
(1956) 02 AP CK 0035
In the Andhra Pradesh High Court

The Public Prosecutor

APPELLANT

Vs

Mulugu Jwala Subrahmanyara

RESPONDENT

Date of Decision : 17-02-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 242, 342
Penal Code, 1860 (IPC) — Section 294A, 420

Citation : (1957) CriLJ 1389

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Judgement

Krishna Rao, J.—Whereas information has been received that Mulugu Jwala Subrahmanyam son of Mallikarjunayya, Ethamukkala Village, Ongole Taluk of Guntur District published proposals, relating to the lottery styled "Sri Bala Thripurasundari Lucky Prize Distributing Company", not being a lottery authorised by the State Government in circumstances constituting the acts of the said Mulugu Jwala Subrahmanyam, an offence punishable inter alia u/s 294-A of the Indian Penal Code, 1860 (Central Act XLV of 1860).

2. Now, therefore, in exercise of the powers conferred by Section 196 of the Code of Criminal Procedure, 1898, (Central Act V of 1898), the Governor of Andhra hereby orders that a complaint be made against the said Mulugu Jwala Subrahmanyam in respect of the offence aforesaid.

(By Order of the Governor.) (Sd.) B. Ch. Narayanamurthy, Secretary to Government.

To

The Inspector-General of Police, Kurnool (with
a spare copy).

Copy to the Collector of Nellore. Copy to the Public Prosecutor, Nellore.

2. On the strength of this order, P. W. 8, an Inspector of Police attached to the Crime Branch of the C.I.D., laid a charge-sheet against the accused under Sections 294-A and 420, Indian Penal Code. In respect of the offence u/s 420, Indian Penal Code, the charge-sheet stated that the accused cheated the public to the tune of Rs. 30,000 to Rs. 40,000 by selling tickets of Re. 1 each for a lottery, without the intention at any time to secure and distribute the prize articles numbering about 2,000 mentioned in the published proposals and tickets.

In respect of the offence u/s 294-A, Indian Penal Code the charge-sheet stated that the accused rendered himself liable for punishment under the second part thereof by having unauthorisedly published a lottery which is not a State lottery nor one authorised by the State Government. The charge u/s 420, Indian Penal Code, was reserved for a separate trial and we are concerned only with the trial of the charge u/s 294-A, Indian Penal Code.

Consistently with the Government's order of sanction and the police charge-sheet, the particulars of the offence stated u/s 242, Criminal Procedure Code, to the accused were that between July and December, 1952, he published proposals for running a lottery without proper authorisation from the Government. The accused pleaded not guilty though he admitted that he ran the lottery. He explained that he could not complete the draw owing to the public commotion and also admitted later during the trial that he published proposals to deliver prizes contingent on drawing lots.

At the trial, P.Ws. 2, 6 and 7 gave evidence that the accused kept an office for the purpose of the Lottery at Door No. 16/97 in Athitota Agraharam, Nellore. This evidence was put to the accused u/s 342, Criminal Procedure Code, on 16th December, 1954, after the close of the prosecution evidence. The accused gave an answer admitting that he kept the lottery office as alleged. His only defence was that he was informed at the Nellore Collector's Office that Government's permission for the lottery was not necessary.

He examined one of his agents D.W. 1 in support of his story. The Additional First Class Magistrate disbelieved D.W. 1 as being an interested witness and also observed that ignorance of law is no excuse, He convicted the accused under both the clauses of Section 294-A, Indian Penal Code and sentenced him to undergo rigorous imprisonment for six months for the offence under the first clause and to pay a fine of Rs. 250 with simple imprisonment for one month in default for the offence under the second clause.

On appeal, the learned Sessions Judge overruled the objections raised by the accused that the sanction by the Government was only in respect of an offence under the second clause of Section 294-A, Indian Penal Code and that the accused could not therefore be convicted for an offence under the first clause. However, the learned Sessions Judge was of the view that as a physical drawing of lots was necessary to constitute an offence under the second clause and as the accused admittedly had no intention to draw lots but cheated the public, the

accused was not guilty under the second clause of Section 294-A, Indian Penal Code.

On these grounds, he set aside the conviction and sentence under the second clause while confirming the conviction and sentence under the first clause, The accused has come up in revision against the conviction under the first clause and the State has preferred an appeal against the acquittal in respect of the offence under the second clause of Section 294-A, Indian Penal Code.

3. In the revision the point taken on behalf of the accused is that there was no complaint nor was the accused tried in respect of an offence under the first clause of Section 294-A, Indian Penal Code and that the conviction under the said clause is therefore illegal and unsustainable. This contention is well-founded. Both the trial Magistrate and the Sessions Judge were in error in stating that the Police charge-sheet mentioned the facts relating to an offence punishable under the first clause, viz., that the accused kept an office for the purpose of the lottery.

The charge-sheet does not mention at all about the accused keeping any office. It merely sets out the facts of the accused having got his company registered, the tickets printed and sold and the proposals relating to the lottery published and of his putting up a show with playing of the band at the Nellore Town Hall where the lottery was published to be drawn. It winds up by stating that the accused was liable under the second part of Section 294-A, Indian Penal Code, for having unauthorisedly published the lottery and u/s 420, Indian Penal Code, for having cheated the public.

It contains no reference to any office or place kept by the accused either at Door No. 16/97, Athitota Agraharam, or elsewhere. The substance of the accusation stated to the accused at the commencement of the trial was also merely that he published proposals for running an unauthorised lottery. This could refer only to an offence punishable under the second clause of Section 294-A, Indian Penal Code and there was no mention of any office having been kept which is an offence punishable under the first clause.

It was only afterwards during the trial that the evidence of some witnesses was let in that the accused kept an office at the Door No. 16/97 in Athitota Agraharam. The first indication in the record that the accused was also prosecuted for keeping the office is to be found on 16th December, 1954, after the close of the prosecution evidence, when the Magistrate put a question to the accused regarding his having kept an office which was spoken to by P.Ws. 2, 6 and 7.

It is clear that there was no trial of the accused at all for the offence of keeping an office punishable under the first clause of Section 294-A, Indian Penal Code. No doubt, the accused admitted in his answer to the Magistrate's question that he kept the office, but the Magistrate did not thereafter ask the accused to show cause why he should not be convicted for the offence of keeping the office as he ought to have done under the summons case procedure.

The existence of a charge under the first clause of Section 294-A, Indian Penal Code, was disclosed for the first time only in the Magistrate's judgment. Thus it cannot be said that there was any trial at all for the offence under the first clause of Section 294-A, Indian Penal Code, of which the accused has been convicted.

4. The learned Sessions Judge held that Section 237, Criminal Procedure Code, empowered the Court to convict the accused under the first clause of Section 294-A, Indian Penal Code, although there was no charge for that offence. But the provisions of Section 237, Criminal Procedure Code, have to be read subject to the provisions of Section 196, Criminal Procedure Code : U. Nyan Nein Da v. Emperor AIR 1926 Rang 169 (A). The relevant portion of Section 196, Criminal Procedure Code, reads:

No Court shall take cognizance of any offence punishable u/s 294-A... unless upon complaint made by order of, or under authority from, the State Government or some officer empowered by the State Government in this behalf.

5. A complaint authorised by the State Government is necessary before a Court, can take cognizance of an offence punishable u/s 294-A, Indian Penal Code. Section 230, Criminal Procedure Code, provides for the situation when a new charge is framed which requires previous sanction and runs as follows:

If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

6. As held by the Judicial Committee in AIR 1948 82 (Privy Council) the words of Section 230, Criminal Procedure Code, indicate

that the Legislature contemplated that sanctions under the Code would be given in respect of the facts constituting the offence charged.

7. Such a sanction is a condition precedent to the Court taking cognizance of the offence and without it the Court has no Jurisdiction to try an accused for the offence. Here, the facts constituting the offence as set out in the order of the State Government refer only to an offence punishable under the second clause of Section 294-A, Indian Penal Code It is clear that the complaint for an offence punishable under the first clause of Section 294-A, Indian Penal Code, was not authorised by the State Government.

The Magistrate was barred by Section 196, Criminal Procedure Code, from taking cognizance of that offence at the trial. These considerations would apply even to invoking Section 246, Criminal Procedure Code. The conviction of the accused under the first clause of Section 294-A, Indian Penal Code, is therefore without jurisdiction and has to be quashed.

8. In the appeal preferred by the State, the point taken is that the learned

Sessions Judge has taken an erroneous view of the ingredients necessary to constitute an offence under the second clause of Section 294-A, Indian Penal Code. No doubt, the learned Sessions Judge was right in holding that Section 294-A contemplates only lotteries in which the lucky numbers are ascertained by "drawing" and that the word "drawing" is used in its physical sense meaning actual drawing from a receptacle whether by manual, mechanical or other process : The Public Prosecutor Vs. K.B. Kalkura, .

In that case, the lucky numbers were determined on the basis of the highest number of the tickets sold by an agent who sold the largest number of tickets. Horwill, J., after referring to the case-law on the subject held that it was not a lottery in which there was drawing in the sense used in Section 294-A, Indian Penal Code and that the accused who ran the lottery did not therefore commit an offence under either clause of the Section,

In the present case, however, it is not disputed that in the tickets, pamphlets and other publications made by the accused, it was given out that the lucky numbers in the lottery would be ascertained by actual drawing in the physical sense. They mention kalupu date which obviously meant that the lucky numbers would be determined by the method of mixing up the tickets or similar tokens and taking out the lucky numbers. The accused also specifically admitted that the proposals he advertised were to deliver prizes contingent on the drawing of lots.

The point of the learned Sessions Judge was that the accused never intended to actually draw lots inasmuch as his intention was to cheat the public. But the section does not require that the accused should have, as a matter of fact, intended to draw the lucky numbers. The second clause of Section 294-A, Indian Penal Code, makes it an offence to publish a proposal to pay any sum of money or to deliver any goods or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of tickets and the like in an unauthorised lottery.

The offence consists in the publication of such proposals and does not depend on whether the proposals were to be actually carried out or not. The intention of the Legislature appears to have been that the public should not be informed of such proposals. *Queen Empress v. Mancherji Kavasji Shapurji* ILR 10 Bom 97. If the proposals are such as come within the mischief of the second clause of Section 294-A, Indian Penal Code, the offence is completed by publishing them and it does not matter whether the scheme is to actually conduct the lottery or to merely defraud the public. The learned Sessions Judge's ground for acquitting the accused cannot be upheld.

9. However, on the question whether the order of acquittal has to be set aside, the learned Counsel for the accused contends that the entire proceedings before the Magistrate were vitiated because the requirement u/s 196, Criminal Procedure Code, of a complaint in the case has not been satisfied. He urges that the Government's order sanctioning the prosecution was addressed to the

Inspector-General of Police and that there is nothing to show that the Inspector-General of Police authorised the making of a complaint by P. W. 8 who laid the charge-sheet,

The learned Public Prosecutor states that P.W. 8 was in fact authorised by the Inspector-General of Police and that the correspondence between them relating to this matter was inadvertently omitted to be filed. P.W. 8 was not cross-examined at all and it does not appear to have been ever suggested during the trial that he had no authority to file the charge-sheet. In the circumstances, it would be legitimate to invoke the presumption u/s 114 (e) of the Evidence Act that official Acts have been regularly performed and that P.W. 8's action was not unauthorised. *Apurba Krishna Bose v. Emperor* ILR 35 Cal 141.

I am, therefore, unable to agree with the contention that there is no nexus between the Government's order directing the making of the complaint and P.W. 8's action in laying a charge-sheet in pursuance thereof.

10. The next contention on behalf of the accused is that the charge-sheet laid by P.W. 8 is not in law a complaint required by Section 196, Criminal Procedure Code, A complaint is defined in Section 4 (1) (h), Criminal Procedure Code and the definition specifically excludes the report of a police officer. The argument is that the charge-sheet filed by P.W. 8 is only a report of a police officer and not a complaint, It appears to me that this contention is well- founded.

The case was originally registered as Crime No. 650 of 1952 u/s 420, Indian Penal Code, on information given to the Nellore Town Police by five persons. After investigation, the charge-sheet In the case was filed by P.W. 8 under Sections 420 and 294-A, Indian Penal Code. In form, the charge-sheet is only the usual charge-sheet or final report u/s 173, Criminal Procedure Code and the question is whether, as contended by the learned Public Prosecutor, it can be treated as a complaint within the meaning of Section 4 (1) (h), Criminal Procedure Code.

In *Mallikarjuna Prasadarao v. Emperor* 1933 Mad WN 876 , Burn, J., held that Section 4 (1) (h), Criminal Procedure Code, excludes from the category of complaints only reports made by the Police in cognizable cases and that a report of police officer in a non-cognizable case would be a complaint. This view receives support from the observations in *The Public Prosecutor Vs. Ratnavelu Chetty*, and *Emperor Vs. Shivaswami Guruswami*, The learned Counsel for the accused relies on *B. N. Subba Rao v. State of Mysore* AIR 1955 Mys 1 (I), where it was held that a police charge-sheet cannot be regarded as a complaint, but I am bound by the Madras decisions.

However, the charge-sheet filed by P.W. 8 here did not arise from the investigation of any non-cognizable offence. It was made after investigation into the cognizable offence which was registered u/s 420, Indian Penal Code and the charge-sheet itself relate to both the offences under Sections 294-A and 420, Indian Penal Code. It is a report falling u/s 173, Criminal Procedure Code, so far as the offence u/s 420, Indian Penal Code, is concerned.

No doubt, after the case was taken on file on the basis of the common charge-sheet for the offences under Sections 294-A and 420, Indian Penal Code, the inquiry into the offence u/s 420 was separated. But no separate charge-sheet or complaint was filed under the Section 294-A, Indian Penal Code; the same document cannot be treated as both a report of a police officer and a complaint because that would be in the teeth of Section 4 (1) (h), Criminal Procedure Code

It is not as if the distinction between a complaint and the report of the police officer has no significance except for- the purpose of procedure. The distinction makes a difference for giving relief to an accused u/s 250, Criminal Procedure Code, because in a case instituted upon complaint, action under that Section would be taken against the complainant whereas in a case instituted upon a report of a police officer, action would have to be taken against the informant to the police.

In my opinion, the charge-sheet filed by P.W. 8 in this case cannot be split up and treated partly as a complaint and partly as a report of a police officer. A valid complaint is a condition precedent for taking cognizance of an offence u/s 294-A, Indian Penal Code. In the absence of such a complaint, the Magistrate would have no jurisdiction to proceed to the trial of such an offence. The defect is not curable u/s 537, Criminal Procedure Code and it follows that the appeal must fail.

11. In the result, the revision case is allowed and the appeal is dismissed. The conviction and sentence of the accused under the first clause of Section 294A, Indian Penal Code, are quashed.