

Chan Boong Heng

AND

Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 2 of 2005)

Headnote:.....

Coram: Cons, P; Power and Mortimer, J.JA.

Date of Hearing:

Date of Judgment:

Power, JA.:

Mr. Chan Boon Heng, the person referred to as the Appellant in these proceedings faced 3 charges before a Magistrate – two under the Customs Act and one under the Broadcasting Act. He was acquitted by the Magistrate on all charges and the Public Prosecutor appealed against those decisions under section 271 of the Criminal Procedure Code.

The hearing of that appeal came before Mr. Justice Chong who was satisfied that:

“As the Magistrate has misdirected himself in relation to the ingredients of the offences that must be proved, the acquittals cannot be sustained. The order of acquittal on each charge is quashed and a retrial before another Magistrate is ordered. It follows that the order discharging the goods from the custody of the Royal Customs and Excise Department is also quashed”.

Mr. Chan now seeks to “appeal” against that decision by filing a certificate under section 291A(1) of the Criminal Procedure. This section reads:

“291A. (1) When an appeal from the decision of a Court of a Magistrate in criminal matter has been heard and determined by the High Court and the Judge who heard the appeal or the Public Prosecutor, on his own behalf or on the application of any party to the proceedings, has, within, one month of such determination or within such further time as the Court of Appeal may permit, signed and filed with the Registrar a certificate that the decision of the High Court involves a point of law which it is desirable in the public interest to have determined by the Court of Appeal, such appeal shall be re-heard by the Court of Appeal.”

It is the contention of Mr. Raymond Lam who appears for Mr. Chan that this section allows three persons to file a certificate, namely the Judge, the Public Prosecutor and any party to the proceedings. Mr. Lam tells us that a certificate filed by a party to the proceeding was filed in Appeal no..... and that the appeal proceeded without objection or comment. However, that may be, the propriety of such a certificate was, it seems, never argued or, indeed, even adverted to in that case.

In the present matter the court having raised doubt as to the propriety of such a course Mr. for the Public Prosecutor in due course submitted that only the first two persons may file a certificate.

We indicated that we would deal with this aspect of the matter as a preliminary issue as, if it is decided against Mr. Chan, the proceedings fail in limine.

If the section can be read as submitted by Mr. Lam no effect is given to the words “on his own behalf” or to the commas which appear after the words “Public

Prosecutor” and the word “proceedings”. The argument, in short, requires that these words simply be given no effect. This cannot be correct. The words of the section are, in our view, unarguably clear. The only two persons who are permitted to file a certificate are the Judge and the Public Prosecutor. The latter may however do so both on its own behalf and on the application to him by any party to the proceedings.

The correctness of this reading is, in my view, clearly underlined by section 219A(5) which reads:

“291A. (5) The powers conferred upon the Public Prosecutor by this section shall be exercisable by the Public Prosecutor only.”

One might further ask, rhetorically, why, if all 3 persons were intended to be given the right to file a certificate the Legislature did not simply give a right of appeal in such cases of the kind given in section 271 of the Criminal Procedure Code?

It was, in my view, clearly intended by the Legislature that only two persons, the Judge and the Public Prosecutor, could file a certificate but that the Public Prosecutor could file on his own behalf or on behalf of a party to the proceedings and that the decision must be taken by the Public Prosecutor himself.

These proceedings are misconceived and must be dismissed.

Cons, P

Mortimer, J.A.

Power, J.A.

Mr. Raymond Lam of M/s Josepg Hoo Morris & Lal for the Appellant.
DPP Khairol Nizam bin and DPP Hj Nabil Daraina bin PUKDSSU Hj Badaruddin for the Public Prosecutor.