REVISITING THE HIGH COURT'S REVISIONARY JURISDICTION TO ENHANCE SENTENCES IN CRIMINAL CASES

The High Court's exercise of revisionary jurisdiction to enhance sentence is well entrenched. Yet in 1993, the Minister of Law stated in Parliament that the object of revision "*is not to enhance sentences*" and that sentences are "*never enhanced on revision*" except where the court below was unaware of a minimum mandatory sentence provided by statute. In this paper, we will consider the ambit of the High Court's revisionary jurisdiction in the context of sentencing. The main theme behind the paper is that while the statutory provisions vesting the High Court with revisionary jurisdiction are wide and capable of being invoked in the context of sentencing, the exercise of such powers to enhance sentences can only be justified in highly exceptional cases. This is because very rarely can a sentence imposed by a subordinate court be described as being palpably wrong. Finally, we also revisit the merits of a suggestion previously raised in Parliament to provide for appeals from decisions made on revision to the Court of Appeal.

K Muralidharan **PILLAI**[*]
LLB (Hons) (National University of Singapore),
LLM (National University of Singapore), MBA (University of California, Los Angeles & National University of Singapore);
FSIArb, MCIArb;
Advocate & Solicitor (Singapore), Solicitor (England & Wales);
Partner, Commercial Litigation, Rajah & Tann LLP.

LUO Qinghui[*]
LLB (Hons) (National University of Singapore);
Advocate & Solicitor (Singapore);
Associate, Commercial Litigation, Rajah & Tann LLP.

* The authors would like to thank their colleagues, Ms Dawn Tan Ly-Ru and Mr Jerome Robert, for their invaluable comments on earlier drafts of this article. All errors and omissions remain the authors' sole responsibility.

I. Introduction

1 The High Court has long been statutorily vested with revisionary jurisdiction over its subordinate courts.[1]

2 This jurisdiction is provided for in ss 23 and 27(1) of the Supreme Court of Judicature Act[2] ("SCJA") as well as ss 266–270 of the Criminal Procedure Code[3] ("CPC").

3 The law reports are replete with examples where this revisionary jurisdiction has been invoked in criminal proceedings.

4 One usual area is where it is alleged that the judge below had acted outside his jurisdiction. Thus, in *Ee Yee Hua v PP*[4], the High Court, in the exercise of its revisionary powers, quashed an order of discharge amounting to an acquittal issued by a Magistrate on the basis that he had no jurisdiction to take cognisance of the offence in question which was ordinarily triable in the District Court. Similarly, in *PP v Lee Wei Zheng Winston*,[5] the High Court restored the original sentence imposed on an accused by the District Court which had, in excess of its powers, altered its original sentence after it was promulgated. Yet another example arose in the decision of *PP v Mahat bin Salim*[6] where the High Court set aside a sentence of reformative training imposed by the District Court on an accused because the accused had already exceeded the prescribed maximum age of 21 years for reformative training on the date of his conviction.

5 Another area where the revisionary jurisdiction of the High Court is invoked is where serious errors or inadequacies in the charges or statements of facts tendered in proceedings in the Subordinate Courts surface subsequent to conviction.

---

1 The Singapore High Court's present powers of revision originated from the Straits Settlement's Criminal Procedure Code 1900 (Ordinance 21 of 1900), which was itself largely modelled on the Indian Criminal Procedure Code. See the discussion on the history of the provision in *Ng Chye Huey v PP* [2007] 2 SLR 106 at [40] and *Butterworths' Annotated Statutes of Singapore* vol 3 *Criminal Procedure* (Butterworths Asia, 1997) at p 1. See also Tan Yock Lin, *Criminal Procedure* vol 2 (Butterworths Asia, 2008) at paras 3905–3950 where revisionary jurisdiction was described as having evolved out of the supervisory jurisdiction of the High Court over inferior courts and tribunals. The Court of Appeal in *Ng Chye Huey v PP* [at 53] authoritatively held that the High Court's inherent supervisory jurisdiction, which existed historically at common law, is distinct from its statutory revisionary jurisdiction.

2 Cap 322, 2007 Rev Ed.

3 Cap 68, 1985 Rev Ed.

4 [1969–1971] SLR 238.

5 [2002] 4 SLR 33.

6 [2005] 3 SLR 104.

6 For example, in *PP v Koon Seng Construction Pte Ltd*,[7] the accused company was convicted on a wrongly presented charge that was more serious than what the Prosecution had intended to prefer. The conviction on the wrong charge was set aside enabling the company to plead guilty to the lower charge. In *PP v Hardave Singh s/o Gurcharan Singh*,[8] the accused was convicted and sentenced on a drug trafficking charge in which the quantity of controlled drug was wrongly stated to be much higher than what it actually was. On revision, his conviction and sentence on the wrongly stated charge were quashed. In *PP v Henry John William*,[9] the accused was convicted on two charges that disclosed non-existent offences. The High Court, on a petition of revision, amended the defective charges and convicted the accused on the amended charges. Again, in *Annis bin Abdullah v PP*,[10] there was an error as to the victim's age in the charge and the statement of facts. As the age of the victim at the time of the offence of having carnal intercourse affected the issue of whether the accused could validly rely on the victim's purported consent in mitigation the High Court exercised its revisionary powers to amend the erroneous charge and statement of facts to reflect the true age of the victim.

7 The High Court's revisionary jurisdiction has also been invoked to set aside convictions in the lower court where it is alleged that an accused was pressurised to plead guilty to an offence.[11]

8 The use of revisionary jurisdiction to enhance sentences in Singapore, however, is of comparatively recent vintage. In 1993, the Honourable Minister for Law ("the Minister") stated in Parliament that the High Court did not (at that point in time) have a practice of enhancing sentences in the exercise of its revisionary jurisdiction unless the sentences below were made in disregard of mandatory minimum sentences prescribed by legislation.[12] This statement was made during the Second Reading of the Supreme Court of Judicature (Amendment) Bill,[13] when (then) Nominated Member of Parliament Associate Professor Walter Woon[14] ("Professor Woon") moved his own

7 [1996] 1 SLR 573.
8 [2003] SGHC 237.
9 [2002] 1 SLR 290.
10 [2004] 2 SLR 93.
11 See *Chua Qwee Teck v PP* [1991] SLR 857 (where the petitioner did not succeed in setting aside his plea of guilty) and the recent case of *Yunani bin Abdul Hamid v PP* [2008] 3 SLR 383 where the High Court set aside the petitioner's conviction on the basis that he faced overwhelming pressure to plead guilty.
12 See *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at cols 109–110.
13 *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at cols 94–118.
14 Presently appointed as the Attorney-General for a two-year term from 11 April 2008.

amendment to the Bill to provide, *inter alia*, for an appeal to the Court of Appeal in the exercise of the High Court's revisionary jurisdiction. In response, the Honourable Minister replied that such a provision was unnecessary for the following reasons:[15]

> In practice, the *sentences are never enhanced on revision* as opposed to appeal, except where the court below was unaware of a mandatory minimum sentence. *The object of revision is not to enhance sentences*, but to correct obvious mistakes of a court below, especially where appeals are not available. For example, where an accused has pleaded guilty without fully understanding the facts, the High Court may be asked by the accused to exercise its power of revision and set aside the conviction on a plea of guilty, since there was no appeal from such a conviction. *The High Court does not, in practice, intervene on its own initiative in the sentences of a court below although it could do so in theory.* It enhances sentences only upon appeal, either by the prosecution or by the accused. Therefore … this amendment is, in my view, not necessary." [emphasis added]

9 Professor Woon countered by stating that even though the High Court did not then have a practice of enhancing sentences on revision, there could be no assurance that such a situation would never happen in future.

10 The Minister responded by stating that:[16]

> [T]here are many things which the courts in the development of the law are dependent on practice and evolution of precedents and this is one of the areas. As Assoc Prof Walter Woon pointed out earlier, there is a background to the origins of this power of revision. It dates back to the days where there were non-professionals, non-lawyers, who were magistrates and judges. That taken together with the other amendment which this House has approved, that is, the Courts can look at the debates and proceedings of this House to ascertain the intention of the legislature, I think today's proceedings should not leave anyone any doubt as to what the intent of this amendment is.

11 Parliament then proceeded to deny Professor Woon's motion for the amendment.

12 After the abovementioned ministerial statement was made in Parliament, there have, however, been several reported decisions in which the High Court exercised its revisionary jurisdiction to enhance

15 See *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at cols 109–110. The Court of Appeal in *Ng Chye Huey v PP* [2007] 2 SLR 106 also made reference to the same ministerial statement at [60].

16 *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at col 111.

sentences.[17] The latest reported decision in which the High Court enhanced a sentence on revision is the 2007 case of *Navaseelan Balasingam v PP*[18] ("*Navaseelan*").

13 In *Navaseelan*, the appellant pleaded guilty in the District Court to five charges under s 4 of the Computer Misuse Act[19] ("CMA") and five charges under s 379 of the Penal Code[20] ("PC") respectively for making unauthorised and fraudulent withdrawals from various automatic teller machines ("ATMs"). Another 258 similar charges under the CMA and the PC were taken into consideration for the purpose of sentencing. The District Judge, after convicting the appellant, sentenced him to six months' imprisonment on each of the five theft charges under s 379 of the PC, and to 18 months' imprisonment on each of the five charges under s 4 of the CMA. The District Judge further ordered the imprisonment term for two of the theft charges and three of the CMA charges to run consecutively, resulting in a total imprisonment term of five and a half years.

14 The Prosecution did not appeal against the sentence. The appellant, however, filed an appeal against sentence. He contended that the sentence meted out by the District Judge was manifestly excessive as past precedents indicated that an appropriate sentence for a conviction under s 4 of the CMA would be in the region of between 8 to 12 months' imprisonment.

15 The High Court dismissed the appellant's appeal against sentence. It went on to hold that the District Judge imposed too light a sentence in thinking that he had no power to impose a sentence higher than seven years' imprisonment under s 11(3)(*a*) of the CPC and that he had misapplied the totality principle. This "error of law" resulted in a "manifestly inadequate" sentence, which warranted the exercise of the High Court's powers of revision to modify the permutation of the appellant's consecutive sentences. In the result, the High Court ordered all the sentences for the CMA charges to run consecutively, resulting in an aggregate term of 102 months or eight and a half years, thereby increasing the total imprisonment term by a further three years.

16 There are other reported decisions where the High Court also exercised its revisionary jurisdiction to enhance sentences. In the 1996 case of *PP v Nyu Tiong Lam*[21] ("*Nyu*"), the District Judge, sitting as a

17 See, for example, *PP v Nyu Tiong Lam* [1996] 1 SLR 273; *Teo Hee Heng v PP* [2000] 3 SLR 168.
18 [2007] 1 SLR 767.
19 Cap 50A, 1998 Rev Ed.
20 Cap 224, 1985 Rev Ed.
21 [1996] 1 SLR 273.

Magistrate, originally imposed fines ranging from $3,000 to $5,000 on each of the five respondents convicted under s 143 of the PC for unlawful assembly, whose common object was to commit an offence of illegal gaming contrary to s 7 of the Common Gaming Houses Act[22] ("CGHA"). The quanta of the fines imposed were in excess of the $2,000 statutory limit provided under s 11(5) of the CPC.[23] The learned District Judge initiated the application for revision for the High Court to set aside the fines and substitute appropriate sentences in their place.

17 At the hearing in the High Court, the Prosecution supported the District Judge's petition for revision. It further argued that deterrent custodial sentences should be imposed on the respondents on the basis of the respondents' previous convictions for offences under the CGHA.

18 The High Court allowed the District Judge's application and exercised its revisionary powers to order a refund of the payments which were in excess of the $2,000 statutory limit. In addition to the reduced fines, the High Court also imposed imprisonment sentences on the five respondents, including nine weeks' imprisonment on three of the respondents, and imprisonment terms of 12 and 15 weeks respectively on the other two respondents. Upon one of the respondents' continued protest in court against his sentence before it was recorded, the High Court further enhanced his sentence from nine to 18 weeks' imprisonment.

19 In *Teo Hee Heng v PP*[24] ("*Teo*"), the applicant initially pleaded guilty in the District Court to a charge of putting a person in fear of injury in order to commit extortion punishable under s 385 of the PC. A further charge of insulting the modesty of the same victim punishable under s 509 of the PC was taken into consideration for the purposes of sentencing. He was sentenced to 30 months' imprisonment and four strokes of the cane. Initially, the applicant filed a petition of appeal against his sentence. However, he later withdrew the appeal and brought, in its place, a petition for criminal revision seeking an order quashing his conviction on the basis that his plea of guilt was qualified and should not have been accepted.

22 Cap 49, 1985 Rev Ed.

23 A Magistrate's Court only has jurisdiction to impose a fine not exceeding $2,000. Although the proviso to s 11(5) also states that the Magistrate's Court may award the full punishment authorised by law for the offence upon the accused's conviction by reason of his previous conviction or his antecedents (and the Magistrate's Court must record its reason for so doing), the District Judge sitting as a Magistrate had imposed the fines exceeding $2,000 in the mistaken belief that he was exercising the powers of the District Court.

24 [2000] 3 SLR 168.

20 The High Court dismissed the applicant's petition for revision. It then proceeded to exercise its powers of revision and enhanced the applicant's sentence to 48 months' imprisonment and six strokes of the cane on its own motion. The High Court based its decision on the aggravating circumstances of the applicant's "contemptible" and "reprehensible" conduct in demanding the victim to perform certain demeaning and degrading acts whilst extorting money from her. The High Court also held that the applicant, by bringing the petition for revision, was "unrepentant and showed no signs of remorse for his deplorable deeds".[25]

21 In all three reported decisions above, the Prosecution did not appeal against the sentences passed on the basis that they were manifestly inadequate. Neither were the sentences below imposed in disregard of a minimum mandatory sentence provision. The High Court nevertheless enhanced the sentences using its revisionary jurisdiction. It does not appear from the judgments that the High Court's attention was drawn to the ministerial statement made in Parliament.

22 Given the apparent conflict between what was stated in Parliament about not using the High Court's revisionary powers to enhance sentences and the evident practice of the High Court to do so ever since, this may be an apposite time to consider the following issues:

(a) whether the High Court's revisionary jurisdiction *may* be invoked to enhance sentences in the first place, and if so,

(b) what the applicable principles appear to be based on case law in governing the court's discretion to enhance sentence in its revisionary jurisdiction.

23 We will deal with these issues in some detail below. Before embarking on the analysis, it may be convenient to set out here a summary of our main contentions:

(a) The High Court's powers of revision as provided for in s 23 of the SCJA and s 266(1) of the CPC are certainly wide enough to be used for the purposes of enhancing sentences imposed by the Subordinate Courts.

(b) Whilst in 1993, as noted by the Minister in Parliament, the High Court did not have a practice of using its revisionary powers to enhance sentence, this does not mean that the High Court cannot subsequently evolve a practice of using the same powers to enhance sentences in appropriate cases. Indeed, in India and Malaysia which have similar provisions governing

25 [2000] 3 SLR 168 at [16].

revision, the use of revisionary powers to enhance sentences is comparatively well established.

(c) A survey of Indian, Malaysian and local case law reveals that the courts appear to be guided by the following principles in deciding whether to invoke its revisionary jurisdiction to enhance a sentence:

(i) where the High Court could have exercised its appellate powers to enhance sentence in a particular case, it should not resort to invoking its revisionary powers to do the same;

(ii) the revisionary jurisdiction of the High Court should not be invoked merely because the court below had taken a wrong view of the law or failed to appreciate the evidence on record. Otherwise, there will be no difference between the High Court's exercise of its appellate and revisionary jurisdictions;

(iii) in determining whether serious injustice has been occasioned, the High Court may take into account public interest considerations; and

(iv) the High Court should not, however, take into account facts and circumstances that fall outside the record of the criminal proceedings as the object of revision is to address a miscarriage of justice arising from a decision made by the subordinate court on the basis of what it had heard and recorded below.

(d) Ultimately, however, having regard to the rationale behind the exercise of revisionary jurisdiction, namely, to correct grave and serious injustice, it is submitted that the High Court's revisionary jurisdiction should only be invoked very sparingly and reserved for rare situations where a subordinate court has imposed a sentence which is glaringly perverse and palpably wrong that merits the High Court's intervention to prevent a miscarriage of justice, and where such a miscarriage of justice cannot be corrected through the exercise of its appellate jurisdiction.

II. The High Court's revisionary jurisdiction to enhance sentence

A. The statutory provisions

24 The Singapore High Court's present powers of revision originate from the Straits Settlement's Criminal Procedure Code 1900[26] ("the 1900 Code"). The 1900 Code was largely modelled on the Indian Criminal Procedure Code. In particular, s 312 in the 1900 Code on the High Court's revisionary powers, which is materially similar to s 266 of the current CPC, was adopted from India. Consequent upon the status of the CPC as an imperial statute which Singapore inherited, no guidelines were laid down as to when and how the High Court should exercise these powers of revision.[27]

25 Similarly, there was no substantive discussion in Parliament after independence on the rationale behind the introduction of the High Court's revisionary jurisdiction through ss 23 and 27 of the SCJA or the scope of such powers of revision at the time of the enactment of the SCJA in 1969.

26 Under s 266(1) of the CPC, the High Court can call for and examine the record of any criminal proceeding[28] before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, *sentence* or order recorded or passed and as to the regularity of any proceedings of that subordinate court.

---

26 Ordinance 21 of 1900.

27 It was observed in the Objects and Reasons to the Bill of the Criminal Procedure Code in *The Straits Settlements Government Gazette* (4 February 1892) that, previously, the Magistrates had to seek guidance from the English text-books. The High Court in England, however, does not have an equivalent statutory revisionary jurisdiction. It continues to have common law supervisory jurisdiction over its Magistrate's Court and the Crown Court (in respect of decisions which do not relate to trial on indictment) exercised through prerogative writs: see Blackstone's *Criminal Practice* (Oxford University Press, 2008) at para D3.2, p 1252. The power of revision was itself contained in ch XXIX of this Bill, described as follows: "This Chapter … makes provision under which that [Supreme] Court may, where it has any reason to suspect that irregularities have taken place or that any injustice has been done in any inferior Court, of its own motion, send for the proceedings and examine into them and do what justice requires thereupon." The Bill was passed as the Criminal Procedure Code 1892 (Ordinance 7 of 1892), never brought into operation but further streamlined before it was finally re-enacted (with modifications) as the 1900 Code. See the discussion on the history of the provision in *Ng Chye Huey v PP* [2007] 2 SLR 106 at [43]–[44].

28 Section 266(2) provides that orders made under s 105 (to prohibit repetition or continuation of public nuisance), s 106 (in urgent cases of nuisance), and proceedings under ch XXX relating to inquiries of death are not proceedings within the meaning of s 266.

27 Section 268 of the CPC then goes on to provide that upon revision, the High Court may, in its discretion, exercise similar powers to that of the appellate court as provided for in ss 251, 255, 256 and 257 of the CPC.[29]

28 Sections 256(*b*) and 256(*c*) of the CPC deal with the power of the High Court to enhance the sentence on appeal. Under s 256(*b*)(ii) of the CPC, the High Court may "reduce or enhance the sentence" in respect of appeal from a conviction. Section 256(*c*) of the CPC enables the High Court to "reduce *or enhance the sentence, or alter the nature of the sentence*" in respect of appeals as to sentence. On the plain meaning of the words appearing in the abovementioned provisions, there is, therefore, nothing that restricts the High Court from enhancing a sentence using its revisionary powers. In fact, s 268(2) of the CPC clearly contemplates that the High Court is competent to make an order using its revisionary powers that is to the detriment of an accused since it provides that such an order should only be made after the accused "has had an opportunity of being heard".

29 Indeed, as will be discussed below, courts in India and Malaysia have established practices of enhancing sentences using revisionary powers arising from provisions which are *in pari materia* with ours.[30] The basis upon which such powers are exercised are also discussed below.

30 What then is the status of the Minister's statement in Parliament that the High Court does not use its revisionary powers to enhance sentences?

31 It is trite that s 9A(3)(*d*) of the Interpretation Act (Cap 1) allows a court to make reference to "any relevant material appearing in any official record of debates in Parliament" to interpret a statutory provision.

32 It is readily apparent, however, that the Minister's statement recorded in the parliamentary debates was post-enactment material made long after provisions on the revisionary jurisdiction of the High Court became part of our law. Courts have always been rather chary of placing weight on post-enactment parliamentary materials to ascertain the legislative intent behind statutory provisions in question.

---

29 Section 268(3), however, specifically provides that the High Court is not authorised to convert a finding of acquittal into one of conviction upon revision.

30 See *PP v Muhari bin Mohd Jani* [1996] 3 MLJ 116; *PP v Hing Chen Loong* [2000] 6 MLJ 161; *PP v Khairuddin* [1982] 1 MLJ 331; *PP v Mustapha bin Abdullah* [1997] 2 MLJ 424; *Shankar v Rama* 41 Cr LJ 1940 793; *PP v Madathi* 43 Cr LJ 1942 671.

33 Also, a careful study of the Minister's statement reveals that what he did then was merely to identify the High Court's practice in desisting from the use of revisionary powers to enhance sentence as it stood in 1993. The Minister did not state that the High Court *cannot* enhance sentences on revision. In fact, he specifically acknowledged that the High Court has the power to do so "in theory".[31] The Minister also did not suggest that the High Court cannot evolve its own practice depending on the prevailing circumstances.[32] Hence, it is submitted that, on its own, the statement is not capable of being read as inferential of the legislative intention to read the revisionary provisions narrowly such that they cannot be used to enhance sentences.

34 As will be discussed in greater depth below, the purpose behind the conferment of revisionary powers on the High Court is to enable it to correct serious injustice arising from decisions (which includes sentences) made in the Subordinate Courts. The plain words of the provisions discussed above make it relatively clear that the revisionary jurisdiction may be invoked in the context of sentencing. In the circumstances, the High Court's past practice of not using its revisionary jurisdiction to enhance sentences cannot affect the ambit of the revisionary powers which were conferred on it by statute[33] and preclude it from now exercising the same to enhance sentences when necessary.

35 We now proceed to deal with the next issue, *ie*, the applicable principles upon which the High Court's revisionary powers might be exercised to enhance sentences.

B. The applicable principles governing the use of revisionary jurisdiction to enhance sentence

36 The *locus classicus* in Singapore relating to the exercise of revisionary jurisdiction is *Ang Poh Chuan v PP*[34] ("*Ang Poh Chuan*"). There, the petitioner sought criminal revision of a subordinate court judge's decision to forfeit his vehicle which had been used by his

31 See *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at cols 109–110.

32 Though it must be pointed out that the Minister must have thought, at that time, that such a development was remote as he opined it was not necessary to provide for appeals to the Court of Appeal in respect of decisions made by the High Court in its revisionary jurisdiction.

33 See Francis Bennion, *Statutory Interpretation: A Code* (Butterworths, 2nd Ed, 1992) at p 64.

34 [1996] 1 SLR 326. This case was relied on as the leading authority on the exercise of the High Court's revisionary powers in two decisions where the sentences therein were enhanced on revision: *Navaseelan Balasingam v PP* [2007] 1 SLR 767 and *Teo Hee Heng v PP* [2000] 3 SLR 168.

employee to commit an offence under s 20(1) of the Environment Public Health Act.[35] The basis of the petition was the financial hardship he suffered, having had to pay off a judgment debt owing to a financial company for breach of a hire-purchase agreement to which the vehicle was subject.

37 Yong Pung How CJ dismissed the petition. Approving the principles laid down in the Indian cases such as *Akalu Ahir v Ramdeo Ram*,[36] *State of Orissa v Nakula Sahu*[37] and *Amar Chand Agarwala v Shanti Bose*,[38], his Honour held that a prerequisite of the exercise of revisionary jurisdiction was that there must have been some "serious injustice". He went on to state that although no "precise definition of what would constitute such serious injustice" was possible in order to preserve the courts' discretion, it must, however, generally be shown that "there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below".[39]

38 Accordingly, hardship caused by forfeiture alone could not attract criminal revision as otherwise, "[revision] would be little more than another form of appeal, and that is clearly not the intention of the statute …".[40] It is, therefore, evident that a clear distinction must be maintained between the exercise of revisionary jurisdiction as opposed to that of appellate jurisdiction.

39 These basic principles guiding the exercise of revisionary power were affirmed in *Knight Glenn Jeyasingam v PP*.[41] There, the appellant, a former Director of the Commercial Affairs Department, faced two charges of criminal breach of trust as a servant and a single charge of dishonest misappropriation punishable under ss 408 and 403 of the PC respectively. The appellant applied for a stay before the District Judge on the ground that he was given immunity from further prosecution by the Attorney-General's Chambers. Hence, according to him, the bringing of the charges against him constituted an abuse of process. The District Judge dismissed his application and ordered the trial on the three charges to begin. Before the commencement of the trial, the appellant filed an appeal against the decision of the District Judge and also brought a petition of criminal revision in relation to the same decision to the High Court.

35 Cap 95, 2002 Rev Ed.
36 AIR 1973 A 2145.
37 AIR 1979 SC 663.
38 AIR 1973 SC 799.
39 [1996] 1 SLR 326 at [17].
40 [1996] 1 SLR 326 at [19].
41 [1999] 3 SLR 362.

40 The High Court dismissed both the appeal and the petition. The appeal was dismissed on the basis that the District Judge's dismissal of the appellant's application was not a final order that disposed of the rights of the parties since the trial on the three charges the appellant faced had not even commenced. The petition for revision was also dismissed as the High Court did not see any glaring defect of procedure or wrongful exercise of jurisdiction by the District Judge in hearing the appellant's application for a stay.

41 On the matter of the petition for revision, the High Court, in affirming the principles of revision laid down in *Ang Poh Chuan*, held that:[42]

> The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. The irregularity or otherwise noted from the record of proceedings must have resulted in grave and serious injustice.

42 Hence, a mere legal error is in itself insufficient to invoke the court's revisionary jurisdiction. Instead, the error must be found to lead to a grave and serious injustice before there will be a revision of the decision.

43 The same point was echoed in *You Xin v PP*[43] where the High Court invoked its revisionary powers to assess the appellants' conviction for contempt of court by the learned District Judge below for disrupting the proceedings during trial.[44] The High Court held that "it is trite law that this power is to be exercised sparingly" and that "the threshold for exercising the revisionary power is the requirement of 'serious injustice'".[45] After reviewing the record, the High Court was satisfied that there was no serious injustice caused to the appellants although, on the face of it, there initially was "an appearance of a lapse in processoral justice" when the learned District Judge announced that he found the appellants to be in contempt of court before they were informed of the court's desire to pursue contempt proceedings.[46]

44 The Malaysian and Indian courts have also made comparable holdings on the exercise of revisionary powers to enhance sentence.

---

42 [1999] 3 SLR 362 at [19].
43 [2007] 4 SLR 17.
44 This aspect of the decision of the learned District Judge was not appealed upon.
45 [2007] 4 SLR 17 at [83].
46 [2007] 4 SLR 17 at [89].

45 Abdul Hamid CJ, in delivering the Malaysian Supreme Court's decision in *Liaw Kwai Wah v PP*,[47] held as follow:

> [W]e wish to observe that a Judge may use the power of revision to increase a sentence only in exceptional cases. He is not to assume the role of the Public Prosecutor. The law is clear in that the Public Prosecutor is vested with a right of appeal against any sentence which he feels is manifestly inadequate. The power of revision is therefore used sparingly and should remain a discretionary power to be exercised primarily for purposes of correcting a miscarriage of justice.

46 Several commentators on the Indian Code of Criminal Procedure have similarly stated that the Indian courts' use of revisionary powers for enhancement of sentence shall be used in "extreme cases where the sentence is grossly inadequate" or where the court below made "a perverse order that causes a miscarriage of justice". It was further stated that "a court of revision does not ordinarily interfere … if sentence is substantial, but does so if it is manifestly or grossly inadequate".[48]

47 A survey of several Malaysian and Indian cases where sentences were enhanced using revisionary powers reveals two overlapping broad categories where revisionary powers were invoked by the High Court to enhance sentence with a view to correct serious injustice:

> (a) where the original sentences imposed below were manifestly inadequate giving rise to a danger of loss of public confidence in the judicial system; and
>
> (b) where overwhelming public interest dictates that the sentences have to be enhanced.

48 These cases are outlined below, starting with the Malaysian cases.

49 In the Malaysian High Court decision of *PP v Muhari bin Mohd Jani*,[49] the accused were police officers. They pleaded guilty to the charge of voluntarily causing hurt to a suspect for the purpose of extorting from him information which might have led to the detection of the offence that the suspect was alleged to have committed. The suspect succumbed to his injuries inflicted by them and died in police custody.

---

47 [1987] 2 MLJ 69 at 71F.

48 See B B Mitra, *The Code of Criminal Procedure 1973* (Arup Kumar De Kamal Law House, 18th Ed, 1995) at p 1402; S C Sarkar, *The Law of Criminal Procedure* (India Law House, 7th Ed, 1998) at p 1201.

49 [1996] 3 MLJ 116.

50 The Sessions Court sentenced each of the two accused to 18 months' imprisonment. Dissatisfied with the short sentences imposed on the accused, the deceased suspect's elder brother filed an application in the Malaysian High Court to revise and increase the sentences imposed on the accused.

51 The High Court allowed the application. It held as follows:[50]

> … [T]he powers of the High Court in revision are exercisable at the discretion of the court and that discretion is untrammelled and free, so as to be fairly exercised according to the exigencies of each case … a judge may use the power of revision to increase a sentence only in exceptional cases … [It] is to be used sparingly … with regard to all the circumstances of each particular case … and the thrust would be primarily for the purposes of preventing or correcting a miscarriage of justice … *The main question to be asked is whether substantial justice has been done or will be done and whether the lower court should be interfered with in the interests of justice.* [emphasis added]

52 On the facts, the High Court held that public interest required a deterrent sentence to be imposed for such a serious offence. In particular, the High Court pointed out that:

(a) the offence under s 330 of the Malaysian Penal Code is a serious offence; and

(b) the respondents were supposed to be the custodians of the law and, by their acts, they had subverted the confidence and trust placed by the public on the Malaysian Police Force.

53 In the result, each of the respondents' sentences were enhanced from 18 to 36 months' imprisonment.

54 In *PP v Hing Chen Loong*,[51] Richard Malanjum J was alerted by a member of the public to the matter of the two accused being sentenced to only five days' imprisonment and a fine for managing a brothel with 23 prostitutes. His Honour called for the record of proceedings. Upon examination, his Honour found that, having regard to the circumstances of the case, the sentences imposed on the accused were manifestly inadequate which resulted in a miscarriage of justice for, amongst others, the following reasons:[52]

(a) some of the prostitutes managed by the accused were quite young, with the youngest being 15 years of age;

---

50 [1996] 3 MLJ 116 at 125D–E, 127B–C.
51 [2000] 6 MLJ 161.
52 [2000] 6 MLJ 161 at 179B–181H.

(b) to allow such light sentences to stand could be interpreted as though Malaysia acquiesces to such illicit activities. This will in turn adversely affect the image of Malaysia "especially when Islam is her national religion";

(c) the learned Magistrate below took into account the irrelevant considerations such as the fact that there was no "force" or cruelty when such matters are not even ingredients of the charge; and

(d) whilst the learned Magistrate recorded below the need to consider public interest as a paramount consideration, he paid only lip service to this.

55 In the result, the sentences were enhanced to 12 months' and nine months' imprisonment respectively.

56 In *PP v Khairuddin*,[53] the accused, a credit controller of a bank, was only sentenced to a total fine of RM9,000 and one day's imprisonment for each of the three charges of dishonest misappropriation and one charge of criminal breach of trust as a servant against him. The Malaysian High Court held that the sentences imposed below did not reflect the gravity of the offence and the manner in which the offence was committed. It went on further to hold that public interest demanded that cases of this nature involving persons in positions of trust, particularly in financial institutions, must be dealt with severely so as to deter would-be offenders. Hence, notwithstanding the fact that the Public Prosecutor had not appealed against sentence, the court was of the view that this was a proper case for the exercise of its revisionary power, to enhance the sentence on the charge of criminal breach of trust from one day's imprisonment to 18 months' imprisonment in addition to the fine of RM2,000.

57 Next, we look at the Malaysian High Court decision in *PP v Mustapha bin Abdullah*[54] where the accused was originally fined RM2,000 by a Magistrate for voluntarily causing hurt to the pregnant victim with an iron chain over a trivial traffic matter. After reading about the case in the newspapers, K C Vohrah J called for the record of proceedings. His Honour noted from the record that the respondent had been very aggressive and violent towards the victim who suffered injuries on various parts of her body. His Honour took judicial notice of the fact that cases of road violence had become prevalent, which required clear signals from the courts that such aggressive behaviour would be severely dealt with. In the result, his Honour set aside the fine of RM2,000 and imposed an imprisonment term of four months.

53 [1982] 1 MLJ 331.
54 [1997] 2 MLJ 424.

58 We now turn to the Indian cases where sentences were enhanced on revision. We begin with the Nagpur High Court decision of *Shankar v Rama*.[55] In that case, the three accused assaulted the complainant thereby causing him injuries, including a fractured left humerus. The Magistrate, instead of recording them as being guilty of causing grievous hurt punishable under s 325 of the Indian Penal Code ("IPC"), found them guilty instead of causing hurt *simpliciter* punishable under s 323 of the IPC. The accused were fined Rs 10 each on the basis that they were "young boys" and "committed the offence in the heat of their youth". The complainant brought an application of revision to the Nagpur High Court for the accused persons' convictions under s 323 of the IPC to be substituted with convictions under s 325 of the IPC instead.

59 The Nagpur High Court found it unnecessary to effect the change in the provisions as requested by the complainant. However, it went on to observe as follows:

> (a) that the punishment imposed on the person who fractured the complainant's humerus was plainly inadequate given the severe hurt caused by him; and
>
> (b) the person could hardly be described as one of "young boys" since he was 25 years old at the material time.

60 It held that "where the High Court considers the sentence imposed to be glaringly inadequate in the case of one of the accused at least and that the judgment of the trial Magistrate, very weak and illogical in its final conclusions, then its interference is called for".[56] In the result, the sentence passed on the 25-year-old assailant was enhanced from a fine of Rs10 to rigorous imprisonment of six months.

61 In *PP v Madathi*,[57] the accused struck her 16-year-old daughter with a very heavy piece of wood. As a result of the blow, she fell unconscious. Thinking that her daughter had died, the accused, with the assistance of two others, hung her daughter to a beam to make it appear that she had committed suicide. Alarm was then raised. Within a short time, the girl's body was cremated before a post mortem could be conducted.

62 The Sessions Judge found the accused guilty under culpable homicide punishable under s 304(2) of the IPC on the basis that she was acting at the material time under grave and continuing provocation. Instead of sentencing her to imprisonment, however, he treated her as a first offender and bound her over under s 562 of the Indian Criminal

55 41 Cr LJ 1940 793.
56 41 Cr LJ 1940 793 at 793.
57 43 Cr LJ 1942 at 671.

Procedure Code. The Prosecution brought a criminal revision petition against the accused. The Madras High Court held that though it was reluctant to interfere with the discretion of the Sessions Judge as to the sentence, it would not allow such a very inappropriate order to stand. The High Court went on to enhance the accused's sentence to five years' rigorous imprisonment.

63 It is noteworthy that whilst the Indian and the Malaysian courts apply a similar principle when invoking the revisionary powers to enhance sentence, the end results do not always appear uniform. This is not surprising given that the circumstances of each case vary greatly. In addition, the powers of the High Court in revision are exercisable at the discretion of the court. Naturally, there will be differences in the application of such wide discretion. What is important, however, is that the courts took it upon themselves to identify precisely the serious injustice they wanted to avert instead of merely identifying the errors of law and fact that had been made by the courts below.

64 This may be a convenient stage to deal with some chosen aspects of the three Singapore cases where sentences were enhanced using revisionary powers with a view to discussing how consistent these decisions were in the application of the principles stated above.

C. *The use of revisionary jurisdiction to enhance sentence in the three Singapore cases*

(1) Invoking revisionary jurisdiction when the court is seized of the same matter in its appellate jurisdiction

65 In *Navaseelan*,[58] it will be recalled that the appellant in the case was caught using cloned bank cards to withdraw money from various ATMs. In total, he withdrew a sum of $54,380. He pleaded guilty in the District Court and was sentenced to five and a half years' imprisonment. He appealed against his sentence to the High Court on the basis that it was manifestly excessive. The High Court dismissed the appellant's appeal and exercised its revisionary jurisdiction to enhance the sentence to seven and a half years' imprisonment on the basis that the court below erred on principle.

66 It should be noted that the High Court was hearing an appeal against sentence. It is provided under s 256(*c*) of the CPC that the High Court has the power to enhance the sentence even though the appeal was brought on the basis that the sentence below was manifestly

58 [2007] 1 SLR 767.

excessive.[59] In *Tan Koon Swan v PP*,[60] ("*Tan Koon Swan*") the Court of Appeal held that an appellate court may interfere with the sentence passed below where it is satisfied that the sentencing judge has, amongst others, passed a sentence which is wrong in principle. Applying both the provision and the case of *Tan Koon Swan*, it would have been open to the High Court in *Navaseelan* to correct the error made by the learned District Judge on principle and enhance the appellant's sentence through the exercise of its powers of appeal. Since such an avenue was open, it was not necessary for the High Court to invoke its revisionary jurisdiction since its powers of revision are to be used sparingly and as a matter of last resort.[61]

67 In deciding to exercise its revisionary powers to enhance sentence, the High Court also cited public interest considerations, that "the security of Singapore's financial institutions and protection of public interest against electronic financial scams are paramount",[62] and there was strong public interest in deterring like-minded offenders from cloning bank cards and making unauthorised withdrawals from ATMs in the future.

68 With respect, it is submitted that reasons of "public interest" cannot justify the invocation of the High Court's revisionary jurisdiction to enhance sentence in *Navaseelan* where the decision below was neither "perverse" nor "palpably wrong" or was such as to result in a miscarriage of justice.

---

59 One example arose in *Oloofsen v PP* [1964] 1 MLJ 305. Wee CJ in that case acknowledged that the power to enhance the sentence in an appeal brought on the basis that the sentence below was manifestly excessive is rarely exercised but should be used in a proper case. In appeals, the High Court has the benefit of perusing the grounds of decision pursuant to s 249 of the CPC (*cf*, s 266(1) of the CPC where the judge exercising revisionary jurisdiction may only call for the record of criminal proceedings). Hence, the High Court, in an appeal, is perceived to be in a better position to understand the basis upon which a sentence is imposed by the subordinate court.

60 [1986] SLR 126.

61 This does not mean, as pointed out by Professor Tan Yock Lin in *Criminal Procedure* vol 2 (Butterworths Asia, 2008) at para 4201 that the High Court cannot exercise its revisionary powers when hearing an appeal. One example arose in *Goh Gek Seng v PP* [1996] 2 SLR 316 where the High Court heard an appeal against the forfeiture of money found on an appellant who was convicted for "punting" at a hawker centre punishable under s 5(1) of the Betting Act (Cap 21, 1985 Rev Ed) ("BA"). The appellant did not appeal against his conviction. The High Court exercised its revisionary powers to substitute the appellant's original conviction for "punting" with a conviction for loitering for purpose of betting punishable under s 5(3) of the BA on the basis that the facts adduced below did not support the original charge.

62 [2007] 1 SLR 767 at [39].

69 The High Court's holding that serious injustice had been occasioned thereby meriting a revision of the sentence to seven and a half years' imprisonment may, at one level, be supportable on the basis that the lower court erred in imposing a grossly inadequate sentence in thinking that its enhanced sentencing jurisdiction was seven years' imprisonment instead of 14 years' imprisonment. This led it to impose on the appellant a sentence of five and a half years' imprisonment that was substantially shorter than what it should have been. The problem with the application of this ground to the facts of this case is that the original sentence of five and a half years' imprisonment imposed by the lower court is in itself a substantially long sentence. It is not easy to characterise the lower court's decision as one that is perverse and palpably wrong leading to a miscarriage of justice. Had the High Court enhanced the sentence using its appellate jurisdiction, there would be no real need to consider whether the lower court had imposed a perverse and palpably wrong sentence. However, this criteria is an essential requirement to be satisfied before the High Court exercises its revisionary jurisdiction to enhance sentence. For the above reason, it is submitted that, unless reasons are proffered as to why the sentence imposed by the lower court is a perverse and palpably wrong decision, it should not be interfered with by the High Court in its revisionary jurisdiction. This point will be amplified further below.

(2) Using revisionary jurisdiction to consider matters outside the record

70 In *Teo*,[63] the High Court, in exercising its revisionary jurisdiction to enhance the applicant's sentence by 18 months' imprisonment and two strokes of the cane, noted that the applicant lacked remorse by prosecuting his application for criminal revision. It stated that by bringing the petition for revision, the applicant was "unrepentant and showed no signs of remorse for his deplorable deeds".[64] This fact, namely, the bringing of the petition for revision, is not a matter that would have been stated in the record of criminal proceedings since it occurred subsequent to the disposal of the case below.

71 In *Nyu*,[65] the High Court took into account the disruptive conduct of one of the respondents in protesting against his sentence during the hearing at the High Court as a basis for exercising its revisionary jurisdiction to further enhance his sentence from nine to

63 [2000] 3 SLR 168.
64 [2000] 3 SLR 168 at [16].
65 [1996] 1 SLR 273.

18 weeks' imprisonment. The relevant excerpt from the judgment is reproduced below:[66]

> They continued to voice their objections, maintaining that they had already paid the fines. I informed them that if they persisted in creating a spectacle of themselves in court, I would not hesitate to double their sentences. Unfortunately for B7, this warning fell on deaf ears. As I had not yet recorded their sentences, I ordered that B7 be sentenced instead to imprisonment for 18 weeks.

72 Once again, the disruptive conduct of the accused during the High Court hearing was not a matter that would have been stated in the record of criminal proceedings below.

73 The question for consideration in this section is whether the High Court is entitled to take into account developments occurring after the conclusion of the proceedings below in the exercise of its revisionary powers to enhance sentence.

74 To answer this question, we return to ss 266 to 268 of the CPC. Read as a whole, the provisions allow the High Court to call for any record of criminal proceedings below, examine any decision made thereof and, in an appropriate case, exercise any of its powers as provided in s 268(1) of the CPC.

75 A perusal of the said provisions will quickly establish that the *raison d'être* behind the invocation of revisionary powers of the High Court is to correct any miscarriage of justice *as may be apparent from the record* of any criminal proceeding in any subordinate court. Hence, it is suggested with respect that the High Court should not have taken into account developments occurring after the conclusion of proceedings below for the purpose of enhancing sentences using its revisionary powers.[67] Particularly in *Nyu*, it is respectfully submitted that it may have been more appropriate for the High Court to punish the appellant's aberrant conduct as contempt of court instead of enhancing his sentence using its revisionary powers.

76 In the previous sections, it has been ascertained that the High Court has been statutorily empowered to exercise its revisionary powers to enhance sentence. The applicable principles emerging from case law

---

66 [1996] 1 SLR 273 at [19].

67 A similar point was made by Professor Tan Yock Lin in *Criminal Procedure* vol 2 (Butterworths Asia, 2008) at para 4504 that "… there was no suggestion that the revisional court will enhance the sentence only with great circumspection or in exceptional circumstances … In the present view, the court should not take into account the offender's subsequent and completely unmeritorious conduct of applying for revision. An accused must be permitted to try by any lawful means to clear his name".

governing the courts' use of revisionary powers to enhance sentences have been discussed, and the High Court's use of its revisionary jurisdiction to enhance sentence in the three Singapore cases has also been examined. In the next section, the more fundamental question of whether the High Court's revisionary powers should, in the first place, be used at all to enhance sentence will be considered.

D. Should the High Court's revisionary jurisdiction be used to enhance sentence

77 The Singapore High Court has in *Ang Poh Chuan* laid down the definitive test for the exercise of its revisionary jurisdiction as that there must be something "palpably wrong" in the decision resulting in "serious injustice". However, in the same case, the High Court also stated that no "precise definition of what would constitute serious injustice" was possible in order to preserve the courts' discretion.[68]

78 The High Court's revisionary jurisdiction has historically evolved out of its supervisory jurisdiction over inferior courts and tribunals and was intended and designed to be all-embracing and simpler because in the past, many of the lower court judges were not legally trained or experienced, and it was thus necessary for the High Court to interfere and correct any injustice which might be perpetrated by these inferior judges.

79 While it is understandable (and it is submitted, correct) for the High Court to adopt the test of "serious injustice" and to decline to define with precision what amounts to "serious injustice" so as to preserve its discretion (since more often than not, each case turns on its own facts), it must be pointed out that the term "serious injustice" in itself is simply not capable of any precise definition!

80 Given the inherent limitation of the test (in the sense of its generality without specific guidelines), and having regard to the rationale behind the exercise of revisionary jurisdiction, namely, to correct grave and serious injustice, it is submitted that the High Court's revisionary jurisdiction can be invoked to enhance sentences, but only sparingly and reserved for highly exceptional situations where a subordinate court has imposed a manifestly inadequate sentence which is glaringly perverse and palpably wrong due to procedural irregularity or substantial impropriety that merits the High Court's intervention to prevent a miscarriage of justice. Further, the situation must be such that the miscarriage of justice cannot be corrected through the exercise of the High Court's appellate jurisdiction.

68 [1996] 1 SLR 326 at [17].

81 The practical implication of these limitations would be that the High Court would, in practice, rarely be entitled to invoke its revisionary jurisdiction to enhance sentence for the following reasons:

(a) very rarely can a sentence imposed by a subordinate court be described as being glaringly perverse and palpably wrong in its inadequacy;

(b) there must not only have been an error by the court below, but the error must have led to a grave and serious injustice; and

(c) the bulk of decisions resulting in manifestly inadequate sentences being imposed on the accused would normally have been corrected through the exercise of the High Court's appellate jurisdiction.

82 Given the limitations on the High Court's use of its revisionary powers to enhance sentence, it is all the more important for us to consider the recourse available arising from this, and, in particular, whether statutory provision should be made for an appeal from the decision of the High Court in the exercise of its revisionary jurisdiction. This question will be considered in the following section.

E. Recourse available arising from the High Court's use of revisionary powers

83 The question of whether the Court of Appeal may hear an appeal from a decision of the High Court exercising its revisionary jurisdiction was dealt with by the Court of Appeal recently in *Ng Chye Huey v PP*.[69]

84 After a comprehensive survey of the relevant cases, the Court of Appeal answered the question in the negative, relying on the following:

(a) that as a creature of statute, the Court of Appeal is only seised of jurisdiction that is expressly conferred upon it by statute;

(b) the express language of s 29A(2) of the SCJA makes it clear that it was not intended for the Court of Appeal to have appellate jurisdiction over the High Court's revisionary jurisdiction; and

(c) the legislative intent is also clearly established to exclude such appeals from being heard by the Court of Appeal. This can be seen by reference to the 1993 parliamentary debates referred

69 [2007] 2 SLR 106.

to above where Professor Woon's motion to move an amendment to provide for an appeal to the Court of Appeal for cases involving the High Court's revisionary jurisdiction was not passed.

85 The state of affairs as it presently stands, however, does raise an anomaly.

86 The time has come to once again revisit Professor Woon's suggestion made 15 years ago for the Legislature to expressly provide for appeals to the Court of Appeal in respect of decisions made by the High Court in its revisionary jurisdiction. As will be recalled, the Minister did not support Professor Woon's motion because it was not necessary to provide for such appeals based on the court practice as it existed then. Fifteen years later, the court practice of using revisionary powers to enhance sentence has become firmly established. In the premises, the basis upon which Professor Woon's motion was rejected no longer holds true.

87 As a matter of comparative study, the corresponding statutes in Malaysia and India allow for appeals to be prosecuted from decisions made by the High Court in its revisionary jurisdiction.[70]

88 However, unlike Malaysia and India, which have double-tier appellate systems, Singapore has a single level appellate system.[71] Due to this distinction, it may possibly be argued that it would be anomalous to provide for an appeal to the Court of Appeal from a High Court decision made upon revision when there is no such right of appeal in the case of a Magistrate's Appeal, particularly since the High Court's powers arising from both its appellate and revisionary jurisdictions are substantially the same.

89 Whilst the powers may substantially be the same, it should be pointed out that the High Court's revisionary jurisdiction is much wider

70 In Malaysia, the right of criminal appeal is untrammelled in respect of decisions made by the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court, but leave is required for those decisions decided by the Magistrates' Court and the appeal in the latter case is confined only to questions of law which have arisen in the course of the appeal or revision: See s 50 of the Malaysian Courts of Judicature Act 1964 (as amended by s 2 of the Courts of Judicature (Amendment) Act 1995 (Act A909). In India, it appears from Art 134(1)(c) of the Indian Constitution that as long as leave is granted by the Supreme Court, an accused is not precluded from appealing against any decision of the High Court in a criminal proceeding, whether made in its original or revisionary jurisdiction.

71 See s 19 of the SCJA in respect of appeals from and special cases submitted by the Magistrates' and District Courts, and s 29A(2) of the SCJA in respect of appeals from any decision of the High Court in exercise of its original criminal jurisdiction.

than its appellate jurisdiction. As can be seen from the cases discussed above, the High Court may exercise its revisionary jurisdiction even where appeals are not (or, for that matter, cannot be) brought to the High Court. There is no statutory time limit provided for the bringing of a petition of revision to the High Court. The High Court may also exercise its revisionary jurisdiction *suo motu* or at the request of third parties. In addition, the powers it may exercise on revision are also much wider than the powers of the High Court exercising supervisory jurisdiction since it can review the correctness of the decision of the court below.

90 Having vested such extraordinary jurisdiction and powers on the High Court, it is, in the authors' respectful view, appropriate and necessary for Parliament to provide for appeals to the Court of Appeal as a form of safeguard and to ensure that the exercise of the High Court's discretion in its revisionary jurisdiction is developed in a principled manner.

91 Separately, it may be worth noting that s 60(1) of the SCJA does allow the Court of Appeal to make a determination on any question of *law of public interest* arising from a decision of the High Court in the exercise of its appellate or *revisionary* jurisdiction in a criminal matter. This provision is not meant, however, to be used as an avenue for appeal but rather, as stated by the Minister in Parliament, "to ensure that the principles of law are correctly and authoritatively decided for future cases".[72]

92 The High Court has been assiduous in ensuring that this provision is not abused by parties as a form of a "backdoor appeal".[73] It has stressed that the discretion to hold whether a question of law is of public interest depends on the facts and circumstances of each case, and even if the above requirements are met, the court still retains a residual discretion to refuse an application made by any party other than the Public Prosecutor.[74] Practically, therefore, it would be difficult for a person whose sentence has been enhanced by the High Court upon revision to utilise this route. This is because the enhancement of sentence usually involves an exercise of discretion on the part of the High Court. It would generally be difficult to frame a question of law that is at the same time of public interest arising from such a context.

72 *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at col 117.
73 See, for example, *Abdul Salam bin Mohamed Salleh v PP* [1990] SLR 301 at [30]; *Ng Ai Tiong v PP* [2000] 2 SLR 358 at [10]; *Ong Beng Leong v PP (No 2)* [2005] 2 SLR 247 at [6]; *Yunani bin Abdul Hamid v PP* [2008] 3 SLR 383 at [46].
74 See *Cigar Affair v PP* [2005] 3 SLR 648 at [5]–[8].

III. Conclusion

93 In the course of this article, the relevant statutory provisions on the High Court's revisionary jurisdiction have been considered and both local and foreign case law reviewed in an attempt to distil the applicable principles governing the use of the High Court's revisionary powers in the context of the enhancement of sentence. Whilst the statutory provisions vesting the High Court with revisionary jurisdiction are wide and capable of being invoked in the context of sentencing, the exercise of such powers to enhance sentences can only be justified in highly exceptional cases because very rarely can a sentence imposed by a subordinate court be described as being palpably wrong. It has also been suggested that this may be a timely occasion to revisit Professor Woon's suggestion that Parliament provide for an appeal to the Court of Appeal from decisions made by the High Court in exercise of its revisionary powers.

94 As we have seen above, the High Court is vested with a wide and unfettered discretion to impose on an accused what it considers an appropriate sentence using its revisionary jurisdiction. However, this jurisdiction should not be used as, borrowing the words of a Law Lord, "a sort of joker or wild card" to enhance sentence merely because the High Court disapproves of the conduct of the accused. The provision of a right of appeal to the Court of Appeal will ensure that the exercise of the High Court's discretion will be developed on a principled basis. This will no doubt go a long way towards safeguarding the interests of the accused and the public alike.