(1933) 04 MAD CK 0020

In the Madras High Court

Durga Venkatramana (deceased) and Others APPELLANT

Vs

Kedari Setti Sanyasayya and Another RESPONDENT

Date of Decision : 25-04-1933

Acts Referred:

Penal Code, 1860 (IPC) — Section 294A

Citation : AIR 1934 Mad 136 : (1934) 66 MLJ 76

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—These revision petitions are against the decisions of the District Munsif of Peddapur in S.C.S. Nos. 372 and 379 of 1931.

They are connected and arise out of the same transaction. The transaction out of which the suits arise may now be described. The plaintiff is the

same in both cases and is a dealer in gramaphones. He managed to get up a party of 120 persons. These 120 persons are to subscribe the first

week each one rupee. At the end of the first week prizes ""are drawn and one of them gets a gramaphone. Then he goes out of the transaction. The

second week the remaining 119 subscribe Re. 1-4-0 each. At the end of the second week another gentleman gets a gramaphone by taking lots.

He goes out of the transaction. Third week the remaining 118 subscribe Rs. 1-8-0 and so on. Each week the amount of subscription is increased

by four annas but is paid by a diminishing number of persons. At the 20th week 19 persons would have drawn gramaphones in this way. But the

remaining 101 people would have paid Rs. 67-8-0 and all of them get a gramaphone each. The net result of the transaction is simply this. 101 out

of 120 persons get each a gramaphone for Rs. 67-8-0 and the remaining 19 get a gramaphone for smaller amounts, the amounts ranging from Re.

1 to Rs. 61-12-0. But every one is sure to get a gramaphone for at the most Rs. 67-8-0 and perhaps for a smaller amount. On this description of

the transaction it is clear that the average price of the gramaphone must be less than Rs. 67-8-0. Otherwise it must mean a loss for the dealer.

Perhaps here it would be relevant to mention that the advertised price of this gramaphone in a Bombay Catalogue is Rs. 80 each. Of course the

dealer would have got them for a large discount as he obtained a large number of them wholesale. The result is that every one of the 120 persons

who would be able to get a gramaphone only for Rs. 80 if they go to an open market is able to get for much less; not one of them has got to pay

more than Rs. 67-8-0. 101 of them have to pay Rs. 67-8-0 and the other 19 have to pay much less. The defendants in these cases took

gramaphones but failed to pay the balance of the amount. What happened was the gramaphone was given in advance while the transaction was

going on and some of them failed to pay the remaining subscriptions. These suits were therefore brought to recover the balance from these two

defendants. The District Munsif finds that this case is similar to that in Shanmuga Mudali v. Kumaraswami Mudali ILR (1925) Mad. 661 in one

respect, namely, that the number of persons is limited and he proceeds to observe that this case falls within the third principle laid down by

Venkatasubba Rao, J., that loss is occasioned to one or more. Then lower down he observes:

It is clear that the remaining 100 members did not actually derive the moneys worth in the concern and I hold that the concern is void u/s 294-A,

Indian Penal Code.

2. I am unable to agree with these observations. As I have already stated each person is able to get a gramaphone for much less than the price at

which such a gramaphone is sold and every one of the 120 persons certainly gets his moneys worth. The difference is some people get only for Rs.

67-8-0 and the others get for much less. In the outside world no one can get it for less than Rs. 80. Whereas all are lucky in getting for a smaller

price, some are more lucky than others and the man who gets it for Re. 1 is extraordinarily lucky. So it is not correct to say that the subscribers do

not get their moneys worth; nor is there any question of an offence u/s 294-A of the Indian Penal Code. The learned Advocate for the respondents relied on the decision in The Universal Mutual Aid and Poor Houses Association, Ltd. Vs. A.D. Thoppa Naidu and Others, . That was a case not

only of lottery but also of keeping a lottery office. As the learned Chief Justice observed at page 562:

In the present case from the handbook published by the Company it is quite clear that the public are invited to purchase the certificates because of

the chance there is of securing valuable prizes.

3. There is an open invitation to the public and the Company in that case was not confined to any limited number of persons. There was canvassing

for cash certificates and an offence u/s 294-A was made out in that case. But that case has no application to the present. In my opinion though

there may be an element of chance and in that sense a lottery, there is no scope for an offence or an invitation to the public inviting them to join as

the whole transaction started with a definite number of ascertained persons and no outsider could ever join in the present transaction after it is

started. In my opinion there is no offence committed. Nor is there any wagering transaction as to which the Full Bench judgment in Narayana

Ayyangar v. Vellachami Ambalam ILR (1927) Mad. 696 : (1927) 52 M.L.J. 687 is conclusive. This is not contested by the learned Advocate for

the respondents. I allow the revision petitions and modifying the decrees of the District Munsif give a decree for the amounts prayed for with

subsequent interest from the date of plaint up to the date of payment at 6 per cent, per annum. The petitioner will have costs throughout.

