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Court-Anwar

COURT DISMISSES ANWAR'S APPLICATION FOR LEAVE

KUALA LUMPUR, Feb 23 (Bernama) -- The Federal Court today dismissed Datuk Seri Anwar Ibrahim's application for leave to appeal against the High Court's dismissal of his RM100 million defamation suit against Prime Minister Datuk Seri Dr Mahathir Mohamad.

Chief Justice Tan Sri Mohamed Dzaiddin Abdullah, who sat with Chief Judge of Malaya Tan Sri Wan Adnan Ismail and Federal Court Judge Datuk Abdul Malek Ahmad, dismissed the application with costs.

Anwar is seeking leave to appeal in the Federal Court after the Court of Appeal upheld Justice Datuk Dr R.K. Nathan's decision to dismiss the suit with costs.

The former deputy prime minister, who filed the suit in January 1999, claimed that Dr Mahathir had lied and had malicious intention when he told a new conference at the Prime Minister's Department that Anwar had committed an immoral act.

Dr Mahathir said in his defence that he had uttered the words in his capacity as the prime minister with qualified privilege.

Mohamed Dzaiddin said that after reading Nathan's grounds of judgment, the panel found that the High Court judge had correctly addressed the issues of justification and qualified privilege raised by Dr Mahathir in his defence.

"We hasten to add that he relied on the facts admitted and the confession as to the acts of gross indecency in the criminal cases involving (Dr) Munawar (Ahmad Anees) and Sukma (Darmawan Sasmitaat Madja) to found his finding that the words spoken of by Dr Mahathir constitute justification," he said.

Munawar is Anwar's former speech-writer while Sukma is the former deputy prime minister's adopted brother.

They were each jailed six months by the Sessions Court on Sept 19, 1998, after they pleaded guilty to allowing Anwar to sodomise them.

On qualified privilege, Mohamed Dzaiddin said the court also found that the judge had applied the correct test and law to the facts and circumstances of the case.

Mohamed Dzaiddin said an important factor which the Federal Court had to take into account was an assessment of the prospects of success, should leave be given to Anwar.

"It is, however, not necessary for the intending appellant to demonstrate to the court the probability and a reasonable likelihood of the appeal succeeding in the event of leave being granted," he said.

All Anwar needed to do was to show that on first impression, the appeal might succeed, Mohamed Dzaiddin said.

He said that on this point, the court noted that Anwar's counsel, Karpal Singh, merely deposed in his supporting affidavit that "if any or all issues raised are decided in the applicant's favour, there is a prima facie case for success in the appeal".

However, the Chief Justice said, there was no submission by Karpal Singh on this point to demonstrate that there was a prima facie case for success in the appeal.

He said it was not the practice of the Federal Court, following the precedent of the English House of Lords, to give explicit reasons for granting or refusing an application for leave.

However, in the present application, the court felt that it was

desirable to state its reasons for refusing leave, he added.

Counsel Datuk Mohamed Adnan Shuaib and N.Chandran appeared for Dr Mahathir.

-- BERNAMA

SBB AHH JK