

4-5/7

8

OF 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

THE ~~QUEEN~~ ATTORNEY GENERAL

Appellant

- and -

IP CHIU and TSUI SHU-HUNG

Respondents

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

THE QUEEN

Appellant

- and -

IP CHIU and TSUI SHU-HUNG

Respondents

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

THE QUEEN Appellant

- and -

IP CHIU and Respondents
TSUI SHU-HUNG

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RECORD OF PROCEEDINGS

No. 1

CONSENT TO PROSECUTION UNDER
S. 31, PREVENTION OF BRIBERY
ORDINANCE

In the
Magistrates
Court

No.1
Consent to
Prosecution
under s. 31,
Prevention of
Bribery
Ordinance
16th November
1976

HONG KONG GOVERNMENT

Prevention of Bribery Ordinance
(Chapter 201)

Consent to Prosecution under
Section 31

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In exercise of the power vested
in me by Section 31 of the Prevention
of Bribery Ordinance, by virtue of an
authorization to me by the Attorney
General, under Section 7 of the Legal
Officers Ordinance, Chapter 87, I
hereby consent to the institution of
the prosecution of

IP Chiu and TSUI Shu-hung

In the
Magistrates
Court

for the following offence alleged to
have been committed by them, contrary
to Section 4(2) of the said Ordinance :-

No.1
Consent to
Prosecution
under s. 31,
Prevention of
Bribery
Ordinance
16th November
1976
(cont'd)

IP Chiu and TSUI Shu-hung, being
public servants, namely Police Sergeant
4598 and Police Constable 6737
respectively of the Royal Hong Kong
Police, did, on the 18th October 1976
at 246 Hollywood Road, 2nd Floor, in
this Colony, without lawful authority
or reasonable excuse, accept an
advantage, namely the sum of \$2,000
Hong Kong currency from CHAN Kwan, as
an inducement to or reward for or
otherwise on account of their abstaining
from performing an act in their capacity
as public servants, namely taking action
in respect of an alleged dangerous drugs
offence.

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DATED this 16th day of November
1976.

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Sgd. (E.R. Astin)
.....
Senior Crown Counsel

In the
Magistrates
Court

No. 2
ORIGINAL CHARGE

No.2
Original
charge
26th November
1976

26th November 1976

Reg. by Mr. HUI Kar-man of Complainant
the I.C.A.C.

versus

IP Chiu and TSUI Shu-hung Defendants

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N.G.S.
3/1/77

Charge:- ACCEPTING AN ADVANTAGE

Statement of offence:- Contrary to
Section 4(2) of Prevention of
Bribery Ordinance, Cap. 201.

In the
Magistrates
Court

No.3

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(cont'd)

Centre Street as he did so he has approached by D1 who said "Board the car". P.W.1 said "Why, I do not know you?" Defendant said he suspected P.W.1 had dangerous drugs and wanted to search him. Then P.W.1 noticed the same green car was nearby and D2 was in driving seat. P.W.1 had known CHOI (D2) for many years and he told him to get in. P.W.1 knew and trusted him so he did so. He was searched by D1 before boarding then got into rear seat. D1 sat beside. Car driven along Queen's Road (West), then D2 told P.W.1 that D1 was a Sergeant and in charge of the party and he (D1) suspected P.W.1 sold "white powder". More conversation - and car driven to car park of Yuk Choi School in Hospital Road, when P.W.1 searched again by D1, then D1 and D2 made it clear, they intended to search his home. They took him home, parked and carried out yet a further search. Then all 3 went to 2/F., 246 Hollywood Road. P.W.'s 13 year-old son opened door (TAM Kai-ho) wife also present (LEUNG Chun, common law wife). These 3 will then say that both officers began searching premises - during the search, D2 found \$1,120 and said to LEUNG (P.W.2) "Ah So, you come here, you want to save him, this will take several thousand bucks before we can talk." P.W.2 said they had no such money. P.W.1 told him to make a phone call to borrow money. She did so to POON Wing (P.W.4) and borrowed \$1,000 from him on her return (all same day within an hour). P.W.2 will say she handed over \$2,000 to her husband, part loan put cash in flat - P.W.1 handed it to D2 as he did so, he said "That is all we have". D2 said to D1 "How about it that is all he has". D1 nodded and D2 put money in pocket. P.W.1, P.W.2 and P.W.3 all saw the transaction. Then P.W.1 was taken back to the motor car, both officers urged him

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to keep whole matter secret and not report what had happened, also told he would not be troubled further. D2 gave his telephone number to P.W.1 said "Look me up when there is a chance". They parted. P.W.2 will say that 19/20 October (2 days later) she received calls on phone from person who said he was D2 and looking for husband. Reported to I.C.A.C. 19 October. D2 arrested 2 November by 2 Investigating Officers Biss and HUI. When first questioned, D2 denied had meeting P.W.1 but he was elsewhere on duty on 18.10.76 eventually admitted meeting P.W.1, and asked to be Crown witness. Advised he could be not properly promised anything. D2 made a caution statement (voluntariness not in issue) admitted meeting him and taking tea at P.W.1's home.

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D1 arrested next day 3 November, he denied any meeting with CHAN, maintained on duty elsewhere on 18.10.76. At a final interview on 5 November defendant asked officers what would happen if he told the truth. He was told nothing could be promised. (Voluntarily not issue) D1 then said "Can I get bail first as wife will have to support children if I go to prison. If I plead guilty I shall be letting them down but if I plead not guilty I shall have tried my best - if I can see her first everything will be alright. I can persuaded her that it is for the best". D1 then gave I.C.A.C. bail but came to I.C.A.C. offices on 8.12.76 of his own accord and wrote a caution statement similar to D2's statement.

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Prosecution intended to call 10 witnesses but following evidence is accepted without challenge.

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Facts admitted are :-

- 1/ Government servants and Public servants;
- 2/ Serving Police Officers;
- 3/ both Service Record admitted;
- 4/ that on 18.10.76 both D1 and D2 were off duty;
- 5/ that D2 off duty on 19.10.76.

I undertake that in so far as all witnesses gave true evidence - Complainant, his wife - no proceedings against them as accomplices will follow. I say this on A.G.'s special instructions. I also inform the Court that P.W.1 has the provision convictions which I shall put to him in his evidence in chief.

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LEUNG: No qualification to those admissions.

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Charge read and explained.

D1 SAYS: Plead not guilty.

D2 SAYS: Plead not guilty.

P.W.1 - CHAN Kwan Affirmed in Puntl.

SAYS: 18.10.76 I resided at 246 Hollywood Road, Western but I now live elsewhere. I now wish to withhold my present address (other matters).

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COURT: I am prepared to let him write it down.

P.W.1: Writes on paper and with English translation. (Placed in sealed envelope.)

CONTINUES: 18.10.76 I left my home address to go shopping and I went at 4.30 to Sai Ying Pun to buy roast meat. I went downstairs, saw a green car - had a Chinese male in it. I have met him before at beginning of October (points to D1) that is him. He said nothing to me. I was waiting for public

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light bus, he was alone. I was about to board public light bus when I saw another Chinese male whom I knew beside the car. I looked over my shoulder saw D2 (points to D2) talking to Chinese male I have known him for a long while. I boarded bus to Central Street, I got off. I noticed nothing on the bus. When I got off (he points to D1) he asked me to get into car - the green car. This was right behind public light bus. D2 in the car. I said "If I have committed any offence you might arrest me". He did not produce identity. I declined to get into car. D1 searched me, found nothing. D2 put his head out of window and said "CHAN Kwan get into the car." I said "You have to accept responsibility if I do." He said "I guarantee nothing will happen to you." I knew D2 to be a policeman. I have known him for a long time to be such. Then car driven along Queen's Road West, I was in the car. I had been searched by D1. Car went to compound at Chan Yuk Hospital and Yuk Tsui School. D2 drove. I sat at the back. D1 on my left. There was conversation. D2 said "Blockhead you are selling white powder. We have evidence to prove it." I said I admitted it was true - it was 2 months previously. No other conversation until we reached the compound. D2 said to me "Sergeant is in charge of party - Sergeant was D1." D1 said something but I can't remember what. When we arrived at the School, the car was parked. D1 searched me again - found nothing. Had searched me thoroughly, before I got in. When he had searched he found nothing. D2 said to D1 "Did you find anything, shall we go to search his home?" D1 said "Yes, we shall take him back". I said

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if one has done something he had to solve it himself - something harmful. Then we drove along Pokfulam Road and D1 said "Do You know me? I am Ah Sum, a lot of people earning living by illegal means know me." I said "I do not know you if I had I would have greeted you." Then the car reached King Char Restaurant at Hollywood Road near some open ground. I was searched again by D1 - in car - a 3rd search - I knew they were looking for dangerous drugs. They found none. A lot of on lookers had gathered around. I knew 2 of them. "Wah" other Wong Yin. D2 said again "You have been in police before you should know better." I was a policeman from 8.9.1950 for nearly 4 years. I knew D2 then. D1 said "Don't try to run away." He was going to take me home. We all went home.

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Morning adjournment.

P.W.1 RECALLED: We all went home. I rang the door bell. My son TAM Kam-bor opened the door, he was afraid. I said D1 had come to take a search. My wife was there. Officers said something to my son. I did not hear. D1 said to me "there is no white powder or polythene bags here." My house has 2 cubicles and a living area. When they arrived, D2 searched living room. D1 searched room where mother-in-law and son slept. Wife, son and I present during search. Mother-in-law in hospital. Wife was in sitting room during search. I asked her not to say anything. Son and I also there. D2 remained there while D1 searched cubicles. D1 said to me "There is evidence to prove it". It is a small flat. I do not know what he meant to say since he had not found anything. D2 said something when he asked my wife to go into cubicle. My mother-in-law's cubicle. I heard him say "He can't deny anything, there is no way for him to deny." I heard him say he did not want the money it was a small sum I can't remember clearly what was said

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10 but I did hear clearly. D2 said something about money. That I was selling drugs in the past he had been tailing me for a long while there was no way for me to deny and that in due course he would beat me up. He was explaining my previous activities. They had found nothing. I heard my wife say I wanted to turn over a new leaf and that I was taking methadone treatment. The officers found nothing. I did not see them show anything to my wife. They did not show me anything. They found pawn tickets and cash \$1,120. D2 found it in a handbag. He said it was only a small amount he would not take it. I heard my wife tell him that I had turned over a new leaf - I could hear - D1 searching the sitting room. I heard D2 say to wife "it can be done. I can beg D1 for a chance for him". He spoke to D1. I heard him, he said "His wife said that she is going to borrow money. She will go to a friend Wah Hing for a loan she will phone her".

20 The purpose was to give the defendant money. This was not said to me personally. He said it would take at least several thousand dollars. Before anything can be done, he said "His wife is going to borrow money". D1 said "be quick". The amount of \$3,000 was mentioned. D2 wanted \$3,000. The amount was agreed with my wife. She made phone call in my presence. I heard her ask to borrow money. I listened in, D1 listened in, he could hear what my wife said. When she finished she left the flat - son stayed behind. D1 and D2 kept on searching the premises. \$1,120 still in my wife's handbag. She was gone 7/8 minutes. She said Kai Hing's husband will only lend \$1,000. She gave me \$1,000. I took the \$1,000 and \$1,000 from the handbag and gave it to D2. D1 was also close by in the sitting room. D2 said "He only got \$2,000." D1

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replied, go downstairs with him. It went into D2's pocket. D1 could see this. D2 said to D1 "That's all he got, how about it?" D1 said "alright, take him down to the car." 3 of us left flat, leaving wife and son there. Went to car. Sat inside. D2 said to D1 "Ask him if he is sincere?" I replied "I am sincere, I am honest." D1 then said to D2 "How about her wife?" He meant he wanted me to make no complaint about him. I said you can set your mind at ease, there will be no trouble from my wife. D1 said I will give you a chance to earn some money, he would allow me to carry on selling drugs but I said I would not. D1 said he would tell no one else, we might co-operate if we have a chance. I should be his informer. This was D2, he said phone number was 468450. I wrote it down when I returned home. D2 took my telephone number. I paid over the \$2,000 because from beginning to end they were over-exercising their power but I was in their hands I was afraid of a plant. I was a Police Officer - for nearly 4 years. I have never had a disagreement with D2. I have seen him on many occasions. He is a common friend up to 18.10.76. I had no complaint against either of them. I never served with either of them. I don't think I know D1 but I think I had met him before he had never spoken to me as a policeman.

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I have been before Court twice, on 22nd November 1957, I was convicted of C/A, on 2nd November 1972 I was convicted to possession of opium potts and fined \$75.

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CROSS-EXAMINATION: I paid the money so that they would not plant white powder on me. They asked wife - not me - for money and I overheard the request. Hence they found nothing on me, or in my home, a very thorough search, only after searching that they would ask for money. Never has any contact with either as policeman. In summer of 1974 I did not meet D2 in Southern Playground. I did not

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10 meet him with 2 men and I was not
searched then. I was not angry
with D2 for searching me in front
of friends. I did not say I would
get my own back. Not true that I
reported to I.C.A.C. to get
revenge. I did not remind D1 just
because he happened to be there.
I went to I.C.A.C. the day after
the incident. I decided to report
when it was happening. I think I
was detained in my flat but I
could give my wife instruction -
but not private conversation - I
did not tell her to report.
Officers engaged in searching flat
while spoke to her, one in each
bedroom. I spoke to her in
sitting room. I did see car when
20 I went out shopping. Barber Ah
Wing told me green car outside my
premises on 18.10.76 - I saw it
personally. I had never spoken to
D1 before, never met him before.
When I saw officers in Queen's
Road West I had no other
conversation with the officers. I
could not just ignore them when
they asked me to get into car. D1
30 caught hold of me stopped me
walking away. Did not push me
into car. I asked D2 to take
responsibility as D1 was hesitating.
I told them no reason to get in.
I said if I had committed an
offence, they could arrest me.
D2 said "Get in I guarantee
nothing will happen." So I could
not ask what for. I told them I
was not committing drug offence.
40 I did not ask what. D2 said he
had been tailing me for a long
while. I did not ask what evidence
they had. I knew I was innocent.
I knew it was untrue they had
evidence. I was forced into the
car as I say. I was not standing
near light when I saw D2 pull up
at lights driving a green car. I
50 did not call out and ask him where
he was going. D1 did not come up
while I was talking to D1. I did
not suggest going home for tea -
did not all go up to my flat at my

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invitation - there was a search.
Not true that D2 spoke to my son
and D1 spoke to me on verandah.
I did not only discuss rent but
I did say something about it - I
did not say "too small, not enough
air". I did tell them I was no
longer engaged in selling drugs.
Not true that after a few minutes
they decided to leave and that on
they wanted I offered "something
for tea". D1 did not push my hand
away and said "don't be stupid".
Not true that wife did not go out.
Not a cleverly conceived plan to
get my own back for embarrassment
on previous occasion. I made a
statement to I.C.A.C. Not different
to what I said to Court today. I
have been offered an indemnity. 10
This was last Friday (31.12.76). 20
They said Legal Department will
give you and wife indemnity if you
give evidence. I had to give
evidence - not a condition of giving
evidence. I did not ask for
indemnity. I have received signed
letters telling me to go to Court.
Coming from Court. Never received
direction from A.G. Never received 30
any direction on what to say. Legal
Officers said it is against law to
give money - but Legal Officer would
give indemnity - I did not have to
do anything to get it - they asked
me to remember to give true evidence.
Not a condition that I gave true
evidence. My evidence is not a pack
of lies. My intention is not to get
revenge on D2. 40

RE-EXAMINATION: Ah Wing said about
car on 16th October not on 18th. I
said it myself on 18th. I have no
doubt that I saw one in car. D1, I
saw D2 then as well.

QUESTIONS BY COURT: I actually saw
them find cash and pawn tickets. 1
week previously I had said to wife,
I want to go to take methadone but
it takes several days to complete 50
procedures. I had agreed with wife
but it was not yet started. The

barber is called "Ah Wing", his shop is a coffin shop 10 shop spaces from my house. I had last seen him 16th on Ching Wah Barber Shop in Tai Tak Tei in Hollywood Road - 15 shop spaces from my home. That is where I had seen him before 16th.

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Lunch adjournment.

10 P.W.2 - LEUNG Chun alias Affirmed
 LEUNG Fung-shu in Puntia.

20 SAYS: 18th October 1976 I lived
 with P.W.1 at 246 Hollywood Road
 and our 13 year-old son TAM Kam-bor.
 I remember call at my home on 18th
 October last. I was asleep my son
 came in to wake me up. As a result
 I went to door and found - after I
 had been to toilet - husband was
 there with 2 other persons. I can
 see them, points to D1 and D2. They
 went in and searched for a long
 while they said Sergeant came to
 search - CHAN Kwan said that to me -
 I was in sitting room. Son on bed
 there. P.W.1 also there. Sergeant
 searched first - D1 the sitting room
 then the kitchen. D2 sat beside my
 son - he also searched. I had a
30 conversation with them. D2 said he
 had seen my son quite often. D2
 said he came to search - later on
 when he was talking with my son he
 asked about school. A long time
 after the search D1 had said "If you
 have it you would better produce it".
 P.W.1 said he had none. Subsequently
 Sergeant said he would send policeman
 to conduct a search - he would make a
40 call for this purpose. I said "by
 all means, but it is useless." P.W.1
 said "Sergeant, it is true there is
 none." Finally they wanted to take
 P.W.1 back - Sergeant said he would
 do this. I said "Don't do that
 Sergeant, there is nothing at all".
 "My mother might die if she heard".
 I pleaded with Sergeant. Later on I
 said this to D2 - "Sergeant said
50 "none of his business". I said "give
 him a chance, he has turned over a

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new leaf, he is now a hawker".
P.W.1 also said he had turned
over a new leaf. D2 said how
can I give you a chance. P.W.1
said "D2 knows me". Sergeant said
"this is my case, nothing to do
with D2". I said to D2 "you have
known P.W.1 for a long while you
say you have laid an ambush for
several weeks say something good
on his behalf". D2 had told me
this. I knew he knew him because
he said so. When I asked for a
chance. P.W. said this he would
not be at his ease if they forced
him to go back with them. D1 said
he wanted to take P.W.1 away - but
they did not do so. I pleaded with
D2. D2 said "there must be some
way out". I said "If you have some
good idea you had better say
something." Then D2 said "you
can't just do anything with words".
I said "What are you up to you have
completed search". I said "there
is a pawn ticket for several \$1,000.
Here was some money \$1,200, this was
in a handbag." They found it out
put the money beside it. I said
that was all I had, I did not offer
it then, finally D2 said "it is
only a small sum, Sergeant will not
take it". I said "That's all I have
if you want tea money you have
better take it". He asked me to
think of a way out and to get
\$3/4,000 more. D2 asked this. D1
was still searching sitting room.
Everyone could hear when asked to
get \$3/4,000 more I said I had no
more. D1 said if P.W.1 taken back
he would be beaten up. When he said
\$3/4,000 I said I did not have it.
I did pay them. I was scared. I
said to D2 at most I could borrow a
few hundred dollars. D2 said to try
my best. I phoned to my old friend -
I call her sister - D2 stood beside
me and listened to what I said after
making the call my friend said she
would lend me \$1,000. She asked me
to go over as she was busy cooking.
I went to outside post offices,
Sheung Wan Market I met my friend's
husband - Wing - he gave me \$1,000.

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10 I then returned home and gave
P.W.1 the money. He produced
another \$1,000 from his pocket,
put \$2,000 together and give it
to D2, when he took the money
he spoke to Sergeant. I did not
hear what Sergeant said. The
\$1,000 came from the handbag.
When \$2,000 paid to D2 both
officers went out with P.W.1 -
all three together. My son was
there when money transaction took
place. The officers arrived
about 4 o'clock and left at about
5 o'clock, 6 o'clock at the
latest. I never saw either of
them again. There were 3 phone
calls the day after. 2 others
after that said he was D2. Said
20 he was TSUI when he rang. He said
he wanted to speak to P.W.1. I
said he was out. D2 said "You
stupid woman, I am looking for
P.W.1". Before 18th October I had
not seen them before.

30 CROSS-EXAMINATION: Nothing
incriminating found on premises.
P.W.1 had committed no offence.
They said they would beat him to
death. They wanted money to
refrain from taking him back, that
is why I paid. I agreed they had
no reason to do so. D2 asked me
to think of the way out. I thought
of this plan. P.W.1 told me they
were police officers to search the
house. They did not come as guests.
D2 had a talk with son then went
into make search - he had a short
40 conversation with son. I did not
make tea. They were there for more
than 7-8 minutes. They took \$2,000
and stayed nearly 1 hour. I do not
remember conversation with P.W.1
and them by door. When they searched
they made a mess. No conversation
near front door with P.W.1 trying to
send D1 money and D1 pushing his hand
away. When I took money he produced
50 the other \$1,000 and said "here is
\$2,000". I did not hear D1 tell my
husband not to be so stupid.

No re-examination.

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QUESTIONS BY COURT: It took a little more than 5 minutes to get the money, at the most. I was alone in a cubicle with D2 for some part of the time. This is when I begged him for a chance for P.W.1 and he also asked for money. While there P.W.1 came in a pleaded with him in the cubicle. I do not know if they heard my conversation or not outside.

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P.W.3 - TAM Kam-bor Affirmed in Puntì.

SAYS: 18th October last lived my mother and father at 246 Hollywood Road. I am 14, not a school boy now I do not attend school. On 18.10.76 I was at home in sitting room. Mother asleep. I was watching television I heard knocking on door. I opened it saw father with 2 persons behind. Father asked me not to be scared, and that Sergeant had come to search. I opened door allowed all three in, went to wake mother up. She came out of cubicle. Father asked her to sit down and not be scared as Sergeant had come to search - they started to search - we have a living room and two cubicles. Sergeant went to cubicle - points to D1 - I see other officers there - points to D2 - father and D1 went to a cubicle. D2 had a talk with mother in sitting room in low voice. I was scared. I did not see father and D1 in cubicle. After D2 had a talk with mother, he went to another cubicle with him I was alone in sitting room. Sergeant and father came back to sitting room. Then mother and D2 came out then father spoke to D1 and D2. I heard one sentence "please help my mother who is sick in hospital". Father asked mother to make a phone call to borrow money. D1 started to search. D2 had a talk with me then started to search. He asked me about school. Then started searching. I only heard my father ask mother to

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10 make call. I heard none of the
conversation in the cubicle. I
did not hear what mother said.
When she made the call she said
Wai Hing was willing to lend
\$1,000. Mother went to change
and went out. I was sitting
there and 2 officers still
searching. I did not hear any
conversation. I did not see
them find anything. I was
frightened - mother was out 5-10
minutes when she came back, she
gave money to father and said it
was \$1,000. He produced \$1,000
from his pocket. I could not
see clearly how much. He gave
the money to D2. This all took
place in front of me. D2 sitting
20 beside me on couch. D2 hold the
money in his hand, said something
to D1. I did not hear. D1
sitting next to D2. I was to
left and D1 to right. When the
money was handed over D2 asked
father to go downstairs to car,
they waited at downstairs for my
father, he went out. I did not
see them talking. I did not know
30 what they were searching for. My
father spoke to Sergeant D1,
mother spoke to D2. Mother did
not make them tea. I did not know
what was going on. I was
frightened. I knew how important
it is to tell the truth. I am
absolutely certain that I saw
money handed over to D2 and he
pocketed and that they searched
40 my parents premises.

CROSS-EXAMINATION: I have no idea
why they came to flat I do not know
what they were talking about. I
only knew she went to borrow money.
I did not know why I saw it handed
over. I do not know why. I was
scared so I did not hear they were
speaking in low voice. I was
unable to hear conversation in
50 bedroom, it is difficult to hear
conversation between rooms. I
switched off television while they
were there. I did not see or hear
mother talking to Sergeant, D1. I

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saw father talking to Sergeant but could not hear. I saw father talking to D2 but could not hear I did not see both parents talking to same man. I spoke to D2 about school - just one or two sentences. D2 did not leave the sitting room he was gone to search but I did not see him search. He was gone for some time - not long, not short. I saw father taking D1 around. I did not see search. I heard noise of searching, parents told me afterwards and I was told when they came what that was. They found nothing. Not a friendly conversation. There was a search. They did receive money. I did not see father give something to D1 who pushed his hand away - I did not see any conversation at front door. They just looked to direction of verandah (P.W.1 and D1) I remember telling D2 that I had completed primary school but had not carried on because family poor. He did not ask me if I was going to carry on. He did not watch television with me, it had clearly been turned off. They did call her "Ah So" - she did not make tea. I did not see either D1 or D2 use lavatory or mother pour tea to them.

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RE-EXAMINATION: I saw both officers searching the flat they had come out for that purpose.

P.W.4 - PUN Wing Affirmed in Puntl.

SAYS: I am also "Shorty Wing".

I reside at 2 New Market Street, 2/F., Western.

40

I am a grocery hawker.

I recall 18th October 1976. I know P.W.1 and P.W.2 - on that day after 5 p.m. she made a phone call to my wife. I spoke to her on the phone myself as a result - she asked my wife for a loan. I took money - my money - took to Post Office near

Sheung Wan Market. I saw P.W.2. I handed her 1 x \$500, 5 x \$100 notes. They sometimes had money transactions - my wife and she - she had asked for an advance. My wife is her close friend. I gave her the \$1,000 and she left. I am positive about date and that it was between 6 p.m.

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10 CROSS-EXAMINATION: I had \$1,000 cash as we run a business I am a mobile hawker. I go everywhere. \$1,000 is a large sum of money. Sometimes more than my weeks supply of groceries. Sometimes my wife would ask her for money. Not uncommon to borrow \$1,000. 2/3 occasions a year. Sometimes I had the money. Sometimes she would lend directly. I recall this occasion so clearly. I kept this in mind very clearly - the previous date I can't remember if it was not through me. If through me I would know. I can't recall previous occasion of loan. I was asked to recall when I was asked to report to commission. Then I was asked to remember 18th October 30 1976. I went there at end of - I can't remember. I have only been there once. I do not operate as money lender. I have not made any arrangement for loan repayment. So common, no need to make any.

RE-EXAMINATION: I see a statement. I made to I.C.A.C. The date I made it was 23rd October 1976.

40 Adjourned to 9.30 a.m. 4th January 1977.
Bail extended for both defendants. P.W.1, P.W.2, P.W.3, P.W.4 released subject to recall.

(Sgd.) N.G. Scriven

4th January 1977.

9.45 a.m. Court resumes.

As before.

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P.W.5 - Kenneth Biss Sworn in
English.

SAYS: I am U.K. Police Officer.

Seconded to I.C.A.C.

At 0800 2nd November 1976 I
went to D2's home. I was with
HUI Kar-man, CHAN Kwong. Mr. HUI
acted as my Interpreter.

I see D2 in dock, that is him.
I told him who I was said I intended
to arrest him and go to Hutchison
House. I cautioned him and said in
simple terms. He had a hospital
appointment so we went via hospital
to Hutchison House. He had been on
night only so I interviewed him at
1815. Then I interviewed him with
HUI acting as Interpreter. I asked
questions. HUI translated the
question then he reply. He asked no
question of his own volition. I
made notes at the end of the
interview. Interview lasted 1 hour
3 minutes. This is my usual
practice.

10

20

COURT: Leave to refresh memory.

I explained allegations reminded
him he was under caution.

I asked what duty on 18th
October. 1976 - I gave calender -
he replied "B shift."

30

I understand that is 1500 hours
to 2300 hours.

I asked if uniform or plain
clothes?

He replied "uniform".

I then said most important that
he remembered accurately and important
to him as I understood he was in
Hollywood Road, Western in plain
clothes that afternoon.

40

He replied : on duty but not in that Road, I then asked if he knew CHAN Kwong. He replied that the only one he knew one in Pokfulam. I then said this man lived in Hollywood Road and you were with him in Pokfulam 18.10.76.

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He replied "That's untrue".

10

I said : I believe you were in Hospital Road car park. He said : he had been to hospital to see his daughter-in-law.

I then said he had just told me he had been working - which was true?

He replied he thought he had a couple of hours off.

20

I asked if he knew Sergeant called "Ah Sum". He replied no - only Sergeant he knew was Sum Chai in Hong Kong Island Control.

I then asked if he knew his number. He replied he did not.

I then said it was alleged he was in a car that day - did he have a car? He replied no.

I then asked if he drove a car AL He replied : that was son's car - AL 8347.

30

I then told him number of car also began with AL and that we had a lot of information about his movements on the day in question and he had better started telling the truth.

He said "What CHAN says is lies why do you believe it?"

40

I said : lets get it straight - he said you searched his house for drugs with Ah Sum. Fortunately his wife and 13 year-old son were present and I believe they have told the truth.

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He replied "Thats not his wife
or son. She used to be bar girl" -
thats her son.

I said : For some one who a few
minutes ago did not know. CHAN -
you have recovered your memory.

He said "I remember now". I
then went out to get cigarettes for
D2. I was out about 1 minutes to the
room. I said "I understand you have
been asking what will happen if you
turn Queen's evidence, let me tell
you I am dealing with a complaint
that you solicited cash from CHAN
Kwong if you wish to tell the truth
do say but I cannot give any
promises. Decisions of this kind
are made at a far higher level".

10

He replied : It's all untrue.
I then terminated the interview at
1917 hours. I again interviewed D2
on 3rd November at 12.15 p.m. He
was reminded of his caution. I told
him that I was quite satisfied he
had visited CHAN's home on day in
question and that I thought he was
accompanied by Sergeant 4598 IP Chiu.

20

He agreed then that he had been
with him but just to give him a lift
to Central Police Station. He denied
seeing Sergeant after the meeting. I
told him he was telling lies. He
then said "Yes, what happened was that
he met his old school friend CHAN
Kwong arguing in street with Sergeant
IP, he stopped his car told them not
to arguing and to get into the car.
He did not hear what they said as
they sat in back. He drove them to
CHAN's home in Hollywood Road where
CHAN asked him to come in with him.
He then asked what took place inside
the flat, he said he heard CHAN and
IP talking for 6 minutes on the
verandah he did not hear what it was
about and left."

30

40

I then asked if he had seen
money change hands. He said "No."
I then asked if he wished to make

written statement under caution and he could write himself if he wished.

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10 He said : he wanted to make it but wanted I.C.A.C. officers to write it. I then left while he dictated a statement to HUI Kar-man. At 1545 hours 3rd November I went to D1's home and saw him, he is D1 - points - I showed warrant and said who I was. HUI again was Interpreter, and arrested him and cautioned him. I searched his home, took him to Hutchison House. At 1830 same day, with HUI Kar-man, I interviewed him at Hutchison House in same manner as D2 very short interview.

20 I reminded him of caution, asked if he knew D2 - he replied that he did and had once swapped house with him.

I asked if he was with D2 on 18.10.76. He replied he had not.

30 I asked what duty he had been working on on the day in question, he replied that he had been on 'B' shift in Island Control Room.

I asked if he knew CHAN Kwong who lived in Hollywood Road, Western. He replied he did not know him. I asked if he was with CHAN on 18.10.76, he replied he did not know him.

I asked if he had gone out socially with D2 or in the car.

40 He replied he had mixed socially with him. He totally denied know CHAN or meeting D2 on 18.10.76.

I asked him whether he had arrested or detained anyone in recent months as he was an office Sergeant.

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He replied "not for 3 years. I have been in Control Room all that time". I said it was alleged he had detained CHAN on that date in a street in Western took him home searched the premises and extorted \$2,000 from him. I said if this had happened surely he would remember.

He replied : it was untrue.

Interview completed at 1845. Interviewed him again 1640 on 4th November 1976 with HUI again reminded him of caution. I asked similar questions. He denied even being in a car or in Hollywood Road that day. I then told him that he had said he was on 'B' shift on 18.10.76. I had checked this with Island Control and have been told he was on leave that day - could he account for his movements?

10

20

He said he could not remember. After trying to help him refresh his memory, he still replied he could not remember. I asked if he had been at a nearby at Central Police Station on 18.10.76. He replied he had. I asked : What he did afterwards? He said : he could not remember. I said : This is only 2 weeks ago and suggested he was not trying to remember.

30

He replied : he could not remember.

I said : P.C. 6737 (D2) had made a statement under caution. Stating quite clearly that he had seen D1 and CHAN arguing in street - had picked them up and driven them to CHAN's home. I asked if D2 was telling lies. He replied : Not true. At that interview he denied all connection with D2 and CHAN on 18.10.76. I concluded interview at 1200 hours.

40

On 5th November 1420 hours I interviewed D1, reminded him he was under caution. Said he had plenty of time to collect his thought, was there anything he wished to say?

He replied : what will happen if I admit this?

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I said : Sergeant - you have 21 years service - more than I. You must know that this is a matter for the Court.

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He asked : Could he have bail first? He said : my wife will have to support our children if I go to prison. If I plead guilty, I will be letting them down, if I pleaded not guilty, I will have tried my best if I can see her just everything will be alright. I can persuade her it is for the best.

20

I understood him to mean that "for the best" meant to plead guilty. I told him what he intended to do was his own business. I could give him no advice or promises, he then said he would be back on the Monday to see me - would 10 a.m. be alright? Interview then concluded.

30

CROSS-EXAMINATION: I have been looking at any book to be quite accurate not because I have difficulty in remembering. The first interview lasted 1 hour 3 minutes. I had no tape recorder or shorthand writer. I hope I have left nothing out I do not think I have. I had no shorthand writer or tape recorder when I interview D1. D1 was kept in custody maximum period. D2 had been bailed much earlier. He got bail the day after his arrest.

40

When I arrested D2, I had P.W.1 complete statement in front of me. That he had been detained and arrested. The question of statement or no statement did not affect bail.

50

When I got near the truth I reported to my Superior - I only recommended bail - not make decision. Yes, D1 was anxious for

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bail at the end of the interview but he had seen his wife and family on a number of occasions. While interviewing D2 I went out to get cigarettes. I was coming back when HUI spoke to me and as a result I made remark about him wanting to be Crown witness. D2 did not say he wanted to be released at all costs. I do not speak or understand Cantonese. D1 had said he was on 'B' shift duty. Do not remember him saying that it was his weeks duty - but it is fair to say he suggested to contact Island Control to check the accuracy.

10

D2 gave me a written cautioned statement on 3rd November before he was released on bail. I saw D1 on 3, 4 and 5 November and on 8th November he came back and made written statement.

20

Sergeant was very worried - concerned about his family - he did not say he wanted them protected - only that he would let them down by pleading guilty.

I did not select the charge. Mr. Corcoram did. HUI Kar-man actually charged them.

30

RE-EXAMINATION: D1 had seen his family on every occasion when he wished at Hutchison House.

QUESTIONS BY COURT: Policy is not to record statement on tape.

Morning adjournment.

P.W.6 - HUI Kar-man Affirmed in
Punti.

SAYS: I am Investigating Officer
of I.C.A.C.

40

At 0800 2nd November with P.W.5 I went to home of D2 and saw him - points to D2. Mr. Biss arrested D2, cautioned him, took him to Hutchison House. I acted

as Interpreter and interpreted everything said to D2. I asked no questions myself. I just interpreted. I made no notes. No notes were made then by either of us.

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I have seen Mr. Biss's notes

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COURT: I am not allowing him to say any more about those notes which not in evidence.

20

P.W.6: to the best of my recollection Mr. Biss told him of complaint on 18.10.76 told him he was alleged to have been with Ah Sum and to have solicited \$2,000 from P.W.1. Biss reminded him of his caution. After he had told him of the allegation, D2 denied being with CHAN or solicited \$2,000. Said he had been on 'B' shift duty. D2 finally said he had gone to visit his daughter-in-law that day but denied seeing P.W.1 that day. That interview lasted 20 minutes - at one stage I was alone with D2. P.W.5 had gone out of room to have a cigarette - Biss to have a cigarette - I had a short conversation with D2. I asked why he did not tell the truth, he replied "If I tell the truth, what benefits will I get?" I said I could give no benefit or make promises. He said "If I turn prosecution witness will it benefit me?" Then Biss came in, I told him and he said to D2 "Decision had to be made by a Superior Officer, whether to deny or admit is up to you".

30

40

D2 was asked if he knew P.W.1, he said he knew a CHAN at Pokfulam Village, he only said he knew this person.

Next day at 12.15 p.m. I again interviewed, again as Interpreter. I remember text of interview in

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round terms. Biss reminded him he was still under caution. Repeated allegation showed him a photo of Sergeant and told him who he was. "Ah Sum". D2 then said "Sergeant is the one I was with that day". He then carried on to tell us that while driving along Hollywood Road he saw D1 and P.W.1 arguing in the street, he told them to get into the vehicle and then P.W.1 invited him home and told him of his address. He then followed them home when they got there. He said he saw P.W.1 and D1 talking in verandah for 5/6 minutes. This was an entirely different account. At the end of this interview, I took a cautioned statement I see a statement that is the one. I tender as Exhibit No.1(a) and a certified translation Exhibit No. 1(b).

10

20

Witness reads Exhibit No.1(a) aloud in Punti.

At 1545 on 3rd November 1976 I went with Mr. Biss to D1's home. When we arrived I saw D1 (points to D1) I was Interpreter for Biss. He arrested him for Bribery, cautioned him and took him to Headquarters at 1830. I was present and P.W.5 reminded him of his caution, reminded him of this allegation of P.W.1 that he had been searched in street by Sergeant, forced into a car, taken back to his house where his house was searched and \$2,000 taken from him. Sergeant was with D2 while there.

30

40

D1 said he admitted he knew D2 he denied the rest. He said he was on 'B' shift but denied being with D2 that day, denied the search, denied seeing P.W.1 on 18.10.76 or taking money - he did not know him.

I interviewed him again 1640, 4.11.76 at that interview there was no change in his explanation. He first said he was on duty 18.10.76

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10 but denied meeting D2 or P.W.1.
I interviewed on 5th November 1976
at 1420 and this time he said he
denied the allegation and finally
asked if he was allowed to be
bailed as he wanted to have a
discussion with his wife as if
he was sent to prison, she would
have to support family and he
wanted to discuss the matter.
He asked if he could go out until
Monday, when he would return and
make a statement. Mr. Biss said
what he did was his business - he
had investigated and believed he
had done something. Had chatted
with D1's Superior and knew he
was on leave on 18.10.76 and knew
he was telling lies. He admitted
20 attending a meeting at 2 p.m. but
denied the allegations. At 1055
on 8.11.76 D1 came and I saw him.
I arranged him to be accompanied.
I cautioned him and asked if he
wanted to write himself. He did
so. I left him with another
officer.

30 26.11.76 I formally charged
both defendants with the present
charge. I now tender copies of
the answer made by both defendants
with certified translation of each
and tender these :-

40 COURT: Takes in Defendant 1's
original as Exhibit P.2(a);
Defendant 1's translation as
Exhibit P.2(b); Defendant 2's
original as Exhibit P.3(a);
Defendant 2's translation as
Exhibit P.3(b).

P.W.6 reads 2(a) and 3(a) in
Cantonese.

CROSS-EXAMINATION: I was working
with P.W.5.

50 I was not in charge of the
case. I worked with P.W.5, I am
not of same rank. I took cautioned
statement from D2 when P.W.5 not
present. I did not take statement
from D1. I would say I helped Mr.
Biss he put most of the questions.

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I would not agree he put 2/3 of the questions when I was with him I acted as an Interpreter. I only saw D2 once without Biss - 2/3 minutes only - not alone with D1, only alone while P.W.5 went out for cigarette. I can't remember more 2/3 occasions when I was with D2 alone. I did not question him. We just had casual talk about - general talk - I would say nothing to do with this case. I brought him out of detention but was only helping Mr. Biss. I saw him on these occasions not on Mr. Biss's instructions. D2 did not ask to be Crown witness. I had no casual conversation with D1. I made no records. I did tell Mr. Biss about casual conversation; he did not suggest I made a record, he made a note in his notebook. I did not see him record casual conversations. He recorded what he considered important in his book, not true that I only interpreted what is important. Did not interview them frequently to wear down their resistance.

10

20

Not true that I only recorded what was incriminating.

RE-EXAMINATION: They were detained at Hutchison House for sometime had to be fed, given cigarettes - I did not do this but I arranged these matters. I did visit their rooms. I was responsible for their welfare and security. I see Exhibit 2(a). The Interpreter was there because I read the English on charge - with legal terms I need a qualified Interpreter LAM whose name appears there is a translator alone.

30

40

QUESTIONS BY COURT: I have never been a policeman, we do have "O.C. cases". I see filed charge. That is my signature. I am not solely in charge : I was the charging officer so I signed.

BUCKLE: Explains system. P.W.5 was officer in charge case in fact.

P.W.7 - KWONG Chun-wah Affirmed
in Punti.

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SAYS: I am Investigating Officer,
I.C.A.C.

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At 1050 8th November on duty
at office. When I saw D1 - points
to D1 - I was given instructions.
I sat with D1 while he wrote it.
He completed it and handed it to
me. I had had nothing to do with
the case previously. I see a
statement, this is it. I see a
duly certified translation I tender
this as Exhibit No.4(a) with the
certified translation as Exhibit
No.4(b).

P.W.7 reads 4(a) in Punti.

20

CROSS-EXAMINATION: When he was
writing this we were alone but
before we started HUI (P.W.6)
cautioned him. He left after
caution.

CASE: D1.

CASE: D2.

Adjourned to 2.30 p.m.
All prosecution witnesses released.

2.30 p.m. Court resumes.

As before.

30

LEUNG: Prosecution have failed to
prove each element of charge.

40

Charge 4(2)(a), Cap. 201 -
whole ambit is aimed at public
servants who do or refrain from
doing act as public servants.
Prosecution evidence has been
given in two occasions P.W.1 or
P.W.2. P.W.1 says if he did not
pay he would have drugs planted on
him. Not a duty of public servant
to plant drugs. Not abstaining.
Therefore a threat to do an illegal
act which seemed had no power to

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do. P.W.2 says payment made to stop
police taking him back to station for
beating up.

So can neither of these be
support for their charge. Not an
offence to exceed authority, may be
subject of another section, or
Ordinance.

Clear evidence from P.W.1 that
he was searched personally and
evidence from P.W.2 that he had
committed no criminal offence.

10

Then the evidence of search -
nothing found. P.W.1 says not
committing nor intending to commit
an offence. Do they have any
evidence against P.W.1. P.W.1 said
he knew no evidence against him and
that D1 and D2 exceeding his
authority. Duty must be shown.

20

No evidence that he was a drug
trafficker if inducement made must
be real inducement coupled with
evidence of P.W.1 trafficking or
committing the offence.

"On account of in their
capacity as public servants" missing.

COURT: Suppose payment made - what
about S.25?

LEUNG: Use presumption sparingly
if applied. Some difficulty in
taking it out of S.4(a) must be
some evidence of payment. S.25
must go to cover requirements of
S,4(2). Purpose must be clear.

30

Cannot be the case that payment
to a public servant : is an offence
for whatever for purpose.

COURT: You are obviously not
embarrassed by wording of charge -
you are not alleging duplicity.

40

LEUNG: No. I make no submission
on that.

COURT TO BUCKLE: 1/ Are you happy with wording of charge?

In the
Magistrates
Court

2/ Reply reason to Miss LEUNG's submission.

No.3
Notes of
Magistrate's
hearing
3rd January
1977 - 5th
January 1977
(cont'd)

BUCKLE: 1/ Happy with charge as stands.

COURT: What about inducement to or reward for. Why not "on account"?

10 BUCKLE: 1/ I am happy as it stands.

2/ See evidence of P.W.1. D2 had been "tailing him for some time hence" therefore D1 and D2 are telling P.W.1 he would get no harassment in the future.

COURT: 1/ I propose to amend under S.27, Cap. 227 before I rule on the submission.

20 2/ Amended charge by striking out words "as an inducement to or reward for or otherwise".

LEUNG: No need to recall any witness in light of that amendment - S.27(3), Cap. 227.

30 COURT: On amended charge and applying an objection test I cannot say any material element of the charge against either defendant is missing and there is a case to answer both defendants.

5 minutes adjournment.

LEUNG: I accept that election can be taken as given and my clients both elect to remain silent and have no witnesses to call.

COURT: Do you wish to address me again?

LEUNG: Yes.

40 Look at material inconsistencies as to P.W.1 and P.W.2 and ability to hear what was going on in the flat. P.W.3 said he could not even hear

In the
Magistrates
Court

No.3
Notes of
Magistrate's
hearing
3rd January
1977 - 5th
January 1977
(cont'd)

conversation in the room where he was.
P.W.1 said he asked wife for loan,
P.W.2 said her own idea. P.W.4
evidence of little value - common
occurrence, nothing unusual about
the incident. Now can he remember
when he could not remember visiting
I.C.A.C. until put to him in re-
examination, view prosecution evidence
with caution.

10

Court must accept a reject P.W.1
or P.W.2 inconsistencies so direct
disregard both. If P.W.3 acceptable
just shown search people payment of
money.

COURT: What about S.25 then?

LEUNG: There would be no evidence of
inducement or reward, may well have
been a loan on whatever must be some
evidence of payment under S.4(2)(a)
first. S.4(2) cannot be split to
leave advantage 'per se' must be
coupled with circumstances before
burden of proof shifted.

20

COURT: Case adjourned to 5.1.77 2.30
p.m. Bail extended same terms.

(Sgd.) N.G. Scriven

4th January 1977

5th January 1977.

Buckle for prosecution.
Both defendants represented by Miss
J. LEUNG.

30

Judgment read as attached, and signed
by me.
Both defendants convicted as charged.

Clear record - both.

MITIGATION: Both have long record.
Both married - both have children.

SENTENCE: A : Both defendants sent to
prison for 2½ years.

40

B : \$1,000 compensation
each to P.W.1.

In the
Magistrates
Court

C : \$1,000 each towards
the costs. (As attached and signed
by me.)

No.3
Notes of
Magistrate's
hearing
3rd January
1977 - 5th
January 1977
(cont'd)

Sgd. (N.G. Scriven)
.....
Magistrate
5th January 1977

CERTIFIED TRUE COPY

10

Sgd.
(N.G. Scriven)
Magistrate

No. 4
JUDGMENT

In the
Magistrates
Court

20

In this case the prosecution
alleges against both defendants
that contrary to S.4(2)(a) of the
Prevention of Bribery Ordinance
they accepted an advantage of
\$2,000 from CHAN Kwan (P.W.1) on
account of abstaining from
performing an act as public
servants namely taking action in
respect of dangerous drugs offences.

No.4
Judgment
5th January
1977

30

I have had evidence from CHAN
Kwan (P.W.1), his wife LEUNG Chan
(P.W.2) and their son TAM Kam-bor
(P.W.3) dealing with the facts which
the prosecution say amounts to the
acceptance of the advantage. P.W.1
says on the 18th of October he left
his house and took a short ride by
public light bus. When he
dismounted he saw D1 whom he had
noticed previously before he mounted
the public light bus. D1 approached
him and asked him to go into a car
standing behind the public light
bus. P.W.1 saw that D2 was in the

In the
Magistrates
Court

No.4
Judgment
5th January
1977
(cont'd)

car. P.W.1 said he declined to get into the car whereupon D1 searched him and found nothing and then D2 told him to get into the car again which he did saying as he did so, "You have to accept responsibility if I do." P.W.1 says he knew D2 to be a policeman. Whilst in the car D1 searched him again and found nothing, D2 said whilst driving the car, "Blockhead, you are selling white powder, we have evidence to prove it." P.W.1 said he admitted it was true but that it was two months previously; then the car was parked in a school compound whereupon D2 introduced D1 as a Sergeant in charge of his party, and whereupon D1 searched P.W.1 again, but still found nothing, whereupon D2 suggested searching P.W.1's house. They all went back to P.W.1's house where his wife and son were at home. P.W.1 described the search which revealed nothing. In the course of the search P.W.2's handbag was apparently opened and revealed pawn tickets and cash amounting to \$1,120. P.W.1 described how he heard D2 talk to his wife in an adjoining cubicle. He heard his wife telling D2 that he had turned over a new leaf and that D2 said to D1 : The wife says she is going to borrow money and that the wife would phone a friend for a loan. P.W.1 said he heard D2 say that it would take several thousand dollars before anything could be done.

10

20

30

40

Various sums of money were mentioned and the sum of \$3,000 was agreed upon and then P.W.2 made a phone call in P.W.1's presence and in the presence of the 1st defendant. P.W.2 left the house for about 7 or 8 minutes, returned and said that one Kai Hing's husband would only lend \$1,000. She gave \$1,000 to P.W.1 who took another thousand dollars from his pocket which had come from the handbag and gave it to D2. D1 was close by and D2 said : "He has only got \$2,000" whereupon D1

50

In the
Magistrates
Court

No.4
Judgment
5th January
1977
(cont'd)

10 suggested going downstairs, and at that point the money went into D2's pocket. On the way D2 said to D1 : "That's all he has got. How about it?" D1 said : "Alright, take him down to the car." There was some conversation between the parties and P.W.1 says that D1 said : "I will give you a chance to earn some money" by which he understood him to mean he would allow him to carry on selling drugs. P.W.1 said he was not intending to do that but D1 said he would tell no one else and the parties might co-operate, D2 went further and suggested that P.W.1 should be his informer and gave his phone number to P.W.1 who in turn gave D2 his phone number.

20 P.W.1 says he paid the money over because he was afraid of "a plant" having been a policeman for nearly four years, and that he was a casual friend with D2 and never had any disagreement with him. In cross-examination he said again that he paid the money so that they would not plant "white powder" on him.

30 P.W.2 confirmed broadly what P.W.1 said but said that the money was paid over to stop her husband taken away and being beaten up.

40 Miss LEUNG for the defence has very properly pointed out to me both in her submission of no case to answer, and in her final submission that there are discrepancies between the evidence of P.W.1 and P.W.2 as to what could be heard in the flat, as to why the money was paid over, as to who suggested making a loan and there are indeed inconsistencies but in my view none of the inconsistencies go so far as to discredit either of the witnesses so materially that I have to reject their evidence entirely. In fact
50 having reviewed all their evidence I put the differences down to the

In the
Magistrates
Court

No.4
Judgment
5th January
1977
(cont'd)

frailty of human memory and those minor inconsistencies which are evidence more of individual honesty than concerted evidence. I had the additional evidence of the son, a boy of 14 who gave his testimony with great care, attention and frankness and whom I regarded as completely reliable and he confirmed the basic elements of the visit, the search, his mother's disappearance for 7 or 8 minutes and the handing over of the money to D2 in the presence of D1.

10

I also had the evidence from the gentleman from whom the money was borrowed, Mr. POON Wing whose wife is the friend of P.W.2, regarding the hurried visit of P.W.2 for the purpose of the loan, and whilst he was shaken somewhat on dates in cross-examination, again I do not feel obliged to disregard his testimony because of that, since he made a statement to the I.C.A.C. within 5 days of the incident.

20

At the close of the prosecution's case therefore the prosecution evidence had established the visit, the search and the payment of \$2,000 and at this stage Miss LEUNG made a submission that even if I found those matters proved beyond all reasonable doubt a material element of the charge under Section 4(2)(a) was missing namely that the prosecution has not proved that the payment was made "on account of the defendants performing acts as a public servant." In the light of the evidence of P.W.1 as to the search, and the allegation against him by D2 that they had evidence against him I rejected the submission and so both defendants were called upon to make their defence. Both elected to stay silent and called no witnesses.

30

40

50

Reviewing the evidence as a whole therefore and considering the way in which the witnesses

10 gave their evidence I have to
consider whether I am satisfied
beyond all reasonable doubt
that all the elements of the
offence as charged in the
amended charge have been proved.
It is necessary at this point
to recall that it was agreed
that both defendants were
government servants, serving
police officers and thus public
servants "within the meaning of
Section 4(2)." It was further
admitted that on the day in
question both were off duty. I
have reviewed briefly the
evidence of the main prosecution
witnesses and I am satisfied
beyond all reasonable doubt that
20 both defendants went to P.W.1's
house, that the search was made
and the money paid over to D2 in
the presence of D1 and that both
defendants were on what was
undoubtedly a completely joint
enterprise.

30 I am entitled to comment on
the fact that neither accused
elected to give evidence and this
is particularly important because
of the statements which they made
individually to investigating
I.C.A.C. officers (Ex. 1(D2),
Ex. 4(D1)) and of the answers
they gave to an extremely skilful
and deep interrogation by Mr.
Biss, a U.K. Police Officer
seconded to the I.C.A.C.

40 The way I look at those
statements, in which they both
admit visiting the house, is to
see whether those statements
which were not confessions,
serve to throw any doubt on the
rest of the prosecution evidence
as to the circumstances under
which the sum of \$2,000 was paid.
The defendants made their statements
separately. They do not coincide
50 with one another in many respects
and suggest a purely accidental or
spontaneous social visit by both

In the
Magistrates
Court

No.4
Judgment
5th January
1977
(cont'd)

defendants on P.W.1 on the day in question. In the course of cross-examination defence counsel had put to P.W.1 that he tried to offer a sum of money to D1 but that D1 pushed it away. She also suggested to P.W.1 that he had a revenge motive for bringing these allegations against D2. It is significant that neither of these factors are mentioned in either of the statements which the defendants made to the investigating officers and which are not disputed to be voluntary and admissible. They do not contain confessions, and as I have said I merely look at them to see if to what extent they support or contradict the facts disclosed in the rest of the prosecution evidence, and I have come to the conclusion that they support the prosecution evidence to the extent of the visit but very little further, except to support P.W.1's allegation that he had conversation with the officers on leaving and at the outside door way and this I regard as a most important factor because this is where, according to P.W.1 the arrangement was made to get in touch with one another the later and that P.W.1 would be allowed to carry on his business as drug pusher or would be invited to become a police informer. If the defendants wanted to suggest that P.W.1 had attempted to bribe them without success or that he had a revenge motive against D2 then I would have expected that to appear in the statement, or that the defendants would have given evidence to that effect before me, but they have not done so. I cannot accept defence counsel's submission that the presumption under Section 25 of the Ordinance does not apply until the prosecution have proved the particulars of the charge, and I hold therefore it is a burden on the accused once payment has been proved beyond doubt, to show that it was for an honest purpose. I am not, however,

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relying on the presumption alone
in this case, because having
reviewed the evidence as a whole
I am satisfied beyond all doubt
on P.W.1's evidence that whether
to prevent beating up, planting
or to prevent future harassment,
it was made to keep the officers
"off his back", and the totality
of the evidence satisfies me
beyond all doubt that payment
was made, that it was an
"advantage", that it was made
in connection with both the
accused's activities as police
officers without authority or
excuse, and on account of their
abstaining from taking further
action against P.W.1. That means
that the charge is proved against
both defendants and they are
convicted as charged accordingly.

In the
Magistrates
Court

No.4
Judgment
5th January
1977
(cont'd)

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Sgd. (N.G. Scriven)
.....

Magistrate,
Central Magistracy.

5th January 1977

No. 5
SENTENCE

In the
Magistrates
Court

No.5
Sentence
5th January
1977

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40

I regard each defendant as
equally culpable and the events
which I have found proved are in
my view corruption of the
meanest type. To behave as you
two did is just the sort of
conduct which reduces the police
to the lowest possible point in
public estimation. You were off
duty and displayed an alarming
willingness to control this man
privately. This undermines the
police force as a whole and your
conduct must cause acute dismay
to those thousands of officers

In the
Magistrates
Court

No.5
Sentence
5th January
1977
(cont'd)

trying to preserve morale and
integrity in the police force in
these difficult times.

The only mitigating feature
which I can find is that this was
a relatively small scale, isolated
incident so that taking into
account the fact that your long
career with the police will now
be finished in disgrace, these
are the only features entitling
me to pass less than the maximum
I am entitled to. You will each
go to prison for 2½ years.

10

I regard this as a severe
penalty and as there is no
evidence at all of any systematic
acceptance of bribes there will
be no additional financial penalty
except an order that both of you :-

20

- (i) pay \$1,000 each to P.W.1
by way of compensation
S.12(1), Cap. 20;
- (ii) pay \$1,000 each towards
the costs of the prosecution
(payable to I.C.A.C.)
(S.69, Cap. 227).

Sgd. (N.G. Scriven)
.....

Magistrate,
Central Magistracy.

30

5th January 1977

No. 6
LIST OF EXHIBITS

In the
Magistrates
Court

IN THE MAGISTRATE'S COURT AT CENTRAL
Reg. v. IP Chiu & TSUI Shu-hung
Case No. C3745 of 1976

No.6
List of
Exhibits

LIST OF EXHIBITS

No.	Description
	P.1(a) Statement by TSUI Shu-hung
	P.1(b) Certified translation of P.1(a)
10	P.2(a) Statement in answer to the charge by IP Chiu
	P.2(b) Certified translation of P.2(a)
	P.3(a) Statement in answer to the charge by TSUI Shu-hung
	P.3(b) Certified translation of P.3(a)
	P.4(a) Statement by IP Chiu
	P.4(b) Certified translation of P.4(a)

In the
Magistrates
Court

No. 7
EXHIBITS

No.7
Exhibits
P.1(b)

P.1(b)

3745 (D2) Ex.1
N.G.S. 4/1/77
INDEPENDENT COMMISSION AGAINST
CORRUPTION

WITNESS STATEMENT/REPORT

C.A.C. Report No.
 Other Ref. 10
 Name : TSUI Shu-hung c.c.c.
 Sex : M
 Address : Kennedy Town Police Quarters
 Tel. 5-468450
 Occupation : P.C. 6737 (E.U./H.K. van
 driver)
 Tel.
 Nationality and Dialect : Chinese/
 punti
 D.O.B. 2.9.1934 I.D. Card No. 20
 C.I. No. P.P. No.
 Taken by : HUI Ka-man in punti Language
 at 1245 hrs. on 3.11.76 at (Place) ICAC
 Interpreter D.L. No.
 (Translator : Y.P. LAW on 3.11.76 -
 CLO Reg. No. 'B'1479/76)

I, TSUI Shu-hung, have been
 cautioned that I am not obliged to say
 anything. But whatever I say will be
 taken down in writing, and may be
 given in evidence. 30

(Signed) TSUI Shu Hung

I can remember that sometime
 between 2 p.m. and 3 p.m. on the 18th of
 October this year, I was not required
 to attend duty on that day, I drove
 my eldest son, TSUI Tung-man's private
 car (which is a Opel of 68 model,
 green in color and of registration
 number AL8347) to Tsan Yuk Hospital to
 visit my daughter-in-law. I then went
 to YU Siu-on's clinic in Wanchai to
 fetch the medicine. After that, I
 drove the car home. When my car
 passed by Queen's Road West, I stopped 40

the car due to that red light was on. Just at this moment, I heard someone shouting 'TSUI Shu-hung' on the pavement on my left hand side. I turned my head around to take a look. The person who called me was found to be CHAN Kwan. I knew CHAN Kwan in my childhood. We were all living in Pokfulam at that time. CHAN Kwan was with the Police Force in the past. He changed his occupation to that of a seaman later. After working as seaman, it was said that he turned to be a 'white-powder dealer', and has been working so for ten odd years roughly. CHAN Kwan upon seeing me at that time asked me where I was heading. I answered him by saying I was going home. CHAN told me he was going to visit a friend. While I was chatting with CHAN Kwan, 'San Chai' was suddenly seen come out to talk to CHAN Kwan. Since I was in the car at that time, I did not know what CHAN Kwan and 'San Chai' talked about. I do not know where 'San Chai' walked out from either. The lights turned green while CHAN Kwan was talking to 'San Chai'. I then drove my car to the road kerb in order not to block the traffic. Later, hearing that CHAN and 'San Chai' were talking in louder and louder voice, so I told them to carry on their talk in my car to avoid being seen by so many people. Speaking of this 'San Chai', he is also a policeman currently attached to 'Island Control'. 'San Chai' is his nickname. I do not know his real name. I have known this 'San Chai' for 7 or 8 years. I applied for accommodation in Tanner Hill Police Quarters at that time. But since I had a wooden hut of my own, I did not move into the quarters. It could be that some fokis told 'San Chai' about it, so he told me at that time that he would apply for a unit in Western District after

In the
Magistrates
Court

No.7
Exhibits
P.1(b)
(cont'd)

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In the
Magistrates
Court

No.7
Exhibits
P.1(b)
(cont'd)

the completion of the construction of quarters in that district, and he would then exchange quarters with me. I came to know 'San Chai' because of this matter. But I seldom associated with him. Why I would have asked 'San Chai' and CHAN Kwan to board my car to carry on their talk was because I know both of them, on top of that, I had known them for a long time. After CHAN Kwan and 'San Chai' boarded the rear seat of my car, CHAN Kwan asked me to drive my car to his home to sit for a while. I did not know where CHAN Kwan lived at that time. He told me he was living in Hollywood Road at that time. On the way to CHAN Kwan's house, CHAN Kwan and 'San Chai' carried on their conversation. But because they were talking in low voice, I had to concentrate on driving, therefore, I did not know what they talked about. When the car reached CHAN Kwan's home, both CHAN Kwan and 'San Chai' got off the car. CHAN said to me at the time, "TSUI Shu-hung, go up to my place to sit for a while." I said at first, "Save the trouble of going up, what shall I do up there?" But CHAN said, "Being schoolmates to each other, you wouldn't come up to sit for a while." Hearing CHAN putting it in that way, so I got off the car and followed both of them upstairs. CHAN Kwan walked in the front at that time. 'San Chai' was in the middle, I was the last in the line. I did not say anything to 'San Chai' from the time seeing 'San Chai' in Queen's Road West up to the time of reaching CHAN Kwan's home. Upon entering CHAN Kwan's home, I saw CHAN Kwan's wife and son present in the living room. I addressed CHAN Kwan's wife by saying, "Ah So" on sighting her. She then invited me to sit down. I cannot remember whether CHAN Kwan introduced 'San Chai' to his wife or not. After I greeted Mrs. CHAN, I talked to CHAN's son. I can remember when I asked CHAN's son which class he had reached in his study, he answered,

"Primary school." I asked further,
"Completed or not?" He answered,
"Completed already." I said,
"Carry on your study since you've
completed." But he only smiled
instead of giving me an answer. I
was only talking to CHAN's son and
watching TV in the living room,
and did not pay attention to what
CHAN and 'San Chai' were doing or
talking about. But I remember that
CHAN and 'San Chai' were on the
balcony at that time. After sitting
for 6 or 7 minutes, I told CHAN Kwan
I was going to leave because I had
to go home for dinner. CHAN Kwan
told me to go downstairs with them
to have a cup of tea together at
that time. 'San Chai' also asked
me to give them company. But I said
I would not go with them because I
would not be able to take dinner
should I have the tea. I left upon
saying that. 'San Chai' also
followed me downstairs. CHAN Kwan
accompanied both of us to the
doorway. After getting down to the
ground floor, I drove my car back
home. 'San Chai' left by himself.
After seeing us to the ground floor,
CHAN Kwan returned upstairs alone.
I do not know for all the time why
'San Chai' would have come out to
talk to CHAN Kwan in Queen's Road
West. I did not see 'San Chai'
search CHAN Kwan's person at that
time. I did not see 'San Chai'
search CHAN Kwan's house when we
were there either; nor I saw CHAN
Kwan give 'San Chai' money. I and
'San Chai' stayed in CHAN Kwan's
house for six or seven minutes only.
Today, i.e., the 3rd November, 1976
at 2 p.m., I.C.A.C. Investigating
Officer HUI Ka-man showed me a man
photograph depicting P.C. 4598. I
can recognize the person depicted in
the photograph is the 'San Chai' I
have talked about. He is a 'Police
3-Stripe', i.e., a Sergeant
currently attached to Island
Control. I have read the above
statement, and have been informed
that I may make any additions,

In the
Magistrates
Court

No.7
Exhibits
P.1(b)
(cont'd)

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In the
Magistrates
Court

No.7
Exhibits
P.1(b)
(cont'd)

deletions or alterations. This statement is true and correct, and is made of my own free will.

(Signed) TSUI Shu Hung
Taken by: HUI Ka Man
1415 hrs. on 3.11.76.

I, LAM Tin Kwan, of the
Judiciary, being a public
officer appointed in
writing by the Honourable
the Chief Justice under
section 27(2) of the
Evidence Ordinance
(Cap. 8) hereby certify
that the foregoing is a
true translation of a
Chinese document marked
3579. 10

Dated 15th December 1976.

(Sgd.) 20
COURT TRANSLATOR

In the
Magistrates
Court

No.7
Exhibits
P.2(b)

P.2(b)

3745
N.G.S. 4/1/77

Do you wish to say anything
in answer to the charge?

You are not obliged to say
anything unless you wish to do
so, but whatever you say will be
taken down in writing and may be
given in evidence. 30

States :-

I do not admit.

(Signed) IP Chiu
1105 hrs.
25.11.76.

10

I, LAM Tin Kwan, of the
Judiciary, being a public
officer appointed in
writing by the Honourable
the Chief Justice under
section 27(2) of the
Evidence Ordinance
(Cap. 8) hereby certify
that the foregoing is a
true translation of a
Chinese document marked
3579G.

Dated 15th December 1976.

(Sgd.)
COURT TRANSLATOR

In the
Magistrates
Court

No.7
Exhibits
P.2(b)
(cont'd)

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P.3(b)

3745
N.G.S. 4/1/77

Do you wish to say anything
in answer to the charge?

You are not obliged to say
anything unless you wish to do
so, but whatever you say will be
taken down in writing and may be
given in evidence.

States :-

Nothing to say.

Do not admit.

(Signed) TSUI Shu Hung

1113 hrs.

25.11.76.

30

I, LAM Tin Kwan, of the
Judiciary, being a public
officer appointed in
writing by the Honourable
the Chief Justice under
section 27(2) of the

In the
Magistrates
Court

No.7
Exhibits
P.3(b)

In the
Magistrates
Court

No.7
Exhibits
P.3(b)
(cont'd)

Evidence Ordinance
(Cap. 8) hereby certify
that the foregoing is a
true translation of a
Chinese document marked
3579H.

Dated 15th December 1976.

(Sgd.)
COURT TRANSLATOR

In the
Magistrates
Court

No.7
Exhibits
P.4(b)

P.4(b)

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3745 (D1) Ex.4
N.G.S. 4/1/77
INDEPENDENT COMMISSION AGAINST
CORRUPTION

WITNESS STATEMENT/REPORT

C.A.C. Report No.
Other Ref.
Name : IP Chiu C.C.C.
Sex : M
Address : No.5, Blk. 'D', 8/F, Tanner Hill P.M.Q. 20
Tel.
Occupation : Sgt. 4598/Royal H.K. Police Force
Tel.
Nationality and Dialect : Chinese/
punti
D.O.B. 42 yrs. I.D. Card No.
C.I. No. P.P. No.
Taken by : Self in punti Language 30
at 1125 hrs. on 8.11.76 at (Place)
Rm. 646, ICAC
Interpreter D.L. No.
(Translator : Y.P. LAW on 8.11.76 -
CLO Reg. No. 'B'1496/76)

I, IP Chiu, have just been
cautioned by I.C.A.C. investigating
officer HUI Ka-man, "I am not obliged
to say anything unless I wish to do
so. But whatever I say will be taken
down in writing, and may be given in
evidence." The following is a
statement made of my own free will
after caution. 40

(Signed) IP Chiu

10 I participated in a meeting held by the Force Welfare at the Pol/Mil control room in Central Police Station at 2.30 p.m. on the 18th of October. Superintendent LAU was the chairman. The attendance comprised Sgt. 8802 (E.U.), another Sergeant (serial number cannot be recalled, attached to Causeway Bay Magistracy), P.C. 3094, another P.C. attached to Central Magistracy, a D.C. attached to C.I.D. Headquarters, clerk LI and myself. The meeting touched upon families of members having picnic at Stanley. The meeting was adjourned at sometime after 3 o'clock. I intended to take the opportunity to go to Western Police Station to visit a colleague. So I walked down to Wellington Street to take light bus. The vehicle travelled along Queen's Road West. When it drew close to the junction of Centre Street, there was a traffic jam ahead. So I got off the vehicle with the intention of buying a horse racing form at Tak Kee Tea House. I heard at this moment a man in front call out, "TSUI Shu-hung, where are you going?" I looked ahead and saw a west bound private car AL8734 of which the driver was TSUI Shu-hung. The man in question had walked up to the said car by this time. The car was slowly mounting on the pavement. So I walked up to the said car and stood beside the man in question. I asked, "Do you know him?" He answered, "Yes. Who are you?" I answered, "We are colleagues." The car came to a halt at this time. The man in question asked further, "TSUI Shu-hung, where're you heading? Let's go for tea." TSUI answered, "Going home. Skip the tea to avoid spoiling the appetite for meal. Better come aboard the car and then talk. Blocking the traffic now." The man in question

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In the
Magistrates
Court

No.7
Exhibits
P.4(b)
(cont'd)

then opened the car door and boarded the car to sit at the rear. I intended to take the front seat, but a litter box was blocking the front door. So I also sat at the rear of the car. The man in question asked TSUI again after boarding the car, "Taking a rest?" TSUI answered, "Yes." The man in question said, "Better go to my house to sit for a while." TSUI answered, "Okay." TSUI then asked me if I was free. I said I was merely going to look a colleague up, but he was not off duty yet. TSUI asked me, "There's no appointment, is it?" I said, "None." TSUI suggested better go up together to sit for a while. I agreed. The man in question then suggested to drive the car off, also indicated to turn right into Des Voeux Road, West. TSUI asked after the car was on its way, "Do you know each other?" I answered, "Don't know." TSUI told me he was called CHAN Kwan, known to each other since childhood and he was a policeman in the past. CHAN nodded his head to me and said, "Go up to sit together. I live in Hollywood Road close to the large open ground." I agreed. The car travelled along Des Voeux Road West towards east. CHAN asked me on the way whether I was attached to the same place with TSUI. I answered, "Not at the same place. I'm attached to the 999 Control Room. He (meaning TSUI) is with E.U." CHAN further asked me where I lived and how many children I had etc. I answered his questions one by one. When the car reached Hollywood Road, CHAN said, "Here it is." TSUI then parked the car on the large open ground. We got off the car together, and went up to the second floor with CHAN. CHAN pressed the bell. A woman opened the door. TSUI addressed her, "Ah So." I also said, "Mrs. CHAN." After sitting down, she went away to pour tea. I talked to CHAN Kwan at this time. I said that the flat was

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10 spacious, filled with fresh air
but a bit old. CHAN said he had
been living there for a very
long time, also said the rental
was high and came to seven
hundred odd dollars each month,
and he would move away in case
he could find cheap rental. Soon
afterwards, I wanted to pass
water. CHAN took me to the
kitchen and showed me where the
toilet was. I walked out of the
kitchen after having attended
the toilet and saw CHAN present
at the doorway of the rear room.
So we talked again at the doorway
of the room. He showed me his
room, also said that the flat was
20 too small and dark, and should
not be worth seven hundred odd
dollars a month etc. After
staying for ten odd minutes, I
suggested to TSUI, "I'll have to
leave. You take time to talk to
each other." I then walked to
the living room. TSUI also said
he had to leave. So I left
together with TSUI. CHAN Kwan
30 followed us accompanying us to
the ground floor and then parted.
I went to Hollywood Road alone to
take a bus home. I have read the
above statement, also know that I
may make any additions, deletions
or alterations. The contents of
this statement are true and
correct. It is made of my own
free will.

40 (Signed) IP Chiu
1310 hrs. on 8.11.76.

I was present when IP Chiu
wrote down the above statement by
himself.

(Signed) KWONG Chun Wah
A.C.O.

In the
Magistrates
Court

No.7
Exhibits
P.4(b)
(cont'd)

I, LAM Tin Kwan, of the
Judiciary, being a public
officer appointed in
writing by the Honourable
the Chief Justice under
section 27(2) of the
Evidence Ordinance
(Cap. 8) hereby certify
that the foregoing is a
true translation of a
Chinese document marked
3579A.

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Dated 15th December 1976.

(Sgd.)
COURT TRANSLATOR

In the
Magistrates
Court

No.8
Record of
conviction
of 1st
Respondent
5th January
1977

No. 8
RECORD OF CONVICTION OF
1ST RESPONDENT

Case No. C3745/76
Magistrates Ordinance,
(Cap. 227) Sec. 28

20

FORM 24

Conviction where punishment is by
imprisonment. No Costs

HONG KONG

IN THE MAGISTRATE'S COURT
AT CENTRAL

Before N.G. Scriven, Esquire, a
magistrate of the said Colony, sitting
at the said court.

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The 5th day of January 1977.

D1 IP Chiu, 42 years, Police
Sergeant 4598 (hereinafter called
the defendant) is this day convicted
before the said court for that he, on
the 18th day of October 1976, being a
public servant, namely Police Sergeant

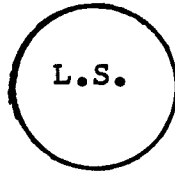
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4598, at 246 Hollywood Road, 2nd floor, in this Colony, without authority or reasonable excuse, accept an advantage, namely the sum of \$2,000 Hong Kong currency from CHAN Kwan on account of his abstaining from performing an act in his capacity as public servants, namely taking police action in respect of an alleged dangerous drugs offence, contrary to S.4(2), Cap. 201 and it is adjudged that the defendant for his said offence be imprisoned in a prison in the said Colony for the space of 2½ years.

In the Magistrates Court

No.8
Record of conviction of 1st Respondent
5th January 1977
(cont'd)

Sgd. (N.G. Scriven)
.....
Magistrate.



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No. 9
RECORD OF CONVICTION OF
2ND RESPONDENT

In the Magistrates Court

No.9
Record of conviction of 2nd Respondent
5th January 1977

Case No. C3745/76

Magistrates Ordinance,
(Cap. 227) /Sec. 28/

FORM 24

Conviction where punishment is by imprisonment. No Costs

HONG KONG

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IN THE MAGISTRATE'S COURT
AT CENTRAL

Before N.G. Scriven, Esquire, a magistrate of the said Colony, sitting at the said court.

The 5th day of January 1977.

D2 TSUI Shu-hung, Police Constable 6737, 42 years (hereinafter called the defendant) is this day

In the
Magistrates
Court

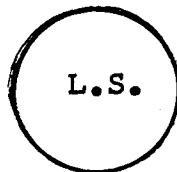
No.9
Record of
conviction
of 2nd
Respondent
5th January
1977
(cont'd)

convicted before the said court for that he, on the 18th day of October 1976, being a public servant, namely Police Constable 6737, at 246 Hollywood Road, 2nd floor, in this Colony, without authority or reasonable excuse, accept an advantage, namely the sum of \$2,000 Hong Kong currency from CHAN Kwan on account of his abstaining from performing an act in his capacity as public servants, namely taking police action in respect of an alleged dangerous drugs offence, contrary to S.4(2), Cap. 201 and it is adjudged that the defendant for his said offence be imprisoned in a prison in the said Colony for the space of 2½ years.

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Sgd. (N.G. Scriven)
.....
Magistrate.



In the
Magistrates
Court

No.10
Notice of
Appeal
against
conviction
by 1st
Respondent
7th January
1977

No. 10
NOTICE OF APPEAL AGAINST
CONVICTION BY 1ST RESPONDENT

Magistrates Ordinance,
(Cap. 227) [Sec. 114]

FORM 101
NOTICE OF APPEAL TO
A JUDGE AGAINST CONVICTION

30

HONG KONG

IN THE MAGISTRATE'S COURT
AT CENTRAL

To Mr. T.Y. LAM, the magistrates' clerk at the said Court.

I, IP Chiu, Prisoner No. 25837, of Victoria Reception Centre do hereby give you notice that it is

my intention to appeal to a judge of the Supreme Court of Hong Kong against a certain conviction of me by N.G. Scriven, Esquire, a magistrate sitting at the said Court.

In the
Magistrates
Court

No.10
Notice of
Appeal
against
conviction
by 1st
Respondent
7th January
1977
(cont'd)

10

Offence: Accepting an
advantage.

Sentence: 2½ years.

Case No.: C3745/76

Date of Sentence: 5.1.1977.

Date of Review:
(if any)

And that the general grounds of such appeal are that there was no evidence, or no sufficient evidence whereon to found the said conviction,

Witness :

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Sgd.
(A. Wong)
for Supt. of Prisons

and that I am not guilty of the said offence.

Dated this 7th day of January
1977.

(Signed) IP Chiu

In the
Magistrates
Court

No.11
Notice of
Appeal
against
sentence
by 1st
Respondent
7th January
1977

No. 11
NOTICE OF APPEAL AGAINST
SENTENCE BY 1ST RESPONDENT

Magistrates Ordinance,
(Cap. 227) [Sec. 114]

FORM 102

NOTICE OF APPEAL TO
A JUDGE AGAINST SENTENCE

HONG KONG

IN THE MAGISTRATE'S COURT 10
AT CENTRAL

To Mr. T.Y. LAM, the magistrates'
clerk at the said Court.

I, IP Chiu, Prisoner No. 25837,
of Victoria Reception Centre do
hereby give you notice that it is
my intention to appeal to a judge
of the Supreme Court of Hong Kong
against my sentence on a certain
conviction of me by N.G. Scriven,
Esquire, a magistrate sitting at the
said Court. 20

Offence: Accepting an advantage.

Sentence: 2½ years.

Case No.: C3745/76

Date of Sentence: 5.1.1977.

Date of Review:
(if any)

Witness :

Sgd. 30
(A. Wong)
for Supt. of Prisons

And that the general grounds of my
appeal are that my sentence was too
severe.

Dated this 7th day of January
1977.

(Signed) IP Chiu

No. 12
NOTICE OF APPEAL AGAINST
CONVICTION BY 2ND RESPONDENT

In the
Magistrates
Court

Magistrates Ordinance,
(Cap. 227) Sec. 114

No.12
Notice of
Appeal
against
conviction
by 2nd
Respondent
7th January
1977

FORM 101

NOTICE OF APPEAL TO
A JUDGE AGAINST CONVICTION

HONG KONG

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IN THE MAGISTRATE'S COURT
AT CENTRAL

To Mr. T.Y. LAM, the
magistrates' clerk at the said
Court.

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I, TSUI Shu-hung, Prisoner No.
25838, of Victoria Reception Centre
do hereby give you notice that it is
my intention to appeal to a judge of
the Supreme Court of Hong Kong
against a certain conviction of me
by N.G. Scriven, Esquire, a
magistrate sitting at the said Court.

Offence: Accepting an advantage.

Sentence: 2½ years.

Case No.: C3745/76

Date of Sentence: 5.1.1977.

Date of Review:
(if any)

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And that the general grounds of
such appeal are that there was no
evidence, or no sufficient evidence
whereon to found the said conviction,

Witness :

Sgd.
(A. Wong)
for Supt. of Prisons

and that I am not guilty of the said
offence.

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Dated this 7th day of January
1977.

(Signed) TSUI Shu-hung

In the
Magistrates
Court

No. 13

NOTICE OF APPEAL AGAINST
SENTENCE BY 2ND RESPONDENT

No.13
Notice of
Appeal
against
sentence
by 2nd
Respondent
7th January
1977

Magistrates Ordinance,
(Cap. 227) Sec. 114

FORM 102

NOTICE OF APPEAL TO
A JUDGE AGAINST SENTENCE

HONG KONG

IN THE MAGISTRATE'S COURT
AT CENTRAL

10

To Mr. T.Y. LAM, the magistrates'
clerk at the said Court.

I, TSUI Shu-hung, Prisoner No.
25838, of Victoria Reception Centre
do hereby give you notice that it
is my intention to appeal to a judge
of the Supreme Court of Hong Kong
against my sentence on a certain
conviction of me by N.G. Scriven,
Esquire, a magistrate sitting at
the said Court.

20

Offence: Accepting an advantage.

Sentence: 2½ years.

Case No.: C3745/76

Date of Sentence: 5th January
1977.

Date of Review;
(if any)

Witness :

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Sgd.
(A. Wong)
for Supt. of Prisons

And that the general grounds of my
appeal are that my sentence was too
severe.

Dated this 7th day of January
1977.

(Signed) TSUI Shu-hung

No. 14
STATEMENT OF FINDINGS OF
MAGISTRATE PURSUANT TO SECTION
114(b) MAGISTRATES ORDINANCE,
CAP. 227, LAWS OF HONG KONG

In the
Supreme Court
of Hong Kong

Central Magistracy
Case No. C3745/76

No.14
Statement of
Findings of
Magistrate
pursuant to
section 114(b)
Magistrates
Ordinance,
Cap. 227,
Laws of
Hong Kong
11th January
1977

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION

10

BETWEEN D1 IP Chiu
D2 TSUI Shu-hung Appellant

and

THE QUEEN Respondent

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This is a statement of the findings on the facts and other grounds of the decision of the undersigned, a magistrate of the Colony of Hong Kong, prepared in accordance with section 114(b) of the Magistrates Ordinance, for the purpose of an appeal to a Judge of the Supreme Court.

1. STATEMENT(S) OF OFFENCE
(Or Other Proceedings).

Accepting an advantage,
contrary to S.4(2),
Cap. 201.

2. DATE PREFERRED. 26.11.76.

3. PLEA(S). Not guilty.

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4. DATE(S) OF TRIAL.

3.1.77., 4.1.77. and 5.1.77.

5. SENTENCE(S)
(Or Other Decisions).

Both defendants sent to
prison for 2½ years.
\$1,000 compensation each
to P.W.1, and \$1,000 each
towards the costs.

In the
Supreme Court
of Hong Kong

No.14
Statement of
Findings of
Magistrate
pursuant to
section 114(b)
Magistrates
Ordinance,
Cap. 227,
Laws of
Hong Kong
11th January
1977
(cont'd)

6. GROUNDS OF APPEAL.

That there was no evidence,
or no sufficient evidence
whereon to found the said
conviction and that the
sentence was too severe.

7. FINDINGS ON THE FACTS AND
OTHER GROUNDS OF DECISION.

C3745/76

Statement of Findings

10

I wrote a judgment and
delivered it in open Court at the
conclusion of this case. There
are only two matters which I would
wish to add now to what I said
there :-

i/ Having regard to S.22 of
Cap. 201 I made no reference
to either P.W.1 or P.W.2
being "accomplices" and to
the need to warn myself in
respect of their evidence.
I did not in fact regard
neither of these as true
participes criminis, since
payment was in my judgment
made to avoid harassment of
P.W.1 of one kind or another.
I found them therefore as a
fact not to be "accomplices"
but if I was wrong then there
were ample corroboration in
the shape of P.W.3's evidence
(the son) and of the
defendant's own statements
admitting the visit at the
time and place alleged.

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ii/ The defendant's statement
(Ex.P.3 and P.4) were not
regarded by me as confessions
of guilt but as admission by
them of some of the facts
alleged by the prosecution,
namely the visit, the time,
the picking up of P.W.1 from

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the public light bus bus stop, and of the parties present at the flat at the material time (R. v. Chandler 1976 3 A.E.R. No.5 as considered in R. v. Donaldson C.A. (CD) 1976),

In the Supreme Court of Hong Kong

No.14
Statement of Findings of Magistrate pursuant to section 114(b) Magistrates Ordinance, Cap. 227, Laws of Hong Kong 11th January 1977 (cont'd)

10 in all other respects I would offer my judgment as my statement of findings and reason for decision.

As to sentence :-

20 It is distressing to have to send two long-service police officers to prison - with a broken career inevitably coupled with loss of pension, it would be tempting merely to fine them and perhaps suspend a prison sentence, but I felt that if, after the Prevention of Bribery Ordinance has been on the Statute Book for 5½ years, this sort of conduct still goes on, then deterrence must be the cardinal point in the assessment of sentences available to me. Counsel said very little in mitigation, so I had to look for 30 redeeming features myself - there seemed to be few. Had I reduced the inevitable custodial sentence and imposed a fine, it would in my view merely be encouraging other corrupt public servants to evaluate their risks in financial terms and set aside reserves accordingly.

40 Dated this at the Central Magistracy the 11th day of January 1977.

Sgd. (N.G. Scriven)
.....
Magistrate.

In the
Supreme Court
of Hong Kong

No.15
Substituted
grounds of
appeal
against
convictions
7th March
1977

No. 15

SUBSTITUTED GROUNDS OF
APPEAL AGAINST CONVICTIONS

IN THE SUPREME COURT OF HONG KONG
CRIMINAL APPEAL NO. 99 OF 1977

BETWEEN :

IP Chiu - 1st Appellant
TSUI Shu-hung - 2nd Appellant

- and -

THE QUEEN - Respondent

10

SUBSTITUTED GROUNDS OF
APPEAL AGAINST CONVICTIONS

TAKE NOTICE that each of the Appellants will rely on the following grounds of appeal against their respective convictions, in lieu of those filed by each of the Appellants personally on the 7th day of January 1977.

20

1. That the learned Magistrate did not follow the mandatory provisions obtained in Section 27(2) of the Magistrates Ordinance (Cap. 227) after amending the Charge.

2. That the learned Magistrate erred in law in convicting the Appellants on a defective amended charge.

30

3. That the learned Magistrate erred in law by invoking and taking into consideration the presumption obtained in Section 25 of the Prevention of Bribery Ordinance (Cap. 201), inasmuch as the said presumption was rebutted by the evidence of the

Prosecution itself, and accordingly there was no or no sufficient evidence to raise the same at the conclusion of the Prosecution case.

In the
Supreme Court
of Hong Kong

No.15
Substituted
grounds of
appeal
against
convictions
7th March
1977
(cont'd)

10

4. That the learned Magistrate misdirected himself in law in convicting the Appellants on the evidence adduced inasmuch as the same did not support the amended charge particularly having regard to his specific findings as stated in lines 33 to 39 (inclusive) of Page 33, and lines 6 to 8 (inclusive) of Page 37, of the Transcript.

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4A. That the learned Magistrate erred in law in admitting Hearsay Evidence from P.W.5 (Mr. Biss) and relied on same.

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5. Generally that it would be unsafe or unsatisfactory to sustain and maintain the said convictions in all the circumstances of the case particularly having regard inter alia to the foregoing grounds either individually, collectively, or otherwise.

Dated this the 7th day of March,
1977.

(Sgd.)
Counsel for the Appellants.

In the
Supreme Court
of Hong Kong

No. 16
Further
grounds of
appeal
against
convictions

No. 16
FURTHER GROUNDS OF
APPEAL AGAINST CONVICTIONS

IN THE SUPREME COURT OF HONG KONG
CRIMINAL APPEAL NO. 99 OF 1977

BETWEEN :

IP Chiu - 1st Appellant
TSUI Shu-hung - 2nd Appellant

- and -

THE QUEEN - Respondent 10

FURTHER GROUNDS OF
APPEAL AGAINST CONVICTIONS

TAKE NOTICE that each of the Appellants will rely on the following Further Grounds of Appeal against their respective convictions, in addition to those filed by each of the Appellants on the 7th of March 1977.

Alternatively to ground 4.A. herein, 20

4.B. That the learned Magistrate erroneously failed to direct himself that in the circumstances, the evidence of P.W.5 (Mr. Biss) should not have been relied on.

Alternatively to 4.A. herein,

4.C. The learned Magistrate erred in law in permitting P.W.5 (Mr. Biss) to refer to his notebook in the witness box to re-fresh his memory in adducing his evidence. 30

(Sgd.)
SOLICITORS for the Appellants

In the
Court of
Appeal of
Hong Kong

No. 18
JUDGMENT OF COURT OF APPEAL

No.18
Judgment
of Court
of Appeal
19th May
1977

IN THE COURT OF APPEAL

1977 No. 99
(Criminal)

BETWEEN

IP Chiu 1st Appellant
TSUI Shu-hung 2nd Appellant

and

THE QUEEN Respondent

10

Coram: Briggs, C.J., Huggins and
Pickering, JJ.A.

J U D G M E N T

Huggins, J.A. :

The Appellants are police officers, the 1st Appellant being a sergeant and the 2nd Appellant a constable, but they were off duty at the material time. They were convicted by a magistrate of accepting an advantage contrary to S.4(2) of the Prevention of Bribery Ordinance, the particulars of offence as originally drafted alleging that they did

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"on 18th October 1976 at
246 Hollywood Road, 2nd
floor, in this Colony,
without lawful authority
or reasonable excuse,
accept an advantage,
namely the sum of \$2,000
Hong Kong currency from

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CHAN Kwan, as an inducement to or reward for or otherwise on account of your abstaining from performing an act in your capacity as public servants, namely taking police action in respect of an alleged dangerous drugs offence".

In the Court of Appeal of Hong Kong

No.18
Judgment of Court of Appeal
19th May 1977
(cont'd)

10 The Appellants appeal against conviction and sentence and the single judge has referred the case to this court.

20 It is not very clear exactly how much of all the evidence he recited the learned magistrate believed, but we will assume that he accepted that CHAN Kwan, a self-confessed drug addict, was approached by the 1st Appellant and searched: that nothing illegal was found on him: that he was asked to get into a car in which the 2nd Appellant was sitting: that CHAN knew the 2nd Appellant to be a policeman: that in the car the 1st Appellant again searched him and found nothing: that as they drove along the 2nd Appellant said to him - "Blockhead, you are selling white powder. We have evidence to prove it": that 30 CHAN admitted that he had done that but that it had been two months before: that on arrival in a school compound the 2nd Appellant introduced the 1st Appellant to CHAN as "a sergeant in charge of his party", whereupon 40 the 1st Appellant searched CHAN again and found nothing: that CHAN was then taken to his home, where a further search was made and nothing illegal found: that his wife pleaded with the 1st Appellant and told him that her husband had turned over a new leaf: that there was a conversation between the wife and the 2nd Appellant in which tea 50 money was mentioned and the 2nd Appellant asked her "to think of a way out and to get \$3/4,000 more":

In the
Court of
Appeal of
Hong Kong

No.18
Judgment
of Court
of Appeal
19th May
1977
(cont'd)

that the wife telephoned a friend to borrow money and obtained a loan of \$1,000, which was added to \$1,000 produced by the husband and handed to the 2nd Appellant in the presence of the 1st Appellant.

The first ground of appeal relates to amendments made to the charge by the magistrate at the close of the prosecution case, purportedly under S.27 of the Magistrates Ordinance. The first amendment was the addition of the description of the offence, "Accepting an advantage". The second was the deletion of the words "as an inducement to or reward for or otherwise" from the particulars. It is complained that the magistrate did not take the procedural steps prescribed by Subs.(2) after he had made the amendments and it is said on the authority of Yip Yuk-lun v Reg. 1961 H.K.L.R. 268 that the omission was fatal. In making the second amendment we think the learned magistrate was in error because it was not "necessary". Indeed the prosecutor very properly expressed his contentment with the particulars as they stood and, although the Crown has not appealed by way of case stated, we shall see that the prosecution was prejudiced by the amendment. Subject to the matters raised in grounds 3, 4, 4B, 4C and 5 it would have been open to the magistrate on the evidence adduced to convict the Appellants on the unamended charge. He would not even have been required to enter a partial verdict. The offence charged after the amendment was the very same as that charged before and in our view S.27(2) had no application. The amendment which consisted of remedying the omission of the statement of the offence was even more technical. That is not to say that the omission was not a defect, since r.3 of the Indictment Rules

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1976 requires that there shall be a statement of the offence, but there can have been no possible doubt what was the offence which had been particularized.

In the
Court of
Appeal of
Hong Kong

Sub-r.(2) may be ambiguous in that it is arguable that "the same" (which has to be read and explained) could refer either to "the necessary amendment" or to "the complaint, information or summons".

No.18
Judgment
of Court
of Appeal
19th May
1977

(cont'd)

10 It seems to be accepted by counsel that it was intended to refer to the complaint, information or summons as amended. In our view it was not necessary to read and explain the amended information to the Defendants. Subs.(2) was clearly intended to relate to cases where the amendment results in a material alteration of the offence charged. As to Subs.(3) the Appellants were represented by counsel and counsel did in fact indicate that she did not wish to have any witness recalled, though in our view such recall should not in any event have been allowed because there were no "matters relevant to such amendment" about which any witness could have been examined.

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40 The second ground of appeal contends that the charge as amended was defective. Although it is not suggested that the charge as it originally stood was bad for duplicity, the argument is that by virtue of the use of the word "otherwise" in S.4(2) it had to be shown that the payment was

- (i) as an inducement to,
- (ii) as a reward for, or
- (iii) on account of (but not as an inducement to or as a reward for)

50 abstaining from performing an act in their capacity as public servants. Therefore, the word "otherwise" having been deleted from the charge, the third

In the
Court of
Appeal of
Hong Kong

No.18
Judgment
of Court
of Appeal
19th May
1977
(cont'd)

alternative was (it is said) insufficiently described. We would not wish to discourage the use of the precise words of the statute in drafting charges, but we think that an allegation that the payment was "on account of" abstaining is in fact wide enough to include a case where it was made "as an inducement to" or "as a reward for" abstaining, these being merely particular instances of payments "on account of" abstaining. The amendment was made because the magistrate thought those two particular instances were not relevant to the present case and he thought he was narrowing the issues. We take a slightly different view and are satisfied that the amended charge was not defective and that the charge was, indeed, not materially altered by the amendment. Since this judgment was drafted we have seen the judgment of McMullin, J. in Chan Wing-yuen v Reg. Criminal Appeal No. 192 of 1977 and we respectfully agree with the observations he there made on this point.

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The third ground of appeal as it originally stood suggested that it was open to the magistrate at the close of the prosecution case to find as a fact that a statutory presumption had been rebutted. That was clearly wrong because whether or not a presumption has been rebutted is a "jury question" and must be decided after the conclusion of the whole of the evidence and the addresses of counsel. The argument advanced under ground 3 was very different and the ground was eventually amended with a view to making it fit the argument. It then read:

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"3. That the learned Magistrate erred in law by invoking and taking into consideration the presumption contained in Section 25 of the Prevention of Bribery Ordinance (Cap.201).

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3A. Alternatively that the learned Magistrate erred in law in relying on the said presumption as the same was rebutted by the evidence of the prosecution itself".

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The foundation of the argument was the amendment by which the magistrate deleted the words "as an inducement to or reward for" from the charge. Section 25 of the Ordinance is in these terms:

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"Where, in any proceedings for an offence under Section 4 or 5, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given and accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved".

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Mr. Litton says that by reason of the amendment the Appellants were no longer alleged in the particulars of offence to have accepted an advantage "as such inducement or reward": they were, in effect, alleged to have accepted it otherwise than as such inducement or reward. It may well be that the draftsman intended that S.25 should, on proof of the gift of an advantage, apply to every case under S.4, but we agree that it does not. But for what we shall have to say later it would be necessary to consider to what extent the magistrate relied upon the presumption.

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Ground 4 raises a question which has caused difficulty on a large number of occasions - whether a public servant has done something "in his capacity as" a public servant. Mr. Litton argues

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that the act which the public servant is to do or to abstain from doing must be one which is legitimately within his capacity as a public servant. The learned magistrate unfortunately took the view that it was unnecessary to make a precise finding as to the reason for the payment. He said:

"Having reviewed the evidence as a whole I am satisfied beyond all doubt ... that whether to prevent beating up, planting /of dangerous drugs on Mr. CHAN/ or to prevent future harassment, it was made to keep the officers 'off his back' ". 10

"Harassment" is a vague term which would include both legitimate police action in prosecuting a person repeatedly for repeated offences and the laying of unfounded charges. The evidence of CHAN was: "I paid over the \$2,000 because from beginning to end they were over exercising their power but I was in their hands I was afraid of a plant" (sic). Whilst "over exercising their power" is equally non-specific, the fabrication of false evidence, even if effected during the course of a police officer's duties, could never be part of his duties or be done in his capacity as a police officer. We agree with Mr. Bellanto that it was not incumbent on the prosecution to particularize the alleged dangerous drugs offence, but on the other hand it was, in our view, necessary to show that there was an allegation of an offence, which allegation was not to the knowledge of the Appellants false. It is not disputed that CHAN had committed an offence two months before, and if the payment had been related to that the conviction would have been supportable, but the evidence showed that the payment was made in respect of a possible future allegation of a future "offence" which would be 20 30 40 50

proved by planted evidence. It is immaterial that the various searches were carried out by the Appellants in their capacities as police officers: the act from which they abstained would not have been so done. It follows that when they received money in respect of that abstention they did not receive it on account of their abstaining from performing an act in their capacity as public servants. Mr. Bellanto suggested, on the authority of So Sun-leung v Reg. Criminal Appeal No. 261 of 1973, that the test was "whether the gift would have been given or could have been effectively solicited if the person in question were not the kind of public servant he in fact was". Even accepting that as a correct test we do not agree that the answer in this case must be "No", any more than it would be "No" if a police officer in uniform received money as a result of using his service revolver to commit a robbery when on beat duty: his duty would be the opportunity for the commission of the robbery but the robbery would not be committed "in his capacity as a police officer". In our view the magistrate should have found that there was no case to answer on the charge of accepting an advantage, but there was evidence of a possible offence of blackmail and the proper course was for him to amend the information accordingly in the exercise of his powers under S.27 of the Magistrates Ordinance.

In our view the remaining grounds of appeal concerning the evidence of Mr. Biss of the Independent Commission Against Corruption were without substance. During the inquiries into this case Mr. Biss interrogated both Appellants with the assistance of the officer in charge of the case,

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Mr. HUI, who acted as Interpreter. Mr. Biss purported to give evidence of what the Appellants had said. Strictly he should not have done that as he does not understand Cantonese, but should have confined himself to reporting what Mr. HUI had said to him. Mr. HUI testified that he acted as Interpreter. It would have been better had he also been asked whether he correctly translated to the Appellants what was said by Mr. Biss and correctly translated to Mr. Biss what was said by the Appellants to the best of his ability, but as that is a necessary part of the act of interpretation we do not think the omission was fatal. Mr. Litton complains that Mr. HUI was not employed by the Independent Commission Against Corruption specifically in the capacity of an interpreter and was in fact the officer in charge of the case, with the result (it is alleged) that he did not confine himself to interpretation. In support of this complaint it is pointed out that on an occasion when Mr. Biss left the room Mr. HUI did put some questions of his own to the 2nd Appellant. It does not follow that Mr. HUI did not faithfully perform the function of an Interpreter when Mr. Biss required him to do so or that his translation was necessarily coloured. The fundamental contention advanced against Mr. Biss's evidence is that it was totally inadmissible as hearsay. Indeed Mr. Litton went so far as to argue that the evidence of a person who uses an Interpreter is always hearsay, although in some circumstances it may be admissible under an exception to the hearsay rule. Such an exception would be where the Interpreter was illiterate: Gaio v Reg. (1960) 104 C.L.R. 419. However, Reg. v Attard (1958) 43 Cr. App. R. 90 is relied upon as authority for the substantive proposition. In

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our view that was a different case, because the Interpreter was not there called as a witness: the evidence of the police officer was clearly inadmissible because he was not speaking from his personal knowledge when he testified as to what the accused had said. All Mr. Biss was required to do was to repeat the words spoken to him by the Interpreter (not as evidence of the truth of what was said to him but merely as evidence of the fact that it was said) and the words he spoke to the Interpreter. The Interpreter could then testify that what he said in one language was a translation of what had been said in the other. We do not think Gaio v Reg. is authority for the proposition that where an Interpreter is not illiterate he alone may give evidence: he is no less a conduit pipe than the illiterate Interpreter. He may be able, with or without the aid of notes made by himself, to remember what was said, but interpretation is a most arduous and difficult occupation and even the best of interpreters may find that all their concentration is needed to perform their primary function, so that they are left with little or no recollection of the contents of what has been said. Where a note is taken by the interrogating officer it is desirable that the Interpreter should be asked whether he can agree that it is a correct note, in which case the note will be available to him for the purpose of refreshing memory. In the present case the note was not made until after the interrogation and Mr. HUI was not invited to check it at the time. In those circumstances the learned magistrate was right not to allow Mr. HUI to refresh his memory from the note.

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Nevertheless it was proper that
Mr. Biss himself should have been
allowed to use his note to refresh
his memory.

The fact that no verbatim
note of the interrogation was made
was itself a ground of criticism and
Mr. Litton submitted that this was
contrary to normal police practice
both in Hong Kong and in the United
Kingdom. If the law enforcement
agencies were required to take a
verbatim note of every interrogation
it is conceded that their task would
be impossible. However, Mr. Litton
eventually confined his contention
to cases, like the present, where
the person under interrogation is
already under arrest and it is
therefore apparent that any statement
made by the suspect is likely to be
relied upon as evidence. We agree
that in such circumstances it is
desirable not only that the statement
should be recorded verbatim but that
it should be recorded in the language
used by the suspect. The Full Court
so stated in Li Ming-kwan v Reg. 1973
H.K.L.R. 275, 278. Failure to follow
that course may well result in a
judge's suggesting to himself or to a
jury that no weight should be
attached to the alleged statement.
However, weight is a "jury matter"
and we cannot say that the judge here
was not entitled to rely on Mr. Biss's
evidence. The alleged "grave dis-
crepancies" between the evidence of
Mr. Biss and Mr. HUI do not appear to
us of such substance as to make the
verdicts unsafe or unsatisfactory.

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Since the only ground upon which
we find that these convictions must
be quashed is that there was no
evidence to put the Appellants upon
their defence on a charge of accepting
an advantage and since we are
satisfied that there was ample
evidence to justify (and, indeed, to
require) an amendment of the charge
to one of blackmail, the question

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remains whether we should order such an amendment and remit the case for further hearing. We know of no precedent for the adoption of such a course where the trial on the original information has proceeded to conviction and reluctantly we have come to the conclusion that it would not be right to adopt it here.

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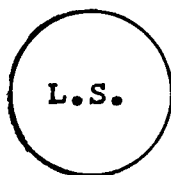
The appeals are allowed and the convictions quashed.

19th May 1977.

No. 19
ORDER GRANTING SPECIAL LEAVE TO
APPEAL TO PRIVY COUNCIL

In the Privy Council

No.19
Order granting Special leave to Appeal to Privy Council
25th April 1978



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At the Court at Windsor Castle
The 25th day of April 1978

PRESENT
THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 21st day of March 1978 in the words following viz.:-

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"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of The Attorney General

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in the matter of an Appeal from
the Court of Appeal of Hong
Kong between the Petitioner and
(1) IP Chiu and (2) TSUI Shu-hung
Respondents setting forth that
the Petitioner prays for special
leave to appeal from a Judgment
of the Court of Appeal of Hong
Kong dated the 19th May 1977
allowing an Appeal by the
Respondents against their
conviction of an offence under
Section 4(2)(a) of the Prevention
of Bribery Ordinance: And humbly
praying Your Majesty in Council
to grant the Petitioner special
leave to appeal against the
Judgment of the Court of Appeal
of Hong Kong dated the 19th May
1977 and for further or other
relief:

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"THE LORDS OF THE COMMITTEE in
obedience to His late Majesty's
said Order in Council have taken
the humble Petition into
consideration and having heard
Counsel in support thereof and
in opposition thereto Their
Lordships do this day agree
humbly to report to Your Majesty
as their opinion that special
leave ought to be granted to the
Petitioner to enter and prosecute
his Appeal against the Judgment
of the Court of Appeal of Hong
Kong dated the 19th May 1977:

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"And Their Lordships do
further report to Your Majesty
that the proper officer of the
said Court of Appeal ought to
be directed to transmit to the
Registrar of the Privy Council
without delay an authenticated
copy of the Record proper to be
laid before Your Majesty on the
hearing of the Appeal upon
payment by the Petitioner of
the usual fees for the same."

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor or Officer administering the Government of Hong Kong and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

N.E. LEIGH