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

In the matter of an application for mandates in the nature of Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/441/2021

Sandresh Ravindra Karunanayake
No. 1291/6, Rajamalwatte Road,
Battaramulla.

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Petitioner

Vs.

1. Hon. Attorney General
   Attorney General's Department,
   Colombo 12.

2. The Registrar
   High Court-at-Bar in Case No.
   HC(TAB) 2445/2021,
   The High Court,
   Colombo.

3. Justice K. T. Chitrasiri
   Retired Judge of the Supreme Court,
   Chairman,
   Commission of Inquiry appointed to
   investigate into and report on the
   issuance of performance bonds,
   No. 92/20,
   Thalapathpitiya Road,
   Udahamulla,
   Nugegoda.

4. Kandasamy Velupillai Esq.
   Retired Deputy Auditor General,
   Member of the Commission of Inquiry,
   Commission of Inquiry appointed to
   investigate into and report on the
   issuance of performance bonds.

5. Secretary to the President
   Presidential Secretariat,
   Colombo 01.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Faiz Musthapha PC with Shavendra Fernando PC, Faisza Markar, Riad Ameen and Zaianab Markar for the Petitioner.

Priyantha Nawana PC, SASG with Lakmini Girihagama DSG and Udara Karunatilake SC for the 1st Respondent.

Argued on : 28.03.2022, 09.09.2022, 28.10.2022 and11.01.2023

Written Submissions: Petitioner -06.12.2022 and 17.02.2023

1st Respondent -01.12.2022 and 10.01.2023

Decided on : 28.02.2023

Sobhitha Rajakaruna J.

The Attorney General has indicted 11 accused and as a consequence, the relevant trial in the case bearing No. HC(TAB) 2445/2021 commenced before a High Court-at-Bar. The Petitioner is the 2nd accused of the relevant indictment. The Petitioner seeks, inter alia, a writ of Certiorari quashing the decision made by the Attorney General-1st Respondent to charge the Petitioner by way of the said indictment and/or information on the charges

bearing Nos. 1, 3, 14, 15 & 16 in the said indictment dated 12.03.2021, marked 'P10', issued on the order of the said High Court-at-Bar.

The Petitioner complains that the 1st Respondent has indicted the Petitioner and/or exhibited information against the Petitioner in the said High Court-at-Bar relying upon certain decisions contained in the report of a Commission of Inquiry when such Commission itself has not recommended such a course of action. The said Commission of Inquiry has been appointed to investigate and inquire into and report on the issuance of Treasury Bonds during the period of 01.02.2015 to 31.03.2016.

Commission of Inquiry

The then President of the Republic of Sri Lanka in pursuance of the provisions of Section 2 of the Commissions of Inquiry Act No. 17 of 1948, as amended ('COI Act') issued a warrant appointing a Commission of Inquiry ('COI') by virtue of Gazette Extraordinary No. 2003/41 dated 27.01.2017 to make recommendations with reference to the matter referred to in the Schedule thereto after an investigation or an inquiry.

The said Schedule;

1. The issuance of Treasury Bonds during the period of 1st February 2015 and 31st March 2016 (hereinafter referred to as "such treasury bonds");
    a. The decision making processes that preceded the issuance of such treasury bonds including the decisions relating to-
        i. the sum of money to be raised by each such treasury bond issue;
        ii. the rate of interest payable on such treasury bonds or the method of determination of the rate of interest payable;
        iii. the dates on which interest on such treasury bonds shall be payable;
        iv. the rate at which, and the periods at the end of which, appropriation out of the Consolidated Fund and assets of Sri Lanka shall be made as a contribution to the sinking fund established for the purpose of redeeming such treasury bonds and the date from which such contributions shall commence;
        v. the date of redemption of such treasury bonds.

b. The disposal of such treasury bonds by the Primary Dealers, Direct Participants or Dealer Direct Participants.

The members of the said COI submitted their Final Report ('Report') to the then President on 30.12.2017 and the said Report is marked as 'P4'.

Charges

The Charges bearing Nos. 1, 3, 14, 15 and 16 of the said indictment 'P10' are related to the Petitioner.

The 1st Charge deals with the offence of causing Perpetual Treasuries Ltd (one of the primary registered agents of the Central Bank of Sri Lanka) to gain between the period of 03.03.2016 to 13.05.2016 an undue profit during the treasury bonds auction held by the Central Bank of Sri Lanka on 29.03.2016 from the treasury bonds bearing ISIN Nos. LKB01025C157, LKB01226F014 and LKB01530E152, which are public property with a face value of Rs.36.98 Billion.

The 3rd Charge is primarily based on the offences of abatement and dishonest misappropriation of property allegedly committed by the Petitioner while he was the Minister of Finance by advising the State Banks-Bank of Ceylon, People's Bank and National Savings Bank to place bids at the treasury bonds auction held by the Central Bank of Sri Lanka on 29.03.2016 for the Treasury Bonds bearing ISIN Nos. LKB01025C157, LKB01226F014 and LKB01530E152, at Yield Rates of 12.75%- 13.2%, 12.8%- 13.45% and 12.9%-13.6% respectively, which were lower than the prevailing Yield Rate.

The 14th, 15th and 16th Charges deal with the allegations against the Petitioner that he has allegedly stated only to accept bids for low Yield Rates and to accept bids made by other Government Institutions in addition to bids received by People's Bank, Bank of Ceylon, and National Savings Bank, in order to meet the public fund requirement at the Treasury Bonds Auction which was held on 29.03.2016 by the Central Bank of Sri Lanka and as a result the relevant officials of those three State Banks were deceived and induced to place Bids worth Rs. 8 Billion, Rs. 3.55 Billion and 8.53 Billion respectively, causing the Central Bank an opportunity cost.

Case before the High Court-at-Bar

After serving the indictment to the accused in the High Court-at-Bar case bearing No. HC(TAB) 2445/2021 and before the matter was taken up for trial, preliminary objections have been raised by some of the accused. The such preliminary objections raised on behalf of the 1st, 4th, 5th and the 6th Respondents have been rejected by the High Court-at-Bar.

But the preliminary objection raised on behalf of the 7th Respondent was taken into consideration by Court. The argument in the High Court-at-Bar in respect of the objection was whether a charge under the Offences Against the Public Property Act No. 12 of 1982, as amended (Public Property Act) could be framed against a legal person. The High Court-at-Bar considering all submissions has arrived at a conclusion that no charges under the Public Property Act could be framed against a legal person and further, no charge on the offence of abetting can be maintained based on an alleged offence under the Public Property Act against a legal person. As such, the accused have been discharged by order dated 06.12.2021 in respect of the offences described in charges bearing Nos. 1, 2 and 3 to 11 of the indictment.

The Petitioner tendering to Court a copy of the said order dated 06.12.2021 along with his counter affidavit submitted that the decision made by the 1st Respondent to indict the Petitioner and/or exhibit information against the Petitioner does not disclose an offence in terms of Section 5(1) of Public Property Act read with Sections 102 and 303 of the Penal Code. It was informed that the Attorney General has lodged an appeal against the said order of the High-Court-at-Bar and one of such applications are still pending before the Supreme Court.

Reliefs against the decisions of the COI

One of the reliefs sought by the Petitioner is for a writ of Certiorari quashing the decisions made in the said Report of the COI as described in paragraph (g) of the prayer of the Petition. The Petitioner asserts that he was not questioned by the COI at any stage regarding the auction held on 29.03.2016 & regarding the meeting held on 28.03.2016 and as such the COI never questioned the Petitioner regarding the subject matter of the case before the High Court-at-Bar. The COI has called witnesses of the three State Banks namely, Bank of Ceylon, People's Bank and National Savings Bank after the testimony of the Petitioner before the COI was concluded.

The Petitioner complains that the COI should have summoned the Petitioner to explain his version on the treasury bond auction held on 29.03.2016 and the meeting held at the Ministry of Finance on 28.03.2016 after those witnesses of the Banks gave evidence and thus, the decisions in the Report made against the Petitioner based on the testimony of such witnesses, without giving him a hearing, is in violation of the Rules of Natural Justice. The Petitioner relies on the judgement of ***Ceylon Printers Ltd. and another vs. Weerakoon, Commissioner of Labour and others (1998) 2 Sri. L.R. 29 (at p. 36)*** in which the following dicta of Lord Parker in ***Crofton Trust Investment Limited v. Greater London Rent Assessment Committee and another (1967) 2 All ER 1103,1109*** has been followed; "*it is quite clear that whenever a new point emerges something, which might take a party by surprise, or something which the Committee has found out and of which parties would have no knowledge, fairness would clearly dictate that they should inform the parties and enable them to deal with the points*". The Petitioner's contention is that the reliefs prayed for in the paragraphs (c) to (g) of the prayer of the Petition should be granted on this reason alone.

As opposed to such arguments, the 1st Respondent referring to the provisions of Section 13 of the COI Act submits that every person who gives evidence before a COI shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court. According to the 1st Respondent, the privileges and safeguards for a witness of a court of law which is relevant to the said matter before COI is laid down in Section 132 of the Evidence Ordinance; and further, the charges framed against the Petitioner are not based on the testimony of the Petitioner before the COI and such testimony does not reveal any information about the meetings convened by the Petitioner on 28.03.2016 and 30.03.2016. In view of the above, the 1st Respondent contends that neither the COI nor the 1st Respondent has acted in violation of Section 13 of the COI Act and has observed rules of Natural Justice at all material times.

Now, I need to draw my attention to the order dated 13.09.2017 of the COI. The eloquent words of a scholarly judge in ***B. Sirisena Cooray vs. Tissa Dias Bandaranayake and Two others 1999 1 Sri. L.R. 1*** have been referred to in the said order by the COI. Dheeraratne J. in the said case has stated;

> *"….it is interesting to reflect upon how great judges of this court, injected into commission proceedings a degree of fairness, particularly before labelling a person as a criminal. They*

were quite conscious, being public functionaries on whom enormous powers were vested by law, of the fact that "it is excellent to have a giant's strength, but it is tyrannous to use like a giant" (Measure for Measure)."

The Members of the COI have clearly placed on record that the COI from its commencement, endeavored to be mindful of the duty cast on them, in the words of Dheeraratne J., to act "fairly" and "with the cold neutrality of an impartial judge". The COI has emphasized that it is implicit that the members have a duty to act equitably throughout these proceedings and they have endeavoured to stay within the confines of the Law.

The COI in the above order has given a comprehensive analysis in respect of the witnesses giving evidence before the Commission. The following passage of the said order is apt here.

> "We are mindful of the established rule of the Criminal Law that, an accused cannot be compelled to give evidence. While an accused can choose to give evidence on his own behalf, the Law prohibits him being compelled to give evidence. This rule derives from section 4 of the Ordinance No. 09 of 1852 of the English Law which stated that, *"no accused person shall be competent or compelled to give evidence for or against himself."*. The rule is partly reflected in section 120(6) of our Evidence Ordinance which states that, "*In criminal trials the accused shall be a competent witness* ***on his own behalf****…".* [emphasis added]. The resulting position is that, the English Law rule that an accused cannot be compelled to give evidence, prevails in our Law too, by operation of section 100 of the Evidence Ordinance."

In light of the above, I take the view that the clear intention or the nature and the rationale of the respective pronouncements of the COI should be procured to assess whether the COI has acted in contrary to the principles of rules of Natural Justice in respect of the impugned assertions of the COI reflected in paragraph (g) of the prayer of the Petition. In this regard what is reflected by terms 'ratio decidendi' and 'obiter dicta' can be adopted to a certain extent in order to assume the nature and the rationale of such impugned assertions.

On perusal of the said impugned assertions along with the observations and the recommendations made by the COI, it implies that the COI has not made any adverse

determination against the Petitioner based on such assertions in reference to the subject matter of the aforesaid High Court-at-Bar case in the said Report. The 1st Respondent in his written submissions dated 09.01.2023 has submitted (paragraph 2(iv));

> *"It is also self-evident that the charges framed against the Petitioner, as set out in paragraph 33 in the Petitions, are framed not based upon the testimony of the Petitioner before the Commission for that testimony does not reveal any information about the meetings convened by the Petitioner on 28th and 30th March 2016, at which the Petitioner gave the impugned instructions to the three State Banks which ultimately proven to be beneficial to the PTL "*

Hence, I am not inclined to accept the propositions of the Petitioner that the COI has acted in violation of rules of Natural Justice, particularly in respect of the impugned assertions reflected in paragraph (g) of the prayer of the Petition. Anyhow, I need to examine whether the Report of the COI or any of its observations or recommendations have been utilized by the 1st Respondent unlawfully when exercising his prosecutorial discretion.

Prosecutorial discretion

The prosecutorial discretion of the Attorney General has been scrutinized in several previous judgements. In ***Land Reform Commission vs. Grand Central Limited (1981) 1 Sri. L.R. 250***, Samarakoon C.J. has given due prominence to the post of Attorney General. He has stated that the Attorney General is the Chief Legal officer and advisor for the State and thereby to the sovereign and is in that sense an officer of the public; the Attorney General of this country is a leader of the bar and the highest legal officer of the State; this predominance of the Attorney General is a common feature in many common wealth countries.

In terms of Section 393(1) of the Code Criminal Procedure Act ('CCPA'), it shall be lawful for the Attorney General to exhibit information, present indictments and to institute, undertake, or carry-on criminal proceedings in the cases mentioned therein including in any case other than one filed under Section 136(1)(a) of the CCPA which appears to him to be of importance or difficulty or which for any other reason requires his intervention. The Attorney General exercises wide powers in respect of criminal prosecutions and such power has been bestowed on the Attorney General by statutory provisions. Hence, the judicial review applications challenging the prosecutorial discretion of the Attorney General has to be examined very carefully and a dire necessity of formulating appropriate

guidelines exist to be adopted before quashing an indictment or a decision of the Attorney General to file an indictment.

In ***The Attorney General vs. Sivapragasam et al, 60 NLR 468,*** Sansoni J. referring to the prosecutorial discretion of the Attorney General has said; (at page 470 & 471);

> *"Mr. Nadesan argued that it is not open to a Crown Counsel who claims to appear and conduct a prosecution to say that he is not leading evidence. He went so far as to say that no prosecutor, not even the Attorney-General, has a discretion in the matter; and that if there is evidence available he must lead it, and if he does not lead it he ceases to appear and conduct the prosecution and the complainant or his pleader would then be entitled to prosecute and lead evidence. With respect, I entirely disagree with this proposition. The logical result of accepting it would be to place a duty on prosecuting counsel to lead evidence even when he knows that all the available evidence will fail to establish the charge against the accused. No prosecuting counsel with any regard for the Court or his own position as an officer of justice need follow such a course. The only object of leading evidence for the prosecution is to establish the ingredients of the charge, and if counsel is not satisfied in his own mind that the totality of the evidence available will achieve that result, he will be failing in his duty to the Court and to the accused if he were to insist on a fruitless recording of evidence and a senseless waste of time. It is quite wrong to suppose that a prosecuting counsel's duty is a mere mechanical leading of evidence regardless of the object for which evidence is led. If he is satisfied that the evidence is insufficient to prove the charge and insists on leading evidence, how can he in conscience ask the Court to convict the accused?"*

Our superior courts have taken a stand that the prosecutorial discretion of the Attorney General is not unfettered. This aspect has been well discussed in the cases such as ***Victor Ivon vs. Sarath N. Silva, Attorney General and others (1998) 1 Sri. L.R. 340; Victor Ivan and others vs. Hon. Sarath N. Silva and others (2001) 1 Sri. L.R. 309*** and ***Centre for Policy Alternatives vs. B. N. Jayarathne and others, SC/FR Application/23/2013, SC minutes 24.03.2014.*** The propositions of the above judgments have been followed by this Court in ***Saroja Govindasamy Naganathan alias Maharachchige Sarojani Perera and others vs. Hon. Attorney General and Wasantha Kumara Jayadewa Karannagoda, CA/WRIT/424/21 decided on 10.11.2021; and Ranjith Keerthi Tennakoon vs. Hon. Attorney General, Inspector General of Police, Ajith Nivard Cabral and others, CA /WRIT/417/2021 decided on 03.11.2021.***

In one of the above judgements, I have referred to an article written by Osita Mba under the heading of '***Judicial Review of the Prosecutorial Powers of the Attorney-General in England and Wales and Nigeria: an Imperative of the Rule of Law', (2010) Oxford U Comparative L Forum 2 at ouclf.law.ox.ac.uk*** in which views have been expressed on the prosecutorial powers of the Attorney General. I have highlighted therein the following passage where the grounds for judicial review of the prosecutorial powers have been recognized;

> *'Some of the grounds for judicial review of the prosecutorial powers of Director of Public Prosecutions under the Constitution of Fiji, which are similar to the powers of the English and Nigerian Attorneys-General, were listed in Matalulu v. DPP*[1]*. In a passage that was cited and endorsed by the Privy Council in Mohit*[2]*, and adopted by the House of Lords in R (Corner House Research and another) v. Director of the Serious Fraud Office (the BAE case)*[3]*, the Supreme Court of Fiji stated that a purported exercise of power would be reviewable if it were made:*
>
> 1. *In excess of the DPP's constitutional or statutory grants of power – such as an attempt to institute proceedings in a court established by a disciplinary law ….*
> 2. *When, contrary to the provisions of the Constitution, the DPP could be shown to have acted under the direction or control of another person or authority and to have failed to exercise his or her own independent discretion – if the DPP were to act upon a political instruction the decision could be amenable to review.*
> 3. *In bad faith, for example, dishonesty. An example would arise if a prosecution were commenced or discontinued in consideration of the payment of a bribe.*
> 4. *In abuse of the process of the court in which it was instituted, although the proper forum for review of that action would ordinarily be the court involved.*
> 5. *Where the DPP has fettered his or her discretion by a rigid policy – eg one that precludes prosecution of a specific class of offences.'*

R vs. Anderson (2014) 2 SCR 167 is a judgement of the Supreme Court of Canada in which it has been held;

[1][2003] 4 LRC 712.
[2][2006] UKPC 20, [2006] 1 WLR 3343 ('*Mohit*') (Lords Bingham, Hoffmann, Hope, Carswell and Brown).
[3][2008] EWHC 714 (Admin) paragraphs 30-31.

"….Prosecutorial discretion is reviewable for abuse of process. The abuse of process doctrine is available where there is evidence that the Crown's conduct is egregious and seriously compromises trial fairness or the integrity of the justice system. The burden of proof lies on the accused to establish, on a balance of probabilities, a proper evidentiary foundation to proceed with an abuse of process claim, before requiring the Crown to provide reasons justifying its decision….."

Further, our Supreme Court in ***Kaluhath Ananda Sarath De Abrew vs. Chanaka Iddamalgoda and others, SC/FR No. 424/2015, SC minutes of 11.01.2015*** has considered the issue as to whether the decision of the Attorney General be reviewed in those proceedings and has found similar grounds for challenge as follows;

'where the legislature has confided the power on the Attorney General to forward indictment with a discretion how it is to be used, it is beyond the power of Court to contest that discretion unless such discretion has been exercised ***mala fide*** *or an* ***ulterior motive*** *or in* ***excess of his jurisdiction'****.*

His Lordship Justice A. H. M. D. Nawaz (with their Lordships Justice Shiran Gooneratne and Justice Arjuna Obeysekere agreeing) in ***Janaka Bandara Tennakoon vs. Attorney General, CA/Writ/335/2016 decided on 20.11.2020 (CA)*** referring to the circumstances of the relevant case have arrived at a conclusion that the Magistrate had no jurisdiction to commence the non summary inquiry in the way he did and concluded it on one single day as he acted in total disregard of statutory stipulations. The Court taking an advanced approach held that there was no warrant for such procedure and it does not absolve the Magistrate from scrupulously observing the mandatory provisions of the law and thus, there was an illegal committal and the resultant indictment dated 01.08.2016 becomes null and void.

After a wide reading on principles relating to prosecutorial discretion enunciated by courts in various jurisdictions, I have observed in ***Dassanayake Mudiyanselage Deepal Pushpa Kumara vs. Hon. Attorney General and others, CA/WRIT/291/2022 dated 27.01.2023***;

"In a nutshell the vital ground that needs consideration of this Court, at this stage is what prejudice would be caused to an accused who has been indicted, by placing his defence through evidence/material before the trial court rather than applying to the review court. Similarly, it is important to consider whether the review court can play the role of a trial judge and

analyze evidence in respect of an alleged offence. ……. I take the view that the following guidelines or criteria are fit and proper to be adopted in the instant Application when considering the vires of the decisions of the Attorney General, particularly, in respect of the impugned indictments served on his behalf. Those should be applicable in addition to the traditional grounds of review in respect of an application for judicial review. Thus, it is appropriate to examine whether merely leading evidence for the prosecution in the trial court;

i. is for the purpose of establishing the ingredients of the charge against the accused
ii. could establish the ingredients of the charge
iii. will be sufficient for the Trial Judge to efficaciously and adequately determine any primary issue with mixed facts and law or an issue of law.

If leading evidence for the prosecution does not fulfil the above requirements, my view is that there is a possibility to review the prosecutorial discretion exercised by the Attorney General. Similarly, when a decision/certificate of a public authority is material in order to establish the ingredients of a charge, it is necessary to examine whether the trial court could adequately and efficaciously review such decision and whether the trial court has power to review such decision/material."

Apart from above I must draw my attention to the conclusion remarks of Prof. Christopher Forsyth (in '***Administrative Law' by the late Sir William Wade and Christopher Forsyth, 11th edition, Oxford p.230***) on 'No Evidence Rule'. He says; 'despite lack of any decision reviewing the old authorities against a 'no evidence' rule, it seems clear that this ground of judicial review is now firmly established and the 'No evidence' thus takes place as yet a further branch of the principle of ultra vires.' Prof. Forsyth further elaborates (at p.230);

"The time is ripe for this development as part of the judicial policy of preventing abuse of discretionary power. To find facts without evidence is itself an abuse of power and a source of injustice, and it ought to be within the scope of judicial review. This is recognised in other jurisdictions where the grounds of review have been codified by statute. In Australia the Administrative Decisions (Judicial Review) Act 1977 expressly authorises review on the ground that there was 'no evidence or other material' to justify the decision where some particular matter has

to be established,[4] and a somewhat analogous provision has been enacted in Canada.[5]"

Lord Denning MR in ***Ashbridge Investments Ltd vs. Minister of Housing and Local Government (1965) 1 WLR 1320 at 1326*** stated; "the court can interfere with the Minister's decision if he has acted on no evidence; or if he has come to a decision to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account, or vice versa; or has otherwise gone wrong in law." (see-***'Administrative Law' by Wade and Christopher Forsyth, 11th edition, Oxford p.229)***

These cannons of articulation relevant to the prosecutorial discretion of Attorney General should be encapsulated for clarity and for the purpose of a fuller and proper adjudication of the instant Application. Hence, I take the view that the following guidelines which in my view are fit and proper to be utilized in assessing such prosecutorial discretion and accordingly, a party could challenge the decision of the Attorney General to forward an indictment if such decision falls within any of the limbs of the criteria enunciated therein;

1. Whether mere objective of leading evidence for the prosecution in the trial court is not for the purpose of establishing the ingredients of the charge against the accused

2. Whether leading evidence for the prosecution in the trial court;
    i. cannot establish the ingredients of the charge due to any restrictions of a written law
    ii. will not be sufficient for the Trial Judge to efficaciously and adequately determine any primary issue with mixed facts and law or an issue of law.

3. Applicability of the 'No evidence rule' in exceptional circumstances.

4. If the Attorney General has taken a decision assuming a jurisdiction which he doesn't have or exceeding his jurisdiction.

[4]Ss. 5,6. See similarly the Administrative Justice Act 1980 of Barbados, s.4.
[5]Federal Court Act 1971, s.28 (1). See also Law Reform Commission of Canada, Report No. 14 (1980), recommendation 4.3.

5. If the Attorney General has taken a decision exercising his prosecutorial discretion in bad faith/ mala fide or with ulterior motive or with political motivation.

6. The decision would amount to an abuse of process.

7. Procedural irregularity or existence of any illegality during the decision making process.

8. If there is a clear miscarriage of justice.

However, before issuing a writ, the Court will have to take into consideration the special circumstances of the respective case and also follow the fundamental principles relating to granting of prerogative remedies by way of a writ. What is material in the instant Application is the source by which the Attorney General has derived power to institute criminal proceedings at the conclusion of a COI. The Attorney General's power to institute criminal proceedings emerges through the provisions of Section 24 of the COI Act. Thus, I need to examine how the prosecutorial discretion has been exercised by the 1st Respondent in view of the said Section 24.

Effect of Section 24

Section 24 of the COI Act;

> 'Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979 or any other law, it shall be lawful for the Attorney-General to institute criminal proceedings in a court of law in respect of any offence, based on material collected in the course of an investigation or inquiry or both an investigation and inquiry, as the case may be, by a Commission of Inquiry appointed under this Act.'

In view of the above Section, what is important to this matter is how the Attorney General derives power to institute criminal proceedings. The above Section does not identify a particular category of persons against whom the Attorney General can institute criminal proceedings. As per the Report of the COI (at p.1165 of the docket), the Section 16 of the COI Act envisages three categories of persons namely;

i. persons who are implicated in the matter under inquiry;

ii. persons who are concerned in the matter under inquiry; and
iii. persons who consider it desirable that they should be represented.

However, it is stipulated that it is lawful for the Attorney General to institute criminal proceedings in respect of any offence based on material collected in the course of an investigation or an inquiry under the said Act. On a careful perusal of the provisions of the said Section, it implies that the duty of identifying the offence is vested upon the Attorney General before instituting such proceedings. The Attorney General can arrive at such conclusion based on the material collected in the course of such investigation or inquiry. The Section 24 of the COI Act was introduced by the Commissions of Inquiry (Amendment) Act No. 16 of 2008 and the said Amendment Act specifically declares that in an inconsistency between the Sinhala and Tamil texts of the Act, the Sinhala text shall prevail. The word used in the Sinhala text of the said Amendment Act for 'material' is 'තොරතුරු' ('...පරීක්ෂණ කොමිෂන් සභාවක් විසින් අවස්ථාවෝචිත පරිදි පවත්වන ලද විමර්ශනයක දී හෝ පරීක්ෂණයක දී හෝ එම විමර්ශන සහ පරීක්ෂණ යන දෙකේ දීම ලබාගත් තොරතුරු මත පදනම්ව...'). It is interesting to note that by way of Commissions of Inquiry (Amendment) Act No. 3 of 2019, the Commission to Investigate Allegations of Bribery or Corruption ('CIABOC') has been empowered to direct the Director General provided that the CIABOC is satisfied that an offence under the laws mentioned therein has been committed on a consideration of material collected in the course of an investigation or inquiry under the COI Act. The Sinhala text of the said Act No. 3 of 2019 identifies the word 'material collected' as 'රැස් කරන ලද කරුණු'. It is obvious that the legislature has given two different interpretations to the word 'material' embodied in the English text. Thus, a reasonable question arises whether the words 'material', 'තොරතුරු', 'කරුණු' are one and the same or whether the legislature has deliberately excluded the word 'evidence' ('සාක්ෂි') from the COI Act.

In this context, this Court has a great task to understand whether the Attorney General is empowered to institute criminal proceedings upon;

i. material collected or
ii. information collected (තොරතුරු) or
iii. matters (කරුණු)

One can simply argue based on a Sinhala glossary that the word 'material' includes information (තොරතුරු) and matters (කරුණු). But I am doubtful whether the word 'evidence' is embodied without any ambiguity within the word 'material'. Anyhow, the legislature has used similar words in Section 26(1)(c) of the COI Act by which the Attorney General has the authority in the conduct of an inquiry or investigation under the COI Act to examine any witness summoned by the Commission, if it appears to him that the evidence of such witness is material to, or has disclosed information relevant to, the investigation or inquiry as the case may be.

In contrast to the voyage of discovering the clear intention of the legislature in respect of the word 'material', another important aspect has surfaced for examination whether the Attorney General should be satisfied based on such material collected that an offence has been committed, before instituting criminal proceedings. The Section 24A of the COI Act expressly requires the satisfaction of the CIABOC that an offence has been committed. Notwithstanding the wordings embodied in Section 24, I take the view that the Attorney General also should be satisfied based on whatever the material collected that an offence has been committed. Thus, it is mandatory for the Attorney General to reach such satisfaction following a due process. It is merely because the degree of fairness spelt out by Dheeraratne J. whose conscience has been deeply embraced by the COI, should be illuminated throughout the process of interpreting the words in Section 24 by Courts.

I am mindful of the words of Sansoni J. in the above case of ***The Attorney General vs. Sivapragasam***; (at pages 470 & 471);

> *"I have not seen the duties and responsibilities of prosecuting counsel set out better than in an article written by Mr. Christmas Humphreys Q. C. when he was Senior Prosecuting Counsel, Central Criminal Court [Criminal Law Review (1955) page 739]. His view, and it is one with which I respectfully agree, is that "the prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of prosecuting counsel to secure a conviction, nor should any prosecutor feel pride or satisfaction in the mere fact of success .... His attitude should be so objective that he is, so far as is humanly possible, indifferent to the result". He continues: "I have never myself continued a prosecution where I was at any stage in genuine doubt as to the guilt, as distinct from my ability to prove the guilt, of the accused. It may be argued that it is for the tribunal alone, whether magistrate or jury, to decide guilt or innocence.* ***I repeat that the prosecutor is fundamentally a minister of justice, and it is not***

in accordance with justice to ask a tribunal to convict a man whom you believe to be innocent."

*"**The obligation of prosecuting counsel to maintain scrupulous fairness in every case he handles is all the greater when he is Crown Counsel representing the Crown in a prosecution**. For "the Crown is interested in justice, the defence in obtaining an acquittal within the limits of lawful procedure and Bar etiquette". As Lord Hewart L.C.J. said in Sugarman [2 (1935) 25 Cr. App. Rep. page 115], "It cannot be too often made plain that the business of counsel for the Crown is fairly and impartially to exhibit all the facts to the jury. **The Crown is not interested in procuring a conviction. Its only interest is that the right person should be convicted, that the truth should be known and that justice should be done"**. I cannot see how the jury can honestly be asked even to consider convicting the accused if counsel for the Crown is satisfied that such a result should not follow upon the evidence available to the Crown. He must first be satisfied that there is a prima facie case against the accused before he enters on the task of leading evidence."* [Emphasis added].

I simply do not have to give more reasons to be guided by those persuasive and fluent words of Sansoni J. Thus, it cannot be assumed that the basic principles of fairness would permit the Attorney General to snatch the Report of the COI to institute criminal proceedings without following a due process.

Exhibiting information on the Report of the COI

The cardinal argument of the Petitioner revolves around the averments of paragraph 9 of the Statement of Objections of the 1st Respondent. The said Statement of Objections has been filed together with a corresponding affidavit in support of the averments therein. The affidavit has been affirmed by Mr. Chethiya Gunasekara, Additional Solicitor General, Officer in-charge of Administration of the Attorney General's Department. In the said Statement of Objections and the affidavit, it is clearly admitted that '*information was exhibited by the 1st Respondent on the charges that were being contemplated against the Petitioner on the basis of the material gathered at the Commission inquiry before the charges were framed and served on the Petitioner under High Court Trial at Bar case bearing No. HC/TAB/2445/2021*.'

The said Statement of Objections has been filed on 01.12.2021. The 1st Respondent after all the parties have formerly concluded their oral submissions, filing his written submissions introduced a letter written by the Attorney General dated 03.03.2020 (marked

'X') addressed to the Acting Inspector General of Police. Although the learned Senior Additional Solicitor General who appears for the 1st Respondent attempted to emphasize through the said document that the Attorney General has considered not only the material collected at the COI, the learned President's Counsel for the Petitioner vehemently objected to tendering a document along with the written submissions and moved that the said document be rejected.

The contention of the Petitioner is that it is not lawful for the 1st Respondent to exhibit information before the High Court-at-Bar based only on the material collected at the COI as the COI had not recommended to institute criminal action against the Petitioner in respect of the meetings held on 28.03.2016 or 30.03.2016.

Whether there is "material" against the Petitioner

The Petitioner has formulated an argument referring to the written submissions dated 09.01.2023 filed on behalf of the 1st Respondent by which the 1st Respondent has answered to the contentions advanced by the Petitioner in the written submissions filed on behalf of the Petitioner. Accordingly, the 1st Respondent identified the fact that the COI had not come to an adverse finding against the Petitioner as an admission. The stand sought to be established by the Petitioner revolves around the words "no evidence before us" in the decision of the COI where it has been decided (at p.718 of the docket);

> *"There is no evidence before us which suggests that Hon. Ravi Karunanayake, MP, the then Minister of Finance or Dr. Samaratunga, Secretary to the Ministry of Finance or any other officer of the Ministry of Finance advised or communicated to the PDD or the CBSL the fact that, the three State Banks had been instructed to bid at specified Yield Rates at the Treasury Bond Auction to be held on 29th March 2016 and been given an assurance that, Bids at higher Yield Rates would not be accepted at this Auction."*

Upon the evidence led before the COI and based on the circumstances laid down in the Report, the members of the COI were of the view that (at p.724 and p.725 of the docket);

> *"(i) Although it appears to have been unprecedented for a Minister of Finance to summon a meeting at which he instructs the State Banks to bid at specified Yield Rates at a Treasury Bond Auction, there is reliable testimony that, there have been instances where such instructions have been given by the Secretary to the Ministry of Finance.*

In any event, in view of the undesirably high Yield Rates which then prevailed, it was reasonable and justifiable for the Ministry of Finance to wish to bring these Yield Rates down at the Treasury Bond Auction to be held on 29th March 2016.

In this background and in view of the fact that, successive Governments have been known to use the state owned Peoples' Bank, National Savings Bank and Bank of Ceylon to implement some policy measures and it is not per se irregular for a Government to do so, we cannot find fault with Hon. Ravi Karunanayake, MP, the then Minister of Finance or the Ministry of Finance, for having convened the meeting on the 28th March 2016 and given instructions to the three State Banks to bid within a specified range of Yield Rates at the Treasury Bond Auction to be held on 29th March 2016;"

"(vi) ….However, it has to be kept in mind that, the Audio Recording establishes that, Ms. Roshini Wijeratne spoke very fast and somewhat unclearly. Therefore, it would be unfair to impute on Mr. Sarathchandra, by virtue of this telephone conversation only, a comprehensive knowledge of all the instructions and assurances given to the three State Banks at the meeting held at the Ministry of Finance on 28th March 2016."

"(vii) The acceptance of Bids at the aforesaid Auction at higher Yield Rates than the Yield Rates at which the three State Banks had placed their Bids, did not result in these three State Banks incurring an actual or real loss but did, cause an "opportunity loss" or "notional loss" to the three State Banks."

At the same time the COI has observed (at p. 770 of the docket);

"We would reasonably expect that, since the then Minister of Finance had instructed the National Savings Bank, Peoples' Bank and Bank of Ceylon to place Bids at these Yield Rates, which were considerably lower than the Yield Rates which the Market expected to obtain at these Auctions, these three State Banks are likely to have faced a degree of restriction when they placed at the Treasury Bond Auction held on 29th Marc 2016 since Bids at these specified Yield Rates, which would, almost inevitably, be accepted, will not represent the most profitable investments possible in the prevailing Market. The witnesses from the National Savings Bank, Peoples' Bank and Bank of Ceylon who gave evidence before us confirmed that, these three State Banks were of that view." (produced in verbatim)

The 1st Respondent gives much weight to certain assertions made by the COI to justify his decision to forward an indictment against the Petitioner. One of such observations made by the COI (p.718 of the docket) is that although, the Petitioner was advised of the day on which the evidence of several witnesses from the three State Banks would be led, neither the Petitioner nor his Counsel appeared before the COI on the particular day. I am of the view that the Petitioner and the 1st Respondent are raising arguments on the said observations to interrogate on whether the COI has not complied the rules of Natural Justice when issuing the Report.

The 1st Respondent draws the attention of this Court to the following passages of the report of the COI;

> *"We are of the view that the evidence before us suggests that, Hon. Ravi Karunanayake, while he was Minister of Finance derived a substantial benefit from the Lease Payments made by Walt and Row Associates (Pvt) Ltd, which is an Associate Company of Perpetual Treasuries Ltd and which is owned and controlled by the same persons who own and control Perpetual Treasuries Ltd."* (at p. 848 of the docket)
>
> *"We have held that, any such omission on the part of Hon. Ravi Karunanayake, MP or the Ministry of Finance to inform the CBSL is likely to have given Perpetual Treasuries Ltd an advantage at the Treasury Bond Auction held on 29th March 2016.*
>
> *We note that, these meetings were held at the Ministry of Finance and Hon. Ravi Karunanayake gave these instructions, soon after he moved into the Apartment for which Walt and Row Associates (Pvt) Ltd paid the Lease Rental."* (at p. 849 of the docket)
>
> *"Finally, we note that, in the course of his evidence, Hon. Ravi Karunanayake, MP stated on oath, that he had no personal, business or official relationship with Mr. Arjun Aloysius. In this connection, we reproduce below, the relevant evidence when Mr. Karunanayake was Cross Examined by learned Senior Additional Solicitor General:…"* (at p. 849 of the docket)
>
> *"However, we note that, the data in the "Forensic Report on Communication Information Analysis" prepared by the Criminal Investigation Department and marked "**C350**" [and related documents] suggests that, there has been extensive telephonic communication between*

Hon. Ravi Karunanayake, MP and Mr. Arjun Aloysius during the period stated in that Report. We note that, the Additional Written Submissions filed on behalf of Mr. Karunanayake, MP on 28th November 2017, do not dispute that, Hon. Ravi Karunanayake, MP and Mr. Arjun Aloysius had some telephonic communications with each other during that period." (at p. 850 of the docket)

In addition to above, the 1st Respondent brings to the attention of this Court the observations made by the COI where the COI has noted that the Hon. Attorney General or other appropriate authorities could also consider whether the evidence given by the Petitioner before the COI was shown to have been incorrect and if that was the case, whether there are grounds for prosecution under Section 179 and/or Section 188 of the Penal Code or other relevant provisions of the law, read with Section 9 of the COI Act. The COI has made the above observation after referring to some telephonic communications between the Petitioner and Mr. Arjun Aloysius during the period stated in the Report.

Similarly, our attention was drawn by the 1st Respondent to the Clause 24 under the sub-heading 'Recommendations' (p.931 of the docket) by which the COI has recommended that the CIABOC should consider whether the Petitioner, while he was the Minister of Finance, derived a substantial benefit from the lease payments made by Walt & Row Associates (Pvt) Ltd (which is an associate company of Perpetual Treasuries Ltd. and which is owned and controlled by the same persons who own and control Perpetual Treasuries Ltd.) for the lease of apartment occupied by the Petitioner and his family and, if so, determine whether appropriate action should be taken against the Petitioner under the Bribery Act.

To my mind, such recommendations made by COI should be dealt with by the CIABOC and the charges mentioned in the indictment 'P10' are in reference to the issues which arose at the meeting held on 28.03.2016 between the Petitioner and the representatives of those three State Banks. The 1st Respondent contends that the CIABOC has already instituted a prosecution against the Petitioner in that regard before the High Court of Colombo in case bearing No. B70/2020 and the trial of the said case is pending. Therefore, it is clear that any assertions or recommendations made by the COI for the CIABOC to consider the institution of criminal proceedings against the Petitioner has no direct impact on the questions of the instant Application. At this stage, I must advert to

examine whether the assertions or observations made in reference to the Petitioner by the COI are adequate to form an opinion by the 1st Respondent to indict the Petitioner.

As I have mentioned earlier, it is important to understand and identify the true nature of the assertions or observations or recommendations made by the COI in respect of the Petitioner. During such process, I need to examine the overview of the recommendations and determinations made by the COI. The Chapter 32 of the Report deals with the 'Determinations and Report on the issues stated in the mandate' whereas Chapter 33 lays down the 'Recommendations'.

The COI has held, inter alia, that;

i. Perpetual Treasuries Ltd., the 1st accused of the indictment bearing case No. HC(TAB) 2445/2021 acted upon 'inside information' (or 'price sensitive information') when it placed bids for an unprecedented value of Rs. 15 Billion at an auction at which only Rs. 1 Billion had been offered.
ii. Mr. Arjuna Mahendran, the 3rd accused of the indictment bearing case No. HC(TAB) 2445/2021 was the source from which the said 1st accused obtained such 'inside information' and accordingly, the said 3rd accused acted wrongfully, improperly, mala fide, fraudulently and in gross breach of his duties as the Governor of the Central Bank.
iii. Mr. Arjun Aloysius, the 4th accused of the indictment bearing case No. HC(TAB) 2445/2021 had inside information.
iv. The said 3rd accused and Mr. Kasun Palisena, the 5th accused are responsible for the damage or detriment caused to the Government and Mr. Geoffrey Aloysius, the 6th accused is one of the sole owners of the ultimate holding company of Perpetual Treasuries Ltd.

The COI has recommended the Attorney General and other appropriate authorities to institute appropriate proceedings in Court against Perpetual Treasuries Ltd., Mr. Arjuna Mahendran, Mr. Arjun Aloysius, Mr. Geoffrey Aloysius, Mr. Kasun Palisena and Mr. Chiththa Ranjan Hulugalla-7th accused, Muththu Raja Surendran-8th accused, A. G. Punchihewa-9th accused, who are Directors of the 1st accused company.

It is abundantly clear that the COI has not made an expressed recommendation or direction against the Petitioner under the said Chapters 32 and 33, although, the COI has

expressed an opinion that the CIABOC should examine as mentioned above whether appropriate actions should be taken against the Petitioner under the Bribery Act. The other opinion expressed by the COI referring to the truthfulness of evidence given by the Petitioner is also based on alleged telephonic communication between the Petitioner and Mr. Arjun Aloysius. As observe above, the CIABOC has already instituted proceedings against the Petitioner.

Hence, I take the view that the assertions or observations or recommendations made by the COI in reference to the meetings on 28.03.2016 and 30.03.2016 and the purported allegations leveled against the Petitioner by the 1st Respondent on instructions given to the State Banks are merely in the nature of assertions or observations of the COI and not expressed determinations.

Due Process

Having considered the nature of the assertions, observations and recommendations made in respect of the Petitioner by the COI in the Report, now, I need to examine whether the decision of the 1st Respondent to indict the Petitioner falls within any of the limbs of the guidelines set out above.

At the outset, it is important to note the following passage of the Report (p.285 of the docket) where the COI has raised concerns upon the manner in which the Petitioner was questioned by the learned representative of the 1st Respondent;

> *"He gave his answer at the outset of his evidence. Despite the fact that the he has already clarified the manner in which the Gazette Notification was published in terms of the Registered Stock and Securities Ordinance. Mr. Dappula De Livera P.C. questioned him at length on this issue disregarding even the directions given by the members of the Commission. His questioning on this issue did not succeed in getting any new material for the purpose of writing the Report by the Commission. Such questioning by him was a waste of time."*

Ironically, the said learned representative of the 1st Respondent later on has signed the document dated 11.02.2021 exhibiting the information in respect of offences to be tried against the accused including the Petitioner, before the High Court-at-Bar by three judges without a jury.

I am mindful of the cardinal principle that where the facts are in dispute and in order to discover the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity to examine their witnesses. (see-***Thajudeen vs. Sri Lanka Tea Board and another (1981) 2 Sri. L.R. 471***). One may argue that the issues raised by the Petitioner can be easily and effectively canvassed before the relevant High Court-at-Bar. Anyhow, it is important to bear in mind that the 1st Respondent has decided to indict the Petitioner as a consequence to the Report of COI. As observed above, the Attorney General is empowered by Section 24 of the COI Act to institute criminal proceedings based on material collected in the course of an investigation/inquiry under the said Act notwithstanding anything to the contrary in the CCPA or any other law. This power conferred on the Attorney General should be exercised based on the golden rules relating to the principles of 'fairness'. The criminal proceedings instituted by the Attorney General under the said Section 24, thus, in my view, should be reviewed carefully.

Although, the 1st Respondent attempted to introduce the letter dated 03.03.2020 (marked 'X') addressed to the Inspector General of Police at an inappropriate stage of the proceedings relating to the instant Application, I take the view that the 1st Respondent has failed to satisfy this Court that a due process has been followed before taking a decision to indict the Petitioner. I am aware that the Attorney General is not essentially bound to divulge evidence before a Review Court to justify his reasons to forward an indictment. However, the concern of this Court in the instant Application is not only whether sufficient evidence was available but whether the due process has been followed by the 1st Respondent before he was contented that there were sufficient evidence against the Petitioner. This is because, under Section 24 of the COI Act, the Attorney General has been granted authority to take a decision notwithstanding anything in the contrary to the CCPA. Further, as observed earlier, the ambiguity on the definition of the word 'material' reflected in the said Section 24 adds additional duty on the Attorney General to satisfy a Review Court that such due process has been followed and the decision taken to institute proceedings is supported with the said principles of 'fairness'.

The two erudite judges of the Supreme Court and a retired Deputy Auditor General, who were the members of the COI, after a strenuous exercise of fact finding concluded that Mr. Arjuna Mahendran's acts have caused grave prejudice to the Government and also to the Central Bank's ability to raise public debt at the 'lowest possible cost'. The COI has held,

inter alia, that the said Mr. Mahendran acted wrongfully, improperly, fraudulently and in gross breach of his duties as the Governor of Central Bank when he instructed that bids to the value of Rs.10.058 Billion be accepted at the treasury bond auction held on 27.02.2015 for the improper and wrongful collateral purpose of enabling Perpetual Treasuries Ltd. to obtain a high value of treasury bonds at that auction at low bid prices and high yield rates. The above is one among several findings of the COI.

However, it cannot be assumed that the total loss caused to the Government due to such conduct of certain individuals provide a special sanction for the Attorney General or any other authority to institute criminal proceedings based on mere assertions or observations made by the said COI. It is highly inappropriate to commence criminal proceedings on conventional ideologies of trapping a person and naming him as an 'accused' to discover whether such person has committed an offence, after going through a lengthy trial. The authorities should not, under the cover of upholding the principles of Rule of Law make decisions according to the multiple echoes of the general public or only on the interest of certain portions of the public. It is often seen that the change of Government is considered as a barren mandate to institute criminal proceedings or withdrawal of criminal proceedings by the authorities against respective political opponents based only on political motivation. This kind of unfortunate occurrences will never emerge if an unvarying due process and fairness is in its place steadily.

Similarly, the Prosecutors should not be prejudiced with utterances or orders made by a fact finding commission unless such commission has expressly made a determination or a recommendation against a particular individual. However much the Prosecutor is honest & impartial, no person should be prosecuted based only on untenable public opinion or on stereotypical personal ideologies as the role of such Prosecutor or the Attorney General is to ensure the fairness at every stage in the criminal proceeding. The following observations made by the Supreme Court of India (criminal appellate jurisdiction) in ***Aparna Bhat vs. The State of Madhya Pradesh, Criminal Appeal No. 329 of 2021 (Special Leave Petition (CRL.) No. 2531 of 2021) [Arising out of S.L.P. (CRL.) Diary No. 20318 of 2020] decided on 18.03.2021*** can be considered as an example to explain such stereotypical personal ideologies**;**

> *"The current attitude regarding crimes against women typically is that "grave" offences like rape are not tolerable and offenders must be punished. This, however, only takes into*

consideration rape and other serious forms of gender-based physical violence. The challenges Indian women face are formidable: they include a misogynistic society with entrenched cultural values and beliefs, bias (often sub-conscious) about the stereotypical role of women, social and political structures that are heavily male- centric, most often legal enforcement structures that either cannot cope with, or are unwilling to take strict and timely measures. Therefore, reinforcement of this stereotype, in court utterances or orders, through considerations which are extraneous to the case, would impact fairness." (Emphasis added)

For the reasons set out above, I take the view that the Attorney General should be satisfied by following due process that adequate evidence and material are available to prosecute an accused against whom no express recommendation or a determination has been made by the COI, before commencing criminal proceedings against such accused under Section 24 of the COI Act. The 1st Respondent is unsuccessful in establishing before this Court the fact that the 1st Respondent has followed such due process for him to be satisfied upon the availability of adequate material and evidence particularly against the Petitioner. This requirement will be certainly different if the COI has made clear and express pronouncements in respect of persons who are implicated in the matter under inquiry or any other appropriate persons under Section 16 of the COI Act. I am highly Influenced in this regard by the admissions of the 1st Respondent in his Statement of Objections supported by an affidavit that the information was exhibited by the 1st Respondent on the charges that were contemplated against the Petitioner on the basis of the material gathered at the COI.

The information exhibited by the 1st Respondent in respect of the offences to be tried against the Petitioner before the High Court-at-Bar appears to be directly based on alleged facts and circumstances reflected in the Report of the COI. I need to reiterate that the assertions or observations or recommendations made by the COI in reference to the meetings on 28.03.2016 and 30.03.2016 and the purported allegations leveled against the Petitioner by the 1st Respondent on instructions given to the State Banks are merely in the nature of assertions or observations of the COI and such assertions or observations cannot be considered as 'material' as intended by the legislature in the said Section 24 of the COI Act.

In view of my above findings and based on the special circumstances of this case, I am of the opinion that the mere leading of evidence for the prosecution against the Petitioner in

the trial court cannot establish the ingredients of the charges due to the restrictions of a written law. Additionally, the decision to indict the Petitioner cannot be assumed as a decision taken following due process and with adequate evidence in terms of the 'No evidence rule'.

Hence, I proceed to issue a writ of Certiorari quashing the decision made by the 1st Respondent to charge the Petitioner by way of an indictment and/or information on the charges bearing Nos. 1, 3, 14, 15 and 16 contained in the document marked 'P10' in relation to case No. HC(TAB)2445/2021. This Judgement should not impede or obstruct any investigations to be conducted against the Petitioner nor shall this Judgement impede or obstruct the 1st Respondent from maintaining the Indictment bearing case No. HC(TAB) 2445/2021 against the 1st, 3rd to 11th Accused, before the High Court-at-Bar.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal