

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

[2026] SGHC 224

Originating Application No 724 of 2022

Between

Pradeepto Kumar Biswas

... Claimant

And

Attorney-General

... Defendant

JUDGMENT

[Constitutional Law — Judicial Review – Equal protection of the law –
Attorney-General – Prosecutorial discretion]
[Administrative Law – Judicial Review]

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Pradepto Kumar Biswas

v

Attorney-General

[2026] SGHC 224

General Division of the High Court — Originating Application No 724 of 2022

Kwek Mean Luck J

8 October 2026

23 October 2026

Judgment reserved.

Kwek Mean Luck J:

Introduction

1 In HC/OA 724/2022 (“OA 724”), the applicant, Mr Pradepto Kumar Biswas (“Mr Biswas”) seeks:

- (a) permission to apply for a prohibiting order to prevent the Attorney-General (“AG”) from proceeding with the criminal proceedings in SC-901344-2022 against him (“Criminal Proceedings”);
- (b) permission to apply for a quashing order to quash the AG’s decision to proceed with the Criminal Proceedings; and

- (c) a declaration that the Criminal Proceedings are in breach of Art 35(8) of the Constitution of the Republic of Singapore (“Constitution”).

Background

2 In the Criminal Proceedings, Mr Biswas faces one count of criminal breach of trust under s 406 of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”), arising out of transfers made from a bank account into which funds had been deposited under a facility agreement with RLK Corporation Pte Ltd (“RLK”).

3 The Prosecution’s case is that RLK deposited funds into the OCBC account of Servus Coal Private Limited (“Servus”) on 22 December 2017 pursuant to a facility agreement dated 18 December 2017 (“Facility Agreement”),¹ and that Mr Biswas, as the sole director and shareholder of Servus, then caused multiple transfers from that account between 22 and 26 December 2017.² The Prosecution’s position is that these transfers were not executed in accordance with the Facility Agreement and without the approval of RLK.³

4 On 13 May 2018, one Koon Yat Kuen (“Mr Koon”) made a police report against Mr Biswas to complain about these transfers.⁴ Mr Biswas was first investigated for cheating under s 420 PC, and a police statement was taken from

¹ Leong Jun Ming’s Affidavit dated 7 December 2022 (“Mr Leong’s Affidavit”) at [7]–[9]; Applicant’s 2nd Affidavit dated 28 August 2026 (“A2A”) at p 1247 (Summary of Facts in SC-901344-2022 at [4]).

² Mr Leong’s Affidavit at [11]–[12]; A2A at p 1247 (Summary of Facts in SC-901344-2022 at [6]).

³ Mr Leong’s Affidavit at [13].

⁴ A2A at p 1252 (List of Exhibits at Exhibit No.1 in the Case for the Prosecution at the trial).

him on 30 May 2018.⁵ On 28 February 2022, the police informed him that he was being investigated for criminal breach of trust instead.⁶ On 7 March 2022, he was charged under s 406 PC (DAC-903578-2022) for being entrusted with property of US\$416,201.90, belonging to Mr Koon, and dishonestly converting the said property to his own use on 22 December 2017 (“Original Charge”).⁷ A cautioned statement was recorded from him in respect of that charge.⁸

5 Subsequently, the charge was amended on 6 July 2022 (“First Amended Charge”). The amendments: (a) named RLK rather than Mr Koon as the owner of the property; (b) extended the period of the offence to between 22 to 26 December 2017; and (c) reduced the property referred to in the charge to a lower sum of US\$415,530.30.⁹ According to Mr Biswas, the First Amended Charge was only served on him on 7 July 2022. This was not disputed by the AG.

6 OA 724 is recorded as having been filed on 31 October 2022 (see [25] below). Shortly before that, on 18 October 2022, the State Courts had fixed the criminal trial for 17 to 20 April 2023. OA 724 was stayed when Mr Biswas was adjudged a bankrupt on 1 December 2022. On 12 May 2023, the High Court dismissed Mr Biswas’s criminal motion for a stay of the Criminal Proceedings, and the trial judge also declined to stay the trial pending that motion and OA 724.

⁵ A2A at p 1215; Mr Leong’s Affidavit at pp 39–41.

⁶ A2A at p 1274.

⁷ A2A at p 1275.

⁸ A2A at pp 1275–1280.

⁹ A2A at p 1245.

7 During the trial, the First Amended Charge was amended again on 10 January 2025, to reflect Mr Biswas’s capacity as director of Servus, whilst retaining the central allegation that he misused funds deposited into the Servus account. The notes of evidence of the trial on 10 and 13 January 2025 reflect the amended charge as describing Mr Biswas as the “director of Servus Coal and in such capacity being entrusted with dominion over the funds in the Servus Coal account”.¹⁰

8 On 22 April 2026, Mr Biswas obtained the approval of his private trustee in bankruptcy to proceed with OA 724. The criminal trial is ongoing, with the final tranche scheduled for December 2026.

Parties’ Submissions

9 According to the statement he filed in support of OA 724 (“Statement”) and his first affidavit, Mr Biswas argues that the Criminal Proceedings are unlawful and irrational as: (a) he has been “singled out” for the charge based on assumptions when he is not a recipient of any monies from the entity named in the First Amended Charge or from the person named in the Original Charge and a statement was not taken from him on 7 March 2022;¹¹ (b) the deliberate omission by the AG and the police to investigate his complaint about a Mr Rudolph was not fair and “wrong in law”;¹² and (c) there is no evidence to support the decision to allow the Criminal Proceedings.¹³ Mr Biswas argues that in bringing the Criminal Proceedings which are both unlawful and irrational,

¹⁰ A2A at pp 323 (lines 11–13) and 426 (lines 4–15).

¹¹ Applicant’s Statement filed on 31 October 2022 (“AS”) at [8] and [12]; Applicant’s 1st Affidavit filed on 31 October 2022 (“A1A”) at [5]–[6].

¹² AS at [10]–[11]; A1A at [7]–[8].

¹³ AS at [13].

the AG acted in breach of Art 35(8) of the Constitution.¹⁴ Further, Mr Biswas claims that the Criminal Proceedings amount to a breach of Arts 12(1) and 12(2) of the Constitution.¹⁵

10 At the hearing, Mr Biswas said that the crux of his application is that the AG proceeded to prosecute him, when there were witnesses who only gave their evidence in 2024. He was arrested in 2022, but the details of the arrest only came in 2024. It is wrong for the police to arrest someone without going through all the data points.¹⁶ His focus was on quashing what he described as a wrong and unlawful arrest.¹⁷

11 In his written submissions, Mr Biswas also asks, in the alternative to permission, that the charge (DAC-903578-2022) be quashed in the public interest.¹⁸ He relies largely on Indian authorities.¹⁹ He contends that the matter is a civil dispute “that has been given a criminal [colour] through an intentional [and] malicious [first information report]”.²⁰ Mr Biswas argues that the investigating officers did not go through the Facility Agreement in detail, complete their investigations or make the effort to obtain all information before arresting him. The charge cannot be established as there was no entrustment of property or dominion over property, no dishonest intent, and no breach of contractual directions.²¹ The investigators and prosecution failed to obtain or

¹⁴ AS at [16]; A1A at [15].

¹⁵ AS at [14]–[15]; A1A at [13]–[15].

¹⁶ Notes of Evidence dated 8 October 2026 (“NE”) at p 2.

¹⁷ NE at p 2.

¹⁸ Applicant’s Submissions filed on 22 September 2026 (“AWS”) at [19].

¹⁹ Applicant’s Bundle of Authorities.

²⁰ AWS at [7].

²¹ AWS at [8]–[11].

consider exculpatory contractual and accounting material.²² He also seems to suggest that the Criminal Proceedings were “attended with mala fide intent and/or...maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge”.²³

12 The AG submits that the application is time-barred as the application was brought more than seven months after the charging decision on 7 March 2022.²⁴ Mr Biswas has also failed to exhaust alternative remedies, given the ongoing criminal trial; judicial review is a remedy of last resort and the appropriate forum for disputes about sufficiency of evidence is the criminal court.²⁵ In any event, there is no arguable case of reasonable suspicion of an abuse of prosecutorial power or breach of Arts 12(1), 12(2) or 35(8) of the Constitution.²⁶ The materials show objective evidence of the transfers, a cautioned statement recorded on the s 406 PC charge, and amendments that did not change the core allegation.

Issues

13 There are four main issues arising in OA 724: (a) whether Mr Biswas’s application is out of time; (b) whether Mr Biswas has failed to exhaust alternative remedies; (c) whether the material discloses an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought;

²² AWS at [18].

²³ AWS at [7] and [17].

²⁴ Respondent’s Written Submissions filed on 22 September 2026 (“RWS”) at [5(a)].

²⁵ RWS at [5(b)] and [27].

²⁶ RWS at [5(c)].

and (d) whether Mr Biswas is entitled to the declaration and/or his alternative prayer for the charge to be quashed in the public interest.

Decision

Time-bar

14 The first main issue is whether Mr Biswas is time-barred. An application for permission to apply for a prohibiting order or quashing order must be made within three months after the date of the omission, judgment, order, conviction or proceedings which gave rise to the application: O 24 r 5(2) of the Rules of Court 2021 (“ROC 2021”). The court retains a discretion to extend time under O 3 rr 4(1) and 4(2) of the ROC 2021, and to waive the non-compliance with O 24 r 5(2) of the ROC 2021 in the interests of justice pursuant to O 3 rr 2(1) and 2(4) of the ROC 2021: see *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [33].

15 In *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R) 568 (“*Teng Fuh*”), the appellant applied for leave to apply for (a) a quashing order to quash a declaration which stated that its land and property were to be acquired for a public purpose; and (b) a mandatory order to be issued against the Collector of Land Revenue, Singapore to reconvey the land to it upon repayment of compensation paid for the acquisition. The declaration itself was made on 26 February 1983 but the appellant made its application only on 30 September 2005: at [1]–[3]. The appellant argued that it only discovered that the land was rezoned as “Residential” in September 2004 and the time for application should run from 13 July 2005 – the date on which the Ministry of Law rejected its appeal for the land to be returned: at [8]. The court rejected the appellant’s argument and held that time runs from the date on which the right to seek relief arises. As the appellant’s right to apply to quash the declaration

for the acquisition of the appellant’s land arises on the date of the declaration on 26 February 1983, time must run from that date: at [16] and [17].

16 Although *Teng Fuh* was decided under O 53 r 1(6) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed), its holding that time runs from the date on which the right to seek relief arises applies equally to O 24 r 5(2) of the ROC 2021. A preliminary question to determine is when Mr Biswas’s right to seek relief arose and thus, when time started to run under O 24 r 5(2) of the ROC 2021.

17 In this case, Mr Biswas seeks permission for a prohibiting or quashing order with respect to the AG “*proceeding* with [the Criminal Proceedings] against [him]” [emphasis added]. This could mean the AG proceeding by way of the Original Charge that Mr Biswas was charged with on 7 March 2022 or proceeding still by way of the First Amended Charge, which was amended on 6 July 2022 and served on Mr Biswas on 7 July 2022. At the hearing, Mr Biswas orally submitted that his application for judicial review relates to the First Amended Charge.

18 At the hearing, the AG submitted that the relevant time runs from 7 March 2022, when Mr Biswas was first charged, and that the subsequent amendments did not alter the nub of the charge. The AG also cautioned that treating an amended charge as the reference point would make the time limit a moving target.

19 Under O 24 r 5(4) of the ROC 2021, an applicant is bound by the grounds and relief sought in his statement and may not rely on any ground not set out in the statement unless the court otherwise allows. The Statement references the Original Charge at paragraph 4, where it states:

4. It is further a pertinent fact that the applicant was charged without his statement been taken on 7th March 2022, which would have addressed any questions that the investigating officer would have and it would make it explicitly clear that there was no wrong doing of mensrea and actusrea.

20 I note that the Statement also goes on to state at paragraph 5:

5. The charge is plain wrong and irrational as the applicant has never received any money from RLK Corporation Pte Ltd.

21 The reference to RLK is not contained in the Original Charge. It surfaced only in the First Amended Charge that was served on Mr Biswas on 7 July 2022. Thus, paragraph 5 of the Statement is plainly a reference to the First Amended Charge. It would also mean that one of the grounds for Mr Biswas’s application in OA 724 only surfaced at that point, which is around 7 July 2022. This is reinforced by paragraph 3 of the Statement, which complains that the charge had to be revised within three months.

22 Paragraph 8 of the Statement refers to both the “entity named in the amended charge” (*ie*, First Amended Charge) and “the person named in the original charge” (*ie*, Original Charge). However, the way it is framed suggests that the primary decision being challenged is proceeding by way of the First Amended Charge and the claim that Mr Biswas is not a recipient of any monies from the “person named in the original charge” is a *further* argument. Paragraph 8 of the Statement states as follows:

8. The grounds for this application are that the Respondent’s application in SC 901344 2022 is both unlawful and irrational because the Respondent has singled out the Applicant for the charge when the applicant is not even a recipient of any monies from the *entity named in the amended charge and one step further, nor from the person named in the original charge which was handed down without a statement.*

[emphasis added]

23 I thus find that the manner in which the Statement is framed supports Mr Biswas’s submission that his application for judicial review relates to the First Amended Charge. Following from this, I find that time should be considered to have run from the time that Mr Biswas was served with the First Amended Charge, which is on 7 July 2022. Time runs from service rather than from the date of the First Amended Charge (*ie*, 6 July 2022), as it was only on service that Mr Biswas’s right to seek relief in respect of it arose: see *Teng Fuh* at [17]; see [15] above.

24 This is not to say that every amendment to a charge restarts time. I do not think that this makes the time limit a “moving target” as the AG submits. Here, the amendment changed the identity of the owner of the property said to have been entrusted to Mr Biswas from Mr Koon to RLK. The AG was given leave to confirm after the hearing whether Mr Koon was a director or shareholder of RLK. The AG informed by way of correspondence dated 13 October 2026 that Mr Koon was not a director or shareholder of RLK. Whatever Mr Koon’s connection with RLK, the Original Charge did not name RLK and Mr Biswas’s complaint that he never received money from RLK could only have arisen from the First Amended Charge. That charge forms one of the grounds set out in Mr Biswas’s Statement.

25 Given that time runs from 7 July 2022, the application for permission must be made within 3 months, that is by 7 October 2022. OA 724 is reflected on records as being filed on 31 October 2022. Mr Biswas’s first affidavit is similarly reflected on records as being filed on that date. That affidavit, however, is dated 7 October 2022. At the hearing, Mr Biswas said that he presented OA 724 for filing on 7 October 2022 and it was accepted by the registry only on 31 October 2022. The AG did not dispute this and accepted that Mr Biswas would be within time if time ran from 7 July 2022. The Statement

itself is dated 6 October 2022 and states that the supporting affidavit was to be filed on 7 October 2022.²⁷ Given that the AG accepts that the application would be made within time if time runs from 7 July 2022, I accept that OA 724 was made within time as it was presented for filing on 7 October 2022.

26 In any event, even if OA 724 were treated as having been filed out of time on 31 October 2022, I would have extended time under O 3 rr 4(1) and 4(2) of the ROC 2021 or waived the non-compliance under O 3 rr 2(1) and 2(4) of the ROC 2021 in the interests of justice: see *Lim Siew Mui* at [33]–[34]. This is because the delay would have been a little over three weeks, the papers were prepared and dated within time, the delay is explained by the process of acceptance by the registry, and the AG has not suggested any prejudice in such circumstances.

27 In view of the above, I find that Mr Biswas is not time-barred.

Exhaustion of remedies

28 The second main issue is whether Mr Biswas has exhausted remedies before filing OA 724. An application for a prohibiting order or quashing order must not be made before an applicant has exhausted any right of appeal or other remedy provided under any written law: O 24 r 2 of the ROC 2021.

29 The facts here are similar to that in *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 (“*Kottakki*”). In *Kottakki*, the appellant was seeking (a) permission to apply for a prohibiting order to prohibit the AG from proceeding with charges against the appellant; (b) permission to apply for a quashing order to prohibit the AG from proceeding with the charges; and (c) a

²⁷ AS at [17].

declaration that the charges were in breach of Art 35(8) of the Constitution: at [9]. In finding that the court below did not err in finding that there was no *prima facie* case of a reasonable suspicion that the charges were unlawful and/or irrational, the Court of Appeal held at [37] that:

...satellite litigation to forestall the trial of a criminal charge is not well received. The discouragement of satellite litigation is evident in O 24 r 2(2) of the Rules of Court 2021, which states that “[a]n application for a prerogative order must not be made before the applicant has exhausted any right of appeal or other remedy provided under any written law.” The obvious remedy which [the appellant] should have sought and exhausted before bringing the Application was the criminal trial. He could have, and, importantly, should have, raised his objections arising from the alleged lack of evidence at the trial; he should not have made the Application for prerogative orders in order to pre-empt and indeed avoid entirely the criminal trial. ...

30 The above observations of the Court of Appeal in *Kottakki* apply here with equal force. Mr Biswas’s objections are that he was wrongly singled out, wrongly charged, the investigation against him was poor and there was an alleged lack of evidence at trial (see [9]–[11] above). Mr Biswas could have, and should have, raised these objections at the trial, which is ongoing. That the trial is now at an advanced stage, with one tranche remaining, reinforces this. Mr Biswas will still have a full opportunity to raise these matters before the trial judge and, if he is convicted, on appeal.

31 Mr Biswas says that OA 724 is “independent of the criminal trial”.²⁸ That does not assist him. His complaints about the adequacy of the investigation all go to whether the charge can be proved, which is the very question before the trial court. Mr Biswas’s main complaint is that there is no evidence to support the Criminal Proceedings (see [9] above). As the Court of Appeal observed in *Kottakki* at [38], an application for prerogative orders is not the right

²⁸ AWS at [2].

forum to raise concerns over the sufficiency of the evidence, and the Prosecution is under no obligation to give an accused person a preview of its case in order to defeat such an application. It is for the Prosecution to establish its case with the requisite evidence at the criminal trial.

32 As Mr Biswas has not exhausted remedies as required under O 24 r 2(2) of the ROC 2021, as expounded on in *Kottakki*, his application for permission is refused. This suffices to dispose of OA 724. For completeness, I have nevertheless proceeded to examine whether there is a *prima facie* case of reasonable suspicion in favour of granting the remedies sought.

Prima facie case of reasonable suspicion

33 I thus turn to the third main issue. In *Gobi a/l Avedian v Attorney-General* [2020] 2 SLR 883 (“*Gobi*”), the Court of Appeal set out three cumulative requirements that the applicant bears the burden of showing before a court will grant leave to commence judicial review: (a) the subject matter of the complaint must be susceptible to judicial review; (b) the applicant must 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: at [44].

34 For OA 724, only the third requirement is in issue, namely, whether the material before the court discloses a *prima facie* case of reasonable suspicion in favour of granting the remedies sought by Mr Biswas. While the threshold is a very low one, this does not mean that the evidence and arguments placed before the court can be skimpy or vague, and bare assertions will not suffice: *Gobi* at [54].

35 Under Art 35(8) of the Constitution, the AG has the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence. This exercise of prosecutorial discretion is subject to judicial review in two situations: (a) where the prosecutorial power is abused (*ie*, it is exercised in bad faith for an extraneous purpose); and (b) where its exercise contravenes constitutional protections and rights: *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 (“*Ramalingam*”) at [17], citing *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 (“*Phyllis Tan*”) at [149]. I examine whether a *prima facie* case of reasonable suspicion can be established for these two grounds.

Abuse of Prosecutorial Power

36 The starting point is that the court will presume prosecutorial decisions undertaken by the AG to initiate prosecution to be lawful: *Kottakki* at [20].

37 In his Statement, Mr Biswas asserts in general terms that individuals “connected to the establishment” have made false allegations against him, and that the charge was “timed with other civil matters to ensure that the rigging and institutional abatement that has taken place against the applicant is hidden”.²⁹ He identifies no facts to support these assertions. He also makes no specific allegation in his Statement that the Prosecution abused its power. This is material because Mr Biswas is bound by the grounds and relief set out in the Statement (see [19] above). Nevertheless, I consider whether a *prima facie* case of this ground can be made out based on facts alleged by Mr Biswas.

²⁹ AS at [2]–[3].

38 In his written submissions, Mr Biswas states that “the [C]riminal [P]roceedings [were] manifestly attended with mala fide intent” and “maliciously instituted with an ulterior motive for wreaking vengeance on [him] and with a view to spite him due to private and personal grudge”.³⁰ By doing so, he alludes to the AG proceeding with the Criminal Proceedings against him for malicious and/or ulterior motives. However, again, no facts were set out to explain why the Criminal Proceedings were proceeded against him for an ulterior purpose.

39 Mr Biswas’s main case in OA 724 is that there is insufficient evidence to justify the charge. An allegation that the evidence is insufficient does not, on its own, show an abuse of prosecutorial power. Such an abuse arises where the criminal process is used for a purpose for which it is not intended, *ie*, to prosecute an offender for some ulterior motive and not to punish him for an offence which he has committed: *Phyllis Tan* at [132] and [147]. Mr Biswas must therefore point to some material suggesting such an improper purpose. In his second affidavit, Mr Biswas refers to some facts that purportedly show how the AG has abused its power. I address these facts below.

40 First, he alleges that the AG chose not to call some witnesses, thus “abusing process and hiding the facts, to support their case with no intention of upholding the truth”.³¹ However, the Prosecution has discretion to call its witnesses for the purpose of proving its case. The failure to call any particular witness, in itself, does not mean that the Prosecution has intentionally concealed any facts. Mr Biswas is also free to apply to call particular witnesses as part of his Defence’s case. At the hearing, Mr Biswas said that his attempts to call

³⁰ AWS at [17].

³¹ A2A at [3] (S/N 5).

certain witnesses were opposed by the Prosecution. There is nothing in his Statement or affidavits to support this claim. In any event, whether witnesses can be called or not, is within the purview of the judge hearing the criminal trial. Where the judge rules that a witness is not allowed to be called, that does not show that there was an abuse of prosecutorial power.

41 Second, Mr Biswas alleges that the AG chose to charge Mr Biswas before the investigations were complete and “[d]irecting a charge on incomplete evidence is a mockery of the judicial process and abuse of process”.³² At the hearing, Mr Biswas said that the investigation was incomplete when he was charged: the affidavit of Investigating Officer Leong Jun Ming (“Mr Leong’s Affidavit”) referred to only two of the four transfers, and two of the recipients of the transfers gave their evidence only in 2024.³³ That further evidence was gathered after the charge was brought does not, without more, suggest that the charge was brought in bad faith or for an extraneous purpose. Investigations may continue after a charge is brought. Mr Leong’s Affidavit was filed in response to Mr Biswas’s affidavit in OA 724 and stated that it was not an exhaustive response.³⁴ The bank statements and debit acknowledgements relied on by the AG were available when Mr Biswas was charged. Whether the evidence as a whole, including that obtained in 2024, suffices to prove the charge, is for the trial court to determine.

42 Besides these two allegations, Mr Biswas has made other allegations that he does not specifically tie to the AG’s abuse of power.

³² A2A at [3] (S/N 9).

³³ NE at p 2.

³⁴ Mr Leong’s Affidavit at [3].

43 First, Mr Biswas takes issue with the fact that the charge was amended twice (so that there have been three versions of it) and that he was initially investigated for an offence under s 420 of the PC instead of s 406 of the PC.³⁵ Mr Biswas was initially investigated in 2018 under s 420 of the PC and the Prosecution eventually proceeded with a charge under s 406 of the PC on 7 March 2022.

44 However, this does not suggest that the evidential basis of the charge was lacking. The Prosecution is entitled, in the exercise of its prosecutorial discretion, to proceed with a different charge having reviewed the objective evidence available at the time: *Public Prosecutor v Chen Song* [2024] SGHC 129 at [79]. Contrary to Mr Biswas’s assertion that no statement was taken, a cautioned statement on the s 406 charge was recorded on the same day the charge was served.³⁶

45 Nor do the amendments to the charge assist Mr Biswas. The amendments did not change the central allegation that funds deposited into the Servus account were misused. They do not suggest an abuse of power by the Prosecution.

46 Second, Mr Biswas alleges that he was not the recipient of monies from RLK and cannot be assumed to have taken money.³⁷ However, as the AG highlights, that was not the Prosecution’s case to begin with. The Prosecution’s case was that monies from RLK were deposited into Servus’s OCBC account, and Mr Biswas made unauthorised transfers of the funds in the OCBC account.

³⁵ A2A at [3] (S/N 10) and [5].

³⁶ AS at [4]; A2A at pp 1275–1280.

³⁷ AS at [8]–[9].

The AG relies on certain evidence to show the transfer of money by RLK to Servus's OCBC account.³⁸ The AG also relies on two Debit Acknowledgements signed by Mr Biswas to show that Mr Biswas transferred money out of the OCBC account.³⁹ Mr Biswas is the sole director and shareholder of Servus. It will be up to the criminal trial court to decide if the evidence adduced is sufficient to prove the charge against Mr Biswas beyond reasonable doubt. Mr Biswas's disagreement with the sufficiency of the prosecution's evidence should be taken up at the criminal trial and does not show that the Criminal Proceedings were brought maliciously.

47 Third, Mr Biswas alleges that no investigating officer had gone through the contract in detail clause by clause and that the contract made no mention of "trust" or "entrustment of property or dominion over property".⁴⁰ He also alleges that the AG's claim, that the transfers were not done in accordance with the facility agreement and without the approval of RLK, was a "bare allegation" and "conjecture" as the investigating and arresting officers did not go through the contract.⁴¹ It is for the Prosecution to prove its case in a criminal trial. For the purposes of this proceeding, the issue is whether there is a *prima facie* case of reasonable suspicion that there was abuse of prosecutorial power. There is no such evidence in relation to Mr Biswas's allegations. It suffices to say that the absence of those words from the Facility Agreement does not suggest that the charge was brought for an improper purpose.

³⁸ Mr Leong's Affidavit at LJM-3 at pp 28–32.

³⁹ Mr Leong's Affidavit at LJM-4 at pp 34–35.

⁴⁰ AWS at [8]–[12].

⁴¹ A2A at [3] (S/N 7).

48 Fourth, Mr Biswas also alleges that RLK actually authorised the transfers under the Facility Agreement, relying on terms and conditions which he says were omitted from the Facility Agreement.⁴² The AG says that, on Mr Biswas's own evidence, those terms relate to a separate arrangement between Indian Ocean Group and RLK. Whether those terms form part of the parties' agreement and whether they authorised the transfers are live issues at the trial. A dispute of that kind does not suggest that the Prosecution acted in bad faith or for an extraneous purpose in bringing the charge.

49 Lastly, Mr Biswas also said that his focus was on quashing what he described as a wrong and unlawful arrest (see [10] above). Mr Biswas is bound by his Statement; Mr Biswas's arrest is not the subject of the Statement or the reliefs sought: O 24 r 5(4) of the ROC 2021. In any event, an arrest is an action of the police, not an exercise of the AG's prosecutorial power under Art 35(8) of the Constitution.

Articles 12(1), 12(2) and 35(8) of the Constitution

50 In his Statement, Mr Biswas also alleged that the Criminal Proceedings are a breach of Arts 12(1), 12(2) and 35(8) of the Constitution.

51 With respect to Art 12(1), the Court of Appeal set out a two-step test in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail*") at [61]–[62], to determine whether an executive act breaches Art 12(1) of the Constitution, namely: (a) whether it resulted in the applicant being treated differently from *equally situated persons*; and (b) whether this differential treatment was reasonable in that it was *based on legitimate reasons*.

⁴² A2A at [3] (S/N 3) and Tab A, pp 8–9.

52 Mr Biswas’s central complaint is that while he was prosecuted, his complaints to the police about other individuals were not investigated and given a cursory “no further action”.⁴³ In my view, the matters relating to these individuals arise from different factual matrices. Mr Biswas has not identified any possible equally situated person who has been treated differently or more favourably by the AG (in his capacity as the Public Prosecutor) for the purposes of Step 1 of the *Syed Suhail* test.

53 In his Statement, Mr Biswas states that he complained that one “Mr Rudolph”, whom he describes as the “[p]erson named in the original charge”, had barged into his then residence and threatened his family but this was never investigated by the police.⁴⁴ A decision by the Police not to investigate a complaint is not an exercise of the AG’s prosecutorial power. In so far as Mr Biswas might be unhappy that the AG did not prosecute Mr Rudolph, Mr Biswas’s police statement recorded on 30 May 2018 merely recorded his allegation that Mr Rudolph “buzzed the guard post and was let into [Mr Biswas’s] house”, “refused to leave until [Mr Biswas] came back” and eventually left after an hour. The statement records no allegation of threats.⁴⁵ At the hearing, Mr Biswas referred to a photograph (Defence Exhibit 1) which he said showed Mr Rudolph harassing his then wife. Even taking that at its highest, the conduct alleged is of an entirely different nature from the criminal breach of trust with which Mr Biswas is charged. Mr Biswas himself described Mr Rudolph’s conduct as “a separate matter”.⁴⁶

⁴³ A2A at [3] (S/N 11).

⁴⁴ AS at [10].

⁴⁵ Mr Leong’s Affidavit at p 40 (at [8], LJM-6).

⁴⁶ Mr Leong’s Affidavit at p 40 (at [8], LJM-6).

54 Mr Biswas also complained about a Mr Simon John Hopkins (“Mr Hopkins”). He lodged police reports against Mr Hopkins in 2019, 2021, and 2022.⁴⁷ The allegations against Mr Hopkins pertain to the allegedly false representations made in relation to company shares which Mr Biswas’s company purportedly acquired and criminal defamation. At the hearing, Mr Biswas said that the police had informed him that the AG took the view that there was no criminal breach of trust by Mr Hopkins, although in his view it was “the perfect example of [criminal breach of trust]”.⁴⁸ Given the nature of the allegations made against Mr Hopkins, Mr Biswas’s disagreement with the AG’s assessment of a different complaint, on different facts, does not make Mr Hopkins equally situated with him.

55 In his police reports in 2019 and 2021, Mr Biswas alleges that other individuals conspired with Mr Hopkins.⁴⁹ The alleged offences and surrounding facts relate to an underlying dispute over company shares and are also different from that of the present case.

56 As seen, the matters relating to Mr Rudolph, Mr Hopkins and other individuals arise from different factual matrices. These include alleged entry to residential premises and disputes over company share transactions. The allegations against them and their surrounding facts are materially different from the facts underlying the charge against Mr Biswas. They are not materially comparable to Mr Biswas’s alleged misuse of funds deposited under the RLK facility. As Mr Biswas has not shown a *prima facie* case of reasonable suspicion

⁴⁷ A1A at pp 20–24 (report in 2019); pp 17–19 (report in 2021); pp 34–36 (report in 2022).

⁴⁸ NE at p 5.

⁴⁹ A1A at pp 18 and 21.

that Step 1 of the *Syed Suhail* test could be satisfied, it is not necessary to consider Step 2.

57 It bears further noting that in exercising his prosecutorial power, the AG is “entitled and obliged to take into account many factors” in making prosecutorial decisions, including “the available evidence, public interest considerations, the personal circumstances of the offender, and the offender’s degree of culpability”: *Xu Yuan Chen v Attorney-General* [2022] 2 SLR 1131 (“*Xu Yuan Chen*”) at [26]. These considerations may apply differently to different offenders, such as to justify differential treatment between them: *Xu Yuan Chen* at [26], citing *Ramalingam* at [24] and [63]. The multitude of factors that the Prosecution is entitled and obliged to take into account in making prosecutorial decisions in each case means that it will generally be relatively challenging for an applicant to establish that he is “equally situated” to another person: *Xu Yuan Chen* at [27]. It follows that Art 12(1) of the Constitution is not breached merely by the fact that an individual faces prosecution, while another person who may have committed similar acts has not been prosecuted: *Xu Yuan Chen* at [27].

58 As for Art 12(2) of the Constitution, it reads as follows:

Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

59 Art 12(2) of the Constitution prohibits specific grounds of discrimination: *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [92]

and [102(d)]. Mr Biswas pleads no specific ground of discrimination or facts that suggest discrimination on any of the protected bases in Art 12(2).

60 As for Mr Biswas’s Art 35(8) challenge, I agree with the AG’s submission that this is parasitic on largely similar points. Mr Biswas argues that there was a breach of Art 35(8) of the Constitution as the Criminal Proceedings were brought unlawfully and irrationally, and such proceedings were unlawful and irrational as (a) he has been “singled out” for the charge based on assumptions when he is not a recipient of any monies from the entity named in the amended charge or from the person named in the original charge; (b) the deliberate omission by the AG and the police to investigate what he told the police years ago (that a Mr Rudolph had barged into his residence and threatened his family member) was not fair and “wrong in law”; and (c) there is no evidence to support the decision to allow the Criminal Proceedings (see [9] above).

61 None of these establish a *prima facie* case of reasonable suspicion. As discussed above, the Prosecution’s case was not that Mr Biswas was the recipient of the funds, but that the funds were deposited into Servus’s bank account. With regard to the failure to investigate allegations against Mr Rudolph, there are many factors that the Prosecution is entitled to consider in making prosecutorial decisions. Lastly, this is not a case where the prosecution has not produced any evidence at all when pursuing the Criminal Proceedings. In any event, it is for the criminal trial court to determine if there is sufficient evidence to support the charge.

62 I thus find that Mr Biswas has not shown a *prima facie* case of reasonable suspicion that the AG abused his power under Art 35(8) of the

Constitution in bringing and continuing the Criminal Proceedings or that the AG had contravened Mr Biswas’s constitutional rights.

The declaration and the alternative relief sought

63 As permission to apply for the prohibiting and quashing orders is refused, the prayer for a declaration falls away. An application for a declaration ancillary to or consequential upon a prerogative order must not be made unless permission to apply for that order has been granted: O 24 r 5(1)(b) of the ROC 2021; *Xu Yuan Chen* at [21].

64 In his written submissions, Mr Biswas asks in the alternative that the charge be quashed in the public interest and invites the court to exercise its inherent jurisdiction to do so.⁵⁰ This relief is not in his Statement, and he has not sought permission to add it. Mr Biswas is therefore bound by the grounds and relief sought in his Statement: O 24 r 5(4) of the ROC 2021. The general prayer in his Statement for “such further or other relief as this Honourable Court deems just” does not, in my view, extend to a distinct and substantive remedy of this kind.

65 In any event, OA 724 is an application for permission to seek prerogative orders in the court’s supervisory jurisdiction. It is not a vehicle for quashing a charge that is being tried in the State Courts. The Indian authorities on which Mr Biswas relies, such as *State of Haryana v Bhajan Lal* [1992] Supp (1) SCC 335, concern the powers of the Indian High Court such as under 482 of the Indian Code of Criminal Procedure. They do not displace the principles governing judicial review of prosecutorial discretion in Singapore as set out at

⁵⁰ AWS at [3] and [19].

[35] above. For these reasons and my findings at [62] above, I decline to grant the alternative relief.

Conclusion

66 For the reasons above, permission to apply for a prohibiting order and a quashing order is refused, and OA 724 is dismissed. As costs follow the event, the AG is awarded costs. The AG sought costs of \$7,000 to \$9,000, inclusive of disbursements of \$847.15. Mr Biswas made no submissions on quantum. I award costs to the AG in the sum of \$7,000 all-in.

Kwek Mean Luck
Judge of the High Court

Applicant in person;
Jocelyn Teo and Samuel Wong (Attorney-General's Chambers) for
the Respondent.
