

PRESS SUMMARY
COURT OF APPEAL, MALAYSIA

Criminal Appeal No. W-05-110-03/2019

Dato' Seri Mohd Najib bin Hj Abdul Razak v Pendakwa Raya

CORAM: Dato' Zabariah binti Mohd Yusof, Dato' Rhodzariah binti Bujang, Datuk Lau Bee Lan (HMR)

BACKGROUND FACTS

The appeal is filed by the appellant against the decision of the learned High Court Judge that dismissed the Notice of Motion by the appellant (the applicant in the Court below) who sought to disqualify Dato' Seri Gopal Sri Ram from continuing to act as a prosecutor in the following criminal cases brought against the appellant:

- i) WA-45-7-2018 and WA-45-8-2018 (the 1MDB Case);
- ii) WA-45-10-2018 (the MOF Case); and
- iii) WA-61R-26-2018 (the PAC Case).

PRELIMINARY OBJECTION BY THE RESPONDENT:

The preliminary objection raised by the respondent is premised on the competency of the appeal by reason of Section 50, Courts of Judicature Act 1964 read with the definition section of the word "decision" in Section 3 of the same.

For this issue, the Court found that, the decision of the learned High Court Judge in dismissing the appellant's application to have the Letter of Appointment been produced and to disqualify Dato' Seri Gopal Sri Ram from acting as a Senior DPP was a decision made in the course of the trial which does not dispose of the rights of the parties.

Therefore, the decision of the learned High Court Judge is not appealable by virtue of Section 50(1) to be read with Section 3 of the Court of Judicature Act 1964. Hence, the Preliminary Objection by the respondent is allowed and based on this alone, this appeal is struck out.

However, assuming that the court is wrong in the determination of the Preliminary Objection, the court proceeded to consider the merits of the appeal by the appellant on the decision of the learned High Court Judge dismissing the Notice of Motion.

OUR DECISION

On the 1st issue: Whether the Letter of Appointment of Dato' Seri Gopal Sri Ram ought to be produced

The fact of the appointment of Dato' Seri Gopal Sri Ram under Section 376(3) Criminal Procedure Code is never in doubt. The counsel for the appellant had sight of the Letter of Appointment when it was shown to him.

The Court do not see the basis of the application for the production of the said Letter of Appointment as Section 376(3) of the Criminal Procedure Code does not require:

- i) The appointment to be made in writing;
- ii) The Letter of Appointment to be produced upon demand;
- iii) The appointment to be gazetted.

Besides, it has not been manifest in the Notice of Motion of the purpose for the production of the Letter of Appointment other than the non-production may impact upon the locus standi of Dato' Seri Gopal Sri Ram and may result in the trial being held to be a nullity.

Therefore, the Court found that the learned High Court Judge did not err in his finding that the respondent is not obliged to produce the Letter of Appointment to the appellant.

On 2nd issue: Whether Dato' Seri Gopal Sri Ram ought to be disqualified from continuing to act as Senior DPP and to appear on behalf of the PP

It is not disputed that the High Court is vested with the inherent jurisdiction to regulate its proceedings and this includes disqualifying a party from appearing for a litigant for good reason.

The contentions of the applicant is that Dato' Seri Gopal Sri Ram ought to be disqualified because he is in a position of conflict of interest as;

- i) He was involved in investigations in the cases that he is to prosecute; and
- ii) He has already taken a position on the culpability of the appellant.

Dato' Seri Gopal Sri Ram involved in investigations:

The basis of the allegations arose from the Media Release given by the AG on 31.8.2018 and the interview given by the AG to The Edge and Malaysiakini on 13.9.2018.

The Court do not see how the contents of the same can amount to Dato' Seri Gopal Sri Ram being involved in the investigations of the cases that he is to prosecute. Apart from the bare assertion by the appellant, there is no evidence to show that Dato' Seri Gopal Sri Ram was involved in the investigations.

Therefore, the Court do not find that the learned High Court Judge had erred when he found that the allegations that Dato' Seri Gopal Sri Ram was involved in the investigations against the appellant is unsubstantiated.

Dato' Seri Gopal Sri Ram has already taken a position on the culpability of the appellant:

This position taken by the appellant is premised on the following:

- i) Dato' Seri Gopal Sri Ram acted as lead counsel for Anwar Ibrahim in appeals before the Court of Appeal in the 2nd Sodomy case;
- ii) Dato' Seri Gopal Sri Ram acted for Anwar Ibrahim in the Court of Appeal case of W-01(A)-413-2017;
- iii) In 2017, he acted for Zaid Ibrahim in a motion for leave to the Federal Court in relation to the application for a judicial review of the decision of the AG in not prosecuting Dato' Seri Najib.

Based on the aforesaid, the appellant submitted that Dato' Seri Gopal Sri Ram had taken the position on the culpability of the appellant and hence he could not possibly has an objective perception in conducting to prosecute the cases against the appellant.

However, the cab rank rule applies in those cases where Dato' Seri Gopal Sri Ram was acting as counsel for the respective clients. He was bound to accept briefs in any court. Further, it has not been shown as to how would the fact that Dato' Seri Gopal Sri Ram had acted in the capacity as cited above, would have an effect on his professional objectivity in conducting the prosecution against the accused.

It is the duty of the trial judge to take control of its own proceedings and the trier of fact who will ultimately decide the fate of the accused persons, in this case the appellant.

Furthermore, in addition to the court's inherent power in having the control of the conduct of the proceedings, there are safeguards in the Criminal Procedure Code to ensure a fair trial for the appellant.

Section 376(3) of the Criminal Procedure Code provides that the appointed DPPs shall be under the general control and direction of the Public Prosecutor. Therefore, the Senior DPP does not have a complete untrammelled power to prosecute in any manner he deems fit. In any event, there are other DPPs also conducting the prosecution of the appellant.

Dato' Seri Gopal Sri Ram is biased and impartial:

This conclusion based on Dato' Seri Gopal Sri Ram arguing before the court in opposing an application for bail by the appellant as he has suggested a bail condition which is unprecedented.

However, it is the duty of the prosecution to object to bail and provide reasons in support for such objection. Ultimately, it is for the Judge hearing the bail application to decide whether to grant bail or with conditions attached.

Therefore, the learned Judge did not err when he found that the apprehension of overzealous prosecution on the part of the appellant is based upon mere speculation as opposed to actual prosecutorial misconduct. There is also nothing before the court to show that there is a real danger of bias by Dato' Seri Gopal Sri Ram if he continues to act as prosecutor in this case.

The alleged perjury committed by Dato' Seri Gopal Sri Ram:

The appellant submitted in the Court below that Dato' Seri Gopal Sri Ram is not fit and proper person to act as Senior DPP because he was shown to have previously given false testimony in a trial before Kuala Lumpur High Court.

The Court is of the view that, whatever that had happened, it was never shown that Dato' Seri Gopal Sri Ram had been found guilty of perjury or any misconduct by any authority. Therefore, the learned Judge did not err when he held that the allegations of perjury are mere allegations unsupported by any evidence or material as they had not been proven in any court of law.

CONCLUSION

Given the aforesaid, it is the Court's decision that the learned High Court Judge did not err in fact or in law when he found that Dato' Seri Gopal Seri Ram is fit and proper person to be appointed as Senior DPP and dismissed the notice of motion. The appeal has no merits.

The Court unanimously dismissed the appeal by the appellant and the decision of the learned High Court is affirmed.

NOTE: This summary is provided to assist in understanding the Court's decision. The full judgment of the Court is the only authoritative document.