

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

In the matter of an Appeal under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

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

**Court of Appeal Case No.
CA/HCC/0360/2019**

Complainant

**High Court of Colombo
Case No. HCB/1910/12**

V.

Ekanayake Mudiyansele
Aruna Bandara Ekanayake

Accused

AND NOW BETWEEN

Ekanayake Mudiyansele
Aruna Bandara Ekanayake

Accused-Appellant

V.

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

Complainant-Respondent

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

BEFORE : **K. PRIYANTHA FERNANDO, J. (P/CA)**
WICKUM A. KALUARACHCHI, J.

COUNSEL : A. K. Chandrakantha for the
Accused – Appellant.

Dilan Rathnayake, Deputy Solicitor
General with Thanuja Bandara,
CIABOC for the Respondent.

ARGUED ON : 31.08.2022

WRITTEN SUBMISSIONS

FILED ON : 06.08.2021 by the Accused –
Appellant.

10.08.2021 by the Respondent.

JUDGMENT ON : 29.09.2022

K. PRIYANTHA FERNANDO, J.(P/CA)

1. The accused appellant (hereinafter referred to as the appellant) was indicted in the High Court of *Colombo* on the following four counts,
 - I. Count No. one, for soliciting a bribe of Rs. 150,000/- from one *U.S. Prasanna* in order to procure employment to him in a government department or establishment, an offence punishable in terms of section 20(a)iv to be read with section 20(b) of the Bribery Act.
 - II. Count No. two, for being a public servant soliciting a gratification of Rs. 150,000/-, an offence punishable in terms of section 19(c) of the Bribery Act.
 - III. Count No. three, for accepting a gratification of Rs. 50,000/-, an offence punishable in terms of section 20(a)iv to be read with section 20(b) of the Bribery Act.
 - IV. Count No. four, for being a public servant accepting a gratification of Rs. 50,000/-, an offence punishable in terms of section 19(c) of the Bribery Act.
2. Upon conviction after trial on all four counts, the appellant was sentenced to 3 years rigorous imprisonment on each count to run concurrently. In addition, the appellant was ordered to pay a fine of Rs. 5,000/- per count, and in default one year rigorous imprisonment. Further, for count no. 3, he was ordered to pay an additional fine of Rs. 50,000/- and a default sentence of one year imprisonment. Being aggrieved by the above convictions and the sentences, the appellant preferred the instant appeal.

3. Although three grounds of appeal have been urged by the Counsel for the appellant in his written submissions, at the hearing of this appeal only the following ground of appeal was pursued by the learned Counsel;

I. The learned High Court Judge has failed to consider and evaluate the evidence with caution.

4. The brief facts of the case as per the evidence led by the prosecution are as follows,

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) has received information in writing from a person, stating that the appellant is taking money from people by making promises to offer government jobs. Acting upon the said information, CIABOC has initiated an investigation and upon the information being found to be genuine, they have conducted a raid. The accused was arrested by the raid team of the CIABOC when he was accepting a bribe of Rs.50,000/-.

5. The learned Counsel for the appellant submitted that, the evidence was led by the prosecution as to how the bribery officials checked on the genuineness of the complaint.

6. The officers who conducted the raid have taken into custody from the possession of the appellant, a file which contained many applications for employment in the government sector. Those were marked and produced in Court at the trial.

7. The learned Counsel for the appellant submitted that, producing those applications by several other persons at the trial has caused prejudice to the

appellant. While conceding that the judgment of the learned trial Judge is in order, the learned Counsel for the appellant submitted that the conviction however should not be allowed to stand as there is a possibility that the mind of the learned trial Judge may have been prejudiced on the above job applications being submitted in evidence, and also on the fact that the bribery officials were satisfied about the acceptance of bribes where the said job applications were submitted.

8. It is the contention of the learned Deputy Solicitor General for the respondent that, the learned trial Judge in his judgment at page 7 (page 562 of the appeal brief) has expressly stated that, what was revealed at the initial investigation with regard to the genuineness of the complaint would not be taken in to consideration when arriving at the judgment. It was further submitted that, the other job applications that were recovered from the possession of the appellant has not been taken into consideration by the learned High Court Judge.
9. The PW1 (investigating officer) in his evidence has said that, upon receiving the information against the appellant, his team investigated into the genuineness of the complaint and it was revealed that the information was genuine. However, as submitted by the learned Deputy Solicitor General, the learned trial Judge on Page 7 of his judgment has clearly stated that he will consider that evidence only for the purpose of deciding on the steps that the witness followed while conducting the investigation and not on the truth of what the witness said. Therefore, I regret to hold that I am unable to agree with the contention of the learned Counsel for the appellant, that the said evidence has caused prejudice to the appellant.

10. Further, the learned trial Judge has not based his conviction on the job applications that were found in the appellant's possession. The learned trial Judge has also not considered any extraneous material that should not have been taken into consideration when deciding the matter.
11. Therefore, I find that the ground of appeal is devoid of merit.

Appeal dismissed.

PRESIDENT OF THE COURT OF APPEAL

WICKUM A. KALUARACHCHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL