

(1978) 11 MAD CK 0052

In the Madras High Court

Case No : Criminal R.C. No. 151 of 1978

Abdul Rahim and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-11-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 469(1)(b)

Citation : (1978) LW(Cri) 195

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

Bench : Division Bench

Advocate : S. Rajagopalan, for the Appellant;

Final Decision : Dismissed

Judgement

Mahaswapan, J.—This reference by Paul, J., raised 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.

2. The revision petitioners were conducting business in chits at Sirkali without registering the proposed bylaws 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 waft 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. I.P-7, launched prosecution against the revision petitioners.

3. 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.

4. 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 5.468 (2) (b) of 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 mention that the offences were brought to the notice of the department only on 19th July 1976. The offences were committed in April 1974 and 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 petitioner that the Registrar is not "a person aggrieved by the offence" and therefore, cannot invoke the provisions of S. 469(1)(b), Crl. 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, the 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. Crl. 161, held that the Registrar of Chits cannot be deemed to be "a person aggrieved by the offence, under S 469(1)(b), Crl. 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 All E.L.R, 1022 . There, Lord Goddard, C.J, observed:

The best definition of the expression "aggrieved" is in *Ex.D. Sidebotham Re*

Sidebotham 14 Ch. D. 465 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 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 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 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.

5. A reference to the Act shows, that the Act requires, under S. 3 that 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 deed 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 a foreman shall execute a mortgage in favour of the Registrar by way of security of properties sufficient for the realisation 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 prize 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 interest 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-S. (1) of S. 12 or he refuses to release the property 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 amounts 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 cases 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) of the Cr.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?

6. 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, resort 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 given 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?

7. In *Samithurai Thevar K. and others v. T.E.S. Batch* 1970 L. W. Crl. 7 the term "some person aggrieved" in S. 128, 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. 462(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. 462(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) of the Crl. P.C.

8. 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.

9. The revision fails and is dismissed.