KNIGHT GLENN JEYASINGAM v *PP* A MATTER OF FIRST PRINCIPLES

Knight Glenn Jeyasingam v *PP*[1] is a much publicised case as is evident from the extent of press coverage given by *The Straits Times*. Its relevance to the legal fraternity lies in its affirmation of basic principles pertaining to criminal appeals and applications for criminal revision.

By way of background information, the case arose from three criminal charges preferred against Knight in early 1998. These criminal charges relate to Knight's conduct sometime in November 1989 and sometime in early October 1990. Knight, who had pleaded guilty to two criminal charges in 1991,[2] claimed that the criminal proceedings in 1998 should not have been brought since the grant of immunity in 1991 covered the subject matter of the three charges preferred against him in 1998. Knight took out an application to stay the criminal proceedings on the three charges.[3]

At the trial, both the prosecution and defence agreed that Knight's application for a stay of the criminal proceedings should be tried as a preliminary issue. Essentially, Knight's contention was that it was an abuse of process to prosecute him for offences in respect of which he had been granted an immunity from prosecution in 1991. After six days' of hearing, the district judge dismissed Knight's application for a stay of the criminal proceedings and ordered the trial to proceed. Knight lodged an appeal against the district judge's order and for good measure, he also applied for a revision of the district judge's order refusing the stay of criminal proceedings.

Both the appeal and petition for criminal revision was heard by the learned Chief Justice who dismissed the appeal and the petition for criminal revision.

Power to stay criminal proceedings

At this juncture, it is convenient to deal with the Singapore court's power to stay criminal proceedings. The Supreme Court of Judicature Act does

1 Magistrate's Appeal No 169 of 1998 and Criminal Revision No 16 of 1998.

2 Although Knight had pleaded guilty, he appealed against sentence passed by the District Court. The appeal in the 1991 criminal proceedings is reported at [1992] 1 SLR 720.

3 The basis for the application was that it was an abuse of process for a prosecution to be maintained in regard to offences in respect of which (a) an immunity from prosecution had been granted or (b) the accused had a legitimate expectation would not be brought.

not expressly provide for the court's power to stay criminal proceedings.[4] However, it cannot be gainsaid that such power exists because the court possesses the power to control the use of the judicial process. Indeed, there is dicta in *PP* v *Ho So Moi*[5] to support the existence of an inherent power[6] to stay criminal proceedings on the ground that such proceedings are an abuse of process.[7]

Other jurisdictions recognise that the court has the power to stay criminal proceedings on the ground of abuse of process — see *Williams* v *Spautz*.[8] This power, according to the High Court of Australia, "arises from the need for the court to be able to exercise effectively the jurisdiction which the court has to dispose of the proceedings." The power will be exercised where the prosecution is brought for an improper purpose. According to Mason CJ in *Williams* v *Spautz*:

> "... every court is 'in duty bound to protect itself against an abuse of its process. In this respect there are two fundamental policy considerations which must be taken into account in dealing with abuse of process in the context of criminal proceedings ... The first is that the public interest in the administration of justice requires that the court protects its ability to function as a court of law by ensuring that its processes are used fairly by State and citizen alike. The second is that, unless the court protects its ability so to function in that way, its failure will lead to an erosion of public confidence by reason of concern that the court's processes may lend themselves to oppression and injustice. As Richardson J observed [in *Moevao* v *Department of Labour* [1980] 1 NZLR 464 at 481] the court grants a permanent stay: 'in order to prevent the criminal processes from

4 Paragraph 9 of the First Schedule (headed "Additional Powers of the High Court") deals only with power to dismiss or stay proceedings where the matter in question is res judicata between the parties, or where by reason of multiplicity of proceedings in any court or courts or by reason of a court in Singapore not being the appropriate forum the proceedings ought not to be continued.

5 [1993] 2 SLR 59.

6 Such inherent power would fall within section 18(1) of the Supreme Court of Judicature Act as by Article 162 of The Constitution, all such inherent power is preserved. Section 18(1) of the Supreme Court of Judicature Act provides that "The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore."

7 In this connection, the approach of the High Court in *PP* v *Norzian bin Bintat* [1995] 3 SLR 462 illustrates that in appropriate situations, the Public Prosecutor's power under Article 35(8) must give way to judicial power.

8 (1992) 107 ALR 635 at 640. This was a case where Dr Spautz commenced 30 proceedings, the majority being criminal prosecutions, against persons who occupied positions of authority at the University of Newcastle following his dismissal. The criminal prosecutions commenced by Dr Spautz included informations for criminal defamation, conspiracy seriously to injure and conspiracy criminally to defame. The trial judge had found that the prominent purpose of Dr Spautz's criminal prosecutions was to exert pressure upon the University to reinstate him and/or agree to a settlement (of his wrongful dismissal claim) favourable to him.

> being used for purposes alien to the administration of criminal justice under law. It may intervene in this way if it concludes ... that the court processes are being employed for ulterior purposes or in such a way ... as to cause improper vexation and oppression."[9]

The English cases acknowledge that the court has the power to stay criminal prosecutions on the ground of abuse of process but the "discretion to stay is not a disciplinary jurisdiction and ought not to be exercised in order to express the court's disapproval of official conduct".[10] In *R* v *Latif*,[11] the House of Lords considered an application for stay of criminal proceedings on the ground of abuse of process and stated that a court has to weigh countervailing considerations of policy and justice to decide whether there has been an abuse of process "which amounts to an affront to the public conscience and requires criminal proceedings to be stayed."[12] However, as it is evident from *Attorney General's Reference (No 1 of 1990)*,[13] the power of the court to stop a prosecution should be exercised in the most exceptional circumstances.

In Hong Kong, where the position of the Attorney-General (in relation to his discretion to institute criminal proceedings) *vis-a-vis* judicial power is similar to the position in Singapore, the Court of Appeal in *The Queen* v *Edward Christopher Harris*[14] accepted that while "The Court could not interfere with the Attorney-General's discretion to prosecute, but once the charge came before the Court it could consider whether the prosecution should be allowed to continue if grounds amounting to an abuse of process are raised."[15] In *The Queen* v *Edward Christopher Harris*, the Attorney-General resiled from a unilateral assurance made to the accused that he would not be prosecuted and in the factual circumstances of that case, the court held that it was not an abuse of process for the Attorney-General to change his mind. It is also worthy of note that Fuad V-P in *The Queen* v *Edward Christopher Harris* observed that the Commonwealth cases "demonstrate that in so far as the criminal process

9 (1992) 107 ALR 635 at 641. These principles are a modification of the principles stated in *Jago* v *District Court (NSW)* (1989) 168 CLR 23 which were relied on by the district judge. The *Jago* principles are more appropriate where a stay of criminal proceedings is being sought on the ground that, in the circumstances of the case, the accused would not have a fair trial.

10 See *Bennett* v *Horseferry Road Magistrates' Court* [1993] 3 All ER 138 at 161.

11 [1996] 1 All ER 353.

12 For cases where the English courts have exercised the power to stay prosecutions on the ground of abuse of process, see *R* v *Liverpool Magistrates' Court, ex parte Slade* [1998] 1 All ER 60 and *Bennett* v *Horseferry Road Magistrates' Court.*

13 [1992] QB 630.

14 [1991] 1 HKLR 389.

15 See also *Keung Siu-wah* v *Attorney General* [1990] 2 HKLR 238 (a case where an application for judicial review was made in relation to the Attorney-General's decision to prosecute).

is concerned, the parameters of the power of a court to stay a prosecution otherwise properly brought before it are still unsettled."[16]

The approach taken by the Hong Kong Court of Appeal in *The Queen* v *Edward Christopher Harris* demonstrates that "While the court must be the master and have the last word [on the use of the legal process] it is only where to countenance the continuation of the prosecution would be contrary to the recognised purposes of the administration of criminal justice that a court would ever be justified in intervening."[17]

It is also pertinent to note that the power of the court to stay prosecutions on the ground of abuse of process has also exercised the Privy Council in recent times. In *Attorney-General of Trinidad and Tobago* v *Phillip and others*,[18] the Privy Council clearly acknowledged that there may be circumstances justifying the state in not fulfilling the terms of a promise or offer not to prosecute.

The Appeal

In *Knight Glenn Jeyasingam* v *PP*, the appeal was dismissed as the order for the trial to proceed was not a final order. In connection with appeals to the High Court from decisions of the subordinate courts, it is trite law that under section 247(1) of the Criminal Procedure Code, an appeal is available only where the "judgment, sentence or order" appealed against is a final order. In the felicitous words of Yong CJ, "Although not expressly stipulated by statute, case law has yielded the overriding requirement of finality in the judgment, sentence or order appealed against to qualify for a right of appeal."[19] It is sufficient to say that this interpretation of section 247(1) of the Criminal Procedure Code was adopted in two Court of Appeal decisions, namely, *Mohamed Razip & Ors* v *PP*[20] and *Ang Cheng Hai* v *PP*.[21] In these two appellate decisions, it was held that a final judgment, sentence or order is one which terminates in the conviction or acquittal of the accused.[22]

It is worthy of note that the approach taken by the Court of Appeal in *Mohamed Razip & Ors* v *PP* and *Ang Cheng Hai* v *PP* is entirely consistent with that taken by the Court of Appeal in dealing with appeals

16 For a case where the Hong Kong High Court quashed the conviction of accused persons on the ground of abuse of process in the commencement of prosecutions, see *The Queen* v *Li Wing-tat* [1991] 1 HKLR 731.

17 [1991] 1 HKLR 389 at 403C where Richardson J's judgment *in Moevao* v *Department of Labour* [1980] 1 NZLR 464 at 482 was cited with approval.

18 [1995] 1 All ER 93 at 108d–e.

19 See paragraph 14 at page 10 of the transcript of the judgment.

20 [1988] 1 MLJ 84.

21 Criminal Appeal No 18 of 1995.

22 On the requirement of finality of judgments or orders in civil cases, see *Ling Kee Ling* v *Leow Leng Siong* [1996] 2 SLR 438 and *Rank Xerox (Singapore) Pte Ltd* v *Ultra Marketing Pte Ltd* [19921 1 SLR 73.

in civil proceedings. In civil proceedings, the applicable test in determining whether a judgment is final or interlocutory is that laid down in *Boczon* v *Altrincham UDC*,[23] *viz*., a judgment or order is final if it "finally disposes of the rights of the parties." In this connection, the phrase "rights of the parties" was explained by Yong CJ to mean "the substantive rights in dispute in the particular action in which the application ... is made."[24]

Faced with the two Court of Appeal decisions in *Mohamed Razip & Ors* v *PP* and *Ang Cheng Hai* v *PP*, Knight contended that the district judge's order refusing the stay of criminal proceedings was a final order as "it could have resulted in the stay of criminal proceedings lodged against [Knight] ... and the matter would have been disposed of."[25] The contention was that there was finality in the district judge's order as it finally disposed of the rights of the parties, in this case, the right (if any) of Knight to a stay of the criminal proceedings. Yong CJ disagreed with the contention and stated that the district judge's order "cannot be said in the circumstances to be final" as the order directed criminal proceedings to be continued, i.e., for a trial to be held for the determination of the guilt or innocence of Knight in regard to the three charges in question.

In the succinct words of Yong CJ, the "operative effect of the district judge's order had been to order the continued hearing of the trial in the ordinary way by the court." In contradistinction, it should be pointed out that if the district judge had ordered a stay of the criminal proceedings against Knight, that order would be a final order inasmuch as it terminates the proceedings and finally disposes of the right of Knight not to be prosecuted for the three offences in question. In such a situation, there would have been an order which effectively secures to Knight an acquittal as he would have obtained freedom from being prosecuted on the three charges in question.

In ruling that the district judge's order was not a final order, Yong CJ relied on *Ramchand* v Goverhandas[26] for the proposition that an order refusing a stay of suit was not a final order.[27] However, there is a Privy Council decision on appeal from Australia where it was held that an order staying an action on the ground that it is frivolous, vexatious and an abuse of process of the court is an interlocutory judgment. This is the

23 [1903] 1 KB 547.

24 *Rank Xerox (Singapore) Pte Ltd* v *Ultra Marketing Pte Ltd* [1992] 1 SLR 73 at 76. The Court of Appeal held that the test laid down in *Boczon* v *Altrincham UDC* was to be preferred to that laid down in *Salaman* v *Warner* [1891] 1 QB 734.

25 See paragraph 18 at page 12 of the transcript of the judgment.

26 AIR (1920) PC 86. A perusal of the judgment of the Privy Council reveals that, in the context of what amounts to a final judgment, both *Boczon* v *Altrincham UDC* and *Salaman* v *Warner* were referred to with approval.

27 See paragraph 16 at page 11 of the transcript of the judgment.

case of *Tampion* v *Anderson*[28] where the Privy Council referred to and followed the English cases which had held that orders dismissing actions on the ground that they are frivolous, vexatious or disclose no reasonable cause of action are interlocutory in nature. It suffices to say that counsel for Knight did not refer to *Tampion* v *Anderson.*

Inasmuch as the English cases referred to in *Tampion* v *Anderson* had applied the test laid down in *Salaman* v *Warner*[29] for determining whether a judgment or order is final and not the test enunciated in *Boczon* v *Altrincham UDC*, *Tampion* v *Anderson* may be said to be unpersuasive in Singapore. *A fortiori*, since the High Court of Australia in *Port of Melbourne Authority* v *Anshun Pty Ltd*[30] held that an order staying proceedings on the ground of abuse of process founded on the application of the wider doctrine of *res judicata* is a final order. In that case, Gibbs J observed that:

> "There may well be a difference between a case in which the action is frivolous or vexatious in the ordinary sense, or in which the proceedings disclose no reasonable cause of action, and a case in which the abuse of process lies in an attempt to litigate an issue which is *res judicata* and *Tampion* v *Anderson* has nothing to say about a case of the latter kind."[31]

Be that as it may, since the district judge did not order a stay of the criminal proceedings against Knight, the district judge's order is clearly an interlocutory order with the result that such an order is not appealable under section 247(1) of the Criminal Procedure Code.

The Petition for Criminal Revision

Dealing with Knight's petition for criminal revision, Yong CJ emphasised the exceptional nature of the revisionary jurisdiction which is conferred by section 23 of the Supreme Court of Judicature Act and supplemented by section 266 of the Criminal Procedure Code.

His Honour agreed with Knight's counsel that the requirements justifying the exercise of revisonary power are strict.[32] These requirements may be found in *Ang Poh Chuan* v PP[33] where Yong CJ said:

> "... various phrases may be used to identify the circumstances which would attract the exercise of revisionary jurisdiction, but they all share the common denominator that **there must be some serious**

28 (1973) 3 ALR 414.
29 [1891] 1 QB 734.
30 (1980) 33 ALR 248.
31 *Ibid* at 249.
32 See paragraph 19 at page 13 of the transcript of the judgment.
33 [1996] 1 SLR 326.

> **injustice.** Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But it must 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.**"[34]

Having said that the revisionary power is a discretionary power and is exercised sparingly,[35] Yong CJ said that the applicant seeking revision "must show that the order of the trial judge is **clearly wrong**."[36] In *Knight Glenn Jeyasingam* v *PP*, the learned Chief Justice reiterated that the High Court would only exercise its revisionary power if "[t]he irregularity or otherwise noted from the record of proceedings ... [has] resulted in grave and serious injustice."[37]

In the instant case, the learned Chief Justice also pointed out that while a misconception of law may undoubtedly cause undeserved hardship, that in itself does not mean that the High Court should exercise its revisionary power. Otherwise the revisionary jurisdiction "would be little more than another form of appeal" which is contrary to the intention underlying section 23 of the Supreme Court of Judicature Act and section 266 of the Criminal Procedure Code.[38] For this reason, the High Court is slow to revise findings of fact on revision: see *R Jagadish Murty* v *Balaram Mohanty & Ors*[39] which was cited with approval by Yong CJ in *Knight Glenn Jeyasingam* v *PP*.[40] His Honour also found the following passage from *Akalu Ahir* v *Ramdeo Ram*[41] of guidance:

> "The High Court has been invested with this [revisionary] power to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that the subordinate courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power, in spite of the wide language of [the equivalent sections] CrPC, does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice."[42]

34 *Ibid* at 330. Emphasis added by writer.
35 See also *Packir Malim* v *PP* [1997] 3 SLR 429, 431H.
36 See *Ang Poh Chuan* v *PP* [1996] 1 SLR at 332C–D. Emphasis added by writer.
37 See paragraph 19 at page 13 of the transcript of the judgment.
38 See paragraph 21 at pages 14 and 15 of the transcript of the judgment.
39 [1992] CrLJ 996. In this case, it was said that the "High Court, however, would not disturb a finding of fact unless it appears that the trial court shut out any evidence, or overlooked any material evidence or admitted inadmissible evidence or where there is a manifest error on point of fact."
40 See paragraph 20 at page 14 of the transcript of the judgment.
41 AIR 1973 A 2145.
42 *Ibid* at 2147.

Turning to the grounds advanced by Knight as justifying the exercise of revisionary power, Yong CJ said that essentially, Knight's complaint was that the district judge had incorrectly evaluated the evidence and mis-appreciated the inconsistencies in the evidence of the main prosecution witness (Mr Tan Ah Leak) on the issue of whether the subject matter of the present three charges fell within the ambit of the immunity granted to Knight in 1991. In this regard, it is pertinent to note that there was only one issue before the district judge and that was whether the subject matter of the three charges against Knight came within the terms of the immunity granted to Knight in 1991. This was an issue of fact and the district judge found on the evidence that Knight failed to prove on a balance of probabilities that the three charges fell within the grant of immunity.

As the learned Chief Justice found that there was no glaring defect of procedure or jurisdiction nor any legal infirmity in the district judge's factual findings, his Honour dismissed Knight's petition for revision. His Honour concluded:

> "In my view, issues of fairness and justice such as those determining abuse of process, may be more equitably determined in the light of evidence adduced by the close of the substantive trial. Taking the present proceedings at this stage and, more importantly, in the absence of any glaring defect of procedure or wrongful exercise of jurisdiction by the district judge, I did not feel able to exercise my discretion to intervene."[43]

The learned Chief Justice's decision in *Knight Glenn Jeyasingam* v *PP* on the petition for revision is particularly welcomed as it re-affirms basic principles guiding the exercise of revisionary power. The clarity of the learned Chief Justice's judgment on the circumstances in which the High Court will exercise its revisionary jurisdiction should prove invaluable in reducing the number of unmeritorious petitions for criminal revision.

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43 See paragraph 23 at pages 16 and 17 of the transcript of the judgment.

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