

Huang Sining (Prosecutor) v Juan Lingjiao  
[2023] SGMC 6

**Case Number** : Magistrate's Complaint No. PS-900009-2021

**Decision Date** : 08 February 2023

**Tribunal/Court** : Magistrates Court

**Coram** : Lee Li Choon

**Counsel Name(s)** : Huan Sining for the prosecution; Derek Kang / Ng Sock Cheng (Carinhill Law LLC) for the Accused, Juan Lingjiao

**Parties** : Huang Sining (Complainant) — Juan Lingjiao (Accused)

*Criminal Proceedings – Costs – Frivolous or vexatious prosecution*

8 February 2023

Judgment reserved

**District Judge Lee Li Choon:**

**Introduction**

1 This judgment is on the issue of costs pursuant to section 355(2) of the Criminal Procedure Code 2010 (2020 Revised Edition) ("CPC") in relation to the private prosecution proceedings in PS-900009-2021.

**Factual background**

2 In private prosecution proceedings brought by the Complainant, Huang Sining ("Huang"), Huang preferred 5 Charges against the Accused, Juan Lingjiao ("Juan") arising from incidents that occurred on 3 days – 23, 24 and 25 October 2019 as follows:

(a) 23 October 2019 Incident

(i) The Criminal Intimidation Charge

(A) For this Charge, Juan was charged that she, at or about 5.00pm on 23 October 2019, in the vicinity of #03-123A Far East Plaza, 14 Scotts Road, Singapore 228213, did threaten Huang with injury to her person with intent to cause alarm to Huang, to wit, by saying in Mandarin words meaning that "*I warn you, do not speak to my staff, and do not pass by my shop, or each time I see you I will hit you*" and that she has thereby committed criminal intimidation under section 503 of the Penal Code (Chapter 224) and punishable under section 506 (1<sup>st</sup> limb) of the Penal Code.

(b) 24 October 2019 Incident

(i) The 1<sup>st</sup> POHA Charge

(A) For this Charge, Juan was charged that she, at or about 4.30pm on 24 October 2019, in the vicinity of #03-123A Far East Plaza, 14 Scotts Road, Singapore 228213, did use insulting words with intent to cause distress to the complainant, to wit, by saying in Mandarin words meaning that "*Your face, really, even \$1 million of plastic surgery cannot make nice*", thereby causing distress to Huang and has thereby committed an offence under section 3(1)(a) of the Protection from Harassment Act, Cap 256A ("POHA") and punishable under section 3(2) of the POHA.

(c) 25 October 2019 Incident

(i) The 2<sup>nd</sup> POHA Charge

(A) For this Charge, Juan was charged that she, at or about 4.00pm on 25 October 2019, at Kra Pow Thai Restaurant located at #03-26 Far East Plaza, 14 Scotts Road, Singapore 228213, did use abusive behaviour towards Huang with intent to cause distress to Huang, to wit, by spitting into the food of Huang and she has thereby committed an offence under section 3(1)(a) of the Protection from Harassment Act, Cap 256A ("POHA") and punishable under section 3(2) of the POHA.

(ii) The Mischief Charge

(A) For this Charge, Juan was charged that she, at or about 4.30pm on 25 October 2019, in the vicinity of Kra Pow Thai Restaurant located at #03-26 Far East Plaza, 14 Scotts Road, Singapore 228213, did cause such change in an Apple iPhone 11 Pro MAX 256GB valued at about \$1,900 as diminished its value or utility, knowing that she was likely to cause wrongful loss to Huang, to wit, by snatching the said handphone from one Cai Zengyan and throwing the said handphone to the ground twice, thereby causing damage to the amount of \$500 or upwards, and has thereby committed mischief under section 425 of the Penal Code (Chapter 224) and punishable under section 426 of the Penal Code.

(iii) The Criminal Force Charge

(A) For this Charge, Juan was charged that she, at or about 4.35pm on 25 October 2019, in the vicinity of Kra Pow Thai Restaurant located at #03-26 Far East Plaza, 14 Scotts Road, Singapore 228213, did use force to Huang without her consent, knowing it to be likely that by use of such force she will illegally cause annoyance to Huang, to wit, by hitting the Huawei P30 Pro in the hand of Huang thrice, and she has thereby used criminal force under section 350 of the Penal Code (Chapter 224) and punishable under section 352 of the Penal Code.

3 The trial proceedings took place over 5 tranches: 7 and 8 October 2021; 9 to 11 November 2021; 11 to 14 January 2022; 17 to 20 May 2022 and 23 to 26 May 2022; totalling 17 days. Parties filed their closing and reply submissions on 11 July 2022 and 3 August 2022 respectively and I delivered my judgment on 9 September 2022, acquitting Juan of all 5 Charges. Upon the acquittal, Juan made an oral application to the court for an award of costs to be made in her favour pursuant to section 355(2) CPC. I then gave directions for submissions on the issue of costs to be filed.

4 Thereafter, Huang attempted to appeal against my decision to acquit Juan, but she failed to obtain the sanction of the Public Prosecutor to do so. Huang then filed applications for criminal motion and criminal revision against my acquittal decision via HC/CM 60/2022, HC/CM 64/2022, and HC/CR 5/2022. On 5 December 2022, all of the aforementioned applications were

summarily dismissed by the High Court pursuant to sections 238B(1) and 238B(2) of the CPC without being set down for a hearing. Undeterred, Huang filed another criminal motion HC/CM 4/2023. This too was summarily dismissed by the High Court pursuant to sections 238B(1) and 238B(2) of the CPC without being set down for a hearing on 4 February 2023.

5 I heard parties on the issue of costs on 12 January 2023 and this judgment arises out of that hearing and the written submissions filed by parties on this issue.

## **The parties' cases**

### ***Juan 's case***

6 Juan 's assertions that the prosecution by Huang against her was frivolous or vexatious are as follows:

- (a) Huang brought the prosecution against Juan with malice, dishonesty and/or an improper motive.
- (b) Huang's conduct of the prosecution showed a lack of good faith or malice which rendered her decision to commence and/or continue prosecution frivolous and/or vexatious.

### ***Huang's response***

7 In essence, based on what I can distil from the copious written and oral submissions provided by Huang that contain mostly irrelevant matters and/or groundless allegations, Huang takes the position that her prosecution against Juan was not frivolous or vexatious because:

- (a) The Public Prosecutor had given her permission to commence and proceed with the criminal proceedings against Juan .
- (b) She had to commence and conduct her own prosecution against Juan because the police had decided not to prosecute Juan .
- (c) She had acted diligently in getting legal advice from her lawyers in the initial part of the process, i.e., drafting the Charges against Juan .
- (d) The Court's acquittal of Juan was mainly due to the fact that she had to conduct the criminal proceedings without the assistance of the police and the police had refused to provide her with evidence that will assist her case such as its "investigation report".
- (e) She did not know Juan before the first incident that gave rise to the Criminal Intimidation Charge and therefore, she could not have had any ill will towards her.

## **The applicable law**

8 Section 355(2) CPC provides:

**355.** – (1)..

(2) If an accused is acquitted of any charge for any offence, and if it is proved to the satisfaction of the court that the prosecution was frivolous or vexatious, the court may order the prosecution or the complainant or the person on whose information the prosecution was instituted to pay full costs, charges and expenses incurred by the accused in and for the

accused's defence, to be taxed by the Registrar of the Supreme Court or the Registrar of the State Courts, as the case may be.

9 The key elements in section 355(2) CPC are:

(a) The prosecution was frivolous or vexatious.

(b) The above (i.e., the element as stated in (a) above) is proved to the satisfaction of the court.

(c) The court may order the complainant to pay full costs, charges and expenses incurred by the accused in and for the accused's defence.

(d) Such costs, charges and expenses as stated in (c) above are to be taxed by the Registrar of the State Courts.

10 The leading authority on the interpretation and application of section 355(2) of the CPC is the case of *Parti Liyani v Public Prosecutor* [2021] SGHC 146 ("*Parti Liyani*"). In *Parti Liyani*, the High Court set out the law or legal principles as regards the interpretation and application of section 359(3) CPC which contains the same criteria for the court to order the prosecution or complainant to pay compensation to the accused in a sum not exceeding \$10,000 as that for the award of costs against the prosecution or complainant as set out in section 355(2).

11 On the issue of whether the prosecution was frivolous or vexatious, the question to ask is whether, based on the evidence the complainant had at the time of commencement of prosecution or continuation of prosecution, an objective reasonable prosecutor would have considered that there was sufficient evidence to render the case fit to be tried or continued before the court.

12 While the analysis as to the sufficiency of evidence is predominantly objective, the overall inquiry as to whether the prosecution was "frivolous or vexatious" has both objective and subjective elements ([124]). The word "vexatious" suggests a more subjective analysis into the state of mind of the complainant ([125]). While there is no requirement to prove malice or dishonesty to show "frivolous or vexatious" prosecution, this does not mean they are irrelevant because the existence of malice, dishonesty or improper motives may well render the prosecution vexatious ([126]).

13 In essence, the court has to consider the totality of the circumstances to arrive at a view as to whether the prosecution was "frivolous or vexatious". ([126])

14 As for the burden of proving to the "satisfaction of the court" that the prosecution was "frivolous or vexatious", it lies on the applicant who is seeking the costs order and the appropriate standard of proof is on a balance of probabilities ([129]). However, as the assertion that the prosecution was "frivolous or vexatious" is a serious and grave one, Chan Seng Onn J in *Parti Liyani* is of the view that the gravity of the allegations must be part of the whole range of circumstances that have to be weighed by the court when deciding as to the balance of probabilities ([131]).

### **Issues to be determined**

15 Based on the above, the sole issue to be determined is: Whether the prosecution was "frivolous or vexatious".

### **My decision**

#### ***Whether the prosecution was frivolous or vexatious in the present case***

16 The starting point for this case is that it is to be distinguished from *Parti Liyani* in that the prosecution here is by a private party against another. Unlike the *Parti Liyani* case where the High Court starts off on the premise that the Public Prosecutor, playing its constitutional role, is presumed to be acting in the public interest when it commences or continues any prosecution ([118]), in this case, there is no such premise. In my view, this main differentiating factor is an important one when assessing the totality of the circumstances in arriving at the conclusion as to whether the prosecution brought by Huang against Juan was frivolous or vexatious.

17 Based on the totality of all of the circumstances in this case, I conclude that the prosecution by Huang against Juan was both frivolous and vexatious.

*The prosecution was frivolous in that there was no case fit to be tried before the court in relation to 3 out of the 5 Charges - the Criminal Intimidation Charge, the Mischief Charge, and the 2<sup>nd</sup> POHA Charge.*

18 As stated by Chan Seng Onn J, the touchstone of the inquiry as to whether “the prosecution was frivolous or vexatious” is the *evidential sufficiency of the commencement and continuation of the prosecution* ([116]). Where the evidence is so insufficient that there was no case fit to be tried before the court and the decision to commence and/or continue prosecution is objectively factually unsustainable, the prosecution will be considered as frivolous.

19 In relation to the Criminal Intimidation Charge, Huang’s only evidence in support of this Charge is her own bare allegation that Juan had uttered the words, “I warn you, do not speak to my staff and do not pass by my shop, or each time I see you I will hit you” to her. While Huang had relied on her husband, Wang Xin (“Wang”) as her witness for this charge, it transpired at trial that Wang was not present when Juan allegedly uttered those words<sup>[note: 1]</sup>.

20 Given that at the trial proceedings I have found Huang’s testimony to be so full of inherent inconsistencies as to be lacking in any credibility altogether<sup>[note: 2]</sup>, I find that Huang’s commencement of the Criminal Intimidation Charge against Juan based solely on her own bare allegation that lacks credibility, is groundless and therefore, frivolous.

21 In relation to the Mischief Charge, as I have noted in my judgment in the criminal prosecution proceedings, Huang did not adduce any credible, objective evidence of damage to the phone, such as the damaged phone itself, repair bills of the phone, or photographs showing the damaged phone and the like<sup>[note: 3]</sup>. Instead, the only evidence of damage tendered by Huang is a receipt that shows that she had purchased a new phone which I have found to be hardly evidence that shows that Huang’s phone was damaged by Juan given that there could be a variety of reasons for Huang to buy a new phone, as I have stated in my oral judgment<sup>[note: 4]</sup>. On this point, at trial, the defence was successful in bringing evidence from an independent witness that proves the contrary, that the allegedly “damaged” phone in fact appeared to be functioning well<sup>[note: 5]</sup>.

22 As damage or devaluation of property is a key or critical element to prove for a charge in mischief to be made out, such a failure of evidence goes to the root of the Charge. In the premises, I find that an objective, reasonable prosecutor in Huang’s shoes would have considered that the prosecution of the Mischief Charge is legally and factually unsustainable and would not have commenced or continued the prosecution thereof. As such, I have little difficulty in concluding that the commencement and/or continuation of the prosecution on the Mischief Charge by Huang is also frivolous.

23 In relation to the 2<sup>nd</sup> POHA Charge, Huang had called Cai Zengyan, the person who was present with her during the incident on 25 October 2019 as her only independent witness to testify about the “act of harassment” (to wit, by spitting into the food of Huang) that was allegedly committed by Juan at the Kra Pow Thai restaurant.

24 At trial, this witness’s testimony turned out to be totally against Huang’s case and right from the get-go, it was apparent that this witness was an adverse witness. As such, during the trial proceedings, Huang had to proceed with her questioning of this witness by way of cross-examination as if she was the opponent’s witness. Throughout the trial proceedings, Huang’s questioning of this witness was opposing and acrimonious. From all that had transpired at the trial proceedings between Huang and this witness, it is obvious that this witness did not witness the act of harassment by Juan that Huang had complained of<sup>[note: 6]</sup>. Huang therefore did not have any basis to commence and/or continue her prosecution against Juan on this charge as her own independent witness’ testimony cannot support or substantiate her case against Juan at all.

25 In the circumstances, I find that Huang's commencement or at least, the continuation of her prosecution against Juan for this Charge is completely groundless, and therefore, frivolous.

26 To sum it up, I find that, based on the evidence Huang had at the time of commencement of prosecution or continuation of prosecution against Juan, an objective and reasonable prosecutor would not have considered that there was sufficient evidence to render the case fit to be tried or continued before the court for at least three out of the five Charges brought against Juan. I am therefore satisfied that there was no case fit to be tried before the court for three of the five Charges brought by Huang against Juan and conclude that the prosecution of these three Charges against Juan is frivolous.

*The prosecution was vexatious in that Huang had deliberately submitted misleading evidence which in turn shows that there was malice and dishonesty in her prosecution against Juan.*

27 In relation to the 1<sup>st</sup> POHA Charge, at the trial proceedings, Huang had mainly relied on 2 video recordings (CE-3 and CE-4, both for the incident on 24 October 2019) to prove her Charge against Juan.

28 On these video recordings (CE-3 and CE-4) tendered by Huang, I have found them to be a shorter, edited version of the actual recordings (DE-1 and DE-2) which were tendered by Juan in her defence, with CE-3 having the last 10 seconds cut out by Huang and CE-4 having the first 30 seconds and last 4 seconds of the recording cut out by Huang<sup>[note: 7]</sup>. Huang had initially objected to Juan's video recordings in DE-1 and DE-2 based on her bare allegation that the video recordings were not authentic. Huang was given the opportunity to tender her evidence including expert evidence to challenge the authenticity thereof, but she did not do so.

29 In my oral judgment for the criminal proceedings, I had found that Huang's edited recordings had hidden the following crucial facts from the court<sup>[note: 8]</sup>:

(a) That it was Huang who had uttered insulting words about Juan's nose, face, and brain at Juan first before Juan retaliated with the words in the 1<sup>st</sup> POHA Charge.

(b) That Huang was not caused harassment, distress, or alarm by Juan's retaliatory words at all because she was seen smiling at Juan and continuing to taunt Juan after Juan's retaliatory words in the 1<sup>st</sup> POHA Charge.

30 My findings in my judgment in the criminal proceedings show that Huang had cut out crucial parts of the actual video recordings that disprove her Charge against Juan. I therefore find Huang's act of submitting misleading evidence to be dishonest and an attempt to pervert the course of justice in her prosecution of Juan.

31 As a result, I find Huang's prosecution against Juan, at the very least, her prosecution against Juan on the 1<sup>st</sup> POHA Charge to be tainted with dishonesty and malice and therefore, vexatious.

32 In *Parti Liyani*, Chan Seng Onn J said at [127]:

In some circumstances, a prosecution brought with sufficient evidence may still be considered "frivolous or vexatious". There is authority that acknowledges that a vexatious charge may include a charge that is true but made with the primary objective of harassing the person accused (see above at [69]). This suggests that from an objective perspective, even if the court is satisfied that there was **sufficient evidence making the case fit to be tried**, it may still be possible that the prosecution was "frivolous or vexatious" if the **prosecutor subjectively would not have brought the prosecution but for malice, dishonesty or an improper motive**. Hypothetically, if the particular DPP having conduct of the trial subjectively believed that the charge was groundless, even though in the court's view there may be some evidence fit to be tried, but only proceeded against the accused person because of a personal vendetta, this may possibly be considered vexatious. (Emphasis in judgment).

33 In my view, the prosecution by Huang against Juan on the 1<sup>st</sup> POHA Charge is one such case – Juan does not dispute she said the insulting words in the Charge. Therefore, there was sufficient evidence making the case fit to be tried in court. However, the editing of the video recordings by Huang shows her subjective intention of bringing these prosecution proceedings because of a personal vendetta against Juan or out of an intention to harass Juan. Because of this, the prosecution against Juan on the 1<sup>st</sup> POHA Charge is still rendered frivolous and/or vexatious, notwithstanding Juan’s admission to the utterance of the said insulting words in the Charge.

34 Based on all of the foregoing, I have now found Huang’s prosecution against Juan on four of the five Charges to be frivolous or vexatious.

*Huang’s conduct of the criminal proceedings shows that her commencement of prosecution against Juan was motivated by improper motives.*

35 While the conduct of the prosecution at trial is not the subject of what is “frivolous or vexatious, the conduct of the prosecution may well reveal that the commencement and/or continuation of the prosecution to have been motivated by improper motives or some collateral purpose and renders the prosecution “frivolous or vexatious” ([139]).

36 As such, I turn now to the revelation of Huang’s true intentions behind the commencement and/or continuation of prosecution proceedings against Juan through the testimony of witnesses and the manner in which Huang had conducted the trial proceedings.

37 First, Huang’s her own witness, Cai Zengyan has testified about how she was hounded or pestered by Huang to sue Juan over the injury caused by Juan on her (Cai Zengyan’s) hand during the incident on 25 October 2019 and how Huang wanted money from her to sue Juan over that injury to the point of Cai Zengyan giving Huang a “draft statement” for Huang’s use against Juan in order to get Huang off her back.

A ...Subsequently, she came to my shop everyday and---and she asked me to lend her \$20,000 so that she can sue Juan Lingjiao and she also tried to persuade me to give another \$20,000 and then she wants me to sue Juan Lingjiao for injuring my hand. And she wants me to get Juan Lingjiao to compensate me S\$100,000. At that time, I already told her this is illogical. And at that time, when the incident happened, where the lady sitting across me in the dock hurt my hand, I---I actually understand why. So subsequently she came to my shop every day. Every day, day after day, to the extent that it’s affecting my work and my life and she asked me to write a letter. So I typed a letter using my computer and there is nothing substantive inside the letter. It’s---it’s just that---that Mdm. Juan injured my hand and then she is to compensate me S\$100,000.<sup>[note: 9]</sup>

...

And then I sent her the draft. So I replied her---to her message a few hours later. In---in my opinion because she’s just pestering me every day. I---I replied to her just to get her---get her off my back. In my subsequent message to her, I told her I do not want to sue Juan Lingjiao. I had nothing to do between her dispute with Juan Lingjiao. In the subsequent message, I also said I will not take whatever money that shouldn’t be taken by me. I have printed all these messages and brought with me to Court today<sup>[note: 10]</sup>.

38 It is not disputed that in Cai Zhengyuan’s scuffle with Juan over the dispute between Huang and Juan, she had in fact suffered an injury on her hand, but she did not see it fit to pursue after Juan. Cai Zengyan’s testimony shows that Huang had resorted to all means to go after Juan, including pestering Cai Zengyan to go after Juan, and this was way before she commenced prosecution proceedings against Juan. This is very telling of Huang’s personal vendetta against Juan. I have no reason not to believe Cai Zengyan’s testimony for she was in fact a prosecution witness called by Huang in support of her prosecution against Juan.

39 Second, in her conduct of the criminal proceedings, Huang herself had revealed her real motive in commencing prosecution proceedings against Juan .

40 Huang had attempted to call a witness by the name of "Shi Jian Hua" to testify as to whether Juan owns the shop she is operating from, a matter that is totally irrelevant to Huang's Criminal Intimidation Charge against Juan . While I did not allow her to call this witness, her explanation in court as to why she wished to summon this witness is telling of her personal vendetta against Juan . Her explanation also revealed her request to "the police to charge Juan", further revealing her personal vendetta against Juan in bringing and continuing these prosecution proceedings against Juan .

Huang: ...So, I want Mr. Shi Jian Hua to appear in Court as a witness, to testify that---and understand why Juan Lingjiao will not allow me to pass by her shop and what authority she has to say that, **when the shop does not belong to her**. In addition, in my communication with the private secretary to Mr. Shi Jian Hua, they also express their ha---the---express the fact that they feel puzzled about this whole incident, so I would need to make this clear. So, **there may be a case within a case here in this situation**, in my communication with Shi Jian Hua, he clarified that Juan Lingjiao is neither his wife, neither---also, they do not have any relationship between them. **So, I need Shi Jian Hua to testify in Court to clarify why Juan Lingjiao claimed that she bought the house. So, it is prove---it---it is proven that Juan Lingjiao has lied because she has peat---repeatedly told lies to harm us, I would request that the police charge her, this---this is why I need Shi Jian Hua to testify in Court**. And this is why I need the Court to approve for me to summon Shi Jian Hua. What is the most important is that the private secretary to Mr. Shi Jian Hua has stressed repeatedly that they do not have any relationship with Ma---Mdm. Juan Lingjiao , this is why I'm asking the Court to give me a chance to clarify this in Court.

Court: Counsel?

Kang: Yes. Your Honour, from what I hear the complainant is saying, it seems as if this witness is being called, because she wants to elicit information from him that relates to matters which are not the subject matter of the charges before the Court, but rather alleged lies that the Defendant has purportedly said on other occasions. So, with respect, I don't see any basis for the complainant to want to subpoena---to justify a subpoena for this witness.<sup>[note: 11]</sup>

(Emphasis mine)

41 Third, in her cross-examination of Juan , Huang has shown her real motives in commencing her prosecution against Juan . For instance, Huang's irrelevant questions concerning alleged accusations against her husband, Wang<sup>[note: 12]</sup> have tended to reveal her vindictiveness against Juan in her prosecution of Juan .

42 Further, from Huang's line of questioning of Juan about Juan's relationship with persons whom Huang is / was embroiled in other legal proceedings with<sup>[note: 13]</sup>, and her attempt to call them as witnesses for cross-examination<sup>[note: 14]</sup> notwithstanding that they are not involved in the five Charges she has brought against Juan , it is also telling that her prosecution of Juan stems out of her personal grievances against Juan for her perceived close relationship with these persons.

43 Importantly, in the process of her cross-examination of Juan , Huang had also openly expressed her personal grievances against Juan and others for reporting her and her husband, Wang to the Ministry of Manpower, thus further revealing her improper motives or collateral purpose in prosecuting Juan <sup>[note: 15]</sup>.

Huang: I want to prove---what I want to prove is that Xiao Cai and Juan Lingjiao actually premeditated all this behaviour to harm me. This is not a simple neighbour dispute. If I can prove that they are doing this with hostility, premeditated to hurt me and my husband, and then if that is the case, that harm that has been caused to me and my husband through these five charges is actually greater than if this action were done randomly, accidentally. As what Juan Lingjiao has said, **because of this incident, she and 20-plus people went to MoM to lodge a complaint against me and my husband, and this has caused a lot of impact to me and my husband. I want to prove their motive.**<sup>[note: 16]</sup>



44 In her closing submissions for the criminal proceedings, Huang had continued to make unnecessary comments about Juan's character in personal attacks against her. Huang had also accused Juan of causing harm to her and her family by reporting against her and her husband, Wang to the authorities<sup>[note: 17]</sup>.

45 As a matter of fact, Huang appears not to have given up on her prosecution against Juan. Her remarks at the hearing on the issue of costs, "as for the five charges against Mdm Juan, I will go through other means to pursue that and not through today's hearing on costs"<sup>[note: 18]</sup> is telling of her continued refusal to accept the outcome of her prosecution against Juan in spite of her failed attempts at appealing and applying for criminal revisions to reverse the outcome and her intention to persist in going after Juan through whatever means she still has.

46 All of these show her bitter enmity towards Juan that underlies the prosecution she had commenced and continued against her.

47 In conclusion, Huang's conduct before, during and even after the trial proceedings shows that she bears deep-seated grievances against Juan and reveals her ulterior motives or intention to harass Juan when she commenced and continued her criminal prosecution against Juan.

48 I therefore find that Huang's commencement and/or continuation of prosecution proceedings against Juan is motivated out of ulterior motives or was for a collateral purpose.

49 Based on a totality of all of the circumstances, I am satisfied that the defence has succeeded in discharging the burden of proving the serious and grave assertion that the prosecution is frivolous and/or vexatious.

### **Some concluding remarks**

50 I will briefly deal with Huang's response on the issue of costs.

51 I am of the view that the Public Prosecutor's permission to allow Huang to commence her prosecution against Juan is a matter of process that has little or no weight to the issue of whether the prosecution can be found frivolous or vexatious. In fact, section 355(2) CPC is as much applicable to prosecutions commenced by the Public Prosecutor as it is to prosecutions commenced by private parties. As for the fact that she had conducted her own private prosecution only because the police had decided not to prosecute Juan, I cannot see how this factor does not in fact go against Huang. Be that as it may, it is still Huang's own decision to commence and/or continue her prosecution against Juan and it is that decision that is being assessed as to whether it is frivolous or vexatious. As for her engaging a lawyer in the initial part of the process, it is irrelevant as this fact does not go towards the sufficiency of her evidence to commence her prosecution against Juan and does not tell me anything about her motive in commencing her prosecution against Juan. As for Huang's contention that the court's acquittal of Juan was due to the fact that her prosecution was without the assistance of the police and a particular "report" of the police, it is but a disingenuous excuse. In any event, from an early part of the criminal proceedings, Huang was made aware that the prosecution bore the burden of proof<sup>[note: 19]</sup>. As for the fact that she did not know Juan prior to the incidents that led to these proceedings, it does not mean that ill-will could not have developed after the incidents that gave rise to the criminal prosecution.

52 In addition to her attempt to appeal against my decision and her applications for criminal motion and criminal revision as stated above, for the hearing on costs, Huang had sought to summon the Investigation Officers behind the police investigations arising from her Magistrate's Complaints against Juan in order to uncover a particular "investigation report". Huang's attempt is probably based on her mistaken belief that that "investigation report" reveals evidence against Juan and it shows that even as late as the costs hearing, Huang still has not given up on going after Juan.

53 All in all, Huang's continued attempts to revisit the criminal charges against Juan as evident in her multiple attempts to appeal or to apply for criminal motion and criminal revision against the acquittal shows she is hell-bent on going after Juan and has refused to accept the outcome of her prosecution against Juan. This further reinforces my finding that she has brought these prosecution proceedings against Juan out of malice and her personal vendetta against Juan.

## Conclusion

54 In conclusion, I am satisfied that the defence has succeeded in proving on a balance of probabilities that the prosecution by Huang against Juan is frivolous and vexatious.

55 I therefore order the complainant (i.e., Huang Sining) to pay full costs, charges and expenses incurred by the accused (i.e., Juan Lingjiao) in and for the accused's defence, with such costs, charges, and expenses to be taxed by the Registrar of the State Courts.

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[note: 1]NE 9 November 2021 (Day 3), 43 / 11 – 45 / 11; NE 9 September 2022 (verdict hearing) 8 / 12 – 15 ; 9 / 27 – 13 / 27

[note: 2]NE 9 September 2022 (verdict hearing), 5 / 8 – 6 / 17

[note: 3]NE 9 September 2022 (verdict hearing), 22 / 16 – 31

[note: 4]NE 9 September 2022 (verdict hearing), 22 / 25 – 31

[note: 5]NE 26 May 2022 (Day 17) 8 / 22 – 9 / 16; NE 26 May 2022 (Day 17) 16 / 8 – 9

[note: 6]NE, 8 October 2021 (Day 2) 54 / 21 – 26; NE, 8 October 2021 (Day 2) 59 / 12 – 19; NE, 8 October 2021 (Day 2) 59 / 29 – 30; NE, 8 October 2021 (Day 2) 60 / 5 – 13; NE, 8 October 2021 (Day 2) 71 / 27 – 29; NE, 8 October 2021 (Day 2) 84 / 23 – 32; NE, 9 September 2022 (verdict) 17 / 17 – 20 / 31

[note: 7]NE, 9 September 2022 (verdict), 12 / 1 – 29

[note: 8]NE, 9 September 2022 (verdict) 12 / 30 – 16 / 13

[note: 9]Notes of Evidence ("NE"), 8 October 2021, 46 / 26 – 47 / 8

[note: 10]NE, 8 October 2021, 47 / 11 – 19

[note: 11]NE, 9 November 2021, 6 / 22 – 7 / 19

[note: 12]NE, 8 October 2021, 63 / 8 – 65 / 9; 66 / 31 – 68 / 5

[note: 13]For example, Huang's questions to Juan about her relationship with one Willy, with whom Huang was embroiled in a civil suit, based on what the Court was given to understand, NE, 18 May 2022, 28 / 19 – 27

[note: 14]NE, 9 November 2021, 9 / 27 – 13 / 27

[note: 15]NE, 18 May 2022, 81 / 1 – 82 / 11

[note: 16]NE, 18 May 2022, 82 / 1 – 11

[note: 17]See [37], [77], [79], [80] of Huang's closing submissions

[note: 18]NE, 12 January 2023, 3 / 17 – 19

[note: 19]NE, 11 November 2021, 86 / 5 – 9

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