

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

In the matter of an application made under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka read along Section Article 160 of the Anti-Corruption Act No.09 of 2023.

1. Kusum Priyadharshini Epa Weihana,  
51/4, Pushpadana Mawatha,  
Kandy.

[Petitioner in S.C. (Writ) 03/2025]

2. Isuru Pulasthi Bandara Polgasdeniya,  
No. 4/1, Mandakini Glow,  
Greenlands Lane,  
Colombo 05.

[Petitioner in S.C. (Writ) 04/2025]

**S.C. (Writ) Application Nos. 03/2025,  
04/2025 & 05/2025**

3. Chandula Ramali Rambukwella,  
No. 51/4, Pushpadana Mawatha,  
Kandy.

[Petitioner in S.C. (Writ) 05/2025]

**Petitioners**

**Vs.**

1. Judge of the High Court,  
High Court No.1,  
Colombo 12.

2. Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malasekara Mawatha,  
Colombo 07.
3. Director General,  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malasekara Mawatha,  
Colombo 07.
4. Mr. R Sumendra,  
Assistant Superintendent of Police,  
Assistant Director (Investigation 2),  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malasekara Mawatha,  
Colombo 07.
5. Justice W.M.N.P. Iddawala,  
Chairman,  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malasekara Mawatha,  
Colombo 07.

6. Mr. K.B.Rajapakse,  
Commissioner,  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malasekara Mawatha,  
Colombo 07.
7. Mr. Chethiya Goonasekera,  
Commissioner,  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malasekara Mawatha,  
Colombo 07.
8. Officer-In-Charge,  
Investigation Officer,  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malasekara Mawatha,  
Colombo 07.

**Respondents**

**Before: Hon. Janak de Silva, J.**  
**Hon. K. Priyantha Fernando, J.**  
**Hon. Sampath B. Abayakoon, J.**

**Counsels:** Farzana Jameel, P.C., with Suren Gnanaraj, Rashmi Dias, Rikaz Riffard, Shabnam Mohamed and Anuk Darmasena for the Petitioner  
Sudharshana De Silva, SDSG with Navodi De Zoysa, SC for the 1<sup>st</sup> Respondent  
Subashini Siriwardena, DDG with Anusha Sammandapperuma, ADL and Gaya Rajapaksha, ADL for the 2<sup>nd</sup> to 8<sup>th</sup> Respondents

**Argued on:** 30.06.2025

**Decided on:** 03.11.2025

**Janak De Silva, J.**

In these three applications, the Petitioners are impugning several freezing orders issued by the 2<sup>nd</sup> Respondent (CIABOC) upon the assets of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners in terms of the Anti-Corruption Act No. 09 of 2023 as amended (Act).

Parties agreed that all three applications may be consolidated and one order given in determining whether notice should be issued by Court.

The Petitioners are related. The 2<sup>nd</sup> Petitioner is the son-in-law of the 1<sup>st</sup> Petitioner. The 3<sup>rd</sup> Petitioner is the daughter of the 1<sup>st</sup> Petitioner.

The impugned freezing orders were made in terms of Section 53(1) of the Act, pursuant to a Suspicious Transaction Report ('STR') sent from the Financial Intelligence Unit of the Central Bank of Sri Lanka by letter dated 05.03.2024 addressed to the Director General of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC).

The assets subject to the impugned freezing orders are as follows:

Petitioners	<b>1<sup>st</sup> FREEZING ORDER</b> (27 <sup>th</sup> of June 2024)	<b>2<sup>nd</sup> FREEZING ORDER</b> (11 <sup>th</sup> Nov 2024)	<b>3<sup>rd</sup> FREEZING ORDER</b> (11 <sup>th</sup> Nov 2024)
Kusum Priyadarshini Epa Weihana	Fixed Deposit at HNB of Rs. 30 Mn.	Savings Account & Fixed Deposit at Sampath Bank	Savings Account at Commercial Bank

Isuru Pulasthi Bandara Polgasdeniya (Son-in-law)	Fixed Deposit at HNB of Rs. 14.125 Mn.	Motor Vehicle – CBK 8549	Savings Account at BOC
Chandula Ramali Rambukwella (Daughter)	HNB assurance PLC life Insurance Policy of Rs. 8 Mn.	Savings Account at Sampath Bank	Savings Account at DFCC

These freezing orders were subsequently confirmed and extended by the 1<sup>st</sup> Respondent acting in terms of Section 53(3) of the Act.

All three applications were filed on 20.03.2025 and 21.03.2025 seeking writs of *certiorari* quashing the initial freezing orders issued by the 2<sup>nd</sup> Respondent and their subsequent confirmations and extensions by the 1<sup>st</sup> Respondent as well as *prohibition* against the 2<sup>nd</sup> Respondent from extending the freezing orders any further.

The Petitioners claim that the decision of CIABOC to issue the freezing orders and the decision of the 1<sup>st</sup> Respondent to confirm and extend them are illegal and ultra vires, primarily due to their *ex parte* nature.

The contentions of the Petitioners at the stage of support raised several important questions of law on the interpretation of the Act. As such, Court heard parties extensively and reserved order on whether notice should be issued.

As this is one of the first cases in which the provisions of the Act arise for consideration by this Court, let me begin by tracing the historical context of the Act. Moreover, it is a trite rule of interpretation that it is permissible for Court to consider the historical context of any law in its interpretation.

### ***Antecedents of Corruption***

Corruption is not a new plague. It was in existence in early civilizations at all levels of government.

In the late Roman Republic, abuse of power was rampant particularly amongst the nobility who were governing overseas provinces. Members in the Senate were passive

observers as some had behaved the same way earlier or were hoping to do so when their time came. However, *Cicero*, considered by some to be Rome's greatest statesman, scholar, orator, philosopher and lawyer was honest and took the view that corruption was a cancer that ate at the heart of a State.

In his address to the jury during the trial of *Gaius Verres*, a former Governor of the island of Sicily, *Cicero* stated [*How to Run A Country, An Ancient Guide for Modern Leaders*, Marcus Tullius Cicero, Selected, translated, and with an introduction by Philip Freeman, Princeton University Press, 2013, pages 55-56] as follows:

*“And so, gentleman of the jury, I hope that I can finish this prosecution knowing that I have done my duty both to the Sicilians and to the Roman people. But I want everyone to know that if you do not live up to my high expectations and fail to convict Verres, I will continue my work and bring charges against anyone who might have offered you bribes as well as against anyone among you who might have brought guilt upon himself by accepting them. So let me say to those who would dare to play their cunning tricks and interfere with the pursuit of justice against the defendant in this case, beware, for they must be prepared to deal with me when I expose them to the Roman people. I hope they will see that I have been vehement, persevering, and vigilant as a prosecutor of this enemy of our Sicilian allies. Let them know that I will be just as adamant and relentless as a prosecutor in the future if the need arises and even more so, for I shall be speaking on behalf of the Roman people.”*

Historical chronicles explain how corruption was prevalent within the governance structure, including the treasury as well as the judiciary, during the days of the Sinhala Kings and the various attempts made to deal with it.

According to Amerasinghe [A. R. B. Amerasinghe, *The Legal Heritage of Sri Lanka*, The Law and Society Trust, Sarvodaya Vishva Lekha Publishers (1999), pages 197-198]:

*“In King Niśśankamalla’s inscription found near the Van-Äla, Polonnaruwa, it appears that the Accountants of the Treasury caused suspicion in the King’s*

*mind as to their integrity. The King, therefore exhorts them, in case they are in need of anything, to take it after informing the authorities. Those who act otherwise are threatened with royal disfavour and a hint is given of its dire consequences. A person who misappropriated gold, silver, money, iron, lands, or cattle or slaves, the King warned, would “be tormented by the fire of the anguish called remorse”. Officials were prohibited from accepting gifts or except in accordance with custom, taking anything for their subsistence (citing tablets of Mahinda at Mihintale, Epigraphia Zeylanica, Vol. I, p. 105). The Badulla Pillar Inscription records the fact that the receipt of gifts by judges was ‘contrary to custom’. The Dhammaddhaja-Jataka, the Buddha-Sala-Jataka, the Mahabodhi-Jataka and the Khandhala-Jataka refer to the replacement of corrupt judges and the reversal of their decisions [Citing Dhammaddhaja-Jataka (Jataka No. 220) which refers to the story of an unjustly ruled matter by a corrupt official that had been overturned by the Buddha in one of his forms]. Aggabodhi VII (772-777 AD) dismissed dishonest judges (euphemistically described at the time as discharging their duties with ‘cunningness’ [...])... and judging according to justice, he rooted out unjust judges.”*

The Badulla pillar-inscription did refer to the exaction of illegal fines and the receipt of gifts by the *dandanayaka* (a judge and high military official) contrary to custom. However, the inscription also records the fact that when the problem was reported to King Udaya IV (946-954 AD), he took steps to rectify the matter by ordering that “a decree should be passed and promulgated prohibiting the unlawful acts committed in violation of the institutions established in the time of King Kassapa IV (898-914 AD)”; and the officials visiting the place were required to ensure that the rules were observed [Ibid. page 201].

Corruption was not a practice endemic to the natives. It was prevalent even amongst the foreign invaders.

De Silva [K.M. De Silva, A History of Sri Lanka, Vijitha Yapa Publications (2005), page 235] describes the prevalence of bribery and corruption amongst Dutch officials as follows:

*“From the experience gained in these years the Dutch adopted a policy of selective restrictions and incentives affecting the Indian traders. While the Bengal, Surat and north Malabar traders were offered incentives as an encouragement to trade with the island, restraints – though not as severe as those of 1670 – were imposed on the South Coromandel traders. The VOC regarded the boat traffic with south India as being especially harmful to its interests and was, therefore, intent on keeping it under control. These boatmen had an expert knowledge of the coast of the island and the Dutch cruisers had virtually no success in hampering them in their efforts to beat the restrictions. Above all, they resorted to **bribery, corruption being endemic among Dutch officials**. The collusions between them and the traders enabled the latter to escape the full rigour of the company’s trade monopoly, to say nothing of the duties due on their goods. Governor Becker found that the senior officials of the company at Galle had formed a partnership to engage in illegal private trade in cloth. Such corruption was the chief reason why the smuggling of cloth continued until the end of the eighteenth century. Thus the company’s profits from textiles never matched their true potential, and their profits from areca too kept declining.”* (emphasis added)

### **Religion and Corruption**

The existence of corruption from early civilization is somewhat perplexing given that major religions unite in their condemnation of bribery and corruption in all its manifestations.



Buddhism highlights the importance of the leaders of a country being free of bribery and corruption. *Adhamma Sutta* of *Aṅguttaranikāya* explains how corrupt leadership has adverse consequences not only on the entire social order but also on nature and the physical environment:

*“Monks, at a time the kings are unethical, the royal servicemen become unethical. When the royal servicemen become unethical, the Brahmin householders become unethical. When the Brahmin householders become unethical, those in the townships and provinces become unethical. When the townships and provinces become unethical, the moon and sun move unevenly. When the moon and sun move unevenly, the stars and the constellations move unevenly. When the stars and constellations move unevenly, then the night and day occur unevenly. When the night and day occur unevenly, the fortnights and months become uneven. When the fortnights and months become uneven, winds blow unevenly and in the wrong direction. When winds blow unevenly and in the wrong directions, deities become disturbed. When the deities become disturbed, the sky does not bring proper rainfall. When there is no proper rainfall, the grains ripen unevenly. When humans eat unevenly ripened grains, their life span is shortened, and they lose their beauty and power and are struck by many ailments. Monks, at a time the kings are ethical the opposite to the above happens. When cattle are crossing a (water way), if the leading bull goes crooked, all of them go crooked as the leading one has gone crooked. Even so, among humans, if one considered the chief behaves unethically, the rest will follow suit. If the king is unethical, the whole country rests unhappily. When cattle are crossing a (water way), if the leading bull goes straight, all of them go straight as the leading one has gone straight. Even so, among humans, if one considered the chief, indeed conducts oneself ethically all the rest follow suit. If the king is ethical, the whole country rests happily.”*

The Bible strongly condemns the practice of bribery. *For I know how many are your transgressions and how great are your sins - you who afflict the righteous, who take a bribe, and turn aside the needy in the gate* (Amos 5:12). *Who lends money to the poor without interest; who does not accept a bribe against the innocent. Whoever does these things will never be shaken* (Psalms 15:5). *Thou shalt take no gift: for the gift blindeth the wise, and perverteth the words of the righteous* (Exodus 23:8). *You must not distort justice; you must not show partiality; and you must not accept bribes, for a bribe blinds the eyes of the wise and subverts the cause of those who are in the right* (Deuteronomy 16:19). *For oppression makes a wise man mad, and a bribe corrupts the heart* (Ecclesiastes 7:7).

Hinduism emphasizes the importance is also unequivocal in its condemnation of bribery or corruption. *He who takes unlawful gifts goes to the Adhomukha (or head-inverted) hell.* (Vishnu Purana: A System of Hindu Mythology and Tradition, H.H. Wilson, Vol. II, page 218). *That king whose subjects are harassed by officials receiving bribes, by thieves in his kingdom, is roasted in hell* (Padma Purana, Bhoomi Khanda, Chapter 67). *Commissioned to a task, one should not touch bribes for by such appropriate one becometh liable to fetters or death* (Mahabharata, Virata Parva). *Accepting bribe is a sin and those who accept the bribe are thrown to hell* (Vamana Purana, Chapter 37). *A king should always be alert with those who take bribe* (Manusmriti, Chapter 9). *Appointed to a task, one should not touch riches. Having obtained unearned riches, one faces imprisonment or death* (The Mahabharata, Translated by Bibek Debroy, Vol. 4, page 12).

The Quran is unequivocal in condemning corruption. *Who break the covenant of Allah after contracting it and sever that which Allah has ordered to be joined and cause corruption on earth. It is those who are the losers* (2:27). *And [recall] when Moses prayed for water for his people, so we said, "Strike with your staff the stone." And there gushed forth from it twelve springs, and every people knew its watering place. "Eat and drink from the provision of Allah, and do not commit abuse on the earth, spreading corruption* (2:205). *And when he goes away, he strives throughout the land to cause*

*corruption therein and destroy crops and animals. And Allah does not like corruption (2:60).*

### ***International Response***

The impact of bribery and corruption on a nation was appreciated from time immemorial. According to *Cicero* (supra. xviii), greed, bribery, and fraud devour a country from the inside, leaving it weak and vulnerable. Corruption is not merely a moral evil, but a practical menace that leaves citizens at best disheartened, at worst seething with anger and ripe for revolution.

In ***K.P.K.L.P. Maduwanthi v. S.M.G.K. Perera and Others* [S.C.F.R. Application No. 23/2021, S.C.M. 18.11.2022 at page 19]**, I held that bribery or corruption in the public sector is a cancer destroying public confidence in the system of governance. It must be eliminated by enforcing the rule of law in which this Court has an imperative role to play.

In ***Dissanayake v. Director General, Commission to Investigate Bribery and Corruption and Another* [S.C. Appeal 160/2017, S.C.M. 21.11.2023 at pages 10-11]** my learned brother Kodagoda, P.C., J. held as follows:

*“At grass-roots level (as in this case) bribery and corruption by the lower rungs of the public service causes inconvenience to the public, and affects the organized manner of the delivery of the services of the government to the people and public administration. At higher levels of governance, bribery and corruption have more serious consequences which adversely affect policy formulation, decision-making, integrity of governance, macro-economic development, investor confidence and the reputation of the country.”*

Corruption has adverse implications domestically as well as globally. United Nations Convention against Corruption (UNCAC) is an attempt by the United Nations to address the debilitating impact of corruption on society at large. It is an international response to the concerns about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of

democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.

UNCAC recognizes that corruption may involve vast quantities of assets, which may constitute a substantial proportion of the resources of States which threatens the political stability and sustainable development of those States. It acknowledges the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering.

### ***The Act***

Our legislature has from time to time, adopted several measures to address the challenges posed by bribery and corruption [See Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965, ***Kariapper v. Wijesinghe (68 NLR 529)***, ***Kariapper v. Wijesinghe (70 NLR 49)***, Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994].

The Act, certified on 08.08.2023, was enacted to give effect to certain provisions of the United Nations Convention against Corruption (UNCAC), signed and ratified by Sri Lanka in 2004, and other internationally recognized norms, standards and best practices. A Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was established to detect and investigate allegations of Bribery, Corruption and offences related to the Declaration of Assets and Liabilities and associated offences. The CIABOC is empowered to direct the investigations and institute proceedings for offences of Bribery, Corruption and offences related to the Declaration of Assets and Liabilities and associated offences. The Bribery Act (Chapter 26), the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 and the Declaration of Assets and Liabilities Law No. 1 of 1975 were repealed.

### ***Freezing Order***

The primary attack of the Petitioners on the freezing orders made by CIABOC is that they could not have been made *ex parte*.

Section 53(1) of the Act, vests CIABOC with power to make freezing orders. A freezing order, as correctly submitted by the Petitioners, is where the CIABOC prohibits by written order, any person identified in Section 53(1) from parting with, dealing with or otherwise disposing of property identified in the freezing order.

It can do so only *where an inquiry or investigation is being conducted* under Section 42 of the Act. Before proceeding to examine the contours of Section 42 of the Act, let me briefly digress to set out the legislative history of Section 53 of the Act.

In terms of Section 53(2) of the Act, a freezing order is valid for seven (7) days. The CIABOC must, within the 7 days, make an application to the High Court seeking confirmation of the freezing order and if required, its extension. It is through this mechanism that freezing orders are brought within judicial purview.

When the Act was gazetted in bill form, Clause 53 provided for a freezing order to be valid for three (3) months. However, in **Anti-Corruption Bill Determination [S.C.S.D. 16-21/2023, pages 40-41]**, Court determined that the three (3) months in Clause 53 has no rational connection to the objects of the Bill and therefore is arbitrary. Accordingly, Court determined that Clause 53(1) of the Bill is inconsistent with Article 12(1) of the Constitution and can only be passed with the special majority required under paragraph (2) of Article 84. Court also opined that the inconsistency will cease if the period is brought down to 7 days. Hence, the seven-day time period in Section 53 of the Act. I observe that this is the only ground on which Clause 53 of the bill was assailed for constitutionality.

Returning to my analysis, pursuant to Section 42 of the Act, CIABOC may commence a preliminary inquiry where the commission of an offence referred to in Section 41 of the Act is disclosed upon (i) receipt of any information, or (ii) upon receipt of a complaint, or (iii) *ex mero motu* or (iv) based on any other material received by it. The purpose of conducting a preliminary inquiry is to determine whether there exist reasonable grounds to believe that an offence under the provisions of the Act has been committed. An investigation may be conducted where after the conduct of a

preliminary inquiry, CIABOC is satisfied that an offence referred to in Section 41 of the Act has been committed.

Nevertheless, CIABOC may authorize the conduct of an investigation without a preliminary investigation where it is satisfied that there exist reasonable grounds to believe the committing of an offence referred to in Section 41 of the Act.

The power of CIABOC to issue freezing orders is not unfettered but subject to certain safeguards. Moreover, it is designed for a specific purpose.

Article 31(1) of UNCAC requires each State Party to take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of (a) proceeds of crime derived from offences established in accordance with UNCAC or property the value of which corresponds to that of such proceeds; (b) property, equipment or other instrumentalities used in or destined for use in offences established in accordance with UNCAC.

Article 31(2) of UNCAC requires each State Party to take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of Article 31 *for the purpose of eventual confiscation*. Thus, measures such as tracing, freezing or seizure form part of an investigative process which seeks to identify and eventually confiscate proceeds of crime derived from offences established in accordance with UNCAC or property the value of which corresponds to that of such proceeds.

It is important to note at this stage, that the Act provides for the forfeiture of both movable and immovable properties in certain specified circumstances [See Section 109(8) of the Act].

Accordingly, freezing orders are investigative tools provided for an effective investigation and are means to an end and temporary in nature. Such temporary measures are required to prevent property which may lawfully be forfeited from being taken outside the jurisdiction or dealt otherwise so as to make a preliminary inquiry

or investigation pursuant to the Act an exercise in futility. The final goal is to make them available for forfeiture as provided for in the Act.

Freezing of assets allegedly to have acquired from illegal activity (criminal offences) were first introduced under the Prevention of Money Laundering Act No. 05 of 2005, Financial Transaction Reporting Act No. 06 of 2005 and Convention on the Suppression of Financing of Terrorism Act No. 25 of 2005. They all carry almost identical or similar provisions.

There can be a parallel drawn between the freezing orders issued under the Act and interlocutory orders such as *Mareva* injunctions and *Anton Piller* orders available in English law. These are used in English legal practice to maintain the *status quo* and prevent relevant parties from acting in manners which may affect the final outcome of legal proceedings.

Alexander [Alexander, Kern (1997), *"The Mareva Injunction and Anton Piller Order: The Nuclear Weapons of English Commercial Litigation"*, *Florida Journal of International Law*: Vol. 11: Iss. 3, Article 8, page 490] states that:

*"To maintain the element of surprise, speed and secrecy are required in applying for both a Mareva and an Anton Piller order. An ex parte order is therefore necessary otherwise the defendant will have notice of the action and the opportunity to dissipate assets if not restrained."*

The Petitioners rely on Section 42(4)(f) of the Act to try and establish that a statement must be recorded from them before a freezing order is made by CIABOC. However, the contention is misplaced for several reasons. The reference there is to an investigation. Nevertheless, in terms of Section 53(1) of the Act, a freezing order can be made at any time after the commencement of a preliminary inquiry which precedes an investigation. Moreover, the recording of the statement of any person who has committed an offence referred to in Section 41 can be done at any time during the investigation.

Therefore, I have no hesitation in rejecting the contention of the Petitioners that CIABOC should have, as a pre-condition to the issuing of any freezing order, followed the rules of natural justice by granting the Petitioners a hearing including recording their statement. Such an interpretation will defeat the very purpose of freezing orders. Making the recording of a statement from the party whose property may be the subject matter of a freezing order puts that party on notice. We live in a world of advanced technologies where the property in issue can be moved out of the reach of the Act and CIABOC within seconds. Moreover, the freezing orders that can be issued by CIABOC is valid only for seven (7) days and can be extended only by judicial oversight.

Before parting from the discussion of the initial making of a freezing order, I must state that the Act does contemplate instances where property that is subject to a freezing order may eventually be found, during or at the end of an investigation, to be property lawfully acquired. As much as an arrest is not illegal merely because the prosecution ended in an acquittal, a freezing order does become unlawful *merely* because it is subsequently found that the property was lawfully acquired.

### ***Judicial Oversight***

Section 53(2) of the Act requires CIABOC to, within seven (7) days of the making of a freezing order, make an application to the High Court seeking its confirmation and if needed, for its extension.

Upon such an application being made, Section 53(2) of the Act requires the High Court to consider two matters. They are:

- (a) Whether there are *sufficient reasons* for the making of such freezing orders,
- (b) Grant an extension for such periods as it considers necessary.

Clearly, the High Court must not mechanically extend freezing orders made by CIABOC. Court must give its judicial mind as to whether continuing with the freezing order is warranted. Having considered the journal entries in the respective cases, I am satisfied that the learned High Court judge has brought his judicial mind to bear on the issues



placed before him and made orders confirming and extending the freezing orders. Court must be satisfied that there are sufficient reasons for the making of such freezing orders. What are sufficient reasons differs depending on the point of time at which CIABOC decides to issue a freezing order.

Where a freezing order is issued upon the commencement of a preliminary inquiry, the test is whether the information received in terms of Section 42(1) of the Act *discloses the commission of an offence referred to in Section 41 of the Act* [Section 53(3) read with Section 42(3) of the Act].

Where a freezing order is made upon CIABOC authorizing the conduct of an investigation directly without the conduct of a preliminary inquiry, the test is whether *the information received in terms of Section 42(1) of the Act discloses reasonable grounds to believe the committing of an offence referred to in Section 41 of the Act* [Section 53(3) read with Section 42(3) of the Act].

The learned President's Counsel submitted that no investigative material whatsoever was placed before the High Court. To require CIABOC to reveal all the investigative material in its possession will be self-defeating and render the provisions in the Act nugatory.

The principal question that arises for consideration is whether the Petitioners should have been given notice of the application made pursuant to Section 53(2) of the Act so as to enable them to be heard by the High Court prior to the exercise of its jurisdiction.

I am mindful that the principle of legality is a rule of interpretation with two key components. Firstly, Parliament assumes that the statutory powers it grants will be interpreted by the Courts, as far as possible, in conformity with fundamental legal values, Secondly, any abrogation by Parliament of fundamental legal values must be set forth in clear and unambiguous terms.

In **R v. Secretary of State for the Home Department; Ex parte Simms** [(2000) 2 AC 115 at 131], Lord Hoffman expounded its modern formulation as follows:

*“[...]the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implementation of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual.”*

The learned President’s Counsel relying on the decisions in **Sundarkaran v. Bharathi** [(1989) 1 Sri LR 46], **Sarath Amunugama and Others v. Karu Jayasuriya, Chairman, United National Party and Others** [(2000) 1 Sri LR 172] submitted that the rules of natural justice formed part of the essential principles of justice. The failure to adhere to such fundamental principles will render any decision illegal an ultra vires.

The learned SDSG relying on Section 112 of the Act, countered that it was permissible for the CIABOC to rely on the words “*ex parte*” in Section 8(1) of the PMLA Act to be applied *mutatis mutandis* in respect of the confirmation and extension of a freezing order made under Section 53 of the Act.

The learned President’s Counsel on the other hand countered that the words *mutatis mutandis* must be interpreted in accordance with the decision in **Visuvalingam et. Al v. Liyanage et al. No. 1** [(1983) 1 Sri LR 203] which laid down a necessity test.

Section 112 of the Act reads as follows:

“112. (1) 2006 අංක 5 දරන මුදල් විශුද්ධීකරණය වැළැක්වීමේ පනත යටතේ සඳහන් කරන ලද නීති විරෝධී ක්‍රියාවක් වන වරදක් යම් තැනැත්තෙකු විසින් මේ පනත යටතේ සිදුකරන ලද අවස්ථාවක දී, ඒ වරද සිදුකරන තැනැත්තාට එරෙහිව මේ පනත යටතේ සිදු කරන ලද වරදකට අමතරව, ඒ පනත යටතේ වන වරදක් සඳහා ද වෝදනා ගොනු කරනු ලැබිය හැකි ය.

(2) 2006 අංක 5 දරන මුදල් විශුද්ධීකරණය වැළැක්වීමේ පනතේ විධිවිධාන, අවශ්‍ය වෙනස් කිරීම් සහිතව එම පනත යටතේ එකී වරද සම්බන්ධයෙන් වන පරීක්ෂණ, විමර්ශන සහ නඩු කටයුතු සඳහා අදාළ කරගත යුතු අතර සහකාර පොලිස්

අධිකාරීවරයකුට හෝ වෙනත් යම් පොලිස් නිලධාරියකුට එකී පනතේ සිදු කරන ලද යම් සඳහනක්, මේ පනත යටතේ වන කොමිෂන් සභාව මගින් නම් කරන ලද යම් නිලධාරියකුට කරන ලද සඳහනක් ලෙස කියවා තේරුම් ගත යුතු ය.”

“(1) Where any person commits an offence under this Act, which amounts to an unlawful activity within the meaning of the Prevention of Money Laundering Act, No. 5 of 2006, such person may be charged for an offence under that Act in addition to an offence under this Act.

(2) The provisions of the Prevention of Money Laundering Act, No. 5 of 2006 shall, mutatis mutandis, apply to the ***inquiries, investigations*** and proceedings in respect of such offence under that Act and any reference in the said Act to the Assistant Superintendent of Police or any other police officer shall be read and construed as a reference to an officer designated by the Commission under this Act.” (emphasis added)

At the Bill stage, Section 112(2) referred only to proceedings and did not cover *inquiries* and *investigations*. Thus, in the **Anti-Corruption Determination (supra. page 56)**, it was held:

*“Sub-clause (2) provides for the application of the provisions of Money Laundering Act No. 5 of 2006 to apply for proceedings of the offence of money laundering under the Bill. However, it has omitted its application to preliminary inquiries and investigations which the Commission is mandated to perform under the Bill.*

*This is irrational and defeats the objects of the Bill. We determine that Clause 112 is inconsistent with Article 12(1) of the Constitution and can only be passed with the special majority required under paragraph (2) of Article 84.*

*The learned ASG submitted that the following amendment will be moved at the Committee Stage:*

*Page 106 Clause 112: delete lines 10 and 11 and substitute the following:-*

*“Act, No. 5 of 2006 shall, mutatis mutandis, apply to the inquiries, investigations and proceedings in respect of such offence under that Act and any”*

*The inconsistency will cease if the above amendment is made.*

Section 112(2) of the Act must be interpreted in the context of this intervention by Court. Accordingly, the application of the provisions of Money Laundering Act No. 5 of 2006 as amended must apply to *preliminary inquiries and investigations which CIABOC is mandated to perform under the Act.*

Moreover, it was held in **Anti-Corruption determination (supra. pages 13-14)** that:

*“According to the said Act, ‘unlawful activity’ is defined inter alia as ‘an offence under the Bribery Act’ (emphasis added). It is pertinent to observe that Clauses 112(1) and (2) of the Bill provides for charging any person under both the Bill and the Prevention of Money Laundering Act No. 5 of 2006 and making applicable the relevant provisions under that Act to such proceedings. Through this legislative scheme a clear nexus and a link is established between the two pieces of legislation complementing the scope and content of each other.”*

According to Section 41(b) of the Act, CIABOC is empowered to hold a preliminary inquiry or conduct an investigation, as the case may be, regarding the allegations contained in any information or complaint made to it or any material received by it under Section 42 where any such allegations or any material received discloses the commission of an offence under the PMLA Act when the unlawful activity within the meaning of PMLA Act is committed in the same transaction together with an offence under the provisions of this Act.

The freezing orders issued on the assets of all three Petitioners by CIABOC specifically refer to the offence of money laundering and Section 7 of the PMLA Act.

Section 8(1) of the PMLA Act as amended by Act No. 40 of 2011 reads as follows:

*“(1) The Police Officer issuing the Freezing Order under the provisions of section 7 shall within the seven days during which such order shall be in force, **make an exparte application** to the High Court seeking confirmation of such Freezing Order and also if the circumstances so necessitate, request an extension of the original period of seven days.” (emphasis added)*

In the **Anti-Corruption Bill determination [S.C.S.D. 16-21/2023]**, it was held (*supra.* at page 21), that Sovereignty in Article 3 of the Constitution includes the right to a Government free of bribery or corruption. The Act must be interpreted in a manner to make this right attainable and not merely illusory.

In the aforesaid circumstances, I hold that CIABOC is entitled to make an *ex parte* application to the High Court to confirm the freezing orders it may make as well as to seek its extensions. Therefore, the complaint of the Petitioners of the violation of the rules of natural justice in making, confirming and extension of the impugned freezing orders must necessarily fail.

In this context, it is important to note that Section 53(12) of the Act provides safeguards to ensure that legitimate interests are not impinged by the grant of a freezing order. It reads as follows:

“(12) මේ වගන්තිය යටතේ තහනම් නියෝගයක් කිරීමට පෙර, එවැනි නියෝගයක් මගින් බලපෑමට ලක් වූ යම් තැනැත්තකුගේ නීත්‍යනුකූල ව්‍යාපාරයට හෝ වෙනත් අවශ්‍යතා වලට හානි විය හැකි බව ඒ වෙනුවෙන් කරනු ලබන ඉල්ලීමක් මත මහාධිකරණයේ මතය වන්නේ නම්, එවැනි ගිණුමක්, දේපලක් හෝ ආයෝජනයකට අදාළ ඕනෑම අත්‍යවශ්‍ය ගනුදෙනුවක් එම අධිකරණය විසින් නියම කරනු ලැබිය හැකි පරිදි කොමිෂන් සභාව විසින් බලය පවරන ලද නිලධරයකුගේ අධීක්ෂණයට යටත්ව සහ මහපොත්වීම යටතේ සිදු කිරීමට අවසර ලබා දීමේ නියෝගයක් කිරීමට මහාධිකරණයට හැකිය.”

“(12) Before making a freezing order under this section, the High Court may on an application made in that behalf, if the High Court is of the opinion that such an order may damage the legitimate business or any other interest of any person affected by such freezing order, make order permitting any essential transaction relating to such account, property or investment to be carried out subject to such supervision and under the direction of an officer authorized by the Commission as may be directed by such court.”

Notwithstanding the reference to “*before making a freezing order*”, I am of the view that this applies to both the confirmation as well as extension of freezing orders. The words “*any person*” is of wider import and includes the Petitioners. Accordingly, they have the opportunity to make an application to the High Court, if they so desire, to obtain permission to carry out any essential transaction subject to judicial supervision.

### ***Judicial Confirmation and Extension***

The Petitioners have sought writs of *certiorari* against the acts of the 1<sup>st</sup> Respondent confirming and extending freezing orders made by the 2<sup>nd</sup> Respondent. This is misconceived in law.

In terms of Section 160(1) of the Act, this Court has been vested with *writ* jurisdiction only where relief is sought against CIABOC.

### ***Seizure of Vehicle of the 2<sup>nd</sup> Petitioner***

Admittedly, physical possession of the Mercedes Benz motor vehicle bearing number CBK 8549 belonging to the 2<sup>nd</sup> Petitioner was taken over by CIABOC. The learned President’s Counsel submitted that this was not a course open to CIABOC. In particular, it was pointed out that, CIABOC had already made a freezing order in terms of Section 53(1) of the Act restraining the Commissioner General of Motor Traffic from registering a transfer of the 2<sup>nd</sup> Petitioner’s motor vehicle which was subsequently confirmed and extended.

I have no hesitation in rejecting this contention. Section 45 of the Act empowers CIABOC to seize any property which it has reasonable grounds to believe is evidence of the commission of any offence under the Act. The reference to specified items mentioned in Section 45(1)(b) of the Act being found in a vehicle does not exclude a vehicle which itself is evidence of the commission of any offence under the Act. The reference to an *article* in Section 45(1)(b) includes a vehicle which is evidence of the commission of any offence under the Act. This power is complemented by the provisions in Section 53(5) of the Act.

The Respondents raised several preliminary objections to these applications including futility, undue delay, availability of alternative remedy and suppression and/or misrepresentation of material facts. However, in view of the conclusions reached above, there is no need to address them.

To summarize:

- (1) Sovereignty in Article 3 of the Constitution includes the right to a Government free of bribery or corruption. The Act must be interpreted in a manner to make this right attainable and not merely illusory.
- (2) CIABOC may commence a preliminary inquiry where the commission of an offence referred to in Section 41 of the Act is disclosed upon (i) receipt of any information, or (ii) upon receipt of a complaint, or (iii) *ex mero motu* or (iv) based on any other material received by it. The purpose of conducting a preliminary inquiry is to determine whether there exist reasonable grounds to believe that an offence under the provisions of the Act has been committed. An investigation may be conducted where after the conduct of a preliminary inquiry, CIABOC is satisfied that an offence referred to in Section 41 of the Act has been committed.
- (3) Nevertheless, CIABOC may authorize the conduct of an investigation without a preliminary investigation where it is satisfied that there exist reasonable grounds to believe the committing of an offence referred to in Section 41 of the Act.
- (4) CIABOC has the power to issue freezing orders as soon as a preliminary inquiry or an investigation is commenced.
- (5) The power of CIABOC to issue freezing orders is not unfettered but subject to certain safeguards. Moreover, it is designed for a specific purpose.
- (6) Freezing orders are investigative tools provided for an effective investigation and are means to an end and temporary in nature. Such temporary measures are required to prevent property which may lawfully be forfeited from being

taken outside the jurisdiction or dealt otherwise so as to make a preliminary inquiry or investigation pursuant to the Act an exercise in futility. The final goal is to make them available for forfeiture as provided for in the Act.

(7) There was no duty on CIABOC, as a pre-condition to the issuing of any freezing order, to have followed the rules of natural justice by granting the Petitioners a hearing including recording their statement. Such an interpretation will defeat the very purpose of freezing orders.

(8) CIABOC is entitled to make an *ex parte* application to the High Court to confirm the freezing orders it may make as well as to seek its extensions.

(9) In terms of Section 160(1) of the Act, this Court has been vested with *writ* jurisdiction only where relief is sought against CIABOC.

For all the foregoing reasons, I hold that the Petitioners have failed to establish a *prima facie* case for notice.

Notice is refused.

Application is dismissed.

**JUDGE OF THE SUPREME COURT**

**K. Priyantha Fernando, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Sampath B. Abayakoon, J.**

I agree.

**JUDGE OF THE SUPREME COURT**