

Attorney General v. Michael De Livera, Privy Council Appeal No. 6 of 1961, S. C. 31 A-B-D. C. (Criminal) Colombo, N 1939, (5/SC), Decided on 5/11/1962

Bribery Act (No. 11 of 1954)-Section 14 (a)-Bribery of a member of Parliament- Quantum of evidence- " In his capacity as such member "-Ceylon (Constitution) Order in Council, 1946, ss. 18, 27, 46, 49 (2)-Parliament (Powers and Privileges) Act (No. 21 of 1953), ss. 7, 8.

Viscount Radcliffe, with Lord Evershed, Lord Jenkins, Lord Devlin, and Mr L. M. D. de Silva agreeing.

The respondents were found guilty in the District Court of Colombo of offences under this section, the first respondent, de Livera, of having offered a gratification to a Mr Munasinghe, member for Chilaw in the House of Representatives, and the second respondent, Fernando, of having abetted the offence. They were sentenced to terms of rigorous imprisonment for 9 and 6 months respectively. These convictions were set aside on appeal to the Supreme Court of Ceylon by a judgment dated 12th April, 1960, the learned Judges of that Court being of opinion that the gratification offered to Mr Munasinghe by the first respondent was not offered to him as an inducement for doing any act in his capacity as a member of the House of Representatives.

This appeal raises for decision a single point: What is the proper interpretation of the words " in his capacity as such member " which appear in Section 14 (a) of the Ceylon Bribery Act (No. 11 of 1954) ? The " member " referred to is a member of the Senate or the House of Representatives and the section, as amended by the addition of a proviso that was added in 1956, runs as follows :-

" A person-

(a) who offers any gratification to a judicial officer, or to a member of either the 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 doing or forbearing to do any act in his judicial capacity or in his capacity as such member, 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 organization 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 organization any allowance or other payment solely for the purposes of his maintenance. "

Held,

that, where the facts show clearly 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, 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.

In interpreting the meaning of the words of the Bribery Act which speak of the capacity of a member of the House of Representatives it is proper to draw any assistance that can be obtained from practices, conventions or rulings that govern the conduct of members of the House of Commons of the United Kingdom. Although the Constitution of Ceylon is laid down by a written instrument, unlike that of the United Kingdom, this distinction is not of any significance for the determination of what is the "capacity" of a member of Parliament in either country.

Appeal allowed.