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Court 'entitled to study relevance of proposed evidence' of Dr Mahathir

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KUALA LUMPUR, Fri. - The High Court today ruled it could examine the relevance of the proposed evidence of Prime Minister Datuk Seri Dr Mahathir Mohamad in the sodomy trial of Datuk Seri Anwar Ibrahim.

Judge Datuk Arifin Jaka said he could look into the relevance without an application by the Prime Minister to set aside his subpoena.

He said this when dismissing a preliminary objection raised by the defence. The judge also said the objection by Anwar's counsel Karpal Singh was without merit.

"To my mind a proper reading of the section (in the Evidence Act) does not require any (such) application to be made," he said, adding that the court could resort to examining the relevance of the evidence.

Arifin said there was no specific provision on the procedure to set aside a subpoena and in practice the person who has been served with a subpoena could apply to set it aside.

"However, the court may ask the party proposing to give the evidence of any fact, in what manner the alleged fact, if proved would be relevant under the Evidence Act."

Anwar and his adopted brother Sukma are charged with sodomising Azizan Abu Bakar at 10-7-2, Tivoli Villa, Jalan Medang Tanduk, Bangsar, about 7.45pm between January and March 1993.

Sukma, a businessman, is also facing a second charge of abetting Anwar in sodomising Azizan, who was the driver to Anwar's wife Datin Seri Dr Wan Azizah Wan Ismail.

Dr Mahathir has been subpoenaed by Sukma while Anwar has also applied to call the Prime Minister, but a subpoena has yet to be issued.

Yesterday, Senior Deputy Public Prosecutor Datuk Abdul Gani Patail objected to calling the Prime Minister and contended that the court had powers to ask the relevance of evidence.

Karpal had submitted that the prosecution had no locus standi to raise such an objection and a person who had been subpoenaed had to apply to set it aside.

To a clarification sought by Karpal after today's decision, Arifin said the subpoena still stands but subject to the court's decision on the relevance of the evidence by Dr Mahathir.

Karpal said both Anwar and Sukma would like to file affidavits to show the relevance of the proposed evidence by the Prime Minister. Arifin told them to file their affidavits by Tuesday.

Yesterday, Dr Mahathir said he would testify at the trial if required but hoped it would be relevant to the case.

"If I am required at the court and it is relevant, I suppose I will have to go. That is the law. There is nothing I can do about it," Dr Mahathir said.

Karpal today also drew the court's attention to the Prime Minister's statement yesterday. The judge said: "I don't think he (Dr Mahathir) had bad intention".

Gani said it was not proper for everyone, including lawyers, to speak to the Press on the case. Hearing continues on Monday.