

CALA 299/2005 (Reported in 2005 2SLR 258) Director General, Commission to Investigate Allegations of Bribery and Corruption Vs. S.B. Dissanayake (HC Colombo B/1516/2004) (2/CA) Decided on 09.11.2005.

Commission to Investigate Allegations of Bribery and Corruption Act, No. 19 of 1954- Sections 4, 13(2), 23A(1), 23A(3)- Indicted – after closure of case for the Prosecution accused was acquitted – Code of Criminal Procedure No. 15 of 1979 Sections 200(1), 340 – Proving of basic fact Burden – Unknown income –Evidence ordinance – Section 114 – Presumption – Burden of proof – Citizenship Act – Judicature Act – 9- 13.

J. Balapabendi J, and E. Basnayake J. agreeing.

Respondent acquitted on the application under section 200(1) of the Code of the Criminal Procedure Act without calling for a defence. This is a Leave to Appeal application against the said order.

Held;

Under section 23A(1) of the Bribery Act, Prosecution is required to prove that the Accused acquired property which cannot or could not have been acquired with any part of his income or receipts ('Basic fact'). It is not required to prove that the acquisitions were made with income of Bribery. A presumption exists that until contrary is proved by the Accused, such acquisition is by way of bribery.

To rebut this presumption 'something more than a reasonable probability' required as per **Wanigasekara Vs. Republic of Sri Lanka 79 NLR 241 AT 251** and different from presumptions under Section 114 of the Evidence Ordinance and section 4 of the Prevention of Corruption Act. Onus – Balance of Probabilities (since onus is on the Accused).

Section 200(1) considered in the light of **AG Vs. Ratwatte 72 CLW 93** and **AG Vs. Baranage 2003 spl. Sri.LR 340**. If the Trial Judge wholly discredited evidence of prosecution or even when is of the opinion that the evidence fails to establish the commission of the offence gives him a power to enter a verdict of acquittal without calling for the defence.

In this case the burden is on the prosecution to prove 'Basic fact' that the known income of the Accused was less than his own expenditure during the relevant period. Evidence produced by the prosecution can be classified as 'known income' and found to be true as per the investigator's evidence.

The High Court Judge has correctly concluded that 'there is cogent and compelling evidence' to establish that the income is 'known income' and the Accused need not prove that the acquisitions were not bribery. No presumption could be drawn and prosecution did not prove 'basic fact'. High Court Judge correct in law and on the facts.

Leave to Appeal refused. Application dismissed.