

**P.P. v. Hong Guan Motor Pte. Ltd.**

Magistrates' Court No. 14 in TAC 357 of 1978

The accused, Ker Hian Hui, pleaded guilty to and was convicted of 2 charges:

- (1) for riding a motor cycle in a manner so rash as to endanger human lives, an offence under section 279 of the Penal Code, (Cap. 103) and
- (2) for failing to stop when requested by a police officer, an offence under section 78(4) of the Road Traffic Act, (Cap. 92).

Upon the application of the prosecutor, the Court made an order for forfeiture of the accused's motorcycle, bought on hire-purchase from Hong Guan Motor Pte. Ltd. The order, granted pursuant to section 372 of the Criminal Procedure Code, (Cap. 113) was subsequently revoked by the High Court on the ground that Hong Guan had not been given an opportunity to be heard on the question of forfeiture.

On a rehearing of the question of forfeiture, Hong Guan Motor Pte. Ltd. showed cause as to why the motorcycle should not be forfeited. The Court also considered the question of whether the words "produce before it" in section 372 meant that the property to be forfeited (the motorcycle in this case) need to be physically produced before the Court before an order of forfeiture can be made. Photographs of the motorcycle in question were tendered by the prosecution in lieu of the motorcycle.

*Held:* (1) Under section 372 of the Criminal Procedure Code, before an order of forfeiture can be made, the property to be forfeited, *i.e.* the motorcycle in question, must be physically produced before the Court. This was not done in this case. Tendering of photographs of the property cannot be said to be 'producing' the property before the Court.

Dictum of Rose C.J. in *Sia Khoon Seng's Application* [1962] M.L.J. 9 and dictum of Spencer Wilkinson J. in *R. v. Baichand* [1952] M.L.J. 229 applied.

(2) Even if the said motorcycle had been produced before the court, and although the court is fully aware of the need to prevent our highways from being turned into racing circuits by hell-riders, having regard to the fact that the accused

(a) had only paid one instalment out of 24 due under the hire-purchase agreement,

(b) is a labourer earning about \$6/- per day, and

(c) had to borrow money to pay his fines,

a forfeiture would adversely affect an innocent third party, the hire-purchase company, as it cannot recover the outstanding instalments from the accused, a man of straw.

(3) Accordingly, the prosecutor's application for the forfeiture of the motorcycle is rejected and an order is made for the return of the said motorcycle to the hire-purchase company.

[Summary by T. Shue]

Commentary: Quite apart from the point about the Court's reluctance to make an order for forfeiture at the expense of some innocent third party (which has been the subject of comment elsewhere),<sup>1</sup> this case merits comment for its detailed consideration of the scope and application of section 372 of the Criminal Procedure Code.<sup>2</sup>

Sub-section (1) of section 372 confers a general power upon the Court to make any "such order as it thinks fit for the disposal of any document, livestock or other property produced before it" either during or at the conclusion of any criminal trial or inquiry. Sub-section (2) goes further to specify that such power includes, *inter alia*, the power to make an order for the forfeiture of any property used for the commission of any offence.

In the instant case, the Court was of the view that "on a plain reading of the section"<sup>3</sup> the words '... property produced before it...' in section 372 mean that the property to be forfeited must be *physically* produced before it. Further, as section 372 is a penal provision, the Court applied the dictum of Sir Alan Rose C.J. in *Sia Khoon Seng's Application*<sup>4</sup> that penal provisions should be strictly construed and any ambiguity resolved in favour of the accused. According to the Court, to say that the tendering of photographs of the property, in place of the actual property, is sufficient to constitute "producing" the property before the Court, would be to stretch the words of the section. Such 'stretching' would be for the benefit of the prosecution and contrary to the principles of construing penal provision strictly.

<sup>1</sup> See Commentary to *P.P. v. Neo Jee Sim*, Selected Unreported Cases No. 2, *supra*.

<sup>2</sup> Cap. 113, Singapore Statutes, Rev. Ed. 1970.

<sup>3</sup> For grounds of decision, see, Mag. Ct. No. 14 in TAC 357 of 1978.

<sup>4</sup> [1962] M.L.J. 9.

This interpretation of sub-section (1) to section 372 is in direct contrast to that of the Court in the earlier unreported decision of *P.P. v. Thian Tin Song*,<sup>5</sup> where it rejected the submission of the defence that the vehicle (also a motorcycle used in the commission of an offence under section 279 of the Penal Code<sup>6</sup>) must be produced before the Court before an order for forfeiture can be made. It ruled that it had power to order forfeiture under section 372 “so long as there is sufficient evidence produced before it to this effect”, whatever that means. Presumably, the tendering of photograph of the property to be forfeited would constitute “sufficient evidence produced before it to this effect” for the purpose of invoking the Court’s power under section 372(1). However, it is submitted that the interpretation in *P.P. v. Thian Tin Song* should be treated warily. It is not at all clear from the Grounds of Decision how the Court arrived at such a conclusion. By way of contrast, the Court in the instant case arrived at its interpretation by invoking the “plain reading” rule as well as the rule in construing penal statutes. Further, the Court in the instant case compared section 372(1) of our Criminal Procedure Code to the equivalent provisions in the Indian Criminal Procedure Code<sup>7</sup> (section 452) and the F.M.S. Criminal Procedure Code<sup>8</sup> (section 407). Both these provisions, by including words like “in its custody” or “in its custody and in the custody of the police or any public servant” which are absent from section 372(1), contemplate forfeiture where the property in question need not be physically produced before the Court. The Court impliedly applied the rule “expressio unius exclusio alterius” by noting the absence of similar words in section 372, and came to the conclusion that the property to be forfeited must be *physically* before the Court for the purpose of invoking section 372.

As a final fortification to the interpretation adopted by the Court, the dictum of Spencer Wilkinson J. in the case of *R. v. Baichand*<sup>9</sup> was called forth. There, in commenting on section 435 of the Straits Settlements Criminal Procedure Code, which is *in pari materia* with section 372, the learned judge said that “the only property which can be said to have been ‘produced before the Court’ is property which has been *physically* produced before it.” In the face of such an exhaustive consideration of section 372 by the Court in the instant case, the interpretation adopted here must be preferred to that adopted in *P.P. v. Thian Tin Song* which was the result of an all too cursory consideration of the section. However, one point that was made by

<sup>5</sup> Mag. Ct. No. 21 in TAC 328 of 1978. See also *supra*, note 1.

<sup>6</sup> Cap. 103, Singapore Statutes, Rev. Ed. 1970.

<sup>7</sup> S. 452 of the Indian Criminal Procedure Code states:

“When an inquiry or trial in any Criminal Court is concluded the Court may make such Order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or documents produced before it or *in its custody* or regarding which any offence appears to have been committed or which has been used for the commission of any offence.”

<sup>8</sup> S. 407 of the F.M.S. Criminal Procedure Code states:

“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 custody or disposal of any property or document whatsoever produced before it or *in its custody or the custody of the police or of any public servant* regarding which any offence appears to have been committed or which has been used for the commission of any offence.”

<sup>9</sup> [1952] M.L.J. 229.

the Court in *P.P. v. Thian Tin Song* remains to be noted and that is on the question of whether there is a limit to the power of the Court, in terms of the value of the property to be forfeited, in making an order of forfeiture.

In *P.P. v. Thian Tin Song*, the motorcycle in question was valued at \$5000/-. The defence submitted that since the Court only has jurisdiction to impose a fine not exceeding \$2000/-,<sup>10</sup> it had no power to order the forfeiture of a motorcycle, the value of which far exceeded its jurisdiction. In rejecting this submission, the Court held that as section 372 "does not specify the limit of the value of the item to be forfeited",<sup>11</sup> it had a wide discretion to order forfeiture. This question did not arise for consideration in the instant case as the value of the motorcycle to be forfeited did not exceed \$2000/-.<sup>12</sup> Be that as it may, the approach adopted by the Court on this question in *P.P. v. Thian Tin Song*, is clearly supportable. The power under section 372 is conferred on *any* Criminal Court conducting a trial or an inquiry without specifying the jurisdictional limits of the Court. Of course, the power is somewhat qualified by the words of section 372(2) in that it "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." The conviction in the instant case, as well as in *P.P. v. Thian Tin Song*, was brought under the Penal Code, an examination of which discloses no special provisions regarding forfeiture. "Any other Act applicable to the case," in the circumstances of the 2 cases, would probably mean the Road Traffic Act,<sup>13</sup> At this point reference may be made to the case of *P.P. v. Neo Jee Sim*<sup>14</sup> where the prosecution's application for an order was made under section 54(6) of the Road Traffic Act. However, unlike section 372 C.P.C., section 54(6) is not a section conferring general powers of forfeiture but is limited to cases where the vehicle has been used for the commission of an offence under section 54 of the Road Traffic Act and as such, cannot affect the scope of section 372 C.P.C. where no offence has been committed under section 54.

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<sup>10</sup> See s. 11(5), Criminal Procedure Code, Cap. 113.

<sup>11</sup> For grounds of decision, see, Mag. Ct. No. 21 in TAC 328 of 1978.

<sup>12</sup> The accused had paid an initial deposit of \$500/- and the first instalment of \$54/-. The remaining instalments to be paid under the hire-purchase agreement totalled \$1,246/-. See p. 11, grounds of decisions, Mag. Ct. No. 14 in TAC 357 of 1978.

<sup>13</sup> Cap. 92, Singapore Statutes, Rev. Ed. 1970.

<sup>14</sup> Selected Unreported Cases No. 2, *supra*.