

5,1950

Appeal No. 37 of 1949.

31257

# 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 DISTANCED  
LEGAL STUDIES

APPELLANTS CASE

BETWEEN

(1) MOHINDAR SINGH  
(2) MOHAN SINGH

*Appellants*

AND

10 THE KING

*Respondent.*

## Case for the Appellants.

RECORD.

1. This is an appeal by special leave from an order and judgment of the High Court of the Colony of Singapore, made in the exercise of its appellate criminal jurisdiction and dated respectively the 1st and 8th June, 1949, whereby the sentences passed on the appellants by the First District Judge of the First District Court at Singapore on the 11th April, 1949, were enhanced.

p. 8.  
pp. 5, 6.  
p. 2.

2. The appellants 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). The first appellant was sentenced to two fines of \$3,000 and \$10. The second appellant was fined \$1,000 and the sum of \$2,000 given by him as a bribe was ordered to be confiscated.

The Deputy Public Prosecutor having appealed to the High Court on the ground that these sentences were inadequate, the High Court enhanced the sentences by passing on the first appellant a further sentence of 18 months rigorous imprisonment and on the second appellant a further sentence of 12 months rigorous imprisonment.

3. The questions to be determined in this appeal are whether the Deputy Public Prosecutor had a right of appeal on the ground of inadequacy of sentence and whether the High Court had jurisdiction to entertain such appeal.

4. The relevant provisions of the Straits Settlements Criminal Procedure Code are set out in the appendix to this case.

5. In the month of March, 1949, the appellants were jointly put on their trial before the first District Judge, the charges against them respectively, as finally amended, being framed on the 5th April, 1949.

6. The charges against the first appellant were as follows :—

p. 4, ll. 17-41.

(1) “ You, Mohindar Singh, are charged that you, on or about the 25th 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 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 under Section 3 (b) of the Prevention of Corruption Ordinance No. 41 of 1937.” 10

(2) “ You, Mohindar Singh, are charged that, whereas one Mohan Singh on or about the 1st March, 1949, at Singapore, did corruptly 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 Corruption Ordinance, No. 41 of 1937.” 20

The charge against the second appellant was as follows :—

p. 4, ll. 44-  
p. 5, l. 7.

“ You, Mohan Singh, are charged that you, on or about the 1st day of March, 1949, at Singapore, did corruptly give one 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 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 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

7. The relevant provisions of the Ordinance (as amended by Ordinance No. 26 of 1946) are set out in the appendix to this case.

8. The case for the prosecution was, briefly, as follows :—

In February, 1949, one Leonard James Wood was serving as Assistant Executive Controller of the Imports and Exports Department on a monthly engagement, but had been notified of termination of such employment, the period of notice expiring on the 2nd March, 1949. On the 24th February, 1949, he received a telephone

communication from the first appellant (whom in his official capacity he already knew as an employee of Phoola Singh and Company), inviting him to lunch that day at the Cathay Restaurant. He had lunch with the first appellant alone, and, according to Wood, the first appellant offered to give him \$7,000 if he would pass import declarations in respect of cargo in the name of Phoola Singh & Co. without referring them to the Senior Customs Officer. Wood said he would try to do so ; and the first appellant promised to hand \$5,000 to Wood when he handed over the import declarations to Wood and the balance when the cargo was released from the custody of the Harbour Board. The first appellant said he would hand over the \$5,000 the following day at his hotel where Wood arranged to meet him, and asked Wood to give him a cheque for \$5,000 as security. Wood did nothing further on the 24th February ; but at 9.30 a.m. on the 25th February he reported the matter to Mr. W. H. Walker, the Executive Controller of the Imports and Exports Department. Later in the day, Wood saw the first appellant at the latter's place of business, where, according to Wood, the first appellant showed him bank notes and the import declarations. Wood, however, put him off, and arranged to meet him again on the 1st March in the Capitol Restaurant at 11 a.m.

Meanwhile, a trap had been prepared for the first appellant by the Imports and Exports Department acting in concert with the Police.

On the 1st March, the arranged meeting took place, when the second appellant was also present, being introduced to Wood by the first appellant as his relative. A Police Officer (Inspector Lawrence), accompanied by another witness, were then present in the restaurant, sitting at a table some little distance away from that at which Wood and the appellants were seated. On that occasion, the first appellant put an envelope on the table, which the second appellant opened up and showed Wood the import declarations. He then took an envelope out of his breast pocket and showed Wood two \$1,000 notes, counted them, and put them back. He then asked Wood to give a cheque for \$2,000 as "surety." Wood wrote out a cheque, dating it March 2nd (in accordance with instructions which he had previously received), collected the documents in one envelope and the money in another, and put them into his hip pocket. At that point, the Police Officer (Inspector Lawrence) intervened and the appellants were arrested.

9. Both the appellants pleaded not guilty, and evidence, oral and documentary, was adduced for the prosecution and for the defence. At the close of the evidence for the defence, the First District Judge convicted both appellants and sentenced them as hereinbefore stated.

In his Grounds of Judgment, dated the 22nd April, 1949, the learned Judge, in awarding the sentences, considered that the first appellant was not the prime mover in the affair ; that he was young and inexperienced ; that he had a clean record and that admittedly he had been encouraged to pursue his course of conduct by the behaviour of Wood.

p. 2.

p. 3, ll. 3-5,  
ll. 8-12.

p. 3, ll. 21-30.

As regards the second appellant the learned Judge considered that apart from his request to avoid that the goods might be imported without examination, there was no evidence to connect him with the firm of Phoola Singh & Co. or with the goods to be imported, and accordingly he did not feel himself justified in imposing a punishment more severe than one-third of that inflicted on the first appellant.

p. 1.

10. On the 12th April, 1949, the Deputy Public Prosecutor gave notice of appeal to the High Court in the following terms :—

“ The Deputy Public Prosecutor, Singapore, hereby gives Notice of Appeal against the inadequacy of the sentences of the First District Judge in the above-mentioned cases on 11th April, 1949.” 10

p. 3.

On the 6th May, 1949, the Petition of Appeal, signed by the Deputy Public Prosecutor, was filed, the material portion of the Petition being in the following terms :—

p. 5, ll. 9-12.

“ 3. Your Petitioner is dissatisfied with the judgment of the learned 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.” 20

p. 5.

11. On the 1st June, 1949, the appeal was heard by Chief Justice Murray-Aynsley, who allowed the appeal and enhanced the sentences passed by the trial Court, sentencing the first appellant to 18 months' rigorous imprisonment and the second appellant to 12 months' rigorous imprisonment, in addition to the fines already imposed.

p. 6.

12. On the 8th June, 1949, the learned Chief Justice recorded the grounds of his judgment. He stated his reasons for enhancing the sentences in the following words :— 30

p. 7, ll. 32-41.

“ 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 by ordering 18 and 12 months' R.I. respectively, in addition to the fines already imposed.” 40

13. By an Order of His Majesty in Council, dated the 25th November, 1949, the appellants obtained leave to prefer the present appeal on the questions whether the appeal by the prosecution above mentioned 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. The appellants humbly submit that this appeal should be allowed, with costs, and that the said order and judgment of the High Court should be set aside and reversed for the following

### REASONS

- 10
- (1) BECAUSE under the provisions of the Straits Settlements Criminal Procedure Code, no appeal lay from the sentences passed on the appellants by the First District Judge on the ground that such sentences were inadequate.
  - (2) BECAUSE the High Court had no jurisdiction to entertain the appeal preferred by the Deputy Public Prosecutor from such sentences on such ground, and should have rejected the appeal as incompetent.
  - (3) BECAUSE the order made by the High Court in such appeal was illegal and constituted an infringement of the essential principles of justice.

W. W. K. PAGE.

R. PARIKH.

## APPENDIX.

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 STRAITS SETTLEMENT CRIMINAL PROCEDURE CODE  
 (as amended by Ordinance XIII of 1938)

*Section 296 :* (1) No appeal shall lie from a judgment sentence or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

(2) No appeal shall lie from a judgment, sentence or order of a Police Court in any of the cases specified in Schedule C.

\* \* \* \* \*

*Section 299 :* When an accused person has pleaded guilty and been convicted by a District Court or Police Court on such plea there shall be no appeal except as to the extent or legality of the sentence. 10

*Section 300 :* When an accused person has been acquitted by a District Court or Police Court there shall be no appeal except by the Public Prosecutor.

\* \* \* \* \*

*Section 302 :* (1) Except in any case to which Section 296 applies any person who is dissatisfied with any judgment, sentence or order pronounced by any District Court or Police Court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against such judgment, by lodging, within ten days from the time of such judgment, sentence or order being passed or made, with the Chief Clerk of the District Court or with the Chief Clerk of the Police Court at the Court House at which the trial was held, a notice of appeal in triplicate addressed to the High Court and by paying at the same time an appeal fee of one dollar. 20

\* \* \* \* \*

(5) Every petition of appeal shall state shortly the substance of the judgment appealed against and shall contain definite particulars of the points of law or of fact in regard to which the Court appealed from is alleged to have erred.

\* \* \* \* \*

*Section 310 :* At the hearing of the appeal the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry shall be made or that the accused shall be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to the law ; 30

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction or committed for trial ; or

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence ; or (Amended by Ordinance 36 of 1933, s. 37) 40

(iii) with or without the reduction or enhancement and with or without altering the finding, alter the nature of the sentence ; (Amended by Ordinance 36 of 1933, s. 37).

(c) in an appeal from any other order, alter or reverse such order.

PREVENTION OF CORRUPTION ORDINANCE, 1937  
(as amended by Ordinance 26 of 1946)

*Section 1* : This Ordinance may be cited as the Prevention of Corruption Ordinance, 1937.

*Section 2* : In this Ordinance—

- “ Agent ” means any person employed by or acting for another, and includes a trustee, administrator and executor, and a person serving under the Crown or under any corporation or public body ;
- 10 “ Consideration ” means valuable consideration of any kind, and particularly includes discounts, commission and rebate, bonuses, deductions and percentages, and also employment or an agreement to give employment in any capacity ;
- “ Person ” includes a body of persons, corporate or unincorporate ;
- “ Principal ” includes an employer, a beneficiary under a trust, and a trust estate as though it were a person, and any person beneficially interested in the estate of a deceased person and the estate of a deceased person as though the estate were a person ;
- 20 “ Public body ” means any corporation, board, commissioners or other body which has power to act under and for the purposes of any Ordinance relating to public health or to undertakings of public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any Ordinance.

- Section 3* : (a) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person any money, gift or other consideration as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Ordinance done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ; or
- 30
- (b) If any person corruptly gives or agrees to give or offers any money, gift or other consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Ordinance done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ; or
- 40
- (c) If any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal ;

he shall be guilty of an offence and be liable on conviction to imprisonment of either description for a term not exceeding three years, or to a fine not exceeding five thousand dollars or to both such imprisonment and fine

\* \* \* \* \*

*Section 6 :* Where any money, gift or other consideration has in contravention of this Ordinance been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof either from the agent or from the person who gave the money, gift or consideration to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Ordinance shall operate as a bar to proceedings for the recovery of such amount or money value 10

\* \* \* \* \*

*Section 9 :* Whoever abets, within the meaning of the Penal Code,  
(a) the commission of an offence against this Ordinance  
(b) the commission outside the Colony of any act, in relation to the affairs or business or on behalf of a principal residing in the Colony, which if committed in the Colony would be an offence against this Ordinance,

shall be deemed to have committed the offence and be punishable accordingly.

Appeal No. 37 of 1949.

In the Privy Council.

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**ON APPEAL**

*from the High Court of the Colony of  
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BETWEEN

**MOHINDAR SINGH and**

**Another** - - - *Appellants*

AND

**THE KING**

*Respondent.*

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**Case for the Appellants**

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