

Dismissed again - Anwar's appeal on sodomy charge
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Opposition leader Anwar Ibrahim has again failed in his appeal to strike out his sodomy charge, based on his claim that DPP Farah Azlina Latif was involved in a relationship with complainant Mohd Saiful Bukhari Azlan.

The irony of today's proceeding is that the merits of Anwar's appeal was not being heard as the three-member appellate bench allowed a preliminary objection by the prosecution in not allowing the appeal to be heard.

The prosecution had argued throughout today's proceedings that the application cannot be heard and is not appealable as it was made during the course of the trial.

The unanimous decision was made by a three-member panel led by Justice Ahmad Maarop, sitting with Justices Sulaiman Daud and Azhar Ma'ah.

anwar karpal singh and palace of justice Justice Ahmad said the prosecution had pointed out that the court has no jurisdiction to hear the application as the hearing is under way.

He said the court's jurisdiction is determined by Section 50(1) of Courts of Judicature Act, as to whether it can hear and determine any appeal while a trial is going on.

"We are of the view that the ruling was made in the course of the trial and it did not dispose of the rights of the accused," he said.

Citing several case laws, Ahmad said the High Court ruling does not constitute a decision as defined under Section 3 of the Courts of Judicature Act.

"Hence, we have no jurisdiction to hear the appeal and we dismiss the application," he said.

On Aug 16, High Court judge Justice Mohamad Zabidin Mohd Diah had dismissed lead counsel Karpal Singh's striking-out application when he ruled that the alleged affair does not compromise the prosecution's case against Anwar.

Karpal: Illogical decision

In an immediate response, Anwar's lead counsel Karpal Singh described today's appellate court decision as illogical, unsupportive and against common sense.

"The Court of Appeal had abdicated from its duties to do justice in hearing this appeal and its merits. The merits of our application are not being heard and they accepted the prosecution's preliminary objection. We will file a leave to appeal at the Federal Court," he said.

The Bukit Gelugor MP said the decision means that if the High Court's decision was in our favour, they can appeal, while if it's not in our favour we cannot appeal, which is illogical.

"I truly feel that in the eyes of the general public they view that the reasoning imposed by the prosecution is illogical."

"In their eyes they know the truth that the charge against Anwar cannot stand and our claim of conspiracy is there. Our assertion of the affair by the prosecutor with Saiful had never been denied or been rebutted. The merits should have been heard," he said.

He warned that the eyes of the world including foreign diplomats are following the case closely.

"I hope the courts will realise that there is a bigger audience out there, the international community," he said.

Hence, the senior lawyer said it is the judiciary in the country is truly on trial here and it is not Anwar.

Anwar: Ruling absurd

Anwar, who was present in today's proceeding with his wife and PKR president Dr Wan Azizah Wan Ismail, described the decision today as "absurd".

He agreed with Karpal that the merits of the case should have been heard as that was the cause of the matter.

"It is truly an unfair decision as it is our contention the affair has resulted in the prosecution's case against me to be compromised. This is clearly an abuse of the court process. However, the court does not allow it to be heard."

"Justice was not truly served in this matter as our right to be heard is not there. It is an absurd judgment and a clear contradiction. It is a clear contradiction when we hear the DPP saying that the prosecution can appeal when they lose, but we are not able to appeal if we lose," he said.

anwar karpal 200910 02Anwar (centre, with Karpal lower right), who is also the Permatang Pau MP, said for the Court of Appeal to cite cases without giving reasons is making a mockery of justice.

"This is the sorry state of affairs of Malaysia's judiciary," he remarked.

When Justice Ahmad announced the decision, the opposition leader decided not to stand as required in respect of the judges leaving the court. He also urged his supporters in the packed court room not to stand.

Preliminary objection

Solicitor-general II Mohd Yusof Zainal Abiden, in submitting his preliminary objection to Anwar's appeal, said the ruling made by High Court Justice Zabidin to dismiss the striking-out application was a procedural ruling.

mohd yusof zainal abiden "If it is a procedural ruling made during the course of the trial, it is not appealable. This is because it does not dispose of the rights of the accused."

Yusof (left) said the application made by Karpal is an interlocutory application and hence the appeal here (at the Court of Appeal) should not be heard.

Karpal, in contrast, submitted that the ruling made by Justice Zabidin was not an

interlocutory application, and hence the matter is appealable.

"If it is a ruling which disposes of the rights of the party like a striking-out application, it constitutes a final order. Hence, such a decision can be deemed to dispose of the rights of the party and hence, it is appealable."

NONEKarpal questioned why was the prosecution afraid to go into the merits of the case where a prosecutor is having an affair with the complainant.

The alleged affair came to light following the issue raised by blogger Raja Petra Kamarudin (right), who operates the Malaysia Today website.

Karpal asked if a charge was struck out, would it not constitute a final order and dispose of the rights of the party.

Karpal, who is also the Bukit Gelugor MP, also asked it is interlocutory does it mean they cannot come here to appeal?

He also questioned the logic brought by the prosecution that if the judge at the lower court agrees to strike-out Anwar's charge, then the prosecution can appeal whereas if the defence failed to do so, it was non-appealable.

Besides today's decision, there is still a decision pending at the Federal Court related to the Anwar matter, that is for the opposition leader to get all of Saiful's statements given to the police.

This follows a contradiction in the charge levelled on Anwar under 377B for consensual carnal intercourse while the evidence led by the prosecution was for non-consensual, resulting in a contradiction to the prosecution's case.

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