

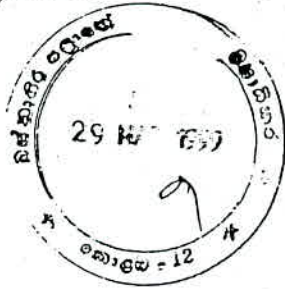
Asitka Anthony

Re-Direction of the Commission  
(Sanction)

When the Director General files a complaint on the direction of the Commission no separate sanction required

S-781 - Bribery Act  
S-11 Commission Act

IN THE HIGH COURT OF THE WESTERN PROVINCE OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.



In the matter of an Application in Revision under Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

Arambawattage Piyasona Rodrigo No.273/1, Pahala Bomiriya, Kaduwela.

High Court Case

No: HCRA 1154/98.

Magistrate's Court

Colombo Case

No: 70890/4

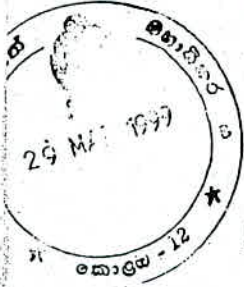
ACCUSED-PETITIONER

- Vs -

1. The Commission to Investigate Allegations of Bribery or Corruption
2. The Director General, The Commission to Investigate Allegations of Bribery or Corruption  
Both of  
36, Malalasekera Mawatha,  
Colombo 7.

BEFORE : ERIC L BASNAYAKE ESQUIRE HIGH COURT JUDGE

COLOMBO



APPEARANCES : Mr.Hemantha Warnakulasooriya P.C.  
for the Petitioner.

Mr.A.K.Chandrankantha Deputy Director  
General of the Respondents.

DECIDED ON : 15.03.1999.

ORDER

On a complaint made to the Magistrate Court under Section 136(1)(b) of the Criminal Procedure Code alleging the commission of several offences punishable under the Bribery Act, summons were issued on the Accused Petitioner. The Accused Petitioner thereafter appeared in the Magistrate Court and at the trial the counsel for the Accused-Petitioner had raised the preliminary objection, that the charges are bad in law as they did not contain the "sanction" as required by Section 78(1) of the Bribery Act as amended by Act No.20 of 1994. The learned Magistrate overruled the said objection by her order delivered on 23.02.1998. The Accused - Petitioner is seeking to revise the said order in this application.

Section 78(1) of the Bribery Act as amended states thus " No Magistrate court shall entertain



any prosecution<sup>u</sup> for an offence under this Act, except by or with the written sanction of the commission."

The learned counsel for the Respondents submitted that sanction is not required when the Director General files a complaint on the direction of the commission in terms of Section 11 of Act No.19 of 1994.

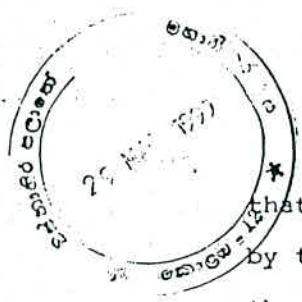
Section 11 of the Commission to Investigate Allegations of Bribery or Corruption Act No.19 of 1994 states thus :-

Where the material received by the commission in the course of an investigation conducted by ... the commission shall direct the Director General to institute criminal proceedings against such person in the appropriate Court ....

....Where the material received ... discloses an offence under part II which does not exceed two thousand rupees, the commission shall direct the institutions of proceedings against such person before the Magistrate Court....



(4)



Counsel for the Respondents further submitted that in this instance too a complaint was made by the Director General on the directions of the commission.

The report filed by the Director General on 17.07.1996 in the Magistrate Court reads as follows :- " අල්ලස් අත් දුන් චෝදනා විචරණ කොමිෂන් සභාව විසින් කරන ලද විධානය පරිදි එක් කොමිෂන් සභාවේ අධ්‍යක්ෂ ජනරාල් ..... 1979 අංක 15 දරණ අපරාධ නඩු විධාන ආඥා පනතේ 135 1(අ) වගන්තිය යටතේ ..... අධිකරණය වෙත වරදා කර සිටිමි. "

Therefore it is clear that the Director General had filed this complaint on the directions of the commission.

I am of the view Section 78(1) of the Bribery Act ~~should be read with Section 11 of Act No.19 of 1994~~ and when the Director General files a complaint on the directions of the Commission no separate sanction is required as those complaints would be regarded as complaints filed by the Commission. This view is further fortified by the fact that the Director General is entitled to file indictments in High Court without any such sanction, for it could stand

(5)



to reason to contend that he should however file complaints only with such sanction in the Magistrate Court.

For the reasons mentioned above I hold that the charge filed is in order and accordingly dismiss the petition with costs fixed at Rs.1500/-.

*Eric L Basnayake*

ERIC L BASNAYAKE

High Court Judge of the Western Province - Colombo.

vk/-

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