

HEWAGAMA  
v.  
THE BRIBERY COMMISSIONER AND ANOTHER

SUPREME COURT.  
G. P. S. DE SILVA, C.J.  
KULATUNGA, J.  
RAMANATHAN, J.  
S.C. APPEAL NO. 55/94  
HC/MC APPEAL NO. 179/92  
MC COLOMBO NO. 93508  
AUGUST 29, 1994.

*Bribery Act, sections 3(1), 4(1) and 71 – Arrest without credible information of any offence – Constitution, Article 13(1).*

**Held:**

A notice to furnish a statement of assets in terms of the provisions of section 4(1) of the Bribery Act is competent only in the course of an investigation into an allegation of bribery against any person, or after the commencement of a prosecution of any person for bribery. The prosecution has to establish that an allegation of bribery against some person is pending.

**Case referred to:**

1. *Piyasiri v. Fernando, A.S.P.* [1988] 1 Sri L.R. 173

**APPEAL** from judgment of the High Court.

*Batty Weerakoon with Ramani Muttettuwagama for appellants.*  
Respondents unrepresented.

*Cur adv vult.*

September 21, 1994.  
**KULATUNGA, J.**

This is an appeal against the judgment of the High Court dated 16.12.93 affirming the conviction and sentence of the appellant by the Magistrate for an offence punishable under S. 71 of the Bribery Act to wit, wilful neglect to comply with a notice dated 23.03.88

purporting to have been sent to him under S. 4(1) (b) of the Act. The said notice required him to furnish a sworn statement in writing (in a prescribed form) enumerating all movable and immovable property owned or possessed by him during the period 1952 to 1982. It was alleged that the appellant neglected to comply with the notice by 02.11.88 which was the final date given by the Bribery Commissioner after several extensions of time to furnish the statement.

Special leave to appeal was granted on the question whether the High Court had failed to consider the fact that the condition precedent for serving a valid notice under s. 4(1) of the Act namely, the pendency of an investigation into an allegation of bribery against any person, has not been established by the prosecution. The learned High Court Judge has said that "according to the evidence led in the Magistrate's Court, the Bribery Commissioner had been conducting an investigation into a charge of bribery against the son of the accused-appellant". Learned Counsel for the appellant submitted that there is no evidence of a pending investigation into an allegation of bribery within the meaning of S. 4(1) or S. 3(1) of the Act.

The son of the appellant referred to by the learned High Court Judge is one R. P. Hewagama, an officer of the Customs Department. On 25.11.86 Hewagama and several other Customs Officer were returning to Colombo, having been on duty at the Katunayake International Airport when they were arrested at Seeduwa by an Assistant Superintendent of Police who was accompanied by several police officers attached to the Bribery Department. They were arrested on a general complaint made by an informant that Customs Officers were in the habit of soliciting and accepting bribes from passengers for waiving customs duties.

After their arrest, they were taken to the Seeduwa Police Station where they were searched and certain moneys and other articles in their possession were taken charge of by the Police. They were then taken to the Bribery Commissioner's Office in Colombo where their statements were recorded. They were released after they gave a written undertaking to appear in the Magistrate's Court of Colombo, the following morning.

Hewagama and other Customs Officers who were so arrested filed 14 fundamental rights applications before this Court which were consolidated and heard together – vide *Piyasiri v. Fernando* <sup>(1)</sup> for the decision in that case where this Court held that the said arrest was made without credible information of any offence but on vague general suspicion; as such it violated the petitioner's rights under Article 13(1).

On 11.01.87, during the pendency of the fundamental rights applications, the Bribery Commissioner served a S. 4(1) notice on R. P. Hewagama (who was one of the petitioners) calling upon him to furnish a statement of his assets on or before 31.01.87. Hewagama furnished the statement P1 as required. Among the properties disclosed in P1 is a house which Hewagama stated had been constructed by his father, the appellant, in or about 1957. No further action was taken for over one year when the bribery Commissioner required the appellant to report to the Bribery Commissioner's office on 17.02.88. As that was the date fixed for the judgment in *Piyasiri*'s case (*Supra*) the appellant applied for another date. He was requested to report on 22.05.88.

On 22.05.88 the appellant attended the Bribery Commissioner's office and was questioned about the house which he constructed for his son. He told them that it was constructed in the 1950s. He next received the notice purporting to be under S. 4(1) of the Act, referred to at the commencement of this judgment.

Learned Counsel for the appellant drew our attention to the provisions of S. 4(1) in terms of which a notice under that section is competent only in the course of an investigation into an allegation of bribery against any person or after the commencement of a prosecution of any person for bribery. As regards the second precondition, it has not been claimed that a prosecution of any person for bribery had been commenced. So that the prosecution had to establish that an investigation into an allegation of bribery against some person was pending. Counsel submitted that the evidence does not establish the existence of that precondition.

In support of his submission Counsel relied on the following passage in the judgment in *Piyasiri's* case. Referring to the conduct of one of the officers who was in the party that arrested the petitioners, H. A. G. de Silva, J. said –

*"Learned Counsel for the respondents attempted to justify the action of the 18th respondent on the basis that what the 18th respondent was doing was investigating allegations of bribery on the order of the Bribery Commissioner, as he was empowered to do, under S. 3 of the Bribery Act but this section presupposes that there are allegations of bribery against definite individuals and not allegations of a nebulous nature" ((1988) 1 Sri L.R. 173 at 184).*

After ordering relief to the petitioners, the judgment went on to state –

*"The moneys and articles taken charge of from the petitioners could await the results of any proceedings in the Magistrate's Court or in a departmental inquiry that may be taken. If no such proceedings are taken the petitioners would be entitled to have such moneys returned to them" (P. 186).*

On 26.05.86 on an application made to the Magistrate, the petitioners were discharged and the goods claimed by them were released – (Vide exhibit V4).

Counsel argued that after the judgment of this Court and the said order of the Magistrate, there was no basis whatsoever to justify the impugned notice; the Bribery Commissioner was not competent to require the appellant to comply with the said notice; as such the appellant committed no offence by his failure to furnish the required statement.

I am in agreement with the submissions made on behalf of the appellant. I hold that there was no legal basis for the impugned notice and hence it is invalid. Consequently, the appellant is not guilty of an offence by reason of his failure to furnish the required

statement. Accordingly, I allow the appeal, set aside the judgment of the High Court and the order of the Magistrate and acquit the appellant.

**G. P. S. DE SILVA, C.J.** – I agree.

**RAMANATHAN, J.** – I agree.

*Appeal allowed.*

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