

**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
read with Section 364 of the Code of Criminal
Procedure Act No.15 of 1979.

Director General, Commission to Investigate
Allegations of Bribery and Corruptions

Petitioner

Vs

CA (PHC) APN 135/2010
HC Colombo 1833/2010

Lokubadu Dayachandra
Gamini Jayasooriya

Accused Respondent

Before : Sisira de Abrew J &
K.T. Chitrasiri J

Counsel : Kapila Waidyaratne DSG for the Petitioner
Dr. Ranjith Fernando for the Respondent.

Argued on : 24.5.2011
Decided on : 30.6.2011

Sisira de Abrew J.

The petitioner in this case seeks to revise the order of the learned High Court Judge (HCJ) dated 8.7.2010 discharging the accused respondent from the indictment preferred against him by the petitioner.

The accused respondent (hereinafter referred to as the accused) was indicted in the High Court of Colombo under Section 20 (V1) of the Bribery Act for soliciting a sum of Rs.600,000/- from one Florida Jayasinghe Gunasekara to secure the release of one MPP Padmathilake who was on remand in connection with an offence under the Immigration and Emigration Act. Before the indictment was read to the accused, learned counsel appearing for the accused in the High Court objected to the indictment on the ground that securing a release of a suspect from the magistrate Court does not fall within the meaning of 'benefit from the Government'. In order to appreciate the objection it is necessary to consider Section 20 of the Bribery Act which reads as follows.

A person-

(a) who offers any gratification to any person as an inducement or a

reward for-

- (i) omitted
- (ii) omitted
- (iii) omitted
- (iv) omitted
- (v) omitted

- (vi) his procuring, or furthering the securing of, any grant, lease or other benefit from the Government for the first mentioned person or for any other person, or
- (vii) omitted

(b) who solicits or accepts any gratification as an inducement or a reward for his doing any of the acts specified in sub-paragraphs (i), (ii), (iii), (iv), (v), (vi), and (vii) of paragraph (a) of this section, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.

The learned HCJ held that getting a suspect discharged from the Magistrate Court does not fall within the meaning of 'benefit from the Government'. He therefore, by his order dated 8.7.2010, discharged the accused from the indictment.

Being aggrieved by the said order, the petitioner has filed this petition to revise it. I will now examine the correctness of the learned HCJ's order. A suspect or an accused in a Magistrate's Court can be discharged in so many ways. I may cite few instances. The officer-in-charge of a Police Station who filed the B report making allegations against a suspect can later withdraw the B report for want of evidence. The officer-in-charge of a Police Station can inform the Magistrate that he would not file charges against the suspect as no evidence is found against the suspect. The Attorney General can take over prosecution in the Magistrate's Court and move court to discharge the accused as there is no evidence against the accused. It is therefore seen that the discharge of a suspect/accused can be secured as a

result of decisions of government officers. Thus when somebody solicits a gratification to get a suspect in the Magistrate's Court discharged, one cannot say that it does not fall within the meaning of benefit from the Government. In fact according to the statements of witnesses attached to the indictment gratification had been solicited to be given to the Magistrate and the officer-in-charge of the Police Station.

For the reasons stated above, I hold that the learned HCJ was in error when he discharged the accused. I therefore set aside the order of the learned HCJ dated 8.7.2010 and direct him to proceed with the trial. The Registrar of the Court is directed to send back the original case record to the High Court of Colombo with a copy of this order.

Petition allowed.

Judge of the Court of Appeal.

KT Chitrasiri J

I agree.

Judge of the Court of Appeal.