

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

Court of Appeal	The Director General
Application No:	Commissioner to Investigate Allegations of
CA (PHC) 0033/2017	Bribery and Corruption, Malalasekera Mawatha, Colombo-07.

High Court of Colombo	<u>Complainant</u>
No.RA/22/15	
MC Colombo Case No.	
12908/2012	<u>1st Accused</u>

Vs.

Hethumuni Titus Mendis Jayawardena
No.04/B/3/5, Housing Scheme, Mattegoda.

1st Accused

Gamage Mudiyanseelage Uditha Wimalnatha
Doloswala,
No.230/6, High Level Road, Galawilawatta,
Homagama.

2nd Accused

AND BETWEEN

In the matter of an application for revision of the order dated 15th December 2014 by the Hon. Additional Magistrate's Court of Colombo in case numbered 12908 made in terms of Article 154P (3) (b) of the High Court Constitution of the Republic read

with section 4 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 and relevant provisions of the Code of Criminal Procedure Act No.15 of 1979 as amended subsequently.

Hethumuni Titus Mendis Jayawardena
No.04/B/3/5, Housing Scheme, Mattegoda.

1st Accused-Petitioner

Vs.

The Director General

Commissioner to Investigate Allegations of
Bribery and Corruption,

No.36, Malalasekera Mawatha,

Colombo-07.

Complainant-1st Respondent

Gamage Mudiyanseelage Uditha Wimalnatha

Doloswala,

No.230/6, High Level Road, Galawilawatta,

Homagama.

2nd Accused-Respondent

The Attorney General

Attorney General's Department

Colombo-12.

3rd Respondent

AND NOW BETEEN

In the matter of an Appeal made against the order of the Hon. High Court Judge of Colombo made on the on the 31st January 2017 under relevant provisions of the Code of Criminal Procedure Act No.15 of 1979 (as amended subsequently) with the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and Article 154P(6) of the Constitution read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Hethumuni Titus Mendis Jayawardena
No.04/B/3/5, Housing Scheme, Mattegoda.

1st Accused-Petitioner-Appellant

Vs.

The Director General
Commissioner to Investigate Allegations of
Bribery and Corruption,
No.36, Malalasekera Mawatha,
Colombo-07.

Complainant-1st Respondent-Respondent

Gamage Mudiyanseelage Uditha Wimalnatha
Doloswala,
No.230/6, High Level Road, Galawilawatta,
Homagama.

2nd Accused-Respondent-Respondent

The Attorney General
Attorney General's Department
Colombo-12.

3rd Respondent-Respondent

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Faisz Musthapha, PC with Thushani
Machado for the Appellant.**
**Dilan Ratnayake, SDSG for the
Respondents.**

ARGUED ON : **27/07/2023.**

DECIDED ON : **01/12/2023.**

JUDGMENT

P. Kumararatnam, J.

According to the Appellant, during his tenure as the Secretary to the Ministry of Petroleum Industries, a stock of “Octane 92” Petroleum had been imported by the Ceylon Petroleum Corporation (CPC) from a Company based in Dubai, United Arab Emirates Government’s national oil company named “Emirates National Oil Company” or more commonly referred to as ENOC. As few vehicles which had run on the said stock of “92 Octane Petroleum” had developed engine troubles, after receiving complaints, the Complainant-Respondent-Respondent (Hereinafter referred to as the Complainant) had commenced investigations and decided to file charges against the 1st Accused-Petitioner-Appellant-Appellant (Hereinafter referred to as the Appellant) and the 2nd Accused-Respondent-Respondent (hereinafter referred to as the 2nd Accused).

As directed the Appellant and the 2nd Accused appeared before the Learned Magistrate of Colombo on 22.01.2013 and were formally charged under Section 70 of the Bribery Act.

The Counsel for the Appellant raised a preliminary objection during the course of the trial stating that the charge cannot be maintained as the Complainant had failed to comply with regard to the mandatory requirement of initiating the proceedings by a written sanction under Section 78(1) of the Bribery Act.

The Learned Magistrate by his order dated 26.09.2014 rejected the preliminary objection on the basis that when the Complainant acting under the directive of the Commission to Investigate Allegation of Bribery or Corruption) (Hereinafter referred to as the CIABOC) acts under Section 136(1) (b) of the Code of Criminal Procedure Act No. 15 of

1979 it is expressly stated that the Complainant acts on the directives of the CIABOC and therefore it is an instance where action is filed “by” the CIABOC and there is due compliance by the Complainant of the provisions of Section 78(1).

Being aggrieved by the said order of the Learned Magistrate, the Appellant filed a revision application in the Provincial High Court of the Western Province Holden in Colombo. The Learned High Court Judge in interpreting Section 78(1) of the Bribery Act held that when action is being instituted by the Commission through the Complainant, there is no requirement of a written sanction by the Commission, dismissed the revision application No. HCRA 22/2015 and affirmed the order of the Learned Magistrate of Colombo.

Now the Appellant filing this appeal against the order of Learned High Court Judge of Colombo, contends that that even in instances where an action is instituted by the Director General of CIABOC on a directive by the CIABOC written sanction is necessary.

Section 78 (1) states:

No Magistrate’s Court shall entertain any prosecution for an offence under this Act except by or with the written sanction of the Commission.

The validity of a legislation passed by Parliament cannot be called into question after the stage set out in Article 80(3) of the Constitution. The said Article reads as follows:

“Where a Bill becomes law upon the certificate of the President, or the Speaker, as the case may be, being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever.”

An important bench of five Justices of Supreme Court in **Attorney General and Others v. Sumathipala** [2006] 2 SLR 126 held that:

*“A judge cannot **under a thin guise of interpretation** usurp the function of the legislature to achieve a result that the Judge thinks is desirable in the interests of justice. Therefore, the role of the judge is to give effect to the expressed intention of Parliament as it is the bounden duty of any Court and the function of every Judge to do justice within the stipulated parameters.”*

In interpreting the Section 78(1) of the Bribery Act, the Learned High Court Judge held that when action is being instituted by the Commission there is no requirement of a written sanction by the Commission. In my view this is the intention of the Legislature when enacted the Bribery Law.

There are several judgements had been delivered by the Apex Court of our country time to time. The Appellant had heavily relied on the decision in **Nandasena Gotabaya Rajapaksha v. DG CIABOC** (CA Revision APN/29/2018) decided on 12.09. 2019. In that case their Lordship held that:

“The prosecution “by” the Commission is therefore clearly legislative residue from Section 78(1) from the statutory provisions that existed before the amendments brought by Act Nos. 19 and 20 of 1994, with no corresponding power conferred on the Commission to institute proceeding. In the circumstances, the orders of the Magistrate’s Court and the Provincial High Court are tainted with illegality and thereby subjected to be interfered with by this Court in exercising its power of revision”.

With utmost respect to their Lordships, I can’t see eye to eye with the above judgment and the reasoning given.

As stated by **Salmond**, “by interpretation or construction is meant, the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed”.

Interpretation of statutes is the process of ascertain the true meaning of the words used in a statute. When language is of the statue is clear, there is no need the rules of Interpretation, But, in certain cases, more than one meaning may be derived from the same word or sentence. It is therefore necessary to interpret the statue to find out the real intention of the statute.

In this regard, a Constitution Bench of five Judges of the Supreme Court of India in **R.S.Nayak v.A.R.Antulay,AIR 1984 SC 684** has held:

“.... If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating”. (para 18)

The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature-not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.

In **Tennakoon v. Dissanakayake** 50 NLR 403 the court held that:

“..the plain meaning of the language of an antiquated statute cannot be given an extended judicial interpretation so as to cope with modern methods of corruption”.

In **Nandasena v Senanayake and Others** [1981] 1 SLR 238 the Court held that:

“Statutes should be construed, as far as possible, to avoid absurdity or futility. A statute should be construed in manner to give it validity rather than invalidity- ut res magis valeat quam pereat”.

The judicial decisions cited above and the writings amply demonstrate that the Court cannot under the guise of interpretation usurp the intention of the legislature.

In this case the Learned Magistrate as well as the Learned High Court Judge had followed the literal interpretation of the section concerned.

In the recent judgment in **TAB 1A and 1B/2020** decided on 11/01/2023, His Lordship Kodagoda,PC, J. held that:

*“ In the circumstances it is clear that, the Supreme Court when deciding **Anoma S.Polwatte v. Director General Commission to Investigate Allegation of Bribery and Corruption** (supra) had never intended to impose an additional requirement to submit a written directive when filing charges before Court, and therefore this Court is not inclined to impose an additional requirement other than the provisions already identified....”*

Considering the interpretation given to the Section 78(1) of the Bribery Act by the Learned High Court Judge, written sanction requirement is unnecessary and only cause an additional requirement which certainly obstruct or delay the smooth function of the Bribery Act. This Court satisfies that the Bribery Commission had given directions to institute proceeding in the Magistrate Court of Colombo under section 78(1) which had been correctly endorsed by the High Court of Colombo as written sanction requirement contemplated by the Appellant would only be superfluous.

Therefore, this appeal is dismissed.

The Registrar of this Court is directed to send this Judgment to the High Court of Colombo and the Magistrate Court of Colombo along with the original case record, if any.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL