
(1997) 04 AHC CK 0112

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 557 of 1996

Pravin Chaudhary

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473, 482

Citation : (1997) 04 AHC CK 0112

Hon'ble Judges : A.N.Gupta, J

Final Decision : Disposed Of

Judgement

A.N. Gupta, J.—On 2551987 Sri G.D. Dwivedi, Inspector of C.B., C.I.D. lodged an FIR against the petitioner, Harish Chandra Gupta, Rajendra Kumar Verma and Ram Babu under Section 3/4 of the Prize Chits Money Circulation Schemes (Banning) Act, 1978 (Act No. 43 of 1978) in substance alleging that the accused persons were running a Chit Fund Company in the name and style of UP. Saving and General Finance, having its head office at Bareilly and branches at Shahjahanpur, Siapur, Budaun, Moradabad, LahimpurKheri, Palla Kalan, Lucknow and Haldwani. It was stated in the FIR that on the pretext of distributing attractive prizes, Chit Schemes were being operated against law and money was being extracted from the Public in monthly instalments. It was also mentioned that even after submitting winding up proposals to the State Government, several schemes were being run, the details of which were given in the FIR. The number of such schemes mentioned in the FIR is atleast 7, After completing investigation, C.B., C.I.D. submitted chargesheet before the competent Court on 1111996 with an application for condonation of delay. Section 3 of the said Act provides that no person shall promote or conduct any prize, chit or money circulation, scheme, or enrol as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme. Section 4 provides that whoever contravenes the provisions of Section 3, shall be punishable with imprisonment for a term which may extend to five thousand rupees or with both. Proviso to Section 4 lays down that except in

the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees. Section 468 (2)(c) Cr.P.C. provides that if the offence is punishable with imprisonment for a term exceeding one year but not exceeding 3 years, the limitation for the court to take cognizance of the offence shall be 3 years. Since the chargesheet had admittedly been submitted to the court after expiry of the aforesaid period of 3 years, an application under Section 473, Cr.P.C. was moved which provide that notwithstanding anything contained in the fore going provisions of this Chapter, which includes Section 468, Cr.P.C. any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice.

2. Learned Magistrate by means of this impugned order dated 19/11/1996 without issuing notice to the accused persons or without giving an opportunity of hearing, allowed the prosecution application under Section 473, Cr.P.C. and condoned the delay in filing the chargesheet and summoned the accused persons for 10th March, 1996 after taking cognizance of the offence.

3. Now this petition under Section 482, Cr.P.C. has been preferred by one of the four accused persons, challenging the order of learned Magistrate condoning the delay in filing the chargesheet without providing an opportunity of hearing to the accused. For this purpose reliance has been placed on a decision given in the case of *State of Maharashtra v. Sharad Chandra Vinayak Dongre and others*, 1995(2) JIC 1363 (SC), in which it has been held that the application for condoning delay in launching prosecution shall be disposed of after issuing notices to the accused persons and after providing them an opportunity of hearing.

4. In view of this, petition under Section 482, Cr.P.C. is allowed. Order dated 19/11/1996 passed by learned Magistrate is quashed so far as it allows the prosecution application moved under Section 473, Cr.P.C for condoning delay in launching prosecution. The case shall go back immediately to the learned Magistrate where the applicant shall appear on 20/5/1997. The applicant or other accused persons shall be free to file objection against application for condonation of delay. If such objection is filed the learned Magistrate shall dispose of the prosecution application for condoning delay after hearing both the parties. If no such objections are filed within a week from 20th May, 1997 the Magistrate shall be free to dispose of the prosecution application after hearing the parties.