

(1994) 11 MAD CK 0119

In the Madras High Court

Case No : Criminal Original Petition No. 11857 of 1992

P.K. Krishnasamy and another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-11-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34

Citation : (1995) 1 LW(Cri) 235

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Advocate : M. Karpagavinayagam, for the Appellant; A.N. Rajan, for the Respondent

Judgement

Jayarama Chouta, J.—In this Criminal Original Petition filed u/s 482 of the Code of Criminal Procedure, the Petitioners, who are two in number, have requested this Court to call for the records in C.C. No. 34 of 1989 on the file of the Judicial Magistrate II, Nagercoil and quash the said proceedings against them.

2. The necessary facts for the disposal of this Criminal Original Petition are:

The Respondent/Sub Inspector of Police, Vadasery, filed a Charge-Sheet in C.C. No. 34 of 1989 before the Judicial Magistrate IX, Nagercoil, against the Petitioners, for an offence punishable u/s 3 of the Tamil Nadu Prize Schemes (Prohibition) Act, 1979, hereinafter referred to as the Act, and Section 34, I.P.C. According to the prosecution, Petitioner No. 1 is the owner and Petitioner No. 2 is the Manager of Bombay Textile Exhibition, doing their business at Tower View Lodge premises and they were conducting sale of textiles under the Prize scheme, by advertising through pamphlets and using coupon, which is prohibited under the Act, and therefore they have committed an offence, punishable u/s 3 of the Act, read with Section 34 Code of CPC. The matter is pending before the Judicial Magistrate II, Nagercoil, in C.C. No. 34 of 1989. The said proceedings has been questioned by the accused/Petitioners in this Criminal Original Petition.

3. Heard the learned Advocate for the Petitioners and the learned Government Advocate on behalf of the State/Respondent.

4. The main argument of the learned Counsel for the Petitioners is that the allegations contained in the F.I.R. Charge sheet and the statements of the witnesses do not constitute an offence, punishable u/s 2(b) of the Act. He invited my attention to Section 2(b) of the Act, which reads as follows:

Prize Scheme" means any scheme by whatever name called whereby and prize or gift (whether by way of money or by way of moveable or immoveable property) is offered, or is proposed to be given or delivered to one or more persons to be determined by lot, draw or in any other manner from among persons who purchase or have purchased goods or other articles from shops, centers or any other place whatsoever specified by the sponsors of the scheme or on any event or contingency, relative or applicable to the drawing of any ticket, lot, number or figure in relation to such purchasers.

Section 3 speaks about prohibition of Prize Schemes, Which says that no person shall promote or conduct any prize scheme, and Section 4 speaks about the penalty for contravening the provisions of Section 3.

5. Placing reliance on the definition of "Prize Scheme" the learned advocate for the Petitioners submitted that to attract the provisions of this Section, there should be a prize or gift, which has to be determined by lot, draw or in any other manner from among persons, who purchase or have purchased goods or other articles from shops, centres or any other place whatsoever specified by the sponsors of the scheme or on any event or contingency, relative or applicable to the drawing of any ticket, lot, number or figure in relation to such purchasers. Here in the present case, the prosecution has collected materials to show that for each and every-purchaser gift is being given and that being so, it is not out of draw, or lot and hence the provisions of Section 2(b) of the Act are not at all attracted. The Petitioners' Advocate further submitted that Section 3 of the Act stipulates that no person shall promote or conduct any Prize Scheme, and here the Petitioners are not promoting or conducting any Prize Scheme, offering Prizes with a commodity or articles or textiles or any other variety of materials along with commodities sold by the Petitioners, will not amount to promoting or conducting any prize scheme. Further, the Petitioners have offered gift with each item of textile sold in their shop and it is not given to one or two person, but to all the persons, who purchase textile item in their shop, and therefore Section 3 of the Act could not be made applicable to the case in question, and consequently the Petitioners pray for quashing the proceedings.

6. On the other hand, learned Government Advocate Mr. A.N. Rajan appearing for the State submitted that in whatever from they give, it attracts the provisions of Section 2(b) of the Act. According to him, the definition of "Prize Scheme" is very wide, which included the present way of gift given by the Petitioners also. It will be difficult for me to accept the contention put forward by the learned

Government Advocate. Section 2(b) is specific that it has to be decided only on the basis of lot or draw. Any other thing given along with the commodities to each and every customer will not attract the provisions of Section 2(b) of the Act. Hence, for the reasons stated above, allowing the proceedings to continue before the trial Court will be waste of public time and in the interest of justice, by invoking Section 482 of the Code of Criminal Procedure, I have to quash the said proceedings.

7. For the reasons stated above, I allow this Criminal Original Petition and quash the proceedings in C.C. No. 34 of 1989, pending on the file of the Judicial Magistrate II, Nagercoil.