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KUALA LUMPUR, MARCH 30 (BERNAMA) -- A SENIOR FEDERAL COUNSEL TODAY DESCRIBED AS THE +COMBINED RESULT+ OF +LEGAL INGENUITY AND A TWISTED IMAGINATION+ THE CONTENTION THAT THE HOME MINISTER AND THE GOVERNMENT HAD CONTRIBUTED TO DEFAMING THE PRIME MINISTER BY CAUSING THE REPORT ON THE PURPORTED PROPOSED SALE OF LIMBANG TO BRUNEI DARUSSALAM TO BE PUBLISHED.

SENIOR FEDERAL COUNSEL T. SELVENTHIRANATHAN SUBMITTED IN THE HIGH COURT THAT APPROVAL FOR CIRCULATION OF A PUBLICATION DID NOT CONSTITUTE AN ACT CONTRIBUTING TO DEFAMATION OR CAUSING A DEFAMATORY MATERIAL TO BE PUBLISHED.

TO SAY THE HOME MINISTER AND THE GOVERNMENT HAD CONSENTED TO RELEASING THE REPORT WHICH APPEARED IN THE FAR EASTERN ECONOMIC REVIEW AND THAT BY DOING SO, HAD CONTRIBUTED TO DEFAMING DATUK SERI DR MAHATHIR MOHAMAD, WOULD BE TANTAMOUNT TO SAYING ALL DEFAMATORY ARTICLES IN THE COUNTRY WERE CAUSED BY THE MINISTER AND THE GOVERNMENT, HE ADDED.

THIS, ENCIK SELVENTHIRANATHAN SAID, WAS UNTENABLE.

THE MAGAZINE AND ITS EDITOR DEREK DAVIES ARE BEING SUED BY DATUK SERI DR MAHATHIR FOR LIBEL OVER AN ARTICLE ON LIMBANG THAT APPEARED IN ITS MAY 21 ISSUE LAST YEAR. -- MORE
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DATUK SERI DR MAHATHIR IS ALSO SEEKING UNSPECIFIED DAMAGES FOR LIBEL CONTAINED IN AN APOLOGY AND RETRACTION RELATING TO THE ARTICLE PUBLISHED BY THE MAGAZINE LAST JUNE 4.

ENCIK SELVENTHIRANATHAN WAS MAKING HIS SUBMISSION ON THE DEFENDANTS' APPLICATION TO INCLUDE THE HOME MINISTER AND THE GOVERNMENT AS THIRD PARTIES TO THE SUIT FILED LAST AUGUST.

REFERRING TO SECTION 9 OF THE PRINTING PRESSES AND PUBLICATIONS ACT, HE SAID THE PURPOSE OF THE SECTION WAS TO PREVENT UNDESIRABLE PUBLICATIONS AND IT DID NOT APPLY TO CIVIL LIABILITY ARISING FROM ANY LIBEL.

HE SAID THE HOME MINISTER AND THE GOVERNMENT DID NOT OWE THE DEFENDANTS A STATUTORY DUTY WHICH COULD MAKE THEM THIRD PARTIES TO THE SUIT, ADDING THAT IT WAS THE DEFENDANTS WHO WERE THE DEFAULTERS OF THE IMPUGNED ARTICLES.

THE PRINTING PRESSES AND PUBLICATIONS ACT CLEARLY PLACED THE RESPONSIBILITY FOR A PUBLICATION UPON A PUBLISHER AND IT COULD NOT BY ANY +STRETCH OF IMAGINATION+ BE SAID THAT SUCH RESPONSIBILITY WAS ON THE PARTY THAT RELEASED THE PUBLICATION, HE ADDED. -- MORE
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+IN NO WAY COULD THE INTENDED THIRD PARTIES BE SAID TO BE RESPONSIBLE FOR A PUBLICATION WHICH WAS MADE ELSEWHERE,+ ENCIK SELVENTHIRANATHAN SAID, ADDING THAT IT WAS THE PUBLISHER WHO HAD DECIDED ON WHAT SHOULD BE PUBLISHED.

HE SAID IT WAS NOT THE HOME AFFAIRS MINISTER WHO EXERCISED THE POWERS UNDER SECTION 9 AND IT FOLLOWED THAT THE GOVERNMENT TOO SHOULD NOT BE MADE A THIRD PARTY TO THE SUIT.

HE SUBMITTED THAT THE DEFENDANTS' APPLICATION TO INCLUDE THE THIRD PARTIES WAS INTENDED TO ENBARASS AND PREJUDICE DATUK SERI DR MAHATHIR.

+THEY ARE SAYING DATUK SERI DR MAHATHIR, AS THE PRIME MINISTER, IS CLAIMING DAMAGES FOR LIBEL BUT HE AS THE HOME AFFAIRS MINISTER, SHOULD HAVE STOPPED THEM FROM DEFAMING HIM,+ ENCIK SELVENTHIRANATHAN ADDED.

THE SENIOR FEDERAL COUNSEL SAID IT WOULD APPEAR THE DEFENDANTS WERE TREATING THE PRIME MINISTER, THE HOME AFFAIRS MINISTER, THE SENIOR AUTHORISED OFFICER WHO RELEASED THE MAGAZINE AND THE GOVERNMENT AS ONE LEGAL ENTITY. THIS APPROACH WAS OBVIOUSLY WRONG, HE CONTENDED. -- MORE
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TO THE DEFENDANTS' SUBMISSION THAT DATUK SERI DR MAHATHIR, BEING THE AGGRIEVED PARTY, COULD HAVE APPEALED AGAINST THE DECISION RELEASING THE MAGAZINE, ENCIK SELVENTHIRANATHAN SAID THE PRIME MINISTER COULD NOT DO SO UNDER THE ACT.

JUSTICE DATUK AJAIB SINGH WILL GIVE HIS DECISION ON APRIL 8. HE WILL ALSO FIX A DATE TO HEAR DATUK SERI DR MAHATHIR'S APPLICATION FOR THE DEFENDANTS TO SPECIFY THE NAME OF THE SOURCE OR SOURCES WHICH THEY CLAIMED IN THEIR DEFENCE HAD PROVED IN THE PAST TO BE WELL-INFORMED AND RELIABLE.

THE HONG KONG-BASED MAGAZINE, IN ITS MAY 21 ISSUE LAST YEAR, HAD IN AN ARTICLE ALLEGED THAT THE PRIME MINISTER HAD DISCUSSED THE POSSIBLE SALE OF LIMBANG TO BRUNEI AT A STARTING PRICE OF US\$6 BILLION (M\$15 BILLION) DURING HIS VISIT TO THE SULTANATE IN MARCH LAST YEAR.

IN THE SUIT, DATUK SERI DR MAHATHIR, AMONG OTHER THINGS, CLAIMED THAT THE WORDS IN THE ARTICLE CONCERNING HIM IN THE WAY OF HIS OFFICE AS PRIME MINISTER, IN THEIR ORDINARY MEANING WERE UNDERSTOOD TO MEAN HE WAS ENGAGED IN AN UNCONSTITUTIONAL AND SURREPTITIOUS ATTEMPT TO SELL TO BRUNEI A PART OF THE TERRITORY OF SARAWAK WHICH WAS A COMPONENT OF MALAYSIA.

HE SAID BECAUSE OF THE PUBLICATION OF THE SAID WORDS, HE HAD BEEN DAMAGED IN HIS CHARACTER AS PRIME MINISTER AND HAD BEEN BROUGHT INTO PUBLIC SCANDAL, ODIUM AND CONTEMPT.

THE MAGAZINE AND ITS EDITOR, IN THEIR DEFENCE, DENIED THE ARTICLE WAS MEANT TO DEFAME THE PRIME MINISTER, ADDING THAT IF THE WORDS WERE DEFAMATORY, THEY WERE PUBLISHED WITH QUALIFIED PRIVILEGE AS DATUK SERI DR MAHATHIR WAS A PUBLIC FIGURE KNOWN IN MALAYSIA AND THE WORLD. -- BERNAMA
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