

20 OCT 1999

Court-Journalist

LEAVE GRANTED FOR JOURNALIST TO APPEAL TO FEDERAL COURT

KUALA LUMPUR, Oct 20 (Bernama) -- The Federal Court here today granted leave for Far Eastern Economic Review (FEER) journalist Murray Hiebert to appeal against the conviction and sentence imposed on him for contempt of court.

Chief Justice Tun Mohamed Eusoff Chin, Chief Justice of Malaya Datuk Wan Adnan Ismail and Federal Court Judge Datuk Paduka Mohamed Dzaiddin Abdullah made the decision after hearing submissions from counsel Cecil Abraham and Muhammad Shafee Abdullah for Hiebert and Datuk Kam Woon Wah for Datin Chandra Sri Ram, who initiated the contempt proceedings.

However, Mohamed Eusoff said leave was granted only on one issue -- does Section 3(1) of the Civil Law Act 1956 have any application to criminal or quasi criminal contempt proceedings.

He also said Hiebert's appeal will be heard by the Federal Court on two conditions. Firstly, the journalist must pay RM200,000 as security deposit in two weeks' time and secondly, he must give the undertaking to be present in court at the time when the appeal is fixed for hearing.

Hiebert, 50, who is appealing against the conviction and the jail sentence passed by the Shah Alam High Court against him for contempt of court in September 1997, was not present in court today.

Originally, Hiebert was sentenced to three months' imprisonment. However, the Court of Appeal reduced it to six weeks on Sept 11. He then served the term after the court refused to release his passport pending his appeal to the Federal Court.

Hiebert, a Canadian, was cited for contempt for his article entitled "See You in Court", which discussed the merits of a RM60 million civil suit brought by Chandra against the International School of Kuala Lumpur (ISKL) for dropping her son, Govind, from its debate team.

The article was written by Hiebert when the case was still pending.

Chandra, the wife of Court of Appeal Judge Datuk Gopal Sri Ram, claimed that the article, when read as a whole, amounted to a serious contempt of court and an unwarranted attack upon the Malaysian judiciary.

The suit was dropped after ISKL agreed to apologise in court.

In his submissions, Abraham said the court has to consider whether the Court of Appeal had erred in finding that the motion for contempt and its accompanying statement does not need particulars of the facts, matters and circumstances whereby it was alleged that Hiebert was in contempt, and whether as a consequences of its failure to do so, he was denied natural justice.

He said the court must also consider whether the Court of Appeal had erred in declining to hold that the original finding of contempt was a nullity because the judge who made it was sitting as a judge in his own cause, since it was his court that Hiebert was alleged to have scandalised.

Abraham also submitted at length on Section 3(1) of the Civil Act Law 1956.

Among others, he said, the Act does not apply to proceedings for contempt which are in substance criminal.

Muhammad Shafee submitted that the same court was also wrong in finding that no mens rea was required for the offence of which the journalist was convicted.

Muhammad Shafee said the prison sentence was wrong in principle for the class of offence committed by Hiebert, where no actual harm to the

administration of justice had been caused.

Meanwhile, Kam said Chandra had instructed him to inform the court that she was leaving the matter of the application entirely for the court to decide.

However, in view of the recent press reports on the case, he brought the court's attention that there was an article which appeared in the International Herald Tribune dated Oct 14, 1999, which said that Hiebert was "the first journalist to be jailed for his works since Malaysia became independent in 1957".

He contended that this report was untrue because Hiebert was jailed "for writing lies which scandalised the courts and not for his works".

"In our country, our constitution provides freedom of speech subject to certain limitations inter alia contempt of court and defamation. Hiebert deliberately told lies and scandalised the court and is thereby subject, like anyone else, to the committed process for contempt of court," Kam said.

Kam said the article went on to say that critics said the government is using the court as a club to bully the news media.

"Also in another article, it was stated that Hiebert was jailed for reporting the case. Again it says that his jailing is seen as the latest salvo in Dr Mahathir's war against the foreign press. This is not true because this is not Mahathir's case," he said.

The article also said the court had confiscated Hiebert's passport and refused for more than two years to hear his appeal effectively imprisoning him in Malaysia, Kam said.

He said this allegation was not true because the faults to the delays of the appeal lies with Hiebert and his counsel who kept making a lot of application for adjournment for various reasons.

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