

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

[2024] SGHC 320

Criminal Revision No 4 of 2024

Between

Public Prosecutor

... Petitioner

And

Marlene Wise

... Respondent

GROUND S OF DECISION

[Criminal Procedure and Sentencing — Disposal of property]
[Criminal Procedure and Sentencing — Revision of proceedings]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND FACTS	2
DECISION IN THE DISPOSAL INQUIRY	4
THE APPLICABLE PROVISIONS OF THE CPC	6
THE PARTIES' CASES.....	8
THE YOUNG INDEPENDENT COUNSEL'S CASE	8
THE PROSECUTION'S CASE	10
THE RESPONDENT'S CASE.....	12
ISSUES BEFORE THE COURT.....	14
THE INTERPRETATION OF S 370(2) AND S 372(1) OF THE CPC.....	15
WHETHER THE COURT IS FUNCTUS OFFICIO AFTER IT ORDERS THE DISPOSAL OF SEIZED PROPERTY UNDER S 370(2) AND DIRECTS THAT IT BE DETAINED BY THE POLICE UNDER S 372(1)	15
WHETHER THE COURT HAS THE POWER TO ADJUDICATE CLAIMS MADE IN RESPECT OF SEIZED PROPERTY AFTER A PUBLIC NOTICE WAS ISSUED PURSUANT TO S 372(1) OF THE CPC.....	17
WHETHER THIS COURT SHOULD EXERCISE ITS REVISIONARY JURISDICTION	22
WHETHER THE RESPONDENT WAS IN LAWFUL POSSESSION OF THE SUM OF USD41,900 THAT SHE TRANSFERRED TO SUN'S BANK ACCOUNT	23
<i>The application of the Lawful Possession Precondition to s 370(2)(b)</i>	<i>24</i>
<i>The scope of the Lawful Possession Precondition</i>	<i>26</i>

<i>Whether the respondent satisfied the Lawful Possession Precondition</i>	29
THE APPLICABLE TEST WHERE THERE ARE COMINGLED FUNDS IN A DISPOSAL INQUIRY	31
CONCLUSION	32

This judgment is subject to final editorial corrections to be approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor

v

Marlene Wise

[2024] SGHC 320

General Division of the High Court — Criminal Revision No 4 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA, and Steven Chong JCA
23 October 2024

12 December 2024

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 Two legal issues arose in this petition for revision taken out by the Prosecution:

(a) After the court makes an order for the disposal of seized property under s 370 of the Criminal Procedure Code (2020 Rev Ed) (the “CPC”) and directs that the seized property be retained by the police pending potential claims pursuant to s 372 of the CPC, does the court become *functus officio* (“Issue 1”)?

(b) Does the court have the power under s 372 of the CPC to adjudicate claims made on the seized property (“Issue 2”)?

These issues arose from the decision of DJ Lau Qiuyu (“DJ Lau”) in a disposal inquiry (see *Public Prosecutor v Marlene Wise* [2024] SGDC 22 (the “GD”)). The seized property in this case was a sum of USD42,511.55 (the “Sum”) in a bank account frozen during investigations by the Commercial Affairs Department (“CAD”).

2 The Prosecution submitted that the answer to Issue 1 should be No and that to Issue 2 should be Yes. Initially, the Prosecution sought a consequential order that the Sum be disposed of to the Government on the grounds that the respondent was not entitled to the Sum as she had never been in lawful possession of it and that there were no other claimants to the Sum. However, in its written submissions here, the Prosecution revised its position and asked the court to return to the respondent the amount of USD41,900 which she had transferred to the said bank account and to forfeit the remaining USD611.55 to the Government. The respondent’s position was that she was entitled to the USD41,900 as well as the remaining USD611.55.

3 After considering the written submissions of the Prosecution, the respondent and the Young Independent Counsel and with the agreement of all parties, we dispensed with an oral hearing pursuant to s 238A(1) of the CPC. We exercised our revisionary jurisdiction and ordered the sum of USD41,900 in the said bank account to be returned to the respondent and the remaining amount of USD611.55 to be forfeited to the State.

Background facts

4 The disposal inquiry before DJ Lau arose out of an investigation into the transfer of moneys into a HSBC bank account in the name of Sun Jian. The undisputed facts are as follows. In January 2021, the CAD received information

from the US Federal Bureau of Investigation that suspected criminal proceeds valued at USD41,900 had been transferred from the respondent's bank account in the USA to the HSBC bank account in Singapore. This transfer of moneys on 12 January 2021 was pursuant to a technical support scam perpetrated against the respondent.

5 Accordingly, the CAD commenced investigations against Sun Jian for possible offences under s 47 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed). On 14 January 2021, the CAD seized the Sum in the HSBC bank account because the moneys were believed to be proceeds of a fraud committed in the USA. By this time, the transfer made by the respondent on 12 January 2021 was dissipated as it had been transferred out of the HSBC bank account on 13 January 2021.

6 As the CAD did not require the Sum any longer for the purpose of its investigations, it prepared a report pursuant to s 370 of the CPC on 19 January 2022. It also applied for a court order in the following terms:

Police to retain the property referred to in paragraph 2 and to issue a Public Notification under Sec 372(1) CPC for any claimants to establish his claim within 6 months.

At the end of the 6-month period:

- i. Police to apply for a disposal inquiry in the event of claims on the seized property;
- ii. If no claims established, the ownership of the seized property to be vested in the Government absolutely.

7 On 20 January 2022, the CAD's application was heard by DJ Koo Zhi Xuan ("DJ Koo"). DJ Koo granted an order in terms of the application. There were two parts to this order. First, pursuant to s 372, the police would detain the

Sum for a period of six months, during which a public notice was to be issued for potential claimants to establish their claims. Second, at the end of the six-month period, the police would apply for a disposal inquiry in the event claims were made on the Sum. If no claims were established, the Sum would vest in the Government absolutely.

7 A public notice was published in the eGazette by the CAD on 24 January 2022. The respondent was the only person who submitted a claim to the Sum. As the CAD did not agree that the respondent was entitled to the Sum, the CAD applied for a disposal inquiry on 9 January 2023 pursuant to DJ Koo's order.

Decision in the disposal inquiry

8 The disposal inquiry was convened before DJ Lau who heard it over three days on 27 February 2023, 24 May 2023 and 11 September 2023. The Prosecution argued that the Sum ought to vest in the Government while the respondent argued that she was entitled to USD41,900. Both parties agreed that the court was not *functus officio* and could make a determination on the entitlement to the Sum.

9 Having considered the parties' submissions, DJ Lau decided that the court was *functus officio* because of DJ Koo's order that the Sum be detained in police custody. She held further that, even if the court was not *functus officio*, it did not have the power under s 372 of the CPC to adjudicate any claims filed in response to the public notice. Instead, DJ Lau held this was a matter for the Commissioner of Police to deal with. Accordingly, she made no order in respect of the disposal of the Sum and left the matter to be decided by the Commissioner of Police.

10 This is a summary of DJ Lau's findings:

(a) DJ Koo's order of 20 January 2022 was a final and unqualified order under s 370 of the CPC that the person entitled to the moneys was unknown or cannot be found, with the effect that the court was now *functus officio* for the purpose of deciding on the disposal of the moneys (see the GD at [26]).

(b) Even if the court was not *functus officio* and was able to decide on the disposal of the moneys, the court did not have the power under s 372 of the CPC to adjudicate any claims made in response to the public notice issued by the Commissioner of Police. This was because the statutory framework and language of s 372 contemplated that this was a matter to be decided by the Commissioner of Police (see the GD at [27]). There were only two references to the powers that may be exercised by a relevant court under s 372. First, pursuant to s 372(1), the court's power was limited to directing that the seized property be detained in police custody where the person entitled to the property was unknown or could not be found. The Commissioner of Police must then issue a public notice and no order of court was needed for this. Second, the court's power under s 372(7) was limited to ordering the destruction or disposal of seized property where the court was of the opinion that either of the conditions in ss 372(7)(a) or 372(7)(b) was satisfied (see the GD at [32]).

(c) Section 372(3) of the CPC provided that the seized property may be sold on the order by the Commissioner of Police. This empowered him to decide substantively on whether one had acquired the seized

property legally and further to make an order for sale (see the GD at [34]).

(d) Unlike s 372 of the CPC, provisions in other legislations made it clear where Parliament was of the view that the matter of disposal should or must be referred to a court for decision. The absence of a similar reference to the court in s 372 suggested that there was no power for the court to determine claims (see the GD at [37]–[39]).

(e) A comparison with the equivalent provisions in the Indian Code of Criminal Procedure 1973 (“the Indian CPC”) confirmed that if Parliament had intended for the court to adjudicate claims made pursuant to the public notice, that would have been made explicit in the CPC as was done in the Indian CPC (see the GD at [40]–[42]).

The applicable provisions of the CPC

11 Before turning to the parties’ cases, we begin by setting out the relevant provisions of the CPC that were the subject of this criminal revision. We set out below the version of ss 370(2) and 372(1) of the CPC which were effective from 28 June 2024 and which the parties relied on:

Procedure governing seizure of property

370.—(1) ...

(2) Subject to subsection (3), and to any provisions on forfeiture, confiscation, destruction or delivery in any other written law under which property may be seized, the relevant court must, upon receiving a report mentioned in subsection (1), make such of the following orders as may be applicable:

(a) in any case where the property consists of a computer and any data stored in the computer, and the relevant court is satisfied that an offence was committed in respect of the data, or that the data was used or

intended to be used to commit an offence — an order for

—

- (i) the deletion of the data from the computer, and the delivery of the computer (after the deletion of the data) to the person entitled to possession of the computer; or
 - (ii) if that person cannot be ascertained, the deletion of the data from the computer, and the custody and production of the computer (after the deletion of the data);
- (b) in any case where the relevant court is satisfied that an offence was committed in respect of the property, or that the property was used or intended to be used to commit an offence — such order as the relevant court thinks fit for the disposal of the property;
- (c) in any case where the relevant court is satisfied that the property consists of anything into which any property mentioned in paragraph (b) has been converted, anything for which any property mentioned in paragraph (b) has been exchanged, or anything acquired (whether immediately or later) by this conversion or exchange — such order as the relevant court thinks fit for the disposal of the property;
- (d) in any case where the relevant court is satisfied that the property does not consist of any property mentioned in paragraph (a), (b) or (c), and the person entitled to possession of the property consents to the use of the property for compensation or restitution, or to the forfeiture of the property — such order as the relevant court thinks fit for the disposal of the property;
- (e) in any other case, an order relating to —
- (i) the delivery of the property to the person entitled to possession of the property; or
 - (ii) if that person cannot be ascertained, the custody and production of the property.

Procedure when person entitled to property is unknown or cannot be found

372.—(1) If the person entitled to the property mentioned in section 370 is unknown or cannot be found, the relevant court may direct that it be detained in police custody and the Commissioner of Police must, in that case, issue a public

notice, specifying the articles of which the property consists and requiring any person who has a claim to it to appear before the Commissioner of Police and establish the person's claim within 6 months from the date of the public notice.

12 After this criminal revision was filed, the Anti-Money Laundering and Other Matters Bill (Bill No 20/2024) (the “Bill”) was read in Parliament for a second time on 6 August 2024. Several changes were proposed to ss 370 and 372 which are not material for the present purposes. However, during her speech at the second reading, Second Minister for Home Affairs Mrs Josephine Teo made the following remarks, the significance of which we will elaborate on subsequently:

Under the proposed amendments, the seized properties will continue to be dealt with in accordance with the CPC and subject to judicial oversight. Interested persons can make their claims to the relevant Court and the Court will determine their entitlement to the properties and deal with it as appropriate.

13 The Anti-Money Laundering and Other Matters Act 2024 (No 24 of 2024) was passed on 6 August 2024 and assented to by the President on 26 August 2024. It has not come into operation yet.

The parties' cases

The Young Independent Counsel's case

14 We appointed a Young Independent Counsel, Ms Rebecca Chia (“Ms Chia”), to address us on the following questions:

- (a) Is a court *functus officio* after it has made an order for the disposal of seized property under s 370(2) of the CPC and directed that the property be detained in police custody under s 372(1) of the CPC (“Question 1”)?

(b) Does the court have the power to adjudicate claims made in respect of seized property after a public notice is issued pursuant to s 372(1) of the CPC (“Question 2”)?

(c) Would the answer to Questions 1 or 2 be different if the court which ordered the disposal of the seized property under s 370(2) of the CPC had also ordered that the police were at liberty to apply for a disposal inquiry in the event of claims over the seized property after notice under s 372(1) was issued (“Question 3”)?

15 For Question 1, Ms Chia answered it in the negative. This was because the court’s order for the property to be detained in police custody was an interlocutory order for the purpose of ascertaining the identity of the persons entitled to the property. If such a person could be identified, then the court could make a final order on the disposal of the property. This distinction was significant because it was only through a final order that the court disposed of the rights of the parties. The court was not *functus officio* because: first, the court had the power to adjudicate claims made in response to the public notice; and second, s 372(7) empowered the court to order the destruction or disposal of the property “at any time” if it had no appreciable value or if it was of a small value.

16 However, if no claim to the property was made within the six-month period after the issuance of a public notice under s 372(1), the court would be *functus officio* upon the expiry of that six-month period by virtue of s 372(5) which stipulates that the ownership of the property or its net proceeds pass to and vest in the Government absolutely. The court’s interlocutory order would then become a final order and the ownership of the property would vest in the Government without the need for any further order from the court.

17 For Question 2, Ms Chia submitted that the answer should be in the affirmative in that the court had the power to adjudicate claims made in respect of seized property after a public notice was issued under s 372(1). The only body with the power to adjudicate such claims was the court, as evidenced by provisions like s 372(7). In contrast, there were no provisions that conferred on the Commissioner of the Police the power to make an order for the disposal or delivery of the seized property.

18 In respect of Question 3, Ms Chia submitted that her answers to Questions 1 and 2 would not be different if the court which ordered the disposal of the seized property under s 370(2) of the CPC had also ordered that the police were at liberty to apply for a disposal inquiry in the event of claims over the seized property after the notice under s 372(1) was issued.

The Prosecution's case

19 The Prosecution agreed with Ms Chia that the court was not *functus officio*. The Prosecution also agreed that the court was the proper forum for the adjudication of claims made in response to a public notice under s 372 of the CPC.

20 At the disposal inquiry, the Prosecution objected to the respondent's entitlement to USD 41,900 in the bank account. However, in its written submissions for this criminal revision, it revised its position and sought an order that the amount of USD41,900 be paid to the respondent and the balance of the Sum be vested in the Government.

21 As the moneys attributable to the respondent had already been dissipated from the HSBC bank account, the Prosecution proposed that the following framework for disposal inquiries be adopted:

(a) Having regard to the nature of disposal inquiries and the lack of procedural rules governing them, the relevant standard of proof should be the *prima facie* standard.

(b) It should suffice for the potential claimant to establish the following three requirements: (i) that his moneys were deposited into the account; (ii) that he was induced by fraud to make the said transfer; and (iii) that the moneys that the potential claimant transferred into the account were acquired lawfully (the “Victim Preconditions”). These requirements “reflect[ed] the essence of the underlying legal basis for a proprietary claim”, without having to engage in “complex legal and evidential inquiries”, much like the modified rules of tracing applied in divorce proceedings in determining whether assets were traceable to gifts or inheritance or were matrimonial assets.

(c) The potential claimant’s claim should be based on his contribution to the bank account during the material time, as a proportion of the total amount transferred into the account. The Prosecution represented this formula in the following manner:

$$\text{Victim's share} = \frac{\text{Total deposits by victim into the account}}{\text{Total deposits into the account}} \times \text{Amount of frozen funds}$$

In the Prosecution’s submission, this *pari passu* method of determining each claimant’s proprietary interest in the funds was simple, fair and

practical. This was unlike the first-in-first-out (“FIFO”) method that would entail a transaction-by-transaction analysis.

(d) The *pari passu* method may not be able to compensate claimants fully for their entire loss because of insufficient funds. However, if there were unclaimed portions of the funds and the court was satisfied that the unclaimed portions constituted the proceeds of crime, it may rely on its powers under ss 370(2)(b), 370(2)(c) or s 370(2)(d) to apply the unclaimed portions for compensation to claimants who have established their claims at the disposal inquiry.

22 Applying this framework, the Prosecution submitted that the respondent was entitled to the amount of USD41,900. She satisfied the Victim Preconditions in that she had transferred USD41,900 into the bank account, she was defrauded into doing so and there was no dispute that the moneys that she had transferred were lawfully acquired. She contributed USD41,900 out of the total sum of USD308,793.58 deposited into the account and that represented about 13% of the moneys in the account. However, as the respondent was the only claimant here and the moneys remaining in the account were sufficient to make good her loss, this court should make an order for compensation out of the remaining funds. The balance in the account should vest in the Government.

The respondent’s case

23 Similar to the Prosecution, the respondent submitted that this was a proper case for revision because DJ Lau erred on the legal issues. She also relied on s 401(2) read with s 390(1)(d) of the CPC to seek an order for disposal of the funds in the bank account instead of this court remitting this matter to the State Court.

24 First, the respondent submitted that DJ Lau’s decision was manifestly erroneous and led to serious injustice because the respondent was unable to claim or to take steps to claim the moneys belonging to her. The moneys were in a “state of limbo” since the court had not made any determination and the Commissioner of Police was unable to adjudicate any disputes over the moneys because the CPC did not confer upon the Commissioner of Police any power to adjudicate such disputes. This interpretation was confirmed by the remarks made by Minister Mrs Josephine Teo during the second reading of the Bill.

25 Second, the respondent submitted that she was entitled to the amount of US\$41,900 in the bank account. She relied on several reasons, some of which mirrored the Prosecution’s position:

(a) The FIFO method should not apply where there were no competing claims to the moneys.

(b) The respondent had deposited moneys into the bank account. She was also in lawful possession of the moneys although this court should reconsider whether this was necessarily a requirement in a disposal inquiry as such a requirement was not indicated in s 370 or s 372 of the CPC.

(c) As was required in s 370(2)(b), one or more offences were committed in respect of the moneys in the bank account.

(d) An order under ss 370(2)(b) or 370(2)(e) was not dispositive of title to the seized property. Nevertheless, justice would be best served by ordering the return of the moneys to the respondent.

Issues before the court

26 Based on the foregoing, two issues arose for our consideration:

- (a) the interpretation of s 370(2) and s 372(1) of the CPC; and
- (b) whether this court should exercise its revisionary jurisdiction.

27 As explained by the Court of Appeal in *Ung Yoke Hooi v Attorney-General* [2009] 3 SLR(R) 307 (“*Ung Yoke Hooi*”) at [23], one objective of the provisions on disposal inquiry is to ensure the safe custody of seized property which belongs to someone and should be returned to the person entitled to its possession. Another equally important purpose is to prevent such property from being wrongfully detained, used, appropriated or disposed of. Sundaresh Menon CJ observed in *Rajendar Prasad Rai and another v Public Prosecutor and another matter* [2017] 5 SLR 796 at [40] that while the rights of all individuals are subject to being curtailed by the powers of the State, those powers are in turn subject to limits which exist to prevent their abuse. The specific expression of this in the context of the CPC is the long-stop date in s 370 by which the seizure of property must be reported to the court.

28 The disposal inquiry is also a mechanism to dispose of seized properties by removing them from the criminal justice system. This is meant to be a speedy and convenient means to get rid of items that the court no longer has use or need for. Therefore, a key feature is the “rough and ready” approach taken in a disposal inquiry. For instance, there are no pre-inquiry processes such as the disclosure or discovery of documents (see *Lim Tien Hou William v Ling Kok Hua* [2024] 3 SLR 457 (“*William Lim*”) at [55]). The court conducting a disposal inquiry is therefore not concerned with examining whether full rights

have been established at civil law, such as the creation or transfer of property rights as these should instead be asserted in separate civil proceedings (see *William Lim* at [45] and [55]; *Thai Chong Pawnshop Pte Ltd and others v Vankrisappan s/o Gopanaidu and others* [1994] 2 SLR(R) 113 at [5]).

The interpretation of s 370(2) and s 372(1) of the CPC

Whether the court is functus officio after it orders the disposal of seized property under s 370(2) and directs that it be detained by the police under s 372(1)

29 We did not agree with DJ Lau’s finding that the court was *functus officio* after it ordered the disposal of seized property under s 370(2) and directed that it be detained by the police under s 372(1). In our judgment, DJ Lau took a legalistic approach to the disposal inquiry which was neither warranted in policy nor in the legislative language of the CPC provisions.

30 DJ Lau construed DJ Koo’s order as a final and qualified order that the person entitled to the moneys was unknown or could not be found. On this basis, she concluded that the court was *functus officio* (see the GD at [25]–[26]):

25 To my mind, this meant that a final and unqualified order must have been made by a court under s 370 before the “further procedure” in s 372 could be triggered. Accordingly, I was unable to agree with the State’s submission that “[s 372] is premised on circumstances where the person entitled to the property is unknown or cannot be found, such that the [c]ourt’s exercise of its powers under [s 370] would be premature.” On the contrary, I was of the view that the court’s exercise of its powers under s 370 must be necessary *before* the procedure in s 372 could apply.

26 In the present case, I found the 20 Jan Order to be a final and unqualified order, with the effect that this court was now *functus officio* for the purpose of deciding on the disposal of the Moneys. I acknowledge that the 20 Jan Order might appear to have contemplated a disposal inquiry at the end of the six-month period from the date of the public notice.

However, the undisputed fact was that the court had then directed for the police to retain the items (*ie*, for them to be detained in police custody) under s 372(1) of the CPC. As explained at [25] above, this could only be done if the court has found that the person entitled to the property was unknown or could not be found. Thereafter, under s 372(1), where the relevant court directed that the seized property be detained in police custody, the Commissioner of Police must then issue a public notice requiring any person who has a claim to it to appear before him and establish his claim within six months from the date of the public notice. Since there had been an order made by the court (as contained in the 20 Jan Order) under s 370, which found that the person entitled to the property was unknown or could not be found, a final and unqualified order has been made under s 370(2), and this court would now be *functus officio* in respect of the same.

31 We were of the view that DJ Koo's order was an interlocutory order. As stated in *Zhu Su v Three Arrows Capital Ltd and others and another matter* [2024] 1 SLR 579 at [12], an order is interlocutory if it does not dispose finally of the rights of the parties. DJ Koo's 20 January order was for the police to retain the seized property for a six-month period so that potential claimants could make their claims. At the end of that period, if no person established a claim, the ownership of the property or its net proceeds would pass to and vest in the Government absolutely. However, if a claim was made, as in the present case, the police would apply for a disposal inquiry. The issue of entitlement to the seized property remained to be decided at the disposal inquiry. Therefore, DJ Koo's order could not be a final order

32 The court's power to direct the police to retain the seized property for six months because the person entitled to the seized property is unknown or cannot be found ("first power") should not be confused with the court's power to decide on the final disposal of the property ("second power"). Upon the exercise of the first power, the police would retain the seized property for a six-month period for the purpose of giving public notice to potential claimants.

During this six-month period, the court retains the power to make orders regarding the seized property if necessary. For instance, s 372(7) provides that in respect of property to which the person entitled is unknown or cannot be found, the court may order the property to be destroyed or otherwise disposed of at any time if, in the court's opinion, it is of no appreciable value or if its value is so small as to make its sale impracticable or make the keeping of it in police custody unreasonably expensive or inconvenient.

33 It follows that the court is not *functus officio* upon the exercise of its first power. However, if no claim is made to the property within the six-month period after the issuance of a public notice under s 372(1), the ownership of the property passes to and vests in the Government absolutely pursuant to s 372(5). Upon this event occurring, the court can be said to be *functus officio* in the sense that its interlocutory order is made final by s 372(5) without the need for a further order. If there are claims made within the six-month period, the court has to exercise its second power and determine the validity of the claims and the appropriate orders to make in the event of conflicting claims.

Whether the court has the power to adjudicate claims made in respect of seized property after a public notice was issued pursuant to s 372(1) of the CPC

34 The other part of this inquiry concerned the relevant entity vested with the power to adjudicate claims made on the seized property under s 372(1) of the CPC. This issue arose because of the words “appear before the Commissioner of Police and establish the person's claim within 6 months from the date of the public notice” in s 372(1). Do these words mean that the Commissioner of Police is the one who has to determine the validity of the

claim? Further, do they mean that the claim has to be established (meaning proved to be valid) within the six-month period?

35 In our judgment, it is the court that is the entity vested with the power to determine claims made in respect of seized property under s 372(1) of the CPC. Having regard to the legislative history of ss 370 and 372 of the CPC, it has been observed that s 370(2) and s 372(1) of the CPC were located previously in ss 392(1) and 392(4) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) (the “1985 CPC”) respectively (see *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie and Mohamed Faizal Mohamed Abdul Kadir gen eds) (Academy Publishing, 2012) (“*The CPC of Singapore*”) at paras 19.033 and 19.045). As the Court of Appeal explained in *Ung Yoke Hooi* at [29], s 392 of the 1985 CPC set out the court’s function to determine who is entitled to the possession of seized property and to order it to be returned to him. However, if such a person cannot be found, the court orders the seized property to be kept in safe custody. Although s 370(3) of the CPC overruled the comments in *Ung Yoke Hooi* at [30] that the court must dispose of the property within a reasonable period of time (see *The CPC of Singapore* at para 19.033), we did not think that it overruled the observations concerning the court’s powers to adjudicate claims under s 392 of the 1985 CPC. In our judgment, this supported our view that the court has the power to adjudicate claims under s 372(1) of the CPC.

36 We did not agree with DJ Lau that the court was not the relevant entity to determine claims because s 372 made only two references to the court’s powers. DJ Lau appeared to have downplayed the significance of s 372(7) by stating that the court’s power was “limited to ordering for the destruction or disposal of the property” where either of the conditions in ss 372(7)(a) or

372(7)(b) was satisfied (see the GD at [32]). However, for the reasons we have discussed earlier, s 372(7) conferred power on the court to make orders for destruction or disposal at any time. This would include power to do so even after the court directs that the seized property be retained in police custody.

37 We also disagreed with DJ Lau's finding that the CPC conferred upon the Commissioner of Police the power to determine claims. We agreed with the YIC, Ms Chia, that any purported power concerned only facilitative measures to be undertaken while the seized property was detained in police custody. Ms Chia relied on the following three provisions:

- (a) Section 372(2), which provides that every notice under s 372(1) must be published in the Gazette or any daily newspaper if, in the opinion of the Commissioner of Police, the value of the property is at least \$1,000.
- (b) Section 372(3), which provides that the Commissioner of Police may order the sale of the seized property if: (i) no person establishes a claim within one month of the public notice in s 372(1); and (ii) if the person in whose possession the property was found cannot show that he had acquired the property legally.
- (c) Section 372(4), which provides that the seized property may be sold at any time when it is under the custody or control of the Commissioner of Police if: (i) it is perishable; (ii) in the opinion of the Commissioner of Police it is worth less than \$1,000; or (iii) in the opinion of the Commissioner of the Police, keeping it involves unreasonable expense or inconvenience.

38 While s 372(3) appears to involve a substantive determination of whether the seized property was acquired legally, the Commissioner of Police's power was limited to ordering a sale but not the disposal of the property. Property is defined in s 2 of the CPC to mean money and all other property, movable or immovable, including things in action and other intangible or incorporeal property. However, in the context of s 372(3), property must exclude money. The provision of a power of sale to the police at the expiry of one month from the publication of the notice is probably to alleviate the problem of warehousing and safe custody of seized property. The net sale proceeds are then disposed of according to s 372(5) (to the Government if no person has established a claim) or s 372(6) (to the person who has established his claim). in a disposal inquiry.

39 It is clear that s 372(1) merely sets out the process leading to the disposal of the seized property pursuant to ss 372(5) or 372(6). This may be contrasted with other statutory provisions where the relevant authority may order disposal of seized property to a claimant or refer the claim to a court for decision. One example is s 12D(3) of the Wildlife Act 1965 (2020 Rev Ed) which provides that "the Director-General may direct that the seized item be released to the claimant or refer the matter to a court for decision". Other examples include s 29(6) of the Tobacco (Control of Advertisements and Sale) Act 1993 (2020 Rev Ed), s 26(5) of the Consumer Protection (Trade Descriptions and Safety Requirements) Act 1975 (2020 Rev Ed), s 64(7) of the Animal and Birds Act 1965 (2020 Rev Ed), s 32(7) of the Wholesome Meat and Fish Act 1999 (2020 Rev Ed).

40 DJ Lau relied on these provisions in other statutes to support her finding that "(t)he lack of any reference in s 372 of the CPC to the court for

determination of any claims made to the Commissioner of Police within the six-month period from his issuance of the public notice thus suggested to [her] that there was no power for the court to so determine” (see the GD at [39]). We disagreed that the absence of such a reference provision in the CPC supported DJ Lau’s finding. Equally, there is no specific provision in s 372 that confers powers of adjudication and disposal on the Commissioner of Police.

41 We were fortified in our view that the court is the proper entity to determine claims made on the seized property by the Bill, which proposed that s 372(1) be amended to the following:

If the person entitled to the property mentioned in section 370 is unknown or cannot be found, the relevant court may direct that it continue to be subject to the custody or control of the relevant law enforcement agency and the head of the relevant law enforcement agency must, in that case, issue a public notice, specifying the articles of which the property consists and requiring any person who claims that the person is entitled to the property to make the person’s claim to the relevant court within 6 months from the date of the public notice, and to thereafter appear before the relevant court to establish the person’s claim.

42 The amended s 372(1) provides that potential claimants must appear before the relevant court to establish their claims. In her explanation for the Bill, Minister Mrs Josephine Teo stated that “under the proposed amendments, the seized properties will continue to be dealt with in accordance with the CPC and subject to judicial oversight”. In our judgment, the Bill changed only the entity to which claims are to be made (the court instead of the Commissioner of Police) but affirmed the legal position that under the current process, it is the court that determines the validity of the claims.

43 There was some debate about the meaning of the words “appear before the Commissioner of Police and establish the person’s claim within 6 months

from the date of the public notice” in s 372(1) of the CPC. The contention involved the issue of whether “appear ... and establish the person’s claim within 6 months” meant that the claim must be proved and determined to be valid within the stipulated period or whether it meant merely that the claim must be lodged within that period. The Bill makes it clear that claims must be made within 6 months from the notice and the proof and determination of the validity of the claim can take place after that period. As stated in the Explanatory Statement to the Bill, “the person does not need to establish the person’s claim within 6 months from the date of the public notice”.

44 Accordingly, the court is the entity with the power to determine claims made on seized property under s 372(1) of the CPC. The police merely facilitate the process.

Whether this court should exercise its revisionary jurisdiction

45 As Menon CJ explained in *Rajendar Prasad Rai and another v Public Prosecutor and another* [2017] 4 SLR 333 at [24], the court’s revisionary jurisdiction should be exercised sparingly, in circumstances where there is serious injustice which entails the finding that there is “something palpably wrong in the decision that strikes at its basis as an exercise of judicial power”. In the context of disposal inquiries, the High Court has intervened in *William Lim* and in *Lee Chen Seong Jeremy and others v Public Prosecutor* [2019] 4 SLR 867.

46 In *Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064 (“*Oon Heng Lye*”) at [16]–[20] and [42]–[44], Menon CJ was satisfied that there were two errors in the Magistrate’s order. First, no notice was given to the petitioner that the seized funds would be reported before a Magistrate’s Court and an order of

forfeiture sought. Second, the Magistrate made the forfeiture order even though there was no power to do so under s 392(1) of the 1985 CPC. However, Menon CJ held that these errors did not necessarily mean that he should exercise the powers of revision. This was because he found that the petitioner was not in lawful possession of the seized funds and therefore was not “entitled to the possession” thereof. The petitioner had admitted that the seized funds were proceeds of unlicensed moneylending although he was not charged for any offence relating to unlicensed moneylending. As a result, Menon CJ concluded that the errors in the forfeiture order occasioned no substantial injustice to the petitioner. He dismissed the petition accordingly.

Whether the respondent was in lawful possession of the sum of USD41,900 that she transferred to Sun’s bank account

47 DJ Lau’s decision did not identify the relevant provision in s 370(2) of the CPC that applied in the respondent’s case because of her finding that the court was *functus officio*. We accepted the respondent’s submission that it should be s 370(2)(b) which provides that in any case where the court is satisfied that an offence was committed in respect of the property or that the property was used or intended to be used to commit an offence, the court may make such order as it thinks fit for the disposal of the property. The offence in question was the technical support scam committed against the respondent which caused the transfer of moneys in her bank account to Sun Jian’s bank account.

48 The Prosecution relied instead on the residual provision in s 370(2)(e). Since we held that s 370(2)(b) applied here, the consequence was that s 370(2)(e), which covers “any other case” would not be applicable here.

49 Two preliminary questions arose for our determination. First, was it necessary for the claimant to demonstrate her entitlement to the seized property by showing that she was in lawful possession of it (the “Lawful Possession Precondition”)? Second, what is the scope of the Lawful Possession Precondition?

The application of the Lawful Possession Precondition to s 370(2)(b)

50 The first question was whether the Lawful Possession Precondition applied to s 370(2)(b). In *William Lim*, the High Court acknowledged that the Lawful Possession Precondition was not stipulated expressly in s 370(2)(b) unlike s 370(2)(e) which mentions “the person entitled to possession of the property”. Nevertheless, the court concluded that this was a requirement that must be satisfied when making a disposal order under s 370(2)(b). Before us, the respondent urged us to consider the correctness of this ruling.

51 The relevant portions of the discussions in *William Lim* are at [35]–[37]:

35 It is important to be precise, however, and take note that in 2018, through the Criminal Justice Reform Act 2018 (Act 19 of 2018) (“Act 19 of 2018”), a new version of s 370(2) was enacted, introducing a number of variations in the orders that can be made. What was in s 392 of the CPC 1985 and s 370(2) of the version of the code pre-Act 19 of 2018 was contained in s 370(2)(e) of the CPC 2018. On this basis, it is clear that the Lawful Possession Precondition applies to s 370(2)(e) of the CPC 2018. But it is unclear whether the Lawful Possession Precondition applies to s 370(2)(b) of the CPC 2018.

36 Notwithstanding the difference in the legislative history of the provisions, there is good reason for the Lawful Possession Precondition to apply to s 370(2)(b) of the CPC 2018. In *Oon Heng Lye*, the court determined that the Lawful Possession Precondition applied to s 392(1) of the CPC 1985 (ie, the equivalent of s 370(2)(e) of the CPC 2018) based on ss 392(4) and 393(1) of the CPC 1985: at [45]–[46]. Section 392(4) of the CPC 1985 sets out the procedure for when the person entitled to property is unknown or cannot be found; s 393(1) sets out

the procedure where no person establishes a claim in such circumstances and where the person in whose possession the property was found is unable to show that he had legally acquired it. Based on the two provisions, the court in *Oon Heng Lye* determined that in making an order for the delivery of the item to the person entitled to possession under s 392(1), the person in question must show that he had legally acquired it.

37 The reasoning in *Oon Heng Lye* may be extended. The equivalents of ss 392(4) and 393(1) in the CPC 1985 are found in ss 372(1) and 372(3) of the CPC 2018. These provisions in the CPC 2018 are materially similar to those in the CPC 1985, and correspondingly set out the procedure for when the person entitled to property is unknown or cannot be found as well as the procedure for when no person establishes a claim in such circumstances and when the person in whose possession the property was found is unable to show that he had legally acquired it.

52 In our judgment, the Lawful Possession Precondition applies to s 370(2)(b) of the CPC. While the words “entitled to possession of the property” appear in s 370(2)(e) but not s 370(2)(b), the broader statutory context must be considered. The opening words in s 372(1) are “If the person entitled to the property mentioned in section 370 is unknown or cannot be found”. This implies that the disposal orders to be made under the various subsections in s 370 must pertain to the person entitled to the property. This is buttressed by the fact that the words “entitled to possession” also appear in ss 370(2)(a)(i) and 370(2)(d).

53 Similarly, s 372(3) provides that if no person comes forward to assert a claim to the seized property within one month from the publication of the notice and if the person in whose possession the property was found cannot show that he “legally acquired it”, then the property may be sold on the order of the Commissioner of Police. The mere absence of any claim to the seized property does not mean that the person in whose possession the seized property was found could regain possession of the seized property as of right.

54 We did not think the absence of the words “entitled to possession of the property” in s 370(2)(b) precluded the application of the Lawful Possession Precondition to this subsection. Section 370(2)(b) addresses the situations where an offence was committed in respect of the seized property or where the seized property was used or intended to be used to commit an offence, the court may make “such order as the relevant court thinks fit for the disposal of the property”. As exemplified by *Oon Heng Lye*, the seized property would not be returned to the person from whom it was seized unless he was entitled to possession and he could only be entitled to possession if he satisfied the Lawful Possession Precondition. This was despite the fact that the property was seized upon suspicion of an offence having been committed by that person and he was eventually detained but not charged for the suspected offence.

55 Accordingly, we held that the Lawful Possession Precondition applied to s 370(2)(b) of the CPC as well.

The scope of the Lawful Possession Precondition

56 The second question concerns the scope of the Lawful Possession Precondition. In *William Lim* at [25], the High Court held that, bearing in mind the objectives of a disposal inquiry, the applicable standard for a claimant to meet is that of proof on a *prima facie* standard. The court elaborated that the claimant should demonstrate his proprietary interest in the seized property. This entails showing that the claimant had ownership and/or possessory rights in the property. Ownership or title, while not necessary, is relevant given that title and possession are related concepts. Often, the right to possession arises from the fact of having title. The High Court explained further that the claimant should also show that the interest was acquired by lawful means or from a legitimate source.

57 In respect of the requirement of lawful means or a legitimate source, Menon CJ held in *Oon Heng Lye* at [49] that where a person admits that the funds seized from his possession are the proceeds of a crime, his possession cannot be regarded as lawful. In that case, the claimant had admitted unequivocally in various statements he made to the police that the seized funds were the proceeds of unlicensed moneylending. Although he was detained but not charged or convicted for unlicensed moneylending, his unequivocal admissions meant that he had no lawful entitlement to those funds (see *Oon Heng Lye* at [51]–[52]).

58 The Prosecution submitted that we should reconsider the scope of these requirements. They contended that the following requirements, which they termed the Victim Preconditions, should apply instead. These are (a) the potential claimant’s money was deposited into the account in issue; (b) the potential claimant was induced by fraud to make the said transfer of money; and (c) the money that the potential claimant transferred into the account was lawfully acquired. In respect of the third requirement, the Prosecution submitted that the potential claimant should “provide proof of income, or some other explanation for the source of his funds”.

59 We did not think that the Victim Preconditions suggested by the Prosecution were different in substance from what was required under the Lawful Possession Precondition. They appear to be elaborations on the particular situation where the property in issue consisted of funds which were transferred out by the victim or siphoned out by the fraudster. While many scams involve funds in bank accounts, they could also involve transfer of movable and even immovable property. Further, s 370 and s 372 of the CPC

obviously cover situations beyond fund transfers. We therefore saw no need to introduce any new test beyond the Lawful Possession Precondition.

60 Where proof of lawful possession is concerned, we did not think this entails proof of title although proof of title would satisfy the Lawful Possession Precondition in practically all cases. The disposal inquiry is meant to be a quick and inexpensive procedure for disposing of property which is no longer needed for investigations or other relevant proceedings. It is not a civil trial to determine rights to title or ownership of a claimant or of competing claimants.

61 In *William Lim*, there were allusions made to title in the course of arguments and in the decision. That was understandable as that case involved two competing claimants who were both victims of the same fraudster. The High Court found that both victims there were in lawful possession of the funds in issue and it was not clear who had the stronger title or interest in those funds. The court decided that the funds should be returned to the person from whom they were seized. Nonetheless, the court was fully aware of the objectives of a disposal inquiry and stated that ownership or title was relevant but not necessary to meet the Lawful Possession Precondition.

62 While ss 370(2)(a), 370(2)(d) and 370(2)(e) use the words “entitled to possession”, s 372(1) uses the term “entitled to the property” and s 372(3) uses “legally acquired”. Similarly, s 371 (covering the procedure where the person entitled to the property is known) uses the term “entitled to the property”. In our judgment, bearing in mind the purpose of a disposal inquiry, the various terms used relate to the concept of possession, not title.

63 We agreed that a claimant need only show on a *prima facie* basis that the seized funds came from a lawful source. Unless there are suspicious

circumstances in a particular case, showing that the funds came from the claimant's bank account would suffice to meet this standard. The claimant should not be required to prove that the funds in his bank account were from his income or other lawful sources. A person's bank account would in all likelihood contain many transactions involving the inflow and outflow of funds. To engage in an inquiry into the multiple transactions would be tantamount to conducting an elaborate tracing of funds, something that the Prosecution accepted was impractical and should not be done when it was arguing against the FIFO methodology of identifying whose funds remained in a seized bank account. Good sense should prevail and good sense should be more than sufficient in most cases.

64 The exception to the general approach in disposal inquiries discussed above would be where there is credible evidence that a claimant's original possession of the property in issue was attained by illegal means. As stated in *Oon Heng Lye* at [49], the question of whether or not a person in actual possession of seized property would nevertheless be regarded as being in lawful possession depends on the circumstances. Where the situation calls for a deeper probe into the claimant's assertion, the court could do what Menon CJ did in *Oon Heng Lye* at [50] by questioning the claimant or his counsel about whether there were any facts showing that the claimant was in lawful possession of the seized funds. The court could then proceed to examine the merits of the claimant's assertions as Menon CJ did in that case.

Whether the respondent satisfied the Lawful Possession Precondition

65 In the present case, there was no dispute that the respondent transferred USD41,900 from her bank account into Sun Jian's bank account and that the moneys from her bank account had been acquired lawfully. It was clear that she

was a victim of fraud. Since there was no hint that the respondent's moneys were obtained illegally, it was correct for the respondent's counsel to take the position before DJ Lau at the hearing that the respondent would not be calling any witness or adducing any exhibits and also would not need to cross-examine the investigation officer.

66 In the light of what we have discussed above, it was clear that serious injustice had been caused to the respondent. She was clearly entitled to the return of her USD41,900 which she had transferred to Sun Jian's bank account as a result of a scam.

67 The respondent submitted that she should be entitled to the entirety of the USD42,511.55 remaining in Sun Jian's account so that she could "totally deal with the whole of the seized funds and enable the full conclusion of these proceedings". Before DJ Lau, the respondent submitted that she was entitled to USD41,900 with the "statutory interest rate of 5.33% per annum". While she did not make the same argument before us, we inferred that this must be the basis for her claiming the larger sum of USD42,511.55. Although the additional amount of USD611.55 claimed was a relatively small amount, we did not think there was any legal basis for her claim beyond the USD41,900 that she had transferred. This was not a civil action where interest could be awarded to the successful claimant. In any event, it could not be said that the additional amount was interest attributable to her USD42,511.55.

68 The Court of Appeal has observed that a Singapore court has the power to make an award of damages in foreign currency (see *Tatung Electronics (S) Pte Ltd v Binatone International Ltd* [1991] 2 SLR(R) 231 ("*Tatung Electronics*") at [16]). A Singapore court also has the power to award the

judgment sum in a foreign currency (see *Indo Commercial Society (Pte) Ltd v Ebrahim and another* [1992] 2 SLR(R) 667 at [10] and [16]). In *Tatung Electronics*, the court explained that because the loss incurred by the respondent was in the UK, it would be more appropriate for the award of damages to be expressed in pound sterling, which would also avoid the problem of the great variations in rates of exchange in the intervening period (see *Tatung Electronics* at [16]). With these principles in civil cases in mind, we saw no impediment to this court ordering the amount of USD41,900 to be returned to the respondent in that currency.

The applicable test where there are comingled funds in a disposal inquiry

69 The Prosecution also urged us to set out a test to deal with situations where there are comingled funds in a disposal inquiry. It relied primarily on *Public Prosecutor v Elevate Hong Kong Holdings Limited* [2023] SGDC 289 (“*Elevate*”) where the District Court discussed three tracing approaches that may be used in a disposal inquiry: the FIFO approach, the *pari passu* approach and the rolling charge approach. The court in *Elevate* adopted the *pari passu* approach (at [27]) and ordered the sum of USD508.44 to be released to the claimant there with the remaining amount to be forfeited to the Government (at [33]).

70 It was not necessary for us to decide this issue since the respondent was the only claimant to the funds and those funds were sufficient to meet her claim. However, our tentative view was that where there are more claims than funds available to meet those claims, the *pari passu* rule should apply as a matter of fairness to the whole body of victims. This would result in a proportionate sharing of the total pool of assets according to what each of the claimants contributed, ignoring the dates on which they made their respective

contributions. The *pari passu* approach is preferable for its relative simplicity in implementation and would be consistent with the objective of a disposal inquiry as an inexpensive and expeditious means to deal with seized property.

Conclusion

71 For the foregoing reasons, we exercised our revisionary jurisdiction and ordered that the amount of USD41,900 be returned to the respondent with the remaining amount of USD611.55 to vest in the Government.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Christoper Ong and Ryan Lim (Attorney-General's Chambers) for
the petitioner;
Goh Kok Yeow (De Souza Lim & Goh LLP) for the respondent;
Chia Su Min Rebecca (Allen & Gledhill LLP) as young independent
counsel.