

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

*In the matter of an application for revision  
under Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

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

**Plaintiff**

**Vs.**

Court of Appeal Application  
No: **CPA/33/22**

High Court of Colombo  
No: **HCB/24/2018**

Wallipuram Adavan  
Ponnillam, 1<sup>st</sup> Lane  
Kovilkulam  
Vauniya

**Accused**

**And now**

Wallipuram Adavan  
Ponnillam, 1<sup>st</sup> Lane  
Kovilkulam  
Vauniya.

**Accused-Petitioner**

**Vs.**

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

**Plaintiff-Respondent**

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

**COUNSEL** : Ashan Stanislaus with Chinthani  
Kaushalya for the Petitioner

**Supported on** : 08.09.2022

**Decided on** : 27.09.2022

**Iddawala – J**

The accused-petitioner (*hereinafter the petitioner*) sought to issue formal notice to the respondent and supported his application on 08.09.2022. The order was reserved for notice. The main contention for determination by this Court is whether the petitioner has established *prima facie* exceptional circumstances for this Court to issue formal notice on the respondents.

The petitioner was indicted in the High Court of Colombo for allegations under Section 19(b) and (c) of the Bribery Act No. 11 of 1954 as amended in Case No HCB/24/2018. The trial commenced on 05.10.2020, and on 14.02.2022, an objection was raised against the maintainability of the action against the petitioner. The said objection was based on the pronouncements in **Anoma Polwatte v Director General, Commission to Investigate Allegations of Bribery or Corruption (CIABOC)** SC/WRIT Application 01/2011 SC Minute dated 26.07.2018 (*hereinafter the Anoma Polwatte case*) and **Kesara Senanayake v Attorney General** [2010] 1 SLR 149 and the petitioner sought to impugn the indictment served by the Director General of the Commission to Investigate Allegations of Bribery or Corruption (*hereinafter the CIABOC*). The learned High Court Judge

dismissed the objection by his order dated 14.02.2022. Aggrieved by the said pronouncement, the petitioner has preferred the instant revisionary application to the Court of Appeal.

During the oral submissions, the counsel for the petitioner submitted that he had already exhausted the Writ jurisdiction of the Supreme Court under Article 140 of the Constitution read with Section 24(1) of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 (as amended) (*hereinafter the Commission Act*). It was further submitted that the Supreme Court refused to issue notice in the Writ petition based on a technical failure, on the basis that the petitioner has failed to produce evidence of the administrative act sought to be quashed in relation to the impugned decision of the CIABOC. The counsel apprised this Court that by the time the Writ petition was supported before the Supreme Court, the instant revision application was already filed before the Court of Appeal under and in terms of Article 138 of the Constitution and that the existence of same has been intimated to the Supreme Court at the time. In clarifying the two avenues the petitioner has sought in this regard, the counsel contended that with the invocation of the Supreme Court's Writ jurisdiction, he sought to quash an administrative decision of the CIABOC. The counsel asserted that on the contrary, he is invoking the revisionary jurisdiction of the Court of Appeal under Article 138 of the Constitution on the basis that the High Court, by its order dated 14.02.2022, has erred in law. It was the counsel's contention that the instant revisionary application can be maintained, irrespective of the dismissal of the Writ petition before the Supreme Court, as the two avenues are distinct in their objectives, albeit the similar result it would occasion. This Court agrees with the counsel on the submission that the revisionary jurisdiction under Article 138 of the Constitution of the Court of Appeal is distinct from that of the writ jurisdiction of the Supreme Court under Article 140 of the Constitution read with Section 24(1) of the Commission Act. Hence, it is accepted that a dismissal of a writ application

filed pursuant to Section 24(1) of the Commission Act read with Article 140 of the Constitution (especially when such dismissal was based on a preliminary technicality) will not bar any litigant from pursuing the avenue of revision under Article 138 of the Constitution where there is purported illegality or irregularity in an order or judgment of a lower court.

***Impugned order***

The impugned order distinguished the procedural facts of instituting the instant case with that of the **Anoma Polwatte Case** (supra) and goes on to state the following:

“එබැවින් අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභා පනතේ 12 වන වගන්තිය යටතේ අල්ලස් කොමිෂන් සභාවේ අධ්‍යක්ෂක ජනරාල්වරයා විසින් මෙම අධිකරණයට අධිචෝදනා පත්‍රයක් ඉදිරිපත් කළ පසු එහි වලංගුභාවය ප්‍රශ්න කිරීමට මෙම අධිකරණයට හැකියාවක් නොමැත...මෙම අධිකරණය විසින් මීට පෙර ද අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභාව එදිරිව රත්පත් සෞම්‍යිංහ නඩුවේදී මෙම නිගමනයට එළඹෙන ලද අතර එයට එරෙහිව අභියාචනාධිකරණය විසින් තීරණය කර ඇත්තේ අනෝමා පොල්වත්ත එදිරිව අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභාව නඩු තීරණය අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභා පනතේ 12 වන වගන්තිය යටතේ ඉදිරිපත් කරනු ලබන අධිචෝදනා පත්‍රයකට අදාළ නොවන්නේ යනුවෙන් මෙම අධිකරණය විසින් කරන ලද නිගමනය නිවැරදි බවයි (බලන්න: බාලපූරිය ආරච්චිගේ රත්පත් සෞම්‍යිංහ එදිරිව අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභාව CPA/02/2021 නඩුවේ ඉද්දවල විනිසුරුතුමාගේ තීරණය) ඒ අනුව මේ වන විට අභියාචනාධිකරණය විසින් නිගමනය කර ඇති එකී තීරණය අනුව මෙම අධිකරණයට අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභාව තුළ පැවති පරිපාලන තත්වයන් ප්‍රශ්න කිරීමට හැකියාවක් නොමැති අතර 12 වන වගන්තිය යටතේ අධිචෝදනා පත්‍රයක් ඉදිරිපත් කර පසු එය නීතිපතිවරයා විසින් මෙම අධිකරණයට ඉදිරිපත් කරනු ලබන අධිචෝදනා පත්‍රයක් සේ සලකා ඉදිරියට කටයුතු කිරීමට සිදු වේ. එබැවින් විත්තිය විසින් ඉදිරිපත් කරන ලද මූලික විරෝධතාවය ප්‍රතික්ෂේප කරමි. නඩුව විභාගයට ගනිමි. (Emphasis added)

(Vide pages 82, 83 of the Appeal Brief)

While this Court will clarify the highlighted part of the above extract in the next section, it suffices to say that there is no *prima facie* illegality or irrationality in the reasoning of the learned High Court Judge. The legality or otherwise of an indictment filed pursuant to Section 12 of the Commission act cannot be determined by the High Court. Such a

determination can only be done by invoking the writ jurisdiction of the Supreme Court as per Section 24(1) of the Commission Act read with Article 140 of the Constitution. (See **Director General, Commission to Investigate Allegations of Bribery or Corruption v Weerasekera Arachchilahe Lalith Kumara** LTA/06/16 CA Minute dated 23.02.2022). Hence, the learned High Court Judge's determination that "අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභා පනතේ 12 වන වගන්තිය යටතේ අල්ලස් කොමිෂන් සභාවේ අධ්‍යක්ෂක ජනරාල්වරයා විසින් මෙම අධිකරණයට අධිචෝදනා පත්‍රයක් ඉදිරිපත් කළ පසු එහි වලංගුභාවය ප්‍රශ්න කිරීමට මෙම අධිකරණයට හැකියාවක් නොමැත" is faultless. Similarly, the impugned order characterizing an indictment filed under Section 12 of the Commission Act as akin to an indictment filed by the Attorney General in relation to the manner in which a High Court should treat such indictment cannot be construed as a misdirection. This characterization was similarly asserted in **Palitha Piyasiri Fernando v Director General CIABOC** CA(PHC)APN 37/20 CA Minute dated 31.07.2020 which held: "Where proceedings are instituted in a High Court in pursuance of a direction made by the Commission under section 11 by an indictment signed by the Director-General, such High Court shall receive such indictment and shall have jurisdiction to try the offence described in such indictment in all respects as if such indictment were an indictment presented by the Attorney General such court ". As such, it is the view of this Court that there is no *prima facie* exceptionality in the impugned order that warrants the issuance of notice to the respondents. Hence, it is the well-considered opinion of this Court, that the order of the Learned High Court Judge delivered on 14.02.2022 is good in law

However, this Court would be remiss of its duty if it did not clarify the following statement made in the impugned order where the learned High Court Judge has interpreted a judgment of this Court, namely **Balasuriya Arachchige Ranjan Somasinghe v Director General, Commission to Investigate Allegations of Bribery or Corruption** CPA 2/21 Ca Minute dated 11.01.2022 (*hereinafter Ranjan Somasinghe case*).

### **Ranjan Somasinghe Case**

**Ranjan Somasinghe Case** (supra) pivoted on the issue of whether the impugned order of the High Court carried any *prima facie* illegality or irregularity to the extent of exceptionality which warrants the issuance of notice to the respondents named in the revisionary application (similar to the instant case before us). Hence, this Court focused on the impugned judgment in **Ranjan Somasinghe** whereby it was held that the following extracts of the order of the High Court of Colombo dated 10.06.2020 delivered in Case No. HC 20/17 was neither contrary to law nor irregular to the point of exceptionality:

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

“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 අධිවෝදනා පත්‍රයක් මගින් මහාධිකරණයක නඩු පවරනු ලැබූ අවස්ථාවක ඒ අධිවෝදනා පත්‍රය ඒ අධිකරණය විසින් භාරගනු ලැබිය යුතු අතර ඒ අධිවෝදනා නීතිපතිවරයා විසින් ඒ අධිකරණය වෙත ඉදිරිපත් කරන ලද අධිවෝදනා පත්‍රයක් වූවාක් සේ සලකා ඒ අධිවෝදනා පත්‍රයෙන් විස්තර කර ඇති වරද සම්බන්ධයෙන් නඩු විභාගයක් පැවැත්වීමට සෑම අංශයකින්ම ඒ අධිකරණයට බලය තිබිය යුතුය වශයෙනි.”

It must be unequivocally stated that this Court did not make any pronouncement on the legal principles enunciated by the **Anoma Polwatte case** (supra) vis-à-vis the **Ranjan Somasinghe case**. The **Anoma Polwatte case** interpreted Section 11 of the Commission Act. And it examined

whether there is sufficient proof to establish that CIABOC has dispensed the burden to “...direct the Director General to institute Criminal proceedings against such person (*person who has allegedly committed offences under the Bribery Act or Act No 1 of 1975*) in the appropriate court.”. This Court has consistently held that such an evaluation of the CIABOC’s dispensation of burden under Section 11 of the Commission falls outside the ambit of the Court of Appeal’s jurisdiction and squarely falls within the writ jurisdiction of the Supreme Court under Article 140 of the Constitution read with Section 24(1) of the Commission Act. (See **Director General, Commission to Investigate Allegations of Bribery or Corruption v Weerasekera Arachchilahe Lalith Kumara** (*supra*). This Bench, in delivering the order of **Ranjan Somasinghe case** and other similar applications referred to the **Anoma Polwatte case** (*supra*) only to the extent of acknowledging that **Anoma Polwatte case** concerned proceedings instituted before the Magistrate Court by way of a charge sheet which is factually distinguishable from cases where the proceedings were instituted in the High Court by way of an indictment. By drawing such a distinction, this Court holds that any question of whether the CIABOC has adequately dispensed its burden under Section 11 of the Commission Act ought to be dealt via the Writ jurisdiction of the Supreme Court and that neither the High Court nor the Court of Appeal can entertain such objections.

Hence, the statement of the learned High Court Judge that “අභියාචනාධිකරණය විසින් තීරණය කර ඇත්තේ අනෙක්මා පොල්වත්ත එදිරිව අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභාව නඩු තීරණය අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභා පනතේ 12 වන වගන්තිය යටතේ ඉදිරිපත් කරනු ලබන අධිචෝදනා පත්‍රයකට අදාළ නොවන්නේ යනුවෙන් මෙම අධිකරණය විසින් කරන ලද නිගමනය නිවැරදි බවයි” ought to be clarified to state that this Court, in delivering the order in **Ranjan Somasinghe Case** did not discuss the applicability of the principles enunciate therein, rather, that such an examination as was carried out by the Supreme Court in **Anoma Polwatte** under its Writ jurisdiction in evaluating the adequacy of CIABOC’s commitment in

fulfilling the requirements of Section 11 of the Commission Act, cannot be carried out by the Court of Appeal sitting in revision, and neither can by the High Court. Hence, the **Ranjan Somasinghe Case** pivoted on whether or not the Court of Appeal (and High Court) has the jurisdiction to entertain objections based on Section 11 of the Commission Act wherein the acts of an independent commission have been impugned.

Application dismissed without issuing notice.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**