This is a most high-handed act and indicates that the accused intended to take the law into their own hands and deprive Senanayake of the use of his car. If Chandrasena thought he had a right in law to re-take possession of the car, he should have had recourse to the courts instead of sending his minions, armed with knives to intimidate Senanayake and his wife and rob the car from their possession. The appeals are therefore dismissed and the convictions and sentences affirmed.

Appeals dismissed.

68 NLR 524

1966 *Present:* **Abeyesundere, J., and Alles, J.**

W. PODI SINGHO, Appellant, and THE QUEEN, Respondent

S. C. 2/1966—D. C. (Crim.) Matale, 1/B2

Bribery Act, as amended by Act No. 40 of 1958—Offences falling within clauses (b) and (c) of section 19—Burden of proof—" Official act "—" Authorised by law or the terms of employment to receive ".

Acceptance of a gratification by a public servant as an inducement or a reward for abstaining from performing an act which is not an offence known to law is not a contravention of section 19 (*b*) of the Bribery Act.

It cannot be said for the purpose of section 19 (*c*) of the Bribery Act that a public servant engaged in any employment in the public service is not authorised by law or the terms of such employment to receive any gratification unless there is in any law or the terms of such employment a prohibition of the acceptance of any gratification by a public servant engaged in such employment.

APPEAL from a judgment of the District Court, Matale.

George Candappa, with *M. Amarasingham*, for the accused-appellant.

N. Tittawela, Crown Counsel, for the Attorney-General.

July 11, 1966. ABEYESUNDERE, J.—

In this case the accused-appellant was charged on two counts under the Bribery Act. On the first count he was charged with having accepted, while being a public servant employed as a Game Watcher in the Department of Wild Life, a gratification of a sum of Rs. 15 as an inducement or a reward for abstaining from performing an official act, to wit, prosecuting G. A. Chandrasena for possessing wild boar flesh, and thereby committed an offence punishable under section 19 (*b*) of the Bribery Act. On the second count he was charged with having accepted, while being a public servant as aforesaid, a gratification of a sum of Rs. 15 from the aforesaid Chandrasena which he was not authorised by law or the terms of his employment to receive, and thereby committed an offence punishable under section 19 (*c*) of the Bribery Act as amended by Act No. 40 of 1958.

It was alleged in the indictment that the offence specified in the second count was committed in the course of the same transaction as that set out in the first count. The learned District Judge convicted the accused appellant on both counts and sentenced him to two years' rigorous imprisonment and to a fine of Rs. 500 on each count and in default of the payment of the fine to three months' rigorous imprisonment on each count, and the sentences were to run concurrently. A sum of Rs. 15 was imposed as a penalty and in default of the payment of the penalty the accused-appellant was sentenced to three weeks' rigorous imprisonment.

In respect of count 1 the prosecution had to prove that the possession of wild boar flesh was an offence known to law and that the accused-appellant accepted a sum of Rs. 15 as an inducement or a reward for abstaining from performing the official act of prosecuting Chandrasena for that offence. There is no evidence that the possession of wild boar flesh is an offence known to law. Therefore the non-prosecution of Chandrasena for possessing wild boar flesh is not an abstention from performing an official act. Consequently the acceptance of a sum of Rs. 15 by the accused-appellant was not as an inducement or a reward for abstaining from performing an official act. The prosecution has therefore failed on count 1.

In respect of count 2 the prosecution had to prove that the sum of Rs. 15 accepted by the accused-appellant was a gratification which he was not authorised by law or the terms of his employment to receive. The Divisional Game Ranger, T. K. Hannan of the Department of Wild Life, Wilpattu, gave evidence for the prosecution and stated that he was familiar with the terms of employment of a watcher like the accused-appellant, that the terms of his employment did not authorise the demanding or the acceptance by him of a gratification for the performance or non-performance by him of his duties, and that there was no provision of law which authorised him to do so.

It cannot be said for the purpose of section 19 (*c*) of the Bribery Act that a public servant engaged in any employment in the public service is not authorised by law or the terms of such employment to receive any gratification unless there is in any law or the terms of such employment a prohibition of the acceptance of any gratification by a public servant engaged in such employment. Thus a Government Medical Officer whose terms of employment prohibit the acceptance of fees for the Medical treatment of patients is not authorised by the terms of his employment to receive the gratification of a fee from a patient whom he medically treats. If section 19 (*c*) of the Bribery Act is given the interpretation which the prosecution in this case seeks to give, the mere fact that there is no permission expressly granted to a public servant by law or the terms of his employment to accept any gratification would constitute non-authorisation by law or the terms of his employment to receive any gratification and would produce the harsh and absurd consequence that even the acceptance of a gift by a public servant on the occasion of his wedding would be

an offence under the aforesaid section as he is not expressly permitted by law or the terms of his employment to receive a wedding gift. There is no evidence of such a prohibition as aforesaid with reference to the employment of the accused-appellant. We are therefore of the view that the acceptance of the sum of Rs. 15 by the accused-appellant was not proved to be the acceptance of a gratification which he was not authorised by law or the terms of his employment to receive. The prosecution has therefore failed on count 2 also.

For the aforesaid reasons we set aside the convictions of the accused-appellant and the sentences passed on him including the imposition of a penalty, and we acquit him.

ALLES, J.—I agree.

Appeal allowed.