

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

In the matter of an application for leave to appeal in terms of Section 15 of the Judicature Act read with Section 331 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,
36, Malalasekara Mawatha,
Colombo 07.

Complainant – Appellant

C.A. Case No. HCC - 85/21

High Court of Colombo

Case No. B 2116/2015

Vs.

1. Amudamana Arachchige
Nimal Rohana Somawardhana,
'Prasan', Galahitiyawa Road,
Gaswaththa,
Bandarawela.
2. Rathnayake Mudiyansele
Karunathilake,
'Lakmi', Jayasiri Mawatha,
Pothuwil Road, Monaragala.

Accused-Respondents

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

COUNSEL : Azard Navavi, DSG for the Complainant-Appellant.
Vijey Gamage with Ershan Ariyaratnam for the
Accused-Respondent.

WRITTEN SUBMISSIONS TENDERED ON

PRILIMINARY OBJECTION : 24.05.2022 (Accused-Respondents)
29.08.2022 (Complainant-Appellant)

ARGUED ON : 21.11.2022

DECIDED ON : 06.12.2022

WICKUM A. KALUARACHCHI, J.

This is a case filed under the Bribery Act against the first and second accused-respondents. The first three of the six counts have been brought against the first accused, and the other three counts against the second accused. After the trial, the learned High Court Judge of Colombo acquitted both accused-respondents by his judgment dated 06.08.2021, on the ground that the case had not been filed with the approval of the three commissioners of the Commission to Investigate Allegations of Bribery or Corruption. The Honourable Attorney General filed this leave to appeal application against the said acquittals.

The learned counsel for the respondents raised a preliminary objection and urged to dismiss the leave to appeal application. Both parties have tendered their written submissions on the preliminary objection. The learned Deputy Solicitor General (DSG) for the appellant and the learned counsel for the respondents made oral submissions at the inquiry.

In respect of the preliminary objection, the following three grounds have been raised in the written submissions tendered on behalf of the respondents:

- I. The Attorney General's sanction has not been obtained to prefer the leave to appeal application.
- II. The complainant does not have a right to prefer a leave to appeal application.
- III. No leave has been sought in the High Court.

At the inquiry, the learned counsel for the respondents raised the following two grounds and made oral submissions only on these two grounds.

- IV. All the matters set out in paragraph five of the petition are questions of law, and thus the leave to appeal application could not be maintained.
- V. The Director General of the Commission to Investigate Allegations of Bribery or Corruption has no right in terms of Section 13(2) of the Commission to Investigate Allegations of Bribery or Corruption Act (hereinafter referred to as "CIABOC Act") to appeal against an acquittal.

Referring to Section 331(1) of the Code of Criminal Procedure Act, Section 15(a) and Section 16(1) of the Judicature Act, and Section 13(2) of the Commission to Investigate Allegations of Bribery or Corruption Act, the learned Deputy Solicitor General for the appellant made submissions that the Director General of the Commission has the legal right to prefer an appeal in this case.

I proceed to deal with all five of the aforesaid grounds urged by the learned counsel for the respondents.

- I. The Attorney General's sanction has not been obtained to prefer the leave to appeal application.

In terms of Section 16(1) of the Judicature Act, any person aggrieved by a judgment, order, or sentence of the High Court in criminal cases may apply to the Court of Appeal with the leave of the court in all cases in which the Attorney General has a right of appeal. Hence, it is apparent that there is no legal requirement to obtain the Attorney General's sanction in order to prefer a leave to appeal application. The Attorney General's sanction is necessary to file an appeal against an acquittal only by the Magistrate's Court in terms of section 318 of the Code of Criminal Procedure Act.

- II. The complainant does not have a right to prefer a leave to appeal application.
- III. No leave has been sought in the High Court.

The aforesaid grounds (II) and (III) could be dealt together. The complainant in this leave to appeal application is the "Director General of the Commission to Investigate Allegations of Bribery or Corruption." According to section 331(1) of the Code of Criminal Procedure Act; an appeal under this chapter (Chapter XXVIII of the CCPA) may be lodged by presenting a petition of appeal or **application for leave to appeal** to the registrar of the High Court within fourteen days from the date when the conviction, sentence, or order sought to be appealed against was pronounced (Emphasis added). Therefore, it is apparent that Section 331(1) makes provisions for an appeal as well as for a leave to appeal application.

Section 15(a) of the Judicature Act makes provision for the Attorney General to appeal from an order of acquittal by the High Court. The said section reads as follows:

The Attorney General may appeal to the Court of Appeal in the following cases: -

(a) from an order of acquittal by a High Court-

(i) on a question of law alone in a trial with or without a jury.

(ii) on a question of fact alone or on a question of mixed law and fact with leave of the Court of Appeal first had and obtained in a trial without a jury.

Whenever the Attorney General has the right of appeal against an acquittal of the High Court, Section 13(2) of the CIABOC Act gives the same right to the Director General to file an appeal against an acquittal. Section 13(2) of the CIABOC Act reads as follows:

“Where proceedings are instituted in the High court by an indictment signed by the Director-General, such Director-General shall have the right to appeal against a judgment order or sentence of such high Court in all cases in which the Attorney-General would have had the right to appeal against such judgment order or sentence had an indictment for such offence been presented to such Court by the Attorney-General an officer appointed to assist the Commission shall be entitled to appear in any Court in support of such appeal”.

Therefore, in this case, the Director General of the Commission can prefer an application for leave to appeal to this court against the judgment of acquittal. Furthermore, there is no legal requirement to obtain leave from the High Court. According to Section 15(a)(ii) of the Judicature Act, leave has to be obtained from the Court of Appeal and not from the High Court. The appellant has correctly sought leave from this court.

IV. All the matters set out in paragraph five of the petition are questions of law, and thus the leave to appeal application could not be maintained.

The learned counsel for the respondents contended that this leave to appeal application could not be maintained because all grounds stated in the paragraph 5 of the appellant's petition are questions of law and in terms of Section 15(a)(i) of the Judicature Act, leave should be obtained from the Court of Appeal only if the appeal is based on a question of fact alone or on a question of mixed law and fact. It is correct that if it is only a question of law, direct appeal has to be preferred. However, when considering the case at hand, the learned High Court Judge has acquitted the first and second accused after full trial. Without evaluating the evidence of the case, if the learned Judge considered only the legal issue of filing the case without the approval of all three commissioners and decided that the case could not be proceeded, the accused should have been discharged. As the impugned judgment is a judgment of acquittal, the ground (VI) stated in paragraph 5 of the petition that "the learned trial Judge has failed to evaluate the evidence led and the documents marked by the prosecution" is a ground to be considered in the appeal. Hence, the grounds pertaining to this appeal are questions of mixed law and facts. Therefore, the applicable section is not Section 15(a)(i), but Section 15(a)(ii) of the Judicature Act. When it is a question of mixed law and fact, the appellant has to obtain leave first from the Court of Appeal in terms of section 15(a)(ii) of the Judicature Act, as correctly pleaded in this leave to appeal application.

V. The Director General of the Commission to Investigate Allegations of Bribery or Corruption has no right in terms of section 13(2) of the Commission to Investigate Allegations of Bribery or Corruption Act (CIABOC Act) to appeal against an acquittal.

Finally, I wish to consider the aforesaid ground (V) urged by the learned counsel for the respondents. The contention of the learned counsel for the respondent was that the section 13(2) of the CIABOC Act, refers to the right to appeal against a judgment, order or sentence but not against an acquittal. He argued; therefore, the Director General has no

right to prefer an appeal against an acquittal. I regret that I am unable to agree with the contention of the learned counsel for the respondents because a judgment includes either an acquittal or a conviction. Section 203 of the Code of Criminal Procedure Act precisely clarifies this issue. This is the section that deals with the passing of judgment by the Judge. The section states “when the cases for the prosecution and defence are concluded, the judge shall forthwith or within ten days of the conclusion of the trial, record **a verdict of acquittal or conviction** giving his reasons therefor and if the verdict is one of conviction, pass sentence on the accused according to law” (Emphasis added). It is apparent that a judgment is delivered by acquitting or convicting the accused. Therefore, the argument that the Director General has no right to appeal against an acquittal has no merit because right to appeal against a judgment necessarily signifies the right to appeal against an acquittal also.

As all five grounds urged by the learned counsel for the respondents are devoid of merit for the reasons stated above, I overrule the preliminary objection taken by the learned counsel for the respondents.

Preliminary objection, overruled.

JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J (P/CA)

I agree.

JUDGE OF THE COURT OF APPEAL