

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.

Director General,

Commission to Investigate
Allegations of Bribery or
Corruption,

No. 36,

Malalasekera Mawatha,

Colombo 07.

Complainant

Vs

CA (PHC) APN 134/2017

HC Colombo Case No: B1895/2012

Kakulandara Mudiyansele

Sarath Premachandra

No. 42/E,

Upper Harasgama,

Matale.

(Presently at Welikada Prison)

Accused

And Now between

Kakulandara Mudiyanse
Sarath Premachandra
No. 42/E,
Upper Harasgama,
Matale.
(Presently at Welikada Prison)

Accused-Petitioner

Vs

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

Respondent

BEFORE : K. K. Wickramasinghe, J &
P. Padman Surasena, J

COUNSEL : Kalinga Indatissa (PC) with AAL Shehan De Silva and
AAL D. Sigera Saddhasena

SUPPORTED ON: 18th September 2017

DECIDED ON : 10th October 2017

ORDER

K. K. WICKRAMASINGHE, J.

The Accused Petitioner (herein after referred to as the Petitioner) in this Revision Application was indicted in the High Court of Colombo for committing an offences under four Charges of the Bribery Act. When the indictment was read over to the Accused Petitioner, he had pleaded 'not guilty' to the indictment and accordingly the trial was commenced before the learned High Court Judge. After trial the Petitioner was convicted for all four Charges punishable under sections 19(b), 19(c), 19(b) and 19(c) of the said Bribery Act. Accordingly, the Petitioner was sentenced as follows:

Charge 1- 5 years imprisonment and a fine of Rs. 5000/= in default 1 year imprisonment

Charge 2- 5 years imprisonment and a fine of Rs. 5000/= in default 1 year imprisonment

Charge 3- 5 years imprisonment and a fine of Rs. 25000/= in default 1 year imprisonment

Charge 2- 5 years imprisonment and a fine of Rs. 5000/= in default 1 year imprisonment

As special Circumstances the Learned Counsel for the Petitioner submitted that the wife of the Petitioner is suffering from Hypothyroidism and undergoing long standing treatment. This condition of the wife was not submitted to the Learned High Court Judge when this Bail Application was made in the High Court. Therefore the High Court Judge was not in a position to consider this ground since it was not before him. The Petitioner cannot seek permission of Court to grant bail as of right. The Learned High Court Judge has refused to Grant Bail to the Petitioner on the ground that there was no exceptional Circumstances.

The Learned Counsel for the Petitioner has submitted the short comings of the trial and further he submitted new material to this Court where the Learned High Court Judge was unable to consider these material since it was not before him. Though

medical conditions of the wife of the Accused are not relevant to consider bail of the Accused, these conditions were not put forward to the Learned High Court Judge.

Any way the circumstances submitted by the counsel are not adequate to Issue Notice to Respondent.

Therefor this Court decides not to Issue Notice to Respondent.

Thus we refuse to Issue Notice to Respondents and dismiss this Revision application.

Judge of the Court of Appeal

P.Padman Surasena, J.

I Agree

Judge of the Court of Appeal

Cases Referred to:-

1. Queen Vs Liyanage 65NLR 287
2. Jayantha Silva and others Vs AG 1997 3 SLR PAGES 117-130
3. Ramu Thamodtheram Pillai Vs AG S.C. 141/75
4. Ward Vs James 1965 1 All E R 563 at 567
5. King Vs Keerala 48 NLR 202
6. John Henry Charls Earnest Howeson, Louis Hardy 1936, 25 Criminal Appeal Courts 167
7. Queen Vs Rupasinghe Perera 62 NLR 238
8. Queen Vs Coranelis Silva 72 NLR 113
9. Salahudeen Vs AG 77 NLR 262