

Anwar fails again, Umno lawyer Shafee will lead prosecution in sodomy appeal
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Datuk Seri Anwar Ibrahim has once again failed to stop Umno lawyer Tan Sri Muhammad Shafee Abdullah (pic) from leading the prosecution in Putrajaya's appeal in his sodomy acquittal.

A five-man Federal Court bench led by Tan Sri Zulkefli Ahmad Makinuddin said Datuk Mat Zain Ibrahim's statutory declaration was an out of court statement and could not be accepted.

"The rest of the allegation in the SD is hotly disputed," he said of the unanimous decision.

As such, he said, Anwar has not made a prima facie case against Shafee.

The public prosecutor's appeal has been scheduled before the Court of Appeal tomorrow.

However, Anwar has filed an application to recall investigating officer Jude Balacious Pereira following the findings of the Human Rights Commission (Suhakam) that the former cop was not a truthful witness in a human rights case five years ago.

The Suhakam inquiry which found Pereira to be an untruthful witness was chaired by then commissioner Shafee , who coincidentally is the lead prosecutor.

One of Anwar's lawyer's Sivarasa Rasiah said the Court of Appeal would have to decide on the application before the appeal was heard.

On the Federal Court ruling today, Anwar (pic, left) said it now meant that even Karpal Singh could prosecute Tun Dr Mahathir Mohamad as conflict of interest was no longer an issue.

"But of course we will not do it even if Pakatan Rakyat comes to power.

"I am disappointed but will shoulder on and return tomorrow to fight another battle," said a calm and composed Anwar.

He said the decision today showed it was difficult to challenge a lawyer who he said was Umno's stooge.

Anwar pointed out that Shafee had fought him tooth and nail in previous cases, but the court did not take this into account.

Earlier Shafee argued that Anwar's application to disqualify him must be thrown out as it heavily relied on Mat Zain's statutory declaration (SD), which he described as hearsay and having no value.

Shafee, who submitted in his capacity as Deputy Public Prosecutor (DPP), called Mat Zain a "rumour monger".

"Mat Zain is a rumour monger. This proceeding is to determine whether I am fit and proper person as DPP. So , the content of the SD is merely hearsay and not admissible in court," he said in rebutting Anwar's appeal to disqualify him.

Attorney General Tan Sri Abdul Gani Patail appointed Shafee as ad hoc DPP last July to lead the prosecution's appeal to set aside the sodomy acquittal of Anwar.

Shafee said Mat Zain should have affirmed an affidavit in support of Anwar's application so that the public prosecutor would have an opportunity to cross examine him.

"Mat Zain was screaming outside the court but was not prepared to come to the court. He did everything dishonestly and dishonourably."

He said the Court of Appeal which dismissed Anwar's application on December 20 was correct in its observation that the SD centred around the 1998 black eye incident.

Saying Anwar was barking up the wrong tree, Shafee said he should have written to Gani to stop him (Shafee) from remaining as DPP.

"The AG has unfettered discretion under the Federal Constitution who he wants to appoint as DPP," he said, adding that the court had no power to disqualify him.

He added that he had no animosity with Anwar and that as a lawyer, he had acted for and against Umno and its leaders on a case to case basis.

He said there would only be conflict of interest if he had conducted the sodomy trial.

Anwar's lawyer Tommy Thomas submitted that Shafee must be disqualified since there was overwhelming evidence of conflict of interest.

Thomas said Shafee should be barred from taking up this case because as a lawyer, he would also be in breach of the Legal Profession (Practice and Etiquette) Rules 1978.

Anwar, 66, was acquitted by the High Court on January 9 last year, on a charge of sodomising his former aide Mohd Saiful Bukhari Azlan at a condominium unit in Bukit Damansara in 2008.

In his second attempt to disqualify Shafee, Anwar said Shafee was not a fit and proper person to be a DPP due to the revelation in Mat Zain's SD.

Mat Zain in his 31-page SD said he and Shafee, as well as former Commercial Crime Investigation Department director Datuk Ramli Yusof, had met Tun Dr Mahathir Mohamad last year, where they allegedly discussed Gani's wrongdoing.

On December 20, Datuk Aziah Ali, who led the three-man Court of Appeal, dismissed Anwar's application, saying the SD was irrelevant as it was related to the "black eye" incident which was already concluded.

Aziah argued that the SD was hearsay evidence and that Mat Zain was not available to ascertain the truth, adding that there were latent defects in the SD such as the blotting out of Mat Zain's identity card number and address.

Anwar had first challenged the legality of Shafee's appointment under the Criminal Procedure Code. This was dismissed by the Federal Court on November 20. - February 11, 2014

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