

30 MAR 1963

25 RUSSELL SQUARE
LONDON, W.C.1

No. 6 of 1961

27/1962

IN THE PRIVY COUNCIL

68214

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN :-

THE ATTORNEY-GENERAL OF
CEYLON

Appellant

- and -

(1) MIHINDUKULASURIYA GURUGE
JOSEPH MICHAEL DE LIVERA

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and

(2) CYRIL STANLEY FERNANDO

Respondents

C A S E FOR THE FIRST RESPONDENT

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1. This is an appeal from an order of the Supreme Court of Ceylon (Weerasooriya and Sinnetamby, JJ.) dated the 12th April, 1960, allowing the Respondents' appeals from a judgment of the District Court of Colombo (J.E.A. Alles, Esq.) dated the 2nd May, 1959, whereby the first Respondent was convicted of offering a gratification to W.J.C. Munasinghe, Member for Chilaw in the House of Representatives, as an inducement or reward for his doing an act in his capacity as such Member, contrary to s. 14(a) of the Bribery Act; the second Respondent was convicted of abetting this offence; and both Respondents were convicted of abetting the acceptance by Munasinghe of the said gratification as such an inducement or reward.

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pp.45-57

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2. The following section of the Bribery Act, No. 11 of 1954, as amended by the Bribery (Amendment) Act, No. 17 of 1956, is relevant to this appeal:

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"14. A person -

(a) who offers any gratification to a judicial officer, or to a member of either the

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Senate or the House of Representatives, as an inducement or a reward for such officer's or member's doing or forbearing to do any act in his judicial capacity or in his capacity as such member, or

(b) who, being a judicial officer or a member of either the Senate or the House of Representatives, solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his judicial capacity or in his capacity as such member,

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shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years or a fine not exceeding five thousand rupees or both:

Provided, however, that it shall not be an offence under the preceding provisions of this section for any trade union or other organisation to offer to a member of either the Senate or the House of Representatives, or for any such member to accept from any trade union or other organisation, any allowance or other payment solely for the purposes of his maintenance".

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pp.1-3

3. The indictment in the District Court of Colombo, dated the 6th February, 1959, charged the first Respondent with offering, on the 19th December, 1958 and the 22nd December, 1958, a gratification of Rs.5,000 to W.J.C. Munasinghe, the Member for Chilaw in the House of Representatives, as an inducement or reward for doing an act in his capacity as such Member, to wit, writing a letter to the Minister of Lands and Land Development requesting him to abandon a proposal to acquire the first Respondent's Vincent Estate at Chilaw, contrary to section 14(a) of the Bribery Act; and with abetting the acceptance of the said gratification by Munasinghe as an inducement or reward for doing the said act in his capacity as such Member. The second Respondent was charged with abetting the said offers by the first Respondent and the said acceptance by Munasinghe.

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4. The trial took place before Mr. A.F.J. Alles, an Additional District Judge, on the 28th, 29th and 30th April, 1959. The evidence for the Crown included the following:-

- (a) A.S. Navaratnarajah said that, as the local Government Agent, in December, 1958 he was directed to take steps to acquire the first Respondent's Vincent Estate. Sometime in that month the second Respondent brought the first Respondent to see him. The first Respondent was not in favour of the acquisition of his estate, and the witness told him that the initiation of the proposal to acquire it had come from the Member of Parliament for Chilaw. The witness also said that the final decision rested with the Minister of Lands and Land Development.
- (b) J.C.W. Munasinghe said that he had been elected as member of Parliament for Chilaw in 1956. He had known the second Respondent for about ten years, but had not known the first Respondent before these incidents. Towards the end of October, 1958 he had been present at a meeting of the local Rural Development Society, when a suggestion was made that the Vincent Estate be acquired for flood relief. He accordingly wrote a letter to the Minister on the 28th October, 1958, asking him to have this estate acquired. He delivered the letter by hand, and the Minister, also on the 28th October, 1958, directed immediate acquisition proceedings. On the 19th December, 1958 the second Respondent saw him at his house early in the morning, and told him that the first Respondent was anxious to be introduced to the witness and to prevent the acquisition of his land. He also said that the first Respondent intended to give the witness or his party or anyone he might nominate a present, if that was done. The witness thought he could inform the police, and told the second Respondent to return with the first Respondent at 7.30 p.m. During the afternoon he informed the police of what had happened, and arrangements were made for the police to be present that evening at his house. Two police officers, Mr. Ingram and Mr. Kuruppu, accompanied him to the house, and hid in a room adjoining the verandah with the door to the verandah ajar. Shortly after 7.30 p.m. the first and second Respondents arrived and the witness sat down with them on the verandah near that door. The first Respondent said that he valued the land to be acquired particularly, and would do anything to prevent

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p.8, 1.27 -
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p.9, 1.17-
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p.10, 11.7-
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p.12, 1.1

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- its being acquired; he would give the witness anything he wanted if he could prevent the acquisition of the land. At that moment the witness was called away to the telephone, and on his return the first Respondent said that he would give him Rs.5.000 in cash, to which the witness said he would give him a letter to the Minister withdrawing the application for acquisition. It was agreed that the Respondents would come to the house again at 9.30 p.m. on the 22nd December, when the letter would be handed over in exchange for the money. On the 22nd December, 1958 Superintendent Rajasuriya and Inspectors Kuruppu, Ingram and Fraser were present in hiding at the witness' house. The two Respondents arrived shortly after 9.30 p.m. The witness had prepared the suggested letter, and read it to the Respondents. The first Respondent said that letter was all right, but asked for a further letter addressed to him saying the land was unsuitable for acquisition. The witness wrote such a letter at the first Respondent's dictation. After further conversation, the witness handed the two letters to the first Respondent, who gave him a wrapped bundle in exchange. The witness said, "Mr. Livera, you are giving me this money for my giving you a letter withdrawing my request for the acquisition of your land". The first Respondent replied, "That is correct". As the Respondents started to leave Superintendent Rajasuriya emerged and asked the first Respondent for the letters. The witness said, "This is what happens to people who try to bribe the members of this Government". The Superintendent opened the wrapped bundle, which contained Rs.5.000.
- p.13, 1.22-
p.16, 1.40
p.87
- p.88
- pp.22-26
- pp.28-29
- p.30, 11.24-
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- (c) Inspector Ingram, of the C.I.D., described the conversations at Munasinghe's house on the 19th and 22nd December, 1958.
- (d) B.R.R. Abeykone, the local rural development officer, said he had been present at a meeting of the Rural Development Society on the 27th October, 1958, when Munasinghe had been asked to take steps for the Government to acquire the first Respondent's estate for settlement of flood victims.
- (e) Munasinghe was recalled to say that in his view he wrote to the Minister requesting the
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- 10 acquisition in his capacity as a Member of Parliament, and wrote the letter of the 22nd December 1958 in the same capacity. Even before becoming a Member of Parliament, he had made to the authorities any representations which needed to be made about the requirements of the electorate of Chilaw. He considered that he had attended meetings of the Rural Development Society, had opened schools and might have attended social functions in his capacity as a Member of Parliament. He had not made any study of constitutional law or Parliamentary practice.
- (f) Superintendent Rajasuriya, of the C.I.D., said that, as a result of a statement made by Munasinghe on the 19th December, 1958, he had arranged to have a conversation overheard at Munasinghe's house that evening. The witness went on to describe the meeting at Munasinghe's house on the 22nd December, 1958, when he had been present in hiding.
5. Neither Respondent gave evidence or called any witnesses.
6. The Additional District Judge delivered a reserved judgment on the 2nd May, 1959. He began by saying that the facts of the case were not seriously contested, and proceeded to set out the evidence. He was satisfied that the second Respondent had been aiding and abetting the first Respondent, even if he had said nothing at the interviews. There was, however, a legal issue involved; arising under s.14 of the Bribery Act. This issue, according to the learned Judge, was whether Munasinghe as Member of Parliament for Chilaw had the legal capacity to write the letters of the 28th October and 22nd December, 1958. If he had no legal capacity to write either letter, the Respondents would be entitled to be acquitted. The learned Judge said Munasinghe had not usurped the duty of the executive. As any private citizen had the right to write to the Minister suggesting a compulsory acquisition, so Munasinghe had not been legally incapacitated as a Member of Parliament from doing so. The learned Judge thought he was therefore bound to convict both Respondents. The first Respondent was sentenced to three months' imprisonment on each of three counts, the sentence to run consecutively, and the second Respondent to two

p.30, 11.34-46

p.32; 1.4-
p.33, 1.18

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months' imprisonment on each of three counts, also consecutively.

7. Both the Respondents appealed to the Supreme Court of Ceylon. The appeals were heard by Weerasooriya and Sinnetaamby, JJ. between the 21st January and the 2nd February, 1960. Judgment was delivered on the 4th April, 1960. The appeals were allowed and the convictions of both Respondents set aside.

pp.62-66	8. Weerasooriya, J. first recited the facts, and ss.14 and 15 of the Bribery Act. The question was whether the gratification of Rs.5,000 had been offered to Munasinghe for doing an act in his "capacity" as a Member of the House, within the meaning of s.14. The Additional District Judge had taken the view that Munasinghe's 'capacity' to write the two letters as a Member of Parliament was established by his freedom from any legal incapacity to do so, but the Crown had not tried to support that reasoning. It was common ground that if a Member did an act exclusively within his power to do as a Member, he did it in his capacity as such Member. The Crown contended that there were other acts which a Member might perform in his capacity as a Member, even though he might also perform those same acts in some other capacity. Munasinghe had admitted that he had habitually made representations to the authorities as a politician and a 'public man' even before he was elected to Parliament. He might have written the two letters, therefore, in his capacity as a Member, as a politician or a 'public man', or even as a private citizen. The only evidence to show in which capacity he had acted was that of Munasinghe himself. The fact that he had signed the letters as "M.P. Chilaw" was irrelevant, because he had used that description even when not purporting to act in his 'capacity' as a Member. There was no evidence that, when the two letters were written, any action in the House of Representatives was contemplated concerning acquisition of land for flood relief. Munasinghe's views, that, if he attended social functions, etc. to which he was invited because he was a Member, he thereby acted in his 'capacity' as a Member, were entirely misconceived. Neither he nor the first Respondent had given any thought to the 'capacity' in which the letters were to be written. Even on the Crown's view of s.14, therefore, it had not been established	10
p.66, 1.19- p.67, 1.43		
p.68, 11.27- 44		20
p.68, 1.45- p.69, 1.46		
p.69, 1.47- p.72, 1.17		30
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that the gratification had been offered to Munasinghe for doing an act in his 'capacity' as a Member.

9. The learned Judge went on to consider the proper construction of s.14. Counsel for the Respondents, he said, had argued that a Member acted in his 'capacity' as a Member only when exercising his functions as such, i.e. only when participating in proceedings in the House. Reference had been made to decisions of the House of Commons in England, and to judicial statements whether various matters were or were not 'proceedings in Parliament'. None of them afforded any precedent for holding that, in writing the letters of the 28th October and 22nd December, 1958, Munasinghe had acted in his 'capacity' as a Member. A Member acted in that capacity, Weerasooriya, J. held, only in the exercise of the functions of his office as a Member, and it had not been proved that Munasinghe had written either letter in the exercise of any such function.
10. Weerasooriya, J. finally dealt with the Crown's argument that the proviso to s.14 indicated that a Member might act in his 'capacity' as a Member even though not acting in the course of proceedings in the House. He held that in maintaining himself a Member was not doing an 'act' within the meaning of s.14. Otherwise, a Member might be doing an act in his 'capacity' as a Member in eating his lunch. A proviso was often inserted to allay unreasonable apprehensions of the effect of an enactment. The learned Judge concluded that the Crown had failed to prove that the gratification offered to Munasinghe was for doing an act in his 'capacity' as a Member.
11. Sinnetamby, J. agreed with the judgment of Weerasooriya, J.. He said consideration of ss.14, 15 and 22 of the Bribery Act supported the view that s.14(a) was confined to acts which a Member was able to do only by virtue of the legal powers vested in him as a Member. If an act fell outside the exclusive rights and powers of a Member of Parliament, it could not be said that in doing it a Member acted in his capacity as such Member. Had s.14 covered acts not strictly referable to a Member's exclusive legal powers, there would have been no need of s.15. The Bribery Act, moreover, was a penal enactment, so any doubt about its

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p.74, 1.51

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p.79 1.22

p.79, 11.23-48

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p.80; 1.19
p.81, 11.35-43

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interpretation had to be resolved in favour of the accused.

12. The first Respondent respectfully submits:

(a) that the construction placed by the Supreme Court upon section 14 of the Bribery Act is right.

(b) that the words 'in his capacity as such member' appearing in section 14 are words of limitation. It is not all acts which a member chooses to do that are acts done 'in his capacity as such member'. 10

(c) that acts done by a member in his capacity as a member of the House of Representatives must be limited to those acts which he is legally entitled to perform only by virtue of his being a member, i.e. to proceedings in Parliament. Acts which he could have done even though he were not a member (and the acts done by Munasinghe in this case were such acts) are not acts which come within the provisions of section 14. 20

(d) that the functions of the House of Representatives in Ceylon are set out in the Ceylon (Constitution) Order in Council, 1946, and in the Standing Orders framed under the said Order in Council, and the acts within the capacity of a member of the House of Representatives as such member must be limited to acts performed in the execution of such functions.

(e) that a strictly legal meaning should be given to the words 'in his capacity as such member', and there is no justification for giving to the words of section 14, which appear in a penal statute, so wide an interpretation as that for which the Appellant contends. 30

(f) that, in any event, and on any interpretation of section 14, the Supreme Court was right in holding that the Crown failed to discharge the burden of proving that the gratification was offered to Munasinghe as an inducement or reward for doing an act in his capacity as a member of the House of Representatives. 40

13. The first Respondent respectfully submits that the order of the Supreme Court of Ceylon was right

and ought to be affirmed, and this appeal ought to be dismissed with costs, for the following (amongst other)

R E A S O N S

1. BECAUSE it was not proved that the gratification offered to Munasinghe was offered to him as an inducement or reward for doing, or forbearing to do, an act in his capacity as a Member of the House of Representatives:
- 10 2. BECAUSE an act is not performed by a Member of the House of Representatives in his capacity as such Member unless it is a proceeding in Parliament:
3. BECAUSE an act is not performed by a Member of the House of Representatives in his capacity as such Member unless it is an act which he is entitled to perform only by virtue of being such a Member:
- 20 4. BECAUSE Munasinghe's act in writing the letter of the 22nd December, 1958 was neither a proceeding in Parliament nor an act which he was entitled to perform only by virtue of being a Member of the House of Representatives:
5. BECAUSE of the other reasons given by the learned Judges of the Supreme Court.

E. F. N. GRATIAEN

S. NADESAN

L. G. Le QUESNE.

No. 6 of 1961

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

THE ATTORNEY-GENERAL
OF CEYLON Appellant

- and -

(1) MIHINDUKULASURIYA
GURUGE JOSEPH
MICHAEL DE LIVERA
and
(2) CYRIL STANLEY
FERNANDO Respondents

CASE FOR THE FIRST RESPONDENT

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