(36)

JABATAN KEHAKIMAN,
MAHKAMAH TINGGI,
BANGUNAN SULTAN ABDUL SAMAD,
JALAN RAJA,
50050 KUALA LUMPUR.

Bil:(33)dlm.JK/MA 16

Tarikh:21 hb Januari 1988

Hakim,
Mahkamah Sesyen,
SEMENANJUNG MALAYSIA.

Majistret,
Mahkamah Majistret,
SEMENANJUNG MALAYSIA.

Tuan/Puan,

PEKELILING PENDAFTAR NO. 2 TAHUN 1988

Per. : Pemindahan kes-kes Jenayah ke Mahkamah Rendah

Saya telah diarahkan olen Yang Amat Arif Hakim Besar Malaya untuk menarik perhatian semua Mahkamah mengenai kandungan dokumen-dokumen yang dilampirkan seperti berikut:-

1) Perintah Mahkamah di Perak dalam Rayuan Jenayah 52-5-87 dan 52-6-87 bertarikh 20hb Oktober 1987 (Lampiran 1).

2) Notis Usul dalam Mahkamah Agung, Permohonan No. 26 Tahun 1987 (Lampiran 2).

...2/-

Notis Usul telah didengar pada 4hb Januari 1988 dan Mahkamah Agung telah menjawab soalan mengenai undang-undang yang telah dikemukakan dengan memberi jawapan yang negatif.

Hakim yang arif menyatakan bahawa memandangkan keputusan Mahkamah Agung itu, kes-kes jenayah yang telah didaftarkan dalam mana-mana Mahkamah untuk perbicaraan, hendaklah, mulai sekarang, tidak boleh dipindahkan ke Mahkamah rendah melainkan Pendakwa Raya memilih Mahkamah rendah sebagai forum yang baru dan ia mempunyai bidang kuasa untuk membicarakannya.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

(S.C. AUGUSTIN)
b.p. Pendaftar,
Mahkamah Tinggi Malaya,
Kuala Lumpur.

s.k. 1) Y.A.A. Ketua Hakim Negara
2) Y.A.A. Hakim Besar Malaya.
3) Y.A. Hakim-Hakim,
Mahkamah Tinggi, Semenanjung Malaysia.
4) Ketua Pendaftar,
Mahkamah Agung Malaysia.
5) Pendaftar,
Mahkamah Tinggi Malaya.
6) Timbalan Pendaftar,
Mahkamah Tinggi Malaya.

ANNEXURE 1

IN THE HIGH COURT IN MALAYA AT IPOH
PERAK CRIMINAL APPEAL 52-5-87, 52-6-87
(Sessions Court Pengkalan Hulu Perak SAC 71-1-86)

1. MOHAMMED SHERIFF B.ABD. RAHMAN — APPELLANT
2. MOKHTAR B.SALLEH

Vs.

THE PUBLIC PROSECUTOR — RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE DATO' ANUAR B. DATO' ZAINAL ABIDIN

THIS 20TH DAY OF OCTOBER, 1987 — IN OPEN COURT

O R D E R

This Appeal coming on for hearing this day in the presence of Counsel Mr. Anthonysamy for the Appellant and Mr. Tun Abdul Majid b.Tun Abdul Majid b.Tun Hamzah, Deputy Public Prosecutor Perak, AND UPON HEARING the Deputy Public Prosecutor and the Appellant aforesaid:

The Honourable Court has this to say that Section 28 of the Prevention of Corruption Act does not now exclude the Magistrate from hearing cases under the Prevention Of Corruption Act.

A Magistrate has jurisdiction to hear cases which the maximum term of imprisonment is 10 years under Section 85 of the Prevention of Corruption Act.

A Magistrate may pass sentence not exceeding 5 years imprisonment.

Section 4(a) Prevention Of Corruption Act 1961 is within jurisdiction of a Magistrate.

IT IS ORDERED that the case be heard by a Magistrate and not a Sessions Court Judge.

t.t. (Illegible)
Senior Assistant Registrar,
High Court,
Ipoh.

ANNEXURE 2

IN THE SUPREME COURT OF MALAYSIA

Application No.26 of 1987

Between

Public Prosecutor .. Applicant

And

1. Mohamed Sheriff bin Hj.Abd.Rahman
2. Mokhter bin Salleh .. Respondents

(In the matter of Section 66(2) of the Courts of Judicature Act 1964

And

In the matter of Pengkalan Hulu Sessions Court Arrest Cases Nos. SAC 71-1-86 and SAC 71-2-86

And

In the matter of Perak Criminal Appeals Nos. 52-5-87 and 52-6-87 decided by the Honourable Mr. Justice Dato' Anuar bin Dato' Zainal Abidin at the High Court Ipoh on the 20th day of October, 1987)

NOTICE OF MOTION

TAKE NOTICE that on Monday the 4th day of January, 1988 at 9.30 o'clock in the forenoon/afternoon or as soon thereafter the Deputy Public Prosecutor on behalf of the Applicant will move the Court for an order that the following question of law of public interest arising out of the above Appeals be reserved for determination by the Supreme Court under section 66 of the Courts of Judicature Act 1964:

Whether the learned Judge is empowered by law to order a criminal case registered in the Sessions Court as a Sessions Court case to be transferred and tried by a Magistrate.

Dated at K.L. this 13th day of November, 1987.

Sd: (Illegible)
Penolong Kanan Pendaftar,
Mahkamah Agung,
Kuala Lumpur.

Sd: (Illegible)
(Tan Sri Abu Talib bin Othman)
Public Prosecutor,
Malaysia.

JABATAN KEHAKIMAN,
MAHKAMAH TINGGI,
BANGUNAN SULTAN ABDUL SAMAD,
JALAN RAJA,
50050 KUALA LUMPUR.

Bil:(33) dlm. JK/MA 16
Tarikh: 21st Jan. 1988.

Hakim,
Mahkamah Sesyen,
SEMENANJUNG MALAYSIA.

Majistret,
Mahkamah Majistret,
SEMENANJUNG MALAYSIA.

Tuan/Puan,

PEKELILING PENDAFTAR NO. 2 TAHUN 1988

Re: Transfer of Criminal cases to Lower Court

I am directed by the Hon'ble the Chief Justice Malaya to bring to the attention of all Courts the contents in the following attached hereto:-

1) Order of Court in Perak Criminal Appeal 52-5-87 and 52-6-87 dated 20.10.1987 (Annexure 1).
2) Notice of Motion in Supreme Court of Malaya Application No.26 of 1987 (Annexure 2).

The Notice of Motion was heard on the 4th Januari, 1988 and the Supreme Court answered the question of law posed therein in the negative.

../-

His Lordship points out in the light of the decision of the Supreme Court no criminal case registered in any Court for trial shall henceforth be transferred to a Court subordinate to it unless the Public Prosecutor chooses the lower Court as the new forum and it has jurisdiction.

"BERKHIDMAT UNTUK NEGARA".

Saya yang menurut perintah,

(S.C. AUGUSTIN)
b.p. Pendaftar,
Mahkamah Tinggi Malaya,
Kuala Lumpur.

s.k. 1) Y.A.A. Ketua Hakim Negara.

2) Y.A.A. Hakim Besar Malaya.

3) Y.A. Hakim-Hakim,
Mahkamah Tinggi, Semenanjung Malaysia.

4) Ketua Pendaftar,
Mahkamah Agung Malaysia.

5) Pendaftar,
Mahkamah Tinggi Malaya.

6) Timbalan Pendaftar,
Mahkamah Tinggi Malaya.

ANNEXURE 1

IN THE HIGH COURT IN MALAYA AT IPOH
PERAK CRIMINAL APPEAL 52-5-87, 52-6-87
(Sessions Court Pengkalan Hulu Perak SAC 71-1-86)

1. MOHAMMED SHERIFF B.ABD. RAHMAN — APPELLANT
2. MOKHTAR B.SALLEH

Vs.

THE PUBLIC PROSECUTOR — RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE DATO' ANUAR B. DATO' ZAINAL ABIDIN

THIS 20TH DAY OF OCTOBER, 1987 — IN OPEN COURT

O R D E R

This Appeal coming on for hearing this day in the presence of Counsel Mr. Anthonysamy for the Appellant and Mr. Tun Abdul Majid b.Tun Abdul Majid b.Tun Hamzah, Deputy Public Prosecutor Perak, AND UPON HEARING the Deputy Public Prosecutor and the Appellant aforesaid:

The Honourable Court has this to say that Section 28 of the Prevention of Corruption Act does not now exclude the Magistrate from hearing cases under the Prevention Of Corruption Act.

A Magistrate has jurisdiction to hear cases which the maximum term of imprisonment is 10 years under Section 85 of the Prevention of Corruption Act.

A Magistrate may pass sentence not exceeding 5 years imprisonment.

Section 4(a) Prevention Of Corruption Act 1961 is within jurisdiction of a Magistrate.

IT IS ORDERED that the case be heard by a Magistrate and not a Sessions Court Judge.

t.t. (Illegible)
Senior Assistant Registrar,
High Court,
Ipoh.

ANNEXURE 2

IN THE SUPREME COURT OF MALAYSIA

Application No.26 of 1987

Between

Public Prosecutor .. Applicant

And

1. Mohamed Sheriff bin Hj.Abd.Rahman
2. Mokhter bin Salleh .. Respondents

(In the matter of Section 66(2) of the Courts of Judicature Act 1964

And

In the matter of Pengkalan Hulu Sessions Court Arrest Cases Nos. SAC 71-1-86 and SAC 71-2-86

And

In the matter of Perak Criminal Appeals Nos. 52-5-87 and 52-6-87 decided by the Honourable Mr. Justice Dato' Anuar bin Dato' Zainal Abidin at the High Court Ipoh on the 20th day of October, 1987)

NOTICE OF MOTION

TAKE NOTICE that on Monday the 4th day of January, 1988 at 9.30 o'clock in the forenoon/afternoon or as soon thereafter the Deputy Public Prosecutor on behalf of the Applicant will move the Court for an order that the following question of law of public interest arising out of the above Appeals be reserved for determination by the Supreme Court under section 66 of the Courts of Judicature Act 1964:

Whether the learned Judge is empowered by law to order a criminal case registered in the Sessions Court as a Sessions Court case to be transferred and tried by a Magistrate.

Dated at K.L. this 13th day of November, 1987.

Sd: (Illegible)
Penolong Kanan Pendaftar,
Mahkamah Agung,
Kuala Lumpur.

Sd: (Illegible)
(Tan Sri Abu Talib bin Othman)
Public Prosecutor,
Malaysia.