Further the journel entry on 16.11.2000 written by the learned High Court Judge himself states as follows සටහන් බලන්න. 280 යටතේ කටයුතු කරමි. මරණ දඬුවම් නියම කරමි. ලේඛන ගොනු කරමි. නිත්දුව හා නිර්දේශ ජනාධිපති තුමියට යවමි.

The contention of the Deputy Solicitor General was that, the above factors indicate that the learned High court judge on the 16.11.2000 may have dictated the judgment in Open Court to the stenographer, and the stenographer had typed it later, eventhough the date of the judgement appears as 2000.11 ..... the judgment had been signed by the Leaned High Court Judge.

In support of his contention he has cited the decision in the case of ***Iqbal Ismail Sadawala vs Registrar High Court Bombay*** [6] It has been held that failure of presiding Judge to date and sign the judgement at the time of pronouncing it is only procedural irregularity curable under section 436 of the Criminal Procedure Code.

Hence, the Deputy Solicitor General submitted that, in the instant case failure to date the Judgement is only a procedural irregularity curable under section 436 of the Criminal Procedure Code.

I agree with the contention of the Deputy Solicitor General, that it was an irregularity curable under section 436 of the criminal Procedure Code. which had not occasioned a failure of justice.

At the outset the counsel for the accused-appellant conceded the fact that who ever who killed deceased has rendered himself to be found guilty of the offense of murder and nothing less, as the deceased had 24 stab injuries caused by a knife of which 8th, 9th and 10th injuries were necessarily fatal.

For the reasons aforesaid, the grounds of appeal urged by the counsel for the accused-appellant are of no merit. I am of the view that the leaned trial judge has rightly found the accused-appellant guilty of the offence charged. Appeal is dismissed.

Sisira de Abrew, J. I agree,

Appeal dismissed.

WIJERATNE BANDARA

vs.

DIRECTOR GENERAL OF PREVENTION OF BRIBERY AND CORRUPTION

COURT OF APPEAL
BALAPATABENDI, J.
DE ABREW, J.
CA 138/2001
H. C. COLOMBO B 1121/95
APRIL 29TH, 2005
MAY 25TH. 2005
JUNE 20TH 2005

Bribery Act - Sections 2(a),(b). 20(b). 28(b) - Trial - Convicted - Charges general and ambiguous ? - Wider construction to be given - Code of Criminal Procedure Act - Section 165.

The accused -appellant was indicated on two counts for committing offences under Section 28(b) of the Bribery Act. After trial the High Court Judge convicted the accused appellants.

On appeal it was contended that :

Section 20(b) on its own makes reference to seven instances where the conduct amounts to offences, as spelt out in section 20(a), even though the seven instances which spelt out in section 20(a) are contained in items (i) to (vii). the charges in the indicment did not specify the offences committed with reference to any of the limbs (i) to (vii) or section 20(a).

Held

(1) Section 20 is designed to punish those who use the advantage of personal or family position for the actual or pretended purpose of influencing the commission by offici als of offences under other sections of the Act.

(2) The legislature intended to prevent or punish even ordinary citizen who accept gratifications as inducement to influence public offcials with a view to acting or not acting in a particular way in the discharge of the official functions;

(3) The words "grant or benefit" in section 20(vi) must be widely construed ;

(4) The two charges have specified the purpose of soliciting and accepting the money,and thus contain all necessary particulars enough to give the accused appellant a notice of the nature of the offence charged with.

APPEAL from the judgment of the High Court of Colombo.

Cases referred to :

1. *Gunasekara vs. Queen, 70 NLR 457*

2. *Perera vs. Attorney - General 1. Sri Kantha LR 73(sc)*

Dr. Ranjith Fernando with H. Gunawardena for accused appellant.

M. Liyanage, Deputy Director General, Bribery Commission for complainant respondent.

Cur.adv. vult.

October 6, 2005

JAGATH BALAPATABENDI, J.

The Accused-Appellant was indicted on two counts for committing offences under section 28(b) of the Bribery Act. After trial the learned High

Court Judge convicted the Accused-Appellant as charged, and sentenced him to 5 years R. I. on each count and directed that both sentences should run concurrently, and a fine of Rs. 2500 imposed on the 1st count in default one year R.I, a fine of Rs. 2500 imposed on the 2nd count in default one year RI, a further penalty of Rs. 3,000 imposed in default one year R. I., the default terms to run consecutively.

At the hearing of the Appeal the counsel for the Accused-Appellant contended that, the evidence led at the trial did not support the particulars of the offence described in the indictment, and the charges mentioned in the indictment under section 20(b) of the Bribery Act were general and ambiguous, thus not in compliance with the section 165 of the Code of Criminal Procedure Act No 15 of 1979. The Counsel for the Accused - Appellant alleged that section 20(b) of the Act on its own makes reference to seven instances where the conduct amount to offences as spelt out in section 20(a) of the Act, Eventhough the seven instances spelt out in section 20(a) are contained in limbs (i) (ii) (iii) (iv) (v) (vi) and (vii), the charges in the indictment did not specify the offence committed with reference to the any of the limbs (i) to (vii) of the section 20(a) of the Act.

The charges in the indictment read as follows :-

1. වර්ෂ 1991 ක් වූ මැයි මස 29 දින හා වර්ෂ 1991 ක් වූ ජූලි මස 15 වනදින අතරතුර කාලපරිච්ඡේදයේ දී මෙම අධිකරණ බල සීමාව තුළ පරකඩුවේදී යුෂ්මතා ආණ්ඩුවෙන් ප්‍රතිලාභයක් ලබා දීමට එනම් ආරච්චිලාගේ ලලිතා පද්මිණී යන අයගේ ස්වාමිපුරුෂයා වන ගිල්මන් දයාපාල යන අය පොලිස් අත් අඩංගුවෙන් මුදවා දීම සඳහා ආධාර කිරීමට පෙළඹවීමක් හෝ ත්‍යාගයක් වශයෙන් රු. 3500 ක් වූ මුදලක තුටු පඩුරක් එකී ආරච්චිලාගේ ලලිතා පද්මිනී යන අයගෙන් අයැදීමෙන් අල්ලස් පනතේ 20(ආ) වන වගන්තිය යටතේ දඬුවම් ලැබිය යුතු වරදක් කළ බවය.

2. වර්ෂ 1991 ක් වූ මැයි මස 29 දින හා වර්ෂ 1991 ක් වූ ජූලි මස 15 වන දින අතරතුර කාල පරිච්ඡේදයේ දී මෙම අධිකරණ බල සීමාව තුළ පරකඩුවේදී ඉහත (1) වන චෝදනාව සඳහන් ක්‍රියා කලාපයේ දීම යුෂ්මතා ආණ්ඩුවෙන් ප්‍රතිලාභයක් ලබා දීමට එනම් ආරච්චිලාගේ ලලිතා පද්මිණී යන අයගේ ස්වාමිපුරුෂයා වන ගිල්මන් දයාපාල යන අය පොලිස් අත් අඩංගුවෙන් මුදවාදීම සඳහා ආධාර කිරීමට පෙළඹවීමක් හෝ ත්‍යාගයක් වශයෙන් රු. 3,000 ක් වූ මුදලක තුටු පඩුරක් එකී

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ආරච්චිගේ ඩිංගිරි මහත්තයා මාර්ගයෙන් ආරච්චිලාගේ ලලිතා පද්මිණී යන අයගෙන් හාර ගැනීමෙන් අල්ලස් පනතේ 20(අ) වන වගන්තිය යටතේ දඩුවම් ලැබිය යුතු වරදක් කළ බවය.

It was stated in the 1st and 2nd counts of the indictment that "the Accused-Appellant "solicited" and "accepted" (a sum of money as mentioned in the charges) "to procure a benefit from the Government".

The Section 20(a) limb(vi) states as follows:

"A person who offers any gratification to any person as an inducement or a reward for "his procuring, or furthering the security of, any grant, lease or other benbefit from the Government, for the first mentioned person or for any other person."

In the case of **Gunasekera vs. Queen**[1] H. N. G. Fernando C. J. observed that "section 20 of the Bribery Act is designed to punish those who use the advantage of personal family position for the actual or pretended purpose of influencing the Commission by "officials" of offences under other sections of the Act, it is obvious that if ordinary citizens are deterred from using their position in that way, there is likelihood that 'officials' can be bribed. Again, although it may be very difficult to prove a direct act of bribery by or to an 'offcial', it may be well easy to prove the taking of a gratification by a person who is only an actual or pretended intermediary. I am satisfied that the Legislature intended as far as possible to prevent or punish even ordinary citizen 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 the official functions. **Common sense therefore requires that in paragrah (vi) of section 20 the expression 'grant or benefit' must be widely construed.** It was held that " the operative word in paragraph (vi) is the word 'benefit' and that its ordinary wide meaning is not narrowed down by its association with the words 'grant' or 'lease' which precede it."

In the case of ***Perera vs. Hon. Attorney-General***[2]

> It was held "Section 20 of the Bribery Act is not restricted to and does not refer to the offering or taking of gratification to or by public officer. 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.

For the reasons aforesaid, it is very clear the two charges in the indictment have specified the purpose of soliciting and accepting the money, thus contain all necessary particulars sufficient enough to give the Accused-Appellant a notice of the nature of the offence charged, also the charges were incompliance with the section 165 of the Code of Criminal Procedure Act. Hence, the point raised by the Counsel for the Accused-Appellant is not tenable in law.

The facts in brief are as follows : On the 30th May 1991 one Dayapala had been arrested by Ratnapura Police for investigation on a charge of attemped murder of one Jayantha Watowita and for being involved in JVP activities. Dayapala's wife Lalitha Padmini (prosecution witness No. 1) had testified that the Accused-Appellant (the Chairman of Gramodaya Mandalaya in the area) had visited her and her uncle Dingirimahatmaya (procecution witness No. 3) several times during the period between 29th May to 15th July 1991 and informed them if a payment of Rs. 3500 is made to a police officer named one Wijeratne they could get Dayapala released from Police Custody. Both witnesses No. 1 and No. 3 have testified that the solicitation of Rs. 3500 was made by the Accused-Appellant at Dingirimahatmaya's residence (at the Residence of witness No. 3). Eventually during the said period a sum of Rs. 3000 had been given to the Accused-Appellant by the Witness No. 3 (Dingirimahatmaya) in the presence of the witness No. 1(Lalitha Padmini) at the residence of Dingirimahatmaya.

Dayapala had been given a suspended jail term for the attemped murder case. and was sent to Boossa Detention camp for his involvement in J. V. P.activities. Thereafter, in August/September 1992 Dayapala was released from Boossa Detention Camp. The complaint was made by Lalitha Padmini (wife of Dayapala) in october 1992 against the Accused-appellant in the Bribery Commission.

At the trial the Accused-Appellant had made a dock-statement denying the allegation, and had stated that Lalitha Padmini thinks that Dayapala was arrested on the information given by him. (The Accused-Appellant).

The evidence led at the trial was very clear that the solicitation of Rs. 3500 had been made by the Accused-Appellant from both witnesses namely Lalitha Padmini (wife of Dayapala) and her uncle Dingirimahattaya, a sum of Rs. 3000 was given to the Accused-Appellant by Dingirimahattaya in the presence of Lalitha Padmini at Dingirimahattaya's residence.

On a perusal of the Judgement it is clear that the learned High Court Judge had correctly considered with reasons the two infirmities in the evidence of Lalitha Padmini alleged by the Counsel for the Accused-Appellant eventhough it was immaterial, and the findings of the learned High court Judge had been based on correct evaluation of the evidence led at the trial and on corroborated testimony of Lalitha Padmini.Hence, I do not see any irregularity in the Judgement of the learned High Court Judge, as alleged by the counsel for the Accused-Appellant.

Thus, we affirm the conviction and the sentences imposed, and dismiss the appeal.

Judge of the Court of Appeal.

SISIRA DE ABREW, J. — I agree.

Appeal dismissed.

SUKUMAL
VS
MUNICIPAL COUNCIL OF COLOMBO

COURT OF APPEAL,
AMARATUNGA, J.,
WIMALACHANDRA, J.
CALA 249/2003
D. C. COLOMBO 6086/SPL
MARCH 29 2004
AUGUST 9, 2004

Municipal Councils Ordinance - Section 49 (1), Section 177 - Appointment to any post or office in the Council - who could appoint?- Is it the Mayor or the Municipal Council Commissioner.

The Plaintiff Petitioner institued action seeking a declaration that he be declared as the permanent caretaker of the Public Toilet of Colombo Municipal Council at a particular bus stand, and a permanent injunction restraining the Defendants from removing him from the said post. He claimed that he was appointed by the Mayor of the Council. Interim relief was refused by the District Court.

On leave being sought.

HELD :

(i) The public toilet is the porperty of the Colombo Municipal Council. the Provisions relating to appointments are found in section 40(1) and section 177.

(ii) It is the Municipal Council and/ or the Commissioner authorised by the Council who could make appointments. The Mayor had no authority to make such appointments.

(iii) Court will grant an injunction only to support a legal right.

APPLICATION for leave to appeal from an Order of the District Court of Colombo.