

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 (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. Appeal No:
85/2022

Director General,
Commission to Investigate Allegations
of Bribery or Corruption,

SC (SPL) Leave to Appeal No:
237/2020

No. 36, Malalasekara Mawatha,
Colombo 07.

COMPLAINANT

Court of Appeal No:
CA 260/2007

Vs.

High Court of Colombo:
HC 1172/1996

Imbulana Liyanage Dharmawardana
No. 145/53, Walawuwatta,
Weliweriya.

ACCUSED

AND BETWEEN

Imbulana Liyanage Dharmawardana,
No. 145/53, Walawuwatta,
Weliweriya.

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

AND NOW BETWEEN

Imbulana Liyanage Dharmawardana,
No. 145/53, Walawuwatta,
Weliweriya.

ACCUSED-APPELLANT-PLAINTIFF

Vs.

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

COMPLAINANT-RESPONDENT-

RESPONDENT

Before : Mahinda Samayawardhena, J.
: Dr. Sobhitha Rajakaruna, J.
: Sampath B. Abayakoon, J.

Counsel : Saliya Pieris, P.C. with Pasindu Tilakaratne
instructed by Manjula Balasooriya for the Accused-
Appellant-Appellant.

: Sudharshana de Silva, P.C., ASG instructed by
Anuradha Siriwardhana, ADG for the Complainant-
Respondent-Respondent.

Argued on : 31-10-2025

Written Submissions : 25-10-2022 (By the Accused-Appellant-Plaintiff
: 20-01-2023 (By the Complainant-Respondent-
Respondent)

Decided on : 02-04-2026

Sampath B. Abayakoon, J.

This is an appeal preferred by the accused-appellant (hereinafter referred to as the appellant) on being aggrieved of the judgment dated 18-09-2020 pronounced by the Court of Appeal.

From the said judgment, the appeal challenging his conviction for the charges preferred against him before the High Court of Colombo was dismissed while varying the sentence imposed by the High Court after the conviction.

When this matter was supported on 06-09-2022 for leave to appeal from the impugned Court of Appeal judgment, leave was granted on the questions of law as set out in sub-paragraphs (a) and (c) of paragraph 15 of the petition dated 28-10-2020.

The said questions of law under which Leave to Appeal was granted read as follows,

- a. Whether the prosecution has failed to establish the charge in the indictment beyond reasonable doubt, given the failure of the prosecution to investigate the entirety of the legitimate income of the petitioner and his wife.
- c. Whether the learned High Court Judge of Colombo and Their Lordships of the Court of Appeal erred in fact and in law when they failed to bring their mind to the inadequacy of the document marked P-20 to establish the case of the prosecution.

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel in support of his argument that the appeal should succeed.

This Court also heard the arguments of the learned Additional Solicitor General (ASG) as to his stand, where it was argued that there is no basis before the Court to interfere with the judgment of the Court of Appeal as well as the judgment pronounced by the High Court. This Court also had the benefit of considering the written submissions of the parties in determining this appeal.

This is a matter where the appellant was indicted before the High Court of Colombo by the Director General of the Commission to Investigate Allegations of Bribery or Corruption for committing an offence in terms of section 23A (3) of the Bribery Act that,

- a. Between the period of 31-03-1990 and 31-07-1992 he acquired the ownership of properties as listed in schedule A of the indictment which he could not have acquired utilizing his known income that he earned during the period.
- b. During the same period the appellant acquired the sums of money and property as mentioned in schedule B of the indictment utilizing the money he could not have acquired using his known income.

The appellant was an Assistant Superintendent of Sri Lanka Customs during the relevant period. After a protracted trial, where the case has been heard *de novo*, on four occasions, the learned Judge of High Court of Colombo of his judgment dated 23-03-2007 found the appellant guilty as charged.

Having considered the evidence placed before the trial Court, it has been determined by the learned trial Judge that during the relevant period the appellant has spent a sum of Rs. 619,425/- in excess of his known income, and accordingly, has found the appellant guilty as charged.

After having considered the appellant's plea in mitigation and other relevant factors, the learned Judge of the High Court has sentenced him in the following manner.

1. For a period of 4 years rigorous imprisonment.
2. For a fine of Rs. 2,500/-, and in default, 6-month imprisonment.
3. For a fine of Rs. 1,200,000/- in terms of section 26A of the Bribery Act, and in default, 5-year rigorous imprisonment.
4. In case of default on paying the fines, the period of imprisonment shall be consecutive to each other.

When this conviction and the sentence was challenged before the Court of Appeal by the appellant, having considered the appellant's known income and his arguments in that regard, Their Lordships of the Court of Appeal have found no reason to interfere with the conviction.

However, having considered the appellant's age and other relevant circumstances, it has been decided to substitute the 4-year rigorous imprisonment imposed upon him with a period of 2-year rigorous imprisonment suspended for a period of 10 years. Apart from the above, having affirmed the fine of 1.2 million, the learned Judges of the Court of Appeal have varied the default sentence to a term of 18 months imprisonment.

At the hearing of this appeal, it was the contention of the learned President's Counsel on behalf of the appellant that in an action of this nature, it is the paramount duty of the investigators to properly investigate the known income

of the person against whom they are conducting an investigation in terms of section 23A (3) of the Bribery Act.

It was his submission that no proper investigation had been conducted in relation to the appellant's income and in as much, the investigators had failed to properly investigate his wife's income, which should have been considered in calculating the appellant's known income for the relevant period.

It was also his submission that the document marked P-20 produced through the Chief Accountant of Sri Lanka Customs to establish the income that had been received by the appellant during the period as rewards was admittedly not a document that reflects the entire income he received as rewards from Sri Lanka Customs.

He relied on the evidence of the relevant witness where he has admitted under cross-examination that the said document was issued based on the records that can be found in his office, where the witness has stated to a question raised on behalf of the appellant that all the reward money received by the appellant may not have been included in the list.

It was his position that the difference between the known income of the appellant and the expenses during the period being around Rs. 600,000/-, when considering the unsatisfactory nature of the investigations carried out, it is quite apparent that the prosecution has failed to prove the necessary ingredients of the charge preferred against the appellant. It was his submission that the learned trial Judge, as well as the learned Judges of the Court of Appeal, failed to appreciate the above, and was of the view that both the judgments cannot be allowed to stand.

It was the submission of the learned ASG on behalf of the respondent that the learned trial Judge and Their Lordships of the Court of Appeal have considered independently to each other the contention of the appellant that the prosecution has failed to establish his known income in a proper manner and have correctly concluded that it was not so. It was his submission that in an action under section 23A of the Bribery Act, once the prosecution proves the necessary ingredients of the section beyond reasonable doubt, a reverse

burden is cast upon a defendant to establish his defence on the balance of probabilities to the satisfaction of the trial Court. It was his submission that the defendant has failed to discharge that burden and his claim that his wife's income was not considered, his reward money earned as a Customs Officer for the period has not been properly accounted for, and also the other arguments placed in his written submissions where he has stated that the income from his coconut estate has also not been properly accounted for, are matters that cannot be accepted due to the conflicting nature of evidence placed before the trial Court. It was his submission that since both the trial Court as well as the appellate Court, in their well-considered judgements, have considered all these relevant facts and the law, there is no basis for this Court to interfere with the said judgments.

Having considered the arguments advanced by the parties before this Court in relation to the matter under appeal, although the penal section in relation to the alleged offence is section 23A (3) of the Bribery Act as mentioned in the indictment, I find it prudent to reproduce the relevant section 23A in full for the better understanding of my judgment.

23A. (1) Where a person has or had acquired any property on or after March 1, 1954, and such property-

(a) being money, cannot be or could not have been-

(i) part of his known income or receipts, or

(ii) money to which any part of his known receipts has or had been converted; or

(b) being property other than money, cannot be or could not have been-

(i) property acquired with part of his known income, or

(ii) property which is or was part of his known receipts, or

(iii) property to which any part of his known receipts has or had been converted,

then, for the purposes of any prosecution under this section, it shall be deemed, until the contrary is proved by him, that such property is or was property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery.

(2) In subsection (1), 'income' does not include income from bribery, and 'receipts' do not include receipts from bribery.

(3) A person who is or had been the owner of any property which is deemed under subsection (1) to be property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:

Provided that where such property is or was money deposited to the credit of such person's account in any bank and he satisfies the court that such deposit has or had been made by any other person without his consent or knowledge, he shall not be guilty of an offence under the preceding provisions of this subsection.

(4) No prosecution for an offence under this section shall be instituted against any person unless the Commission has given such person an opportunity to show cause why he should not be prosecuted for such offence and he has failed to show cause or the cause shown by him unsatisfactory in the opinion of such Commission.

(5) For the purposes of this section, where a spouse or unmarried child under the age of eighteen years of a person has or had acquired any property movable or immovable on or after March 1, 1954, it shall be presumed until the contrary is proved that such property was acquired by such person aforesaid and not by such spouse or unmarried child, as the case may be.

(6) In any prosecution for an offence under this section a certificate from the Chief Valuer with regard to the value of any immovable property or the cost of construction of any building on such property shall be sufficient proof of such value and cost of construction unless and until the contrary is proved.

In this subsection, 'Chief Valuer' means the Chief Valuer of the Government, and includes any Senior Assistant Valuer, or Assistant Valuer of the Government Valuation Department.

(7) For the purpose of this section 'a person' shall mean any person whomsoever, whether or not such person can be shown to have been concerned with any act referred to in section 18 or section 20 or whether or not he is public officer within the meaning of this Act.

The relevant section 23A clearly provides that once the prosecution establishes that the accused person acquired any property being money or any other property other than money, cannot be or could not have been part of his known income or receipts, it shall be deemed, until the contrary is proved by him that such property is or was property which he has or had acquired by bribery or to which he has or had converted any property acquired by him through bribery.

However, it is settled law that the initial burden is on the prosecution to establish that it carried out a full investigation as to the known income of the accused person for the burden to be shifted towards the accused.

In the case of **Kakulandara Vs. Director General CIABOC (2006) 3SLR 90**, it was stated that;

“The burden lies with the prosecution to prove that the charges were filed only after a thorough investigation of the known income of the accused. If this was challenged the prosecution should satisfy court that such an investigation was done. If persons are brought before court without such investigation, the prosecution would in effect be expecting the defence to

prove the innocence of the accused. The prosecution must prove its case without leaving part of the evidence to be provided by the accused.”

The Supreme Court, having considered the provisions in the Bribery Act, and the relevant law in relation to the proof required by the prosecution in terms of section 23A of the Act, in the case of **L. C. Fernando Vs. Republic of Sri Lanka (1979) II NLR 313 at 319**, held as follows;

“The law which creates the offence is subsection 3 to section 23A. A person who owns property which is deemed to be property, (a) which he has acquired by bribery or (b) to which he has converted property acquired by bribery is guilty of an offence. Section 90 defines what bribery is. The prosecution then has to prove, beyond reasonable doubt, that the appellant owned such property. Subsection 1 to section 23A states what is deemed to be property acquired by bribery. Where it is shown that a person to whom the section applies has acquired property, within the requisite period, movable or immovable and it is shown that he could not have acquired such property from his known income or known receipts or it is shown that it is not property to which any part of his known receipts has been converted that property is deemed to be property (a) acquired from bribery or (b) to which he has converted property acquired from bribery and that person who owns such property is guilty of an offence under section 23A (3) of the Act. The offence then depends on the legal presumption. But that legal presumption will apply to the property and will only last “until the contrary is proved by him”. The legislature has clearly stated by whom “the contrary” is to be proved. It is not by the prosecution. It is by “him”, that is the person who owns or acquires such property. He knows best how he acquired it. It is within his special knowledge. Consequently, he is in a position to show that it was not acquired from bribery. What is it that “he” has to prove or, as the learned trial Judge stated, contrary of what? Contrary of “that such property is property acquired by him by bribery”. He has to prove that the property was not acquired from income or receipts from bribery, i.e.,

the property was not acquired from any gratification accepted in contravention of part II of the Bribery Act.”

In the matter under appeal, there is no dispute as to the stated acquisition of property and money by the appellant other than the contention that the wife's income had not been given credit in favour of the appellant's known income. Although the appellant has claimed in his evidence that he received an income of around Rs. 324,000/- for a period of 9 months since the acquisition of his coconut estate, and it has not been included as his known income by the prosecution, it needs to be noted that it is an admitted fact that his income from the coconut estate was Rs. 28,000/- for the relevant period. It is the same sum he has declared in his declaration of assets and liabilities as a government servant, which has drawn the attention of the learned High Court Judge as well as the Court of Appeal.

The main contention as to the known income of the appellant has been that the investigators failed to properly investigate his wife's income, which should have been calculated in favour of his known income.

It has been the evidence of the investigating officer that he could not determine that the wife of the appellant is self-employed, and is engaged in cake making and selling various types of ornamental plants. It was his position that though the plaintiff may have stated in his statement that his wife earns about Rs. 4,000/- per month from self-employment, since he did not produce any proof to substantiate his claim, there was no basis for him to calculate such an amount towards the known income of the appellant.

Under cross-examination, it has been suggested to the witness that the appellant's wife earns Rs. 4,000/- per month from her cake business, and a profit of around Rs. 2,000/- per month from her ornamental plant business amounting to Rs. 150,000/- per annum for which the witness has replied that, if there was some documentary proof in that regard, he could have accepted that fact.

It is clear to me from the judgment of the learned Judge of the High Court and the appellate judgment of the Court of Appeal that this aspect has been well

considered by both the Courts in order to determine whether the prosecution should have given credit to such a sum before filing action against the appellant.

As correctly considered, there are no documentary proof to establish that the appellant's wife was engaged in such self-employment during the relevant period other than the oral testimony of the appellant. The learned Judge of the High Court has considered the declaration of assets and liabilities tendered by the appellant to the relevant authority for the year 1990, marked P-18 (e) by the prosecution during the trial. The appellant has stated in the asset declaration that his wife possesses about Rs. 75,000/- through her daily earnings and by keeping part of the reward money earned by him with her, without specifying what her daily income is. Other than that, the appellant has not declared that the wife earns about Rs. 150,000/- per annum as claimed when the investigating officer was cross-examined before the trial Court. As considered correctly, if his wife was a person who earned a sum of that nature per annum, it would have been more than the annual basic salary of the appellant himself. Under such circumstances, there should be some documentation as to the purchase of material, maintaining a bank account, and other financial transactions relating to the claimed self-employment, where there was none. It is my view that under the circumstances, there was nothing more for the prosecution to investigate in relation to the income of the appellant's wife, which justifies non-inclusion of such an income in favour of the appellant's known income.

It is my view that when it was the turn of the appellant to lead evidence and establish that the prosecution has failed to give credit to all his known income, he could have led evidence that can be accepted before the trial Court in that regard, rather than making claims as to his wife's income without substantiating the same.

In my view, his wife would have been the best witness who could have given evidence on behalf of the appellant in this regard. The appellant has not thought it fit to call his wife to give evidence.

Another factor worth mentioning is the appellant's admission in his evidence that although his wife paid income tax for her share earnings in a company called Singha Enterprises, she has not declared her self-employment income to the Inland Revenue Department.

For the reasons as considered above, I find no basis to agree with the submissions of the learned President's Counsel that the prosecution has failed to conduct a thorough investigation as to the income of the appellant's wife. On the contrary, it is my considered view that there was no basis for the investigators to give credit to such a claimed income as the known income of the appellant. I find that the appellant has failed to establish before the trial Court on the balance of probabilities that such an income should have been given credit in favour of him by the investigators.

The other position taken up during the hearing of this appeal was that the document marked P-20 does not reflect all the monies received by the appellant as cash rewards.

It has been established that the payment of incentives has been paid only from 1994 for Custom Officers, and such incentives cannot be part of the document marked P-20. I find that since P-20 was an official document issued by the relevant authority as to the income earned by the appellant for the relevant period, there would have been no basis for the prosecution to disregard that document other than relying on it. The document P-20 refers to Rs. 493,521.40/- as his reward income. If it was the contention of the appellant that he received much more than what the official document states, since such rewards and other payments would definitely be accounted for by the relevant authority, or at least by the appellant himself by showing when he received such additional reward money and whether he deposited such amounts in his bank accounts or elsewhere, he should have produced evidence in order to establish his claim. The appellant, other than claiming that P-20 was not a complete statement as to his reward income, has failed to substantiate his claim in a manner acceptable to the trial Court, even though his burden was only on the balance of probabilities.

As considered correctly by Their Lordships of the Court of Appeal, although the learned trial Judge has incorrectly stated in the judgment that the document marked P-20 was an admitted document, I find that the said determination has not caused any prejudice to the appellant since P-20 has been well considered by the trial Judge to determine whether there is merit in the appellant's claim that all his reward money has not been accounted in the document marked P-20. I am of the view that the prosecution has established beyond reasonable doubt the appellant's known income, and the fact that the appellant has spent more than Rs. 619,425. 00/- during the relevant period more than his known income.

I am of the view that the appellant has failed to discharge the burden cast upon him as to the proven discrepancy in his income and his spending in the balance of probabilities before the trial Court.

For the reasons as considered above, I find no basis to interfere with the conviction of the appellant by the High Court and the appellate judgment of the Court of Appeal in that regard, where the appellant has been given further concessions in relation to his sentence.

Accordingly, the appeal is dismissed for want of any merit. The judgment dated 23-03-2007 by the learned Judge of the High Court of Colombo and the appellate judgment dated 18-09-2020 of the Court of Appeal are affirmed.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court