

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

**In the matter of an Appeal in terms Section
331 (1) of the Code of Criminal Procedure
Act No. 15 of 1979 read with Article 138 of
the Constitution.**

The Commission to Investigate Allegations
of Bribery or Corruption

Complainant

Court of Appeal Case No.
CA HCC 64/2018

Vs.

High Court of Colombo Case No.
HCB 1794/2009

Mahagoda Vithanage Chandrarathne
Dharmawardhana,
No. 63/15B,
Dambahena Road,
Maharagama.

Accused

AND NOW BETWEEN

Mahagoda Vithanage Chandrarathne
Dharmawardhana,
No. 63/15B,
Dambahena Road,
Maharagama.

Accused-Appellant

Vs.

1. The Commission to Investigate Allegations of Bribery or Corruption,
Bandaranayake Memorial International Conference Hall, Office of the Bribery and Corruption Commission,
No.36,
Malalasekara Mawatha,
Colombo 07.

- 1A. Director General,
The Commission to Investigate Allegations of Bribery or Corruption,
Bandaranayake Memorial International Conference Hall, Office of the Bribery and Corruption Commission,
No.36,
Malalasekara Mawatha,
Colombo 07

Complainant-Respondents

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

Counsel: Priyantha Nawana, P.C with Ravihansa Wijesinghe for the
 Accused-Appellant.

Anuradha Siriwardhana, Assistant Director General for the
Respondent.

Argued on: 15.07.2025

Decided on: 29.08.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Colombo* in High Court case number HCB 1794/2009.
2. The charges in the indictment are as follows;

Charge 01

That on or about March 13,2007, within the jurisdiction of this Court, at *Narahenpita*, the accused-appellant solicited a gratification being a sum of Rs.300,000 from *Helarawegedara Priyantha Vijerathne*, as an inducement or reward to assist to obtain a passenger transport permit from the *National Transport Commission* for a bus bearing registration no. CP GO 2274 and thereby committed an offence punishable under section 20(b) of the Bribery Act read with section 20(a)(vi).

Charge 02

That on or about March 14,2007, within the jurisdiction of this Court, at *Narahenpita*, the accused-appellant accepted a gratification being a sum of Rs.200,000 from *Helarawegedara Vijerathne Banda* as an inducement or reward to assist him to obtain a passenger transport permit from the *National Transport Commission* for the bus bearing no. CP GO 2274 and thereby committed an offence punishable under section 20(b) of the Bribery Act read with section 20(a)(vi).

Charge 03

That on or about March 23, 2007, within the jurisdiction of this Court, at *Maharagama*, the accused-appellant accepted a gratification being a sum of Rs.100,000 from *Helarawegedara Vijerathne Banda* as an inducement or reward to assist him to obtain a passenger transport permit from the *National Transport Commission* for the bus bearing no. CP GO 2274 and thereby committed an offence punishable under section 20(b) of the Bribery Act read with section 20(a)(vi).

3. At the conclusion of the trial, the learned High Court Judge has found the accused-appellant guilty of the charges, convicted him and sentenced as follows;

A term of five years rigorous imprisonment each in respect of the first, second and third charges.

Further has imposed a fine of Rs.5000 each in respect of the first, second and third charges, with a term of one-year rigorous imprisonment each in default of the payment of the fine.

Also, the appellant has been ordered to pay a sum of Rs.200,000 and Rs.100,000 as compensation with a term of three years rigorous imprisonment each in default of the payment of the same.

It has also been ordered that the default terms imposed shall run consecutively.

4. The accused-appellant being aggrieved by the disputed judgment and the sentencing order, has preferred the instant appeal to this Court.

Case of the prosecution

5. *Thanthirige Piyal Nandasiri* being the registered-owner of the bus bearing registration no. CP GO 2274 has granted a power of attorney to one *Rohana Liyanage* authorizing the latter as the agent to make decisions as regards to the bus referred to above. In that context, the possession of the bus together with the route permit obtained in respect of the same has been handed over to PW02 in the year 2004 by the agent upon executing the document marked “ප්‍ර-3”.
6. Consequent to obtaining the possession of the same, PW02 has plyed the particular bus on the *Colombo-Kandy* route and paid the monthly instalments due on the hire purchase agreement/lease agreement to the absolute owner/lessor. In the year 2007, PW02 has paid the final instalment and proceeded to get the bus registered in his name. Though PW02 has also attempted to get the route permit issued in respect of such bus transferred to his name, he has failed in such attempt.

7. Thereafter, PW01 and PW02, have visited the *Ministry of Transport in Colombo* to make an application to get a fresh route permit issued in the name of PW02. When PW01 and PW02 visited the *Ministry of Transport* on March 13, 2007 for such purpose, they have been unsuccessful in their attempt to meet the relevant officer as he has not been in office on that day.
8. When PW01 and PW02 were stepping out of the *Ministry of Transport* they have been accosted by PW03. Upon inquiry, PW01 and PW02 have stated the purpose of their visit to PW03. The latter in that instance has advised PW01 and PW02 to meet the appellant stating that the appellant will be able to be of assistance to them. PW01 and PW02 have thereafter proceeded to meet the appellant at the *Ceylon Transport Board Office in Narahenpita, Colombo* on the same day. The appellant has agreed to assist PW02 to obtain a fresh route permit in respect of the bus bearing registration no. CP GO 2274. The appellant has also informed PW01 and PW02 that they will have to expend a sum of Rs.300,000 to obtain such permit.
9. The appellant has got in touch with PW01 over the phone that evening and requested that a sum of Rs.200,000 be handed over to him on the next day at his office. PW01 and PW02 have on March 14,2007 gone to the purported office of the appellant in *Narahenpita* and handed over to the appellant a sum of Rs.200,000 on that day. Thereafter, as narrated by PW01, a further sum of Rs. 100,000 has been deposited into the bank account of the appellant on March 23, 2007. The relevant deposit slip has been marked “අ-2”. Though payments have been made and the money accepted by the appellant, he has failed to assist PW02 in obtaining the particular route permit. Eventually, the appellant has denied accepting money from PW02 for the purpose of assisting him to obtain a route permit. When PW01 and PW02 realised that the appellant was not in a position to assist PW02 to obtain the particular route permit, PW01 has proceeded to make a complaint to the *Commission to Investigate Allegations of Bribery or Corruption*.

Case of the appellant

10. The appellant has maintained that he being a son of a successful businessman, he was not in great need of money and that he was not pressed to ask for money from PW02.
11. The learned President's Counsel for the appellant argues that the appellant has been convicted only of the first and second charges. Consequently, the appellant would have to focus solely on challenging the conviction and the sentences imposed for the first and second charges only.
12. The journal entry dated February 23, 2018, indicates that the disputed judgment has been delivered in open Court on that date. The learned high court judge has concluded that the prosecution has established, beyond a reasonable doubt, that the appellant has committed the offences outlined in all three charges set forth in the indictment. As a result, the appellant has been convicted of all three charges.
13. In contrast, upon reviewing the disputed judgment included in the appeal brief, it becomes clear that the appellant has been convicted only of the first two charges. When this discrepancy is compared with the material in the disputed judgment and presented in the journal entry, it is evident that the omission in the judgment is due to a typographical error.
14. Despite this error in the disputed judgment, it is the view of this Court that it has not resulted in a failure in justice. Consequently, it does not expel the appellant from challenging the conviction and the sentence imposed for the third charge in the indictment.
15. The learned Presidents Counsel has also raised concerns regarding the implications of section 20(a) and section 20(b) of the Bribery Act No. 11 of 1954 (as amended). Specifically, section 20(a) addresses the offence of offering a gratification, while section 20(b) pertains to solicitation and acceptance of a gratification aimed at achieving one or more of the objectives outlined in subsections (i) to (vii).

16. In this context, the decision of the respondent to combine the distinct conduct described in section 20(a) and section 20(b) into a single charge; namely the first and second charges in the indictment; it is contended has resulted in prejudice to the appellant.
17. The appellant's dock statement constitutes a concerted effort to refute the allegations outlined in the indictment against him. He has categorically denied the allegations presented in the charges and has explained that his financial standing, stemming from inherited wealth, has eliminated any need for the actions of which he is accused.
18. Accordingly, the circumstances surrounding the appellant's situation do not suggest that he was misled by any errors in the particulars stated in the charges. The assertion that he acted without culpability due to his wealth does not show any significant errors in stating the offences in the charges in the indictment that would warrant a dismissal of the charges. Therefore, the alleged errors in the particulars do not rise to the level of being material enough to undermine the appellant's case or to prejudice him anyway.
19. The provisions outlined in section 166 of the Code of Criminal Procedure Act No.15 of 1979 are pertinent to the aforementioned instance.

Section 166 is as follows;

“Any error in stating either the offence or the particulars required to be stated in the charge and any omission to state the offence or these particulars shall not be regarded at any stage of the case as material, unless the accused was misled by such error or omission”.

20. The learned President's Counsel has also argued that it was essential for the prosecution to present compelling evidence demonstrating that PW02 was the registered owner of the bus bearing registration number CP GO 2274. That this evidence was crucial for substantiating the charges outlined in the indictment. However, since the prosecution has failed to establish this fact, the appellant should be afforded the benefit of the doubt.

21. PW01 and PW02 have provided testimony regarding the registered owner of the particular bus. At the relevant time, the bus has been registered to one, *Thanthirige Piyal Nandasiri*. He has executed a power of attorney granting his agent, *Rohana Liyanage*, the authority to make decisions concerning the bus.
22. Subsequently the agent, *Rohana Liyanage*, has transferred possession of the bus to PW02. Following this transfer, PW02 has operated the bus on the *Kandy-Colombo* route, based on a route permit issued in the agent's name.
23. An agreement has been entered into between the agent and PW02. Under this agreement, PW02 has taken possession of the bus and undertaken to fully settle pending instalments of the lease or the hire purchase agreement.
24. Although an attempt has been made to produce a vehicle registration certificate marked V1, the prosecution has requested its admission as evidence, pending proof. Therefore, this document needs to be verified by its writer or a witness who saw the document being signed to confirm its authenticity. Since the appellant has not called such a witness to testify about the details in V1, there would not be direct testimony to support the contents of such certificate. Accordingly, the Court could question its validity.
25. In such circumstances, the prosecution has failed to establish through cogent evidence that PW01 was the registered-owner of the particular bus at the relevant period of time.
26. The learned High Court Judge has observed in its judgment that if the prosecution failed to establish that the appellant was able to and was in a position to procure the benefit referred to in the charges outlined in the indictment, then the appellant would be guilty of cheating, rather than the specific offences set forth in the charges.

" මෙම නඩුවේ දී විත්තිකරු විසින් ඉහත කී ප්‍රතිලාභය එනම් ප්‍රවාහන බල පත්‍රය ලබා දීම සඳහා අධාර කිරීමට මෙම මුදල අයද සිටීම සහ භාර ගැනීම සිදු කළ බව ඔප්පු කළ යුතුය. මෙවැනි චෝදනාවක් ඔප්පු කිරීමේ දී විත්තිකරු ත් ට එවැනි ප්‍රතිලාභයක් ලබා දීම සඳහා මැදිහත්

විමර්ශන කටයුතු කිරීමේ කිසියම් වු ආකාරයක සම්බන්ධ කමක් අනුකාරයකින් හැකියාවක් තිබීම සම්බන්ධයෙන් යම් කරුක් ද සාක්ෂි තුළින් ඔප්පු කළ යුතුය. නොසේ නම් යමෙක් අසත්‍ය ලෙස යමක් කරන බව අභවා මුදලක් ලබා ගත් පමණින් එය අල්ලස් පනතේ 20 වගන්තිය යටතට නොව දඩනීති සංග්‍රහ යටතේ රැවටීමෙන් වැළැක්වී සිදු කිරීම බවට පත් වේ. එසේ හෙයින් ඉහත අංශය සම්බන්ධයෙන් සාක්ෂි ඉදිරිපත් කිරීම අවශ්‍ය වේ. ඉහත සඳහන් කරුණා සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කළ යුතු වේ."

[vide page 404 of the Appeal Brief]

27. Section 18 of the National Transport Commission Act No. 37 of 1991 (as amended) is as follows;

"(1) No person shall use an omnibus for carriage of passengers for a fee or reward or separate fare except under the authority of passenger service permit for the time being in force issued by the Commission or by a person authorised in that behalf.

(2) For the purpose of this section, the power to issue a permit to operate omnibus for the carriage of passengers between two or more Provinces shall be vested with the Commission."

28. It is undisputed that the route permit is obtained or granted according to the provisions of the National Transport Commission Act No. 37 of 1997. In this context, it would not be unreasonable to expect the prosecution to establish a connection between the appellant and the commission of the relevant actions, demonstrating that the appellant was in the position to influence the decision to issue a route permit. In this instance, however, the prosecution has failed to meet that burden of proof.

29. This fact is substantiated by the testimony of PW04, which pertains only to the appellant's association with a regional office of the *Central Transport Board*.

ප්‍ර: අද මේ ගරු අධිකරණයේ ඉන්නවාද?
 උ: එහෙමයි ස්වාමිනි.
 ප්‍ර: කොතනද ඉන්නේ?
 උ: විත්ති කුසුවේ සිටිනවා ස්වාමිනි.
 (සාක්ෂිකරු විසින් විත්තිකුසුවේ සිටින විත්තිකරුවා පෙන්වා හඳුනා ගනී.)
 ප්‍ර: දැන් මේ නමුත් පිළිගන්නා මෙම ලේඛණය නමුත් විසින් අල්ලේ හෝ දූෂණ චෝදනා විමර්ශන කොමිෂන් සභාවට ඉදිරිපත් කරනු ලේඛණයක් බව?
 උ: එහෙමයි ස්වාමිනි.
 (ස්වාමිනි ඒ අනුව සුදිනට අයත් ධාවන අධ්‍යක්ෂ ප්‍රධාන ධාවන කළමනාකාර තනතුරට අදාළ පත්වීමේ ලිපිය 1999.01.12 දිනැති සහ සමාගම් සේවාවේ ii ශ්‍රේණියේ නිලධාරී තනතුරට උසස් කිරීම පිළිබඳ 2004.07.23 දිනැති ලිපිය පැ.08(අ), පැ.08(ආ) ලෙස ලකුණු කර තොරටයෙන් ඉදිරිපත් කර සිටිනවා ස්වාමිනි)

අධිකරණයෙන්:

මෙම ලිපියේ අන්තර්ගතය දෙපාර්ශවය දැනටමත් පිළිගෙන ඇත. ඒ අනුව, එය ලකුණු කිරීමට අවසර දෙමි.

අධිකරණයෙන්:

ප්‍ර: මහත්මයා ඒ වකවානුවේ රාජකාරී කටයුත්තක් වශයෙන් මේ ලේඛණය අල්ලේ කොමිෂියමට ඉදිරිපත් කළාද?

උ: එහෙමයි ස්වාමිනි.

30. Despite the absence of substantial evidence, as previously outlined, the learned High Court Judge has arrived at a conclusion based on flawed reasoning that can be considered erroneous as follows;

"මෙම නඩුව අල්ලස් පනතේ 20 ආ වගන්තිය යටතේ ගොනු කර ඇති අතර රජයෙන් යම් අකාරයට ප්‍රදානයක් ලබා ගැනීම සඳහා තුඩු පවුරක් ලබා ගත් යුතු බව පැමිණිලිලේලෙන් ඔප්පු කළ යුතුවේ. එහිදී විත්තිකරුට මෙවැනි ප්‍රවාහන බල පත්‍රයක් ලබා ගැනීමට මැහඳහන් වී කටයුතු කිරීමේ හැකියාවක් තිබුණත් දැයි මා දැන් සලකා බලමි. ඒ සම්බන්ධයෙන් ඉදිරිපත් වූ සාක්ෂි වන්නේ මෙම විත්තිකරු ප්‍රවාහන අමාත්‍යාංශය සහ ප්‍රවාහන අමාත්‍යවරුන්ට සම්බන්ධ කටයුතු කර අයකු බවය. එය අපිත් නැමඅත්තා ගේ සාක්ෂිඅයෙන් මෙන්ම විත්තිකරුගේ පත්වීම ලිපි පැ. 8 පැ 8 ආ මගින් ද තහවුරුවේ. එපමණ ද නොව පැ.සා 3 අපිත් ගේ සාක්ෂියට අනුව ඔහු විත්තිකරු කල ට සිට දන්නා අයකු

වන අතර විත්තිකරු මෙවැනි ප්‍රවාහන බල පත්‍ර නිකුත් කර ගමනාගමන කොමිසමේ සමාජීයත්ව වශයෙන් පෙර සිටි බව විත්තිකරු විසින් අපීක්‍ෂා කළ අයට ප්‍රකාශ කර ඇත. තවද ලක්ෂ දෙනක මුදල ගැනීම සම්බන්ධයෙන් විමසීමේ දී එය වත්මන් ගමනාගමන කොමිෂන් සමාජීයත්වයට ගෙවිය යුතු බව දැනුම් දී ඇත. විත්තිකරුගේ සේවයේ ස්වභාවය ඔහු ප්‍රවාහන අමාත්‍යවරුන්ගේ සම්බන්ධීකරණ කටයුතු කිරීම සහ විත්තිකරු විසින් අපීක්‍ෂා කළ නැමැත්තාට ප්‍රකාශ කර ඇති කරුණු තුළින් ඔහු යවන පිළි ගැනීම් හේතු කොට ගෙන එවන් ප්‍රවාහන බලපත්‍රයක් ලබා ගැනීමේ කටයුත්තට මැදිහත් වී එවැන්නක් ලබා ගැනීම සඳහා අවශ්‍ය සම්බන්ධතාව හැකියාව සහ අවස්ථාව ඇති බව මේ සාක්ෂි තුළින් ඒකායන ලෙස හෙළිදරව් වී ඇත. තවද එවැනි බල පත්‍රයක් රජයෙන් ලබන ප්‍රතිලාභයක් වශයෙන් සැලකිය හැක.

[*vide* page 410 of the Appeal Brief]

31. Upon careful consideration of the facts presented, this Court concludes that the last two complaints by the learned President's Counsel for the appellant possess merit. The discrepancies identified are significant and have materially impacted the cogency of the prosecution's case. As a result, the prosecution has failed to establish its case beyond a reasonable doubt.
32. In light of these circumstances, I find it necessary to intervene in the prior conviction, the disputed judgment and the accompanying sentencing order. Therefore, I hereby set aside the conviction, the disputed judgment and the sentencing order.
33. Consequently, the appellant is acquitted of all charges outlined in the indictment.
34. The particular offences have been committed in the year 2007. 17 years have passed since then. Therefore, this Court finds that it does not seem just to call upon the appellant to defend himself again after such an unconscionable lapse of time.

In *Queen vs. G. K. Jayasinghe* 69 NLR 314 at page 328, Sansoni, J, has stated,

“...we have considered whether we should order a new trial in this case. We do not take that course, because there has been a lapse of three years since the commission of the offences, and because of own view of the unreliable nature of the accomplice’s evidence on which alone the prosecution case rests.

We accordingly direct that the judgment of acquittal be entered.”

35. Hence, this is not a fit case to order a re-trial.

Appeal allowed.

36. The Registrar of this Court is directed to communicate this judgment to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal