

*Mohamed Usoof Muthu Mohamed v. The Attorney General*

79-1-NLR-078

*S. C. 25/75—D. C. Colombo B 147**Bribery Act—Meaning of phrase 'official act' — Sections 19 and 24.*

The accused being a Grama Sevaka was convicted of an offence punishable under Section 19 of the Bribery Act. The submission on behalf of the accused-appellant was that on the evidence as accepted by the trial Judge that when the accused solicited the gratification he did so in an area outside his jurisdiction, consequently it was not in relation to an official act which he could have performed. It was submitted therefore that there was no official act in relation to which he solicited such gratification.

*Held* : That the term 'official act' in section 19 of the Bribery Act must not be restricted to the meaning of the term in section 158 of the Penal Code. The words must be given a wider meaning in the total context of the Bribery Act, and therefore the act of the accused in the present case fell within the term 'official act' in the section.

Cases referred to:—

*Mohamed Auf v. The Queen*, 69 N.L.R. 337.

*Zoysa v. Subaweera*, 42 N.L.R. 357.

*Tennekoon v. Dissanayake*, 50 N.L.R. 403.

*Karunaratne v. The Queen*, 69 N.L.R. 10.

*The State v. Sadhu Charan Panigrahi*, (1952) 53 Criminal Law Journal 367.

APPEAL against conviction in the District Court, Colombo.

*V. S. A. Pullenayagam* with *S. J. Mohideen* and *Asoka Somaratne* for the accused-appellant.

*G. M. A. Bogollagama*, Senior State Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 1, 1976. THAMOTHERAM, J.

The accused-appellant was convicted of the following charge : —

That on or about the 25th day August 1972 at Murunkan you being a public servant to wit a Grama Sevaka did solicit from V. Ramalingam a gratification of a sum of Rs. 25 or two bottles of arrack as an inducement or a reward for your performing an official act to wit—returning the switch key of tractor No. 25 Sri 9586 and the timber removal permit No. A 32 XXXIV 001280

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taken charge of by you from the said V. Ramalingam and that you are thereby guilty of an offence punishable under section 19 of the Bribery Act

The case for the prosecution was that the tractor with a load of fence posts driven by one V. Ramalingam was stopped at Murunkan by the accused-appellant and the 2nd accused, who was acquitted of the charge of abetment. The 1st accused introducing himself as the acting Grama Sevaka of Murunkan demanded the permit from Ramalingam to transport the fence posts. Ramalingam handed him the permit which was valid till midnight of 25.8.72.

Although a valid permit was produced, the accused-appellant maintained it was invalid and demanded Rs. 25 or two bottles of arrack if he was to return the switch key of the tractor and the permit which he had taken. The suggestion he had made was that the fence posts were being transported without a valid permit and that if he was to refrain from taking official action and release the tractor he was to be given the bribe demanded.

The learned Judge had accepted the evidence that the accused had demanded the bribe, that this demand was made at Murunkan, and that although he was a Grama Sevaka he was not acting as Grama Sevaka of Murunkan, the place where the alleged detection and demand were made. Mr. Pullenayagam made his submissions of law based on these findings of fact. His contention was that as the accused acted in an area outside his jurisdiction the demand of the bribe was not in relation to an official act in relation to which he solicited the bribe.

The facts of this case illustrate some of the absurd results which follow if one were to adopt the narrow view of what constitutes an official act. The tractor was stopped almost at the boundary line of the two areas. On one side of it he could perform an official act on the other he could not for want of jurisdiction .

If it was a case of acceptance, then under section 24 of the Act the fact that he had no power to act in the particular area did not matter and he would be guilty of the offence of accepting an illegal gratification. But the soliciting for the same gratification will not be an offence as he had no power to act in that area.

It must be noted that the meaning given to the term official act in section 19 must be the same as that given in section 24 except that certain defences open in the case of section 19 (b) will not be open if section 24 is applicable. In the case of acceptance the acceptor or taker cannot plead :

—  
(1) That he did not actually have the power, right opportunity to do the act or to forbear to do it.

(2) That he did not intend to do it or forbear.

(3) That he did not in fact so do or forbear.

These defences are not open to a public servant who accepts but are available to him if he only solicits. In *Mohamud Auf vs. The Queen*, 69 N.L.R., page 337, H. N. G. Fernando, C J., T. S. Fernando J. and Abeysondera J. were of the view that the expression "Official Act" in section 19 of the Bribery Act should not be given a wider meaning than that which was placed in the two judgements in *Zoysa vs. Subaweera*, 42 N.L.R., page 357 (Wijewardene J.) and in *Tennekoon vs. Dissanayake*, 50 N.L.R., page 403 (Gratiaen J.)

Manicavasagar J. and Samerawickreme J. were of the view that the words "Official Act" should be given a wider meaning T. S. Fernando J. who agreed with the C. J.'s view had in an earlier case expressed dissatisfaction with giving a narrow meaning to the term "Official Act". He said in that case i.e. *Karunaratne vs. The Queen*, 69 N.L.R., page 10— "Performing an official act is not in my opinion restricted to the performance of those acts which a public servant is required by law to perform, but embraces all these acts which he does which are referable to his official capacity of a public servant or which according to recognised and prevailing practice he does as a public servant."

Manicavasagar J. in *Mohamed Auf vs. The Queen* while agreeing with T. S. Fernando J.'s opinion in the *Karunaratne* case though it did not go far enough. Manicavasagar J. said— "I find it difficult to see any principle in the distinction between the act of a public servant which falls strictly within his official functions and an act which he has not the power or duty to perform at all, but which he nevertheless does for a gratification or making the giver believe that he has the power to do what may be an official act—in either case the official acts corruptly." Manicavasagar J. then proceeded to quote from the judgement of Jagannadhadas J. in *The State vs. Sadhu Charan Panigrahi* (1952) 53 Criminal Law Journal, page 367 at page 369 in which the Judge said :— "The gist of the offence clearly is not that there was at the time, an official act to be procured capable of being performed by the taker of the bribe or by another public servant with whom he intended to exercise his influence, but that the extra-legal gratification if obtained is a motive or reward for doing official act's, that is for doing what may be or is believed or held out to be official conduct. The stress in the section is not so much on the performance of the official act itself, or on its being capable of performance but on the nature of the act being official."

Samerawickreme J. said "I think that 'Official Act' in section 19 (a) and (b) has been used as opposed to personal or private conduct. I am, therefore, of the view that 'Official Act' in that provision should be read to mean any act of a public

servant referable to his office or employment and the doing of which does not constitute private or personal conduct."

Both Manicavasagar J. and Samarawickreme J. had pointed out that the Bribery Act was passed because it was found that the provisions of section 158 of the Penal Code were insufficient to deal with cases of corruption. Manicavasagar J. said :— "This provision, and I believe the Bribery Act itself—though it took quite a time to be brought into the statute book—was largely influenced by the judgements delivered by two eminent judges of this court, Wijewardene J. in the case of *De Zoysa vs. Suraweera* and Gratiaen J. in *Tennekoon vs. Dissanayake*. They refused to give an extended judicial interpretation to the plain meaning of "Official Act" in section 158 of the Penal Code, which Gratiaen J. in language so characteristic of him described as "an antiquated enactment, conceived a century ago, which still remains unamended, and helpless to cope with modern methods of corruption." Both judges took the view that it was no offence under section 158 if a public servant received a bribe to confer a favour which he had not the power to perform.

In this view of the matter I do not see any reason why we should be tied down to the meaning of "Official Act" given to section 158 which appears in quite a different setting. Section 158 appears in a chapter with the heading "Of Offences By or Relating to Public Servants."

The Bribery Act is an Act "to provide for the prevention and punishment of bribery and to make consequential provisions relating to the operation of other written law." In order to give effect to the object of the Act the provision is made for the appointment of a Bribery Commissioner, and an entire new Department was created with a special procedure provided. The words "Official Act" must given a meaning in the total context of the Bribery Act and it is our view that the words so looked at must be given the wider meaning given by Manicavasagar J., Samarawickreme J. and T. S. Fernando J. in *Karunaratne vs. The Queen*, supra. As Samarawickreme J. pointed out in regard to section 158 of the Penal Code that "provisions in that section were designed to secure impartiality and fairness in the performance of official acts rather than to stamp out corruption."

As we are unanimously of the view that the term "Official Act" must be given the wider meaning, the act of the accused appellant falls well within the term "Official Act". The submissions of Mr. Pullenayagam must necessarily fail. We dismiss the appeal. The conviction and sentence are affirmed.

SIRIMANE, J.— I agree.

COLIN THOME, J.—I agree.

*Appeal dismissed*