

CA 325/07 (Reported in 2010, 1SLR 220) Director General, Commission to Investigate Bribery and Corruption Vs. Anuruddha Ratwatte. (HC Colombo B 1579/15) (2/CA) Decided on 26.02.2010.

Appeal and revision against discharge of the Accused on objections on pre- conditions under Section 23(4) of the Bribery Act - 'Affording of an opportunity- Patent lack of jurisdiction-requisite of a certificate of dissatisfaction in an indictment under the Bribery Act - Application off the 'Expressio Unius est Exclusion Alterius'

D.S.C. Lecamwasam J. with Ranjit Silva J. agreeing.

The defence took up the Preliminary objection on non compliance with the pre-conditions under section 23A(4) at the end of the Prosecution's case.

1. Not giving an opportunity to the accused to show why he should not be prosecuted. (CA did not deal with this since counsel confined only to the second point in the High Court. Order also reflects only the second point and he is estopped in the Appeal.)
2. Absence of a certificate that the accused has failed to show cause or if shown, unsatisfactory in the opinion of the commission.

Appellant's position- Defence is precluded to raise objections after the Prosecution closed the case, at a late stage of proceedings, as per section 39 of the Judicature Act

Respondent's position - objection to the patent lack of jurisdiction can be taken up at any stage and the absence of a certificate is a patent lack of jurisdiction under section 23A(4).

Held;

Intention of the legislature by the section 23A(4) is no action can be instituted without giving an opportunity to show cause for the purpose of protecting subjects from arbitrary arrest. If no cause is shown or if the commission is not satisfied with the given cause, legal action shall follow. Patent lack will arise only if opportunity is not afforded. Requisite of a certificate is not expressly mentioned as in section 12(2) of the Act No. 19/1994 and the maxim 'Expressio unius est exclusion alterius' can be applied. Certificate of dissatisfaction is not a requirement in an indictment under the Bribery Act.

Kanagarajah Vs. Queen 74 NLR 378 – Circumstances differentiated and not followed.

High court of Colombo Order 30.11.2007 set aside. Case referred back to the High Court for further trial.

Appeal allowed.