

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC**  
**OF SRI LANKA**

In the matter of an Appeal under and in terms of Section 331 of the Code of Criminal Procedure Act No.15 of 1979 read with relevant provisions of the Bribery Act and Article 138 of the Constitution of the Democratic Socialist Republic Socialist Republic of Sri Lanka.

Director General,  
Commissioner to Investigate Allegations of  
Bribery or Corruption,  
No. 36, Malalasekara Mawatha,  
Colombo 07.

**Complainant**

**Court of Appeal Case No:**

**HCC 307/2018**

*HC Colombo: HCB 05/2017*

**V.**

Akmeemana Obata Mudalige Ananda  
Wijesena alias Akmeemana Obada Mudalige  
Ananda Wijesekara,  
Bogahayaya, Kuruvithenna,  
Mahiyanganaya.

**Accused**

**AND NOW BETWEEN**

Akmeemana Obata Mudalige Ananda  
Wijesena alias Akmeemana Obada Mudalige  
Ananda Wijesekara,  
Bogahayaya, Kuruvithenna,  
Mahiyanganaya.

**Accused-Appellant**

**V.**

Director General,  
Commissioner to Investigate Allegations of  
Bribery or Corruption,  
No. 36, Malalasekara Mawatha,  
Colombo 07.

**Complainant-Respondent**

**Before:** Menaka Wijesundera, J.  
B. Sasi Mahendran, J.

**Counsel:** Anil Silva, PC with Amaan Bandara and Shaluka Neranga for the  
Accused- Appellant  
Sudharshana De Silva, DSG with Udari Kumarihamy, CIABOC for the  
Respondent for the Respondent

**Written** 16.01.2020 (by the Accused-Appellant)

**Submissions :** 29.01.2020 (by the Respondent)

**On**

**Argued On:** 22.09.2023

**Decided On:** 14.11.2023

**Sasi Mahendran, J.**

The Accused-Appellant (hereinafter referred to as Accused) was indicted before the High Court of Colombo on the following four Counts under section 19 (b) and (c) of the Bribery Act for soliciting and accepting gratification as a reward or inducement whilst the Accused was employed as an Agrarian Research and Production Assistant.

- i. On or about 02nd February 2010 at Pinnagolla within the jurisdiction of this Court you being a public servant to wit Agrarian Research and Production Assistant did solicit a gratification of a loan in a sum of Rs. 20,000/- from Disanayaka Mudiyansele Gamini Wickramaratna as an inducement or reward to perform an official duty namely to provide the report necessary to obtain water to the plantation of Disanayaka Mudiyansele Gamini Wickramaratna and thereby committed an offence punishable under Section 19(b) of the Bribery Act.
- ii. At the time place and in the course of the transaction referred to in Charge 1 you being a public servant to wit Agrarian Research and Production Assistant did solicit a gratification of a loan of Rs. 20,000/- from Disanayaka Mudiyansele Gamini Wickramaratna and thereby committed an offence punishable under Section 19(c) of the Bribery Act as amended.
- iii. On or about 05th February 2010 in the course of the transaction referred to in Charge 1 at Meegahakiwula within the jurisdiction of this Court you are being a public servant to wit Agrarian Research and Production Assistant did accept a gratification of a loan in a sum of Rs. 20,000/- from Disanayaka Mudiyansele Gamini Wickramaratna through Sedillage Don Karunadasa Wickramaratna as an inducement or reward to perform an official duty namely to provide the report necessary to obtain water to the plantation of Disanayaka Mudiyansele Gamini Wickramaratna and thereby committed an offence punishable under Section 19(b) of the Bribery Act.
- iv. At the time place and in the course of the transaction referred to in Charge 3 you being a public servant to wit Agrarian Research and Production Assistant did accept a gratification of a loan in a sum of Rs. 20,000/- from Disanayaka Mudiyansele Gamini Wickramaratna through Sedillage Don Karunadasa

Wickramaratna and thereby committed an offence punishable under Section 19(c) of the Bribery Act.

Prosecution led the evidence of eight witnesses, marking productions P1 to P10. The Accused gave evidence and subjected himself to cross-examination. One defense witness was called, and the defence closed the case marking productions V1 to V11.

After the trial, the Learned High Court Judge of Colombo Acquitted the Accused from the 1<sup>st</sup> and the 3<sup>rd</sup> Count but convicted the Accused on both the 2<sup>nd</sup> and the 4<sup>th</sup> Counts and sentenced to,

- a. 3 years of rigorous imprisonment on both counts, the sentence to run concurrently.
- b. To a fine of Rs.5000 for each count in default One-year rigorous imprisonment.
- c. In addition, a penalty of Rs.20,000 in terms of section 26 of the Bribery Act.

Being aggrieved by the aforesaid conviction and sentence, the Accused preferred an appeal to this Court.

**The following grounds were urged by the learned counsel for the defence in his written submission.**

- a. Has the prosecution proved the case against the Accused appellant beyond reasonable doubt?
- b. Does the evidence clearly demonstrate that the Complainant was acting with animosity towards the Accused Appellant because he performed his official duties in accordance with the law?
- c. Has the Learned Trial Judge failed to take into consideration matters favourable to the Accused Appellant and thereby have the Accused Appellants been deprived of a fair trial?

- d. The Learned High Court Judge has not considered the defence evidence in accordance with the guidelines set out by Your Lordships Court.
- e. The Learned High Court Judge has drawn adverse inferences from the defence evidence/ defence documents which were not borne out in the High Court Trial and thereby there has been a denial of a trial?
- f. Even assuming without conceding that a loan was requested it does not amount to a gratification within the meaning of the law and the circumstances of this case. Has the failure of the Learned High Court Judge to consider this aspect occasioned a miscarriage of justice?

**The facts and circumstances giving rise to this appeal are that:**

In his evidence, retired police officer Gamini Wickramarathna aimed to secure a water pipeline for his banana plantation. To obtain the necessary permissions, he approached Palliyaguruge Susantha, the Agrarian Development Officer of the Rideemaliyedda area. Mr. Susantha introduced him to the Accused, who held the position of Agrarian Research Development Officer in the Pinnagolla area at the time. The Accused was suggested as the person to provide a report for this purpose.

Subsequently, Mr. Susantha advised the complainant to prepare a project report. Following this, Mr. Susantha requested Rs. 25,000, explaining that it was necessary for superior officers to visit the site and approve the project report.

It is alleged that after receiving the project report on February 2, 2010, the Accused visited the site, contacted the complainant, and requested a loan of Rs. 20,000, promising to repay it within a week. Due to a lack of funds, the complainant borrowed money from Athnayaka Mudiyansele Somaratna and Karunadasa Wickramaratna.

According to the allegations, the Accused was unable to repay the loan as per the agreement, leading Wickramaratna to file a complaint against the complainant for failing to return Rs. 20,000 on April 30, 2010, at the Mahiyanganaya police station.

The complainant asserts that despite his repeated requests, the Accused never returned the money. Additionally, it is claimed that the Accused refused to grant

permission for the water supply required for cultivation, citing various reasons. Consequently, on May 7, 2010, the Complainant filed a complaint against the Accused Appellant at the Mahiyanganaya Police Station.

On July 22, 2011, more than a year and a half after the Accused allegedly received Rs. 20,000, the complainant lodged a complaint with the Bribery Commission, leading to the opening of an inquiry based on this complaint.

The central issue in question pertains to whether mere acceptance of “gratification” in the absence of any evidence to demonstrate that the said “gratification” was accepted as a result of or pursuant to some ulterior reason such bribery or corruption would suffice to penalize the Accused under of Section 19(c) of the Bribery Act.

**In the Bribery Act, Section 19 ( c ) read as follows.**

*A person;*

*c. who being a public servant solicits or accepts any gratification,*

*shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.*

*Provided however, that it shall not be an offence for a public servant to solicit or accept any gratification which he is authorized by law or the terms of his employment to receive.*

According to Section 90 of the Bribery Act, gratification encompasses the following:  
Gratification includes,

*a. Money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable.*

*b. Any office, employment or contract*

*c. Any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part,*

*d. Any other service, favour or advantage of any description whatsoever including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already*

*instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty, and*

*e. Any offer, undertaking or promise of any gratification, within the meaning of the preceding paragraphs (a), (b), (c) and (d)*

According to the learned High Court judge, the prosecution need not to prove that the loan (gratification) was sought specifically for fulfilling official duties. Instead, the judge emphasized that merely presenting evidence of the acceptance of gratification by the government servant is sufficient to substantiate the charge.

The following excerpt of the judgment of the learned High Court Judge (at p502 ) depicts the same:

“මීට අනුරූපව 19 (ඇ) වගන්තිය යටතේ ඇති වෝදනා ඔප්පු කිරීම සඳහා එම වෝදනාවන්හි සඳහන් දින සහ ස්ථානයන්හි දී විත්තිකරු විසින්ම රජයේ සේවකයෙකු එනම් කෘෂිකර්.ම පරියේෂණ හා නිෂ්පාදන සහකාර වන නිලධාරියෙකු වශයෙන් සේවයේ යෙදී සිටියදී එකී වෝදනාවන්හි සඳහන් මුදල පැ .සා. 01 ගෙන් ලබාගත් බවට හෝ අයැද සිටි බව ඔප්පු කළ යුතු වේ. මෙම 19 (ඇ ) වගන්තිය යටතේ වන 2 වන සහ 4 වන වෝදනා ඔප්පු කිරීම සඳහා මෙම මුදල අයැද සිටීම තුටු පඩුරක් වශයෙන් අයැද සිටි බව ඔප්පු කළ යුතු වන අතර එය කිසියම් හෝ රාජකාරියක් හෝ කටයුත්තක් සිදු කිරීම සඳහා පොළබවීමක් හෝ ත්‍යාගයක් වශයෙන් අයැද සිටි බව හෝ ලබා ගත් බවක් ඔප්පු කිරීමේ අවශ්‍යතාවයක් නැත.”

It should be noted that the Accused was acquitted of the 1st and 3rd counts because there was insufficient evidence to establish beyond a reasonable doubt that the money taken as a loan could be classified as gratification.

This is made clear in the following excerpt from the Judgement of the Learned High Court Judge in his Judgement **at Page 203**;

“විත්තිකරු විසින් මුදලක් අයැද සිටින්නේ මුදල් හදිස්සියක් සඳහා ණයක් වශයෙන් බව පැමිණිලිකරුගේ ස්ථාවරය වේ. ඒ අනුව මෙම මුදල අයැද සිටීම සෘජුව යම් රාජකාරියක් සිදු කිරීමට පෙළඹවීමක් හෝ ත්‍යාගයක් වශයෙන් ඉල්ලන ලද තුටු පඩුරක් වශයෙන් සෘජුව සාක්ෂි හෙළිදරව් වන්නේ නැත..”

Therefore, the Accused was acquitted of the 1st Count because there was no evidence to demonstrate that the money taken as a loan could be directly construed as an inducement for gratification.

In this case, the Learned Trial Judge acquitted the Accused on the 1st and 3rd counts due to the absence of Prosecution evidence establishing that the money demanded by the Accused constituted solicitation or gratification for obtaining the report.

According to The Learned high Court judge in his judgement **On the Page 501 of the Appeal brief;**

“එකී 19 (ආ) වගන්තිය යටතේ වන චෝදනා ඔප්පු කිරීම සඳහා එම චෝදනාවන් වල සඳහන් නිල කටයුතු එනම්, වගාවකට ජලය සපයා ගැනීම සඳහා බලපත්‍ර වලට නිදේශීය ලබා දීම සඳහා පොළඹ විමක් වශයෙන් එකී චෝදනාවන් වල සඳහන් තුටු පඩුරු ඇයද සිටි බව හෝ ලබා ගත් බව ඔප්පු කළ යුතු වේ.”

The issue at hand is whether the Learned High Court Judge could convict the Accused under Section 19(c) of the Bribery Act without evidence that the loan was given by the complainant as an inducement for the Accused to perform any official work.

Section 19(c) of the Bribery Act states that any public servant who accepts any gratification is guilty of an offence. In this case, the Accused obtained a loan from PW01, and he was convicted. The Learned High Court Judge determined that the Accused was a government servant who received a loan from PW01. Based on this finding, the Accused was convicted of the charge.

According to learned judge **On the Page 515 of the Appeal brief**

“ඒ අනුව පැමිණිල්ල විසින් විත්තිකරු රජයේ සේවකයෙකු ලෙස සිටියදී එම නිලයේ සිටීම යන කරුණ භාවිතා කොට පැමිණිල්ලකරුගෙන් 2010 පෙබරවාරි 02 වන දින රුපියල් විසිදහසක් අයැද සිට ඇති බවත්, ඉන් අනතුරුව 2010.02.05 වෙනිදා එම මුදල පැ.සා 02 කරුණාදාස මගින් ලබා ගත් බවද, එම මුදල අයැද සිටීම සහ භාර ගැනීම තුටු පඩුරක් වශයෙන් ලබා ගෙන ඇති බව සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කර ඇති බව තීරණය කරමි. ඒ අනුව පැමිණිල්ල විසින් 02 04 චෝදනා සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කර ඇති බව තීරණය කරමි.”

Section 19(c) of the Bribery Act places the burden on the Prosecution to establish two key elements beyond reasonable doubt: firstly, that the Accused-appellant was a state officer, and secondly, that he accepted gratification. Furthermore, this gratification should serve as an inducement or reward for the performance of any official act. The term "inducement" is explicitly mentioned in the section.



In the absence of evidence demonstrating that the particular loan was obtained as a bribe or for corruption, or for any other such ulterior reasons it is my considered opinion that the Learned High Court judge may have overlooked the essential element of this offense under Section 19(c) of the Bribery Act.

A similar view was expressed by His Lordship Justice T.S. Fernando in **In Karunaratne v. The Queen, 69 NLR 10 at page 19,**

*"In respect of the second charge of which the appellant has been convicted, Mr. Chitty complains, again not without justification, that it would appear that the trial Judge has once again misapprehended a question of law, this time the nature of the offence charged. The second charge is referred to by the learned Judge as " a straight-forward charge that the Accused being a public servant did solicit from Piyasena a gratification of Rs. 100". He goes on to say, " this solicitation is itself an offence ". If by this he meant that all that the prosecution had to prove was that the public servant did solicit a gratification, I fear that one element of the offence under section 19 (c) has been overlooked. "Gratification" has been the subject of definition in the Act (vide . section 90), but throughout carries with it here a sinister and not an innocent connotation. If the words " any gratification which he is not authorised by law or the terms of his employment to receive " are given the widest possible interpretation of which they are capable, then a public servant who accepts a personal gift from a friend, relative or neighbour, or for that matter a birthday present from his wife, would be guilty of an offence under the Act. It would be absurd to have to reduced oneself to the position that such gifts are within the mischiefs which the Act was designed to punish. Some limitation upon the wide words of the section was obviously intended by the Legislature. However wide the words of a statute may appear to be, they must be given an interpretation that accords with the intention of the Legislature. This rule of interpretation is formulated in Maxwell, ibid, at pp. 58-59 as follows :-*

*"It is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject-matter. While expressing truly enough all that the legislature intended, they frequently express more in their literal meaning and natural force ; and it is necessary to give them the meaning which best suits the scope and object of the Statute without extending to ground foreign*

*to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter."*

*This portion of Section 19(c) of the Bribery Act clearly indicates that it aims to penalize the solicitation or acceptance of gratification other than legal gratification. It implies that there may be situations where legal gratification is acceptable, but the offense occurs when there is a solicitation or acceptance of gratification that goes beyond what is legally acceptable. In such cases, the person involved must be acting as a public servant.*

*The underlying problem that this part of the section seeks to address is the act of soliciting or accepting gratification while acting as a public servant. In other words, it pertains to situations where a public servant is carrying out their duties in their capacity as a public servant."*

This proposition was followed by **His Lordship Vythialingam, in R. J. B. Fernando v. Republic of Sri Lanka 79 I NLR page 545 in page 548, ,**

*" Mr. Gunasekera who appeared for the Accused-appellant submitted that the Bribery Act does not define the term gratification. The defining section merely states that the forms which a gratification could take as including the forms set out in the section. Mr. Gunasekera submitted that having regard to the preamble to the Act and the definition of the terms, the word gratification when used in the Act means no more nor less than a bribe, and as such, there must be some element of perversion and/or corruption in the conduct. He argued that there must be some element of moral turpitude and that an acceptance of a mere irregular payment would not come within the meaning of the term gratification as used in the Act. He submitted that if the term gratification was given a wide meaning so as to include any gratification then a public servant who accepted an innocent gift would be guilty of bribery.*

*A similar argument was advanced before the Supreme Court in the case of Karunaratne v. The Queen, 69 N.L.R 10. In a charge under section 19 (c) as it originally stood the trial Judge had said that the charge " was a straightforward charge that the Accused being a public servant did solicit from Piyasena a gratification of Rs. 100 " and that " this solicitation is itself an offence.*

*..... Further, he held that*

*I am of the view that this same limitation should be applied to the term gratification in sections 19 and 21 as well. Otherwise, it would be illogical. To come within the meaning of the term gratification in the section it should be other than a legal gratification. Was then the gratification in the instant case a gratification " other than a legal gratification ? " Omitting words which are not relevant for the purpose, section 19 (b) read with sub-section (a) sets out that a public servant who solicits or accepts any gratification as an inducement or a reward for his assisting any person in the transaction of any business with the government shall be guilty of an offence."*

**Justice Abeyesundere, in H. J. Gregory Perera v. The Queen, 69 NLR 431 at page 432 held that,**

*"There must also be some evidence to show that the appellant is not authorised by law to solicit or accept a gratification of the kind referred to above.*

*Crown Counsel who appears for the Attorney-General submits that the Court can take judicial notice of any law. In establishing a charge under Section 19 (c) of the Bribery Act what the prosecution has to prove is, inter alia, that there is no law authorising the Accused to solicit or accept the gratification mentioned in the charge. It is not possible for any Court to take judicial notice of the absence of such a law. We are satisfied that the prosecution has failed to lead evidence necessary to establish one ingredient of the offence alleged in the indictment. Therefore, we set aside the conviction of the appellant and the sentence passed on him and acquit him."*

In light of the aforementioned judgment, it becomes evident that the Learned High Court Judge, in his ruling, acknowledged the absence of evidence regarding inducement to obtain the report. Despite this, he proceeded to convict the Accused for the 2nd and the 4th Counts.

Upon careful consideration, we are convinced that the Prosecution did not present the requisite evidence to establish one crucial element of the alleged offense as stated in the indictment.

Therefore, for the foregoing reasons, guided by the wisdom of our superior courts, we set aside the conviction and sentence and acquit the Accused.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**