

**DALAM MAHKAMAH PERSEKUTUAN MALAYSIA**  
**PERMOHONAN JENAYAH NO. 05 – 65 – 2005 (W)**

**(MAHKAMAH RAYUAN RAYUAN JENAYAH NO. W-09-27-2005)**

**Dalam Perkara Peraturan-Peraturan 98 Dan 137 Kaedah-Kaedah  
Mahkamah Persekutuan 1995;**

**Dan**

**Dalam Perkara Artikel-Artikel 121, 125A, 128 Konstitusi  
Persekutuan;**

**Dan**

**Dalam Perkara Akta Bantuan Bersama Dalam Perkara Jenayah  
2002 (MACMA), Akta Keterangan (Akta 56) Dan Kanun Tatacara  
Jenayah (Akta 593);**

**Dan**

**Dalam Bidangkuasa Mahkamah Persekutuan Yang Sedia Ada**

**ANTARA**

**TAN SRI ERIC CHIA ENG HOCK ... PEMOHON**

**DAN**

**PENDAKWA RAYA ... RESPONDEN**

**CORAM:** Y.A.A. Tun Dato' Sri Ahmad Fairuz Bin Dato' Sheikh  
Abdul Halim, CJ  
Y.A.A. Dato' Richard Malanjum, CJ (Sabah & Sarawak)  
Y.A. Dato' Alauddin Bin Dato' Mohd Sheriff, FCJ

Y.A. Dato' Bentara Istana Dato' Nik Hashim B. Nik Ab.  
Rahman, FCJ  
Y.A. Dato' Augustine Paul, FCJ

**Judgment Of Richard Malanjum CJ (Sabah & Sarawak)**

I have the advantage of reading in draft the Judgment of Augustine Paul FCJ ('the main Judgment'). On the issues discussed therein I am in agreement with his conclusions.

However, I noted that there is another aspect in the submission of learned counsel for the Applicant which should be considered. The gist of his submission is that in exercising his revisionary power the High Court Judge was actually exercising his original jurisdiction within the meaning of section 87 of the Courts of Judicature Act 1964 (the CJA).

The learned Deputy Public Prosecutor in reply argued otherwise. He submitted that the exercise of revisionary power was nothing more than a continuation of the proceeding in the subordinate court in respect of the same case.

I think the point raised can be determined without dwelling into the facts of this case which have already been adequately dealt with in the main Judgment. What needs to be examined here is the law which deals with the nature of jurisdiction of the High Court when it exercises its revisionary power.

Sections 31 and 35 of CJA stipulate certain powers of the High Court and they read:

*'31. Revision of criminal proceedings of subordinate courts*

*The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts **in accordance with any law for the time being in force relating to criminal procedure.***

*'35. General supervisory and revisionary jurisdiction of High Court*

*(1) In addition to the powers conferred on the High Court by this or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate*

*courts, and may in particular, but without prejudice to the generality of the foregoing provision, **if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal,** in any subordinate court, call for the record thereof, and may remove the same into the High Court or may give to the subordinate court such directions as to the further conduct of the same as justice may require.*

*(2) Upon the High Court calling for any record as aforesaid all proceedings in the subordinate court in the matter or proceeding in question shall be stayed pending further order of the High Court.’ (Emphasis added).*

In the Criminal Procedure Code (‘CPC’) there are also provisions which empower a Judge of the High Court with revisionary power. They are sections 323 and 325 which read:

*‘323. Powers to call for records of subordinate Courts*

*(1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court.*

*(2) Orders made under sections 97 and 98 are not proceedings within the meaning of this section.*

*325. Powers of Judge on revision*

*(1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by sections 311, 315, 316 and 317 of this Code.*

*(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence.*

*(3) Nothing in this section shall be deemed to authorise a Judge to convert a finding of acquittal into one of conviction.'*

(Emphasis added).

Subsection (1) of section 325 therefore empowers a High Court Judge in the course of exercising his revisionary power, after calling for the record of proceedings suo motu or after it came to his knowledge, to make such order as may be made under sections 311, 315, 316 and 317 of CPC, namely, the respective powers of a High Court Judge to order a stay of execution pending appeal, the arrest of respondent in certain cases pending an appeal against acquittal, to make a decision as though there is an appeal before the High Court and the making of an order to take further evidence. But there is no power to reverse an acquittal to one of conviction when exercising his revisionary power. Subsection (3) thereof makes it clear.

Now, in the matter before us the learned High Court Judge in his written judgment made it very clear that he was exercising his revisionary power pursuant to section 31 of CJA read with section 323 of CPC. Was he therefore exercising an original jurisdiction notwithstanding that he invoked these relevant statutory provisions? For if he was, then his decision would be within the ambit of section 87 of CJA which reads:

*‘(1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal.’ [Emphasis added]*

It has been said that a *‘revision is not a right and is only a procedural facility afforded to a party, while an appeal is a statutory right conferred on a party. It cannot be said that a proceeding in revision is*

*a continuation of the suit, appeal or trial. It is only a step-in-aid for invoking the powers of superintendence by the Sessions Judge and the High Court for correcting irregularities if any, in the judgments and orders of the subordinate courts. Interference in revision being a discretionary power vested in the superior courts, a revision petition cannot be considered to be a continuation of the proceedings pending in the trial court or the appellate court* (see: **KUNHAMMAD v ABDUL KADER 1977 K L T 840**). Similarly, in **Ku Izham bin Ku Adnan v Public Prosecutor [1998] 5 MLJ 720** it was said that the ‘*object of a revision is to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted in some injury to the due maintenance of law and order or in some undeserved hardship to individuals. The judge’s duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court.*’

At first blush the foregoing views may seem to be in tandem with the analogy drawn by learned counsel for the accused on the similarity between the exercise of revisionary power and the supervisory power of the High Court. The latter is an exercise of its original jurisdiction.

However, to agree with the analogy made will be failing to consider the other relevant statutory provisions which are equally pertinent. Such an approach was adopted in **Lam Kong Co Ltd v. Thong Guan Co Ptd Ltd [2000] 3 CLJ 769** when considering the issue of whether the Court of Appeal retained any revisionary power. His Lordship Mohammed Dzaidin FCJ (as he then was) proceeded to examine the existing statutory provisions and went on to say this:

*‘It is trite that the Court of Appeal today no longer has any original jurisdiction after the repeal of ss. 45-49 of the Act by the Courts of Judicature (Amendment) Act 1994 (Act A886) what remains is its criminal and civil appellate jurisdiction.’*

This pronouncement, and thus by implication the approach, was recently approved by this Court in **Metramac Corporation Sdn Bhd**

**v Fawziah Holdings Sdn Bhd (2006) 3 CLJ 177** when it accepted as correct the foregoing statement. Hence, to determine whether or not a particular exercise of power by the High Court is made pursuant to its original jurisdiction, it must necessarily depend on the statutory provision which governs it. For now one has to accept the fact that the jurisdictions of the courts in this country have been statutory demarcated. This is allowed by the Federal Constitution [Articles 121 and 128 (3)].

Sections 22 to 25 of the CJA stipulate what are the original jurisdictions of the High Court. Section 31 under which the learned High Court Judge in this matter acted upon is not included. I think the view expressed by Mohamed Dzaidin J (as he then was) in the case of **Tengku Abdul Muiz Shah & Ors v Public Prosecutor [1983] 1 MLJ 422** sums up the true position of the law when he said this, inter alia, at page 423:

*‘...Except for certain Articles in the Constitution (See Articles 121, 122A, 122B, 122C; 123; 126.), the powers and jurisdiction of the High Court are governed by the Courts of Judicature Act*

*1964. In the sphere of criminal jurisdiction, the High Court has three jurisdictions, namely, original, appellate and revisionary. With regard to its original jurisdiction, section 22(1)(a)(i) of the Act states that the High Court shall have jurisdiction to try all offences committed within its local jurisdiction.... Lastly, under section 31 of the Act, the High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts. Thus, so far it is clear that the High Court has jurisdiction to try all offences committed within its local jurisdiction and to hear appeals and to exercise powers of revision from subordinate courts.'*

In other words the exercise of revisionary power by the High Court Judge is not in law an exercise of his original jurisdiction and hence does not come within the ambit of section 87 of the CJA. That should therefore answer the point raised by learned counsel for the accused.

Even if the foregoing approach is deemed too simplistic a view to take, it still does not justify equating wholly the revisionary power of the High Court to its supervisory power as ordinarily understood. To

do so would be ignoring the stark differences in the two judicial functions of the High Court. No doubt the end result of each may be quite similar in that both are intended to correct or rectify any error committed by an inferior tribunal, an adjudicating body or a subordinate court. But the similarity ends there. Although section 35 of CJA refers to supervisory jurisdiction of the High Court together with its revisionary jurisdiction, the exercise of supervisory power is generally in relation to the additional powers of the High Court given under section 25 of CJA to issue what is commonly known as the prerogative writs such as certiorari, mandamus and prohibition. It entails the commencement of a proceeding in the High Court itself unlike an exercise of revisionary power where it is preceded with an existing proceeding in the subordinate court. This matter under consideration is a good illustration. There is therefore merit in the contention by the learned Deputy when he highlighted the fact that the High Court Judge was only exercising his revisionary power on an interlocutory issue in relation to a case which is still pending in the Sessions Court.

My answer therefore to the primary question is that an exercise of revisionary power by a High Court Judge is not an exercise of an original jurisdiction so as to bring it within the ambit of section 87 of CJA.

For the above reasons the Notice of Appeal filed by the accused in this Court is therefore struck out for want of jurisdiction under section 87 of the CJA.

Signed.  
**(DATO' RICHARD MALANJUM)**  
Chief Judge Of Sabah And Sarawak

Date: 28<sup>th</sup> December, 2006

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