When Joinders of Charges are allowed under the Criminal Procedure Code 2010: *S Iswaran v Public Prosecutor* [2024] 4 SLR 965; [2024] SGHC 123

I. Executive Summary

Where an accused faces multiple criminal charges, the Criminal Procedure Code 2010 (2020 Rev Ed) ("**CPC**") allows the charges to be heard jointly under certain conditions (this is known as a "**joinder of charges**"). A joinder allows multiple offences to be tried in one (rather than several) hearings or trials.

Specifically, section 133 of the CPC allows a person accused of 2 or more charges to be tried at one trial if the offences "form or are a part of a series of offences of the same or a similar character". If the person commits 2 or more offences stemming from "one series of acts connected so as to form the same transaction", then section 134 of the CPC permits the person to be tried at one trial for all such offences.

In *S Iswaran v Public Prosecutor* [2024] SGHC 123, pursuant to sections 133 and 134 of the CPC, the former Minister for Transport S Iswaran ("**Iswaran**") applied for a joinder of all 35 charges he faced for obtaining valuable items as a public servant, corruption and obstruction of justice. The Singapore High Court ("**HC**") allowed the application.

In doing so, the HC clarified the interpretation of sections 133 and 134 of the CPC. *First*, the court found that an application for joinder of charges under those two sections can be made by the Defence and not just the Prosecution. *Second*, the phrase "a series of offences of the same or a similar character" from section 133 should be interpreted as requiring similarity in law and in fact, having regard to the wider characteristics of the offences. This is in contrast to the Prosecution's suggestion that the phrase should be interpreted as requiring a "factual connection or nexus" among all the offences. The court rejected this interpretation to ensure that the requirements for section 133 are not conflated with that of section 134.

II. Material Facts

Iswaran faced a total of 35 charges. 27 of the 35 charges against Iswaran related to Mr Ong Beng Seng ("**OBS**"). The 27 charges consisted of:

(a) 24 charges under section 165 of the Penal Code (Cap 224, 2008 Rev Ed) ("**Penal Code**") for obtaining valuable items from OBS with no consideration (i.e. something given in exchange) as a public servant (the "**OBS section 165 Penal Code charges**");

(b) 2 charges under section 6(*a*) read with section 7 of the Prevention of Corruption Act 1960 (2020 Rev Ed) ("**PCA**") for receiving items as inducement for doing acts that served to advance OBS's business interests (the "**OBS PCA charges**"); and

(c) 1 charge under section 204A(*a*) of the Penal Code 1871 (2020 Rev Ed) concerning an act with tendency to obstruct the course of justice, for repaying S$5,700 as the cost of a business class flight ticket from Doha to Singapore (at OBS' expense) (the "**OBS section 204A Penal Code charge**").

Eight of the 35 charges related to Mr Lum Kok Seng ("**LKS**"), managing director of Lum Chang Holdings. These eight charges were also under section 165 of the Penal Code, for the act of obtaining valuable items from LKS with no consideration as a public servant.

In his application for a joinder, Iswaran argued that:

- Pursuant to section 133 of the CPC, the OBS section 165 Penal Code charges, the OBS PCA charges and the LKS charges ought to be tried in one trial.
- Pursuant to section 134 of the CPC, the OBS section 204A Penal Code charge should be tried in the same trial as mentioned in (a) above.

Conversely, the Prosecution argued that the OBS charges should be tried separately from the LKS charges; specifically, that the latter charges should be tried before the former charges.

III. Issues

The HC dealt with four issues. First, it considered whether an application for a joinder of charges may be made by the Defence, or whether it is within the sole prerogative of the Prosecution. After concluding that the Defence could also apply for a joinder of charges, the HC then considered the legal requirements of sections 133 and 134 of the CPC, before applying them to the facts here. Finally, it considered whether a joinder of the charges would cause prejudice Iswaran's defence, pursuant to section 146(*a*) of the CPC.

A. The Defence may apply for a joinder of charges, as it is not within the sole prerogative of the Prosecution

To determine whether the application for joinder of charges was open to the Defence, the HC first considered the express wording of sections 133 and 134 of the CPC, before discussing the court's role in such situations.

(i) The wording of sections 133 and 134 of the CPC

- **Section 133 – Joining of similar offences**: When a person is accused of 2 or more offences, the person may be charged with and tried at one trial for any number of those offences if the offences form or are a part of a series of offences of the same or a similar character.
- **Section 134 – Trial for more than one offence**: If, in one series of acts connected so as to form the same transaction, 2 or more offences are committed by the same person, then the person may be charged with and tried at one trial for every such offence.

The HC held that the express wording of the sections did not provide any basis for the conclusion that an application for joinder of charges was within the Prosecutor's sole discretion. The HC further noted that the way the CPC has been drafted also militated against such a conclusion. There were other provisions in the CPC that include the express words "on the application of" the Public Prosecutor, indicating that an application may only be exclusively taken out by the Prosecutor. However, similar language was not found in sections 133 and 134 of the CPC. Thus, there was no reason to imply an interpretation that only the Prosecutor may apply for a joinder.

(ii) The court's role in such situations

The Prosecution argued that its prerogative to conduct criminal proceedings extended to a decision with regards to a joinder of charges. It relied on Article 35(8) of the Constitution of the Republic of Singapore (2020 Rev Ed), which states that the Attorney-General has the "power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence". The Prosecution further highlighted section 11(1) of the CPC, which states that the Attorney General, as the Public Prosecutor, "has the control and direction of criminal prosecutions and proceedings under this Code or any other written law".

The HC disagreed. It noted that the Prosecution's argument relied on its acceptance that an application to the court was necessary for charges to be joined for trial. However, if the Prosecution's submission was correct (i.e. that its prerogative to conduct criminal proceedings extends to determining which charges should be joined at a single trial), then any application to the court for a joinder of such charges would be unnecessary. In other words, the logical conclusion of the Prosecution's argument was that the Prosecution could unilaterally decide that charges can be joined, without any need for an application to court.

However, the HC stated that it was undisputed that such an application is necessary for the joinder of charges, and such applications are ultimately subject to the court's control and discretion. Once charges have been brought before the court, the court's overall control and supervision over proceedings extends to oversight of the standing down of charges pending trial on other charges. This is necessary to prevent a situation where the court is powerless to intervene in cases where the Prosecution seeks to stand down charges in a manner objectively oppressive to the accused person.

Such reasoning applied equally to applications for a joinder of charges. Judicial scrutiny over joinders of charges is justified on the basis that such applications are an aspect of management, as opposed to prosecution of proceedings. They serve to prevent prejudice or embarrassment of the accused's defence, and are necessarily within the court's purview and subject to its supervisory jurisdiction. Once it is accepted that the court has oversight over the joinder of charges, the Prosecution's submission that applying for a joinder of charges is within its sole prerogative must necessarily fail.

B. Legal requirements of sections 133 and 134 of the CPC

The HC first addressed the issue of what amounts to "a series of offences of the same or a similar character", as required by section 133 of the CPC. It accepted Iswaran's submission that this test requires the offences to be similar in law and in fact, having regard to the wider characteristics of the offences. The HC noted that at its core, this inquiry aimed to determine whether the offences, in view of their similarities, may be conveniently and practically tried together where no prejudice would be caused to the accused.

The HC rejected the Prosecution's argument that the appropriate test under section 133 of the CPC was instead whether there is a "factual connection or nexus" among all the offences. The HC held that the Prosecution had conflated the requirements for section 134 with that of section 133 of the CPC. Section 133 requires that offences "form or are a part of a series of offences of similar character", while section 134 requires that there is to be "one series of acts connected so as to form the same transaction". Thus, it was clear that under section 134, but not section 133, the offences need to be connected. The words "form or are a part of a series" must mean something other than the offences being closely connected in time, place, and circumstances. Indeed, the Prosecution's submission that offences can only be joined under section 133 of the CPC if they are so closely connected factually and temporally and arise out of a single factual matrix would effectively render section 134 of the CPC redundant. It logically followed that section 133 of the CPC requires a different test.

The HC then applied Iswaran's proposed test to his application for joinder of charges under section 133 of the CPC.

C. Application of sections 133 and 134 to the facts

(i) Similarity between OBS section 165 Penal Code charges and LKS charges

The HC held that both categories of charges, i.e. the OBS section 165 Penal Code charges and the LKS charges, were legally identical as they were both brought under section 165 of the Penal Code. The legal defences that Iswaran was likely to raise for those charges were also materially similar, since they concerned his mental state at the time of the offences. All the charges also shared factual similarity because they arose in the course of Iswaran's functions as a public servant. Although the OBS section 165 Penal Code charges and LKS charges concerned different givers and different received items, with different witnesses to be called to prove the charges, this did not mean the offences were factually dissimilar. This is because the court is not concerned so much with the connectedness of the factual circumstances, but with the wider similarity of the facts alleged in the charges.

(ii) Similarity between charges under section 165 of the Penal Code (concerning both OBS and LKS) and the OBS PCA charges

The HC held that both categories of charges shared a common *actus reus* (the part of the crime that deals with the guilty *act*): that of Iswaran obtaining items of value in his position as a Minister of the Government of Singapore. Although the *mens rea* (the part of the crime that deals with the accused's guilty *mind*) for both categories of charges differed, these differences did not render the charge so legally dissimilar that it would not be practical and convenient for the charges to be tried together: they shared broad similarities as they related to Iswaran's alleged awareness of the connection between the obtaining of valuable items and his official functions.

The HC then addressed Iswaran's application for a joinder under section 134 of the CPC, namely whether the OBS section 204A Penal Code charge should be tried in the same trial as the other charges joined under section 133 of the CPC. The HC found that the alleged act constituting the charge (the re-paying of the cost of Iswaran's flight from Doha to Singapore) had a clear continuity of action with the alleged obtaining of the said flight, which was the subject matter of one of the OBS PCA charges. Since they were part of the same transaction, the HC held that they may be joined under section 134 of the CPC.

D. Would joinder of the charges cause prejudice the accused's defence, pursuant to section 146(a) of the CPC?

Since the HC found it would be appropriate to order a joinder under sections 133 and 134 of the CPC, the inquiry shifted to section 146(*a*) of the CPC, where the court will determine whether the joinder will prejudice or embarrass the accused's defence on the facts.

In this case, Iswaran had already confirmed that a joinder would not prejudice or embarrass the Defence. In fact, he argued that he will be prejudiced if his application for joinder is dismissed. In such circumstances, there were strong reasons to order a joinder of all charges. Thus, the HC allowed Iswaran's application for a joinder of his charges.

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