

## **MohamedAuf v The Queen ,69NLR10**

Mohamed Auf, **Appellant**, and The Queen, **Respondent**, S. C. 5/67-D. C. Kandy, B/3, a judgment of the District Court, Kandy.

### **Facts**

The appellant was indicted on 2 counts as follows :-

1. That on or about the 13th day of February, 1963, at Katugastota, in the division of Kandy, being a public servant Inspector of Schools, Department of Education, did accept a gratification of a sum of Rs. 30 from Namasivayam Vathavooar as an inducement for performing an official act, to wit, making an endorsement on the Teacher's Certificate of the said Namasivayam Vathavooar and thereby guilty of an offence punishable under section 19 of the Bribery Act.
2. That at the time and place aforesaid and in the course of the same transaction being a public servant, to' wit, Inspector of Schools, Department of Education, did accept a gratification of a sum of Rs. 30 from the said Namasivayam Vathavooar which gratification not authorized by law or the terms of the employment to receive and that thereby guilty of an offence punishable under section 19 of the Bribery Act, and was convicted by the learned District Judge of Kandy on both counts. He was sentenced to imprisonment for one year on each count, sentences to run concurrently and to a fine of Rs. 25 on each count and to pay a penalty of Rs. 30.

### **Held**

The endorsement on the teacher's certificate after inspection has to be similar to the entry made in the school log book. However, rule 130 in chapter 15 of the inspectors manual provides that such an endorsement can be skipped in certain specified certificates, which includes the "certificates of teachers employed in estate schools". Therefore, the Defendant was not required by the rule to make the endorsement that he did. The fact that he previously endorsed the same certificate sufficed to establish that the making of the endorsement was referable to his official capacity.

The expression " official act" when it occurs in s 19 of the Bribery Act does prima facie appear to have been uses in any connotation different from the same expression found in s158 of the Penal Code. The meaning of the above was considered in the case of *de Souza v Suraweera* , where it was held that a police officer who obtained a gratification upon a representation that he would favor a person at a police inquiry could not be convicted of an offence under s 158 if the officer knew he had no official function to perform at the inquiry. A similar decision was reached in the case of *Tennakon v Dissanayake*.

According to Abeyesundara J, s24 of the Bribery Act was intended to extend the application of s 19 to two situations in which s19 would not by itself apply. First s19 only applies when a gratification is offered or accepted in connection with the performance or abstaining from performance of an act which is an official act in the strict sense that some public servant does not have the power by virtue of his office to perform, rendering the acceptor guilty notwithstanding he did not actually have the power to act or that

he did not intend to or so do the act. The fact to be proved for the purposes of s19 is the acceptance of a gratification as an inducement or reward for performing an official act. With regards to s24 what needs to be proved is that a public servant accepted a gratification and the public servant had grounds to believe or suspect something, which is the consideration for the offer of the gratification, provided there is a reasonable belief that the consideration is of the same nature.

In the case of *Podi Singhir v. The Queen*, the grounds for the acquittal of the accused in appeal was that the threat of prosecution. It was an idle one, because the person threatened had not committed an offence known to the law. In view of the scope of s24, the grounds for the decision in the above case must be overruled. The offence defined by s19(c) is that of accepting an unauthorized gratification and one of the ingredients of the offence is the fact that the gratification accepted is an unauthorized one. S106 casts on a person the burden of proving any act which is especially within his knowledge in this case there is no evidence to show that the appellant was aware of the terms of his employment. On the contrary, those terms are within the knowledge of the government which the appellants employer and on whose behalf the petition in this case was lodged. Therefore, the conviction and sentence passed on the first count should be affirmed while the conviction and sentencing in the second count should be set aside