IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 34

Criminal Motion No 13 of 2024

Between

Siva Raman

…*Applicant*

And

Public Prosecutor

…*Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review — Permission for review]

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v
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Steven Chong JCA:

1 CA/CM 13/2024 ("CM 13") is an application by Mr Siva Raman (the "Applicant") for permission under s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") to review an earlier decision of the Court of Appeal rendered some five years ago in CA/CCA 32/2018 ("CCA 32"), wherein the Court of Appeal upheld the decision of the trial Judge (the "Judge") in HC/CC 69/2017 ("CC 69").

2 In CC 69, the Applicant claimed trial to two charges under s 7 and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for importing not less than 108.81g of diamorphine and 315.74g of methamphetamine (pure weights) (the "Drugs") into Singapore (the "Charges"). The background facts were largely undisputed and were set out in an agreed statement of facts ("ASOF") admitted pursuant to s 267 of the CPC. The

Applicant admitted to bringing the Drugs into Singapore, and that he was in possession of the Drugs at the material time. Accordingly, the only issue which arose for the Judge's determination was whether the Applicant could rebut the presumption of knowledge under s 18(2) of the MDA. The Applicant denied that he knew that the Drugs were diamorphine or methamphetamine. His defence, which only emerged when he was cross-examined, was that he believed that the Drugs were "head-shaking" medicine used in pubs which, according to him, was not illegal in nature. He eventually conceded that he knew he was being asked to deliver something illegal, but that he did not know it would lead to such serious consequences.

3 The Judge rejected the Applicant's explanation and convicted him of the Charges. However, she found that the Applicant was a courier within the meaning of s 33B(2) of the MDA, and accordingly imposed a sentence of life imprisonment instead of the death penalty. A sentence of 24 strokes of the cane was also imposed on the Applicant.

4 The Applicant appealed against the Judge's decision on both conviction and sentence in CC 69 *vide* CCA 32. On 1 October 2018, the Court of Appeal dismissed the Applicant's appeal, with no written grounds rendered. In its oral judgment, the Court of Appeal agreed with the Judge that the Applicant's assertion that he believed the Drugs to be "head-shaking" medicine for use in pubs was a bare assertion which only surfaced during the trial and which was inconsistent with all the other circumstances of the case.

5 To obtain leave to commence review proceedings under s 394H of the CPC, the Applicant must establish a legitimate basis for the exercise of this court's power of review, having regard to the requirements set out under s 394J of the CPC. In particular, there must be "sufficient material" on which the

appellate court may conclude that there has been "a miscarriage of justice": s 394J(2) of the CPC; *BWJ v Public Prosecutor* [2024] SGCA 25 at [8] ("*BWJ*").

6 The two bases relied upon by the Applicant in CM 13 are (a) that there is fresh evidence which demonstrates that his reference to "head-shaking" medicine at the trial was in fact a reference to ecstasy pills and (b) that various errors were made in the trial below and in the Judge's decision. For the reasons that follow, I find that they do not constitute "sufficient material" which reveals any "miscarriage of justice". Consequently, the Applicant has not demonstrated any legitimate basis for the exercise of this court's power of review. I therefore dismiss the Applicant's motion summarily without setting it down for hearing, pursuant to s 394H(7) of the CPC.

Background Facts

7 The complete facts are set out in the written grounds of decision of the Judge in *Public Prosecutor v Siva Raman* [2018] SGHC 10. For present purposes, it suffices for me to briefly summarise the salient facts.

8 On 16 May 2016, at about 5am, the Applicant drove a Malaysian-registered lorry (the "Lorry") from Johor Bahru into Singapore. He was accompanied by one Anathan Kanapathy ("Anathan"), a lorry attendant. At the Woodlands Checkpoint, the Lorry failed an image check, and the Applicant was directed to drive the Lorry to the Cargo Command Centre for further checks.

9 During the search of the front cabin of the Lorry, three dark green plastic bags were discovered, which contained six packets of powdery/granular substance and three packets of crystalline substance. The contents of the packets were sent for analysis by the Health Sciences Authority ("HSA") and were

found to contain not less than 108.81 g of diamorphine and 315.74 g of methamphetamine respectively. The Applicant agreed that he had brought into Singapore by land not less than the aforesaid amount of Class "A" controlled drugs listed in the First Schedule to the MDA.

10 Ten statements were recorded from the Applicant, which were given voluntarily without any threats, inducement or promises. They were admitted by consent. During the trial, the Applicant questioned whether, in the course of the recording of the statements, the term "drugs" was properly translated by the interpreters, Mr Raman Narayanan ("Mr Raman") and Mdm Malliga Anandha Krishnan ("Mdm Malliga"). The dispute centred around the terms "*bothai porul*" and "*bothai marunthu"*. Both Mr Raman and Mdm Malliga testified that literally, "*bothai*" means intoxicating, and "*marunthu*" means medicine. Put together, however, "*bothai marunthu*" was commonly understood and used to refer to controlled drugs.

11 Over the course of the ten statements, the Applicant's description of the events changed considerably along the following lines:

(a) In the first two long statements recorded on 18 May 2016, the Applicant mentioned one Ganesan A/L Sukumaran ("Ganesan"), and that Ganesan had either rented or borrowed the Lorry on ten occasions until the Applicant heard rumours that he had been bringing drugs into Singapore. The Applicant then stopped renting or lending the Lorry to Ganesan. The Applicant initially denied that he knew that the dark green plastic bags were in the Lorry, and explained that Ganesan must have put them there to "take revenge on him". The Judge also noted that in the first long statement, the Applicant understood the term "*bothai marunthu*" to refer to controlled drugs and not legal medicine.

(b) In the third long statement recorded on 19 May 2016, the Applicant changed his account, admitting that he brought the Drugs into Singapore at the request of Ganesan. According to him, however, Ananthan did not know anything about the Drugs.

(c) In the fourth long statement recorded on 20 May 2016, the Applicant revealed that he told the truth because he did not wish to get Ananthan into trouble.

(d) In the sixth long statement recorded on 12 July 2016, the Applicant confirmed that he knew that Ganesan wanted him to deliver drugs but maintained that he did not know what type of drugs they were.

The trial and the Judge's decision

12 It was undisputed, as recorded in the ASOF, that the Applicant had, pursuant to an arrangement with Ganesan, brought the Drugs into Singapore and further, that the Applicant was in possession of the Drugs at the material time. The Judge thus found that the presumption of knowledge under s 18(2) of the MDA could be validly invoked by the Prosecution. Accordingly, the only issue which arose for the Judge's determination was whether the Applicant had rebutted the presumption of knowledge on a balance of probabilities.

13 The Applicant elected to give evidence, and his testimony was largely consistent with his long statements. The Applicant conceded that he knew that he was transporting "*bothai marunthu*" and that he would receive RM10,000 in return from Ganesan. The Applicant agreed to Ganesan's arrangement and eventually brought the Drugs into Singapore.

14 The crux of the Applicant's case in rebutting the presumption of knowledge was that to him, "*bothai marunthu*" was a reference to "head-shaking" medicine used in pubs which would make heads shake upon consumption. The Applicant initially contended that "*bothai marunthu*" referred to medicine which were *not illegal* in nature. He contended that the term for illegal drugs was "*bothai porul*". Nevertheless, he accepted that Mdm Malliga used both "*bothai porul*" and "*bothai marunthu*" when interpreting the long statements to him, and, by the end of the cross-examination, the Applicant conceded that he knew that he was being asked to deliver something illegal. However, this "head-shaking" medicine explanation was not raised during his evidence-in-chief and only emerged belatedly during cross-examination.

15 The Judge found that the Applicant had not rebutted the presumption of knowledge on a balance of probabilities. The gist of her reasoning was that:

> (a) First, the Applicant's claim that "*bothai marunthu*" meant a form of legal "head-shaking" medicine was an afterthought. It was not mentioned in any of the ten statements, and in particular, the third long statement where the Applicant gave a detailed account of events, including his state of mind. Further, this fact was not raised in examination-in-chief, but was only mentioned belatedly during his cross-examination.
>
> (b) Second, the Applicant's claim was inconsistent with the contents of the long statements which referred to three specific controlled drugs – "ice", "ganja" and "heroin". In the third to sixth long statements, the Applicant admitted that he knew he was being asked to deliver drugs by

Ganesan. However, he did not mention that these "drugs" were *legal*, as he claimed the "head-shaking" medicine was.

(c) Third, although Mdm Mallinga had some difficulty recalling the exact words used in the course of recording his statements, the Judge found the long statements to be accurate, with the Applicant understanding the terms "*bothai porul*" or *"bothai marunthu*" to refer to controlled or illegal drugs, and not merely to medicine (which was legal in nature). This was evident in the first long statement where the term "*bothai marunthu*" was understood by the Applicant to mean drugs and not medicine.

(d) Fourth, the Applicant's claimed understanding of "*bothai marunthu*" was inconsistent with the Applicant's account that he became angry when he heard rumours that Ganesan was using the Lorry to transport "*bothai marunthu*".

(e) Fifth, the Applicant received the Drugs under very suspicious circumstances but failed to take any steps to establish the nature of the contents despite alleging that he did not know the type of drugs which he had received.

(f) Finally, the Applicant knew that he was being promised a substantial sum for the delivery, and further admitted to knowing that he was being asked to deliver something illegal.

16 The Judge found that the Charges were proved beyond a reasonable doubt. However, the Judge found that the Applicant was a mere courier and thus imposed the sentence of life imprisonment and 24 strokes of the cane instead of the death penalty.

The appeal proceedings

17 The Applicant's initial petition of appeal in CA/CCA 55/2017 ("CCA 55") only disputed the sentence imposed by the Judge on the basis that it was manifestly excessive. However, the Applicant subsequently applied *vide* CA/CM 10/2018 for leave to file a fresh notice of appeal and petition of appeal, which was granted on 9 July 2018 by the Court of Appeal.

18 In the fresh notice of appeal and petition of appeal filed in CCA 32, the Applicant extended the scope of his appeal to include the Judge's findings on conviction. The Applicant's principal argument in CCA 32 was that the Judge erred in rejecting his explanation that "*bothai marunthu*" was "head-shaking medicine" used in pubs.

19 The Court of Appeal dismissed the appeal on 1 October 2018, with the following oral judgment delivered by Judith Prakash JA (as she then was):

> We dismiss the appeal. The appellant was found in possession of the drugs which formed the basis of the two charges which he was tried on in the High Court. In those circumstances, he had to prove that he did not know the nature of the drugs. The Judge found that he had not discharged his burden on a balance of probabilities. We are satisfied that her finding was not against the weight of the evidence and must be upheld. The appellant's assertion that he believed the drugs were "head shaking medicine" for use in clubs was a bare assertion which surfaced only during the trial and which was not consistent with all the other circumstances of the case.
>
> We must therefore dismiss the appeal.

The present proceedings

20 On 27 March 2024, the Applicant filed the present motion, CM 13, accompanied by a supporting affidavit (the "27 March Affidavit"). CM 13 was not initially stated to be an application under s 394H of the CPC and did not

comply with the formal requirements thereunder. Instead, the Applicant merely sought to challenge his conviction and sentence. Following various case management conferences and clarificatory letters, the Applicant confirmed in writing on 12 June 2024 that CM 13 was intended to be an application under s 394H of the CPC. The Applicant further indicated that he wished to adduce fresh evidence in CM 13. The Prosecution did not object to the Applicant's request.

21 The Court of Appeal granted the Applicant's request by consent, and further directed that CM 13 be treated as an application for leave to review the decision in CCA 32 under s 394H of the CPC as confirmed by the Applicant. The Court of Appeal directed the Applicant to exhibit the fresh evidence by way of a supplementary affidavit, in compliance with the necessary formal requirements. The Applicant filed his supplementary affidavit on 23 July 2024 containing the three pieces of fresh evidence (the "Fresh Evidence"). The parties have also tendered their written submissions for the court's consideration.

22 Section 394H(6)(*a*) of the CPC stipulates that an application for permission under s 394H(1) 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 and it is on this basis that I determine this motion.

Applicable Law

23 The applicable legal principles to an inquiry under s 394H(1) of the CPC are well-established and was recently restated by this court in *BWJ* at [8], affirming *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 at [17] ("*Kreetharan*"). An application for permission must disclose a "legitimate basis for the exercise of [the] court's power of review".

A "legitimate basis" is established if an applicant can satisfy the court that the material relied upon in the review proper is "almost certain" to satisfy the requirements under s 394J of the CPC: *Roslan bin Bakar and others v Public Prosecutor* [2022] 1 SLR 1451 at [21].

24 Section 394J(2) of the CPC requires an applicant to demonstrate that there is sufficient material (being evidence or legal arguments) on which 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. In this regard, ss 394J(3)(*a*) to 394J(3)(*c*) stipulate the cumulative criteria for such material to be considered "sufficient" (*BWJ* at [8]):

> (a) the material has not been canvassed at any stage of the said criminal matter;
>
> (b) the material could not have been adduced in court earlier even with reasonable diligence; and
>
> (c) the material is compelling, in that it is reliable, substantial, powerfully probative and capable of showing almost conclusively that there has been a miscarriage of justice in the said criminal matter.

The failure to satisfy *any* of these requirements will result in the dismissal of the review application.

25 In addition, where the applicant relies on material consisting of legal arguments, s 394J(4) of the CPC makes it clear that such material will only be "sufficient" if it is based on a change in the law that occurred after the conclusion of all proceedings relating to the criminal matter in respect of which

the earlier decision was made: *BWJ* at [9]; *Tangaraju s/o Suppiah v Public Prosecutor* [2023] 1 SLR 622 at [31] ("*Tangaraju*").

The parties' cases

The Applicant's case

26 The Applicant's present motion appears to be founded on two bases. First, the Applicant seeks to adduce the Fresh Evidence, namely:

(a) a photograph titled "*STIMULAN, DEPRESSEN"* (the "Photograph");

(b) a definition of "stimulant"; and

(c) a definition of "drug, intoxicating medicine".

27 By the Fresh Evidence, the Applicant seeks to establish that his reference to "head-shaking" medicine at the trial and on appeal was in fact a reference to ecstasy pills. He explains that it was his poor command of the English language which resulted in his inability to explain at the trial what "head-shaking" medicine referred to, and submits that this would enable him to rebut the presumption of knowledge under s 18(2) of the MDA.

28 Secondly, the Applicant alleges that various errors were made in the trial below and in the Judge's decision. Among others, the Applicant highlights alleged errors made in the recording of his statements, errors made at the trial and the alleged failure of the Prosecution to disclose a particular statement of his.

The Prosecution's case

29 The crux of the Prosecution's case is that the Applicant has not raised any material that meets the statutory requirements under s 394J of the CPC for leave to be granted.

30 In relation to the Fresh Evidence, the Prosecution submits that they do not support the Applicant's case at all, and they do not constitute "sufficient material" that supports a finding that there was a miscarriage of justice in the present case.

31 As for the alleged errors in the proceedings before the Judge, the Prosecution submits that the Applicant's arguments do not disclose new material or evidence, but merely seek to revive points which were raised and rejected after the trial and on appeal, for which there is no reason to grant leave to review under s 394H of the CPC as sought by the Applicant.

Issue to be determined

32 Against the somewhat broad nature of the Applicant's case, it must be recalled that the legal inquiry in the present motion is a narrow and focussed one — namely, whether there is a legitimate basis for the court to exercise its power of review, having regard in particular to the requirements under s 394J of the CPC. For the Applicant to succeed, it must be shown that *both* the sufficiency and miscarriage of justice requirements under s 394J(2) have been satisfied.

33 With the principles articulated at ([23] to [25]) in mind, I turn to address the Applicant's two grounds for the present motion, beginning with the Fresh Evidence.

The Fresh Evidence adduced by the Applicant

34 The Applicant appears to rely on the Fresh Evidence in a composite manner — he submits that collectively, they would establish the exact knowledge of the Drugs in question that he possessed at the material time, and therefore rebut the presumption of knowledge under s 18(2) of the MDA.

35 According to the Applicant, he was allegedly prejudiced during the investigations and at the trial because he was unaware of the English term for "head-shaking" medicine and was therefore unable to "give a proper answer when questioned". He explains that the delay in obtaining the Photograph can be attributed to the fact that his wife had only recently passed the Photograph to him during prison visitation. As for the definitions of "stimulant" and "drug, intoxicating medicine", he claims that he could not adduce this evidence at the trial because his command of the English language was poor at that material time, and that he had only recently "studied the English language".

36 In my judgment, the Fresh Evidence does not disclose any legitimate basis to exercise the power of review as the requirements under s 394J of the CPC are not fulfilled. I set out my reasons below.

37 First, I do not accept the Applicant's explanation for the delay in the production of the Fresh Evidence. These are documents or explanations that should have been adduced either at the trial or the appeal, which occurred almost seven and five years ago respectively. Moreover, the Fresh Evidence which the Applicant seeks to adduce are no more than matters of common knowledge which *existed at the material time* of CC 69 and CCA 32, and which he could have been apprised of with reasonable diligence, noting that he was represented by counsel at all material times.

38 In particular, if the "head-shaking" medicine was in fact a reference to ecstasy pills, this would be a simple matter of submissions by his counsel after taking instructions from the Applicant. Similarly, the definitions which the Applicant claims to have only learnt recently are elementary non-legal definitions on which his counsel could have advised him with a simple dictionary search. I am therefore unpersuaded by the Applicant's explanation that the delay is justified because he was unfamiliar with the English Language. That the Applicant did not make such a submission despite the accessibility of the information contained in the Fresh Evidence leads me to the same conclusion as the Judge and the Court of Appeal *ie*, that the Applicant's explanation is a mere afterthought.

39 Flowing from the above, the requirement under s 394J(3)(*b*) of the CPC is not fulfilled in relation to the Fresh Evidence, namely, the requirement that it could not have been adduced in court earlier even with reasonable diligence.

40 Secondly, even if I were to disregard the Applicant's belated production of the Fresh Evidence, I am not convinced that it aids the Applicant's case in this motion in any meaningful way. The Applicant at present appears to maintain the same position that he had taken at the trial and on appeal, *viz* that he subjectively believed the Drugs to be "head-shaking" medicine. His written submissions also do not appear to appreciate that "ecstasy" is a controlled drug which is illegal, seeing that he only refers to it as a "stimulant" and a "party drug". Therefore, the Applicant appears to maintain that he believed the Drugs to be legal in nature, with the only difference being that instead of using a colloquial term "head-shaking" medicine, the Applicant adopts the English term "ecstasy". In other words, the Applicant is merely substituting the name "head-shaking" medicine with the proper English term, ecstasy pills.

41 The insuperable difficulty that the Applicant faces is that neither the Judge nor the Court of Appeal held the inability to define "head-shaking" medicine against him for the purposes of assessing his defence. Rather, his explanation was rejected for reasons completely independent of the definition or his understanding of "head-shaking" medicine (see above at [15]). Therefore, even if the Applicant had, at the trial used the term "ecstasy" instead of "head-shaking" medicine, it would nevertheless have been entirely inconsequential to the outcome. A mere substitution of the names does not change the fact that the Applicant's defence concerning the nature of the drugs, whether "head-shaking" or ecstasy, was *still* an afterthought since it was only brought up during his cross-examination, as the Judge and the Court of Appeal had noted.

42 For these reasons, the Fresh Evidence also fails to meet the requirement under s 394J(3)(*c*) of the CPC because there is nothing compelling or powerfully probative and capable of showing conclusively that there has been a miscarriage of justice. I therefore find that the Fresh Evidence adduced by the Applicant does not meet the sufficiency and miscarriage of justice requirements — it discloses no legitimate basis for the exercise of this court's power of review.

The Applicant's factual allegations

43 I now consider the second ground of the Applicant's case in CM 13 *viz,* the various factual allegations raised as to the conduct of the trial and the decision of the Judge. These allegations, contained in the 27 March Affidavit and his written submissions dated 23 June 2024, may be summarised as follows:

(a) that Mdm Malliga did not ask the Applicant the questions as reflected in the statements and that she had lied during her testimony;

(b) that the meaning of certain Tamil phrases in the statements were incorrectly interpreted;

(c) that mistakes were made in the recording of his statements, including an alleged error and inconsistency in the number of bundles that were seized;

(d) that there was a statement taken by the police on 12 December 2016 which was not disclosed during the trial by the Prosecution;

(e) that Ganesan had sabotaged him by placing a different drug inside the Lorry from what he thought was "head-shaking" medicine;

(f) that there was a mistake during the trial in that it was allegedly stated that on 17 May 2015, nine packets of powdery/granular substance were sent to the HSA for analysis and the HSA report was dated 2015 as opposed to 2016 when the Applicant was arrested;

(g) that the trial was not a genuine trial;

(h) that the Judge had erred, having regard to dicta in *Public Prosecutor v Phuthita Somchit and another* [2011] 3 SLR 719, *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201, *Public Prosecutor v Mas Swan bin Adnan and another appeal* [2012] 3 SLR 527, and *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 ("*Gobi*"); and

(i) finally, that the Prosecution did not prove its case beyond a reasonable doubt, and that the Judge erred in placing weight on the Applicant's statements because "the answers the [Applicant] gave were as a result of questions put to him".

44 It is not necessary to address every point raised by the Applicant in so far as they are, as the Prosecution rightly submits, a mere re-litigation of the issues which were raised and considered before the Judge and the Court of Appeal without producing any new evidence or material apart from those available at the trial or on appeal. I agree with the Prosecution that the Court of Appeal's dicta in *Kreetharan* at [21] is instructive:

> 21 It was apparent that nothing raised by the applicants in their affidavits or submissions met the conjunctive requirements in s 394J of the CPC based on any standard and that no legitimate basis for the court to exercise its power of review had been disclosed. In this regard, it is clear from the foregoing that it is *insufficient* for an applicant to attempt to re-characterise the evidence already led below or to mount fresh factual arguments on the basis of such evidence. To a large extent, this was what the applicants sought to do before us. Any new points raised by the applicants were either unhelpful or could have been raised earlier with reasonable diligence.
>
> [emphasis in original]

45 In my judgment, the Applicant's disputes are entirely factual in nature and are based on evidence which were either before the court or which could have been obtained with reasonable diligence. The Applicant's second basis essentially operates as an *appeal* from Court of Appeal's concluded decision, which fundamentally misapprehends the nature of an application for *review* under s 394H of the CPC. In any case, even if the Applicant's arguments are considered on the merits, they would nevertheless be rejected primarily because they are either undermined by his admissions in the ASOF or squarely considered and correctly rejected by the Judge in CC 69 and by the Court of Appeal in CCA 32.

46 As for the legal authorities cited by the Applicant in support of his arguments, s 394J(4) of the CPC makes clear that such material will only be "sufficient" if it is 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, and even then, not every change in the law is a licence to review concluded appeals: *Tangaraju* at [4]. I note at the outset that the Applicant does not appear to point to any change in the law disclosed by these authorities, but merely relies on them to support his *factual* arguments. Moreover, even if the cited authorities in fact brought about a change in the law, all the cases cited by the Applicant (see above at [43(h)]), save for *Gobi* (which was determined primarily on the facts), were decided *before* the appeal in CCA 32 was concluded – thus rendering them irrelevant for the purpose of the present motion.

47 For completeness, I specifically consider two factual contentions of the Applicant which in my view warrant further scrutiny, namely, the Applicant's allegations that there was an error in the trial concerning the date of the HSA reports (see above at [43(f)]) and that there was a statement which was taken from him on 12 December 2016 which was not disclosed at the trial (see above at [43(d)]).

48 In relation to the former, the Applicant has correctly pointed out an error at paragraph 14 of the ASOF where the date of 17 May 2016 was mistakenly stated as 17 May 2015, which was not detected and remedied when the Prosecution read out the ASOF at the opening of the trial. However, having reviewed the record of the proceedings, I am satisfied that this was no more than a clerical error which caused no prejudice to the Applicant. There is no basis to conclude that the chain of custody had been broken – the HSA certificates were correctly dated and there is no evidence which suggests that the HSA certificates relied on at the trial did not pertain to the Drugs in question. In the circumstances, although the clerical error has been correctly identified, it is that and no more – it does not demonstrate any miscarriage in justice.

49 As for the latter, it is pertinent that the specific statement is a statement recorded from the *Applicant*. This distinguishes the present case from *Tangaraju*, wherein the statements in question were recorded from *material witnesses*. Although this was not raised by the Applicant, I note for completeness that the change in the law following the Court of Appeal's decision in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984, which concerned the Prosecution's disclosure obligations in relation to statements of *material witnesses*, has no relevance to the Applicant's statements and is thus immaterial for present purposes.

50 Absent any relevant change in the law post-conclusion of the appeal, any application for the disclosure of the Applicant's statements would be an issue which should have been taken up at the trial or on appeal, for example, by way of an application based on the Prosecution's disclosure obligations under *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205. Indeed, as the Applicant himself concedes in his 27 March Affidavit, he had instructed his counsel as to the existence of the statement in preparation for CCA 32. His counsel had discussed the matter with the Prosecution, but pertinently, no application was made for the statement to be disclosed. As the statement in question was evidence which could have been obtained with reasonable diligence in the proceedings below, it does not pass muster under s 394J(3)(*b*) of the CPC.

Conclusion

51 For the above reasons, I find that the Applicant has failed to demonstrate a legitimate basis for the court to review the concluded appeal in CCA 32. Neither of the bases of the Applicant's case meet the requirements under s 394J(2) of the CPC of being sufficient material on which the court may

conclude that there has been a miscarriage of justice in CCA 32. The application is therefore summarily dismissed without being set down for hearing, pursuant to s 394H(7) of the CPC.

Steven Chong
Justice of the Court of Appeal

Applicant in person;
Chan Yi Cheng and Gabriel Lee (Attorney-General's Chambers) for the respondent.