

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

[2024] SGHC 30

Criminal Motion No 85 of 2023

Between

Lin Haifeng

... Applicant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Criminal review]

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Lin Haifeng
v
Public Prosecutor

[2024] SGHC 30

General Division of the High Court — Criminal Motion No 85 of 2023
Vincent Hoong J
1 February 2024

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Vincent Hoong J:

Introduction

1 In the court below, the Applicant claimed trial to nine charges under s 6(b) read with ss 7 and 29(a) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) and nine charges under s 477A read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed). He was acquitted by the District Judge (“DJ”) of all the 18 charges. The Prosecution appealed against the decision of the DJ.

2 After hearing parties, I allowed the Prosecution’s appeal and convicted the Applicant on all the 18 charges.¹ The matter was adjourned for the purpose of sentencing. However, before the hearing for sentencing took place, the Applicant brought an application under s 394H of the Criminal Procedure Code

¹ HC/MA 9061/2023/01.

2010 (“CPC”) for permission to make a review application (“the s 394H Application”).² In support of the s 394H application, the Applicant furnished my oral judgment issued on 21 September 2023.

3 The present criminal motion seeks my recusal from hearing the s 394H Application.

4 In the s 394H Application, the Applicant contends that my oral judgment issued on 21 September 2023 is new evidence which demonstrates that there was a breach of natural justice in his case. The Applicant claims that, because I may be required to decide on whether my own judgment discloses a breach of natural justice, there is apparent bias, and I should recuse myself from hearing the s 394H Application.

My decision

5 I find that the Applicant has fundamentally misapprehended the nature of a criminal review, which is distinct from an appeal.

6 The purpose of a criminal review is to correct a miscarriage of justice, and not to allow the applicant a second chance to rehash the same issues in the hope of achieving a different outcome (*Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 (“*Kho Jabing*”) at [54]). The Court of Appeal observed that a criminal review is distinct from an appeal as the former is intended to reopen a final decision of an appellate court after the applicant has been accorded all the due process rights. Such an application is thus an extraordinary proceeding

² HC/CM 98/2023.

which can only be initiated in rare and extraordinary circumstances (*Roslan bin Bakar v Public Prosecutor* [2022] 1 SLR 1451 at [21]).

7 The high threshold for a review application finds expression in s 394J of the CPC. Section 394J(2) of the CPC provides that the applicant must satisfy the appellate court that there is *sufficient material* 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. Furthermore, under s 394J(3) of the CPC, sufficient material must be new evidence and or legal arguments that have not been canvassed at any prior stage of proceedings. This requirement is an important corollary of the fact that *a review is neither an appeal nor a rehearing* (*Kho Jabing* at [54]).

8 I accept the Prosecution’s submission that in a bona fide review application based on new evidence or legal arguments that have not previously been canvassed, the Judge who made the decision would be best placed to consider such material and decide whether the high threshold for a review application is met. This is aligned with the wording of s 394H(6) of the CPC which provides that an application under s 394H of the CPC to the General Division of the High Court *is to be heard by the Judge who made the decision to be reviewed*, or if that Judge is not available, by any Judge. The procedure for criminal review sits in stark contrast with an appeal, where any potential error in law or fact is designed to be assessed by a different forum.

9 Next, the Applicant has clearly conflated an appeal with a criminal review. The authorities cited by the Applicant in his written submissions all relate to the apparent bias of a Judge sitting in an appellate capacity and

determining the correctness of their own earlier decision. In contrast, the present matter concerns permission for a review application.

10 Finally, if the Applicant's argument regarding apparent bias is accepted, the issue of apparent bias would arise in most cases seeking leave for criminal review since the leave stage is to be assessed by the Judge who made the decision. Consequently, any litigant seeking an impermissible second appeal may then furnish the Judge's grounds of decision or judgment, claim that it is new evidence which supports the making of a review application, and allege apparent bias as a basis for an application under s 394H of the CPC to be heard by a different Judge. The Applicant's argument is wholly unprincipled and accepting such an argument would encourage forum shopping by litigants to have their matters reheard by another Judge.

11 For the reasons above, I dismiss this present application for my recusal to hear the s 394H Application.

Vincent Hoong
Judge of the High Court

Lok Vi Ming SC, Joseph Lee, Michelle Yeo,
Samuel Ling and Jervis Ng (LVM Law Chambers LLC) for the Appellant;
Senthilkumaran Sabapathy and Joseph Gwee
(Attorney-General's Chambers) for the Respondent.