

**Jurisdiction over a foreign contemnor:
Li Shengwu v Attorney General [2019] SGCA 20**

I. Executive Summary

In July 2017, the appellant Li Shengwu (“**Li**”) published a post on Facebook stating that the “Singapore government is very litigious and has a pliant court system. This constrains what the international media can usually report.” The Attorney-General (“**AG**”) considered this statement to be made in contempt of court, specifically scandalising the courts (or “scandalising contempt”).¹ It then requested Li to, among other things, delete the statement from his Facebook page and issue a signed written apology. However, this was not complied with by the given deadline (which included the extension period requested by Li).

The AG subsequently applied for, and was granted, leave to apply for an order of committal against Li for contempt of court.² As Li was in the United States, the AG also then applied for, and was granted, leave to serve the committal papers on him in the United States (i.e. “**out of jurisdiction**”).³ The papers were duly served on Li at his overseas address.

Li then argued in the High Court (“**HC**”) that the courts had no jurisdiction (or authority) over him, as leave to serve the committal papers on him out of jurisdiction had been wrongly given.⁴ As such, service should be set aside and not be considered effective. The HC disagreed. On appeal, the Court of Appeal (“**CA**”) upheld the HC’s ruling and dismissed the appeal.

II. Discussion

The two types of jurisdiction in question here were “subject-matter” jurisdiction and “personal” jurisdiction. Generally, *subject-matter jurisdiction* refers to whether a court can hear a case on a particular *subject*. *Personal jurisdiction* refers to whether a court has authority over the *party* being sued. When the party being sued is outside Singapore at the time of service of the originating processes, i.e. outside of jurisdiction, the claimant can serve the relevant papers only with leave of the court, under limbs (a) to (t) of Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“**Rules of Court**”) Order 11 rule 1 (“**Order 11 rule 1**”).⁵

The CA addressed the following questions here:

- (a) What was the correct statutory basis, if any, for the court’s jurisdiction over a “foreign contemnor” (meaning that the party allegedly making statements in contempt of court was within jurisdiction – i.e. within Singapore – at the time he made the statements, but came to be out of jurisdiction – i.e. overseas – when the committal papers were served on him),

¹ “Contempt of court” refers to the disrespect of the authority, dignity and justice of the courts and their rules, and/or the wilful disobedience of the court’s instructions. Generally, a statement is considered to be in contempt of court when it scandalises the court; interferes with the administration of justice; is in disobedience of court orders; and/or attempts to influence the outcome of a court proceeding.

² An order of committal (to prison) is how a court can punish someone for contempt of court. The AG may apply for an order of committal for contempt; however, the court must first grant permission for the AG to apply for such an order, before he can actually do so.

³ Generally, a Singapore court can only adjudicate cases if it has jurisdiction (or authority) over the involved parties. However, the court only has jurisdiction over parties who a) voluntarily submit to the court’s jurisdiction or b) have been served with the necessary originating processes. Furthermore, where a defending party is outside Singapore, the claimant also has to first obtain the court’s permission to serve the originating processes overseas.

⁴ While this was not the first case where committal papers were served on a party outside Singapore, this was the first time where such service was actively challenged in court.

⁵ Order 11 rule 1 provides for circumstances under which service of an originating process out of Singapore is permissible with leave of court (see note 3). Such circumstances may include whether the case is based on a cause of action arising in Singapore, or whether it concerns the construction, effect or enforcement of any written law.

and

(b) Which limb of Order 11 rule 1 allowed service out of jurisdiction to such contemnor? The CA agreed with Li on the following:

(i) The HC's *subject-matter* jurisdiction to hear and try contempt cases was based on the court's inherent jurisdiction. Such jurisdiction was also recognized and conferred by section 7 of the SCJA.

(ii) The HC's *personal* jurisdiction over a foreign contemnor must be established under the procedures specified in Order 11 rule 1.

However, it disagreed with Li that proper service was not effected under Order 11 rule 1; indeed, it held that service was properly effected under limb (n) of Order 11 rule 1. Thus, the HC had subject-matter jurisdiction over the alleged contempt and personal jurisdiction over the alleged contemnor (Li), and jurisdiction was established in all material aspects.

A. The HC's jurisdiction to hear contempt proceedings over a foreign contemnor

Li (the alleged foreign contemnor) argued that the court had *subject-matter* jurisdiction over contempt cases due to its inherent jurisdiction as a superior court⁶ to hear and try such cases. He further argued that the statutory basis for the court's *personal* jurisdiction over a foreign contemnor was established by section 16 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") – which established the HC's jurisdiction over civil (as opposed to criminal) matters. However, he argued that section 16 also required service to be effected under one of the limbs of Order 11 rule 1 – and that none of the limbs on which the AG relied (specifically limbs (n), (p), (s) and (t)) applied here. As such, he contended that leave to serve the committal papers on him had been wrongly given, and the HC had no jurisdiction over him.

The AG countered that a charge of contempt based on scandalising the judiciary was considered criminal contempt. Thus the HC's jurisdiction to hear such a charge was based on section 15 of the SCJA, which established the HC's jurisdiction over criminal matters.⁷ It also argued that proper service was effected under Order 11 rule 1 limbs (n), (p), (s) and (t).

(i) Subject-matter jurisdiction

a. The HC's inherent jurisdiction gave it subject-matter jurisdiction

The CA agreed with Li, holding that the HC (and the CA) possessed an inherent jurisdiction to hear and punish cases of contempt. This was due to their inherent authority, based on their status as superior courts of law, to hear cases of contempt of court. These courts had the "authority" to hear cases of scandalising contempt because the power to punish in such cases was based on the courts' interest in ensuring the proper administration of justice; this in turn lay within the particular province of the courts as the institution in which the State's judicial power was vested. The CA also noted that this authority also applied to those categories of contempt that arose out of pending proceedings before the courts, e.g., disobedience of court orders in litigation.

The CA further stressed that section 7 of the SCJA, which sets out the power of the HC and the CA to punish for contempt, merely *preserved* the courts' inherent jurisdiction in respect of

⁶ In general, "inferior" courts have limited jurisdiction (or authority) to determine cases, while "superior" courts have general jurisdiction (or authority) to determine cases. In Singapore, the HC and the CA are considered superior courts of law.

⁷ The AG's argument in this respect significantly differed from its arguments in the HC, which were based upon section 7 of the SCJA. While usually a party may not advance new points on appeal, the CA ultimately agreed to hear arguments regarding section 15, due to the novelty of the point, and (more importantly) because Li's counsel "commendably indicated" that he was prepared to address this point as well.

contempt. Section 7 *conferred* jurisdiction on the HC and the CA to hear and punish for contempt, but did not *create* the jurisdiction, which had always existed under those courts' inherent jurisdiction. Indeed, the HC and CA's jurisdiction to hear and punish for contempt was a "natural and immutable consequence" of their existence, as the institutions charged with administering and dispensing justice; thus their jurisdiction came into existence upon the courts themselves being created.

b. AG's arguments

No real distinction between civil and criminal contempt.⁸ The CA rejected the AG's argument that the HC's jurisdiction to hear scandalising contempt proceedings was based on section 15 of the SCJA. Section 15 establishes the HC's jurisdiction over criminal matters, including criminal contempt.

The CA held that there was no real distinction in principle between civil and criminal contempt: they were both "quasi-criminal"⁹ in nature, due to substantive similarities in how they were treated. *First*, committal proceedings for both types of contempt were both initiated under Order 52 of the Rules of Court. *Second*, the standard of proof in both civil and criminal contempt was similar – i.e. the criminal standard of proof beyond reasonable doubt. *Third*, penal consequences applied to cases of both civil and criminal contempt. The CA stated that this similarity in substance and procedure made sense considering that both types of contempt were directed towards the same goal: protecting the proper administration of justice. This unity of objective showed that there was no reason in principle to give the distinction between the types of contempt such significance that criminal contempt should be found to rest on the HC's criminal jurisdiction, and civil contempt on the HC's civil jurisdiction.

Criminal contempt cases not treated in the same way as criminal offences. The CA also rejected the AG's argument that criminal contempt was classified as a criminal matter, and thus that criminal contempt fell within the courts' criminal jurisdiction. Criminal contempt was not like any other criminal offence. Not only was it only quasi-criminal, it was "sui generis"¹⁰ and unlike ordinary criminal proceedings, because an action for criminal contempt could even arise out of civil proceedings, e.g. due to an egregious breach of a court order. The CA also noted that the distinction between civil and criminal contempt was an outdated one.

Incongruous to require service, as service does not confer jurisdiction. Lastly, the CA stated that if the AG was correct that criminal contempt cases were based on the court's criminal jurisdiction, the CA then had difficulty accepting the AG's explanations as to why service under the Rules of Court was still required.

The AG argued that service of process did not confer jurisdiction on the courts; its function was to notify the alleged contemnor of the commencement of committal proceedings against him. However, the CA found it was incongruous to require service of committal papers in accordance with Order 11 of the Rules of Court, if service did not have the effect of conferring personal jurisdiction. *First*, there was the incongruity that the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") governed the procedure for criminal proceedings for criminal offences, whereas under the AG's argument, the procedure for criminal contempt cases was

⁸ "Criminal" contempt refers to conduct calculated to interfere with the due administration of justice, e.g. scandalising the court. "Civil" contempt arises when a party disobeys a court order or undertaking by a person involved in litigation.

⁹ A "quasi-criminal" proceeding is a civil proceeding that may result in a penalty similar to a criminal penalty.

¹⁰ Of its own kind.

under the civil procedure rules in the Rules of Court. The AG had not given a satisfactory explanation as to why criminal contempt used *civil*, instead of criminal procedure. Indeed, Order 1 rule 2 of the Rules of Court excluded the Rules of Court from being applied to “criminal proceedings”. *Second*, the present case concerned service of the committal papers outside of jurisdiction – but as jurisdiction to try criminal offences was generally territorial¹¹ in nature, service of criminal process was likewise territorial in nature and governed by the CPC (not the civil Rules of Court). *Finally*, using the AG’s suggested approach, the court already had jurisdiction because, according to the AG, the alleged offence was committed in Singapore.¹² However, in that case, compliance with Order 11 of the Rules of Court should be entirely unnecessary.

(ii) Personal jurisdiction

The CA then addressed the issue of personal jurisdiction. It again agreed with Li, holding that personal jurisdiction over a foreign contemnor was established where service was made in accordance with section 16 of the SCJA (read with Order 11 of the Rules of Court).

First, civil procedure and processes had always been relied on to establish jurisdiction over any contemnor. Service of originating process was an integral mode of commencing civil proceedings, and formed the foundation of the court’s civil jurisdiction. Thus, it was the *civil* jurisdiction of the court that was engaged when one was seeking *personal* jurisdiction over the contemnor. *Second*, founding jurisdiction on service was a better explanation for the AG’s own position (that service in accordance with Order 11 was required, as discussed above). *Lastly*, adopting a unified procedure for establishing jurisdiction over a foreign contemnor, by relying on section 16(1) of the SCJA read with Order 11 of the Rules of Court for both civil and criminal contempt, reflected the CA’s view that there was no real reason in principle to distinguish between criminal and civil contempt.

The CA noted that the above approach also cohered with current law, under the Administration of Justice (Protection) Act 2016 (No 19 of 2016) (“**AOJPA**”) (this act did not apply here as it only came into effect on 1 October 2017, after Li made the statement in question).

B. Service out of jurisdiction here was allowed under Order 11 rule 1

Li argued that section 16 of the SCJA required service to be effected under one of the limbs of Order 11 rule 1. The CA considered whether service on Li was in fact properly effected under Order 11 rule 1 limbs (*n*), (*p*), (*s*) or (*t*).¹³ It held that service was only permissible under limb (*n*), but it further held that service was indeed properly effected under that limb.

Under Order 11 rule 1, service of an originating process out of Singapore is permissible (with the court’s leave) if the underlying claim:

- (*n*) is made under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), the Terrorism (Suppression of Financing) Act (Cap. 325) or *any other written law*;
- (*p*) is based on a *cause of action* arising in Singapore;
- (*s*) concerns the construction, effect or *enforcement of any written law*; or
- (*t*) is for an *order of committal* under Order 52.

¹¹ This means, generally, that Singapore courts have jurisdiction over criminal cases which occur in Singapore.

¹² The CA also noted that the only basis on which the AG alleged that Li was in Singapore at the time of the publication of the statement was an article published by Reuters; the CA considered this “clearly inadequate”.

¹³ Service out of jurisdiction must be effected under one of the limbs of Order 11 Rule 1.

The CA addressed limbs (p), (s) and (t) before turning to limb (n).

Limb (p). The CA held that this limb was a “non-starter”, as an application to commit for contempt was not a “cause of action”.

Limb (s). Focusing on the words “enforcement of any written law”, the AG argued that the “written law” here was section 7(1) of the SCJA, which states that the courts “shall have power to punish for contempt of court”. “Enforcement” meant the application of a written law to a set of facts. As section 7 would be enforced when sanctions were ordered for a person guilty of contempt, the AG argued that it would satisfy limb (s). The CA rejected this argument, holding that it was incongruous to speak of the enforcement of a *power-conferring* provision (i.e. a provision that conferred power on the courts) such as section 7. In any event, section 7 conferred power on the court, not the litigants.

More fundamentally, while the AG framed its claim as a committal order to punish the contemnor for contempt, the CA stated that the purpose of punishing for contempt was to protect the proper administration of justice, and to vindicate the court’s authority. Such interests underlaid the entire system of the administration of justice, and were not particular to a written law.

Limb (t). As limb (t) only came into effect from 1 October 2017, after Li allegedly committed the contempt, the CA held that it did not apply here. The CA also rejected the AG’s argument that limb (t) had retrospective effect. It was unlikely that limb (t) was intended to have retrospective application. It was enacted to supplement the newly enacted AOJPA, and even took effect on the same day that the AOJPA came into force. Further, the AOJPA specifically provided that it did “not apply to any act of contempt of court committed before the appointed day”. Moreover, it would be unfair for limb (t) to apply retrospectively, as it would open the alleged contemnor to a liability for which he would not have been previously liable.

Limb (n). The CA considered this to be the AG’s strongest argument. The AG (again) argued that section 7(1) of the SCJA, which states that the courts “shall have power to punish for contempt of court”, was the relevant “written law”. It also clarified that the AG’s practice was to frame applications for committal as applications brought under Order 52 of the Rules of Court read with section 7(1) of the SCJA.

The CA held that thus presented, the claim was indeed one brought under written law. The mere fact that the claim *could* be brought without invoking section 7(1) did not detract from the fact that the AG *did* elect to frame the case using that section. The issue was whether the AG was entitled to frame his case under section 7; if yes, then limb (n) was satisfied.

The CA rejected Li’s argument that the “written law” in question here should be the statute setting out or creating the legal basis for the claim. Limb (n) did not require such a narrow interpretation. The point was that it was up to the AG how he wished to frame his claim. Here, the AG was entitled to frame his case as a claim brought under section 7(1), because the claim was for punishment which the written law (i.e. section 7) expressly empowered the court to order. This was not a case where a provision, having no or only a very tangential relation to the claim, was being relied upon as the relevant written law. In other words, the framing of the claim was not merely a matter of presentation with a peripheral reference to some written law. Instead, section 7 was the relevant written law that expressly governed the scenario contemplated here – someone having committed a contempt – by providing for the power to

punish the act, and it was that power under which the AG was making a claim.

III. Lessons Learnt

This judgment explains the basis of the HC's (and CA's) subject-matter and personal jurisdiction over contempt cases involving a foreign contemnor. (A foreign contemnor is a party who had made the allegedly contemptuous statements in Singapore, but was out of jurisdiction (i.e. overseas) when the committal papers were actually served on him). In arriving at its conclusion, the CA stressed that there is no real distinction in principle between civil and criminal contempt for the purposes of establishing jurisdiction and permitting service out of jurisdiction. However, the CA left open the question of whether the civil-criminal distinction would still be useful in future cases. Given that the AOJPA has recently taken effect, it remains to be seen how the AOJPA will affect the utility of this classification.

Additionally, as acknowledged by the CA, the issue of whether service is properly effected on foreign contemnors is unlikely to repeat itself given that limb (t) of Order 11 is now in force. Nonetheless, this case still highlights how different limbs of Order 11 Rule 1 ought to be interpreted, and explains how the courts will determine if a provision applies retrospectively.

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