

Summary of the Constitutional Court Ruling No. 58/2547

Dated 23rd September B.E. 2547 (2004)*

Re: The Supreme Court referred the objection of a defendant (Mr. Prasert Jongwiriawong) to the Constitutional Court for a ruling under section 264 of the Constitution in the case where section 221 of the Criminal Procedure Code was contrary to or inconsistent with section 26, section 27, section 28, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The facts in the application could be summarized as follows. State attorney of the Office of the Attorney General, as plaintiff, and Mr. Chuchart Srisaeng, as co-plaintiff, jointly indicted Mr. Prasert Jongwiriawong as defendant for the offence of contempt of the court or the judge in court proceedings at the Criminal Court in Criminal Case No. 14309/2542. It was requested that the defendant be convicted under section 91 and section 198 of the Penal Code and imprisoned and fined under section 4 of the Act Amending the Penal Code (No. 6), B.E. 2526 (1983) and article 5 of the Order of the State Administration Reform Council No. 41, dated 21st October B.E. 2519 (1976). The Criminal Court gave judgment that the defendant committed an offence under section 198 of the Penal Code. The defendant was sentenced to imprisonment and a fine with the imprisonment sentence suspended.

The co-plaintiff appealed the Criminal Court's judgment. The Court of Appeals affirmed the judgment.

The co-plaintiff thereafter appealed the judgment to the Supreme Court.

The defendant filed a motion at the Criminal Court requesting for the Supreme Court to refer his objection to the Constitutional Court for a ruling that the provision which dealt with the suspended sentence given by the judge to the defendant which allowed the plaintiff the exercise the right of appeal to the Supreme Court under section 221 of the Criminal Procedure Code affected the essential substances of the defendant's rights and liberties. Such provision was therefore contrary to or inconsistent with section 233 and section 26 to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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The Supreme Court issued an order that section 221 of the Criminal Procedure Code was a provision of law to be applied to a case by the court and there had not yet been a ruling of the Constitutional Court in relation to such provision. Therefore, a temporary stay was imposed and such opinion of the defendant was referred to the Constitutional Court for a ruling under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court could accept this application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court found that the defendant, as applicant, objected that section 221 of the Criminal Procedure Code was contrary to or inconsistent with section 26, section 27, section 28, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The provisions of section 221 of the Criminal Procedure Code were provisions of law which the Supreme Court was going to apply to a case, and there had not yet been a ruling of the Constitutional Court on such provisions. The Constitutional Court could therefore accept this application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 221 of the Criminal Procedure Code was contrary to or inconsistent with section 26, section 27, section 28, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 26, section 27, section 28, section 29 and section 30 of the Constitution were provisions which provided the rights and liberties of the Thai people. Section 26 of the Constitution was a provision which stipulated the exercise of powers by all State organs which must have regard to human dignity, rights and liberties under the provisions of the Constitution. Section 27 recognized that rights and liberties provided under the Constitution, whether expressly, by implication or by rulings of the Constitutional Court, were protected and binding on State organs in enacting laws, applying laws and interpreting laws. Section 28 was a provision which recognized that a person could invoke human dignity or exercise his or her rights and liberties to the extent that did not infringe the rights and liberties of others and not in contravention to the Constitution or not inconsistent with the good morals of the people. Such provision also guaranteed the rights of a person to exercise judicial rights when rights and liberties recognized by the Constitution had been infringed. Section 29 was a provision which prohibited the restriction of rights and liberties of a person, except by virtue of provisions of law specifically enacted

for a purpose prescribed by the Constitution. In addition, such restriction was only allowed to the extent that was necessary without affecting the essential substances of such rights and liberties. Finally, section 30 was a provision which protected the fundamental rights and liberties of the Thai people. The principle stated that all persons should be equal under the law and received equal protection under the law. Men and women had equal rights and unjust discrimination against a person was prohibited. On the other hand, section 221 of the Criminal Procedure Code provided the right of a party in a criminal case who was barred from submitting an appeal to the Supreme Court to be able to submit an appeal to the Supreme Court under certain conditions prescribed by law. Under the provisions of the Criminal Procedure Code on appeals to the Court of Appeals and the Supreme Court, once a court had given a judgment or an order, a party who was unsatisfied with such judgment or order was entitled to submit an appeal to the Court of Appeals or the Supreme Court, whether the matter involved a factual or legal problem, except where an appeal to the Court of Appeals or the Supreme Court was prohibited under the Criminal Procedure Code or other laws. According to section 221 of the Criminal Procedure Code, both the plaintiff and the defendant had the right to request a judge who participated in the trial or signed the judgment or made a dissenting opinion in the court of first instance or request for leave of the Court of Appeals to submit an appeal to the Supreme Court. The reason for allowing the Supreme Court to reconsider the case was for the benefit of justice, not a matter of the exercise of powers by an organ without having regard to human dignity, rights and liberties. This did not result in the rights and liberties recognized by the Constitution being left unprotected. Nor did it relate to the invocation of human dignity or the exercise of one's rights and liberties in such a way as to infringe the rights and liberties of other persons. There was no restriction on rights and liberties of persons recognized by the Constitution and all persons were treated equally. Therefore, section 221 of the Criminal Procedure Code was neither contrary to nor inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As regards the objection that section 221 of the Criminal Procedure Code was contrary to or inconsistent with section 233 of the Constitution, the Constitutional Court held that section 233 of the Constitution was a general provision which provided that the trial and adjudication of cases were the powers of the courts and the trial and adjudication itself must be in accordance with the Constitution and the law. Section 221 of the Criminal Procedure Code was a procedural law on the right to submit an appeal to the Supreme Court, which provided the exception that if a judge who participated in the trial or signed a judgment or prepared a dissenting opinion in the court of first instance or the Court of Appeals considered that the matter decided contained an important question which deserved further consideration by the highest court and allowed the appeal to the Supreme Court, such appeal to the Supreme Court should be accepted for further proceedings. It was a right of the parties to request a certification of a factual problem, being a right which was equally available to every party. This gave an opportunity for the judge giving judgment under section 219 to suspend the defendant's sentence and the judge of the Court of Appeals who affirmed the defendant's suspended sentence or other authorized person under section 221 to

have the power to certify an appeal to the Supreme Court on whether or not to suspend the sentence. The Supreme Court would then have to hear the case in accordance with the Constitution, the law and in the name of His Majesty The King. Therefore, section 221 of the Criminal Procedure Code was neither contrary to nor inconsistent with section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 221 of the Criminal Procedure Code was neither contrary to nor inconsistent with section 26, section 27, section 28, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
