon the success of Prayers (a) and/or (b). This was emphasised in *Xu Yuan Chen v Attorney-General* [2022] 2 SLR 1131 ("*Xu Yuan Chen*"), where the court held at [21] that the appellant there "[could not] be *granted* the [d]eclaration under O 53 of the

ROC 2021 unless he first succeeds in obtaining leave to apply for the [p]rohibiting [o]rders".

22 In summary, the issues to be determined were:

(a) whether the materials before me disclosed an arguable or *prima facie* case of reasonable suspicion that the exercise of prosecutorial discretion to bring the Charges against the Applicant was:

(i) a breach of Art 12(1) of the Constitution;

(ii) unlawful and/or irrational as the Charges were not based on any conclusive evidence; and

(b) if so, whether there was a breach of Art 35(8) of the Constitution.

Issue 1: Whether there was a *prima facie* case that Art 12(1) had been breached

23 As a preliminary matter, the AG highlighted that pursuant to O 24 r 5(4) of the ROC 2021, the Applicant is bound by the grounds and relief set out in his statement and may not rely on any ground not set out in the statement unless the Court otherwise allows.[21] In this case, the Applicant had in his Written Submissions, relied on additional grounds that were not set out in the Applicant's Statement – *ie*, in relation to selective investigations constituting a breach of Art 12 (see [14] above). Consequently, the AG did not have the opportunity to respond to these grounds in his affidavit. Notwithstanding, the

[21] Defendant's Written Submissions dated 15 May 2023 ("Defendant's Written Submissions") at para 14.

AG responded to these grounds in his written submissions and during the hearing.[22] I will hence proceed to consider them.

The applicable law

24 Article 12(1) of the Constitution states that, "[a]ll persons are equal before the law and entitled to the equal protection of the law."

25 The Court of Appeal has provided extensive guidance on the consideration of applications for leave to commence judicial review for breach of Art 12(1). In *Xu Yuan Chen*, the Court of Appeal dismissed the appeal and upheld the High Court's dismissal of the appellant's application for leave to commence judicial review on the basis that the appellant had not shown a *prima facie* breach of Art 12(1). In dismissing the appeal, the Court of Appeal held at [1], citing *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 ("*Datchinamurthy*") at [29], that "the concept of equality under Art 12(1) does not mean that all persons are to be treated equally, but simply that all persons *in like situations* will be treated alike" [emphasis in original].

26 Additionally, the Court of Appeal in *Datchinamurthy* reiterated at [29] the two-step test that has been developed in our local jurisprudence to determine whether executive action breaches Art 12(1) (referencing *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 at [61]–[62]):

> (a) the applicant must first discharge his evidential burden of showing that he has been treated differently from other equally situated persons;

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22 Defendant's Written Submissions at paras 9 and 26; Notes of Evidence for the Hearing on 22 May 2023 ("Notes of Evidence") at p 2, line 27 to p 4, line 10.

(b) the evidential burden then shifts to the decision-maker in question to show that the differential treatment was reasonable, in that it was based on legitimate reasons which made the differential treatment proper.

27 In ascertaining whether persons are "equally situated", the Court of Appeal further held at [30] that:

> … the court [will] have regard to the nature of the executive action in question (see *Syed Suhail (CA)* at [63] and *Tan Seng Kee* at [327]) and consider whether, in that context, the persons being compared are so situated that it is reasonable to consider that they should be similarly treated. … the test is a factual one of whether a prudent person would objectively think the persons concerned are roughly equivalent or similarly situated in all material respects … Here, the notion of being equally situated is 'an analytical tool used to isolate the purported rationale for differential treatment, so that its legitimacy may then be assessed properly'…

28 Further guidance on the application of this test, in the context of applications for leave to commence judicial review on the ground of breach of Art 12(1) in criminal proceedings, is found in the Court of Appeal decisions in *Ridzuan* and *Syed Suhail*.

29 In *Ridzuan,* two people were convicted of the same charges for trafficking in drugs; however, only one was granted a certificate of substantive assistance. The appellant sought leave to commence judicial review proceedings against the Prosecution's decision not to grant him the same certificate, claiming that his Art 12 rights had consequently been breached. The Court of Appeal held at [51] that the applicant could satisfy his evidential burden by showing: (a) that his level of involvement in the offence and the consequent knowledge he had acquired of the drug syndicate he was dealing with was "practically identical to" that of the co-offender, and (b) that he and his co-offender had provided

"practically the same information" to the Central Narcotics Bureau – yet only the co-offender was given the certificate. This would constitute a *prima facie* case of reasonable suspicion of breach. Only then would the evidential burden shift to the Prosecution to justify its decision.

30 In *Syed Suhail*, the appellant filed an application for leave to commence judicial review to obtain a prohibiting order against the Singapore Prison Service to stay his execution. He alleged that he had been scheduled for execution ahead of other prisoners who had been sentenced to death before him and that this breached Art 12. The Court of Appeal considered that prisoners may *prima facie* be regarded as being equally situated once they have been denied clemency (at [64]). The Court also accepted as a rational baseline the State's position as to what equal treatment entailed – namely, that all else being equal, prisoners whose executions arose for scheduling should be executed in the order in which they were sentenced to death (at [72]). Another prisoner, Datchinamurthy, had been scheduled for execution later than the appellant, despite having been sentenced to death before the appellant (at [75]). It appeared that no differentiating factors were available to justify the differential treatment of the appellant and Datchinamurthy (at [76]). The Court found that the appellant had made out a *prima facie* case of reasonable suspicion, and granted leave to commence judicial review proceedings (at [77]).

The parties' submissions

31 The Applicant submitted that the Prosecution's bringing of the Charges against him constituted a breach of Art 12(1) as other parties that were involved in the Corruption Scheme upon which the Charges were founded were not investigated (*ie*, selective investigation).

32 The Applicant claimed that there were no payments from his bank accounts or from Neptune to Harish.[23] As such, payments to Harish could only have been made by Staghorn Singapore. Harish's interest in Staghorn Singapore was concealed to induce MOPS to make payments to Staghorn Singapore. This formed the basis of the Additional Charges against Harish and Gopinath. Yet, Parthiban, who was named in the Additional Charges (see [10] above), had not been investigated by the Prosecution.[24] Additionally, the Applicant submitted that there had been no investigation into, among other things, the relationship between Staghorn Singapore and MOPS, why Staghorn Singapore was able to influence MOPS to award contracts to Neptune, and the relationship between persons who represented MOPS in its entry into contracts with Neptune and Staghorn Singapore.[25] Further, the Applicant highlighted that Harish's Three Other Associates had not been investigated or prosecuted at the time of the hearing.[26]

33 In response, the AG submitted that the Applicant's submission that there had been a breach of Art 12(1) was a non-starter. The Applicant was the only bribe-giver in the Corruption Scheme.[27] In addition, Harish and Gopinath (who, amongst other things, conspired to accept the bribes), were charged according to the evidence and the applicable offences that could be made out on the evidence. The controlling minds in the Corruption Scheme which grounded the Charges had been charged.[28] Further, the Applicant had not identified any

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23 Applicant's Written Submissions at para 27.

24 Applicant's Written Submissions at para 3.

25 Applicant's Written Submissions at paras, 4, 12, and 14.

26 Applicant's Written Submissions at paras 18 and 25.

27 Defendant's Written Submissions at para 26.

28 Notes of Evidence at p 3.

possible equally situated person who had been treated differently or more favourably by the PP.[29]

34 In relation to Harish's Three Other Associates, the AG's evidence was that they were based overseas and were uncooperative with the CPIB.[30] In investigating and deciding whether to prosecute Harish's Three Other Associates, the Prosecution considered the difficulties in investigation, prosecution, and enforcement against them. As for Parthiban, the AG submitted that the Prosecution would be taking into account the evidence of Parthiban's level of involvement and knowledge in the corruption dealings and other relevant factors and would assess what action to take after the criminal proceedings against the Applicant, Harish, and Gopinath are concluded.[31]

Decision

35 During the hearing, counsel for the Applicant was invited to respond to the guidance provided in *Xu Yuan Chen*, *Datchinamurthy*, *Ridzuan*, and *Syed Suhail* (the "Four CA Decisions"). Counsel responded that if two people could be charged for the same offences arising out of the same facts, they would be equally situated. When counsel for the Applicant was further asked if he had a specific response to the Four CA Decisions, he replied that this was an axiom that he had come up with as to what would be equally situated.[32]

36 This axiom did not accurately reflect nor engage the holdings in the Four CA Decisions. Even if I assumed that the axiom was correct, it also did not

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29 Defendant's Written Submissions at para 26.

30 DPP's Affidavit at para 12.

31 DPP's Affidavit at para 12.

32 Notes of Evidence at p 2.

assist the Applicant. The Prosecution's position was that the Applicant was the sole bribe-giver, and the other parties in the scheme were intermediaries or recipients of the bribe. The PCA charges against the Applicant were consequently in relation to s 6(*b*) of the PCA for giving gratification. On the other hand, the PCA charges against Harish and Gopinath are in relation to s 6(*a*) of the PCA for receiving gratification. The Applicant did not present any materials which showed a *prima facie* case, beyond a bare assertion, that he was not the sole bribe-giver, and that there are others who should be similarly charged because they are equally situated.

37 In any event, and more fundamentally, as stated above, the axiom characterised by counsel for the Applicant did not accurately reflect the law and guidance set out by the Court of Appeal in the Four CA Decisions. Nor did it explain why a different position from what the Court of Appeal has consistently held, should be taken.

38 As was held in *Datchinamurthy* at [30], the "test is a factual one of whether a prudent person would objectively think the persons concerned are roughly equivalent or similarly situated in all material respects". In the present case, the Prosecution's position was that the Applicant was the sole bribe-giver in the alleged Corruption Scheme and there was no other person who had agreed to pay and/or paid the kickbacks. The Prosecution had also brought charges against Harish and Gopinath; however, this was for their roles in, amongst other things, conspiring to accept the bribes from the Applicant.

39 In *Ridzuan*, the Court of Appeal at [51] went beyond the similarity of charges to examine whether one offender's level of involvement in the offence and the consequent knowledge he acquired of the drug syndicate he was dealing with, was "practically identical" to a co-offender's level of involvement. Here,

the Applicant had not shown that there was someone else who was in a "like situation" as him, whose involvement was "practically identical" as him, in the vein of the analysis in *Ridzuan*, and was not charged despite also being a bribe-giver. Applying the test as set out in *Datchinamurthy*, I found that a prudent person would be of the view that there were no other persons in this case who were similarly situated to the Applicant.

40 At the hearing, the Applicant emphasised that the lack of investigation into and prosecution of Staghorn Singapore and/or Parthiban constituted a breach of Art 12(1). However, neither were in a like situation as the Applicant. They were intermediary parties between Neptune and Harish in the alleged scheme and not bribe-givers like the Applicant. Additionally, Neptune was the party that was awarded the contracts by MOPS at the inflated prices. The Applicant did not show how Parthiban or Staghorn Singapore was related to or involved with Neptune, in the way the Applicant was.

41 Harish's Three Other Associates were also not in a like situation as the Applicant. They were intermediaries with control of the companies to which the kickbacks were paid before reaching Harish. As such, they could not be said to have been in a "like situation" as the Applicant nor was their involvement "practically identical". Relatedly, the Court of Appeal in *Xu Yuan Chen* at [39] has recognised the Prosecution's consideration of the difficulty in investigation, prosecution, and enforcement as a potential differentiating factor between two accused persons' situations.

42 The Applicant briefly mentioned that a contract manager at MOPS who awarded the contracts was not investigated.[33] However, the Applicant did not

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[33] Applicant's Written Submissions at para 17.

provide any evidence of the contract manager's role or explain how he was involved in the Scheme. In any event, on its face, being a staff of MOPS, the contract manager would have been involved, if at all, as a recipient of the bribe(s), not as a bribe-giver. He would hence also not be in a like situation as the Applicant.

43 The Applicant also mentioned that one Sudeep Shome ("Shome"), who was one of the signatories from Neptune, had not been investigated.[34] However, the Applicant did not explain how Shome was involved in the Corruption Scheme. The Applicant had adduced a series of documents including work order forms from MOPS, a statement of final account from MOPS, and a Marine Services Agreement between Neptune and Staghorn Singapore.[35] However, these documents contained the Applicant's position (*ie*, Managing Director) and what appeared to be the Applicant's signature, as opposed to Shome's. In other words, there was no evidence adduced of Shome's involvement in the Corruption Scheme. Further, the Applicant did not make any oral submissions at the hearing that might explain how Shome was in a like situation as the Applicant such that the failure to investigate or prosecute Shome would constitute a breach of Art 12(1).

44 It is worth reiterating that the Court of Appeal has held in *Ramalingam* at [53] that it is not necessarily in the public interest that every offender must be prosecuted:

> … Offences are committed by all kinds of people in all kinds of circumstances. It is not the policy of the law under our legal system that all offenders must be prosecuted, regardless of the circumstances in which they have committed offences. Furthermore, not all offences are provable in a court of law. It

34 Applicant's Written Submissions at para 3.

35 Applicant's Affidavit at pp 6–49.

> is not necessarily in the public interest that every offender must be prosecuted, or that an offender must be prosecuted for the most serious possible offence available in the statute book. … The Attorney-General's final decision will be constrained by what the public interest requires.

45 The case of *Quek Hock Lye v Public Prosecutor* [2012] 2 SLR 1012 provided another useful reference point. This case was summarised in *Xu Yuan Chen* at [29]:

> In *Quek Hock Lye* at [24], [the Court of Appeal] held that even divergent consequences faced by accused persons in the same criminal enterprise, flowing from their respective charges, were 'not *per se* sufficient to found a successful Art 12(1) challenge', as the question was whether the Prosecution's charging decision was made for 'legitimate reasons'. The court held that the appellant had not discharged his burden of establishing a *prima facie* case of breach of Art 12(1), and observed that in any event, the appellant was 'the main culprit' behind the criminal enterprise and his co-conspirator's willingness to testify was 'a relevant consideration which could have operated on the mind of the Public Prosecutor in preferring separate charges' against them (*Quek Hock Lye* at [25]).

46 In this case, while various parties were involved in the same criminal enterprise, the Applicant was the sole bribe-giver in the alleged scheme. This was a relevant consideration for the Prosecution in deciding to proceed against the Applicant or against him first, and not some of the others in the scheme.

47 Although the threshold for leave to commence judicial review is a very low one, of a *prima facie* case of reasonable suspicion, the Applicant had not shown that there was someone who was in a "like situation" who was treated more favourably by the Prosecution. Consequently, I found that the Applicant had not shown that there was a *prima face* case of reasonable suspicion that the exercise of prosecutorial discretion against him was in breach of Art 12(1).

Issue 2: Whether there was a *prima facie* case of reasonable suspicion that the Charges were unlawful and/or irrational because they have not been proved beyond reasonable doubt

48 The other plank of the Applicant's case was that there was a *prima facie* case of reasonable suspicion that the Charges were unlawful and/or irrational. The Applicant claims that the exercise of prosecutorial discretion against him was biased and unfair as the Charges were not based on any conclusive proof and that the Prosecution had not proven the charges against him beyond reasonable doubt.

49 The Applicant stated that the charges framed against him are factually incorrect. In particular, the Applicant claimed that there was no evidence that he had given bribes to Harish – he was not the bribe-giver – and maintained that Harish had not received any moneys from him or Neptune. The Applicant submitted that there was no objective evidence or documentary proof of the alleged Corruption Scheme and kickbacks to Harish.[36] In support of his claims, the Applicant highlighted that there were no work reports listing Harish as a recipient. The AG was put to strict proof of payments from him to Harish.[37] The Applicant posited that he was a whistle-blower who exposed the corruption within MOPS, and the Prosecution in bringing the Charges against him was penalising him for being a whistle-blower.[38]

50 The Applicant also submitted that evidence of the Charges must be proven beyond a reasonable doubt before the Charges could be brought against him. This standard was not met.[39] In particular, the Applicant submitted that

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36 Applicant's Written Submissions at paras 7–8 and 10.

37 Applicant's Statement at para 20.

38 Applicant's Affidavit at paras 7 and 12.

39 Applicant's Written Submissions at paras 20.

Harish' Three Other Associates being uncooperative with the CPIB's investigations implied that there was no proof of conspiracy, as set out in the Charges.[40] Hence, the exercise of prosecutorial discretion was biased and unfair as the Charges were not based on any conclusive proof.

51 In response, the AG submitted that there was no obligation on the Prosecution to adduce all the evidence to prove the underlying Charges in this application. This was particularly so as the Applicant had not adduced any evidence to displace the presumption of constitutionality or discharge his burden of proof of showing a *prima facie* case of reasonable suspicion of abuse of process or breach of constitutional rights.[41]

52 Further, the AG submitted that the Applicant had not identified how the Prosecution was acting in abuse of power.[42] Even if the Applicant was a whistle-blower, it would be lawful and proper for the Applicant to be tried on the Charges and found guilty if the Charges were proven. At most, any assistance that the Applicant may give as a whistle-blower could perhaps be relevant to sentencing, but that was separate from the decision to prosecute the Applicant.[43]

53 The AG further submitted that the Prosecution had not acted improperly.[44] The Prosecution had explained that all decisions were taken based on the evidence and considerations of public interest. There was nothing improper in the Prosecution proceeding with the Charges against the Applicant even though the Prosecution was unable to and/or had at this stage decided not

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40 Applicant's Written Submissions at para 26.

41 Defendant's Written Submissions at para 19.

42 Defendant's Written Submissions at para 20.

43 Defendant's Written Submissions at para 20(a).

44 Defendant's Written Submissions at para 20(b).

to also proceed with charges against other persons involved in or related to the Corruption Scheme, such as, Harish's Three Other Associates and/or Parthiban. This did not constitute any abuse of power.

54 Additionally, although the DPP's affidavit stated that Harish's Three Other Associates had been "uncooperative with the CPIB", that did not mean that the Prosecution would clearly be unable to discharge its burden of proof at trial. It was open for the Prosecution to rely on other evidence to prove the Charges.[45]

Decision

55 It is trite law that the Prosecution is not obliged to prove the Charges beyond reasonable doubt at this stage of the Criminal Proceedings. Importantly, the forum where the discharge of the Prosecution's burden of proof is to take place, is at the criminal trial. If the Applicant wishes to challenge the evidence against him, he will have the right and opportunity to do so in the criminal proceedings.

56 Additionally, as held by the Court of Appeal in *Ramalingam* at [74], the AG is not under any general obligation to disclose his reasons for making a particular prosecutorial decision. More fundamentally, the court should presume that the AG's prosecutorial decisions are constitutional or lawful until they are shown to be otherwise: *Ramalingam* at [44]. The Applicant had not shown otherwise here.

57 For completeness, the Applicant had not identified an improper purpose that the Prosecution was acting on by bringing the Charges. Additionally, even

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[45] Defendant's Written Submissions at para 20(b).

if the Applicant was a whistle-blower, that fact may go towards sentencing, but it did not preclude the Prosecution from proceeding with the Charges.

Issue 3: Whether the bringing of the Charges constituted a breach of Art 35(8) of the Constitution

58 The Applicant submitted that, as the bringing of the Charges constituted a breach of his rights under Art 12(1) and were irrational and/or unlawful, the AG breached Art 35(8) of the Constitution and thus the applicant sought a declaration of such.[46]

59 Article 35(8) of the Constitution states that "[t]he Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence."

60 In response, the AG submitted that the Applicant's submission was entirely premised on a breach of Art 12(1) and/or the alleged insufficiency of the evidence in respect of the Charges. As Art 12(1) had not been breached, and the sufficiency of evidence underpinning a prosecutorial decision was not a matter for judicial review in the absence of any abuse of power or breach of constitutional rights, it was clear that the Applicant also had no case on the basis of Art 35(8).

61 Indeed, the Applicant's case that Art 35(8) was breached was predicated on a breach of Art 12(1) and/or the Charges being brought against him despite lack of proof beyond reasonable doubt. Given my findings above in relation to Issues 1 and 2, I found that there was no basis to the Applicant's case that there was a breach of Art 35(8). Moreover, in the same vein as held in *Xu Yuan Chen*

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[46] Applicant's Written Submissions at para 4; Applicant's Affidavit at para 13; Applicant's Statement at para 29.

at [21], since permission had not been granted here for the Applicant to apply for the prohibiting and quashing orders, the Applicant's prayer for the declaration also fell away, *per* O 24 r 5(1)(*b*) of the ROC 2021.

Conclusion

62 For the reasons above, I dismissed OA 122. The daily tariff for judicial review applications under Appendix G are in the range of $14,000–$35,000. The AG asked for costs at $6,000 all-in, inclusive of disbursements of more than $800, while the Applicant submitted for $5,000 all-in. Taking into account that the work done includes the filing of an affidavit, and both written *and* oral submissions, costs were awarded to the AG in the sum of $5,500 all-in.

Kwek Mean Luck
Judge of the High Court

Lim Tean (Carson Law Chambers) for the applicant;
Gan Yingtian Andrea and Zhicong Lee (Attorney-General's Chambers) for the respondent.