

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA**

In the matter of an Application for Revision to revise and set aside the order of the Learned High Court Judge of Colombo dated 10th November 2025 made in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, read with the provisions of Section 364 of the Code of Criminal Procedure Act, No. 15 of 1979.

CA Case No: CA -CPA-108-25

HC of Colombo Case No: HCB/379/25

Commission to Investigate Allegations of
Bribery or Corruption

Complainant

Vs.

1. Edirisinghe Arachchige Jayantha
Edirisinghe,
No.4/B/98,
Wickramasinghepura,
Battaramulla.

2. Lakshman Yapa Abeywardena.
No. 75/14,
Grama Sanwardena Road,
Polwatta,
Pannipitiya.

Accused

AND NOW

Edirisinghe Arachchige Jayantha
Edirisinghe.
No.4/B/98,
Wickramasinghepura,
Battaramulla.

1st Accused-Petitioner

Vs.

Commission to Investigate Allegations of
Bribery or Corruption
36, Malalaskara Mawatha
Colombo 07

Respondent-Complainant

Lakshman Yapa Abeywardena.
No. 75/14,
Grama Sanwardena Road,
Polwatta,
Pannipitiya.

2nd Accused-Appellant

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J

Counsel : Sanjay Rajaratnam, PC, with Edward Jayasinghe for the Accused-Petitioner
 Thushari Dayarathne, ASG with S. Senevirathne for the Respondent

Written 14.01.2026 (by the Accused-Petitioner)

Submissions: 20.01.2026 (by the Complainant-Respondent)

On

Supported On: 10.12.2025

Order On 06.02.2026

ORDER

B. Sasi Mahendran, J.

This revision application has been filed by the 1st Accused-Petitioner (herein after referred to as the Petitioner) invoking the revisionary jurisdiction of this court, seeking the following reliefs prayed in the petition dated 24th November 2025,

The Petitioner has *inter alia* prayed for the following reliefs;

- a) Issue notice on the Respondent - Complainant;
- b) Grant Interim Relief staying proceedings before the High Court of Colombo in Case No. HCB/379/25 until the finding, hearing, and determination of this Application;
- c) Make an Order to call the Case Record of the High Court of Colombo in Case No. HCB/379/25;
- d) Revise and set aside the Order of Learned High Court Judge dated the 10th of November 2025 marked "PIA";
- e) Make an Order quashing the Indictment in the High Court of Colombo in Case No. HCB/379/25 marked "P1B";
- f) Grant costs of this application; and
- g) Any such reliefs

The facts and circumstances of this case are as follows,

The Petitioner and the Accused–Respondent (hereinafter referred to as the 2nd Accused) were indicted on five counts under Section 70 of the Bribery Act, No. 11 of 1954, as amended by Acts Nos. 20 of 1994 and 22 of 2018. During the period from 01.10.2014 to 12.12.2014, while being public servants, namely: The Petitioner who was at the relevant time serving as the Director General of the Board of Investment of Sri Lanka; and 2nd Accused who was at the relevant time serving as the Minister of Investment Promotion, the said Petitioner conspired to commit the offences set out in the 2nd and 4th counts of the indictment (filed against the Petitioner), thereby committing offences punishable under Section 70 of the Bribery Act read with Sections 113(b) and 102 of the Penal Code.

The Petitioner caused advertisements valued at Rs. 1,748,877.76 to be published using funds belonging to the Board of Investment in a special newspaper supplement dated 19.11.2014, in celebration of the 4th anniversary of the second term of office of His Excellency Mahinda Rajapaksa, the then President of Sri Lanka, with knowledge that such acts would cause loss to the Government and/or with knowledge that such acts would confer an unlawful benefit, favour, or advantage on another person, thereby constituting the offence of corruption within the meaning of Section 70 of the Bribery Act. Furthermore, the 2nd Accused was further indicted under Section 70 of the Bribery Act, read with Section 102 of the Penal Code, for aiding and abetting the commission of the aforesaid offences.

The Counsel representing the accused raised several preliminary objections on 7th October 2025. The matter was thereafter scheduled for an order on those objections on 10th November 2025.

The defence raised preliminary objections as follows,

1. That following the enactment of the Anti-Corruption Act, No. 09 of 2023, no indictment can be filed under the repealed Bribery Act;
2. That although the 1st Accused is a public servant, the competent authorities were required to first proceed under the National Audit Act, and accordingly, Section 70 of the Bribery Act is inapplicable;
3. That the indictment is legally defective as it fails to identify the specific limb of Section 70 allegedly violated and fails to state or quantify the alleged benefit; and

4. That the indictment is bad in law due to duplicity, in that it alleges both the causing of loss to the Government and the conferring of an undue or illegal benefit on another person, which are two distinct and separate offences.

Thereafter, with the permission of the learned High Court Judge, both parties filed written submissions. The learned High Court Judge, by order dated 10.11.2025, dismissed the preliminary objections raised by both the Petitioner and the other accused.

The Petitioner has filed the present revision application challenging the impugned order and seeking its annulment. The primary submission of learned counsel for the Petitioner is that the charges contained in the indictment are framed under the provisions of the Bribery Act. Since the Bribery Act has been repealed by Section 163(1) of the Anti-Corruption Act, it is contended that the Director General is without jurisdiction to submit an indictment based on a statute that no longer remains in force.

It is indeed true that the Anti-Corruption Act has been in force since 8th August 2023. In terms of section 163(1), the following enactments stand repealed.

Section 163(1),

- a) The Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994;
- b) Declaration of Assets and Liabilities Law, No. 1 of 1975;
- c) The Bribery Act (chapter 26).

According to Section 163(2)(f), any contravention or legal proceeding **initiated** under the provisions of the repealed Acts, regulations, or rules made thereunder before the commencement of this Act shall be deemed to be an offence committed or a proceeding initiated under the repealed Acts and shall be tried and continued in accordance with the provisions of those repealed Acts.

According to Section 163 (2) (g), when the Commission has commenced an **investigation** prior to the date of commencement of this Act, such investigation shall be deemed to continue and take effect from the date on which this Act came into operation.

The offences in question, falling within the scope of the Bribery Act, were committed between 1st October 2014 and 12th December 2014. The complaint, however, was lodged

on 16th May 2018. Following this, CIABOC initiated an investigation under Sections 3, 4, and 5 of the Commission to Investigate Allegations of Bribery or Corruption Act, prior to the enactment of the Anti-Corruption Act. This point was expressly highlighted by counsel for the Complainant Respondent in his written submissions.

What is an investigation?

Black's Law Dictionary, 11th Edition, by Bryan A Garner

Investigation

“The activity of trying to find out the truth about something, such as a crime, accident, or historical issue; esp., either an authoritative inquiry into certain facts, as by a legislative committee, or a systematic examination of some intellectual problem or empirical question, as by mathematical treatment or use of the scientific method.”

I am mindful that the above investigation commenced before the abolition of the Bribery Act. In terms of Section 163(2)(f), (g) and Section 163 (3), the provisions of the said Act permit the use of investigations and findings against suspects for the purpose of instituting criminal proceedings in the appropriate Court. Since these investigations had already commenced before 15.09.2023, the date on which the Anti-Corruption Act came into force, the Commission was not precluded from exercising its powers under Section 65(1) to direct the Director General to initiate criminal proceedings against the individual arising from the investigation.

In which manner the prosecution commence was discussed by His Lordship Ranaaraja J in the case of ***Jayasinghe Appuhamilage Nirosh and another v. ACPA*** 113/2024, Decided On 23.09.2025, held that:

“The “right of prosecution” refers to the legal authority and responsibility to bring criminal charges against a person accused of a crime, typically vested in a prosecutor or a private individual in certain circumstances. This involves investigating the alleged crime, gathering evidence, deciding if there is sufficient evidence to proceed and then presenting that case in Court to prove the guilt of the accused.

The initiation of such a process is triggered by providing information either orally or in writing, to a public officer or an investigator as stipulated in section 109 of the Code of Criminal Procedure Act No. 15 of 1979.

Section 456 of Code of Criminal Procedure Act No.15 of 1979 provides as follows:

“The right of prosecution for murder or treason shall not be barred by any length of time, but the right of prosecution for any other crime or offence (save and except those as to which special provision is or shall be made by law) shall be barred by the lapse of twenty years from the time when the crime or offence shall have been committed.

In Queen vs. Don Louis as reported in [1863] Ramanathan Reports at page 98, it was held as follows:

“The question in this case proceeds on the words of the 45th clause of Ordinance No.15 of 1843 which is as follows “The right of prosecution for any crime of offence (other than treason or murder) shall be barred by the lapse of 20 years from the time when the crime or offence was committed.

The court is unanimously of opinion that the words “the right of prosecution” or must be taken to mean “the right to commence a prosecution” or in other words, a prosecution for any offence other than treason or murder must be commenced before the lapse of 20 years from the time when the offence was committed.

A prosecution before the Supreme Court in this colony may be commenced by the information of a private person before a justice of the peace and afterwards continued by the Queen’s Advocate, and the court considers that as one and the same prosecution. Any doubt as to what forms the commencement of a prosecution was determined by the judgment of the fifteen English judges in R.v.Brooks 1 Den.C.O.217 and 2 O. & K., 402, in which they adjudged that a prosecution is commenced by information and issue of the warrant of apprehension or at least by the apprehension of the prisoner. In the case before the court, the information was laid down before the justice of peace by an affidavit sworn in November, 4th 1862, that is, before the lapse of 20 years from the committal of the offence charged, and there were continued proceedings founded on that affidavit leading in due course to the trial and conviction.

The Court is of the opinion that the prosecution was commenced in time, or in the words of the Ordinance, that the right of prosecution was exercised before the lapse of 20 years necessary to bar it”.

In the aforementioned judgment, it has been established that the right of prosecution must be taken to mean the right to commence a prosecution and the information provided by an individual regarding the commission of an offence to the Justice of Peace effectively marks the commencement of a prosecution.”

Although multiple enactments were repealed by the said Act, Section 163(2) preserves the authority to impose offences under those repealed enactments on the following grounds.

For easy reference, it is pertinent to refer to the relevant sections as follows,

Section 163 (2)(f)

“(f) all contraventions or proceedings initiated under the provisions of the repealed Acts, regulations or rules made thereunder prior to the commencement of this Act, shall be offences committed or proceedings initiated under the repealed Acts and be tried accordingly

Section 163 (2)(g)

“(g) all interests, rights, assets, obligations, debts and liabilities of the Commission to Investigate Allegations of Bribery or Corruption established under the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994 prior to the date of commencement of this Act, shall be deemed with effect from the date of commencement of this Act to be the interests, rights, assets, obligations, debts and liabilities of the Commission; and”

Section 163 (3)

“(3) All investigations under the repealed Acts commenced by the Commission under the Commission to Investigate Allegations of Bribery or Corruption Act, No.19 of 1994, and pending on the day preceding the appointed date shall be deemed to be investigations commenced by the Commission under this Act, and all such investigations may be continued after the appointed date, as if they were investigations commenced and continued on the direction of the Commission, and all statements and documents furnished to the Commission in the course of investigations or certified copies thereof shall be admissible in proceedings

instituted under the Commission to Investigate Allegations of Bribery or Corruption Act, No.19 of 1994, as if such investigations were conducted and the proceedings were instituted under this Act.”

I am also mindful of the judgment of *Ramalingam v The Jaffna Central Bus Co. Ltd.* 56 NLR, page 501, De Silva, J held that:

“Where an offence is committed in contravention of an Ordinance which is subsequently repealed the prosecution in respect of it may, by virtue of section (3)(b) of the Interpretation Ordinance, be instituted even after the repealing statute comes into force, unless the repealing statute expressly prohibits it.”

The Anti-Corruption Act stipulates that an offence previously governed by the Bribery Act may still be prosecuted even after the latter’s repeal, provided that a complaint was made and an investigation was initiated prior to the commencement of the Anti-Corruption Act, which came into force on 15th September 2023.

I am mindful that, although the indictment was filed by the Director General, the decision to proceed against the Petitioner was made by the Commission. In terms of Section 65, the Commissioner must be satisfied that an offence has been committed by the Accused. The Petitioner is now challenging the offences set out in the indictment on the basis that the relevant Act had been repealed and was no longer in force. In effect, this amounts to an indirect challenge to the decision of the Commission. Our Courts have consistently held that any party seeking to contest the legality of a decision of the Commission must do so exclusively within the jurisdiction of the Supreme Court.

It is pertinent to refer to Section 160 of the said Act,

160.

(1) The jurisdiction vested in the Court of Appeal by Article 140 of the Constitution shall, in respect of applications in which relief is sought against the Commission be exercised by the Supreme Court and not by the Court of Appeal.

(2) Subject to the provisions of subsection (1), no injunction or enjoining order shall be granted by any court restraining or staying, or having the effect of restraining or staying, the Commission, from commencing or continuing, the conduct of an

investigation under this Act or from exercising any of the powers conferred on it by this Act or from giving any direction under this Act.

The commission made the decision to initiate criminal proceedings against the petitioner. Consequently, such a decision must be contested before the Supreme Court, rather than the High Court, since under Section 160(1) of the Anti-Corruption Act, the High Court lacks jurisdiction to review decisions of the commissioners.

The principle laid down by our Courts is that revision is permissible only in cases where the order is so unjust as to shock the conscience of the Court. I don't have any reason to interfere with the impugned order of the Learned High Court Judge delivered on 10.11.2025.

For the above-mentioned reasons, we dismissed this revision application. I make no order with regard to cost.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL