IN THE COURT OF THE IV ADDITIONAL SESSIONS JUDGE,THRISSUR

Present:-

Sri. K V REJANISH, IV ADDITIONAL SESSIONS JUDGE.
Saturday, the 30th day of March 2024/ 10th Chaithram 1946 SE

Criminal R.P.10/2021
(CMP 3468/2017 in C.C.81/2017 of Special Addl. Chief Judicial Magistrate, Thrissur)

Revision Petitioner/ 10th Accused	Prasanth Sundar Raj, S/o Late S.S Rajah, 60-17-12, Bank Colony Road, Siddhartha Nagar , Vijayawada, Andhra Pradesh, (Prasanth Sundara Rajan, aged 38/15, S/o Rajan Sundara, Flat . No. 502, Bhavani Shakthi Homes, Rajiv Nagar , Yousaf Guda, Hyderbad – 500045,)Permanent Address:- Prasanth Sundara Rajah, aged 47, S/o S. S. Rajah, F. No. 502, Bhavani Shakthi Homes, Rajiv Nagar, Yousaf Guda, Hyderbad – 500045, Now residing at 60-17-12, Sidhartha Nagar, Vijayawada, Andhra Pradesh – 520010.
	By. Adv. V.M. Mahesh
Respondent/State:	State of Kerala, rep. By Detective Inspector, CBCID, OCW-III, Malappuram Sub Unit in Cr. No. 2287/2011 of Thrissur Town East P.S (CBCID Cr. 48/CR/EOW-II/KTM/2011)
	Rep. By Public Prosecutor – Adv. Soly Joseph C.

This Crl. Rev. Petition having been finally heard on 25.03.2024 having stood over for consideration to this day, the Court Passed the following:

O R D E R

The revision petitioner is 10th accused in the above mentioned case.

This Criminal Revision Petition challenges the order dismissing the discharge petition filed by the 10th accused in CC. No. 81/2017 of the Special Additional Chief Judicial Magistrate Court, Thrissur.

2. The prosecution case is that the 4th accused is the Managing Director of A1 to A3 companies. A5 to 13 are the Directors of the 1 to 3 accused companies. A14 to 16 are its promotional shareholders. The 1st accused company named Nano Excel Enterprises Ltd was incorporated on 12.07.2007. The 2nd accused company named Nano power Corporation Ltd was incorporated on 01.01.2010. The name of the 2nd accused company was changed to Nano Excel Corporation Ltd on 26.02.2010. A3 company was formed for promoting the business of A1 and A2 companies. A3 company was incorporated on 01.11.2012. A4 to 13 along with A14 to 16 conducted promotional business meets at various hotels at Thrissur and influenced people through their website, broacher, advertisements etc. by publishing that the persons who invested in the business plan of the accused, the company namely Royalty club board will pay high profit as return and will get huge amount as commission by enrolling new members into the business plans stating that the 3rd accused company is starting a hydro-electric project in Arunachal Pradesh and will pay commission to the persons enrolling new members in the power package and can earn Rs.360/- per month @ Rs.3/- for 120 unit current for 50 years consecutively and that shares will be sold. Many

offers were also made for those who purchase shares in the 3rd accused company. On the basis of the promise made by the accused, some charge witnesses paid amounts directly to the accused company. The company had promised cure from various ailments on using of bracelet and pendent developed with nano technology. Company promised to relieve many illness and controlling various ailments on using its products like relaxation card, energized feet card, male watality card, menstrual relief card, biocool water bottle, cooking stone and bracelet etc. The products supplied were poor in quality and didn't provide the assured relief from ailments. The accused company failed to repay the amount deposited by the witnesses. The accused company also failed to provide the promised benefits to the depositors. The accused were conspired together to deceive the depositors by conducting money circulation scheme under the guise of A1 to A3 companies. Thereby the accused committed the offences punishable u/s. 120B, 406 and 420 r/w 34 of IPC and Sec.4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

3. The learned counsel for the revision petitioner would argue that, the order of the trial Court is improper, irregular and illegal. The petitioner is the 10th accused in the above case. Admittedly the prosecution does not have a case that the petitioner had participated in any promotional

activity to promote the activities of the company. The prosecution does not have a case that the petitioner had even stepped into the State of Kerala. The petitioner is an interior designer based at Hyderabad. The only allegation against the petitioner is that the petitioner was the director of A3 company from 13.05.2010 to 26.07.2010. The form 1A in respect of Nano Power Corporation Ltd was submitted by 8 person including the petitioner. The Form No.1 was submitted by 7 person including the petitioner. Subsequently the petitioner was appointed as director of Nano Power Corporation Ltd on 13.05.2010. Thereafter the Forum 20 of Nano Power Corporation Ltd by which the business of the company commenced was submitted only on 14.06.2010. It is the admitted case of the prosecution that the petitioner resigned from Nano Power Corporation Ltd on 26.07.2010 by filling Form 32 with the registrar of companies, Hyderabad. Even according to the prosecution, the petitioner was a director of Nano Power Corporation Ltd after it commenced its business on 14.04.2010 to 26.07.2010. After the commencement of the business of the company, the petitioner was functioning as a director only for 43 days. It is also admitted from the records of the prosecution that the bank account of Nano Power Corporation Ltd was opened only one month thereafter in August, 2010. It is settled law that unless the prosecution is able to show that the petitioner was in charge or responsible for the conduct of the business of the company or day to day affairs of the company, the petitioner cannot be made liable for criminal prosecution based on the principle of vicarious liability. The CJM of Kottayam has been discharged the petitioner in CC.No.5/2016 on the ground that the prosecution has not produced any materials to show that the petitioner had any involvement in the affairs of the company or the petitioner had any involvement in canvassing, collecting or circulating any money so collected. So the learned counsel argued for discharge of the petitioner.

4. The learned Public Prosecutor strongly objected this application. Admittedly the petitioner was the director of A3 company. Public at large are the victims of this crime. The amount involved in money circulation is huge. Conspiracy has also alleged against the petitioner. Materials are there in the final report to frame a charge against the petitioner. So the petitioner is not entitled to get discharge. Hence the PP argued for dismissal of this application.

5. The points for consideration are:-

1. Is there any incorrectness, illegality or impropriety in the order under challenge.?
2. What shall be the proper order.?

6. Heard both sides.

7. **Point Nos. 1 and 2:-** I have gone through the records of the trial court. The alleged offences against the petitioner are u/s. 120B, 406 and 420 r/w 34 of IPC and Sec.4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. So many persons were cheated by the accused by conducting money chain business. Since this being a crime pertaining to money chain business, mere participation in the intermediary stage will invite the offence u/s. 5 of the Prize Chits and Money Circulation (Banning)Act, 1978. The petitioner was the Director of A3 company from 13.05.2010 to 26.07.2010. Admittedly that period was the relevant period of alleged transaction. Here the main case of the petitioner is that after the commencement of business of the company, the petitioner was only functioned as director for 43 days and the bank account of Nano Power Corporation Ltd was opened only one month thereafter in August 2010. So the prosecution doesn't have any records against the petitioner to implicate him in this crime. This argument of the petitioner cannot be appreciated in a petition for discharge. Here the arguments raised by the petitioner could only be appreciated after the trial since the same is a matter of evidence.

8. Apart from that, criminal conspiracy is also alleged against the petitioner. In the stage of discharge, evidence of criminal conspiracy cannot be appreciated. In a case of criminal conspiracy, production of direct

evidence may not be possible in every case. The circumstances leads to the conspiracy will be the available evidence in those cases. Further, it is alleged by the prosecution that the accused were conducted mass gatherings to promote their business. It is also alleged that A4 to 18 through the broachers, company websites, advertisements in Newspapers and by conducting promotional meetings in hotels at Thrissur, inspired confidence of the public by propagating them to deposit money in the companies and promised them to return the deposited amount within 6 months and thereafter commission in 10 installments after 3 to 6 months and 10 times as royalty club bonus in 3 to 5 years time. Many charge witnesses have stated the same. So the charge witnesses have to be given an opportunity to identify the accused before the trial Court and that is only possible at the time of trial. So the prosecution should be given an opportunity to adduce evidence against the petitioner. If the petitioner is discharged at this stage, that opportunity will be denied to the prosecution. The records of the Nano Power Corporation Ltd would show the fact that the petitioner is the director of the said company since 13.05.2010. Form No. 32 of the company would show the same. So prima facie materials are there in the final report to show that the petitioner was the director of the accused company on the relevant period of alleged crime.

9. The law with regard to the discharge is very well settled.

The Hon'ble Apex Court in State through ***Deputy Superintendent of Police v. R. Soundirarasu & Others AIR 2022 SC 4218*** has held that " *the primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record is not to be gone into. The stage of framing of charge is a preliminary one and the test of "prima facie" case has to be applied. If the trial court is satisfied that a prima facie case is made out, charge has to be framed*". Further, the Hon'ble High Court of Kerala in ***P.P. Farooque v. Deputy Superintendent of Police, 2007 ICO 8789*** has held that " *the obligation to discharge the accused u/s. 239 Cr.PC, arises when the Magistrate/Special Judge considers the charge against the accused to be groundless that is, there is no legal evidence or when the facts are such that on offence is made out at all and no detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage not any exercise of weighing materials in golden scales is to be undertaken. Unless the order passed by the Magistrate is perverse or the view taken by the Court is wholly unreasonable,or there is non consideration of any relevant material, or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible*". Here the order of the Magistrate is not perverse. Further, the view taken by the trial Court is not wholly unreasonable. Relevant materials have been considered by the trial Court to arrive the conclusion. So the petitioner is not entitled to get discharge in this case. So I find the order of the trial Court is correct in this regard. Hence no interference is required against that order. So this criminal revision petition has to be dismissed.

In the result, the criminal revision petition is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the 30th day of March, 2024).

Sd/-
K V REJANISH
IV ADDL. SESSIONS JUDGE
THRISSUR.

APPENDIX

NIL

Sd/-
IV ADDL.SESSIONS JUDGE
THRISSUR.

(True copy)

By Order,

Copied by: kr

Compared by: pbs

Sheristadar

Order in Crl. R.P. 10/2021
Dated: 30.03.2024
…………..