

Delays in providing statement to cops must be explained with cogent reasons - Lawyers

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29 Nov 2023 12:00pm



SHAH ALAM - Any unavoidable circumstances resulting to delays towards the completion of a particular investigation should be explained with cogent reasons.

Former Malaysian Bar president Salim Bashir said under Section 107A of the Criminal Procedure Code (CPC), investigating officers must provide a status report on the investigations of specific complaints within a predefined time frame.

He said the clause emphasised the value of prompt updates and transparency in court cases.

However, the section also acknowledged that unforeseen circumstances may arise, leading to delays in the completion of investigations, he added.

“If there are any unavoidable circumstances resulting delays towards the completion of a particular investigations, it should be explained by the investigating officer by proffering cogent reasons,” Salim said when contacted.

Salim added that the clause also recognised the practical realities that may affect the proceedings' timeframe while yet striving to preserve the integrity of the investigation process.

The recognition, he said served as a foundation for fostering a more comprehensive and adaptable approach to investigative proceedings, allowing for the intricate balance between the importance of promptness and the acknowledgment of legitimate hurdles that investigators might encounter.

"The provision also acknowledged that flexibility may be necessary in some cases while upholding the expectation of a comprehensive and timely investigative procedure. This is in line with the larger ideals of justice and due process within the legal system," he said.

Salim said this in response to the delay of Community Communications Department (J-Kom) assistant officer Abdul Wahab Abdul Kadir Jilani's appearance before the police to provide his statement over a video that emerged purportedly showing him and former J-Kom director-general Mohammad Agus Yusoff allegedly having an indecent conversation.

Yesterday, Inspector-General of Police Tan Sri Razarudin Husain said Wahab's statement will be recorded after the police made arrangements with the latter's lawyer.

It was reported that Wahab has fallen into severe depression following the incident, resulting in him having to arrange to meet the police on another day. This was disclosed by his lawyer Faizal Rahman.

Meanwhile, lawyer Datuk Geethan Ram Vincent said that under Section 111 of the CPC, when a witness is being summoned, the police will issue a notice for their presence and the witness is excused from attendance if they are officially declared medically unfit.

He said it was important to note that there is no specific time frame stipulated for this.

"In such cases, the witness must furnish medical proof in the form of a Medical Certificate (MC) or a comprehensive medical report.

"As long as the person is declared medically unfit, they need not attend. So, it all depends on whether he has an MC and how long is the MC for?

"If they do not attend after the Section 111 notice, the police could obtain a warrant from the magistrate to compel the witness' attendance," he added.

Geethan also highlighted that the duration of the MC was a pivotal factor, determining the period for which the witness was exempted from attending.

This flexibility in time frames, he said allowed for a reasonable consideration of the witness' health condition and to ensure a fair and just process.

He said in a bid to accommodate the witness' situation, the police may extend their flexibility by agreeing to conduct the statement-taking process at alternative locations.

"Whether it's at the witness' home or even the hospital, the police are willing to ensure a conducive environment for the witness, fostering an atmosphere where the statement can be provided comfortably," he said.

Lawyer R. Sivaraj said lawyers held the prerogative to engage in negotiations with the police, particularly when their clients were not in optimal conditions to provide statements.

He added that citing mental health issues as an excuse was viewed critically.

He said the legal framework insisted on a case-by-case evaluation, ensuring that legitimate reasons were presented for any delays in the statement process.

"Lawyers can negotiate with the police, if their clients are not well, then they need to provide proof to the police. If witnesses have problems and need space, a delay can be made at the discretion of the police.

"However, I think the issue of mental problems should not be used as an excuse," he said.

He added that in situations where the witness, for valid reasons required an extension to providing a statement, the lawyer assumed the crucial role of convincing the police of the necessity for such an extension.

He said police also have the authority to locate witnesses in various places to obtain their statements.

This implied that the statement-taking process was not confined to a specific venue and law enforcement can proactively reach out to witnesses, ensuring a more dynamic and accessible interaction, he added.

On Friday, Bukit Aman Criminal Investigation Department (CID) director Datuk Seri Mohd Shuhaily Mohd Zain confirmed that the police recorded statements from three individuals linked to the case.

They were Agus, the person believed to be 'Mr H' and a hotel employee.

The investigation was being carried out under Section 500 of the Penal Code for defamation and Section 233 of the Communications and Multimedia Act 1998 for improper use of network facilities or network services.

In a press conference held after the video went viral Agus and Wahab denied the authenticity of the video, claiming that the audio had been doctored by someone they identified as 'Mr H'.