



The Federal Court: Order for retrial is improper where an alleged contemnor has been denied the right to a fair trial in committal proceedings

In the course of an Election Petition proceeding, the Returning Officer for State Legislative Assembly Elections for DUN Rantau Negeri Sembilan (N.27) General Elections (“the Alleged Contemnor”) was found guilty of the charge of contempt in the face of Court initiated by the High Court Judge on her own motion pursuant to Order 52 Rule 2A of the Rules of Court 2012 and sentenced to three months imprisonment for allegedly interfering with the administration of justice by sending WhatsApp messages to another potential witness.

On appeal, the Court of Appeal quashed the conviction and set aside the sentencing of the Alleged Contemnor but further ordered that the committal proceedings be retried, whether wholly or partly, before the same High Court. The Alleged Contemnor was granted leave to appeal to the Federal Court against the order for retrial.

Chief Judge of Malaya Azahar bin Mohamed, delivering the unanimous judgment of the Federal Court, agreed with the decision of the Court of Appeal to the extent that the conviction and sentence of the Alleged Contemnor must be quashed and set aside as High Court Judge’s refusal to allow the Alleged Contemnor to call his witness was a gross violation of the rule of law and the Alleged Contemnor should have been given the opportunity to prepare for and be heard in his defence and to call any witness in support of his defence.

However, the Federal Court was of the view that the Court of Appeal’s Order for retrial, that too before the same High Court Judge, was improper where the Alleged Contemnor was denied of his constitutional right to a fair trial at first instance. The Federal Court allowed the Appeal, upholding the acquittal of the Alleged Contemnor of the charge of contempt in the face of Court, and set aside the order for retrial, much to the relief of the Alleged Contemnor (now the Assistant Director of PTG Negeri Sembilan) who is eager to put this entire ordeal behind him.

Our [Rajasingam Gothandapani](#), [Sathya Kumardas](#) and [Sharon Jessy](#) represented the Alleged Contemnor.

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