
(1932) 11 CAL CK 0004
In the Calcutta High Court

Rabindra Nath Dhar

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 22-11-1932

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 196
Penal Code, 1860 (IPC) — Section 294A

Citation : AIR 1933 Cal 332

Hon'ble Judges : Mitter, J

Bench : Division Bench

Judgement

Mitter, J.—This rule was issued on the Chief Presidency Magistrate to show cause why the conviction of and the sentence passed on the petitioner Rabindra Nath Dhar u/s 294-A, I.P.C., should not be set aside. The first ground on which this Rule is supported is that the sanction of the Local Government was not obtained as it was necessary to have been obtained u/s 196, Criminal P.C., before cognizance could be taken of an offence u/s 294-A, I.P.C. The point which is made by Mr. Fazlul Huq who appears for the petitioner is that this sanction was not exhibited in Court till 10th June 1932, whereas the cognizance was taken of the case on the complaint of the Police Inspector on 26th May 1932. If he had been able to substantiate this point the Rule would have been made absolute. Unfortunately for his client it appears that this sanction of the Local Government which was signed by Mr. Reid, Officiating Chief Secretary to the Government of Bengal, is dated 18th May 1932 and was annexed to the petition of complaint and was marked as Ex. B. The complainant was examined and processes were directed to be issued on 27th May 1932, so that cognizance was taken of the case after the complaint was lodged and the complaint was made by the order of or under the authority from the Local Government within the meaning of Section 196, Criminal P.C. There is therefore really no substance in this point taken by Mr. Huq.

2. The next ground on which this conviction is attacked is that the entire evidence even if believed does not bring the case within para. 2, Section 294-A,

I.P.C. It appears that the present petitioner was charged for publishing a proposal to pay a sum of money or to deliver any goods on an event or contingency relative or applicable to the drawing of a ticket, lot, number or figure in a lottery not authorized by Government. So far as the Chandernagore Sweep Stake is concerned of which the petitioner claims to be the head organizer there is no question that he has not been able to produce any paper to show that this lottery was authorized. It is argued by Mr. Huq that no evidence was adduced by the Crown that the Irish Sweep Stake was not authorized by the Government. It appears however that evidence has been given in this case that this is an unauthorized lottery by the Police Inspector who was examined in the case. So far as the Irish Sweep Stake is concerned it is not even authorized in England, far less is it authorized by the Government of India. The ticket itself contains a proposal for the payment of different sums for the benefit of the holders of such tickets. It appears from a circular of the Irish Sweep Stake which is referred to in one of the letters written by or found in the possession of the present petitioner that the Irish Hospital Sweep Stake is expected to reach the huge total of ₹ 5,000,000 or seven crores of rupees. The said letter states that applications should be made with Its. 7-8-0 par ticket to R.N. Dhar. The above money it is stated in that circular will be divided on each unit of ₹100,000 as follows: 50 first prizes of ₹30,000 or over four lacs of rupees each, 50 second prizes of ₹15,000 or over two lacs of rupees each 50 third prizes of ₹10,000 or over 1½ lacs of rupees each, 1200 prizes of Rs. 12,000 to Rs. 15,000 each and 5000 cash prizes of ₹200 or Rs. 2,750 each. It is difficult to hold having regard to the correspondence which has been disclosed in this case that the case of the petitioner does not come within the mischief of Section 291-A, I.P.C. I am of opinion that the conviction is justified by the provisions of this section.

3. A question that may however arise is whether the sentence of fine of Rs. 200 is too severe. This is the first offence of the kind so far as the petitioner is concerned and some consideration may be given to the circumstance that the petitioner says that he did not know that the Irish Hospitals' Sweep Stake was an unauthorized lottery. It is true that ignorance of law is no excuse, but one may in awarding sentence take into consideration the fact that the accused was not cognizant of the fact that the Irish Hospitals Sweep Stake was an unauthorized lottery. My attention has been drawn by Mr. Bhattacharjee to a letter addressed to the petitioner by the Irish Hospitals Trust Ltd., Dublin, to the effect that:

whole sale distribution by the means suggested, viz., advertisement, circularizing, &c is almost certain to bring you into conflict with the authorities.

4. It may be that the petitioner might not have understood the full import of this statement. I think the ends of justice will be met in this case by reducing the sentence to a fine of Rs. 50 (rupees fifty only). Mr. Bhattacharjee who appears for the Crown rightly says that according to the practice which is followed by Crown counsel he leaves the question of sentence to the Court. The result is that

the fine imposed on the petitioner is reduced to Rs. 50. If the fine has already been realized, the portion of the fine remitted, i.e., Rs. 150, will be refunded to the petitioner.