

(2000) 05 GAU CK 0001

In the Gauhati High Court

Case No : Criminal Revision Petition No.46 of 1996

State of Tripura

APPELLANT

Vs

Ashoke Kumar Subba

RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 34, 420, 468, 469

Citation : (2000) CriLJ 3190 : (2000) 2 GLT 564

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : S. Das, P.P, for the Appellant; K.H. Choudhury Sr. Advocate, A.C. Bhowmik and D.C. Roy, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—The accused-Ashoke Kumar Subba one of the managing partners of M/s. Bindhya Agency, entered into an agreement on 8-1-1993 with the State of Tripura for conducting Tripura State Lottery as an agent. In terms of the agreement, the accused-Ashoke Kumar Subba did not obtain the approval of the State Government for the scheme and fixed 14-2-1993 as the date of lottery draws. The State of Tripura through Shri D. Chakraborty, Director, Small Savings, Group Insurance and Institutional Finance, Government of Tripura, Agartala, on 16-2-1993 lodged an FIR, culminating in filing of chargesheet under Sections 468, 469, 420 read with Section 34 of I.P.C. against the accused persons, namely, Ashoke Kumar Subba, Basanta Subba and Majid Khan, opposite parties in the present revision petition. The accused persons were put on trial before the learned Addl. Chief Judicial Magistrate, West Tripura district who by his order dated 14-12-1995 u/s 239, Cr. P.C. finding the charge as groundless and further that the dispute is of civil nature, has discharged all the 3 accused persons. The State of Tripura by way of present revision has grievance against the said discharge order.

2. I have heard Mr. S. Das, learned Public Prosecutor for the State of Tripura. Also heard Mr. K.H. Chowdhury, learned senior counsel along with Mr. A.C. Bhowmik and Mr. D.C. Roy, learned counsel for the respondent.

3. The argument of the learned counsel for the State is that at the stage of framing charge u/s 239, Cr.P.C. the Court is required to see whether a prima facie case regarding commission of certain offence is made out. The question whether the charges will eventually stand proved or not should be determined only after the evidence is recorded during the trial State of Himachal Pradesh Vs. Krishan Lal Pardhan and Others, Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another, Learned Public Prosecutor submitted that the Addl. Chief Judicial Magistrate was not at all justified in discharging the accused persons without taking the evidence on the record. The accused persons have violated the terms of the agreement entered into between the parties, further they have forged the signature of the informant Director Shri D. Chakraborty, by transplanting the signature from some other documents of the printed lottery tickets. The State of Tripura did not accord approval to the schemes of lottery draw and as stated in the FIR the informant Director was surprised to know about the date of draws only through the newspapers dated 16-2-93.

4. As has transpired during the course of investigation, the accused Shri Ashoke Kumar Subba of M/s. Bindhya Agency submitted 3 lottery schemes, namely, Chetak daily, Dhan Laxmi daily and Labh Laxmi Super with complete details to the informant Director of Institutional Finance on 21-1-93 and 25-1-93 and 14-2-93 was fixed for draw in the said proposals. The paragraph 3 of the chargesheet runs as follows :-

Mr. A.K. Subba of M/s. Bindhya Agency submitted three schemes of lotteries namely (i) Chetak Daily, (ii) Dhan Daily, (iii) Labh Laxmi Super daily with all details to the Director Institutional Finance, Government of Tripura, Agartala on 21-1-93 and 25-1-93 for approval fixing the date of draw on 14-2-93. He also wanted approval fixing the date of draw on 14-2-93. He also wanted Govt. order for printing of tickets. Shri A.K. Subba also applied for giving the specimen signature of the Director Institutional Finance Mr. D. Chakraborty to be printed on lottery tickets.

5. Para-7 of the agreement provides that the scheme for every lottery shall be submitted by the organising agent to be approved by the Director of State Lotteries within 3 days from the date of submission of the scheme by the organising agent, if satisfied. So, in terms of the paragraph the accused submitted schemes to the Director for approval of the scheme in which 14-2-93 was also fixed for draw. The Director was to approve the scheme within 3 days much in advance. It has also come out during the investigation that on 28-1-93, the Director invited the accused to meet him on 12-2-93 for finalisation of the operational discussion. The Director did not communicate formally the approval within 3 days nor he did communicate to the accused persons about the disapproval of the scheme. It is the case of the accused persons that the Director

gave 3 specimen signatures to one Miss Ratna Paul, Private Secretary of the accused Ashoke Kumar Subba for printing of the lottery tickets.

6. The State of Tripura has also filed a civil suit against the accused persons for account and recovery of the amount and the accused persons have also filed civil suit against the State of Tripura for injunction. Though the civil suit has been dismissed by the learned Civil Judge, Sr. Division on account of failure of the accused persons to furnish guarantee within time, the learned Civil Judge found that, in fact, the Director, Institutional Finance approved the scheme submitted by the accused persons. In pursuance of the agreement, the accused persons also sent lottery machine for the purpose of draw through Assam Bengal Carrier. As also observed by the learned Addl. Chief Judicial Magistrate, in Misc. Appeal No.23 of 94, the learned District Judge by his judgment dated 4-9-95 has held that the Director handed over his specimen signature to one Ratna Paul. In the FIR it has not been alleged that the signature of informant Director D. Chakraborty has been forged or taken from some other documents/correspondence and printed on the lottery tickets. In the FIR, the allegation is "it also transpire the signature of the undersigned is printed on the tickets have not been done with formal communication of such specimen signature by the undersigned". Under the agreement, the number of draw to be organised by the accused persons shall be 5475 draws in one year and the accused persons were to pay guaranteed minimum royalty for 1460 draws amounting to Rs. 1,46,00,000/-. If the complainant Director did not approve the scheme within a period of 3 days, the accused persons cannot be blamed for the same. If not expressed approval, there is tacit approval of the proposals of the schemes submitted by the accused persons to the Director of Lotteries for approval. 14-2-93 had been fixed for draw, the Director of Lotteries could have informed the accused persons about his disapproval of the scheme, if any, and could have cancelled 14-2-93 fixed for draw.

6-A. The mere breach of contract cannot give rise to a criminal prosecution, it has to be shown that the accused had dishonest intention. It cannot be inferred from the mere act that the persons did not subsequently fulfil the promise or did not act according to the terms of the conditions of the contract. As, seen above, the accused persons, according to the terms and conditions of the agreement did submit the schemes for approval to the Director of Lotteries much in advance with clear intimation about the draw and they also requested for specimen signature of the Director which the Director appears to have given to the accused persons, of course, not through formal communication. The accused persons also sent the lottery draw machine.

7. In view of these facts and circumstances, the accused persons cannot be said to have dishonest intention to cheat or to have committed forgery. The essential ingredients of offences under Sections 468, 469 and 420 of IPC are completely wanting in the case. The learned Additional Chief Judicial Magistrate has rightly observed that the charges are groundless, further the dispute is of civil nature

between the parties to the suits, one filed by the State of Tripura and another filed by the accused persons, pending in the Civil Court for adjudication. The order of discharge passed by the Addl. Chief Judicial Magistrate, West Tripura district on 14-12-95 does not suffer from any irregularity, illegality, impropriety or incorrectness so as to call for interference.

8. In the result, the Revision has no force and deserves dismissal. Accordingly, the Revision is dismissed.