(1978) 08 AHC CK 0002

In the Allahabad High Court

Case No : Criminal A. No. 1107 of 1977

Suresh Kumar Bahri and Another — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 02-08-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 294A

Citation : (1978) ACR 312

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : Janardan Sahai and S.N. Mulla, for the Appellant;

Judgement

P.N. Goel, J.—This is an application u/s 482 Code of Criminal Procedure.

2. The police is prosecuting the applicants who are Managing Directors of a Private Ltd. Company styled "Lords Mutual Benefit Financial (p) Ltd.", Bareilly, u/s 294A IPC for floating a lottery without the permission of the State Government. This section punishes the person who keeps any office or place for the purpose of drawing any lottery. This section also punishes the person who publishes any proposal of drawing lottery. The police has submitted charge sheet against the applicants. The contention of the applicants is that they have not floated any lottery, that they have floated four super savings schemes, that the maximum number of members in any scheme is 2000, that the terms and conditions of membership of this scheme do not amount to drawing of lottery and that as such they have not committed any offence u/s 294A IPC. The applicants further alleged that before starting the schemes they applied for approval of the schemes to the Reserve Bank and that Reserve Bank raised no objection. The applicants have filed a form of the application for membership on the back of which terms and conditions of one of the schemes are printed. Sri M.L. Dwivedi, Assistant Special Intelligence Officer, Special Branch Intelligence Department, has filed counter affidavit. He has attempted to show in this affidavit that the

alleged scheme amounts to lottery and, therefore, the applicants are liable to be punished u/s 294A. In this affidavit he has referred to G. O. No. 3176/5-751-1969, dated 15-12-- 1969 sent secretly to the District Magistrates of Uttar Pradesh. A copy of this G. O. is Annexure 1 to this counter affidavit. This G. O. contains instructions to the District Magistrates. It is not a part of law. Therefore, the case has to be decided, not on the basis of the instructions contained in the G. O.

but on the basis of the provisions of law contained in Section 294A IPC.

3. Vinai Kumar Thapar has filed rejoinder affidavit.

4. It has been stated above that Section 294A punishes the person who keeps an office or place for drawing lottery as well as who publishes any proposal for drawing lottery.

5. Before indicating the meaning of the term lottery which is not defined in the Indian Penal Code or in any other Act, it is appropriate to reproduce the relevant terms and conditions here:

2. The applicants shall become a Member or subscriber only on acceptance by the Company. The Company reserves its rights to reject any application for membership without assigning any reason whatsover.

3. The ''Super Savings Scheme'' (hereinafter called ''Scheme'') has a face value of Rs. 500/-. The maximum membership of a scheme is 2000 at any time. The monthly subscription or instalment is Rs. 10/-payable by the 15th day of each English calender month. The tenure of the scheme is unlimited.

6. A member can join the scheme at any time qua him the tenure of the scheme is 50 months. A member may complete his 50 months within a maximum period of 75 months commencing with the month of his joining the scheme subject to availability of membership, Clause 14th below and discretion of the company. In case the company is not able to allot any member a ticket (within a maximum of 2000) and so certifies in writing then the maximum period of 75 months may be extended by the Company to that extent.

4. The object of the scheme is to help the members to save regularly every month and to invest their small savings for profitable return.

5. Every month the company will hold a draw in which 10 prizes of Rs. 1500/- in all divided into Ist Rs. 500/-2nd Rs. 200/-, 3rd Rs. 100/- 4th Rs. 100/- 5th Rs. 100/-, 6th Rs. 100/-, 7th Rs. 100/-, 8th Rs. 100/-, 9th Rs. 100/-, 10th Rs. 100/- Total 1500/- would be declared draws shall take place by digit system or by such process as the Company may from time to time decide. The prizes are offered by the company only as an added incentive to members but they do not form a part of the scheme. If during the continuance of the actual numbers of members is considerably reduced, the Company may in its discretion reduce the amount of prizes after publication in a local newspaper. The Company however guarantees a

minimum prize of Rs. 500/- every month.

6. A member winning any prize/s in any draw/s shall continue to be a member and would be required to pay all further instalments. A member thus has to pay Rs. 500/- in 50 monthly instalments of Rs. 10/- each irrespective of the fact whether he wins prize/s or not.

7. When a member completes his 50 months period as provided in these rules, the Company will return the amount of Rs. 500/- paid by him together with a sum of Rs. 32/- as interest. No interest would be payable to a member who does not complete his membership for 50 months. A member thus deposits Rs. 500/- in 50 months and gets it back with Rs. 32/- as interest and also takes part in draws wich are offered by the company as added incentive.

9. The draws will take place at the Regd. office of the Company on the 3rd Sunday of each month at 5 p.m. In case the same is a holiday or the office of Company is close for any reason the draw will be held on the next working day at the same time.

11. Membership may in the discretion of the Company, be transferred on receipt of Rs. 5/- or such other sum as the company may from time to time fix as the transfer fee.

14. Members who fail to pay one or more instalments at any time shall be deemed as defaulters and their membership shall be deemed to have ceased automatically without giving any notice. The amount paid by such defaulters is refundable to them at the end of the period of 50 months from the time they have joined the scheme (excluding those intervening months in which they have not paid their instalments but including the months after the month of the last payment) after the deduction of 15% of the total face value of scheme i. e. after a deduction of Rs. 75/- in case the amount paid is Rs. 75/- or less then no amount will be refunded.

15. The Company may in its discretion revive the membership of a defaulter on receipt of uptodate dues and a sum of Rs. 2/- per default as revival charges.

16. In case of dispute whatsover and of whatsoever nature arising between the Company and the member, the Company shall have the right to appoint an arbitrator to settle the disputes. The decision of the arbitrator so appointed by the company shall be binding upon the parties. In any case only courts at Bareilly shall have exclusive jurisdiction to settle any dispute subject to the arbitration provision.

7. Sri S.N. Mulla, Senior Advocate for the Appellants urged that the terms of the scheme clearly indicate that the member would get back his entire amount of Rs. 500/- deposited in 50 monthly instalments of 10/- after 50 months along with a sum of Rs. 32/- as interest, that there was no risk of money deposited by him, that the member would even get some interest on the money deposited by him, that the monthly draw was by way of added incentive, that the prizes offered in

the monthly draws were not a part of the scheme, that the object of the scheme was to promote habit of small savings, that in the case of a lottery there was merely a chance of winning the prize and that the person who took the lottery ticket was not returned the price of his tickets in the event of his not coming out successful in draw.

8. On the other side the learned State Counsel urged that the monthly draws were the main incentive for the person to become a member and to deposit Rs. 10/- p.m. for 50 months with the applicants, that the interest of Rs. 32/- payable on the Rum of Rs. 500/- was very low, that this interest was no attraction to the members depositors, that the proposed monthly draws were in the nature of lottery and that as such the applicants were liable to be prosecuted u/s 294A IPC. The State Counsel further urged that the point raised by the applicants could appropriately be decided by the Magistrate and that this Court would not exercise inherent jurisdiction in a case where the points of fact and law could be rightly and appropriately decided by the Magistrate.

9. In support of his contention the learned State counsel relied on the Full Bench case of Sesha Ayyar Vs. Krishna Ayyar, .

10. Before examining the terms and conditions of the scheme in question and dealing with the case of Sesha Ayyar, meaning of the word ''lottery'' may be understood. This word as said above is not defined in the IPC. In the Shorter Oxford English Dictionary, 1936, Vol. I, word lottery means, "an agreement for distribution of prizes by chance among persons purchasing tickets. Slips or lots bearing the same number as the ticket, and representing either prizes or blanks are drawn form a wheel". This word, according to this dictionary also means, "issue of events as determined by chance."

11. In the Compact Edition of the Oxford English Dictionary, 1972 word lottery means, "an arrangement for the distribution of prizes by chance among persons purchasing tickets.-*

12. It will be seen from the above definitions that winning/distribution of prizes by chance is the main element of lottery. The above meanings do not necessarily show that the purchaser of the ticket would lose the price of the ticket or not. Ordinarily the purchaser of the ticket loses the money for which he purchases the ticket.

13. In the case of Sesha Ayyar the dictionary meaning of the word lottery was taken into consideration. In this case the Plaintiff had taken two tickets of Rs. 3/- each in the kuri and had paid Rs. 270/- representing 45 monthly payments of Rs. 3/- on each ticket. The scheme of the kuri was to be conducted in 50 months. The subscribers who were not fortunate at to draw a prize were at the close of the kuri after the 50th drawing, to be refunded the amount of the money subscribed by them. Under the scheme on 25th of every English month one ticket was to be drawn out of 625 tickets and the holder of the winning ticket was to be paid a prize of Rs. 150/- without any liability to pay for future instalments.

As the kuri did not complete 50 months and came to an end after 45 months, the Plaintiff who did not win any prize demanded the sum of Rs. 270/- paid by him on the two tickets. The Defendants who had floated the scheme contended that the transaction was in the nature of a lottery which was not authorised by the Government, that as such it was an illegal transaction and could not be enforced at law. Cornish J., Varadachairar J., Wadsworth, J. and Lakshmana Rao, J. were of the opinion that the transaction was in the nature of lottery, despite the fact that if the subscriber did not get any prize, he would be refunded his entire amount without any interest. They further held that the Plaintiff did not enter into illegal transaction with the Defendants The Defendants may have committed an offence u/s 294A IPC. Therefore, the Plaintiff was entitled to get back the amount paid by him. Venkataramana Rao, J. held a contrary view He was of the opinion that the transaction was not a lottery.

14. Some relevant observations may be reproduced below;

Cornish, J. observed;

So that a subscriber to the kuri had the prospect of at least getting back the amount of his total subscription of Rs. 150/- at the termination of the drawings; but his purchase of a ticket for Rs. 3 gave him a chance of a prize of Rs. 150/- if his ticket was drawn at-the first drawing, a chance of a prize of Rs. 150/- for a payment of Rs. 6/- if his ticket was successful at the second drawing, and so on down to the 49th drawing, when the winner would get Rs. 150/-for an expenditure of Rs. 147/- on his ticket. In my opinion this kuri was clearly within the above mentioned definition of a lottery.... The contention, too, that it is an element of a lottery that some of the competitors must stand to lose, seems to be founded upon a misconception of the passage in Halsbury.... It gives no warrant for the theory that a lottery is not a lottery unless it fulfils one of the essential conditions of a wager. A lottery and a wagering contract are two distinct things .... In 48 Mad. 661 (7) Venkatasubba Rao, J. was of the opinion that a scheme would not be a lottery if the prize money, came out of the interest earned from the subscribers'' contributions. With great respect I am unable to agree to this being a correct test. If the subscribers have purchased a chance of winning a prize it can make no difference whether the prizes are paid circuitously from the interest earned on the subscribers contributions or are paid directly from those contributions.

Varadachariar, J. observed:

The result of the authorities seems to me to be that a scheme may fairly be 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 and must have entered into his calculation. It is the fact of the prize and not the source from which it is paid that I think is the deciding factor...The mere fact that the subscribers to such a scheme may at some time be able to receive a lump sum made up of their monthly payments of small sums ought not to blind us to the other features of the scheme. That a considerable sum must result as interest from the investment of the monthly contributions over a period of something like 50 months and that a large portion of this interest goes to the promoters and is lost to the subscribers cannot be denied. If the interest earned is divided among the subscribers themselves, the position may be different.

Wadsworth, 3. observed:

In the view that I take that, though the risk of loss is usually found in any lottery scheme it is not an essential part of the definition of a lottery............ Whether that view be correct or not, in the present case, it seems to me clear that there was distribution of prizes by lot and that this distribution was not gratuitous. It seems to me therefore to follow that the scheme now under consideration is certainly a lottery

Lakshmana Rao, J. observed:

...in my opinion the crucial test is whether or not the chance of winning a prize by lot enters into the bargain. If it does the subscribers would necessarily be risking something, and it is not essential that the fund out of which the prizes are provided should consist only or at all, of sums contributed by them. That every one of them would in any event obtain full value for his subscription would not prevent the scheme from being a lottery and it is only when the chances of a prize are obtained wholly gratuitously that the scheme would not be a lottery. Viewed in this light the scheme under consideration is clearly a lottery.

15. I shall now turn to examine terms and conditions of the scheme floated by the applicants.

16 Condition No. 4 Indicates the object of the scheme. Its object is to help the members to gave regularly every month and to invest their small savings for profitable return. It is thus evident that this scheme Is meant for persons of humble means. This scheme is not meant for those wealthy persons.

who desire to invest huge sums of money-Condition No. 8 provides that when a member completes ht''s 50 months, the Company will return the amount of Rs. 500/- along with Rs. 32/- as interest. It means that the member would pay Rs. 10/- p. m. to the Company for 50 months and then he would get back his total amount of Rs. 500/- with Rs. 32/-as interest. In other words the member will get Rs. 32/- as interest after 4 years and two months. This interest on the sums deposited by the member is obviously not attractive. It is common knowledge that on a deposit of Rs. 500/-for 5 years, the post office gives simple interest of Rs. 10/- per cent. The depositor is allowed interest every year. In Bank a person who deposits a certain sum of money for 5 years and one month gets 10 per cent p. m. simple interest. He gets the interest at the said rate every half year. Taking this into consideration the interest offered by the Company is not at all attractive and no person of humble means would like to deposit their small savings with the Company. But he is attracted/tempted to become a member of the Company on the basis of condition No. 5. This condition clearly shows that the Company would hold a draw every month and would give 10 prizes of a total sum of Rs. 1500/- as detailed in the said condition. No doubt it has been stated that the prizes are offered only as an added incentive to the members but they do not form a part of the scheme. However, looking to the nominal interest given by the Company, the prizes offered in condition No. 5 are the main attraction for the small saver. It will be noticed that under condition No. 5, the Company has a discretion to reduce the amount of the prizes If the number of members is considerably reduced. The Company, however, guarantees a minimum prize of Rs. 500/- every month. The prizes are to be given on the basis of draws by a digit system or by such process as the Company from time to time decide. It means that even the prizes offered can be reduced on the number of members having gone down. This condition is clearly indicative of the fact that the Company desires that there should be of full strength of 2000 members. In other words, the Company desires to obtain a sum Rs. 20.000/- every month. In that case the Company would give 10 prizes of a total sum of Rs. 1500/-. Condition No. 5 relating to the prize is an integral part of the scheme. In view of the fact that the interest offered is very low, this condition No. 5 is the real attraction for the members. This condition from every angle is in the nature of a lottery. In view of this it is immaterial that the member would be repaid his entire amount with a small interest of Rs. 32/-after 50 months. The winning of prize is obviously a matter of chance.

17. Taking into consideration the dictionary meaning of the word lottery and the above observations in the case of Sesha Ayyar with which I am in full agreement, I am of the view that the scheme in question comes within the ambit of the term "lottery". In the result, the applicants have been rightly summoned by the Magistrate.

18. Having determined the main point involved in the case, it is not necessary to express opinion about the 2nd point raised by the State counsel viz., that the Magistrate could appropriately decide the point involved and as such this Court should not exercise inherent jurisdiction in the case.

19. For the conclusion arrived at above, this application u/s 482 Code of Criminal Procedure is without merit and is rejected. Stay order dated 22-2-1977 is vacated.

