

(1938) 03 MAD CK 0022
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

Soosai Pillai and Others

RESPONDENT

Date of Decision : 01-03-1938

Acts Referred:

Penal Code, 1860 (IPC) — Section 294A

Citation : AIR 1938 Mad 715 : (1938) 47 LW 573 : (1938) 1 MLJ 724

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The prosecution case was that the three counter-petitioners had been conducting a chit fund and had thus committed an offence

punishable u/s 294-A, Indian Penal Code. As however, chit funds had been very common in Southern India and there had been some

misapprehension as to the law governing them, Courts having held at one time that chit funds were not illegal, the Government thought it would be

unduly hard on persons conducting chit funds if prosecution were forthwith launched against them. G.O. No. 2621, dated 14th September, 1934,

was thereupon passed ordering the District Magistrate of Malabar to give wide publicity to the fact that such chit funds were illegal and to order

those who were conducting them to wind them up as soon as possible, adding that prosecutions need not be launched unless there were indications

of fraud. The counter-petitioners were ordered to wind up this chit fund and it appears that no drawing took place after the order was

communicated to them. They were given to understand, however, that they should, in winding the fund up, repay the subscriptions; and the

counter-petitioners addressed the Government by a petition asking for time until the end of December, 1935, to pay up the amounts due to the

subscribers. This petition seems to have been referred to the District Magistrate, who granted time to do so.

2. As this too was not done and the money was not repaid to the subscribers, this prosecution was launched. The Taluk Magistrate of Sivaganga

acquitted the accused on the ground that the accused did not raise any subscriptions after receiving the order from the District Magistrate, that

there was thereafter no drawing of any lot, that the shed in which the office had been located was dismantled that the fund did not continue to exist

as a lottery, and that no proposals were published, and concluded his judgment by saying that there was no evidence that there was any fraud on

the part of the organisers of the fund, that they had obeyed the District Magistrate's order and wound up the lottery, and that if dues were still to

be paid to the subscribers, it was open to them to recover their dues through Civil Courts.

3. It is not denied that a transaction of this kind contravenes the provisions of Section 294-A, Indian Penal Code, but the learned Advocate for the

accused has put forward the same argument here as seems to have found acceptance with the learned Taluk Magistrate. The accused have not

been punished for contravening the order of the District Magistrate that they should wind up the lottery; for such an order would have had no

binding and legal force if the lottery itself had been valid; but they have been convicted for conducting the lottery and thereby contravening the

provisions of Section 294-A. The various points considered by the learned Taluk Magistrate have therefore no bearing on the question whether the

accused committed an offence. If they conducted a lottery that was illegal, they were liable to be punished u/s 294-A whatever the action of the

Crown might subsequently have been.

4. It is argued that the order of the Government that they should wind up the lottery within a certain time and that they should re-pay the

subscriptions within a certain time amounted to an authorisation of the lottery prior to that date. I am unable to agree that the withholding of

prosecution is tantamount to authorisation. It seems to me that the authorising of a lottery by private persons would be the last thing the

Government would be prepared to do. Clearly, the object of the Government in issuing their order in the form they did was to withhold the

prosecutions of persons who were running lotteries in ignorance of the law, provided that they did their best to wind, up the lottery and to pay

everybody who had subscribed to the lottery. It is clear therefore that the accused were guilty of the offences with which they were charged if it

has been satisfactorily proved that the three accused conducted the lottery.

5. It is further contended that both the complaint and the charge led the accused to believe that they were charged not for an offence u/s 294-A,

but for disobeying the orders of the District Magistrate; for we find in the complaint that:

It is alleged that the accused organised a prize chit - and that as this was an unauthorised lottery, the accused had to wind up the same, that the first

accused sent a petition to the local Government praying for time, that time was granted till 31st December, 1935, the accused being informed that

prosecution would be launched if the concern was not closed by that date, and that as the concern was not closed as directed, they were liable for

the offence u/s 294-A.

6. The charge is to the effect that a complaint had been received to the effect that the three persons, (accused) had opened a chit fund, that they

kept a lottery office, and that they had also published proposals relating to the lottery. So far it is clear that they are charged with having committed

offences punishable u/s 294-A, but the charge does not end there but contains the further words:

And that in spite of the order directing you to wind up the said company within 31st December, 1935, you did not close it accordingly. Show

cause why you should not be punished.

7. The judgment of the learned Taluk Magistrate shows that he conducted this enquiry with a view to ascertain whether any fraud had been played

by any of the accused.

8. I have been asked that in case I think that the order of the Taluk Magistrate was not right, he should be ordered to retry the accused. It is

ordered accordingly. This order of retrial will give an opportunity to the accused to repay to the subscribers whatever may be due to them and so

put themselves in a position to plead for mercy in case they are found guilty.