

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

**In the matter of an appeal under
and in terms of Section 331 of the
Criminal Procedure Code Act No.
15 of 1979 read with Article 138
and 154P (3) (a) of the Constitution
of the Republic of Sri Lanka.**

Commission to Investigate Allegations of
Bribery and Corruptions.

Plaintiff

Nawaratne Mudiyanseelage Edward Saman
Kumara

**Court of Appeal
Case No. CA 272/2013**

Accused

Vs.

And Now Between

Nawaratne Mudiyanseelage Edward Saman
Kumara.

Accused-Appellant

**High Court of Colombo
Case No. HCB 1680/ 2006**

Vs,

Commission to Investigate Allegations of
Bribery and Corruption

Plaintiff-Respondent

**Before : S. Thuraiaraja PC, J &
A.L. Shiran Gooneratne J**

**Counsel : Accused-Appellant absent and unrepresented.
Wasantha Perera SSC appears as *amicus curiae*.**

Written Submissions : Accused Appellant – not filed.

Complainant Respondent-28th February 2018.

Argument on : 07th December 2018.

Judgment on : 12th December 2018.

JUDGMENT

S. Thurairaja, PC. J

This is an appeal filed by Nawaratne Mudiyansele Edward Saman Kumara (hereinafter sometimes called and referred to as the Appellant) who was a Grama Sewaka, a public servant was indicted under section 19(b), 19(c), 19(b) and 19 (c) of the Bribery Act for soliciting and accepting Rs. 5,000/- from Wijelath Arachchige Samantha. The Appellant was found guilty after the trial and sentenced to 2 years rigorous imprisonment on each count and a fine of Rs.10,000/-. In default 3 months simple imprisonment on each count. The same imprisonments were suspended for a period of 7 years. Further Rs. 5,000/- to be returned as a fine.

Being aggrieved with the conviction and the sentence, the Appellant preferred an appeal to the Court of Appeal. Initially, the Appellant was present and represented by an Attorney-at-Law. He was continuously present till May 2016; thereafter he was absent and unrepresented. This Court issued several notices to the Appellant as well as his Counsel. But, there were no response from both. Hence this matter is fixed for argument and the Court invited honourable Attorney General to assist, as *amicus curiae* to decide this appeal.

Senior State Counsel Wasantha Perera, who represented the Respondent; the Director General of Commission to Investigate Allegations of Bribery and Corruption

filed written submissions and assisted the Court. The Senior State Counsel took up a preliminary objection of maintainability of this appeal. The Appellant had not named the Respondent properly. According to the appeal, he had cited the Respondent's name as 'Commission to investigate Allegations of Bribery and Corruption'. The Counsel submits that, the Director General of Commission to investigate Allegations of Bribery and Corruption is the Respondent. The Appellant had not named the correct respondent in his appeal. Therefore he cannot maintain the appeal. In support of his argument he submits the judgment of **Dr. Shiranee A. Bandaranayake J** (as then) in **Kesara Dahamsonda Senanayake vs Attorney General [Case No. SC Appeal 134/2009]** decided on 6th of December 2010. Similar objection was taken and the Supreme Court held as follows.

"Considering the applicability of the Supreme Court Rules and taking the view that a failure to comply with the requirements of Rules 4 and 28 is necessarily fatal, Dr. Amarasinghe J., held that,

"It has always, therefore, been the law that it is necessary for the proper constitution of an appeal that all parties who may be adversely affected by the result of the appeal should be made parties and, unless they are, the petition of appeal should be rejected."

As stated earlier it is common ground that the Director-General of the Commission to investigate Allegations of Bribery and Corruption was not made a party to this appeal. On the basis of the examination of the provisions of the Act No. 19 of 1994, it is evident that the Director-General, has to be regarded as the complainant in such an application and therefore is a necessary party to this appeal. In terms of the 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, should be made parties.

It is thus apparent that the appellant has not complied with Rules 4 and 28 of the Supreme Court Rules of 1990."

We are inclined to accept the preliminary objections taken by the Senior State Counsel. Anyhow the Appellant is absent and unrepresented. Therefore in fairness of the Appellant, we considered the merit of this case.

The Appellant was indicted by the Director General of the Commission to Investigate Allegations of Bribery and Corruption on four (4) counts.

The prosecution led the evidence of Wijayalath Arachchige Samantha, Galabadaarachchilage David Silva (PW2), Chandrapala Abeywickrama Gunawardhana (PW 3-Inspector of Police) and Wanninayaka Mudiyansele Wasantha Wanninayaka (Retired Divisional Secretary, Galewela).

The Learned Trial Judge after carefully considering the evidence before her, found the Accused-Appellant guilty on all four charges contained in the indictment and imposed 2 years imprisonment on each count which were suspended for a period of 7 years and Rs. 1000/- fine on each count and another Rs. 5000/- as penalty.

Being aggrieved with the said conviction and the sentence the Appellant preferred an appeal to the Court of Appeal and submits the following grounds of appeal.

- a) The judgment is contrary to law, the evidence adduced at the trial.
- b) The Learned High Court Judge has failed to properly interpret the Sections 19(b) and 19(c) of the Bribery Act.
- c) The Learned High Court Judge has failed to consider that the respondent has failed to prove their case beyond reasonable doubt.

Considering the 1st ground of appeal, this is too wide and vague. Anyhow we perused the evidence submitted at the trial. The Learned Trial Judge had adequately considered the evidence before her and found the Appellant guilty as charged. We do not find any reason to interfere with the said findings. Accordingly we find this ground of appeal fails on its own merits.

The 2nd ground of appeal is that the Learned Trial Judge had failed to interpret Section 19(b) and 19 (c). We perused the judgment of the Learned Trial Judge. There, we find the Learned Trial Judge had carefully analysed the facts of the case and approached the law with judicially trained mind. Ingredients were sufficiently considered by the Learned Trial Judge. Hence, we have no reason to interfere with the same.

The last ground of appeal is that, the Learned Trial Judge had failed to consider that, the prosecution had failed to prove their case beyond reasonable doubt. Even though, this ground of appeal is too wide, in the interest of the Appellant, we carefully considered and found that, the Learned Trial Judge in her 24 pages judgment had meticulously analysed the evidence before her and found that, those were proving the charges levelled against the Appellant. After carefully considering all materials, we find that, this ground of appeal fails on its own merits.

As we discussed above, the preliminary objection taken by the State regarding the maintainability can be held against the Appellant. Since, the Accused-Appellant was absent and unrepresented, we considered the substantive appeal and find that, there is no merit. Hence, we dismiss the appeal.

The Registrar is hereby directed to send a copy of this judgment to the Director General of Commission to Investigate Allegations of Bribery and Corruption to implement the sentence under Section 29 of the said Act.

We dismiss the appeal and affirm the conviction and the sentence. We direct the Learned High Court Judge of Colombo to implement the sentence from today.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL