
(2016) 06 BOM CK 0116
In the Bombay High Court
Case No : Criminal Appeal No. 123 of 2016

Himmat Shriram Maghade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 406

Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 3, 4

Citation : (2016) ALLMRCri 3032

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : Shri P.V. Navlani Advocate, for the Appellant; Smt. M. Deshmukh, APP, for the Respondent

Final Decision : Disposed Off

Judgement

S.B. Shukre, J.(Oral) - Heard finally by consent of the parties.

2. Learned counsel for the appellant submits that the appellant is not having any intention to cause wrongful gain or wrongful loss to anybody and, therefore, the finding recorded by the trial Judge that the appellant has committed an offence punishable under Section 4 read Section 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short the Prize Chits Act) and also under Section 406 of Indian Penal Code is illegal.

3. Learned APP supports the impugned judgment and order and prays for dismissal of the appeal.

4. On going through the impugned judgment and order and record and proceedings, I find that the learned APP is right when she submits that there is ample evidence on record which clearly establishes beyond reasonable doubt the intention of the appellant, which was to run a scheme in violation of the prohibition of Section 3 of the Prize Chits Act. The scheme that was floated was to the effect that various persons were introduced to the membership of the

scheme on their paying membership fee of Rs. 100/- and further paying monthly contribution of Rs.1,000/- for a fixed period of time. In view of this, the members were promised some prize which were to be announced by drawing a lot and the non-winner members were promised of getting Rs. 12,000/- after a year with a bonus of Rs. 1,000/-. In the case of weekly scheme, payment of Rs. 6,000/- after the weekly payment at the rate of Rs.100/- for 52 weeks was promised. All the members of this scheme known as "Maitry Collection" have consistently deposed about this fact. They have also deposed about this appellant's role who convinced them about the said scheme in joining the scheme. There is also evidence to show that the amount was misused. These acts of the appellant were in violation of Section 3 of the Prize Chits Act and constituted an offence punishable under Section 4 of that Act as well as Section 406 of Indian Penal Code. Therefore, I am of the view that the finding of guilt recorded against the appellant for these offences by the learned Additional Sessions Judge cannot be said to be perverse or arbitrary or against the well settled principles of law.

5. At this stage, learned counsel for the appellant has pointed out to me a patent illegality committed by the learned Additional Sessions Judge in imposing consecutive punishment for both the offences upon the appellant. He submits that offences under Section 4 of the Prize Chits Act and under Section 406 of Indian Penal Code were committed during the course of single transaction and, therefore, as per the law laid down by the Hon'ble Apex Court in the case of Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti v. Assistant Collector of Customs, Ahmedabad & ors. reported in AIR 1988 SC 2143, the sentences awarded could not have been directed to run consecutively.

6. It is well settled that when the offences are committed in a single transaction, the sentences awarded for these offences should be directed to run concurrently. In the instant case, both the offences for which the sentences are handed out by the learned Additional Sessions Judge, without any manner of doubt, have been committed in a single transaction, i.e. to say, in the course of floating a scheme "Maitry Collection" and operating the same. Therefore, the learned Additional Sessions Judge ought to have proceeded to make the sentences awarded by him run concurrently by following the settled principles of law. Therefore, I find substance in the argument of learned counsel for the appellant and the operative portion of the impugned judgment and order needs to be modified so as to bring it in line with the settled principles of law. To this extent only, this appeal can be allowed. In the result, following order is passed.

7. The appeal is partly allowed. The conviction recorded for the offences punishable under Section 4 of the Prize Chits Act and under Section 406 of Indian Penal Code and the sentences of imprisonment and fine respectively imposed for these offences are hereby maintained. However, the direction that these sentences shall run consecutively is hereby quashed and set aside. It is substituted by the direction that the said sentences shall run concurrently.

Remaining portion of the operative part of the judgment and order is also maintained.

8. Appeal is disposed of in these terms.