

Ms Dilrukshi Dias Wickramasinghe  
The Director General  
Commission to Investigate Allegations of Bribery and Corruption  
36, Malalasekara Mawatha  
Colombo 7

23<sup>rd</sup> March 2015

#### **Complaint on an Offence of Corruption**

This is a formal complaint of a Criminal Offence of Corruption, which has been committed by the Deputy Director of Customs, A Lankadeva in connection of a Customs case investigated and a formal inquiry into it conducted by himself on 19<sup>th</sup> March 2015, conferring an unlawful benefit and/or advantage (cash reward) to him and a group of Customs Officers that falls within the Section 70 of the Bribery Act.

This is a case of clear abuse of legal process and a deception of the Chief Magistrate Court, Colombo to embezzle ill-gotten wealth of over 40 million rupees by unlawful means, making it a fitting case to initiate a formal inquiry into this matter.

#### **Description of the Case**

On 13<sup>th</sup> March 2015, the officers of the Customs Information & Communication Technology Directorate produced two suspects namely Mohamed Hanif Haji Anwar and Mohamed Ismail Aleem Siddick of Janatha Garments Ltd, before the Chief Magistrate Colombo, alleging that they were involved in an evasion of fiscal levies running into several hundred million rupees concerning import of textile/fabric. It was further alleged that the two suspects were capable of interfering with the investigation and absconding and therefore to keep them in the remand custody to 'conduct a proper investigation'.

It was further submitted by the Customs that the Magistrate Court had no jurisdiction to consider bail as the value of the subject matter was over one million rupees.

Both these suspects were represented by us in the Magistrate's Court and it was brought to the notice of the Court that the allegations made against the suspects (that they were capable of interfering with the investigation and absconding) were absolutely false. It was further submitted to the Court that the primary objective of remanding the suspects was to induce them to agree to pay a substantial penalty that the Customs Officers would demand, out of which they are entitled to claim 1/3 as cash rewards in terms of Section 153 of the Customs Ordinance. Therefore, it was requested to release the suspects, subject to the condition that they should appear at Customs whenever necessary for further investigations if any.

However, the Customs insisted that the suspects should be remanded and the Hon' Magistrate had no other option but to make an order to keep both suspects in the remand custody until 23<sup>rd</sup> of March 2015.

Whilst they were in the remand custody the Customs Officers had compelled the owner of the Janatha Garments Ltd (the father of one of the suspects), to enter into a 'negotiated settlement' to secure their release from remand prison. This is an absolutely improper and unlawful act committed by the Customs Officers who had abused the legal process to force a parent to enter into an agreement under duress with the Customs officials, in order to have his son released.

The father who had no other option had agreed to pay a huge penalty of 120 million rupees and to pay 50% of it (Rs 60 million) before the release of the suspects from the remand custody and to pay the balance 50% later by installments.

Thereafter, an application was made to the Court by the Customs on 18<sup>th</sup> March 2015 for an order directing the Prison authorities to produce the suspects for 'investigation purposes' on the following day (19<sup>th</sup> March 2015). This application itself was absolutely false, as the suspects had been taken to the Customs not for any 'investigation purposes' but to attend a formal Customs Inquiry conducted by Mr A Lankadeva. This act clearly amounts to misleading of the Court as the power of the Magistrate Court has been used for a improper purpose.

At the Customs inquiry the suspects were imposed a penalty of 120 million rupees out of which a sum of Rs 60 million was recovered forthwith, with time given to pay the balance 60 million and after the inquiry both suspects were returned to the remand prison.

On the same day (19<sup>th</sup> March 2015) a motion was filed in the Court, notifying that 'investigations have been completed and therefore to release the suspects' (copy of the motion dated 19<sup>th</sup> March 2015, filed in Court enclosed)

#### **Distinct violations committed in the process by the Customs Officers**

- a) The Customs officers led by Mr A Lankadeva, the Deputy Director of Customs, have abused the Court process and have made the Magistrate Court, a party to their fraudulent act.
- b) Secondly, Mr A Lankadeva who had led the investigation should not have got himself appointed to conduct the formal Customs Inquiry against the suspects. He should have refused to conduct the formal inquiry, with due regard to the principles of Natural Justice applicable to any inquiry that affects the rights of any suspect person.
- c) Thirdly, Mr A Lankadeva is fully aware that he has been already accused for conducting inquiries into cases investigated by him and also deceitfully sharing cash rewards with the officers who carry out investigations under his directions.
- d) Fourthly, in a case of this nature, (in the event where an allegation of evasion of fiscal levies is discovered), the fiscal levy element shall be recovered first and foremost, as per the Order made by the Supreme Court in SC 49/2008 dated 20<sup>th</sup> March 2009. According to this Court ruling the Customs officers are not authorized to recover the tax element dodged as a penalty and use a substantial portion of it to share amongst the officers as cash rewards.

N. Kodituwakku

*Bogorath*

Attorney-at-Law & Solicitor (UK)

19, Galle Road, Colombo 10, Sri Lanka