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**PP v. TRAN VAN SAN**

HIGH COURT MALAYA, TAIPING  
MOHD RADZI HARUN JC  
[CRIMINAL REVISION NO: AB-43-2-04-2019]  
17 SEPTEMBER 2019

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**CRIMINAL PROCEDURE:** *Revision – Application for – Request for review of order of sentences against accused – Accused found guilty of charges under s. 68(2)(c) of Wildlife Conservation Act 2010 – Mandatory provisions for both sentence of fine and imprisonment under s. 68(2)(c) – Sessions Court Judge only meted out imprisonment sentences – Whether Sessions Court Judge erred in not imposing fines – Whether court empowered to alter nature of sentences – Whether court ought to exercise revisionary powers – Criminal Procedure Code, s. 323 – Courts of Judicature Act 1964, ss. 31, 35, 36 and 37*

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This was a criminal revision pursuant to s. 323 of the Criminal Procedure Code ('CPC') at the request of the Sessions Court Judge ('SCJ'). The accused was charged before the Sessions Court for four cases involving ten charges under the Wildlife Conservation Act 2010 ('the Act') which were (i) three charges under s. 68(1)(b) of the Act ('case 1'); (ii) three charges under s. 68(2)(c) of the Act ('case 2'); (iii) three charges under s. 68(2)(c) of the Act ('case 3'); and (iv) one charge under s. 68(2)(c) of the Act ('case 4'). The SCJ convicted the accused for all the ten charges and meted out imprisonment sentences from the date of arrest for each case. However, the SCJ requested for this court to review her order of sentences against the accused for cases 2, 3 and 4 as she had been under the wrong impression that the said charges were the same with the charges for case 1, namely for offences under s. 68(1)(b) of the Act, when in actual fact the charges for cases 2, 3 and 4 were for offences under s. 68(2)(c) of the Act. According to the SCJ, the said orders were not in compliance with the statutory provision.

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**Held (allowing application):**

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(1) The charges for cases 2, 3 and 4 were for offences under s. 68(2)(c) of the Act. The said charges against the accused must reflect that he was charged for offences under s. 68(1) and to be sentenced under s. 68(2). The phrase 'Any person who commits an offence under sub-s. (1)' in sub-s. 68(2) is almost akin in its effect and intent to s. 313 of the Penal Code which provides 'whoever commits the offence defined in s. 312' which has the legal effect of it being a criminalisation provision. A person, therefore, could be charged for an offence under sub-s. 68(2) and to be sentenced under the same provision. Thus, the charges against the accused were lawful. (paras. 14, 16 & 17).

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- (2) As s. 68(2)(c) of the Act provides mandatorily that both the sentences of fine and imprisonment, within the range as stated therein shall be imposed upon conviction, the sentence of imprisonment only that was meted out by the SCJ to the accused for all the charges for cases 2, 3 and 4 were clearly a mistake that was subject to a revision by this court pursuant to s. 323 of the CPC. (para 18) A  
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- (3) Applying the relevant provisions under Chapter XXXI of the CPC and ss. 31, 35, 36 and 37 of the Courts of Judicature Act 1964 and the legal principle pertaining to revision, and having satisfied that the SCJ had erred in law in not making order for the sentence of fines against the accused for the charges for cases 2, 3 and 4, this court was empowered to alter the nature of the said sentences accordingly. (para 19) C
- (4) Taking into consideration all pertinent facts and information available, including the listing in the International Union for Conservation of Nature Red List of the animals which were the subject of the charges against the accused, the need for this court to send a strong message to the public on the seriousness of the commission of such in keeping with the aims and objectives of Parliamentary intention in introducing the Act in 2010, this court, in exercising its revisionary powers against the decision of the SCJ, had decided as follows (i) case 2: for the three charges relating to the critically endangered *Panthera Tigris*, to impose fines of RM150,000 for each offence, in default three months' jail; (ii) case 3: for the three charges relating to the vulnerable *Neofelis Nebulosa*, to impose fines of RM100,000 for each offence, in default two months' jail; (iii) case 4: for the one charge relating to the vulnerable *Panthera Pardus*, to impose fines of RM100,000 for the offence, in default, two months' jail; and (iv) the sentence of 24 months' imprisonment for each of the charges for cases 2, 3 and 4 and for all the said sentences to run concurrently, as imposed by the SCJ was affirmed. (para 28) D  
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- Case(s) referred to:** G
- Emperor v. Nasrullah & Ors* AIR 1928 All 287 (*refd*)  
*Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC (*refd*)  
*Manokaran & Anor v. PP* [1978] 1 LNS 118 HC (*refd*)  
*PP v. Nguyen Thi Huong* [2015] 2 CLJ 102 HC (*refd*)  
*Ramanathan Chettiyar v. Subrahmanya Ayyar* (1924) ILR 47 Mad 722 (*refd*)  
*Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565 FC (*refd*) H
- Legislation referred to:**
- Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Second Schedule  
 Courts of Judicature Act 1964, ss. 31, 35, 36, 37  
 Criminal Procedure Code, s. 323 I  
 Dangerous Drugs Act 1952, ss. 39A, 39C  
 Penal Code, s. 313  
 Wildlife Conservation Act 2010, ss. 60(1)(b), 65, 68(1)(b), (2)(c), 71

- A *For the appellant - Ainna Ridzwan & Muniara Zainal Abidin; DPPs*  
*For the respondent - Ahmad Syamil Azad; M/s Akram Hizri Azad & Azmir*  
*Reported by Suhainah Wahiduddin*

## JUDGMENT

- B **Mohd Radzi Harun JC:**

### Background

- C [1] This is a criminal revision pursuant to s. 323 of the Criminal Procedure Code at the request of the learned Sessions Court Judge (“HMS”) *vide* her letter to this court dated 16 April 2019.

[2] Tran Van Sang, a Vietnamese national (“the accused”), was charged before the Kuala Kangsar Sessions Court for four cases involving charges under the Wildlife Conservation Act 2010 (Act 716) briefly described as follows:

- D No. Kes: AG-62ES-1-03-2018 – three charges under s. 68(1)(b) of Act 716 (“case 1”).

No. Kes: AG-62ES-2-03-2018 – three charges under s. 68(2)(c) of Act 716 (“case 2”).

- E No. Kes: AG-62ES-3-03-2018 – three charges under s. 68(2)(c) of Act 716 (“case 3”).

No. Kes: AG-62ES-4-03-2018 – one charge under s. 68(2)(c) of Act 716 (“case 4”).

- F [3] The learned HMS requested for this court to review her order of sentences against the accused for cases 2, 3 and 4 as soon as she realised that the said orders were not in compliance with the statutory provision. Case 1 is therefore not the subject of this review.

- G [4] At the conclusion of the hearing of this review application, I allowed the application, and directed that the sentences against the accused for cases 2, 3 and 4 as ordered by the HMS to be altered as enumerated in para. 28 below, and highlighted my main reasons for the same. The Public Prosecutor was aggrieved by my decision and filed this appeal. I set out below the full reasons for the decision.

- H **The Charges**

[5] The accused claimed trial for all ten charges preferred against him as below:

**No. Kes: AG-62ES-01-03-2018 (“Case 1”)**

- I 1st Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati

menyimpan satu (1) unit Tanduk Rusa Sambar (*Cervus unicolor*) tanpa lesen yang sah iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Pertama Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 60(1)(b) yang boleh dihukum di bawah seksyen dan Akta yang sama.

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2nd Charge:

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Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati menyimpan Dua Puluh (20) Unit Taring Beruang Matahari (*Helarctos malayanus*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(1)(b) yang boleh dihukum di bawah seksyen dan Akta yang sama.

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3rd Charge:

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Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati menyimpan Seratus Lapan Puluh Lapan (188) Unit Kuku Beruang Matahari (*Helarctos malayanus*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(1)(b) yang boleh dihukum di bawah seksyen dan Akta yang sama.

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**No. Kes: AG-62ES-2-03/2018 ) (“Case 2”)**

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1st Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati menyimpan Lapan (8) Unit Gigi Harimau Belang (*Panthera tigris*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(2)(c) yang boleh dihukum di bawah seksyen dan Akta yang sama.

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2nd Charge:

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Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati menyimpan Lapan Belas (18) Kuku Harimau Belang (*Panthera tigris*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(2)(c) yang boleh dihukum di bawah seksyen dan Akta yang sama.

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- A** 3rd Charge:  
Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati
- B** menyimpan Dua (2) Bahagian Hidupan Liar Harimau Belang (*Panthera tigris*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(2)(c) yang boleh dihukum di bawah seksyen dan Akta yang sama.
- C** **No. Kes: AG-62ES-3-03/2018 (“Case 3”)**  
1st Charge:  
Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati
- D** menyimpan Tiga (3) Bahagian Hidupan Liar Harimau Dahan (*Neofelis nebulosa*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(2)(c) yang boleh dihukum di bawah seksyen dan Akta yang sama.
- E** 2nd Charge:  
Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati
- F** menyimpan Dua (2) Gigi Harimau Dahan (*Neofelis nebulosa*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(2)(c) yang boleh dihukum di bawah seksyen dan Akta yang sama.
- G** 3rd Charge:  
Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati
- H** menyimpan Empat Belas (14) Kuku Harimau Dahan (*Neofelis nebulosa*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(2)(c) yang boleh dihukum di bawah seksyen dan Akta yang sama.
- I** **No. Kes: AG-62ES-4-03/2018 (“Case 4”)**  
1st Charge:  
Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam Daerah Sungai Siput Dalam Negeri Perak di dalam Kenderaan jenis

Mitsubishi Triton, no. Pendaftaran JNK 7468 warna silver telah didapati menyimpan Lima (5) Gigi Harimau Kumbang (*Panthera pardus*) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 [AKTA 716]; dan oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 68(2)(c) yang boleh dihukum di bawah seksyen dan Akta yang sama.

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### The Orders Of The HMS

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[6] At the end of the defence case, the learned HMS convicted the accused for all the charges and meted out the following sentences:

#### Case 1:

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First charge: eight months imprisonment from the date of arrest (26 August 2017)

Second charge: 24 months imprisonment from the date of arrest

Third charge: 30 months imprisonment from the date of arrest

#### Case 2:

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First charge: 24 months imprisonment from the date of arrest

Second charge: 24 months imprisonment from the date of arrest

Third charge: 24 months imprisonment from the date of arrest

#### Case 3:

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First charge: 24 months imprisonment from the date of arrest

Second charge: 24 months imprisonment from the date of arrest

Third charge: 24 months imprisonment from the date of arrest

#### Case 4:

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First charge: 24 months imprisonment from the date of arrest

### The Revision

[7] The HMS had informed this court that when she meted out the sentences, she was under the wrong impression that the charges against the accused for cases 2, 3 and 4 were the same with the charges for case 1, namely for offences under s. 68(1)(b) of Act 716, when in actual fact the charges for cases 2, 3 and 4 were for offences under s. 68(2)(c) of that Act. Upon the pronouncement of the sentences for all the charges, and as she was *functus officio* by the time she realised her mistake, she wrote to this court to review her orders for the sentences against the accused for cases 2, 3 and 4.

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[8] The sentences provided under s. 68(1)(b) and 68(2)(c) of Act 716 are as follows:

68(1) Subject to subsection (2), any person who:

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(a) ...; or

(b) takes or keeps any part or derivative of a totally protected wildlife,

- A without a special permit commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit **or** to imprisonment for a term not exceeding three years or to both. (emphasis added)
- (2) Any person who commits an offence under subsection (1) and which offence involves:
- B (a) ...;
- (b) ...; or
- C (c) Serow (*Capricornis sumatrensis*), Gaur (*Bos gaurus*), Javan Rhinoceros (*Rhinoceros sondaicus*), Sumatran Rhinoceros (*Dicerorhinus sumatrensis*), Tiger (*Panthera tigris*), Leopard (*Panthera pardus*), Clouded Leopard (*Neofelis nebulosa*) or False Gharial (*Tomistoma schlegelii*) shall, on conviction, be punished with a fine of not less than one hundred thousand ringgit and not more than five hundred thousand ringgit **and** with imprisonment for a term not exceeding five years. (emphasis added)
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### Finding

[9] The basis of the revision powers of the High Court are set out in Chapter XXXI of the CPC and ss. 31, 35, 36 and 37 of the Courts of Judicature Act 1964.

E [10] Abdoolcader J (as he then was) in *Manokaran & Anor v. Public Prosecutor* [1978] 1 LNS 118; [1979] 1 MLJ 262, ruled that the High Court has not only extensive powers of revision in criminal proceedings under the provisions of s. 323 of the CPC, “but even wider powers conferred by s. 35 of the Courts of Judicature Act 1964 ...”

F [11] In exercising its extensive revision powers as set out in *Manokaran (supra)*, the Supreme Court in *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163; [1987] 2 MLJ 69 held that the main objective of the High Court is essentially to put right a miscarriage of justice. The Supreme Court in *Liaw Kwai Wah (supra)* cited with approval the leading Indian cases on this subject, *Emperor v. Nasrullah & Ors* AIR 1928 All 287 (Ind) and *Ramanathan Chettiyar v. Subrahmanya Ayyar* (1924) ILR 47 Mad 722, and held as follows:

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#### Object of revision

H We would observe that the power of revision is to be exercised in accordance with the law for the time being in force relating to criminal procedure. In the present case that law is the Criminal Procedure Code. We would also observe that the object of the revisionary powers provided for in the Code is:

- I ... to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted

on the one hand in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals. (*Emperor v. Nasrullah & Others* AIR [1928] All 287).

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It is also clear that the High Court may examine the record of proceedings in the subordinate courts “wherever it considers that in doing so the purpose of justice will be served, as for example, accused is subjected to a vexatious and groundless prosecution.” (*Ramanathan Chettiyar v. Subrahmanya Ayyar* ILR 47 Mad 722).

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#### Duty of High Court

Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court.

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The Judge’s duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instance, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a question of legality of conviction or error of law concerning the conviction or sentence, the Judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice.

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[12] The Federal Court in *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565 had reaffirmed and set out unequivocally the purpose of a revision and the powers and duties of a judge exercising a revisionary power as below:

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[32] It has been said that a ‘revision is not a right and is only a procedural facility afforded to a party, while an appeal is a statutory right conferred on a party. It cannot be said that a proceeding in revision is a continuation of the suit, appeal or trial. It is only a step-in-aid for invoking the powers of superintendence by the Sessions Judge and the High Court for correcting irregularities if any, in the judgments and orders of the subordinate courts. Interference in revision being a discretionary power vested in the superior courts, a revision petition cannot be considered to be a continuation of the proceedings pending in the trial court or the appellate court’ (see: *Kunhammad v. Abdul Kader* [1977] KLT 840). Similarly, in *Ku Izham bin Ku Adnan v. Public Prosecutor* [1998] 2 CLJ 956 it was said that the ‘object of a revision is to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted in some injury to the due maintenance of law and order or in some undeserved hardship to individuals. The judge’s duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court.’

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[13] Relying on the relevant provisions under Chapter XXXI of the CPC and ss. 31, 35, 36 and 37 of the Courts of Judicature Act 1964, and the legal principle pertaining to revision as set out by the authorities cited earlier, I am entitled at this juncture to examine the charges preferred against the accused with the intent of satisfying myself as to the regularity of the

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A proceedings before the HMS. This is also in line with my duty at this stage exercising my “supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment”, which may have resulted in some injury to the due maintenance of law and order or in some  
B undeserved hardship to the accused. (See *Tan Sri Eric Chia Eng Hock (supra)*)

[14] The charges for cases 2, 3 and 4 were for offences under s. 68(2)(c) of Act 716. The said sub-s. 68(2) was drafted with a certain peculiarity. It started with the phrase “Any person who commits an offence under sub-s. (1) ...”. At one look, that phrase may be read to mean that sub-s. 68(2)  
C is an enhanced penalty provision, akin to ss. 39A and 39C of the Dangerous Drugs Act 1952 (“DDA”). If that reading is correct, the charges for cases 2, 3 and 4 against the accused must reflect that he is charged for offences under sub-s. 68(1) and to be sentenced under sub-s. 68(2). And if this court agrees with that reading, then I must make specific orders on this issue.

D [15] However, upon scrutiny, I am satisfied that the said sub-s. 68(2) is not an enhanced penalty provision. If it is so, it would have used similar language with that found, for instance, in s. 39A of the DDA, which provides:

Every person **found guilty** under subsection (1) ... . (emphasis added)

E [16] It is my finding that the phrase “Any person who commits an offence under sub-s. (1)” in sub-s. 68(2) is almost akin in its effect and intent to s. 313 of the Penal Code, which provides:

Whoever commits the offence defined in section 312 ...

F which has the legal effect of it being a criminalisation provision. A person, therefore can be charged for an offence under sub-s. 68(2) and to be sentenced under the same provision.

[17] I therefore found that the charges against the accused were lawful.

G [18] As s. 68(2)(c) of the said Act provides mandatorily that both the sentence of fine and imprisonment, within the range as stated therein, shall be imposed upon conviction, the sentence of imprisonment only that was meted out by the learned HMS to the accused for all the charges for cases 2, 3 and 4 were clearly a mistake that is subject to a revision by this court pursuant to s. 323.

H [19] Applying again the relevant provisions under Chapter XXXI of the CPC and ss. 31, 35, 36 and 37 of the Courts of Judicature Act 1964 and the legal principle pertaining to revision as set out by the authorities cited earlier, and having satisfied that the HMS had erred in law in not making order for the sentence of fines against the accused for the charges for cases 2, 3 and 4,  
I it is my finding that I am empowered to alter the nature of the said sentences accordingly.

**The Revised Sentence**

[20] The learned Deputy further highlighted to this court that panthera tigris (tiger) for which the accused was charged for case 2 is listed as “critically endangered” under the International Union for Conservation of Nature (“IUCN”) Red List of Threatened Species.

[21] Whereas, nebulosa (clouded leopard) and panthera pardus (leopard), the subjects of the charges against the accused for cases 3 and 4 respectively, are listed as “vulnerable” in the said IUCN Red List of Threatened Species.

[22] Based on the above facts, the learned Deputy had submitted that this court shall impose the appropriate fines against the accused and not alter the duration of the 24-month imprisonment that had been sentenced against the accused by the HMS. Apart from highlighting the gravity of the offences committed by the accused, the learned Deputy also informed the court that the accused would complete serving the said 24-month period on 26 April 2019, a day after the hearing date of this revision by this court.

[23] Learned counsel for the accused in his submission stated that he conceded that the learned HMS had erred in not imposing the mandatory sentence of fines against the accused. Learned counsel had asked that this court took into consideration the fact that the trial for the charges against the accused had, in actual fact, continued for two years. The accused was originally facing three charges only. The accused was discharged not amounting to an acquittal in respect of those three charges at the request of the prosecution on 5 March 2018, but was subsequently re-charged for the charges as reflected in cases 1 to 4 on that same date.

[24] I had expressed briefly at the proceedings before I read out my decision that this court agrees with the submission of the learned Deputy that the offences committed by the accused are serious in nature. In fact, this court also took judicial notice on the seriousness of the offences committed by the accused as s. 68 of Act 716 is listed in the Second Schedule to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) and therefore falls within the definition of “serious offence” under that Act.

[25] However, notwithstanding the offences under s. 68 of Act 716 is legally defined as “serious offence”, this court took the view that the sentences provided for persons found guilty for offences under s. 68(2)(c) of Act 716 do not reflect the gravity of the offence. Until the said provision is reviewed and sentences provided therein are amended accordingly, this court is bound to only impose sentences as currently provided and taking into consideration the applicable principle on sentencing. The learned Deputy informed the court that Act 716 is undergoing review process which include proposal to increase the punishment as provided under s. 68(2)(c).

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A [26] My research showed that there are very few cases pertaining to Act 716 being reported in law journals. One that I had referred to for purposes of my decision in this review was the decision of my learned brother Collin Lawrence Sequerah JC (as His Lordship then was) in *PP v. Nguyen Thi Huong* [2015] 2 CLJ 102. There, His Lordship was dealing with an appeal against  
B the inadequacy of sentences for four charges against the respondent under ss. 60(1)(b), 65, 68(1)(b) and 71 of Act 716. The Sessions Judge in that case sentenced the respondent as follows:

- (i) six months' imprisonment for the s. 60(1)(b) offence;
- (ii) three months and RM20,000 (s. 65);
- C (iii) nine months (s. 68(1)(b)); and
- (iv) nine months and RM30,000 (s. 71).

His Lordship allowed the prosecution's appeal and enhanced the sentences to the following:

- D (i) 12 months' imprisonment for the s. 60(1)(b) offence;
- (ii) six months and RM40,000 (s. 65);
- (iii) 18 months (s. 68(1)(b)); and
- (iv) 18 months and RM50,000 (s. 71).

E [27] I had particularly applied His Lordship's reference to the Parliamentary debate as shown in the Hansard during the tabling of Act 716 to replace its predecessor, the Wildlife Preservation Act 1972 (Act 76), as a reflection of public interest in the preservation of wildlife in Malaysia. His Lordship held as follows:

F [10] It is therefore clear that one of the foremost considerations in sentencing policy is that of public interest. ... I do not think that there can be much argument that it would be in the public interest to ensure the protection of certain species of wildlife. It is also in keeping with the overall concept of public interest that such rights of liabilities as are affected can be gleaned from a particular Act that has been amended in  
G order to reflect the intended public interest. In the instant case that Act is the Wildlife Conservation Act 2010 ('Act 716'). This Act replaced the Wildlife Preservation Act 1972 ('Act 76'). One of the main aims in replacing Act 76 with Act 716 was because the punishment for offences under Act 76 prescribed disproportionately lower sentences for offences committed.

H [11] The policy reasons behind the amendment to the said Act can be gathered from the reference to the official Parliamentary debates or the *Penyata Rasmi Parlimen Dewan Rakyat* (Hansard) dated 12 July 2010 Second and Third Reading where the then Right Honourable Minister for Natural Resources and Environment, YB Dato' Douglas Uggah Embas said in Bahasa Malaysia:

I ... di antara kelemahan akta yang sedia ada adalah denda yang terlalu rendah untuk membanteras jenayah berkaitan hidupan liar. ... Ia didapati tidak setimpal dengan nilai komersial dan estetik

hidupan liar yang dilindungi di bawah akta tersebut. Sebagai contoh, penalty maksimum bagi kesalahan membunuh seekor harimau liar di bawah akta sedia ada adalah RM15,000 atau penjara tidak melebihi lima tahun sahaja kalau dibandingkan dengan nilai komersial yang boleh menjangkau RM200,000. Di bawah rang undang-undang ini, kesalahan yang sama mengenakan denda minimum sebanyak RM100,000 dan maksimum RM500,000 dan penjara mandatori tidak melebihi lima tahun. Dalam mengambilkira keperluan pencegahan melalui penalti bersifat deterrent dengan izin, rang undang-undang ini telah memasukkan elemen penjara mandatori bagi kesalahan demikian terutama bagi melindungi species hidupan liar yang sangat terancam. Hukuman dan denda yang dicadangkan dalam rang undang-undang ini menunjukkan komitmen kerajaan yang tinggi dalam menangani aktiviti jenayah hidupan liar ke arah memperbaiki imej negatif negara yang dilabel sebagai hab kepada penyeludupan perdagangan haram hidupan liar antarabangsa.

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[14] The court will therefore be failing in its duty, if a strong message was not sent out that such crimes would not merely result in a 'slap on the wrist' but with severe punishment in keeping with the aims and objectives of Parliamentary intention in amending such Act. A mode of sentence that would result in a deterrence to would be offenders was therefore justified under the circumstances.

E

**[28]** Taking into consideration all pertinent facts and information available, including the listing in the IUCN Red List of the animals which were the subject of the charges against the accused, the need for this court to send a strong message to the public on the seriousness of the commission of such in keeping with the aims and objectives of Parliamentary intention in introducing Act 716 in 2010, this court, in exercising its revisionary powers against the decision of the HMS, had decided as follows:

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(i) Case 2: for the three charges relating to the critically endangered panthera tigris, to impose fines of RM150,000 for each offence, in default three months jail;

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(ii) Case 3: for the three charges relating to the vulnerable neofelis nebulosa, to impose fines of RM100,000 for each offence, in default two months jail;

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(iii) Case 4: for the one charge relating to the vulnerable panthera pardus, to impose fines of RM100,000 for the offence, in default two months jail; and

(iv) The sentence of 24 months imprisonment for each of the charges for cases 2, 3 and 4, and for all the said sentences to run concurrently, as imposed by the HMS is affirmed.

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