
(2009) 09 KL CK 0036

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24704 of 2009 (G)

Devdhan Lottery Services (DLS)

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Kerala Police Act, 1960 — Section 29
Penal Code, 1860 (IPC) — Section 420
Reserve Bank of India Act, 1934 — Section 45

Citation : (2009) 3 KLJ 479 : (2009) 4 KLT 356

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : M.K. Damodaran and O.V. Maniprasad, for the Appellant; V.G. Govindan Nair (D.G.P.), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner seeks to quash Exts. P2 and P6 and seek a direction that the respondents shall not interfere with the functioning of the JYOTHIS project of the petitioner firm. Heard senior Adv. M.K. Damodaran for the petitioner and Adv. V.G. Govindan Nair, Director General of Prosecution.

2. On 3.7.2007, the Commissioner of Police, Kochi City issued Ext. P2 notice to two persons, who, the petitioners, a firm, states, are its partners. The contents of Ext. P2 notice refer to certain activities of a scheme called JYOTHIS project. It is stated therein that on preliminary enquiry, the said scheme is found to be similar to the "LIS" scheme and that the activity of JYOTHIS project would tantamount to infraction of the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978, Section 420 IPC and Section 45 of the Reserve Bank of India Act. The said notice apparently makes a comparison to state that the activity of JYOTHIS project is virtually the modus operandi involved in the subject matter of CrI. No. 672/06 of the Ernakulam Central Police Station which stands chargesheeted before the court of the Chief Judicial Magistrate, Ernakulam. It is also submitted by the learned Director General of Prosecution that the petitioner operates from the same premises from where the persons

involved in Cr. No. 672/06 had operated. The petitioner, on the other hand, denies it and also takes the stand that it has nothing to do with any other transaction and that the petitioner is an independent entity.

3. The apprehension of the commission of a cognizable offence provide sufficient ground for a preventive exercise by the police. The existence of such power is traceable to the various statutory provisions, in particular, to those in Chapter XI of the Cr.PC and to Section 29 of the Kerala Police Act, 1960. So much so the power to prevent the commission of an offence, when exercised bonafide, is not be subjected to judicial intervention or interdiction, if the prevention or prohibition is on sustainable grounds.

4. The right to carry on an activity which is not forbidden by law and referable to the fundamental rights guaranteed under Part III of the Constitution of India can be subjected only to constitutionally permissible limitations. This is also part of the guaranteed fundamental rights. The right to information of the ground on which the prohibition is imposed, inheres in the person prohibited and this carries with it the right to be heard in opposition to a prohibition or a preventive action and to have a decision thereon, stating the reasons therefor. This also trickles from Part III of the Constitution of India. Therefore, when the person prohibited shows the ground as to why the prohibition ought not to have been made or shall not continued, it is the bounden duty of the State, including the police authority exercising the police power as noticed above, to consider the objections and conclude as to whether it is justifiable to continue the prohibition or prevention. Ext. P2 is issued in July, 2007. The petitioner has placed materials before the Commissioner of Police as per Ext. P3 on 8.8.2008 and has also ultimately requested for a decision by making Ext. P9 representation, though, in between, the petitioner had attempted to carry on the business; but later slopped-and-apGI Ggisedras~evideliced from Ext. P7, Hence, by now, it is abundantly necessary that the request of the petitioner to revoke the prohibition invoked some time in 2007 needs to be considered by the competent authority.

For the aforesaid reasons, without expressing anything on the merits of the matter, the second respondent Commissioner of Police is directed to take up Ext. P9 and any other representation from the petitioner, pending in that regard; give the petitioner an opportunity of being heard and issue a decision in accordance with law. Let this be done within an outer limit of 45 days from the date of receipt of a copy of this judgment This writ petition is ordered accordingly.