

**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 Section 11 (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 reads with Article 138 of the Constitution.*

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

**Plaintiff**

Court of Appeal Application  
No: **CPA 85/2022**

**Vs.**

High Court of Colombo  
No: **HCB/115/2021**

1. Maldeniyage Don Upali  
Gunarathne Perera,  
No.372, Upper Karaghamuna,  
Kadawatha.
2. Hewa Rajage Wasantha  
Wimalaweera,  
No.59, Wilabada Road,  
Gampaha
3. Upali Senarath Wickramasinghe,  
No.300 G, Godagama Road,  
Athurugiriya
4. Sudeera Parakrama Jinadasa,  
No. 65, Model Town,  
Ratmalana

**Accused**

**And Now**

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Maldeniyage Don Upali Gunarathne  
Perera,  
No.372, Upper Karagahamuna,  
Kadawatha.

**1<sup>st</sup> Accused-Petitioner**

Sudeera Parakrama Jinadasa,  
No. 64, Model Town,  
Ratmalana

**4<sup>th</sup> Accused-Petitioner**

**Vs**

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

**Plaintiff-Respondent**

**BEFORE**

: Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL**

: Maithree Gunarathne, PC with Ashan  
Nanayakkara and Migara Gunarathne  
for the Petitioner.

A.Navavi, DSG with S.M Sabry, ADL for  
the Respondent

**Argued on**

: 09.01.2023

**Decided on**

: 04.04.2023

**Iddawala – J**

This is a revision application against the order dated 21.02.22 delivered by the learned High Court Judge of the Provincial High Court of Western Province holden in Colombo. The accused-petitioners (*hereinafter referred to as the petitioners*) aggrieved by the said impugned order, has preferred this instant revision application to this Court in order to set aside the said order.

The facts of the case are as follow. The petitioners were the accused of the High Court of Colombo case bearing no. HCB/32/2017. The Director General of the Commission to Investigate Bribery or Corruption framed 14 charges under Sections 19 (c) read with Section 25 (3) of the Bribery Act and Section 113 (a) of the Penal Code against the said accused or the petitioners of the instant application. However, when this matter was fixed for trial on or about 26.08.2019, the 1<sup>st</sup> accused-petitioner brought up the following preliminary objections: 1) The sanction given by one Commissioner to commence the investigation and file charges in court is contrary to law. 2) The case must fail in *ab initio* as it has failed to satisfy the law. 3) The Attorney-General cannot appear on behalf of the Respondent. The aforesaid matters were fixed for argument and the petitioners filed the written submissions consequently. However, prior to the matters being taken up for argument, the respondent withdrew the lower court case filed at the High Court of Colombo which engendered the following revision applications CA/PHC/APN/16/2020 and CA/PHC/APN/18/2020, thereby rendering the above applications redundant.

Thereafter the petitioners were indicted for the second time on 29.06.2021 under the case bearing no. HCB/115/2021, under the same 14 charges framed by the Commission to Investigate Bribery or Corruption. Consequently, the petitioners took up the following preliminary objections on 13.12.2021.

1. The indictment has been served without a proper sanction or the direction of the Bribery Commission.
2. The indictment served is bad in law.

3. The Attorney-General has no right to appear on behalf of the Director General of the Bribery Commission.

The learned Attorney-General filed the counter objections on the 19.01.2022 and after a perusal of the submissions made by both the parties, the learned High Court Judge delivered his order dated 21.02.2022 by dismissing the aforesaid preliminary objections of the petitioners. Therefore, aggrieved by this impugned order, the petitioners have sought to invoke the revisionary jurisdiction of this Court to set aside the said order.

This Court will not take up the third objection which is that the Attorney-General cannot appear on behalf of the Director General of the Bribery Commission as it addressed under a separate application bearing no. CA/CPA/77/2022.

In delving into the first two submissions made by the petitioners, it is the observation of this Court that the major premise on which the above objections are levelled, is the purported defectiveness in the indictment served. It is the averment of the petitioners that the indictment is bereft of the proper directive of the Commission to Investigate Bribery and Corruption (*hereinafter referred to as the Commission*), to conduct the investigation proceedings as required by the law. Therefore, it is the submission of the petitioners that based on the failure to meet the requirements of the law, the indictment served is erroneous and bad in law.

Although, it is the submission of the respondent that the Director General instituted the indictment in the High Court with the proper directive by the Commission and that the full Commission was established by the time such indictment was instituted, thereby rendering the petitioners' submissions futile.

Having setting out the arguments of both the parties, this Court observes that the petitioners' submissions are primarily premised and pivots on the interpretation of Section 11 of the Act no.19 of 1994 (*hereinafter referred to as the CIABOC Act*) which can be reproduced below in the following manner:

*“Where the material received by the Commission in the course of an investigation conducted by it under this Act, discloses the commission of an offence by any person under the Bribery Act or the Declaration of Assets*

*and Liabilities Law, No. 1 of 1975, the Commission shall direct the Director-General to institute criminal proceedings against such person in the appropriate court and the Director-General shall institute proceedings accordingly.....” (Emphasis added)*

The petitioners in further fortifying the above stance has cited the case of **Anoma Polwatte vs Director General, The Commission to Investigate Allegations of Bribery or Corruption and others** SC/Writ Application No. 01/2011 dated 26.07.2018 where the Supreme Court held that *“Even though the Act had not provided a specific provision as to how the directive should be made, there exists a prerequisite under section 11 of the Act to obtain a directive when the investigations conducted, disclose the commission of an offence, before launching any prosecution.”*

The contention of a requisite of the directive of the Commission and the implications of the **Anoma Polwatta Case** (supra) have been well addressed and ironed out by the Supreme Court in -the case of **Indiketiya Hewage Kusumdasa Mahanama v Commission to Investigate Allegations of Bribery or Corruption** SC TAB 1A and 1B/2020 decided on 11.01.2023, where the Five Judge Bench of the Supreme Court presided by His Lordship Justice Malalgoda P.C. resolved the knots in relation to the interpretation and application of Section 11 of the CIABOC Act and settled the legal reasoning behind the law and the principles pertaining to it. Accordingly, the Supreme Court held:

*“...the Supreme Court when deciding Anoma S. Polwatte V. Director General Commission to Investigate Allegations of Bribery and Corruption (supra) had never intended to impose an additional requirement to submit a written directive when filing charges before Court, and therefore this Court is not inclined to impose an additional requirement other than the provisions already identified in Section 12 (I) and (II) of the CIABOC Act when forwarding an indictment before the High Court.” (at page 43)*

It is evident by the above pronouncement that the Supreme Court did not intend to impose an additional requirement of attaching a written directive of the Commission to the indictment but rather required the satisfaction of the requisites promulgated under Section 12 of the Commission when filing charges under Section 11 of the CIABOC. Hence, it is the observation of this Court that the petitioners' averment that by virtue of, *inter alia*, the **Anoma Polwatta Case**, the absence of a written directive renders the indictment, bad in law is without credit and thus cannot be maintained.

The Supreme Court further elaborated that:

*“As already observed by us, when deciding the above case, this Court had never intended to impose an additional requirement of submitting a written directive given by the Commission when forwarding an indictment by the Director General CIABOC to High Court other than following the provisions already identified under Sections 12 (I) and (II) of the CIABOC Act. If the Director General is directed under Section 11 of the CIABOC Act by the CIABOC to forward an indictment, he is only bound to follow the provisions in Section 12 (I) and (II) of the CIABOC Act. In the absence of any complaint, that the Director General CIABOC had failed to comply with Sections 12(I) and (II) of the CIABOC Act when forwarding the indictment before the High Court at Bar it is correct in refusing the jurisdictional objection raised on behalf of the 2nd Accused before the High Court at Bar. The Trial Judge before whom the indictment is filed is therefore bound to accept the indictment and take up the trial unless there is material to establish that Director General CIABOC had failed to comply with the provisions of Sections 12 (1) and (2) of the CIABOC Act. Any party who intends to challenge an indictment forwarded by the Director General CIABOC on the basis that, the CIABOC had failed to comply with Section 11 of the CIABOC Act, the said challenge could only be raised in*

*an appropriate action filed before an appropriate forum.” (at page 44)*

Therefore, in light of the above pronouncement, this Court rejects the submission of the Petitioners that the lack of a written directive by the Commission renders the indictment bad in law.

Furthermore, this Court is of the observation that pertaining to the forum chosen by the petitioners to address the defectiveness of the indictment, this Court lacks the jurisdiction to canvass such objections as per the law set out in a plethora of cases such as the following: **Director General of Commission to Investigate Allegations of Bribery or Corruption vs Lalith Kumara** LTA 06 of 2016 dated 23.02.2022, **B.A. Ranjan Somasinghe vs Director General of Commission to Investigate Allegations of Bribery or Corruption** CPA 02/2022 dated 11.01.2022, **D.M. Rohini Ekanayake vs Director General of Commission to Investigate Allegations of Bribery or Corruption** CA PHC APN 76/21 dated 05.04.2022 and **Amarawansa Abeysiri Munasinghe Vs Director General of Commission to Investigate Allegations of Bribery or Corruption** CA-HCC-308/2019 dated 31.01.2023. In the above instances, this Court has repeatedly established that an act of the Commission has to be challenged by way of writ application to the Supreme Court as mandated in section 24(1) of CIABOC Act. This stance was reaffirmed in **Kusumdasa Mahanama** (supra) which held that:

*“Any party who intends to challenge an indictment forwarded by the Director General of CIABOC on the basis that the CIABOC had failed to comply with section 11 of the CIABOC Act, the said challenge could only be raised in an appropriate action filed before an appropriate forum.” (At Page 44)*  
(Emphasis added)

Thus, in the instant application the petitioners cannot raise the objection of the indictment being defective under Section 11 of CIABOC Act and thereby impugn the acts of the Commission before the Court of Appeal or before the High Court. It ought to be canvassed under the writ jurisdiction before the Supreme Court

under section 24 (1) of the Act. The Court of Appeal or the High Court is not the proper forum and has no jurisdiction to entertain such objections.

Therefore, it is the view of this Court that with regards to the preliminary objections of the petitioners, the submission that the lack of a written directive renders the indictment bad in law cannot be maintained as the Commission's directive is required in commencing the investigations as per Section 11 of the CIABOC and an indictment served under Section 11 only requires the fulfillment of the requisites delineated under Section 12 of the CIABOC as established by the Supreme Court. Therefore, an additional attachment of a written directive by the Commission in order to serve an indictment is not intended by the law. As such, the first submission of the petitioners cannot be maintained. Furthermore, pertaining to the forum chosen to raise an objection against the defectiveness of the indictment served is inappropriate as this Court lacks the jurisdiction to challenge an indictment, such an application must be made by way of a writ before the Supreme Court as mandated by Section 24 (1) of the CIABOC Act.

Therefore, this Court observes that the learned High Court Judge of Colombo has correctly dismissed the preliminary objections of the petitioners and thus affirms the order dated 21.02.2022.

Application dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**