

Dr M did not insult royal institution, says DPP

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By Koh Jun Lin

Then-prime minister Dr Mahathir Mohamed did not utter anything seditious during the debates for the 1993 constitutional amendments, but was in fact protecting the royal institution, argued DPP Noorin Badaruddin in court today.

"The people could have done something that would jeopardise the constitutional monarch.

"Before the people lose respect (to the rulers), he founded the Special Court that could hold them accountable in their personal capacity.

"Mahathir did not question the constitutional monarch, but he defended it," she said.

She was objecting Bukit Gelugor MP Karpal Singh's bid to subpoena the former prime minister and several others to appear as witnesses at his sedition trial, on the grounds that they are not material witnesses.

At the time, several scandals involving the royalty especially the 1992 'Gomez Incident' had led to the government to amend the law, effectively stripping the royalty of their immunity from prosecution.

In the incident on November 1992, Johor hockey coach Douglas Gomez was summoned to the Johor palace, where the late Sultan Mahmud Iskandar allegedly assaulted him for criticising the sultan's orders to withdraw his hockey team from a tournament.

Karpal has contended that the parliamentary debates at the time were more seditious than what he had supposedly said.

Since no one was charged as a result, it would be unfair and unconstitutional to charged him, he had argued when he applied for his charges to be struck out.

He is charged under Section 4(1)(b) of the Sedition Act for allegedly saying during a press conference on Feb 6, 2009 that legal action could be taken against the Perak sultan for his role in the 2008 Perak constitutional crisis.

If convicted, Karpal could be jailed for up to three years or fined up to RM5,000, or both.

Karpal: Witnesses are vital

Claiming that the attorney-general's prosecutorial discretion had not been exercised properly, Karpal wishes to subpoena then attorney-general Abu Talib Othman, the current attorney-general Abdul Gani Patail and, noting that the cabinet acts on the attorney-general's legal advice, Mahathir, to support his application.

However, Noorin argued that their testimonies would not be useful, and to subpoena them would be an abuse of court processes.

"All these witnesses are not relevant at all and would not be helpful in the defence," she said, adding that Karpal should be calling witnesses who could raise reasonable doubt on this charge.

She also argued that even if what was said during the 1993 parliamentary debates were seditious, it is irrelevant to Karpal's case.

In addition, under Article 145 of the federal constitution, she said the attorney-general has discretion on whom to prosecute and it is not for the court to question his discretion.

Even the constitution's Article 8 provision for equality before the law is subject to this, Noorin argued.

"Therefore it is clear that the AG's (attorney-general) discretion is absolute and cannot be questioned in court... The court should not allow it," she said.

However, Karpal maintained that the witnesses are vital to his argument that it is unconstitutional under Article 8 to selectively prosecute him, and that it is Article 145 that is subject to Article 8, not the other way around.

Otherwise, the veteran lawyer noted, "it would be disturbing".

Justice Azman Abdullah fixed next Thursday for the decision on whether to subpoena the witnesses.

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