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 27th February 2026, made in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the High Court of the Provinces (Special Provisions) Act No.19 of 1990

Commission to Investigate Allegations of Bribery or Corruption

Complainant

Court of Appeal

Revision Application No:

CPA/31/2026

Vs.

High Court of Colombo

Case No. HCB 381/25

1. Deepal Lasantha Mahathanthrige
2. Pahalage Rasika Iroshani Perera

Accused

AND NOW BETWEEN

1. Deepal Lasantha Mahathanthrige
2. Pahalage Rasika Iroshani Perera

Accused-Petitioner

Vs.

Commission to Investigate Allegations of Bribery or Corruption

Respondent

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

Counsel: Jayathu Wickremasuriya instructed by
Shanika Samarawickrema for the Accused-Petitioner.

Argued on: 30.04.2026

Order on: 14.05.2026

Order

Amal Ranaraja. J,

1. This is an application filed by the accused-petitioners (hereinafter referred to as the petitioners) invoking the revisionary jurisdiction granted to this court in terms of Article 138 of the Constitution.

2. The petitioners in this case have been named suspects in Colombo Magistrates Court Case No. B/25270/03/15. Initially, they have been accused of committing offences punishable under Sections 403, 386 and 389 of the Penal Code of Sri Lanka. These accusations have been in relation to a sum of Rs. 600,000.00 being obtained from the virtual complainant. Subsequently, the petitioners had been charged with those offences in the Magistrates Court. The matter has been concluded when the petitioners returned the said sum to the virtual complainant, pursuant to an arrangement made in Court and the petitioners' acquitted.

3. Subsequently, the petitioners have been indicted in the High Court of Colombo in Case No. HCB/381/25, in respect of the same incident, but for distinct offences, offences punishable under Section 20 of the Bribery Act No. 11 of 1954 (As Amended).

4. When the matter had been taken up for trial in the High Court, the petitioners have raised a preliminary objection. They have contended that no person may be tried twice for the same offence, citing the principle against double jeopardy. Consequently, they have argued that the indictment was defective, should be quashed and the petitioners discharged. The learned High Court Judge has overruled the objection.

5. Aggrieved by this order dated February 20th, 2026, the petitioners have preferred the instant application to this Court.

6. The maxims "*nemo debet bis vexari pro una et eadem causa* and *nemo debet bis puniri pro uno delicto*" expresses a great fundamental rule of criminal law, which forbids that a man should be put in jeopardy twice for one and the same offence. It is the foundation of the special pleas of *autrefois* acquit and *autrefois* convict. This rule of law has been enshrined in our legal system through the provisions outlined in Section 314(1) of the Criminal Procedure Act No. 15 of 1979.

7. Section 314(1) of the Code of Criminal Procedure Act No. 15 of 1979 reads as follows;

> ***314.***
>
> *(1) A person who has once been tried by a court of competent Jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal remain in force not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from*

the one made against him might have been made under section 176 or for which he might have been convicted under section 177.

8. *E.R.S.R. Coomaraswamy* in his book, "*The Law of Evidence*" [Volume I] at page 543 cites Spencer Bower and Turner, op. cit., section 317, pp.268-269, states as follows;

"The plea of auterfois acquit is expressed in the maxim, nemo debet bis vexari pro una et eadem causa it is a species of estoppel by which one party is precluded as against the other from asserting the contrary of what has been determined in previous proceedings between them, But the plea of auterfois convict depends on nemo debet bis puniri pro uno delicto it is strictly not a manifestation of the doctrine of estoppel but is akin to merger. The rights of the successful party having become merged in the judgment, the same facts cannot be re-asserted in fresh proceedings"

9. In the case of *SC Appeal No. 12 A/2009* decided on 05.05.2011, Shiranee Thilakawardena, J, in considering the meaning of the term "tried" in the provisions in Section 314(1) in the Code of Criminal Procedure Act No. 15 of 1979 has stated as follows;

"The word "tried" – the operative word of this section – finds meaning in Section 5 and Section 184 of the Code of Criminal Procedure Act referred to above. Section 5 provides that all offenses (under the Penal Code or any other Law) are to be (i) investigated, (ii) inquired into and (iii) tried and otherwise dealt in accordance with the provisions of the Code of Criminal Procedure Act referred to above. The nature of these three phases of an allegation of an offense in the context of a summary

procedure is found in Section 184 which stipulates that if a Magistrate proceeds to try the accused, there is a mandatory obligation to take all such evidence as is produced by the prosecution or the defense. The effect, then, of the operative language of Section 314(1) as informed by the abovementioned sections is to make clear that if a person is to have been considered "tried" for purposes of Section 314, the opportunity for both sides to produce some evidence to support their respective stances has to have been available. Given the earlier determination that acquittals under the Proviso require some level of evidentiary proceeding to have taken place, and that an opportunity for leading evidence is inherent to Section 314(1) definition of "tried", it necessarily follows that an acquittal under the Proviso of Section 186 does not fall within the ambit of Section 314."

10. The matters discussed above indicate that there has not been an opportunity for either party involved in the Magistrates Court Case No. B/25270/03/15 to present in full evidence that could support their respective positions. In the situation referred to such an opportunity was evidently absent. Furthermore, the ability to present evidence is inherently tied to the definition of "tried' outlined in Section 314(1) of the Code of Criminal Procedure Act No. 15 of 1979. Consequently, it logically follows that an acquittal such as the one being considered does not fall within the scope of Section 314(1) of the Code of Criminal Procedure Act No. 15 of 1979.

11. As articulated in Section 314(1) of the Code of Criminal Procedure Act, the framework allows for the introduction of evidence as a crucial component of the trial. The absence of such an opportunity implies that

the acquittal cannot be categorised within the provisions of such Section 314(1) of the Code of Criminal Procedure Act.

12. Furthermore, Section 314(2) of the Code of Criminal Procedure Act is as follows;

> ***314.***
>
> *(2) A person acquitted or-convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under subsection (1) of section 175.*

13. The provisions in Section 314(2) being so, a previous trial outcome does not block future trials for different offences. If a person has already faced a trial and has been either found guilty or not guilty of a particular offence, that outcome does not automatically protect him from being tried again for a completely separate and distinct offence.

    The crucial part is "distinct offence". This means the second charge must be for a different type of offence, with its own unique elements that need to be proven. It is not about trying a person twice for the exact same offence, which is generally prevented by the rule against "double jeopardy". This principle applies even if the prosecution could have brought up the "distinct offence" during the first trial.

14. In such circumstances, preliminary objection raised by the petitioners lacks merit and the learned High Court Judge has rightly overruled it.

15. Due to the reasons set out above I am not inclined to issue notice on the respondents and proceed to dismiss the instant application in the first instance.

16. I make no order regarding costs.

17. The Registrar is directed to send this order to the High Court of Colombo for information.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal