

BY COURIER

16th May 2008

C.R. de Silva, P.C. Esqr.,
Hon. Attorney General,
Attorney General's Department,
Hultsdorf Street,
Colombo 12.

Dear Sir,

**Criminal Prosecution against Mr. K.N. Choksy P.C., M.P.
& Mr. R. Paskaralingam & Others**

I am encouraged by the following statements attributed to you in the *Daily Mirror* yesterday i.e. 15.5.2008.

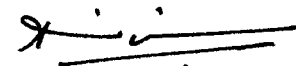
“The Attorney General said that it had been explicitly mentioned, that no transgression of the law to be tolerated and that all persons found to have violated the law would be dealt with and held accountable for their conduct”

“The Attorney General stressed that he himself had sanctioned the forwarding of indictments against several key persons in authority including ministers, members of parliament and several other senior officers of the government in respect of their participation in various criminal activities

I refer to my attached Letter of 18.4.2008 addressed to Mr. Sisira Mendis, DIG-CID, with copy, among others, to you.

In conformity with the foregoing stance taken by you, I trust that you would not make any exception to this long outstanding matter, warranting prosecution, as had been upheld by the Supreme Court *vide* the dicta thereof, and also by a Special Presidential Commission of Inquiry, which framed charges on grounds of fraud against the government, on the advice of the Solicitor General.

Yours truly,



Nihal Sri Ameresekere

cc: Mr. Sisira Mendis, DIG-CID
Mr. Victor Perera, Inspector General of Police
Mr. Gotabhaya Rajapakse, Secretary, Ministry of Defence

Mr. Neville Piyadigama, Chairman, Police Commission
Ven. Elle Gunawansa, Member, Police Commission / Chairman, Committee to combat Fraud,
Bribery & Corruption

Rtd. Supreme Court Judge Priyantha Perera Esqr, Chairman, Public Service Commission /
former Chairman, Special Presidential Commission of Inquiry
Mr. S.K.P. Bambarenda, Co-ordinating Secretary, to the Secretary, Ministry of Labour /
former Secretary Special Presidential Commission of Inquiry

Mr. Lalith Weeratunga, Secretary to the President

H.E. the President

BY COURIER

25th April 2007

Mr. C.R. de Silva P.C.
Hon. Attorney General,
Attorney General's Department
Colombo 12.


Dear Sir,

I write with reference to my Letter dated 18.4.2007 addressed to Mr. Lalith Weeratunga, Secretary to H.E. the President, with copies, amongst others, to you, enclosing copies of certain documents noted therein, to be apprised you of the facts.

In relation to Letter dated 28.2.1990 of Mr. K.N. Choksy P.C. M.P., by which he had endorsed that the full alleged Claims be paid under the Government Guarantees, disregarding the irregularities and queries raised by me, as a professional Accountant by Memo dated 13.12.1989, objecting to any such payments being made, giving the reasons therefor, I enclose copy of my said Memo dated 13.12.1989, which had not been enclosed with copy of my aforesaid Letter.

The foregoing is particularly in the context of my Complaint made in terms of Section 10 of the Offences Against Public Property Act No. 12 of 1982, for attempting to commit an offence punishable under the said Act or to cause such an offence to be committed.

Yours truly,



Nihal Sri Ameresekere

cc: Mr. Victor Perera, IGP
Mr. D.W. Prathapasinghe, DIG-CID

Mr. Neville Piyadigama, Chairman, Police Commission
Ven. Elle Gunawansa, Member, Police Commission / Chairman, Committee to Combat
Fraud, Bribery & Corruption

Mr. Gotabaya Rajapakse, Secretary, Ministry of Defence, Public Security, Law & Order

Mr. Lalith Weeratunga, Secretary to H.E. the President

BY COURIER

18th April 2007

Mr. Lalith Weeratunga
Secretary to His Excellency the President
Presidential Secretariat
Colombo 1.

Dear Sir,

My very best wishes for a successful New Year !

I thank you for your Letter dated 15.3.2007 forwarded to the Hon. Attorney General, with copy to me, on the matter of the fraud perpetrated on the Government in the construction of the Hilton Hotel of Hotel Developers (Lanka) Ltd. (HDL), *a Company majority owned by the Government, and which had been funded on the basis of Government Guarantees issued.*

Though I meant to respond to the above Letter promptly, I could not do so, due to pressure of work, including pertaining to the new Companies Act, and the New Year Holidays !

Particularly, since a new Hon. Attorney General has assumed Office, I set out below very briefly, the pertinent facts to apprise him thereof. I shall be most willing to offer him any clarifications and/or explanations, with copies of relevant documents:

1. In September 1990, D.C. Colombo Case No. 3155/Spl, settled by Late Mr. P. Navaratnarajah Q.C. and Mr. K. Kanag-Isvaran P.C., was instituted by me, as a derivative action in law, in the right and on behalf of HDL, represented by the Hon. Attorney General (*The Hon. Attorney General, so informing me, did not oppose my action in the interest of the country.*)
2. In October 1991, the District Court upheld my Case as a strong *prima-facie* case of fraud and issued interim injunctions *preventing any payments even under the Government Guarantees, inter-alia*, observing that they were issued to *prevent the devious siphoning out of a large scale of foreign exchange from the country*, and that persons, *who had gained influence in society*, exercising such influence (*read with the Complaint this particularly refers to Mr. K.N. Choksy P.C., M.P.*) had prevented the raising of questions, *whereas generally a company would raise questions and would not allow other parties to act arbitrarily*; and if the position set out is correct, *then this is actually an instance of acting in fraudulent collusion.*
3. In December 1992, the Supreme Court affirmed the interim injunctions, *inter-alia*, observing that I had a reasonable and real prospect of success, and not fanciful, even in the light of the defences raised in the pleadings, objections and submissions of the Defendants, and that in the given circumstances, *the Government could not be indifferent, having made itself eventually responsible for the re-payment of monies borrowed by HDL.*
4. In March 1995, a Special Presidential Commission, comprising Supreme Court Judge P.R.P. Perera J and Court of Appeal Judges, H.S. Yapa J and Late F.N.D. Jayasuriya J, was appointed to investigate, *among other matters*, into this fraud. The Commission was assisted by the CID and by the Solicitor General Mr. Douglas Premaratne P.C., on behalf of the Hon. Attorney General.

5. In December 1995, after recording of evidence of 24 Witnesses, including Officials of the Ministry of Finance, UDA, Ceylon Tourist Board, Colombo Municipal Council, Ceylon Electricity Board, Fire Brigade and Fort Police, and after having obtained a Report from Panel of 3 Chartered Architects, the Commission issued Show Cause Notices on Mr. K.N. Choksy P.C. M.P., Mr. R. Paskaralingam, Mr. C.L. Perera and F.G.N. Mendis, setting out several charges, as framed by Solicitor General on behalf of the Hon. Attorney General, on the following grounds;

"The aforesaid acts of commission and/or omission on your part were fraudulent and were detrimental to the interests of the said Company and/or the Government of Sri Lanka, in its capacity as the major Shareholder, causing financial loss and damage to the said Company and/or the Government of Sri Lanka"

"Having regard to the matters set out hereinabove, you are hereby required to show cause as to why you should not be found guilty of misuse or abuse of power and/or corruption and/or commission of fraudulent acts in terms of Section 9 of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended"

6. Subsequently in March 1996, it was discovered before the Commission (*a fact not discovered at the time of the Supreme Court Judgment and the issuance of the above Show Cause Notices*), that the *floor elevations* depicted on the floor sheets of the substituted architectural plans (*original plans were missing*) of the Hotel Building, described as "amended plans" and approved by the UDA on 29.4.1986, are not the same *floor elevations* given in respect of the corresponding floors on the cross-sectional sheets forming a part and parcel of the very same UDA approved plans.

The 3rd and 4th floors were shown to be at the same *elevation* of 24.5 meters, whilst the 19th floor and the Roof of the 19th floor were shown to be at *elevations* of 72.7 meters and 72.5 meters, respectively. *The Commission observed this to be an inherent, intrinsic impossibility, raising the question, as to how the UDA could have ever approved such a plan ?* Furthermore, the sheet numbers given on the "amended plans" reveals the absence of the 'basements', in that, the relevant sheets are missing !

7. In February 2005, the UDA having examined the substituted architectural plans described as "amended plans", conceded that the architectural plans are fraudulent / irregular, and therefore undertook to prepare a 'measured drawing' of the Hotel Building actually constructed, and forwarded the same in September 2005.
8. With one of the Commissioners having fallen critically ill, the Inquiry was not concluded and the Warrant of the Commission having thereafter expired, all the Documents of the Commission were transmitted by the Secretary to the President to the Department of National Archives. Nevertheless, in September 1999, Mr. D.Y. Liyanage, then Deputy Secretary to the Treasury, as the Chairman of HDL, as authorised and empowered by the Board, caused the HDL Lawyers to write to the CID to investigate this matter and to take appropriate action.
9. Subsequently, the Hon. Attorney General having advised to investigate, the Director CID, Mr. Sisira Mendis required my Statement to be recorded. Accordingly, my Statement / Complaint was recorded as far back as 12.3.2004 (*Vide - my Letter to CID dated 15.3.2004*) by a team of CID Officers, led by Inspector of Police Mr. P. Visvanathan ! The CID Officers upon the documentary evidence presented were taken aghast and expressed the view *that this was the biggest fraud they had come across in their entire career !* However, upon a subsequent visit, at his request to the office of the former DIG-CID, I was taken aghast to find that the documents I had handed over to the CID upon the recording on my statement on 12.3.2004, were 'neatly' tied up, gathering dust !

10. Consequently, I assisted the CID to trace the relevant documents of the Commission to the Department of National Archives, and you, in terms of Section 23 of the National Archives Law, required the Documents to be released for investigation by CID. In such circumstances, I could not comprehend, why the CID was endeavouring to obtain 'photocopies' of a very large volume of Documents, including Architectural Plans, without having obtained the relevant documents / initiating proceedings *as normally done in other cases*, in the Magistrate's Court, obtaining orders to retrieve documents and to record statements of the concerned persons ?
11. In fact, authenticated copies of the relevant Documents, upon which the District Court issued interim injunctions and Supreme Court delivered Judgment, are available in the Commercial High Court. Furthermore, the proceedings and authenticated copies of documents would be available at the Attorney General's Department, having been in the custody of then Solicitor General Mr. Douglas Premaratne P.C., then Deputy Solicitor General, Late Mr. A.R.C. Perera P.C., and finally with Solicitor General Mr. Saleem Marsoof P.C., who assisted the Commission.
12. **In addition** to the matter of the aforesaid fraud, I had complained to the CID on the Offence of 'aiding and abetting' i.e. 'attempting' to commit an offence in terms of Section 10 of the Offences Against Public Property Act No. 12 of 1982 by Mr. K.N. Choksy P.C. M.P. and Others, in that attempting to somehow cause the wrongful and unlawful payment of Government monies under Government Guarantees, under fraudulent / false representations.

My aforesaid action prevented such fraud on the Government and resulted in the write-off in June 1995 of 'alleged claims' amounting to Jap. Yen 17,586 Mn., (then equivalent to US \$ 207 Mn. Sri Lanka Rs. 10,200 Mn.) *In fact, Mr. K.N. Choksy P.C. M.P. having prevented an independent physical examination, thereafter endorsed in writing that the entire payments be made, and subsequently futilely attempted to jeopardise my above action, resorting to misuse and abuse of political power, including attempting to bring upon undue influences and pressures even on the Hon. Attorney General !*

I quote Section 10 of Act No. 12 of 1982 -

"10. Any person who attempts to commit an offence punishable under this Act, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with such imprisonment of either description as is provided for the offence and with such fine, as is provided for the offence."

I am advised that the offence of aiding and abetting stands on its own, even if the principal act attempted had not been committed / prevented from being committed.

13. In fact in my Letter dated 29.5.2006 to the IGP, whilst setting out the background, I, *inter-alia*, stated thus:

"Notwithstanding the gravity and the national economic proportions of this economic crime, I regret that the CID has been 'tardy' in this investigation, particularly when compared with the haste and speed at which the following subsequent matters have been investigated by the CID, as per advice / directions of the Hon. Attorney General, with proceedings commenced in the Magistrates' Courts -

- Rs. 1 Mn. alleged Offence by Mr. Abdul Cader M.P. in terms of Offences Against Public Property Act No. 12 of 1982 (*I recently read a newspaper report that he has now been indicted in the High Court*)
- Investigations into Accounts of Sri Lanka Cricket for alleged malpractices including re- a payment of UK Pds 1500/- as an alleged Offence under the Immigrants & Emigrants Act (*Recently the Hon. Attorney General obtained a conviction*)
- Alleged misappropriation of Rs 82 Mn. in the 'Helping Hambantota' issue. found fault with by the Supreme Court."

"I drew attention to the Offence to attempt to commit an Offence in terms of Section 10 of the Offences Against Public Property Act No. 10 of 1982. In this instance, the attempt to fraudulently obtain a large scale of foreign exchange from the Government under Government Guarantees, including by cheating, forgery, false certification of records and accounts, etc."

In complete contrast to the inaction vis-à-vis the aforesaid major crime of national economic proportions, that too, upheld by the Supreme Court, and even warranting the framing of Charge Sheets by the Hon. Attorney General, on grounds of fraud against the Government to be issued by the Special Presidential Commission, after investigations carried out by the CID under the supervision by the Hon. Attorney General, it was reported in the media in October 2006, that a former Chairman of Sri Jayawardenapura Hospital had been convicted, for conspiring to misuse cheques to the value of Rs. 64,000/- belonging to Musaeus College, Colombo, fraudulently, and for criminal breach of trust, in the Magistrate's Court, in a prosecution by the State.

In addition also in complete contrast, recently, very expeditiously, proceedings were initiated in the Magistrate's Court against Mr. Sripathy Sooriyarachchi M.P., for an alleged misuse of a Government Motor Vehicle, under the aforesaid Offences Against Public Property Act No. 12 of 1982 !

Whilst as a civic and constitutional duty (*vide - Article 28 of the Constitution*) to protect, and combat the misuse and waste of public property, in this instance, a large scale of Government monies in foreign exchange, I instituted civil action, it is the obligation and duty of the State to have taken prompt and effective criminal action, regardless of the personalities concerned and/or any socio-political considerations !

The then Minister of Justice reiterated in public the Government's commitment that punitive action will be taken by the legal machinery against the offenders, in combating the pillage and plunder of public resources in this instant case. Subsequently, he informed Parliament that show cause notices on fraudulent and detrimental acts to the interest of the Government had been served on several persons, and that the matter is being proceeded with.

I am forwarding copies of the under-noted relevant documents to the Hon. Attorney General for easy reference, to facilitate this belated matter to be expeditiously dealt with.

In the context of the representations made to the IGP / DIG-CID and the actions taken by the Police Commission and the Chairman, Committee to Combat Fraud, Bribery & Corruption, I am copying this Letter to them, so that they may be kept apprised of the foregoing.

Yours truly,


Nihal Sri Ameresekere

cc: Mr. C.R. de Silva P.C., Hon. Attorney General - *Encl:*
Plaint in 3155/Spl
DC Order
SC Judgment
SPC Show Cause Notices.
K.N. Choksy's Letters dated 28.2.1990 / 8.8.1988
Letters to IGP / CID dated 16.3.2007 / 14.12.2006 /
28.9.2006 (+ attachments)

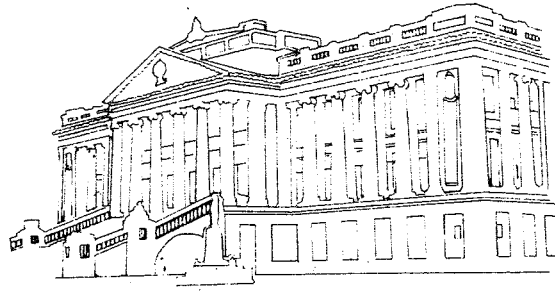
Mr. Victor Perera, IGP

Mr. D.W. Prathapasinghe, DIG-CID

Mr. Neville Piyadigama, Chairman, Police Commission

Ven. Elle Gunawansa, Member, Police Commission / Chairman, Committee to Combat Fraud,
Bribery & Corruption

Mr. Gotabaya Rajapakse, Secretary, Ministry of Defence, Public Security, Law & Order



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My No. }

SP/4/12

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சனாதிபதி அலுவலகம்
PRESIDENTIAL SECRETARIAT

කොළඹ 1.
கொழும்பு 1.
Colombo 1.

March 15, 2007

Hon. Attorney General
Attorney General's Department

Mr. Nihal Sri Ameresekere has been repeatedly writing to me in regard to what he considers to be a major fraud in the construction of the Colombo Hilton. He also contends that the Supreme Court upheld that there was a major fraud in the construction and had further made an observation that the government should not be indifferent.

Mr. Ameresekere further laments that his numerous complaints to the CID has gone unheeded. I wish to seek your advice as to what action the government of Sri Lanka should take on this matter, as Mr. Ameresekere emphasizes that a major fraud has been perpetrated on the government of Sri Lanka.

Lalith Weeratunga
Secretary to the President

Copy: Mr. Nihal Sri Ameresekere
Business & Management Consultant
167/4, Sri Vipulasena Mawatha,
Colombo.

BY COURIER

15th December 2006

Mr. C.R. De Silva P.C.,
Solicitor General,
Attorney General's Department,
Hultsdorf Street,
Colombo 12.


Dear Solicitor General,

I forward herewith for your kind attention and warranted action, copy of my Letter to the IGP dated 14.12.2006.

Since my Complaint was recorded, the CID records would reveal several representations I had made in this regard.

All persons being equal before the law, I trust that warranted action would be caused to be expeditiously taken, on this grave and serious matter of national economic proportions, enforcing the rule of law.

Yours truly,



Nihal Sri Ameresekere

BY COURIER

14th December 2006

Mr. Victor Perera,
Inspector General of Police,
Police Headquarters,
Colombo 1.

Dear Sir,

**Criminal Prosecution against Mr. K.N. Choksy P.C., M.P.
& Mr. R. Paskaralingam & Others**

I thank you for the prompt action taken on my Letter of 13.10.2006, in that, I received a copy of the annexed Letter dated 19.10.2006 addressed by the CID to the Director, National Archives Department, to obtain copies of relevant Documents for the investigation.

The background, *vis-à-vis*, this major fraud to deviously siphon out by fraudulent means, a massive amount of foreign exchange from the Government, under Government Guarantees, is as follows:

1. In September 1990, I instituted a public interest action and the Supreme Court in December 1992 upheld it as a serious *prima-facie* case of fraud on the Government, observing that in the given circumstances, the Government could not be indifferent; and further upheld the interim injunctions, which had been issued by the District Court in October 1991 'to prevent the siphoning of large scale of a foreign exchange from the country'.
2. Mr. K.N. Choksy P.C., M.P., as a Director of the Hilton Hotel owning Company, majority owned and controlled by the Government, notwithstanding my objections as a professional Director, and in the known absence of Bills of Quantities and Final Measurements, endorsed in writing that the said alleged claims be paid in full by the Government, which led me to institute the above action.
3. As a result of my action, the Japanese contractors of the Hilton Hotel in June 1995 wrote-off Jap.Yen 17,586 Mn. (then equivalent to US \$ 207 Mn., SL Rs. 10,200 Mn. i.e. equivalent today to Rs. 37,600 Mn. @ 12% p.a. interest) on their alleged claims made against the Government on the Government Guarantees. The Japanese contractors having been so penalised and therefore pardoned, is it not just and equitable that penal action as warranted be taken against those others, as was the endeavour by the Special Presidential Commission.
4. Mr. K.N. Choksy P.C., M.P., among others, was a Defendant in my action and was unable to file Objections and Answer. However, he desperately made a futile attempt to have my action dismissed; also bringing to bear pressures on me, misusing and abusing his political office, whereas I acted in the interest of the country.
5. In addition to the matter of the above fraud, I draw your kind attention to the provisions of the Offences Against Public Property Act No. 12 of 1992, including the offence to 'attempt to commit an offence punishable under that Act' – *vide Section 10 of the Act*. I had drawn specific attention of the CID to this other aspect. To establish this, only a very few available documents would be necessary, and not the entirety of the documentation pertaining to the above fraud.
6. In March 1995, a Special Presidential Commission was warranted comprising Supreme Court Judge Justice Priyantha Perera (*present Chairman, Public Service Commission*) and 2 Judges of the Court of Appeal, Justices Hector Yapa and late Ninian Jayasuriya. The Commission in its investigations was assisted by the CID and the Solicitor General Mr. Douglas Premaratne P.C.. The then Minister of Justice & Constitutional Affairs G.L. Peiris assured Parliament that it was intention of the Government that fraud and wrong-doing will be dealt with severely under the law.

7. The Commission after recording the evidence of 24 witnesses, including obtaining a Report from a panel of 3 Chartered Architects, issued Show Causes Notices framed by the Solicitor General on Mr. K.N. Choksy P.C. M.P., R. Paskaralingam (*former Secretary Ministry of Finance & Treasury / Chairman UDA*) former Chairman & Managing Director of the Company, Mr. C.L. Perera and one other Director Mr. F.G.N. Mendis (*Chairman, Delmege Forsyth & Co. Ltd.*), *inter-alia*, on grounds of fraud on the Government, causing loss and damage.
8. Subsequently, it was discovered before the Commission (*a fact not discovered at the time of the Supreme Court Judgment and the issuance of the above Show Cause Notices*), that the *floor elevations* depicted on the floor sheets of the substituted architectural plans (*original plans were missing*) of the Hotel Building, described as "amended plans" and approved by the UDA on 29.4.1986, are not the same *floor elevations* given in respect of the corresponding floors on the cross-sectional sheets forming a part and parcel of the very same UDA approved plans.

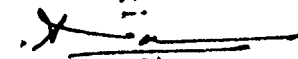
The 3rd and 4th floors were shown to be at the same *elevation* of 24.5 meters, whilst the 19th floor and the Roof of the 19th floor were shown to be at *elevations* of 72.7 meters and 72.5 meters, respectively. The Commission observed this to be an inherent, intrinsic impossibility, raising the question, as to how the UDA could have ever approved such a plan. Furthermore, the sheet numbers given on the "amended plans" reveals the absence of the 'basements', in that, the relevant sheets are missing.

In February 2005 the UDA having examined the substituted architectural plans described as "amended plans", conceded that the architectural plans are irregular, and therefore undertook to prepare a 'measured drawing' of the Hotel Building actually constructed, and forwarded the same in September 2005.

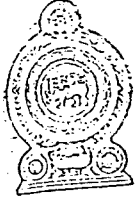
9. With one of the Commissioners having fallen critically ill, the Inquiry was not concluded and the Warrant of the Commission having thereafter expired, all the Documents of the Commission were transmitted by the Secretary to the President to the Department of National Archives.
10. Subsequently, the Hon. Attorney General having advised to investigate, the Director CID, Mr. Sisira Mendis required my Statement to be recorded. Accordingly, my Statement / Complaint was recorded in March 2004 by a team of CID Officers led by Inspector of Police Mr. P. Visvanathan. The CID Officers upon the evidence presented admitted that this was patently a very major fraud.
11. Consequently, I assisted the CID to trace the relevant documents of the Commission to the Department of National Archives, and the Secretary to the President, in terms of Section 23 of the National Archives Law, required the Documents to be released for investigation by CID. In such circumstances, I cannot understand the CID endeavouring to obtain 'photocopies' of a very large volume of Documents, including Architectural Plans, as evidenced by the annexed Letter.
12. In fact, authenticated copies of the relevant Documents, upon which the District Court issued interim injunctions and Supreme Court delivered Judgment, are available in the Commercial High Court.

Given the foregoing facts (*particularly the Supreme Court Judgment and the Special Presidential Commission's Show Cause Notices after investigations*), ought not, as normally done, a "B" Report be filed in a Magistrates' Court and Orders obtained to retrieve Documents and record statements of the concerned persons, whose statements, in fact, had been recorded by the CID, itself, in assisting the Commission under the advice of the Solicitor General ?

Yours truly,



Nihal Sri Ameresekere



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කොළඹ 12, ශ්‍රී ලංකාව.

சட்டத்துறை அதிபதியின் சட்டம்

කොළඹ 12, ශ්‍රී ලංකාව.

Attorney-General's Chambers

Colombo 12, Sri Lanka.

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Telephone } 327166

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Fax } 436421

My No.AG55/2003
Yr. No.PA/DCI/P/1400/04

10th March, 2004

Mr. Lionel Gunatilleke,
Deputy Inspector General of Police,
Criminal Investigation Department,
Colombo.

1. Proceedings of Special Presidential Commission in respect of Hon. K.N. Choksy P.C. and Mr. R. Paskaralingam.
2. Cases against Mr. Douglas Peiris, SSP under I & E Act

I refer to the letter of 10th March, 2004 addressed to me by the Director/CID and the conference held in my Chambers today.

This is to confirm that the proceedings before the Special Presidential Commission referred to above cannot form the basis for the institution of any criminal proceedings. You may therefore consider recording statements of persons acquainted with the subject matter of the said proceedings in order to ascertain whether there is sufficient material to proceed with the investigations.

I also confirm that the two cases referred to in the said letter against Mr. Douglas Pieris are still pending.

With regard to the 'subject matter of Magistrate's Court, Negombo Case No. B 2577/00, I have to advise you, that in view of the conflicting positions taken up by him and since the said case has been withdrawn, the question of further investigations does not arise. In this context I have already advised your predecessor in office that the contents of the document do not justify any further action against any other person.

K.C. Kamalabayson P.C.,
Attorney-General

BY REGISTERED POST

18th February 2004

K.C. Kamalabayson, Esqr., P.C.
Attorney General,
Attorney General's Department,
Hultsdorp,
Colombo 12.

Your Ref: AG55/2003

Dear Sir,

**Criminal prosecution against K.N. Choksy P.C., M.P. and R. Paskaralingam
for fraud perpetrated on the Government / cover-up thereof**

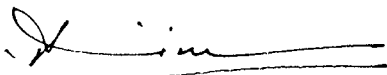
I refer to my Letters dated 18.12.2003 and 22.12.2003 and your reply dated 23.12.2003 (copy attached) on the above subject, intimating to me that you have called for the relevant particulars from the Inspector General of Police, and my subsequent Letters dated 24.12.2003 and 5.1.2004.

The Attorney General, upon investigations carried out by the CID, having caused Charge Sheets (further copies attached), on the premise of commission of fraudulent acts detrimental to the interests of government, to be served by the Special Presidential Commission on K.N. Choksy P.C., M.P. and R. Paskaralingam, would it now not be a matter of filing indictments in the High Court, inasmuch as per media reports, indictments are said to be imminent in respect of far more less grave and less material alleged offences; whereas this involved an attempt to perpetrate a grave crime and fraud of national economic proportions on the government, with an endeavour to cause the payment of monies under state guarantees, notwithstanding my objections as a professional (Supreme Court having previously upheld the same as a serious prima-facie case of fraud, with an attempt to deviously syphon out a large scale of foreign exchange from the government and the country); and furthermore, during the Inquiry before Special Presidential Commission, after the aforesaid Charge Sheets had been served, irrefutable evidence of fraud having surfaced? I draw attention particularly to the final two paragraphs of my Letter dated 18.12.2003.

It is now 2 months since my initial Letter to you on 18.12.2003 and your reply dated 23.12.2003. As such, I wish to ascertain, as to what progress has been made on the subject matter under reference? Or is it that the aforesaid persons having been knowingly recommended by the Prime Minister, Ranil Wickramasinghe to be appointed as the Minister of Finance, and Advisor to the Prime Minister, respectively, intentionally to shield them from such prosecution, and in which circumstances, you and/or the law enforcement authorities are thus and thereby inhibited from enforcing the Rule of Law as in the case of ordinary citizens of the country, notwithstanding the much professed dicta that all are equal before the law?

I urge that warranted action be taken, irrespective of the socio-political standing of the aforesaid persons, upholding the scales of justice as is prevalent in civilised societies.

Yours faithfully,



Nihal Sri Ameresekere

cc: Indra de Silva Esqr., Inspector General of Police
Lionel Gunatilleke Esqr., Deputy Inspector General of Police / CID
Sisira Mendis Esqr., Director, CID

✓ Her Excellency the President Chandrika Bandaranike Kumaratunga

BY LOCAL COURIER

24th December 2003

K.C. Kamalabayson Esqr., P.C.,
Attorney General

C.R. de Silva Esqr., P.C.,
Solicitor General

Attorney General's Department
Colombo 12.

Your Ref: AG55/2003

Dear Sirs,

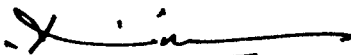
**Criminal prosecution against K.N. Choksy P.C., M.P. and R. Paskaralingam
for fraud perpetrated on the Government / cover-up thereof**

I acknowledge your Letter dated 23rd December 2003 in response to my Letter of 18th December 2003, informing me that you had called for the relevant particulars from the Inspector General of Police.

In this context, I draw your kind attention to the penultimate paragraph on page 5 of my Letter of 18th December 2003, whereby I intimated that the record of the proceedings and copies of the productions / documents would be with Saleem Marsoof, Esqr, P.C., Addl. Solicitor General, who was assisting the Special Presidential Commission towards the end of its period, and hence that all recorded statements of evidence and other productions / documents would be in your custody and possession.

I had also been informed that the records that were with the Special Presidential Commission had been forwarded to the Archives Department for safekeeping, and these could be retrieved.

Yours faithfully,



Nihal Sri Ameresekere

cc: Indra de Silva Esqr., Inspector General of Police
Lionel Gunatilleke Esqr., Deputy Inspector General of Police / CID
Sisira Mendis Esqr., Director, CID

Her Excellency the President Chandrika Bandaranike Kumaratunga

මගේ අංකය
எனது இல.
My No.

AG55/2003



නැ. පෙ. අංකය
அஞ்சல் பெட்டி.
P. O. Box No. } 502

ඔබේ අංකය
உமது இல.
Your No.

කොළඹ 12.

කොළඹ 12.

Colombo 12.

දුරකථන අංක
தொலைபேசி இல.
Telephone Nos.

433967
433769
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23rd December, 2003

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சட்ட மது அறிபதி திணைக்களம்
ATTORNEY-GENERAL'S DEPARTMENT

Mr. Nihal Sri Ameresekera,
167/4, Vipulasena Mawatha,
Colombo.

**CRIMINAL PROSECUTION AGAINST K.N.CHOKSY P.C., M.P.
AND R.PASKARALINGAM**

I refer to your letter of 18th December, 2003.

This is to inform you that I have called for the relevant particulars from the Inspector General of Police.


for Attorney-General

REGISTERED POST

18th December 2003

K.C. Kamalabayson Esqr., P.C.,
Attorney General

C.R. de Silva Esqr., P.C.,
Solicitor General

Attorney General's Department
Colombo 12.

Dear Sirs,

**Criminal prosecution against K.N. Choksy P.C., M.P. and R. Paskaralingam
for fraud perpetrated on the Government / cover-up thereof**

You are aware that a Special Presidential Commission was appointed by Her Excellency the President in terms of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended, as per the Proclamation published in the Gazette Extraordinary No. 858/4 of 14.2.1995, to conduct in terms of the said Proclamation, investigations into the conduct of affairs of certain public bodies and matters pertaining thereto, itemised in the Schedule to the said Proclamation; wherein Item 2 stipulated was Hotel Developers (Lanka) Ltd., [HDL] the owning Company of the Hilton Hotel, a company majority owned by the Government and on whose behalf, State Guarantees had been given to the Japanese Collaborators thereof. *Copy of the Gazette Notification is annexed marked "A"*.

The Special Presidential Commission, comprised the then Supreme Court Judge, P.R.P. Perera, as its Chairman and the then Appeal Court Judge, present Supreme Court Judge, H.S. Yapa and late Appeal Court Judge, F.N.D. Jayasuriya. The then Solicitor General, P.L.D. Premaratne P.C., assisted the Special Presidential Commission on behalf of the then Attorney General in the conduct of its investigations. A team of CID Officers, headed by then Senior Superintendent of Police, Godfrey Gunasekera, was attached to the Special Presidential Commission to conduct investigations.

The Special Presidential Commission carried out investigations into the matter of the fraud perpetrated on HDL and the Government, recording statements of 24 Witnesses, who included Officers of the Ministry of Finance & Planning, UDA, Ceylon Tourist Board, Colombo Municipal Council, Ceylon Electricity Board, Fire Brigade and Fort Police. The Special Presidential Commission also obtained an Investigation Report from a panel of 3 Chartered Architects, headed by Prof. Nimal de Silva and comprising Upali Iddawela and Dudley Waas. The names of the said 24 Witnesses are set out on page 229 of the 4th Interim Report submitted by the Special Presidential Commission to Her Excellency the President in March 1997, *a copy of which page is annexed marked "B"*.

Upon the conclusion of its investigations, the Special Presidential Commission, assisted by the then Solicitor General, in December 1995, served Show Cause Notices on 4 persons, containing several charges on grounds of fraud, stating thus:

"The aforesaid acts of commission and/or omission on your part were fraudulent and were detrimental to the interests of the said Company and/or the Government of Sri Lanka, in its capacity as the major Shareholder, causing financial loss and damage to the said Company and/or the Government of Sri Lanka"

Prior to my instituting legal action, K.N. Choksy P.C. had prevented a correct engineering examination of the Hotel by his Letter dated 8.8.1988. Thereafter, notwithstanding my objections as a professional accountant, as per my Memorandum dated 13.12.1989 to making payment to the Japanese Contractors in the absence of Bills, of Quantities and Final Measurements, K.N. Choksy P.C. M.P. by his Letter dated 28.2.1990 endorsed that the full payment be made to the Japanese Contractors. If not for my legal action this would have resulted in a loss of Jap. Yen 17,586 Million i.e. US \$ 207 Million to the Government i.e. the public. Copies of the said Letters of K.N. Choksy P.C., M.P., are annexed marked "E1" and "E2", respectively and copies of my Memorandum is annexed marked "F"

In my aforesaid legal action, wherein K.N. Choksy P.C., M.P., was a Defendant, the District Court issued interim injunctions, *inter-alia*, observing in its Order thus:

- # *the Contractors having performed a lesser volume of work, have attempted to obtain a larger sum of money... and the Plaintiff having raised the question concerning the basis for the payment of monies.*
- # *the other Defendants, [i.e. the Directors], as persons having connections concerning the said Hotel business, having intervened therein in such matter, acting to obtain the said monies, had not readily acted to conduct a correct examination.*
- # *they having prevented such correct examination, were attempting to, howsoever, effect the payment of monies.*
- # *they are exercising the influence, that they have gained in society, acting together with the Company, to prevent the raising of the questions concerning the matters of the work in connection with the Contracts, the Prospectus ...*
- # *their collaboration was adverse to the interest of the Shareholders of the Company, and they were acting through such collaboration, in a manner amounting to defeat the interests of the Shareholders of the Company.*

The District Court in its Order further observed thus:

"Accordingly, the present position is that the Defendants' statement, that they have performed their part of the Contracts and the willingness shown by the Company to accept the same, as set out by the Defendants, **cannot be accepted as the basis for payment...** in fact, whether, as stated by the Plaintiff, this is a devious method of siphoning out, a large scale of foreign exchange from this country...The significance, that is shown herein, is that **generally, the Company which has to pay money, would be raising questions, in respect of such situation, and would not allow other parties to act arbitrarily...If the position, that explains this is correct, then this actually, is an instance of acting in fraudulent collusion**".

[Emphasis added]

Copy of the District Court Order of 28.10.1991 is annexed marked "G".

After the issuance of the interim injunctions by the District Court, the collusion between K.N. Choksy P.C., M.P. and R. Paskaralingam, then Secretary, Ministry of Finance to cover up this fraud perpetrated on the Government i.e. the public, is borne out by the Finance Ministry Minutes dated 20/22/23/27.11.1991. Copies of relevant Finance Ministry Minute Sheets are annexed marked "H".

After I had instituted the aforesaid legal action and the District Court had issued enjoining orders, acting regardless thereof and my objections, K.N. Choksy P.C., M.P., in a further endeavour to cover-up the fraud, acting in concert with R. Paskaralingam, intervened to have a fraudulent set of Audited Accounts of HDL certified and adopted. This too, was prevented by me by instituting a further legal action, D.C. Colombo Case No. 3231/Spl, wherein the said fraudulent Audited Accounts of HDL were enjoined by Court.

Subsequently, the Supreme Court upholding the issuance of the interim injunctions by the District Court, in its Judgment, inter-alia, stated thus:

- # *the Plaintiff has succeeded in establishing that he has a legally enforceable right and that there is a serious question and prima-facie case and wrong-doer control, and that HDL is entitled to the reliefs claimed.*
- # *the Plaintiff has a reasonable and real prospect of success, even in the light of the defences raised in the pleadings, objections and submissions of the Defendants*
- # *the Plaintiff's prospect of success was real and not fanciful and that he had more than a merely arguable case*
- # *because in the circumstances of the case, the Directors, including the Government's representatives on the Board will not assist or are helpless to intervene*
- # *Interim Injunctions were granted to prevent the "syphoning out of money" from HDL and the Country*
- # *but for the Interim Injunctions, HDL, like Pyrrhus after the battle of Asculum in Apulia, might well be constrained to say, "One more such victory and we are lost".*
- # *it might be pointed out that it could not entirely be a matter of indifference to the Government the Government made itself eventually responsible for the repayment of the monies borrowed by HDL*

[Emphasis added]

A copy of the Supreme Court Judgment of 2.12.1992 is annexed marked "I"

K.N. Choksy P.C., M.P., the 7th Defendant in my legal action was unable to file Objections and Answer. Nevertheless, he wrongfully intervened in the Leave to Appeal Application made by the Japanese Collaborators in the Court of Appeal, endeavouring to have by legal action dismissed, **he submitting that I had no legal right to institute such an action in my country**, which matter is dealt with at pages 6 and 7 of the Supreme Court Judgment, shown highlighted.

Whilst R. Paskaralingam absconded abroad from personally facing prosecution before the Special Presidential Commission, K.N. Choksy P.C., M.P. having being found out to make untrue, erroneous and false statements to mislead and deceive the Special Presidential Commission and the public, absconded thereafter from appearing before the Special Presidential Commission. The extracts of the obiter dicta in a Postscript made by the Special Presidential Commission in March 1996, on the Written Submissions made to the Special Presidential Commission by K.N. Choksy P.C., M.P., are given below:

"In the course of the proceedings of February 29, 1996 the Commission has adverted to the provisions of Rules 15, 50 and 51 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) and to two Dicta pronounced by two eminent Judges presiding over the Superior Courts of the Great Britain."

After I had instituted the aforesaid legal action and the District Court had issued enjoining orders, acting regardless thereof and my objections, K.N. Choksy P.C., M.P., in a further endeavour to cover-up the fraud, acting in concert with R. Paskaralingam, intervened to have a fraudulent set of Audited Accounts of HDL certified and adopted. This too, was prevented by me by instituting a further legal action, D.C. Colombo Case No. 3231/Spl, wherein the said fraudulent Audited Accounts of HDL were enjoined by Court.

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- # *the Plaintiff has succeeded in establishing that he has a legally enforceable right and that there is a serious question and prima-facie case and wrong-doer control, and that HDL is entitled to the reliefs claimed.*
- # *the Plaintiff has a reasonable and real prospect of success, even in the light of the defences raised in the pleadings, objections and submissions of the Defendants*
- # *the Plaintiff's prospect of success was real and not fanciful and that he had more than a merely arguable case*
- # *because in the circumstances of the case, the Directors, including the Government's representatives on the Board will not assist or are helpless to intervene*
- # *Interim Injunctions were granted to prevent the "syphoning out of money" from HDL and the Country*
- # *but for the Interim Injunctions, HDL, like Pyrrhus after the battle of Asculum in Apulia, might well be constrained to say, "One more such victory and we are lost".*
- # *it might be pointed out that it could not entirely be a matter of indifference to the Government the Government made itself eventually responsible for the repayment of the monies borrowed by HDL*

[Emphasis added]

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Whilst R. Paskaralingam absconded abroad from personally facing prosecution before the Special Presidential Commission, K.N. Choksy P.C., M.P. having being found out to make untrue, erroneous and false statements to mislead and deceive the Special Presidential Commission and the public, absconded thereafter from appearing before the Special Presidential Commission. The extracts of the obiter dicta in a Postscript made by the Special Presidential Commission in March 1996, on the Written Submissions made to the Special Presidential Commission by K.N. Choksy P.C., M.P., are given below:

"In the course of the proceedings of February 29, 1996 the Commission has adverted to the provisions of Rules 15, 50 and 51 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) and to two Dicta pronounced by two eminent Judges presiding over the Superior Courts of the Great Britain."

"A Court of Law, a Tribunal, or a Statutory Commission ought to, in the course of its Proceedings, apply and enforce such rules of Conduct and Etiquette. A Court must not only be concerned with punishing Counsel for breach of such rules, but must ensure that such rules are observed in proceedings conducted before it."

"In addition to the dicta of Lord Reid and Lord Esher to which the Commission has already referred to in the Proceedings, this Commission wishes to place on record certain decisions which lay down valuable pronouncements in regard to the paramount duty of Counsel to Court. Lord MacMillan on Ethics of Advocates, states thus: - '*In the discharge of his office, the Advocate has a duty to his Client, a duty to the State, and a duty to himself*'. This passage was cited with approval by Lord Justice Willmer in *Meek vs. Flemming*:"

"We are of the unanimous view that in this respect **he [reference being to K.N. Choksy P.C., M.P.] has stated untrue, erroneous and false facts, which necessarily has the tendency to mislead and deceive the public in general, and the members of this Commission" - [Emphasis added]**

The Special Presidential Commission in another Postscript, inter-alia, stated thus:

"Thus, the Supreme Court has in effect upheld the law as laid down the aforesaid English decisions and the law as set out in the Provisions of Article 106. This Commission is surprised to ascertain and note that Mr. K.N. Choksy P.C. was one of the Junior Counsel who appeared for the 2nd, 3rd and 7th respondents at the argument of this appeal before the Supreme Court. In these circumstances, it surprises and startles this Commission how Mr. Choksy with a conscience and consistent with his duties as Counsel to the Commission, making submissions to the effect that the Supreme Court refused to adopt the English law as laid down in these two English Cases and held that the English law did not coincide with the law of Sri Lanka."

Copies of the above Postscripts of the Special Presidential Commission published in the Daily News of 30.3.1996 are annexed marked "J"

The proceedings of the Special Presidential Commission on this matter was not concluded due to the sudden hospitalisation of late Justice F.N.D. Jayasuriya with a serious heart condition, he having been the Member of the Special Presidential Commission, who was actively involved in the conduct of the investigations into this fraud. Nevertheless, the record of the proceedings and copies of the productions / documents would be with Saleem Marsoof, Esqr., P.C., Addl. Solicitor General, who was assisting the Commission towards the end of its period. Hence, all recorded statements of evidence and other productions / documents would be in your custody and possession.

By Letter dated 6.8.2002, J. Charitha Ratwatte, present Secretary, Ministry of Finance, constituted a Committee in the context of a Letter dated 28.2.2001 from you, the Attorney General. Whilst I informed the said Committee and your representative, Nihal Jayawardene Esqr., Senior State Counsel, that whilst I would consent to a settlement of the commercial matters, I specifically refused to compromise on the matter of fraud and/or of the endeavour to cover-up the fraud, particularly by K.N. Choksy P.C. M.P. and R. Paskaralingam. This is confirmed by my Letter dated 26.7.2002 addressed to you, the Attorney General, consequent to a discussion had with you. Quote:

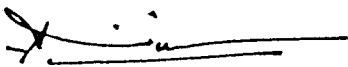
"At the last discussion had with you, together with my Counsel, Mr. Douglas Premaratne P.C., you confirmed to and assured us that, should there be any criminality, that you would be the first person to recommend that warranted action in that regard be taken."

I have witnessed the speed and zeal with which you have been directing the investigations into an alleged offence of aiding and abetting a person, who is alleged to have travelled on a forged Passport, with an alleged payment of U.K. Pounds 1500/- made to him from the Sri Lanka Cricket funds, by it President Thilanga Sumathipala. The concerted efforts made by the Officers of the Criminal Investigation Department, who have been conducting investigations, under your directions, into this alleged offence have been extensively publicised and is well known. The incredible haste, speed and zeal with which you have acted / caused matters to be reported to the Courts of law, including making questionable submissions to the Supreme Court, is well known.

In comparison with the above, in stark contrast thereto, you have intriguingly and questionably failed and neglected to take any action, whatsoever, in regard to the foregoing matter of a massive fraud perpetrated on the Government, the country and the public, and its cover-up, *notwithstanding your aforesaid assurance to me*. Such offence of fraud / crime is not prescribed, inasmuch as, I understand, that you recently indicted Rohan Perera, former Chairman of Pramuka Bank after its closure, for a transaction alleged to have been perpetrated in 1992 concerning another Bank.

In the context of the speed and zeal with which you have acted in the aforesaid matter, apparently deeming the same to be of grave importance and of utmost urgency, I urge you to take even more stronger, speedier and effective action, as is warranted, and cause such action to be taken, in regard to the foregoing matter of the massive fraud perpetrated on the Government and the public, and its cover-up, which you would concede is far more graver and of national and public importance; inasmuch as the former Solicitor General, acting on behalf of the Attorney General, having already caused charges of fraud to be made, as aforesaid, admittedly upon credible evidence, after investigations by the Criminal Investigations Department, subsequent to which the aforesaid further irrefutable evidence of fraud surfaced before the Special Presidential Commission.

Yours faithfully,



Nihal Sri Ameresekere

cc: Indra de Silva Esqr., Actg. Inspector General of Police
Lionel Gunatilleke Esqr., Deputy Inspector General of Police / CID
Sisira Mendis Esqr., Director, CID

Her Excellency the President Chandrika Bandaranike Kumaratunga