

*The Right Time and Place for a Criminal Motion:
Amarjeet Singh v Public Prosecutor [2021] SGHC 73*

I. EXECUTIVE SUMMARY

Criminal motions are routinely filed to seek a broad range of remedies associated with the court’s criminal jurisdiction. There being no explicit limits on the sort of remedies pursuable by way of a criminal motion, it risks being abused to subvert established mechanisms that gatekeep other court procedures. The question then is: in what context would the filing of a criminal motion be appropriate (or not)?

In *Amarjeet Singh v Public Prosecutor* [2021] SGHC 73, the High Court (“**HC**”) clarified that a criminal motion is ultimately a procedural device by which the criminal jurisdiction of the court may be invoked, rather than being a source of such jurisdiction.¹ Therefore, the court’s first concern is to ascertain whether the motion had been brought within the court’s criminal jurisdiction. This would be the case where:

- (a) there was a primary criminal action that was itself an exercise of the court’s original, appellate, or revisionary criminal jurisdiction, and the criminal motion merely sought a form of relief that was ancillary/incidental to that primary action; or
- (b) the criminal motion itself invoked some aspects of the HC’s criminal jurisdiction (such as its appellate jurisdiction), for instance when seeking the court’s leave to refer questions of law of public interest.

The HC further stressed that a criminal motion should not be used to circumvent the procedural or substantive requirements that accompany other applications or processes.

II. MATERIAL FACTS

Mr. Amarjeet Singh (“**Singh**”) was originally investigated for a potential offence under section 353 of the Penal Code (Cap 224, 2008 Rev Ed) (“**Penal Code**”), but was later charged under section 352. Section 353 sets out an aggravated form of the offence and it concerns the use of criminal force to deter a public servant from discharging his duty, whereas section 352 of the Penal Code concerns the use of criminal force simpliciter. Both offences are punishable with imprisonment, fine or both imprisonment and fine. The only difference between them is in the maximum imprisonment terms and the maximum fines that may be meted out.

Singh and the Prosecution entered into discussions regarding the Prosecution’s intended sentencing position for Singh. Singh alleged that the Prosecution had promised him a non-custodial sentence if he pled guilty to the offence under section 352; the Prosecution’s version was that it had only given an indication of the sentence it would seek, but had not entered into any plea agreement.

The Prosecution subsequently reviewed the matter, and assessed that the gravity of Singh’s offence warranted a higher charge. The Prosecution therefore amended Singh’s charge to one under section 353 of the Penal Code. After the amendment of this charge, Singh elected not to plead guilty. Instead, he argued that there was an enforceable plea agreement between him and the Prosecution pursuant to the original charge. These claims were dismissed by the trial court, which considered it had no jurisdiction to make such an order. Singh then filed a criminal motion in the HC seeking to “enforce” the plea agreement.

¹ Generally, when a court has jurisdiction over a matter, it has the authority to hear and determine said matter.

Singh ultimately withdrew his application after the court expressed reservations about the jurisdictional basis of his application. That said, the HC took the case as an opportunity to set out the jurisdictional contours of a criminal motion.

III. ISSUES

The HC considered the following issues:

- (a) What was the nature of the jurisdiction that the application sought to invoke, and
- (b) Whether a criminal motion was the correct method for enforcing the alleged plea agreement.

A. *The nature of the court's jurisdiction being invoked in the present application*

The HC first clarified the types of criminal jurisdictions the HC possesses, before addressing the nature of criminal motions. It then specified the test for when it would be appropriate to bring a criminal motion.

(1) *The HC's criminal jurisdiction*

The HC's criminal jurisdiction consisted of four main types: original, appellate, supervisory, and revisionary.

The court's *original* criminal jurisdiction is concerned with the court's trial jurisdiction, which in turn involves the court's consideration of a case at first instance (i.e. when the proceedings are first initiated), taking cognizance of a cause at its inception, trying it and ultimately passing judgment based upon the law and facts.

The court's *appellate* criminal jurisdiction is exercised when it considered appeals arising from any judgment, sentence or order of a court, or any decision of the HC as mentioned in specific instances under section 149M(1) of the Criminal Procedure Code (Cap 68, 2021 Rev Ed) ("CPC").

The court's *supervisory* criminal jurisdiction involves the court's scrutiny and control over decisions of the inferior courts and tribunals or other public bodies discharging public functions. Under this jurisdiction, the court has powers to review the activities of public authorities and, in some cases, of private bodies exercising functions of public importance such as licensing.

The court's *revisionary* jurisdiction is a hybrid of its supervisory and appellate jurisdictions. Once this jurisdiction is invoked, the HC may examine the record of any criminal proceeding before any State Court so to satisfy itself as to the regularity of these proceedings, as well as the correctness, legality or propriety of any judgment, sentence or order passed. The HC may then exercise certain powers flowing from its revisionary jurisdiction, including the power to alter or reverse any order made by the court below, or the power to take further evidence. The HC's revisionary jurisdiction has traditionally been tightly controlled and sparingly exercised. Its invocation requires a demonstration not only that there has been some error but also that grave and serious injustice has been occasioned as a result.

(2) *The Nature of Criminal Motions*

The HC then addressed the exact nature of criminal motions. The starting point was Division 5 of Part XX of the CPC, these being the statutory provisions governing criminal motions.

The HC made three observations in this regard. *First*, the criminal motion provisions were largely administrative in nature and did not appear to describe or constrain the particular jurisdiction that might be invoked by a criminal motion. This was possibly explained on the basis that these provisions replaced the limited guidance originally provided by the Supreme Court (Criminal Appeals) Rules (Cap 322, R 6, 1997 Rev Ed), those rules being largely administrative in nature as well.

Second, the provisions did not identify or specifically limit the powers exercisable in a criminal motion. This was in contrast with many of the other “power-conferring” provisions found in Part XX of the CPC.

Third, the HC noted that section 405 of the CPC describes a criminal motion as a “[a] motion ... *in respect of any criminal matter.*” This suggested that criminal motions are filed to seek an order that is connected to or supportive of a primary action, such actions referring to those that invoke the original, appellate or revisionary criminal jurisdiction of the court.

In that regard, the subject matter of a criminal motion is fundamentally tethered to the conduct of the main trial or appeal or application for revision, and the effort to ensure that the correct outcome is reached as a result of that trial or appeal or application for review. This, the HC observed, was true for both the more common applications (such as applications to vary bail or to produce further evidence), and for the more uncommon ones as well (such as applications to seek leave to allow video link testimony at trial or for trials to be transferred to another court).

Thus, the HC concluded that a criminal motion may well involve the exercise of a court’s original, revisionary or appellate jurisdiction. The particular jurisdiction invoked would depend on the nature of the parent action and the order sought.

(3) When bringing a criminal motion would be appropriate

The HC then explained when it would be appropriate to bring a criminal motion. It first outlined the potential difficulties that could arise when a party seeks to invoke the jurisdiction of the court using a criminal motion. Specifically, the processes of criminal references, revisions, appeals and trials each had their own rules, which prescribed how the court’s process may be invoked, managed and controlled. These prescriptions acted as procedural safeguards which existed to streamline administration, restrain any abuse of process, preserve the finality of judgments, and constrain the circumstances in which the court’s powers may be invoked and exercised. While the criminal motion was endowed with a high degree of procedural flexibility, it was not intended to be a mode by which the procedural safeguards for certain originating actions or appeals or revisions could be circumvented.

Further, the HC cautioned that criminal motions should not be used to circumvent the general rule forbidding appeals against interlocutory or procedural rulings. This rule preserves the momentum of the criminal process, ensuring that not every conceivable grievance will undermine the progress of a criminal matter.

Ultimately, to ensure the jurisdictional soundness of an application for a criminal motion, the HC would examine whether it was brought within the court’s criminal jurisdiction by: (a) constituting a primary action invoking or purporting to invoke the court’s criminal jurisdiction; or (b) seeking specific relief incidental to or supportive of a primary action invoking the original, appellate, or revisionary criminal jurisdiction of the court.

B. *Whether a criminal motion was the correct method for enforcing the alleged plea agreement*

The HC then held that a criminal motion was not the correct method of enforcing the alleged plea agreement. It disagreed with Singh's argument that his application invoked the court's original criminal jurisdiction: there was neither a trial before the HC, nor was the matter related to an ongoing trial. Further, Singh was not seeking any relief that could fairly be described as incidental to or supportive of the proper or fair conduct of a pending trial. Indeed, the real point of the criminal motion was to stop the Prosecution from proceeding with its intended prosecution under section 353 of the Penal Code.

The HC also noted that in substance, Singh was in fact seeking to secure public law remedies through his criminal motion. Specifically, the motion's request to "enforce" the plea agreement suggested that Singh was seeking an order that the Prosecution carry out or perform the alleged plea agreement. He was, in effect, seeking a mandatory order, which was to be rightfully pursued under Order 53 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), and granted pursuant to the court's *supervisory civil* jurisdiction. Thus, in substance, Singh's criminal motion was an attempt to control the Prosecution's conduct. The jurisdiction it invoked did not relate to any parent criminal proceeding, but was instead an independent attempt to persuade the court to act on its *supervisory (civil)* capacity.

The HC then held that allowing Singh's application to succeed would effectively result in the HC exercising its powers of judicial review over the Attorney-General's exercise of its prosecutorial discretion. This would bypass the leave requirement in judicial reviews. Such leave would ordinarily only be given where (a) the subject matter of the complaint was susceptible to judicial review; (b) the material before the court disclosed an arguable case or a *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant; and (c) the applicant has sufficient interest in the matter. Additionally, applicants seeking judicial review would typically have to prove that alternative remedies were exhausted, or that the relief sought has practical utility. By bringing a criminal motion, Singh would have avoided the scrutiny of these requirements. That, the HC noted, was impermissible.

Indeed, before the HC, Singh agreed that if he wanted to pursue the point further, he should seek leave to commence judicial review instead. Singh then applied for leave to withdraw the motion, which the HC granted.

IV. LESSONS LEARNT

This case serves as a useful reminder for lawyers to consider the jurisdictional basis of their applications before filing them. Lawyers should not assume that jurisdiction would be established by fact of the application alone, and they should also be mindful that there are specific procedural pathways for specific court processes. The failure to consider, or an attempt to circumvent such procedures, will not be favourably received by the courts.

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