

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

*In the matter of an Appeal under and
in terms of Article 128 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.*

SC. APPEAL 64/23

SC/SPL/LA No. 337/2022.

CA No: CA/HCC/149/20

HC Case No. HCB 2147/16

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

COMPLAINANT

Vs.

Chandana Chithral Kariyawasam,
No. 494/4, Hirimbura Road,
Kahaduruwawatte, Galle.

ACCUSED AND THEN BETWEEN

Chandana Chithral Kariyawasam,
No. 494/4, Hirimbura Road,
Kahaduruwawatte, Galle.

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

AND NOW BETWEEN

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

**COMPLAINANT-RESPONDENT-
APPELLANT**

Vs.

Chandana Chithral Kariyawasam,
No. 494/4, Hirimbura Road,
Kahaduruwawatte, Galle.

**ACCUSED-APPELLANT-
RESPONDENT**

BEFORE : P. PADMAN SURASENA J
YASANTHA KODAGODA PC J
KUMUDINI WICKREMASINGHE J

COUNSEL : Azard Navavi, SDSG with Ms. Ganga Heyyanthuduwa, Deputy Director General, Ms. Anusha Samandapperuma/ ADL for the Complainant- Respondent- Appellant

Kalinga Indatissa, PC with Ms. Razana Salih, Nirodh de Silva

and Ms. Nushani shahib for the Accused-Appellant- Respondent.

ARGUED &

DECIDED ON: 24-10-2023.

P. PADMAN SURASENA J

Court heard the submissions of the learned Senior Deputy Solicitor General who appeared for the Complainant- Respondent-Appellant and also the submissions of the learned President's Counsel who appeared for the Accused-Appellant- Respondent and concluded the Argument.

This Court by its order dated 16-03-2023, has granted Special Leave to Appeal in respect of the questions of law set out in paragraph 12 (a), (b), (f), (g), (i) and (j) of the Petition dated 08-12-2022. In addition to the above questions of law, Court had also granted Special Leave to Appeal in respect of the following two questions formulated by the learned Senior Deputy Solicitor General who appeared for the Director General of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC).

- i. *“Does a major part of the judgment of the Court of Appeal contain parts verbatim from the written submissions filed by the parties without such portions being subjected to a proper judicial evaluation?”*
- ii. *If the answer to the above question is in the affirmative, should the judgment of the Court of Appeal be permitted to stand?*

Having considered the submissions, we are of the view that for the disposal of this Appeal, it would suffice for us to consider, the afore-mentioned two questions of law formulated at the time of supporting the Special Leave to Appeal Application relevant to this Appeal by the learned Senior Deputy Solicitor General who appeared for the Director General of CIABOC.

In the course of making the submissions Mr. Azard Nawawi, Senior Deputy Solicitor General produced before court, a copy of the judgment of the Court of Appeal in which he had highlighted the verbatim contents taken from the written submission filed by the Accused-Appellant in the Court of Appeal dated 31-05-2021 which has been produced in this Court marked **P7** and from the written submission filed by the Complainant-Respondent-Appellant in the Court of Appeal dated 01-06-2022 which has been produced in this Court marked **P8**.

Having compared the contents of the judgment of the Court of Appeal with the contents of the said written submissions filed by both parties in the Court of Appeal, we observe that except few words of certain sentences, rest of the judgment of the Court of Appeal dated 28-10-2022 is exactly the same in content as those in the written submissions of the Accused- Appellant-Respondent (**P7**) and the written submission filed by the Complainant-Respondent-Appellant (**P8**).

It is the submission of the learned Senior Deputy Solicitor General that this fact alone is sufficient to prove that the Court of Appeal had not given its mind to the merits of the issues raised when deciding them. He proceeded to cite and rely on two previous precedents of this court which he has annexed to his written submissions marked **X 1** and **X 2**. The said judgments of this Court are directly on

point and are self-explanatory. It is worthwhile reproducing their operative parts which are as follows.

In the case of Bilingahawatte Gedara Ariyaratne Vs. Attorney General,¹ this Court having taken into consideration, the submissions of the learned counsel for the Accused-Appellant-Petitioner in that case who had complained that the entirety of the written submission filed on behalf of the Complainant-Respondent had been reproduced in the judgment of the Court of Appeal, proceeded to do a comparison of the written submissions tendered by both parties before the Court of Appeal vis a vis the contents of the judgment delivered by the Court of Appeal which was impugned in that case. Having found merits in the above submission, Aluwihare PC J held in that case as follows:

“Upon comparison, it is clear that the same contents inclusive of the formatting, paragraphing, numbering and underlying that appear in the written submissions is reflected in the identical manner in the Judgment of the Court of Appeal. Hence it is clear that the Court of Appeal had not arrived at the decision on an independent evaluation of the material in this case. Other than mere 3 lines that appear on the last page of the Judgment, entirety of the judgment is a reproduction of the written submissions filed on behalf of the Complainant-Respondent.

This Court is of the view that it is unsafe to sustain the judgment delivered by the Court of Appeal. ...”

This Court in that case, having noted that there had been a clear failure on the part of the Court of Appeal to give it's mind to the issues raised, proceeded to set aside the judgment delivered by the Court of Appeal and send the case back to the Court of Appeal for rehearing by a Bench comprising of Judges who did not hear the case in the Court of Appeal at the previous instance.

In the case of Bilingahawatte Gedara Karunaratne alias Raja Vs. Attorney General², this Court having perused the judgment of the Court of Appeal in that case, had

¹ SC Spl LA No. 43/2017; decided on 12-10-2017.

² SC Spl LA No. 66/2017; decided on 05-12-2017.

found that the written submissions filed by the Attorney General had been reproduced from word to word in the judgment of the Court of Appeal in that case. Sisira J de Abrew J, answering in the affirmative, the question of law "*Has the Court of Appeal failed to consider the defence case?*" stated as follows:

"We have perused the judgment of the Court of Appeal and we find that the written submissions filed by the Attorney General have been reproduced from word to word in the judgment. Thereafter Her Ladyship has written two sentences affirming the conviction and the sentence. We therefore, hold that the Court of Appeal has failed to consider the Appellant's case and severe prejudice has been caused to the Accused-Appellant in this case.

In our view, when the Appellate Court considers an appeal it becomes the sacred duty of that Court to consider arguments for both sides. When the Appellate Court reproduces the written submissions filed by the Attorney General and writes a few sentences affirming the conviction, (the Appellate Court) fails to perform its sacred duty.

It is not the duty of the Court of Appeal to reproduce the written submissions filed by one party in the judgment and give the judgment in favour of the party who filed written submissions. The Court of Appeal in this case after reproducing the written submissions filed by the Attorney General in its judgment, has dismissed the appeal.

In these circumstances, we answer the above questions of law in the affirmative.

In our view the judgment of the Court of Appeal cannot be permitted to stand. We therefore set aside the judgment of the Court of Appeal and direct the Court of Appeal to re-hear the case by a different Bench."

In the course of the submissions, the learned President's Counsel who appeared for the Accused- Appellant- Respondent in the instant case, was not able to counter the above submissions made by the learned Senior Deputy Solicitor General. This is because it was clear to everyone that on the face of it, the contents of the judgment of

the Court of Appeal is entirely a reproduction in verbatim, of the written submissions filed by both parties.

In our view, this is a clear indication of the failure on the part of the learned Judge of the Court of Appeal to consciously consider the submissions made by the parties pertaining to the issue at hand when arriving at the decision he had made. Therefore, we are unable to accept such a writing as a judgment pronounced after considering the issues and submissions made by the respective parties to the case. Under the above circumstances, we are unable to permit this judgment to stand.

In view of the above, we proceed to set aside the judgment dated 28-10-2022 and send the case back to the Court of Appeal with a direction to the Court of Appeal to conduct a fresh argument before a panel of Judges who did not sit as members of the panel which had delivered the impugned judgment dated 28-10-2022.

In view of the above conclusion, we will not proceed to consider the other questions of law in respect of which this Court has granted Special Leave to Appeal.

Appeal is allowed. Case is sent back to the Court of Appeal to conduct a fresh argument.

JUDGE OF THE SUPREME COURT.

YASANTHA KODAGODA, PC, J.,

I agree

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.,

I agree

JUDGE OF THE SUPREME COURT

AG/-