

R. Gnanavelan and anr. Vs. State of Tamil Nadu and ors.

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Court : Chennai

Decided On : Aug-27-1984

Reported in : AIR1985Mad69

Judge : V. Ramaswami and ;David Annoussamy, JJ.

Acts : Tamil Nadu Raffle Rules, 1976 - Rule 36; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11

Appeal No. : Writ Petn. Nos. 1384 and 3635 of 1984

Appellant : R. Gnanavelan and anr.

Respondent : State of Tamil Nadu and ors.

Advocate for Def. : A. Sadanand, Adv.

Advocate for Pet/Ap. : B.R. Dolia and ;T.S. Subramaniam, Adv.

Judgement :

1. The above writ petitions were heard together and are disposed of by this common judgment.

2. Raffles are conducted by the State of Tamil Nadu, first respondent in Writ petition No. 1384 of 1984 and the second respondent in writ petition No. 3635 of 1984. The Commissioner, Tamil Nadu Raffles, second respondent in writ petition No. 1384 of 1984 and the First Respondent in writ petition No. 3635 of 1984 and the Director of Tamil Nadu Raffles (third respondent in Writ petition No. 1384 of 1984) are in charge of the conduct of Raffles. They held a bumper draw with an amount of Rs. 15 Lakhs (Rupees fifteen lakhs) for the first prize. The Original date of draw was scheduled to be 3-4-1977 but it was postponed and the draw was held on 25-5-1977 and the ticket bearing No. AB275522 was declared to be entitled to the bumper prize of Rs. 15 lakhs.

3. On 27-5-1977 the Director of Raffles received a letter from one Pappa stating that she was the purchaser of the prize winning ticket but that she lost it. On 9-8-1977 the petitioner in W. P. No. 1384 of 1984, Gnanavelan (hereinafter referred to as the first petitioner) claimed the amount from the Director of Raffles and produced a ticket bearing the number above quoted. On 1-3-1977 the petitioner in W. P. No. 3635 of 1984, C. Subramaiaam (herein after referred to as second petitioner) made a similar claim It is worth noting that all the three claimants declared having purchased their ticket from one Meenakshi of Madurai.

4. On 18-8-1977 Pappa sent a regular petition to the Director of Raffles stating that in spite of her efforts she was not able to trace her ticket and requested the Director of Raffles to refer the matter to the Government and in the meanwhile not to pay to any other claimant. On 22-8-1978 she instituted a suit before the City Civil Court, Madras, subsequently withdrawn to the High Court, in which she prayed for payment of the prize money to her and for an injunction to the Director of Raffles not to pay it to any other person. On 6-9-1977 the first petitioner, who was in possession of a prize winning ticket, got himself impleaded and filed an application to pay the prize money to him. On 27-2-1978 the prize money was deposited into Court as per the directions of this court in Application No. 572 of 1978. While making the deposit the Director of Raffle stated that the money might be paid to the rightful owner. On 27-4-1978 the Registrar was directed by this Court to deposit the money in Indian Overseas Bank, Royapuram. On 1-8-1983 the suit filed by Pappa was dismissed and so also the application of the first petitioner for payment of the prize money to him. It was against the order rejecting the application that the first petitioner has filed O. S. A. No. 157 of 1983 which was dismissed by our judgment dated 20-6-1984 reserving the right to the parties in the W. P.

5. The matter was then scrutinised by the Director of Raffles. On 13-8-1977 he wrote a letter to the Works Manager, Government Press, Madras forwarding him the tickets filed by both the petitioners in the writ petitions and, requesting him to offer his expert opinion covering all aspects of the verification (i.e., tint, colour, ink, zero code, etc.). He also asked the Works Manager to state specifically whether the numbers printed on the tickets tally with the specimen numbers used for printing of tickets under 'AB' series for the special bumper draw held on 15-5-1977. The reply from the Government press was to the effect that the raffle ticket presented by the first petitioner was not delivered by the Government Press and that the ticket presented by the second petitioner was not decipherable and that no comments on the genuineness of that ticket could be offered. The Director of Raffles finding that there were three claimants for the prize and suspecting some malpractices filed a complaint to the police against both the petitioners on 28-10-1977. He also wrote to the Director, Tamil Nadu Forensic Science Laboratory on 7-11-1977 calling for his opinion on the tickets of the petitioners. The Laboratory gave its opinion on 27-1-1978 as follows:

(1) In respect of the ticket of the second petitioner;

The figures in the 3rd digit of the red enclosed number "275-22" stamped and marked Q 1 on the raffle ticket could not be deciphered. The figures "2" in the first and second digits have been posted on a cellophane paper by trimming the edges probably with a pair of scissors instead of the torn edges being physically fitted as in other parts of the torn edges of the raffle ticket and

(2) In respect of the ticket of the first petitioner, there is slight variation in the distance between the holes made by wire stitching in the Raffle ticket bearing the marking Q. 2 from the specimen raffle ticket similarly stamped and marked S. 1. The figures "2" in the red enclosed number '275522' stamped and marked 'Q2' on the raffle ticket in the second and sixth digits are slightly smaller in breadth and the shape of the curve at the tip portion vary on a comparison with the specimen figures "2" in the numbers stamped and marked S. 21. Similarly, the shape of the downward stroke in figure 7 in the fifth digit of the red enclosed number '275522' stamped and marked Q2 varies from the shape of the downward stroke of figures '7' in the

specimen numbers stamped and marked S. 1".

6. On 5-4-1978 the Superintendent of Police forwarded to the Director Stationery & Printing, Government Press, Madras, the ticket produced by the first petitioner along with the report of the Forensic Laboratory and requesting him to offer opinion as to whether the figures found in the ticket were hand numbered or machine numbered. He received an answer on 11-4-1978 to the effect that the ticket produced was a hand-numbered one and the ticket bearing the same number and delivered from the Government Press was numbered by the Hulley numbering machine.

7. Other facts came also to light in the course of investigation and trial, the most salient of which are as follows: - The Assistant Works Manager, Government Press, stated that he did not give any opinion specifically whether the tickets presented by the petitioners were printed at Government Press or not because he had not applied a final conclusive test which is called the "Chemical Reaction Test". He further stated that in respect of the ticket presented by the first petitioner, the ticket though appearing to be a genuine one, was not the one delivered by the Press and that such a conclusion was arrived at after careful study and examination of the wire stitching mark in the ticket. He also added that the event of a defective ticket being found, the Collator would remove that defective ticket from the bundle, take a spare ticket kept, for the purpose, imprint the particular number by hand machine, put it back and stitch it. The General Manager of the Government Press stated that he offered opinion on the basis of his practical experience and not with the help of any apparatus. He added that no scientific method was applied and that there was no facility available. He admitted that in the past, sixteen instances of double-claims were brought to his notice and that in all those cases both the tickets were found to be genuine. He admitted also that whenever necessity arose for rectification of number hand numbering was resorted to.

8. The Senior Accounts Officer in the Directorate of Raffles, Madras stated that in the past there had been 16 double claims and that in some cases both the claimants have been paid. He added that the Director of Stationery and Printing, Madras opined invariably in all those cases that both the tickets were genuine and that one or two code words printed were by mistake. He narrated also that in respect of a draw due on 19-10-1977 the Tamil Daily "Murasoli" published in its issue dated 10-9-1977 news item reporting that certain AK series raffle tickets sold at Trichy were having no number and that a Telugu Daily, "Andhra Prabha" published photographs of such a ticket, that a press note was issued requesting the general public to surrender all such defective tickets in their possession and in the tickets so surrendered the following defects were noticed the serial number of the ticket not printed but written in ink, serial number without series letter; ticket without any number. On account of those defects the draw was postponed to 9-11-1977.

9. In the criminal case against the first petitioner, namely C. C. No. 15940 of 1978, the prosecution examined 22 witnesses and filed 25 exhibits. On 30-5-1982 the Second Metropolitan Magistrate, Egmore, Madras, convicted the first petitioner for offences under Ss. 430 read with 511, Penal Code and 471 read with 467, Penal Code and sentenced him to undergo rigorous imprisonment for 18 months. The first petitioner appealed against the conviction and sentence before the Court of Session, Madras and in that appeal, C. A. No. 207 of 1982, two witnesses, viz., the Expert from the Forensic Science Laboratory and the Works Manager, Government Press, were re-examined and seven more exhibits were filed by the prosecution. The accused (first

petitioner) filed four exhibits. The Principal Sessions Judge, Madras by judgment dated 12th November, 1982 found that the charges against the first petitioner were not proved beyond reasonable doubt, set aside the conviction and sentence and acquitted the first petitioner. In his judgment he observed that the methods adopted by the concerned authorities to find out whether the tickets were forged were not adequate. He added that the evidence placed before him would lead to the inference that a sample raffle ticket from AB serial had been stolen from the Government Press.

10-11. In the criminal case, viz., C. C. No. 25944/78 under S. 420 read with S. 511, IPC and S. 471 read with S. 467, IPC the prosecution examined 21 witnesses and marked 25 exhibits. On the basis of the evidence adduced before it, the criminal court acquitted the accused (second petitioner herein) giving him the benefit of doubt.

12. At the end of the criminal proceedings both the petitioners reiterated their claims for payment before the Director of Raffles who rejected them on 23-1-1984 by two similar orders worded as follows:-

"The claim preferred in respect of ticket No. AB 275522 in the draw held on 25-5-1977 is rejected under R. 36-h of the Tamil Nadu Raffle Rules, 1976."

It is against those orders that W. P. No. 1384 of 1984 was filed by the first petitioner and W. P. No. 3635 of 1984 by the second petitioner. The prayer in both the petitions is for issue of a Writ of certiorarified mandamus quashing the above said order and directing the concerned authorities to pay the prize amount of Rs. 15 lakhs with interest at 12 per cent per annum from the date of draw, viz., 25-5-1977 till date of actual payment. Both the petitioners asserted that one Meenakshi from Madurai had paid her commission of 1 1/2 lakhs of rupees to the person having sold the prize. Winning ticket. Both the petitioners complained that the Director of Raffles who passed the orders failed to exercise the jurisdiction vested in him as per the Rule and that he passed the orders without any application of mind and without disclosing any reasons as to why he rejected the claims.

13. R. 36-h of the Tamil Nadu Raffle Rules, 1976 reads as follows: -

"Claims for prizes for mutilated/ tampered/ torn/disfigured/ forged tickets shall be rejected except in cases where it is possible to verify the genuineness of the ticket. If during verification it is found that the ticket is genuine, the prize amount due shall be disbursed. The claim shall be rejected if the genuineness of the ticket cannot be established. In such cases, the decision of the Director of Tamil Nadu Raffle shall be final and binding".

It is obvious from a plain reading of the orders that the Director of Raffles has failed to give the reasons for rejecting the tickets while exercising his powers under R. 36-h and that these cursory orders are untenable. The learned Government pleader conceded that the orders in their present form cannot stand but suggested to refer the matter again to the Director of Raffles for proper disposal after setting aside the present orders. The petitioners contended on the contrary that after the findings of the criminal Courts nothing remained to be decided, that the Director of Raffles had no jurisdiction to give any finding, that he had no discretion to exercise, that the order to be passed is only towards effecting the payment and they, therefore, prayed this Court to issue direction to that effect.

14. There is some force in the contentions of the petitioners. If orders have been passed by the Director of Raffles without any recourse to criminal proceedings, the course suggested by the learned Government Pleader would be possible. But in the present case the concerned authorities have chosen to bring the matter before the criminal court and they are bound by the consequences arising out of their own course of action. In fact, they had the choice, when they had any doubt about the genuineness of the tickets, between three courses: to decide themselves or to leave the matter to the civil Court or to bring it before the criminal Court. The last one is obviously the worst for the claimants. The fact of being arrested, charged and tried in a criminal Court casts aspersion on the person concerned. The authorities who have got the choice of the forum of deciding about the genuineness of the ticket, after opting deliberately for the criminal court cannot ignore the verdict of the criminal Court and ask for an opportunity and the right to decide afresh in the matter. Rules of law and procedure are devised to give finality to disputes however hard it may be to reach the truth and however unpalatable may be the result to the parties. If upon the prosecution launched by the authorities the prize claimant is sentenced, he has to undergo the sentence. Similarly, if the prosecution fails, whatever may be the reason, the same authorities have to accept the finding readily and effect payment. The authorities have only a choice between the three courses listed above; they cannot resort to them one after the other.

15. This Court had occasion to consider this kind of situation in *Jerome D'Silva v. Regional Transport Authority, South Kanara* and it was held as follows: -

"As primarily the criminal courts of the land are entrusted with the enquiry into offences, it is desirable that the findings and orders of the criminal courts should be treated as conclusive in proceedings before quasi-judicial tribunals like the Transport Authorities under the MV Act."

Then explaining how the above principle should be implemented in practice the following guidelines were prescribed :

"The position then would be this. If there is a conviction by a competent criminal Court, that would furnish conclusive ground for any penal action by the Transport Authorities. Equally, if the criminal prosecution ended in a discharge or acquittal of the accused and that event happened before the order of any Road Transport Tribunal, then such Tribunal would not have the power to go behind the final order of a competent criminal Court. If at the time the Road Transport Tribunal disposes of any application or before such tribunal passes an order no prosecution has been launched, then of course it is not incumbent on the tribunal to await a criminal prosecution. But if a prosecution is in respect of the same offence by reason of which the Transport Authority proposes to take drastic action against the accused in the criminal case, then, it is desirable that the transport authority should await the decision of the criminal court. This procedure would avoid the spectacle of two departments of the Government proceeding on contradictory lines to the annoyance and hardship of the citizen".

The Supreme Court had occasion to consider the same issue in *Pritam Singh v. State of Punjab* in which the court quoted

with approval and applied the observations of Lord MacDermott at page 479 in *Sambasivam v. Public Prosecutor, Federation of Malaya, 1950 A. C. 458 (A)*:-

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication".

16. It is thus found that the prayer of the learned Government Pleader to refer the matter to the Director of Raffles is utterly unacceptable as repugnant to settled norms and principles of law and justice. He, however, repeatedly contended that the facts that before the criminal courts the tickets were not found to be proved forged do not rule out the hypothesis of their being forged. In his understanding, not proved forged' does not mean not forged, genuine". This subtle distinction, may be true in the pure semantic world, has no application in respect of a court-finding the nature and value of which have to be borne in mind. The argument put forth seems also to arise out of a misconception that the prosecution failed by accident in the criminal trial and that the matter is still at large. This is not true. In fact, the question brought before the court is not whether there is adequate proof. The question is very, much whether the document is a forged one or not, one side contending that it is forged and the other that it is not. The court scrutinises the evidence adduced by both sides, gives its opinion in saying that the document was proved to be forged or not and then in answering the point at issue gives a finding that the document is forged or not; it does not leave the last question open. So it is obviously wrong to say that the matter is only at the stage of opinion to the effect that the document is not proved to be forged. Further, the fact of the document being actually forged though being within the domain of possibility does not deprive the finding of the court from the finality attached to it by the law. The maxim *res judicata pro veritate accipitur* does not mean that the finding of the court is the exact reflection of truth but means only that such a finding has to be accepted as truth. In fact, the court gives its finding on the basis of the evidence placed before it by the parties and in accordance with the rules of evidence and such a finding is conclusive and binding only upon the parties, who are not entitled to re-open the same issue. Of course, when the court itself has left the issue open to doubt, or has disposed of the case on technical ground without giving a finding on merits the matter may be examined afresh in a subsequent proceeding.

17. We are at a loss to understand the hesitation of the concerned authorities, who are certainly quite aware of the position of law, to accept the verdict of the forum they have deliberately chosen among others. This shows only that the gravity of the criminal proceedings is lost sight of and discloses scant consideration for a finding of the criminal court. The criminal proceeding is not a weapon to be brandished and used in all circumstances. A poor man for the only sin of purchasing a ticket of a lottery organised by the State should not be driven into accused's box light heartedly. Further, if the spectre of criminal prosecution is allowed to haunt the minds of the prospective purchasers of the ticket that would have a deterring effect and bring down the yield expected from the raffles and defeat the very purpose of the scheme.

18. To sum up, a criminal proceeding by its very nature is an extremely grave one. Recourse to it should be made with the greatest care, caution and circumspection. There is no compulsion for the authorities to launch a prosecution in each and every case. Proper and careful assessment of the evidence forthcoming

should be done before deciding on the course to be adopted. Once launched the prosecution should be conducted efficiently and the finding of the court to which the

matter was brought has to be accepted, after of course exhausting the right of appeal or revision, if so advised. The matter would remain open only when there is no definite finding by the criminal court.

19. Turning back to the facts of the case, we find that there are two claimants for the first prize. As per R. 36-a of the Tamil Nadu Raffle Rules, 1976, a holder of the prize winning ticket shall be entitled to claim the prize amount. Normally, there would be only one holder of a prize winning ticket. But if by chance there are more than one, multiple payment has to be made as per the mandatory provision of the rule quoted above. From the statement of the prosecution witnesses as already stated, there has been, in the past, cases in which two tickets bearing the same winning number have been produced and found genuine and in some cases double payment has also been made. This is not controverted by the learned Government Pleader. However, the reluctance to effect double payment. in the present case appears to arise out of the magnitude of the amount involved. But the simplistic attitude to make multiple payment when the amount is low and to refuse to effect such payment when the amount is high is repugnant to law and justice. It is understandable that claims are settled straightway by multiple payment when the amount is so trivial as it is not worth examining the case in depth. But this should not lead to mechanical refusal or multiple payment without any consideration when the amount is handsome. If the tickets are found to be genuine after submitting them to appropriate tests the payment promised is to be made to all holders of such tickets. No doubt, when the amount is huge such multiple payments cause loss to the Government and the scheme becomes counterproductive. But it is to be remembered that the amount of the prize was deliberately fixed high in order to catch the imagination of the people and thereby to boost the sales and realise higher resources. The solution, therefore, is not shirking the responsibility in making the payment due but consists instead of plugging the loopholes in the functioning of the system. Alluring amounts in this highly speculative venture are bound to raise temptations from various quarters and at different levels. In built safety measures in the ticket issuing machinery are essential to avoid duplication, and pilferage. Fool-proof devices are necessary to check up counterfeittings. The facts disclosed in the criminal investigations and trials point out that much remains to be done in these fields. Whatever may be the position, the law requires that when a ticket is presented and that is found to be genuine the prize promised has to be disbursed irrespective of any earlier payment for any other ticket bearing the same number.

20. We shall now advert to the reliefs that can be awarded to the parties, in these cases. The first petitioner R. Gnanavelan was found by the Principal Sessions Judge, Madras in C. A. No. 270 of 1982 to be an innocent person and he was set at liberty. This finding is final and binding upon the respondents 1 to 3 in W. P. No. 1384 of 1984. He is entitled to the prize amount. Since the amount has been already deposited into court as per the request of the first petitioner (Gnanavelan), and subsequently invested in a bank he may be permitted to withdraw the amount along with interest accrued so far.

21. As far as the second petitioner (C. Subramaniam) is concerned, the second Metropolitan Magistrate in C. C. No. 25244 of 1978 found that a doubt was subsisting on the point whether the ticket was a forged one or not and acquitted him giving him the benefit of doubt. Therefore, a fresh finding is necessary on that point. It is also seen that the ticket produced by him is not intact. He has not also shown before us how and why it should be considered as genuine. He did not also ask for any fresh

expert evidence on the point. So, this is a fit case for referring the matter again, to the Director of Raffles, Madras for a fresh finding in accordance with the provisions of R. 36-h of the Tamil Nadu Raffle Rules, with full reasons in case of rejection.

22. In the result, Writ petition No. 1384 of 1984 is allowed; the order of the third respondent in W. P. No. 1384 of 1983 dated 23-1-1984 is quashed and the first petitioner is declared entitled to the amount deposited in the Indian Overseas Bank, Royapuram, along with interest. The Registrar, High Court, in whose favour the amount stands now deposited, to the credit of C. S. No. 293 of 1978, is directed to effect payment to the first petitioner (R. Gnanavelan) after deducting 34.6 per cent for the purpose of Income Tax.

23. W. P. N. 3635 of 1984 is allowed in part and the order dated 23-1-1984 rejecting his claim is set aside and the Director of Tamil Nadu Raffles Scheme is directed to re-examine this petitioner's claim, uninfluenced by the observations of the criminal court and unconcerned by the payment of the prize amount to the first petitioner (Petitioner in W. P. No. 1384 of 1984). In the circumstances, there will be no order as to costs.

With reference to Art. 134A of the Constitution, the learned Government pleader made an oral request for leave to appeal to the Supreme Court. We have accepted the finding that the winning ticket had not been shown R6 be a forged one. No question of law much less a substantial question of law which needs to be decided by the Supreme Court, can be said to arise in the proposed appeal to the Supreme Court. In the circumstances, we reject the request for grant of leave against our judgment in WP No 1384 of 1984.

24. Order accordingly.

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