

Hameed V.The Queen 70 NLR 19

M. A. Hameed and another **Appellants**, and the Queen, **Respondent**, S. C. 3-4/66-D. C. Gampaha (Bribery), 1/B. APPEAL from a judgment of the District Court, Gampaha.

G. P. A. SILVA, J. SIVA SUPRAMANIAM, J agreeing

Facts

1st accused-appellant was charged with the following offence, namely, that while being a Public Servant, Police Sergeant No. 1775, Meegahawatta Police, did accept from one B. P. Seiman a gratification of a sum of Rs. 25 which gratification he was not authorized by law or the terms of his employment to receive, and that he thereby committed an offence punishable under section 19 read with section 89 (b) of the Bribery Act. The 2nd accused-appellant was charged with having, as a Public Servant, to wit, Police Constable No. 26, Meegahawatta Police, abetted the 1st accused in the commission of the said offences. Both the accused were convicted of the said charges.

Held

That there was no evidence in the case that the 1st accused was not authorized by law or the terms of his employment to receive the said gratification. In the absence of such evidence, he submitted, the conviction could not be sustained, and for this submission he relied on the recent Divisional Bench decision in *Mohamed Auf v. The Queen* [(1967) 69 N. L. R. 337.] in which it was held that the burden of proving that the acceptance of a gratification was not authorized by the terms of the employment lay on the prosecution and that in the absence of such evidence the prosecution could not maintain this charge. Counsel for the Crown however sought to distinguish the present case from the Divisional Bench case.

Decision to convict the accused was arrived at without proof of one of the necessary ingredients of the offence, namely, that the acceptance of the gratification was not authorized by law or the terms of employment of the 1st accused. Therefore, no sufficient reason to distinguish the principle involved in this case from that of the Divisional Bench case referred to in regard to the proof of the essential ingredients of the offence.

Therefore, the accused-appellants were acquitted for the conviction and sentence.. Appeal allowed.