IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE, KOLENCHERRY:
Present : Smt. Sirsha N A,
Judicial I Class Magistrate.
Saturday the 31st day of May, 2025

CMP No. 932 of 2025
In
CC No: 221 of 2019

Petitioner/ 1st Accused	**:**	Navas K K, S/o. Khader Pilla, age 37/16, Karuvelimattom House, Near Engineering College, Thrikkakara , Thrikkakara Kara, Vazhakkala Village (By Adv. Sain Paul Alunkal & Adv. E N Jayakumar)
Respondent	:	State represented by the Sub Inspector of Police, Kunnathunadu Police Station (Crime No. 1223/16 of Kunnathunadu P.S.) **(By A.P.P. Kolenchery)**
Order	**:**	CMP is partly allowed.

ORDER

This order arises from the petition filed by the first accused under Section 239 of the Code of Criminal Procedure, seeking discharge in C.C. No. 221 of 2019. The offences alleged against them are under Sections 406 and 420 read with Section 34 of the Indian Penal Code, 1860 and Section 4(1) r/w 76 of the Chits Fund Act, 1982. The petitioner seek discharge on the ground that the allegations made in the final report are unfounded and do not warrant the framing of charges.

2. According to the prosecution, as set out in the final report, the accused were operating a chit fund business under the name and style of *Karivelimattom Chits Pvt. Limited*. They allegedly induced various individuals, including CW2 to CW4, to join the chit scheme and remit periodic payments, promising that the chit amount would be disbursed either upon auction or upon completion of the subscription period. However, the business was later shut down without disbursing the due amounts to the subscribers, thereby allegedly committing criminal breach of trust and cheating.

3. The averments in the petition are as follows : on the available materials on record, there is no prima facie case for commission of the offences alleged against

the accused. There is no ground for presuming that the accused have committed the offences alleged. The submission of the charge sheet is based totally on unfounded assumptions and it will result in causing miscarriage of justice. It is submitted with respect that the complaints made by the de facto complainants are premature complaints and are of civil nature. The materials produced before this court is not sufficient to frame charge against the accused. No offence is made out against the accused. The respondent has no jurisdiction to entertain the above case.

4. A copy of the petition was served to the Learned Assistant Public Prosecutor (APP). Though no written objections were submitted, the learned APP strongly opposed the petition, contending that a prima facie case is made out against the petitioners based on the materials produced by the prosecution. It was submitted that at the stage of Section 239 CrPC, the court cannot evaluate the defence evidence but only examine whether a prima facie case is disclosed from the prosecution's records.

5. Heard both sides.

6. Though not specifically pleaded in the discharge petition, the learned counsel for the petitioners raised several arguments to substantiate their claim. The primary contention is that the charge sheet has been filed solely against the petitioners without arraying the company, *Karivelimattom Chits Pvt. Limited*, as an accused. The petitioners argue that in the absence of the company being arraigned as an accused, the prosecution is unsustainable—particularly in view of the decisions in *Sunil Bharti Mittal v. CBI* [(2015) 4 SCC 609] and *S.C. Garg v. State of Uttar Pradesh* [2025 KHC OnLine 6341], which holds that vicarious liability under the IPC cannot be imposed on individuals solely based on their official position unless specific allegations of active participation or mens rea are made.It is further contended that no specific role or act of misappropriation has been attributed to the petitioners. There is also no material to show that they were individually entrusted with any funds, or that they misappropriated the same in violation of trust, as required under Section 405 IPC to attract Section 406 IPC.

7. Upon consideration of the charge sheet and accompanying records, and after hearing both sides, the following point arises for determination:

1. Whether the charges against the accused under Sections 406 and 420 r/w 34 IPC and Section 4(1) r/w 76 of the Chits Fund Act, 1982 are groundless so as to warrant discharge under Section 239 CrPC?

8. **<u>Point No.1 :</u>** In a criminal case ,where a charge is liable to be framed, it is a well-settled position of law that the court is not a mere post office acting at the behest of the prosecution. The judge is expected to apply his judicial mind to the facts of the case to determine whether a prima facie case has been made out by the prosecution. At the same time, while considering an application for discharge, the court must proceed on the assumption that the material placed on record by the prosecution is true. The court is required to evaluate such material to determine whether, on its face value, it discloses the existence of the essential ingredients of the alleged offences. Therefore, the central issue for consideration is whether the prosecution has placed sufficient material on record that, if taken at face value, discloses the elements necessary to constitute the offences alleged.

9. The first offence alleged against the petitioners are under 406 of the IPC. To attract an offence under Section 406 IPC, it is essential to establish entrustment of property and dishonest misappropriation or conversion of that property in violation of the trust. In the present case, there is no material in the police report to indicate that CW1 to CW4, or any other subscriber, entrusted funds directly to the petitioners in their personal capacity. The allegations are primarily against the chit fund company, which is not even made an accused. Further, the prosecution records do not reflect any specific act of misappropriation or dishonest conversion by the petitioners individually. The entrustment, if any, appears to have been with the company as a legal entity. Thus, in the absence of clear allegations of personal culpability or criminal intent (mens rea) on the part of the petitioners, the essential ingredients of Section 406 IPC are not met. Accordingly, **the charge under Section 406 IPC is held to be groundless and cannot be sustained.**

10. The second allegation of the accused is under section 420 of the IPC. The principal arguments raised by the counsel for the petitioners are that Section 420 IPC is attracted only when there is dishonest inducement at the very inception, leading to delivery or destruction of property, or alteration/destruction of a valuable security. If the dishonest intention arose only subsequent to a dispute, the offence would not fall under the purview of criminal law but would attract civil liability. The petitioners argue that since the chit company made certain payments earlier in compliance with the chit agreement, it cannot be inferred that there was a dishonest intention from the beginning. Additionally, it is contended that disputes in chit fund matters fall within the jurisdiction of the Registrar of Chits under Section 64 of the Chit Funds Act, and the company had furnished adequate security as required under Rule 25 of the Kerala Chit Fund Rules, 2012.

11. However, from the materials on record, it is evident that there are allegations indicating that the accused dishonestly induced subscribers by making false promises, collected funds under the guise of running a lawful chit business, and despite knowing that repayments could not be made, continued to accept subscriptions and subsequently shut down operations. These allegations, though subject to proof during trial, prima facie suggest dishonest inducement and deception at the inception. The fact that the petitioners were persons in charge and continued to operate the business despite probable knowledge of the impending collapse raises a triable issue under Section 420 IPC. At this stage, the court is not expected to undertake a detailed evaluation of the evidence or assess its sufficiency but must merely determine whether the materials disclose a prima facie case. Accordingly, the charge under Section 420 IPC r/w Section 34 IPC cannot be said to be groundless.

12. The next allegation against the accused is under section 4(1) r/w 76 of the Chits Fund Act, 1982. The Chits Fund Act set out a statutory framework for taking cognizance of offence under the act. Section 75 of Chits Fund Act provides that “No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by Registrar or any officer authorized by him on this behalf”. This means that for the offence punishable under Chits Fund Act a

Magistrate can not take cognizance unless a complaint is filed by the Registrar or authorized officer, even if the Police report discloses offences under act unless the procedural bar under section 75 is satisfied. In this case there is no valid complaint prescribed by the Chits Fund Act. Hence cognizance can not be taken for the offence punishable under section 4(1) r/w 76 of the Chits Fund Act, 1982.

13. **Conclusion**

In light of the above findings, this Court concludes as follows:

- The charge under Section 406 IPC is groundless. The petitioner is therefore discharged from the said offence.
- Cognizance for the offence punishable under section 4(1) r/w 76 of the Chits Fund Act, 1982 can not be taken as the statutory bar under section 75 of the act is not complied with.
- However, a prima facie case exists against the petitioner under Section 420 IPC read with Section 34 IPC. Accordingly, the petition for discharge in respect of this offence is rejected.

ORDERED ACCORDINGLY

- The petition is **partly allowed**.
- The accused is **discharged under Section 406 IPC and 4(1) r/w 76 of the Chits Fund Act, 1982.**
- The petitioner shall face trial for the offence under **Section 420 IPC r/w Section 34 IPC**.

(Dictated to the Confdl, Asst, transcribed and typed by her, corrected by me and pronounced in open court on this the 31st day of May, 2025.)

Sirsha N A
Judicial Ist Class Magistrate
Kolencherry