



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 16/2541* Dated 15th December B.E. 2541 (1998)

Re : The Supreme Court referred the opinion of the parties which objected that section 220 of the Criminal Procedure Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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The Permanent Secretary of the Ministry of Justice submitted an application, dated 4th November B.E. 2541 (1998), requesting for a Constitutional Court ruling in the case where the Supreme Court requested that the Ministry of Justice refer the opinion of Mr. Kosum Talasophon, the applicant, in Criminal Case Judgment No. 7732/2539, Case No. 8283/2540 of the Criminal Court between Mr. Kosum Talasophon, as plaintiff, and Mr. Krit Komolrit, the first defendant, and Mr. Pornchai Lormpakorn, the second defendant, on charges of offences against a competent official in the course of justice. Mr. Kosum Talasophon, the plaintiff, submitted an objection that section 220 of the Criminal Procedure Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and requested that such opinion of the applicant be referred to the Constitutional Court for a ruling.

According to the application of Mr. Kosum Talasophon, Mr. Kosum Talasophon, as plaintiff, filed claims against Mr. Krit Komolrit and Mr. Pornchai Lormpakorn, as defendants in the Criminal Court, on charges of filing false complaints and giving false statements and petitioned for the punishment of the defendants under section 175 and section 177 of the Criminal Code. The Court of First Instance examined the cause of action and held that the case lacked any cause of action. Judgment was thereby passed to dismiss the action. The plaintiff appealed to the Court of Appeal. The Court of Appeal held that the plaintiff had previously filed claims against the two defendants on charges of filing false complaints and giving false statements and therefore held that this claim was prohibited by res judicata under

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section 39 (4) of the Criminal Procedure Code. Such section was related to public order which the Court of Appeal could raise in its consideration. The Court of Appeal agreed with the Court of First Instance's dismissal of the claim and therefore passed judgment to affirm the earlier judgment. The plaintiff appealed to the Supreme Court. The Criminal Court issued an order refusing leave to appeal to the Supreme Court because such an appeal was prohibited under section 220 of the Criminal Procedure Code. The plaintiff appealed the order which refused his appeal to the Supreme Court, giving reasons that the order of the Criminal Court which refused his leave to appeal to the Supreme Court was an order unduly made. It was contended that the prohibition from appeal to the Supreme Court prohibited only the deliberation of the same issue and reasons. On the problem of whether or not the claim was res judicata under section 39 (4) of the Criminal Procedure Code, such problem was a matter related to consistency with public order which the Court of First Instance did not consider but was subsequently raised by the Court of Appeal on appeal. In addition, the judgment of the Court of Appeal did not reveal facts which could be considered under section 186 (5) of the Criminal Procedure Code and was therefore contrary to public order and inconsistent with section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). While the case was pending consideration by the Supreme Court of the appeal against the order which refused leave of appeal to the Supreme Court, the plaintiff submitted an application requesting for a ruling of the Constitutional Court under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The application stated that the Court of First Instance's order refusing the plaintiff of a leave of appeal for reasons of being an appeal to the Supreme Court prohibited under section 220 of the Criminal Procedure Code was a disentitlement of the plaintiff's right to appeal to the Supreme Court under section 272 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) contrary to public order and inconsistent with the Constitution and an infringement of the plaintiff's right to receive justice under section 26, section 27 and section 28 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The plaintiff considered that section 220 of the Criminal Procedure Code was contrary to or inconsistent with the Constitution. By virtue of section 6 in conjunction with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the plaintiff requested that his opinion be referred to the Constitutional Court for a ruling. The Supreme Court therefore referred the application to the Constitutional Court for a ruling.

The facts obtained were sufficient for consideration.

The Constitutional Court held that the issue which required consideration was whether or not section 220 of the Criminal Procedure Code was a provision of law contrary to or inconsistent with section 272, section 26, section 27 and section 28 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 272 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that "there shall be three levels of Courts of Justice, viz, Courts of First Instance, Court of Appeal and the Supreme Court of Justice, except otherwise provided by this Constitution or other laws." The applicant considered that section 220 of the Criminal Procedure Code, which prohibited appeal to the Supreme Court, was inconsistent with the Constitution. The

Constitutional Court held that section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “the trial and adjudication of cases are the powers of the Courts, which must proceed in accordance with the Constitution and the law and in the name of the King.” The word “law” in section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the word “provided by... other laws” provided as an exception in section 272 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) also referred to the law on court procedure. In this case, section 220 of the Criminal Procedure Code stated that “the parties shall be prohibited from appealing to the Supreme Court a case which the Court of First Instance and the Court of Appeal passed judgment dismissing the plaintiff’s claim.” This was the intention of the law to prevent a case which had been dismissed in two Courts to be reconsidered in the Supreme Court. Such a restriction of right to appeal to the Supreme Court was also not an absolute restriction. A leeway was provided in section 221 of the Criminal Procedure Code that “in a case prohibited from appeal to the Supreme Court under section 218, section 219 and section 220 of this Code, if any judge who considered the case or affixed his or her signature in the judgment or prepared a dissenting opinion in the Court of First Instance or the Court of Appeal considered that the substance decided was an important problem which deserved the consideration of the highest Court and allowed the appeal to the Supreme Court, or the Director-General of the Department of Public Prosecution affixed his or her signature endorsing the appeal as containing a cause for submission to the highest Court, such an appeal to the Supreme Court shall be accepted for consideration.” In other words, if any party wished to appeal to the Supreme Court a case that was prohibited under section 218, section 219 and section 220 of the Criminal Procedure Code, he or she could proceed under section 221, in which case the Supreme Court could accept the case for consideration. Therefore, section 220 of the Criminal Procedure Code was neither contrary to nor inconsistent with section 272 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As regards the issue on whether or not section 220 of the Criminal Procedure Code was also contrary to or inconsistent with section 26, section 27 and section 28 of the Constitution, the consideration of all cases should be in accordance with specific laws for the case or the applicant was subject to the application of section 220 and section 221 of the Criminal Procedure Code and section 220 of the Criminal Procedure Code, which restricted the right to appeal to the Supreme Court, did not affect human dignity, rights and liberties in accordance with section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), together with the fact that the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) did not provided for the right to appeal to the Supreme Court, section 220 of the Criminal Procedure Code was therefore neither contrary to nor inconsistent with section 26, section 27 and section 28 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

By virtue of the reasons above, the Constitutional Court held that section 220 of the Criminal Procedure Code was neither contrary to nor inconsistent with section 272, section 26, section 27 and section 28 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
