

On 7 November 1976 at about 8.30 a.m., a party of four police officers went on rounds looking for "pirate taxis". They were in plain clothes in an unmarked police vehicle. At about 10.00 a.m. when they were at Boon Lay Avenue, they saw the accused who was driving a station wagon bearing registration No. GC 5153K, sounding his horn and picking up six passengers near Block 187. The police officers suspected that it was a "pirate taxi" and decided to trail the vehicle. It went along Boon Lay Drive and turned into Boon Lay Way where it was subsequently intercepted. A search of the vehicle was conducted in the presence of the accused. Cash amounting to \$8.50 in coins was recovered from two separate cigarette tins which were kept under the driver's seat. The accused and the six passengers were arrested.

The accused was charged with:

- (1) Using a motor vehicle as a public service vehicle without there being in force in respect of it a valid public service vehicle licence granted under the provisions of Part II of the Road Traffic Act (Cap. 92), an offence punishable under section 54(2) of the Act;
- (2) using the same vehicle at the same time, date and place, while there was not in force in relation to the user of the said vehicle a policy of insurance in respect of third party risks in compliance with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Act, (Cap. 88) an offence punishable under section 3(2) of the Act.

At the trial, there were certain discrepancies in the evidence of the three police witnesses who testified for the prosecution. The evidence of the five passengers who testified for the prosecution was that nothing was said or agreed about the fare at the time they boarded the vehicle. They did not even know how much they were supposed to pay. The prosecution relied on the presumption in section 81 of the Road Traffic Act (Cap. 92) submitting that once these presumptions had been raised the duty of giving an explanation which was consistent with innocence was cast upon the accused.

Held: (1) The presumptions in section 81 of the Road Traffic Act (Cap. 92) were rebuttable presumptions and the evidence of the pro-

secution witnesses was such that it negated these presumptions. *Gan Chye Huat v. Public Prosecutor* [1962] M.L.J. 27, considered.

(2) There is no known rule of law which says that prosecution witnesses themselves cannot rebut such presumptions in law.

The court acquitted and discharged the accused on both charges without calling for his defence, whereupon the prosecution made an application for the forfeiture of the station-wagon under section 54(6) of the Road Traffic Act (Cap. 92).

Held: (1) It was not proved to the satisfaction of the court that the vehicle had been used in the commission of an offence under section 54(1) of the Road Traffic Act.

(2) The owner of the vehicle was an innocent third party. It was wholly inappropriate for the prosecution to have made this application and it would be manifestly unjust if any further inquiry were to take place for purposes of forfeiting the vehicle.

(3) The vehicle was ordered to be returned to its rightful owner.

[Summary by T. Shue]

Commentary: On the question of the forfeiture of a motor vehicle used in the commission of an offence, it might be interesting to note the Court's general disinclination to prejudice an innocent third party as manifested in two other unreported cases in the Magistrate's Court. These were the recent decisions in *P.P. v. Thian Tin Song*¹ and *P.P. v. Hong Guan Motor Pte. Ltd.*² Both involved accused persons who were each convicted of an offence under section 279 of the Penal Code,³ for riding a motor-cycle in a manner so rash as to endanger human lives.⁴ In both cases, the motor-cycle used in the commission of the offence were vehicles bought on hire-purchase, with hire-purchase instalments still outstanding. Upon the conviction of the accused in each of the 2 cases, application was made by the prosecution for the forfeiture of the motor-cycle. However, in these cases, the statutory provision, upon which the court's power to order forfeiture was invoked, was that of section 372 of the Criminal Procedure Code.⁵

¹ Mag. Ct. No. 21 in TAC 328 of 1978.

² Mag. Ct. No. 14 in TAC 357 of 1978. Sub-nom. *P.P. v. Ker Hian Hui*. See *infra*.

³ Cap. 103, Singapore Statutes, Rev. Ed. 1970.

⁴ This seemingly popular pastime of some motorcyclists, of turning our highways into racing circuits, has been dubbed by the press as 'hell-riding' and the participants, 'hell-riders'.

⁵ Cap. 113, Singapore Statutes, Rev. Ed. 1970. The relevant portion of s. 372 reads as follows:-

- (1) During or at the conclusion of any inquiry or trial in any Criminal Court, the Court may make such order as it thinks fit for the disposal of any document, livestock or other property produced before it.
- (2) The power conferred upon the Court by this section includes power to make an order for the forfeiture... of any property regarding which an offence is or was alleged to have been committed or which appears to have been used for the commission of any offence but shall be exercised subject to any special provisions regarding forfeiture... contained in the Act under which the conviction was had or in any other Act applicable to the case.

In *P.P. v. Thian Tin Song*, after considering facts given by the accused when he was called upon to show cause why an order for forfeiture should not be made, the Court decided not to make such an order on the ground that it would mean "more severe hardship caused not only to the accused but *also to the hire-purchase company*."⁶ Clearly, as far as the accused was concerned, the Court felt that a fine of \$1000/- and a 6-year disqualification from driving all classes of vehicles, "coupled with the fact that he was a National Serviceman and had incurred debts to pay his legal fees were sufficient punishment in the circumstances of the case."⁷

How an order for forfeiture of the motor-cycle would cause hardship to the hire purchase company was not articulated in the Grounds of Decision. The accused had bought the motorcycle on hire purchase four months before the commission of the offence and there were still more than 10 instalments to be paid to the hire-purchase company. Had the motorcycle been forfeited under a court order, the hire purchase company could still have recovered the remaining instalments, due under the hire purchase agreement, in a civil action.⁸ However, the prejudice to the hire purchase company is real in that a key feature of a secured credit transaction like hire-purchase, *i.e.* the right to repossess the property for breach of the agreement,⁹ is extinguished once the motorcycle has been forfeited. Very often, the hire-purchase company has to exercise this right of repossession because it is the only real remedy open to them, *e.g.* where a civil action to recover the outstanding instalments under the agreement is clearly futile because the purchaser is a 'man of straw'. This appears to have been the major consideration of the Court in *P.P. v. Hong Guan Motor Pte. Ltd.* which arose from an order of forfeiture made by the Court in *P.P. v. Ker Hian Hui*.¹⁰ There, the motorcycle used by the accused, for the commission of the offence under section 279 of the Penal Code, had been bought on hire-purchase from Hong Guan Motor Pte. Ltd. Apart from an initial down-payment, only one instalment had been paid by the accused, while 23 more instalments remained outstanding. Hong Guan Motor Pte. Ltd. successfully applied to have the order revoked as it had not been given an opportunity to be heard on the question of forfeiture. The case then came before the Court as *P.P. v. Hong Guan Motor Pte. Ltd.* to rehear the question of forfeiture and for Hong Guan to show cause why the motorcycle should not be forfeited.

In rejecting the prosecutor's application for forfeiture and ordering the return of the motorcycle to Hong Guan, the Court noted that as the accused, Ker Hian Hui, was a labourer earning about \$6/- per day and had to borrow money to pay his fines, he was indisputably a 'man of straw'. To order a forfeiture of the motorcycle would "adversely affect an innocent third party, Hong Guan Motor Pte. Ltd...."¹¹ The interest of Hong Guan was clearly underlined as the

⁶ For grounds of decision, see, Mag. Ct. No. 21 in TAC 328 of 1978.

⁷ *Ibid.*

⁸ *Re Motor Traders Finance Co. Ltd.* [1951] M.L.J. 123.

⁹ All hire-purchase agreements will contain a clause giving the hire-purchase company the right to repossess the property in the event of any breach of the conditions of the agreement by the hirer, including a default in payment of instalments.

¹⁰ *Supra*, note 2.

¹¹ For grounds of decision, see, Mag. Ct. No. 14 in TAC 357 of 1978.

Court noted that it was in fact the beneficial owner of the motorcycle under the hire-purchase agreement, and as the accused had committed a breach of the terms of the agreement by using the motorcycle to commit an offence, under clause 9 of the agreement, Hong Guan was entitled to repossession.

The Court's approach on the question of forfeiture of vehicles used in the commission of offences in both these cases, as well as in the instant case, can only be described as fair. While it is true that as a matter of policy, forfeiture may be desirable as an added deterrent to the accused and all potential offenders, the interests of an innocent third party clearly outweigh whatever deterrent value there is in the gesture of forfeiture. Where the innocent third party happens to be a hire-purchase company, quite apart from the fact that the company has a civil action against the accused under the hire-purchase agreement, it may be argued that the risk of forfeiture must be deemed to be undertaken by those in the hire-purchase business as just another risk of the trade. While it is unlikely that such an argument will appeal to those in the hire-purchase business, this, coupled with the hire-purchase company's right to claim under a hire-purchase agreement, at least makes forfeiture more supportable. The same cannot be said where the relationship between the accused and the innocent third party is not one of business or contract, as in the instant case.