

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

In the matter of an Appeal preferred under articles 127 and 128 (4) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with Section 8 of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007.

SC Appeal NO 10/2024

High Court of Colombo Case No:

HCRA/156/2023

High Court of Colombo Case No:

HCB 124/2021

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

COMPLAINANT

-Vs-

Subeya Hakuru Susilathne,
No. 1/35,
16th Mile Post,
Ihala Siyambalawa,
Eppawala.

ACCUSED

AND THEN BETWEEN

Subeya Hakuru Susilathne,
No. 1/35,
16th Mile Post,
Ihala Siyambalawa,
Eppawala.

ACCUSED-PETITIONER

-Vs-

01. Commission to Investigate Allegations of
Bribery or Corruption,

No. 36,
Malalasekara Mawatha,
Colombo 07.

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

COMPLAINANT-RESPONDENT

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT

AND NOW BETWEEN

Subeya Hakuru Susilathne,
No. 1/35,
16th Mile Post,
Ihala Siyambalawa,
Eppawala.

ACCUSED-PETITIONER-APPELLANT

-Vs-

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

02. Director General,

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

**COMPLAINANT-RESPONDENT-
RESPONDENT**

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT- RESPONDENT

BEFORE : **P. PADMAN SURASENA, J,
YASANTHA KODAGODA, PC, J,
ACHALA WENGAPPULI, J,**

COUNSEL : Accused-Petitioner-Appellant appears in person.
Azard Navavi, SDSG with Gayan Maduwage for the Respondent-Respondent

ARGUED &

DECIDED ON: 03-05-2024

P. PADMAN SURASENA, J.

The Accused Petitioner-Appellant appears in person.

Court heard the submissions of the Petitioner-Appellant (hereinafter referred to as the Appellant) as well as the submissions of the Senior Deputy Solicitor General who appeared for Complainant-Respondent-Respondent and the Respondent-Respondent and concluded the argument of this case.

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) had filed an indictment against the Appellant in respect of an incident involving soliciting and accepting a sexual gratification.

The four counts contained in the said indictment are as follows:

Count 01 - for an offence punishable under Section 16 (b) of the Bribery Act ;

Count 02 - for an offence punishable under Section 19 (c) of the Bribery Act ;

Count 03 - for an offence punishable under Section 16 (b) read with Section 25(1) of the Bribery Act ;

Count 04 - for an offence punishable under Section 19 (c) read with Section 25(1) of the Bribery Act.

The High Court of Colombo had assigned the case No. HCB 2122/2015 for the case opened for that indictment. The sole accused in that case was the Appellant. As the Appellant had pleaded not guilty, the High Court had commenced the trial in that case.

Halfway through the trial, the Prosecution had sought permission from the learned High Court Judge to withdraw the said indictment, reserving its right to file a fresh indictment. Accordingly, the learned High Court Judge had permitted the said application made by the Prosecution and proceeded to discharge the Appellant.

Later on, the CIABOC has filed a second indictment against the Appellant on the same charges as in the previous indictment filed of record in case No. HCB 2122/2015. The High Court of Colombo had assigned the case No. HCB 124/2021 for the case opened for the second indictment. When that case (case No. HCB 124/2021) was taken up in Court, the Appellant had raised a preliminary objection before the learned Judge of the High Court against the maintainability of the 2nd indictment (case No. HCB 124/2021) against him on the basis that he has previously been discharged by the High Court from similar charges in the trial pertaining to the first case (case No. HCB 2122/2015). The learned High Court Judge, after considering the submissions made by the parties, by his order dated 29-01-2024 (which has been produced marked **P 22**), has proceeded to overrule the said preliminary objection raised by the Appellant.

Thereafter, the Appellant had challenged that issue in various forms in several litigations instituted in different Courts. This was adverted to, in the submissions made by the learned Senior Deputy Solicitor General.

In addition to the afore-said several litigations, the Appellant has also filed a petition in terms of section 7 (1) of the International Covenant on Civil and Political Rights Act No. 56 of 2007 (ICCPR Act). In that Petition, the Appellant had alleged that the CIABOC has violated the Human Right guaranteed to him under Section 4 (3) of the ICCPR Act which gives him protection against a second prosecution after his discharge from the first case.

In order to appreciate this argument, we perused the order discharging the Appellant, made by the learned High Court Judge on 11-10-2021 in the first case (case No. HCB 2122/2015). The relevant part of the proceeding containing the said order is as follows:

පැමිණිල්ල වෙනුවෙන් කරුණු දක්වයි:-

ගරු මැතිතුමනි මෙම නඩුවේ අධි චෝදනා පත්‍රය ඉල්ලා අස් කර ගෙන නැවත නඩු පැවරීමට කොමිෂන් සභාවෙන් අනුමැතිය ලැබී තිබෙනවා. ඒ අනුව අධි චෝදනා පත්‍රය අද දින ඉල්ලා අස්කර ගන්නා අතර නැවත නඩුව ගොනු කිරීමට ඉදිරි දිනයේ දී කටයුතු කරමි.

අධිකරණයෙන්:-

ඒ අනුව නැවත නඩු පැවරීමට යටත්ව අධි චෝදනා පත්‍රය ඉල්ලා අස්කර ගැනීමට අවසර දෙමි. ඒ අනුව වූදින අපරාධ නඩු විධාන සංග්‍රහ පනතේ 194(03) වගන්තිය යටතේ නිදහස් කරමි.

(Signed)

මහාධිකරණ විනිසුරු,

කොළඹ

From the above Order, it is clear that the Learned High Court Judge has only discharged the Appellant from the further proceedings relating to the first case (case No. HCB 2122/2015), but had not proceeded to acquit him from any of the charges in the indictment in that case.

Since the learned High Court Judge had acted under Section 194 of the Code of Criminal Procedure Act No. 15 of 1979, let me at this stage reproduce that section below for easy reference.

Section 194 of the Code of Criminal Procedure Act.

- (1) At any stage of a trial before the High Court under this Code before the return of the verdict the Attorney General may, if he thinks fit, inform the Court that he will not further prosecute the accused upon the indictment or any charge therein, and thereupon all proceedings on such indictment or charge as the case may be against the accused shall be stayed and he shall be discharged of and from the same.*
- (2) The information under this section may either be oral or in writing under the hand of the Attorney General.*
- (3) The Prosecuting Counsel may with the consent of the presiding Judge at any stage of the trial before the return of the verdict withdraw the indictment or any charge therein and thereupon all proceedings on such indictment or charge as the case may be against the accused shall be stayed and he shall be discharged of and from the same.*

We are mindful of the existence of the provision of law in Section 314 of the Code of Criminal Procedure Act No. 15 of 1979. We must consider that provision also at this juncture. The said provision is reproduced below.

Section 314 of the Code of Criminal Procedure Act.

- (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 166 or for which he might have been convicted under section 167.*
- (2) A Person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under subsection (1) of section 165.*
- (3) A person convicted of any offence constituted by any act causing consequences which together with such act constituted a different offence from that of which he was convicted may be afterwards tried for such last mentioned offence, if the consequences had not happened or were not known to the Court to have happened at the time when he was convicted.*
- (4) A person acquitted or convicted of any offence constituted by any acts may notwithstanding such acquittal or conviction be subsequently charged with and tried for*

any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

As can be seen from the afore-stated Section 314, the Order of the discharge of the Appellant from the further proceedings relating to the first case by the High Court from similar charges in the first trial does not fall under any of the four limbs in Section 314 of the Code of Criminal Procedure Act No. 15 of 1979.

However, the argument advanced by the Appellant before us is that he is entitled to be protected from the second prosecution launched by the CIABOC in the presence of the phrase “නිදහස් කරනු ලැබ ඇති” in Section 4 (3) of the ICCPR Sinhala Act. We see the significance of this argument as the phrase used in Section 4 (3) of the ICCPR English Act is the phrase “acquitted”.

He advanced this argument drawing our attention to the phraseology used by the learned High Court Judge in his order dated 29-01-2024, marked **P 22**.

We have considered this issue consciously. Let me juxtapose Section 4 (3) of the ICCPR Sinhala version with that of the English version.

Section 4 (3) of the ICCPR Sinhala version

"යම් සාපරාදී වරදක් සඳහා නීතියට අනුව දැනටමත් වැරදිකරු කරනු ලැබ ඇති හෝ නිදහස් කරනු ලැබ ඇති කිසිම තැනැත්තකුට, එම වරද සඳහාම නැවත නඩු විභාග කිරීම හෝ දඬුවම් පැමිණවීම නොකළ යුතුය."

Section 4 (3) of the ICCPR English version

*"No person shall be tried or punished for any criminal offence for which such person has already been convicted or **acquitted** according to law."*

Thus, we can clearly observe that there is some disparity between the English version and the Sinhala version of Section 4 (3) of the ICCPR. We are mindful that in a situation of this nature, one has to act in terms of Article 23(1) of the Constitution. It is reproduced below.

Article 23(1) of the Constitution:

(1) All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English:

Provided that Parliament shall, at the stage of enactment of any law determine which text shall prevail in the event of any inconsistency between texts:

Provided further that in respect of all other written laws and the text in which such written laws was enacted or adopted or made, shall prevail in the event of any inconsistency between such texts.

Thus, when there is a disparity between the Sinhala text and English Text, the Sinhala text must prevail. This is because as per Article 23(1) of the Constitution, all laws are enacted in Sinhala and Tamil and not in English. Furthermore, we have to be mindful that the English version of any law is only a translation of the law which may necessarily have been enacted in Sinhala and Tamil.

Section 11 of the ICCPR Act only states that in the event of any inconsistency between the Sinhala and Tamil texts of the Act, the Sinhala text shall prevail. Thus, we observe that it is the Sinhala version which must prevail in case of a discrepancy between the different languages.

The matter does not end there. We now have to consider as to what the Parliament had intended to achieve through the promulgation of the ICCPR Act. It is to that issue we would now turn.

In order to consider the intention of the Parliament, it is necessary first to consider the background under which the ICCPR Act was promulgated. Generally, it is in the recitals found in the Preamble of the Act that the mischief to be remedied, and the scope of the Act are described. Therefore, let us reproduce the Preamble of the ICCPR Act below. It is as follows:

" WHEREAS Sri Lanka is a State Party to the International Covenant on Civil and Political Rights which was adopted by the General Assembly of the United Nations on 16th December, 1966 and entered into force on 23rd March, 1976:

AND WHEREAS Sri Lanka has acceded to the aforesaid Covenant on 11th June, 1980:

AND WHEREAS a substantial part of the civil and political rights referred to in that Covenant have been given legislative recognition in the Constitution of Sri Lanka, as well as in other legislation enacted by Parliament.

AND WHEREAS it has become necessary for the Government of Sri Lanka to enact appropriate legislation to give effect to those civil and political rights referred to in the aforesaid Covenant, for which no adequate legislative recognition has yet been granted.

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:“

Thus, the perusal of the several recitals in the Preamble makes it clear that the Parliament intended to enact the ICCPR Act with the objective of giving effect to the provisions of the International Covenant on Civil and Political rights (ICCPR) to which Sri Lanka is a state party.

The said International Covenant on Civil and Political Rights was adopted by the General Assembly of the United Nations on 16th December 1966. It entered into force on 23rd March 1976. Thus, it is clear according to the Preamble of the Act that it became necessary for the Government of Sri Lanka to enact appropriate legislation to give effect to those Civil and Political Rights referred to in the said International Covenant on Civil and Political Rights. Therefore, it is this international obligation which the Parliament fulfilled by taking steps to enact the ICCPR Act No. 56 of 2007.

Let us now examine the nature of the corresponding right which the International Covenant on Civil and Political Rights had recognized. The said corresponding provision is Article 14(7) of ICCPR which is as follows:

“No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”.

Therefore, the corresponding Civil and Political Right which the Government of Sri Lanka is obliged to recognize by enacting an appropriate legislation to that effect, is the right of protecting the person from

being tried or punished again for an offence for which he has already been finally convicted or acquitted. This becomes clear when one juxtaposes Section 4(3) of the ICCPR Act with its corresponding provision in the International Covenant on Civil and Political Rights.

Thus, the Civil and Political right which the International Covenant on Civil and Political Rights had sought to protect under its Article 14(7) is the protection against being tried or punished again for an offence for which the Appellant has already been **finally convicted or acquitted**. We find no provision in the International Covenant on Civil and Political Rights which had sought to protect the Appellant being tried or punished for an offence from which he has been discharged.

Moreover, the International Covenant on Civil and Political Rights could not have been drafted in Sinhala but in one or more international languages of which English is one. Perusal of Section 4 (3) of the English ICCPR Act shows clearly that it is substantially a reproduction of the provision in Article 14(7) of the International Covenant on Civil and Political Rights. The purpose of the said provision is clear. That is to protect all persons from being tried or punished for any criminal offence for which such person has already been convicted or acquitted according to law.

Furthermore, we see that there are two categories of persons who cannot be tried or punished again for the same offence under Section 4 (3) of English ICCPR Act. The first category is persons who have already been convicted for the same offence. The Second category is those who have been acquitted from the same offence.

However, Section 4 (3) of the Sinhala ICCPR Act has used the phrase "නිදහස් කරනු ලැබ ඇති" instead of the word 'acquitted'. The meaning of the phrase "නිදහස් කරනු ලැබ ඇති" is, *discharged*.

If we are to adopt the strict interpretation of the phrase "නිදහස් කරනු ලැබ ඇති", upholding the argument of the Appellant to hold that the relevant category of persons who cannot be tried or punished again for the same offence under Section 4 (3) of the Sinhala ICCPR Act, is the category of those who have been once discharged from the same offence, then the resultant position would be that there is no provision to protect the category of persons who have been acquitted once from the same offence. Ironically, this would lead to the interpretation that Section 4 (3) of Sinhala ICCPR Act has not extended

any protection to the category of persons who have been acquitted once from the same offence although the Parliament had taken pains to enact ICCPR Act No. 56 of 2007 with the objective of giving effect to the provisions of the International Covenant on Civil and Political rights (ICCPR) to which Sri Lanka is a state party. We cannot accept that the intention of the legislature in enacting the ICCPR Act No. 56 of 2007, was not to extend any protection to the category of persons who have been acquitted once from the same offence but only to extend the protection to the category of persons who have been once discharged from the same offence. Thus, we are unable to accept the argument of the Appellant that the provision of law in Section 4 (3) of the Sinhala ICCPR Act must be interpreted strictly according to its words, and words alone. Such an interpretation would lead to absurdity and defeat the remedial action envisaged by the legislature to the relevant mischief.

For the foregoing reasons, we reject the argument advanced by the Appellant. Therefore, we also hold that the learned High Court Judge has correctly decided to reject the argument advanced by the Appellant.

For the foregoing reasons, we decide to affirm the judgment dated 29-01-2024, dismissing the Petition filed by the Appellant in the High Court in terms of section 7 (1) of International Covenant on Civil and Political Rights Act No. 56 of 2007 (ICCPR Act).

This appeal should therefore stand dismissed without costs.

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT

AG/-