

(1981) 11 MAD CK 0013
In the Madras High Court
Case No : Criminal App. No. 414 of 1978

State by Public Prosecutor

APPELLANT

Vs

V.M. Narayanasami Mudaliar and Others

RESPONDENT

Date of Decision : 25-11-1981

Acts Referred:

Constitution of India, 1950 — Article 14
Penal Code, 1860 (IPC) — Section 294A

Citation : (1983) LW(Cri) 105

Hon'ble Judges : M.N. Moorthy, J

Bench : Single Bench

Advocate : N. Dinakar, Govt. Advocate No. II Criminal Side on behalf of the State, for the Appellant; Habibulla Badsha, A.J.A. Kumaran and Mr. J. Stainislas for Respt. Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Moorthy, J.—Nine accused who faced a trial before the learned Judicial Second Class Magistrate, Gudiyatham, in C.C.No.4749 of

1976 were found guilty for an offence under S. 294-A, Part 1, I.P.C., and sentenced to pay fine of Rs. 500 each in default to suffer simple

imprisonment for one month. Likewise they were also convicted for an offence under S. 294-A, part 2, I.P.C., and sentenced to pay a fine of Rs.

500 each in default to suffer imprisonment for one month. Against the said convictions and sentences, the accused preferred an appeal before the

learned Sessions Judge, North Arcot Division at Vellore, in CrI.App.No.440 of 1977. The appeal was allowed and the convictions and sentences

were set aside. Aggrieved by the order of acquittal passed by the lower appellate Court, the State has preferred this appeal against acquittal.

The prosecution case in a nutshell is as follows :--The nine accused were

partners of Sri Mahalakshmi Financial Corporation, situated at No.50

Neeli Govindappa Chetty Street, Tharanampet, Gudiyatham. Between 5th February, 1976 and 2nd September, 1976, for the purpose of

conducting lotteries, they conducted and drew lotteries without authorisation of the Government and paid prizes and also published proposals to

pay bumper amounts and deliver bumper prizes in the nature of goods by drawing lottery tickets sold to the public and drew tickets by lots and

paid prizes and delivered goods for such tickets drawn.

2. The prosecution has examined seven witnesses to prove the case against the accused. P.W.1 was the Deputy Inspector of Police, Gudiyatham.

According to him, Sri Mahalakshmi Financial Corporation was having its office at No.50, Neeli Govindappa Chetty Street, Tharnampet,

Gudiyatham, and all the accused were its partners. It was registered with the Registrar of Firms on 13th September, 1973. It started a bumper

prize scheme in February, 1976 according to which every member was to pay Rs. 250 and prizes would be given by drawing lots. Ex.P3 is its

advertisement. 1851 persons joined the scheme. Winners were declared by drawing lots. The said Corporation had no permission from the

Government. He has filed Exs.P3 to P8 in support of the case against the accused.

3. P.W.2 was the Head Clerk of the said Corporation. According to him, he wrote the amounts of the drawing of the lotteries. He has deposed to

the drawing of lots on different dates and produced Ex.P10 to P13, the minutes of the drawing of the lots. The lots were drawn with similar tokens

on each drawing date. Ex.P3 is the publication of the scheme by the corporation.

4. P.W.3 had purchased four cash certificates for Rs. 250 each from the Corporation. The certificate purchased in the name of his daughter

Parameswari fetched him the first prize of Rs. 50,000. Instead of money, he got a car, cup-board, refrigerator and grinding machine and gave

Ex.P28 receipt. According to him, he joined the scheme on seeing the advertisement of the same in the Bank.

5. P.W.4 purchased a cash certificate for Rs. 250 and he secured the third prize of Rs. 400 in the drawing of lots on 5th August, 1976. He went to

attend the drawing of lots and one number from each of the five boxes was picked up and the winners were declared.

6. P.W.5 was the Manager of the Tanjore Permanent Fund, Gudiyatham branch.

For the draw held on 5th May, 1976 he acted as the "" "".

According to him, numbers from 0 to 9 were put and shuffled and numbers were taken and the winners were declared.

7. P.W.6 purchased a cash certificate for Rs. 250 but he did not win any prize. He attested Ex.P30 mahazar for the recovery of Ex.P3 to P29 by

P.W.7 from A9.

8. P.W.7 was the Inspector of Police, Gudiyatham. He deposed that Accused 1 and 9 were partners of the Mahalakshmi Financial Corporation.

He recovered Ex.P3 to P29 from A9 under a mahazar. He deposed that the accused had no authorisation from the Government to conduct the activities of the scheme of the corporation.

9. When the accused were questioned, on the incriminating circumstances appearing against them in the prosecution case, they admitted that they

had received deposits of Rs. 250 each. According to them, they returned the deposit with Rs. 50 as interest to the subscribers after the expiry

period. In the meantime, once in three months, they distributed the profits to four depositors as prizes and nobody stood to lose. They denied that

the scheme is a lottery and as such they have not committed any offence.

10. The learned Public Prosecutor contended that the lower appellate Court erred in holding that the bumper prize scheme is not a chit fund

transaction and the subscribers have joined the scheme run by the accused on the inducement of the prizes offered by them ranging from Rs.

50,000 to Rs. 500 to be drawn at regular intervals by way of lots. He further contended that because no loss has been sustained by the subscriber

the scheme does not cease to be a lottery. The element of chance plays a predominant role in this scheme. Only a few lucky subscribers benefit

from the scheme and they get more than the other subscribers and this is decided by lots which is nothing but a pure chance. He also contended

that the publishing of proposal form by the accused will itself attract the definition of "publication" within the meaning of S. 294A, Part 2, I.P.C.

11. Mr. A. Ramachandran, learned counsel appearing for the accused, contended that, as no subscriber lost any amount which he has deposited

and not even the interest, the scheme as envisaged does not become a lottery. Some should lose and some should gain for the transaction to

become a lottery. Merely giving a share of the profits as an incentive for

attracting deposits is not a lottery. He farther contended that all the partners of the Corporation, who are nothing but sleeping partners, except perhaps the Managing partner, could be made answerable for the scheme. He next contended that the bumper scheme as in this case is being run everywhere and it is not established that a licence is necessary. Finally, he argued that the accused, with a view to improve their banking business and to get more deposits, started the scheme in the same way as done by everybody else. He filed a number of pamphlets advertisements in the newspapers of similar bumper schemes and incentive prize offers.

12. S. 294A, I.P.C. is in these terms:

Whoever keeps any office or place for the purpose of drawing any lottery not being a lottery organised by the Central Government or a lottery authorised by the State Government shall be....

Whoever publishes any proposals to pay any sum or to deliver or to do or forbear doing anything for the benefit of any person, on any event or

(sic) relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be....

The prosecution has to prove the following points to establish the guilt of the accused for an offence under S. 294A:

- i. The accused kept an office or place;
- ii. The place was used for the purpose of distributing sums of money by chance;
- iii. Such a distribution is a lottery, and
- iv. There was a drawing within the meaning of the section.

For the second part, the consideration is whether the accused published proposals for the payment of the sums of the money on any event relative to the drawing of such lottery.

13. The word "lottery" is not defined in the Code. Encyclopaedia Britannica defines "lottery" as a scheme or procedure for distributing something

(usually money or prizes) among a group of people by lot or chance. Lottery is generally defined as a hazard in which such (sic) lots are ventured

for a chance of obtaining a greater value. In its simplest form the adventurers contribute a fund which they agree among themselves shall be

unequally divided upon the happening of an agreed event. It is also defined, as organised competition, where money or other prize is paid, the

winners of which are selected by lots, the funds being subscribed by the competitors. A scheme is regarded as a lottery if it is clear that whatever other benefit the subscriber or competitor may get in return for his money, the chance of his getting the prize was also part of the bargain must have entered into his calculation.

14. The scheme in the instant case as disclosed by the prosecution and the subsequent distribution of prizes to the successful candidates by

drawing lots is not disputed by the accused. It has been admitted that the subscribers paid Rs. 250/- for each cash certificate as deposit. The

learned Public Prosecutor contended that what the accused have done is "lottery" business as Ex.P.3 the publication shows"" . It contains the rules

also according to which every three months there will be a drawing of lots and the prizes would be given from Rs. 50,000/- downwards. The

scheme was to run for sixty months. The prosecution has produced Exs.P10 to P13 which clearly show that the draws were held and four persons

were declared winners in each draw. The prosecution has also proved that the numbers were put in a jar, mixed and one number was taken from

each jar and written on the blackboard and prizes were given to the successful persons. The accused had also not denied that they had their office

at No.50, Neeli Govindappa Chetty Street, Tharanampet, Gudiyatham. Ex.P3 advertisement also mentions the same address, and it contains the

names of the nine accused as partners. It is also contended that 1851 persons would not have joined the scheme if there was no publication.

15. On behalf of the State, the learned Public Prosecutor, to support his stand that the transaction of the firm of the accused is a lottery, relied

heavily on a Full Bench decision of our High Court reported in Sesha Ayyar v. Krishna Ayyar and others ILR 59 Mad 562 (F.B.). The learned

Judges there were considering whether "kuri" or "prize chit" was a lottery. There the prize chit started with 625 subscribers, the monthly

subscription being Rs. 3/-. The number of months to be subscribed was fifty. Every month a ticket was to be drawn out of the 625 tickets and the

winning ticket was to be paid Rs. 150/- without any liability to pay for future instalments. That process was to be repeated every month till the 50th

month. After the 50th month, the remaining 575 subscribers were each paid Rs. 150/-, i.e., the amount actually paid by them and the chit fund was

then to be closed. By a majority of 4 to 1 the Court held that the said "kuri" or "chit fund" was a lottery.

16. The decision reported in *Gordon, Mackay & Co. Ltd. v. Watson*, 1936 2 All England Law Report 33 was next placed before me by the

learned Public Prosecutor. In that case, a limited company employed agents to distribute tickets bearing the names of races, horses and jockeys,

and also the name of the company, and an offer to exchange the tickets for goods on demand. Any member of the public receiving a ticket was

entitled to bet on the combinations named on the ticket. If he won, he received the amount of his bet; if he lost he could exchange the ticket for

goods worth six pence through the firm's agent. By conditions on the ticket, he paid no money to the agents, but undertook to pay 6 pence if he

lost. The Court held that the scheme was a lottery.

17. The learned counsel for the accused raised a point that the State authorities are allowing drawing of lots to be conducted by number of

commercial houses and banks. The firm of the accused alone is singled out for prosecution. He made a feeble attempt to contend that this is

discrimination violating the guarantee of equal protection of the laws under Art. 14 of the Constitution of India. This point though raised was not

pressed before me.

18. The learned counsel for the accused contended that the case cited by the learned Public Prosecutor reported in *Sesha Ayyar v. Krishna Ayyar*

and other ILR 50 Mad 696 (F.B.), is a case dealing with pure and simple "kuri" transaction, unlike the present case and that it was decided before

an Act like the Madras Chit Funds Act 24 of 1961 came into force. According to him, even in *Narayana Ayyangar and 2 others v. Vellachami*

Ambalam and another, ILR 50 Mad 696 (F.B.) a suggestion was thrown out that the chit fund transactions require to be regulated in the interest of

the Public to avoid perpetration of fraud on poor and innocent persons and that legislation on the lines of the Provident Fund Act is the proper

course and not to declare them illegal by the straining of the law relating to wagering contracts and Act 24 of 1961 answered the need for it.

19. S. 2 of Act 24 of 1961 defines "chit" as a transaction whether called chit, kuri, or by any other name, by which its foreman enters into an

agreement with a number of subscribers, that every one of them shall subscribe

a certain sum or a certain quantity of grain by instalments for a definite period and that each subscriber in his turn as determined by lot or by auction or by tender or in such other manner as may be provided for in the agreement, shall be entitled to a prize amount. It is strenuously contended that the tenor of the Full Bench decision reported in *Sesha Ayyar v. Krishna Ayyar and other*, ILR 59 Mad 562 at Page 590 should be viewed in the light of the absence of provisions like that of Act 24 of 1961. Unlike in the Full Bench case where the subscribers stood to lose the interest, in the present case the money was returned to the subscribers with interest, there is absolutely no loss to any subscriber. There is no question of any hazard, risk or danger. The scheme as envisaged by the accused's firm is a benevolent scheme to encourage and foster the habit of savings by the Public. In a lottery only a few are benefited while the many who subscribe are the losers, but in any arrangement as the one made by the accused all in turn got a return of the amount of their contribution. The learned counsel relied on a decision reported in *John Wallingford v. The Directors of the Mutual Society and another*, (sic) wherein it was held that "'society constituted'" for the benefit of its members, making certain of them entitled to particular benefits by the process of periodical drawings, does not become a lottery.

20. The learned Public Prosecutor countered the arguments of the accused's learned counsel relating to Act 24 of 1961. He contended that even there a licence is required to conduct the chits. The purpose of the Act is different. For a lottery loss is not necessary as observed by Wadsworth, J. in *Sesha Ayyar Krishna Ayyar v. and others*, ILR 59 Mad 562 at Page 590 "'though the risk of loss is usually found in any lottery scheme , it is not an essential part of the definition of a lottery'". But it should be noted that the correctness of this dictum was felt unnecessary to be considered by the learned Judge.

21. The term "lottery" denotes a game of chance. Ordinarily, it is a sort of a device to induce the party to buy worthless things against their better judgment and with no return. The only person who always wins is the lottery keeper. S. 294A, I.P.C., punishes (a) one who keeps an office or place for drawing lotteries, and (b) one who publishes any advertisement relating to the lottery.

22. In the instant case Mahalakshmi Financial Corporation is a banking concern. The scheme to attract deposit was by inducing the public that

there will be periodical drawing of lots and prizes would be distributed. As I hold, the purpose of the scheme was only to attract deposits and

distribution of prizes from periodical lots is only an inducement and where no subscriber stands to lose, as even the interest money is paid to the

persons who did not get any prize, it is difficult to describe a transaction like theirs as a lottery to attract S. 294-A, Part I, I.P.C. There is no scope

for an offence as the whole transaction was started with a number of persons who were fixed deposit holders of the bank. There is no question of

any other outsider also trying to join the scheme, after it was started.

23. As far as publication in the second part of S. 294-A, I.P.C., is concerned, it envisages making a thing available to the public. The learned

Public Prosecutor relied on Ex.P3 as "publication". The evidence of P.W.3 is that the prize distribution scheme was put up only by the Bank.

P.W.2 admits that Ex.P pamphlet was given only to persons who were depositing money in the Bank, and that there was no advertisement of the

same at all. AI in his statement emphatically denied that there was any advertisement of the scheme. Under these circumstances, I am not prepared

to hold that there was publication to attract the second part of S. 294-A, in the present case.

24. It cannot be gainsaid that similar other schemes have enjoyed wide publicity and free patronage. It can very well be argued that, choosing a

particular corporation, like the one of the accused, for prosecution is as much a matter of chance as the distribution of prizes under its own scheme.

25. In the result, I see no reason, much less compelling reasons, to set aside the order of acquittal passed by the lower appellate Court. The

Criminal appeal against acquittal by the State fails and it is dismissed.