

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN)
RAYUAN JENAYAH NO.: B-06B-47-12/2020

ANTARA

PEGUAM NEGARA MALAYSIA

...PERAYU

DAN

MOHD KASSIM BIN ABD HAMID

(NO. K/P: 551102-02-5163)

[Bapa Kandung Muhammad Adib Bin Mohd Kassim]

...RESPONDEN

Broad Judgment

[1] There are three appeals before us which are Criminal Appeal No. B-06B-96-12/2019 (**“Appeal No. 96”**) Criminal Appeal No. B-06B-13-02/2020 (**“Appeal No. 13”**) and Criminal Appeal No. B-06B-47-12/2020 (**“Appeal No. 47”**). At the outset, parties have agreed to submit on the issues pertaining to Appeal No. 47 first as it will have a bearing on the other two appeals.

[2] The issue raised in Appeal No. 47 is whether the learned Sessions Court Judge (**“SCJ”**) sitting as a Magistrate holding an inquiry of death under Chapter XXXII of the CPC has any jurisdiction to punish for contempt of court, and in the alternative, whether the exercise of the learned SCJ’s jurisdiction to punish for

contempt of court is limited only to contempt in the face of the court (*facie curiae*) which means contempt before or in the presence of the court.

[3] First and foremost, Dato' Ambiga Sreenevasan, the learned counsel for the AG submitted that a Magistrate holding an inquiry of death is not a 'court' per se hence there can be no jurisdiction to punish for contempt of court in the first place. According to the learned counsel for the AG, the terms 'court' and 'inquiry' are distinctively defined under sections 2 and 6 of the CPC.

[4] We do not agree with the learned counsel for the AG. Upon careful reading of sections 2, 6 and 9 of the Criminal Procedure Code ("**CPC**") together with sections 3(2) and 82 of the Subordinate Courts Act 1948 ("**SCA 1948**"), we are of the considered view that for the purpose of the present appeal, a 'court' simply means a Magistrate Court established under the SCA 1948 whereas an 'inquiry' is one of the powers and jurisdiction exercisable by the said Magistrate or Magistrate Court under the CPC.

[5] In addition, section 82 of the SCA 1948 makes no distinction between a Magistrate and a Magistrate Court in terms of the exercise of its lawful powers and jurisdiction under the law. In other words, when a Magistrate is exercising its lawful powers and jurisdiction under the law, even for an inquiry of death as conferred on the Magistrate by virtue of Part VIII and Chapter XXXII of the CPC, it is doing so as a court of law. See **Re Derek Selby, Deceased [1971] 2 MLJ 277; [1971] 1 LNS 122 (HC)** and **Public Prosecutor v. Seeralan Suppiah [1985] 2 MLJ 30; [1985] CLJ Rep 250 (SC)**.

[6] Since a Magistrate holding an inquiry of death is doing so as a court of law, we hold that the Magistrate clearly has jurisdiction to punish for contempt of court.

[7] The learned counsel for the AG submitted in the alternative, that even if a Magistrate holding an inquiry of death has the power and jurisdiction to punish for contempt of court, the exercise of such a power is limited only to contempt *facie curiae*, or contempt in the face of the court.

[8] The learned counsel for the AG submitted that the Magistrate Court, as an inferior court, has no jurisdiction to punish for contempt outside of the court. Reference was made to the case of **The Queen v Lefroy (1873) LR 8 QB 134**.

[9] However, we found that the principle in Lefroy's case was derived from an interpretation of a specific statute in the UK namely the County Courts Act 1846 (9 & 10 Vict c 95) (now the County Courts Act 1984 (c 28). We do not have any similar legislation in Malaysia. Therefore, we are of the view that the principles enunciated in Lefroy's case is not applicable here in Malaysia by virtue of section 3(1) of the Civil Law Act 1956 ("**CLA 1956**").

[10] We have instead our own constitutional and statutory provisions regarding the power of our courts to punish for contempt of court. The power to punish for contempt of court by the Federal Court, the Court of Appeal and the High Court (superior courts), are stipulated in Article 126 of the Federal Constitution ("**FC**") and section 13 of the Courts of Judicature Act 1964 ("**CJA 1964**"). For the subordinate courts, the power to punish for contempt are provided in section 99A and paragraph 26 of the Third Schedule to the SCA 1948.

[11] In our instant appeal, section 99A and Paragraph 26 of the Third Schedule to the SCA 1948 are applicable. Paragraph 26 of the Third Schedule to the SCA 1948 states:

“26. Contempt of court.

Power to take cognizance of any contempt of court *and to award punishment for the same, not exceeding, in the case of a Sessions Court, a fine of three hundred ringgit or imprisonment for six weeks, in the case of a Magistrates' Court presided over by a First Class Magistrate, a fine of one hundred and fifty ringgit or imprisonment for three weeks, and in the case of a Magistrates' Court presided over by a Second Class Magistrate, a fine of fifty ringgit or imprisonment for one week, to such extent and in such manner as may be prescribed by rules of court. If the contempt of court is punishable as an offence under the Penal Code, the court may, in lieu of taking cognizance thereof, authorize a prosecution.”*

[12] The learned counsel for the AG submitted that the Magistrate’s power and jurisdiction to punish for contempt of court is limited only to contempt in the face of the court (*facie curiae*) due to the use of the word “cognizance” in paragraph 26 of the Third Schedule to the SCA 1948.

[13] We found no merit in this submission. We are of the view that by definition, the term “cognizance” merely means, among others, jurisdiction or judicial notice or knowledge (see Black’s Law Dictionary).

[14] We are also of the view that the authorities relied upon by the learned counsel for the AG do not support their case. The cases cited, that is, **Balogh v St Albans Crown Court [1975] QB 73**, **Re Kumaraendran, An Advocate & Solicitor [1975] 2 MLJ 45** and **Bok Chek Thou & Anor v Low Swee Boon & Anor [1998] 4 MLJ 342**, do not in our minds state or imply that the words “cognisance of any contempt” of court is exclusively applicable only to contempt in the face of the court (*facie curiae*).

[15] On the contrary, we are of the view that the term “cognisance of any contempt of court” as stated in paragraph 26 of the Third Schedule to the SCA 1948 would include both contempt in the face of the court (*facie curiae*) and contempt outside of the court (*ex facie curiae*). We therefore agreed and adopted the similar position taken by Suriyadi J, (as His Lordship then was), in **Bok Chek Thou & Anor v Low Swee Boon & Anor [1998] 4 MLJ 342** which stated as follows:

“Adverting to, and disseminating this relevant para 26, the subordinate courts may act on any contempt of court, inclusive of any form of contempt in the face of the court (or contempt ex-facie the court).”

Conclusion

[16] Based on the foregoing reasons, we found that there are no merits in the AG’s cross-appeal in Appeal No. 47 and hereby dismiss the cross-appeal.