

Lawyers back Muhyiddin's acquittal: common knowledge to have clear, detailed charges

Prosecutors should have drafted charges to disclose alleged offence in detail, one says



According to former Malaysian Bar president Salim Bashir Bhaskaran, failure to outline sufficient details on alleged offences could result in the accused being 'prejudiced in his defence'. – Unsplash pic, August 15, 2023

KUALA LUMPUR – Legal eagles have supported the high court's decision to acquit Perikatan Nasional (PN) chairman Tan Sri Muhyiddin Yassin of four charges of power abuse amounting to RM232.5 million.

Speaking to Scoop, the lawyers unanimously agreed that the framing of the charges against the former prime minister should have been clearer in nature, as required under the Criminal Procedure Code (CPC).

According to criminal defence lawyer Datuk Geethan Ram Vincent, prosecutors in charge of the case should have clearly drafted the charges to disclose the alleged offence in detail.

“The charge is the basis of every criminal trial. It is fundamental that the charge is not vague and gives sufficient notice to the accused as to the alleged offence he has committed,” he said.

“It is trite law (common knowledge) that the charge in question must be precisely formulated to include specific accusations against the appellant, who has the right to know and have notice of the very nature of the charge against him.

“That appears to be lacking in (Muhyiddin’s) case,” he added.

Echoing their sentiments, former Malaysian Bar president Salim Bashir Bhaskaran said that failure to outline sufficient details on the alleged offences could result in the accused being “prejudiced in his defence”.

“Defective charges will also be seen as a contravention of an accused’s constitutional rights to obtain a fair trial, as accorded under Article 5 of the federal constitution.

“Omissions in a charge are not fatal (to the prosecution’s case) unless they are material, have occasioned a failure of justice, and have prejudiced the accused person,” he said.

The lawyer said that Muhyiddin’s acquittal follows a pattern seen in previous cases where criminal charges were dismissed due to deficiencies, citing the example of clerk Sam Ke Ting’s exoneration in a case involving alleged reckless driving resulting in the tragic demise of eight teenage cyclists.

The case saw the Court of Appeal set aside her six-year jail sentence and RM6,000 fine in April after it found that the charge against her was defective as there was an element of duplicity – one charge describing two different offences – in the proceedings.

He also pointed to the case of Carriercorp Petroleum Sdn Bhd director Anuar Ghazali, whose appeal to strike out two amended criminal breach of trust charges that lacked clarity was allowed by high court judge Datuk Noorin Badaruddin in 2020.

Besides that, lawyer Datuk David Gurupatham said that part of the burden placed upon the prosecution team in criminal cases is to ensure that the charges against the accused are framed properly.

“This situation (accused persons being acquitted) is common in criminal trials where the charges are defective. The charges will not be accepted, and the outcome is to release the accused.

“Procedural compliance with the CPC is a strict requirement of the law. It impacts life and liberty and will duly be treated as such,” he added.

Earlier today, justice Datuk Muhammad Jamil Hussin ruled that the four charges against Muhyiddin were vague, flawed, and unfounded because they did not contain details of the offences committed, as required by the CPC.

“The lack of details and sufficient notice on the alleged offences committed, as well as inadequate clarity on how power abuse happened, amounted to a violation of (Muhyiddin’s) basic right to a fair trial,” the judge said.

Deputy public prosecutor Datuk Wan Shahrudin Wan Ladin later confirmed that the Attorney-General’s Chambers will appeal the decision and seek a stay of proceedings for Muhyiddin’s three other money laundering charges pending the appeal.

On April 18, Muhyiddin filed a notice of motion to request that he be acquitted and discharged of the four charges, alleging that the charges lacked particulars as to how he had abused his position or the Prime Minister’s Office for bribery-related purposes.

Besides the now-nullified four charges, the Pagoh MP is also facing two charges of receiving proceeds from unlawful activities amounting to RM195 million from Bukhary Equity, which was deposited into Bersatu’s CIMB Bank account.

Muhyiddin was also charged in the Shah Alam Sessions Court on March 13 with receiving proceeds from unlawful activities amounting to RM5 million. The case has since been transferred to the sessions court here to be tried with the other cases. – August 15, 2023