

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

**In the matter of an Application for Revision
in terms of Article 138 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka, read with Section 364 and 365 of the
Criminal Procedure Act No. 15 of 1979.**

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

Complainant

Court of Appeal Revision Application
No. CPA/106/2024

Vs.

High Court of Colombo
Case No. HCB 179/2022

1. Delwakkada Liyanage Chandrapala,
Pepiliyana Mawatha,
Kohuwala.

2. Vimalasena Rubasinghe,
No. 101/24/C,
3rd Lane,
Egodawaththa,
Boralesgamuwa.

Accused

AND NOW BETWEEN

The Director General,
Commission to Investigate Allegations of
Bribery or Corruption,

No. 36,
Malalasekara Mawatha,
Colombo 07.

Complainant-Petitioner

Vs.

1. Delwakkada Liyanage Chandrapala,
Papiliyana Mawatha,
Kohuwala.
2. Vimalasena Rubasinghe,
No.101/24/C,
3rd Lane,
Egodawaththa,
Boralesgamuwa.

Accused-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Anusha Sammandapperuma, Assistant Director Legal with
Kajalakshi Sivasasramaniam and Gaya Rajapaksha for the
Petitioner.

Senarath Jayasundara with Sheshan Rathnayake and
Chathurangi Wadege for the 1st and 2nd Accused-
Respondents.

Argued on: 08.07.2025

Decided on: 07.08.2025

ORDER

AMAL RANARAJA, J.

1. This is an application by the Complainant-Petitioner namely the Director-General of the Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as the “Petitioner”) invoking the revisionary jurisdiction granted to this Court in terms of Article 138 of the Constitution.
2. The petitioner is seeking to set aside an order made by the Learned High Court Judge of Colombo on January 05, 2024 in High Court of Colombo case no. HCB/ 179/2022, where the indictment forwarded by the petitioner has been rejected and the accused discharged on a preliminary objection raised on behalf of the accused-respondent named in the instant application.
3. When the instant application was supported for notice, this Court after having satisfied itself with regard to the submissions made on behalf of the petitioner has decided to issue notice on the accused-respondents. Accordingly, the accused-respondents were represented in Court and were permitted to file objections.
4. Filing objections the accused-respondents have moved that the matter be dismissed on the basis that the application of the petitioner had no merit.

High Court case no. HCB/179/2022

5. The first accused-respondent has been indicted in the *High Court of Colombo* on counts of corruption, offences punishable in terms of section 70 of the Bribery Act No. 11 of 1954 (as amended). The

aforementioned counts are alleged to have been committed by the first accused-respondent while he was serving as the Director-General of the *National Rupavahini Corporation* between the period of December 16,2024 and January 15,2015. The second accused-respondent has been indicted on counts of abetting, offences punishable under section 102 of the Penal Code read together with section 70 of the Bribery Act No. 11 of 1954 (as amended).

6. On January 10,2023, the accused-respondents have submitted written objections to the *High Court*. One of the key objections raised is that the accused-respondents have already been acquitted by the *Magistrates Court*. They argue that the charges outlined in the charge sheet from that case are identical to those in the indictment forwarded to the *High Court*. Therefore, they contend that the proceedings in the *High Court* cannot continue as long as the acquittal from the *Magistrates Court* remains in effect and has not been overturned by a competent *Court*.
7. The Learned High Court Judge pronouncing the order on January 05,2024, has determined that the indictment cannot be sustained due to the stated objection.
8. Accordingly, the accused-respondents, have been discharged.

Factual Background

9. Before considering the legality of the disputed order (i.e. order discharging the accused-respondents from the *High Court* case no. HCB/179/2022). I would now proceed to examine the factual background which led to the accused-respondents being indicted in the *High Court of Colombo*.

10. The *Commission to Investigate Allegations of Bribery or Corruption* (hereinafter referred to as the “*Commission*”) upon receipt of a communication regarding allegation of bribery and corruption has investigated such allegation and thereafter directed the *Director-General* to institute criminal proceedings against the accused-respondents on July 07,2017, before the *Magistrates Court of Colombo* by case no. 74173/01/17. The counts, the accused-respondents have been charged for have been the same as those stated in the indictment forwarded to the *High Court of Colombo* subsequently. When the matter was taken up for trial in the *Magistrates Court*, PW01 has concluded his testimony, when PW02 was giving evidence, the Learned Counsel of the accused-respondents have raised an objection regarding the maintainability of the case on the basis that the *Commission* had not collectively directed the *Director-General* to institute proceedings against the accused-respondents. The objections have been based on the judgment pronounced by their Lordships of the Supreme Court in the case of *Anoma Polwatta vs. The Commission to Investigate Allegations of Bribery or Corruption*, SC/Writ Application No. 01/2011.
11. The Learned Magistrate has overruled the objection. The accused-respondents thereafter has preferred an application in revision to the *Provincial High Court of Western Province holden in Colombo* seeking to revise the order of the Learned Magistrate.
12. However, during the pendency of the revision application, the *Director-General* after having considered the implications of the Supreme Court judgment referred to above has decided to withdraw the case in the *Magistrates Court*.
13. The Learned Magistrate has permitted the withdrawal of the case in the *Magistrates Court* and has further determined that such application for

withdrawal has been made in terms of section 189 of the Code of Criminal Procedure Act No.15 of 1979. Therewith, proceeded to acquit the accused-respondents. The said order acquitting the accused-respondents have been pronounced on July 27,2021. Subsequently, the accused-respondents have submitted an application to withdraw the revision application that had been forwarded to the *Provincial High Court of the Western Province holden in Colombo*. The Court has granted the application, allowing the withdrawal.

14. The *Director-General* has thereafter forwarded the indictment in question to the *High Court of Colombo* on August 03,2022. There is no dispute that the said indictment contains the same charges that have been outlined in the charge sheet handed over to the accused-respondents in the *Magistrates Court*.

Legal analysis

15. The maxim “*nemo debet bis vexari pro una et eadem causa*” expresses a great fundamental rule of criminal law, which forbids that a man should be put in jeopardy twice for one and the same offence. It is the foundation of the special pleas of *autrefois* acquit and *autrefois* convict. This rule of law has been enshrined in our legal system through the provisions outlined in section 314 of the Code of Criminal Procedure Act.

16. Section 314 of the Code of Criminal Procedure Act reads as follows;

“(1) A person who has once been tried by a Court of competent Jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal remain in force not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 176 or for which he might have been convicted under section 177.”

17. When the instant application was taken up for argument, the Learned Counsel for the petitioner has cited several legal interpretations as to the word “tried” referred to in section 314 of the Code of Criminal Procedure Act. She has also argued that the Learned High Court Judge erred in properly considering the provisions in section 314 of the Code of Criminal Procedure Act and has drawn the attention of this Court to the judgment in the case of SC Appeal 12A/2009 decided on May 05,2011 to support her argument.
18. It has been her position that although the Learned Magistrate has acquitted the accused-respondents from the *Magistrates Court’s* case, that itself would not be a bar to the petitioner to indict the accused-respondents and section 314 of the Code of Criminal Procedure Act was not applicable.
19. The Learned Counsel for the accused-respondents argued that the order pronounced by the Learned Magistrate constituted an acquittal that has not been overturned by a competent Court. Consequently, this acquittal remains a final verdict. He further argued that the provisions laid out in section 314 of the Code of Criminal Procedure Act precluded the petitioner from presenting an indictment against the accused-respondents as long as the acquittal is still in effect.
20. *E. R. S. R. Coomaraswamy* in his book, “*The Law of Evidence*” [Volume-I] at page 543 cites Spencer Bower and Turner, op. cit., section 317, pp. 268-269, states as follows,

“The plea of autrefois acquit is expressed in the maxim, nemo debet bis vexari pro una et eadem causa it is a species of estoppel by which one party is precluded as against the other from asserting

the contrary of what has been determined in previous proceedings between them. But the plea of autrefois convict depends on nemo debet bis puniri pro uno delicto it is strictly not a manifestation of the doctrine of estoppel but is akin to merger. The rights of the successful party having become merged in the judgment, the same facts cannot be re-asserted in fresh proceedings”.

21. In the case of SC Appeal No.12 A/2009 decided on May,05,2011, Shiranee Thilakawardena, J, in considering the meaning of term “tried” in the provisions in section 314 in the Code of Criminal Procedure Act has stated as follows;

“The word ‘tried’, the operative word in this section, finds meaning in section 5 and section 184 of the Code of Criminal Procedure Act referred to above. Section 5 provides that all offences (under the Penal Code or any other law) are to be (i) investigated (ii) inquired into and (iii) tried and otherwise dealt in accordance with the provisions of the Code of Criminal Procedure Act referred to above. The nature of these three phases of an allegation of an offence in the context of a summary procedure is found in section 184 which stipulates that if a Magistrate proceeds to try the accused, there is a mandatory obligation to take all such evidence as is produced by the prosecution or defence the effect, then, of the operative language of section 314(1) as informed by the above mentioned sections is to make clear that if a person is to have been considered tried for purposes of section 314, the opportunity for both sides to produce some evidence to support their respective stances has to have been available.

Given the earlier determination that acquittal under the proviso require some level of evidentiary proceeding to have taken place,

and that an opportunity for leading evidence is inherent to section 314 (1) definition “tried”, it necessarily follows that an acquittal under the proviso of section 186 does not fall within the ambit of section 314.”

22. As stated earlier, during the proceedings in the *Magistrates Court*, an objection has been raised by the accused-respondents regarding the maintainability of the case. The objection has asserted that the *Commission* has not collectively directed the institution of such proceedings. In response to this objection, the *Director-General* has decided to withdraw a case from the *Magistrates Court*. He has thereafter on the direction of the *Commission* instituted proceedings against the accused-respondents by forwarding an indictment based on the same charges outlined in the charge sheet that had been presented to the accused-respondents in the *Magistrates Court*.

23. The matters discussed above indicate that there has not been an opportunity for either party involved in the *Magistrates Court* case to present in full evidence that could support their respective positions. In the situation referred to, such an opportunity was evidently absent. Furthermore, the ability to present evidence is inherently tied to the definition of “tried” outlined in section 314 of the Code of Criminal Procedure Act. Consequently, it logically follows that an acquittal such as the one being considered does not fall within the scope of section 314 of the Code of Criminal Procedure Act.

24. As articulated in section 314(1) of the Code of Criminal Procedure Code Act, the framework allows for the introduction of evidence as a crucial component of the trial. The absence of such an opportunity implies that

the acquittal cannot be categorised within the provisions of such section as it inherently lacks the necessary evidential foundation that section 314 of the Code of Criminal Procedure Act presupposes.

25. Therefore, it is my considered view that the Learned High Court Judge was misdirected when he discharged the accused-respondents based on the matters discussed in the disputed order.

26. Accordingly, I set aside the order dated January 05, 2024, of the *High Court of Colombo* and dismiss the objection raised on behalf of the accused-respondent as to the sustainability of the indictment/case before the *High Court of Colombo*.

27. I direct the Learned High Court Judge of Colombo to restore the case back to the Court's case roll and proceed with the case to its conclusion.

28. The Registrar of this Court is directed to communicate this order to the *High Court of Colombo* for necessary compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal