

A. B. Samarakoon v The Attorney – General 78 NLR 438, (SC 52/75, DC- Colombo 197/B) (3/SC) Decided on 08/12/1976

Section 16 of the Bribery Act - any person who being a Police Officer employed in any capacity for the prosecution, detection or punishment of offenders accepts any gratification as an inducement, for such officer protecting from detection or punishment the perpetrator of any offence shall be guilty of the offence of bribery

Tennekoon, C. J., with Vythialingam, J. and Ratwatte, J. agreeing,

Facts;

The accused appellant was indicted on four charges related to solicitation and acceptance of gratification amounting to bribery within the meaning of section 16 of the Bribery Act. After trial the appellant was acquitted on the first 3 charges but was found guilty on count 4 and was sentenced to rigorous imprisonment and to a fine. The appellant appealed on the conviction.

The only appeal submission made by the appellate counsel was that the prosecution failed to establish that the person who gave the bribe was the “perpetrator” of an offence within the meaning of section 16 of the Bribery Act. Which means that the word “perpetrator” can in the context only mean a person who has actually committed an offence, not those who are alleged to have or are suspected of having committed an offence.

Held;

The gratification should be accepted upon a condition express or implied operating in the officer's mind, at the time of the acceptance of the gratification that the giver or some other person will obtain some benefit or immunity from the officer in the performance of the duties of his office. It is not necessary in a charge under this section for the prosecution to establish the existence of an actual perpetrator of an offence. It is sufficient if there is a suspected, alleged or hypothetical perpetrator of an offence.

Bultjens and Poothathamby vs. The Attorney-General, S.C. 18-19-75; rejected that the words 'perpetrator of an offence' appearing in section 16 of the Bribery Act, in the context which they appear must be given a meaning to include those who have committed an offence as well as those who are alleged to have or are suspected of having committed an offence.

Appeal dismissed. The conviction and the sentence was affirmed.