CHUA TIAN CHANG

v.

PP

HIGH COURT MALAYA, KUALA LUMPUR
AMELIA TEE ABDULLAH J
[CRIMINAL APPLICATION NO: 44-47-04-2013]
26 SEPTEMBER 2013

CRIMINAL LAW: *Sedition - Publication of seditious words - Accused member of Parliament and member of opposition political party - Accused tried in Sessions Court - Application before High Court for stay and/or setting aside and/or striking out of charge in Sessions Court - Whether court had jurisdiction to strike out charge before commencement of trial - Whether charge proper - Whether Sedition Act 1948 suitable legislation in present times - Whether charge against public policy - Whether there was selective prosecution - Sedition Act 1948, s. 4(1)(b)*

CRIMINAL PROCEDURE: *Jurisdiction of court - High Court - Inherent powers of High Court - Accused tried in Sessions Court - Application before High Court for stay and/or setting aside and/or striking out of charge in Sessions Court - Whether court had jurisdiction to strike out charge before commencement of trial - Whether inherent powers of court ought to be invoked to strike out charge - Criminal Procedure Code, s. 173(c)*

The accused ('the applicant'), a member of the Parliament and a member of an opposition political party, was charged in the Sessions Court under s. 4(1)(b) of the Sedition Act 1948 ('the Act') for the offence of sedition. The alleged seditious words uttered by the applicant were in relation to the incident which occurred in Lahad Datu and were published in 'Keadilan Daily'. In the present application before the High Court, the applicant applied for, *inter alia*, the charge against him in the Sessions Court to be stayed and/or set aside and/or struck out. The applicant further prayed for an order that he be acquitted and discharged. The prosecution, in opposing the application, submitted that by virtue of s. 173(c) of the Criminal Procedure Code, the court had no jurisdiction to strike out a charge before the commencement of a trial. It was the applicant's submission that (i) the charge was wrong in law as the offence of sedition under the Act would only be applicable if the seditious words were used in relation to the

A Yang di-Pertuan Agong or the Yang di-Pertua Negeri or against the Government whilst in this case, the applicant made reference to UMNO, a political party; (ii) the Act is an antiquated piece of legislation which was no longer suitable in present times as it contravened art. 10 of the Federal Constitution and furthermore,
B the Prime Minister had announced that the Act would be repealed and replaced by the National Harmony Act 2012; (iii) the charge against him was against public policy because he was a member of the Parliament and an opposition political party; and (v) the charge against him was a selective prosecution, *mala fide* and
C politically-motivated as there were many serious cases involving seditious uttering committed by either UMNO members or its supporters but were not charged in the court.

Held (dismissing application):

D

(1) The High Courts have inherent powers but the scope of such inherent power is very limited. The exercise of such inherent power to prevent injustice or an abuse of the process of the court is subject to the conditions that (i) the inherent powers could not be invoked to override an express provision of law
E or when there is another remedy available; and (ii) such inherent powers are strictly confined to procedural matters only. However, this was not a case where the court was prepared to invoke its inherent powers to strike out the charge against the applicant. (paras 12 & 37)

F

(2) There were three references to 'kerajaan UMNO' and one reference to just 'kerajaan'. 'Kerajaan' would point to the Government of Malaysia and of any State of Malaysia. It could be argued that since UMNO had no 'kerajaan' or
G government, 'kerajaan UMNO' would bring the meaning that it means UMNO. However, it could also be argued that since UMNO had no 'kerajaan' or government, the use of the words 'kerajaan UMNO' should be interpreted to mean the government. The charge as it stands was not wrong in law
H and it is for the prosecution to prove that the words 'kerajaan UMNO' referred to, or could be inferred to refer to, the government or the government of the day. This was clearly a matter to be decided by the trial court. (paras 19 - 20)

I

(3) The Act is still in force and any contravention of the Act has to be dealt with according to the law. Whilst it is true that the Prime Minister had made certain pronouncements about an intention to repeal the Act, however, until such time as the Act is truly and properly repealed, it remains a valid Act of the Parliament where a contravention of its provisions would constitute a chargeable offence. In addition to that, policy decisions or intended policy decision could be, and often, are subject to change. (para 25)

(4) Section 4(1)(b) of the Act does not state the classification of individuals who could be charged under the Act. The use of the words 'any persons' would mean that any person who contravenes the provisions of that section can be charged. There is nothing in s. 4(1)(b) of the Sedition Act which excludes or exempts persons such as the applicants, as a member of the Parliament or as a member of an opposition political party from compliance with the law relating to sedition. If any person, and this included the applicant, were to utter seditious words, he lays himself open to prosecution notwithstanding that he may have, as a reason for uttering such words, perceived that he was doing so for the information of his constituents, his party supporters, or the public at large. (para 33)

(5) The decision of the Public Prosecutor whether to prefer a charge against a person would depend on the facts or evidence against that person as contained in the investigation paper submitted by the police. It could not be gainsaid that where there is sufficient evidence of the commission of an offence, a charge can be preferred. If there is insufficient evidence or where the evidence is doubtful, the Public Prosecutor can decline to prosecute. In this case, there was no evidence of or information before the court pertaining to the various allegations of selective non-prosecution as well as selective prosecution. (para 35)

Case(s) referred to:

Connelly v. Director of Public Prosecutions (1964) AC 1254 ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2010] 7 CLJ 397 FC ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2010] 8 CLJ 934 CA ***(refd)***
Director of Public Prosecutions v. Humphrys [1976] 2 All ER 497 ***(refd)***
Jagar Singh v. PP [1936] 1 LNS 25 HC ***(refd)***

A *Kanawagi Seperumaniam & Anor v. PP [2013] 1 LNS 949 HC* ***(refd)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***
Lim Gais Khee v. Regina [1959] 1 LNS 52 HC ***(refd)***
Mat Shuhaimi Shafiei v. PP [2014] 5 CLJ 22 CA ***(refd)***
B *PP v. Ini Abong & Ors [2009] 1 CLJ 526 HC* ***(refd)***
PP v. Lee Pak [1937] 1 LNS 48 HC ***(refd)***
PP v. Margarita B Cruz [1987] 1 LNS 129 HC ***(refd)***
PP v. Teoh Choon Teck [1962] 1 LNS 141 HC ***(refd)***
State of Haryana and Others v. Ch Bhajan Lal and Others AIR 1992 SC 604 ***(refd)***

C **Legislation referred to:**
Criminal Procedure Code, s. 173(c)
Federal Constitution, arts. 10, 145(3)
Penal Code, s. 500
Sedition Act 1948, ss. 2, 4(1)(b)

D *For the applicant - Eric Paulsen (Latheefa Koya with him); M/s Daim & Gamany*
For the prosecution - Yusaini Amer Ab Karim (Mohd Farizul Hassan with him); DPPs

E *Reported by Najib Tamby*

JUDGMENT

F **Amelia Tee Abdullah J:**

[1] The applicant, Chua Tian Chang, has, *vide* a notice of application dated 12 April 2013, applied, *inter alia*, for the charge against him in Kuala Lumpur Sessions Court Criminal Case No. 6-62-259-03-2013 to be stayed and/or set aside and/or struck out ("digantung dan/atau diketepikan dan/atau dibatalkan"). The applicant further prays for an order that the applicant be acquitted and discharged thereon.

H **[2]** From the application and the affidavit in support (encl. 3), the court notes that the grounds or basis for the application are as follows:

(i) The criminal proceedings against him is an abuse of process and a travesty of justice;

I (ii) The charge against the applicant is against public policy; and

(iii) The charge against the applicant is politically motivated.

The Charge

[3] The charge against the applicant in the Sessions Court reads as follows:

> Bahawa kamu, pada 1 Mac 2013 jam 11.00 pagi di alamat No: 62-2-A, Fraser Business Park, Jalan Off Metro Pudu, Jalan Yew, Kuala Lumpur, Wilayah Persekutuan telah menyebutkan perkataan menghasut dengan membuatkan kenyataan bahawa:
>
> (a) Serangan tembak menembak di Lahad Datu dipercayai konspirasi terancang kerajaan UMNO untuk mengalih perhatian dan menakut-nakutkan rakyat;
>
> (b) Insiden berkenaan menimbulkan banyak persoalan dan keraguan di sebalik wayang mainan kerajaan UMNO;
>
> (c) Menyifatkan pencerobohan di Lahad Datu hanya sandiwara kerajaan untuk menakut-nakutkan rakyat seolah-olah wujud suasana tidak aman di Sabah. Kejadian pencerobohan di Lahad Datu hanya sandiwara kerajaan untuk menakut-nakutkan rakyat seolah-olah wujud suasana tidak aman di Sabah; dan
>
> (d) Ada konspirasi oleh kerajaan UMNO untuk mengalih pandangan rakyat Sabah, terutama dari isu pemberian kad pengenalan kepada warga asing;
>
> dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah seksyen 4(1)(b) Akta Hasutan 1948 (Akta 15) dan boleh dihukum di bawah seksyen 4(1) Akta yang sama.

[4] The applicant was charged on 14 March 2013 and had pleaded not guilty to the charge. The case against him is now pending hearing in the Sessions Court.

[5] The alleged seditious words were published in 'Keadilan Daily' the official on-line news portal of the Parti Keadilan Rakyat. A brief perusal of the on-line news article will reveal that the alleged seditious words do indeed appear in the said article.

Whether The Court Has Jurisdiction To Strike Out The Charge

[6] In considering the merits of the applicant's application, the court would first have to consider whether it has jurisdiction to strike out the charge as prayed. In submitting that the court has inherent powers to set aside or strike out *mala fide*, oppressive and vexatious charges and to safeguard the integrity of the judicial

process, learned counsel for the applicant has referred to a number of English authorities such as *Director of Public Prosecutions v. Humphrys* [1976] 2 All ER 497 and *Connelly v. Director of Public Prosecutions* (1964) AC 1254.

[7] The court notes that in the Supreme Court case of *Karpal Singh & Anor v. Public Prosecutor* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544, Abdul Hamid Omar LP, in warning against reliance on the English law concept, had stated at p. 190 (CLJ); p. 548 (MLJ) as follows:

> Perhaps it is appropriate that we now pause to consider the constitutional consequences of relying on the English common law concept. Unlike UK, the Constitution of the Federation which is a written law is specifically declared to be the Supreme law of the land. Also, it is to be noted that UK has no criminal procedure code as enacted by our legislature. For our immediate purpose we wish to refer to art. 145(3) of the Constitution which states that the Attorney General shall have power, exercisable at his discretion, to institute, conduct, or discontinue any proceedings for an offence, other than proceedings before Syariah Court etc. The discretion vested in the Attorney General is unfettered and cannot be challenged and substituted by that of the courts. The reasoning and logic behind such contention is well illustrated in the cases of *PP v Lee Tin Bau, Long bin Samat & Ors v PP, PP v Datuk Harun bin Haji Idris and Ors* and *Poh Cho Ching v PP.*

[8] Learned counsel for the applicant has also referred the court to the High Court decision in *PP v. Ini Abong & Ors* [2009] 1 CLJ 526; [2008] 8 MLJ 106 where His Lordship Hamid Sultan JC (as His Lordship was then) had held as follows:

> The High Court has the power and jurisdiction to arrest a wrong at *limine* and advance the remedy at the earliest opportunity. For this purpose, there is no necessity to search for such powers or jurisdiction in the CPC as advocated by the learned DPP ... The High Court also has the jurisdiction to arrest any form of wrongful prosecution, if the interest of justice demand it ... Once a matter is brought to the court and the bona fides of the AG's decision to prosecute is challenged, the court always has inherent jurisdiction to address the issue ... A judge is constitutionally bound to arrest a wrong at *limine* and that power and jurisdiction cannot be ordinarily fettered by the doctrine of judicial precedent.

[9] The learned Deputy Public Prosecutor, on the other hand, has attempted to persuade the court that it has no jurisdiction to strike out a charge before the commencement of trial. Reliance is

placed on s. 173(c) of the Criminal Procedure Code ("CPC") which provides that "... the court shall proceed to take all such evidence as may be produced in support of the prosecution". It is submitted that in the cases of *Karpal Singh v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544 and *Dato' Seri Anwar Ibrahim v. PP* [2010] 8 CLJ 934; [2010] 6 MLJ 533 the Supreme Court and the Court of Appeal respectively had held that there is no provision in the Criminal Procedure Code for striking out proceedings or for acquitting an accused before hearing all the evidence that the prosecution had to offer.

[10] In a similar vein, the learned Deputy Public Prosecutor has submitted that if such applications for striking out were to be allowed by the court, it would give rise to a dangerous precedent of criminal trials by affidavits.

[11] The court notes that the respondent does not deny that the court does indeed possess inherent powers to strike out a charge which is *mala fide*, oppressive or which is an abuse of the court process. What then is this "inherent power"? In the case of *Dato' Seri Anwar Ibrahim v. PP* [2010] 7 CLJ 397, Her Ladyship Heliliah Mohd Yusof, FCJ was of the view that inherent jurisdiction is part of the court's power to do all the things reasonably necessary to ensure fair administration of justice within its jurisdiction subject to existing laws including the Constitution. Inherent powers are not derived from statute "but are intrinsic in a superior court which is necessary to prevent injustice or its process being obstructed or abused".

[12] Whilst our own Federal Court has recognised that High Court have inherent powers, however, it cannot be denied that the scope of such inherent power is very limited. The exercise of such inherent power to prevent injustice or an abuse of the process of the court is subject to the following conditions:

(i) The inherent powers cannot be invoked to override an express provision of law or when there is another remedy available (See *Karpal Singh* (*supra*)); and

(ii) Such inherent powers are strictly confined to procedural matters only (See *Dato' Seri Anwar Ibrahim v. PP* (*supra*)).

[13] In light of the above, the court is thus of the view that this court has the inherent power to set aside and quash a charge which is *mala fide*, oppressive and an abuse of the process of

court or where there has been a miscarriage of justice. However, it cannot be gainsaid that on the authorities cited, this inherent power must be exercised with the greatest of caution. In the case of *State of Haryana and Others v. Ch Bhajan Lal and Others* AIR 1992 SC 604, the Supreme Court of India had cautioned that the power of quashing a criminal proceeding:

> ... should be exercised very sparingly and with circumspection and that too **in the rarest of rare cases**; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the compliant and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. (emphasis added)

Grounds Or Basis For The Application

[14] A number of grounds have been advanced as the basis for this application. The court will deal with each of these grounds in turn.

Whether The Charge Is Wrong In Law

[15] Learned counsel for the applicant has submitted that the charge is wrong in law as the offence of sedition under the Sedition Act 1948 is only applicable if the words said to have a seditious tendency were used in relation to the Yang di-Pertuan Agong or the Yang di-Pertua Negeri or against the government. Reference was made to a number of authorities in relation to the proper framing of charges so that an accused person will know the charge that has been framed against him and thus be able to answer it as best as he can (*Jagar Singh v. Public Prosecutor* [1936] 1 LNS 25; [1936] 1 MLJ 92, *Public Prosecutor v. Lee Pak* [1937] 1 LNS 48; [1937] 1 MLJ 265, *Public Prosecutor v. Margarita B Cruz* [1987] 1 LNS 129; [1988] 1 MLJ 539, *Public Prosecutor v. Teoh Choon Teck* [1962] 1 LNS 141; [1963] 1 MLJ 34, *Lim Gais Khee v. Regina* [1959] 1 LNS 52; [1959] 1 MLJ 206.)

[16] The applicant's complaint is that in this case, he had referred to UMNO which is a political party and not an entity that was entitled to protection under the Sedition Act 1948. It was also pointed out that UMNO had even filed a defamation suit against the applicant *vide* Kuala Lumpur High Court Civil Case 23NCVC-36-03-2013 and this would show clearly that the Sedition Act

1948 was being wrongly used against the applicant. In summary, it is the applicant's contention that the impugned words were uttered against UMNO and not against the government.

[17] In response, the learned Deputy Public Prosecutor for the respondent has submitted that from a perusal of the statement that was made by the applicant, there was the use of the word "kerajaan" and this has been defined in s. 2 of the Sedition Act 1948 as meaning "the Government of Malaysia and of any State in Malaysia". As such, it is the respondent's submission that the words "kerajaan UMNO" and "kerajaan" are references to the government of Malaysia or more aptly, to the government of the day.

[18] In respect of this issue, the court has carefully perused the applicant's statement in Keadilan Daily which published the alleged seditious words. The court notes that there are four areas where the alleged seditious words appeared, namely:

i. "... Serangan tembak menembak di Lahad Datu dipercayai konspirasi terancang **kerajaan UMNO** untuk mengalih perhatian dan menakut-nakutkan rakyat ...";

ii. "... insiden berkenaan menimbulkan banyak persoalan dan keraguan di sebalik wayang mainan **kerajaan UMNO**.";

iii. "... pencerobohan di Lahad Datu hanya sandiwara **kerajaan** untuk menakut-nakutkan rakyat seolah-olah wujud suasana tidak aman di Sabah."; and

iv. "... Ada konspirasi oleh **kerajaan UMNO** untuk mengalih pandangan rakyat Sabah, terutama dalam isu pemberian kad pengenalan kepada warga asing ..."

(emphasis added)

[19] The court notes that in these four excerpts from the statement attributed to the applicant, there were three references to "kerajaan UMNO" and one reference to just "kerajaan". The reference to "kerajaan" would point to the government of Malaysia and of any State in Malaysia. The more difficult question is with regard to what the words "kerajaan UMNO" mean. It can be argued that since UMNO has no "kerajaan" or government, the words "kerajaan UMNO" would bring the meaning that it means UMNO. On the other hand, it can also be argued that since UMNO has no kerajaan or government, the used of the

words "kerajaan UMNO" should be interpreted to mean the government, especially in light of the fact that the third excerpt uses the word "kerajaan" only.

[20] The wording in the charge in relation to the alleged seditious words follows the words used in the article appearing in Keadilan Daily. The court is of the view that the charge as it stands is NOT wrong in law. It is for the prosecution to prove that the words "kerajaan UMNO" refers to, or can be inferred to refer to, the government or the government of the day. And this is clearly a matter to be decided by the trial court.

[21] Accordingly, the court finds that there is no merit in the first issue that is raised by the applicant.

Whether The Criminal Proceeding Is An Abuse Of Process And A Travesty Of Justice. Whether The Charge Against The Applicant Is Against Public Policy

[22] The applicant submits that although the Attorney General has the power under art. 145(3) of the Federal Constitution to institute, conduct or discontinues any proceedings for an offence, however that discretion should be exercised properly after taking into account all relevant facts. The applicant submits that the Attorney General has misused his powers by *mala fide* charging the applicant in this case ("menyalahgunakan kuasanya dengan menuduh pemohon secara *mala fide* dengan niat yang jahat").

[23] According to the applicant, the charge against him is against public policy under two heads, firstly, because he is a member of Parliament and a member of an opposition political party. It is submitted that the applicant had "secara suci hati dan niat baik telah menggunapakai hak kebebasan bersuara dan hak lain yang dijamin oleh Perlembagaan Persekutuan dan telah melaksanakan kewajipan kepada masyarakat awam dan Negara untuk memeriksa dan memperseimbangkan (check and balance) tindak tanduk kerajaan selaras dengan amalan demokrasi Negara". It is thus the applicant's submission that the Sedition Act 1948 should not be used against persons such as the applicant who had honestly and in good faith raised these important issues in the bigger interests of the public. It is also submitted that the issue about the giving of identity cards to foreign nationals has been proved during the proceedings of the Royal Commission of Inquiry on Immigrants in Sabah.

[24] Secondly, it is the applicant's contention that the Sedition Act 1948 is an antiquated piece of legislation and is no longer suitable in present times as it contravenes art. 10 of the Federal Constitution. Further, the Prime Minister had on 11 July 2012 announced that the Sedition Act 1948 will be repealed, to be replaced by the National Harmony Act. As such, it is submitted that it was unfair to prosecute persons under the Sedition Act 1948 as they, and the applicant, would have relied on the undertaking of the Prime Minister to repeal the said Act.

[25] On this issue, the learned Deputy Public Prosecutor has correctly pointed out that the Sedition Act 1948 is still in force and that any contravention of the Act has to be dealt with according to law. The court agrees with this submission. Whilst it is true that the Honourable Prime Minister had made certain pronouncements about an intention to repeal the Sedition Act, however until such time as the said Act is truly and properly repealed, it remains, as it is today, a valid Act of Parliament where a contravention of its provisions would constitute a chargeable offence. On this issue of an intended repeal of the Sedition Act 1948, the court agrees with the learned Deputy Public Prosecutor that policy decisions or intended policy decisions can be, and often times are, subject to change. Thus, the court is of the considered view that the applicant's contention that the charge against him is contrary to public interest on this score is without merit.

[26] On the issue of whether it was unfair to charge the applicant under the Sedition Act, 1948, the court has dealt with this under the next following heading.

Whether The Charge Against The Applicant Is Mala Fide And Politically Motivated

[27] The applicant has raised a final issue about the charge against him being a selective prosecution which is politically motivated and made *mala fide*. It is submitted that the applicant was investigated for an offence under s. 500 of the Penal Code and that at no time was either he or his counsel informed that he was being investigated under the Sedition Act 1948. According to the applicant, this would reveal the unfair, malicious and politically motivated behaviour of the Public Prosecutor and the police.

[28] In his submission, the applicant complains that the proceedings against him were instigated by senior leaders in UMNO/the government in their attempt to make the applicant a scapegoat in view of the fact that the then up-coming general elections were to be held on 5 May 2013. In his affidavit-in-support (encl. 3), reference was made to various newspaper cuttings where the applicant was attacked and severely criticised by various political figures such as the Prime Minister, Datuk Seri Najib Tun Razak; the Deputy Prime Minister, Tan Sri Muhyiddin Yassin and even the former Prime Minister, Tun Abdullah Ahmad Badawi.

[29] The applicant submits that as a result of the comments of these senior political figures which were inflammatory in nature, many police reports were lodged and protests made against him which included the burning of the applicant in effigy as well as vociferous calls for his citizenship to be revoked.

[30] The applicant had pointed out that there were more many serious cases involving seditious uttering committed by other individuals who were either members of UMNO or UMNO supporters but who were not charged in court. These include:

(i) Zulkifli Noordin's statement on 6 March 2013 which belittled Indians and the Hindu religion. Zulkifli is an independent Member of Parliament and the Vice-President of PERKASA who supports UMNO;

(ii) Ridhuan Tee Abdullah's statement on 18 February 2013 which belittled Indians and the Hindu religion. Ridhuan Tee is an Associate Professor at University Pertahanan Nasional Malaysia and a supporter of UMNO;

(iii) Ibrahim Ali's threats on 19 January 2013 to burn copies of the bible containing the word "Allah". Ibrahim Ali is an independent Member of Parliament and the President of PERKASA who supports UMNO; and

(iv) The statement of Shahrizat Jalil on 28 November 2012 when she raised the possibility of the recurrence of the May 13 racial riots. Shahrizat is the Ketua Wanita UMNO and the former Minister of Women, Family, and Community Development.

[31] Comparison was next made with individuals who had been charged for sedition and these were allegedly almost all from opposition parties. These include:

(i) Suhaimi Shafiei, a member of PKR and member of the Selangor State Assembly, who was charged on 7 February 2011 at the Shah Alam Sessions Court;

(ii) Karpal Singh, the Chairman of the Nasional Democratic Action Party (DAP) who was charged on 17 March 2009 at the Kuala Lumpur Sessions Court; and

(iii) P Uthayakumar, former legal adviser and head of the Hindu Rights Action Force (HINDRAF) who was charged on 11 December 2007 at the Kuala Lumpur Sessions Court.

[32] In light of the foregoing, the applicant submits that the failure of the Public Prosecutor to charge those individuals who were UMNO members or supporters who had committed seditious acts had raised serious questions pertaining to the motive and the independence of the Public Prosecutor. According to the applicant, these circumstances would show that the Public Prosecutor was willingly allowing himself to be made the tool of the UMNO leadership and was acting according to their instructions and in their interests.

[33] In response, the learned Deputy Public Prosecutor has pointed out that s. 4(1)(b) of the Sedition Act 1948 does not state the classification of individuals who can be charged under the Act. The use of the words "any person" would mean that any person who contravenes the provisions of that section can be charged. The court is in full agreement with the learned Deputy Public Prosecutor on this point. The court finds nothing in s. 4(1)(b) of the Sedition Act 1948 which excludes or exempts persons such as the applicant as a Member of Parliament or as a member of an opposition political party from compliance with the law relating to sedition. It follows therefrom that if any person, and this includes the applicant, were to utter seditious words, he lays himself open to prosecution notwithstanding that he may have, as a reason for uttering such words, perceived that he was doing so for the information of his constituents, his party supporters or the public at large.

[34] The learned Deputy Public Prosecutor has referred the court to the case of *Mat Shuhaimi Shafiei v. PP* [2014] 5 CLJ 22; [2012] MLJU 93 where the applicant had applied, *inter alia*, for the case against him to be struck out. One of the grounds for the application is that there is an abuse of process because the prosecution was selective in prosecuting the applicant under the Sedition Act 1948 for political purposes. In dismissing the application, Her Ladyship Noor Azian bt Shaari JC (as Her Ladyship was then) had stated as follow:

> The Applicant has raised the issue of selective prosecution for political purpose; therefore the charge cannot be sustained.
>
> The SA does not criminalize the innocent nor does it apply only to those from the opposition parties. The letters of the words in the Act does not recognise such classification. It does not identify the offenders into those from the government or from the opposition. There is also no racial identification or classification. It uses the words "any person" and it covers all, whether from the ruling parties or the opposition.
>
> The SA also does not criminalise the innocent. It is only when it comes within the mischief of the SA in section 3 as the Deputy Public Prosecutor said "that the shield of an innocent person is taken away and the clothes of a condemned man is worn".
>
> …
>
> In this case the Applicant is suggesting victimisation. That is the Applicants' presumption/assumption. If it is, the applicant would definitely have a defence that could be ventilated at the hearing of the charge against him.

[35] Further on this issue, the court is of the considered view that the decision of the Public Prosecutor whether to prefer a charge against a person would depend on the facts or evidence against that person as contained in the investigation paper submitted by the police. It cannot be gainsaid that where there is sufficient evidence of the commission of an offence, a charge can be preferred. Conversely, if there is insufficient evidence or where the evidence is doubtful, the Public Prosecutor can decline to prosecute. In light of the fact that there is no evidence or information before the court pertaining to the various allegations of selective non-prosecution as well as selective prosecution, the court finds nothing to support the applicant's complaint on this score.

Conclusion

[36] In coming to a decision in this case, the court has, at all times, kept in the forefront art. 145(3) of the Federal Constitution which confers powers on the Attorney General to institute, conduct, or discontinue any proceedings for an offence. This power is exercisable at his discretion and is not amenable to review. And whilst the court had said that it possesses inherent powers to strike out a charge, the court had also cautioned that this inherent power to set aside and quash a charge which is *mala fide*, oppressive and an abuse of the process of court or where there has been a miscarriage of justice must be exercised with the greatest of caution.

[37] After careful consideration of the application before me and the authorities as cited by the parties, the court is not satisfied that this is such a case where the court is prepared to invoke its inherent powers to strike out the charge against the applicant. The court is not satisfied that there is sufficient basis based merely on the averments as contained in the applicant's affidavit for the court to grant the order as prayed. The applicant still has an option of making a representation to the Public Prosecutor if he is convinced that the charge against him should not be proceeded with. As this court had stated in a similar case (*Kanawagi Seperumaniam & Anor v. PP* [2013] 1 LNS 949 in 44-147-08-2012, 44-148-08-2012 and 44-149-08-2012), if such representation should fail, the applicant must allow the case to take its course without any further impediment so that a fair and just result can be obtained.

[38] Thus, in conclusion, and for the reasons as aforestated, the court finds that there are no merits in the application before the court and the court would dismiss the application accordingly.