

Emperor Vs. Vazirally

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Court : Mumbai

Decided On : Jul-30-1928

Reported in : (1928)30BOMLR1426

Judge : Patkar and; Baker, JJ.

Appeal No. : Criminal Application for Revision No. 128 of 1928

Appellant : Emperor

Respondent : Vazirally

Judgement :

Patkar, J.

1. In this case the accused is tried on a charge under Section 291 A (second part) of the Indian Penal Code for publishing a proposal for the drawing of a lottery. The accused, who is the proprietor of the British Cigarette and Tobacco Co., published 22,000 handbills advertising a prize of Rs. 5 which could automatically be obtained by purchasers of Park Drive Cigarettes. Ex. B is one of such handbills. It appears that ten currency notes of Rs. 5 each were sent to the manufacturers of Park Drive Cigarettes at Belfast, who put in a note of Rs. 5 in each of ten packets of cigarettes. The ten packets were mixed with other packets and subsequently packed in 50 cases and dispatched to the accused who is the sole agent for the cigarettes in India, The question is whether the whole scheme is a lottery.

2. In *Taylor v. Smetten* (1883) 11 Q.B.D. 207 Hawkins J., accepting the definition of lottery as a distribution of prizes by lot or chance, held that selling of packets of good tea at a price worth the money but in each packet of which was a coupon entitling the purchaser to receive a prize (whatever it might turn out to be) mentioned on such coupon, was a lottery within the statute 42 Geo. III, c. 119. It was further held that it was utterly immaterial whether a specific article was or was not conjoined with the chance and as the subject-matter of the sale. In *Willis v. Young and Stem-bridge* [1907] 1 K.B. 448 it was held that the scheme of distribution of chances could amount to a lottery when all chances were paid for by the general body of purchasers although an individual purchaser may not have paid for his chance. The present case closely resembles the case of *Hunt v. Williams* (1888) 52 J.P. 821, where a person kept a sweetstuff shop and sold penny packets of American caramel of which several packets contained a half penny in addition to a fair penny worth of sweets, it was held that that amounted to an offence of keeping a lottery. We think, therefore, that the scheme of the accused in the present case of distribution of prizes by lot or chance amounted to a lottery.

3. The question is whether the act of the accused falls within the second part of Section 294 A. The first part of Section 294 A refers to keeping any office or place for the purpose of drawing any lottery not authorised by Government. The second part of Section 294 A refers to publishing any proposal to pay any sum on any event or contingency relative to the drawing of any such lot in any such lottery. It is urged on behalf of the accused that there is no drawing of a ticket, lot, number or figure in the lottery in question, Reliance is placed on the decision in the case of *Emperor v. Muhandi Lal* (1917) 18 L.J. 768, where it was held that the word 'drawing' is used in the section in its physical sense and the actual drawing of lots is an essential ingredient of the offence provided for in Section 294 A, Indian Penal Code. The learned Magistrate held : 'There was certainly no drawing of any ticket of cigarettes. The purchaser when he buys the packet buys or draws the packet and the chance of the prize contained in it. The distribution of the prizes would not be according to a number of coupons. The distribution of the prize is by chance and depends upon the purchaser drawing the right packet.' It was held in *Kamakshi Achari v. Appauu. Pillai* (1863) I.M.C.R. 418 that lotteries ordinarily

understood are games of chance in which the event of either gain or loss of the absolute right to a prize or prizes by the persons concerned, is made wholly dependent upon the drawing or casting of lots, and the necessary effect of which is to beget a spirit of speculation and gaming that is often productive of serious evils. The first part of Section 294 A refers to keeping an office or place for the purpose of drawing any lottery. The second part refers to a proposal to pay any money etc. on any event or contingency relative to the drawing of any ticket, lot, number or figure in a lottery.

4. The ingredients of the offence under the second part of Section 294A are, firstly, there must be a lottery, secondly, there must be a drawing of any ticket, lot, number or figure in such lottery, and thirdly, there must be a publication of a proposal to pay any 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 such drawing.

5. Having regard to the decisions in *Barratt v. Burden* (1893) 63 L.J.M.C. 33 *Hunt v. Williams* (1888) 52 J.P. 821 and *Taylor v. Smetten* (1883) 11 Q.B.D. 207, it appears that the scheme published by the accused amounts to a lottery.

6. On the second question whether there is a drawing of any ticket, lot, number or figure, I agree with the view in *Emperor v. Mukandi Lal* that the word 'drawing' is used in the first and second part of Section 294A in its physical sense and that the actual drawing of lots is an essential ingredient of the offence under Section 294A.

7. The third question is whether there is any proposal to pay any sum on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure. The putting of the five rupees note would amount to a proposal to pay a sum, but I think that that proposal to pay a sum is not on the event or contingency relative to the drawing of any lot. I do not agree with the view of the Magistrate that by the mere fact of drawing the packet, the customer draws the lot and automatically gets a note of Rs. 5 if per chance he purchases the packet containing the note. There is no drawing of any lot, nor is there any agreement to pay any sum of money on any event or contingency relative to such drawing of the lot. There must first be the drawing of the lot, and there must be a proposal to pay

any sum or deliver any goods etc. on the event or contingency of such drawing. In the present case, there is no proposal to pay any sum on any event or contingency relative to the drawing of any lot. In the English Act the offence is of keeping any lottery. The wording of the second part of Section 294A, in my opinion, excludes a lottery in which there is no drawing of view any ticket, lot, number or figure, and there is no proposal to pay any money which is dependent on the event of such drawing of a ticket, lot, number or figure. In *Emperor v. Rachappa* : AIR1925 Bom26 it was held that a mere publication on a trade handbill that tickets in an unauthorised lottery can be had at a particular place is no offence under para 2 of Section 294A, since it does not constitute a publication of a proposal to pay any sum on any event or contingency relating or applicable to the drawing of any ticket in any lottery not authorised by Government. In *Madan Gopal v. The King Emperor of India* (1910) P.R.1910 it was held that the words 'any office or place for the purpose of drawing any lottery' in the first part of Section 294A mean an office or place intended to be the scene of the actual drawing of the lottery. In that case the offence under Section 294A was held proved as there were actual drawings of prizes.

8. I, therefore, think that the conviction and sentence of the accused is not sustainable. I would, therefore, reverse the conviction and sentence and order the fine, if paid, to be refunded.

Baker, J.

9. The accused was convicted under the 2nd paragraph of Section 294A of the Indian Penal Code, of publishing a proposal relating to a lottery. The facts are that the accused, who is a dealer in cigarettes, had caused five rupee notes to be placed in some packets of cigarettes, pieces of plain paper being placed in the remaining packets so that it was impossible to distinguish the packets containing the notes from those not containing them, and any purchaser of a packet of the cigarettes sold by the accused stood a chance of getting a packet containing a five-rupee note. The accused published a pamphlet, which is given in detail in the judgment of the learned Magistrate, in which these facts were set out. On these facts he was convicted under Section 294A, Clause (2), of publishing a proposal

relating to a lottery, and was fined Rs. 50. The accused applies in revision, and on his behalf two points are raised : first, that the transaction in question does not amount to a lottery, and secondly, that even if it does, it does not amount to publishing a proposal relating to a lottery under Section 294A, latter part. There is no definition of lottery in the Indian Penal Code, but in view of the definition which has been laid down by the Courts in England there can be no doubt that the transaction in question is a lottery. In *Taylor v. Smetten* (1883) 11 Q.B.D. 207, which is very similar to the present case, it was laid down that a lottery is a distribution of prizes by lot or chance, and that it makes no difference that the distribution is part of a genuine mercantile transaction. The learned Magistrate has pointed out that the case is exactly on all fours with *Hunt v. Williams* (1888) 52 J.P. 821. That report does not seem to be available, but the facts are given with sufficient detail in Ratanlal's commentaries to show that it is exactly similar to the present case. The accused in that case sold packets of sweets at a penny each, some packets contained a half-penny, and the purchasers therefore stood the chance of getting half their money back. This is precisely similar to the present case in which a purchaser of a packet of cigarettes had a chance of getting a packet containing a five-rupee note, the odds according to the learned Magistrate being 50,000 to 1. I entertain no doubt, therefore, that on the rulings of the Courts in England the transaction in question amounts to a lottery, but it is contended that the publication by the accused of the terms of this transaction is not within the terms of paragraph 2 of Section 294A. That section says :

And whoever publishes any proposal to pay any sum, 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 any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

10. The section was drafted long ago, and probably the Legislature had not then in contemplation such commercial developments as are indicated by the present case. Undoubtedly there is a proposal to pay a sum, viz., Rs. 5, on the contingency of the purchaser buying a packet of cigarettes containing a five rupee note. The question is whether the purchase by the purchaser of a packet of

cigarettes can be regarded as amounting to the drawing of any ticket, lot, number or figure in the lottery. No doubt the section primarily contemplates the ordinary form of a lottery in which success depends on the drawing of a particular number of ticket from a receptacle provided for the purpose, which is the usual principle on which lotteries, sweepstakes, etc., are conducted. It is not in evidence that the packets of cigarettes bear any particular number or figure, and it is of the essence of the competition that each packet should be indistinguishable from another, measures being taken to ensure this by inserting pieces of plain paper in those packets which did not contain a five-rupee note. The notes and paper were put in by the manufacturers at Belfast, and the accused himself was, therefore, equally in the dark as to which were the prize packets. As to whether the handing of a packet of cigarettes to a customer from the general stock in a shop would amount to the drawing of a lot, as mentioned in the section, there is a somewhat similar case in *Emperor v. Mulkandi Lal* (1917) 18 L.J. 768, in which it was held by the Punjab Chief Court (p. 771): 1 Though there is ample authority for holding that a lottery does not cease to be a lottery because the winners are determined by a method other than the actual drawing of the winning numbers, still we have no doubt that in the offence provided for in Section 294A of the Code the actual drawing of lots is an essential ingredient. The word 'drawing,' we think, is used in the section in its physical sense and when the section was enacted in 1870, it seems probable that the only form of lottery envisaged by the Legislature was a lottery run on the usual lines in which the winning numbers are actually drawn out of an urn, box or other receptacle,' This being a penal provision must be strictly construed, and I agree with the view taken by the learned Judges in *Emperor v. Mukandi Lal*, It follows, therefore, that the act of the accused in publishing the particulars with which he is charged, does not fall within the terms of is, 294A of the Indian Penal Code. I agree, therefore, that the conviction and sentence should be set aside, and the fine, if paid, refunded.