

(2000) 11 SIK CK 0001
In the Sikkim High Court
Case No : Criminal Appeal No. 3 of 2000

State of Sikkim

APPELLANT

Vs

Sameer Ahmed and Others

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Citation : (2001) CriLJ 2680

Hon'ble Judges : Ripusudan Dayal, C.J.;Anub Dev, J

Bench : Division Bench

Advocate : S.P. Wangdi, P.P. and J.B. Pradhan, for the Appellant; M. Rai, for the Respondent

Judgement

Ripusudan Dayal, C.J.—This appeal has been filed by the State u/s 377 of the Code of Criminal Procedure for enhancement of sentence. The accused persons were tried by the learned Judicial Magistrate, East and were charged under Sections 3, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereinafter referred to the Act) and all of them were sentenced to a fine of Rs. 3,000/- each and in default to undergo simple imprisonment for a term of one year on the plea of guilty. Besides, accused No. 1, namely, Sameer Ahmed was directed to be released u/s 4 of the Probation of Offenders Act. The order is startling in more than one respect. If an accused was to be released on probation, there was no question of his being sentenced of fine. There was also no question of framing charge under Sections 3 and 6 of the Act, since they do not provide for any punishment. Section 3 prohibits a person from promoting and conducting 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 6 deals with the offences by companies and in nutshell provides that where an offence under this Act has been committed by a company, every person who, at the time of offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 6 does not provide for any substantive offence. However, more than anything else, the entire proceedings before the learned Judicial Magistrate were void in view of Section 9 of the Act which states : "No Court inferior to that of a Chief Metropolitan Magistrate, or as the case may be, Chief Judicial Magistrate, shall try any offence punishable under this Act." Section 461(1) of the Code of Criminal Procedure provides that if any Magistrate, not being empowered by law in this behalf tries an offender, the proceedings shall be void. As the Judicial Magistrate was not empowered by law to try the offences under the aforesaid Act, the trial before the Judicial Magistrate has been void. This plea is available to the accused persons in view of Sub-section (3) of Section 377 of the Code of Criminal Procedure which provides: "When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

2. In the result, since the proceedings before the Judicial Magistrate were void, we set aside the impugned order dated 18-3-2000 of the learned Judicial Magistrate, East passed in Criminal Case No. 17 of 1999 and direct that the respondent-accused persons shall be tried de novo by the Chief Judicial Magistrate, East & North. All the accused persons shall be produced before the Chief Judicial Magistrate today itself. The trial Court file be sent to the Court today. Bail application shall also be disposed of by the Chief Judicial Magistrate, East & North.