1967 *Present :* **G. P. A. Silva, J., and Siva Supramaniam, J.**

A. M. A. HAMEED and another, Appellants, *and* THE QUEEN, Respondent

S. C. 3-4166-D. C. Gampaha (Bribery), 1/B.

Bribery Act-Prosecution under section 19—Burden, of proof—Can Court take judicial notice of certain facts ?

In a prosecution, under section 19 of the Bribery Act, against a police officer for accepting a gratification which he was not authorised by law or the terms of his employment to receive, the court cannot take judicial notice that a police officer is not authorised by law or the terms of his employment to accept a gratification for doing an act which would have the effect of interfering with the course of justice in a proceeding pending before a court of law.

APPEAL from a judgment of the District Court, Gampaha.

G. E. Chitty, Q.C. with *E. H. C. Jayetileke*, for the Accused-Appellant.

Kenneth Seneviratne, Crown Counsel, for the Attorney-General.

May 10, 1967. G. P. A. SILVA, J.-

In this case the 1st accused-appellant was charged with the following offence, namely, that while being a Public Servant, to wit, Police Sergeant No. 1775, Meegahawatta Police, did accept from one B. P. Seiman a gratification of a sum of Rs. 25 which gratification he was not authorised by law or the terms of his employment to receive, and that he thereby committed an offence punishable under section 19 read with section 89 *(b)* of the Bribery Act. The 2nd accused-appellant was charged with having, as a Public Servant, to wit, Police Constable No. 26, Meegahawatta Police, abetted the 1st accused in the commission of the said offences: Both the accused were convicted of the said charges.

It was contended by learned Counsel for the appellants, and this is not contradicted by Crown Counsel, that there was no evidence in the case that the 1st accused was not authorised by law or the terms of his employment to receive the said gratification. In the absence of such evidence, he submitted, the conviction could not be sustained, and for this submission he relied on the recent Divisional Bench decision in *Mohamed Auf v. The Queen*[1] in which it was held that the burden of proving that the acceptance of a gratification was not authorised by the terms of the employment lay on the prosecution and that in the absence of such evidence the prosecution could not maintain this charge. Counsel for the Crown however sought to distinguish the present case from the Divisional Bench case on the footing that the facts of this case were different and that, on the facts that were established, the court could take judicial notice that a police officer was not authorised by law or the terms of his employment to accept a gratification for doing an act which would have the effect of interfering with the course of justice in a proceeding pending before a court of law. He based this argument not on any particular provision of law but on the principle that there were certain notorious facts which were so well known that any court could take judicial notice of them and that one such instance was that a police officer was debarred from accepting a gratification for the purpose for which he accepted it in this case. Acceptance of this submission would be tantamount to a decision that the burden that is cast on the prosecution of proving certain essential ingredients of an offence would depend on the facts of each case. The pronouncement made in the Divisional Bench decision referred to leaves no room for such a conclusion.

Mr. Chitty raised a further agrument which appeared to have much substance, namely, that even if this Court *was* prepared to take judicial notice of the aforementioned fact, it would not affirm the conviction unless it was clear that the trial Judge was invited to consider this question without evidence and that he decided to take judicial notice of that fact and that the conviction was based on such a decision. Admittedly in this case, the trial Judge *was* not invited to consider this matter at all 'nor did he do so *proprio motu*. 'It must, therefore, be assumed that the 'decision to convict the accused was arrived at without proof of one of the necessary ingredients of the offence, namely, that the acceptance of the gratification was not authorised by law or the terms of employment of the 1st accused. I do not therefore find sufficient reason to distinguish the principle involved in this case from that of the Divisional Bench case 'referred to in regard to the proof of the essential ingredients of the' offence.

For these reasons I set aside the conviction and sentence and acquit the accused-appellants.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.

[1] *(1967) 69 N. L. R. 337.*