

Opposition members fail to get charges under Peaceful Assembly Act dropped

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The Sessions Court today dismissed an application to discharge four men, including two MPs for their failure to fulfil a requirement under the Peaceful Assembly Act (PAA).

Judge Mat Ghani Abdullah said the validity of a notice issued by City Hall could only be decided after a full trial.

"It is premature for this court to give the accused persons a discharge without having the benefit of hearing the evidence," he said.

Defence counsel Eric Paulsen said the notice was defective as City Hall was merely an administrator of the property, which is the field where the assembly was held.

He told the court today the property owner was the Federal government.

Seremban MP Anthony Loke Siew Fook and Pandan MP Rafizi Ramli were charged with organising a rally without meeting a condition set by Dang Wangi police chief ACP Zainuddin Ahmad.

Also facing the charge were Batu Burok assemblyman Dr Syed Azman Syed Ahmad Nawawi and PKR staff Muhammad Adib Ishar.

They were charged with committing the offence at Padang Merbok, Jalan Parlimen in Kuala Lumpur between 2pm and 6pm on June 22 last year.

The offence under section 15 (3) of the PAA carries a fine of up to RM10,000.

Last July, all pleaded not guilty to the charge. They also face an alternative charge of, as organisers, failing to furnish a copy of DBKL's approval letter (allowing the rally at the venue) dated June 12, 2013, 10 days before the event to Zainuddin, as required under Section 9(1) of the PAA.

Mat Ghani also refused to give the four a discharge as the prosecution had appealed to the Federal Court against the decision of the Court of Appeal which had struck down Section 9(5), a punishment provision, as unconstitutional.

"It has gone to the Federal Court and it has to be exhausted to the end," he added.

The apex court has fixed May 27 to hear the public prosecutor's appeal. Mat Gani then fixed the case against the four for hearing on June 5.

On April 25, the Court of Appeal ruled that the charge against Seri Setia assemblyman Nik Nazmi Nik Ahmad under Section 9(1) of the PAA for failure to give notice to the police before the rally was merely advisory.

The three-man Court of Appeal bench led by judge Datuk Mohamad Ariff Md Yusof had said that while the police could impose restrictions on peaceful assemblies, they could not penalise organisers and participants for non-compliance of the PAA.

The Court of Appeal also ruled that Section 9(5) of the PAA, which provides for punishment for failure to give a 10-day notice to the authorities before a protest, as unconstitutional.

On May 6, Nik Nazmi was recharged for the same offence.

Sessions Court judge Yasmin Abdul Razak, who gave him a discharge not amounting to an acquittal, said she was bound by the ruling of the superior court.

Yesterday activists Badrul Hisham Shaharin @ Chegubard, Edy Nor Reduan and Mohamed Bukhairy Mohamed Sofian were also given a discharge for the same offence.

Sessions judge Ahmad Bache too said he was bound by the superior court ruling.

Rafizi later told reporters that he was disappointed with the public prosecutor who was bent in ensuring the charges against them remained.

"In the two other cases, the judges gave the accused persons a discharge. Why was our case an exception?" he asked.

Paulsen had submitted his clients be given a discharge as the alternative charge was groundless in light of the Court of Appeal ruling.

Deputy Public Prosecutor Nurulhuda Nuraini Mohd Nor applied the case to be adjourned until the Federal Court decided on the public prosecutor's appeal. - May 15, 2014.

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