

Bribery - Government

I. Srikantha LR 73

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SUPREME COURT

PERERA

Vs.

THE HON. ATTORNEY-GENERAL

S. C. Appeal/45/83-S. C. Special L.A./67/82-CA/6/79-H.C. Colombo 836/B

BEFORE : WIMALARATNE, J., COLIN-THOME, J. and SOZA, J.

COUNSEL : V. S. A. Pullenayagam with D. S. Wijesinghe, Miss M. Kanapathipillai and Miss D. Wijesundera for Accused-Appellant.

Upawansa Yapa, Deputy Solicitor-General with Mrs. Tilakawardene, S. C. for the Attorney-General.

ARGUED ON : 29th August, 1983.

DELIVERED ON : 19th September, 1983.

Bribery — Interpretation of the word "Government" — Section 20(b)(vi) of the Bribery Act — Expression of the word "benefit" — Who is an "Official"?

Held,

Section 20 is not restricted to and does not refer to the offering or taking of gratification to or by public officers: Any person who solicits or accepts gratification as an inducement for procuring, or furthering the securing of, any grant, lease or other benefit from the Government, is guilty of bribery.

APPEAL from the COURT OF APPEAL.

COLIN-THOME, J.

The accused-appellant was indicted in the District Court of Colombo on two charges as follows :—

- (1) That between the 1st day of August, 1976 and the 12th day of November, 1976 at Mannar and Anuradhapura you did solicit a gratification of a sum of Rs. 150/- from one D. Wilson Perera as an inducement or a reward for your furthering the securing of a benefit from a scheduled institution,

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to wit : the Ceylon Transport Board for the said D. Wilson Perera, to wit : an order in favour of the said Wilson Perera, in two inquiries pending against him and that you are thereby guilty of an offence punishable under Section 20 of the Bribery Act.

- (2) That on or about the 11th day of November, 1976 at Mannar and in the course of the same transaction you did accept a gratification of a sum of Rs. 100/- from the aforesaid D. Wilson Perera as an inducement or a reward for your securing the benefit out in Count (1) above and that you are thereby guilty of an offence punishable under Section 20 of the Bribery Act.

At all material times the accused-appellant was a typist and the complainant was a security guard in the Ceylon Transport Board.

At the close of the trial the learned District Judge acquitted the accused appellant on count (1) as it was bad for duplicity. He however proceeded to convict the accused appellant on count (2) and sentenced him to a term of 18 months rigorous imprisonment.

The appeal of the accused appellant to the Court of Appeal was dismissed. He now appeals to the Supreme Court.

Learned Counsel for the accused-appellant has not contested the facts in this case. His only submission deals with the interpretation of the word "Government" in Section 20(b) (vi) of the Bribery Act. The relevant part of the section reads :—

"A person—

- (b) who solicits or accepts any gratification as an inducement or a reward for
- (vi) his procuring or, furthering the securing of, any grant, lease or other benefit from the *Government*, for the first mentioned person or for any other, shall be guilty of an offence etc."

Mr. Pullenayagam submitted that under Section 20 the benefit must proceed or emanate from the "Government" or a scheduled institution. He urged that the expression "benefit" did not extend to the act or conduct of a corrupt official. Learned Counsel did not canvas the interpretation of "benefit" in *Gunasekera v. The Queen* 70 N.L.R. 457.

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An examination of the scheme of the Bribery Act reveals that Section 14 to 19 (Part 11) are designed against the taking or offering of gratifications by or to "officials", in connection with acts which are either official acts or done or to be done in an official capacity.

Section 20 is not restricted to and does not refer to the offering or taking of gratifications to or by public officers :

any person who solicits or accepts a gratification as an inducement for procuring, or furthering the securing of, any grant, lease or other benefit from the Government, for the first mentioned person or for any other person is guilty of bribery. Section 20 reaches out to those persons who use the advantage of a personal position for the actual or pretended purpose of influencing the commission by "officials" of offences under other sections of the Act. This section has been brought in as it is often difficult to prove a direct act of bribery by or to an "official". On the other hand there will be no difficulty in proving the taking of a gratification by a person who is an actual or pretended intermediary.

The expression "Government" may be viewed in two aspects, giving rise to two distinct senses of the work, which however often coincide in use. Firstly, the expression is often used to indicate a permanent entity irrespective of the changes in the persons who hold office. This is illustrated by a quotation from Bentham :

"The business of Government is to promote the happiness of the society by punishing and rewarding" (See Princ. Legis., vii, para 1).

The second aspect is Government as constituted afresh by the appointment of a number of persons to certain official positions, synonymous with appointments in a Ministry or administration, Public Department or scheduled institution. In my view Section 20 has to be widely construed this second sense as well and not only in the abstract, as the Legislature intended as far as possible to prevent or punish even ordinary citizens who accept gratifications as inducements to influence public officials with a view to acting or not acting in a particular way in the discharge of their official functions. An official capable of giving a lenient sentence acts or the Government when he performs such an official act.

In the circumstances of this case I hold that the accused appellant has been correctly found guilty under count (2) of the indictment. For these reasons the appeal is dismissed subject to a variation in the sentence. As this matter has been pending for the inordinate length of over seven years I reduce the sentence to one of six months rigorous imprisonment.

WIMALARATNE J.—I agree.

SOZA J.—I agree.

Appeal dismissed subject to Variation in sentence.