IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No.3005 of 2010 (O&M)
Date of decision:29.11.2019

Surjit Singh Kheri ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. K.S. Aulakh, D.A.G., Punjab.

SUVIR SEHGAL, J.

The petitioner is in revision challenging the judgment dated 09.10.2010 passed in Criminal Appeal No.26 dated 29.04.2006 by the Additional Sessions Judge, Sangrur.

As per the allegations in the FIR, secret information was received by the Sub-Inspector Harmik Singh that Shiv Kumar, Treasurer, Nirmal Singh, Secretary, Harjit Kumar, Master alongwith 4-5 other persons in connivance with each other were running a lottery and held a Lucky Draw on 27.03.2000. The draw was held by Krishna Gaushala Committee, Longowal and each ticket was worth Rs.100/. The first prize was of maruti car and there were other prizes also. All the said persons were alleged to have defrauded innocent people and had drawn the prizes in the names of their known persons. After registration of FIR, raid was conducted on the house of Nirmal Singh and prize articles belonging to Gaushala Committee

Longowal were recovered. The maruti car was produced by the petitioner, Surjit Singh Kheri, which was taken into possession during the investigation. FIR was registered under Sections 120-B, 419 and 420 of Indian Penal Code (hereinafter referred to as “IPC”). Later on Section 3/4/5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereinafter referred to as “the Act”) was added. The charges were framed against the petitioner and 3 other accused under the said provisions. The accused pleaded not guilty and claimed trial. The prosecution examined as many as fifteen witnesses but no witness was examined in the defence by the accused.

By its judgment dated 30.03.2006, the Court of Chief Judicial Magistrate, Sangrur convicted Nirmal Singh, Surjit Singh Kheri, Harjit Kumar, Master and Shiv Kumar for offence under Section 5 of the Act and sentenced them with a fine of Rs.3,000/- each and in default thereof, they were to undergo rigorous imprisonment for a period of six months. The trial Court found that no offence was made out under the provisions of the IPC.

Surjit Singh Kheri, petitioner herein, Harjit Kumar, Master and Shiv Kumar filed three separate appeals before the Sessions Court, Sangrur. After examining the evidence and the material produced by the prosecution, the Court of Additional Sessions Judge, Sangrur by a common judgment dated 09.10.2010 found that the prosecution had not been able to establish the guilt of Shiv Kumar and Harjit Kumar. Their appeals were allowed. Their conviction and sentences were set aside and they were acquitted of the charges. In the appeal filed by the present petitioner, the Court found that the prosecution had proved its case against him beyond all reasonable doubts and affirmed the findings of the trial Court and dismissed his appeal. Hence this revision.

Counsel for the parties have been heard and record has been examined with their assistance.

Sh. Ashok Bhardwaj, Advocate appearing for the petitioner has argued that the provisions of the Act are not attracted to the allegations levelled against the petitioner. While refuting the argument of the petitioner, Sh. K.S.Aulakh, appearing for the State has urged that the guilt of the petitioner has been established and he has been rightly convicted and sentenced under Section 5 of the Act.

Before adverting to the factual position, it is necessary to examine the statutory provisions of the Act. Section 2(c), 2(e) and Section 5 of the Act which are relevant for the purpose of adjudication of present revision are reproduced herein under:-

> *“2(c) "money circulation scheme" means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;”*
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> *x x x x x x x x x x*

“2(e) "prize chit" includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in instalments by way of contributions or subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilises the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes, namely:-

(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or gifts in cash or in kind, whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement;

(ii) refunding to the subscribers or such of them as have not won any prize or gift, the whole or part of the subscriptions, contributions or other monies collected, with or without any bonus, premium, interest or other advantage by whatever name called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein,

but does not include a conventional chit;”

x x x x x x x x x

"5. Penalty for other offences in connection with prize chits or money circulation schemes:-

Whoever, with a view to the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act or in connection with any chit or scheme promoted or conducted as aforesaid,-

(a) prints or publishes any ticket, coupon or other document for use in the prize chit or money circulation scheme; or

(b) sells or distributes or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution any ticket, coupon or other document for use in the prize chit or money circulation scheme; or

(c) prints, publishes or distributes, or has in his possession for the purpose of publication or distribution-

(i) any advertisement of the prize chit or money circulation scheme; or

(ii) any list, whether complete or not, of members in the prize chit or money circulation scheme; or

(iii) any such matter descriptive of, or otherwise relating to the prize chit or money circulation scheme, as is calculated to act as an inducement to persons to participate in that prize chit or money circulation scheme or any other prize chit or money circulation scheme; or

(d) brings, or invites any person to send, for the purpose of sale or distribution, any ticket, coupon or other document for use in a prize chit or money circulation scheme or any advertisement of such prize chit or money circulation scheme; or

(e) uses any premises, or causes or knowingly permits any premises to be used, for purposes connected with the promotion or conduct of the prize chit or money circulation scheme; or

(f) causes or procures or attempts to procure any person to do any of the above-mentioned acts,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees."

The evidence led by the prosecution shows that allegations against the petitioner are that he had purchased a lottery ticket being run by Krishna Gaushala Committee and was the winner of a prize, a Maruti car, in the draw held on 27.03.2000. On the basis of the fact that the said car was produced by the petitioner before the police and was also released to him by the Court, he has been found guilty of offence under Section 5 of the Act.

A perusal of the definition of the expression 'Money Circulation Schemes', 'Prize Chits' and Section 5 of the Act reproduced above clearly establishes that the offence alleged against the petitioner is not made out. Participating in a lottery and being a winner of the prize does not fall within the ambit of the provisions of the Act. A lottery ticket winner, who purchases a lottery ticket by making one time payment of a certain specified amount, cannot come within the purview of the Act. Moreover, allegation against the petitioner is not of printing or publishing any ticket or selling or distributing it or of advertising it or of permitting any person to use his premises for the purpose of promotion of Prize Chits or Money Circulation Schemes. Therefore, by no stretch of imagination, can it be said that the petitioner is guilty of the offence under Section 5 of the Act.

In view of the above, judgment of conviction and sentence passed against the petitioner by the trial Court and affirmed by the Appellate Court, is set aside and the petitioner is acquitted of the charges framed against him.

Revision petition is accordingly allowed.

(SUVIR SEHGAL)
JUDGE

November 29, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No