

1976 Present : Wimalaratne, J., Weeraratne, J., and Colin-Thome, J.

K. NADARAJA, Appellant and THE REPUBLIC OF SRI LANKA, Respondent.

S. C. 76/75—D. C. Colombo B/233

Bribery Act—Interpretation of the phrase “ a person who while having dealings of any kind with the Government ”—Bribery Act. S. 21.

Section 21 of the Bribery Act provides *inter alia* that a public servant who solicits or accepts any gratification from a person having dealings of any kind with the Government through any department, office or establishment of the Government shall be guilty of an offence punishable under the Bribery Act.

One K. Weerasinghe Banda was the occupier of Lot 71 in Hulundu Oya Colony, Moneragala, on a permit issued under the Land Development Ordinance. He had a dispute with one Mutunayake, the occupier of the adjoining Lot 70, regarding the obstruction of the channel through which water was supplied to his lot through lot 70. He sent at least two petitions to the Government Agent, Moneragala in 1972 and a further petition to the Minister of Agriculture in 1973. The Government Agent referred these petitions to the District Land Officer, who directed the accused, a Kachcheri Surveyor to draw up a feasibility plan for the purpose of giving water to lot 71. When the accused went to the land on 20.11.73. Weerasinghe Banda felt that the accused was going to take a decision unfavourable to him, and he also got the impression that the accused “ was angling for a bribe ”. He therefore went to the accused’s house on 25.11.73 and offered the accused a bribe; and thereafter made a complaint to the Bribery Department. A trap was laid in consequence of which Weerasinghe Banda offered and the accused accepted a sum of Rs. 450 on 30.11.73. The officers of the Bribery Department rushed up and arrested the accused and recovered from his possession the marked Rs. 450.

Held : That Section 21 was clearly intended to penalise acts of Bribery by persons who have transactions of any kind with the Government. A person who is in occupation of an allotment of land on a grant or permit issued under the Land Development Ordinance will necessarily have numerous dealings with Government Departments in respect of that allotment. The Land Development Ordinance itself confers rights and imposes duties on an allottee. In the exercise of those rights and in the performance of his obligations he must necessarily have recourse to the Government Agent. Land

Development officers, appointed under Section 6 of that Ordinance are empowered to perform the functions assigned to Government Agents under that Ordinance. It was by virtue of those powers that the Land Development officer requested the accused to prepare a feasibility plan. There can, therefore, be no doubt that Weerasinghe Banda was a person who had dealings with the Government through the Moneragala Kachcheri. The accused, having solicited and accepted a bribe from Weerasinghe Banda, committed an offence punishable under Section 21 of the Bribery Act.

APPEAL from a judgment of the District Court, Colombo.

V. S. A. Pullenayagam with *L. F. Ekanayake*, for the Accused-Appellant.

Priyantha Perera, Senior State Counsel, for the State.

July 28, 1976. WIMALARATNE, J.—

One Kempitiya Weerasinghe Banda was the occupier of Lot 71, in Hulundu-oya colony, Moneragala, on a permit issued under the Land Development Ordinance (Cap. 464). He had a dispute with one Mutunayake, the occupier of the adjoining Lot 70, regarding obstruction of the channel through which water was supplied to his Lot through Lot 70. He sent at least two petitions to the Government Agent, Moneragala in 1972, and a further petition to the Minister of Agriculture in 1973. The Government Agent referred these petitions to the District Land Officer, who directed this accused, a Kachcheri Surveyor to draw up a feasibility plan for the purpose of giving water to Lot 71.

When the accused went to the land on 20.11.73, Weerasinghe Banda felt that the accused was going to take a decision unfavourable to him, and he also got the impression that the accused "was angling for a bribe." He therefore went to the accused's house on 25.11.73 and offered the accused a bribe. The accused wanted Rs. 500 to prepare the plan, but the amount was subsequently reduced to Rs. 450. Weerasinghe Banda made a complaint to the Bribery Department and accompanied the officers of that Department to Moneragala on 27.11.73. A trap was laid in consequence of which Weerasinghe Banda offered, and the accused accepted, the sum of Rs. 450 on 30.11.73. The officers of the Bribery Department rushed up and arrested the accused, and recovered from his possession the marked Rs. 450.

The accused was charged on four counts under the Bribery Act (Cap. 26). The 1st charge was that he solicited this gratification as an inducement or reward for his performing an official act, to wit: preparing a plan of Lots 70 and 71 at Hulundu-oya colony, an offence punishable under Section 19. The 2nd charge was that he solicited this gratification from Weerasinghe Banda, a person having dealings with the Government

through an office of the Government, to wit: the Moneragala Kachcheri, an offence punishable under section 21. The 3rd and 4th charges were that he accepted this sum of Rs. 450 from Weerasinghe Banda, offences punishable under Sections 19 and 21 respectively.

The accused admitted having accepted this money, but his defence was that this was consideration for the execution by him of another job, namely, the preparation of a survey plan of a different land at a place called Marawa. It was to be a "private job" which he was going to entrust to a private surveyor to whom he was going to make payment. The defence also took up the position that Weerasinghe Banda was not a person who had dealings with the Government, within the meaning of section 21 and that the charges under counts 2 and 4 could not in any event be maintained.

The learned District Judge, convicted the accused on all four counts and sentenced him to a term of 3 years rigorous imprisonment and a fine of Rs. 500 (in default 5 months rigorous imprisonment) on each count. He also imposed a penalty of Rs. 450 in default a term of 4 months rigorous imprisonment. The substantive jail terms were to run concurrently, whilst the default sentences were to run consecutively.

Learned Counsel for the accused-appellant has referred us to the contents of the conversation between the accused and the complainant on the occasion when the money was given. According to the 'summary of facts'—

"At the bus stand Weerasinghe Banda told the accused—
'I have promised to sell it, so please do it soon for me. I cannot sell it if the boundaries are not marked.' The accused then promised to come on the 4th. Weerasinghe Banda said the 4th was too late, whereupon the accused promised to come on the 3rd. Then referring to the land in the colony Weerasinghe Banda said:—

'Sir, that job.'

The accused said:—

'I will attend to that too'

The evidence of Weerasinghe Banda that there were two jobs to be done by the surveyor regarding the dispute between lots 70 and 71, namely, the plotting out of the channel *and* the demarcation of the boundary between the two lots, was supported by the petitions P2 and P3 to the Government Agent, where the complainant referred to these *two* matters. On the other hand, the accused's version that the other jobs referred to the survey

of the land at Marawa was not supported by any other evidence, not even of evidence of an application made or a letter written by Weerasinghe Banda to any person in authority showing some sort of preparation to purchase a lot in Marawa. The learned District Judge has therefore come to the correct conclusion that the bribe was solicited and accepted in connection with the survey of lots 70 and 71 in Hulundu-oya colony.

The next point taken up by learned Counsel for the appellant was the applicability of section 21 to the facts of this case. The relevant portion of section 21 reads as follows :—

‘ A person—

- (a) who, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any gratification to any public servant employed in that department, office or establishment, or
- (b) who, within one year before or after his having dealings of any kind with the Government through any department, office or establishment of the Government, offers any gratification to any public servant employed in that department, office or establishment, or
- (c) who, being a public servant, solicits or accepts any gratification the offer of which is an offence under this section ;

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 : ”

His contention is that Weerasinghe Banda was a person who had merely sent a petition to the Government Agent, and was therefore not “ a person who had dealings ” with the Government. He refers to the dictionary meaning of the words “ deal with ”—a person who deals with is a person who has “ business transactions with ”. It is therefore essential that for this section to come into operation the person offering a gratification should be a person who has business transactions with the Government. He submits that sub-section (b) by limiting the period of culpability to one year before or one year after having dealings with the Government, supports his contention that this section should be limited to the offer of a gratification by persons having business transactions only.

Learned Senior State Counsel on the other hand submits that the use of the words “ person who, having dealings of *any kind* ”, was intended to include persons who had not only business

transactions, but had dealings of any kind, which called for some action on the part of a Government department. Weerasinghe Banda paid an annual rent in respect of his holding ; he had a dispute with his neighbour who also had an allotment from Government. As a result of Weerasinghe Banda's complaints some action was called for by the Government. He was therefore a person who had dealings with the Government through the Moneragala Kachcheri.

A guide to the interpretation of section 21 is provided by sections 17, 19 and 20. *Section 17* makes it an offence to offer any gratification to a public servant (and likewise, for a public servant to solicit or accept a gratification) as an inducement or reward to assist in the promotion of the procuring of any contract, or in the execution thereof, or in the payment of the price stipulated therein. *Section 19* penalises the acts of persons who offer gratifications to public servants (and likewise, the solicitation or acceptance of gratifications by public servants) for the purpose of performing, expediting, hindering or preventing the transactions of any business. *Section 20* penalises the offer (and likewise, the solicitation or acceptance) of gratifications as a reward for such transactions as the payment of claims, the procuring of appointments in any office and the securing of grants, leases and other benefits from the Government.

These three sections are, in my view, intended to penalise the acts of bribery by or in respect of public servants in regard to the main types of dealings the public may have with Government departments. The next section, namely section 21 was therefore clearly intended to penalise acts of bribery by persons who have transactions of any other kind with the Government.

A person who is in occupation of an allotment of land on a grant or permit issued under the Land Development Ordinance (Cap. 464) will necessarily have numerous dealings with Government departments in respect of that allotment. The Land Development Ordinance itself confers rights and imposes duties on allottees. In the exercise of those rights and in the performance of his obligations he must necessarily have recourse to the Government Agent. Land Development Officers, appointed under section 6 of that Ordinance are empowered to perform the functions assigned to Government Agents under that Ordinance. It was by virtue of those powers that the Land Development officers requested the accused to prepare a feasibility plan. There can, therefore, be no doubt that Weerasinghe Banda was a person who had dealings with the Government through the

Moneragala Kachcheri. The accused, having solicited and accepted a bribe from Weerasinghe Banda, committed offences punishable under section 21 of the Bribery Act.

The conviction of the accused on all four counts is therefore affirmed.

We are of the view that the sentence of 3 years rigorous imprisonment imposed on the accused is excessive in the circumstances of this case. We therefore substitute a sentence of one year's rigorous imprisonment and a fine of Rs. 500 on each count, the sentences be run concurrently. We also impose a penalty of Rs. 450.

WEERARATNE, J.—I agree.

COLIN THOME, J.—I agree.

Conviction affirmed.

Sentence varied.

