



Case note: *Shadrake Alan v Attorney-General* [2011] SGCA 26 - Restating the Test for Contempt of Court

by Teo Yi-Ling

On 27 May 2011, the Court of Appeal rejected the appeal by British writer, Alan Shadrake, against his conviction and sentence for contempt of court. This brought to an end a trial that had generated a fair amount of media interest, at home and abroad, due to its facts. The case of *Shadrake Alan v Attorney-General* [2011] SGCA 26 (“*Alan Shadrake*”) concerned statements in the book *Once A Jolly Hangman: Singapore Justice in the Dock*, written by Shadrake, which claims to expose secrets of how the death penalty is administered by the Singapore legal system. The 76 year-old writer had been sentenced by the High Court to six weeks’ jail and a fine of S\$20,000 for being found guilty of making contemptuous statements in his book. This recent case of contempt, apart from its relatively sensational nature, is important as it effectively clarified the appropriate test for liability for the offence of contempt of court.

What is the reason behind the existence of such an offence? One of the limitations on the Constitutional right of freedom of speech and expression, is protecting against contempt of court. “Contempt of court” is conduct that tends to undermine the authority of legal proceedings, or causes the public to lose confidence in the courts in resolving disputes. One form of contempt is the offence of scandalising the court. This happens when a person behaves in a manner, or publishes a statement that brings a court or a judge of a court into contempt, or lowers his authority. Until this Court of Appeal case, the usual test for liability of this offence was the “inherent tendency” test – whether an act or words suggesting or alleging bias, lack of impartiality or any wrongdoing concerning a judge in the exercise of his judicial function, has the inherent tendency to interfere with the administration of justice. In *Alan Shadrake*, the Court of Appeal clarified that the test to be applied instead is the “real risk” test - whether, given the facts and circumstances, there is a real risk that public confidence in the administration of justice is or would be undermined as result of the conduct or statement.

As it is a strict liability offence, only the intention to commit the contemptuous act needs to be proved. This offence can be committed in various media, including print publication, television or radio broadcasts, pictures, physical acts or gestures, spoken words, or words on a poster. However, if the conduct or statements can be described as being made in good faith and fairness, there is no contempt. In *Alan Shadrake*, the Court of Appeal also clarified that fair criticism is not a defence to a charge of contempt, it simply describes using the concept of fair criticism in determining whether or not a statement or conduct is a contempt of court in the first instance.

At the trial, the Attorney-General (AG) applied to commit Shadrake for contempt of court in respect of certain passages in the book. The complaint was that the passages scandalised the judiciary by alleging or implying the following:

- In applying the death penalty, the Singapore judiciary gives into political and economic pressures, does not administer justice impartially, lacks independence and allows the abuse of the judicial process;

- It is biased against the weak, poor and less educated, and is otherwise guilty of impropriety; and
- It is a tool of the Peoples' Action Party to muzzle political dissent in Singapore.

The AG's case was that there were 14 statements in the book that contained one or more of these allegations or implications. These statements referred to cases that Shadrake claimed either that the government intervened to spare the accused or convicted person on the basis of protecting important business, economic and diplomatic relationships, or intervened where the accused or convicted persons were wealthy, highly-educated and well-connected.

In his book, Shadrake had described himself as an investigative journalist, and claimed that he had undertaken a "meticulous search of legal files and archived cases going back to 1963 while interviewing abolitionists and lawyers involved in many sensational cases that went largely under-reported or not reported at all". He claimed that part of his research was apparently interviewing a person who had been an executioner at Changi Prison (hence the reference to "hangman" in the title) for around 50 years. After hearing all the evidence, the Honourable Judge was of the opinion that Shadrake's claims on the judiciary's role and legal procedure were misconceived, that he made sweeping statements, and that he distorted (in some instances recklessly) facts of cases he claimed supported his conclusions. The Judge found that 11 of the 14 statements posed more than a remote possibility of undermining public confidence in the administration of justice in Singapore. He also found that the statements could not be described as fair criticism because they had been made in bad faith and/or without rational basis. On appeal by Shadrake, the Court of Appeal found that 2 of the 11 statements were not, in its opinion, contemptuous. It noted that this case was the by far the worst case of scandalising contempt to come before the Singapore courts. The Court of Appeal affirmed the High Court's sentence of six weeks' jail and a \$20,000 fine imposed on Shadrake.

Alan Shadrake, the latest in a line of contempt of court cases that have come before the courts in the last few years, is important in that it gave the Court of Appeal the opportunity to clarify and restate the law as to the appropriate test for liability, and also allowed a clarification of the concept of fair criticism.

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