

Apex court throws out bid to remove Shafee
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The Federal Court in Putrajaya has unanimously dismissed Anwar Ibrahim's application to remove senior lawyer Muhammad Shafee Abdullah from leading the prosecution team in the government's appeal against the Sodomy II verdict.

Chief Judge of Malaya Zulkefli Ahmad Makinuddin, who led the five-member bench, said former Kuala Lumpur CID chief Mat Zain Ibrahim's statutory declaration were statements made outside the court and could not be accepted as a basis for the application.

Zulkefli said the threshold adopted in the court in this application was prima facie evidence.

"As a result of this, the statutory declaration cannot be accepted to verify the allegations (against Shafee); it remains hotly disputed. Hence, there is no prima facie material before the court to establish a case - the appeal is dismissed," he said.

The other judges hearing the appeal were Chief Judge of Sabah and Sarawak Richard Malanjum, and Federal Court judges Suriyadi Halim Omar, Zaleha Zahari and Jeffrey Tan Kok Wha.

Anwar, in his immediate reaction, expressed disappointment with the decision.

"It seems to be a tough call on the position of an Umno lawyer (Shafee). What this means if Pakatan Rakyat forms the next government, and we appoint (DAP chairman) Karpal Singh to charge a leading Umno person like Dr Mahathir (Mohamad), is it all right - although we would not do so.

"But I am just saying this is their logic. A lawyer fighting tooth and nail against us, blatantly biased, a political stooge of the ruling party, and used now as the lead prosecutor. I am disappointed but we will have to deal with it," the Permatang Pauh MP said.

In today's proceedings, the five member panel asked whether Mat Zain had affirmed any affidavit in support of Anwar's application, to which the reply was in the negative.

Shafee (*left*) claimed Mat Zain's SD should be considered as made outside the court as no affidavit was made in support of the application for him to scrutinise or cross-examine as to the veracity of its contents.

Mat Zain's SD centred upon the meeting and discussion he had with Shafee and former Commercial Crime Investigation Department Ramli Yusuff and former premier Dr Mahathir Mohamad, on several issues regarding the black-eye incident and the Pulau Batu Puteh issue.

Conflict of interest

Lawyer Tommy Thomas had submitted earlier that Shafee cannot be appointed as he had acted for Umno before and has clients whom he has represented against Anwar.

"This is clearly stated in Shafee's *curriculum vitae* and the applicant is concerned that he would not get a fair trial," he said, adding that this could also be a violation of the Legal Professions Act.

There seems to be a conflict of interest, Thomas said with Shafee's appointment as he and his clients would stand to gain from securing Anwar's conviction.

To make matters worse, Thomas (*left*) said Shafee was also present at Najib's house when the complainant (Mohd Saiful Bukhari Azlan) was there.

Besides Thomas, the others on the team were R Sivarasa, Latheefa Koya and Eric Paulsen.

Shafee was appointed by attorney-general Abdul Gani Patail last July to lead the prosecution team.

The senior lawyer in reply said the credibility of Mat Zain is in dispute as he was not interested in filing any affidavit to support Anwar's claims, which form the basis of the application.

"Hence, whatever is stated in the SD should be considered as hearsay evidence as there is no opportunity for me to cross-examine the former police officer," he said.

Shafee also said that besides representing Umno, he had also represented others including Semangat 46, which had led to the de-registration of Umno. The senior lawyer said he was is a professional and denied that he is a member of any political party.

At one point of time, Justice Malanjum described Shafee as a "mercenary" to the amusement of the court.

However, Shafee took Malanjum's remark in the spirit of banter.

Anwar was acquitted by the Kuala Lumpur High Court on Jan 9, 2013, of sodomising his former aide Mohd Saiful Bukhari Azlan at the Desa Damansara condominium six years' ago.

This is Anwar's second attempt to remove Shafee from the prosecution team, after the latter obtained a fiat from Attorney-General Abdul Gani Patail (*right*) last July.

On Dec 20, the Court of Appeal had dismissed Anwar's first application to remove Shafee when it ruled out Mat Zain's statutory declaration.

The prosecution's appeal proper will be heard at the Court of Appeal tomorrow.

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