

“Chain Remand” and its consequences in reality according to Malaysian Criminal Law as comparative studies.

Pramananthan Vasuthevan^{1*}

¹Academic, Department of Marketing and Management, Faculty of Business, Nilai University

*Corresponding author, E-mail: pramananthan@nilai.edu.my

Abstract

In a criminal procedure, a person can be prosecuted if that person is arrested. As such, we need to examine how an arrest may be lawfully effected and by whom in what circumstances. Furthermore, we have to consider the responsibilities of the person effecting the arrest and right of the arrested person, as the case may be. The Criminal Procedure (Amendment) Act 2006 was the first major piece of legislation to reform the criminal process in Malaysia for 20 years and represented an attempt not only to deal with specific problems relating to police practice and the pre-trial process, but also to single out Malaysia as a progressive state within Asia committed to the Rule of Law.

Keyword: Chain Remand

Introduction

Getting arrested is an incredibly stressful, painful and confusing experience, both for the person under arrest and their family, friends and loved ones. And, once the arrested person is taken to jail, there is probably just one thing on everyone's mind: getting that person back out of jail.

“Chain remand” literally means that when a person is arrested, the arrested person would be remanded and once the remand expires, the police would re-arrest the individual saying there’s been another police report made which allows them to circumvent the limitations under the Criminal Procedure Code (CPC).

Objectives

The main objective of the proposed dissertation is to examine how an arrest and remand order maybe lawfully affected and by whom in what circumstances and what the arrestee rights are and remedies available for abuse of power and wrongful arrest.

Concept theory framework

Peripheral Realism Theory

Materials and Methods

The research methodology would be focused on qualitative method and some extend to quantitate method where appropriate.

Results

Research was transpired when Malaysian Crime Watch Task Force (My-Watch) chairman Datuk R. Sri Sanjeevan was arrested and re-arrested and remanded for a total of nine times based on varying police reports under Sections 384 and Sections 506 of the Penal Code.

Under Section 117 of the CPC, a suspect can only be remanded for up to seven days. Lawyers for Liberty, Executive Director Eric Paulsen said although the use of chain remand was technically “lawful”, it was an abuse of power as “the police should investigate diligently and not at their leisure which may explain the need for multiple remands for different reports”.

<http://www.themalaymailonline.com/malaysia/article/chain-remand-more-common-than-you-think-lawyers-say-after-crime-fighters-de#sthash.DbH5UGU9.dpuf>

Therefore, there may be cases where the arrest may be challenged as being unlawful for lack of justification or due to excessive use of force or other relevant grounds.

Magistrates must take their remand powers seriously as the liberty of a person is at stake. They should not treat remand applications as a chore, to be 'rubber stamped' without considering the legality and merits especially in cases of multiple remands.

Conclusions and Discussion

When arrested, a person has a fundamental right under the **Article 5(3) Federal Constitution** to be informed as soon as possible in ordinary language, of the grounds of his arrest unless that can be inferred from the surrounding circumstances or if he makes it impossible for the person making the arrest to inform him. Thus, a person arrested is entitled to ask the reasons for his arrest as well as to which police station he is being taken to. This fundamental rights was also upheld in **Christie & Anor v Leachinsky [1947] AC 573 1 All ER 567** . The Federal Court, in **Abdul Rahman v Tan Jo Kok [1968] 1 MLJ 205** referred to and cited **Christie & Anor v Leachinsky [1947] AC 573 1 All ER 567** .In **Mohammad Shafiq Dollah &Another v Sarjan Mejar Abdul Manaf Jusoh & others [2013] 2 CLJ 1096** it was held that both Section 28A and Article 5(3) of the

Federal Constitution. The police must bring a person arrested immediately to the nearest police station and nowhere else.

The Federal Constitution also gives the arrested person a right to consult and he is defended by a legal practitioner of his choice. A person arrested has the right to remain silent and refuse to answer any questions. Under **Article 5 of the Federal Constitution** which provides a personal liberty of a person is fundamental rights which there can be no deprivation save in accordance with law.

A police officer who has taken a person into custody must produce him before a Magistrate without necessary delay. Police detention of the arrested person must not exceed 24 hours (excluding the time taken for the journey from the place of arrest to the Magistrate Court).

Section 28 of the Criminal Procedure Code provides: -

(1) A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein as to bail or previous release take or send the person arrested before a Magistrate's Court.

(2) No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable.

(3) Such period shall not in the absence or after the expiry of a special order of a Magistrate under Section 117 CPC exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Before the new **Section 28A** CPC a person arrested under this section is almost always not informed of the grounds in which he is arrested not afforded the right to counsel. Further, an arrested person is also deprived from communicating with his family or friends with regards to his detention.

This has resulted in his family and/or counsel being unaware as to when the person arrested would be produced in court for remand or be charged. This has led to arrested persons being remanded and/or charged in the absence of his counsel and/or family.

Under the new **Section 28A of the Criminal Procedure Code** which came into force since September 2007 the rights of an arrested person are clearly spelt out.

Under this new section, an arrested person will have the following rights: -

- to be informed as soon as may be the grounds for this arrest;
- right to contact a legal practitioner of his choice within 24 hours from the time of his arrest;

- right to communicate with a relative or friend of his with regards to his whereabouts within 24 hours from the time of his arrest;

- right to consult with his lawyer and the lawyer is allowed to be present and to meet the arrested person at the place of detention before the police commences any form of questioning or recording of any statement from the person arrested.

However, the right to communicate with a relative, counsel or friend and the right to consult a counsel of his choice will be refused where there is reasonable belief that to do so could result in an accomplice of the person arrested taking steps to avoid apprehension or there would be destruction, concealment or fabrication of evidence or intimidation of witnesses or where taking regard to the safety of other persons, the questioning or recording of any statement should not be delayed. Before the new section 28A a person arrested under this section is almost always not informed of the grounds in which he is arrested and not afforded the right to counsel. Further, an arrested person is also deprived from communicating with his family or friends with regards to his detention. This has resulted in his family and/or counsel being unaware as to when the person arrested would be produced in court for remand or be charged. This has led to arrested persons being remanded and/or charged in the absence of his counsel and/or family.

The new section 28A reflects the rights of an arrested person as enshrined under Article 5 of the Federal Constitution. With clearly spelt out rights under this new section, it is hoped that the police would comply strictly with the same. However, there may be cases where the arrest may be challenged as being unlawful for lack of justification or due to excessive use of force or other relevant grounds.

References

1. Arrest and remand an article in The Malaysian Bar, Malaysian Bar Council 14/7/2016
2. Criminal Procedure, Francis Ng Aik Guan, Malayan Law Journal Sdn. Bhd., Kuala Lumpur 2000.
3. Criminal Procedure, Francis Ng Aik Guan, Malayan Law Journal Sdn. Bhd. Kuala Lumpur 2006.
4. Criminal Procedure Code, LexisNexis Malaysia Sdn. Bhd., 2016 Selangor.
5. Criminal Procedure in Malaysia, Mimi Kamariah Majid, University of Malaya Press, 2nd Edition, 1995, Kuala Lumpur.
6. Criminal Procedure, Datuk Baljit Singh Sidhu, Brickfield Asia Corporation 2016, Kuala Lumpur

List of cases

1. PP v Datuk R. Sri Sanjeevan [2016]
2. Christie & Anor v Leachinsky [1947] AC 573 1 All ER 567
3. Abdul Rahman v Tan Jo Kok [1968] 1 MLJ 205
4. Mohammad Shafiq Dollah & Another v Sarjan Mejar Abdul Manaf Jusoh & others [2013] 2 CLJ 1096

Statues

1. Article 5 Federal Constitution
2. Criminal Procedure (Amendment) Act 2006
3. Section 15 CPC
4. Section 28A CPC
5. Section 117 (1), (2), CPC
6. Section 3 Prevention of Crime Act(POCA) [2013]