

1967

Present : H. N. G. Fernando, C.J., and Alles, J.

L. DE S. A. GUNASEKARA, Appellant, and THE QUEEN, Respondent

S. C. 6/67—D. C. Colombo, 21/Bribery

Bribery Act (Cap. 26)—Sections 14 and 20—“ In his capacity as a Member of Parliament ”—“ Procuring any grant or benefit for another person ”—Meaning of words “ procure ”, “ grant ” and “ benefit ”.

The accused-appellant was charged on three counts. On the first count he was charged under s. 14 of the Bribery Act with having accepted, in his capacity as a Member of Parliament, a gratification of Rs. 3,000 as an inducement or reward for doing a certain act, namely, procuring for one Dharmasena a licence for the sale of liquor. Count No. 2 charged the appellant under s. 20 of the Bribery Act with having accepted the said sum as an inducement or reward for procuring for Dharmasena a grant from the Government, namely, a grant of a licence for the sale of liquor. The third count was an alternative to count 2, that he accepted the gratification as an inducement or reward for procuring for Dharmasena a benefit from the Government, namely, a licence for the sale of liquor, in breach of s. 20 of the Bribery Act.

The evidence established the fact that the accused solicited a gratification of Rs. 3,000 from Dharmasena on a promise that he would get the licence issued to Dharmasena, and on the pretext that the money was to be given as a bribe to the Minister for Home Affairs for the issuing of the licence. The Minister, whose evidence was believed *in toto* by the trial Judge, testified that the accused, as a Member of Parliament of the Government Party, had direct access to him and often saw him in his office on various matters. He said also that Members of Parliament often mention to him such matters as applications for liquor licences, but that such matters would not be matters of record. He stated that the only reason urged by the accused in connection with the application of a man from Eheliyagoda for a liquor licence was that the man had been a strong supporter of the accused at his election. That reason had nothing to do with the accused's constituency or with the interests of good Government. Further, the Minister denied that he had requested or taken any money from the accused in connection with the matter of an application for a liquor licence.

Held, (i) that the evidence failed to establish one element required by s. 14 of the Bribery Act, viz., that the gratification was accepted as an inducement for the accused doing an act *in his capacity as a Member of Parliament*. The undertaking that the accused would get a liquor licence for Dharmasena was not an undertaking to do any act in his capacity as a Member of Parliament.

(ii) that the word “ procure ” in s. 20 of the Bribery Act means obtaining for another person by one's care or efforts.

(iii) that s. 20 (1) (a) (vi) of the Bribery Act does not refer only to a grant of some proprietary right or interest enjoyed by the Crown. The expression “ grant or benefit ” in this context must be widely construed. Further, the operative word is the word “ benefit ”, the ordinary wide meaning of which is not narrowed by its association with the words “ grant ” or “ lease ” which precede it.

APPEAL from a judgment of the District Court, Colombo.

G. E. Chitty, Q.C., with *P. Nagendran, V. E. Selvarajah* and *Gamini Dissanayake*, for Accused-Appellant.

Vincent T. Thamotheram, Deputy Solicitor-General, with *Ranjith Goonetillake*, Crown Counsel, for the Respondent.

Cur. adv. vult.

November 20, 1967. H. N. G. FERNANDO, C.J.—

The appellant in this case, who at the relevant time was a Member of Parliament, was charged on three counts : first that he did accept from one Dharmasena a gratification of Rs. 3,000 as an inducement or reward for doing an act in his capacity as a Member of Parliament, to wit, procuring for Dharmasena a licence for the sale of liquor and that he thereby committed an offence punishable under section 14 of the Bribery Act. The second count charged the appellant with accepting the said sum from Dharmasena as an inducement or reward for his procuring for Dharmasena a grant from the Government, to wit, a grant of a licence for the sale of liquor and that he thereby committed an offence punishable under section 20 of the Bribery Act. The third count was an alternative to count 2, that he accepted the gratification as an inducement or reward for procuring for Dharmasena a benefit from the Government, to wit, a licence for the sale of liquor and he thereby committed an offence punishable under section 20 of the Bribery Act.

In order to examine the arguments of Counsel at the appeal, it is necessary to refer to some of the relevant evidence much of which consists of Dharmasena's testimony. Dharmasena desired to obtain a licence for the sale of liquor at a hotel run by him at Eheliyagoda and he made an application to the Government Agent, Ratnapura. His application was not successful, and he apparently was told that he could get a liquor licence if he made contact with a Government Member of Parliament for that purpose. Presumably because Dharmasena did not know an M.P., he requested the help of one Rajapakse, who introduced him to his brother-in-law Harischandra, said to be a friend of this Accused, who was then the M.P. for Kalawana. Dharmasena, Rajapakse and Harischandra visited the Accused—at his house in Ratnapura and spoke to him there. According to Dharmasena he asked the Accused to obtain a licence for him, and the Accused said that he would first speak to the Commissioner of Excise about the matter. The next week the same three people again met the Accused at his house, and Dharmasena was then told to come on a subsequent occasion to Sravasti, the hostel in Colombo for Members of Parliament. He took a written application in

the name of his brother to Sravasti and he met the Accused. Thereafter the Accused accompanied him to the office of the Commissioner of Excise. After going into the office, the Accused returned and stated that he had handed the application to the Commissioner, that it would be sent to the Minister, and that after the Minister signed, Dharmasena would get the licence. On the same occasion the party went to the Home Ministry after the Accused had telephoned the Minister, and the Accused was in the Ministry for half an hour. On his return the Accused stated that he spoke to the Minister and that Dharmasena will get the licence.

Subsequently, Dharmasena apparently offered to pay Rs. 10,000 or Rs. 5,000 to the Accused when he got the licence, but the Accused said that he did not want any money. Thereafter, however, at another meeting the Accused said "that money had to be given before the work is done and the Minister will not do it without accepting the money". The Accused wanted the money to be given to him for him to pay it to the Minister. At this stage Dharmasena agreed to pay Rs. 3,000 and to pay a further sum of Rs. 2,000 after obtaining the licence. The Accused had said that the Minister had wanted Rs. 5,000 down and Rs. 5,000 sometime later.

Dharmasena made arrangements to raise the money by sale of his land to one Suwanda for Rs. 6,000. Suwanda himself had to withdraw the money from the General Post Office. On the 24th of October 1962 Dharmasena, Rajapakse and Suwanda met the Accused at Sravasti with the appropriate form for the withdrawal of Rs. 6,000 from the Post Office Savings Bank. The Accused had, according to an officer of the Postal Department, identified Suwanda and requested that officer to expedite the withdrawal and this was accordingly done.

The party thereafter went to the Home Ministry and outside the office Dharmasena handed Rs. 3,000 in cash to the accused. The Accused entered the Ministry and on his return said that Dharmasena will get the licence very soon.

The evidence thus far recited is corroborated in ample respects by Rajapakse and Suwanda, particularly in regard to the fact that the accused asked for the money outside the Home Ministry and then went into the Ministry. The prosecution produced at the trial the conveyance of Dharmasena's land to Suwanda, and it was established that when this deed was signed on 25th October 1962 the vendor acknowledged that a part consideration of Rs. 3,000 had already been paid.

Dharmasena did not get his liquor licence despite frequent calls on the Accused, and ultimately the Accused delivered to him at Sravasti on 10th April 1963 a cheque for Rs. 3,000 bearing the same date. On that occasion the Accused told Dharmasena not to credit his cheque because he had no money in the Bank, that he gave the cheque only because Dharmasena did not trust him, and that somehow or other he will get the

licence for Dharmasena. That the cheque was given as a sort of security is confirmed by the fact that the cheque was not presented until very much later.

There was no explanation from the defence of the fact that a cheque for Rs. 3,000 drawn by the Accused to bearer had been presented by Dharmasena for payment through his bank. There was nothing in the evidence to indicate any business transaction between the two men and nothing to contradict the version that the cheque was given either for the purpose of repaying the Rs. 3,000 given to the Accused on 25th April 1962, or as a sort of security for the keeping of the Accused's promise to obtain a liquor licence for Dharmasena.

The then Minister of Home Affairs gave evidence at the trial. According to him, the Accused saw him sometime in 1962 and requested him to issue a licence to run a liquor bar to a person said to be from Eheliyagoda who was a supporter of the Accused. The Minister in reply said that no liquor licences were being issued pending a Cabinet decision and that the application could be made after that decision.

It is relevant to note certain other evidence given by the former Minister. As a Member of Parliament of the Government Party, the Accused had direct access to the Minister and often saw him in his office on various matters. He said also that other Members of Parliament often mention to him such matters as applications for liquor licences, but that such matters would not be matters of record. Further, the Minister denied that he had requested or taken any money from the Accused in connection with the matter of an application for a liquor licence. The trial Judge accepted *in toto* the evidence of the Minister.

Counsel has complained, perhaps rightly, that the judgment of the learned District Judge contains a mere narrative of the evidence, and little or no statement of reasons. But it is clear to me that it would have been unreasonable to reject the substantial allegations in the evidence of Dharmasena, which were corroborated in important respects by other witnesses and in one respect by the Minister. The absence of any explanation for the payment into Dharmasena's account of a cheque for Rs. 3,000 drawn by the Accused fortifies Dharmasena's testimony. The Defence could make no reasonable suggestion as to why Dharmasena, Suwanda and Rajapakse should have implicated the accused falsely in an offence of an unusually grave nature. The evidence established the fact that the Accused solicited a gratification of Rs. 3,000 from Dharmasena on a promise that he would get the licence issued to Dharmasena, and on the pretext that the money was to be given as a bribe to the Minister for the issuing of the licence.

Counsel for the Accused in appeal has argued that the facts of this case do not establish one element required by s. 14 of the Bribery act, viz. that the gratification was accepted as an inducement for the Accused doing an act *in his capacity as a Member of Parliament*. In considering

this argument, I have derived valuable and sufficient assistance from the judgment of Viscount Radcliffe in the case of *Attorney-General v. de Livera*¹ and it is useful to cite freely from that judgment :—

“ It would be misleading therefore to confine the idea of a member’s capacity entirely within the limit of those activities which the written Constitution specifically notices as falling within his constitutional function, in effect the sole activity of voting upon motions or resolutions of his Chamber. The Standing Orders themselves envisage a wider range of action as appropriate to an individual member, as, for instance, the presentation of petitions to the Chamber, the institution of motions and the putting of questions for answer by the Prime Minister, Minister or Parliamentary Secretary. All these specific activities are certainly tied to what takes place in proceedings on the floor of the House : but Their Lordships are satisfied that in determining what a member does in his “ capacity as such ” within the meaning of those words in the Bribery Act the answer must be found in what can be learnt of the constitutional conventions and practices of the day rather than by exclusive reference to the wording of the Constitution or the Standing Orders of the House or any similar document.”

* * * *

“ They recognise that there are many things which a member may be invited to do because he is a member and enjoys as such a status and prestige which supply the motive of the invitation but in doing which he would not be acting in his capacity as a member. But, with this recognition made, they are of opinion that the circumstances of any particular case may show that in the light of prevailing practices or conventions observed by members of the House some act for which an inducement has been offered is sufficiently closely bound up with and analogous to a proceeding in the House as to be properly described as done by a member in his capacity as such.”

In *Livera’s case* an offer of a bribe was made to the then Member of Parliament for Chilaw in the following circumstances. The M. P. had strongly recommended in writing the acquisition of an estate for alienation to persons of certain villages in his constituency who had been displaced from their homes as a result of floods. The Minister thereupon directed the Land Commissioner that the M. P. had asked for the estate for alienation and that acquisition proceedings should be taken immediately. When *Livera*, the owner of the estate, interviewed the Government Agent with the object of stopping the acquisition, the Government Agent referred *Livera* to the M. P. There was evidence from the Land Commissioner that it was the practice to consult the M. P. of the area before acquiring land for alienation. In these circumstances it is perfectly clear that when *Livera* approached the M. P. with

¹ (1962) 64 N. L. R. 409.

his request for the cancellation of the acquisition, he approached a person who according to the prevailing practice could well have secured the cancellation by a request made in that behalf in his capacity as the M. P. for Chilaw. On these proved facts their Lordships were able to hold thus :

“ Where the facts show clearly, as they do here, that a Member of Parliament has come into or been brought into a matter of Government action that affects his constituency, that his intervention is attributable to his membership and that it is the recognised and prevailing practice that the Government Department concerned should consult the local M. P. and invite his views, Their Lordships think that the action that he takes in approaching the Minister or his Department is taken by him ‘ in his capacity as such Member ’ within the meaning of Section 14 (a) of the Bribery Act.”

Having regard to the earlier statement in the judgment of Viscount Radcliffe that “ the circumstances of any particular case may show that some act for which an inducement has been offered is sufficiently closely bound up with and analogous to a proceeding in the House as to be properly described as done by a member in his capacity as such ”, Their Lordships in fact decided that the function of the M. P. for Chilaw in such a matter as the acquisition of land in his constituency for alienation was analogous to a proceeding in the House. Although Their Lordships did not explain precisely where the analogy lay, it is safe to assume that in their opinion the part played by the Member of Parliament in connection with such a decision was merely an alternative to raising by way of question or motion in Parliament a matter of general importance to his constituency. Their Lordships were however careful to emphasize the distinction between something done by a member of Parliament *merely because he is a member*, and something done by him *in his capacity as a member*. This matter is referred to in the following passage :—

“ It is plain from this account that Mr. Munasinghe played a dominating part in the proposal to acquire the Vincent Estate for the accommodation of the flood victims in the Chilaw District. It was he who initiated the proposal by his letter to the Minister of Lands and Land Development dated 28th October 1958. He might indeed have taken this step from more than one standpoint of his personal position as a prominent local man, as an active politician, general secretary of the Sri Lanka Freedom Party, even perhaps as Chief Government Whip. In fact, however, it is to be noted that his letter was headed ‘ House of Representatives ’ and his signature at the foot had added to it the words ‘ M. P. Chilaw ’.”

I can see no resemblance between the facts established in *Livera's case*, and those proved in the instant case. There is no question that in *Livera's case* the Minister ordered the acquisition only because he approved

a request for acquisition formally made by the Member of Parliament for Chilaw who signed as such. The member must according to the practice be consulted before the acquisition ; that being so, his direct request for the acquisition was at least equivalent to and in fact more effective than his being consulted by the Land Commissioner on a proposal mooted by someone else. Their Lordships were confidently able to reject the alternative possibilities that the Member of Parliament in that case was merely acting by virtue of his personal prominence or influence. For present purposes it is sufficient to note that they were thus able to reject the alternative that the member was merely attempting to exploit his influence as a member of the Government Party. That alternative I am quite unable to reject in the case of this accused. According to the evidence of the Minister, the only reason urged by this Accused in connection with the application of a man from Eheliyagoda for a liquor licence, was that the man had been a strong supporter of the Accused at his election. That reason had nothing to do with the Accused's constituency or with the interests of good Government. Dharmasena himself must have realized that no such interests were involved in the matter of his application for a liquor licence.

In the concluding paragraphs of the judgment in *Livera's case*, Their Lordships referred to three distinct matters which established that the member in that case was acting in his capacity as such member : firstly, that the member is brought into a matter of Government action that affects his constituency ; secondly, that his intervention is attributable to his membership ; and thirdly, that it is the recognised and prevailing practice that the department concerned should consult the local M. P. on the matter involved. The evidence in the instant case fails to establish to any extent whatsoever any of these characteristics which serve to bring a member's action within the scope of s. 14 of the Act.

The learned trial Judge does not appear to have realized the importance of this particular element of s. 14 which I have thus far discussed. There is therefore nothing in the judgment which needs to be considered in this connection. I would hold that the undertaking that the accused would get a liquor licence for Dharmasena was not an undertaking to do any act in his capacity as a Member of Parliament. The conviction and sentence on the first count of the indictment is therefore quashed and the accused is acquitted of the charge stated in that count.

The arguments relating to the second and third counts were threefold. Mr. Chitty's first contention was that the prosecution had not proved that the accused accepted a gratification for his "*procuring* any grant or any benefit from the Government" for Dharmasena. One ground of this argument was that in s. 20, the word "*procure*" does not mean merely getting or obtaining, but involves an element of control or authority in the matter of getting or obtaining a grant or relief. In other words, merely making a request that something be granted is not "*procuring*", unless the person making the request has because of some special capacity or

interest a function to perform in connection with the decision whether or not the request is to be granted. Mr. Chitty was unable to refer to any actual instances where, under the law or practice now prevailing in regard to the transaction of Government business, a person might have such a function to perform. Instead he thought that perhaps the Legislature when referring in several paragraphs of s. 20 to "procuring" or "preventing" various matters was merely legislating in anticipation of the establishment in the future of certain somewhat unusual Government procedures.

I am unable to agree that any such special connotation attaches to the word "procure" when used in s. 20, or that the word has any meaning different from its ordinary Dictionary meaning "to bring about by care or pains" or "to obtain by care or effort".

In the present case, the evidence as accepted by the trial Judge is that in the first instance, the accused, after interviewing or pretending to interview the Excise Commissioner and the Minister, told Dharmasena "I will get you the licence". This was a simple assurance to Dharmasena that the licence would be granted because the accused made a request in that behalf to the two officials concerned. Had the licence then been issued, undoubtedly it would have been correct to say that the licence was obtained for Dharmasena by the care or effort of the Accused.

At a later stage, the accused informed Dharmasena that a further effort was necessary, viz., that a sum of Rs. 5,000 must be paid to the Minister, and that thereupon the Minister would issue a licence. Even in April 1963 when the Accused gave his cheque to Dharmasena he still maintained "somehow or other I will get you the licence". Mr. Chitty argued that the fact that the money was given by Dharmasena to satisfy the Minister showed that what the Accused at this stage undertook to do was only to act as a sort of messenger in delivering the money to the Minister; further that since the Minister might fail to grant the licence in his discretion there was no undertaking by the Accused to procure such a licence.

It is in my opinion misleading to take too much account of the accused's false statement that he was going to bribe the Minister. In fact he took the money for himself and the learned trial Judge found with much justification that Dharmasena knew this all the time. That being so, Dharmasena was relying, not on a decision of the Minister which might or might not be favourable to him, but instead on the Accused's frequent protestations that he will get the licence for Dharmasena.

Let me suppose that the Accused had nothing to do with Dharmasena, and that Dharmasena himself had made his application, interviewed the Excise Commissioner and the Minister, and had even (I say this for the sake of argument only) paid some money to the Minister or someone of the Ministry, and had then been granted his licence. In those circumstances surely it would be correct to say that Dharmasena "procured the licence

for himself". When in fact the Accused undertook to make all these necessary efforts, he was agreeing to procure the licence, and if having made the efforts, the licence was in fact granted, it would have been a perfectly correct statement of fact to say that the accused had procured the licence for Dharmasena.

In my opinion the expression "procuring a grant or relief for another person" in s. 20 means obtaining it for another person by one's care or efforts.

Mr. Chitty urged that the accused only undertook to assist Dharmasena to obtain the licence, and that therefore the correct charge if any should have been one of accepting the gratification as an inducement "for furthering the procuring of a grant or benefit". He argued that when the taker of the gratification has no power or control in the matter of the giving the contemplated grant or benefit, he does no more than "further the procuring". My reasons have already been stated for the conclusion that, according to the evidence in this case, the Accused undertook to do much more than to assist Dharmasena; the language in which the undertaking was expressed (vide the summary in the early part of this judgment) definitely establishes that Dharmasena was assured that the accused would get the licence for him.

Moreover I do not agree that the distinction between an undertaking to procure something, and an undertaking to further the procuring of something, depends on the question whether or not the undertaker has a control over the matter of the conferment of the thing. A person will properly be said to "further a procuring" if what he undertakes to do is something short of actually obtaining the grant or benefit. A charge of "furthering" would have been appropriate if for instance the Accused had only said that he would speak to the Minister or that he would deliver Dharmasena's application to the Commissioner of Excise. Similarly it would be a case of only furthering the procurement of employment if a person merely agrees to recommend another for employment without an assurance that the employment would actually be obtained. No doubt the conduct of the accused in this case rendered him guilty of accepting an inducement for furthering the procuring of a licence for Dharmasena. But since he in fact undertook "to get the licence" he also committed the offence of accepting a gratification as an inducement for procuring the licence.

Mr. Chitty's second objection to counts 2 and 3 was that a liquor licence is not a grant or a benefit contemplated in paragraph (vi) of section 20 of the Act. He relied in this connection on the English Case of *Heap v. Hartley*¹ in which a distinction was drawn between a grant and a licence. That case was not one which called for consideration of a statutory provision like s. 20 (1) (a) (vi) of the Bribery Act, which refers to the procuring of "any grant or benefit from the Government". Even

¹ 42 Chancery Division, p. 461.

if it be correct that in English Property Law, the word "grant" ordinarily connotes the surrender or transfer by the grantor of something previously owned or enjoyed by the grantor, I am unable to agree that the word was intended in our Bribery Act to have that same special connotation. The word "grant" with its grammatical variations, occurs in our Statute Law in the Excise Ordinance itself in connection with the issue of liquor licences, in the Citizenship Act in connection with the conferment of the status of citizenship, and in the Royal Letters Patent in reference to the Prerogative of Pardon. There are I am sure other provisions of our Statute Law in which the word is issued in contexts in which there is not involved any question of the surrender or transfer by the Crown or the Government of any right to property or any right having a direct financial value.

The contention that the Legislature intended, in s. 20 (1) (a) (vi), to refer only to a grant of some proprietary right or interest enjoyed by the Crown, is with respect contrary to common sense. The contention is based on the supposition that the Legislature was, in enacting paragraph (vi) of s. 20, concerned only to prevent and punish corruption in the matter of the surrender or transfer of property or of rights enjoyed by the Crown or the Government. Any such supposition is negatived when account is taken of the purpose of the Legislature as evidenced in the Bribery Act. Sections 14 to 19 of the Act, speaking generally, are designed against the taking or offering of gratifications by or to "officials", in connection with acts which are either official acts or done or to be done in an official capacity. The benefits or favours or advantages in consideration of the obtaining or giving of which bribery is penalised by those sections are varied and even multitudinous. Those sections are followed by s. 20, which is not restricted to and does not even refer to, the offering or taking of gratifications to or by public officers; *any person* who accepts a gratification as an inducement for procuring employment under the Government or a public Corporation, or for procuring a grant or benefit from the Government or such a Corporation is guilty of bribery. In this way s. 20 is designed to punish those who use the advantage of personal or family position for the actual or pretended purpose of influencing the commission by "officials" of offences under other sections of the Act. It is obvious that if ordinary citizens are deterred from using their position in that way, there is less likelihood that "officials" can be bribed. Again, although it may be very difficult to prove a direct act of bribery by or to an "official", it may be well easy to prove the taking of a gratification by a person who is only an actual or pretended intermediary. I am satisfied that the Legislature intended as far as possible to prevent or punish even ordinary citizens who accept gratifications as inducements to influence public officials with a view to acting or not acting in a particular way in the discharge of the official functions. Common sense therefore requires that in paragraph (vi) of s. 20 the expression "grant or benefit" must be widely construed.

Mr. Chitty rightly pointed out that since counts 2 and 3 were in the alternative, the accused should not have been convicted on both those counts. I have stated my reasons for the opinion that the term "grant" in paragraph (vi) does not bear the special meaning contended for by Mr. Chitty. But even if the correctness of that opinion be doubtful, the issue of a licence is quite clearly a benefit referred to in that paragraph. I accept the submission of the learned Deputy Solicitor-General that the operative word in paragraph (vi) is the word "benefit", and that its ordinary wide meaning is not narrowed by its association with the words "grant" or "lease" which precede it. Since therefore the counts were framed in the alternative, I would set aside the conviction and sentence on count 2, and affirm the conviction on count 3, and impose on the Accused on that count a sentence of 3 years rigorous imprisonment.

ALLES, J.—I agree.

Convictions on counts 1 and 2 set aside.

Conviction on count 3 affirmed.
