

Criminal appeal cases No 173/2009 and No 174/2009 rejected and judgment and decree of Yangon North District Court confirmed

YANGON, 2 Oct —Daw Aung San Suu Kyi, Daw Khin Khin Win and Ma Win Ma Ma (a) Ange Lay filed appeals against the judgments at Yangon Division Court as they were dissatisfied with the judgments of the Criminal Regular Trial 47/2009. These were the criminal appeal cases No 173/2009 and No 174/2009. Regarding their appeals, Yangon Division Court heard the final arguments on 18 September and passed final judgments together at 10 am today.

In reviewing the reasons of the lawyers of the appeal plaintiffs, there are two main points: (1) the 1974 constitution of the Socialist Republic of the Union of Myanmar became null and void due to the situations that happened in the country in 1988 and (2) it cannot be said that Daw Aung San Suu Kyi breached the terms of the restrictions and continued restrictions against her original rights prescribed in the 1974 constitution as they had not been the legal ones before. Therefore, it is necessary to conclude whether the 1974 constitution is still in force or not. The 2008 constitution of the Republic of the Union of Myanmar has been approved by the national referendum. The third paragraph of the preamble of the constitution states that "In order to gain independence speedily, the Constitution was hastily drafted, and it was adopted by the Constituent Assembly on 24th September 1947. After attaining independence, Parliamentary Democracy System was practised in the State in accord with the Constitution of the Union of Myanmar. However, as democratic system could not be effectively materialized, the new Constitution of the Socialist Republic of the Union of Myanmar was drafted based on the single party system, and after holding a National Referendum, a socialist democratic State was set up in 1974. The Constitution came to an end because of the general situation occurred in 1988." According to the statement, it is found that the 1974 constitution became null and void due to the situations that happened in the country in 1988. The sixth paragraph of the announcement No 1/90 of the State Law and Order Restoration Council states that "the State Law and Order Restoration Council (Tatmadaw) is an organization that is ruling the country with martial law and it is not an organization that is practising any constitution. The SLORC Government is ruling the country as a military government and it is known to all that it is the government accepted by the United Nations and world nations."

According to the above statement, it is found that the State Law and Order Restoration Council (Tatmadaw) clearly stated that it did not practise any constitution. It is therefore clear that at a time when the Tatmadaw took over the State duties in order to save the country in time that was in deteriorating situation, the 1974 constitution became null and void.

The constitution of a country has to be prescribed in accord with the wishes of its people. As for the 1947 constitution, the State leaders hastily drafted it at a Constituent Assembly as they wanted to gain independence speedily in a peaceful way. Then the independence was announced. As to the 1974 constitution, the draft one was first written and it was approved and promulgated through the referendum.

The 2008 constitution was prescribed on 29 May 2008 through the national referendum only after the National Convention had adopted basic principles and detailed basic principles. This is why the constitution came into existence after the true desire of the people had been obtained.

Here, it is necessary to be aware of the fact that the constitution and the statute law are different. In the

Declaration No 6/88 issued by the State Law and Order Restoration Council, it is stated that on 18 September, 1988 when the SLORC took over the State duties, all the existing laws are still in effect until it dissolves or revokes them. The existing laws mean ordinary statutes. In these expressions, the constitution is not included.

Sub-Article (A) of Article 202 of the 1974 constitution states that this Constitution is the Basic Law of all the Laws of the Union. Section-449 of the 2008 constitution also states that this Constitution is the Basic Law of all the Laws of the Union. Looking at those provisions, the constitution is the basis of all existing laws. Based on the constitution, all other existing laws have to be prescribed to be in conformity with that constitution. The constitution is not to be prescribed based on the existing laws. It can therefore be said that the statement of the deputy division law officer that the provisions included in the constitution that is not contrary to the existing laws shall not become null void is not true.

Therefore, it can be deduced from the foregoing legal points along with the nature of the law, the 1974 constitution of the Socialist Republic of Myanmar became null and void following the general deterioration in 1988, and that is stated in the third paragraph of the State Constitution of the Union of the Republic of Myanmar.

The second part is to decide whether or not the restriction order, the prohibition order and the continued prohibition order on Daw Aung San Suu Kyi are legitimate, and she violated these orders. The scrutinization of the primary case exposes that Daw Aung San Suu Kyi, Daw Khin Khin Win, Ma Win Ma Ma (a) Ange Lay and Mr John William Yettaw were put on trial under the Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts.

The Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts was promulgated under Pyithu Hluttaw Law No. 3 in 1975. The 1988 situations put an end to the 1974 constitution, but the State Law and Order Restoration Council did not promulgate or nullify the law. In 1991, the State Law and Order Restoration Council amended the law under Law No 11/91. Therefore, the Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts is still in force, and it is the original law.

Here, the purpose of the Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts needs to be explained. The law is designed to protect the State sovereignty and security, and community peace from threats, and safeguard the nation against those desiring to harm the State. In order to achieve these objectives, the Central Body, also the administrative body, was formed and then entrusted authority to take preventive measures against possible dangers. The Central Body pursues the objectives by issuing restriction order, warrant for arrest and prohibition order according to its executive authority. It has to take action and make a verdict according to the executive power only when a person violates restriction order, warrant for arrest and prohibition order issued under the authority of the Central Body.

Evidence (b) restriction order, evidence (b-1) prohibition order and evidence (b-2) are the orders the Central Body issued on Daw Aung San Suu Kyi under Article (7), Article 10 (b) and Article 11 under the Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts. The law is still in effect, so it cannot be deemed if the said orders issued according to the law are illegitimate orders. It will be

unwise if the law is deemed to have been null and void like the 1974 constitution. The 1974 constitution and the existing laws are separate laws. Therefore, it is fair to say that the revision case filed by the lawyers of appeal plaintiffs should not be accepted for hearing.

According to the witnesses who argued in the primary case, US citizen Mr John William Yettaw entered the residence of Daw Aung San Suu Kyi twice. In the first time, he left Book of Mormon. In the process of searching the house, Daw Aung San Suu Kyi took the book from the altar in her house and gave it to the officials. In the second time, she accepted the letters and books given by Mr John William Yettaw's daughter. The statements of the witnesses have made it apparent that while staying in her house, Mr John William Yettaw took many photos and made several home videos and brought them along with him. Appeal plaintiffs Daw Khin Khin Win and Ma Win Ma Ma (a) Ange Lay live together with Daw Aung San Suu Kyi. The statements of the plaintiff witnesses also made it clear that while Mr John William Yettaw was staying in the residence of Daw Aung San Suu Kyi, the two violated the law in collusion with Daw Aung San Suu Kyi by helping him with making bed and laying the table for meals for him.

Paragraph (c) of the prohibition order and continued prohibition order on Daw Aung San Suu Kyi says not to communicate outside by post or by telegraph. The initial court defined the expression "communicate" in combination with the expression "outside" stated in the paragraph (c). Here, the expression "communicate" means the deal between the one who communicates and the one who is communicated. Only then will they be able to contact with each other. Accepting outside contact means communicating outside, so it shall be deemed that Daw Aung San Suu Kyi re-communicated Mr John William Yettaw by accepting his contact. Therefore, the initial district court's decision "she failed to abide by the prohibition order" is not wrong. The argument given by the lawyer of the appeal plaintiff — considering the expression "outside" to be "making a contact" by combining the expression with another expression "communication" can make the initial expression greatly confused— is deemed to be wrong.

On the whole, the 1988 unrest made the 1974 constitution null and void, but the Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts is still in effect and it is therefore an existing law. According to the statements of the plaintiff witnesses, it makes it clear that defendants Daw Aung San Suu Kyi, Daw Khin Khin Win and Ma Win Ma Ma (a) Ange Lay failed to honour the restriction order, the prohibition order and the continued prohibition order issued under the provisions of the law. Therefore, it is not wrong that the initial district court sentenced Daw Aung San Suu Kyi under Article (22) of the law and Daw Khin Khin Win and Ma Win Ma Ma (a) Ange Lay under Article (19) of Code of Criminal Procedure and Article (22) of the law.

Therefore, it is hereby announced that based on the above-mentioned facts, the judgment and order of Yangon North District Court are confirmed and reject the criminal appeal cases Nos 173/2009 and 174/2009.

Appeal plaintiffs' lawyers U Kyi Win, U Nyan Win, U Hla Myo Myint and Daw Khin Htay Kywe, and appeal defendants' deputy law officers from Yangon Division Court Daw Khin Mar Kyi, Daw Khin Mayday and U Myat Khaing were present at the hearings.

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