

5,1950

No. 37 of 1949.

31256

In the Privy Council.

ON APPEAL
FROM THE HIGH COURT OF THE COLONY OF SINGAPORE
(ISLAND OF SINGAPORE).

UNIVERSITY OF LONDON
W.C.1.
9 - NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

- 1. MOHINDAR SINGH
2. MOHAN SINGH

Appellants

AND

THE KING

Respondent.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

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ON APPEAL
FROM THE HIGH COURT OF THE COLONY OF SINGAPORE
(ISLAND OF SINGAPORE).

BETWEEN

1. MOHINDAR SINGH

2. MOHAN SINGH

Appellants

AND

10 THE KING

Respondent.

RECORD OF PROCEEDINGS.

No. 1.

NOTICE OF APPEAL.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE
(ISLAND OF SINGAPORE).

1st District Court.

Cases Nos. 350 & 351.

REX

Appellant

Against

20 1. MOHAN SINGH

2. MOHINDAR SINGH

Respondents.

NOTICE OF APPEAL.

To: The Honourable the Justices of the High Court of the Colony of Singapore.

The Deputy Public Prosecutor, Singapore, hereby gives Notice of Appeal against the inadequacy of the sentences of the 1st District Judge in the above-mentioned cases on 11th April, 1949.

Dated at Singapore this 12th day of April, 1949.

By the Authority of His Majesty's Attorney-General.

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(Sgd.) A. D. FARREL,

Deputy Public Prosecutor.

The address for service of the above-named Appellant is the Attorney-General's Chambers, Singapore.

In the High Court.

No. 1.
Notice of Appeal,
12th April
1949.

*In the
High Court.*

No. 2.

FOUNDATIONS OF JUDGMENT of District Judge.

No. 2.
Grounds of
Judgment
of District
Judge,
22nd April
1949.

1st District Court.

Cases Nos. 350 and 351 of 1949.

Magistrate's Appeal No. 42 of 1949.

REX

Vs.

1. MOHAN SINGH
2. MOHINDAR SINGH.

This appeal is against the sentences imposed. I shall not in these 10
Grounds of Judgment deal with the evidence except in so far as it
particularly affects sentence.

Very briefly the Crown case was that on the morning of 24th February
an officer of the Imports and Exports Department (P.W. 1) received by
telephone an invitation to lunch from a stranger, a representative of a
firm Phoola Singh & Co. P.W. 1 met this man (Accused 1) for lunch out
of curiosity and was offered \$7,000/- in return for improperly permitting
the importation of certain goods without examination. P.W. 1 agreed
to accept the bribe and arranged for the first instalment to be paid to him
at his hotel the following morning at 11 a.m. The first instalment was to 20
be \$5,000/- in cash in exchange for a cheque which would be returned or
destroyed when the importation was complete; when the balance of
\$2,000/- would be paid.

That afternoon P.W. 1 returned to his office but made no report
of the incident. His reasons for not reporting were, one, that he thought
it was tom-foolery and, two, he wanted to wait and see whether Accused 1
took any further step to show that Accused 1 was in earnest. However,
at 9.30 a.m. next morning, without any further indication or communica-
tion from Accused 1, P.W. 1 reported to his superior Mr. Walker (P.W. 2)
and thereafter a trap was laid. P.W. 1 was instructed to put off Accused 1 30
until some time the following week. This he did. No evidence was given
as to the excuse given by P.W. 1 for the delay.

The following week on 1st March, 1949, P.W. 1 met Accused 1 by
arrangement at a café where a police officer was keeping watch. Accused 1
was accompanied by Accused 2. At this meeting Accused 2 handed to P.W. 1
five sets of documents relating to the goods which were to be imported
and two \$1,000/- notes in return for a cash cheque and reiterated the
request previously made by Accused 1. As soon as this was done the
two accused were arrested.

The goods in question which were lying in the Harbour Board were 40
later examined and found not to be in accordance with the documents.
The documents related to good quality textiles, the goods were mere
remnants.

Accused 1 is registered as the Manager of the firm of Phoola Singh & Co.
in Singapore but it appeared from the evidence that he is in fact little
more than a clerk. Accused 1 said that P.W. 1 had, on the 23rd February,
accosted him in Change Alley and offered "assistance". This was denied
by P.W. 1. If this is untrue then Accused 1 did, as the prosecution
alleged, offer a bribe to a complete stranger.

Offences of this nature are I consider extremely serious and as a rule merit long terms of imprisonment but I agreed with the learned Deputy Public Prosecutor that probably Accused 1 was not the prime mover in this affair. Accused 1 is only 23 years of age, has a previously clean record and was until a very few months ago a student.

In the High Court.
No. 2.
Grounds of Judgment of District Judge, 22nd April 1949, continued.

The facts of this case are quite unlike those in *Lee Lye Seng v. Rex* (Magistrate's Appeal, No. 184 of 1948) where the learned Judge said "It is in the public interest to avoid imprisoning first offenders whenever practicable" but after taking into account the youth of Accused 1, his inexperience and the encouragement admitted to have been given by P.W. 1 I decided that it would be wrong to impose a long term of imprisonment.

Rather than impose a short term of imprisonment for so serious an offence I decided to impose only a substantial fine. The fine I imposed was \$3,000 which in the circumstances was perhaps somewhat lenient having regard to the supposed value of the goods concerned (as shown by the documents) and the magnitude of the bribe offered. The second charge (abetment of Accused 2) concerned merely a further step in the transaction and for this I did not consider it appropriate to impose more than a nominal penalty.

Accused 2 was convicted of giving the bribe of \$2,000/-. There was no evidence, apart from the request he made to P.W. 1 (that the goods might be imported without examination) to connect him with the firm of Phoola Singh & Co. His evidence and that of Accused 1 was that he was merely providing the \$2,000/- to assist Accused 1. Although I considered there must have been some other connection between this man and the goods which were to be imported, there was as I have said no evidence and I did not consider I should be justified in imposing on Accused 2 a punishment more than one-third as severe as that I imposed on Accused 1.

In addition to these punishments I ordered confiscation of the two \$1,000/- notes.

Dated this 22nd day of April 1949.

District Judge.

No. 3.

PETITION OF APPEAL.

To: The Honourable the Justices of the High Court of the Colony of Singapore.

No. 3.
Petition of Appeal,
6th May 1949.

THE PETITION of the ATTORNEY-GENERAL, Colony of Singapore,

40

Showeth as follows:—

1. The Respondents herein were charged before Mr. E. P. Shanks, First District Judge, First District Court, Singapore as follows:—

"You, Mohan Singh, are charged that you, on or about the 1st day of March, 1949, at Singapore, did corruptly give to one Leonard James Wood, of the Imports and Exports Dept., Singapore, the sum of \$2,000.- cash, as an inducement for showing favour

*In the
High Court.*

No. 3.
Petition of
Appeal,
6th May
1949,
continued.

in relation to his principal's affairs, namely, by arranging for the passing of a number of Import Declarations as listed in the schedule attached hereto without there being endorsed thereon a direction for further examination of the said declaration by Mr. Boyd, the Textile Adviser, and thereby committed an offence punishable under Section 3 (b) of the Prevention of Corruption Ordinance No. 41 of 1937.

SCHEDULE.

	DATE	IMPORTED BY	FROM	SS.	CONSIGNMENT	
1.	3.1.49	Phoola Singh & Co.	U.S.A.	Flying Clipper	55 Bales Cotton Duck.	10
2.	3.1.49	do.	do.	do.	56 do. do.	
3.	26.1.49	do.	do.	Soestdijk	100 do. numbered 1-100	
4.	26.1.49	do.	do.	do.	100 do. No. 101-200.	
5.	26.1.49	do.	do.	do.	170 Bales fibre yarn unbleached.	

and

“ You, Mohindar Singh, are charged that you, on or about the 25th day of February, 1949, at Singapore, did corruptly agree to give to one Leonard James Wood of the Imports and Exports Dept., Singapore, the sum of \$7,000.— as an inducement for showing 20
favour in relation to his principal's affairs, namely, by arranging for the passing to you of certain unspecified Import Declarations for the import of cloth without there being endorsed thereon a direction for further examination of the said declarations by Mr. Boyd, the Textile Adviser, and thereby committed an offence punishable under section 3 (b) of the prevention of Corruption Ordinance, No. 41 of 1937.

Alternative to 1st Charge.

“ You, Mohindar Singh, are charged that, whereas one Mohan Singh on or about the 1st of March, 1949, at Singapore, did corruptly 30
give to Leonard James Wood of the Imports and Exports Dept., Singapore, the sum of \$2,000.— cash as an inducement for showing favour in relation to his principal's affairs, namely by arranging for the passing of Import Declarations, as listed in the schedule attached hereto, without there being endorsed thereon a direction for further examination of the said declarations by Mr. Boyd, the Textile Adviser, you Mohindar Singh, abetted the commission of the said offence which was committed in consequence of your abetment, and thereby committed an offence punishable under section 3 (b) in association with section 9 of the Prevention of 40
Corruption Ordinance, No. 41 of 1937.

SCHEDULE.

	DATED	IMPORTED BY	FROM	S.S.	CONSIGNMENT	
1.	3.1.49	Phoola Singh & Co.	U.S.A.	Flying Clipper	55 Bales Cotton Duck.	
2.	3.1.49	do.	do.	do.	56 do. do.	
3.	26.1.49	do.	do.	Soestdijk	100 do. numbered 1-100	
4.	26.1.49	do.	do.	do.	100 Bales Cotton Duck numbered 101-200.	
5.	26.1.49	do.	do.	do.	170 Bales fibre yarn unbleached.	50

respectively.

2. The Respondents each claimed trial to the charges hereinbefore set forth. At the conclusion of the hearing on the 11th April, 1949, the said Respondents were convicted and sentenced as follows :—

Respondent No. 1, Mohan Singh :—

Fine \$1,000.— to be paid on or before 19th April, 1949.

Respondent No. 2, Mohindar Singh :—

Charge I—fine \$3,000.— to be paid on or before 19th April, 1949.

Charge II—fine \$10.—

3. Your Petitioner is dissatisfied with the judgment of the learned
10 District Judge on the following ground :—

That a sentence of fine only in the circumstances of this case is manifestly inadequate as a deterrent of similar offences.

4. Your Petitioner prays that such judgment or order may be reversed or annulled or that such order may be made thereon as justice may require.

Dated at Singapore this 6th day of May, 1949.

By the Authority of His Majesty's Attorney-General.

(Sgd.) A. D. FARRELL,
Deputy Public Prosecutor.

20 The address for service of the above-named Appellant is the Attorney-General's Chambers, Singapore.

No. 4.

CERTIFICATE of result of Appeal.

30 IN accordance with the provisions of Section 313 (1) of the Criminal Procedure Code I hereby certify that the Appeal of the Deputy Public Prosecutor against the inadequacy of sentences imposed by E. P. Shanks, Esq., District Judge was called on for hearing on the 1st day of June 1949 before the Honourable the Chief Justice and after reading the Case stated by the said Magistrate the transcript of the evidence the adjudication and conviction and after hearing Mr. A. D. Farrell Counsel for the Appellant and Mr. F. R. N. H. Massey and Mr. R. H. Green Counsel for the Respondents

IT WAS ORDERED that the sentence of fine be enhanced by the addition of a sentence of 18 months r.i. in respect of the first Respondent and 12 months r.i. in respect of the second Respondent.

Given under my hand and the Seal of the Supreme Court this 1st day of June 1949.

(Sgd.) E. W. NIND,
Dy. Registrar.

*In the
High Court.*

No. 3.
Petition of
Appeal,
6th May
1949,
continued.

No. 4.
Certificate
of result of
Appeal,
1st June
1949.

FOUNDATIONS OF JUDGMENT of Murray-Aynsley, C.J.

No. 5.
Grounds of
Judgment
of Murray-
Aynsley,
C.J.,
8th June
1949.

**FOUNDATIONS OF JUDGMENT
of MURRAY-AYNSLEY, C.J.**

This was an appeal by the Public Prosecutor on the ground of inadequacy of sentence. The Respondents were convicted as follows :—

Respondent No. 1

(1) that he, on or about the 24th day of February, 1949, at Singapore, did corruptly agree to give to one Leonard James Wood of the Imports and Exports Department, Singapore, the sum of \$7,000/- as an inducement for showing favour in relation to his principal's affairs, namely, by arranging for the passing to him of certain unspecified Import Declarations for the import of cloth without there being endorsed thereon a direction for further examination of the said declarations by Mr. Boyd the Textile Adviser, and thereby committed an offence punishable under Section 3 (b) of the Prevention of Corruption Ordinance, No. 41 of 1937. 10

(2) that, whereas one Mohan Singh on or about the 1st day of March, 1949, at Singapore, did corruptly give to Leonard James Wood of the Imports and Exports Department, Singapore, the sum of \$2,000/- cash as an inducement for showing favour in relation to his principal's affairs, namely, by arranging for the passing of Import Declarations, as listed in the Schedule under-mentioned, without there being endorsed thereon a direction for further examination of the said declarations by Mr. Boyd the Textile Adviser, he abetted the commission of the said offence which was committed in consequence of his abetment, and thereby committed an offence punishable under Section 3 (b) in association with Section 9 of the Prevention of Corruption Ordinance, No. 41 of 1937. 20 30

Respondent No. 2

that he, on or about the 1st day of March, 1949, at Singapore, did corruptly give to one Leonard James Wood, of the Imports and Exports Department, Singapore, the sum of \$2,000/- cash, as an inducement for showing favour in relation to his principal's affairs, namely, by arranging for the passing of a number of Import Declarations as listed in the schedule under-mentioned, without there being endorsed thereon a direction for further examination of the said declarations by Mr. Boyd, the Textile Adviser, and thereby committed an offence punishable under Section 3 (b) of the Prevention of Corruption Ordinance No. 41 of 1937. 40

The sentences were in the case of the Respondent Mohindar Singh a fine of \$3,000 on the first charge and a fine of \$10 on the second charge. The other Respondent Mohan Singh was fined \$1,000. The fines were paid.

The facts were briefly as follows. Mohindar Singh was, at material times, the representative in Singapore of a firm named Phoola Singh which seems to have had its headquarters in Bangkok. This firm had obtained permits for the importation from the United States of a very large quantity of textiles and also a release of a corresponding quantity 50

of U.S. dollars to pay for them. It appears that the goods shipped were of a kind different from that for which the permits had been given and that the value of the goods shipped would have been very much less than that of the kind of goods that should have been shipped. The consequence of this would be that the U.S. dollars released for the purchase would not all be needed. The goods shipped had arrived in Singapore and all that was necessary was for the goods to get past the customs here in order to complete the transaction. In order to get past the customs it was necessary to avoid examination. If the goods were examined the whole
 10 scheme would be discovered. The documents show that very large sums of money were involved.

It was in these circumstances that Mohindar Singh offered \$7,000 to one Leonard James Wood, a subordinate employee of the Department controlling imports and exports. For this Wood was to refrain from putting on the papers a "chop" which would cause the goods to be examined. There was a conflict of evidence as to whether Wood did or did not make the first approach. It seems clear that in the early stages Wood was an accomplice. Later Wood changed his attitude and gave
 20 information to his superiors with the result that a trap was laid. At a subsequent meeting between Mohindar Singh and Wood the other Respondent Mohan Singh was present. There Mohindar Singh handed the documents relating to the goods in question to Wood. Wood handed a cheque to Mohindar Singh and Mohan Singh handed two notes each for \$1,000 to Wood. At this point the Police intervened and all three were arrested.

The evidence is sufficient to show that the attempt to bribe Wood was part of a larger scheme to acquire illegally a very large sum in American currency. How far the Respondents were involved in the larger scheme is immaterial. They were involved in a deliberate attempt to bribe a
 30 Government officer and the magnitude of the bribe offered shows that they knew a large amount was at stake.

In a case of this kind where monetary gain is the object of the offence, a pecuniary penalty is seldom a satisfactory method of punishment. A fine is an expense which those who commit this sort of offence are prepared to incur if the prospects of gain are good enough. I do not think that indiscriminate severity is called upon in these cases, but the present case is undoubtedly a serious one of its kind, and too small penalties are merely an inducement to others to do the same thing. I consider that a substantial sentence is necessary in both cases. Therefore, I enhanced the sentences
 40 by ordering 18 and 12 months R.I. respectively, in addition to the fines already imposed.

(Sgd.) C. M. MURRAY-AYNSLEY,
 Chief Justice,
 Singapore.

Singapore, 8th June, 1949.

*In the
 High Court.*

No. 5.
 Grounds of
 Judgment
 of Murray-
 Aynsley,
 C.J.,
 8th June
 1949,
continued.

*In the
Privy
Council.*

No. 6.

ORDER of His Majesty in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE

The 25th day of November 1949.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT.

Mr. TOM WILLIAMS.

VISCOUNT HALL.

MAJOR MILNER.

No. 6.
Order of
His
Majesty in
Council
granting
Special
Leave to
Appeal,
25th
November
1949.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 31st day of October 1949 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Appellants in the matter of an Appeal from the High Court of the Colony of Singapore (Island of Singapore) between (1) Mohindar Singh (2) Mohan Singh Appellants and Your Majesty Respondent setting forth (amongst other matters) : that the Petitioners pray for special leave to appeal against the Order and Judgment of the High Court made in the exercise of its appellate criminal jurisdiction and dated respectively the 1st and 8th June 1949 whereby it enhanced the sentences passed on the Petitioners by the First District Judge of the First District Court at Singapore on the 11th April 1949 : that the Petitioners were convicted on the 11th April 1949 by the First District Judge of offences under the Prevention of Corruption Ordinance (Straits Settlements Ordinance No. 41 of 1937) : that the first Petitioner was sentenced to two fines of \$3,000 and \$10 : that the second Petitioner was fined \$1,000 and the sum of \$2,000 given by him as a bribe was ordered to be confiscated : that the Public Prosecutor having appealed to the High Court against these sentences upon the ground of their inadequacy the High Court increased the sentences by passing on the first Petitioner a further sentence of 18 months' rigorous imprisonment and on the second Petitioner a further sentence of 12 months' rigorous imprisonment : that it is submitted that the Appeal by the prosecution was incompetent and that the Appellate Court had no jurisdiction to entertain such Appeal or to make any order thereon other than an order of rejection thereof : And humbly praying Your Majesty in Court to grant the Petitioners special leave to appeal from the Order and Judgment of the High Court dated respectively the 1st and 8th June 1949 or for such other Order as to Your Majesty in Court may seem just :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Court have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal

against the Order and Judgment of the High Court of the Colony of Singapore dated respectively the 1st and 8th days of June 1949 but that the Appeal ought to be limited to the questions whether the Appeal by the prosecution was incompetent and whether the Appellate Court had jurisdiction to entertain such Appeal or to make any order thereon other than an order of rejection thereof :

10 “ And Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Colony of Singapore for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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E. C. E. LEADBITTER.

*In the
Privy
Council.*

No. 6.
Order of
His
Majesty in
Council
granting
Special
Leave to
Appeal,
25th
November
1949,
continued.