

Re- S 4(1) Commission Act.

DDG/ Mrs. Jayasingh

S 21 Commission Act.

Imp. Sec. Jayasingh
pl. e. soc. lab. survey officer
K. Logan

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12/9/2013

IN THE PROVINCIAL HIGH COURT OF WESTERN PROVINCE

OF DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

(HOLDEN AT COLOMBO)

High Court Colombo

HCRA 103/2011

Magistrates' Court

Colombo

Case No. 55724/1/10

Narasinghe Buwelikada Deeshika

Malkanthi,

No.345/1, Uduwila, Delgoda,

Meegahawatta.

Accused-Petitioner

Vs.

1. The Commission to Investigate Allegations of Bribery or Corruption,
No.36. Malalasekara Mawatha,
Colombo 07.
2. The Director General for the Commission to Investigate - Allegation and Bribery or Corruption,
No.36, Malalasekara Mawatha,
Colombo 07.



Complainant - Respondents

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

3rd Respondent

Decided on : 2013.08.06

Counsel : Mr. V.P.A. Hettiarachchi with Mr. Vijaya Hettiarachchi
for the Petitioner.
Ms. Ruwani Wickramasinghe for the 1st and 2nd
Respondents.

JUDGMENT

Accused Petitioner has been charged in the Magistrate's Court under Section 70 of the Bribery Act as amended by Act No. 20 of 1994 for an offence of corruption.

In the Magistrate's court, at the inception a preliminary objection has been raised on behalf of the Accused - Petitioner that this case cannot be maintained against the Accused - Petitioner,

since there have been no people (petitioners) made as required under section 41 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994. Learned Magistrate for the reasons stated in his order dated 2011.06.02 has overruled this objection and has fixed the case for trial. It is this order that is sought to be revised by the Accused - Petitioner in this revision application.

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Learned Counsel for the Accused - Petitioner drew the attention of this court to Section 21 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 and submitted to this court that the provisions in section 21 envisages a situation where the person who makes the allegation in any communication made by him to the Commission under section 4, becomes responsible for the veracity of its contents. It is the submission of the learned counsel for the Accused - Petitioner that Section 21 becomes redundant if section 4 (1) is interpreted to include anonymous petitions also. In view of these submission this court needs to examine the provision in section 21 of the Act No.19 of 1994. It is as follows,



Every person who makes an allegation or communication made by him to the Commission under section 4 knowing such allegation to be false or having reason to believe that such allegation is not true shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding two hundred thousand rupees or to both such imprisonment and fine and shall in addition, be liable to the payment to the person in respect of whom the communication was made, of compensation of such sum as the Court may think fit."

The Preliminary objection that the Accused - Petitioner has raised in the Magistrates' Court is that since there is no proper complaint by a specific person the Commission to Investigate Allegations of Bribery or Corruption which is hereinafter referred to as the "Commission" has no legal power under Section 4 (1) of the Act No. 19 of 1994, to conduct the investigation pertaining to this

matter against the Accused - Petitioner and that therefore the Commission could not have preferred these charges against the Accused - Petitioner. It is therefore necessary at this stage to examine the section 4 of the Act. It is as follows,

" 4 (1) An allegation of bribery or corruption may be made against a person (whether or not such person is holding on the date on which the communication is received by the commission, the office or employment by virtue of holding which he is alleged to have committed the act constituting bribery or corruption) by a communication to the Commission, or a person may by a communication to the Commission, draw the attention of the Commission to any recent acquisitions of wealth or property or to any recent financial or business dealings or to any recent expenditures by a person (whether or not such person is holding any office or employment on the date on which such communication is received by the Commission) which acquisitions, dealings or expenditures are to the knowledge of the person making such communication not commensurate with the known sources of wealth or income of such person.

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(2) Upon receipt of a communication under subsection (1) the Commission, if it is satisfied that such communication is genuine and that the communication discloses material upon which an investigation ought to be conducted, shall conduct such investigation as may be necessary for the purpose of deciding upon all or any of the following matters:-

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- (a) Prosecution or other suitable action under the provisions of the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975; or
 - (b) Prosecution under any other law,

and where the Commission decides, whether before or after the conduct of an investigation, that a -communication received by it should be dealt with by any other authority, it may forward such communication to such other authority.

(3) The Commission shall have the power to investigate any matters disclosed by a communication received by it under subsection (1) whether or not such matters relate to a period prior to the appointed date and notwithstanding anything to the contrary in any other law....."

It is also useful at the same time to have in mind that the word used for the term "Communication" in Sinhala Act is "දැනුම්දීම".

Learned Counsel for the Accused - Petitioner heavily relied on the case of **Mahinda Rajapaksha Vs. Attorney General and others** Supreme Court FR application No. 387/2005 decided on 27.03.2006 by the Supreme Court. In this case the Supreme Court has cited the following commentary from Sohoni's Code of Criminal Procedure 1973-Vol.II, page 1416 has which reads as follows:

'The information on which the Police Officer is expected to act must be authentic; in other words, the information must be capable of being traced to a specific individual who would take the responsibility for the same so that should the information subsequently turn out to be false, the informant may be proceeded against....."

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The issue before the Supreme Court in that case was whether it was justifiable for Police to have proceeded with an investigation on the given set of facts in that case without a complaint being recorded by the virtual complainant who had wanted police to commence an investigation. The decision in that case was centered around section 109 of the Code of Criminal Procedure Act.

Further in that case the Supreme Court has considered the facts which are intrinsic in nature in that case, when arriving at that conclusion.


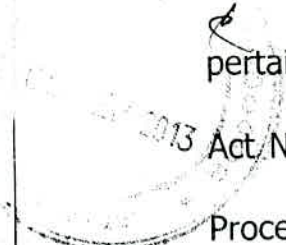
Respondent on the other hand distinguishes this case from the application to this case and insist that it is legal for the

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Commission to proceed to investigate into this matter even on an
anonymous petition.

As pointed out by the learned counsel for the
Complainant - Respondents in her written submissions Act No. 19 of
1994 has not given an interpretation to the word "Communication".

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It is clear that the commencement of investigation
pertaining to this case has been done according to section 4 of the
Act No. 19 of 1994. Therefore Section 109 of the Code of Criminal
Procedure Act has no direct relevance to this case.

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According to section 4 (1) it is even open for the
person who provides the communication just to draw the attention
of the commission to any recent acquisitions of wealth , property or
any recent financial or business dealings or to any recent
expenditures by a person. This means that pre- requisites for
commencement of an investigation by the commission by virtue of
this section are not the same as described in the quotation cited by
the Supreme Court in that case, cited above. Therefore it is the



view of this Court that the case relied upon by the learned counsel for the Accused - Petitioner has no direct relevance to this case.

Further there is another distinguishable feature which is found in section 4 (2). According to section 4 (2) an investigation is commenced by the commission only if it is satisfied that a communication referred to in section 4 (1) is genuine and that it discloses material upon which an investigation ought to be conducted. This should be considered as a sufficient safe guard against incoming false complaints referred to in the Supreme Court judgment relied upon by the learned counsel for the Accused - Petitioner.

According to the petition a Commission to Investigate Bribery or Corruption has taken steps to charge the Accused - Petitioner in the Magistrate's Court in Colombo and a copy of the charge sheet has been handed over to her by the learned Magistrate. Learned Magistrate having overruled the impugned preliminary objection has fixed this case for trial.

upon receipt of an anonymous communication under section 4(1), the Commission is empowered to authorize the conduct of an investigation for which variety of powers have been conferred on the commission by the provisions of the Act. Where the material collected in the course of such investigation conducted by it discloses the commission of an offence by any person, then the commission has the power to direct its Director General to institute criminal proceedings against such person in an appropriate court in terms of section 11 of the Act No.19 of 1994. Since the charge sheet in this case has been filed by the Commission in the Magistrate's Court it could be presumed that the material collected during this investigation has disclosed that the offences described in the charge sheet are alleged to have been committed by the Accused - Petitioner.

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However, except presenting an argument that the Commission has no power to prefer charges against the Accused - Petitioner on an anonymous communication, the Accused - Petitioner has not adduced any reason what so ever either before the Magistrate's Court or before this court to satisfy this court that the Commission on the material collected could not have been

satisfied that the allegations against the Accused - Petitioner are well founded.

The Supreme Court case relied upon by the Accused - Petitioner is a Fundamental Rights application against violation of Fundamental Rights guaranteed by Article 12 (1) of the constitution. The Supreme Court has held that the Petitioner in that case has been denied equal protection of law. The Supreme Court has given specific reasons as to why it came to that finding in that case. However as I have mentioned before there are no facts produced before this court by either party which would have been of some assistance to this court to ascertain whether there is at least a semblance of truth in the submissions made on behalf of the Accused - petitioner that the allegations against the Accused - Petitioner are baseless.

It is appropriate at this stage to turn to the reasons given by the learned Magistrate when he overruled this preliminary objection. Learned Magistrate in his order has stated that the Supreme Court judgment cited above relied upon by the Accused - Petitioner has no application to this case as investigation and

preferring charges in respect of this case has been done by the Commission in terms of Provisions of some other law namely, under Section 4 (1) of the Act No. 19 of 1994.

It must be remembered that unlike the institution of proceedings by the police under the Provisions of Criminal Procedure Code which was the subject matter under review in the Supreme Court case cited above by the learned Counsel for the Accused - Petitioner, the legislature has established a Commission by the name of "Commission to Investigate Allegations of Bribery or Corruption " which consists of two retired Judges of Superior Courts. According to Section 4 (2) an investigation could be conducted only if the Commission is satisfied that such communication referred to in Section 4 (1) is genuine and that the communication discloses material upon which investigation should be conducted. Therefore it could be clearly seen that there is a filtering process in place which is not seen in the other cases instituted under the Provisions of Code of Criminal Procedure Act. This suggests that the procedure of institution of proceedings by the Commission is different from that done by the police as in the Supreme Court case relied upon by the Accused - Petitioner.

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Learned Counsel for the Accused - Petitioner at no stage pointed out a basis on which this court could come to a conclusion that the charges have been falsely framed against the Accused - Petitioner.

In view of this, I see no reason or no basis to interfere with the order of the learned Magistrate overruling the preliminary objection. Hence I proceed to dismiss this application.

PP Surasena

(P. Padman Surasena)
High Court Judge
Colombo.
(Court No. 04)
2013.08.06

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