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

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.
CA/HCC/ 0444/2017

High Court of Colombo
Case No. HCB/1901/2012

Don Seemon Ralalage Shantha Premaratne

Accused-Appellant

Vs.

The Director-General
Commission to Investigate
Allegations of Bribery or Corruption
No.36, Malalasekera Mawatha,
Colomb0-07.

Complainant-Respondent

BEFORE : **Sampath B. Abayakoon, J.**

P. Kumararatnam, J.

COUNSEL	:	**Kalinga Indatissa, P.C, with A. Wasantha Akram, Ravindu Jayakody and Rashmini Indatissa for the Appellant.** **Sudharshana De Silva, SDSG, for the Respondent.**
ARGUED ON	:	**16/07/2024**
DECIDED ON	:	**05/11/2024**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Director General of the Bribery Commission in the High Court of the Western Province holden in Colombo on the following charges:

1. Between 01.12.2007 and 26.12.2007 at Ampara the Appellant did solicit a gratification of Rs.50,000/- from a person by the name of Ganhewalage Punchi Nona as an inducement or reward to secure a government job for her son Jayasundara Mudiyanseage Janaka Bandara, preferably in the Ceylon

Electricity Board and thereby committed an offence punishable Under Section 20(b)iv of the Bribery Act.

2. On or about 26.12.2007 at Ampara the Appellant did accept a gratification of Rs.50,000/- from a person by the name of Ganhewalage Punchi Nona as an inducement or reward to secure a government job for her son Jayasundara Mudiyanselage Janaka Bandara, preferably in the Ceylon Electricity Board and thereby committed an offence punishable Under Section 20(b)iv of the Bribery Act.

As the Appellant pleaded not guilty to the charges levelled against him, the trial proceeded, and the prosecution had called five witnesses, marked productions P1 to P5 and closed their case. As the prosecution had presented a prima facie case against the Appellant, the learned High Court Judge had called for the defence. The Appellant had given evidence from the witness box, called five witnesses, and marked V1 to V12 in support of his case and closed his case. After considering the evidence presented by both parties, the learned High Court Judge had found the Appellant guilty on the charges and has imposed the following sentences on the Appellant on 02/11/2017:

1. For the first count 04 years rigorous imprisonment with a fine of Rs.5,000/- and with a default sentence of 01-month simple imprisonment.
2. For the second count 4 years rigorous imprisonment with a fine of Rs.5000/- and with a default sentence of 01-month simple imprisonment.

Further the learned High Court Judge has ordered the four-year sentence imposed on 1st and 2nd counts to run concurrent to each other.

Being aggrieved by the aforesaid conviction and the sentence the Appellant preferred this appeal to this Court.

The following Grounds of Appeal were raised on behalf of the Appellant.

The learned High Court Judge has failed to consider;

1. that the prosecution has failed to prove the case beyond reasonable doubt.
2. That the evidence which was led at the trial is insufficient to make an order of conviction.
3. that the evidence of the Appellant had not been given any consideration by the learned High Court Judge.
4. that the learned High Court Judge has failed to evaluate the evidence for the prosecution taking into consideration the obvious infirmities and contradictions in his judgment.
5. that the failure on the part of the trial judge to consider the date of commission of the offence is conduct which reflects partial bias on the part of the High Court Judge.
6. that the Judge who wrote the judgment had failed to observe the demeanour and deportment of the witnesses.

Background of the case albeit briefly is as follows:

PW1, Punchi Nona a village lass was living in Nagaswewa, Dehiattakandiya with her family of 09 members with much difficulty as her only source of income was the earnings from cultivation of paddy in a land of two and half acres in extent. None in her family were permanently employed. As such, she had sought assistance to secure a permanent employment to her son-in-law PW2 in a government department, preferably in the Ceylon Electricity Board.

The Appellant was an Attorney-At-Law cum local politician to whom PW1 had extended her support. Due to this connection PW1 had requested the Appellant to secure a government job for PW2, preferably in the Ceylon Electricity Board. The Appellant had solicited Rs.50,000/- for the job. As she

did not possess Rs.50,000/-, she had mortgaged a portion of her cultivated land to the village Funeral Donation Society and obtained a loan of Rs.50,000/- and had handed over the money to the Appellant at his office in the presence of her son-in-law PW2 on 26.12.2007.

As the Appellant had failed to secure a government employment for PW2 as promised, she had requested the money back from the Appellant. She had made this request as her financial situation had further deteriorated. The Appellant had issued a cheque for Rs.50,000/- without retuning the money which he had accepted from PW1. But the cheque had bounced when it was presented to the relevant bank for clearance. After the cheque was dishonoured, the Appellant had deposited Rs.25,000/- to the PW2's account. As the payment of the remaining Rs.25,000/- was delayed by the Appellant, PW1 had lodged a complaint at the Bribery Commission. When he got to know that a complaint had been lodged against him at the Bribery Commission, the Appellant had sent Rs.25,000/- through a person to PW1.

The Appellant had received the purported money when he was functioning as the Chief District Organiser of a political party. The Appellant is an Attorney-At-Law by profession and was a member of parliament and held the post of a Deputy Minister. According to the Appellant, he had received this Rs.50,000/- from PW1 as a contribution for the construction of his party office when he was functioning as the District Organiser.

To prove a bribery case, the prosecution must demonstrate that a thing of value was offered and accepted, that there was an illegal intent, and the intent was to pay money and receive something in return that was illegal.

In a criminal trial, it is incumbent on the prosecution to prove the case beyond reasonable doubt. There is no burden on the Appellant to prove his innocence. This is the "Golden Thread" that was discussed in **Woolmington v. DPP [1935] A.C.462.** In this case Viscount Sankey J held that:

"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt…… If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner……the prosecution has not made out the case and the prisoner is entitled to an acquittal."

Rodrigo J, in **James Silva V The Republic of Sri Lanka** (1980) 2SLR Page 167 citing **Jayasena V the Queen** 72 NLR Page 313, Held that;

" ……..A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalising and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty - see the Privy Council Judgment in ***Jayasena v The Queen****."*

As the raised grounds of appeal are interconnected, all grounds will be considered together in this appeal.

The assessment of the credibility of witnesses primarily depends on the testimony given by them either for the prosecution or for the defence during the examination-in-chief, cross examination, and re-examination. In this case the learned High Court Judge had considered the evidence of all the prosecution witnesses, evaluated their evidence extensively and was satisfied himself that their evidence passed the test of consistency and the test of probability.

Under the first charge the prosecution had led evidence that the solicitation had taken place between 01.12.2007 to 26.12.2007. PW1 had given evidence after about five years of the incident. She had given evidence of the incident without deviating from her original stance. Her evidence was very well corroborated by the evidence of PW2 and PW3.

As per Section 165 of the Code of Criminal Procedure Act No.15 of 1979, the Appellant had been given reasonable notice regarding the time of incident. For clarity the Section 165 of CPC is re-produced below:

Particulars as to time, place and person.

(1) The charge shall contain such particulars as to the time and place of the alleged offence and as to the person (if any) against whom and as to the thing (if any) in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged and to show that the offence is not prescribed.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of movable property, it shall be sufficient to specify the gross sum or, as the case may be, the gross quantity in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174:
Provided that the time included between the first and last of such dates shall not exceed one year.

(3) When the nature of the case is such that the particulars mentioned in section 164 and the preceding subsections of this section do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

In **Bhoginbhai Hirjibhai v. State of Gujarat** (supra) the court held further:

"In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the

spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters."

"It is unrealistic to expect a witness to be a human tape recorder."

In **R. v. Dossai** 13 Cr.App.R. 158 the court held that:

"A date specified in an indictment is not a material matter unless it is an essential part of the alleged offence; the defendant may be convicted although the jury finds that the offence was committed on a date other than that specified in the indictment. Amendment of the indictment is unnecessary, although it will be good practice to do so (provided that there is no prejudice below) where it is clear on the evidence that if the offence was committed at all, it was committed on the day other than that specified."

As the Appellant had been given sufficient notice regarding the date of offence under which he had been indicted and led plausible evidence through witnesses regarding the period, I conclude that this has not caused any prejudice or failure of justice as the Appellant had raised a totally different issue in the trial.

PW1 is from a remote area of Dehiattakandiya and she had had her education up to Ordinary Level. She had mixed up the institution in which she requested the Appellant to secure a government job for her son-in-law. But this had been cleared and given reasons as to why she mixed up the institution in her evidence. The relevant portion her evidence is re-produced below:

Pages 119 and 132-133 of the brief.

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ප්‍ර : වෝටර් බෝඩ් එක කියන්නේ මොකද්ද කියන එක ගැන සාමාන්‍ය අවබෝධයක් තිබෙනවාද?

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ප්‍ර : ඒ ආයතනය මඟින් මොන වගේ කාර්යයක් සඳහා ද තියෙන්නේ කියලා දන්නවා ද?

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උ : මතක හැටියට විදුලි බල මණ්ඩලය කොහෙදත් කීවා. එහෙම වෙන්න ඇති.

ප්‍ර : හරස් ප්‍රශ්න වල දී අහපු ප්‍රශ්නයකට කීවා තමුන්ට ජල සම්පාදන මණ්ඩලයද, විදුලි බල මණ්ඩලය ද කියන එක පැටලුනා කියලා?

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As accurately argued by the Senior Deputy Solicitor General, the learned High Court Judge had meticulously evaluated the evidence and had given plausible reasons as to why he did not give weight to the confusion with regarding the government institution.

The learned President's Counsel contended that the learned High Court Judge who wrote the judgment did not have the advantage of observing the demeanour and deportment of key witnesses thereby the Appellant was not given a fair trial in this case.

Section 48 of the Judicature Act states;

> In the case of death, sickness, resignation, removal from office, absence from Sri Lanka, or other disability of any Judge before whom any action, prosecution, proceeding or matter, whether on any inquiry preliminary to committal for trial or otherwise, has been instituted or is pending, such action, prosecution, proceeding or matter may be continued before the successor of such Judge who shall have power to act on the evidence already recorded by his predecessor, or partly recorded by his predecessor and partly recorded by him or, if he thinks fit, to resummon the witness and commence the proceedings afresh:
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> Provided that where any criminal prosecution, proceeding or matter (except on an inquiry preliminary to committal for trial) is continued before the successor of any such judge, the accused may demand that the witnesses be resummoned and reheard.

In this case the trial had been conducted by several High Court Judges and two defence witnesses had testified before the learned High Court Judge who wrote the judgment.

The Appellant was very well represented by Counsels during the trial. The learned Defence Counsel has agreed to continue the case under Section 48 of the Judicature Act at all times when a new High Court Judge had taken up the proceedings. Hence the Appellant cannot presently take up the position that the learned High Court Judge who wrote the judgment had not observed the demeanour and deportment of the witnesses. But the learned High Court Judge who wrote the judgment had very well analysed the evidence recorded in his judgment.

In **Dharmaratane v Dassanayake and Others** (2006) 3 Sri L. R. 130 the court held that;

> *"In view of the provisions of section 48 of the Judicature Act - as amended a party to an action has no right to demand a trial de novo but where an application is made for a trial de novo there is a discretion vested in the judge to decide whether a trial de novo should be ordered or not".*

In **Vimala Dissanayake and Others v Leslie Dharmaratne** (2008) 2 SLR 184 the court held that;

> *(1) "It is necessary for a succeeding Judge to continue proceedings since there are change of Judges holding office in a particular Court due to transfers, promotions and the like. It is in these circumstances that Section 48 was amended giving discretion to a Judge to continue with the proceedings.*
> *(2) The exercise of such discretion should not be disturbed unless there are serious issues with regard to the demeanour of any witnesses recorded by the Judge who previously heard the case".*

In **Herath Mudiyanselage Aruyaratna v. Republic of Sri Lanka** CA/307/2006 decided on 17/07/2013 that:

> *"Transfer of a judge to another station covers the words 'other disability' as stated in Section 48 of the Judicature Act, hence the succeeding judge has no disability to continue with a trial".*

This Court already held in Case **No.CA/HCC/0168/2015** decided on 24/02/2022 that:

> *"In the case under consideration, it is clear from the proceedings that the succeeding High Court Judge has decided to continue with the case by calling the remaining witnesses as formally adopting the evidence previously recorded was not a matter that needed the attention of the Learned High Court Judge, as there was no such requirement and the provision is for the continuation of the trial.*
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> *……. although it has been the long-standing practice of our judges to formally adopt the evidence led before their predecessors, it is not a mandatory requirement".*

In this case, the Appellant had taken up the position that he did not solicit the sum mentioned in the indictment but had received the same as a donation to build the party office. This was refuted by PW1.

The learned SDSG very correctly submitted that PW1 Punchi Nona is not a rich woman to donate money to the Appellant to fund a party office for him. She was only a supporter of the political party to which the Appellant belonged. PW1 specifically stated that she had tried to secure a government job for her son-in-law through the Appellant, due to their destitute living conditions. As the Appellant had demanded money, she had mortgaged the only property she owned to the village Death Donation Society to obtain Rs.50,000/- which she had then given to the Appellant in the presence of PW2.

An accused has the right to explain evidence and the right to present evidence or witnesses for his own defence. In this case the Appellant does not deny that he received money from the complainant. But his position was that the money received was a donation for the purpose of funding the Party Office. Punchi Nona in her evidence had categorically stated that she

mortgaged her only paddy land to the Death Donation Society and obtained a loan for the sole purpose of obtaining a government job for her son-in-law who had no permanent job at that time.

The learned High Court Judge had given his reasons as to why he disregarded the defence evidence. The relevant portion is re-produced below:

Pages 440-442 of the breief.

විත්තිකරු සාක්ෂි දෙමින් පවසා ඇත්තේ මෙම ගොඩනැගිල්ල ඉදිකිරීම සම්බන්ධයෙන් ශ්‍රී ලංකා නිදහස් පක්ෂයේ භාණ්ඩාගාරික විසින් වි. 1 වශයෙන් එවන ලද ලිපිය ප්‍රකාරව ඊට යන වියදම ප්‍රාදේශීය වශයෙන් එකතු කිරීමට ක්‍රියා කළ බවය. මෙම වි. 1 ලිපිය මඟින් එකී අරමුදල් එකතු කිරීම විධිමත් ලෙස කළ යුතු බවට අවධාරණය කර ඇත. කෙසේ වුවද විත්තිකරු විසින් මෙම ගොඩනැගිල්ල සෑදීම සඳහා විවිධ පුද්ගලයන් විසින් දෙන ලද පරිත්‍යාග පිළිබඳව ලේඛනයක් පවත්වාගෙන ගොස් ඇති බවට කිසිදු ලේඛනයක් ඉදිරිපත් කොට නොමැත. මෙවැනි කටයුත්තක දී මහජනතාවගෙන් ලැබෙන ආධාර සම්බන්ධයෙන් ලේඛනයක් පවත්වාගෙන යා යුතුව තිබුනේ වුවද විත්තිකරු ඒ ආකාරයෙන් ලැබුණු මුදල් සම්බන්ධයෙන් හෝ වෙනත් පරිත්‍යාග සම්බන්ධයෙන් කිසිදු ලේඛනයක් පවත්වාගෙන ගොස් ඇති බවක් අනාවරණය වන්නේ නැත. එකී ගොඩනැගිල්ල ඉදි කිරීම සඳහා පරිත්‍යාගයක් වශයෙන් මෙම නඩුවේ මුල් පැමිණිලිකාරිය වන පුංචි නෝනා රුපියල් 50,000/- ක මුදලක් පරිත්‍යාග කළ බව සනාථ කිරීම සඳහා කිසිදු ලේඛනගත සාක්ෂියක් මෙම විත්තිකරු විසින් මෙම අධිකරණයට ඉදිරිපත් කොට නොමැත.

විත්තිකරු මෙම ගොඩනැගිල්ල සෑදීම ආරම්භ කිරීමට පෙර විවිධ සංවිධාන සහ පාක්ෂිකයන් දැනුවත් කොට මෙම කාර්යය සඳහා ආධාර ලබා දෙන ලෙසට ඉල්ලීම් කරන ලද බව තහවුරු කිරීම සඳහා වි. 3 දරණ ලේඛනය නඩු විභාගයේ දී ඉදිරිපත් කොට ඇත. විත්තිකරුගේ සාක්ෂිය අනුව සහ විත්තියෙන් කැඳවන ලද සාක්ෂිකරුවන් වන මදුරපේ පඤ්ඤාසාර හිමි, පළාත් සභා මන්ත්‍රීවරයෙකු වන ජයසේන යන සාක්ෂිකරුවන්ගේ සාක්ෂිවලට අනුව බොහෝ දුර බැහැර සිට අම්පාර නගරයට යන පාක්ෂිකයන්ගේ පහසුව සඳහා මෙම පක්ෂ මූලස්ථානය ගොඩ නැගීමට විත්තිකරු අපේක්ෂා කර ඇති අතර ඒ සම්බන්ධයෙන් විවිධ පාර්ශවයන් සමඟ සාකච්ඡා කිරීමෙන් අනතුරුව එම තීරණය ගෙන ඇත. විත්තිකරුගේ සාක්ෂියට අනුව මෙම කාල වකවානුව වන විට ත්‍රස්තවාදී කලබල පැවති බැවින් දෙහිඅත්තකණ්ඩිය වැනි දුර බැහැර ප්‍රදේශයක සිට අම්පාර නගරයට එන පාක්ෂිකයන්ට රෑ බෝ වී ආපසු යාමට නොහැකි බැවින් නැවතීමේ පහසුව සඳහා ද මෙම ගොඩනැගිල්ල ඉදි කිරීමට අරමුණු කොට ඇත. ඒ අනුව මෙම ගොඩනැගිල්ල සෑදීමේ

අවශ්‍යතාවය 2006 වර්ෂයේ දී තීරණය කොට එම ගොඩනැගිල්ලේ ඉදි කිරීම් කටයුතු ආරම්භ කොට ඇත. විත්තිකරුගේ සාක්ෂියට අනුව සහ වි. 6 වශයෙන් ඉදිරිපත් කොට ඇති ඡායාරූප ඇල්බමයෙහි ඇතුළත් ඡායාරූපවලට අනුව මෙම ගොඩනැගිල්ලේ බිම් මහල විවෘත කිරීමේ උත්සවය 2008.09.24 වන දින සිදුකොට ඇත. මෙම ඡායාරූප ඇල්බමය සහ විත්තිය විසින් ලකුණු කොට ඉදිරිපත් කර ඇති එම වි. 6 දරණ ඇල්බමයෙහි අන්තර්ගත ආරාධනා පත්‍රයට අනුව මෙම ගොඩනැගිල්ලේ පළමු අදියර නැතහොත් බිම් මහල විවෘත කිරීම 2008.09.24 වන දින සිදුකොට ඇති අතර මින් තහවුරු වන්නේ එම දිනය වන විට බිම් මහලේ වැඩ කටයුතු නිම කොට ඇති බවය. විත්තිකරුගේ ස්ථාවරය වන්නේ පැමිණිලිකාර පුංචි නෝනා මෙම ගොඩනැගිල්ල ඉදි කිරීමේ කාර්යය සඳහා රුපියල් 50,000/- ක මුදලක් පරිත්‍යාගයක් වශයෙන් ඔහුට ලබා දුන් බවය. ඉදිරිපත් වූ සාක්ෂි වලට අනුව ඇය මෙම රුපියල් 50,000/- ක මුදල විත්තිකරුට ලබා දී ඇත්තේ 2008.12.26 වන දිනය. එනම්, මෙම ගොඩනැගිල්ලේ බිම් මහල විවෘත කිරීමෙන් මාස තුනකට පමණ පසුවය. එම බිම් මහල ඉදි කිරීමෙන් පසුව මෙම ගොඩනැගිල්ලේ වැඩ කටයුතු තවදුරටත් කරගෙන ගිය බවට හෝ ඒ සඳහා පරිත්‍යාග ලබා ගත් බවට හෝ කිසිදු සාක්ෂියක් ඉදිරිපත්ව නැත.

මෙම ගොඩනැගිල්ල ඉදි කිරීමේ අවශ්‍යතාවය පාක්ෂිකයන්ට පහදා දී ඔවුන්ට ඒ සඳහා පරිත්‍යාග කරන ලෙසට ඉල්ලීම් කොට ඇත්තේ වි. 3 ලේඛනයට අනව 2006 වර්ෂයේදීය. ඒ අනුව ගොඩනැගිල්ල ඉදි කිරීමේ කටයුතු ආරම්භ කොට ඇත්තේ 2006.08.28 වන දිනය. විත්තිකරු කියා සිටින පරිදි මෙම ගොඩනැගිල්ල ඉදි කිරීම සඳහා මෙම මුදල පැමිණිලිකාර පුංචි නෝනා විසින් ලබා දුන්නේ නම් එය ලබාදිය යුතුව තිබුනේ මෙම ගොඩනැගිල්ල ඉදි කිරීම ආරම්භ කිරීමට පෙර හෝ ගොඩ නගමින් පවතින අවස්ථාවේ දී සහ බිම් මහල සම්පූර්ණ කොට විවෘත කිරීමට පෙරය. ඇය විසින් මෙම මුදල 2008.12.26 වන දින ලබා දී ඇති අතර ඒ අනුව මෙම ගොඩනැගිල්ලේ ඉදි කිරීම් කටයුතු සඳහා ඉහත කී මුදල පරිත්‍යාගයක් වශයෙන් පැමිණිලිකාර පුංචි නෝනා විත්තිකරුට ලබා දුන් බවට ඔහු විසින් මෙම අධිකරණයේ දෙන ලද සාක්ෂිය කිසිසේත්ම මෙම අධිකරණයට පිළිගත නොහැකි සහ විය හැකි භාවයෙන් යුක්ත එකක් නොවන බව මෙම අධිකරණයේ මතය වන්නේය.

This goes to show that the prosecution had proven that the Appellant had solicited and accepted the gratification as disclosed by PW1. The learned High Court Judge found the prosecution's evidence to be very persuasive.

The learned High Court Judge in his judgment carefully considered the evidence led by both parties to come to his conclusion. Hence, the learned

High Court Judge had been satisfied with the credibility of the witnesses who had given evidence on behalf of the prosecution.

In this case the evidence presented by the prosecution is overwhelming. No contradictory position existed among the prosecution witnesses. The learned High Court Judge had considered the inter se and per se contradictions of prosecution witnesses and held that the prosecution had adduced cogent, consistent, and believable evidence. Therefore, I conclude that the grounds of appeal raised by the Appellant have no merit.

When considering the totality of the evidence, it is clear that the prosecution has proven the charges in the indictment against the Appellant beyond reasonable doubt.

Therefore, the appeal is dismissed, and the conviction and the sentence are affirmed.

The Registrar of this Court is directed to send this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL