

DON LIYERIS

v

**DIRECTOR-GENERAL OF THE COMMISSION TO INVESTIGATE  
ALLEGATIONS OF BRIBERY AND CORRUPTION**

COURT OF APPEAL  
BALAPATABENDI, J.  
BASNAYAKE, J.  
CA 55/98  
HC COLOMBO B/29097  
OCTOBER 20, 2005  
NOVEMBER 11, 2005  
JANUARY 16, 2006

*Bribery Act – sections 12, 19, 90, and 90(c) – Offence of bribery – Is it one of strict liability? – Should there be actus reus together with mens rea? – Bribery? – Donation to a community center? – Is it a bribe?*

**Held:**

However laudable the purpose for which the money is to be finally utilized and whatever his intentions were with regard to the use of the money, an offense is committed by a public servant under section 22 if he solicits or accepts any gratification for performing any official act.

**APPEAL** from the High Court of Colombo.

**Case referred to:**

(1) *Rupasinghe v Attorney-General* 1986 2 Sri LR 329.

*Dr. Ranjith Fernando with Deshani Jayathilaka and Amila Umayanganie for the accused-appellant.*

*Ms. M. Liyanage, Deputy Director-General of Bribery, the Bribery Commission.*

February 27, 2006

**JAGATH BALAPATABENDI, J.**

The accused-appellant was charged by an indictment as follows:

**Count (1)** that the accused-appellant on the 18.1.1996 whilst being the Chairman of the Homagama Pradeshiya Sabha did solicit from one Nalin Priyantha Perera a sum of Rs. 100,000/- as an inducement or gratification in order to grant approval for a Building Plan submitted to the said Pradeshiya Sabha, thereby committing an offense punishable under section 22 of the Bribery Act.

**Count (2)** related to the corresponding charge under section 19(c) of the Bribery Act as amended.

**Count (3)** that the accused-appellant on the 20th January 1996 whilst being the Chairman of the Homagama Pradeshiya Sabha did accept from one Nalin Priyantha a sum of Rs. 10,000/- as an inducement or gratification in order to grant approval for a Building Plan submitted to the said Pradeshiya Sabha, thereby committing an offence punishable under section 22 of the Bribery Act.

**Count (4)** related to the corresponding charge under section 19(c) of the Bribery Act as amended.

After conclusion of the trial the learned High Court Judge convicted the accused-appellant on all 4 counts as charged and sentenced him to 2 years R.I. and suspended the term of imprisonment for 10 years. In addition a fine of Rs. 5000/- and in default of the fine 06 months RI was imposed.

This appeal is preferred against the said conviction and sentence.

Facts of the case in brief are as follows: The evidence of the witness Nalin Priyantha Perera revealed that, a Building Plan submitted to the Homagama Pradeshiya Sabha by the witness on behalf of Nemico Industries had been rejected. When the witness

made representations to the Chairman of the said Pradeshiya Sabha the accused-appellant, had indicated that the approval of the Building Plan could be made if a donation of Rs.200,000/- is made to the construction of the Community Center in the area. Subsequently the witness has agreed to pay Rs.100,000/- as a donation for the construction of the community center. Thereafter the witness had lodged a complaint in the Bribery Commission and in consequence to the said complaint a raid had been carried out by the Officers of the Bribery Commission at the time the money (Rs.100,000/-) was handed over.

The witness has stated at page 37 as follows:-

- ප්‍ර ඊට පස්සේ තමුන් ගියා
- උ ඔහු මේ ප්‍රාදේශීය සභාවේ සභාපති තුමා මුණ ගැසීම සඳහා ගියා ඒ යන විට සභාපති තුමා ඉමුල්ගම ප්‍රදේශයේ පුරා ආලාචකව මුල් ගල් තැබීමට යාමට පුදානම් වෙමින් සිටියා පුරා ආලාචක වැඩ පිළිවෙලට අදාළ කටයුතු වල ඔහු නියැලී සිටින බව කීවා.
- ප්‍ර ඊට පස්සේ තමුන් ආ පිදවිය තමුන් කීවාද?
- උ කීවා. ඊට පස්සේ ඔහු කීවා අපි පුරා ආලාචක සඳහා වා තැනීම කටයුතු සඳහා මුදලක් ලබා දෙන්න කියා බල කිරීමක් කර සිටියේ නැත. මේම ගොඩනැගිලි සැලැස්ම අනුමත කර දෙන්න නම් අදාළ යෝජනා පුරා ආලාචක අරමුදල සඳහා යම් මුදලක් පරිත්‍යාග කරන්න කීවා.
- ප්‍ර ඒ මුදල කීයක් කියාද කීවේ?
- උ ලක්ෂ දෙකක් (රු 200,000/-) කීවේ

at page 40 the witness had stated as follows:

- ප්‍ර ඒ කියන්නේ මොකටද කැමති වුනා කීවේ?
- උ යෝජනා පුරාආලාචක ආධාර පිණිස රු ලක්ෂයක මුදලක් අරඹන ගොඩනැගිලි සැලැස්ම අනුමත කරවා දෙන්න ඔහු කැමති වුනා.

At the trial the accused-appellant had made a dock statement more or less admitting the facts stated by the Prosecution witnesses, and taken up a defence that the soliciting and accepting of the said money was 'bona fide' without any intention that it was solicited and accepted as a bribe or gratification. The witness Nalin Perera was informed by him that the donation was for the construction of the community center.

The only ground of appeal urged by the Counsel for the accused-appellant was that the learned Trial Judge erred in law by coming to a conclusion that "however laudable the purpose for which the money is to be finally utilized," and "what ever his intentions were with regard to the use of this money" an offence had been committed by a public servant under section 22 of the Bribery Act if he solicits or accepts any gratification for performing any official act."

The contention of the Counsel for the accused-appellant was that the offence of bribery is not one of 'strict-liability' but requires the usual elements of any offence viz: the '*actus-reus*' together with '*mense-rea*' should be established together to complete the commission of such an offence. The offence of bribery can only be committed by a person who not only commits the '*actus-reus*' but also does it with the required '*mens-rea*' (corrupt intention).

Further he contended that the definition given for 'bribery' in Modern legal usage (2 edition) by Garner is: 'The corrupt payment, receipt, or solicitation of a private favour for official action of the bribe-taker (or bribe-giver). Also "a 'bribe' is a reward or favour given or promised to a person in a position of trust in order that the person's judgment will be skewed or conduct corrupted in one's favour." Thus, he submitted that the learned High Court Judge had come to a finding that section 22 of the Bribery Act contemplates a 'Strict liability' offence and mere act or the '*actus reus*' was sufficient enough to constitute an offence under the section.

The contention of the Counsel for the Complainant-respondent was that the interpretation given in the provisions of section 90 and 90(c) of the Bribery Act constitutes the offence committed by the accused-appellant. The witness Nalin Perera had stated that the accused-appellant solicited a sum of Rs. 200,000/- and subsequently brought down to Rs. 100,000/- and accepted the same amount to grant an approval for the Building Plan; where he is not authorized by law or any other Regulations to solicit or to accept any money in discharge of an official act.

In support of her contention the Counsel cited the decision in the case of *Rupasinghe v Attorney-General*<sup>(1)</sup>.

Now I would like to examine the findings of the learned High Court Judge in his judgment. At the outset the learned High Court Judge

after analysis of the evidence in the case has posed a question; viz "Can a public servant solicit or accept any money from any person who comes to get an official act done however laudable the purpose for which the money is to be finally utilized? Clear answer to this question is 'No'. According to the section 22 of the Bribery Act, soliciting any gratification for performing any official act is an offence."

The learned High Court Judge finally had come to a correct conclusion on analysis of evidence that the accused-appellant solicited a sum of Rs. 100,000/- from the witness (Nalin Perera) for performing an official act, to wit: - the approval of the Building Plan, whatever his intentions were with regard to use of this money.

So it is clear from the findings in the Judgment that the learned High Court Judge had dealt with the question of '*mense-rea*'.

Thus I do not agree with the contention of the Counsel for the accused-appellant, that the above mentioned findings were incorrect in law.

Further, I would like to mention the remark he had made in his Judgment, which I fully endorse that "in terms of the Bribery Act section 22 soliciting and accepting money by a public servant from a person who comes to get an official act done as an inducement for performing an official act, is a bribe. If not public officers could be come collecting agents for various charities and other organizations from the public who come to them to get official work done by them."

For the reasons aforesaid, I am of the opinion that the findings of the learned High Court Judge in his Judgment were correct in law and on facts.

**BASNAYAKE** – I agree.

*Appeal is dismissed.*