

Court of Appeal upholds stay on ruling of paper committal

by Former CJ Ian Chang

The Guyana Court of Appeal presided over by Madam Chief Justice Yonette Cummings-Edwards on Thursday 24th March, 2016, stayed an execution granted by Justice B.S. Roy on Former Chief Justice Ian Chang's judgement that paper committals under the Sexual Offences Act 2010 was unconstitutional.

The former CJ's judgement was based on an application by accused Ray Bacchus who was charged with a Sexual Offence committed on a Child Under the Age of 16 years in January 2014. The decision of the Appellate Court was based primarily on the application to discharge the stay and not the substantive appeal by Bacchus.

In her ruling, Justice Yonette Cummings-Edwards stated that the Court of Appeal declined to discharge or vary the order for stay of execution of the order by then Chief Justice Chang in Chambers. "The stay of the decision granted by Justice Roy will not be varied, discharged or set aside by the Appellate Court and thus declined the application by Bacchus because there is an arguable ground for an arguable appeal in the substantive matter. The stay will now have to be determined in the appeal for the arguments for the appeal," explained Justice Cummings-Edwards.

Accused Ray Bacchus, through his Attorney Mursalene Bacchus, had challenged the Magistrate's decision to commit him to stand trial in the High Court, on the grounds that he was not allowed to cross-examine witnesses during the committal proceedings in the magistrate court. In his order, Justice Chang had ruled that the Paper Committals were unconstitutional because they did not allow for the accused to cross examine the witnesses.

However, the Director of Public Prosecutions (DPP) had appealed the former CJ's order because it is in contravention of the spirit of section 43 of the Act which

states where a person is charged with an offence under the Act, there shall be no oral preliminary inquiry and instead a paper committal shall be held in accordance with the procedure set out on the First Schedule .

Former Attorney-General Anil Nandlall had appeared for the State and had argued that Justice Chang's ruling had placed other sexual offence cases in jeopardy. He pointed out that other cases that are sent to the High Court on the basis of a paper committal would be null and void.