

T N. Fernando, Assistant Commissioner of Excise, Kalutara V. Nelum Gamage, Bribery Commissioner et al. (S.C. APPEAL NO. 70/92, - C.A. 381/92), (3/SC), Decided on 05/12/1993

Sections 3(2) and 6 of the Bribery Act - Sections 5 and 124 of the Code of Criminal Procedure Act, No. 15 of 1979 - Notice by authorized officer of Bribery Commissioner's Department to attend the Bribery Commissioner's Department to answer an allegation of bribery and to be produced for an identification parade.

G. P S. De Silva, C.J. with Kulatunga, J. And Ramanathan, J. agreeing,

An appeal against the judgment of the Court of Appeal dismissing an application for a writ of certiorari to quash the notice sent by the 2nd respondent to the appellant directing him to attend the Bribery Commissioner's Department to answer an allegation of bribery and to be produced for an identification parade.

Held:

Section 3(2) of the Bribery Act authorizes the Bribery Commissioner or any officer authorized by the Commissioner to direct in writing any person acquainted with the facts under investigation, inter alia, to answer an allegation of bribery but does not empower them to direct such person to submit to an identification parade.

In terms of Section 5 of the Code of Criminal Procedure Act and S. 6 of the Bribery Act, recourse may be had to S. 124 of the Code for holding an identification parade in respect of a person suspected of the offence of bribery. The decision to invoke the jurisdiction of a Magistrate under S. 124 of the Code of Criminal Procedure Act does not involve the exercise of a power by the respondents and hence does not attract the remedy of certiorari. Any objection to the exercise of such jurisdiction or the manner of its exercise must be taken before the Magistrate.

1. *R. v. Electricity Commissioner* (1924) 1 KB 171; In terms of that decision the existence of a decision affecting the right of subjects was a precondition to the issue of the writ.
2. *R. v. Criminal Injuries Compensation Board* (1967) 2 Q B 864, 892; affecting rights of subject meant no more than affecting subjects.
3. *R. v Inland Revenue Commissioners exp. Rosminister Ltd.*, (1980) AC 452, 1013; Now the emphasis is on the exercise of a power, e.g. power of a tax officer to seize anything reasonably believed to be required as evidence of tax fraud

The Bribery Act does not preclude a person suspected of bribery being subjected to an identification parade under S. 124 of the Code at the stage of investigations prior to the institution of proceedings in a Court.

Appeal dismissed.