

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

*In the matter of an Appeal under section
331 (1) of the Code of Criminal Procedure
Act No- 15 of 1979.*

Court of Appeal Case No:

CA/HCC/0397/2019

Commission to Investigate Allegations of
Bribery or Corruption

COMPLAINANT

Vs.

High Court of Colombo

Case No: HCB/2131/2016

Rengasamy Selvarajah,
No. 296, Alhena,
Naula.

ACCUSED

AND BETWEEN

Rengasamy Selvarajah,
No. 296, Alhena,
Naula.

ACCUSED-APPELLANT

Vs.

1. Commission to Investigate Allegations of
Bribery or Corruption,
No. 36, Malalasekara Mw, Colombo 07.

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

RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.

Counsel : Senarath Jayasundara with C. Wedage and Nandana
Gamage for the Accused Appellant
: Gayan Maduwage for the Respondent

Argued on : 01-12-2022

Written Submissions : 01-12-2022, 04-07-2022 (By the Accused-Appellant)
: 01-12-2022, 28-10-2022 (By the Respondent)

Order on : 27-01-2023

Sampath B. Abayakoon, J.

**Order on the preliminary objection raised by the learned Counsel for the
Bribery Commission**

The accused appellant (hereinafter referred to as the appellant) filed this appeal on being aggrieved of his conviction and the sentence by the learned High Court Judge of Colombo.

The appellant was indicted before the High Court of Colombo on two counts of soliciting and accepting a gratification of Rs. 3000/- being a government servant, which are offences punishable in terms of section 19(c) of the Bribery Act.

After trial, he was found guilty as charged and sentenced accordingly.

The appellant has filed his petition of appeal on 02-09-2019, while being incarcerated through the Jailer of the Welikada Prison, as provided for by section 331(1) of the Code of Criminal Procedure Act, naming only the Hon. Attorney General as the respondent.

However, on 05-09-2019, the Attorney-at-Law for the appellant too has filed an appeal on behalf of him, citing the Commission to Investigate Allegations of Bribery or Corruption (Bribery Commission) and the Hon. Attorney General as the respondents.

At the hearing of this appeal, the learned Counsel for the appellant raised a preliminary legal objection based on jurisdiction and the learned Counsel for the Bribery Commission too raised an objection on the basis that the appellant has failed to name the necessary party to this appeal as a respondent, therefore, the petition appeal was bad in law and should be dismissed *in limine*.

Relying mainly on the decided case of **Kesara Senanayake Vs. The Attorney General and another (2010) 1 SLR 149**, it was his contention that the appeal

should stand *in limine* dismissed, as the appellant has failed to follow the relevant appellate rules in relation to the institution of an appeal.

As this was a matter that needs to be determined before proceeding with the appeal proper, and before the consideration of the jurisdictional objection raised by the appellant, parties were allowed to tender written submissions in that regard.

This Court had the benefit of scrutinizing the written submissions tendered for the purposes of this order.

It appears that when the appellant filed his appeal on the 2nd of September 2019 through the jailer of the Welikada Prison, he has named only the Hon. Attorney General as the respondent, may be due to his lack of knowledge. It appears that he may have believed that all the prosecutions before the High Court is conducted by the Attorney General. However, when his Attorney-at-Law filed the second petition of appeal he has named the Bribery Commission as well as the Attorney General as respondents.

I am in no position to agree with the submission of the learned Counsel for the appellant that it was done so as the caption of the indictment indicates that it was the Bribery Commission who has filed this action against the appellant, and the Director General was only the signatory to the indictment.

As in the cases of the indictments presented to the High Court by the Attorney General on behalf of the Republic, it is the Director General of the Commission to Investigate the Allegations of Bribery or Corruption who should file an indictment before the High Court with the approval of the Commission.

When a person who is dissatisfied by a conviction based on an indictment filed by the Republic against him, it is against the Attorney General the appeal should be filed, naming him as the respondent. Similarly, in the case of an indictment filed by the Director General of the commission it is against the Director General an appeal should be preferred.

In the case of **Kesara Senanayake Vs. The Attorney General (Supra)** the appellant was convicted by the High Court and the appeal preferred by him to the Court of Appeal was dismissed for want of merit. The appellant preferred an appeal to the Supreme Court Challenging the judgment of the Court of Appeal. At the hearing of the appeal, the learned Senior State Counsel (SSC) who represented the Bribery Commission raised a preliminary objection as to the maintainability of the appeal on the basis that the appellant has failed to name the necessary party, namely, the Director General of the Commission to Investigate Bribery and Corruption, hence the appeal is bad in law, as the appellant has failed to follow the necessary Supreme Court Rules.

Agreeing with the objection, it was held that;

The Totality of Rules 4, 28(1), and 28(5) of the Supreme Court Rules 1990 indicates the necessity for all parties, who may be adversely affected by the success or failure of the appeal, be made parties to the appeal.

Held further per Shirani Bandaranayke, J.

“In terms of Supreme Court Rules, for the purpose of proper constitution of an appeal, it is vital that all parties, who may be adversely affected by the result of the appeal be made parties.”

In the instant appeal, when the appellant filed his appeal through the Jailor of the Welikada Prison, he has exercised his right to appeal against his conviction.

As considered above, their lordships of the Supreme Court have held that following the Supreme Court Rules is mandatory in an appeal, hence, I find merit in the objection raised in that regard.

In the instant appeal, when the Attorney-at-law filed the formal appeal subsequent to the appeal preferred by the appellant, he has named the Commission to Investigate Bribery or Corruption as the Respondent, whereas, he should have named the Director General of the Bribery Commission.

Although I view this as a clear procedural defect, I am of the view that this is a curable defect that can be corrected as this appeal has not yet been taken up for argument. For all intended purposes, the Bribery Commission has been represented right throughout in this appeal. I find that no prejudice of any kind would be caused to either party by this defect, if rectified.

I am of the view that dismissing an appeal on a technical defect, which can be corrected without causing prejudice to any party, would be against the spirit of the Constitutionally recognized right to appeal available to a party dissatisfied by a judgment of an original Court.

Accordingly, I direct the appellant to amend the caption of the petition of appeal by naming the Director General of the Commission as the respondent and by removing the name of the Hon. Attorney General who has been named as a respondent, which would bring the petition of appeal in order.

The preliminary objection raised by the learned Counsel for the Commission to investigate Bribery or Corruption is dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal