

REVISIONAL CRIMINAL.*Before Addison J.***GURBAKHSI SINGH—Petitioner***versus***THE CROWN—Respondent.****Criminal Revision No. 1776 of 1933.***Indian Penal Code, Act XLV of 1860, Section 294-A: 'Lottery' and 'Drawing'—meaning of.*

Held, that the word "lottery" as used in Section 294-A of the Indian Penal Code, in the absence of any definition by the legislator, must be construed in its ordinary meaning as given in the dictionary, *i.e.* as "a scheme for the distribution of prizes by lot or chance" irrespective of any other interpretation given to it under the English Common Law.

Madan Gopal v. Emperor (1), *A. D. Raj v. Emperor* (2), *Universal Mutual Aid and Poor Houses Association v. Thoppa Naidu* (3), *Crown v. Mukandi Lal* (4), and *Emperor v. Vazirally* (5), followed.

Narayana Aiyangar v. Vellachami Ambalam (6), and *Kamakshi Achari v. Appavu Pillai* (7), dissented from.

Held further, that the word "drawing" used in the section must also be given its usual physical interpretation, and its meaning relative to a lottery therefore is that lots should be drawn by some mechanical or human agency involving their chance extraction. The publication of the scheme in this case involving a lottery which was not to be drawn was consequently not punishable under the section.

Crown v. Mukandi Lal (4), and *Emperor v. Vazirally* (5), relied upon.

Case reported by Mr. E. C. Marten, Sessions Judge, Lahore, under Section 438, Criminal Procedure Code, for orders of the High Court.

Nemo, for Petitioner.

JEREMY, Public Prosecutor, for Respondent.

(1) 17 P. R. (Cr.) 1910. (4) 85 P. R. (Cr.) 1917.

(2) 1932 A. I. R. (Rang.) 143. (5) (1929) I. L. R. 53 Bom. 57.

(3) 1933 A. I. R. (Mad.) 16. (6) (1927) I. L. R. 50 Mad. 696 (F.B.).

(7) (1863) 1 Mad. H. C. R. 448.

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THE REPORT OF THE SESSIONS JUDGE.

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The proceedings are forwarded for revision on the following grounds:—

These two revision petitions against convictions under section 294-A, Indian Penal Code, in separate cases, each present for consideration two legal questions which are identically the same in both cases. They may therefore be dealt with in one order. In the case *Crown versus Sardar Gurbakhsh Singh Narang*, the accused is the Editor of the Weekly paper—*The Fateh* of Lahore; whilst in the case *Crown versus Sayed Inait Shah*, the accused is the Editor of the *Siyasat*, a daily paper of Lahore. Both these persons have been convicted for publishing a notice of a proposal for an alleged lottery managed by the Industrial Bank, Limited. There are no facts in dispute. The publication of the notice which is the same in both cases and refers to the same lottery is admitted.

It has merely been argued (a) that the scheme published is not a lottery and (b) that even if it is, the publication thereof is not illegal, as it involved no "drawing" within the meaning of section 294-A, Indian Penal Code. A reference to the notification will explain the conditions upon which this scheme was to work. The Bank issued a lac of ten rupee bonds which were redeemable at the end of 20 years by every holder who would receive Rs. 10-8-0. Thus none of the investors suffered any capital depreciation. This money was to be invested and from the interest a series of prizes were to be allotted yearly in the following manner. Every bond-holder who died within the ensuing year was treated as a prize winner. For the distribution of the rest of the prizes, the

number of the bond held by the deceased holder, whose death was first reported to the Bank, was to be taken and ten added thereto, *e.g.*, if the deceased's bond was No. 813, then the first prize winner would be the holder of the bond No. 823 and the remaining prizes were distributed by adding ten, *e.g.* 833, 843, 853, etc., etc. until the prizes were exhausted. Thus it will be seen that the prizes although allotted by chance were not drawn in the manner generally accepted and were derived entirely from interest and not capital.

It has been argued before me on the first point mentioned above that such a scheme does not amount to a lottery and the Full Bench ruling *Narayana Aiyangar v. Vellachami Ambalam* (1), has been cited before me in support of this contention. This concerned a chit fund and the law of lottery is discussed at length therein with special reference to English cases. It was finally held that a scheme whereby nobody lost their capital, even though they failed to profit by making interest, could not be called a lottery. Similarly an old ruling *Kamakshi Achari v. Appavu Pillai* (2), has also been put forward to support the same contention. I would very respectfully venture to differ with these two rulings. The word "lottery" is nowhere defined in the Criminal Code or in any other Statute that I know of. Its common meaning, as disclosed by the dictionary, is "a scheme for the distribution of prizes by lot or chance," and in the present instance the prizes were certainly to be distributed by chance, the factor of chance being the death of a bond-holder. I am unable to see how any Court is legally authorised to place a more arbitrary.

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or restricted interpretation on the word 'lottery' than is in common use in the English language. There may be in England a judicially restricted interpretation accepted in English Common Law, which differs from the common and current meaning; but in India we are not bound by Common Law and are obliged to give the current meaning to any word used in a statute. In this I am supported by a number of rulings. *Madan Gopal v. Emperor* (1), *A. D. Raj v. Emperor* (2), *The Crown v. Mukandi Lal* (3), *Emperor v. Vazirally* (4) and *Universal Mutual Aid & Poor Houses Association v. Thoppa Naidu* (5), are all rulings which support the prosecution contention that a scheme such as the present is certainly a lottery. I therefore hold on the first point that the scheme published was a lottery.

On the second point it has been argued before me that the provisions of section 294-A, Indian Penal Code, only make illegal that type of lottery which involves an actual drawing and that the word 'drawing' must be given a usual physical interpretation; that is to say, lots will have to be drawn by some human or mechanical agency from a receptacle. The relevant portion of the first part of the section reads, "Whoever keeps an office or place for the purpose of 'drawing a lottery'" and the second part reads "and whoever publishes any proposal to pay any sumon any event or contingency relative or applicable to the 'drawing' of any ticket, lot, number or figure in any such lottery." It has been specifically held in *The Crown v. Mukandi Lal* (6),

(1) 17 P. R. (Cr.) 1910.

(2) 1932 A. I. R. (Rang.) 143.

(3) 35 P. R. (Cr.) 1917.

(4) (1929) I. L. R. 53 Bom. 57.

(5) 1933 A. I. R. (Mad.) 16.

(6) 35 P. R. (Cr.) 1917.

that the word 'drawing' must be read as being used in its physical sense and this is followed in *Emperor v. Vazirally* (1), where the origin of the word 'draw' and the place it finds in this section, is discussed at length. Webster's dictionary defines the word 'drawing' as "the act of pulling, hauling, attracting, extracting, taking lots, a card or cards from the pack, etc." So its meaning relative to a lottery is clearly that the lots should be drawn by some mechanical or human agency involving their chance extraction. The present scheme, as has already been seen, contains no such element. There was no physical or mechanical 'drawing' to determine the lucky lots which depended on a sort of arithmetical progression based on an original number to be determined merely by the chance death of a bond-holder. I would therefore hold that the publication of a scheme involving such a lottery is no offence as the law at present stands. The remedy for this, if any is needed, lies with the legislature and not with the judiciary.

I forward these revision petitions to the High Court with a recommendation that in both cases the convictions be quashed on the grounds I have set out.

ORDER OF THE HIGH COURT.

ADDISON J.—For reasons given by the learned Sessions Judge, I accept the petition, set aside the conviction, and direct that the fine, if paid, be refunded.

P. S.

Revision accepted.

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(1) (1929) I. L. R. 53 Mom. 57