IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 92

Magistrate's Appeal No 9099 of 2025

Between

Liao Nuoqian

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Benchmark sentences]
[Criminal Procedure and Sentencing — Sentencing — Principles]

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v
Public Prosecutor

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Hoo Sheau Peng J:

1 This was an appeal by Mr Liao Nuoqian ("Mr Liao") against the sentences imposed by the learned District Judge ("DJ") for five charges of abetment by conspiracy to cheat using a debit card under s 420 read with ss 109 and 108B of the Penal Code 1871 (2020 Rev Ed) ("PC") ("Cheating Charges"). Mr Liao did not contest the sentence for the charge of abetment by conspiracy to transfer possession of items to facilitate control by another of benefits of criminal conduct under s 51(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed) ("CDSA") read with ss 109 and 108B of the PC ("CDSA Charge").

2 To elaborate, the DJ had sentenced Mr Liao to 36 months' imprisonment for the cheating charge involving the highest value of goods cheated ("2nd Charge") and 32 months' imprisonment each for the four remaining Cheating Charges. The 36-month imprisonment sentence was ordered to run

consecutively with the 12-month imprisonment sentence for the CDSA Charge, bringing the global sentence to 48 months' imprisonment.

3 Having considered the parties' submissions, I allowed the appeal. I reduced each of the sentences for the Cheating Charges to 24 months' imprisonment. With the sentences for the same two charges to run consecutively, the global sentence was 36 months' imprisonment.

4 In the appeal, a question which arose was whether the sentencing approach in *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando*") for cheating offences involving the use of credit cards under s 420 of the PC ("*Fernando* approach") is applicable to debit card cheating offences. I answered this in the positive. To explain, I now provide my detailed reasons.

Background

5 Mr Liao pleaded guilty to the Cheating Charges and CDSA Charge set out in [1] above. He also consented to 18 charges being taken into consideration ("TIC") for sentencing. These comprised another ten abetment by conspiracy to cheat charges ("TIC-Cheating Charges"), seven charges under s 4 of the Computer Misuse Act 1993 (2020 Rev Ed), and a charge of possessing benefits from criminal conduct under s 54(1)(*c*) of the CDSA ("TIC-CDSA Charge").

6 The charges stemmed from an arrangement Mr Liao entered into sometime between late July and August 2024 with one Gan Tie Xia ("Mr Gan"), whom he came to know from a Telegram group chat. The arrangement was for a Standard Chartered Bank Union Pay debit card ("Card") to be delivered to Mr Liao while he was in Hong Kong. The Card was to be used to purchase goods in Singapore when Mr Liao visited for a holiday in August 2024. Mr Liao

was to pass the purchased items to Mr Gan through Mr Gan's acquaintances in Singapore. Mr Liao was told that Mr Gan wanted the funds in the account linked to the Card to flow out from the People's Republic of China ("PRC") to an overseas country. For his participation, Mr Liao was promised some profits from the reselling of the items.[1]

7 Sometime before 26 August 2024, Mr Gan arranged for the Card to be delivered to Mr Liao in Hong Kong. On 26 August 2024, Mr Liao arrived in Singapore and met up with Mr Gan's associates.[2] Mr Gan gave Mr Liao the personal identification number ("PIN") of the Card over Telegram and instructed him to follow one Zhuo Zhijie ("Mr Zhuo") to various stores to purchase items using the Card.[3] Mr Zhuo told Mr Liao what specific goods (watches and gold bars) to purchase.[4] Following Mr Gan's instructions, Mr Liao presented the Card to the staff of the various stores and forged the signature on the back of the Card when signing on the invoices and charge slips.[5] Mr Zhuo would leave the store while Mr Liao was completing the purchases as he did not want to be recognised and attract suspicion as he had bought similar items from the same stores previously.[6] 15 such purchases were made over two days on 27 and 28 August 2024. These formed the subject of the Cheating Charges and TIC-Cheating Charges. By these acts, Mr Liao had deceived the staff of the

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1 Statement of Facts dated 25 April 2025 ("SOF") at paras 5–8: Record of Appeal ("ROA") at p 19.

2 SOF at paras 8–9: ROA at p 19.

3 SOF at para 10: ROA at p 20.

4 SOF at para 11: ROA at p 20.

5 SOF at para 13: ROA at p 20.

6 SOF at para 11: ROA at p 20.

stores into believing he was the rightful cardholder and dishonestly induced them into accepting the Card for payments and delivering the goods to him.[7]

8 After the purchases, Mr Liao handed the items to Mr Zhuo. These items formed the basis of the CDSA Charge.[8] Mr Zhuo then handed the items over to another associate who brought them out of Singapore on 29 August 2024 (save for a gold bar worth $3,620 which Mr Liao had received as remuneration).[9] Mr Liao had reasonable grounds to believe that the arrangement to use the funds to purchase items and pass the items back to Mr Gan would facilitate Mr Gan's control of his benefits from criminal conduct.[10] This was because Mr Gan had specifically told Mr Liao that he wanted the funds in the account linked to the Card to be spent overseas so that they could flow out of his account in the PRC to another country.[11] None of the items have been recovered, save for the gold bar which was found in Mr Liao's hotel room and seized as a case exhibit.[12] This was the subject matter of the TIC-CDSA Charge.

9 On a separate note, sometime before 30 August 2024, the Commercial Affairs Department received information that RMB148,225 was transferred to an account linked to the Card on 27 August 2024. This sum formed proceeds from a scam perpetrated in the PRC, where the victim had transferred funds to

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7 SOF at para 13: ROA at p 20.

8 SOF at para 18: ROA at p 22.

9 SOF at para 15: ROA at p 21.

10 SOF at para 20: ROA at p 23.

11 SOF at para 19: ROA at p 23.

12 SOF at paras 4 and 16: ROA at pp 18–19 and 22.

a purported stock trading website.[13] It was not disputed that Mr Liao had no specific knowledge of the scam at the material times.

10 Individually, the amounts involved for the Cheating Charges ranged from $29,347.20 to $56,650.[14] For the Cheating Charges, the quantum of the goods involved was $184,851.20.[15] Together with the TIC-Cheating Charges, the total value of the goods was $301,099.30.

Decision below

11 The DJ's reasons are found in *Public Prosecutor v Liao Nuoqian* [2025] SGDC 284 ("GD"). In deciding the sentences for the Cheating Charges, the DJ applied the *Fernando* approach (see GD at [26]–[49]). Broadly, the court is to ascertain which of two sentencing ranges should apply, and then to assess any mitigating and aggravating factors to discount or enhance the sentence accordingly (*Fernando* at [75]). I shall elaborate on the approach below.

12 The DJ considered that many cheating offences had been committed. The total value of the goods across the 15 charges was high, and the goods were not recovered. The individual amounts in each charge were also significant. The DJ relied on *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Anne Gan*") at [42], where the court explained that in sentencing for financial and property offences, the economic value is a proxy for the degree of criminal benefit received by the offender and the degree of harm caused to the victim. The DJ concluded that the harm occasioned for the present offences was substantial (GD at [28]).

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13 SOF at para 3: ROA at p 18.

14 SOF at para 14: ROA at pp 20–21.

15 SOF at para 14: ROA at pp 20–21.

13 For the extent of actual loss and damage, the DJ found that although no actual financial loss was occasioned, given the nature of such credit card offences, the potential for intangible or tangential losses is always present (GD at [31]). In doing so, the DJ relied on the observation in *Fernando* at [49] that a "chain of parties is inevitably involved in every transaction" and regardless of whether items are eventually recovered, there would be intangible harm caused by inconvenience, embarrassment, loss of reputation, *etc* (GD at [30]).

14 The DJ held that there was planning and premeditation. Mr Liao was involved in the planning of the offences, even if to a lesser extent than Mr Gan. He entered into the arrangement even before arriving in Singapore. He agreed to pass the items to Mr Gan through Mr Gan's acquaintances in Singapore. He also agreed to the arrangement knowing the purpose was for Mr Gan to move money out of PRC and into another country and executed the plan in Singapore. The offences were not spontaneous (GD at [33] and [34]).

15 Mr Liao "participated in a carefully orchestrated scheme to perpetrate credit card cheating offences" (GD at [36]). Although he was not the mastermind, he demonstrated a moderate level of sophistication. He presented a card that did not belong to him to merchants and forged the signature on the back of the Card. He did not demur and was complicit in Mr Zhuo's efforts to avoid detection knowing that Mr Zhuo had previously made similar purchases and was unable to remain in the stores to avoid suspicion. He actively participated in a relatively sophisticated crime and was involved in efforts to avoid discovery (GD at [36]).

16 Considering his role, Mr Liao was integral to the plan masterminded by Mr Gan. For syndicate offences, and where the offender has a stake in the outcome of the offences, the sentence should correspond to the role of the

offender (*Fernando* at [44]). The plan was detailed and precise, and Mr Liao followed it to the tee. He was motivated by the promise that he would be given a share of the profits, and he was indeed rewarded with a gold bar. Mr Liao's participation was not minor or accidental, and he was a key player in the commission of the offences (GD at [37]).

17 There was a transnational element to the offences. Mr Liao and his co-conspirators arrived from overseas to carry out the offences. The plan was devised before he had even left Hong Kong. The items were quickly moved out of Singapore by the co-conspirators. The international dimension not only made the offences difficult to detect but, as observed in *Fernando* at [20], also had the potential to impact "Singapore's standing as an international financial, commercial and transit hub". A severe stance had to be adopted against short term-visitors who commit such offences (GD at [38]).

18 The DJ held that the sentencing range of 24 to 36 months' imprisonment for "syndicated and/or counterfeit/forged credit card and/or sophisticated offences" should apply as these were clearly syndicated offences (GD at [41]–[42]).

19 The indicative starting sentence for each of the Cheating Charges was 24 months. The need for general and specific deterrence was evident. The number of cheating offences committed and the quantum involved were significantly higher than those in *Fernando*. The level of culpability was also notably higher having regard to the degree of premeditation, his involvement in the planning, the moderate level of sophistication, and his role in the commission of the offences as part of an international syndicate (GD at [48]). As Mr Liao faced multiple charges, he also could not be treated as a first offender (GD at [40], citing *Chen Weixiong Jerriek v Public Prosecutor* [2003]

2 SLR(R) 334 ("*Chen Weixiong Jerriek*") at [17]). In light of these aggravating factors and the increase in prescribed punishment for s 420 PC offences since *Fernando* was decided, the sentence for the 2nd Charge, where the sum involved was around twice that of the other Cheating Charges, was uplifted to 54 months' imprisonment. For each of the remaining four Cheating Charges, the sentence was uplifted to 48 months' imprisonment (GD at [48]).

20 Since Mr Liao pleaded guilty at an early stage, he was accorded the maximum 30% reduction to his sentence pursuant to the Sentencing Advisory Panel's Guidelines for Reduction in Sentences for Guilty Pleas ("PG Guidelines") (GD at [49]). The sentences were reduced to 36 months' imprisonment for the 2nd Charge and 32 months' imprisonment for each of the four remaining Cheating Charges.

Issues to be determined

21 Reframing the arguments raised by the parties on appeal, there were three issues to be dealt with:

(a) whether the *Fernando* approach should apply;

(b) whether the sentencing ranges in *Fernando* should be adjusted, and whether the DJ applied the correct sentencing range; and

(c) whether the DJ erred when applying the sentencing range, and in assessing the sentencing factors.

The *Fernando* approach

22 Given that all three main issues turn on the *Fernando* approach, I set it out at this juncture. In essence, *Fernando* deals with cheating offences involving the use of credit cards under s 420 of the PC.

23 The sentencing approach involves two-stages (*Fernando* at [75]). At the first stage, the court determines which of two sentencing ranges is applicable and arrives at an appropriate starting point within the applicable sentencing range. The two sentencing ranges are as follows:

(a) *syndicated and/or counterfeit/forged credit card and/or sophisticated offences* – 24 to 36 months' imprisonment for each charge;

(b) *non-syndicated stolen/misappropriated credit card offences* – 12 to 18 months' imprisonment for each charge.

24 At the second stage, the court considers the mitigating and aggravating factors to decide if the sentence should be discounted or enhanced accordingly. These include the sentencing factors set out by the court in *Fernando* (at [73]):

(a) degree of planning and premeditation (see *Fernando* at [39]–[41]);

(b) sophistication of offence and measures taken to avoid detection (see *Fernando* at [42]–[43]);

(c) role of the accused (see *Fernando* at [44]–[45]);

(d) number of offences and quantum involved (see *Fernando* at [46]–[48]);

(e) extent of actual loss, damage and adverse consequences (both tangible and intangible) to victims and connected parties (see *Fernando* at [49]–[50]);

(f) international dimension (see *Fernando* at [66]–[67]); and

(g) remorse shown (see *Fernando* at [49]–[54]).

25 With the *Fernando* approach in mind, I turn to the first issue.

Issue 1: Whether the *Fernando* approach should apply

26 On appeal, Mr Liao contended that the *Fernando* approach should not apply to the present case involving a debit card, or at least not in full force. By relying on *Fernando,* the DJ had erred as to the proper factual matrix and failed to appreciate the material before her in two main ways. First, the DJ had failed to appreciate the distinction between a credit card and a debit card.[16] *Fernando*, which set out the principles for cheating offences involving credit cards, should not apply wholly to the present case where a debit card was used as the harm considerations are different. In this connection, Mr Liao also pointed out that in the GD, the DJ had erroneously referred to the Card as a "credit card" on multiple occasions. Second, the DJ had failed to appreciate that Mr Liao had an honest belief that the Card belonged to Mr Gan.[17] This scenario falls outside the categories of credit card cheating offences envisioned in *Fernando.* For the following reasons, I was unable to agree with either submission.

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16 Defence's Written Submissions ("DWS") at para 13.

17 DWS at para 22.

Distinction between debit card and credit card cheating offences

27 At the outset, I noted that the DJ had indeed wrongly referred to the Card as a "credit card", when it was in fact a debit card (see GD at [28], [31], [33], [34], [36] and [44]). That said, having considered the parties' submissions on the distinction between the use of debit and credit cards in cheating offences, I concluded that nothing material turned on this for the reasons below.

28 In relation to the extent of harm, I saw no reason to distinguish between credit and debit card cheating offences. Mr Liao's primary argument was that debit card fraud results in a much narrower stratum of harm as compared to credit card fraud. To explain, Mr Liao argued that in debit card fraud cases, no pecuniary harm would result to financial institutions, merchants, or the cardholding community. Further, there would be a strict upper limit as to the harm caused by debit card fraud as this would be limited by the amount of funds in the bank account, whereas credit cards "can have an indeterminate spending ceiling".[18] The "intangible" or "tangential" harm to the cardholding community and the financial institutions involved as envisaged in *Fernando* at [49] would not translate equally to debit card fraud where the scope of such harms is reduced.[19] Where a credit card is involved for cheating offences, either the financial institution bears the brunt of pecuniary losses if the transaction goes through, or the merchants themselves encounter losses in the event of chargebacks.[20] As a further consequence, the cardholding community may face increased credit interest rate hikes implemented to hedge against the risks of

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18 DWS at para 19(a).

19 DWS at para 18.

20 DWS at para 19(a).

unsecured spending.[21] In contrast, as debit cards involve direct spending, these considerations do not apply in full force. Further, only the true owner of the funds would suffer immediate pecuniary harm.[22]

29 The Prosecution's position was that the reasoning in *Fernando* applies with equal force to debit card cheating offences.[23] Debit cards are as pervasive as credit cards as a mode of payment in daily commerce.[24] Fraudulent use of a card, whether a debit or credit card, involves deception of financial institutions and merchants. The fraudulent use of debit cards is just as difficult to detect and may equally cause inconvenience to the cardholder and all parties involved.[25] There is thus also public interest in deterring misuse of debit cards. Furthermore, it is not always the case that the use of a credit card would be more damaging than the use of a debit card. In the present case, the use of an unnamed debit card aided in obfuscating the authentication process for the high-value transactions involved.[26] This might not have been possible if a credit card had been used. The use of the debit card was precisely what enabled the "quick succession of transactions".[27]

30 I rejected Mr Liao's argument that the use of a credit card results in more potential harm than a debit card due to the strict upper limit of funds in the bank account. This is not always the case. There may be, for example, a credit limit

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21 DWS at para 19(b).

22 DWS at para 18.

23 Prosecution's Written Submissions ("PWS") at para 54.

24 PWS at para 54.

25 PWS at para 55.

26 PWS at para 51–53.

27 PWS at para 52.

for a credit card that is lower than the amount of funds in a bank account. If no spending limit is set on a debit card linked to a bank account containing a large amount of funds, the extent of harm potentially caused by its use could far exceed that caused by the use of a credit card. This was precisely the case with Mr Liao's fraudulent use of the Card. As for Mr Liao's point that debit card fraud involves a narrower stratum of harm as it affects fewer stakeholders, I did not see how the relevant stakeholders such as the financial institutions, merchants, and wider cardholding community would be any less affected by debit card fraud. Financial institutions may well suffer pecuniary harm if they are obligated to recover a customer's funds where a debit card was fraudulently used. Similarly, merchants may also suffer loss in the event a debit card transaction is disputed. The costs associated with reimbursing victims of debit card fraud and enhancing security measures may also be passed on to the wider cardholding community, *ie*, debit cardholding bank customers. I was not convinced that as a general rule, any less actual, potential, or tangential harm would result from debit card fraud compared to credit card fraud.

31 Moving on, I note that in *Fernando* at [49], the court stated that the dominant sentencing consideration for credit card fraud offences is general and specific deterrence. In my view, the fraudulent use of a card for payment, whether a credit or debit card, is undesirable, and would harm "Singapore's standing as an international financial, commercial and transit hub" (see *Fernando* at [20] and [88]). As the Prosecution rightly pointed out, debit cards are as pervasive as credit cards as a mode of payment.[28] The crux of the wrongdoing in such offences is that a fraud is perpetrated on the financial institutions and/or businesses, and the public interest in deterring misuse of

[28] PWS at para 54.

cards should always apply. A strong stance should be taken towards such offences, regardless of the type of card used. Thus, there is no reason to treat debit card fraud differently from credit card fraud.

32 Finally, the type or extent of harm caused by card-related fraud offences is a sentencing factor (see *Fernando* at [73(e)]). Any concerns that the actual or potential harm of a particular debit card cheating offence differs from that of general credit card cheating offences could be addressed within this sentencing factor. Indeed, any consideration of harm must be "evaluated in its proper matrix" on the facts of each case (*Fernando* at [49]).

33 To sum up, in my view, the *Fernando* approach is equally applicable to debit card cheating offences.

No wrongdoing in the obtaining of the Card

34 I turn to Mr Liao's argument that the DJ had failed to appreciate that Mr Liao had an honest belief that the Card belonged to Mr Gan. Mr Liao asserted that he had operated under the belief that he was "authorised" to use the Card belonging to Mr Gan as he had received the PIN from Mr Gan and the Card was unnamed.[29] Mr Liao had no reason to believe that the Card did not belong to Mr Gan.[30] Furthermore, Mr Liao had not been involved in the obtaining of the funds from the true owner, *ie*, from the scam perpetrated in PRC.[31] He did not cause the loss of funds from the scam victim as these funds "had already been lost" before Mr Liao came into the picture.[32]

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29 DWS at para 22.

30 DWS at para 9.

31 DWS at para 21.

32 DWS at para 21.

35 Mr Liao highlighted that these circumstances, where he had used the Card thinking it was Mr Gan's and on Mr Gan's behalf, set the present case apart from the "spectrum of credit card frauds" envisioned by the court in *Fernando* at [55(a)]–[55(i)]. The types of credit card frauds set out in *Fernando* all concerned some form of prior wrongdoing in the obtaining of the card, which Mr Liao contended was absent in his case.

36 At the hearing, the Prosecution did not address whether Mr Liao had an honest belief that the Card belonged to Mr Gan, but argued that this was not material as the fact of the matter was that Mr Liao had known he was not the rightful cardholder, and also that he was not the owner of the funds in the bank account. Yet, he had still chosen to use the Card. Mr Liao also had not truly believed that he was authorised to use the Card, as he had known that he had to forge someone else's signature to use it. Mr Liao was prepared to accept at the hearing that he could not have thought he was "authorised" in this technical sense. Nonetheless, Mr Liao maintained that it was significant that he had believed the Card belonged to Mr Gan and that he had been acting on Mr Gan's instructions to use it.

37 As a preliminary observation, I noted that the "spectrum of credit card frauds" set out in *Fernando* at [55] would be equally relevant in relation to fraud using debit cards. Indeed, a debit card can also be stolen, intercepted, fraudulently applied for, *etc*. For the reasons given at [28]–[32] above, I have explained that there should be no distinction between debit and credit card frauds. The "spectrum of credit card frauds" is equally applicable to illustrate how debit cards may be obtained by different illegal means prior to the commission of the cheating offences.

38 That said, I agreed with Mr Liao that his case fell outside the categories set out in *Fernando* at [55], but only in the sense that there did not appear to be any illegality in how he obtained the Card. Usual cases of card fraud would indeed involve some form of wrongdoing in how the offender obtains the card, such as by stealing it, fraudulently receiving it, or even fraudulently creating it. Here, the Card had been delivered to Mr Liao pursuant to Mr Gan's arrangement[33] and he appeared to have had reason to believe that Mr Gan was the owner of the Card since Mr Gan was the one who had informed him of the PIN number of the Card.[34]

39 Nevertheless, I could not accept that for this reason, the *Fernando* approach was inapplicable. First, the categories set out within the "spectrum of credit card frauds" in *Fernando* is "by no means comprehensive or exhaustive … and cannot be presumed to cover every conceivable credit card fraud/scheme" (*Fernando* at [55]). Indeed, it was acknowledged that "an entire gamut of potential credit card frauds exists with varying levels of seriousness", but importantly, that the "sentencing considerations … continue to be relevant across the board" (*Fernando* at [55]). The application of *Fernando* is not limited to cases where there was prior illegality in the obtaining of the card.

40 Second, and flowing from the above, I noted that any such wrongdoing in how a card was obtained would likely form the subject of another separate charge. Indeed, the young offender in *Fernando* faced separate charges – one under s 403 of the Penal Code (Cap 224, 1985 Rev Ed) for the criminal misappropriation of the credit card, and others under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) for cheating and dishonestly inducing delivery of

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33 SOF at para 7: ROA at p 19.

34 SOF at para 10: ROA at p 20.

property by the fraudulent use of the credit card when making the purchases (see *Fernando* at [3]). As explained above, in *Fernando* at [55], the court merely set out how an offender may lay his/her hands on the credit card so as to perpetrate the cheating offences. It does not follow that cheating offences without any underlying wrongdoing in the obtaining of the card fall outside the card fraud offences addressed by the *Fernando* approach.

41 Any prior wrongdoing may be addressed by a separate and distinct charge from the cheating charges for the misuse of the card at the point of the transactions. That said, whether there is a separate charge is at the Prosecution's discretion. Where there is no such separate charge, the context may still be considered, if appropriate, in calibrating the sentences for the cheating offences. In the present case, where Mr Liao committed no wrongdoing in obtaining the Card, this was accounted for by the fact that he faced no separate charge for how he obtained the Card. There was no reason why the *Fernando* approach should not apply. Indeed, as I explain shortly at [50] below, the cheating offences were syndicated offences, and the sentencing range involving such offences would be engaged.

42 More importantly, the Cheating Charges pertained to Mr Liao's fraudulent use of the Card for the purchases, and not the underlying circumstances of how the Card had been obtained. The gravamen of each of the Cheating Charges was that at the point of sale, Mr Liao had deceived the merchants into believing he was the rightful cardholder of the Card although he had known he was not, and in so doing, had dishonestly induced the delivery of the goods to himself.[35] In this connection, the Prosecution was correct in stating that whether Mr Liao had known the Card belonged to Mr Gan was irrelevant.

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[35] SOF at para 13: ROA at p 20.

The basis for the Cheating Charges was that Mr Liao had known that he was not the rightful owner of the Card nor the funds in the account when making the purchases.

43 As for the fact that certain funds in the account had "already been lost" by the scam victim before Mr Liao came into the picture, I agreed with the Prosecution that this was not "an ingredient of the cheating charges".[36] In any case, I observed that the items (save for the gold bar he had received for himself) were not recovered as they had been brought overseas by another member of the syndicate (see [8] above). Therefore, even though I could accept that Mr Liao did not cause the initial loss of funds by the scam victim, he had certainly contributed to preventing the recovery of these funds by converting the funds into the purchased goods, and transferring possession of the goods to another to be brought out of Singapore. I will return to this later.

44 By the above, I did not agree with Mr Liao that the *Fernando* approach should not apply to debit card cheating cases, or that the DJ erred in relying on *Fernando*.

Issue 2: Whether the sentencing ranges in *Fernando* should be adjusted, and whether the DJ applied the correct sentencing range

45 Turning to the next issue, the DJ had considered that the applicable sentencing range was "at least 24 to 36 months' imprisonment for each charge" as these were "clearly syndicated crimes" (GD at [42]). As Mr Liao's position was that the *Fernando* approach should not apply, or at least not apply in full force, he did not suggest specific reasons not to apply the sentencing range.

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[36] PWS at para 64.

46 I should add that the DJ had observed that it "could be argued that the sentencing range should be adjusted upwards to correspond with the increase in the prescribed punishment for the offence" (GD at [42]). After *Fernando* was decided in 2007, the prescribed punishment for s 420 offences under the PC was amended with effect from 1 January 2020 (*vide* the Criminal Law Reform Act 2019 (Act 15 of 2019)) to increase the maximum imprisonment term from seven to ten years. Based on this, the Prosecution argued that the DJ "had good basis to adjust the sentencing range of 24 to 36 months' imprisonment upwards" in view of the increase in prescribed punishment.[37] I have a few observations to make in this regard.

47 First, in my view, the DJ did *not* adjust the sentencing range. She merely commented that a possible case could be made for the sentencing ranges in *Fernando* to be adjusted in view of the increase in prescribed punishments. Instead, the DJ seemed to have adopted the sentencing range of 24 to 36 months' imprisonment, and then considered the increase in prescribed punishment when applying the upward calibration to the starting point of 24 months' imprisonment.

48 This approach was correct in principle. The statutory maximum sentence signals the gravity with which Parliament views any individual offence and the sentencing judge ought to consider this to determine precisely where the offender's conduct falls within the entire range of punishment devised by Parliament (*Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [60]). Any increase in prescribed punishment may be taken into account in determining the appropriate sentences.

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[37] PWS at para 77.

49 Second, I saw no need to adjust the sentencing ranges upwards. In *Prakash s/o Mathivanan v Public Prosecutor* [2025] 4 SLR 1386 ("*Prakash*"), a three-member coram of the General Division of the High Court affirmed the applicability of the existing benchmark sentences in *Fernando* while noting the increase in the prescribed punishment for s 420 offences under the PC (at [64]). Similarly, I did not consider it to be necessary or appropriate in this case for me to adjust the sentencing ranges given that the parties have not argued this point.

50 As Mr Liao appeared to accept that the Cheating Charges were of a "syndicated nature"[38] and it was apparent from the facts that a syndicate was indeed involved, I saw no reason to depart from the sentencing range of 24 to 36 months' imprisonment for each of the Cheating Charges. The factor of syndication alone is sufficient for this sentencing range to apply.

Issue 3: Whether the DJ erred when applying the sentencing range, and assessing the sentencing factors

Stage one – the appropriate starting point within the sentencing range

51 Having determined that the sentencing range of 24 to 36 months' imprisonment was applicable for the Cheating Charges, I next considered the appropriate starting point within this range.

52 As set out above at [19], the DJ had arrived at a starting point of 24 months' imprisonment for each of the Cheating Charges (GD at [45]). However, the DJ did not clearly explain her reasoning. In the GD, the DJ discussed the general aggravating factors *before* her discussion on the starting point within the sentencing range (see [12]–[19] above). That said, it was not altogether clear

[38] DWS at para 34.

to me that she had relied on the aggravating factors to fix the indicative starting point.

53 I did not think that 24 months' imprisonment as a starting point was wrong. It is necessary, however, for me to elaborate on the approach to arrive at the indicative sentence within the sentencing range. In my view, at the first stage of *Fernando*, the court is to consider the nature of the offences having regard to the factors which determine which of the two sentencing ranges is more appropriate. In other words, the court should focus on the factors that assist the court in determining which of the classifications apply. Similarly, to arrive at an appropriate starting point within the applicable sentencing range, the court should, as far as possible, confine its consideration to the factors pertinent to the classification. It is only at the second stage that the court considers the other sentencing factors, as aggravating or mitigating factors, in determining whether the starting sentence should be enhanced or discounted (see [23] and [24] above).

54 To illustrate with the present facts, at the first stage, the fact of syndication alone would mean that the applicable sentencing range is 24 to 36 months' imprisonment for each of the Cheating Charges. The court can possibly have regard to the relevant circumstances such as the size, scale and operations of the syndicate concerned (see *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") at [52]) and arrive at an appropriate starting point within the range. At the second stage, the court can then consider the other sentencing factors as separately aggravating or mitigating factors to uplift or discount the starting sentence.

55 In this regard, I make a similar observation as the court did in *Logachev* at [53] that the fact of syndication is in and of itself an aggravating factor as it

raises the "spectre of organised crime" (see also *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [25]). Deterrence is necessary for syndicate and/or counterfeit card offences "as they involve deception that invariably assumes a degree of sophistication and planning" (*Fernando* at [21]). This is taken into account and reflected in the higher sentencing range for syndicate and/or counterfeit card offences in *Fernando*. However, and I reiterate the observations of the court at [53] of *Logachev*, factors such as premeditation and planning and sophistication continue to apply separately as aggravating factors. This is likewise reflected in the second stage of the *Fernando* approach. If such factors have already been accounted for in arriving at a starting point within the benchmark ranges in *Fernando*, a court should be wary of again considering them at the second stage separately as aggravating factors. I shall return to these observations below when addressing Mr Liao's contentions that the DJ had double counted or placed excessive weight on certain factors.

56 Following from my analysis, the fact of syndication and various features of the syndicate and its operations should be the focus at the first stage to arrive at a starting point within the sentencing range of 24 to 36 months' imprisonment. In this regard, I noted that there was very little information available regarding the nature of the syndicate, such as the number of members and the reach of its operations. The co-conspirators to the offences had departed from Singapore before Mr Liao was arrested.[39] It was not clear if the supposed mastermind of the scheme, Mr Gan, was the true orchestrator of the crimes. Further, it was not even established who the true owner of the Card was and whose signature Mr Liao had forged. All that could be surmised about the syndicate from the facts was that it was a group that organised the purchase of

[39] SOF at para 2: ROA at p 18.

items in Singapore to be brought overseas. Given the lack of information regarding the syndicate, I was satisfied that the starting point of 24 months' imprisonment for each of the Cheating Charges was appropriate.

Stage two – the assessment of the aggravating and mitigating factors

57 As set out at [19]–[20] above, having assessed the offences to be at the lowest end of the sentencing range as a starting point, the DJ applied relatively high uplifts. In doing so, she appeared to have considered the sentencing factors identified at [48] of the GD to be serious aggravating factors. Mr Liao's early plea of guilt was described as the "single, significant factor in [Mr Liao's] favour" (GD at [49]). Dissatisfied with the DJ's approach, Mr Liao contended that she had double counted the factor of syndication and had given excessive weight to certain sentencing factors (see also [55] above).

58 In relation to double counting, Mr Liao relied on the authority of *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*"), which set out a non-exhaustive list of instances where aggravating factors may be regarded as having been impermissibly double counted (at [82]–[92]):

(a) the factor is an essential element of the charge (*Raveen* at [84]);

(b) the factor has already formed the factual basis of a statutory mechanism for the enhancement of sentence or of other charges brought (*Raveen* at [85]–[86]);

(c) the factor has been fully taken into account at one stage of the sentencing (*Raveen* at [87]); and

(d) nominally different sentencing factors share the same normative substance (*Raveen* at [88]–[89]).

59 At the end of the day, Mr Liao contended that based on the facts and circumstances, the uplift that the DJ had applied was excessive and a final sentence ranging between 12 and 15 months' imprisonment was appropriate for each of the Cheating Charges.[40] I shall deal with Mr Liao's specific contentions in turn below.

(a) Syndicated offences: Whether the DJ had erred in double counting the factor of syndication at both stages of the Fernando approach

60 Pointing to the DJ's reasons at [48] of the GD, where the DJ considered that Mr Liao "was a key player in the commission of the offences which involved an international syndicate", Mr Liao submitted that the DJ had impermissibly double counted the factor of syndication in arriving at the starting sentencing range of 24 to 36 months' imprisonment, and again as an aggravating factor in uplifting the sentences from 24 months' imprisonment to 48 and 54 months' imprisonment.[41]

61 From my observations at [55] above that the fact of syndication is in and of itself an aggravating factor which is reflected in the higher sentencing range applied for such offences, it was clear that the fact of syndication strictly should not be taken into account as an additional aggravating factor at the second stage of the *Fernando* approach. Indeed, the factor of syndication is *not* listed as one of the sentencing factors in *Fernando*.

62 Be that as it may, it was not obvious from the DJ's reasons at [48] of the GD that she had considered the factor of syndication as a discrete aggravating factor or if she had only mentioned the involvement of an "international

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40 DWS at para 91.

41 DWS at paras 31–34.

syndicate" in passing when describing Mr Liao's role in committing the offences (see [60] above). In my view, she did not err in this regard.

(b) Degree of planning and premeditation: Whether the DJ had placed undue weight on the degree of planning and premeditation as an aggravating factor

63 In relation to the factor of planning and premeditation, Mr Liao made two arguments. First, the factor of premeditation was impermissibly double counted by the DJ.[42] Second, the DJ erred in finding that Mr Liao had participated in the planning of the offences.[43] I deal with these in turn.

64 First, Mr Liao argued that the issue of premeditation in terms of the pre-arranged agreement to pass the purchases to Mr Gan through the syndicate members had been wrongly considered by the DJ as an aggravating factor (see GD at [33]) as this was already an essential element of the CDSA Charge.[44] Accordingly, this was an instance of double counting (see [58(a)] above). In my view, this submission was legally incorrect. It is clear from *Raveen* at [84] that it would be double counting if "a factor that is an essential element of the charge is taken also as an aggravating factor enhancing the sentence within the range of applicable sentences *for that charge*" [emphasis added] and not a separate charge. While Mr Liao's entering into the arrangement to transfer possession of the goods was an essential element of the CDSA Charge, it was not an element of the Cheating Charges.

65 Nevertheless, I was of the view that the DJ's consideration of the premeditation with regards to the agreement to transfer possession of the goods

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42 DWS at paras 35–36.

43 DWS at paras 24–28.

44 DWS at para 35.

as an aggravating factor for the Cheating Charges could be seen as an instance of double counting where "a factor is expressly or implicitly taken into account in sentencing even though it has already formed the factual basis … of other charges brought against the offender" (*Raveen* at [85]). Indeed, the premeditated agreement to hand the goods over to Mr Gan's associate formed the factual basis of the CDSA Charge and should not independently have been considered as an aggravating factor for enhancing the sentences for the Cheating Charges. That said, the DJ was entitled to consider the premeditation going towards the commission of the Cheating Charges, *ie*, the agreement to use the Card and to forge the signature on the back of the Card, as an aggravating factor (GD at [33]). However, I must also acknowledge here that it may be artificial to draw a line between the arrangement to commit the cheating offences via the fraudulent use of the Card and the arrangement to transfer possession of the purchased goods to Mr Gan's associates as both were part of the overall arrangement that facilitated the retention of benefits from criminal conduct – the gravamen of the CDSA Charge. As such, I was of the view that not too much weight should be accorded to the factor of premeditation as an aggravating factor for the Cheating Charges.

66 Second, Mr Liao contended that the DJ erred in finding that Mr Liao participated in the planning of the offences. He posited that a distinction should be drawn between planning and premeditation as they are distinct concepts. Mr Liao relied on the court's finding in *Fernando* that "while the offences were premeditated in nature, they were committed without any proper planning" (at [82]).[45] As a starting point, I accepted that premeditation and planning, while closely connected, are not entirely similar concepts. In *Fernando*, the court

[45] DWS at para 25.

affirmed the explanation in Andrew Ashworth, *Sentencing and Criminal Justice* (Butterworths, 3rd Ed, 2000) at p 136 that a "person who plans or organises a crime is generally more culpable, because the offence is premeditated" (at [82]). As can be seen, an offence that is planned would almost always be premeditated, but the reverse may not be true.

67 Apart from Mr Liao's contention, the more important point to be made here was that an offender's role in relation to the planning and/or premeditation is relevant as this goes towards assessing an offender's culpability. Where syndicated operations are involved, the sentence should reflect the role played by the accused (*Fernando* at [44]). An offender who occupies a higher position in the syndicate's hierarchy will be more culpable than one who is in the lower rungs of the syndicate (*Logachev* at [60]).

68 In the present appeal, it was significant that Mr Liao had not participated in the planning of the offences, although it was clear that the offences in themselves were planned and premeditated. I agreed that Mr Liao cannot be said to have planned the offences as he had simply been following the instructions of Mr Gan and Mr Gan's associates.[46] Indeed, it appeared that Mr Gan and/or his associates had planned the arrangement in advance and proposed the plan to Mr Liao, who simply agreed to it. The DJ had also found that Mr Liao "had not masterminded the offences" (GD at [36]). Related to my observations at [55] and [56] above, there was insufficient information regarding the planning and premeditation of the syndicate crimes. In fact, all the details of how the cheating offences had been planned and carried out appeared to have been provided by Mr Liao himself. I was satisfied that any planning would not be an additional aggravating factor in these circumstances.

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[46] DWS at para 27.

69 Flowing from the above, I also disagreed with the DJ's finding that Mr Liao was a key player in the commission of the offences (GD at [37]). Although Mr Liao's role was essential to the commission of the cheating offences as he was the one who had made the purchases, this had to be seen in the context of the arrangement. As noted by the DJ, Mr Gan had "devised a detailed and precise schedule on when, where, and what to purchase" and Mr Liao "followed it to the tee" (GD at [37]). It was apparent that Mr Liao was merely following the instructions of Mr Gan. The lack of planning on Mr Liao's part indicated to me that he was part of the lower rungs of the syndicate. Even if any planning and/or premeditation of the offences could be taken as a separate aggravating factor, this had to be attenuated by the fact that Mr Liao's role in the planning was very limited, if he could even be said to have participated at all.

70 In sum, with regard to the degree of premeditation and planning and Mr Liao's role in the arrangement, I was not satisfied that these were particularly aggravating factors that would justify any significant uplift from the starting point of 24 months' imprisonment.

(c) Sophistication of offence and measures taken to avoid detection: Whether the DJ had erred in finding that the offences were sophisticated

71 The DJ had found that Mr Liao had participated in a "carefully orchestrated scheme" to perpetrate the cheating offences (GD at [36]). He had demonstrated a moderate level of sophistication in forging the signature on the back of the Card and in being complicit in Mr Zhuo's efforts to avoid detection by omitting to "demur" when Mr Zhuo left the stores to avoid raising suspicion (GD at [36]).

72 Mr Liao argued that, contrary to the DJ's assessment, his behaviour could not be seen as sophisticated, and it certainly paled in comparison to the accused in *Public Prosecutor v Lim Joe* [2021] SGDC 162 ("*Lim Joe*") who had devised an elaborate network by creating multiple buyer and seller accounts on the e-commerce platform, Lazada, in order to self-trade and defraud Lazada into issuing him refunds for fake transactions.[47] I agreed that Mr Liao's conduct had not been particularly sophisticated. I was not convinced that a failure to hesitate when Mr Zhuo left the stores to avoid suspicion was in any way sophisticated. This had, after all, been in line with the plan as explained to Mr Liao. I similarly assessed the forgery of the signature to be of a low level of sophistication at best given that he had been specifically instructed to do so.

(d) Number of offences and quantum involved: Whether the DJ had erred in placing undue weight on the number of offences and quantum involved in assessing harm

73 Mr Liao submitted that the DJ had erred in applying a rigidly mathematical correlation between the quantum involved and the sentence.[48] In assessing the level of harm, the DJ had adopted the position in *Fernando* at [47] that the higher the quantum involved, the heftier the sentence should be (GD at [27]).[49] Mr Liao, relying on *Anne Gan* at [43], argued that this general principle should be qualified in two ways. First, where the offender was not intended to benefit from what the victim had been caused to part with, the value of economic loss will not be an accurate proxy for the offender's culpability. Second, economic value is an accurate proxy for only economic harm.[50] On the facts, the

47 DWS at para 45(c).

48 DWS at paras 50–66.

49 DWS at para 55.

50 DWS at para 53.

direct victims of the cheating offences, *ie*, the merchants, had suffered no real financial loss as they received payments for the goods. The loss which had been caused to the "true" victim, *ie*, the scam victim in the PRC, had crystallised before Mr Liao came into the picture.[51] All in all, while the quantum involved in all of the cheating offences was high (*ie*, $301,099.30), the quantum of benefit to Mr Liao was only $3,620 (the value of the gold bar he received) and the merchants had suffered no financial loss.[52] Considering these matters, the sentence was excessive.

74 The Prosecution argued that the DJ had correctly found the harm caused by the offences to be substantial in considering the values of the goods involved.[53] The court in *Fernando* at [47] stated that "the sentencing tariffs for cheating offences under s 420 of the PC are based on the *quantum* in each charge" [emphasis added]. At the hearing, the Prosecution also relied on the case of *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor* [2014] 1 SLR 756 ("*Idya Nurhazlyn*") at [47]–[48], where the court observed that for cheating offences, the "primary yardstick will often be the value of the property involved". In the present case, the fact that no real financial loss had been caused to the merchants or financial institutions was at best a neutral factor as a lack of loss is not mitigating.[54]

75 Having considered the submissions, I concluded that the DJ had overstated the level of harm occasioned by the offences and given far too much weight to this in uplifting the sentences.

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51 DWS at para 61.

52 DWS at para 65.

53 PWS at para 62.

54 PWS at para 50.

76 First, I begin by setting out the relevant applicable principles in assessing the harm occasioned for property and financial offences. It is clear that "the economic value is a *proxy* for the degree of criminal benefit received by the offender and the degree of harm caused to the victim, and both are relevant sentencing considerations" [emphasis added] (*Anne Gan* at [42]). There should be no linear relationship between the sums involved and the appropriate sentence (*Public Prosecutor v Lam Leng Hung* [2017] 4 SLR 474 at [368]). Clearly, a rigid mathematical approach to sentencing should not be adopted as ultimately each case must be decided on its facts. It was also observed in *Logachev* at [49] that the amounts involved are not at the "forefront" of the court's consideration as seen in how the two benchmark sentencing ranges in *Fernando* are not distinguished by the amounts cheated. Indeed, in *Idya Nurhazlyn*, affirming *Fernando* at [88], the court noted that quite apart from the value of the property involved being the primary yardstick, in cases of misuse of financial instruments that threaten the conduct of legitimate commerce, "the need for general deterrence is likely to take centre stage" (*Idya Nurhazlyn* at [48]). Having surveyed the authorities, I was convinced that undue weight should not be placed on the quantum involved when assessing harm as this factor is, at the end of the day, only a *proxy* for the level of harm.

77 Second, and flowing from the above, the DJ appeared to have placed a great deal of weight on the quantum of the goods involved in applying an uplift to the starting point of 24 months' imprisonment. Further, the DJ had applied an additional uplift of six months for the 2nd Charge where the amount involved was $56,650 – this being around $20,000–$30,000 more than the amounts involved in the other Cheating Charges. As the quantum involved was the only fact setting the 2nd Charge apart from the other Cheating Charges, I was of the view that too much weight had been placed on the sums involved as a sentencing

factor and an additional uplift of six months' imprisonment was excessive if solely for the higher quantum alone.

78 Third, the DJ had failed to give sufficient weight to the fact that no real financial loss was caused to the direct victims of the cheating offences. Essentially, it was agreed that *only intangible harm* in the form of "inconvenience, embarrassment, loss of reputation, time and costs expended in investigations as well as time, research, effort and costs involved in enhancing security measures" was caused (GD at [30]–[31]). While intangible harm is not of any less significance than tangible harm, it was recognised by the court in *Fernando* at [49] that no *actual loss* being caused is still a relevant, albeit not decisive factor for sentencing. The court had indeed considered the fact that no loss was occasioned in determining the offender's sentence in *Fernando* (at [83]).

79 Fourth, my ultimate assessment of the harm occasioned by the cheating offences was low to moderate. Mr Liao faced 15 charges in total for his acts of cheating, which was not insignificant. While the total quantum of the goods involved in the present case (*ie*, $301,099.30) was substantial, this had to be balanced against the key fact that no real financial loss was caused to the direct victims of the cheating, *ie*, the merchants. This set Mr Liao's case apart from the offender in *Lim Joe*, who caused actual loss to Lazada of $94,777.45 and who was assessed to have caused harm at the low end of the moderate spectrum of harm, albeit when applying the general harm-culpability framework for offences under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) as set out in *Public Prosecutor v Gene Chong Soon Hui* [2018] SGDC 117 (*Lim Joe* at [42]). As a sidenote, in relation to the discussion on Mr Liao's role within the syndicate at [67]–[70] above, the benefit Mr Liao had received in the form of a gold bar worth $3,620 and in having been allowed to use the Card for his own

expenses in Singapore[55] paled in comparison to the total quantum of $301,099.30 involved in all of the cheating charges (proceeded and TIC). This showed that he indeed only occupied a low position within the syndicate's hierarchy.

80 That said, and reiterating my observations at [43] above, while the initial loss to the scam victim may not have been caused by Mr Liao, he did contribute to the fact that the scam victim would likely not see the return of his/her funds as he had converted these funds into goods that were brought overseas. To add to this, the intangible harm as described at [78] above was still a relevant consideration. As noted in *Fernando* at [49], due to the inevitable and intangible damage caused by card fraud and the public interests at play, "general and specific deterrence must therefore feature as the vital if not dominant sentencing considerations for such offences".

81 All in all, I assessed the harm caused to be of low to moderate severity. As I explained at [76] and [77] above, I did not consider the differences in the amounts involved across the Cheating Charges to be significant. An uplift from the starting point of 24 months' imprisonment for each of the Cheating Charges was warranted, without any additional uplift in respect of the 2nd Charge.

(e) Whether general deterrence and specific deterrence applicable

82 I turn to address the overarching importance of the principle of deterrence. As I mentioned at [31] and [76] above, general deterrence features in these card-related fraud cases. While Mr Liao agreed that general deterrence was applicable, he argued that specific deterrence was not applicable in his

[55] SOF at para 21: ROA p 23.

case.[56] In *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 ("*Huang Ying-Chun*") at [84], the court accepted that foreigners who commit criminal offences would "likely be deported after they serve sentence, and barred from re-entering Singapore". This, Mr Liao submitted, suggested that foreigners who could not re-enter Singapore would not have the opportunity to reoffend and thus specific deterrence should not apply as a sentencing consideration.[57]

83 At the hearing, the Prosecution argued that it was speculation as to whether Mr Liao would indeed be deported and banned from re-entering Singapore. Certainly, a ban period could expire, for example.

84 Having considered these submissions, I was of the view that specific deterrence was applicable in the present case, and the DJ did not err in this regard. As observed in *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [32], specific deterrence is "directed at *persuading* a particular offender from contemplating further mischief" [emphasis added]. I agreed with the Prosecution that it could not be said that Mr Liao would have absolutely no opportunity to commit offences in Singapore. As a general observation and having regard to the underlying *persuasive* function of specific deterrence, it would be going too far to state that specific deterrence should never apply to foreigners who commit crimes in Singapore as they would have no opportunity to re-enter Singapore. This is not only speculation, but it also disregards the obvious reality that a ban cannot be completely foolproof. Certainly, *Huang Ying-Chun* does not set out any general proposition that specific deterrence does not apply to a foreigner who commits crimes in Singapore, as he or she would have no opportunity to re-offend in Singapore.

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56 DWS at para 67.

57 DWS at para 70.

85 Having affirmed the applicability of specific deterrence, I return to the application of general deterrence to the present case. In this connection, the transnational element in the offences was a particularly relevant consideration which I should now discuss. The entire arrangement had been planned by a foreign syndicate, and the goods were moved out of Singapore. I repeat the DJ's observations that the international dimension not only made the offences difficult to detect, but as observed by the court in *Fernando*, also has "the potential to impact Singapore's standing as an international financial, commercial and transit hub" (GD at [38]). I agreed with the DJ that the court must adopt a severe stance against short-term visitors who perpetrate such offences (GD at [38]).

86 I considered the transnational nature of the offences to be a serious aggravating factor, which warranted a further uplift to the starting sentence. As an added observation, I noted that where a foreign or international syndicate is involved, this could certainly also feature at the first stage of the *Fernando* approach when considering the fact of syndication. A court should be wary not to count the transnational element again as a separate aggravating factor at the second stage of the approach if it has already been accounted for in the first stage. In setting the starting point of 24 months' imprisonment above, the transnational nature of the syndicate was not taken into account.

(f) First offender: Whether Mr Liao should be treated as a first offender

87 With that, I turn to Mr Liao's arguments on the mitigating factors. Mr Liao submitted that as he had no prior convictions, he should be treated as a first offender.[58] The DJ had relied on the case of *Chen Weixiong Jerriek* for the

[58] DWS at para 74.

proposition that it is the court's prerogative to refuse to consider anyone who has been charged with multiple offences as a first-time offender, even if he has no prior convictions, and in fact should be reluctant to regard such offenders as first-time offenders (GD at [40]). Mr Liao argued that the present case should be distinguished from the facts of *Chen Weixiong Jerriek*, where the offender committed a string of robbery-related offences over two months before again voluntarily causing hurt with a dangerous weapon while out on bail around six months later.[59] In contrast, while Mr Liao was charged with many offences, these had been committed over a limited span of two days stemming from a single set of instructions.[60]

88 On my assessment of the circumstances, I agreed with the DJ that Mr Liao should not be treated as a first offender for the purposes of sentencing. Mr Liao had entered Singapore with the objective of assisting Mr Gan. Over two days, he followed the instructions of Mr Gan and his associates to commit several offences. There was no reason to accord him treatment as a first offender.

(g) Remorse shown: Whether the DJ had failed to consider Mr Liao's co-operation with the authorities as a mitigating factor

89 Mr Liao contended that the sentence should be further discounted taking into account Mr Liao's co-operation with the authorities as an additional mitigating factor.[61] The PG Guidelines allowed for the court to consider other

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59 DWS at para 75.

60 DWS at para 76.

61 DWS at paras 83–90.

ways in which an accused person has demonstrated remorse apart from pleading guilty.[62]

90 As noted by the court in *Logachev* at [70], co-operation with the authorities is a mitigating factor when it is borne out of remorse. Substantial mitigating weight could be attributed in cases where the offender's co-operation went further than simply admitting guilt (*Logachev* at [70]).

91 I was persuaded that Mr Liao had readily supplied the authorities with information regarding the arrangement and the commission of the offences, including inculpatory facts, in addition to pleading guilty to all the offences. As noted by Mr Liao in his submissions[63] and from my observations at [68] above, several details had come from Mr Liao. This showed that he had genuine remorse for his actions. I was of the view that some weight could be accorded to Mr Liao's co-operation with the authorities as evidence of his remorse. I took this into account as a mitigating factor.

My decision

92 From all the foregoing, I concluded from a re-assessment of the sentencing factors and principles that the sentences arrived at by the DJ were manifestly excessive.

93 Adopting the starting point of 24 months' imprisonment for each of the Cheating Charges, I considered it appropriate to apply a total uplift of 12 months' imprisonment, especially having regard to the low to moderate level of harm occasioned and the transnational element in the offences (see [81] and [86]

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62 DWS at para 85; PG Guidelines at p 4.

63 DWS at paras 88 and 89.

above). In doing so, I also kept in mind the increase in prescribed punishment for offences under s 420 of the PC. I did not distinguish between the 2nd Charge and the other Cheating Charges given my findings that the quantum involved should not be a particularly weighty factor in the circumstances (see [81] above). Therefore, I arrived at a sentence of 36 months' imprisonment for each charge.

94 Taking into account the remorse Mr Liao had shown in co-operating with the authorities, I reduced the sentences by one month each to 35 months' imprisonment. Applying the 30% discount pursuant to the PG Guidelines for Mr Liao's early plea of guilt and rounding downwards slightly, I arrived at a sentence of 24 months' imprisonment for each of the Cheating Charges.

Conclusion

95 Accordingly, I allowed the appeal. Each of the sentences for the Cheating Charges was lowered to 24 months' imprisonment. I further ordered the sentence for the 2nd Charge to run consecutively with the sentence of 12 months' imprisonment for the CDSA Charge. The global sentence was 36 months' imprisonment backdated to Mr Liao's date of arrest on 30 August 2024.

Hoo Sheau Peng
Judge of the High Court

Chooi Jing Yen and Chong Xin Zi Claire (Chooi Jing Yen LLC) for the appellant;
Lim Ying Min and Lim Li Ting (Attorney-General's Chambers) for the respondent.
