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

[2023] SGHC 229

Originating Application No 387 of 2023

Between

Koh Shu Cii Iris

… *Applicant*

And

Attorney-General

… *Respondent*

GROUNDS OF DECISION

[Administrative Law — Remedies — Quashing order]
[Administrative Law — Remedies — Declaration]
[Criminal Procedure and Sentencing — Complaints to Magistrates]

TABLE OF CONTENTS

Koh Shu Cii Iris
v
Attorney-General

[2023] SGHC 229

General Division of the High Court — Originating Application No 387 of 2023
See Kee Oon J
30 June 2023

17 August 2023

See Kee Oon J:

Introduction

1 This was an application for permission to proceed with judicial review for a quashing order in relation to the decision of the Attorney-General acting in his capacity as the Public Prosecutor (the "Respondent") to intervene in and discontinue HC/MA 1/2022/01. In addition, the Applicant sought declaratory relief. I dismissed the application after hearing the parties' submissions. I now set out the grounds of my decision, incorporating the brief oral remarks I had delivered at the conclusion of the hearing.

Background facts

2 The brief background to the application is as follows. The Applicant was investigated for alleged criminal offences and subsequently charged in court. In

the course of investigations, the police seized the Applicant's MacBook laptop, her Vivo handphone and an Original Cloud E-mail Disk (collectively, the "Electronic Devices").

3 The Applicant asserted legal professional privilege over the material in the Electronic Devices. In November 2022, the Applicant, a team of police officers and a team of officers from the Attorney-General's Chambers (the "AGC") commenced a legal professional privilege review in accordance with an agreed protocol to identify privileged material in the Electronic Devices.

4 By way of a Magistrate's Complaint filed on 18 November 2022, the Applicant alleged that the police officers had breached the legal professional privilege review protocol, such that the material in the Electronic Devices had been compromised and was inadmissible in her criminal proceedings. She further asserted that the police officers had committed an offence under s 182 and/or s 187(1) of the Penal Code 1871 (2020 Rev Ed) ("PC") by remaining silent when she had asked a member of the AGC team a question about the legal professional privilege review.

5 Pursuant to the Magistrate's Complaint, a Senior Magistrate examined the Applicant on oath on 23 November 2022. He dismissed her complaint under s 152(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") as he found no credible evidence that the police officers had committed an offence under s 182 and/ or s 187(1) of the PC. The Senior Magistrate's written grounds of decision are contained in *Iris Koh Shu Cii v Christopher Koh and others* [2023] SGMC 2 ("*Iris Koh*").

6 On 6 December 2022, the Applicant filed a notice of appeal against the dismissal of her complaint.

7 On 9 February 2023, the Respondent conveyed his position via a letter dated the same date to the Supreme Court Registry that the Applicant's appeal was legally unsustainable. This was because a complainant did not have a right of appeal against the dismissal of a Magistrate's Complaint.

8 On 16 February 2023, the Respondent reiterated via a second letter that the Applicant's complaint had been properly dismissed. The Respondent invited the Applicant to withdraw her appeal, failing which he would apply to discontinue the appeal.

9 As there was no response from the Applicant to the Respondent's letters, the Respondent informed the Supreme Court Registry on 13 March 2023 that he would intervene to discontinue the appeal (the "Decision"). The Decision by the Respondent to do so formed the subject matter of the present application, which was filed on 14 April 2023. The Applicant's appeal in HC/MA 1/2022/01 against the dismissal of her Magistrate's Complaint has been held in abeyance.

The parties' submissions

The Applicant's submissions

10 The Applicant submitted that all the requirements for the grant of permission to commence judicial review were made out, having regard to *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [5]. It was not disputed that alternative remedies had been exhausted, that the Decision was susceptible to judicial review and that the Applicant had sufficient interest in the present matter.

11 The Applicant's submissions focused primarily on the material at hand disclosing an arguable case of reasonable suspicion in favour of granting the

remedies sought. It was submitted that the Decision was illegal, irrational and procedurally improper. Thus, the three applicable grounds of judicial review were satisfied.

12 In relation to illegality, the Applicant submitted that the Respondent had made errors of law since the Senior Magistrate had not complied with two requirements under the CPC in dismissing her complaint. First, s 151(2)(*a*) of the CPC was not complied with as the Applicant did not sign off on a written summary of her examination. Second, the Senior Magistrate did not issue a summons for the attendance of a person who may be able to assist in determining whether there are sufficient grounds for proceeding, nor direct a police officer to inquire into and report on the veracity of the complaint, before dismissing the complaint.[1] In her oral submissions, the Applicant focused only on the latter point.

13 Furthermore, the Respondent made an error of law in interpreting s 374(1) of the CPC to preclude any right of appeal against the dismissal of a Magistrate's Complaint under s 152(1) of the CPC.[2] As the order for dismissal was a final order that disposed of the rights of the parties, there should be a right of appeal. Even if the proper course was to apply for a criminal revision, this would not assist the Applicant where the record itself was erroneous or incomplete.

14 In addition, the Respondent took into account irrelevant considerations.[3] This could be seen from his erroneous interpretations of ss 152(1) and 374(1)

---

1 Applicant's Written Submissions dated 23 June 2023 ("AWS") at para 20.

2 AWS at paras 21–22.

3 AWS at paras 23–25.

of the CPC. Equally, the Respondent failed to take into account relevant considerations[4] since the Senior Magistrate had failed to comply with the requirements in s 152(1) of the CPC. The failure to comply with this safeguard to obtain evidence from a second source meant that the Senior Magistrate did not conduct any further enquiry, and thus, the Respondent lacked sufficient evidence to review the substantive merits of the appeal in coming to his Decision.

15 The Applicant also contended that the Respondent's position that there was no public interest in allowing the appeal to continue was irrational.[5] It would be in the public interest to ensure that errant police officers are taken to task, especially those guilty of intentional procedural breaches.

16 Finally, the Applicant submitted that there was procedural impropriety. The Respondent's Decision would deny the Applicant her right to a fair hearing and deny her an opportunity to correct the erroneous decision by the Senior Magistrate to dismiss her complaint without complying with the requirements in s 152(1) of the CPC.

The Respondent's submissions

17 In response, the Respondent contended that there was no arguable case of reasonable suspicion in favour of granting the remedies sought on any of the three grounds alleged by the Applicant. The Respondent pointed out there was no merit in the appeal against the Senior Magistrate's decision to begin with.

---

4 AWS at para 26.

5 AWS at paras 27–29.

18 As for the arguments put forth by the Applicant in this application, the Respondent maintained that there was no illegality. As a matter of statutory interpretation, s 151(2)(*b*) of the CPC does not impose any mandatory requirement for the Magistrate to issue a summons to compel the attendance of a person who may be able to assist or direct a police officer to inquire into the complaint.[6] The Applicant had suffered no prejudice whatsoever even if she did not sign off on a written summary of her examination pursuant to s 151(2)(*a*) of the CPC. Hence, the dismissal of her complaint was nonetheless valid even if there was a procedural irregularity, in view of s 423 of the CPC. Moreover, the Respondent had not made any error of law in interpreting s 374(1) of the CPC as precluding any right of appeal against the dismissal of a Magistrate's Complaint under s 152(1) of the CPC.[7] There was no legislation that conferred an express right of appeal.

19 There was also no irrationality in the Decision. The Respondent submitted that the Applicant's assertion of public interest in taking errant police officers to task was both vague and absurd. If this assertion were to be accepted, the upshot would be that any intervention by the Respondent in any private prosecution would always be irrational.[8] In any event, the Decision was reasonably supported by the lack of merits to the Applicant's case.[9]

20 As for procedural impropriety, it was submitted that the Applicant had not pointed to how she had been deprived of notice of the Decision or denied a

---

6 Respondent's Written Submissions dated 23 June 2023 ("RWS") at paras 11–17.

7 RWS at paras 18–21.

8 RWS at para 22.

9 RWS at para 23.

fair chance to be heard by the Respondent.[10] The Applicant had conflated the Respondent's Decision, which was the subject of this application, with the decision of the Senior Magistrate.[11] The Applicant's challenge of the Senior Magistrate's decision was based on the Applicant's flawed interpretation of s 152(1) of the CPC and was hence unmeritorious.[12]

21 Finally, the Respondent submitted that the Applicant's prayer for declaratory relief must necessarily fail since it was contingent on the grant of permission to apply for a prerogative order.[13] In this regard, the arguments for declaratory relief would fail given the Applicant's erroneous reading of s 152(1) of the CPC.

Issues for determination

22 Taking the entirety of the Applicant's written and oral submissions into account, the main issues for determination centred on whether there was an arguable case of reasonable suspicion that the Decision was illegal, irrational and/or procedurally improper. These issues revolved around the proper interpretation of ss 152(1) and 374(1) of the CPC.

---

10 RWS at para 26.

11 RWS at para 27.

12 RWS at para 31.

13 RWS at para 34.

My decision

Issue 1: There was no arguable case of reasonable suspicion that the Decision was illegal

23 The Applicant's arguments hinged on the determination of two sub-issues: (1) whether it is mandatory under s 152(1) of the CPC for a Magistrate to adopt either course of action provided for by s 151(2)(*b*) of the CPC before dismissing a complaint; and (2) whether s 374(1) of the CPC precludes any right of appeal against the dismissal of a Magistrate's Complaint.

24 In respect of sub-issue (1), I accepted the Respondent's submission that there was no arguable case of reasonable suspicion that the Decision was illegal. Specifically, the procedures under s 151(2)(*b*) of the CPC are not mandatory requirements but are entirely a matter of judicial discretion, and it is not mandatory under s 152(1) of the CPC to adopt either course of action provided for by s 151(2)(*b*) of the CPC before a complaint may be dismissed.

25 As for sub-issue (2), I found that s 374(1) of the CPC does not afford any right of appeal against the dismissal of a Magistrate's Complaint since there is no specific provision in the CPC or any other written law conferring such a right of appeal. Hence, the Respondent rightly considered s 374(1) of the CPC as a relevant consideration.

Sub-issue 1: Whether it is mandatory under s 152(1) of the CPC for a Magistrate to adopt either course of action provided for by s 151(2)(b) of the CPC for dismissing a complaint

26 To recapitulate, the Applicant argued that s 152(1) of the CPC should be interpreted as imposing a mandatory requirement that a Magistrate *must*, before dismissing a complaint, either issue a summons to compel the attendance of a

person who may be able to assist him or her in determining whether there are sufficient grounds for proceeding with the complaint, or direct a police officer to inquire into and report on the veracity of the complaint. Given the Senior Magistrate's failure to comply with the procedural requirements in s 152(1) of the CPC, this therefore rendered his dismissal of the complaint unlawful, resulting in the Respondent making an error of law in adopting the dismissal.

27 At the outset, it will be helpful to set out s 152(1) of the CPC, which reads as follows:

> **Dismissal of complaint**
>
> **152.**—(1) After examining the complainant under section 151(2)(*a*), and making any inquiry under section 151(2)(*b*)(i) or considering the result of any inquiry under section 151(2)(*b*)(ii), the Magistrate may dismiss the complaint if he or she decides that there is insufficient reason to proceed.

28 Section 152(1) of the CPC must however be read in tandem with s 151(2) of the CPC, which provides thus:

> **Examination of complaint**
>
> **151.**—(1) Any person may make a complaint to a Magistrate.
>
> (2) On receiving a complaint by a person who is not a police officer nor an officer from a law enforcement agency nor a person acting with the authority of a public body, the Magistrate —
>
> (*a*) *must* immediately examine the complainant on oath and the substance of the examination must be reduced to writing and must be signed by the complainant and by the Magistrate; and
>
> (*b*) *may*, after examining the complainant —
>
> (i) for the purpose of inquiring into the case himself or herself, issue a summons to compel the attendance before him or her of any person who may be able to help him or her determine

> whether there was sufficient ground for proceeding with the complaint;
>
> (ii) direct any police officer to make inquiries for the purpose of ascertaining the truth or falsehood of the complaint and report to the Magistrate the result of those inquiries;
>
> (iii) proceed in accordance with section 15 of the Community Mediation Centres Act 1997; or
>
> (iv) postpone consideration of the matter to enable the complainant and the person complained against to try to resolve the complaint amicably.

[emphasis added]

29 A plain reading of s 151(2)(*b*) of the CPC suggests that Parliament did not intend to lay down any mandatory requirements *after* the complainant has been examined by the Magistrate. Had there been a contrary intent, the word "must" (or even the word "shall", although it need not necessarily connote a mandatory obligation) rather than "may" would have been employed in s 151(2)(*b*) to require the Magistrate to "issue a summons to compel the attendance … of any person who may be able to help him or her determine whether there is sufficient ground for proceeding with the complaint". This is entirely reasonable and logical. After all, in relation to the requirements under ss 151(2)(*b*)(i) and 151(2)(*b*)(ii), the Magistrate is not required and cannot be expected to issue a summons in *every* instance to compel the attendance of some third person or to "direct any police officer to make inquiries for the purpose of ascertaining the truth or falsehood of the complaint", respectively. For example, it would not always be possible to identify any such third person, or there may simply be no third person involved at all. Whether a further stage of enquiry is necessary must be case-specific and dependent on the substance of each complaint.

30 As the Respondent submitted, this interpretation is principled because the inquiries that may be undertaken pursuant to ss 151(2)(*b*)(i) and 151(2)(*b*)(ii) of the CPC are intended to allow a Magistrate to determine whether there are sufficient grounds for proceeding with the complaint or to "[ascertain] the truth or falsehood of the complaint" respectively. Conceivably, there would also be cases where it is apparent from the complainant's examination alone that there is insufficient reason to proceed with the complaint. One such example is the present case, where the Magistrate has determined after examining the complainant that the complaint discloses no offence. As such, the Magistrate should proceed to dismiss the complaint under s 152(1) of the CPC as it would be fruitless and wasteful for the court to pursue further inquiries under ss 151(2)(*b*)(i) and 151(2)(*b*)(ii) of the CPC.

31 The Respondent's reading is supported by s 152(1) of the CPC as set out at [27] above. The relevant phrase in s 152(1), *viz*, "and making any inquiry under section 151(2)(*b*)(i) *or* considering the result of any inquiry under section 151(2)(*b*)(ii)" [emphasis added] refers to what may be contemplated *after* the Magistrate has examined the complainant under section 151(2)(*a*) of the CPC. Reading this phrase within the context and sentence structure of s 152(1) and having regard to the bracketing commas within which the phrase is situated, the plain meaning of s 152(1) is that it does not compel a Magistrate to undertake additional inquiries pursuant to ss 151(2)(*b*)(i) or 151(2)(*b*)(ii) of the CPC. Section 152(1) of the CPC only goes so far as to require the Magistrate, at the very least, to examine the complainant under s 151(2)(*a*) of the CPC before dismissing a complaint.

32 For completeness, I would also touch on the argument that s 151(2)(*a*) of the CPC was not complied with since the Applicant was apparently not asked to sign off on a written summary of her examination. In my view, the Applicant

was not prejudiced in any way by this procedural irregularity. I agreed with the Respondent's oral submission that this omission was not fatal in view of s 423 of the CPC, which addresses when errors, omissions or irregularities do not make proceedings invalid. The non-compliance with s 151(2)(*a*) of the CPC had not caused any failure of justice.

Sub-issue 2: Whether there is any right of appeal against the dismissal of a Magistrate's Complaint

33 The Applicant submitted that s 374(1) of the CPC should not be read as precluding a right of appeal against the dismissal of a Magistrate's Complaint. Section 374(1) of the CPC provides:

> **When appeal may be made**
>
> **374.**—(1) An appeal against any judgment, sentence or order of a court, or any decision of the General Division of the High Court mentioned in section 149M(1), may only be made as provided for by this Code or by any other written law.

34 I found that the Applicant's arguments were misplaced. Section 374(1) of the CPC is unambiguously clear in providing that an appeal "may only be made as provided for by this Code or by any other written law". The Applicant was unable to point to any provision conferring a statutory right of appeal in relation to the dismissal of the Magistrate's Complaint, simply because no such provision exists. There was no basis for the Applicant's argument that such a right somehow did exist on account of the *absence* of provisions in either the State Courts Act 1970 (2020 Rev Ed)[14] or the Supreme Court of Judicature Act 1999 (2020 Rev Ed)[15] precluding an appeal against the dismissal of a Magistrate's Complaint. With respect, the Applicant's argument was a complete

---

14 AWS at para 22(k).

15 AWS at para 22(l).

non sequitur and it provided no support for the suggestion that s 374(1) of the CPC does not preclude such an appeal.

35 The Applicant pointed further to ss 374(4A), 374(5), 375 and 376(1) of the CPC, presumably to argue that these provisions are the *only* provisions prescribing the situations where there is no right of appeal or the only situations where the right of appeal is limited. This argument was also a non-starter since it is evident from s 374(1) of the CPC itself that an appeal is subject to the minimum requirement that it must relate to a "judgment, sentence or order", but more importantly that it "may only be made as provided for by this code or by any other written law".

36 In this regard, the only relevant argument the Applicant mounted was based on *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196. In that case, Yong Pung How CJ considered the meaning of a "final order" and held that the test for finality is to see whether the judgment or order finally disposes of the rights of the parties. The Applicant submitted that a Magistrate's Complaint ought to be considered a "final order" since it disposed of the rights of the parties. However, I did not find it necessary to make any finding in this respect. Taking the Applicant's case at its highest, and assuming that the dismissal of her complaint was a final order that disposed of the rights of the parties, the Applicant would still not have been able to point to any express statutory provision conferring a right of appeal. As the Respondent rightly pointed out, there is no such statutory provision.[16] The Applicant's apparent reliance on s 374(2) of the CPC as a provision conferring a right of appeal did not get her very far.[17] Section 374(2) of the CPC does not provide for a right of

16 RWS at para 19.

17 AWS at para 22(f).

appeal simply because the "Applicant's petition of appeal sets out grounds which are questions of fact, law or a combination of both."[18] The provision states that "[a]n appeal may lie on a question of fact or a question of law or on a question of mixed fact and law." It plainly does not provide that an appeal automatically arises whenever such questions are purportedly raised.

37 I agreed with the Respondent's interpretation that the appeal was legally unsustainable under s 374(1) of the CPC for the following reasons:

(a) Section 376 of the CPC expressly governs appeals in relation to private prosecutions and provides as follows:

> **Appeal against acquittal and sentence in private prosecutions**
>
> **376.**—(1) Where in any prosecution by a private person —
>
> (*a*) an accused has been acquitted by a court; or
>
> (b) an accused has been convicted and sentenced by a court,
>
> there is to be no appeal against the acquittal or the sentence (as the case may be) by the private person.
>
> (2) The Public Prosecutor may appeal against any judgment, sentence or order of a court in a private prosecution or may, by fiat, and on such terms and conditions as the Public Prosecutor thinks fit, permit a private person to pursue such appeal.

There is no mention in s 376 of the CPC of any right of appeal against the dismissal of a Magistrate's Complaint. Nowhere else within Part 20 of the CPC, which governs "Appeals, Points Reserved, Revisions and Criminal Motions", or elsewhere in the CPC, is there any such provision either. Section 376(1) provides instead that a private person who has

---

18 AWS at para 22(g).

commenced a private prosecution may *not* appeal against the acquittal of or the sentence imposed on an accused. Section 376(1) of the CPC governs private prosecutions, which are only commenced when a Magistrate finds sufficient reason to proceed with a complaint (see s 153(1)(*a*) of the CPC). If a private person who has successfully brought a private prosecution to its conclusion effectively has no right of appeal, it ought to follow that any private person whose complaint does not even pass muster under s 152(1) of the CPC would have no basis to be permitted to appeal against the dismissal of their complaint.

(b) Section 401(1) of the CPC expressly provides that the General Division of the High Court may exercise its revisionary powers to direct a Magistrate to make further inquiry into a complaint which has been dismissed under s 152 of the CPC. Since the revisionary powers of the General Division of the High Court generally apply to judgments, sentences and orders that cannot be appealed against (see s 400(2) of the CPC), s 401(1) of the CPC bolsters the Respondent's position that an order made under s 152(1) of the CPC is non-appealable.

Indeed, under s 400(1) of the CPC, the Respondent and not any complainant is the proper party to seek revision against an order of dismissal under s 152(1) of the CPC. The Applicant's recourse, if any, ought to lie in the court's revisionary rather than appellate jurisdiction, but this is subject to the Respondent having determined that such a course of action is warranted. This is consistent with the Respondent (but not a complainant) having a right of audience before the General Division of the High Court (see s 11(6) of the CPC), and, as provided for by s 11(1) of the CPC, the Respondent having the control and direction of criminal prosecutions and proceedings. It also ensures that

any such petition for revision is subject to the Respondent's control to guard against frivolous petitions.

Issue 2: There was no arguable case of reasonable suspicion that the Decision was irrational

38 The Applicant submitted that the Respondent was irrational in taking the position that there was no public interest in allowing the appeal to continue.[19] It was contended that there was a public interest in ensuring that errant police officers are taken to task, especially those guilty of intentional procedural breaches. However, as the Respondent pointed out, this alone is not a sufficient basis to satisfy the high threshold of irrationality, even on the less exacting threshold of showing an "arguable case of reasonable suspicion".

39 I found that the Respondent's decision was not irrational. While there was a public interest in taking errant police officers to task, this could not in itself form the basis for allowing the application given that the Decision was clearly not unreasonable in the circumstances. Taking the Applicant's argument to its logical conclusion, any decision by the Respondent to intervene in a private prosecution would always be irrational because such a prosecution is, by definition, commenced by a party alleging criminal offences against third parties, and it would always be in the public interest for those third parties to be taken to task.[20] In any event, I concurred with the Respondent's submission[21] that the Decision would have been reasonable in light of the following:

---

19 AWS at paras 27–29.

20 RWS at para 22.

21 RWS at para 23.

(a) As conveyed via letter to the Applicant on 9 February 2023, she had no right to appeal against the dismissal of her complaint to begin with (see above at [7]).

(b) It was abundantly clear that the facts presented by the Applicant to the Senior Magistrate did not disclose an offence under ss 182 and/or 187(1) of the PC (*Iris Koh* at [25]).

(c) The Magistrate's appeal was not the proper forum for the Applicant to ventilate her claims of alleged police impropriety during the legal professional privilege review. It appeared that the real purpose of her Magistrate's Complaint was to challenge the admissibility of the material on the Electronic Devices.[22] The issue of admissibility ought properly to be raised at the Applicant's trial on her charges instead, as the Senior Magistrate noted (*Iris Koh* at [10]). The appeal did not appear to have been pursued in good faith but to advance a collateral purpose.

Issue 3: There was no arguable case of reasonable suspicion that there was procedural impropriety in the making of the Decision

40 The Applicant submitted that the Respondent's Decision would deny the Applicant her right to a fair hearing and deny her an opportunity to correct the erroneous decision by the Senior Magistrate to dismiss her complaint without complying with requirements under s 152(1) of the CPC.

41 However, as pointed out by the Respondent, the subject of the inquiry here was the *Respondent's* decision and whether there had been procedural impropriety in how the Respondent came to the Decision. In my assessment, the

[22] Supporting Affidavit of Iris Koh Shu Cii dated 14 April 2023 at p 34, lines 16–20 and p 37, lines 17–28.

Senior Magistrate had exercised his discretion judicially in evaluating the complaint before him. In any case, the alleged procedural errors made by the Senior Magistrate were premised on the Applicant's erroneous interpretation of s 152(1) of the CPC, which I have addressed in respect of Issue 1 (see above at [23]–[31]).

42 In this regard, the Respondent had given the Applicant notice of its position and a fair chance to be heard on her representations:[23]

(a) On 9 February 2023, the Respondent notified the Applicant of his position that her appeal was legally unsustainable.

(b) On 13 February 2023, the Applicant (through her counsel) alleged that the Senior Magistrate had unlawfully dismissed her complaint under s 152(1) of the CPC. Having considered the Applicant's position, the Respondent replied on 16 February 2023 stating that he took a contrary view.

(c) On 13 March 2023, the Respondent gave the Applicant notice of his decision to intervene to discontinue her appeal. On 23 March 2023, the Applicant made representations through her counsel and invited the Respondent to reconsider his decision. This was followed by the Respondent's written explanation on 24 March 2023 that he had arrived at his decision after considering the merits of the Applicant's appeal and whether there was a public interest in allowing it to continue.

43 There was therefore no arguable case of reasonable suspicion that the Decision was procedurally improper. The Applicant's submissions incorrectly

---

[23] RWS at para 29.

challenged the decision of the Senior Magistrate rather than the Decision (of the Respondent) which was being impugned. In any event, I saw no cogent reason to differ from the Senior Magistrate's decision to dismiss the complaint. There was no *prima facie* error in his finding that no offence had been disclosed on the complaint. The Applicant was afforded a full and fair hearing by the Senior Magistrate, who had duly explained why her complaint was dismissed. Adequate notice of the Respondent's intention to intervene and discontinue the appeal had been given to the Applicant by the Respondent and counsel's representations had been considered.

Conclusion

44 To sum up, the application for leave to commence judicial review for a quashing order of the Decision was dismissed as the Applicant had not demonstrated an arguable case of reasonable suspicion that the Decision was illegal, irrational or procedurally improper. In particular, the Respondent was justified in taking the position that the requirements under s 152(1) and s 151(2)(*b*) of the CPC are not mandatory and that s 374(1) of the CPC does not afford any right of appeal against the dismissal of a Magistrate's Complaint.

45 Correspondingly, the declaratory relief sought by the Applicant was also dismissed as it was contingent on the grant of permission to apply for a prerogative order (see *Cheong Chun Yin v Attorney-General* [2014] 3 SLR 1141 at [27]).

46 At the conclusion of the hearing, the Respondent asked for the Applicant's counsel to be held personally liable for costs on the basis that the application was frivolous and vexatious, and because counsel had advanced his submissions based on a clearly untenable interpretation of the law. It was further

pointed out that counsel had rebuffed the Respondent's repeated invitations to withdraw the application despite warnings of potential personal costs consequences.

47 I declined to order the Applicant's counsel to bear costs personally. I noted that counsel did not put forward any authorities to support the interpretations of ss 152(1) and 374(1) of the CPC that were advanced and could have been more prudent in the advice dispensed to the Applicant and in the arguments advanced before the court. That being said, I was also conscious that there was no specific case authority which deals with whether a dismissal of a Magistrate's Complaint pursuant to s 152(1) of the CPC was an "order" which could be appealed against. The Senior Magistrate alluded to this in *Iris Koh* (at [31] and [34]). As such, I did not think that the application was clearly frivolous and vexatious.

48 In the circumstances, I ordered the Applicant to bear the Respondent's costs fixed at $5,000, inclusive of disbursements.

See Kee Oon
Judge of the High Court

Mohamed Arshad bin Mohamed and Patrick Fernandez
(Fernandez LLC) for the applicant;
Lim Tze Etsuko and Jiang Ke-Yue
(Attorney-General's Chambers) for the respondent.