shall explain the terms of the promissory note to the borrower, and shall certify thereon that the borrower appeared to understand the meaning of the same. The money borrowed shall be paid over by the lender to the borrower in the presence of the attestor who shall certify the fact upon the promissory note.

(2) Any promissory note required to be attested under this section and not so attested shall be void and the lender shall not be entitled to recover any loan for which due note is taken as security."

With all due respect to counsel for the borrower we cannot see anything in the above two sections requiring that the copy of the promissory note supplied by the lender to the borrower should be authenticated.

It is true that section 16(1) refers to security given by the borrower, but that provision deals principally with notes or memoranda of the contract for the repayment of the money lent. It says that there should be such a note or memorandum satisfying certain conditions prescribed by the subsection, without which neither the loan nor its security can be enforced, and it is that note or memorandum which must be authenticated. The subsection does not say that the security also must be authenticated.

The principal provision dealing with promissory notes is section 27, and that section nowhere says that a promissory note taken as security should be authenticated. All it says is that if the borrower does not understand what is written in the note, (1) it should be attested by a solicitor, (2) the solicitor should explain its contents, (3) the solicitor should certify on the note that the borrower appeared to understand its contents, (4) the money borrowed should be paid in the presence of the solicitor, and (5) the solicitor should so certify on the note.

As there is no legal requirement that the promissory note supplied by the lender to the borrower should be authenticated, there is in our view no merit in the borrower's contention.

In the course of his judgment the learned trial judge said that the memorandum prepared in accordance with section 16(1), Exhibit P1A at page 34, was not authenticated either. With all due respect we do not think that he should have dealt with this point at all, as the dispute referred by counsel to the court concerned authentication of the promissory note only, not of the memorandum under section 16(1).

With all due respect we would dismiss this appeal, with costs; the appellant's deposit to be paid to the respondent against his taxed costs.

Appeal dismissed.

Solicitors: *Syarikat Visa; Oo Gin Sun, Bakar & Co.*

AH THIAN v. GOVERNMENT OF MALAYSIA

[F.C. (Suffian L.P.) May 28, 1976]

[Kuala Lumpur — Federal Court Criminal Application No. 3 of 1976]

Constitutional Law — Application to declare law invalid on ground of inconsistency with Constitution — Power may be exercised by any court — Leave of Federal Court not necessary — Federal Constitution, arts. 4, 8, 74 or 75.

Constitutional Law — Parliament — Doctrine of supremacy of — Whether applicable in Malaysia.

In this case the applicant had been charged with committing armed gang robbery under sections 392 and 397 of the Penal Code, an offence punishable under section 5 of the Firearms (Increased Penalties) Act, 1971 as amended. It was argued that the Firearms (Increased Penalties) (Amendment) Act, 1974 was *ultra vires* the Federal Constitution as it contravened Article 8(1) of the Constitution and was therefore void. An adjournment was obtained to enable the applicant to obtain the leave of a judge of the Federal Court to start proceedings for a declaration that the Act was void for the reason stated.

Held: as the argument of the applicant was that the Act was invalid because it was inconsistent with the Constitution, Clause (4) of Article 4 and Clause (1) of Article 128 of the Constitution did not apply and the point may be raised in the ordinary way in the course of submission and determined in the High Court, without reference to the Federal Court and there is no need for leave of a Judge of the Federal Court.

Case referred to:-

(1) *Ooi Ah Phua* v. *O.C.C.I.D. Kedah/Perlis* [1975] 2 M.L.J. 198.

FEDERAL COURT.

Karpal Singh for the applicant.

T.S. Nathan (Deputy Public Prosecutor) for the respondent.

Suffian L.P.: This application is before me in my capacity as a judge of the Federal Court.

The applicant was charged with committing armed robbery under sections 392 and 397 of the Penal Code, an offence punishable under section 5 of the Firearms (Increased Penalties) Act 37 of 1971 as amended.

If convicted he is liable to imprisonment for his natural life and with whipping with no less than six strokes.

Also charged with him was one Ooi Chooi Toh who figured in the case of *Ooi Ah Phua* v. *O.C.C.I.D. Kedah/Perlis*.[1]

The applicant's counsel argued that the Firearms (Increased Penalties) Act 37 of 1971 as amended by the Firearms (Increased Penalties) (Amendment) Act A256 of 1974 is "*ultra vires* the Federal Constitution as it contravenes article 8(1) of the Constitution and is therefore void".

Article 8(1) reads —

"All persons are equal before the law and entitled to the equal protection of the law."

On March 30, 1976, at the close of the case for the prosecution, counsel for the applicant applied for an adjournment to enable him to obtain the leave of a judge of the Federal Court to start proceedings for a declaration that the Act is void for the reason already stated. The application was granted, hence this

application before me. It is said that the application is made under article 4(4) of the Constitution.

The doctrine of the supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of State legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

Under our Constitution written law may be invalid on one of these grounds:

(1) in the case of Federal written law, because it relates to a matter with respect to which Parliament has no power to make law, and in the case of State written law, because it relates to a matter which respect to which the State legislature has no power to make law, article 74; or

(2) in the case of both Federal and State written law, because it is inconsistent with the Constitution, see article 4(1); or

(3) in the case of State written law, because it is inconsistent with Federal law, article 75.

The court has power to declare any Federal or State law invalid on any of the above three grounds.

The court's power to declare any law invalid on grounds (2) and (3) is not subject to any restrictions, and may be exercised by *any* court in the land and in *any* proceeding whether it be started by Government or by an individual.

But the power to declare any law invalid on ground (1) is subject to three restrictions prescribed by the Constitution.

First, clause (3) of article 4 provides that the validity of any law made by Parliament or by a State legislature may not be questioned on the ground that it makes provision with respect to any matter with respect to which the relevant legislature has no power to make law, except in three types of proceedings as follows:—

(a) in proceedings for a declaration that the law is invalid on *that* ground; or

(b) if the law was made by Parliament, in proceedings between the Federation and one or more states; or

(c) if the law was made by a State legislature, in proceedings between the Federation and that State.

It will be noted that proceedings of types (b) and (c) are brought by Government, and there is no need for any one to ask specifically for a declaration that the law is invalid on the ground that it relates to a matter with respect to which the relevant legislature has no power to make law. The point can be raised in the course of submission in the ordinary way. Proceedings of type (a) may however be brought by an individual against another individual or against Government or by Government against an individual, but whoever brings the proceedings must specifically ask for a declaration that the law impugned is invalid on that ground.

Secondly, clause (4) of article 4 provides that proceedings of the type mentioned in (a) above may not be commenced by an individual without leave of a judge of the Federal Court and the Federation is entitled to be a party to such proceedings, and so is any State that would or might be a party to proceedings brought for the same purpose under type (b) or (c) above. This is to ensure that no adverse ruling is made without giving the relevant government an opportunity to argue to the contrary.

Thirdly, clause (1) of article 128 provides that only the Federal Court has jurisdiction to determine whether a law made by Parliament or by a State legislature is invalid on the ground that it relates to a matter with respect to which the relevant legislature has no power to make law. This jurisdiction is exclusive to the Federal Court, no other court has it. This is to ensure that a law may be declared invalid on this very serious ground only after full consideration by the highest court in the land.

The applicant wants to attack the validity of the Firearms (Increased Penalties) Act not on the ground that it relates to a matter with respect to which Parliament has no power to make law. In my judgment, this Act deals with criminal law and the administration of justice, both matters with respect to which Parliament has power to make law (see item 4 of List I in the Ninth Schedule to the Constitution). The applicant says that the Act is invalid because it is inconsistent with the Constitution, i.e. on ground (2) set out in paragraph 9 above. Therefore clause (4) of article 4 and clause (1) of article 128 do not apply and the point may be raised in the ordinary way in the course of submission, and determined in the High Court, without reference to the Federal Court, and there is no need for leave of a judge of the Federal Court.

True the learned judge has power under section 48 of the Courts of Judicature Act, 1964 (L.M. Act 91) to stay the proceedings before him and refer a matter like this to the Federal Court. He has not however done so in this case (this is an application by the accused). But in any event matters like this as a matter of convenience and to save the parties time and expense are best dealt with by him in the ordinary way, and the aggrieved party should be left to appeal in the ordinary way to the Federal Court.

If the learned judge had done that here, the applicant and his co-accused would have been acquitted or convicted by now. As it is, in 1976 they are still being tried for an offence which they are alleged to have committed on December 26, 1974.

My order on the application is that this matter be remitted back for continuation of trial by the High Court.

Order accordingly.

Solicitors: *Karpal Singh & Co.*