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.

CA/CPA/36/2025

HC of Colombo Case No: HCB/303/24

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

COMPLAINANT

-Vs-

1. Nivard Ajith Lesley Cabral
No.32/6, School Lane, Nawala.
And formerly of,
No. 80/2, Ananda Rajakaruna Mawatha
Colombo 08.

2. Kankanamgamage Don Dharmasena Dheerasinghe
No.78/1
Wickramasinghepura,
Battaramulla

3. Benderage Don Wasantha Ananda Silva
No.188/4, Silva Place,
High Level Road, Pannipitiya.

4. Chandrasiri Jayasinghe Panditha Siriwardhana
No 31/A,
Batadombagahawatte Road, Maharagama

5. Harankaha Arachchillage Karunaratne
197A, Asoka Garden, Makola Road,
Kiribathgoda

ACCUSED

AND NOW BETWEEN

Kankanamgamage Don Dharmasena Dheerasinghe
No.78/1
Wickramasinghepura,
Battaramulla

2nd Accused-Petitioner

Vs.

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

Complainant-1st Respondent

Nivard Ajith Lesley Cabral
No.32/6, School Lane, Nawala.
And formerly of,
No. 80/2, Ananda Rajakaruna Mawatha
Colombo 08.

1st Accused-Respondent

3. Benderage Don Wasantha Ananda Silva
No.188/4, Silva Place,
High Level Road, Pannipitiya.

3rd Accused-Appellant

4. Chandrasiri Jayasinghe Panditha Siriwardhana
No 31/A,
Batadombagahawatte Road, Maharagama

4th Accused-Appellant

5. Harankaha Arachchillage Karunaratne 197A, Asoka Garden, Makola Road, Kiribathgoda

5th Accused-Respondents

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

Counsel : Dimuthu Senerath Bandara for the Petitioner

Anusha Sammandapperuma, ADL with Kajaluxsy Sivasubramaniyam, for the Respondents

Supported On: 25.09.2025

Order On: 03.11.2025

ORDER

B. Sasi Mahendran, J.

This is a revisionary application filed by the 2nd Accused Petitioner (hereinafter referred to as the Petitioner) invoking the revisionary jurisdiction of this court, seeking the following reliefs prayed in the petition dated 19 April 2025.

The Petitioner has *inter alia* prayed for the following reliefs;

1. Issue notices to the Respondents;
2. Call for and peruse the original case record of the High Court of Colombo, Case No. HCB 303/24;
3. Stay further proceedings in the High Court of Colombo, case No. HCB 303/24, until the final determination of this Application,
4. Set aside the order dated 21.02.2025 (marked as "P4") delivered by the learned Judge of the High Court of Colombo in case No. HCB 303/24,
5. Quash the indictment filed against the Petitioner in the High Court of Colombo, case No. HCB 303/24,
6. Acquit or discharge the Petitioner from respective charges levelled against him,
7. Grant costs, and
8. Grant such and further relief

The following facts are relevant to the Application

The petitioners, along with the others, were originally indicted before the High Court of Colombo, bearing case No. HCB 271/2024 by an indictment. When the indictment was served to the Petitioners, they raised preliminary objections with regard to the legality of the said indictment. By order dated 31.05.2024, the Learned High Court Judge upheld the preliminary objections and dismissed the matter. Thereafter, the above-mentioned Complainant filed another indictment dated 16.08.2024 for the

High Court of Colombo. When the matter came up on 10.10.2024 following preliminary objections were raised by them.

a. That the indictment in the case bearing No. HCB 303/2024 is sans vires and/or is in Contempt of the Supreme Court of the Republic, as it contravenes the judgment in the case bearing no. SC/FR/457 / 2012 dated 18th September 2014 on the very same facts and issue in law.

b. That there is no valid indictment before the High Court in the said matter as there has not been a proper appointee appointed to the office of the Director General of the Commission to Investigate Allegations of Bribery and Corruption;

c. The first complaint and the other material served with the indictment do not disclose any offence against the Accused.

The main objection raised by the counsel with regard to the maintainability of the action on the basis that the accused, who are the petitioners in the bearing, no SC/FR/457 / 2012, which was marked as X 1 in the brief in the said judgement, the Supreme Court has already adjudicated on the same facts. The Learned High Court Judge overruled the objections on 21.02.2025 and gave the following reasons.

1. The Supreme Court Fundamental Rights case (SCFR 457/2012) and the High Court indictment concern different matters, and it is unclear whether the same evidence is involved; the order has no effect on the conduct of the criminal trial.
2. The indictment (HCB 271/24) was validly signed by the 1st Respondent on 16.08.2024, after his proper appointment on 02.04.2024. Although cases (SCFR 105/24, 110/24, and 113/24) were filed challenging the 1st Respondent's appointment and he later resigned, his prior official decisions remain valid and unaffected.

3. Even if a higher court later rules the appointment invalid, actions lawfully taken during his tenure—including the signing of the indictment—remain valid and the trial can proceed.
4. The High Court cannot challenge the validity of a CIABOC (Commission to Investigate Allegations of Bribery or Corruption) indictment; such challenges must be made in the proper forum.
5. Under section 38 of the Penal Code, conspiracy to commit corruption can be charged by combining section 70 of the Bribery Act with section 113(b) of the Penal Code.
6. According to section 165(2) of the Code of Criminal Procedure, the time period of the offence may extend beyond one year unless it involves Criminal Breach of Trust or Misappropriation.

When the matter was supported on 25.09.2025 in this court, the main argument put forward by the counsel for the petitioner is that in the said SC/FR/457 / 2012, the court formed the opinion that the court could not come to a conclusion that the members of the monetary board in deciding on investing in Greek Bonds acted arbitrarily, unreasonably and fraudulently. It is pertinent to reproduce that portion of the said judgment.

Sujeewa Arjune Senasinghe v. Ajith Nivard Cabrall and Others, SC FR 457/ 2012, Decided on 18.09.2014, K. Sripavan, J held that;

"Considering the totality of the circumstances, it is neither possible nor desirable to hold that the members of the Monetary Board in taking a decision to invest in Greek bonds, have acted arbitrarily, unreasonably and in a fraudulent manner. In view of the conclusion reached, the Court is not inclined to express any opinion on the

objections raised by the learned Deputy Solicitor General on the maintainability of the application."

We are mindful that under Section 11 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994, which deals with the directive to institute proceedings by the Commission, reads as follows;

> *'Section 11 Where the material received by the Commission in the course of an investigation conducted by it under this act, discloses the Commission of an offence by any 8 person under the Bribery Act or the Declaration of Assets and Liabilities Law, No 1 of 1975, the Commission shall direct the Director General to institute Criminal proceedings against such person in the appropriate court and the Director General shall institute proceedings accordingly'*

Accordingly, on the directions of the Commissioner, the criminal proceeding has been instituted against this petitioner. We are mindful that forwarding the indictment is a discretion which may be lawfully exercised by the Director General. Once an indictment is presented, the Learned High Court judge has no option but to proceed with the matter.

In accordance with the directions issued by the Commissioner, criminal proceedings have been initiated against the petitioners. The petitioner's primary objection is that, although their decision to invest in Greek bonds was not deemed fraudulent in SC FR 457/2012, the Director General has nonetheless instituted proceedings against them under the Bribery Act. It is acknowledged that the Supreme Court, in that fundamental rights case, did not reach a definitive conclusion regarding whether the petitioner's actions constituted fraud. Nevertheless, the Commission has instructed the Director General to proceed with legal action. Should the petitioner wish to challenge the Commission's decision, they must file an application before the Supreme Court to seek appropriate relief.

We note that this court has no jurisdiction to quash the said decision.

Anti-Corruption Act No. 9 of 2025

> *160. (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 (I), 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.*

The remaining issues raised by the petitioners could be considered by the trial judge during the trial.

For the above-mentioned reason, the application is hereby dismissed without issuing notice.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL