

03/11/1998

`Presence of observers would amount to interference'

Ruslaini Abbas; Carolyn Hong

KUALA LUMPUR, Mon. - Judge Datuk S. Augustine Paul rejected three applications made by the defence at the start of Datuk Seri Anwar Ibrahim's trial which began today.

One application was on giving observer status to representatives from local and international organisations.

Another application was for lawyers representing the two persons convicted of allowing Anwar to sodomise them, to hold a watching brief.

The third application was for a ruling on the status of Emergency (Essential Powers) Ordinance 22 under which the former Deputy Prime Minister is charged.

The hearing started at 9.20am, about 10 minutes after Anwar was escorted into the courtroom from a basement lock-up.

Anwar, who appeared in good spirits, kissed his wife, daughters, mother, father and father-in-law the moment he arrived in the dock and smiled and waved to the Press and others in the gallery who included Opposition Leader Lim Kit Siang.

When asked by a reporter about his condition, Anwar said: "I am in good health and expecting a good trial too."

Paul came in about 9.20am and told the parties that proceedings would be in Bahasa Malaysia in line with section 8 (Language of Court) of the National Language Act, but he would consider application for trial in English when it involved questions of law.

Senior deputy public prosecutor Datuk Abdul Gani Patail then introduced his assistants, senior DPPs Azahar Mohammad and Mohd Yusof Zainal Abiden and DPPs Stanley Augustin, Nordin Hassan and Shamsul Sulaiman.

Abdul Gani also introduced Anwar's lawyers, Raja Aziz Addruse, Sulaiman Abdullah, Christopher Fernando, Zainur Zakaria, Gurbachan Singh Pannu, Kamar Ainhah Kamaruzaman, Sankara N. Nair and Pawancheek Merican.

Raja Aziz then applied to include Zulkifli Nordin as Anwar's counsel.

Paul: "His name was not on the list before and why now?"

Raja Aziz: "He was detained under the ISA (Internal Security Act) then and just released recently, My Lord."

Paul allowed the application after Raja Aziz said Zulkifli was outside the court. Zulkifli was then called in.

Raja Aziz then applied for organisations and representatives of the Malaysian Bar Council, Amnesty International, Law Asia, the London-based Justice International, the Indonesian Legal Aid Bureau and United Nations rapporteur Dr Param Cumaraswamy to be accorded observer status.

Paul: "Do the organisations' constitutions allow them to come here to be observers?"

Sulaiman replied such applications were normally allowed and cited cases involving the MP for Kota Melaka Lim Guan Eng and Param where international observers were given the respective status.

Sulaiman: "Part of the organisations' charters are to make appeals to Governments, the judiciary, prisons' authorities and they send out observers to see for themselves that the rule of law is being followed."

Paul: "The application should be made in accordance with the law and is there such a law?"

Sulaiman said there was no special law on the matter, but the court could use its discretion.

Paul then pointed to the Legal Profession Act and said that when the

observers came in, they were acting as lawyers and they had no right to be in court under the country's law.

Paul: "I feel this is a regrettable contempt ... it is totally wrong and an alien concept."

The judge said the observers would exercise a kind of supervision over the court which was not subjected to any kind of control either by the Federal Court or the Court of Appeal.

Paul: "Their presence would amount to an interference."

The judge said to allow the application would contravene Article 30 of the United Nations Universal Declaration on Human Rights and dismissed the application.

In dismissing the Bar Council's application to hold a watching brief, Paul said the council should operate within the provisions of the Legal Profession Act and it could only be allowed to monitor the proceedings if the court had asked it to.

On the application to allow lawyers Karpal Singh, Jagdeep Singh Deo, Gobind Singh Deo, Balwant Singh Sidhu and Manjeet Singh to hold a watching brief for Sukma Darmawan Sasmitaat Madja and Dr Munawar Ahmad Anees, Paul asked Abdul Gani if they would be called to testify.

When Abdul Gani said they would not, Paul dismissed the application.

Sukma and Munawar were jailed six months each in September for allowing Anwar to sodomise them.

At this juncture, Karpal told the court about a news report on a statement by the Senators Club of Malaysia alleging that he (Karpal) was in contempt for disobeying a court gag order when he tried to read Sukma's letter in Parliament last week.

Karpal asked for a ruling, but Paul made none saying that just because the senators accused him (Karpal) of contempt, it did not make him guilty.

Karpal then directed the court's attention to another report which stated that a Deputy Minister had called for Paul to resign if he felt that he could not conduct the case in Bahasa Malaysia. He gave a copy of the report to him.

Paul read the report and smiled, saying that Karpal could take up the issue in a separate action.

Karpal: "I urge the court to make a ruling on this and you just cannot sit there and smile."

Paul: "Thank you for raising this and you can take the necessary action."

Manjeet then stood up and said the court was conducting an exclusion exercise.

Manjeet: "Do you want us to leave now since some of the observers are already in court?"

Paul said since they were already in court there was no hurry for them to leave.

Proceedings went on with Raja Aziz directing the court's attention to a statement made by Prime Minister Datuk Seri Dr Mahathir Mohamad and Attorney-General Tan Sri Mohtar Abdullah.

Raja Aziz said the two should be cited for contempt for making such remarks.

He referred to a report quoting Dr Mahathir as saying there would be racial disharmony if Anwar was not convicted, and another which quoted Mohtar as saying more charges of sexual offences would be brought against Anwar.

Raja Aziz then spoke about the abolition of Ordinance 22 and submitted at length on the issue.

Later in the afternoon, Abdul Gani, arguing his case, said on Oct 22, the Dewan Rakyat had annulled Ordinance 22 with effect from Jan 8, the

date the Anti-Corruption Act 1997 came into force.

To annul the ordinance under Article 150 of the Constitution, both houses of Parliament must pass resolutions.

He said it could not be denied that Dewan Negara had not yet passed a resolution to annul Ordinance 22.

"The offences the accused is charged with are offences which occurred in August 1997. He was charged on Sept 29, 1998," he said.

He said Ordinance 22 was the same as an Act of Parliament and was promulgated under Article 150 of the Constitution which states that an ordinance would have the same effect and force as an Act of Parliament.

Ordinance 22 was promulgated on Feb 21, 1970.

Asked by the judge if he had any other arguments besides his earlier submission that a resolution to annul the ordinance had not been passed by Dewan Negara, Abdul Gani said even if both houses of Parliament had passed the resolutions, the prosecution could still charge the accused because of section 30 of the Interpretation Act.

Section 30 is a saving clause which allows a repealed law to continue to have certain effect.

As section 30 used the word "repeal", as opposed to "annul", the judge asked the prosecution for the difference between the two.

Abdul Gani said there was no definition of "annul" in the Federal Constitution and Interpretation Act but gave the definitions found in several dictionaries.

In Black's Law Dictionary fifth edition, "annul" means to reduce to nothing, make void or of no effect, nullify, cancel, destroy. To annul a judgment or judicial proceeding is to deprive it of force.

Black's Law Dictionary defines "repeal" as an abrogation, annulling existing law by enacting of subsequent legislation, to revoke or abrogate.

Referring to the Oxford Modern English Dictionary, "repeal" means to revoke, rescind or annul a law or Act of Parliament.

Referring to the 20th Century Dictionary, "repeal" means to revoke, annul, quash or set aside.

Referring to the Interpretation Act, "repeal" was defined to include rescind, revoke, cancel and replace.

Abdul Gani said the definition in the Interpretation Act of repeal as "including" meant that it was not an exhaustive definition or confined to those words only.

He also argued that section 52 of the Act stated that sections 28 to 31 applies on the expiry of a law. He said expiry was not defined in the Act but its common meaning was termination or end.

If both houses of Parliament had annulled the ordinance, its power would end and with this, the ordinance would expire.

Summing up, he said this meant that even if Ordinance 22 had been annulled by both houses, the accused could still be charged with an offence committed prior to Jan 8.

Abdul Gani also referred to several cases to argue his point that what was important was the date the offence was committed, not the date the person was charged.

He said even if Ordinance 22 had been annulled, there was nothing to take away the prosecution's powers to charge a person for offences committed at the time when the ordinance was in force.

But more importantly, he said, Ordinance 22 had not been annulled yet because Dewan Negara had not passed a resolution to that effect.

In reply, Raja Aziz began by saying that his argument would be on whether the ordinance was repealed or annulled.

The judge, however, said the main point he wanted to be convinced upon was the fact that the matter had not gone through the full process.

Raja Aziz said this was the point, that it was not right to subject the accused to a trial when it was clear from the Deputy Minister in the Prime Minister's Department Datuk Nazri Aziz's statement that it was going to be annulled. The court had inherent jurisdiction to ensure that the process was not abused.

The judge then said this argument had been advanced before but not accepted by the courts in the country although some English courts had.

Raja Aziz said the accused should never be harassed. He then said he wanted to address the argument put forward by the prosecution that there was no distinction between "annul" and "repeal".

He said section 30 which speaks of repeal seemed to indicate that there must be a law which repealed the earlier law. He said section 32 which speaks of expiry of a law was talking about temporary legislation as expiry meant termination caused by lapse of time.

He argued that the prosecution could investigate, institute proceedings or charge a person under the Act before Jan 8 but it could not do so after Jan 8 for offences committed before that date.

He said to continue with the trial, having regard to the clear statement of the Deputy Minister, would be an abuse of process.

He said although Dewan Negara had not annulled the ordinance, the court should not allow an unfair situation to arise.

The judge then commented that it was possible for the Dewan Negara not to annul the ordinance. Raja Aziz said this had never happened in this country. He said Dewan Negara should have a chance to say no to the annulment and when it has said so, the defence would fight the case. Otherwise it would be an abuse of process.

The judge then said the application was dismissed as the ordinance had not been brought to Dewan Negara yet.

He asked if there were any more objections to be made. Raja Aziz said there were none on this point. He then raised another point on the defence's application for Anwar's cautioned statement. He said the application was made some time ago but the defence only obtained it today from the prosecution. He said the defence had no time to study the document and asked for time.

The judge suggested hearing be continued tomorrow morning. Raja Aziz said it was too short and asked for tomorrow afternoon.

Abdul Gani said the prosecution did not oppose the application but wanted to make a statement about the late delivery of the documents. He said the request was made early but due to miscommunication, the first information report and cautioned statement were only delivered today. He said he had apologised to counsel. He said six other documents were given.

Raja Aziz then asked for Anwar to be brought to court in the morning to meet his lawyers. Abdul Gani had no objections but said he would have to check with the police and prisons on the security aspect.

Raja Aziz asked why it was so difficult as tomorrow was already scheduled as a trial day. The judge then asked counsel why it was so difficult for them to go to the prison. Raja Aziz said the time spent would be too long.

check with the court administration.

Abdul Gani and Raja Aziz were later told in chambers that Anwar would be brought to court by 9am and the hearing would continue at 2pm tomorrow.

(END)