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Judge: PM need not testify

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KUALA LUMPUR, Fri. - The High Court today ruled that Prime Minister Datuk Seri Dr Mahathir Mohamad does not have to testify for the defence in the Datuk Seri Anwar Ibrahim's sodomy trial since his intended evidence was irrelevant.

Judge Datuk Arifin Jaka set aside the subpoena issued on Dr Mahathir obtained by the defence last month.

"I have come to the conclusion that the defence has failed to satisfy the court on the relevance of the evidence which Dr Mahathir could possibly offer to the defence," the judge said.

On Anwar's contention of a conspiracy to fabricate evidence against him, Arifin said there was no evidence to implicate the Prime Minister in this.

"There is not an iota of evidence, or even a suggestion by any witness this far to show that Dr Mahathir was involved in any conspiracy to fabricate evidence, or a political conspiracy to topple Datuk Seri Anwar," he said.

Moreover, Arifin said the issue was irrelevant to the trial.

The judge said to call Dr Mahathir to testify on irrelevant issues would be an abuse of the court process and he had a duty to restrain such abuse.

Immediately after Arifin delivered his 16-page decision, Anwar stood up in the dock and expressed his disappointment, contending that the court had accepted Dr Mahathir's explanation as the gospel truth.

Arifin said he was not going to record Anwar's remarks as it could amount to contempt and told the sacked Deputy Prime Minister to sit down.

After making more remarks and urging the court to do justice, Anwar thanked the judge for listening, "although not recording", his views.

Anwar's counsel Karpal Singh said he regretted the ruling.

"At this point of the defence, it would depend very much on the Prime Minister being ordered to testify. The calling of Tun Daim Zainuddin, Aziz Shamsuddin and subsequent witnesses would be irrelevant without Dr Mahathir being called," he said.

Counsel said Arifin had cited Indian cases in his findings and if such references were to be ruled as a misdirection in future, it would ruin the entire proceedings.

Arifin said he could not say if his decision was wrong or right, but "that's the way I look at it".

Counsel said Anwar and co-accused Sukma Darmawan Sasmitaat Madja required time to think about their next course of action.

Leading counsel Christopher Fernando said he advised Anwar to consider the matter carefully and give further instruction on whether to proceed with the trial or to abandon it.

"In fact his immediate reaction was to abandon it at this stage, because he sees his chance of succeeding as next to zero, but later he accepted my advice to think about the matter over the weekend," Fernando said.

Sukma's counsel, Gobind Singh Deo, said he did not understand the decision and had problem relaying it to his client.

Arifin said he had considered submissions by counsel, and if they were unhappy with his decision they could go to a different tribunal.

"What is the point of telling me now, because I am not going to review my decision. I will stick to it and please do not waste time talking about my judgment," the judge said.

Arifin adjourned proceedings to Wednesday. The prosecution did not

object to the adjournment.

Anwar and Sukma, who is his adopted brother, are charged with sodomising Azizan at Tivoli Villa apartment in Bangsar between January and March 1993.

Sukma is facing a second charge of abetting Anwar in sodomising Azizan at the same time and place.

Azizan is the former driver of Anwar's wife, Datin Seri Dr Wan Azizah Wan Ismail.

The defence had applied to call Dr Mahathir but the court ordered them to show the relevance of the Prime Minister's evidence.

In the process Anwar filed an affidavit giving reasons for calling Dr Mahathir who subsequently filed a 14-page reply.

In his decision, Arifin said the court had accepted the Prime Minister's explanation.

Arifin said he accepted Dr Mahathir's reasons for clearing Anwar of the allegation in 1997 since the Prime Minister had believed the findings of the police investigations then.

"Dr Mahathir was entitled to form his opinion based on the investigation. His opinion is irrelevant to the charges against Datuk Seri Anwar because the charges were brought about by the Attorney-General as the Public Prosecutor," he said.

The judge said in any event, Dr Mahathir's view was irrelevant and it was a futile exercise to call him.

Arifin said the rest of Anwar's allegations in the affidavit were also irrelevant.

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