

CA (PHC) APN 105/06 P.W. Alfred Kanthilal Silva Vs. Attorney General (HC Colombo 1407/02) (2/CA). Decided on 15.05.2012.

Application for revision of order of High Court Colombo overruling preliminary objection as with the validity of the indictment forwarded by the DG, Bribery Commission. Section 23A and 23A(4) of the Bribery Act as amended Article 13(5) of the constitution. Reasonable opportunity to show cause – validity of an indictment and fair trial.

Sarath De Abrew J. Rohini Marasinghe J. agreeing.

Inquiry into the assets of the accused by the Bribery Commissioner commenced in 1990. Form 05 tendered on 18.01.1991. Pending inquiry accused left the island (1994) and returned in 1997. Show cause letter tendered to the accused on 03.09.2001 and statement tendered by him on 04.01.2002. Commission sought clarification on 10.06.2002 and directed to appear on 14.06.2002, within 4 days with extensive documents and information and accused sought one month's time. Commission refused on 14.06.2002 citing the 'bad delay' of investigation since the accused was away abroad for a number of years. Indictment forwarded on 18.08.2002 (without the clarifications sought).

Prior to the indictment being read over preliminary objection was raised. On the oral submissions, pre objections overruled by the High Court.

Held;

Section 23A (4) of the Bribery Act is a mandatory provision, or safeguarded to shut out haphazard indictments. For a valid indictment in a property/asset cases, the following requirements shall be complied with

1. Reasonable opportunity to show cause for non prosecution
2. Failure to do so after a reasonable opportunity given
3. When the given cause is unsatisfactory.

Under the circumstances the burden of proof is on the accused in the view of section 23A and Article 13(5) of the constitution and courts owe a duty to ensure strict compliance of mandatory provisions of section 23A(4). Article 13(3) extends to this situation. A flawed indictment will infringe the right of fair trial by the competent court. Four days time to forward clarifications is not a reasonable opportunity and refusal fro extension of time arbitrary and the reason given unacceptable and not relevant.

Indictment is bas in law, without any form(?) and no legal consequences will flow thereupon. **R.P. Wijesiri Vs. The Attorney General 1980 2 SLR 317 and Director**

General for the Prevention of Bribery and Corruption Vs. Fernando 1993 3SLR 104
followed.

Order dated 14.07.2016 set aside. Preliminary objections upheld. Accused-petitioner discharged. Application allowed with costs.