

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Director General
Commission to investigate allegations of
Bribery or Corruption
36, Malalasekera Mawatha
Colombo 07.

COMPLAINANT – APPELLANT

Case No. CA.LA 02/2014

HC (Colombo) Case No. B1818/09

VS

Hemasiri Bandara Thibbotumunuve
No. 110/4/4, Stratford Avenue
Colombo 06.

ACCUSED - RESPONDENT

BEFORE

: Deepali Wijesundera J.

: Achala Wengappuli J.

COUNSEL

: Wasantha Perera S.S.C.

for the Appellant

Nagitha Wijesekera with Ayesha

Ginige for the Accused-Respondent

ARGUED ON

: 04th May, 2018

DECIDED ON

: 18th May, 2018

Deepali Wijesundera J.

The respondent was charged under section 23 (A) (3) of the Bribery Act for illegal accumulation of wealth and after trial he was acquitted by the High Court on 23/05/2014. This appeal is against the said acquittal by the respondent appellant.

The appellant's counsel argued that before filing the indictment against the respondent the appellant conducted a full inquiry and obtained documents and the respondent's statement was also recorded under section 23 A (4) of the said act and that the respondent failed to show how he managed to purchase an apartment with the income he had. He further submitted that although he had the opportunity to show how he found the money to buy the apartment he failed to do so at the inquiry.

At the trial the respondent has brought a witness to testify that he gave the money to purchase the said apartment. He argued that the learned High Court Judge can not accept such evidence without proper investigations being conducted by the Bribery Commission.

The learned counsel cited the judgment in **C.S.D. Swami vs The State (1969) AIR (sc) page 7** and said that known sources of income must have reference to source known to the prosecution. I find that the facts stated in this case is not relevant to the instant case.

The learned counsel for the appellant further stated that for the appellant to conduct a complete investigation the respondent has to cooperate with the appellant and reveal all the sources of income and if the sources of income were established the indictment against the respondent might not have been brought. This is a contradictory statement by the learned counsel who earlier said the indictment was filed after a full investigation was done. The counsel can not blow hot and cold he has to specifically state his arguments.

The learned counsel for the respondent stated that the learned High Court Judge has considered the documents V1 to V6 produced by the respondent in the High Court through their witness who gave evidence to show how the said apartment was purchased by the respondent and delivered his findings. He argued that the findings of facts can not be interfered with.

The learned counsel for the appellant cited the judgment in **L.C. Fernando vs The Republic of Sri Lanka 79 NLR vol II p.313** and **D.W. Wanigasekera vs The Republic of Sri Lanka 79 NLR 241** and said it was held in these two judgments that contradicting positions have to prove by balance of probability and that creating a reasonable doubt is not sufficient and that the learned High Court Judge has not evaluated the evidence accordingly. On perusal of the High Court Judge's judgment we find that it is not so. The learned High Court Judge has properly analysed the evidence and arrived at the findings.

In D.W. Wanigasekera vs The Republic of Sri Lanka it was held;

- (1). That the 'basic fact' to be proved was that the accused acquired property which could not have been acquired with any part of his sources of income or receipts known to the prosecution after investigation and that the prosecution is not required to prove that the acquisitions were made with income or receipts from bribery. An interpretation based on the appellant's contention would defeat the very purpose for which the section was included in the Bribery Act since section 23A is designed against a person in respect of whom there is no proof of the actual receipt of a gratification, but there is presumptive evidence of bribery.***
- (2). That the presumption created by section 23A may be rebutted by the accused by proving on a balance of***

probabilities, that the property was acquired otherwise than by bribery.

The respondent by his evidence has proved how the said apartment was bought.

The appellant has failed to state a single legal argument to set aside the High Court judgment. A well considered judgment of the High Court can not be set aside on a mere statement on facts.

For the afore stated reasons we decide to refuse the application of the appellant. Application is refused and the judgment dated 23/05/20214 is affirmed.

JUDGE OF THE COURT OF APPEAL

Achala Wengappuli J.

I agree.

JUDGE OF THE COURT OF APPEAL