

1967 *Present* : Abeyesundere, J., and Siva Supramaniam, J.

GREGORY PERERA, Appellant, *and* THE QUEEN, Respondent

S. C. 1/67—D.C. (Bri.) Colombo, 20

*Bribery Act, as amended by Act No. 40 of 1958—Section 19 (c)—Charge thereunder—
Burden of proof.*

Where a person is charged under Section 19 (c) of the Bribery Act with having solicited or received a gratification which he was not authorised by law or the terms of his employment to receive, the prosecution must lead some evidence to show that the accused was not authorised by law to solicit or accept a gratification of the kind mentioned in the charge.

APPPEAL from a judgment of the District Court, Colombo.

S. Kanagaratnam, for Accused-Appellant.

Kenneth Seneviratne, Crown Counsel, for the Crown.

April 15, 1967. ABEYESUNDERE, J.—

In this case the appellant was indicted under Section 19 (c) of the Bribery Act, as amended by Act No. 40 of 1958, with having solicited a gratification of Rs. 100 which he was not authorised by law or the terms of his employment to receive and with having accepted a gratification of Rs. 100 which he was not authorised by law or the terms of his employment to receive. He was convicted on both counts of the indictment and sentenced to a term of 3 years' rigorous imprisonment on each count and to pay a fine of Rs. 100 on each count.

Counsel for the appellant submits that there is no evidence led by the prosecution to establish that the appellant was not authorised by law or the terms of his employment to solicit or receive the aforesaid gratification. P6 is the letter of appointment of the appellant. That letter contains the terms of the appellant's employment. In that letter the appellant is not authorised to solicit or accept any gratification. The production of P6 is not sufficient to establish the ingredients of the offence alleged under paragraph (c) of Section 19 of the Bribery Act. There must also be some evidence to show that the appellant is not authorised by law to solicit or accept a gratification of the kind referred to above.

Crown Counsel who appears for the Attorney-General submits that the Court can take judicial notice of any law. In establishing a charge under Section 19 (c) of the Bribery Act what the prosecution has to prove is, *inter alia*, that there is no law authorising the accused to solicit or accept the gratification mentioned in the charge. It is not possible for any Court to take judicial notice of the absence of such a law. We are satisfied that the prosecution has failed to lead evidence necessary to establish one ingredient of the offence alleged in the indictment. Therefore we set aside the conviction of the appellant and the sentence passed on him and acquit him.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.
