Cheong Chun Yin *v* Attorney-General
[2014] SGHC 124

Case Number : Originating Summons No 25 of 2014
Decision Date : 27 June 2014
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : M Ravi (L F Violet Netto) for the applicant; Francis Ng, Chee Min Ping and Marcus Foo Guo Wen (Attorney-General's Chambers) for the respondent
Parties : Cheong Chun Yin — Attorney-General

27 June 2014

Tay Yong Kwang J:

Introduction

1 This matter, Originating Summons No 25 of 2014 ("OS 25/2014"), is an application by Cheong Chun Yin ("the Applicant") for leave to commence judicial review proceedings against the Public Prosecutor ("PP"). The application arose out of the PP's determination that the Applicant had not substantively assisted the Central Narcotics Bureau ("CNB") in disrupting drug trafficking activities within or outside Singapore ("the negative substantive assistance determination") and the PP's consequential decision not to certify to a court, pursuant to s 33B(2)*(b)* of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), that the Applicant had substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore ("the non-certification decision"). The Applicant sought leave to apply for

(a) quashing orders in respect of both the negative substantive assistance determination and the non-certification decision;

(b) a mandatory order enjoining the PP to make a fresh determination on substantive assistance; and

(c) a declaration that s 33(B)(4) of the MDA does not operate to "debar any inquiry by the Court that may be necessary for the Court to decide whether the Public Prosecutor has acted within his statutory authority or jurisdiction". [note: 1]

2 The Attorney-General ("the Respondent") opposes the application. At the hearing on 11 April 2014, I dismissed the Applicant's leave application. The Applicant has filed an appeal against my decision and I now set out the grounds for my decision.

Background Facts Leading to OS 25/2014

3 On 16 June 2008, the Applicant and a female, Pang Siew Fum ("Pang"), were arrested following surveillance conducted by the CNB. CNB officers observed the Applicant collecting a luggage bag from the Arrival Hall of Changi International Airport ("the luggage bag") after arriving in Singapore on a flight from Myanmar. The Applicant was thereafter seen passing the luggage bag to Pang before they left the airport separately. CNB officers subsequently arrested the Applicant and Pang.

4 Pang had the luggage bag in her possession at the time of her arrest. When the CNB officers searched the luggage bag, they discovered a modified base, beneath which a large packet was concealed. The packet contained white powdery substance which was later ascertained to be 2,726 grams of diamorphine.

5 The Applicant and Pang were subsequently charged jointly with being in possession of not less than 2,726 grams of diamorphine for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the MDA punishable with death because of the quantity of the diamorphine involved. Both claimed trial.

6 At the trial, the Applicant was represented by Mr Ramesh Tiwary and Mr Adrian Chong. The Applicant's defence was that he did not know that the luggage bag contained diamorphine. He claimed that one "Lau De" in Malaysia had asked him to carry gold bars into Singapore. He claimed that he travelled from Malaysia to Myanmar at the request of Lau De and that he was handed the luggage bag in Myanmar. He maintained that he assumed that the luggage bag contained gold bars. He subsequently brought the luggage bag to Singapore and handed it to Pang.

7 Mr Tiwary cross-examined Assistant Superintendent Chan Gin Choong Gary ("ASP Chan") on the issue of CNB's attempts to ascertain the identity of Lau De. ASP Chan testified that he had screened the Malaysian phone numbers provided by the Applicant. He stated that he had ascertained that the numbers were registered under the names of one "Ali" and one "Chong Min Sin". However, he stated that he had not interviewed those two persons. Mr Tiwary did not elicit any further information from ASP Chan, such as why he did not interview the two persons. Neither did Mr Tiwary cross-examine any other Prosecution witness on this issue.

8 At the close of the trial, in their written submissions, the Applicant's defence counsels urged the court to take into account the investigating officers' failure "to interview or question either of [those] 2 people to ascertain the identity or whereabouts or involvement of Lau De." They argued that the effect of the omission was that the "court was deprived of the evidence of both [those] witnesses as regards the identity and involvement of Lau De". [note: 2] The Prosecution, in its reply submissions, argued that the existence or identity of Lau De was irrelevant since its case was that the Applicant was wilfully blind to the presence of the drugs in the luggage bag. In the alternative, it stated that it was relying on the statutory presumption of knowledge of the drugs in s 18(2) of the MDA in which case, the material issue was whether the Applicant had rebutted the presumption. It argued that

> … [T]he onus is on Cheong to rebut the said presumption. He has sought to do so by reference to the existence of one 'Lau De', in attempting to explain his alleged belief that [the luggage bag] contained gold bars. As such, it is for Cheong to adduce concrete information proving the existence of 'Lau De' if he wishes to substantiate his defence. In the absence of any such additional information, Cheong is hardly in a position to speculate… what such information would show. [note: 3]

9 The trial judge found both the Applicant and Pang guilty and convicted them accordingly. He rejected the Applicant's defence in the following terms in his written grounds (*Public Prosecutor v Pang Siew Fum and another* [2010] SGHC 40 at [5]) ("*Pang Siew Fum* (HC)"):

> The second accused testified that he was asked by one "Lau De" to help bring gold bars to Singapore. He was handed a bag, supposedly to contain the gold, in a hotel in Myanmar. He checked the bag but did not see any gold and he assumed that the gold must be hidden in the

suitcase somewhere. He did not report to "Lau De" that he did not see any gold. I did not find his testimony convincing and I was of the view that his evidence did not create any reasonable doubt in my mind that he might not have known that he was carrying heroin. It was immaterial that the CNB did not make adequate efforts to trace "Lau De" or check on his cell-phones. The absence of any trace of "Lau De"…was not taken as evidence in favour of or against either accused.

Following the conviction, the trial judge sentenced both the Applicant and Pang to death on 4 February 2010.

10 Both the Applicant and Pang appealed against their conviction and sentence. Their appeal was heard and dismissed by the Court of Appeal on 22 February 2011. In its written grounds, the court stated that the Applicant had failed to rebut the presumption of knowledge under s 18(2) of the MDA: *Pang Siew Fum & another v Public Prosecutor* [2011] SGCA 5 at [83] – [99].

11 On 14 November 2012, Parliament passed the Misuse of Drugs (Amendment) Act 2012 (Act No. 30 of 2012) ("the Amendment Act"). The Amendment Act introduced a new s 33B into the MDA with effect from 1 January 2013. The following parts of s 33B are relevant to this application:

Discretion of court not to impose sentence of death in certain circumstances

33B.—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court —

(a) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes; or

...

(2) The requirements referred to in subsection (1)(*a*) are as follows:

(a) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted —

(i) to transporting, sending or delivering a controlled drug;

(ii) to offering to transport, send or deliver a controlled drug;

(iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or

(iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and

(b) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

...

(4) The determination of whether or not any person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities shall be at the sole discretion of the Public Prosecutor and no action or proceeding shall lie against the Public Prosecutor in relation to any such determination unless it is proved to the court that the determination was done in bad faith or with malice.

12 Section 27(6) of the Amendment Act allows a person, who has been convicted of an offence under ss 5(1) or 7 of the MDA and sentenced to death, and whose appeal against conviction and sentence has been dismissed by the Court of Appeal before the coming into force of s 33B of the MDA, to apply to the High Court to be re-sentenced in accordance with s 33B of the MDA. The following parts of s 27 of the Amendment Act are relevant to this application:

Savings and transitional provisions

27. …

(6) Where on the appointed day, the Court of Appeal has dismissed an appeal brought by a person for a relevant offence, the following provisions shall apply:

(*a*) the person may apply to the High Court to be re-sentenced in accordance with section 33B of the principal Act;

(*b*) the High Court shall determine whether the requirements referred to in section 33B of the principal Act are satisfied after hearing any further arguments or admitting any further evidence, and —

(i) if the requirements referred to in section 33B of the principal Act are not satisfied, affirm the sentence of death imposed on the person; or

(ii) if the requirements referred to in section 33B of the principal Act are satisfied, re-sentence the person in accordance with that section;

…

(9) In this section —

"appointed day" means the date of commencement of this section;

"relevant offence" means an offence under section 5(1) or 7 of the principal Act, or an attempt to commit an offence under section 5(1) or 7 of the principal Act, and which offence is punishable by death under the sixth column of the Second Schedule to the principal Act.

The "appointed day" in relation to s 27 of the Amendment Act is 1 January 2013. The offence for which the Applicant was convicted is a "relevant offence". To date, the Applicant has not applied for re-sentencing pursuant to s 27(6)(*a*) of the Amendment Act.

13 The Respondent submitted that on 29 January 2013, the Prosecution invited Mr Ravi, who now represents the Applicant, to forward to the Prosecution any new information that was not previously provided to the CNB. The Respondent stated that no such information was provided by Mr Ravi or the Applicant thereafter. [note: 4] This is not disputed by the Applicant.

14 On 6 November 2013, the Prosecution informed Mr Ravi that the PP would not be certifying that the Applicant had substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore. [note: 5] On 9 January 2014, the Applicant filed OS 25/2014.

When will leave be granted to commence judicial review proceedings?

15 An applicant seeking judicial review must meet three conditions for leave to be granted (*Jeyaretnam Kenneth Andrew v Attorney-General* [2013] 1 SLR 619 at [5] and affirmed by the Court of Appeal ([2014] 1 SLR 345 at [5])):

(a) The subject matter must be susceptible to judicial review;

(b) The applicant must have sufficient interest or *locus standi* in the subject matter; and

(c) The material before the court must disclose an arguable case or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant.

16 The Respondent accepted that the subject matter of this application is susceptible to judicial review and that the Applicant has sufficient interest in the matter to apply for judicial review. Accordingly, the only issue in this application was whether the Applicant had made out an arguable or *prima facie* case of reasonable suspicion in favour of granting the prerogative orders that he sought.

Applicant's Submissions

17 The Applicant submitted that he was challenging the "legal validity" and not the "correctness" of the PP's negative substantive assistance determination and the non-certification decision. [note: 6] He accepted that s 33B(4) of the MDA excludes the court's jurisdiction to review the PP's decisions except on grounds of bad faith or malice. However he relied on *Re Application by Yee Yut Ee* [1977-1978] SLR(R) 490 at [18] – [31] and *Stansfield Business International Pte Ltd v Minister for Manpower (formerly known as Minister for Labour)* [1999] 2 SLR(R) at [21] – [22] and argued that such an exclusion clause does not oust the court's power to review a decision that is made in excess or lack of jurisdiction. [note: 7] He submitted that the PP's decisions were liable to be quashed because the PP committed errors of law in the manner in which he made them which deprived him of the jurisdiction conferred on him by s 33B(2)(*b*) of the MDA to make those decisions.

18 In brief, the Applicant submitted that the PP had committed the following errors of law (although he advanced three different errors of law in his written submissions, two of them are related and have accordingly been consolidated):

(a) The PP had failed to make an "allowance" when assessing whether the Applicant had substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore to make up for the fact that the information that the Applicant had provided was not adequately investigated at that time and was now rendered worthless by the passage of time. [note: 8]

(b) The PP had failed to "give consideration to what value might have been obtained from the information if it had been utilized". [note: 9]

Failure to make "allowance" when making substantive assistance determination

19 The Applicant submitted that the amendments to the MDA have created a "schism" between

the way that CNB treated information provided by an accused person prior to the enactment of s 33B of the MDA and the way that it treats such information today. [note: 10] I believe that he was suggesting that potential leads are more rigorously investigated now than they would have been before the amendments to the MDA.

20 With respect to the present case, the Applicant claimed that the CNB did not adequately follow up on the information that he had provided and that this was confirmed by the trial judge's statement in his grounds of decision that "[i]t was immaterial that the CNB did not make adequate efforts to trace "Lau De" or check on his cell-phones". He submitted that CNB could have done more. For example, he suggested that the investigating officer could have conducted "forensic analysis" on the telephone numbers to "identify and trace incoming and outgoing calls". He stated that if this had been done promptly, the persons under whose names the phone lines were registered could have been traced and interviewed with the help of Malaysian law enforcement authorities. [note: 11] He submitted that it was too late to do so now because the information that the Applicant had provided the CNB was "time-sensitive" and was now "essentially worthless". [note: 12]

21 He further claimed that Parliament intended to create "an equal dispensatory regime for the death penalty in the case of drug couriers who have co-operated to the best of their abilities" when it put in place the regime under which offenders who had been convicted and sentenced to death prior to the enactment of s 33B could apply to the High Court to be re-sentenced in accordance with s 33B. [note: 13] He argued that in order to give effect to this intention, the PP must apply a different legal test when assessing the assistance provided by an offender who had been convicted and sentenced before the amendments and whose sentence is being reconsidered in accordance with s 33B. He argued that the PP should have made an "allowance" to make up for the difference in the way that the information that the accused person provided would have been treated had he provided the same information after the enactment of s 33B. [note: 14]

22 The Applicant also asserted that it was evident from the affidavit of State Counsel Foo Guo Wen Marcus ("Marcus Foo's affidavit"), which was filed on behalf of the Respondent, that the PP had not made such an allowance. [note: 15] Therefore he argued that the PP's negative substantive assistance determination and the non-certification decision should be quashed.

PP's failure to consider the potential value of the information provided by the Applicant

23 The Applicant submitted that the PP committed an error of law by not directing his mind to the question of whether the information that the Applicant provided could have substantively assisted CNB in disrupting drug trafficking activities within or outside Singapore. He claimed that prior to the trial, the PP had made the determination that it was not relevant to investigate the information that the Applicant had provided since it was not pertinent to the issue of his guilt. [note: 16] Therefore he claimed that the "information was never acted upon". [note: 17] He further claimed that in order to make up for this omission, the PP ought to have given "consideration to what value might have been obtained from the information if it had been utilised". [note: 18] He argued that it could be deduced from Marcus Foo's affidavit that this was never done.

24 He pointed out that Marcus Foo's affidavit simply restates the Prosecution's assertion in its reply submissions filed at the close of the trial that the existence or identity of Lau De was irrelevant. [note: 19] He pointed out that it does not go on to mention how the information that the Applicant provided was assessed for the purpose of making the substantive assistance determination. It also

does not deny the Applicant's assertion in his affidavit that if the investigating officers had acted appropriately upon the information provided, it was "indisputable" that it would have led to the identification and possible arrest in Singapore or Malaysia of the person who supplied the drugs to him. [note: 20]

25 In the circumstances, the Applicant submitted that it could be deduced that the PP failed to consider the potential value of the information that he had provided. Therefore, he argued that the PP's negative substantive assistance determination and the non-certification decision should be quashed.

The Court's Decision

Procedural Issue

26 The Respondent argued that the Applicant's prayer in this application for leave to apply for a declaration pursuant to O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) is procedurally flawed. The Respondent submitted that an application for declaratory relief should only be made after leave to apply for the prerogative order (*ie*, mandatory order, prohibiting order and/or quashing order) sought had been granted. In support, the Respondent relied upon the Court of Appeal's explanation of how O 53 should be construed at [53] of *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1. [note: 21] At that paragraph, the Court stated:

> … it is our judgment that the proper construction of O 53 should be such that an applicant who wishes to obtain a prerogative order and a declaration under this order must, first, obtain leave to make an application for a prerogative order (O 53 r 1(1)(*b*)). In the same application he may also apply for declaratory relief. Once leave is granted, and upon hearing the parties on the substantive merits, the court may grant (a) any prerogative order and a declaration; or (b) only a prerogative order without any declaration; or (c) only the declaration without any prerogative order. … It is understandable why O 53 does not permit the application for only declaratory relief because it is essentially an order relating to the grant of prerogative orders. Indeed, if a party only wishes to apply for freestanding declaratory relief he could have done so under O 15 with less hassle as no leave of court is required for him to proceed with his application. Of course, even though no leave is required for an application for declaratory relief, he must still show that he has a genuine basis to ask for the relief as the court is not obliged to answer essentially academic questions.

27 It appears to me that the Court of Appeal was merely stating that a party cannot apply for "freestanding declaratory relief" pursuant to O 53. Before a party can obtain declaratory relief pursuant to O 53, it has to first obtain leave to make an application for a prerogative order. Therefore, the Applicant cannot be faulted for including an application for a declaration in this application.

Review on grounds of jurisdictional error of law

28 The Applicant relied on the doctrine of jurisdictional error of law in an apparent attempt to circumvent s 33B(4) of the MDA which limits the court's jurisdiction to review the PP's decision as to whether any person had substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

29 There were two interrelated issues:

(a) First, whether it is permissible to review the PP's negative substantive assistance determination and the non-certification decision on the ground of jurisdictional error of law notwithstanding s 33B(4) of the MDA.

(b) Second, whether the Applicant had succeeded in establishing an arguable case or *prima facie* case of reasonable suspicion that the PP had committed errors of law that deprived him of the jurisdiction conferred on him by s 33B(2)(*b*) of the MDA to make the determination as to whether the Applicant had substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

For the Applicant to succeed, both questions have to be answered in the affirmative.

30 If the Applicant wishes to be re-sentenced under the present MDA, he can apply under s 27 of the Amendment Act (see [12] above). The court will make its determination whether the requirements in s 33B are met after hearing any further arguments or admitting any further evidence. The two conditions in s 33B(2)(*a*) and (*b*) are distinct from each other. The first requires proof on a balance of probabilities by the Applicant that his role was that of a mere courier in the drug trafficking. The second is in the sole discretion of the PP.

31 It cannot be disputed that the PP has the sole discretion whether to certify under s 33B(2)(*b*) and his exercise of discretion can only be challenged on the grounds of bad faith and malice which must be proved by the Applicant. The Respondent accepts that unconstitutionality, although not expressly mentioned in s 33B(4), is the only other ground available to the Applicant. This is correct because during the Second Reading of the Bill, the Minister for Law, Mr K Shanmugam, said (see Singapore Parliamentary Debates, Official Report (14 November 2012) vol 89):

> … the Public Prosecutor's discretion is not unfettered. It is subject to judicial review, either on bad faith or malice, which is expressly provided for, and of course, unconstitutionality, which goes without saying.

There is therefore no separate ground of jurisdictional error of law available to the Applicant.

32 In any case, the alleged errors of law amounted to no more than the Applicant's dissatisfaction over the way the CNB conducted its investigations in this case. Presumably, the PP, in exercising his discretion whether to give a certificate under s 33B(2)(*b*), would consider the views of the CNB about the results of its investigations into any information or assistance provided by the Applicant. How the CNB decides to conduct its investigations in each case is not something which is within the purview of the courts under the statutory scheme in s 33B unless the Applicant can show bad faith or malice on the part of the CNB which may then potentially taint the PP's decision. The Applicant is practically asking the court to adjudicate on the adequacy of the investigations and to speculate on what would have happened if the CNB had done this or that. If the court accedes to this, I think the court will be making a jurisdictional error.

33 There was no basis for saying that the information provided by the Applicant was not adequately followed up anyway. The Applicant's basis for this assertion is essentially the trial judge's statement that "[i]t was immaterial that the CNB did not make adequate efforts to trace "Lau De" or check on his cell-phones". The main point that the trial judge was making at [5] of *Pang Siew Fum* (HC), where this statement is found, is that the Applicant had actual knowledge that he was carrying heroin and that the question of whether CNB had taken adequate efforts to trace Lau De was immaterial. This was because, even if it was true that CNB could have located Lau De if it had followed up on the information provided by the Applicant, it would not have been relevant to the

question of the Applicant's guilt. [note: 22] The trial judge therefore did not make a finding of fact that the CNB's efforts to trace Lau De were inadequate.

34 In any event, the evidence led during the trial could not lead to the conclusion that the CNB's efforts in tracing Lau De were inadequate. All that was uncovered at the trial was that the investigating officer had screened the Malaysian phone numbers provided by the Applicant and had ascertained the names under which the phone lines were registered. The investigating officer admitted that he did not interview the two persons under whose names the phone lines were registered. There was no further evidence led as to why the investigating officer did not do so or that if he had done so, certain outcomes would have been achieved.

Alleged violation of Article 12 of the Constitution

35 At the hearing before me, Mr Ravi raised, for the first time, the argument that the PP's negative substantive assistance determination and the non-certification decision violated Article 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution").

36 In the context of executive actions, the equal protection clause in Article 12 is breached if "there is a deliberate and arbitrary discrimination against a particular person. Arbitrariness implies a lack of any rationality" (*Public Prosecutor v Ang Soon Huat* [1990] SLR 915 at [22]). This test was applied by the Court of Appeal in *Eng Foong Ho and others v Attorney-General* [2009] 2 SLR(R) 542 in determining whether the acquisition by the Collector of Land Revenue of property on which a temple was located and not the properties of a nearby Mission and Church violated Article 12 of the Constitution.

37 In the present case, the Applicant failed to provide any evidence that the PP deliberately and arbitrarily discriminated against him in making the negative substantive assistance determination and the non-certification decision. Therefore, the Applicant had not even established a *prima facie* case of breach of Article 12 of the Constitution. Although the discretion to issue the certificate of substantive assistance is a power conferred by statute (*ie*, s 33B(2)(*b*) of the MDA) as opposed to one conferred by the Constitution, in view of the high constitutional office of the Attorney-General as the PP, the courts should proceed on the basis that the PP exercises his power in accordance with law unless shown otherwise (*ie*, there is a presumption of constitutionality and/or legality): *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") at [45] – [47]. The burden is on the Applicant here to show that there is a *prima facie* case of a breach of constitutional rights: see *Ramalingam* at [70]. As stated earlier, he has failed to discharge this burden.

Conclusion

38 For the reasons set out above, I dismissed the Applicant's application for leave to commence judicial review proceedings against the PP. The Respondent agreed that both parties would bear their own costs for this application.

[note: 1] Applicant's Written Submissions at para 2

[note: 2] Affidavit of Foo Guo Wen, Marcus at pp 61 – 62

[note: 3] Affidavit of Foo Guo Wen, Marcus at pp 73 – 74

[note: 4] Respondent's Written Submission at para 13

[note: 5] Respondent’s Written Submission at para 14

[note: 6] Applicant’s Written Submissions at para 16

[note: 7] Applicant’s Written Submissions at paras 66 – 69

[note: 8] Applicant’s Written Submissions at paras 30 – 51

[note: 9] Applicant’s Written Submissions at paras 22 – 29; Applicant’s Rebuttal of Respondent’s Reply Submissions at p 3

[note: 10] Applicant’s Written Submissions at para 34

[note: 11] Applicant’s Written Submissions at para 45

[note: 12] Applicant’s Written Submissions at para 31

[note: 13] Applicant’s Written Submissions at para 33

[note: 14] Applicant’s Written Submissions at para 33

[note: 15] Applicant’s Written Submissions at paras 34 – 35

[note: 16] Applicant’s Written Submissions at para 23

[note: 17] Applicant’s Rebuttal of Respondent’s Reply Submissions at p 2

[note: 18] Applicant’s Rebuttal of Respondent’s Reply Submissions at p 3

[note: 19] Applicant’s Written Submissions at para 29

[note: 20] Applicant’s Written Submissions at para 29

[note: 21] Respondent’s Written Submissions at para 23

[note: 22] Respondent’s Written Submissions at para 58