

(1978) 11 MAD CK 0014
In the Madras High Court
Case No : Criminal P.C. No. 151 of 1978

Abdul Rahim and Another

APPELLANT

Vs

The State by the Chit Registrar, Nagapattinam

RESPONDENT

Date of Decision : 07-11-1978

Acts Referred:

Tamil Nadu Chit Funds Act, 1961 — Section 3, 7

Citation : (1979) LW(Cri) 156

Hon'ble Judges : Paul, J; Maheswaran, J

Bench : Division Bench

Advocate : S. Rajagopalan, for the Appellant; M. Sivalingam, Government Advocate No. 1 on behalf of the State, for the Respondent

Final Decision : Dismissed

Judgement

Paul, J.

(26-4-1978)

1. In this criminal revision, the convictions of the revision petitioner for offences under Ss. 3 and 7 read with S.56(1) of the Tamil Nadu Chit Funds

Act have been challenged. One of the grounds on which such a challenge has been made is that the filing of the complaint itself is barred by reason

of S.468, CrI. P.C. and as such the learned Magistrate should not have taken cognizance of the offence.

2. S.468, CrI.P.C. states that (1) except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the

category specified in sub-section (2), after the expiry of the period of limitation, and (2) the period of limitation shall be (a) six months, if the

offence is punishable with fine only; (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years,

if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. S.469 which deals with the

commencement of the period of limitation states (1) the period of limitation, in relation to an offender, shall commence (a) on the date of the

offence: (b) where the Commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on

which such an offence comes to the knowledge of such person or to any police officer whichever is earlier; or (c) where it is not known by whom

the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police

officer making investigation into the offence, whichever is earlier.

3. In the case now before me the complaint itself mentions, that the offence was brought to the notice of the department only on 19th July 1976. It

might be noted that the complaint was filed on 4th January 1977 even though the offence was committed in March, 1975. The prosecution relies

therefore on S.469(1)(b) for saving limitation. S.469(1)(b) could be invoked by the prosecution only where the commission of the offence was not

known to the person aggrieved by the offence or to any police officer. Natarajan, J. has in *Sulochana v. State, Registrar of Chits (Investigation and*

Prosecution), Madras 1977 L.W. CrL. 161 held that the Registrar of Chit Funds cannot be taken to be a person aggrieved by the offences so as to

claim the benefit of extended limitation provided under S.469(1)(b) and (c). CrL.P.C. He has observed that

the Registrar has come forward with the complaint in performance of his official duty and not on account of any grievance felt or sustained by him

personally in the contraventions committed by the petitioner. The complaints preferred in discharge of one's official duty are vastly different in

character and nature from complaints preferred by persons aggrieved by commission of the offence. They distinctly fall in two different categories

and the former is not to be confused with the latter.

4. K.N. Mudaliyar, J. had in *Samithurai Thevar K. and others v. T.E.S. Batcha* 1970 L.W. CrL. 7 with reference to S.198, CrL.P.C. considered

the connotation of the term "person aggrieved" and he has observed that term "the section does not say that complaint can only be made by the

person defamed. What it requires is that the complaint must be made by "some

person aggrieved." The expression "some person aggrieved" was not intended to be restricted to the person actually defamed. It must be determined in each case according to its own circumstances whether the complainant could be said to be in a legal sense a person "aggrieved" within the meaning of S.198, CrI.P.C." It is therefore, necessary to give a ruling on the meaning of the expression "person aggrieved" as it occurs in S.469(1)(b), CrI.P.C. With great respect I am unable to agree with Natarajan, J., when he holds that the Registrar cannot be taken to be a person aggrieved by the offence so as to claim the benefit of the extended limitation provided under S.469(1)(b) and (c) of the Code, for, under S.3 of the Tamil Nadu Chit Funds Act, the bye-laws of the chit have to be registered with the Chit Registrar and further under S.7 a certificate of commencement should be obtained from the Chit Registrar. These provisions have been made to ensure that there is proper supervision of the conduct of the chit from its very inception. If there is contravention of Ss. 3 and 7, then the Registrar will not be able to exercise such supervision which he is statutorily bound to exercise. Therefore, in my view, the Registrar of Chit Funds would certainly be a person aggrieved.

5. In view of this difference of opinion, the papers will be placed before the Honourable the Chief Justice for posting the matter before a Division Bench.

Pursuant to the aforesaid reference of Honourable Thiru Justice Paul, dated 26th April, 1978 the aforesaid petition coming on for hearing before the Division Bench, the Court made the following Order:

Maheswaran, J.

6. This reference by Paul, J. raises a question of attractive importance and that question is whether the Registrar of Chits (Investigation and Prosecution), Nagapattinam is a "person aggrieved by the offence" so as to claim the benefit of extension of limitation provided under S.469(1)(b), CrI.P.C.

7. The revision petitioners were conducting business in chits at Sirkali without registering the proposed bye-laws of the chits with the Registrar and without obtaining the certificate of commencement from the Registrar of chits in violation of Ss. 3 and 7 of the Tamil Nadu Chit Funds Act, 1961

(hereinafter referred to as the Act. A complaint was received from P.W. 2, Narasimhan by P.W. 1, Kalyanasundaram, Registrar of Chits

(Investigation and Prosecution), Nagapattinam. He was also directed under Ex. P 3, the proceedings of the District Registrar, to enquire into the

matter. He found the revision petitioners running a chit in violation of Ss. 3 and 7 of the Act and after obtaining sanction, Ex P.7, launched

prosecution against the revision petitioners.

8. The defence was that a false case has been foisted on the revision petitioners. The trial Magistrate found the revision petitioners guilty of the

offences charged and convicted them under S.56(1) read with Ss. 3 and 7 of the Act and sentenced each of them to pay a fine of Rs. 50/- under

each count. In appeal, the convictions and sentences were confirmed. The revision petitioners are aggrieved and have filed this revision petition.

9. I find from the records that no objection as to the question of limitation has been raised by the revision petitioners. The memorandum of grounds

of criminal revision does not contain any objection as to "limitation". Obviously, this point was raised before Paul, J., which has necessitated this

reference. The punishment proposed under S.56(1) of the Act for violation of Ss. 3, 4 and 7 of the Act is imprisonment for one year and the

Registrar of Chits should have filed the complaint within a year from the date of commission of the offence as specified in S.468(2)(b) Crl. P.C.

One chit, according to the complaint, was started from April 1974 and the other from March 1975. But the complaints were filed only on 4th

January 1977 as seen from the seal affixed to the complaints. The complaints themselves mentioned that the offences were brought to the notice of

the department only on 19th July 1976. The offences were committed in April 1974 and in March, 1975. The contention of the counsel for the

revision petitioners is that the complaints are barred by the law of Limitation as they have not been filed within a year from the date of the

commission of the offences. Per contra, it was contended that the commission of the offences was not known to the Registrar and that the

department came to know of the offences only on 19th July, 1976, and therefore, the period of limitation begins to run only from the date of

knowledge as prescribed in S.469(1)(b), Crl. P.C. It was then pointed out by the learned counsel appearing for the revision petitioners that the

Registrar is not "a person aggrieved by the offence" and therefore, cannot invoke the provisions of S.469(1)(b) CrI. P.C. As I earlier pointed out

this plea was not taken before the courts below. The question whether the Registrar of Chits could claim the benefit of S.469(1)(b) of the Code as

a "person aggrieved" by the offence is bereft of authorities. Except for the judgment of a single Judge of this Court, there appears to be no other

ruling either of this Court or other Courts involving the question under reference. Natarajan, J in *Sulochana v. State, Registrar of Chits*

(Investigation and Prosecution), Madras 1977 L.W. CrI. 161 held that the Registrar of Chits cannot be deemed to a "a person aggrieved by the

offence", under S.469(1)(b), CrI. P.C. and consequently, the Registrar cannot claim the benefit of extended limitation provided under S.469(1)(b).

The reasoning of the learned Judge is that the Registrar has come forward with a complaint in performance of his official duty and not on account

of any grievance felt or sustained by him in the contraventions committed by the petitioners and that the complaint preferred in discharge of one's

official duty is one different from those preferred by persons aggrieved by the commission of the offence and that therefore, they fall under distinct

categories. To arrive at this conclusion, the learned Judge placed reliance on the meaning of the words "aggrieved person" referred to in *R. v.*

London Sessions Appeal Committee 1951-I-All England Law Reports 1932. There, Lord Goddard, C.J., observed:

The best definition of the expression "aggrieved" is in *Ex. P. Sidebotham, Re: Sidebotham* where James, L.J. said:-"But the words "person

aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person

aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived

him of something or wrongfully refused him something, or wrongfully affected his title to something.

That was a case where the council's decision with regard to the cancellation of street trading licence has been reversed by a Magistrate of Bow

Street. The right of the Council to appeal to Court of Session against that decision as an "aggrieved person" within S.64 of the London County

Council (General Powers) Act, 1947 has been negatived. It was held that it cannot be said that the Borough Council comes within those words

aggrieved person"". It was observed in that case that it is seen from the decision that wherever the words "borough council" is mentioned, it is always mentioned as "borough council" and persons who may be affected by the order of the council are mentioned as a "person" and that the right of appeal given by S.64 is to any person deeming himself "aggrieved" and that if it has been intended to give the borough council the right of appeal, the Act would have said ""any person or any borough council deeming themselves aggrieved."" As the words "borough Council" was not mentioned in S.64, their Lordships came to the conclusion that a borough council cannot be termed as a ""person aggrieved"". But, in order to see as to how far the definition of the expression "person aggrieved" given by James, L.J., in Ex. P. Sidebotham, Re: Sidebotham 14 Ch. 465, is applicable to the facts of the present case, we have to refer to the objects of the Act, namely, the Tamil Nadu Chit Funds Act, 1961.

10. A reference to the Act shows, that the Act requires, under S.3 every chit should be registered with the Registrar and even if the foreman conducts more than one chit, each chit has to be separately registered and a chit agreement in duplicate has to be executed by the foreman and attested by two witnesses and such agreement has to be filed in duplicate with the Registrar. S.7 prohibits commencement of any auction or drawing of any chit unless the foreman has obtained a certificate of commencement. Such certificate is granted on complying with the requirements of registration referred to and on the foreman furnishing security provided in S.12 of the Act, and that section also requires that foreman shall execute a mortgage in favour of the Registrar by way of security of properties sufficient for the realization of the chit money, the chit amount being the total of subscription payable by the subscriber for any one instalment without any deduction. In the alternative, the foreman is required to deposit in any approved bank or invest in Government securities not less than half the chit amount and transfer the amount so deposited in favour of the Registrar and such security has to be necessarily given in respect of each chit transaction. The prized subscriber receives the prize amount on his furnishing security for the due payment of future subscriptions. A reading of this Act shows that the legislation was rendered necessary in order to be a check on defaults frequently committed by persons conducting the chit. Certain safeguards, both in the interests of the foreman and of the

subscribers have been made in the Act, and in my view, these restrictions are quite reasonable. So far as I could see from the provisions of S.54 of the Act, a foreman will be an aggrieved person if the Registrar by his order refuses to register the by-laws in accordance with S.3 or refuses to grant a certificate of commencement in accordance with S.7 or refuses to accept the security under Clause (a) of sub-section of S.12 or he refuses to release the properly charged or to release the cash security or Government Security under Sub-S.(4) or (5) of S.12 and he can appeal within 30 days from the date of communication of the order, to the Director of Chits. In respect of an order passed under S.26(1) of the Act by the Registrar, the foreman or any other "person aggrieved" can appeal to the Director of Chits. I have already pointed out that the legislation was intended to provide a measure of safety for the subscribers of chit fund transaction. That fact cannot be denied. S. 12 of the Act requires the foreman to furnish security to be held by the Registrar in trust. This, in my view, is to ensure the fulfilment of the obligations of the foreman. The foreman receives at each instalment of the chit transaction large amount of money which he has under the rules to disburse to the prize winner less certain deductions. If the foreman does not carry out his obligations in this regard, the numerous subscribers to the chit would be left without any remedy, except perhaps by way of preferring suits which may in some case prove fruitless. It is therefore, necessary that the Registrar of Chits takes action under S.56(1) of the Act for violation of the provisions of Ss.3, 4 and 7 and in most of these cases the Registrar of Chits is not aware of the chits conducted in violation of Ss.3, 4 and 7 of the Act, for, any person anywhere in the State of Tamil Nadu can at any time organize a business of chit without the knowledge of the Registrar. It may be that certain number of individuals join together to subscribe daily, weekly or monthly instalments for a fixed period of days, weeks or months. If everything goes on well, no one is bothered and no one complains about the irregularity of the foreman. But, if something goes wrong, the Registrar is apprised of the matter, as in this case, by a petition. It is only then the Registrar comes to know of the offence, and if by that time one year elapses from the time of occurrence, the Registrar of Chits is left without any remedy to prosecute under S.56(1) of the Act. Could he not then resort to the provisions of S.469(1)(b), CrI. P.C. to claim the benefit of

extended limitation? Could it be said that the functions of the Registrar of Chits in the discharge of his official duty end even before they begin,

because he has not filed the complaint within a year of the date of commission of the offence?

11. The following meanings are given for the word "aggrieved" in the Shorter Oxford English Dictionary on Historical Principles by William Little,

H.W. Fowler and J. Coulson, Third Edition;

Hurt in spirit, now grieved; injuriously affected having a grievance: hurt; aggravated

The words ""aggrieved person"" should not, in my view, be given a very restricted meaning as including only those against whom a decision has been

pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. The

expression ""aggrieved"" as defined by James, L.J., in Ex. P. Sidebotham, Re: Sidebotham 14 Ch.D. 465 includes a person who has suffered a legal

grievance. Cannot the Registrar who has been appointed under S.51 of the Act to discharge certain duties imposed upon him be said to be a

person who is having a legal grievance, because, the foreman has violated certain provisions of law pertaining to the regulation of chits? Could he

not therefore, report to the provisions of S.469(1)(b), Crl. P.C. when the offence relating to the violation of the provisions of the Act comes to his

knowledge after a year of the date of commission of the offence? Could it be supposed that the legislature contemplated to deprive the Registrar,

to whom it has gives certain rights of having recourse to the provisions of S.469(1)(b), Crl. P.C. if the offence comes to his knowledge only a year

later than the date of the commission of the offence?

12. In Samithurai Thevar K. and others v. T.E.S. Batcha 1970 L.W. Crl. 7 the term ""some person aggrieved"" in S.198 Crl. P.C. has been

considered by K.N. Mudaliyar, J., who has observed that the section does not say that complaint can only be made by the person defamed and

what it requires is that the complaint must be preferred by "some person aggrieved" and that the words "some person aggrieved" were not

intended to be restricted to the person actually defamed. S.469(1)(b), Crl. P.C. refers to the ""person aggrieved by the offence."" Surely, it is not the

subscriber who is aggrieved by the foreman not registering with the Registrar the

proposed by-laws or in the foreman not obtaining a certificate of the commencement of the chit. In my view, it will not be correct to hold that the "person aggrieved by the offence" in S.469(1)(b) excludes the Registrar who is charged with the duty of enforcement of the provisions of the Act. One can presume that the legislature legislated only for the purpose of bringing about an effective result. If the Registrar is to be excluded from the purview of the definition of "person aggrieved by the offence", it would reduce the Chit Funds Act to a futility, and if the Registrar is not allowed to invoke the provisions of S.469(1)(b), the chit transaction will only be ineffectual. Considering the objects of the Act, I am clearly of the view that the Registrar would be very much a "person aggrieved by the offence" within the meaning of the term in S.469(1)(b), Crl. P.C.

13. If we now examine the facts of the case we would find that the revision petitioners have been running a business of chit transaction without registering the proposed by-laws in accordance with S.3 and without obtaining a certificate of commencement under S.7 of the Act. The evidence of P.Ws. 2, 3 and 6 to 8 and P.Ws. 4 and 5 clearly establishes that the revision petitioners have been running two different chits in the village and that the revision petitioners have violated Ss.3 and 7 of the Act. Both the Courts below have given a clear finding that the revision petitioners have not registered the proposed by-laws under S.3 and obtained the certificate of commencement under S.7. I see no reason to interfere with this finding. The revision fails and is dismissed.