1976 *Present :* **Tennekoon, C. J., Vythialingam, J. and Ratwatte, J.**

A. B. SAMARAKOON, Appellant *and* THE ATTORNEY-GENERAL, Respondent

S. C. 52/75—D. C. Colombo 197/B

Bribery—Meaning of phrase 'perpetrator' of an offence—Bribery Act, S, 16.

S. 16 of the Bribery Act *inter alia* provides that any person who being a Police Officer employed in any capacity for the prosecution, detection or punishment of offenders accepts any gratification as an inducement for such officer protecting from detection or punishment the perpetrator of any offence shall be guilty of the offence of bribery.

Held : That the gratification should be accepted upon a condition express or implied operating in the officer's mind at the time of the acceptance of the gratification that the giver or some other person will obtain some benefit or immunity from the officer in the performance of the duties of his office. It is not necessary in a charge under this section for the prosecution to establish the existence of an actual perpetrator of an offence. It is sufficient if there is a suspected, alleged or hypothetical perpetrator of an offence.

APPEAL from a judgment of the District Court, Colombo.

V. S. A. Pullenayagum with *A. P. Niles* for the accused-appellant.

Tilak Marapana, Senior State Counsel for the Attorney General,

December 8, 1976. TENNEKOON, C. J.

The accused appellant was indicted on four charges the 1st and 2nd related to solicitation and acceptance on the 10th of May, 1973, of a gratification of Rs. 10 amounting to bribery within the meaning of section 16 of the Bribery Act. The 3rd and 4th counts were also charges of bribery under the same section of the Bribery Act, but relating to solicitation of a sum of Rs. 100 on the 11th of May, 1973, and to acceptance of such a sum as a gratification on 19th of May, 1973. After trial the appellant was

acquitted on charges 1, 2 and 3, he was found guilty on count 4; he was sentenced to 2 years rigorous imprisonment and to a fine of Rs. 500, a default sentence of 5 months was also passed.

The appellant has appealed on the conviction.

Count 4 on which the appellant was convicted reads as follows:—

> "That on or about the 19th day of May, 1973, at Colombo and in the course of the same transaction, you being a Police Officer employed for the prosecution, detection and punishment of offenders did accept a gratification of a sum of Rs. 100 from the said V. D. S. Fernando as an inducement or reward for your protecting from punishment the perpetrator of an offence, to wit, the aforesaid V. D. S. Fernando and that you have thereby committed an offence punishable under section 16 of the Bribery Act."

The only submission made in appeal was that the prosecution had failed to establish that V. D. S. Fernando was the perpetrator of an offence within the meaning of section 16 of the Bribery Act, and that the prosecution having thus failed to establish an essential ingredient of the offence the conviction is bad.

It is unnecessary for the consideration of this submission to set out the facts in detail. It is sufficient to say that V. D. S. Fernando was the accused in a criminal case pending in the Magistrate Court of Gampaha. This was a case in which Fernando was charged with criminal breach of trust of a certain sum of money. There was also another case pending against Fernando in the J.M.C., Colombo. The accused-appellant, who was a Police Sergeant attached to the Peliyagoda Police Station was the Police Officer investigating and prosecuting the offences involved in these two cases. The evidence accepted by the learned District Judge is that on the 19th of May, 1973, the appellant accepted a gratification of a sum of Rs. 100 from Fernando. The learned District Judge also found that the 2 cases in which Fernando was involved were in respect of alleged breach of trust and alleged cheating in respect of a large sum of money, and that the accused was in fact investigating the offences and had in fact sought to get statements from Fernando in relation to the complaints. There is nothing to indicate that the accused-appellant and Fernando had any transactions or relationship between them other than the one arising from the fact that Fernando was one in respect of whom complaints had been received of certain offences alleged to have been committed by him, and that the appellant was a Police Sergeant investigating and prosecuting in respect of those complaints.

Submission made by Mr. Pullenayagum is that under section 16, the gratification has to be given as an inducement or reward for the recipient's protecting from punishment the *perpetrator* of an offence. It is submitted that the word 'perpetrator' can in the context only mean a person who has actually committed an offence, and that there was no proof in the case that Fernando had committed the offences which were being investigated by the appellant.

This submission of Counsel is not by any means making its maiden voyage through this Court. A similar submission was made in the case of *Bultjens and Poothathamby vs. The Attorney-General*, S.C. 18—19-75 (S. C. Minutes of 2.2.76; a Bench consisting of Sirimane, J., Vythilingam, J., and Gunasekera, J. rejected the submission holding that the words 'perpetrator of an offence' appearing in section 16 of the Bribery Act, in the context which they appear must be given a meaning to include those who have committed an offence as well as those who are alleged to have or are suspected of having committed an offence. In that case Mr. Pullenayagum relied heavily upon the cases of *Queen vs. Ramalingam* 2 N.L.R. 48, *Notley vs. Antonis* 22 N.L.R. 335 and *Piyadasa vs. Herath* 54 N.L.R. 552 in all of which the Supreme Court held that section 211 of the Penal Code penalises the offer of a gratification to any person in order to prevent or avoid the legal consequences of offences actually committed Justice Vythialingam commented as follows :—

> "Moreover such an interpretation would make the provisions of section 16 almost identical with the provisions of section 221 of the Penal Code. What then was the purpose in re-enacting in section 16 of the Bribery Act the identical provisions contained in section 211 of the Penal Code ? It is only explicable on the basis that section 211 was considered inadequate to deal with the growing menace of corruption and section 16 was intended to have a wider scope. It could not have been the intention of the Legislature to re-enact in section 16 the identical provisions contained in section 211 with all its limitations particularly so as the Bribery Act was intended *inter alia* to penalise acts which the Supreme Court had ruled were outside the scope of the sections in the Penal Code and was 'intended to apply to a wider class and to have a wider scope than the provisions of the Penal Code".

The same point was taken by Mr. Pullenayagum in another case which was argued before Justice Sirimane, Justice Vythialingam, and Justice Gunasekera, all of whom had already pronounced on this question in S.C. 18—19/75. Justice Sirimane who wrote the judgment in this case said :

> "This same question was argued by the same Counsel before the same Bench in S.C. 18-19/75—D.C. Colombo 169/B —(S.C. Minutes of 2.2.1976). It was there held that the objects of section 211 of the Penal Code and section 16 of the Bribery Act are completely different and cannot be said to be analogous provisions. It was also held that the words "perpetrator of an offence" must be given a wider meaning to include those who are alleged to have committed offences or accused of having committed offences..... "

Mr. Pullenayagum again took the point before a Bench consisting of Sirimane, J., Sharvananda, J. and Gunasekera, J., first and last of whom had already participated in the judgments of the two earlier cases. Justice Sharvananda delivered the judgment in this case which will be found in the S.C. Minutes of 22.3.76 relating to S.C. Case No. 22/75. Justice Sharvananda said :

> "I agree with the judgment of Vythialingam, J., in S.C. 18-19 of 1972, D. C. Colombo 169/Bribery S.C. Min. that the motivation of section 16 in the Bribery Act is different from that of section 211 of the Penal Code and that the context calls for a wider meaning of the words "'perpetrator of an offence' to include 'suspected perpetrator.'".

One can I think understand Mr. Pullenayagum's persistence in this argument ; for a strict grammatical and even logical construction of the section seems to support him. The words of the section are 'for protecting from detection or punishment the perpetrator of an offence'. Counsel's submission is that the legislature could not have contemplated an innocent man being afraid of or in need of protection against detection ; equally, he submits and even more so, one cannot imagine the legislature casting so great a slur upon our system of criminal justice as to suppose an innocent man being in fear of or in need of protection from punishment by our courts. Counsel further submits that neither the term 'perpetrator' nor the term 'offender' bear in themselves the meaning 'suspected or alleged perpetrator or offender'. These terms mean only 'actual perpetrator' or 'actual offender'. It is only, he submits a context that can compel one to give these terms the extended meaning of 'alleged or suspected perpetrator or offender ; such as for example in the expression 'prosecute an offender or 'arrest an offender'

In section 16 he submits, being coupled with 'protection from detection or punishment', the word 'perpetrator' can only bear its ordinary meaning.

I agree with Counsel's submission that the *immediate* context in section 16 does not warrant the giving of the extended meaning to the term 'perpetrator'. But I agree, with respect, with the judgments of Vythialingam, J., Sirimane, J. and Sharvananda J., that the broader context warrants a construction somewhat wider than that contended for by Counsel for the appellant.

Mr. Marapana, Senior State Counsel has submitted a different line of approach to the section from that adopted by this court in the cases I have referred to. The words 'for such officers' protecting from detection or punishment the perpetrator of an offence' are descriptive of the purpose for which the gratification was given or accepted, solicited or offered. Senior State Counsel's submission then is that the whole of that group of words refers to the motivation of the giver, the acceptor, the solicitor or the offeror, as the case may be, and have no reference to reality but only to a mental state : Counsel submits that this is the natural conclusion one is driven to if one approaches the section from a consideration of the general objects of the Bribery Act and section 16 in particular.

The Bribery Act contains many provisions dealing with what acts amount to bribery. In the original Bribery Act as passed in 1954 an effort was made at detailing in various sections the particular nature of the act and/or the particular category of officer intended to be caught up ; ultimately by means of two amendments made by Act No. 40 of 1958 and by Law No. 38 of 1974 there was provided in section 19 (c) as follows :

> "A person who, being a State officer, solicits or accepts any gratification,
>
> shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees :
>
> Provided, however, that it shall not be an offence for a State officer to solicit or accept any gratification which he is authorised by law or the terms of his employment to receive."

Indeed this section seems to render many of the earlier sections relating to public officers superfluous. However, having regard to section 19(c) and to the general purpose of the Act, while

Mr. Pullenayagum's argument may have—nay, does have——an attraction to the strictly logical mind, I prefer to reach for a meaning to section 16 which while being within the language used by the legislature would be more effective in defeating the evils at which it was aimed.

It is I think a matter of common knowledge that gratifications are not entirely uncommon among investigators at the hands not only of those who are detected in the act by police and other investigating officers but also at the hands of those who in consequence of a complaint or other information become liable to be investigated and perhaps prosecuted ; this class of alleged or suspected offenders would include those who are innocent as well as those who are guilty. In either case the catalyst that predisposes such a person to willingness to give a bribe to the investigator is the avoidance of a prosecution, irrespective of whether he is guilty or not ; even in the case of the innocent they would be prepared to pay to avoid what sometimes turns out to be oppressive methods of investigation or a damaging but fruitless prosecution or the expense of defending a groundless one.

To my mind there is no doubt that section 16 of the Bribery Act is also directed towards gratifications solicited or received from persons indulging in activities outside the law who are willing to make a monthly or otherwise regular payment to a police officer in order to induce him to turn a blind eye to his transgressions of the law. In such cases at the time of giving the gratification it may well be that no perpetration of an offence has yet occurred and it may also happen that no such perpetration occurs during the anticipated period in respect of which the gratification was given. Even in a case of this type section 16 would apply, for it can truly be said that the gratification was solicited or accepted or offered or given (as the case may be) as an inducement for the officer's protecting from detection or punishment the perpetrator of an offence, although at the time of the gratification there may be no offence yet perpetrated and hence no perpetrator actual or suspected. Having regard to the category of public servants referred to in the section, viz. those employed ' for the prosecution, detection or punishment of offenders ' I am convinced that the expression in the latter part of the section, viz. " gratification as an inducement or reward for protecting from detection or punishment the perpetrator of an offence " is only a compendious way of giving expression to what is in common parlance referred to in this area of corrupt activity as 'protection money ' ; it is a phrase signifying the purchase of immunity from the legitimate performance of their duties by State Officers

employed for the purpose of investigating offences, arresting and prosecuting those against whom reasonable grounds exist of having committed offences.

I am therefore of opinion that when section 16 of the Bribery Act speaks of " any person who being a Police Officer employed in any capacity for the prosecution, detection or punishment of offenders accepts any gratification as an inducement for such officer's protecting from detection or punishment the perpetrator of an offence ", it is speaking of a gratification accepted upon a condition express or implied, operating in the officer's mind at the time of the acceptance of the gratification that the giver or some other person will obtain some benefit or immunity from the officer in the performance in the duties of his office ; it is not necessary in a charge under this section for the prosecution to establish the existence of an actual perpetrator of an offence. It is sufficient if there is a suspected, alleged or hypothetical perpetrator of an offence.

The very literal construction contended for by Counsel for the appellant would tend to defeat what I consider to be the very obvious intention of the legislature. While I agree, with all respect, with the conclusions reached by my brother judges in the cases I have referred to in the course of this judgment I prefer the approach to section 16 which I have endeavoured to set out in this judgment, and which goes somewhat beyond the conclusions reached in those judgments.

To get back to the facts of this case I am of opinion that there can be no doubt that the appellant accepted the money only with this in mind, viz. that he was, in consideration of that gratification expected to provide protection to the giver from detection or punishment on the supposition that the giver was the perpetrator of an offence.

I would therefore hold that the acceptance of Rs. 100 by the appellant from Fernando is an offence within the meaning of section 16 of the Bribery Act.

The appeal is dismissed. The conviction and sentence are affirmed.

Vythialingam, J. — I agree.

Ratwatte, J. — I agree.

Appeal dismissed.