

Public Prosecutor V. Dato' Sahar Bin Arpan A Case Study

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Introduction

The accused in this case - Dato' Sahar bin Arpan is a State Executive Council (EXCO) member for the State of Malacca. He was found guilty by the High Court of Malaya in Malacca for an offence under section 2(1) of the Emergency (Essential Powers) Ordinance No. 22/1970. Briefly, the charges against him are as follows

1. as a Member of the Administration he had committed corrupt practice by using his public position for his pecuniary advantage when he participated in a meeting of the State EXCO which approved an application by Ivory Heights Sdn. Bhd. for two pieces of state land in Malacca;
2. as a Member of the Administration he had committed corrupt practice by using his public position for his pecuniary advantage when he participated in a meeting of the State EXCO which approved Ivory Heights Sdn. Bhd.'s application to change the lease of the two pieces land from 60 years to 99 years
3. as a Member of the Administration he had committed corrupt practice by using his public position for his pecuniary advantage when he participated in a meeting of the State EXCO which approved the company's application to increase the total area of these two pieces of land.

Excluding the Federal Territory of Kuala Lumpur and Labuan, Malaysia has thirteen states. Each state has its own Legislative Assembly and from among the members of this Assembly, the Ruler of the State, on the advice of the Chief Minister appoints the members of the State Executive Council (EXCO). The EXCO as a body, is the State Authority that decides on matters contained in the State List of the Federal Constitution.

Alienation of State Land and matters connected thereto are state matters and with a few exceptions, the domain of the State EXCO.

The accused, being a member of the Malacca State EXCO sat and took part in three EXCO meetings which dealt with the applications for state land made by Ivory Heights Sdn. Bhd., a company set up by two persons who were closely connected to the accused.

All official documents of this company did not in any way reveal any connection between this company and the accused. In short, the accused's name did not appear in

any official or company document.

The ACA got its break almost by chance. An investigation into another matter, unrelated to this one turned up two cheques each for RM 250,000-00 in the name of the accused. Further investigations by the ACA unearthed evidence to connect the accused with the company. However, right from the initial stage of the investigations until the accused's conviction in the High Court, ACA investigators and Prosecutors encountered a lot of problems.

Investigation stage

The two shareholders of the company were close aides and political supporters of the accused. Another key figure was a close friend and golfing buddy. The fourth one was also his close associate. These four could, if they were willing to do so, provide the direct evidence against the accused.

The two shareholders were quite co-operative. They gave our investigators a lot of leads which eventually materialised into sufficient evidence against the accused. The close friend and golfing buddy was not willing initially to co-operate but after being confronted with certain documents, he also, albeit grudgingly, divulged enough information to put our investigators on the right track.

The fourth person was from the outset belligerent. He was not willing to co-operate and maintained his uncooperative attitude to the end.

The accused, being a senior politician and member of the EXCO was held in high esteem by the public. He was well liked and respected by those who knew him. It was therefore quite difficult for our Investigators to get those linked to the case to co-operate.

Luckily, the two shareholders being simple people of comparatively unexciting academic background and low income were overwhelmed enough by the accused's trickery to divulge everything they knew about the case.

Incidentally, as the case unfolded, it transpired that the accused had tricked these two persons into believing that the company was not doing any business. These two were asked to relinquish their interests in the company for a pittance. When these two realised that they had been played out by the accused, they co-operated fully with our investigators.

The third and fourth persons took over the company which by that time had already received approvals for its applications for the pieces of State Land. The half share in the company owned by the third person was then sold for RM 2,743,603-00 to another person. From the proceeds of the sale, RM 500,000-00 was disbursed to the accused.

The third and fourth persons being well educated and economically well off, were not so willing to co-operate. These last two together with the accused were in fact the ones to have gained financially from the whole transaction.

The investigators found obstacles from other quarters also. An important cheque for

instance, supposedly in the safe custody of a bank, was found missing. The hand written notes of the Secretary of the EXCO regarding minutes of the relevant EXCO meetings were also missing.

These two instances of missing documents might not have been deliberate attempts at frustrating the investigation but they did in a way forced our investigators to work extra hard to bridge the missing gaps.

Once the investigators had completed their investigation, they handed over the investigation papers to the Prosecution Division. Satisfied with the evidence presented before him, the Senior Federal Counsel/ Senior Deputy Public Prosecutor (DPP) decided to bring charges against the accused.

Trial stage

The first few days of the trial went quite well with the Prosecution calling formal witnesses to establish the parameters of the case.

The problem started when the first of the two shareholders was called to give evidence. Expecting a smooth account of events beginning with the formation of the company to its eventual sale, the Prosecution was astounded when this witness on whom much reliance was placed, took an about turn and denied everything he had said in his statements to the investigators. In short, he exculpated the accused from any wrongdoing.

The Senior DPP conducting the case had no choice but to apply to the court to impeach him. After hearing arguments the court ruled that this witness' credit was impeached.

When the second shareholder was called, the Prosecution was expecting the worst. Indeed the Prosecution did get what it was expecting. The second shareholder as though on cue duplicated what the first shareholder had done and totally contradicted himself on all material points.

What he said in court was diametrically opposite to what he had said in his written statement to the investigators. The Senior DPP then took the only course of action available to him and had this witness impeached also.

With two key witnesses gone, the Prosecution was really walking on a tight rope. It had to decide whether to call the other two key witnesses and risk getting them turning hostile or to just rely on purely circumstantial evidence by calling other witnesses who could in one way or another convince the court of the accused complicity in the matter.

The Prosecution decided to take a gamble by calling the third key witness. As it turned out this witness was a bit helpful. On many important points, he did stick to what he had told the investigators but on a few other issues he diverged materially from his statement.

The Prosecution decided not to have him impeached because looking at his evidence

as a whole, he had actually said enough to connect the accused to the company. However in making his submission at the end of the Prosecution case, the Senior DPP urged the Court to sieve through this witness' evidence carefully, to accept some parts and to reject others basing among other things on the fact that this person was an interested witness.

The Prosecution then decided not to call the fourth person because apart from the fact that he had all along been very uncooperative, the Prosecution felt that it had enough direct evidence to establish a case against the accused on all three charges.

From that point onwards the Prosecution had to depend on a number of witnesses who added other circumstantial evidence which pointed to the involvement of the accused in the company.

Though their evidence was mostly circumstantial, it was sufficient for the court to call for the accused's defence. At the end of the defence 's case, the court ruled that the Defence had failed to raise a reasonable doubt in the Prosecution's case and therefore convicted the accused on all three charges.

A few disturbing features emerged from this case and prompted the ACA to make certain recommendations to the Government and its agencies:

- the two shareholders of this company were salaried people with meagre income and no other visible means of financial backing;
- the company itself had a paid up capital of only RM2-00;
- the two shareholders and the company had no previous experience in fish rearing:(the purpose for which the two pieces of land were applied for) and they did not have the technical expertise for this kind of business;
- The Fisheries Department which initially opposed this application changed its position when the accused intervened;
- the lease to the lands was extended from 60 years to 99 years even though for this kind of business activity a long tenure was not necessary;
- once the applications were approved the company was almost immediately sold off- stock lock and barrel- for a hefty sum;
- by selling the company, the people behind the company circumvented the requirement of having to seek the EXCO's approval for the disposal of the alienated lands.

The ACA believe that unscrupulous members of the Administration may with relative ease exploit the weaknesses in the system to enrich themselves and their close friends.

Towards the elimination of such possibility, the ACA had made certain recommendations to the government and various agencies outlining the possible avenues for corruption found in the system and suggesting possible steps to eradicate them.

In conclusion, cases of this nature are normally difficult to detect as the accused's name does not appear on any official document. Those involved are also people close to him. Even if these people are willing to co-operate initially, there is no guarantee

that they will still co-operate in court.

The ACA in our effort to fight corruption in its various forms have embarked on a comprehensive campaign to educate the people on the evils of corruption and corruption's corrosive effects on the nation.

We hope by going to the people and appealing to their sense of right and wrong, we will be able in the near future to create a society that abhors corruption and abuse of power at all levels of the public and private sectors.