

1976 Tennekoon, C. J., Vythialingam, J. and Ratwatte, J.

R. J. B. FERNANDO, Accused-Appellant

and

THE REPUBLIC OF SRI LANKA, Respondent

S. C. 35/75—D. C. Colombo B/310

Bribery Act, sections 19, 21—Meaning of the term “gratification”.

Where the accused-appellant who was a Process Server in the Magistrate's Court solicited a sum of money from the complainant, in order to obtain the release of a deed which the complainant had tendered as security in the Magistrate's Court—

Held: That the purpose for which the money was solicited and accepted by the accused was to assist the complainant in the transaction of his business in the Magistrate's Court. Such a gratification is not a legal gratification and is an offence under section 19 (b) of the Bribery Act.

Case referred to :

Karunaratne v. The Queen, 69 N.L.R. 10.

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

S. L. Gunasekera, for the accused-appellant.

W. S. Yapa, Senior State Counsel, for the Attorney-General.

March 18, 1976. VYTHIALINGAM, J.

The accused-appellant who was a public servant employed as a Process Server in the Magistrate's Court of Waftala was convicted on two counts of soliciting and two counts of accepting a gratification of Rs. 20 from M. Pablis Fernando and sentenced

to 9 months' rigorous imprisonment on each count, the sentences on counts 1 and 2 to be consecutive, while the sentences on counts 3 and 4 were to run concurrently with the sentences on counts 1 and 2, to a fine of Rs. 25 and to a penalty of Rs. 20 in default two weeks rigorous imprisonment respectively.

The complainant had stood as surety for the release on bail of a relative one Ekman Fernando who had been charged in the Magistrate's Court of Wattala with house breaking and theft and had tendered a deed as security. Thereafter on 22.8.74 he had gone to the Magistrate's Court for the purpose of taking back the deed. He saw four persons near the witness shed and sought the advice of an elderly person among them as to how he could withdraw the deed. He told him to go and speak to the gentleman in the office. At that time the accused who was among the four persons agreed to help the complainant to withdraw the deed and that it would cost him Rs. 20 and asked him to come in two or three days' time.

On the following day the complainant made a complaint to the Bribery Commissioner's Department, and a trap was laid for 23.8.74. On that day the complainant went to the Magistrate's Court, Wattala, along with Constable Jayasinghe who was to pose as his son and Inspector Premaratne of the Bribery Department who was in charge of the raid. There they met the accused and told him that they had brought the Rs. 20 to take back the deed. The accused then told him that he could not do it at that time and as the complainant and Jayasinghe were going away the accused clapped and called them back. He asked Jayasinghe to stay behind and asked the complainant to give the money and to come on the following day.

Thereafter he took them to the sign board of the road and told them to give the money to the boy in a small boutique, whom he pointed out. The complainant went up to the boy and gave him the money and the boy put it in to a drawer of a table which was there. The signal was given and Inspector Premaratne came up

and arrested the accused as he was going back to the Magistrate's Court. The complainant also said that the accused asked for the Rs. 20 to prepare a motion and also as a bribe for himself. Constable Jayasinghe said that the accused had told the complainant that a motion had to be submitted and that it could not be done in any indirect way. The complainant himself had said so in his statement to the police (D1).

For the prosecution the complainant, Jayasinghe, Premaratne and the boy in the boutique Usman gave evidence. The accused gave evidence on his own behalf and accepted most of the prosecution evidence. He said that on the first occasion he told the complainant that a motion had to be drafted by a lawyer and submitted to the office. The complainant said that he could not afford to pay a lawyer and said that he knew the judge and could get it done through the judge. He also said that he could afford only a small amount and request that it be given to somebody even as a bribe in order to get the deed. The accused then told the complainant that a motion had to be submitted and that it could not be done in any other way, even by offering a bribe.

The accused then told the complainant that if he could not afford to spend for a lawyer, to give him Rs. 15 or Rs. 20 so that he could draft a motion and tender it to Court. The complainant agreed to this suggestion and agreed to come the next week as he had no money on that day. As to the events on the 28th August the accused's version was much the same as that of the prosecution. He said that he asked them to give the money to the boy in the boutique because if he took the money himself it might be construed as a bribe. He admitted that he was going to get the money from Usman.

He stated that he had experience in drafting motions and that he had done so on three or four occasions previously. His position was that it was not a bribe but payment for his services in drafting the motion which was completely outside his functions and duties as a Process Server. It is unnecessary for me to consider the differences between the accused's version and the

prosecution version, as the accused has admitted both the solicitation and the acceptance of the gratification as also the purpose for which the gratification was given. The question is whether the gratification is such a gratification within the meaning of the term as used in sections 19 and 21 of the Bribery Act under which the accused is charged.

Mr. Gunasekera who appeared for the accused-appellant submitted that the Bribery Act does not define the term gratification. The defining section merely states that the forms which a gratification could take as including the forms set out in the section. Mr. Gunasekera submitted that having regard to the preamble to the Act and the definition of the terms, the word gratification when used in the Act means no more nor less than a bribe, and as such, there must be some element of perversion and/or corruption in the conduct. He argued that there must be some element of moral turpitude and that an acceptance of a mere irregular payment would not come within the meaning of the term gratification as used in the Act. He submitted that if the term gratification was given a wide meaning so as to include any gratification then a public servant who accepted an innocent gift would be guilty of bribery.

A similar argument was advanced before the Supreme Court in the case of *Karunaratne v. The Queen*, 69 N.L.R. 10. In a charge under section 19 (c) as it originally stood the trial Judge had said that the charge "was a straight forward charge that the accused being a public servant did solicit from Piyasena a gratification of Rs. 100" and that "this solicitation is itself an offence." Dealing with these observations, T. S. Fernando, J. said at page 19 "If by this he meant that all the prosecution had to prove was that a public servant did solicit a gratification, I fear that one element of the offence under section 19 (c) has been overlooked. 'Gratification' has been the subject of definition in the Act (vide section 90) but throughout carries with it here a sinister and not an innocent connotation. If the words 'any gratification which he is not authorised by law or the terms of his employment to receive' are given the widest possible

interpretation of which they are capable then a public servant who accepts a personal gift from a friend, relative or neighbour or for that matter, a birthday present from his wife would be guilty of an offence under the Act. It would be absurd to have to reduce oneself to the position that such gifts are within the mischiefs which the Act was designed to punish. Some limitation upon the wide words of the section was obviously intended by the Legislature. An examination of this part of the section 19 (c) makes it apparent that what is penalised is the solicitation or acceptance of a gratification other than a legal gratification. This is therefore an indication that this part of the section contemplates occasions when a legal gratification may be accepted, but there is a solicitation or an acceptance of a gratification other than a legal gratification.”

I am of the view that this same limitation should be applied to the term gratification in sections 19 and 21 as well. Otherwise it would be illogical. To come within the meaning of the term gratification in the section it should be other than a legal gratification. Was then the gratification in the instant case a gratification “other than a legal gratification?” Omitting words which are not relevant for the purpose, section 19(b) read with sub-section (a) sets out that a public servant who solicits or accepts any gratification as an inducement or a reward for his assisting any person in the transaction of any business with the government shall be guilty of an offence.

In the instant case the complainant was a person who had business to transact with the Government in that he had to obtain the release of a deed which he had tendered as security in the Magistrate’s Court. In the accused’s own words, he solicited the money “so that he could draft a motion and tender it to Court” and “after the money was given I went to the Court House to obtain a paper and prepare the motion.” According to the Registrar of the Magistrate’s Court of Wattala a written application has to be made for the release of the deed. So that the purpose for which the money was solicited and accepted by the accused was to assist the complainant in the transaction of

his business in the Magistrate's Court. The acceptance of such a gratification is an offence under section 19 (b) and is therefore, not a legal gratification.

Similarly section 21 (a) makes it an offence for any person, having dealings of any kind with the Government through any department, office or establishment of Government to offer any gratification to any public servant employed in that department, office or establishment. Section 21 (c) makes it an offence for a public servant to solicit or accept any gratification the offer of which is an offence under section 21 (a). The complainant is a person who had dealings with the Magistrate's Court office and department. This might of course be the result if the words in the accused was employed in that office. The solicitation and acceptance of such a gratification by him in relation to such dealings by the complainant is an offence under section 21 (c) and cannot therefore be a legal gratification.

Mr. Gunasekera gave two examples of the consequences which would follow if the solicitation and acceptance of the gratification were not to be construed as containing some element of corruption or perversion. The first was the case of the wife of an employee, who, on her return from abroad, gives her husband a gift of a shirt. His submission was that the husband would be guilty of an offence under section 21 because he had dealings with the Customs department and he was employed in that department. This might of course be the result if the words in section 21 are given their widest meaning they are capable of. As T. S. Fernando, J. pointed out (*supra*) "Some limitation upon the wide words of the section was obviously intended by the Legislature." In this instance the limitation would be that the gratification should have been offered, solicited or accepted "in connection with the dealings" of his wife with the department. Thus, if the wife had given the shirt to her husband in consideration for his assisting her in clearing her through the Customs he would have been guilty of an offence under the section. If however, it was not in connection with her dealings with the department but simply a gift by a wife to her husband, then it would not be other than a legal gratification.

The other example was the case of a police officer who by section 82 of the Police Ordinance is made guilty of an offence if he engages without authority in any employment other than his police duties. Mr. Gunasekera submitted that such an officer would also be guilty of an offence under section 19 if he repairs a car belonging to a neighbour and accepts a fee or reward for his services. With respect, No. He would not be guilty under section 19 (b) because he was not accepting the money as an inducement or a reward for his performing or abstaining from performing an official act or for such expeditious, delaying, hindering, preventing, assisting or favouring "any person in the transaction of any business with the government as referred to in paragraph (a) of the section.

Different considerations may, however, apply in regard to section 19 (c). For the question may well arise in such a case as to whether when a police officer is prohibited by law from engaging in any other employment he is also not authorised by law or the terms of his employment from receiving any remuneration in respect of such other employment. The question will have to be decided in an appropriate case. It does not arise in the instant case because the accused is not charged with any offence under section 19 (c) but only with having committed offences under section 19 (b) and section 21 (c). As I have endeavoured to show the gratification which the accused solicited and accepted was one which was not a legal gratification and he was therefore rightly convicted on all four counts.

The jail terms in respect of counts 1 and 2 have been made to run consecutively. Although solicitation and acceptance are distinct offences yet, in the instant case they are part of the same transaction and are really one act. The sentences therefore should have properly been made concurrent and I direct that the sentence of nine month's rigorous imprisonment on each of the counts 1 and 2 should also be concurrent. The acceptance and solicitation by the accused of the gratification was for the purpose of drawing up a motion and presenting it to the office. It did not involve the doing of any act in any corrupt or wrong way in the

discharge of their duties either by the accused or by any other official in the Magistrate's Court office. In other words, there was no corruption of an official or the perversion of government business in the act of the accused.

In the circumstances, acting under section 239 (1) of the Administration of Justice Law, I suspend the sentences of imprisonment for an operational period of five years. The fines and penalty will stand and are to be paid within one month of the date on which the decision of this court is conveyed to the accused. The default sentences however are deleted and the Additional District Judge is directed to comply with the relevant sections of the Administration of Justice Law in regard to the sentences. Subject to the variation in the sentence the appeal is dismissed.

TENNEKOON, C. J.—I agree.

RATWATTE, J.—I agree.

*Appeal dismissed.
Sentence varied.*