
IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Criminal Revision No 4 of 2007

**Amue Athu
(Charged as Meitinee Wongsa)**

v

PUBLIC PROSECUTOR

-Before-

THE HONOURABLE JUSTICE LEE SEIU KIN (COURT 4D)

Heard on:

Friday, 13th April 2007

Day 1

For the Public Prosecutor

Ms Janet Wang [Wang]

For Petitioner

Mr Ragbir Singh s/o Ram Singh Bajwa [Bajwa]
M/s Bajwa & Co

Certification

It is hereby certified that we have produced a full and accurate record of the transcript of the audio recording to the best of our skill and ability.

For and behalf of
WordWave International Asia Limited

Rachel Tan
Supervisor - Supreme Court Contract

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Table of Contents

CERTIFICATION

1 **(Commenced at 11.46am)**

2 Bajwa: Please you, your Honour. Your Honour, my name is Bajwa. I
3 appear for the petitioner in this case.

4 Court: Yes.

5 Bajwa: And my learned friend Ms Wang appears for the Public
6 Prosecutor.

7 Court: Right.

8 Bajwa: Your Honour, there are two preliminary issues that I'd like to
9 deal with this morning. One is a question of interpreter. We
10 have mentioned in our petition that the petitioner understands
11 the language known as Akha because she belongs to an---the
12 Akha tribe. It is a---

13 Court: Right.

14 Bajwa: ---a tribe that resides in the borders along Thailand---northern
15 Thailand and Burma.

16 Court: Yes.

17 Bajwa: So Registry has informed me that they were unable to get a
18 Akha interpreter.

19 Court: Yes.

20 Bajwa: And so I offered my assistance. And I have actually summoned
21 down---

22 Court: Yes.

23 Bajwa: ---an Akha person who also can interpret, though she's not an
24 official Court interpreter. She had actually in fact---and I
25 would like to disclose this to the Court---that she had actually
26 acted for me in interpreting my instructions when I went down
27 to visit the petitioner in prison. However, your Honour, she is
28 entirely independent. She only knew about this case over the
29 internet when she was---she found out some of the information
30 on the internet, and that's how we got on to her as well. Her
31 resume has been handed over to the Crime Registry. They
32 seem to be satisfied with it, and they have actually sworn her in

1 already to interpret, subject only of course if---whether there's
2 any objection from the prosecution---

3 Court: All right.

4 Bajwa: ---and from the Court.

5 Court: All right. And I have---her name is Isariya Ar-Ngee. I don't
6 know whether it's the correct pronunciation.

7 Ar-Ngee: Yes.

8 Court: All right.

9 Bajwa: That's right.

10 Court: And you have taken an oath as an interpreter?

11 Unidentified speaker: Yes, she did.

12 Court: Can you speak English?

13 Ar-Ngee: Yah.

14 Court: All right, then you better speak for yourself then, all right?

15 Ar-Ngee: Yah, right, okay.

16 Court: You are an Akha national?

17 Ar-Ngee: Yes.

18 Court: Yes?

19 Ar-Ngee: Yes.

20 Court: All right. Ms Wang, any---

21 Wang: Yes, your Honour. First, your Honour, in respect of the use of
22 this interpreter, your Honour, in Court today. Your Honour, we
23 have a concern. This interpreter, your Honour, she has never
24 been---

25 Court: Pardon?

26 Wang: She has never been a Court interpreter.

27 Court: I know that, yes.

28 Wang: And---but of course, your Honour, if the purpose of using her
29 today, your Honour, is to assist the Court, we have no
30 objections to that. But, your Honour, I must add a rider. We
31 are not accepting that by the use of her today, it means that the
32 appellant did not understand the Thai language. We're not

- 1 accepting that.
- 2 Court: We don't know. We have to find out. I mean---
- 3 Wang: Yes, we do not accept that because, your Honour, if your
4 Honour have read the petition and the grounds set out, the
5 allusion she made in her petition, your Honour---
- 6 Court: Yes.
- 7 Wang: ---she had alluded and claimed that she did not understand the
8 Thai language.
- 9 Court: Yes.
- 10 Wang: So, your Honour, we are just saying that with respect to the use
11 of the interpreter today, your Honour, we have no objections if
12 it is to assist the Court.
- 13 Court: Oh yes, yes, yes.
- 14 Wang: But we are not accepting that the position that she---the
15 applicant only understood---
- 16 Court: Yes, okay.
- 17 Wang: ---Akha language, your Honour.
- 18 Court: Yes, I understand.
- 19 Wang: So that is the rider here, your Honour.
- 20 Court: All right.
- 21 Wang: Your Honour, if I---
- 22 Court: Just a minute, just a minute.
- 23 Wang: Sorry, your Honour.
- 24 Court: Yes, Ms Wang. She has something I think. Yes, you wanted to
25 apply for something, right?
- 26 Wang: Well, yes, your Honour, I'm coming to this, your Honour.
27 Your Honour, we have earlier written to the Court, your
28 Honour---
- 29 Court: Yes.
- 30 Wang: ---seeking an adjournment in this case, your Honour, as various
31 grounds were raised in the application---in the petition of the
32 applicant, of which the prosecution wanted to seek further

- 1 clarifications. Your Honour, on that note, your Honour, I
2 would just like to inform you, your Honour, that we are ready
3 to assist the Court, your Honour. I have prepared a set of
4 written submissions, your Honour.
- 5 Court: Yes, I know, but what is the grounds of your application for
6 adjournment?
- 7 Wang: Sorry, your Honour, at this point, your Honour, we are not
8 seeking an adjournment, your Honour.
- 9 Court: Oh, you are not seeking now?
- 10 Wang: We are ready to go on, yes.
- 11 Court: Oh, okay.
- 12 Wang: Of course save for various points, your Honour, which I have to
13 inform the Court that we do not have certain requisite
14 information, but your Honour, I'll---I'll just---I'll go to that
15 when I---when I arrived at my---certain stage of my
16 submissions, your Honour.
- 17 Court: All right.
- 18 Wang: But at this stage, yes, I'm ready to go on, your Honour.
- 19 Court: Okay.
- 20 Bajwa: Very well, your Honour, may I then proceed with the---
- 21 Court: Before---before that, Mr Bajwa, maybe I just ask Ms Wang one
22 point.
- 23 Bajwa: Yes, sure.
- 24 Court: What was the purpose of your applying for adjournment? I
25 think Mr Bajwa's point is that she has been in prison for 6
26 months or more, more than 6 months already, right? And
27 adjournment would mean delaying her release if he succeeds
28 anyway.
- 29 Wang: Well, of course. First, your Honour, if I may just lay out the
30 context and the circumstances and the background---
- 31 Court: Yes.
- 32 Wang: ---behind our application. Your Honour, we received this

- 1 application or the petition for the criminal revision some time
2 late last week.
- 3 Court: Yes. Last week?
- 4 Wang: Yes, your Honour.
- 5 Court: I see, all right.
- 6 Wang: It was sent to us, your Honour, I think it was late evening of 3rd
7 of April, your Honour.
- 8 Court: It was filed on---when was it filed, Mr Bajwa?
- 9 Bajwa: 30th of March, your Honour.
- 10 Court: 30th of March.
- 11 Wang: Yes, this is the---there's just no casting aspersions on my
12 learned friend, your Honour, but by the time the High Court---
- 13 Court: Oh, I see.
- 14 Wang: ---sent the papers down to us, your Honour.
- 15 Court: Late last week, is it?
- 16 Wang: Yes, your Honour. And that was on the evening on---on the
17 3rd of April, your Honour.
- 18 Court: All right.
- 19 Wang: And your Honour will note that last week was a short week,
20 your Honour, and in view of various grounds and allegations
21 which were raised in the petition, your Honour, we had to
22 speak to the authorities, namely, ICA, your Honour. I had to
23 recall the IO in this case, the investigating officer, and also to
24 instruct her to look into the various claims that were raised in
25 the petition. And in view of that, your Honour, we were
26 concerned that we will not be able to meet the timeline because,
27 your Honour, the Court had earlier set a deadline for us to file
28 our arguments by the 10th, your Honour, that was a Tuesday,
29 your Honour. So, your Honour, in view of the long weekend
30 and---and---and there were a lot of investigations to be carried
31 out, your Honour---
- 32 Court: Yes.

- 1 Wang: ---on---we applied for the adjournment, your Honour, earlier on
2 Monday, your Honour.
- 3 Court: Right.
- 4 Wang: So that was more to---essentially to pre-empt bursting the
5 timeline on the 10th, your Honour.
- 6 Court: All right, so now---now you are okay?
- 7 Wang: Yes. In the meantime, your Honour, we have tried our best,
8 your Honour, to carry out whatever sort of clarifications we
9 could, your Honour.
- 10 Court: All right. All right, fine.
- 11 Wang: And therefore, your Honour, I do apologise that I only managed
12 to give you a copy of my written submissions today and of
13 course to my learned friend.
- 14 Court: Yes, that's all right, yes.
- 15 Bajwa: Your Honour, I appreciate my learned friend's efforts to have
16 got the arguments ready by this morning. May I just tender to
17 her as well the authorities---
- 18 Court: Now, Mr Bajwa, this is a criminal revision, right?
- 19 Bajwa: Yes.
- 20 Court: And you are going on the basis that the conviction was
21 wrong---sorry, criminal revision?
- 22 Bajwa: Yes, your Honour, I---I am---
- 23 Court: I mean, once the commission is correct, the sentence is really
24 the minimum, isn't it?
- 25 Bajwa: That's right, yes.
- 26 Court: Yes? So the conviction was wrong? Of course to any extent
27 that you are going on the basis that she ought not to have been
28 prosecuted, that's a separate issue which is not within my
29 jurisdiction, right?
- 30 Bajwa: Not necessarily---
- 31 Court: I mean, the points that you raised about---assuming it's
32 true---that she being a victim of trafficking and so on---

- 1 Bajwa: Yes.
- 2 Court: ---would go to the---to the manner in which the executive ought
3 to have dealt with her up to the point of, you know, deciding
4 whether to prosecute or not, right? But insofar as she has been
5 charged in Court under section 36---
- 6 Bajwa: Yes.
- 7 Court: ---right, the charged that was proceeded with, and insofar as on
8 the proceedings, according to the---the---the notes of
9 evidence---
- 10 Bajwa: Yes.
- 11 Court: ---right, she had pleaded guilty and---to the charge and in fact
12 gave some mitigation---
- 13 Bajwa: Yes.
- 14 Court: ---your grounds would be that she had actually not pleaded
15 guilty because she was not---she did not understand the
16 proceedings and---
- 17 Bajwa: She had pleaded guilty.
- 18 Court: Right?
- 19 Bajwa: She had pleaded guilty because she did not understand the
20 proceedings, not---not---not pleaded guilty but pleaded---
- 21 Court: Yes, she had pleaded guilty but---purportedly pleaded guilty
22 but she had not understood---
- 23 Bajwa: Yes.
- 24 Court: ---the---the---the full extent of the plea of guilt---
- 25 Bajwa: The proceedings itself, yes.
- 26 Court: ---and also admitted to the statement of facts without
27 understanding what it was?
- 28 Bajwa: That's correct.
- 29 Court: That's---that's your basic point, right?
- 30 Bajwa: That's correct, your Honour.
- 31 Court: And therefore the Court ought to quash the conviction? That's
32 the application before me?

- 1 Bajwa: That's correct, except, your Honour, the first point: Although
2 you---you are right when you say that it may be an executive
3 decision that I'm queering in a sense that the ban should not
4 have been made in the first place---
- 5 Court: Yes.
- 6 Bajwa: ---which is where they failed to recognise her as a victim of
7 human trafficking. I am bringing that up so that essentially
8 when you go for revision before the Court, you look at all the
9 circumstances, including the process of investigation, if you
10 come to the---
- 11 Court: All right. So to the extent that if there's any discretion that I
12 have to exercise---
- 13 Bajwa: Yes.
- 14 Court: ---I should take into account all these factors?
- 15 Bajwa: Yes.
- 16 Court: All right.
- 17 Bajwa: Because the final conclusion is that basically, is it unjust to
18 have this particular person punished?
- 19 Court: I understand, I understand.
- 20 Bajwa: That's the main---
- 21 Court: I understand.
- 22 Bajwa: ---in swaying---it's all encompassing, your Honour.
- 23 Court: The---of course the applicant has filed---or various people have
24 filed affidavits on behalf of the applicant.
- 25 Bajwa: Yes.
- 26 Court: And I have read through those affidavits.
- 27 Bajwa: Thank you, your Honour.
- 28 Court: But that goes to the circumstances?
- 29 Bajwa: Yes.
- 30 Court: The basic issue is still whether that commission ought to be
31 quashed---
- 32 Bajwa: Yes.

- 1 Court: ---right? Because if that commission is---is valid, is---is
2 correct, then the 1 year sentence is---
- 3 Bajwa: Yes.
- 4 Court: ---there's no question about it, right?
- 5 Bajwa: Terminated, yes.
- 6 Court: All right. So I've understood that part. But I have looked at
7 the charge and the statement of facts and I have discovered
8 something which perhaps you, and particularly Ms Wang could
9 render some assistance on it because it seems to me that that is
10 the starting point, right?
- 11 Bajwa: Yes.
- 12 Court: Even if she had understood the charge and so on, whether the
13 statement of facts discloses an offence, right---and Ms Wang I
14 think your assistance would be of great help in this manner---in
15 this matter---look at the charge that was proceeded with, which
16 is the 2nd charge.
- 17 Bajwa: That's right, 2nd charge.
- 18 Court: Mr Bajwa, you can sit down.
- 19 Bajwa: Thank you, your Honour.
- 20 Court: I think Ms Wang maybe would be the more appropriate person.
21 It's a charge under section 36. And 36, the pre-condition for 36
22 is, the person must have been on a prior occasion removed or
23 otherwise lawfully sent out.
24 What is this expression "removed or otherwise lawfully sent
25 out"? What does it entail?
- 26 Wang: Your Honour, in respect to this phrase, your Honour---
- 27 Court: I---I---I can understand it if you are not prepared for it, but---
- 28 Wang: No, yes, your Honour, I---I can---
- 29 Court: You are prepared for it, all right.
- 30 Wang: ---I---I can assist, your Honour. Your Honour, we have---in
31 this context, your Honour, we are not speaking of someone
32 who---who---who has been convicted in Court. That means a

12.00pm

- 1 Court conviction is not a prerequisite in---in a case like that,
2 which means that we actually are referring to cases including
3 cases of repatriation, that means persons who are repatriated.
4 And it may not necessarily be that they have committed any
5 offences or that they have been---
- 6 Court: Yes, but what is the---what is it then?
- 7 Wang: ---charged in Court so---your Honour, when we are talking
8 about “have been removed or otherwise lawfully sent out”,
9 your Honour, that means pursuant to a ban order being read to
10 the person, your Honour. So this is the authorisation, that
11 means an officer from ICA, he’s authorised to---
- 12 Court: Ban order. So there is a ban order here, all right---
- 13 Wang: Yes, that’s right, your Honour. So this---this is actually the---
- 14 Court: ---which Mr Bajwa has some complaint about. It---it seems to
15 be---
- 16 Wang: That’s right.
- 17 Court: ---it’s in the note---note of proceedings, you know. This---this
18 letter that she signed, right? Mr Bajwa, you’re satisfied now
19 you have a copy of the letter that---that---that ban order there---
- 20 Bajwa: Your Honour, I have a---
- 21 Court: ---she---she didn’t sign it actually, she---she impressed her
22 thumbprint on it. It---it’s in the notes of evidence that the
23 sub---subordinate courts had produced, I think it’s the last page,
24 the last page of the bundle.
- 25 Bajwa: Your Honour, you’re talking about the criminal petition itself.
26 The petition itself, I have that---
- 27 Court: Well, we received notes of evidence from the subordinate
28 court.
- 29 Bajwa: You have received, your Honour?
- 30 Court: Oh, you have not?
- 31 Bajwa: Sorry, no, I have not received, your Honour.
- 32 Wang: No, we have not, your Honour. We have not, your Honour.

- 1 Court: You have not received?
- 2 Wang: Yes.
- 3 Bajwa: No, your Honour.
- 4 Court: Then how are we going to proceed if you have not received?
- 5 Wang: Your Honour, if I may assist, your Honour, I have certified true
6 copies of the ban order.
- 7 Court: You have given a copy to him, right?
- 8 Wang: Yes.
- 9 Court: All right. Oh, you haven't?
- 10 Bajwa: No, your Honour.
- 11 Court: Well---
- 12 Bajwa: Your Honour, perhaps, your Honour ---
- 13 Court: Well, you need that?
- 14 Bajwa: Yes, your Honour.
- 15 Court: You will need that.
- 16 Bajwa: I have not had sight of a---
- 17 Court: Do you have the statement of facts, Mr Bajwa?
- 18 Bajwa: I have the statement of facts.
- 19 Court: You have the statement of facts.
- 20 Bajwa: ---that is in---
- 21 Court: All right, that's all you need.
- 22 Bajwa: The only document I have, your Honour, is what I have
23 displayed in the petition itself.
- 24 Court: All right. Well, I mean this is a criminal revision, I suppose
25 things happened very quickly so---
- 26 Bajwa: Yes, your Honour.
- 27 Court: So long as we have everything, that's fine. All right. So Ms
28 Wang, this is the ban order you're talking about?
- 29 Wang: Yes, that's right, your Honour. So he---this is the so-called---
- 30 Court: Under what provision---
- 31 Wang: ---lawful sending out, your Honour.
- 32 Court: Who---who had---who did the banning?

- 1 Wang: Sorry, your Honour?
- 2 Court: Who did the banning?
- 3 Wang: Who did the banning---
- 4 Court: Yes.
- 5 Wang: Well, your Honour, in this---
- 6 Court: Here---here, this letter merely says:
- 7 [Reads] “You are hereby informed that you are banned from
- 8 entering Singapore with effect from that...”
- 9 Wang: Yes.
- 10 Court: Who banned it?
- 11 Wang: The IC authorities, your Honour. The Controller of
- 12 Immigration, your Honour.
- 13 Court: Controller of Immigration.
- 14 Wang: Yes.
- 15 Court: But this is not signed by the Controller of Immigration, right?
- 16 Wang: No, your Honour.
- 17 Court: No.
- 18 Wang: This is signed by someone who has been delegated the duty of
- 19 an---who’s the authorised officer, your Honour. Your Honour,
- 20 in fact, your Honour, I have in my submissions, your Honour,
- 21 enclosed affidavit of this officer, your Honour, who issued this
- 22 ban order. Because one of the grounds relied on by my learned
- 23 friend in his petition, your Honour---
- 24 Court: But this is not a ban order. This is an---this is a---
- 25 Wang: The ban notification, your Honour.
- 26 Court: This is a notification, right---
- 27 Wang: Yes, to inform---
- 28 Court: ---that she has been banned, right?
- 29 Wang: Yes. The applicant that she is banned and it’s a permanent ban
- 30 and then---
- 31 Court: Right.
- 32 Wang: ---she is not to---

- 1 Court: Right. So all we have is---
- 2 Wang: ---re-enter.
- 3 Court: ---this document---
- 4 Wang: Yes.
- 5 Court: ---which says that she has been notified that she has been
6 banned.
- 7 Wang: Yes. And the consequences of---
- 8 Court: This document is not the banning order as such. It's a
9 notification that she's been banned.
- 10 Wang: Yes, that's right.
- 11 Court: Right. I'm not saying that you need to show her the banning
12 order.
- 13 Wang: That's right.
- 14 Court: Right. But this document is not---
- 15 Wang: Yes.
- 16 Court: ---the banning order.
- 17 Wang: Yes. That's right, yes.
- 18 Court: Right, it's not the operative---
- 19 Wang: Yes.
- 20 Court: ---order, right?
- 21 Wang: Yes.
- 22 Court: It's just---if there is a banning order, she has been notified that
23 there is one?
- 24 Wang: Yes, that's right.
- 25 Court: But then she is banned under which provision? Is it---is that a
26 blanket power on the part of the Controller of Immigration to
27 ban anybody he likes?
- 28 Wang: No, your Honour. Of course the Controller would have an
29 empowering provision, your Honour, in the Act, your
30 Honour---
- 31 Court: Right. Right.
- 32 Wang: ---which, your Honour, I do apologise, your Honour, that I'm

- 1 not able to give that section to you right now, your Honour.
2 But I have actually enclosed the relevant documentation and in
3 my submissions to which I will refer during my submissions.
- 4 Court: Yes, okay.
- 5 Bajwa: Your Honour, if I read what your Honour has said which I am
6 grateful for. Looking at the section---
- 7 Court: No, no, no. I---I---
- 8 Bajwa: Yes.
- 9 Court: I'm sorry, Ms Wang, I misunderstood you. I---this is a
10 preliminary point that I---I would like to get over.
- 11 Wang: Yes, your Honour.
- 12 Court: All right. Preliminary point is, whether the statement of facts
13 disclosed that the applicant has committed an offence under
14 section 36, right. And my starting point was that section 36 has
15 a precondition that there was a prior removal or otherwise
16 lawfully sending out. If there has not been a prior removal or
17 otherwise lawfully sending out, then she would not have
18 committed an offence, right?
- 19 Wang: Yes, your Honour.
- 20 Court: Right. So now we are---I'm then looking at the statement of
21 facts to see whether---well, you agree that the statement of facts
22 must contain all the elements of the offence?
- 23 Wang: Yes, your Honour.
- 24 Court: All right. So it must contain something to show that she was
25 removed or otherwise lawfully sent out.
- 26 Wang: Yes, your Honour.
- 27 Court: All right. So now, as far as this ban notification is concerned,
28 this is not the---I mean, we---I think insofar as the statement of
29 facts is concerned, it describes her coming to Singapore on the
30 23rd of April 2004 and it describes her going back to Thailand
31 on the 24th, all right, where you---what el---what more it
32 describes, we will go to it later. And then of course it describes

- 1 that she re-entered Singapore in---on 27th September 2006.
- 2 Bajwa: That's right.
- 3 Court: And so on, right. So---so the subsequent entry is---is okay. So
4 the point is, insofar as there is a precondition that she must
5 have been removed or otherwise lawfully sent out of
6 Singapore---
- 7 Wang: Yes.
- 8 Court: All right. So that---my---my---my concern is, whether the
9 statement of facts has stated that because any conviction must
10 be based on that fact. If that fact is absent in the statement of
11 facts, then the---all---then---then---then one vital element of the
12 offence has not been made out or proved as---as it were.
13 You---you understand my point, Ms Wang? I---I know it's a
14 bit of a surprise because I---
- 15 Wang: Yes, I do, your Honour. Yes, I do, your Honour.
- 16 Court: ---I only look---I only saw it, you know, last night, so I---I
17 thought I hear you on it.
- 18 Wang: Yes, your Honour. Your Honour, I do, your Honour. Your
19 Honour, I'm actually referring to paragraph 3 of the---my
20 learned friend's petition, your Honour, because I do not have
21 a---a record of the---
- 22 Court: It's not the submission, it's statement of facts.
- 23 Wang: Yes. Yes, which is the---
- 24 Court: It's not even Mr Bajwa's submission. This is just something
25 that I---I notice.
- 26 Wang: No, your Honour, the statement of facts is reflected there,
27 because we do not have the benefit of the notes of evidence.
28 The---
- 29 Court: You don't have the benefit of what?
- 30 Wang: The record of proceedings which---
- 31 Court: I know but do you have the statement of facts?
- 32 Wang: Yes, I do have---

- 1 Court: Yes.
- 2 Wang: ---which is in my learned friend's petition.
- 3 Court: Oh, you don't have the statement of facts yourself?
- 4 Wang: No, I do not have, your Honour.
- 5 Court: Oh, I thought---I thought you already checked with the---
- 6 Wang: No.
- 7 Court: ---immigration on this.
- 8 Wang: No, your Honour. Usually we will get a copy from---from the
- 9 Courts, your Honour.
- 10 Court: Oh, I see, I see.
- 11 Wang: Yes.
- 12 Court: All right. But you have---you have the statement of facts,
- 13 right?
- 14 Wang: Yes.
- 15 Court: You look at the first paragraph, all right. First paragraph
- 16 describes the---the applicant. Then she said---said that:
- 17 [Reads] "She was arrested on 6th of October for making false
- 18 statements in the application for Visit Pass"---then---"...
- 19 subsequently referred to ICA Investigation Branch...for further
- 20 investigation."
- 21 Paragraph 2 is the crucial one.
- 22 [Reads] "Investigation revealed that the Accused previously
- 23 entered Singapore on 23rd April to solicit in Singapore"---all
- 24 right---"However AVB officers arrested her on 23rd April 04.
- 25 So---so far it shows that she entered Singapore on 23rd 04 and
- 26 she was arrested on 23rd 04, right, continuing from there.
- 27 [Reads] "...and referred her to the Immigration Department for
- 28 repatriation..."
- 29 So so far there is the---the---the---the requirement of---what's
- 30 the word "removed or otherwise lawfully sent out" is not made
- 31 out yet, right. AVB arrested her and referred her to
- 32 Immigration for repatriation, right?

- 1 Wang: Well, your Honour, if--if I may, your Honour. Your Honour,
2 reading of section 36 is rather wide, your Honour, it's our
3 submission, because it says that "has been removed or
4 otherwise lawfully sent out", your Honour.
- 5 Court: Yes.
- 6 Wang: So when we're talking about repatriation, your Honour, quite
7 clearly, your Honour---
- 8 Court: Talking about what?
- 9 Wang: Repatriation.
- 10 Court: Repatriation.
- 11 Wang: Yes, oh---repatriation, yes, your Honour.
- 12 Court: Yes.
- 13 Wang: That would include the act of being removed and sent out, your
14 Honour.
- 15 Court: Under what law? They just sent her to immigration for
16 repatriation, they didn't send her out.
- 17 Wang: Yes, your Honour.
- 18 Court: And we haven't finished yet and we have to look at the whole
19 thing. I'm just going line by line to see---
- 20 Wang: Yes.
- 21 Court: ---where in the statement of facts does it assert, all right, that
22 she has been removed or otherwise lawfully sent out. Now
23 I---do you have any case law on this---on these---on these
24 words "removed or otherwise lawfully sent out"?
- 25 Wang: I do not have them right now with me.
- 26 Court: Offhand, right?
- 27 Wang: Your Honour, yes.
- 28 Court: I don't know to what extent there is case law on this.
- 29 Wang: Yes.
- 30 Court: But it---subject to what the authorities say, "removed or
31 otherwise lawfully sent out" cannot mean mere physically
32 shoving her out, right? It must be some lawful act.

- 1 Wang: Pursuant to---to---
- 2 Court: Pursuant to some provision.
- 3 Wang: Some---
- 4 Court: Some banning provision, if you like. All right?
- 5 Wang: Yes.
- 6 Court: It cannot be simply---there must be some---some---some legal
7 status or legal manner. As I said, subject to what the authorities
8 say, all right. But let's---let's hold that for the time being, all
9 right, and move on to the third sentence at the end of line 3, all
10 right. So they had been sent---
- 11 [Reads] "...the AVB, Anti-Vice Bureau had sent her to the
12 Immigration Department for repatriation"---then---"...Accused
13 was then repatriated back to Thailand on 24.4.04..."
- 14 Right? So the word here is "repatriated back". Is that
15 sufficient to satisfy the condition of "removed or otherwise
16 lawfully sent out"? Anyway, so, the next sentence:
- 17 [Reads] "...Prior to her repatriation, accused was served with a
18 written notice on the same day informing her that she was
19 permanently barred from entering Singapore with effect from
20 24.4.04."
- 21 Now look at it strictly, that sentence merely asserts that she had
22 been served with that notice the ex---the---the letter, the
23 Immigration letter, right, to which she affixed her thumbprint
24 dated 24th April of 2004, right. That's---that's all it says,
25 right?
- 26 Wang: Yes.
- 27 Court: Okay. The next sentence:
- 28 [Reads] **"...She was also informed that she would only be**
29 **allowed to visit Singapore if she had made a prior**
30 **application to obtain the written permission of the**
31 **Controller of Immigration before she enters Singapore..."**
32 **So similarly that's the---what they have told her.**

- 1 Wang: Yes, right.
- 2 Court: So the point is, if there is a lawful sending out, then she has
3 been notified of it.
- 4 Wang: Yes.
- 5 Court: So the question is, where is the assertion that there was a lawful
6 sending out? Anyway continuing that,
7 [Reads] “Accused was informed that the failure to do so would
8 result in prosecution and upon conviction...”
9 So same---same point as the earlier sentence.
10 [Reads] “...notice was served to the Accused by an
11 Immigration Officer in Thai. Accused accepted the ban notice
12 and acknowledged that she knew the consequences of
13 breaching the ban notice...passport...endorsed with entry
14 ban...deported to Thailand...”
15 So maybe if---if anything there’s a---the line 4, well, you don’t
16 have the statement of facts, is it? This is reproduced. So I
17 would describe that as the first, second, third sentence, right:
18 [Reads] “Accused was then repatriated back to Thailand on
19 24.04.04.”
20 And the last sentence of paragraph 2:
21 [Reads] “She was deported to Thailand on 24.4.04.”
22 Right? So in the statement of facts, if any part of it---in
23 paragraph 2 of the statement of facts, if any part of it can be
24 said to relate to the precondition of “removed or otherwise
25 lawfully sent out of Singapore”, it would only be these two
26 parts, right?
- 27 Wang: Yes.
- 28 Court: The third sentence:
29 [Reads] “...Accused was then repatriated back to Thailand on
30 24.04.04”---and the last part of the last sentence---“she was
31 deported to Thailand on 24.04.04”.
- 32 Wang: Yes, it would appear to be, yes, your Honour.

- 1 Court: Pardon?
- 2 Wang: It would appear to be.
- 3 Court: Appear so, right. The question is, on what basis was she
4 removed or otherwise lawfully sent out? I mean we know she
5 was removed.
- 6 Wang: Yes, your Honour.
- 7 Court: But what is the basis? For that we must look at the
8 Immigration Act.
- 9 Wang: Yes, yes.
- 10 Court: So then I suppose the question is, whether just these
11 two---these two phrases---
- 12 Wang: Would constitute, yes, the---
- 13 Court: ---is enough to---to---to---is enough---
- 14 Wang: The element of---
- 15 Court: ---allegation of fact.
- 16 Wang: Yes.
- 17 Court: ---of the fulfilment of that precondition in section 36.
- 18 Wang: The element of removal or---
- 19 Court: Prior removal or otherwise ---
- 20 Wang: ---or lawfully being sent out.
- 21 Court: ---lawfully sending out---lawful sending out.
- 22 Wang: Your Honour, I'm afraid, your Honour, that I do not have my
23 literature right now to assist you in this point, your Honour,
24 because ---
- 25 Court: That's why I thought you might not have---
- 26 Wang: Yes, yes.
- 27 Court: ---because it's a new point, I mean. It's---it's a---
- 28 Wang: Yes, your Honour.
- 29 Court: That's---that's the problem I have because if the statement of
30 facts do not---
- 31 Wang: Yes, I---I do understand where you are coming from.
- 32 Court: Yes.

12.15pm

- 1 Wang: I---I do. I do---
- 2 Court: Yes.
- 3 Wang: ---understand where you are coming from. Your Honour, I
4 would definitely need some time to look into this, your Honour,
5 because essentially I was addressing the points raised by my
6 learned friend in the petition, your Honour. But your Honour,
7 you have raised a very valid point as to---
- 8 Court: Yes.
- 9 Wang: ---in fact whether the statement of facts is given---the offence is
10 even made out, your Honour, by just looking at the statement of
11 facts, so I mean, notwithstanding my learned friend's---
- 12 Court: No, I---I---I really would hear your submission on this---
- 13 Wang: ---points---
- 14 Court: ---because if the offence is not made out on the statement of
15 facts---
- 16 Wang: Then, yes, of course it is---
- 17 Court: ---then the---the---the commission is---is not valid.
- 18 Wang: Yes, that's right, so---
- 19 Court: Right, and of course Mr Bajwa has other---
- 20 Wang: Concerns, yes, that's right, yes.
- 21 Court: ---concerns.
- 22 Wang: But we are talking about something which is more fundamental
23 and that would actually---the issue is whether the High Court
24 really would have to exercise revision powers. In this sense, if
25 the statement of facts itself, your Honour, does not support,
26 your Honour, the elements in the charge, your Honour, so that
27 is a very fundamental---
- 28 Court: Yes.
- 29 Wang: Of course, your Honour, yes, yes.
- 30 Court: There's two. There's the first---first point is whether the
31 statement of facts---
- 32 Wang: Yes.

- 1 Court: ---supports the charge---first point is whether---
- 2 Wang: Yes, yes.
- 3 Court: ---the charge is---is valid, I mean, there's no---there's no
4 question about that. Then whether the statement of facts
5 support the---the charge and then of course the---Mr Bajwa's
6 point that the applicant---
- 7 Wang: On---on the administration of the---
- 8 Court: ---had not understand---
- 9 Wang: ---entire process. Yes, that---that is---
- 10 Court: Yes, about the interpretation and so on.
- 11 Wang: Yes, your Honour.
- 12 Court: So, this would be the---this---these would be the two---two
13 fundamental points. Now, Mr Bajwa---
- 14 Bajwa: Yes, your Honour.
- 15 Court: You---presumably you are quite happy---you don't have---need
16 to make any submission on this unless you have something to
17 add to your---to the point that I made?
- 18 Bajwa: Your Honour, the difficulty I have in this case is that I've
19 actually been asking for this notice that I've just seen this---this
20 af---this morning. I've actually written in to the ICA. I wanted
21 to have sight of this---
- 22 Court: Yes.
- 23 Bajwa: ---and perhaps I could have formulated the argument that you
24 also made without taking it away from you, your Honour, but---
- 25 Court: Well, you don't really need that---
- 26 Bajwa: Yes, the---the---
- 27 Court: Well, that---that might have done something but from the
28 statement of facts it doesn't say that, so---
- 29 Bajwa: Yes, so it seems like this is not the ban itself. This is just a
30 notific---informing the person that "You have been banned".
- 31 Court: Which is what---
- 32 Bajwa: Yes.

- 1 Court: ---is asserted in the statement of facts anyway, so it's no
2 different.
- 3 Bajwa: That's right. And neither has this been brought to the learned
4 District Judge in the Court below. They did not submit this
5 particular notice. They just referred to it in the statement of
6 facts.
- 7 Court: The---the---the applicant would have the---this document,
8 right? No, she doesn't have?
- 9 Bajwa: No, your Honour, she---the only thing she has given me so far
10 which I obtained from the prison---
- 11 Court: Because it is a---it's exhibit A and---the statement of facts is
12 exhibit A and this is actually marked exhibit B, you know.
- 13 Wang: Yes, your Honour, I believe the---
- 14 Court: But anyway, there we are. She---
- 15 Wang: It could be in the record of proceedings, your Honour, yes.
- 16 Court: In the record of proceeding, yes.
- 17 Bajwa: So it's in the record of proceeding. Yes, that's a surprise to me.
- 18 Court: It's marked---it's---it's in fact in the record of proceeding. Yes,
19 it's statement of facts admitted, marked A, then notice of ban
20 from entering Singapore, admitted and marked B. That's what
21 it says in the statement of fact.
- 22 Bajwa: Your Honour, that has taken me by surprise because what I
23 have received from the Sub Court doesn't have the exhibits. I
24 only have the notes of evidence.
- 25 Court: No, this was just prepared, I suppose, because of the
26 late---the---the---the urgent application. So the---the point now
27 is: What do we do from here?
- 28 Bajwa: Your Honour, could I suggest that this matter, first of all,
29 maybe perhaps just be stood down, to let me also look at the
30 submission that she has made and also this particular point you
31 have mentioned---
- 32 Court: Right.

- 1 Bajwa: ---and also get a full record, copies of the---
- 2 Court: Right.
- 3 Bajwa: ---the full record---
- 4 Court: Right.
- 5 Bajwa: ---and then if we can come back in the afternoon---the
6 difficulty I have with an adjournment, although this seems to be
7 a classic case where it should be adjourned is that time is
8 running out unless we can have a---a---a very urgent special
9 date sometime next week. If we don't carry on today, then
10 she's got another 2 months to serve, assuming at the end of the
11 day, that the revision is allowed, then the decision will be
12 announced.
- 13 Court: I can---I---she can come back in another 2 week---I mean, I
14 hate to---I hate to do this because if---if really the commission
15 ought to be squashed, then she should not stay there a day
16 longer---
- 17 Bajwa: That's right.
- 18 Court: ---than necessary. But on the other hand, she had just filed in
19 the application on---when is it---30th---
- 20 Bajwa: 30th of March, yes.
- 21 Court: ---March, so to be fair to the---to the prosecution, they also
22 need to look into the matter.
- 23 Bajwa: Yes.
- 24 Court: I don't know whether they want to but Ms Wang seems to say
25 that they have looked sufficiently into the matter. Perhaps the
26 best thing to do for the time being is to stand it down until the
27 afternoon and perhaps you can come back at 2.30. You can
28 look at this. I can give you a copy of the record of evidence
29 from the Court---the record of proceedings from the Court.
- 30 Bajwa: Perhaps I can take it now, your Honour, and make a copy.
- 31 Court: Yes, you can---you can---you can---we'll make a copy for you
32 and---and also for the DPP and you can---you can look at it

- 1 over the break and---and then we'll see what we can do at 2.30.
- 2 Yes.
- 3 Bajwa: Your Honour, I think I will---I will not have any difficulty of a
- 4 short adjournment, say, for a week, till Friday, if that is
- 5 possible if your---if your Court is free on that day. I can live
- 6 with 1 week.
- 7 Court: We'll---we'll see how we can do.
- 8 Bajwa: Yes.
- 9 Court: We'll come back at 2.30 and---and see what we can do, all
- 10 right?
- 11 Bajwa: All right, your Honour, yes. Thank you.
- 12 Court: Yes.
- 13 Bajwa: We'll stand it down then.
- 14 Court: Is it all right, Ms Wang? Maybe you can---you can---
- 15 Wang: Your Honour, I have some difficulty, your Honour. I have
- 16 another case, your Honour, with you, so---
- 17 Court: I know, I know, I know that, but on this case---
- 18 Wang: ---by the time---I may not have time to get the---whatever is
- 19 necessary, your Honour.
- 20 Court: Well, the other case is only application for---
- 21 Wang: The extension of---
- 22 Court: ---extension of time---
- 23 Wang: Yes, yes, your Honour.
- 24 Court: ---to file petition of appeal, right?
- 25 Wang: Yes, yes. Yes, your Honour.
- 26 Court: Well, we will see how it goes. I---I---I don't think it should
- 27 take too long, the other one, so you have a bit more time.
- 28 Wang: Yes, your Honour.
- 29 Court: So we'll stand it down until 2.30.
- 30 Bajwa: Very well, your Honour.
- 31 Court: All right?
- 32 Bajwa: Much obliged.

- 1 Court: All right.
- 2 **(Adjourned at 12.20pm)**