

**Public Prosecutor**

AND

**Hj Suffian bin Hj Md Bungsu  
Jonathan Kho Chew Sen**

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**(High Court of Brunei Darussalam)  
(Criminal Appeal No. 4 of 2025)**

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Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.

**Date of Ruling: 22<sup>nd</sup> October, 2025.**

*Headnote: Criminal Law – Prevention of Corruption Act, Cap 131 and Penal Code, Cap. 22 – Appeal by Prosecution against acquittal on all charges -Failure of a Magistrate to determine if defendants have rebutted presumption under Section 25 of Prevention of Corruption Act – Magistrate to assess evidence in totality based on objective standard – Appeal allowed - Retrial ordered.*

DPP Suriana Radin and DPP Nurul Fitri Kiprawi for the Appellant.

Mr Roy Prabhakaran and Mr Kamal Shaari (M/S Yusof Halim & Partners) for the Defendants/Respondents.

**Cases cited:**

*Wong Kai Fen vs P.P*

*P.P vs Khoo Yong Hak* (1995) 2 SLR 283

*Chan Wing Seng Vs P.P* (1997) 2 SLR 426

**RULING**

**Haji Abdullah Soefri, J.C:**

**Introduction**

This is an appeal filed by the Prosecution (Appellant) against the decision of the Chief Magistrate who had acquitted both Defendants (Respondents) on 6<sup>th</sup> March 2025 of all charges under section 6(a), 6(b) of the Prevention of Corruption Act, Section 165, and section 165 read with section 109 of the Penal Code, Cap 22.

**Charges:**

**1<sup>st</sup> Charge (Against D1 only)**

That you, on or about 17<sup>th</sup> July 2014 in Brunei Darussalam, being an agent, to wit, the Director of the Radio Television Brunei, Prime Minister's Office, did corruptly accept from one Jonathan Kho Chew Sen (Brunei National, NRIC No: 50-723928), an Assistant Head of Editorial News and Current Affairs, Radio Television Brunei, Prime Minister's Office, holding a Division II post, a gratification, to wit, a Mercedes C200 CGI AMG Sports bearing a registration number BAN 9963, as an inducement or reward for doing an act in relation to your principal's affairs, to wit by securing the appointment of

the said Jonathan Kho Chew Sen, as the Acting Head of News and Current Affairs at Radio Television Brunei and you have thereby committed an offence Under Section 6(a) of the Prevention of Corruption Act, Chapter 131.

**Alternative Charge to the 1<sup>st</sup> Charge (against D1 only)**

*That you, on or about 17<sup>th</sup> July 2014 in Brunei Darussalam, being a public servant, to wit, the Director of the Radio Television Brunei, Prime Minister's Office, obtained for yourself a valuable thing, to wit, a Mercedes C200 CGI AMG Sports bearing a registration number BAN 9963, without consideration from Jonathan Kho Chew Sen (Brunei National, NRIC No: 50-723928) an Assistant of Head of Editorial News and Current Affairs, Radio Television Brunei, Prime Minister's Office and you have thereby committed an offence Under Section 165 of the Penal Code, Chapter 22.*

**2<sup>nd</sup> Charge (against D2 only)**

*That you, on or about the 17<sup>th</sup> July 2014, in Brunei Darussalam, being the Assistant Head of Editorial News and Current Affairs, Radio Television Brunei, Prime Minister's Office, holding a Division II post, did corruptly give to an agent, namely one Hj Muhammad Suffian bin Hj Bungsu, the Director of Radio Television Brunei, Prime Minister's Office, a gratification, to wit, a Mercedes C200 CGI AMG Sports bearing the registration number BAN 9963, as an inducement or reward for doing an act in relation to his principal's affairs, to wit by securing your appointment as the Acting Head of Editorial News and Current Affairs at Radio Television Brunei and that and you have thereby committed an offence punishable under section 6(b) of the Prevention of Corruption Act, Chapter 131.*

**Alternative Charge to the 2<sup>nd</sup> charge (against D2 only)**

*That you, on or about the 17<sup>th</sup> of July 2014 in Brunei Darussalam, abetted the commission of an offence by Hj Suffian bin Hj Md Bungsu, who was a public servant, to wit the Director of Radio Television Brunei, Prime Minister's Office, did obtain for himself a valuable thing without consideration to wit, a Mercedes C200 CGI AMG Sports being the registration number BAN 9963 from you, the Assistant Head of Editorial News and Current Affairs, Radio Television Brunei, Prime Minister's Office holding a Division II post, to which you were a subordinate of the said Hj Muhammad Suffian Bin Hj Md Bungsu, which offence was committed in consequence of your abetment and you have thereby committed an offence punishable under section 109 and section 165 of the Penal Code, Chapter 22.*

The Appellant had categorized the ground of appeal into subheadings as follows:

- a) Misdirection in the elements of section 6(a) and section 6(b) of the Prevention of Corruption Act.
- b) The existence of the Interest – Free Loan
- c) Misdirection in the elements of section 165 of Penal Code.
- d) The Chief Magistrate erred in law and/or fact by placing no weight on the statements of the 2<sup>nd</sup> Respondent recorded by the Anti-Corruption Bureau.

**Factual Background**

I will not repeat what has been submitted by the Appellant under this heading but save to quote paragraphs 10 and 11 of their submissions as follows:

*“para 10. The Prosecution's case in relation to the corruption charges was that the Mercedes car was a gift by the 2<sup>n</sup> Respondent to the 1<sup>st</sup> Respondent in order to secure the*

*2<sup>nd</sup> Respondent's position as the Acting Head of News and Current Affairs. In respect of the alternative charges under section 165 of the Penal Code, it was the prosecution's case that the 1<sup>st</sup> Respondent accepted the Mercedes car without consideration and the 2<sup>nd</sup> Respondent abetted by giving the car to him.*

*Para 11. The crux of the Defence was that the Mercedes car was not a gift from the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent but rather on "interest-free loan". It was their defence that unknowingly to the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent had purchased the Mercedes car to which he paid all BND\$66,800 in cash. It is the defence narrative that the 2<sup>nd</sup> Respondent did so out of his generosity. He then surprised the 1<sup>st</sup> Respondent with the Mercedes car at the 1<sup>st</sup> Respondent's house. Subsequent to the surprise, both the Respondents agreed that the 1<sup>st</sup> Respondent was to repay the 2<sup>nd</sup> Respondent all BND\$66,800. It is not in dispute that there had been no single payment made to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent. I have laid out the grounds of appeal that were submitted by the Appellant. I have also have read the Respondent's submission and the Appellant further submission in reply. I have also read the notes of proceedings and the judgments of the Magistrate below acquitting the Respondents."*

Having have scrutinized and analyzed the judgment, notes of proceedings and also submissions of all parties, firstly, I would like to highlight the role of an appellate court. It is submitted by the Appellant and not disputed by the Respondents that the role of an appellate court in an appeal against conviction is not to reassess the evidence in the same way that a final judge would. An appellate court is restricted to consider

- a) Whether the judge's assessment of witness credibility is plainly wrong or against the weight of the evidence
- b) Whether the judge's verdict is wrong in law; and
- c) Whether the judge's decision is inconsistent with the material evidence on record.

The question that need to be looked into is whether the Chief Magistrate has misdirected herself on the operation of the presumption of section 25 of Prevention of Corruption Act?

In her judgment she stated (Para 101):

*"Under section 25 of the Prevention of Corruption Act (PCA), once the elements of the charges are established, there is a presumption that the gratification was given and accepted corruptly as an inducement or reward, unless proven otherwise. At this stage the burden shifts to the defendants to prove, on a balance of probabilities, that their actions were not corrupt"*

Section 25 of the Act states as follows:

*"Where in any proceeding for an offence under this Act, it is proved that the accused gave or accepted a gratification, the gratification shall be presumed to have been given and accepted corruptly as such inducement or reward as is alleged in the particulars of the offence, unless the contrary is proved"*.

Section 25 requires the prosecution to prove the accused gave or accepted gratification before the presumption is triggered.

The Magistrate in her judgment state that “*once the elements of the charges are established*”.

Gratification is defined in Section 2 of the Act to includes:

- a) Money of gift, loan, fee, reward, valuable security or other property or interest in property of any description, whether movable or immovable

It was not disputed that 1<sup>st</sup> Respondent 1 accepted a Mercedes car from 2<sup>nd</sup> Respondent. It is not disputed that the 2<sup>nd</sup> Respondent paid the full purchase price of the car in cash and registered the car under the 1<sup>st</sup> Respondent’s name.

This is gratification that has been established for the presumption to be triggered.

It is not “*once the elements of the charges are established*” as stated in the Chief Magistrate judgment for the presumption to be triggered.

As to her judgment, when read as a whole, her mind does not reflect that the burden has shifted to the Defendant as this is obvious that she did not make any decision to rule that the Defendant has rebutted the presumption on balance of probabilities.

All throughout the judgment she emphasized that the prosecution has failed to prove the case beyond reasonable doubt and she concluded in paragraph 132 of her judgment as follows:

*Para 132: “Based on the overall findings, the court concludes that the Prosecution has failed to establish a case against both Defendants beyond reasonable doubt. Consequently, the Court enters an acquittal for both Defendants on the main charges under section 6(a) and 6(b) of the Prevention of Corruption Act”.*

Has the Defendants successfully rebutted the presumption on balance of probabilities that the gratification was received by the 1<sup>st</sup> Respondent and in the case of 2<sup>nd</sup> Respondent that he did not give the gratification “*corruptly*” by virtue of section 25 of the PCA?

This remain unanswered by the Chief Magistrate.

Assessment of Evidence in its totality?

The question is whether in acquitting both Respondents on both the main charges and the alternative charges, did the Chief Magistrate has taken into account or assess all the evidence in its totality in order to determine the status of the Mercedes car.

Although in Para 117 to 137 the Magistrate highlighted all the reasons for believing the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent, and accepting that it is a loan and thus, the car is not a gift, the question is whether the assessment made by the Chief Magistrate after assessing the evidence in its totality and not against the weight of the evidence?

In Wong Kai Fen vs P.P the High Court held as follows:

*“The presumption that a gratification was given “corruptly” or accepted under section 25 of the Prevention of Corruption Act may be rebutted by the accused on a balance of probabilities.*

In deciding whether a gratification was given “*corruptly*” the court must be satisfied beyond reasonable doubt that there was a “*corrupt element*” in the transaction and a “*corrupt intent*” present on the part of the person giving. (*P.P vs Khoo Yong Hak*) (1995) 2 SLR 283.

Whether a transaction has a “*corrupt element*” is an objective inquiry that is essentially based on the ordinary standard of the reasonable man and “*corrupt intent*” refers to the question of whether the accused knew what he did was corrupt by the ordinary and objective standard. (*Chan Wing Seng Vs P.P*) (1997) 2 SLR 426.

Having had analysed the judgment, I am satisfied that the Chief Magistrate has misdirected herself on the Section 25 and has failed to decide whether the Respondents has successfully rebutted the presumption on balance of probabilities after it is triggered.

The Chief Magistrate has failed to assess all the evidence in its totality based on the objective test based on the ordinary standard of a reasonable man when she determined the “*corrupt element*” and “*corrupt intent*”. This is also directly affected her decision for the alternative charges.

Section 284 of the Criminal Procedure Code, Cap 7:

*“In an appeal from an order of acquittal, the High Court may -*

- a) Dismiss the appeal*
- b) Direct that further inquiry to be made, or order a new trial on the same or an amended charge; or*
- c) Find the accused guilty of any offence of which the lower court might have convicted him and pass sentence on him according to law.”*

Having had said all the above, this court allowed the appeal and the acquittal of the Respondents on the main charge and alternative charge are quashed and the Court ordered a retrial on the same charges for both 1<sup>st</sup> Respondent 1 and 2<sup>nd</sup> Respondent.

Appeal is allowed. Acquittal is quashed. Re-trial is ordered on the same charge against 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent.

**HAJI ABDULLAH SOEFRI BIN POKSM DATO SERI PADUKA HAJI ABIDIN**  
Judicial Commissioner