

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,
PATTAMBI

Present:- Smt. Neema Noor Mohamed, Judicial Magistrate of First Class
Tuesday, this the 12th day of May, 2026.

C.M.P. No. 3628/2025 in C.C. No. 358/2022.

Gireesh, S/o. Sidharthan, Vayaloor House, : Petitioner/ 3rd accused
Vadakkumuri P.O, Peringottukara, Thrissur.
(By Adv. Sri. Sekhes.K.S)

Vs.

State represented by the Sub Inspector of Police, : Respondent/Complainant
Chalissery Police Station in Crime No. 490/2021.
(By: Smt. Resmi.V.S., Gr.II A.P.P.)

ORDER

This petition is filed by 3rd accused under Section 262 BNSS seeking discharge from the offences punishable under Sections 406, 420, 201 r/w Section 34 of the Indian Penal Code.

2. The prosecution case, in brief, is that 4th accused company was being run by 1st to 3rd accused under the name and style of “Janam Nidhi Limited” and from 05/04/2018 to 23/10/2021, the accused induced CW1 to deposit amount of ₹93,000/-, as chitty on the promise that the principal amount along with interest would be repaid on maturity. It is alleged that thereafter the accused failed to repay either the principal amount or the interest amount to CW1. It is further alleged that the accused destroyed the computer containing the account details of the company with an intention to destroy evidence.

3. Heard the learned counsel for 3rd accused and the learned Assistant Public Prosecutor. Perused the charge sheet records and other materials placed before this Court.

4. The contention of 3rd accused is that he was not present at the time of the alleged transaction and there is no material to substantiate that the defacto complainant had paid any amount to him. It is further contended that the major allegations in the complaint are against the Managing Directors of the company who are 1st and 2nd accused and that petitioner/3rd accused had no knowledge regarding the day-to-day affairs of the company.

5. The learned counsel for 3rd accused relied upon the judgment of the Hon'ble Supreme Court in ***Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923***, wherein it was held that individual criminal liability must be established through direct evidence of involvement or by specific statutory provision and that directors cannot automatically be presumed to be vicariously liable for the acts of the company.

6. Reliance was also placed on ***Pharmaceuticals Ltd. v. Neeta Bhalla & Another, AIR 2005 SC 3512***, wherein the Hon'ble Supreme Court held that directors are not automatically vicariously liable for offences committed by the company and that only those who were in charge of and responsible for the conduct of the business of the company at the relevant time can be proceeded against.

7. The learned counsel further relied upon the decision in ***Susela Padmavathi Amma v. Bharti Airtel Ltd., Special Leave Petition (Criminal) No.12391 of 2022***, wherein the Hon'ble Supreme Court reiterated that merely holding the position of a director does not automatically render a person liable for offences committed by the company and that specific allegations regarding the role and involvement of such director are necessary.

8. Reliance was also placed on the decisions reported in ***Rumidhar v. State of West Bengal, (2009) 6 SCC 364*** and ***Archana Rana v. State of Uttar Pradesh, AIR 2021 SC 1177***.

9. At the outset, insofar as the offence punishable under Section 420 IPC is concerned, the complaint and charge sheet materials do not disclose any allegation of intentional deception or fraudulent inducement at the inception of the transaction. The prosecution materials only disclose acceptance of deposit amount and subsequent failure to repay the same.

10. The Hon'ble Supreme Court in ***Arshad Neyaz Khan v. State of Jharkhand & Another, 2025 LiveLaw (SC) 950***, has held that for the offence of cheating, criminal intention is necessary at the time of making false or misleading representation, i.e., from the inception of the transaction. It was further held that in criminal breach of trust, mere proof of entrustment followed by dishonest misappropriation is sufficient and that the offences under Sections 406 and 420 IPC are distinct and cannot simultaneously co-exist in the same set of facts as they are antithetical to each other.

11. In the present case, there are no specific allegations indicating that 3rd accused or the other accused had dishonest intention from the inception while inducing CW1 to deposit the amount. Therefore, the ingredients constituting the offence punishable under Section 420 IPC are not made out.

12. However, on perusal of the prosecution records, it is seen that there are statements of employees recorded during investigation indicating that 3rd accused/petitioner was also functioning as a Managing Director of the company. Though the learned counsel for the petitioner contends that there is no direct evidence regarding entrustment of money to 3rd accused, the materials collected during investigation prima facie indicate his association with and participation in the affairs of 4th accused company during the relevant period.

13. Whether the role of 3rd accused was active or passive, whether he was actually involved in the management of the company, and whether he had knowledge

regarding the transactions alleged by the prosecution are matters that can only be adjudicated upon during the course of trial on appreciation of oral and documentary evidence.

14. Insofar as the offence punishable under Section 201 IPC is concerned, the prosecution has specifically alleged destruction of the computer containing the account details of the company. Whether such destruction was intentional and whether the same was done with an intention to cause disappearance of evidence are matters to be decided only during trial upon appreciation of evidence.

15. At this stage, this Court cannot conduct a meticulous appreciation of the records or adjudicate upon the defence set up by 3rd accused. The materials placed before the Court are sufficient to proceed against 3rd accused for the offences punishable under Sections 406 and 201 read with Section 34 IPC.

In the result,

The discharge application is partly allowed.

The 3rd accused is hereby discharged from the offences alleged under section 420 IPC.

At the same time case proceeded against him under section 406 and 201 r/w 34 IPC.

Pronounced by me in open court, this the 12th day of May, 2026.

Sd/-

Judicial Magistrate of First Class,
Pattambi.

//True Copy//

Judicial Magistrate of First Class,
Pattambi.