

CONSTITUTIONAL LAW

Constitution – Presumption of guilt on director, etc of body corporate – Whether presumption of innocence eroded – Whether deeming provision constitutional — Whether section 122 of the Securities Industry Act 1983 unconstitutional – Securities Industry Act 1983, section 122(1) – Federal Constitution, articles 5(1) and 8(1)

PP v Gan Boon Aun

[2017] 4 CLJ 41, Federal Court

Facts The respondent and one Khiudin bin Mohd, both directors of Transmile Group Berhad (“Transmile”), were charged at the Sessions Court under the Securities Industry Act 1983 (“SIA”)¹ for making a misleading statement in Transmile’s report, which was likely to induce the purchase of shares in Transmile; and alternatively, for furnishing a misleading statement to Bursa Malaysia Securities Berhad in Transmile’s report. The trial judge acquitted the respondent and Khiudin on the principal charge but ordered their defence to be entered on the alternative charge. An objection was raised, contending that section 122² of the SIA was unconstitutional. The respondent and Khiudin applied to have it referred to the High Court. The High Court ruled that section 122 of the SIA was constitutional, but the ruling was reversed by the Court of Appeal. In the Federal Court, it was held that only the Federal Court has the jurisdiction to determine questions that affect the provisions of the Federal Constitution. Thus the matter was remitted to the High Court, which then referred the constitutional issues to the Federal Court.

Issue The main issue was whether section 122(1) of the SIA violates articles 5(1)³ and 8(1)⁴ of the FC, on the basis that it abrogated the fundamental right of an accused person to be presumed innocent until proven guilty, and that a criminal charge must be proved by the prosecution against the accused beyond reasonable doubt.

Held It was held that section 122(1) of the SIA was not unconstitutional and therefore did not violate the doctrine of presumption of innocence, as such presumption required the prosecution to prove the guilt of the company beyond all reasonable doubt. Thus, the deeming provision was held to be fair and necessary as it must be first proved beyond reasonable doubt that the offence was committed by the company before it is deemed committed by its directors or its officers.

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¹ Now repealed by the Capital Markets and Services Act 2007

² Offences by bodies of persons and by employees and agents

³ Liberty of the person

⁴ Equality