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

In the matter of an Application for Revision 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.

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

**Court of Appeal**

**Revision Application No. CPA/02/2026**

**COMPLAINANT**

**High Court of Colombo**

**Case No. HCB/186/2022**

**Vs.**

Pathiraja Mudiyanselage Jayasumana
Chandrawansa Pathiraja,
No.28, Fairfield Gardens,
Colombo 08.

**ACCUSED**

**AND NOW BETWEEN**

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

**COMPLAINANT-PETITIONER**

**Vs.**

Pathiraja Mudiyanselage Jayasumana
Chandrawansa Pathiraja,
No.28, Fairfield Gardens,
Colombo 08.

**ACCUSED-RESPONDENT**

**Before:** **Amal Ranaraja J.**

**&**

**Dr. Sumudu Premachandra J.**

**Counsel**: K. Sivasubramaniyam for the Petitioner.

Kalinga Indatissa, PC with Rashmini Indatissa, Rangana Saliah, Ovini Haththotuwa instructed by Oshadhi Malimage for the Respondent.

**Written Submissions:** By the Petitioner not filed.

By the Respondent not filed.

**Argument On:** 30/07/2026.

**Order On :** 11/09/2026.

**Dr. Sumudu Premachandra J.**

1] The Accused-Respondent was charged under Section 70 of the Bribery Act for causing financial loss to the Government between January 2012 and January 2015 by unlawfully providing financial advantages to a third party through false certification of full poster and digital banner deliveries. Following the withdrawal and refiling of earlier Magistrate Court cases, an indictment (Case No. HCB/186/2022) was brought in the Colombo High Court, which ultimately discharged the Accused on 16/06/2023, after upholding a defence preliminary objection alleging that all three CIABOC Commissioners had not individually directed the investigation.

2] The Petitioner states the said Order is infested with illegality since the learned High Court Judge had entailed sanctioning of criminal investigation by all 3

Commissioners on a prerequisite to the institution of Criminal proceedings in the High Court which is not known to the law.

3] On 09/02/2026, the case was supported ex-parte for the notices and notice on the Respondent was issued. Upon receiving the notice, the Respondent filed the proxy on 09/03/2026. Thereafter, the Respondent filed objections along with an affidavit.

4] The said objection contains preliminary objections with regard to the maintainability of this action.

5] The Respondent argues that the application was filed over two and a half years after the High Court's 16/06/2023 order, thus, the Petitioner is guilty of laches.

6] The Petitioner explained the said administrative delay was caused by legal challenges to the Director-General's appointment filed in the Supreme Court case. They were waiting for the decisions of SC/Writ/06/2024, SC/FR/105/2024, SC/FR/110/2024, SC/FR/113/2024 and SC/FR/29/2025. However, the said application was withdrawn by the Petitioners of those cases on 23/09/2025.

7] It is to be noted that the said impugned dismissal order of the learned High Court Judge was made on 16/06/2023. The said SC cases were withdrawn on 23/09/2025 (Paragraph 27 of the Petition). This application was filed on 08/01/2026.

8] Thus, it is clearly seen that the delay is from the 2 years 7 months and from the withdrawal of SC cases 3 months 16 days. I now consider whether the Petitioner is guilty of laches, and can the application be made?

9] In the case of ***Gunasekara and Another Vs. Abdul Lathif*** [1995] 1 SLR 225, it was observed that delay alone will not bar a person from obtaining relief which he may be entitled to, but the Court will grant relief only if the delay can be reasonably explained.

10] In that case, it was observed by His Lordship R.B. Ranaraja, J., as follows;

> *"The word "lashes" is a derivative of the French verb Lacher, which means loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. Stroud's Legal Dictionary 5th Ed pg 1403) It also means unreasonable delay in pursuing a legal remedy, whereby a party forfeits the benefit upon the principle Vigilantibus Non Dormantibus Jura Subveniunt. The neglect to assert one's rights or the acquiescence in the assertion 'or adverse' rights will have the effect of barring a person from the 'remedy which he' might have had if he resorted to it in proper time. (Mozley & Whiteley's Law Dictionary 10th Ed pg 260). When it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equal to waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted, in either of these cases lapse of time and delay are most material.(Lindsay Petroleum Co Vs. Hurd (1874 LRPC 221,239)."*

11] In ***Gnanpandithen and another V Balanayagam and another*** [1998] 1 SLR 391, the Court held;

*"The question whether delay is fatal to an application in revision depends on the particular facts and circumstances of the case."*

12] Further, in ***Urban Development Authority vs Wijayalaxmi*** [2006] 3 SLR 62, it was held that when there is a satisfactory explanation with regard to the delay and period of delay is not excessive, delay cannot be taken to refuse the relief.

13] On the other hand in ***Liyanagamage Lahiru Kithsiri Kumara vs AG*** CA (PHC) 21/2015, it was held that a delay of 15 months was fatal to the maintenance of a revision application and thereby it was dismissed.

14] In ***Wijesinghe v Tharmaratnam*** (Sri Kantha Law Report Vol-IV 47), the court held that:

*"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court."*

15] In ***Hotel Galaxy (Pvt) Ltd. V Mercantile Hotels Management Ltd.*** [1987] 1 SLR 5 the Court held that:

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

16] The Petitioner explains that bringing the matter in December 2025 was neither deliberate nor inordinate, as proceedings were necessarily delayed pending the Supreme Court's resolution of several fundamental rights and writ applications (including SC/Writ/06/2024 and SC/FR/29/2025) challenging the legal appointment of the Director General under Anti-Corruption Act No. 9 of 2023.

17] The Petitioner relies on ***Nandani Malkanthi Rajapuruge v. Don Jayathilakalage Mahinda Jayathilaka***, CA/ CPA /0080/ 2019, decided on 15/02/2024. In that, His Lordship Justice M.T. Mohammed Laffar while dismissing the application on delay and no avail of exceptional circumstances, held that reasonable time was a question of fact to be determined on the facts and circumstances of each case.

18] moreover, in ***Ganapandithan v. Balanayagam*** [1998] 1 SLR 391, His Lordship G.P.S. De Silva CJ has held that delay is fatal to an application in revision depends on the facts and the circumstances of the case.

19] The Petitioner mentioned the cases of this court namely CA/CPA/38/2025, CA/CPA/34/2025, and CA/CPA/36/2025 (tendered as X3–X5) in support of the application. Those are connected matters in similar nature and His Lordship B. Sasi Mahendran, J held that the jurisdiction, for appeal in this nature, stems from Article 140 is vested with the Supreme Court, and is not vested to the Court of Appeal. The ratio of these cases has no application to the instant case.

20]The Petitioner cited the case of ***The Director General, Commission to Investigate Allegations of Bribery or Corruption (CIABOC) vs Konara Mudiyanselage Dissanayake***, CA (PHC) APN 0013/24, decided on 20/12/2024. In that, His Lordship P. Kumararatnam, J. held that under the requirements under Section 12(1) and (2) of the CIABOC Act, the High Court has no power to question the validity of the indictment. It was held under former Act No. 19 of 1994.

21] In ***Bank of Ceylon v. Kaleel*** [2004] 1 SLR 284, the Court held;

> *"The court will not interfere by way of revision when the law has given the plaintiff-petitioner an alternative remedy (s. 754(2)) and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction...*
>
> *In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary per son would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court.""*

22] The Petitioner maintains that the existence of an alternative remedy does not serve as an absolute bar to exercising discretionary revisionary Jurisdiction under special circumstances.

23] Addressing the procedural nature of the case, the Petitioner argues that the order dated 16/06/2023 merely permits trial proceedings to continue without finalizing the substantive rights of the parties, making it an Interlocutory Order rather than a final order. If so, this court is puzzled with why special leave application to has not been filed to vacate the impugned order. I must emphasis that the learned trial judge admitted the objection is technical and the Accused-Respondent has only been discharged from proceedings without going into the merits (vide paragraph 98 of the judgement dated 16/06/2023). It is to be stressed that the Accused Respondent has not been acquitted and discharged.

24] The learned trial judge's impugned order is based on whether a sanction by three Commissioners is required for investigations. This issue was conclusively settled by the Supreme Court in the ***Director General of the Commission to Investigate Allegations of Bribery or Corruption v. K.M. Dissanayaka***, **(CA**

**(PHC) APN 13/2024,** as the leave was refused by SC/SPL/LA/46/2025. This principle was reaffirmed by a Five-Judge Bench in ***Director General of the Commission to Investigate Allegations of Bribery or Corruption v. Johnston Xavier Fernando and others,*** CA/CPA/77/2023 dated 04/08/2026, where it was held that no such sanction is required.

25] I note that the Petitioner's justification that administrative delays stemmed from litigation challenging the Director General's appointment under Anti-Corruption Act No. 09 of 2023 is refuted by the Respondent as false and misleading, given that the Act was passed three months after the judgement, appeal windows had already lapsed, and certified copies were obtained by the Petitioner in November 2023 shows mala fides.

26] It is an admitted fact by the parties that this revision application is filed after 2 years 7 months from the impugned judgement. Though, it is an order, the Petitioner said that they should get leave from the court under the principle enunciated in ***Ranjith vs Kusumawathie and others***, [1998] 3 SLR 232, it should be noted that the said case decided in relation to civil cases under section 754 of the Civil Procedure Code, has no direct application to this case. In the case in hand, the applicable law can be found in section 68(1) of the Anti-Corruption Act, No. 9 of 2023. It enacts;

> *"68. (1) Where proceedings are instituted in the High Court by an indictment signed by the Director-General,* ***the Director-General shall have the right to appeal against a judgment, order or sentence of such High Court in all cases*** *in* ***which the Attorney-General would have had the right*** *to appeal against such judgment, order or sentence had an indictment for such offence been presented to such Court by the Attorney-General."*
> [Emphasis is added]

27] Thus, it is clear that the "order" of a High Court covers and is subjected to an appeal. It should be noted, in the above section, that the Director-General has been put as the color of office as Attorney General. The section 15 of the Judicature Act as amended enacts the scope of right of appeal of the Attorney General as;

*"15. The Attorney-General may appeal to the Court of Appeal in the following cases:-*

*(a) from an order of acquittal by a High Court of the Republic of Sri Lanka or a High Court for the Province established by Article 154P of the Constitution*
*(i) on a question of law alone in a trial with or without a jury;*

*(ii) on a question of fact alone or on a question of mixed law and fact with leave of the Court of Appeal first had and obtained in a trial without a jury;*
*(b) in all cases on the ground of inadequacy or illegality of the sentence imposed or illegality of any other order of the High Court of the Republic of Sri Lanka or the High Court for the Province established by Article 154P of the Constitution."*

28] The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) is established as a body corporate with perpetual succession, a common seal, and the power to sue and be sued under Section 3(2) of the Anti-Corruption Act, No. 9 of 2023 (which repealed and replaced the earlier provisions under the-Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994). The section shows the legal entity of the CIABOC as;

*"3. (1) There shall be established, for the purposes of this Act, a Commission which shall be called and known as the Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as the "Commission"). (2) The Commission shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name."*

29] By section 68(1), the Director -General has been par with Attorney General. Since the Attorney General is a creature of law, similarly Director General is a creature of law. In the case of ***R.P. Wijesiri v. Attorney General*** [1980] 2 SLR 317, the Court of Appeal established a foundational principle regarding the limits of executive and prosecutorial power. In that His Lordship Ranasinghe. J (As the then was) enunciated;

> *"The Attorney-General is a creature of the law and he is possessed of, and is entitled to exercise only such powers as have been vested in him by express provisions of law. There do not seem to be any inherent powers vested in him to which recourse could be had to justify any step taken by him which is not specially authorised by an express provision of law."*

30] In that case, the Court held that the Attorney General is a creature of the law, he does not possess inherent or arbitrary powers and can only exercise authorities that are explicitly granted to it by statutory provisions and subject to rules and regulations of law. If the Director General has been given similar status, can be subjected to the same treatment. In this case, the Learned President Counsel for the Accused Respondent stressed that no speciality be given to the Petitioner on his status, the delay should be decided in the same manner where the court applies to other cases and the 2 years 7 months delay should not be condoned. This court is of the view, if the reasonable explanation is given, the length of delay is immaterial. However, the Court admits that not speciality be given on the status as Director General is a creature of law.

31] In said ***R.P. Wijesiri v. Attorney General*** (supra)**,** the Court of Appeal upheld that the Attorney General cannot bypass mandated legal processes or invent powers not explicitly detailed in the law. In said Wijesiri's case, the Court held since the statutory pre-conditions were not met, the High Court lacked the competency to hear the indictment. I am of the view that the same standard of rules of law would apply to any legal entity including Attorney General and Director General of CIABOC. As our legal system follows adversarial system, oppose to inquisitorial system, the respective parties should prove their respective cases whether in trial court or appellate court. Thus, I hold if the reasonable explanation cannot be given for the 2 years 7 months delay, the application should be dismissed.

32] The learned Counsel for the Petitioner said that they waited for decisions of SC/FR/105/2024, SC/FR/110/2024, SC/FR/113/2024 and SC/WRIT/06/2024, the decision regarding the appointment of Director General, later dismissed on 23/09/2025. It should be noted this case was filed on 08/01/2026 after three and half months. If they were waiting for the above cases, once, those are over, cases should be filed immediately without delay. On top of it, the learned President Counsel for the Respondent points out, despite this case, some other cases were filed during the pendency of the said Supreme Court cases, thus, the Petitioner has not come with clean hands to this court. This position was not countered by the Petitioner.

33] In the above circumstances, I am of the view that for the 2 years 7 months delay, no reasonable explanation is given, despite pendency of the above Supreme Court Cases, some cases have been instituted by the Petitioner, thus, the Petitioner cannot be condoned for the delay.

34] I now consider the second objection. The Accused-Respondent says that the Petitioner has an alternative remedy where if they fail in such remedy, this application must be dismissed.

35] It is to be noted that the Petitioner has distinct right of appeal against any judgement or order under section 68(1) of the Anti-Corruption Act, No. 9 of 2023. However, they have not exercised such right. There is no reason given for not exercising such a right.

36] In ***Gunasekera v Chitra Silva and others*** [2006] 3 SLR 188 it was held;

> *"Where an alternative remedy is available and if a party fails and or neglects to exercise such remedy due to the parties own conduct and or negligence court will not exercise the extraordinary powers of revision. However, when the party is able to show exceptional circumstances, Court will not hesitate to exercise such jurisdiction."*

37] In the case of ***Perera Vs. People's Bank*** [1995] 2 SLR 84, it was held that, revision is a discretionary remedy and the conduct of the Defendant is a matter which is intensely relevant.

38] In the case of ***Marjan Mohamed Jazil vs Sideek Noorul Hidaya,*** CA Revision Application No: 0025/17, decided on 09/05/2022, His Lordship Mohammed Laffar, J emphasized as;

> *"The right to appeal is a statutory right and must be expressly created and granted by a statute. Merits or demerits cannot be considered at the commencement of the appeal and all matters can be considered only at the argument. The right to appeal is a right provided by the legislature. Revision is an extraordinary and discretionary remedy granted by Court under special circumstances. It is not available as a right. The Petitioner in a Revision Application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right. If the Petitioner had not availed himself of the right to appeal which was available to him, and invoking the revisionary jurisdiction of this Court, there is a duty cast upon the Petitioner to satisfy this Court as to why he did not invoke the appellate jurisdiction. Failing which, the Petitioner cannot proceed with the Application for revision.* ***An Application for revision is available where the failure to exercise the right to appeal is explained to the satisfaction of the Court."*** [Emphasis is added]

39] Thus, there is no explanation given why the Petitioner has not acted under section 68(1) of the Anti-Corruption Act, No. 9 of 2023. Thus, the Petitioner has slept over on their statutory rights. In ***Liyanage and another Vs. Rathnasiri – Divisional Secretariat, Gampaha and others*** [2013] 1 SLR 6 the Supreme Court cited and adopted the well-known Latin maxim "*Vigilantibus non dormientibus jura subveniunt*" which means "the law assists those who are vigilant, not those who sleep over their rights". Thus, I hold this court cannot assist the Petitioner for his own folly and the negligence.

40] Thus, the delay of 2 years and 7 months in filing a revision application cannot be excused by the Court otherwise there should have been a severe, exceptional, and legally convincing explanation. In this case, there is no explanation as such.

41] To act on revision, the Courts require a clear, specific, and convincing reason (*"sufficient cause"*) to excuse procedural or filing delays. Vague explanations or prolonged inaction do not justify late filings. If not Courts treat extended, unexplained delays (such as multi-year gaps in taking steps for a revision application) as a blatant abuse of the judicial process, often leading to outright dismissal with costs. On the other hand, this court sees precedent risks diluting strict adherence to rules, judge made law and submission deadlines (filing without delay) or statutory revision windows, sets a counterproductive precedent (bad) for due administration of justice. It is to be stressed meeting deadlines, filing without delays come under procedural law. If the application was allowed, it will open the flood gates. His Lordship Dr. Amarasinghe J. in the case of ***Fernando vs. Sybil Fernando and Others*** [1997] 3 SLR 12, stressed that the procedural law cannot be taken as secondary. His Lordship notes;

> *"there is the substantive law and the procedural law.* ***Procedural law is not secondary****. The two branches are complementary. Halsbury points out*

*it is by procedure that the law which puts life into substantive law, gives it remedy and effectiveness and brings it into being."* [Emphasis is added]

42] In that His Lordship Justice Amarasinghe further notes that judges should not deviate from the normal procedure and act under his own wishes as;

*"The Work of the Commercial Courts" (1921 - 23) 1 Cambridge Law Journal 6 at P 8 - 9. " ..... The Oath which every judge takes is: I will do right to all manner of people without fear or favour or prejudices according to the law and customs of the realm. And it is the laws and customs of this realm that the judges have to administer. If once you allow the laws and customs which you have to administer to be diverted by the particular view you take of the particular case, another judge may think otherwise on the same facts, and there ceases to be any certainty in the law.*

*If the laws and customs you have to administer are wrong it is for Parliament to put them right - not for the judges. It is important that the Judges should interpret the settled laws without altering them according to their views of right or wrong in the particular cases."*

43] Thus, a delay spanning nearly three years falls well outside normal legal tolerance; and that the Respondent showed CIABOC actively instituted other cases and revisions throughout that timeframe. Further under section 68(1) the impugned High Court order discharge of the Accused is subject to a direct statutory right of appeal, which the Petitioner neglected to pursue. I hold that the Petitioner has slept over his right and is subject to the legal maxim of *Vigilantibus Non Dormientibus Jura Subveniunt,*"the law assists the vigilant, not those who sleep on their rights".

44] In another division of this court, in ***Kalage Arachchige Thusitha Kalyana vs The Attorney General***, CA (PHC)APN 0115/2024, DECIDED ON:

04/12/2024., His Lordship P. Kumararatnam, J., held dismissed the application which was filed 8 months' delay and noted;

> *"The reasons adduced for delay of 08 months to file this revision application cannot be accepted by this Court. Further, the Petitioner had not taken any endeavour to file an appeal against the conviction and the sentence. Had he really wanted to lodge an appeal against judgment of the learned High Court Judge of Badulla, he could have done it through the prison."*

45] In view of the above reasoning, the preliminary objections are upheld. This revision application is dismissed, No costs.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL