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

In the matter of an Application for Revision made under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 364 and 365 of the Criminal Procedure Act No. 15 of 1979.

Court of Appeal Revision	The Director General,
Application No:	The Commission to Investigate Allegations
CA/CPA/77/2023	of Bribery or Corruption
CA/CPA/0118/2023	No. 36, Malalasekara Mawatha,
CA/CPA/0119/2023	Colombo 07.
CA/CPA/0130/2023	
CA/CPA/0131/2023	**COMPLAINANT**
CA/CPA/0154/2023	
CA/CPA/0007/2024	**Vs.**
High Court of Colombo	1. Johnston Xavier Fernando,
Case No: HCB/165/2022	Rosewood Estate,
	Rathkarawwa, Maspotha,

Kurunegala.

2. Ponnage Eraj Fernando,
   No. 248/151, Araliya Drive,
   Lotus Grove, Hill Street,
   Dehiwala.

3. Kaaja Mohideen Mohamed Zakeer,
   No.198/8, Roger Weerasinghe Mawatha, Wilgoda Road,
   Kurunegala.

ACCUSED

AND NOW BETWEEN

The Director General,

The Commission to Investigate Allegations

of Bribery or Corruption

No. 36, Malalasekara Mawatha,

Colombo 07.

COMPLAINANT-PETITIONER

Vs.

1. Johnston Xavier Fernando,
   Rosewood Estate,
   Rathkarawwa, Maspotha,
   Kurunegala.

2. Ponnage Eraj Fernando,
   No. 248/151, Araliya Drive,
   Lotus Grove, Hill Street,
   Dehiwala.

3. Kaaja Mohideen Mohamed Zakeer,
   No.198/8, Roger Weerasinghe Mawatha, Wilgoda Road,
   Kurunegala.

ACCUSED - RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
Damith Thotawatta, J.
K.M.S. Dissanayake, J.
K.P. Fernando, J.
Annalingam Premashanker, J.

COUNSEL : **Anusha Sammandapperuma Assistant Director General with Gaya Rajapaksha, ADL Kajalakshi Sivasubramaniam, LA Kavini De Silva, LA for the Petitioner.**
M.U.M. Ali Sabry, PC with Ruwantha Coorey, Naamiq Nafath, Dilshan Aluvihare, Vimukthi

Karunarathne and Thenuda Imbulangoda, instructed by A. De Silva for the 1st Accused Respondent.
Samantha Premachandra with Naveen Jayamanne instructed by Piyumi Ruwanpathirana for the 2nd Accused Respondent.

ARGUED ON : **10.12.2025, 03.03.2026 and 19.05.2026.**

DECIDED ON : **04.08.2026.**

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JUDGMENT

P. Kumararatnam, J.

The Accused-Respondents were indicted before the High Court of Colombo on 27th May 2022 under the Case No. HCB/165/2022 in terms of Section 70 of the Bribery Act No 11 of 1954 for the offence of corruption, where the 1st Respondent was charged for using his powers as the Minister of Trade to deploy a number of employees of the Co-operative Wholesale Establishment (Hereinafter referred to as “CWE”) for purposes other than their official duties, thereby intentionally or knowingly causing wrongful or unlawful loss to the Government, while the 2nd and 3rd Respondents were charged with aiding and abetting the 1st Respondent in the commission of the said offence. In the first count of the indictment, all

Respondents are charged for conspiracy to commit the offence of corruption under Section 70 of the Bribery Act.

According to the Complainant-Petitioner (Hereinafter referred to as the Petitioner) the offences with which the Respondents were charged arose from a criminal investigation conducted by the Commission which revealed a number of alleged corrupt activities within the CWE during the period where the 1st Respondent was the Minister of Cooperative and Internal Trade, the 2nd Respondent was the Chairman of the CWE and the 3rd Respondent was the Acting Director of the CWE. The information was received via an anonymous complaint on 24. 02. 2015, and upon consideration of such information, the authorized investigation officer had commenced a criminal investigation with the approval of the Commission, which was granted on 13. 03. 2015.

As per the Petitioner, the investigation had revealed that the 1st Respondent, with the support of the 2nd and 3rd Respondents, had deployed employees of the CWE for purposes other than their official duties while causing their salaries, including overtime payments, to be paid by the CWE by using the powers vested in the 1st Respondent as the Minister of Trade, thereby intentionally or knowingly causing wrongful or unlawful loss to the Government, and as such, upon consideration of the investigational material, the Commission had directed the Petitioner to institute criminal proceedings before the relevant Magistrate's Court.

As such, the Respondents were charged before the Magistrate's Court of Colombo on 19. 05. 2016 with the offence of corruption punishable under Section 70 of the Bribery Act, No. 11 of 1954. The Petitioner had accordingly instituted five actions against the Respondents for the same offences committed in different time periods between 2010 to 2014 in the Magistrate Court of Colombo under case numbers MC 53074/01/16, MC 53075/01/16, MC 53076/01/16, MC 53077/01/16 and MC 53078/01/16.

According to the Petitioner, when the aforesaid actions were called before the Magistrate's Court of Colombo, the Counsel for the Respondents had raised a preliminary objection regarding the maintainability of the above action without a valid directive under Section 11 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994. (Hereinafter referred to as 'CIABOC Act'.) It was also alleged that the institution of proceedings had been done without the sanction of the Commission under Section 78 of the Bribery Act No. 11 of 1954, and thus, contended that all five Prosecutions are bad in law and void *ab initio.*

The Learned Magistrate by order dated 04.06.2019 had refused the preliminary objection raised on behalf of the Respondents. Aggrieved by said Order, the Respondents had filed a Revision Application, which had been refused by the Learned High Court Judge. Upon this refusal, the Respondents had preferred a Revision Application before the Court of Appeal bearing the Case No. CA/PHC/APN/101/19.

Whilst the aforesaid Case was pending before the Court of Appeal, consequent to the determination of **Anoma Polwatta v The Commission to Investigate Allegation of Bribery and Corruption SC/Writ Application No. 01/2011**, the Commission was directed to withdraw the charge sheets previously filed before the Magistrate Court of Colombo and to refile the same in accordance with the law. Thus, Case No. MC/53075/01/16 was withdrawn and the Learned Magistrate discharged the Respondents subject to the refiling of the case against them.

Accordingly, criminal proceedings against the Respondents were instituted before the High Court of Colombo on 27.05.2022. Upon receipt of the Indictment, the Learned High Court Judge caused the Indictment to be served on the Respondents on 10. 10. 2022 with the material relied upon by the Prosecution.

On the same date the indictment was served, the Counsel for the Respondents brought about a preliminary objection regarding the maintainability of this indictment on the basis that there was no valid directive to investigate the allegation against the Respondents. The objection that the investigation was void *ab initio* was based on the ground that it had been carried out without the full complement of the members of the Commission. It was further contended that, in the absence of a lawful direction by a duly constituted Commission authorizing the investigation, the investigation was *ultra vires* and tainted by illegality.

Opposing the preliminary objection, the Learned Counsel appearing for the Prosecution contended that there is no provision in the Bribery Act or the CIABOC Act, nor any judicial pronouncement which mandates that all three Commissioners must jointly issue a direction to commence a criminal investigation or to institute criminal proceedings.

The Learned High Court Judge, by Order dated 19.05.2023 upheld the preliminary objection raised on behalf of the Respondents and discharged them from the case. Although the Respondents were discharged in respect of the case bearing the number HCB/165/2022, the same preliminary objection was refused in the four other connected matters which are now at the trial stage before other High Courts of Colombo.

Thus, the Petitioner, being aggrieved by the Order dated 19.05.2023 of the Learned Trial Judge, seeks to invoke the Revisionary jurisdiction of this Court.

Further, when this case bearing the number CA/CPA/77/23 came before this court for argument, the Learned Counsel for the Complainant-Petitioner as well as the Learned Counsel for the Accused-Respondents in the cases bearing the numbers CPA/0118/23, CPA/119/23, CPA/0130/23, CPA/131/23, CPA/154/23, CPA/0007/24 agreed to be bound by this judgment of this Court namely CA/CPA/77/23.

As such, the judgment of the case bearing the number CA/CPA/77/23 shall bind all the parties in the cases bearing the numbers CPA/0118/23, CPA/119/23, CPA/0130/23, CPA/131/23, CPA/154/23, CPA/0007/24, as urged and agreed by the respective Counsel.

<u>The Petitioner submits the following grounds to invoke the extraordinary jurisdiction of this Court:</u>

i. The Order dated 19.05.2023 is contrary to law.
ii. The said Order is ill conceived as it has failed to consider the judicial pronouncement of the Supreme Court in SC/TAB/1A,1B/2020.
iii. The said Order is erred in law as it has failed to consider Section 24 of the CIABOC Act.
iv. The said Order is misconceived in law as the Learned Trial Judge has failed to consider the judicial pronouncement of CA/PHC/APN/2/2021.
v. The Said Order is contrary to Section 2(8) of the CIABOC Act.
vi. The Said Order is clearly misguided in law as it has failed to consider the judicial pronouncement of CA/PHC/57/99 which prevailed at the time of the investigation was commenced in the present case.
vii. The order is contrary to the legal maxim of *Lex non Cogit Ad impossibilia.*
viii. Said order is illegal as there is no any statutory provision or a judicial authority which requires a sanction of all three Commissioners to investigate allegations of Bribery and Corruption.

- ix. The order is clearly in error as the Learned Trial Judge misdirected himself in considering the *ratio decidendi* in the case of SC/WRIT/1/2011 applicable to the present case.
- x. The said order is illegal as the High Court failed to consider the decision which the preliminary objection was based on is *per incuriam* as failure to follow a statutory provision.
- xi. The said order is misconceived in law as the Learned Trial Judge has failed to consider the judicial pronouncement of SC/APPEAL/160/2016 decided on 2.12.2022.
- xii. The said order is irrational as it has failed to consider the Supreme Law of the country.
- xiii. The said order is contrary to law as the criminal investigation against the Accused conducted by the Commission is legal and proceeding instituted against the Accused by the Petitioner is not void in *ab initio.*
- xiv. The said order is manifestly arbitrary as it has failed to consider Section 114 of the Evidence Ordinance.
- xv. The said order is manifestly arbitrary as it has failed to consider Section 12(1) of the CIABOC Act.
- xvi. The said order is tainted with unlawfulness as it has misinterpreted Section 3 of the CIABOC Act.
- xvii. The said order is clearly misguided in law in holding that only three members of the Commission constitute the "Commission".
- xviii. The said order is clearly misguided in law in holding judicial pronouncement of CA/HCC/149/2020, applicable to the present case.
- *xix.* The order is contrary to the legal maxim of *Ut res magis valeat quam pereat.*
- xx. The order suffers from irrationality as there are no valid reasons.

The Respondents' contended in their arguments that conducting investigation for acts constituting Bribery or Corruption is a function of the Commission, that thereby can only be exercised by the full complement of members of the Commission, that therefore a valid directive by the full complement of members of the Commission is required for an investigation to be conducted under Bribery Law. As such, the absence of such direction makes the present investigation, patently *ultra vires* and attracts the ground of illegality that goes to the root of the case.

The Respondents further referred to the Bribery (Amendment) Act, No. 22 of 2018 which modified Section 70 of Chapter 26, enabling bribery and corruption cases to be instituted and tried before either the High Court or Magistrate's Court, whereas previously such offences were triable summarily only before a Magistrate's Court.

Accordingly, the Respondents challenged the institution of proceedings before the High Court in 2022 under this amendment, contending that the amendment deprives accused persons of a vested right to be tried summarily before a Magistrate's Court. They argued that, as the alleged offences were committed prior to the enactment of the Amendment, its application to those proceedings would amount to a retrospective operation of the law, which is impermissible in the absence of clear legislative intent.

<u>Section 2(8) of the CIABOC Act No. 19 of 1994 states:</u>

> "The members of the Commission may exercise the powers conferred on the Commission either sitting together or separately and where a member of the Commission exercises any such power sitting separately, his acts shall be deemed to be the act of the Commission."

Although the Respondents contended that the order to investigate had not been signed by all three Commissioners, as evident above, Section 2(8) of the CIABOC Act does not contain any such express provision with such a requirement.

In this case, as the Director General of the Commission has filed the indictment in the High Court of Colombo in terms of Section 11 of the CIABOC Act, it is necessary to assess the requirements that must be fulfilled by CIABOC Act when forwarding an indictment before the High Court as identified in Section 12(1) and (2) of the CIABOC Act which reads as follows:

Section 12(1):

> Where proceedings are instituted in a High Court in pursuance of a direction made by the Commission under section 11 by an indictment signed by the Director-General, such High Court shall receive such indictment and shall have jurisdiction to try the offence described in such indictment in all respects as if such indictment were an indictment presented by the Attorney-General to such court.

Section 12(2):

> There shall be annexed to every such indictment, in addition to the documents which are required by the Code of Criminal Procedure Act, No. 15 of 1979, to be annexed thereto, a copy of the statements, if any, made before the Commission, by the accused and by every person intended to be called as a witness by the prosecution.

Section 24:

> (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.

Accordingly, apart from questioning the requirements specified under Section 12(1) and (2) of the CIABOC Act, the High Court has no power to question the validity of the indictment. Any such challenge is only possible before the Supreme Court in the form of a Writ seeking to quash the directive issued by the Commission to institute proceedings in the High Court, as per Section 24 of the Act.

In the case of **Indikatiya Hewage Kusumadasa Mahanama and Another v. The Commission to Investigate Allegations of Bribery or Corruption and Another** SC TAB 1A and 1B/2000, decided on 11.01.2023, the Supreme Court held that:

"In the circumstances it is clear that, the Supreme Court when deciding Anoma S.Polwatte v. Director General Commission to Investigate Allegation of Bribery and Corruption (supra) had never intended to impose an additional requirement to submit a written directive when filing charges before Court, and therefore this Court is not inclined to impose an additional requirement other than the provisions already identified…."

It was further held that:

> *"As observed by us, when deciding the above case, this Court had never intended to impose an additional requirement of submitting a written directive given by the Commission when forwarding an indictment by the Director General CIABOC to High Court other than following the provisions already identified under Sections 12(I) and (II) of the CIABOC Act. If the Director General is directed under Section 11 of the CIABOC Act by the CIABOC to forward an indictment, he is only bound to follow the provisions in Section 12 (I) and (II) of the CIABOC Act. In the absence of any complaint, that the Director General CIABOC had failed to comply with Sections 12(I) and (II) of the CIABOC Act when forwarding the indictment before the High Court at Bar it is correct in refusing the jurisdictional objection raised on behalf of the 2nd Accused before the High Court at Bar. The Trial Judge before whom the indictment is filed is therefore bound to accept the indictment and take up the trial unless there is material to establish that Director General CIABOC had failed to comply with the provisions of Sections 12 (1) and (2) of the CIABOC Act. Any party who intends to challenge an indictment forwarded by the Director General CIABOC on the basis that, the CIABOC had failed to comply with Section 11 of the CIABOC Act, the said challenge could only be raised in an appropriate action filed before an appropriate forum."*

Therefore, considering this judgment of the Supreme Court, along with Section 2(8) of the Bribery Act, a written sanction requirement would be unnecessary in such a circumstance, and would only cause an additional requirement which would obstruct or delay the smooth operation and function of the Bribery Act. It must be noted at all times that such allegations of bribery or corruption require immediate action and investigation. As such, any delays in investigations due to such additional and unnecessary requirements would further delay justice and therefore result in the loss of public trust and confidence in the justice system.

Section 3 of the CIABOC Act, refers to the functions of the Commission, and is reproduced below:

> The Commission shall subject to the other provisions of this Act, investigate allegations, contained in communications made to it under section 4 and where any such investigation discloses the commission of any offence by any person under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975, direct the institution of proceedings against such person for such offence in the appropriate court.

In the case of **Anoma S. Polwatte** (supra) their Lordships of the Supreme Court considering section 2(8), section 3 and section 5 of the CIABOC Act, have observed as follows:

> *"When looking at the provisions of the above 3 provisions of the Act, it is clear that by the above provisions, a clear distinction had been between the powers of the Commission and functions of the Commission. As identified in section 3 referred to above, when an offence is disclosed after an investigation, Commission shall direct the institution of proceedings and the said conduct of the Commission had been identified within the functions of the Commission. The powers of the Commission have been identified under section 5 of the Act and under section 2(8), such powers of the Commission may be exercised by its members either sitting together or separately.*
>
> *Thus, it is clear that the members of the Commission can exercise ancillary powers on his own though the full complement of the Commission is not available at one give time, but for the exercise of functions such as the direction to be given to the Director General, it is crystal clear that the Act has not provided for one member alone to give such direction."*

However, it must be considered if the Learned High Court Judge was correct in extending the principle laid down by the Supreme Court in the judgment of **Anoma S. Polwatte** (supra) to dismiss the indictment.

As Section 3 of the CIABOC Act begins with the phrase “The commission shall, subject to the other provisions of this Act…”. The wording reasonably indicates that section 3 must be understood in the context of the CIABOC Act as a whole. Accordingly, it is the view of this Court that the powers of the Commission cannot be confined to those set out in Section 5 of the CIABOC Act and that the powers extend beyond those in Section 5.

Section 4(3) of the CIABOC Act reads as follows,

> The Commission shall have the power to investigate any matters disclosed by a communication received by it under subsection (1) whether or not such matters relate to a period to the appointed date and not withstanding anything to the contrary in any other law.

Section 16 (3) of the CIABOC Act reads as follows:

> The Commission may delegate to the Director General or any other officer appointed to assist the Commission any of its Page 11 of 18 powers [other than the powers referred to in paragraphs (i), (j), (k) and (1) of subsection (1) of section 5, section 11, and this section] and the person to whom such powers are delegated may exercise those powers subject to the direction of the Commission.

As such, it is quite evident that the sections considered above indicate that the powers of the Commission are not limited to the areas mentioned in Section 5. As such, it is clear that the legislature intended for the Commission to exercise its powers collectively or individually.

Statutes must be interpreted to minimise any absurdities or futilities, and it remains a prominent legal principle. This would ensure the effective operation of the legislative intent, and that the law is applied effectively within society.

In the case of **Nandasena vs. Senanayake and Another** [1981] 1 SLR 238 at page 245, Sharvananda, J. (as he was then) has held:

> *"Statutes should be construed, as far as possible, to avoid absurdity or futility. A statute should be construed in a manner to give it validity rather than invalidity- ut res magis valeat cuam pereat. As Lord Dunedin stated in Whitney Vs. Inland Revenue Commissioner (1925) AC 27, 52, "A statute is designed to be workable, and the interpretation thereof should be to secure that object, unless crucial omission or clear direction makes that end unattainable." A similar view was expressed by Lord Simon L.C. in Noles Vs. Don Caster Amalgamated Collieres Ltd (1940) AC 1014, 1023 in the words: "If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislature to futility and should rather accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result." Lord Reid enunciated the same view in Luke Vs. Inland Revenue Commissioner (1963) 1 ALL ER 655, 664 "How then are we to resolve this difficulty? To apply the word literally is to defeat the obvious intention of the legislature and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result, we should do some violence to the words. This is not a new problem... The general principle is well settled. It is only where the words are absolutely incapable of construction which will accord with the apparent intention of the provision and avoid a wholly unreasonable result that the words of the enactment must prevail."*

It is thus legitimate and proper to read and rely upon such a principle as this: "Where the language of a statute in its ordinary meaning and grammatical construction leads to manifest contradiction of the apparent purpose of the enactment, or to cause inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence." (Maxwell 'Interpretation of Statues, 10th Ed. at p. 229). A purposive approach to the construction of relevant section of the law avoids the futility apprehended by Counsel and enables the statutory objective to be achieved."

As such, this Court is satisfied that the Bribery Commission had given the necessary directions to institute proceedings in the High Court of Colombo against the Respondents.

In the case of **Hotel Galaxy (Pvt) Ltd vs. Mercantile Hotels Management Ltd** [1987] 1 SLR 5, it was held,

"It is settled law that the exercise of revisionary powers of the appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention."

In the case of **Dharmaratne vs. Palm Paradise Cabanas** [2003] 3 SLR 24, Gamini Amarathunga, J. has observed thus;

"Existence of exceptional circumstances in the process by which the Court select the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a getaway of every litigant to make a

second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given a right of appeal. The practice of Court in insisting the existence of exceptional circumstance for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed."

In the case of **Nimalawathie Vs. Perera & Another** [2015] SLLR 393 it was held:

> *"Revision is a discretionary remedy granted by Court but no one can invoke the revisionary jurisdiction of the Court of Appeal as a matter of right Under normal circumstances revisionary relief will not be granted if there exists an alternative remedy. It is settled law that the exercise of the revisionary powers of the Appellate Courts is confined to cases in which exceptional circumstances exist warranting its intervention".*

As the Petitioner had established sufficient exceptional grounds before this Court, this Court in the exercise of the discretionary remedy of revision, directs to set aside the Order dated 19.05.2023 of the Learned High Court Judge of Colombo.

Therefore, the Learned High Court Judge is hereby directed to revert the case back to the case role of the Court and issue notices on the Respondents, and to commence the trial and conclude the same expeditiously.

Therefore, the revision is allowed.

As agreed by the respective counsel, this judgment of the case CA/CPA/77/23 will bind the parties in the cases bearing numbers CPA/0118/23, CPA/119/23, CPA/130/23, CPA/131/23, CPA/154/23, CPA/0007/24.

Accordingly, the cases bearing numbers CPA/0118/23, CPA/119/23, CPA/130/23, CPA/131/23, CPA/154/23, CPA/0007/24 would stand dismissed and the Learned High Court Judge is hereby directed to revert the cases back to the case role of the Court.

The Registrar of this Court is directed to send this Judgment to the High Court of Colombo for necessary action forthwith, and to cause a copy of this judgment to be filed in the record of the cases bearing numbers CPA/0118/23, CPA/119/23, CPA/0130/23, CPA/131/23, CPA/154/23, CPA/0007/24.

JUDGE OF THE COURT OF APPEAL

DAMITH THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

K.M.S. DISSANAYAKE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

<u>K.P. FERNANDO, J.</u>

I agree.

JUDGE OF THE COURT OF APPEAL

<u>ANNALINGAM PREMASHANKER, J.</u>

I agree.

JUDGE OF THE COURT OF APPEAL