

27/1962

1.

IN THE PRIVY COUNCIL

No. 6 of 1961

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

THE ATTORNEY GENERAL
OF CEYLON Appellant

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

- and -

1. M.G.J.M. de LIVERA
2. CYRIL STANLEY FERNANDO
Respondents

10 **68215** CASE FOR THE APPELLANT

Record

1. This is an appeal, by special leave granted on the 21st November 1960, from the Judgment and Order of the Supreme Court of Ceylon (Weerascoriya and Sinnetamby, J.J.), dated the 4th April, 1960, whereby the Supreme Court, upon an appeal by the Respondents above-named against the Judgment and Order of the District Court of Colombo, dated the 2nd May, 1959, acquitted the Respondents setting aside the said Judgment and Order of the District Court by which the first and second Respondents had been found guilty of several offences punishable under section 14 of the Bribery Act.

p.61, l.22 -
p.84, l.4

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2. This appeal raises the question as to whether the existing law of Ceylon is adequate to prevent attempts at the corruption of members of the Parliament of Ceylon. The principal ground of this appeal is that the Judgment and Order of the Supreme Court were based upon a wrong interpretation of the words "in his capacity as such member" (viz. Member of Parliament) contained in section 14(a) of the Bribery Act under which the Respondents were tried.

p.45, l.29 -
p.57, l.4

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3. The Respondents were tried together in the District Court, Colombo on 28th and 29th April and 2nd May 1959 on an indictment, dated 9th February 1959, preferred against them by the Attorney General

Record

of Ceylon in which the following offences were charged:-

p.1, 1.20 -
p.3, 1.16

- "1. That on or about the 19th day of December 1958 at Dalugama Kelaniya within the jurisdiction of this Court, you Mihindukulasuriya Guruge Joseph Michael de Livera the first accused above named did offer a gratification to wit a sum of Rs.5,000/- to Welikala James Charles Munasinghe Member for Chilaw in the House of Representatives as an inducement or a reward for his doing an act in his capacity as such Member to wit: addressing a letter to the Hon'ble C.P. de Silva Minister of Lands and Land Development, requesting him to abandon the proposal for the acquisition of Vincent Estate, Chilaw, and that you are thereby guilty of an offence punishable under Section 14(a) of the Bribery Act No.11 of 1954. 10
2. That at the time and place aforesaid you Cyril Stanley Fernando the second accused above-named did abet the offence set out in count one and that you are thereby guilty of an offence punishable under Section 14(a) read with Section 25(2) of the Bribery Act No.11 of 1954. 20
3. That on or about the 22nd day of December 1958 at Dalugama Kelaniya within the jurisdiction of this Court, you Mihindukulasuriya Guruge Joseph Michael de Livera, the first accused above-named did offer a gratification to wit: Rs.5,000/- to Welikade James Charles Munasinghe Member for Chilaw in the House of Representatives, as an inducement or a reward for his doing an act in his capacity as such member to wit: addressing a letter to the Hon'ble C.P. de Silva Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent estate, Chilaw and that you are thereby guilty of an offence punishable under Section 14(a) of the Bribery Act No.11 of 1954. 30 40
4. That at the time and place set out in count three you Cyril Stanley Fernando the

second accused abovenamed did abet the offence set out in count three and that you are thereby guilty of an offence punishable under Section 14(a) read with Section 25(2) of the Bribery Act No.11 of 1954.

10 5. That at the time and place set out in count three you Mihindikulasuriya Guruge Joseph Michael de Livera the first accused abovenamed did abet the acceptance of a gratification to wit, Rs.5,000/- by Welikala James Charles Munasinghe Member for Chilaw in the House of Representatives as an inducement or a reward for his doing an act in his capacity as such member to wit, addressing a letter to the Hon. C.P. de Silva Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent estate, Chilaw and that you are thereby
20 guilty of an offence punishable under Section 14(b) read with Section 25(2) of the Bribery Act, No.11 of 1954.

30 6. That at the time and place set out in count three you Cyril Stanley Fernando the second accused abovenamed did abet the acceptance of a gratification to wit, Rs.5,000/- by Weligala James Charles Munasinghe, Member for Chilaw in the House of Representatives, as an inducement or a reward for his doing an act in his capacity as such member to wit, addressing a letter to the Hon'ble C.P. de Silva Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent estate Chilaw and that you are thereby
40 guilty of an offence punishable under Section 14(b) read with Section 25(2) of the Bribery Act No.11 of 1954."

40 4. Welikade James Charles Munasinghe named in the indictment was at all material times the elected member for the House of Representatives of the Parliament of Ceylon for the constituency of Chilaw.

5. Section 14 of the Bribery Act No.11 of 1954 as amended by the Bribery (Amendment) Act No.17 of 1956 (the amendment being the addition of the proviso) reads as follows:-

Record

"14. 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 his judicial capacity or in his capacity as such member, 10

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." 20

Section 89 of the said Act provides:-

"For the purposes of this Act a person offers a gratification if he or any other person acting with his knowledge or consent directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any gratification to or for the benefit of or in trust for any other person." 30

Section 91 of the said Act includes the following definitions:-

"gratification includes

(a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any 40

description, whether movable or immovable.

* * * *

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

6. The relevant facts of the case appear in the following extracts from the evidence and judgments:-

10 (a) Extracts from the evidence of Abeykone, formerly Rural Development Officer in the Chilaw area:

"I was the rural development officer in this area in question for about 5½ years. I was in Chilaw in that capacity until the end of 1958. There is a village headman's division called Ichampitiya. I was working in Chilaw Pitigal Korale North.

p.28, l.23 -
p.29, l.29

20 In 1958 a number of people within my area were rendered homeless as a result of flooding. There were a number of people who had no houses to live in.

30 There is a rural development society functioning in the Ichampitiya Village Headman's division. As a rural development officer it is one of my duties to attend the meetings of this society. On 27.10.59 there was a meeting of this particular rural development society. I myself was present at that meeting. Mr. Munasinghe M.P. for Chilaw was one of those present at that meeting. A discussion took place as to how the problem of the landless in that area could be solved. A resolution was also passed that Government should acquire an estate to settle the flood refugees in that estate. The estate suggested to be acquired was one Martin estate belonging to Mr. Livera and Mr. Munasinghe was asked to take steps for the Government to acquire that land."

Cross-Examined by Mr. Nadesan -

40 "There are other lands available beyond that of Mr. Livera

Record

Q. Why was this particular estate picked for acquisition?

A. The rural development society chose this estate because the people who were landless lived round about this area.

I understand that certain portions of Mr. Livera's land also go under water during floods. As far as I can remember these people wanted the Government to acquire an estate and then there was a discussion on this.

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Q. Was any formal resolution of any kind passed by the rural development society to acquire a certain land?

A. I think a resolution was passed that Mr. Munasinghe should take steps to acquire Mr. Livera's land.

In the course of the discussion at the meeting this Martin Estate was mentioned by the people and not by Mr. Munasinghe."

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(b) Extract from the evidence of Munasinghe, the Member of Parliament concerned, also as to the meeting deposed to by Abeykone:

p.9, 1.17 -
p.10, 1.1

"Representations were made by the Rural Development Society of Sangathatana in Etchampitiya V.H.'s Division at their meeting to acquire this particular land called Vincent Estate owned by Mr. Livera. I too was present at their meeting. The resolution passed at the meeting was that this Vincent Estate consisting of about 175 acres and which is a part of Martin Estates Co. Ltd., be acquired for flood relief. I cannot remember when this meeting was held, but it was somewhere in the latter half of October 1958. After that meeting in consequence of the representations made to me I formed the opinion that this estate was suitable for acquisition. I therefore decided to write to the Minister regarding this matter. I wrote to the Minister of Lands and Land Development Mr. C.P. de Silva in this connection on 28.10.58 (shown letter Pl). Pl is the letter I wrote to Mr. C.P. de Silva. It is dated 28.10.58. The Rural

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10 Development Society meeting must have been held before 28.10.58 (Counsel reads P1). On this letter I see an endorsement made by Mr. C.P. de Silva; I am acquainted with his handwriting. The endorsement in P1 is in Mr. C.P. de Silva's handwriting and it bears his signature. That endorsement is dated 28.10.58, which is also the date of this letter. I took P1 by hand to Mr. C.P. de Silva at his office and suggested to him that alienation might be in $\frac{1}{2}$ acre blocks and asked him to acquire this land under the special provisions of the Acquisition Act so that immediate possession of the land may be taken."

(c) Extract from the judgment of Weerasooriya J. given in the Supreme Court:

20 "At the material time Mr. Munasinghe was the Member for Chilaw in the House of Representatives. He was also the Chief Government Whip and General Secretary of the Sri Lanka Freedom Party. Vincent Estate is situated within his constituency and was owned by the 1st accused. On the 28th October, 1958, Mr. Munasinghe addressed to the Minister of Lands and Land Development the letter P1 strongly recommending as a matter of urgency the acquisition of the Vincent Estate for alienation to the inhabitants of certain villages in the Chilaw District who had been displaced from their homes as a result of floods. P1 bears the printed heading "House of Representatives" and is signed by Mr. Munasinghe as "M.P. Chilaw". At the time the Minister of Lands and Land Development Mr. C.P. de Silva, was the authority empowered under the Land Acquisition Act, No.9 of 1950, to initiate acquisition proceedings and to give the necessary directions in that behalf. The question whether Vincent Estate should be acquired or not was, therefore, primarily a matter for him.

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p.62, 1.29 -
p.64, 1.43

On the representations contained in P1 the Minister decided that Vincent Estate should be acquired, and he gave the following directions, to the Land Commissioner: "For early action. M.P. Chilaw asks this land for alienation in $\frac{1}{2}$ acre lots for people who got ruined by the floods and those people of Chilaw town who have employment but no houses to live in.

Record

Please take acquisition proceedings immediately". Soon afterwards the Government Agent, Puttalam, called for a report from the Divisional Revenue Officer regarding the proposed acquisition. Before that report was received, the 1st accused who, presumably had learnt of the steps that were being taken, saw the Government Agent. The object of the visit was clearly to dissuade the authorities from proceeding with the acquisition. The 1st accused told the Government Agent that the estate, in part, was itself liable to floods and therefore not suitable for a housing scheme. The Government Agent referred the 1st accused to Mr. Munasinghe as the Member of Parliament for Chilaw and the person who put forward the proposal to acquire the estate, and he also informed the 1st accused that the final authority on the question whether it should be acquired or not was the Minister of Lands and Land Development.

It is the evidence of Mr. Munasinghe that prior to the 19th December, 1958, the 1st accused was a stranger to him, but he had known the 2nd accused well from about 1947, when Mr. Munasinghe became Chairman of the Madampe Town Council, in which office he continued till 1956 except for a short break of about three months. During that period the 2nd accused was the Secretary of the Madampe Town Council and closely associated with Mr. Munasinghe, whom he often visited in his bungalow. At the time of the alleged offences, however, the 2nd accused was the Secretary of the Puttalam Urban Council while Mr. Munasinghe was residing in Kelaniya. It may be inferred that the 1st accused knew the 2nd accused and also the latter's previous association with Mr. Munasinghe. According to Mr. Munasinghe, the 2nd accused came to his house in Kelaniya on the morning of the 19th December, 1958. The 2nd accused said that he came at the instance of the 1st accused, who was "pestering" him for an introduction to Mr. Munasinghe, that the 1st accused was anxious that his estate should not be acquired and was prepared to give Mr. Munasinghe or his party or any person nominated by Mr. Munasinghe a present of money if the acquisition was stopped. Mr. Munasinghe stated that he

requested the 2nd accused to come with the 1st accused at 7.30 p.m. on the same day and the 2nd accused went away promising to do so. In the meantime Mr. Munasinghe got in touch with the Police and it was arranged for some Police officers to be present in concealment at the house of Mr. Munasinghe within hearing distance of any conversation that would take place between him and the accused when they met in the evening. Mr. Munasinghe has stated in evidence that at that meeting the 1st accused offered him Rs.5,000/- in cash to stop the acquisition, that he undertook to give the 1st accused on the 22nd December, at about 9.30 or 10 p.m., being the date and time fixed for their next meeting, a letter addressed to the Minister of Lands and Land Development withdrawing his earlier application for the acquisition of the estate, in return for which the 1st accused was to hand him the sum of Rs.5,000/-.

On the 22nd December the Police were again present, unknown to the accused, when the latter came to see Mr. Munasinghe as arranged. On that occasion Mr. Munasinghe gave the 1st accused the letter P3 addressed to the Minister in which he withdrew his application for the acquisition of the estate, stating that it was not suitable for housing purposes as a part of it gets submerged during seasonal floods. P3 is written on notepaper bearing the printed heading "Chief Government Whip" and is signed by Mr. Munasinghe as "M.P. Chilaw". The 1st accused took the letter and handed to Mr. Munasinghe a wrapped parcel, P6, containing the Rs.5,000/-. As for the 2nd accused, apart from being present, he neither did nor said anything. When the accused were about to depart the Police officers came forward, disclosed their identity and took into custody, among other things, the letter P3 and the parcel P6.

The facts as set out above have been accepted by the trial Judge and were not challenged in appeal."

- (d) Extract from the judgment of the learned trial Judge (Alles ADJ):

Record
 p.50, l.25 -
 p.51, l.30

"After the accused had taken their respective seats Mr. Munasinghe read out the letter P3 dated the 22nd of December which had been drafted for him for the occasion. This letter is written on notepaper headed "Chief Government Whip House of Representatives Building" and is dated the 22nd of December 1958. The subject of the letter is written at the top of the letters as "Withdrawal of Application for Acquisition of Wilson estate alias Vincent estate, part of Martin estate, Chilaw". It is addressed to the "Hon. C.F. de Silver Minister of Lands and Land Development Colombo". It is signed by "J.C.W. Munasinghe M.P. Chilaw." It reads "My dear C.P. Objections have been raised against the acquisition of Wilson estate, Chilaw owned by Mr. Livera of Titus Stores, Colombo on the grounds that the land in question gets submerged during the Deduru Oya floods and is not suitable for housing purposes. I have inspected the land and I find a stream leading from Deduru Oye running across the land and during floods it overflows its banks and inundates the land on either side. Under the circumstances I hereby withdraw the application I made to you for alienation of this land. There is plenty of land available in the area North of Aluthwatte where we have already acquired four acres of land. I suggest that the Government agent be directed to acquire available high land North of Aluthwatte beyond the railway line and the proposed acquisition of Mr. Livera's estate be dropped. Trusting this will meet with your immediate attention. Yours sincerely, J.C.W. Munasinghe M.P. Chilaw". The 1st accused was satisfied with this letter but being a keen business man and knowing that if P3 was handed to Mr. C.P. de Silva he had no document in his own hand he suggested that Mr. Munasinghe should write a letter to him as if in reply to an earlier letter written by him to Mr. Munasinghe which he promised to give to him later. Thereupon at the 1st accused's dictation Mr. Munasinghe sat down and wrote the letter P4 also dated the 22nd of December. In this letter Mr. Munasinghe purports to write "Dear Mr. Livera: With reference to your letter of the 20th instant regarding the acquisition of your land I have made inquiries

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at the spot with regard to the objections you raise in your letter and find them to be correct. I enclose herewith a letter to Mr. C.P. de Silva to drop the matter and request the G.A. to find alternate sites in areas that do not get affected by floods". Thereafter the 1st accused took out a bundle from his trouser pocket and gave the bundle to Mr. Munasinghe on his handing over the letters P3 and P4 in the "On Her Majesty's Service" envelope P5 addressed to the Hon. C.P. de Silva Minister of Lands, Colombo."

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- (e) Extract from the evidence of the said Munasinghe with reference to his second meeting, on the evening of 22nd December 1958, with the First Respondent:

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"(Shown P3 a letter dated 22.12.58). This is the letter which I had got ready. This letter is signed by me. It is not my handwriting. I dictated this letter to a boy who is in my house and he wrote it (P3 is read). I had not inspected this land and found that a stream was running across this land. I merely put down the suggestions the 1st accused had given me. As I had promised to have a letter on the lines indicated by him I had this letter ready for him. After the 1st and 2nd accused came to my house on the 22nd the first matter in the conversation was about this letter. I read out the letter to the accused with difficulty as the light was very faint. The 1st accused said that the letter was all right."

p.14, 11.32-46

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- (f) Extract from the evidence of Gunawardene Land Commissioner:

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"As Land Commissioner, as soon as I receive the G.A.'s report stating that the land could be acquired I write to the M.P. of the area where the land is situated to find out his views and that is a matter of routine. We write to the M.P. of the area because generally as the representative of the people of the area he might be able to advise us."

p.35, 11.5-12

7. The learned trial Judge found both Respondents guilty on all the counts in the indictment and sentenced them to various terms of rigorous imprisonment which, in the case of the 1st Respondent

p.56, 11.41-48

Record

p.45, ll.31-32

aggregated to 9 months and, in the case of the 2nd Respondent to 6 months. As to the facts proved by the prosecution, the learned trial Judge stated as follows:- "I might say at the very outset that the facts simply cannot be contested." On the law, the learned trial Judge took a view of section 14 of the Bribery Act which was not supported by the Crown before the Supreme Court and which, in the submission of the Appellant, is erroneous. The learned trial Judge appears to have taken the view that any act of a member of Parliament that was not legally incompetent for him to perform as such member came within the meaning of the phrase "in his capacity as such member" in section 14(a) of the Bribery Act. The reasoning of the learned trial Judge is seen from the following concluding passage in his judgment:

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p.54, l.23 -
p.56, l.5

"..... but the question to be decided in this case is whether Mr. J.C.W. Munasinghe is legally incompetent or legally "incapacitated" from doing the act which he did as a Member of Parliament he wrote the letter P1 and P3 to the Hon. Minister of Lands. Just as a Judge, who has not taken his oaths as a Judge or who has no jurisdiction to try a particular case has no legal capacity to try such a case, can it be said that Mr. Munasinghe had no legal capacity as Member of Parliament to write the above letters to the Minister? The accused would certainly be entitled to an acquittal at the hands of this Court if Mr. Munasinghe as Member of Parliament usurped to himself the executive powers of the Minister of Lands and chose to write to the Land Commissioner directing him to take steps to acquire the 1st accused's land or if he chose to write to the Land Commissioner directing him to take steps to acquire the 1st accused's land or if he chose to write to the Land Commissioner directing him not to take steps to acquire this land. In such an event Mr. Munasinghe the Member of Parliament would certainly not have the legal capacity to act in that manner. The position here is entirely different. Mr. Munasinghe M.P. has not usurped the functions of the executive. All he has done is to suggest to the executive authority as M.P. for Chilaw that a certain land in his electoral area be acquired to give relief to flood victims also in his

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electoral area. It is left entirely to the executive authority to act or not on this request made by the Member of Parliament. This is the sort of request even a private citizen can make to an executive authority. Seeing the distress suffered by flood victims in the residential area where I live I as a private citizen can suggest to the Minister of Lands to acquire a particular vacant premises for their occupation. If a private citizen can do exactly what Mr. Munasinghe M.P. has done, can it be said that Mr. Munasinghe has no legal capacity to do this act as Member of Parliament for the area? It is true that Mr. Munasinghe M.P. can make the same suggestion that has been made in the letters P1 and P3 to the Minister in Parliament and this is a right which a private citizen who is not an M.P. does not have but merely because as M.P. has the right to make this suggestion to a Minister in Parliament is he thereby legally "incapacitated" as M.P. from making the same suggestion to the Minister outside the House of Representatives. I have carefully perused the various constitutional authorities submitted to me by Learned Counsel the various functions of a Member of Parliament as a constituent of the Legislature have been set out, but nowhere is it stated that his capacity as a Member of Parliament to make a suggestion of this nature ceases once he leaves the floor of the House. In my opinion Mr. Munasinghe was not legally competent or legally "incapacitated" as Member of Parliament from writing the documents P1 and P3 to the Hon. Minister of Lands and Land Development. In the result I have no alternative but to find the accused guilty of the charges laid against them."

8. The Respondents appealed to the Supreme Court by notice of appeal dated 2nd May 1959 on the following grounds:-

"(a) the said Judgment is contrary to law and against the weight of evidence in the case.

p.58, 1.31 -
p.59, 1.4

(b) there is no evidence in the case to prove that the first accused appellant offered a gratification to the witness W.J.C. Munasinghe for his doing any act in his capacity as a member of the House of Representatives.

Record

(c) there is no evidence in the case to prove that the first accused appellant abetted the acceptance of a gratification by the witness W.J.C. Munasinghe as an inducement for his doing any act in his capacity as a member of the House of Representatives.

(d) the act of the witness W.J.C. Munasinghe in addressing the letter P3 to the Honourable C.P. de Silva Minister of Lands and Land Development is not in law an act done by the witness W.J.C. Munasinghe in his capacity as a member of the House of Representatives within the meaning of Sections 14(a) and 14(b) of the Bribery Act No.11 of 1954. 10

(e) the aforesaid sentence is harsh and excessive."

p.61, 1.18 -
p.82, 1.47

9. The Supreme Court on 4th April 1960 set aside the Judgment and Order of the District Court and acquitted the Respondents. Both learned Judges of the Supreme Court who heard the appeal adopted the construction of Section 14 of the Act suggested by the counsel for the Respondents, that is to say, that the expression "in his capacity as such member" has a meaning corresponding to the expression "in his judicial capacity" in the same section and that a member of the Senate or of the House of Representatives acts "in his capacity as such member" only in the exercise of his functions as such member when he participates in proceedings in the Senate or in the House of Representatives, as the case may be, and not otherwise. 20 30

p.72, 1.31 -
p.74, 1.28

10. Weerasooriya J. found support for this construction in certain debates in the British House of Commons, particularly the debate on the amended resolution passed by that House on the Report of the Committee of Privileges on the question of privilege raised in connection with a letter written by the Member for Vauxhall to the Minister of Fuel and Power, Hansard Vol.591, 208 et seq. He also, however, examined the case for the prosecution on the assumption that section 14(a) may be given a construction other than that which he adopted and held that the prosecution had failed to prove that in addressing the letter P3 to the Minister Munasinghe had acted in his capacity as Member of Parliament. 40

p.72, 11.1-17

Weerasooriya J. concluded the main part of his judgment by saying:-

10 "There appears to be no judicial definition of the expressions "proceedings in Parliament" or "capacity" as a Member of Parliament. But the Courts have from time to time stated what various specific matters connected with Parliament do or do not fall within the ambit of its "proceedings". These cases are referred to in Erskine May's Parliamentary Practice (14th edition) 61. They afford no precedent for holding that in writing the letters P1 or P3 Mr. Munasinghe was acting in his "capacity" as a member of the House of Representatives. I see no reason to give to "capacity" in the expression "in his capacity as such member" in Section 14 of the Act a wider meaning than that which the word bears in the expression "in his judicial capacity" in the same section. I agree with the submission of Mr. H.V. Perera that a Member of

20 the House of Representatives cannot be regarded as acting "in his capacity as such member" within the meaning of Section 14 except in the exercise of the functions of his office as such member. The prosecution has failed to prove that in writing P1 or P3 Mr. Munasinghe was acting in the exercise of any such function.

30 Before I conclude this judgment I wish to refer to an argument of the Attorney-General based on the proviso to Section 14. By virtue of the proviso it would not be an offence under the preceding provisions of the section for any trade union or other organisation to offer to a member of the Senate or the House of Representatives, or for any such member to accept from any trade union or other organisation, any allowance or other payment solely for the purpose of his maintenance. While an allowance is a "gratification" within the definition of that term in Section 91 of the Act, gratification would per se be punishable as it is also necessary for the constitution of an offence under Section 14 that the gratification is offered or accepted as an inducement or reward for the member's doing or forbearing to do any act in his "capacity" as such member. The Attorney-General submitted that in the case contemplated in the proviso all the elements of an offence under the preceding provisions of the section are present in that the member concerned, in

40 utilising the allowance towards his maintenance as a member, would thereby be doing an

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Record

"act" in his "capacity" as such member. On the strength of this submission the Attorney-General invited us to regard the proviso as indicating that there may be the doing of an "act" by a member of the House of Representatives in his "capacity" as such member within the meaning of Section 14 even though the "act" be not done in the course of proceedings in the House. I am unable, however, to agree that a Member of the House of Representatives who maintains himself is doing an "act" within the meaning of Section 14, or that such member who maintains himself on an allowance which is paid to him for no other reason than that he is a member of the House of Representatives is doing an "act" in his "capacity" as such member. If the learned Attorney-General's argument is to prevail, it could be said of a member of the House of Representatives that in eating his lunch or dinner (being part of the process of maintaining himself) the cost of which is met from the allowance paid to him, he is doing an "act" in his "capacity" as such member.

It is possible, as Mr. H.V. Perera suggested that the genesis of the proviso to Section 14 is in the findings of the Bribery Commission in its report published as Sessional Paper No.XII of 1943 that certain nominated European members of the former State Council had accepted a "gratification" within the Commission's terms of reference in that they were in receipt of a regular allowance paid to them by the Chamber of Commerce and certain other organisations. In view of these findings the legislature may have intended in enacting the proviso to Section 14, that the offer of an allowance by a trade union or other organization solely for the purposes of maintenance of a member of the Senate or the House of Representatives, or the acceptance of the allowance by such member, should be taken out of the operation of the preceding provisions of the Section even if the understanding on which the allowance is paid is that the member would conduct himself in a particular way in proceedings in the Senate or the House of Representatives, as the case may be.

10 In considering whether this particular proviso throws any light on the construction of the preceding provisions of Section 14, it is well to bear in mind, however, that while the effect of an excepting or qualifying proviso is, ordinarily, to except out of preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it, often a proviso is inserted to allay fears and to protect persons who are unreasonably apprehensive of the effect of an enactment although there is really no question of its application to their case.

20 In my opinion, the prosecution has failed to prove that the gratification offered to Mr. Munasinghe on the 19th or the 22nd December, 1958, was for his doing an act in his "capacity" as a member of the House of Representatives. This failure goes to the root of all the charges. In the circumstances, however reprehensible the conduct of the accused may have been, they are entitled to an acquittal on those charges. I set aside their convictions and the sentences passed on them and acquit them."

30 11. Sinnetamby J. whilst he agreed with Weerasooriya J. was influenced more by the view he formed as to the intentions of Parliament from an examination of the Bribery Act, particularly Sections 15 and 22. In dealing with the construction to be placed upon Section 14(a) of the Bribery Act he said:-

"If my view of Section 22 is correct, it would lend support to the view that Section 14(a) is confined to those cases in which a member does an act which he is able to do only by virtue of the legal powers vested in him as a member and which act he would not be able to perform but for the fact that he is a member.

p.76, 1.46 -
p.76, 1.3

p.77, 1.30 -
p.79, 1.15

p.79, 11.16-48

40 A person may act in various capacities; he may act in his official capacity when he performs functions pertaining to the office he holds; but, although he cannot divest himself of the office he holds, he may still act in a private or personal capacity, i.e. when he does something which he in common with other people who are not holders of that office are able to do. In interpreting Section 14, therefore, it seems to me, one must first ask

Record

oneself whether the act for the doing of which a gratification is offered, is one which the member of Parliament can do only because he is a member of Parliament. If so, it is something which he does in his capacity as such member. If it is something which he could have done even though he were not a member, the mere fact that he is a member does not bring the act within the purview of the Section. In the result, in order to decide whether a person is acting in his capacity as a member of Parliament, one has first to ascertain what exclusive legal rights, powers, duties, privileges, and so on attach to membership of Parliament then one cannot say that he is acting in his capacity as such member". 10

12. Both members of the Supreme Court held that the prosecution had failed to prove that the gratification offered to Munasinghe whether on 19th or on the 22nd December 1958 was for doing an act "in his capacity as a member of the House of Representatives". (Weerasooriya J. at p.76; Sinnetamby J. at p.82). The Appellant, however, submits that the evidence adduced permits no other inferences to be drawn than:- 20

(a) that a gratification was offered on 19th December and given on 22nd December 1958 to Mr. Munasinghe in respect of a letter being written by him to the Minister of Lands and Land Development withdrawing his, Mr. Munasinghe's application, for the acquisition by such Minister under compulsory powers of the first Respondent's land. 30

(b) that such gratification was offered and given as aforesaid because as the Respondents and each of them well knew, Mr. Munasinghe as elected member of the House of Representatives for Chilaw had directly initiated the proposal for the said land acquisition by the Minister and as the Respondents and each of them well knew, as such member Mr. Munasinghe would have immediate access to and influence with the Minister in preventing such proposal from being implemented. 40

(c) that the first Respondent when offering and giving the gratification as aforesaid intended that Mr. Munasinghe as such member, should be induced to act in such manner as to negate or withdraw his earlier initiation of Ministerial action

for the acquisition of lands in his constituency and in the interests of a body of his constituents.

13. The question for decision, however, is whether on the facts adduced in evidence and the inferences properly to be drawn therefrom, the gratification offered to Munasinghe was "as an inducement or a reward for 'his doing an act' in his capacity as such member".

10 14. The provisions of the Constitution of Ceylon (Ceylon Independence Order in Council 1947) relevant to this question are the following:-

21. Subject to the provisions of this Order, each Chamber may, by resolution or Standing Order, provide for:-

* * * * *

(iii) the regulation of its business, the preservation of order at its sittings and any other matter for which provision is required or authorised to be so made by this Order.

20 27. (1) The privileges, immunities and powers of the Senate and the House of Representatives and of Senators and Members of Parliament may be determined and regulated by Act of Parliament but no such privileges, immunities or powers shall exceed those for the time being held or enjoyed by the Commons House of Parliament of the United Kingdom or of its Members.

30 15. Pursuant to Section 27 of the Constitution, the Ceylon Parliament enacted the Parliament (Powers & Privileges) Act No.21 of 1953. This Act has a descriptive title as follows:-

40 AN ACT TO DECLARE AND DEFINE THE PRIVILEGES, IMMUNITIES AND POWERS OF THE TWO HOUSES OF PARLIAMENT AND OF THE MEMBERS THEREOF; TO SECURE FREEDOM OF SPEECH AND DEBATE OR PROCEEDINGS IN THE HOUSES; TO PROVIDE FOR THE PUNISHMENT OF BREACHES OF THE PRIVILEGES OF PARLIAMENT AND TO GIVE PROTECTION TO PERSONS EMPLOYED IN THE PUBLICATION OF THE REPORTS, PAPERS, MINUTES, VOTES OR PROCEEDINGS OF THE HOUSES.

Record

This Act also contains the following Sections which are relevant to the powers and privileges of the Ceylon Parliament and its members:

SECTION 3

There shall be freedom of speech, debate and proceedings in the House and such freedom of speech, debate or proceedings shall not be liable to be impeached or questioned in any court or place out of the House.

SECTION 7

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The House and the members thereof shall hold, enjoy and exercise, in addition to the privileges, immunities and powers conferred by this Act, such and the like immunities as are for the time being held, enjoyed and exercised by the Commons House of the Parliament of the United Kingdom of Great Britain and Northern Ireland and by the members thereof.

SECTION 8

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Subject to the provisions of this Act, a copy of the Journals of the Commons House of the Parliament of the United Kingdom of Great Britain and Northern Ireland, or of the proceedings of the said House, or of a report of any Committee of the said House, which has been or purports to have been printed by the order of or by the printer of the said House shall be received as prima facie evidence without proof of its being such copy, upon any inquiry touching the privileges, immunities and powers of the House or members thereof.

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SECTION 9

All privileges, immunities and powers of the House, shall be part of the general and public law of Ceylon, and it shall not be necessary to plead the same, but the same shall in all courts in Ceylon be judicially noticed.

SECTION 22

(1) Each of the acts and omissions specified

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in the Schedule to this Act is hereby declared to be a breach of the privileges of Parliament.

(2) Every breach of the privileges of Parliament which is specified in the Schedule to this Act (whether in Part A or Part B thereof) shall be an offence under this Part punishable by the Supreme Court under the provisions hereinafter contained in that behalf.

S C H E D U L E

PART A

PARAGRAPH 9

The offering to or acceptance by any member or officer of the House of a bribe to influence him in his conduct as such member or officer, or the offering to or acceptance by any member or officer of the House of any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, resolution, matter, rule or thing submitted to or intended to be submitted to the House or any committee.

PARAGRAPH 11

The abetment of any act or omission specified in any of the preceding paragraphs.

16. Pursuant to the provisions of Section 21 of the Ceylon Constitution the House of Representatives has made provision by Standing Orders inter alia for the regulation of its business. The relevant Standing Orders are the following:

31. At the stage of business provided by these Standing Orders questions relating to public affairs may be put to the Prime Minister or to any Minister or Parliamentary Secretary relating to subjects with which the member questioned is concerned.

34. (1) The proper object of a question is to obtain information on a matter of fact within the special cognizance of the member to whom it is addressed.

(2) A question must not be made the pretext of a debate.

Record

139. (1) In all cases for which these Orders do not provide, resort shall be had to the usages and practices of the Commons House of Parliament of Great Britain and Northern Ireland which shall be followed so far as the same may be applicable to this House, and not inconsistent with these Orders, nor with the practices of this House. In cases of doubt, the Standing Orders of this House shall be interpreted in the light of the relevant practice of the Commons House of Parliament of Great Britain and Northern Ireland. 10

(2) Notwithstanding anything contained in the preceding paragraph of this Order, no restrictions which the House of Commons has imposed by Standing Order shall be deemed to extend to this House or its members until the House has provided by Standing Order for such restriction.

17. Consideration of the relevant provisions of the Ceylon Constitution, the Parliament (Powers and Privileges) Act and the Standing Orders of the House of Representatives, leads to the conclusion that the position of a member of the House of Representatives bears a close resemblance to that of a member of the House of Commons of the United Kingdom. It is therefore submitted that in determining whether any particular act is done or to be done by a member of the Ceylon Parliament in his capacity as such, guidance can be obtained from English authority in parallel cases. 30

18. It is a recognised function of Members of the Parliament of the United Kingdom to act as intermediaries between persons or bodies of persons in their constituencies and Ministers of the Crown in regard to matters of public interest or concern arising in the constituency in respect of which matters the Minister has responsibility and may be questioned in Parliament. It is also a recognised function of a Member of Parliament to make comments or recommendations to a Minister on any special subject in which a Member was expected to or invited to advise; as for instance in a proposed compulsory acquisition of land within his constituency for a public purpose. It is submitted that the performance of such functions is also recognised as appertaining to the capacity of a member of the House of Representatives of Ceylon (vide the 40

evidence of the Acting Permanent Secretary referred to in paragraph 6(f) above). When a member of the House of Representatives performs such a function he is not only acting in a way in which such members ordinarily act, but he is also acting in the performance of a duty and in a matter in which he has a special interest as a member. This function of Members of Parliament has received judicial recognition in the case of K. v RULE (1937) 2 K.B. 375 where it was held that the defence of "privileged occasion" was open to a person charged with criminal libel in respect of letters defamatory of police officers and a justice of the peace sent to a Member of Parliament. There the Court of Criminal Appeal held that the Member of Parliament whose intervention with the Home Secretary had been sought by the accused had a sufficient interest in the receipt of the communication to render the occasion privileged. The principle of this decision was re-affirmed by Du Parcq L.J. in BUSE v McCARTHY (1942) 1 K.B. 156. It is submitted that the basis of this authority is that the receipt of communications from private persons soliciting intervention with a Minister is a function which a Member of Parliament exercises in his capacity as such member, notwithstanding that he has no duty to act and notwithstanding that action to the same end might be solicited equally from other persons not possessing the same capacity.

19. In their oral submissions to the Supreme Court Counsel for the Respondents contended that members of the Ceylon Parliament only acted in their capacity as such members when they exercised the functions of their office by participating in proceedings in Parliament and that the acts sought to be, and in fact done by Murasinghe at the Respondents solicitation, did not constitute such participation. This argument was accepted by Weerasooriya J. (Record p.74 ll.43-48) and inferentially by Sinnemamby J. The Appellant submits firstly, that the argument is wrong since it postulates the reading into section 14 of the Bribery Act of words of limitation restricting the natural and ordinary meaning of the words used "in his capacity as such member"; and further because it introduces the concept of Parliamentary privilege and contempt of Parliament (matters which are comprehensively but separately dealt with by the Parliament (Powers and Privileges) Act 1953) into the construction of the later Bribery Act of 1954, whereas these two

Record

Acts are entirely separate and distinct. If, however, the argument accepted by the Supreme Court be correct, and if it be that the phrase "in his capacity as such member" does postulate a reference to proceedings in Parliament, then the Appellant submits that, having regard to Bird's Case (1694) (5 Corbett's Parliamentary History p.910), the Resolution of the House of Commons in 1895 and Henderson's Case (1954) (Parliamentary Papers 1944-45 session, vol. 3) and in the light of modern constitutional practice, the act here solicited to be done was, in the circumstances established, a participation in such proceedings. 10

20. The Appellant submits that the Judgment and Order of the Supreme Court were wrong and should be set aside and that the order and conviction of the Respondents by the District Court should be restored for the following amongst other

R E A S O N S

1. BECAUSE the construction placed by the Supreme Court upon section 14 of the Bribery Act is wrong. 20
2. BECAUSE the right view of section 14 is that the words used therein in their ordinary meaning are wide enough to include a class of acts in the performance of which a member of Parliament, qua member, has a special interest if not a strict legal duty and that such class of acts include -
 - (i) the function of acting as intermediary between a person or body of persons in his constituency and a Minister in regard to a public matter arising in the constituency in respect of which matter the Minister has responsibility and may be questioned from the floor of the House of Representatives; 30
 - (ii) making comments or recommendations to the Minister on any special subject in which a member of Parliament was expected to, or invited to, advise, as for instance in a proposed compulsory acquisition for a public purpose within his constituency. 40
3. BECAUSE the Supreme Court failed to recognize that, for the purposes of section 14 of the

Bribery Act, there is a vital difference between the class of acts referred to in Reason 2 above and acts of a social nature which fall outside that class but which members of Parliament are often called upon to do because they are members of Parliament.

- 10 4. BECAUSE P3, being the letter dated 22nd December 1958 addressed to the Minister by Munasinghe, was an act falling within the class referred to in Reason 2 above and that this being the act in respect of the doing of which gratification was offered and given by the Respondents to Munasinghe, the Supreme Court was wrong in holding that the prosecution had failed to prove the offence charged.
- 20 5. BECAUSE even if the phrase "in the capacity of such member" refers to proceedings in Parliament, the act of Munasinghe in addressing the letter P3 to the Minister amounted, in the circumstances proved, to a proceeding in Parliament.

NEIL LAWSON.

WALTER JAYAWARDENA.

IN THE PRIVY COUNCIL No. 6 of 1961

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

THE ATTORNEY GENERAL OF CEYLON
Appellant

- and -

1. M.G.J.M. DE LIVERA
2. CYRIL STANLEY FERNANDO
Respondents

CASE FOR THE APPELLANT

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