

Karpal: Shafee a material witness, can't prosecute

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By Hafiz Yatim

The defence team today submitted to the Court of Appeal that Muhammad Shafee Abdullah cannot prosecute in the government's Sodomy II appeal because the senior lawyer was a material witness.

In his submissions, lead defence counsel Karpal Singh said Shafee was present when alleged sodomy victim Mohd Saiful Bukhari Azlan met then deputy prime minister Najib Abdul Razak at the latter's official residence.

NONE"Shafee (left) was also offered to the defence as a witness and had his statement recorded by the police under Section 112 of the Criminal Procedure Code," he added.

The night in question was on June 24, 2008, at Najib's residence, that is two days before the alleged sodomy incident at Desa Damansara condominium, of which Anwar was acquitted by the Kuala Lumpur High Court.

As such, Karpal submitted that Shafee should not be allowed to lead the prosecution team in the government's appeal against the High Court's decision to acquit Anwar against charges of sodomising Saiful.

Karpal said the court should adopt a "strict approach" in disallowing Shafee from prosecuting in this case to avoid causing wrong public perception on the administration of justice.

"A material witness cannot be counsel (prosecutor) and his professional conduct can also be questioned," he submitted, adding that having a counsel who is a material witness will cause injustice to the other party.

"Shafee's presence could have provided the narratives to the prosecution's case," he said.

The appellate court is hearing Anwar's application to bar Shafee from leading the prosecution team.

At the start of today's hearing, Karpal told the court that Shafee and DPP Noorin Badaruddin had submitted separate affidavits in reply to Anwar's application which they may need time to reply.

Conspiracy in Shafee's presence

NONEMeanwhile, counsel Ramkarpal also submitted that although Shafee had denied meeting Saiful as cited in the lawyer's affidavit in reply, one cannot deny that there is a conspiracy at large with his presence there.

"He was there and this adds further intrigue as to what transpired," he added.

Ramkarpal said the court and the defence must be convinced that he had no role in the case but now he is brought in to represent the prosecution.

Justice Ramly Ali, who is leading the three member panel that includes Justices Rohana Yusof and Justice Mohd Zawawi Salleh, said if possible they would not want to postpone the matter further to allow Anwar to reply to Shafee and Noorin's affidavit.

Justice Ramly then suggested if Shafee and Noorin would consider withdrawing their affidavits and Shafee agreed.

Karpal yesterday successfully removed Justice Tengku Maimun Tuan Mat from hearing the appeal. This resulted in Justice Rohana replacing Tengku Maimun on the bench.

Based on appeal records

Meanwhile, Shafee defended his appointment as a prosecutor on the grounds that the trial proper is over.

"... the grounds of appeal are based on the appeal records and there is no other evidence to be adduced," he said.

Hence, he felt that his presence in Najib's house should not be in questioned as he had never met Saiful.

"My statement which I gave to the police was based on this. Although I was offered as a defence witness, no one (from the defence) came to interview me," he said.

When the defence was called, Anwar's lawyers had interviewed several other witnesses who included Najib, his wife Rosmah Mansor and former inspector-general of police Musa Hassan. However, some of the witnesses refused to be interviewed.

The Court of Appeal will deliver its decision on Anwar's application at 3pm.

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