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

**[2023] SGHC 296**

Magistrate's Appeal No 9112 of 2023

Between

Kandasamy Senapathi

… *Appellant*

And

Public Prosecutor

… *Respondent*

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# *EX TEMPORE* JUDGMENT

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[Criminal Law — Appeal]
[Criminal Law — Offences — Property — Criminal breach of trust]
[Criminal Law — Statutory offences — Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed)]
[Criminal Procedure and Sentencing — Sentencing — Principles]

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# Kandasamy Senapathi
# v
# Public Prosecutor

**[2023] SGHC 296**

General Division of the High Court — Magistrate's Appeal No 9112 of 2023
Vincent Hoong J
17 October 2023

17 October 2023

**Vincent Hoong J:**

## Introduction

1 Mr Kandasamy Senapathi (the "Appellant") was employed by the Hindu Endowments Board ("HEB") as a priest of the Sri Mariamman Temple (the "Temple") from 20 December 2013 to 30 March 2020. Between 2016 and 2020, the Appellant committed various offences of criminal breach of trust relating to the pawning of pieces of gold jewellery belonging to the Temple. He also transferred part of the pawn proceeds out of jurisdiction.

2 The Appellant pleaded guilty to and was convicted on the following four charges:

(a) two amalgamated charges of criminal breach of trust under s 408 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") read with ss 124(2) and 124(8)(*a*)(i) of the Criminal Procedure Code (Cap 68,

2012 Rev Ed) ("CPC") involving sums of $1,539,950 and $399,750 (the "CBT Charges"); and

(b) two amalgamated charges of removing benefits of criminal conduct from jurisdiction under s 47(1)(*b*) and punishable under s 47(6)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA") read with s 124(2) of the CPC involving sums of $54,803.86 and $54,392.45 (the "CDSA Charges").

3 The Appellant also consented to six other charges to be taken into consideration for the purposes of sentencing. These comprised three amalgamated charges of criminal breach of trust under s 408 of the Penal Code read with s 124(2) of the CPC, and three amalgamated charges of removing benefits of criminal conduct from jurisdiction under s 47(1)(*b*) and punishable under s 47(6)(*a*) of the CDSA read with s 124(2) of the CPC.

4 The District Judge (the "DJ") imposed individual sentences of five years' imprisonment and four years' imprisonment for the two CBT Charges, and 12 months' imprisonment for each of the two CDSA Charges. The DJ ordered for two of the individual sentences to run consecutively, thereby leading to a total sentence of five years' and 12 months' imprisonment. The DJ's grounds of decision are set out in *Public Prosecutor v Kandasamy Senapathi* [2023] SGDC 122 (the "DJ's GD").

5 The Appellant is dissatisfied with the sentences imposed by the DJ and has filed an appeal against the sentences imposed.



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6 I begin by summarising the salient facts to which the Appellant pleaded guilty in the court below.

**Facts**

7 The Appellant first served in the Temple as the former Chief Priest's second-in-charge.[1] Sometime in July 2018, the Appellant was promoted to Chief Priest of the Temple.[2] In the course of his duties, the Appellant was entrusted by the Temple's management with the keys and combination number code to the Temple's safe which contained 225 pieces of gold jewellery which were meant to adorn the Hindu deities during special prayers or events.[3] Since 2014, the Appellant was the only individual who had access to the keys and combination number code to the safe.[4]

8 Between 2016 and 2020, the Appellant pawned a total of 66 distinct pieces of the Temple's gold jewellery at various pawnshops on 172 occasions.[5] The Appellant's scheme involved him "rolling" the pieces of jewellery which he pawned, *ie*, he would pawn a piece of jewellery, receive the pawn proceeds, and then return on another day to redeem the first piece of jewellery using a second piece of jewellery.[6]

9 The Appellant's conduct went undetected prior to 2020 as the Appellant was able to borrow sufficient money to redeem all the pieces of jewellery which

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1 Record of Appeal ("ROA") at p 16: Statement of Facts ("SOF") at para 1.

2 ROA at p 16: SOF at para 1.

3 ROA at p 16: SOF at para 2.

4 ROA at p 16: SOF at para 3.

5 ROA at p 17: SOF at para 7.

6 ROA at p 17: SOF at para 7.



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were pawned whenever he learnt of a scheduled audit. Once the audit was completed, the Appellant would then pawn the Temple's jewellery again to repay the money which he had borrowed.[7]

10 By engaging in the conduct described above, the Appellant obtained pawn proceeds totalling $2,328,760.[8] The Appellant would then deposit a portion of this sum into his bank account and remit it to Indian bank accounts. A total sum of $141,054.90 was remitted by the Appellant out of jurisdiction.[9]

11 In July 2020, the Appellant's offences came to light when a routine audit, which was delayed due to the COVID-19 pandemic, was scheduled.[10] The Appellant initially tried to avoid detection of his offences by informing a member of the finance team of the Temple that he did not have the key to the safe as he had left it in India.[11] However, when the Appellant was told that the audit had to be conducted and that the safe may have to be broken for its contents to be audited, the Appellant confessed to pawning the Temple's jewellery.[12] At the time of his confession, the Appellant had pawned 17 pieces of gold jewellery belonging to the Temple. He subsequently borrowed about $521,000 from friends to redeem the 17 pieces of gold jewellery and returned them to the Temple.[13] As all the pieces of gold jewellery had been returned to the Temple,

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[7] ROA at p 18: SOF at para 8.

[8] ROA at p 18: SOF at para 9.

[9] ROA at p 18: SOF at para 9.

[10] ROA at pp 16 to 17: SOF at paras 4 to 5.

[11] ROA at pp 16 to 17: SOF at para 4.

[12] ROA at p 17: SOF at para 5.

[13] ROA at p 17: SOF at para 6.



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the Temple suffered no loss. Notably, however, the sum of $141,054.90 which was remitted by the Appellant out of jurisdiction was not recovered.

**The DJ's decision on sentence**

12 In relation to the CBT Charges, the DJ imposed a sentence of five years' imprisonment for the charge involving a sum of $1,539,950 and a sentence of four years' imprisonment for the charge involving a sum of $399,750. In determining the sentences for the CBT Charges, the DJ considered the following:

> (a) First, the DJ considered the amount misappropriated as a key indicator of the harm perpetrated and the culpability of the offender in offences of criminal breach of trust.[14] In the present case, the amount misappropriated, being the total pawn proceeds obtained by the Appellant from pawning the Temple's gold jewellery, was $2,328,760.[15] Based on the precedents, sentences in the range of five years' imprisonment were imposed for cases involving misappropriation of between $67,000 and $1.5 million.[16] Therefore, the DJ found that the preliminary sentence for the charge involving a sum of $1,539,950 was five years' imprisonment, while the preliminary sentence for the charge involving a sum of $399,750 was four years' imprisonment.[17]

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[14] ROA at pp 95 to 96: DJ's GD at [31], citing *Public Prosecutor v Ewe Pang Kooi* [2019] SGHC 166 at [9].

[15] ROA at p 96: DJ's GD at [32].

[16] ROA at pp 96 to 98: DJ's GD at [33].

[17] ROA at p 98: DJ's GD at [34].



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(b) The DJ next considered the aggravating factors. In particular, the DJ considered that the Appellant's culpability was high given the high degree of trust reposed in him as the Chief Priest.[18] Further, the misconduct led to the loss of trust and confidence in the Temple's management and the HEB.[19] The Appellant also abused the trust placed in him over four years, and only ceased offending when he was unable to prevent his criminal acts from being exposed by the 2020 audit.[20] Further, the Appellant showed premeditation and a high degree of planning as he took steps to cover his tracks during prior annual audits by redeeming and returning all the jewellery beforehand.[21] Lastly, the Appellant obtained a large amount of pawn proceeds, *ie*, $2,328,760.[22] These aggravating factors warranted an uplift of one year's imprisonment for each of the two CBT Charges.[23]

(c) The DJ then considered the mitigating factors. In particular, he noted that the Appellant had made full restitution, by way of redeeming the remaining 17 pieces of gold jewellery and returning them to the Temple. This was done by the Appellant before the Temple lodged a police report, thereby indicating genuine remorse. Further, no loss was caused to the Temple. These mitigating factors, therefore, warranted a

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18 ROA at p 98: DJ's GD at [35].

19 ROA at p 98: DJ's GD at [35].

20 ROA at pp 98 to 99: DJ's GD at [36].

21 ROA at pp 98 to 99: DJ's GD at [36].

22 ROA at p 99: DJ's GD at [37].

23 ROA at p 99: DJ's GD at [38].



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reduction of one year's imprisonment for each of the two CBT Charges.[24]

13 In relation to the CDSA Charges, the DJ imposed a sentence of 12 months' imprisonment for each charge. In determining the sentences for the CDSA Charges, the DJ considered the following:

(a) First, the DJ considered the offence-specific harm and culpability factors set out in *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 ("*Huang Ying-Chun*"). The DJ recognised that the offence which arose for consideration in *Huang Ying-Chun* and for which a sentencing framework was devised was an offence under s 44(1)(*a*) of the CDSA. Even though the CDSA Charges in the present case related to offences under s 47(1)(*b*) of the CDSA, the DJ found that the offence-specific harm and culpability factors were relevant.[25] The DJ found that the following offence-specific factors were present on the facts:

(i) In relation to the factors going towards harm: (A) there was a transnational element given the transfer of the criminal proceeds out of jurisdiction; and (B) there was a loss of public confidence in the Temple and HEB as a result of the Appellant's offences.[26]

(ii) In relation to the factors going towards culpability: (A) the duration of offending was a sustained period of four

24 ROA at p 99: DJ's GD at [39].

25 ROA at p 100: DJ's GD at [41].

26 ROA at p 101: DJ's GD at [43].



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years; (B) the Appellant had abused his position as Chief Priest, which gave him unrestricted access and total control over the jewellery; (C) the Appellant committed a serious abuse of trust by pawning the jewellery and remitting some of the proceeds to India; (D) the Appellant was the sole actor and committed the predicate criminal breach of trust offences; and (E) the Appellant's offending conduct only ceased because he was no longer able to conceal his misdeeds as a result of the scheduled audit in 2020.[27]

(b) Second, the DJ considered the case precedents cited by the parties to conclude that sentences of 12 months' imprisonment were given for CDSA offences involving amounts of $47,651 and $65,116.10. This involved, *inter alia*, a consideration of an unreported precedent cited by the Prosecution, *Public Prosecutor v Ariel Biasong Salamanes* (DAC-928060-2018 and others).[28]

14 The DJ ordered the following individual sentences to run consecutively: the sentence of five years' imprisonment imposed in respect to the CBT Charge involving a sum of $1,539,950 and the sentence of 12 months' imprisonment for one of the CDSA Charges. This, therefore, resulted in an aggregate sentence of five years' and 12 months' imprisonment.[29]

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27 ROA at p 101: DJ's GD at [44].

28 ROA at p 101: DJ's GD at [45].

29 ROA at p 102: DJ's GD at [48].



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**The Appellant's arguments on appeal**

15 I begin by highlighting that the Appellant had initially filed a Petition of Appeal ("POA") and written submissions when he was not represented. Thereafter, the Appellant appointed Mr Divanan s/o V Narkunan ("Mr Divanan") to assist him in this appeal. Soon after Mr Divanan was appointed, the Appellant filed Criminal Motion No 68 of 2023 ("CM 68"), where the Appellant sought permission to amend his POA to include 11 additional grounds to support his appeal against sentence. While the Prosecution initially did not consent to the Appellant being granted permission to introduce additional grounds of appeal, the Prosecution ultimately consented for CM 68 to be dealt with by consent pursuant to s 408A(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) based on a shortened list of six additional grounds of appeal. Given the parties' agreement on the six additional grounds of appeal, on 5 October 2023, I allowed the Appellant to amend his POA to include the six additional grounds of appeal.

16 The Appellant now makes the following arguments in his appeal against sentence:

(a) First, the Appellant argues that the sentences imposed in relation to the CBT Charges are manifestly excessive and ought to be reduced to 4.5 years' imprisonment and 3.5 years' imprisonment respectively. The Appellant makes three points in support of this argument:[30]

(i) The DJ erred by focusing only on the misappropriated sum as particularised in the CBT Charges, without having regard

[30] Appellant's Submissions dated 6 October 2023 ("Appellant's 6 October Submissions") at para 10.



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to the amounts reflected in the CDSA Charges which showed that the benefits actually obtained by the Appellant was a mere faction of the total pawn proceeds.[31]

(ii) The aggravating factors in the present ought not to have contributed to an uplift of one year's imprisonment for each of the two CBT Charges.[32]

(iii) The DJ erred by placing excessive reliance on unreported precedents.[33]

(b) Second, the Appellant argues that the sentences imposed in relation to the CDSA Charges are wrong in principle and are manifestly excessive. He submits that a sentence of seven to eight months' imprisonment ought to have been imposed for each of the two CDSA Charges. The Appellant makes the following points in support of this argument:

(i) The DJ erred in relying on the sentencing framework set out in *Huang Ying-Chun* which was devised for offences falling under a different provision of the CDSA.[34]

(ii) The DJ erred in placing undue weight on unreported precedents.[35]

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31 Appellant's 6 October Submissions at paras 11 to 23.

32 Appellant's 6 October Submissions at paras 24 to 26.

33 Appellant's 6 October Submissions at paras 27 to 29.

34 Appellant's 6 October Submissions at paras 36 to 39.

35 Appellant's 6 October Submissions at paras 40 to 44.



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(iii) The DJ erred by failing to consider and apply the sentencing ranges laid down in *Public Prosecutor v Ho Man Yuk* [2017] SGDC 23 ("*Ho Man Yuk*") for offences under s 47(1)(*b*) and punishable under s 47(6)(*a*) of the CDSA.[36]

## My decision

### *Whether the appeal against sentence in relation to the CBT Charges ought to be allowed*

17 Having considered the Appellant's arguments as well as the Prosecution's submissions, I am of the view that the individual sentences imposed in relation to the CBT Charges cannot be said to be manifestly excessive. Let me briefly explain.

#### *Whether the DJ erred in considering the amounts misappropriated as reflected in the CBT Charges*

18 First, I am unable to agree with the Appellant's argument that the DJ erred by focusing only on the misappropriated sums as particularised in the CBT Charges and without having regard for the amounts encapsulated in the CDSA Charges which showed the benefits actually obtained by the Appellant.

19 As the DJ had correctly recognised,[37] in property offences such as criminal breach of trust, the amount misappropriated is a key indicator of the harm perpetrated and the culpability of the offender: see *Public Prosecutor v Ewe Pang Kooi* [2019] SGHC 166 at [9] and *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [18]. Therefore, the DJ was correct to have

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[36] Appellant's 6 October Submissions at paras 46 to 48.

[37] ROA at pp 95 to 96: DJ's GD at [31].



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considered the amount misappropriated in determining the preliminary sentences to be imposed for the CBT Charges.

20 The Appellant argues that DJ erred in considering the pawn proceeds obtained by the Appellant by pawning the pieces of gold jewellery belonging to the Temple (*ie*, the sums of $1,539,950 and $399,750). While he accepts that he had received these sums as pawn proceeds, he points to the "unique fact pattern"[38] in the present case where the Appellant was "rolling" the pieces of jewellery which he pawned (see [8] above). Given his modus operandi, the Appellant states that most of the pawn proceeds were, in fact, used by him to pay off the principal sums as well as the interest which he owed to the respective pawnshops when he sought to redeem the pawned items. Therefore, he states that his only real benefits were the sums totalling $141,054.90 as reflected in the CDSA Charges.[39]

21 I am unable to agree with this argument. When the Appellant pawned the pieces of gold jewellery, he received the pawn proceeds as reflected in the CBT Charges. These pawn proceeds represented the value of the pieces of gold jewellery which the Appellant had misappropriated. How the Appellant chose to use the pawn proceeds *subsequently* is irrelevant to determining the sum misappropriated in each of the CBT Charges.

22 In asking this Court to focus only on the fact that the Appellant was ultimately able to remit just the sum of $141,054.90 out of jurisdiction, the Appellant seeks to minimise the extent of his criminal conduct. While the

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38 Appellant's 6 October Submissions at para 12.

39 Appellant's 6 October Submissions at paras 18 to 19.



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Appellant may not have been able to transfer the pawn proceeds in full out of jurisdiction, this was because he had instead used the pawn proceeds to pay off the amounts owed to the pawnshops in order to redeem the pieces of gold jewellery belonging to the Temple, and to continue his scheme of "rolling" the pieces of gold jewellery undetected. It was always open to the Appellant to redeem the pieces of gold jewellery from the pawnshops at his own expense and cease his offending conduct. Instead, he perpetrated a scheme where he could repeatedly pawn pieces of gold jewellery belonging to the Temple and cover the amounts owed to the pawnshops by using the pawn proceeds obtained. Here, it is also important to remember that the sums which he owed to the pawnshops were a result of his own unlawful conduct of pawning items which had been misappropriated. In my view, therefore, the Appellant cannot now point to his use of a portion of the pawn proceeds to continue his offending conduct and avoid detection to argue that the sums misappropriated were lower. This is simply a disingenuous argument.

23 More significantly, as the Prosecution highlights, it is clear from the proceedings in the court below that the Appellant never particularised how much of the pawn proceeds were actually used to redeem the pieces of gold jewellery which he had pawned and to pay the sums which he owed to the pawnshops.[40] In the absence of such particularisation, the Appellant's assertion is a bare one and cannot be accepted by this Court.

24 Given the above, the DJ was correct to focus on the amounts misappropriated as reflected in the CBT Charges to arrive at the preliminary sentences to be imposed on the CBT Charges.

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[40] Respondent's Supplementary Submissions dated 11 October 2023 ("Respondent's Supplementary Submissions") at para 9.



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*Whether the DJ erred in his treatment of the aggravating factors and mitigating factors*

25 Second, I am unable to agree with the Appellant that the DJ erred in his treatment of the aggravating factors and mitigating factors.

26 The Appellant submits that his offences involved a low level of planning and were unsophisticated, that no special means was employed by him in pawning the pieces of gold jewellery and that his offences were not complicated.[41] I do not agree with this characterisation of the Appellant's offences. It is clear from the Statement of Facts that the Appellant's offences were carefully designed so as to allow him access to immediate funds as and when he required. The Appellant gained access to such funds by pawning the pieces of gold jewellery to which he had unfettered access because of his position in the Temple. Further, the Appellant even took active steps to avoid detection. From 2016 to 2019, the Appellant would borrow money to redeem and return the pawned pieces of jewellery on each occasion when he learnt that an audit was scheduled.[42] The Appellant's scheme was thus carefully planned to avoid detection. The DJ, therefore, did not err in finding that that there was a high degree of planning and premeditation.

27 The Appellant submits that the DJ erred in considering that there was a high degree of trust reposed in the Appellant. According to the Appellant, such degree of trust reposed was already reflected in the charges of criminal breach of trust *by a servant*, being more serious offences than criminal breach of trust

[41] Appellant's 6 October Submissions at para 25.

[42] ROA at p 18: SOF at para 8.



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*simpliciter*.[43] In my view, the Appellant's argument fails to account for the fact that there was a special responsibility and degree of trust reposed in the Appellant in the present case. The Appellant was initially the Chief Priest's second-in-charge, and later, the Chief Priest. By virtue of his position, he was the *only* employee entrusted with the keys and combination number code to the safe in the Temple. As the Prosecution correctly highlights, it is trite that the quality and degree of trust reposed in an offender in such offences is a factor relevant to determining the appropriate sentence.[44] In my view, the DJ did not err in any way in finding that there was a high degree of trust reposed in the Appellant.

28 Finally, the Appellant points to the fact that his offences were not syndicated offences.[45] In my view, however, this was neither an aggravating factor nor a mitigating factor.

29 In the circumstances, I find that the DJ did not err in his assessment of the aggravating and mitigating factors in the present case as I have summarised at [12(b)] and [12(c)] above.

*Whether the DJ erred in his treatment of the precedents*

30 Third, I do not agree with the Appellant that the DJ erred in his treatment of the precedents cited by the parties. As is made clear from the DJ's GD (at [33]), the DJ had applied his mind to and considered the precedents cited in the court below. While the Appellant has sought to argue that the DJ ought to have

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43 Appellant's 6 October Submissions at para 25(f).

44 Respondent's Supplementary Submissions at para 14(c).

45 Appellant's 6 October Submissions at para 25(g).



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placed greater weight on some of these precedents,[46] I do not find the Appellant's arguments to be convincing.

***Whether the appeal against sentence in relation to the CDSA Charges ought to be allowed***

31 I next consider the Appellant's arguments in relation to the CDSA Charges.

*Whether the DJ erred in considering the offence-specific factors in* Huang Ying-Chun *and failing to consider the sentencing ranges in* Ho Man Yuk

32 The Appellant's key argument in relation to the CDSA Charges is two-fold. First, the Appellant states that the DJ ought not to have considered the offence-specific factors set out in *Huang Ying-Chun* since the framework related to offences under s 44(1)(*a*) of the CDSA.[47] Second, the Appellant states that the DJ ought to have instead considered and applied the sentencing ranges laid out in *Ho Man Yuk* since these related directly to offences under s 47(1)(*b*) of the CDSA which formed the CDSA Charges the Appellant was convicted on.[48]

(1) Whether the DJ ought to have considered and applied the sentencing ranges in *Ho Man Yuk*

33 I begin by considering the sentencing ranges in *Ho Man Yuk*. In *Ho Man Yuk*, the District Court stated the following (at [141]) when setting out sentencing ranges for offences under s 47(1)(*b*) of the CDSA:

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46 Appellant's 6 October Submissions at paras 27 to 29.

47 Appellant's 6 October Submissions at paras 36 to 39.

48 Appellant's 6 October Submissions at paras 46 to 48.



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> 141 In summary, taking into account the various considerations in this case, including the amounts involved for the present CDSA offences as compared to the relevant precedent cases, the fact that the money involved in the present case was recovered (through not strictly speaking "restituted" …), and the fact that no "plead guilty" sentencing discount should operate, I applied the following sentencing ranges which did not significantly deviate from the Prosecution's sentencing range, except that they were lower than that proposed by the Prosecution in certain instances:
>
> (a) For amounts less than $5,000 – 2 weeks' imprisonment;
>
> (b) For amounts from $5,000 to less than $10,000 – 1 months' imprisonment;
>
> (c) For amounts from $10,000 to less than $40,000 – 2 – 4 months' imprisonment;
>
> (d) For amounts from $40,000 to less than $100,000 – 5 – 9 months' imprisonment;
>
> (e) For amounts from $100,000 to less than $300,000 – 10 – 11 months' imprisonment; and
>
> (f) For amounts from $300,000 to $500,000 – 12 – 13 months' imprisonment.

34 First, it is important to recognise that the sentencing ranges in *Ho Man Yuk* were issued by *a District Court*. The Appellant states that *Ho Man Yuk* "holds precedential authority for cases under s 47(1)(*b*)"[49] of the CDSA. The Appellant also highlights the fact that the sentences imposed in *Ho Man Yuk* were upheld on appeal.[50] However, in my view, it is important to recognise that while the specific sentences in relation to the CDSA charges in *Ho Man Yuk* were upheld in *Shaikh Farid v Public Prosecutor and other appeals* [2017] 5 SLR 1081, See J (as he then was) did not comment specifically on the appropriateness of the sentencing ranges set out by the court below. In fact, in his subsequent decision in *Chong Kum Heng v Public Prosecutor* [2020] 4 SLR

[49] Appellant's 6 October Submissions at para 46.

[50] Appellant's 6 October Submissions at para 48.



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1056 ("*Chong Kum Heng*"), See J stated unequivocally (at [70]) that he had not commented specifically on the appropriateness of the sentencing ranges set out in *Ho Man Yuk*.

35 Second, the Appellant points to the fact that the sentencing ranges in *Ho Man Yuk* were considered and applied in the subsequent High Court decisions of *Chong Kum Heng* and *Public Prosecutor v Juandi bin Pungot* [2022] 5 SLR 470 ("*Juandi bin Pungot*"). In my view, it is important to carefully examine the court's treatment in these decisions of the sentencing ranges in *Ho Man Yuk*:

(a) In *Chong Kum Heng*, See J commented on the sentencing ranges set out in *Ho Man Yuk*, stating (at [70]) that it would be more rational and helpful when setting out a general guide *to ensure that the respective sentencing ranges suggested do not leave gaps in between the respective bands*. See J then set out indicative broad sentencing bands for CDSA charges which involve amounts up to $40,000 (without commenting further on charges where the amounts are above $40,000, since that did not feature in *Chong Kum Heng*).

(b) In *Juandi bin Pungot*, Hoo J considered the sentencing ranges issued in *Ho Man Yuk*, because the ranges were relied on by both the prosecution and the defence. Hoo J stated that she broadly agreed with the approach (at [73]), but *only* made reference to two of the ranges set out in *Ho Man Yuk* (for amounts of $100,000 to $300,000, and $300,000 to $500,000). However, even then, Hoo J found (at [76]) that an uplift from the ranges was necessary to take into account that the facts in *Juandi bin Pungot* were more egregious than *Ho Man Yuk*.



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36 What this means, therefore, is that the sentencing ranges which have been issued by the District Court in *Ho Man Yuk* have not been specifically endorsed *in its entirety* by an appellate court thus far. While the sentencing ranges in *Ho Man Yuk* have sometimes been used as a reference point for determining the appropriate sentence, adjustments have had to be made to the sentencing ranges for two reasons: (a) the sentencing ranges do not sufficiently address the fact that s 47(1)(*b*) of the CDSA is an offence-creating provision which can capture a wide range of offences with differing severity, given that the sentencing ranges are only based on one consideration (*ie*, the amounts in the charge); and (b) the sentencing ranges have a clear shortcoming as seen by the gaps left in between the respective bands.

37 More crucially, as was noted in *Public Prosecutor v Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd) and other appeals* [2022] 5 SLR 336 at [29], sentencing frameworks and benchmarks should generally be left to the appellate court. Further, sentencing frameworks and benchmarks should only be imposed when there are sufficient cases, and should not be imposed *a priori* generally.

38 Given the above, my views are as follows:

(a) First, I do not find that the sentencing ranges set out by the District Court in *Ho Man Yuk* were binding on the court below in the present case.

(b) Second, as was observed in *Chong Kum Heng* (at [70]), I note that there is a glaring issue with the sentencing ranges set out in *Ho Man Yuk*, since they leave gaps in between the respective bands. Further, the sentencing ranges set out in *Ho Man Yuk* was designed specifically to



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cover cases where the moneys which are the subject of the offence under s 47(1)(*b*) of the CDSA are recovered. Therefore, the ranges may only apply to a *limited* set of cases and may have limited utility in the wider range of offences falling under s 47(1)(*b*) of the CDSA. Finally, as the Prosecution has correctly observed, while the decision in *Ho Man Yuk* set out sentencing ranges principally based on the *amounts* reflected in the CDSA charges, the quantum laundered cannot be the only determining factor for such CDSA offences.[51] There are other factors which need to be factored into the analysis (as laid out in the harm-culpability framework in *Huang Ying-Chun* which I will consider below). For these reasons, I do not endorse the sentencing ranges in *Ho Man Yuk*, and the sentencing ranges should not be regarded as operative.

(c) Further, I do not seek to lay down a sentencing framework or benchmark for offences under s 47(1)(*b*) of the CDSA in the present case. The parties in this appeal have not proposed the laying down of such a framework or benchmark. Further, given the unique facts of the present case, I do not find that this is an appropriate case for a sentencing framework or benchmark to be laid down covering offences under s 47(1)(*b*) of the CDSA.

39 While I have already stated that I do not endorse the sentencing ranges in *Ho Man Yuk* and that the sentencing ranges should not be regarded as operative, I should nevertheless add that the individual sentences of 12 months' imprisonment imposed by the DJ in relation to the CDSA Charges cannot be said to be manifestly excessive even if the sentencing ranges in *Ho Man Yuk* are

51 Respondent's Supplementary Submissions at para 34.



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considered (*ie*, five to nine months' imprisonment for charges covering amounts from $40,000 to less than $100,000):

(a) First, the sentencing ranges in *Ho Man Yuk* were set out on the basis that the monetary sum in *Ho Man Yuk* was recovered. In the present case, there was no recovery of the sums which were the subject of the CDSA charges (being the amount totalling $141,054.90 which was remitted by the Appellant to bank accounts in India). While the Appellant had made full restitution, this was in relation to the pieces of gold jewellery belonging to the Temple which the Appellant redeemed and returned to the Temple (see [11] above). In my view, such restitution is only relevant in so far as the CBT Charges are concerned. However, the point remains that, in relation to the CDSA Charges, the amounts were transferred out of jurisdiction and were not recovered.

(b) Second, the duration of offending in relation to the CDSA charges here was four years, which is significantly longer than the duration of offending in *Ho Man Yuk* of seven days. Further, the total number of remittances and transfers was also higher (40 in the present case versus a maximum of 26 for one of the offenders in *Ho Man Yuk*).

(c) Third, the circumstances surrounding the offences were also more egregious in the present case, given the manner in which the Appellant had abused the trust reposed in him as Chief Priest by remitting the criminal proceeds derived from his sustained offending, as opposed to the offenders in *Ho Man Yuk* whose CDSA offences were borne out of opportunistic conduct while at a casino.



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### *(2)* Whether the DJ erred by considering the offence-specific factors set out in *Huang Ying-Chun*

40 Given my above finding that the sentencing ranges set out by the District Court in *Ho Man Yuk* were not binding on the court below, I find that the DJ correctly considered the offence-specific factors set out in *Huang Ying-Chun*.

41 While it is correct that the offence which arose for consideration in *Huang Ying-Chun* and for which a sentencing framework was devised was an offence under s 44(1)(*a*) of the CDSA (*ie*, an offence for assisting another to retain benefits from criminal conduct), I agree with the Prosecution that many of the offence-specific factors set out in *Huang Ying-Chun* would be equally applicable to a case involving an offence under s 47(1)(*b*) of the CDSA (*ie*, an offence of laundering one's own benefits from criminal conduct). As the Prosecution observes, the underlying criminality of both type of offences under the CDSA are the same, given that they target conduct seeking to conceal, remit or transfer criminal benefits. Further, the prescribed punishments for both offences are also the same.[52] In my view, therefore, the offence-specific factors in *Huang Ying-Chun* are relevant to offences under s 47(1)(*b*) of the CDSA.

42 As is clear from the DJ's GD (at [43]–[44]), the DJ had carefully considered the offence-specific factors set out in *Huang Ying-Chun* which featured in the present case. Following an assessment of the harm caused and the Appellant's culpability, the DJ correctly arrived at the sentence of 12 months' imprisonment for each of the two CDSA Charges.

43 In arriving at this decision, the DJ considered the precedents cited in the court below. The Appellant takes issue with the DJ's reliance on unreported

52 Respondent's Supplementary Submissions at para 28.



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precedents in this regard.[53] While I agree with the Appellant generally that unreported precedents have little precedential value given that they are unreasoned (as I had previously stated in *Toh Suat Leng Jennifer v Public Prosecutor* [2022] 5 SLR 1075 at [51]), I do not find that the DJ *significantly* relied on unreported precedents in arriving at the sentences for the CDSA Charges. The DJ's GD makes clear that his decision was ultimately founded on his assessment of the offence-specific factors which featured in the present case.

**Conclusion**

44 For the above reasons, I do not find that the individual sentences imposed by the DJ were manifestly excessive. Neither can the total sentence of five years' and 12 months' imprisonment be said to be manifestly excessive in view of the aggravating factors in the present case.

45 In fact, if at all, the individual sentences imposed on the proceeded CBT Charges and CDSA Charges were lenient, given that the charges were amalgamated under s 124(2) of the CPC. This meant that s 124(8)(*a*)(i) of the CPC applied, which *doubled* the court's sentencing jurisdiction. As I had previously stated in *Public Prosecutor v Song Hauming Oskar and another appeal* [2021] 5 SLR 965 (at [69]), the device of amalgamation is not merely administrative or procedural in nature. Rather, amalgamation may be used to signal the higher criminality of an accused person and the gravity of his criminal conduct. This is precisely why s 124(8)(*a*)(i) doubles the maximum punishment which may be imposed. While I had stated the point above in the context of amalgamation under s 124(4) of the CPC, this would similarly apply to amalgamation under s 124(2) of the CPC. However, the Prosecution did not file

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[53] Appellant's 6 October Submissions at paras 40 to 44.



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an appeal in the present case. The Prosecution also did not make any arguments on the effect of amalgamation in the court below or in the course of this appeal. Therefore, I see no reason to disturb the sentences imposed by the DJ.

46 The Appellant's appeal against sentence is therefore dismissed.

Vincent Hoong
Judge of the High Court

Divanan s/o V Narkunan (Phoenix Law Corporation) for the appellant;
Lynn Tan and Benjamin Low (Attorney-General's Chambers) for the respondent.

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