

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

In the matter of an Application for Revision under and in terms of Article 138 of the Constitution of the Republic read together with the High Court of the Province (Special provisions) Act No. 19 of 1990

*In the matter of an action in the High court under the provision of section 11 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, Bauddhaloka Mawatha,  
Colombo 07.

**Complainant**

**Vs.**

Court of Appeal Application No  
:  
**CPA/2/21**

Balasuriya Arachchige Ranjan Somasinghe  
No. 102/2/A, Rawathawatta Road,  
Rawathawatta, Moratuwa

High Court of Colombo No :  
**HC 20/17**

**Accused**

**And now between**

Balasuriya Arachchige Ranjan Somasinghe  
No. 102/2/A, Rawathawatta Road,  
Rawathawatta, Moratuwa

**Accused-Petitioner**

**Vs.**

1. Kanishka Wijeratne  
Director General of the Commission to Investigate Allegations of Bribery or Corruption,  
No. 36, Bauddhaloka Mawatha,  
Colombo 07
  
2. Sarath Jayamanne PC,  
Former Director General of the Commission to Investigate Allegations of Bribery or Corruption.  
Attorney General's Department  
Colombo 12
  
3. Hon. Justice Eva Wanasundara,  
Chairman
  
4. Chandra Nimal Wakishta,  
Member  
Commission to Investigate Allegations of Bribery or Corruption,  
No. 36, Bauddhaloka Mawatha,  
Colombo 07
  
5. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12

**Respondents**

**BEFORE** : Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL** : Dharshana Weraduwege instructed by S. K. Senarathne for the petitioner  
Ayesha Jinasena, P.C. Additional Solicitor General with Gayan Maduwage for the respondents.

**Supported on** : 13.12.2021

**Decided on** : 11.01.2022

### **Iddawala – J**

The accused petitioner sought to issue formal notice to the respondents and supported his application on 13.12.2021. The respondents were represented by counsel and raised objections against such request. The order was reserved for notice.

The main contention for determination by this Court is whether the accused petitioner has established *prima facie* exceptional circumstances for this Court to issue formal notice on the respondents.

### ***The Impugned Order***

The petitioner sought to impugn the order of the Learned High Court Judge of Colombo in Case No. HC 20/17 delivered on 10.06.2020. The background facts of the said case are as follows:

An indictment against the accused petitioner was preferred under section 23A of the Bribery Act for committing an offence falling under section 23A (3) of the same Act read with section 11 of the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994 (hereinafter Commission Act). As such the trial commenced on 29.11.2017. Evidence of several witnesses were led and on 23.09.2020 the accused petitioner raised an objection to the jurisdiction of the High Court on the basis that criminal action cannot be instituted against the accused petitioner as there is no lawful

directive as per section 11 of the Commission Act. Submissions were made on this regard by both parties and on 10.06.2020, the Learned High Court Judge overruled the said objection and observed the following at page 5 of the impugned order:

“මේ අනුව නීතිපතිවරයා විසින් මෙම අධිකරණයට අධිචෝදනා පත්‍රයක් ඉදිරිපත් කල පසු එම අධිචෝදනා පත්‍රය මෙම අධිකරණයට ඉදිරිපත් කිරීමට පෙර නීතිපති දෙපාර්තමේන්තුවේ සිදුවූ කාර්යය හෝ කාර්යයන් ප්‍රශ්න කිරීමට මහාධිකරණයට බලයක් නැත. ඒ ආකාරයට 12 වන (Commission Act) වගන්තියේදී සඳහන් වන්නේ අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභාවේ අධ්‍යක්ෂක ජනරාල්වරයා විසින් අධිචෝදනා පත්‍රයක් ඉදිරිපත් කළ විට මහාධිකරණය විසින් එය භාර ගෙන ඉදිරි පියවර ගත යුතුය.” (emphasis added )

In delivering his order, the Learned High Court Judge made observations regarding the accused petitioner’s reference to *Anoma Polwatte v Jayawickrema SC/Writ Application No 01/2011 SC Minute* dated 26.07.2018 (hereinafter referred to as *Anoma Polwatte*). The Learned High Court Judge distinguished *Anoma Polwatte* from the instant matter observing that *Anoma Polwatte* concerned proceedings initiated under section 78(1) of the Bribery Act before the Magistrate Court by way of a charge sheet. The order held that in contrast, the instant matter was instituted under section 11 of the Commission Act before the High Court by way of an indictment, thus distinguishing the two cases on the basis of their respective facts.

### ***Submissions by Parties***

In supporting the application, the counsel for the accused petitioner referred to the impugned order as a ‘shocking misdirection of law’ and alleged that the refusal of the Learned High Court Judge to refer to the *Anoma Polwatte* (delivered by a Divisional Bench of the Supreme Court) contravened well settled legal principles and mandatory procedural requirements. The said allegation was made in reference to the requirements under section 11 of the Commission Act. Hence, the counsel for the accused petitioner requested that notice be issued to the respondents under the revisionary jurisdiction of the Court of Appeal.

Learned ASG in her submissions, objected to the issuance of notice and stated at the outset that the application was ‘frivolous’, filed in an attempt to subvert the due administration of justice. ASG stated that this was an indirect attempt to halt the trial proceedings before the High Court against the accused petitioner. ASG contended that

as per the mandatory requirements under section 11 of the Commission Act, a directive has been issued prior to the institution of action against the accused petitioner before the High Court and that the ASG is prepared to share such directive with the Bench. ASG further submitted that neither the said section nor the judgment in *Anoma Polwatte* has any relevance to the impugned order and that *ex-facie* they are two different matters.

### ***Analysis***

As such the primary issue to be dealt with by this Court is whether the impugned order was decided erroneously, and if the answer is in the affirmative, whether such fact amounts to a *prima facie* exceptional circumstance warranting the issuance of notice to the respondents.

The judgment of *Anoma Polwatte* was consequent to a writ application concerning a case instituted in the Magistrate Court. This is evinced by the reference made in the judgment to section 78(1) of the Bribery Act (when referring to the background facts of the application) and when the judgment referred to an alternate objection which argued that the written sanction is a prerequisite for initiation of prosecutions before Magistrate Court. While the Supreme Court in *Anoma Polwatte* refused to base its *ratio decidendi* on the said section, the reference to section 78(1) of the Bribery Act points to the facts of the case. As such, the contention of the Learned High Court Judge that the *Anoma Polwatte* dealt with a case of institution of proceedings before the Magistrate Court is faultless.

This is made clear by the following extracts of the Supreme Court judgment at page 6:

*“On or about the 1st week of November 2010, four years after her first statement was recorded, the Petitioner was served with summons to **be present before the Chief Magistrate’s Court of Colombo on 16.11.2010 in respect of a Bribery case bearing No. 60 147/01/ Bribery..... When the Petitioner presented herself before the learned Chief Magistrate of Colombo on 16.11.2010 she was served with a copy of the charge sheet and enlarged on personal bail with two sureties. When the charge sheet was served and read out to her....”** (Emphasis added)*

The fact that *Anoma Polwatte* was occasioned by a case filed before the Magistrate Court under section 78(1) of the Bribery Act is an undisputed fact. The examination of section

11 of the Commission Act undertaken by the Supreme Court in *Anoma Polwatte* does not vitiate the said undisputed fact. As the learned ASG rightly pointed, the elucidation of section 11 of the Commission Act by the Supreme Court in *Anoma Polwatte* and the factual background where its proceedings were instituted under section 78(1) of the Bribery Act are *ex facie* independent matters.

At no point does the Learned High Court Judge in his order dated 10.06.2020 pass a determination on the applicability of section 11 of the Commission Act to the instant case nor has the Learned High Court Judge pronounced that a lawful directive of the commission (as elucidated by *Anoma Polwatte*) is unnecessary to continue the proceedings before the High Court. Section 11 of the Commission Act is referred to in the impugned order only to the extent of setting out the scope of jurisdiction of the High Court when an indictment under the hand of the Director General of the Commission to Investigate Allegations of Bribery or Corruption is received by the High Court:

“මෙම ප්‍රශ්නගත නඩුව අල්ලස් පනතේ 78(1) වගන්තිය අදාළ වන අවස්ථාවක් නොවේ. මෙම නඩුවට අදාළ වන්නේ අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභා පනතේ 12 වන වගන්තිය වේ. එසේම 12(1) උපවගන්තියේ සඳහන් වන්නේ 11 වන වගන්තිය යටතේ කොමිෂන් සභාව විසින් කරන ලද විධානයක් ප්‍රකාරව අධ්‍යක්ෂක ජනරාල්වරයා විසින් අත්සන් තබන ලද අධිචෝදනා පත්‍රයක් මගින් මහාධිකරණයක නඩු පවරනු ලැබූ අවස්ථාවක ඒ අධිචෝදනා පත්‍රය ඒ අධිකරණය විසින් භාරගනු ලැබිය යුතු අතර ඒ අධිචෝදනා නීතිපතිවරයා විසින් ඒ අධිකරණය වෙත ඉදිරිපත් කරන ලද අධිචෝදනා පත්‍රයක් චූලාක් සේ සලකා ඒ අධිචෝදනා පත්‍රයෙන් විස්තර කර ඇති වරද සම්බන්ධයෙන් නඩු විභාගයක් පැවැත්වීමට සෑම අංශයකින්ම ඒ අධිකරණයට බලය තිබිය යුතුය වශයෙනි.” (Page 5 of the impugned order)

The impugned order merely states that the *Anoma Polwatte* concerned proceedings instituted before the Magistrate Court by way of a charge sheet which is a contrast to the instant matter where an indictment was preferred.

*Anoma Polwatte* was a judgment of the Supreme Court pursuant to a writ application filed by an accused challenging the institution of an action under the Bribery Act thereby challenging the decision of the Commission to Investigate Allegations of Bribery and Corruption to prosecute the accused under the provisions of the Bribery Act. The petitioner of the instant application, without resorting to the proper forum, has relied on the revisionary jurisdiction of the Court of Appeal to impugn the order of the High

Court which has correctly held that the High Court lacks jurisdiction to pass judgment on the legality or otherwise of an indictment forwarded by the Attorney General.

The Learned High Court Judge in his order dated 07.10.2020 at page 5 – 6 held as follows:

“අනෝමා පොලවත්ත තීරණය 78(1) වගන්තිය යටතේ මහේස්ත්‍රාත් අධිකරණයක කාර්ය පටිපාටියට අදාළව තීන්දු කරන ලද නඩුවක් හෙයින් එහි භරය අධිචෝදනා පත්‍රයක අදාළ කාර්යය පටිපාටියට අදාළ නොවේ. එබැවින් අනෝමා පොලවත්ත නඩු තීරණය සෘජු ලෙස මෙම ප්‍රශ්නගත නඩුවට අදාළ නොවන බවට මම තීරණය කරමි. ඒ අනුව මූලික විරෝධතාවය ප්‍රතික්ෂේප කරමින් නඩුව ඉදිරියට විභාග කිරීමට තීරණය කරමි.”

In doing so, the Learned High Court Judge has drawn a distinction between the procedural requirements for instituting action before the Magistrate Court by way of a charge sheet under the Bribery Act (section 78(1)) and the instant matter where the case was instituted before the High Court by way of an indictment under the Commission Act (section 11 read with section 12 of the said Act).

Hence, it is the well-considered opinion of this Court, that the order of the Learned High Court Judge delivered on 10.06.2020 is good in law. The accused petitioner’s submissions failed to establish *prima facie* exceptional circumstances warranting the issuance of notice to the respondents.

Accordingly, application is dismissed without issuing notice.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**