

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

G.S. Don Dayarathne

**Accused - Appellant**

**C.A. Case No. 289/2009**

**H.C. Colombo Case No. B1654/06**

Vs

The Bribery Commission

**Respondent**

**BEFORE**

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

**COUNSEL**

: M.A. Kumarasinghe for the

Accused Appellant

Kapila Waidyaratne A.S.G.

For the Respondent

**ARGUED ON**

: 23<sup>rd</sup> February, 2017

**DECIDED ON**

: 06<sup>th</sup> April, 2017

**Deepali Wijesundera J.**

The accused appellant was indicted for soliciting a gratification of Rs. 5,000/= from one Wilson the complainant on or about 12/01/2005 under sec. 19 (c) of the Commission to Investigate Bribery or Corruption Act. After trial the appellant was convicted for the said charge and sentenced to two years RI and a fine of Rs. 5,000/= was imposed carrying a default term of 12 months.

On the day in question the appellant had visited the complainant's land accompanied by another senior officer namely D.B.S. Weesinghe to ascertain the extent of land he was alleged to have been unlawfully occupying. The land which was situated in a hilly terrain was inspected by the appellant since the senior officer could not climb the hill. The appellant after having inspected the boundaries accompanied by the complainant had reported to the senior officer that the complainant was illegally occupying one acre of land. Thereafter the senior officer and the appellant had got the complainant to sign a letter. The appellant had asked the complainant to come to his house the next day with his wife to discuss the matter. At the said discussion which was held at the appellant's house the following day, it was alleged that the appellant solicited Rs. 5,000/= to be given to two senior officers. The complainant had gone to the Passara Police and made a complaint and the Officer In Charge had asked him to

bring currency notes to the value of Rs. 5,000/=. These notes have been initialled by the OIC. But the complainant and the OIC failed to carry out the raid as planned by the OIC. Thereafter on the advice of the OIC after about three weeks from the said date the complainant had made a complaint to the Wild life Authority which was referred to the Bribery Commission.

I find that the Officer In Charge without referring to the office of the Bribery Commission has tried to conduct a raid having initialled the currency notes given by the complainant which is not the legal procedure. When there is an institution especially established to apprehend offenders of this nature the OIC has assumed the duties which is out of his official duties. Further the defacing of currency notes too is an offence under the provisions of the Monetary Law.

**Section 58 of the Monetary Law no 58 of 1949 (as amended) states thus;**

*(a) cuts, perforates, or in any other way whatsoever mutilates any currency note,*

*(b) prints, stamps, or draws anything upon any currency note, or affixes any seal or stamp to or upon any currency note, or*

***(c) attaches or affixes to or upon any currency note anything  
in the nature or form an advertisement.***

The complainant's story that the appellant asked him to come to his house with his wife is questionable. Will a person who solicits a bribe invite a witness to be present at the time of the solicitation?

The complainant, his wife and son who were main witness at the High Court are parties with vested interest and the learned High Court Judge has not scrutinised their evidence with great care.

The learned High Court Judge rejected the dock statement of the appellant by mistakenly stating that the person arrested by the appellant is the complaint but it is another Wilson and not the complainant. This is a grave misdirection by the learned High Court Judge.

I find that it is unsafe to allow the conviction to stand as the prosecution has not presented cogent evidence. The charge rests entirely on the word of mouth of the complaint. On applying the test of probability I'm unable to accept the evidence of the complainant and the OIC.

For the afore stated reasons I decide to set aside the conviction and sentence dated 24/06/2009 by the High Court of Colombo. Accordingly I allow the appeal.

**JUDGE OF THE COURT OF APPEAL**

**L.U. Jayasuriya J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**