

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

*In the matter of an Appeal and in terms of
section 331 (1) 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.*

Director-General

Commission to Investigate Allegation of
Bribery or Corruption

No. 36 Malalasekera Mawatha,

Colombo 07.

Complainant

Vs.

Court of Appeal Application

No: **CA-HCC-194/2020**

High Court of Colombo

No: **HCB 2046/2014**

Dasanayeke Mudiyanseelage Rohini
Wasantha Kumarihami

Sangeethodaya, Janajayapura,

Mahawa.

Accused

AND NOW

Dasanayeke Mudiyanseelage Rohini
Wasantha Kumarihami

Sangeethodaya, Janajayapura,

Mahawa

Accused-Appellant

Vs.

Director General,

Commission to Investigate Allegation of
Bribery or Corruption

No. 36 Malalasekera Mawatha,

Colombo 07.

Complainant- Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Anil Silva P.C. with Amaan Bandara for the
Accused-Appellant,
Sudarshana de Silva Deputy Solicitor
General with Priyangani Jayalath Assistant
Director Bribery Commission for the
Complainant Respondent.

Argued on : 05.10.2022

Written Submissions on : 10.11.2021 by the Accused Appellant
10.01.2022 by the Complainant
Respondent

Decided on : 12.10.2022

Iddawala - J

This is an appeal filed against the judgment of the learned High Court Judge of High Court of Colombo dated 22.01.2020 bearing Case No. HCB 2046/2014. The facts of the case are as follows. The accused-appellant (hereinafter referred to as the appellant) was an Assistant Director of Education at Nikaweratiya Education Office. Appellant had solicited 300,000/= from Thennakoon Mudiyansele Nisansala Swarnamali Thennakoon (hereinafter referred to as PW1) and on or about 02.07.2011 had accepted 200,000/= from Dissanyake Mudiyansele Bandara Manike Dissanayake (the mother of PW1) as a gratification to facilitate an employment for PW1 at the Bank of Ceylon. On 22.01.2020 appellant was convicted by the learned High Court Judge for four counts under the Bribery Act No. 11 of 1954 as amended (hereinafter referred to as the Bribery Act).

1. Count 1 – For soliciting a gratification of 300,000/= as an inducement or reward to assist obtaining an employment which is an offence punishable under section 20(b) read with section 20 (a) iv of the Bribery Act.
2. Count 2 – For the same cause of action as Count 1, being a public servant soliciting a gratification of 300,000/= which is an offence punishable under section 19 (c) of the Bribery Act.
3. Count 3 - For accepting a gratification of 200,000/= as an inducement or reward to assist obtaining an employment which is an offence punishable under section 20(b) read with section 20 (a) iv of the Bribery Act.
4. Count 4 - For the same cause of action as Count 3, being a public servant accepting a gratification of 200,000/= which is an offence punishable under section 19 (c) of the Bribery Act.

For each count the learned High Court Judge has imposed 5 years of rigorous imprisonment with a fine of 5,000/= and if in default 1 year of

rigorous imprisonment. Sentences pertaining to 1st and 2nd counts are imposed to run concurrently and sentences pertaining to 3rd and 4th counts are imposed to run concurrently. In addition to this the learned High Court Judge has ordered to pay a sum of 200,000/= as a penalty under section 26 of the Bribery Act and if in default 1 year of rigorous imprisonment.

The appeal at hand is to set aside the judgment of the learned High Court Judge. However, on the day of the argument President's Counsel appearing for the appellant did not challenge the conviction but appreciated a variance in the sentence. The learned Deputy Solicitor-General appearing for the Bribery Commission (Respondent) stated that the sentence imposed by the learned High Court Judge is in order and is legal and further conceded that however sentencing is under the discretion of the court.

At this instance, I would like to draw the attention to section 16 of the Code of Criminal Procedure Act No. 15 of 1979 as amended.

“16 1) When a person is convicted at one trial of any two or more distinct offences the court may, subject to section 301, sentence him for such offences to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence, unless the court orders them or any of them to run concurrently, the one after the expiration of the other in such order as the court may direct, even where the aggregate punishment for the several offences is in excess of the punishment which the court is competent to inflict on conviction of one single offence;”

Thus, as per this provision it is in the discretion of the court to allow sentences in case of conviction for several offences at one trial to run concurrently. Considering the cogent and persuasive submissions made by the learned President's Counsel behalf of the appellant and the fact that all four charges against the appellant are occasioned in the same

transaction, this Court inclines to allow varying the sentence. Thereby, all four sentences imposed by the learned High Court Judge for the four counts shall run concurrently with effect from 22.01.2020, the date of conviction.

Subject to the aforementioned variance of the sentence, appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL