
(1934) 01 MAD CK 0027
In the Madras High Court

Public Prosecutor

APPELLANT

Vs

M. Munisami Naidu

RESPONDENT

Date of Decision : 31-01-1934

Acts Referred:

Penal Code, 1860 (IPC) — Section 294A

Citation : AIR 1934 Mad 464 : (1934) ILR (Mad) 923 : 150 Ind. Cas. 1119 : (1934) 40 LW 26

Hon'ble Judges : Beasley, C.J

Bench : Division Bench

Judgement

Beasley, C.J.—The respondent was charged before the Taluq Magistrate of Cuddalore with an offence u/s 294-A, I.P.C. and was acquitted. Government now appeals against that acquittal. The respondent is a cycle and gramophone dealer keeping a shop for that purpose, and the case for the prosecution is that, besides carrying on that perfectly legitimate, business, he got up a lottery after having invited members of the public to take part in it and also that he kept an office or place for the purpose of drawing the lottery which was not authorized by Government. First of all, we have got to see what this scheme of the respondent which is alleged to be a lottery, provided for. That is set out in para. 3 of the Magistrate's order. It is evident that the respondent started two chits as they are described by the Taluq Magistrate one in February 1932, and the other in March 1932. The condition of these chits, or whatever description the scheme merits, are contained in two, documents Exs. D and D-1. There were to be a hundred "subscribers in each section. The subscription was fixed at Rs. 3 a month and the transactions covered a period of 20 months. Every subscriber was offered a gramophone with a needle box and some records or a cycle with accessories; and when joining the chit the subscriber had to state whether he wanted a gramophone or a cycle. There was to be a drawing every month for 20 months. The subscriber whose number or name was drawn at one of these monthly drawings was at once given the article he wanted and was relieved from liability to pay further subscriptions. In the 21 months the subscribers who did not win

prizes, that is to say, whose names or numbers had not been drawn and who had not received a prize in the shape of a cycle or gramophone were each given a cycle or a gramophone.

2. The result of this is that those whose names or numbers were drawn earlier derived a far greater benefit than those whose names or numbers were drawn later. The successful subscriber whose name or number happened to be drawn in the first month would get for his Rs. 3 either a cycle or a gramophone and thereafter contribute nothing towards the scheme, whereas the unsuccessful ones continued to subscribe. There therefore was provided for a very substantial gain to a subscriber, which gain was dependent purely upon chance, that is to say, upon his name or number being drawn at any one of the monthly drawings. In our opinion this was clearly a lottery and, that being so, as the drawings took place in the respondent's shop, it appears to us that, although he may have kept that shop for the purpose of carrying on his legitimate business of selling gramophones and cycles to the public, he might rightly be said also to be keeping a place for the purpose of drawing a lottery. But it is not necessary to express any more definite opinion upon that part of the case than we have already expressed because, if this is a lottery as we hold it to be, we are satisfied that the respondent did publish in Ex. D, D-1 a proposal to deliver goods on an event or contingency relative or applicable to the drawing of the ticket, lot or number, and if that is so, he committed an offence under the latter portion of Section 294-A, I.P.C. Some difficulty has arisen in this case by reason of a judgment of Ramesam, J., in *Durga Venkataramana v. Sanyasayya* AIR 1934 Mad. 136. From the facts of that case, our learned brother was dealing with a scheme similar to this. In fact we are unable to see that it differs in any important respect. Our learned brother was of the opinion that there was certainly in that scheme an element of chance and that for that reason it was in a sense a lottery, but he was of the opinion that there was no scope for an offence or an invitation to the public asking them to join as the whole transaction was started with a definite, number of ascertained persons and no outsider could ever join in the transaction after it had started. Accordingly he was of opinion that no offence had been committed.

3. It must be observed that in the case now before us the scheme provided for a division of subscribers into sections of a hundred. As the number of subscribers became 100, that section was closed and the subscribers who came in later were put into the next section and as those numbers exceeded 200 those who came in after, were put in still another section. That is to be found from both Ex. D and Ex. D-1. We do not know whether in the case referred to there was a similar provision, but, in our opinion, it does not make any difference whether there was only one section containing 100 subscribers or whether there was provision for more sections each of them containing 100 subscribers. Our learned brother bases his opinion upon the fact that the number of persons was ascertained, namely 100, and it is upon that ground that, although of the opinion that the scheme was possibly a lottery, he held that no offence had been committed. With

great respect to our learned brother, we are unable to see that this affects the question. The subscribers are formed into sections - obviously for the sake of convenience - and members of the public were asked to become members of the sections. Each section no doubt is limited to 100, but the excess numbers become members of other sections. As soon as each section is complete the lottery commences. It is clearly a lottery. The public are asked to join in it, and, if that is so, an offence falling within the latter part of Section 294-A, I.P.C., is clearly committed. We are unable to agree with the decision in Venkataramana v. Sanyasayya AIR 1934 Mad. 136. The acquittal of the respondent must therefore be set aside and substituted therefor there must be a conviction u/s 294-A, I.P.C. (latter part) and the respondent must be punished with a fine of Rs. 50 in default of payment of which he will undergo one week's simple imprisonment.