

(1976) 06 MAD CK 0022

In the Madras High Court

Case No : Criminal Appeal No. 362 of 1974

State by Public Prosecutor

APPELLANT

Vs

Kalyanasundaram

RESPONDENT

Date of Decision : 25-06-1976

Acts Referred:

Citation : (1976) LW(Cri) 218

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : B. Ramamurthy, for Public Prosecutor, for the Appellant; Modivanan, for M/s. T.R. Rojagapalan and T.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

Natarajan, J.—The State is the Appellant, and the appeal is directed against the acquittal of the accused in C C. No. 324 of 1973 on the file of the Additional First Class Magistrate, Mayuram, of an offence punishable u/s 53(2)(b) read with Section 20(2) of the Tamil Nadu Chit Funds Act, 1961.

2. The brief facts of the case which are not in controversy are as follows: The Respondent is conducting chit business at Mayuram and the bye-laws of the Chit Fund have been duly registered with the Chit Registrar. In Chit Fund No. 12 which was commenced on 27th September, 1971, one Ramakrishnan consented to be a subscriber and he was assigned Ticket No. 13. He had also entered into an agreement in respect of the contributions to be made by him to the chit. Notwithstanding the agreement, Ramakrishnan defaulted in paying the very first instalment which fall due on 9th October, 1971. Therefore, the Respondent removed him from the rolls of the Chit and substituted in his place one Venkatesan and took a fresh agreement from the new entrant. On the ground that the Respondent had failed to intimate the removal of Ramakrishnan from the list of subscribers within 14 days from the date of removal, the Chit Registrar, Mayuram, preferred a complaint against the Respondent. The defence of the Respondents that Ramakrisinan, having failed to subscribe even the first

instalment and thus becoming incompetent to partake in the first auction held on 11th October, 1971, was not a non-prized subscriber as contemplated under the Tamil Nadu Chit Funds Act, and therefore, he (the Respondent) was not under a legal obligation to give notice of his removal from the list within 14 days. This defence was accepted by the Trial Magistrate and the Respondent was acquitted.

3. Mr. B. Ramamurthy, appearing for the learned Public Prosecutor contends that the learned Magistrate was not justified in making a difference between a defaulting subscriber and a non-prized subscriber, and holding that since Ramakrishnan was a defaulting subscriber, he was not a non-prized subscriber, and therefore, the Respondent was not under an obligation to give notice of Ramakrishnan's removal from the subscribers' list to the Chit Registrar. To appreciate the controversy of the case it is necessary to refer to some of the provisions of the Act.

4. Section 2(2) of the Act defines what a chit is. For the purpose of this case it is not necessary to make a detailed reference to that definition. Section 2(3) defines a "defaulting subscriber" to be a subscriber who has defaulted in the payment of subscriptions due according to the terms of the chit agreement. Section 2(12) refers to "non-prized subscriber" and says that the words do not include a subscriber who has defaulted in the payment of subscriptions due according to the terms of the chit agreement. Section 2(14) defines a "prized subscriber" to be a subscriber who has either received or is entitled to the prize amount. "Prize amount" is defined in Section 2(13) and is said to mean the difference between the chit amount and the discount. Reference is also made in this definition clause to fractional holders of tickets and contributions payable in kind etc. But a reference to a them is necessary so far as the instant case is concerned. Ss.20(1) and 20(2) of the Act read as follows:

A non-prized subscriber who defaults in paying his subscription in accordance with the terms of the chit agreement shall be liable to have his name removed from the list of subscribers. Every such removal shall, with the date thereof, be entered in the relevant book maintained by the foreman. A written notice of such removal shall be given by the foreman to the defaulting subscriber within fourteen days of such removal, A true copy of the entry referred to in Sub-section(1) shall be filed by the foreman with the Registrar within fourteen days from the date of such removal.

Having regard to the several provisions referred to above, it may clearly be seen that a subscriber committing default ab initio cannot be equated with a non-prized subscriber, whose removal alone from the subscription list calls for intimation under Ss. 20(1) and 20(2) of the Act. Even the definition of non-prized subscriber" occurring in Section 2(12) clearly states that that terminology will not include a subscriber who was defaulted in payment of subscriptions due according to the terms of the chit agreement. The position is made still more clear by Section 2(13) which says that "prize amount" will mean among other things, the difference between the chit amount and the discount. If, therefore,

follows that for a subscriber to be included in the category of non-prized subscribers he should have contributed at least the first instalment of the chit and be eligible to bid at the auction. Otherwise, without payment of subscription he will not be eligible to lay claim to the prize amount. In the present case, since Ramakrishnan did not pay even the first instalment and was not a subscriber on the date of the auction, it necessarily follows that he cannot be termed a non-prized subscriber. The contention of the Public Prosecutor that even a defaulting subscriber should be treated as a non-prized subscriber cannot, therefore, be accepted.

5. Apart from the definitions referred to above, I may also point out the provisions contained in Section 22 of the Act, which run contra to the contentions of the learned Public Prosecutor. That Section lays down that when a substituted subscriber draws the prize amount, the defaulting subscriber shall be entitled to recover from the foreman his contributions subject to such deductions as may be provided for in the chit agreement. This will mean that for a subscriber to be included in the category of non-prized subscriber, he must have made some contributions towards instalments. Without the payment of even one instalment a subscriber cannot be termed a non-prized subscriber as envisaged u/s 2(12) of the Act.

6. In such circumstances, the acquittal of the Respondent has to be sustained, and the appeal cannot be allowed. The appeal will, therefore(sic), stand dismissed.