

**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 and
Section 13(2) of the Commission to
Investigate Allegations of Bribery or
Corruption Act No. 19 of 1994*

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

Petitioner

Court of Appeal Application **Vs.**
No: **CA/PHC/APN/69/2017**

High Court of Colombo
No: **B/1871/2011**

Vitanachchi Palitha Jayawickrama
Wellawaya Road
Marawila

Accused – Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : A. Navavi DSG for the Petitioner
Mahendra Kumarasinghe with Navindu
Kalansuriya for the Accused
Respondent.

Argued on : 09.03.2022

Decided on : 07.04.2022

Iddawala – J

This is a state revision filed on 24.05.2017 to revise the judgment of the High Court of Colombo dated 16.12.2016 in Case No B1871/2011 which acquitted the accused respondent (*hereinafter respondent*) on charges of bribery.

The respondent was indicted in the High Court of Colombo on four counts of Solicitation and Acceptance of a sum of Rs. 7,500/- from the virtual complainant and thereby committing the offences in term of Section 19(b) and 19(c) of the Bribery Act (as amended). The prosecution led the evidence of 5 witnesses:

1. Hewabeddage Anula Padmini: virtual complainant (PW01)
2. WPC Chandrakantha: decoy (PW02)
3. CI Priyantha Liyanage: investigating officer, CIABOC (PW03)

4. Chandani Jayalath: office assistant, Palmyrah Development Board (PW04)
5. Kumara Wahalathanthri: General Manager, Palmyrah Development Board (PW06)

The facts of the case are as follows. The virtual complainant was employed as an instructor of the Palmyrah Development Board since 2005 and was a subordinate to the respondent. The virtual complainant levelled an allegation against the respondent saying that he had solicited a bribe to allow the virtual complainant to sign off in the daily attendance registry of the workplace even on days she was absent. Although the complainant was paid a monthly salary, the amount was calculated on a daily basis and as such, for the calculation of the salary, reference is made to the attendance registry. At the time, the complainant was pursuing an external degree in an education institute, whereby she attended lectures during office hours. This prevented her from attending to her official duties and consequently she could not sign off on the attendance registry.

The complainant alleged that although she did not report to work on all 30 days, she was forced to obtain the salary for the entire month and the amount corresponding to the days she was absent were ordered to be handed over to the respondent. Based on the said complaint to the Commission to Investigate Allegations of Bribery or Corruption, a raid was conducted on 26.06.2008 during which the complainant handed over Rs. 7500/- to the respondent. The respondent submitted that he took over such monies as an installment of a loan she had previously obtained from the respondent.

During submissions the learned Deputy Solicitor General (DSG) for the petitioner contended that the instant application pivots on establishing the purpose for which the said payment of Rs. 7,500/- was made. It was the DSG's contention that the purpose for which money was accepted/ gratification sought was made to secure preparation of salary for the

complainant. Vide Page 77 of the Brief, the virtual complainant gave evidence as follows:

“මම යන්නේ නැති දවස්වලට තමයි මුදල් ලබාගත්තේ. ඒ කියන්නේ මම ඒ මුදල ලබාදුන්නේ මගේ රැකියාව අහිමි වෙන නිසා ඒ වගේම මගේ ජීවිතේම තිබෙන අනතුරු දැනුන නිසා.”

However, it must be noted that the prosecution elicited this evidence only upon re-examination and such a position was not maintained by the prosecution prior to that. It was the position of the petitioner that this amounted to a gratification in terms of Section 90 of the Bribery Act and was paid to ensure the continuation of the employment of the virtual complainant and thus constitutes an offence in terms of Section 19(c) of the Bribery Act. Section 19(c) of the Bribery Act stipulates the following:

“who being a public servant solicits or accepts any gratification shall be guilty of an offence”

In support of such contention, the learned DSG referred to evidence elicited during the trial where the complainant states that she gave such money to ‘protect her life’, ‘obliged to the demands of the respondent’ and to ‘secure continued employment’ (page 73 and 77 of the appeal brief). It was the DSG’s contention that by forcing the complainant to make payments to secure employment, the respondent sought a ‘gratification’ as interpreted in Section 90 of the Bribery Act. The said section is reproduced below:

“Gratification includes any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceeding of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty”

The DSG contended that when the totality of the evidence led in trial is considered, the learned Trial Judge has failed to consider the evidence

placed before the High Court and applied the relevant provisions of the Bribery Act. It was further submitted that, while the petitioner concedes that Count 1 and Count 2 has not been proven beyond reasonable doubt, the failure of the learned High Court judge to consider the applicability of Section 19(c) of the Bribery Act, which is count 02 and 04 in the indictment, tantamount to a total misdirection on a question of law and failure to properly analyze and evaluate the evidence led in trial.

Delivering the submissions on behalf of the respondent, the counsel contended that the impugned order has adequately given mind to all the bribery charges levelled against the respondent. It was the contention of the counsel for the respondent that the prosecution has failed to establish the 'purpose' for which the money was taken from the virtual complainant. The evidence elicited by the virtual complainant in Page 77 of the Brief was characterised as a 'weak attempt' by the prosecution to establish a purported purpose upon re-examination. While the DSG's position is that the money given to the respondent on the day of the arrest was part of the money the virtual complainant had falsely claimed for her non-working days, PW04, in her evidence stated that the complainant gave the money saying "sir, here's the money I took from you"

උ: ඊට පස්සේ එයා (virtual complainant) සල්ලි වගයක් දුන්නා මෙන් මේ පාලිත මහත්තයගෙන් ගත්ත සල්ලි කියලා. එතන හිටපු තැන මෙසේ උඩින් තිව්වා පාලිත මහත්තයාගෙන් ගත්ත සල්ලි කියලා එයා ඒ සල්ලි තියල ගියා. (Vide Page 130 of the Brief)

උ: ඊට පස්සේ එතන පාලිත මහත්තයා ඒ මෙස ලඟ හිටගෙන හිටියා. ඊට පස්සේ එයා සල්ලි වගයක් දුන්නා මෙන් පාලිත මහත්තයගෙන් ගත්ත සල්ලි කියලා. ගත්ත සල්ලි කියල සල්ලි මෙසේ උඩින් තියලා එයා ගියා පහලට. (Vide Page 133 of the Brief)

This version is compatible with the version put forward by the respondent who claimed that he took the money as repayment of a loan. Yet, PW04 has not been treated as an adverse witness and treated accordingly by the

prosecution. It is pertinent to note at this instance that the respondent's testimony was consistent, uncontradicted and no omission were marked regarding his evidence.

In any event, it was the contention for the respondent that anything other than an acquittal is not permitted as no count can be sustained on vitiated credibility of the virtual complainant. The counsel for the respondent submitted that this was a case where the virtual complainant has colluded with the respondent to defraud the government. It was the counsel's contention that the learned High Court Judge has accurately arrived at the conclusion that the virtual complainant was evasive and dishonest in her evidence. To demonstrate the same, the counsel for the respondent drew attention of this Court to the evidence given by the virtual complainant:

Virtual complainant admits that the arrangement she had with the respondent tantamount to defrauding the government but is evasive in answering whether she was aware of the same. And she introduces a new position that she was forced to oblige with the demands of the respondent as she 'feared for her life'.

ප්‍ර: එතකොට මේ විදිහට බොහෝ කාලයක් 2008 වර්ෂයේ වෙනකම් බොහෝ කාලයක් මේ විදිහට සිදු වුනා කියල තමා කියන්නේ ?

උ: ඔව්

ප්‍ර : එතකොට තමන් මේ වංචාවට සම්බන්ධ වුනා?

උ : සම්බන්ධ වුනේ මේ හේතුව නිසා. මම ගැහැණු ළමයෙක්

ප්‍ර : සම්බන්ධ වුනාද නැද්ද?

උ: සම්බන්ධ වුනේ නැ මම.

ප්‍ර: එතකොට එහෙම නම් තමා මේ රජයේ මුදලනේ ආපසු අරගෙන තියෙන්නේ පළමු වන විත්තිකාරයාට ගෙව්වා කියලා තමා කියන්නේ? තමනේ එක කරලා තියෙන්නේ?

උ: මම කලේ නැ . මම නොදැනුවත්ව තමයි කරල තියෙන්නේ

ප්‍ර : තමා දුන්නේ නැත්නම් වෙනින් කවිද දුන්නේ?

උ: මම සල්ලි දුන්නේ නැ. මගෙන් බලෙන් තමයි ගත්තේ.

ප්‍ර : තමාට තර්ජනය කලාද?

උ : තර්ජනය කලා කියන්නේ වටාපිටාවෙන් තමා තර්ජනය කලේ. ඒ කියන්නේ මම ගැහැණු ළමයෙක් නිසා මට ඒ මුදල දෙන්න සිද්ධ වෙනවා. මොකද පාරේ බැහැල යන්න ඕන නිසා. ඒ කියන්නේ මට මොනවා හරි කරදරයක් වුනොත් එකට පිළිතුරු සපයා ගන්න.

(Vide Page 57 – 59 of the Brief)

Vide Page 73 of the Brief, the virtual complainant claims that she could not lodge complaints against the respondent as “එහෙම කතා කරන්න ගිය නම් සමහරවිට මගේ ජීවිතයත් අහිමි වෙන්නත් පුළුවන්. රැකියාවත් අහිමි වෙන්නත් පුළුවන්”. However, she also claims that she personally handed over a letter to the Speaker of the Parliament citing her grievances and that she received a verbal response. She was asked to produce the said letter for which she presented a purported ‘draft’ of the letter. As such the virtual complainant refers to several reasons as to why she complied with the demands of the respondent, but the prosecution has failed to establish the purpose for which such money was handed over with any certainty.

The evidence adduced from the virtual complainant revealed that she was demoted from her position of an instructor to that of a labourer. (Vide Pages 52 – 54). As a result of such a demotion, the respondent had deducted her salary. On two occasions, the virtual complainant admits that she retaliated to such reduction by lodging complaints with the Commission to Investigate Allegations of Bribery or Corruption (Vide Page 54 and Page 60). In this regard, the learned High Court Judge has made the following observation at Page 224 of the Brief:

“මෙම නඩුවේ පැ.ස. 01 ගේ සාක්ෂිය අනුව අනිකුත් පැමිණිල්ලේ සාක්ෂි සැලකිල්ලට ගැනීමේදී පැ.ස. 01 උපදේශික තනතුරේ සිට කම්කරු තනතුරට සේවා තත්වය පහත වැටීම නිසා පැ.ස. 01 විත්තිකරු සමග ද්වේශ සහගත සිටි බව පැ.ස. 01 අධිකරණයේ සාක්ෂි දුන් විලාසය අනුව පෙනී යයි.”

In his concluding remarks, the learned High Court Judge observes that cheating charges ought to have been preferred against both the virtual complainant and the respondent. As such the impugned order dated

16.12.2016 acquits the respondent on charges under the Bribery Act on the basis that the prosecution failed to establish the charges beyond reasonable doubt. We are in agreement of this determination.

It is clear from the above examination that the prosecution has failed to prove, beyond reasonable doubt, that the respondent has committed bribery offences. This is evinced by the failure to satisfactorily establish the purpose for which the money was solicited/ accepted by the respondent on the date of the raid. Furthermore, credibility of PW01, the virtual complainant has been shaken and it is evident that she has lodged the complaint against the respondent due to her demotion from an instructor to a labourer in the Palmyrah Development Board.

Taking into consideration all of the above, it is the considered view of this Court that the impugned order dated 16.12.2016 does not warrant interference under the revisionary jurisdiction of the Court of Appeal.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL