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 Sections 364 and 365 of the Criminal Procedure Act No. 15 of 1979

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

Complainant

Court of Appeal Revision Application No.
CPA 0111/2024

Vs.

High Court of Colombo
Case No. HCB 207/2022

Bamunuarachchi Pathirennehelage Sarana Guptha Gunawardhane,
No.15/3,
Wijayarama Road,
Gampaha.

Accused

AND NOW BETWEEN

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

Complainant-Petitioner

Vs.

Bamunuarachchi Pathirennehelage Sarana Guptha Gunawardhane,
No.15/3,
Wijayarama Road,
Gampaha.

Accused-Respondents

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

Counsel: Anusha Sammandapperuma, A.D.L. with Kajaluxsy Sivasburamaniyam for the Complainant-Petitioner.

Anil Silva, P.C. with Arindra Silva and Anjana Abeyratne for the Accused-Respondent.

Supported on: 15.10.2025

Decided on: 10.11.2025

ORDER

AMAL RANARAJA, J.

1. This is an application filed by the complainant petitioner, namely the Director General of the Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as the "Petitioner"), seeking to invoke the discretionary remedy of revision granted to this Court by Article 138 of the Constitution.

2. The petitioner is seeking to set aside and vacate the order dated October 12, 2023, pronounced by the learned High Court Judge of Colombo,

where the indictment was dismissed based on a preliminary objection pertaining to the maintainability of the indictment before the Court.

3. When the matter was supported for notice on August 29, 2024, and it was determined that the facts and the law presented before the Court contained sufficient grounds to issue notice to the accused respondent, this Court issued notice to be returnable on October 16, 2024.

4. The said notice had been issued by the Court under registered cover on September 27, 2024. When the matter was mentioned on October 16, 2024, which was the return date for the notice, the accused respondent has been directed to file objections, if any, within a month from that date. However, a statement of objections has not been tendered to this Court.

5. This is a matter in which the petitioner, as the Director General of the Commission to Investigate Allegations of Bribery or Corruption, has filed the indictment under consideration against the accused respondent in the *High Court of Colombo* in case number HCB/207/2022, in terms of Section 11 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 (hereinafter referred to as the CIABOC Act).

6. The charges in the indictment state that the accused respondent, by his actions as described in the charges, has committed the offence of corruption, punishable under Section 70 of the Bribery Act No. 11 of 1954 as amended.

7. The indictment has been served on the accused respondent on March 16, 2023. Afterward, the accused respondent has been granted time to file

any preliminary objection they might have. The accused respondent has submitted his preliminary objections in writing.

8. The complainant petitioner has filed his submissions countering the preliminary objection raised.

9. The learned High Court Judge has issued his order on October 12, 2023, which is now being challenged before this Court.

10. The learned High Court Judge has addressed the objection raised on the grounds that under the provisions of this CIABOC Act, the Commission is required to investigate allegations of Bribery or Corruption communicated to it collectively. Therefore, since the investigations in this case has commenced by a single Commissioner, the indictment is rendered void *ab initio.*

11. In agreement with this preliminary objection, the learned High Court Judge has discharged the accused respondent from the case, concluding that the investigation into the alleged offences has not been initiated collectively by the Commission, indicating a clear lack of jurisdiction in this matter.

12. In the process of his determination, the learned High Court Judge has considered several sections of the CIABOC Act, as well as case law including that of *Anoma S. Polwattta vs. The Commission to Investigate Allegations of Bribery or Corruption*, SC Writ Application No. 1/2011 decided on 26.07.2018.

13. The learned High Court Judge has further determined that some other case law cited on behalf of the petitioner, such as *Indiketiya Hewage Kusumadasa Mahanama and Another vs. The Commission to Investigate*

Allegations of Bribery or Corruption SC/TAB/1A and 1B/2020 decided on 11.01.2023 and *Nandasena Gotabaya Rajapakse vs. The Director General, Commission to Investigate Allegations of Bribery or Corruption and Others*, CA (Revision) APN No. 29/2008 decided on 12.09.2019, were not relevant to the preliminary objections pending before such Court.

14. Since the essence of the order issued by the learned High Court Judge relies on the premise that the Commission has to collectively investigate allegations of bribery or corruption communicated to it, under the CIABOC Act, it is the view of this Court that a detailed examination of the learned High Court Judge's is determination in necessary to assess its correctness in this regard.

15. I will now consider the argument presented by the petitioner which posits that an objection similar to the one underlying the disputed order cannot be raised in the High Court. This argument is based on the provisions outlined in sections 12(1) and 12 (2) of the CIABOC Act.

16. Another division of this Court in *CA Application No 85/2022* decided on 04.04.2023 has determined that objections concerning to the Director General's its right to file an indictment must be raised exclusively under section 24 of the CIABOC Act. Consequently, neither the Court of Appeal nor the High Court serves as an appropriate forum for challenging an indictment on these grounds.

17. The Court of Appeal has been guided by the Supreme Court judgment in *Indikatiya Hewage Kusumadasa Mahanama and Another vs. The Commission to Investigate Allegations of Bribery or Corruption* (*supra*) where, after having considered a similar objection, their Lordships of the Supreme Court have observed thus,

"When considering the submission referred to above, it is clear that the said grounds of appeal raised on behalf of the 2nd accused-appellant were based on a misrepresentation given to the decision of this Court in the case of ***Anoma S. Polwatte vs. The Director General of the Commission to Investigate Allegations of Bribery or Corruption and Others*** *(supra). As already 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 provision already identified under section 12 (1) and (2) 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 of section*

12 (1) and (2) of the CIABOC Act. In the absence of any complaint that the Director General CIABOC had failed to comply with sections 12 (1) and (2) 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 section 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 would only be raised in an appropriate action filed before an appropriate forum."

18. The appropriate course of action in response to the observation mentioned above is to file an application under section 24 of the CIABOC Act. Such application should take the form of a writ in the Supreme Court, seeking to quash the directive issued by the Commission to institute proceedings in the High Court.

19. Be that as it may, it appears that the learned High Court Judge has been guided by the judgment in *Anoma S. Polwatte* (*supra*) where it was determined that a direction to institute proceedings under the Bribery Act or The Declaration of Assets and Liabilities Law No. 1 of 1975 is a function of the Commission, and such function shall be exercised collectively by the Commission.

20. Upon consideration of the relevant legal framework, the learned High Court Judge has concluded that investigating allegations communicated to the Commission is also a function of the Commission as defined under Section 3 of the CIABOC Act. Consequently, the learned High Court Judge has determined that the indictment should be dismissed, citing that the Commission has not collectively conducted the investigation into the allegations pertinent to the offences specified in the indictment.

21. The case of *Anoma S. Polwatte* (*supra*) has established that the authority to direct the institution of proceedings under the Bribery Act or The Declaration of Assets and Liabilities Law resides with the Commission, and a collective directive from the Commission is a necessary prerequisite for initiating such proceedings. However, it seems that the learned High Court Judge has extended this interpretation by asserting that an investigation (in terms of the CIABOC Act) in to allegations communicated to it must also be conducted collectively by the Commission. Consequently, any

investigation that is not carried out collectively may a have vitiating effect on the indictment that arises from such an investigation.

22. For matters of clarity, I will reproduce section 3 of the CIABOC Act, which refers to functions of the Commission and relied on by the learned High Court Judge in his determination,

> *"The Commission shall subject to the other provisions of this Act, investigate allegations, contained in the 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."*

23. The case of *Anoma S. Polwatte* (*supra*) involved a writ application submitted to the Supreme Court challenging the institution of proceedings against *Anoma S. Polwatte* in the Magistrate's Court under the provisions of section 78(1) of the Bribery Act. The application sought writs of Certiorari, Prohibition and Mandamus as per section 24(1) of the CIABOC Act.

24. The Supreme Court has held that the CIABOC Act grants certain functions and powers to the Commission. While these powers can be exercised collectively or individually the functions must be exercised collectively.

25. Their Lordships of the Supreme Court having considered 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."

26. The above observations of their Lordships of the Supreme Court clearly show that the focus had been on the function of instituting proceedings before a Court of law, and that it should be exercised collectively.

27. Since the judgment in *Anoma S. Polwatte* (*supra*) has not provided clear directions as regards to the investigation of an allegation communicated to it, becomes necessary for this Court to consider whether 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.

28. If one takes the face value of section 3 of the CIABOC Act, it can be argued that investigation of allegations communicated to it and institution of proceedings are functions designated to the Commission and should be exercised collectively.

29. However, when one goes through the other sections of the CIABOC Act is clear that the intention of the legislature on formulating the provisions in the Act had not been that.

30. Section 3 of the CIABOC Act begins with the phrase "*The commission shall, subject to the other provisions of this Act...*". The wording indicates that section 3 must be understood in the context of the CIABOC Act as a whole. It emphasizes the necessity of interpreting its stipulations in relation to the various other provisions outlined in the CIABOC Act, particularly concerning the investigation of allegations communicated to it and the institution of legal proceedings.

31. As the function of the institution of proceedings had been interpreted and determined by the Supreme Court, my focus in this judgment is on the investigation of allegations by the Commission.

32. It is my view that the powers of the Commission cannot be confined to those set out in section 5 of the CIABOC Act. When one examines the CIABOC Act it becomes evident that the powers granted to the Commission extend beyond those outlined in section 5 of the Act.

33. Section 4(3) of the 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".

(the emphasis is mine)

34. Section 16 (3) of the Act reads as follows,

"The Commission may delegate to the Director General or any other officer appointed to assist the Commission any of its 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."

(the emphasis is mine)

35. It is my view that the sections considered above indicate that the powers of the Commission and are not limited solely to the areas outlined in section 5 of the CIABOC Act. Investigating allegations communicated to the Commission is also a power vested in it, although this is described as a function of the Commission.

36. It is abundantly clear that the legislature in its wisdom has provided for the Commission to exercise its powers collectively or individually.

37. Section 2(8) of the CIABOC Act reads as follows;

"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."

38. The principle that statutes should be interpreted in a manner that it minimizes, absurdity or futility is a well-established legal practice. This maxim serves as a guide to ensure that legislative intent is honoured and the law operates effectively within society.

39. 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."*

40. If this Court is to accept the argument that the powers granted to the Commission are limited solely to those specified in section 5 of the CIABOC Act, then the investigation of allegations communicated to it, an essential function of the Commission would compromise the very purpose of enacting the CIABOC Act. The Bribery Act designed to address bribery and corruption would therefore fail to fulfill its intended objectives.

41. Allegations of bribery or corruption can arise at any moment, necessitating prompt and effective investigation. If the legislature intended for the Commission to conduct investigations collectively, it becomes evident that such a requirement would lead to an absurd

situation. The need for immediate action in response to allegations cannot be overstated delays in investigations would not only hinder justice but also undermine public trust in the integrity of the institution.

42. Article 156A enacted by the 19th Amendment to the Constitution introduces enabling provisions for the establishment of a Commission to Investigate Allegations of Bribery or Corruption. It clearly indicates that the legislature intended to empower this Commission to carry out investigations in to such allegations.

43. Article 156A(1)(b) reads as follows,

> *"The powers of the Commission including the power to direct the holding of a preliminary inquiry or the making of an investigation into an allegation of bribery or corruption whether of its own motion or on a complaint made to it and the power to institute prosecutions for offences under the law in force relating to bribery or corruption."*

44. The corresponding Article 156A(1)(b) of the 21st Amendment to the Constitution, reads as follows,

> *"The powers of the Commission including the power to direct the holding of a preliminary inquiry or the making of an investigation into an allegation of bribery or corruption whether of its own motion or on a complaint made to it, and the power to institute prosecutions for offences under the law in force relating to bribery or corruption."*

45. I also believe that the rationale behind the legislature's decision to enact sections 4(3), 16(3) and section 2(8) lies in the intention to explicitly delineate the powers of the Commission to investigate allegations communicated to it. These sections also serve as primary sources of authority for the Commission distinct from the powers granted under section 5 of the CIABOC Act.

46. Due to the matters discussed above, the determination of the learned High Court Judge to discharge the accused respondent from the proceedings before the High Court cannot be allowed to stand.

47. As the application before this Court is an application invoking the revisionary jurisdiction of the Court of Appeal, which is a discretionary remedy, it becomes necessary for this Court to consider the conditions upon which the discretionary remedy of revision can be granted.

48. 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."*

49. In the case of *Wijesinghe vs. Thamaratnam*, (Srikantha Law Reports Vol-IV page 47), it was held,

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

50. In the case of *Vanik Incorporation Ltd. vs. Jayasekare* [1997] 2 SLR 365, it was held,

> *"Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice."*

51. 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."*

52. I find that the petitioner has established sufficient exceptional grounds before this Court. I am of the view that this is a fit and proper case where this Court should intervene by exercising the discretionary remedy of revision vested in this Court to interfere with the disputed order of the learned High Court Judge for the reasons as considered.

53. Accordingly, the order dated October 12, 2023, of the learned High Court Judge of Colombo, is set aside as it cannot be allowed to stand.

Application is allowed.

54. The learned High Court Judge is directed to revert the case back to the case roll of the Court and issue notice on the accused respondent, read over the indictment to him, and proceed therefrom to hear evidence if necessary, and conclude the case.

55. The Registrar of the Court is directed to communicate this judgment to the *High Court of Colombo* for necessary compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal