

1978 Present: Wimalaratne, J., Vythialingam, J. and
Tittawella, J.

VISWALINGAM APPIAH NAGESWARAN, Accused-Appellant
and
THE REPUBLIC OF SRI LANKA, Respondent
S. C. 3/77—D. C. Colombo 329/Bribery

Bribery Act, section 19—Acceptance of a gratification as a reward for performing an official act—Accused entitled to practice medicine for gain—When acceptance of money can become an “unauthorised gratification” in these circumstances—Medical Ordinance (Cap. 105) as amended by Act No. 16 of 1965, sections 36, 41 (1)—Effect of circular laying down conditions of private practice.

The accused-appellant was an Assistant Medical Practitioner (Apothecary) attached to a Rural Hospital and was convicted on charges of bribery. He had prescribed medicine to an outdoor patient who had come to the hospital during working hours and accepted a sum of Rs. 5. The facts were not contested, but it was submitted that the appellant being a person entitled to practice medicine for gain under section 41 (1) (a) of the Medical Ordinance, he had not committed any offence under the Bribery Act. The letter of appointment issued to the appellant by the Director of Health Services, the terms and conditions of which the appellant had accepted, laid down that the appellant could not engage in private practice except with his authority and that the appellant was subject to the various regulations set out therein. The Rural Hospital of which the appellant was in charge was one of the stations where private practice was permitted and the circular notifying this also laid down, *inter alia*, as a condition that such patients should not be examined in this institution or in the Apothecary's bungalow and that no fee for gratification be accepted from outdoor patients who call at the institution.

Held: That the conviction of the appellant must be affirmed. The appellant performed an official act by examining a patient at the Rural Hospital during office hours and in the circumstances of this case his acceptance of money is clearly unauthorised. What was accepted therefore became an “unauthorised gratification”. The acceptance of the money was in violation of the circular issued by the Director of Health Services the conditions of which the appellant's terms of employment bound him to observe. The acceptance of money by the appellant was therefore “not authorised by the terms of his employment”.

Case referred to:

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

A PPEAL from a judgment of the District Court, Colombo.

V. S. A. Pullenayagam, with M. Somasunderam, A. Chinniah and Mrs. S. Gnanakaran, for the appellant.

Asoka de Z. Gunawardene, Senior State Counsel, for the Attorney-General.

Cur. adv. vult.

May 18, 1978. TITTAWELLA, J.

The accused-appellant, an Assistant Medical Practitioner (Apothecary) attached to the Pulasthigama Rural Hospital has been convicted on two charges of bribery and sentenced to concurrent terms of six months' rigorous imprisonment and to a fine of Rs. 200 in default of which a further two months imprison-

ment has been imposed. He has also been directed to pay a penalty of Rs. 5.

The appellant was trapped on the 28th November, 1973, by officers of the Bribery Commissioner's Department accepting a sum of Rs. 5 for prescribing medicine to an outdoor patient who had called at the hospital during working hours and whose name had been entered in the Out Patient's Department Register. The officers who took part in the detection and the Superintendent of Health Services, Matale, within whose jurisdiction the Rural Hospital falls were witnesses for the prosecution. The appellant neither gave evidence nor called any witnesses on his behalf at the trial.

The facts were not contested in appeal and the only matter argued at the hearing was a question of law. It was submitted that the appellant is a person entitled under section 41 (1) (a) of the Medical Ordinance to practice medicine and surgery for gain. He was therefore permitted in law to receive payment for professional services rendered and as such the appellant had not committed any offence under the Bribery Act. Reliance was placed on the case of *Mohamed Auf v. The Queen*, 69 N.L.R. 337, where H. N. G. Fernando, C. J. at page 343 stated—

“ that the offence defined by section 19(c) is that of accepting an *unauthorised* gratification, and one of the ingredients of the offence is the fact that the gratification accepted is an *unauthorised* one. ”

For a consideration of this submission it becomes necessary to examine the relevant provisions of the Medical Ordinance, the terms and conditions of appointment of the appellant and the circulars touching this question issued by the Director of Health Services from time to time in relation to the provisions of the Bribery Act.

Under section 36 of the Medical Ordinance as amended by the Medical (Amendment) Act appearing at page 100 of Vol. I of the 1967 supplement to the Revised Legislative Enactments no person other than a medical practitioner shall be entitled to recover any charges for any medical or surgical advice. There is however a saving provision for Government apothecaries in section 41 (1) of the Ordinance in the following terms—

“ Nothing in this Ordinance shall make it unlawful for a Government Apothecary actually employed in the public service as an apothecary and for the time being in charge of a dispensary or hospital to practice medicine and surgery for gain..... ”

The appellant is a Government Apothecary employed in the public service and was at the relevant time in charge of this

Rural Hospital. His letter of appointment dated 25th October, 1951 issued by the Director of Health Services was produced by the prosecution. Paragraphs (4) and (8) of this document are respectively as follows :—

- (a) You shall not be entitled as of right to engage yourself in private practice except with my authority. The conditions under which such authority may be granted shall be determined by me in accordance with the circumstances of the various stations. Unauthorised private practice will lead to an Officer's discontinuance from service.
- (b) In the discharge of your duties you will be subject in addition to the above conditions to the following
 - (a) Public Service Regulations
 - (b) Financial Regulations
 - (c) Departmental Orders
 - (d) General Orders
 - (e) such other orders as may from time to time be issued.

On the 28th October, 1951, the appellant signified his written acceptance of the appointment on the terms and conditions stated in the letter of appointment referred to at above. In August 1961 private practice for Government Apothecaries in certain specified areas was permitted and the list of the specified stations was notified in *Gazette* No. 14125 of the 1st August, 1964. The Pulasthigama Rural Hospital was one such station and the conditions of private practice were contained in a circular dated 26th August, 1964 issued by the Director of Health Services. The substance of this circular could be summarised as follows :—

- (a) the Apothecary in charge was entitled to private practice,
- (b) the examination of the patients should not be undertaken in the Institution or in the Apothecary's bungalow,
- (c) under no circumstances should a fee or gratuity be accepted from out-patients who call at the Institution,
- (d) no drugs, dressings or medicines should be issued to private patients except in cases of extreme urgency.

Section 19 (a) of the Bribery Act which is the basis for count 1 of the indictment penalises a public servant for accepting a gratification as a reward for performing an official act. Section 19 (c) of the Bribery Act which is the basis for count 2 penalises a public servant for accepting a gratification which he is not authorised to receive by law or the terms of his employment. Regarding count 1 there cannot be much doubt that the appellant when he examined the patient at the Rural Hospital during office hours having entered the patient's name in the Out Patient's Register was performing an official act. Whilst it may

be contended that under section 41 (1) of the Medical Ordinance it was not unlawful for him to practice medicine for gain the acceptance of money in the circumstances was clearly unauthorised and what was accepted becomes an "unauthorised gratification" as contemplated by H. N. G. Fernando, C. J., in the case of *Mohamed Auf v. The Queen*. I am therefore of the view that the submission of the learned Counsel for the appellant is untenable.

The position becomes much clearer when count 2 of the indictment is considered. The acceptance of the money in the circumstances was clearly in violation of the circular issued by the Director of Health Services. The terms of employment of the appellant bound him to observe the conditions laid down in that circular. The acceptance of the money was in direct contravention of this and therefore "not authorised by the terms of his employment". Whilst the contravention of this circular could be the subject of an appropriate disciplinary inquiry the Bribery Act has made such a contravention punishable under section 19 (c) of the Act and the conviction on count 2 is also in order.

The convictions and sentences are therefore affirmed and the appeal is dismissed.

WIMALARATNE, J.—I agree.

VYTHIALINGAM, J.—I agree.

Appeal dismissed.
