**IN THE COURT OF SPECIAL ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THRISSUR.**

**Present: Smt. Alpha Mamai K., Additional Chief Judicial Magistrate.**

**Dated, this the 20th day of August, 2025.**

**CMP : 4450/2024 in CC 45/2016**

**(Cr. No. 1834/2011 of Thrissur Town West Police Station)**
**(CBCID Cr. 4/CR/EOW II/KTM/12)**

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| **Petitioner/Accused no. 19.** | : | Bijesh, S/o. Sreedharan, Vaderiyattil House, Mundur, Avanur Village, Kaiparambu.<br><br>(By Advocate. Sri. Pramod K.) |
| **Respondent/ Complainant** | | State represented by the Deputy Superintendent of Police, CBCID EOW II, Ernakulam Sub Unit.<br><br>(Crime no.1834/2011 of Thrissur Town West Police Station).<br><br>(CBCID Cr. 4/CR/EOW II/KTM/12)<br><br>(By Smt. Dhannu Gireesh, Assistant Public Prosecutor, Court of Additional Chief Judicial Magistrate, Thrissur) |
| **Petition** | : | U/s.239 Cr.P.C. |
| **Order** | : | Allowed. |

**O R D E R**

This is a petition filed u/s. 239 Cr.P.C., by the accused no.19, in CC 45/2016, on the file of this court, seeking discharge, in the case.

**2.** Petition averments are, as follows:

Petitioner is the accused no.19, in the above case. The offences alleged are under sections 120(b), 406, 420 r/w 34 IPC and sections 4, 5, 6 of the Prize Chits and Money Circulation (Banning) Act, 1978. The petitioner/accused no.19 has nothing to do with the deposit, made by the defacto complainant and deposits taken by the company and the other accused. The petitioner was not even arrayed as an accused, in the First Information Report. It is clear from the charge sheet that, no deposit received by the accused/petitioner directly or indirectly. It is pertinent to note that, the defacto complainant paid the amount to the company directly and received the products from the company. The prosecution has not produced any document to show that, the petitioner had collected or utilised the deposit, paid by the defacto complainant to the company. It is also relevant to note that, nowhere in the First Information Statement/First Information Report, charge sheet, it is mentioned that, the company worked under a binary system. There is no evidence to show the involvement of the petitioner, in this crime. The petitioner is unnecessarily indulged in this crime. The petitioner is not even having any acquaintance with the defacto complainant, so far. The prosecution records does not reveal the specific role played by the petitioner, in the above case. The Honourable Supreme Court of India in Sharif Ahmed and Another v. State of Uttar Pradesh and Another, reported in 2024 INSC 363 has held that, the role played by the accused in crime should be separately and clearly mentioned in the charge regarding each of the accused. It is pertinent to note that, nowhere in the First Information Statement/First Information Report and charge sheet, there is not even a single whisper regarding the involvement of the petitioner. No document produced by the defacto complainant to connect the accused/petitioner with the offences alleged. The petitioner not instigated, nor canvassed, nor collected any money from the defacto complainant. The petitioner is neither a director of the companies involved in this case, nor involved in any promotional activities of the companies. There is no single document produced in the prosecution records, to show

the involvement of the petitioner, in the business of the company. The Honourable Supreme Court of India, in Vishnu Kumar Shukla v. State of Uttar Pradesh, reported in 2023 KHC 1006 has held that, “an application of judicial mind is necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused, when an application for discharge is filed.” The Honourable Supreme Court of India, in the abovesaid case, further observed that, “It cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or broad probabilities of the case- If a view gives rise to suspicion, as opposed to grave suspicion, Court concerned is empowered to discharge the accused.” It is settled principle of law that, no one should be punished for the offence which is not committed by him. Hence, the protection provided under sections 227 and 239 Cr.P.C., are essential provisions of law, for safeguarding a person from false allegations. The purpose of sections 227 and 239 Cr.P.C., is to ensure that, the court should be satisfied that, the accusation is not frivolous and there is some material for proceeding against the accused. The Honourable High Court of Kerala in Rajesh Kumar J., v. Central Bureau of Investigation, Ekm and Another, reported in 2021 KHC 692 has held that, “At the stage of considering an application for discharge, Court must proceed on the assumption that material which has been brought on record by prosecution is true and evaluate material in order to determine whether the facts emerging from the material, taken on their face value, disclose the existence of the ingredients necessary to constitute the offence”. The prosecution records does not reveal the involvement of the petitioner, in the offences alleged. Hence, seeks to discharge the petitioner, in the above case.

**3.** Objection was filed by the learned Assistant Public Prosecutor, as follows:- The averments in the petition, are factually incorrect and legally unsustainable. The

petition filed by the accused, is devoid of merit and hence liable to be dismissed. There are sufficient ingredients to constitute the offences punishable under sections 120(b), 406, 420 r/w 34 IPC and sections 4, 5, 6 of the Prize Chits and Money Circulation (Banning) Act, 1978, against the accused/petitioner. The accused/ petitioner is a business promoter of Nano Excel Companies. It is revealed that, he had shares in accused nos.1 to 3 companies, which clearly shows that, he had a thorough knowledge about the functioning of accused nos. 1 to 3 companies, at the time of registration itself. It is crystal clear from the case diary and charge sheet that the accused/petitioner looted money from general public, as promoters of Nano Excel Companies and it is revealed from the statements of witnesses that, the accused had criminal intention from the very beginning to cheat the public, by way of enrolling persons, and thus by making quick money. Accused conducted the activities to promote the business of the company. The companies not functioned as per the norms, objectives and guidelines mentioned in the Certificate of Incorporation. Accused published misleading advertisements in the marketing of Nano technology products and announced shares of Nano Power Corporation Limited company through network marketing system. There is primafacie evidence against the petitioner/accused and the documents produced, reveals the role of each petitioner/accused, in the commission of offence. In Gold Quest International Pvt. Ltd. and Another v. State of Tamilnadu 2003 O supreme (mad)627, it was held that, the scheme must involve the enrollment of members, where the financial benefits depend on the number of new members recruited. And the Honourable Court emphasized that, the scheme should be evaluated as a whole considering both promoters and members perspectives. The Supreme Court in State of West Bengal and Others v. Swapankumar Guha, AIR 1982 SC 949, established that two conditions must be satisfied for liability under the Prize Chits and Money Circulation Banning Scheme Act,1) The scheme must be for making quick or easy money, and 2). The opportunity for such earnings must depend on the enrolement of member. Moreover,

at the time of framing of charge, the probative value of the materials on record, cannot be gone into. There is primafacie case against the accused, as per the prosecution records. Hence, seeks to accept the objection and dismiss the discharge petition, filed by the accused/petitioner.

**4.** Heard both sides.

**5.** CC 45/2016 on the file of this court, is a case based on the final report filed by the Deputy Superintendent of Police, CBCID EOW II, Ernakulam Sub Unit, against accused 22 in numbers, alleging offences punishable, under sections 120-B, 406, 420 r/w 34 IPC, sections 4, 5, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

**6.** Case of the prosecution, is as follows:-

Accused with intend to commit cheating, by conducting money circulation business, banned as per section 3 of The Prize Chits and Money Circulation Scheme (Banning) Act 1978, from 2007 till 2011, in furtherance of their common intention, and by committing criminal conspiracy, with intend to cheat public, and to obtain wrongful gain, accused nos.4 to 6, formed accused no.1 company on 12/07/2007 and thereafter, accused nos. 5 to 10nfrmed accused no.2 company on 01/01/2010 an changed its name to Nano Excel Corporation Limited on 26/01/2010 and accused nos. 4 to 13 formed accused no.3 company and created a website with the help of CW9 Amandeep Singh, the director of the software company named Roots Infocom at Ludhiyana, Punjab and conducted multilevel marketing business through website, and through the website, and through brochures and advertisements, and through classes conducted by accused nos. 14 to 22, promoted the illegal business of money circulation scheme and by making false promise of returning ten times more amount within a short span of time and also promising income on members enrolling in the

company, and also by promising amount, if money deposited in the power package of Nano Excel Power Corporation, and also by promising products, which the accused know to be that of low quality, fraudulently and dishonestly induced CW1 Lalu K.O., to deliver Rs.3,00,000/- on 12/03/2010, CW2 Joicy Lalu to deliver Rs. 12,000/-, CW3 Sinto P. Antony to deliver Rs.12,000/- and thereby altogether obtained a total amount of Rs. 3,24,000/- from CW1 to CW3 and thereafter, neither gave profits as promised, nor returned the amount obtained and thereby committed cheating on general public, including CW1 to CW3, and thereby accused committed offences punishable u/s. 120-B, 406, 420 r/w 34 IPC and sections 4, 5, 6 of the Prize Chits and Money Circulation (Banning) Act, 1978.

**7.** The prosecution in this case was initiated by CW1/defacto complainant Lalu K.O., by preferring a complaint u/s. 190(1)(a) Cr.P.C., before the Honourable Chief Judicial Magistrate Court, Thrissur, against accused 12 in numbers, accused no.1 Nano Excel Corporation Limited, represented by Managing Director and Chief Executive Officer, Harish Babu Madineni, accused no.2 Harish Babu Madineni, accused no.3. Patric Thomas, accused no.4 S.U. Chinna Rao, accused no.5 P.P. Rengareddy, accused no.6 K. Meera Harish, accused no.7 Radha Raja, accused no.8 Sundar Raja Prasanth, accused no.9 Karthikeyan, accused no. 10 P.D. Lonappan, accused no.11 Suresh and accused no.12 Reneesh, on 18/11/2011, alleging offences punishable under sections 418, 420 r/w 34 IPC and section 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

8**.** The said complaint was forwarded to the Station House Officer, Thrissur Town West Police Station, u/s. 156 (3) Cr.P.C., for registration of First Information Report and accordingly the First Information Report in this crime, crime no. 1834/2011 of Thrissur Town West Police Station, was registered on 01/12/2011.

**9.** After investigation, the Investigating Officer, Deputy Superintendent of Police, CBCID EOW II, Ernakulam Sub Unit, filed final report, against accused 22 in numbers, accused no.1 Nano Excel Enterprises Private Limited, represented by Harish Babu Madineni, accused no. 2 Nano Excel Power Corporation Limited/Nano Excel Corporation Limited, represented by Harish Babu Madineni, accused no. 3 Nano Power Corporation Limited, represented by Harish Babu Madineni, accused no.4 Harish Babu Madineni, accused no.5 S.V.Chinna Rao Swayamvarapu, accused no.6 Patric Thomas, accused no. 7 Radha Sundara Rajah, accused no.8 P.P. Rengareddy, accused no.9 Meera Harish K., accused no.10 Prasanth Sundar Rajah, accused no.11 Kumari Rajah, accused no.12 Sarath Babu Lagatapati @Sarath, accused no.13 Chedella Subhashini, accused no.14 Muhammed Asharaf, accused no.15 Lonappan, accused no.16 Pramodkumar, accused no.17 Jayan P.G., accused no.18 Shabeer, accused no.19 Bijesh, acused no.20 C.V. Anilkumar, accused no.21 Sajeev Karun and accused no.22 Sajeev Raj, alleging offences punishable under sections 120B, 406, 420 r/w 34 IPC and sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. In the final report there are, 44 witnesses cited by the Investigating Officer, and CW1 to CW3 are the persons, who are alleged to be cheated by the accused.

10**.** Hence, in the complaint preferred by CW1/defacto complainant Lalu K.O., this petitioner/accused no.19 Bijesh**,** was not arrayed as the accused. It is to be noted that, the complaint preferred by CW1 George Paul, is not a spontaneous First Information Statement, preferred by an aggrieved or a victim or an informant. The complaint preferred by CW1 Lalu K.O., is a complaint, filed after much deliberations with the help of a lawyer and in such complaint CW1/defacto complainant Lalu K.O., the alleged victim of cheating, is expected to mention the name of each and every person, who had played a specific role in cheating him. Hence, if this petitioner/accused no.19, had played any role in cheating him, or in obtaining money

from him, on behalf of the company, definitely the name of petitioner/accused no.19 would have been mentioned by CW1/defacto complainant Lalu K.O., in the complaint preferred by him in court.

11. In the complaint, all the allegations are stated against the accused mentioned in the complaint and it is specifically stated in paragraph no:2 of the complaint that, "ഒന്നാം പ്രതി സ്ഥാപനത്തിന്റെ നാനോ ടെക്നോളജി ഉൽപ്പന്നങ്ങൾ നെറ്റ്വർക്ക് മാർക്കറ്റിംഗ് വഴി നേരിട്ട് മാർക്കറ്റ് ചെയ്യുന്നതിനുള്ള ഡിസ്ട്രിബ്യൂട്ടർഷിപ്പും നാനോ ഉൽപ്പന്നങ്ങളും ഒന്നാം പ്രതി സ്ഥാപനം തുടങ്ങുന്ന നാനോ പവർ പെ്രാജക്ടിന്റെ ഷെയറുകൾ നൽകാമെന്നും അന്യായക്കാരൻ മുടക്കുന്ന സംഖ്യ പ്രതികളുടെ നെറ്റ് വർക്ക് ചെയിൻ ബിസിനസ്സ് പ്ലാനിൽ നിക്ഷേപിച്ചും കൂടുതൽ വരുമാനം (passive income) ഉണ്ടാക്കാമെന്നും പ്രതികൾ ഒത്തൊരുമിച്ച് അന്യായക്കാരനെ വിശ്വസിപ്പിച്ചത് പ്രകാരമാണ് അന്യായക്കാരൻ പ്രതികളുടെ ബിസിനസ്സിൽ പണം നിക്ഷേപിക്കുന്നതിന് ഇടയായത്. കൂടാതെ ആകർഷകമായ ഒരാഴ്ചത്തെ ബാങ്കോക്ക് ടൂർപാക്കേജും തരാമെന്ന് പ്രതികൾ പറഞ്ഞ് വിശ്വസിപ്പിച്ചിരുന്നതാണ്." It is further stated in the paragraph no.3 of the complaint that, "പ്രതികൾ പത്രമാധ്യമങ്ങൾ വഴിയും കമ്പനിയുടെ ലഘുലേഖകൾ വഴിയും പ്രചാരണം നടത്തിയും പ്രതികൾ നേരിട്ട് നടത്തിയ പേ്രാഗ്രാമുകൾ വഴിയും, www.nanoexcel.net എന്ന വെബ്സൈറ്റ് വഴിയും, അന്യായക്കാരനെ നേരിട്ട് കണ്ട് സംസാരിച്ച് വിശ്വസിപ്പിച്ചാണ് അന്യായക്കാരനെ പ്രതികളുടെ നെറ്റ്വർക്ക് ബിസിനസ്സിൽ ചേർത്തത്. പ്രതികൾ തൃശ്ശൂർ ലുലു ഇന്റർനാഷണൽ കൺവെൻഷൻ സെന്ററിലും, കാസിനോ ഹോട്ടലിലും മറ്റും സംഘടിപ്പിച്ച ജനപ്രതിനിധികളും സാമൂഹ്യ സാംസ്കാരിക നേതാക്കൾ പങ്കെടുത്ത **program** കളിൽ പങ്കെടുക്കുകയും അവിടെ വെച്ച് ഒന്നാം പ്രതി സ്ഥാപനത്തിന് വേണ്ടി **2** മുതൽ **12** കൂടിയ പ്രതികൾ അന്യായക്കാരനെ നേരിട്ട് കണ്ട് അന്യായക്കാരൻ ഒന്നാം പ്രതി സ്ഥാപനത്തിൽ മുടക്കുന്നപണം നഷ്ടമാകില്ലെന്നും പ്രതികളുടെ ബിസിനസ്സിൽ ചേർന്നാൽ ഏറ്റവും കുറഞ്ഞത് പത്തിരട്ടിയെങ്കിലും കൂടുതൽ പണം ലഭിക്കുമെന്നും ടി ബിസിനസ്സിൽ അന്യായക്കാരൻ നേരിട്ട് ബിസിനസ്സ് നടത്തിയില്ലെങ്കിൽ പോലും അപ്രകാരം പണം ലഭിക്കുമെന്നും അന്യായക്കാരനെ പറഞ്ഞ് വിശ്വസിപ്പിച്ചിരുന്നതും വാഗ്ദാനം ചെയ്തിരുന്നതുമാണ്." It is further stated in the

paragraph no.4 of the complaint that, "അപ്രകാരം അന്യായക്കാരൻ ഐ.ഡി. നമ്പർ 165750, 165745, 165742, 165735, 165730, 165724, 165717, 165709, 165706, 165702, 165699, 165697, 165690, 165776, 165841, 165838, 165836, 165834, 165832, 165807, 165806, 165798, 165791, 165784, 165780 എന്നീ നമ്പറുകളിലായി 12,000/- രൂപ വീതം മൊത്തം 3,00,000/- രൂപയും, കൂടാതെ ടിയാന്റെ ഭാര്യ ജോയ്സി ലാലു എന്നവർ ഐ.ഡി. നമ്പർ 165677, 165683 എന്നീ നമ്പറുകളിലായി 12,000/- രൂപ വീതം 24,000/- രൂപയും, സുഹൃത്തായ സിൻറോ ആന്റണി പി. എന്നവർ 147558, 165671 എന്നീ നമ്പറുകളിലായി 12,000/- രൂപയും പ്രതി സ്ഥാപനത്തിന്റെ നാനോ പവർ പെ്രാജക്ടിന്റെ ഷെയറിന് വേണ്ടിയും പെ്രാഡക്ട് ഡിസ്ട്രിബ്യൂട്ടർഷിപ്പിന് വേണ്ടിയും പ്രതിസ്ഥാപനത്തിന്റെ തൃശ്ശൂർ കാഞ്ഞാണി, റോഡിൽ അയ്യന്തോൾ ചുങ്കത്തുപ്രവർത്തിച്ചിരുന്ന് ഓഫീസിൽ ചെന്നിട്ടുള്ളതും പ്രതികൾ അന്യായക്കാരനിൽ നിന്നും സംഖ്യ കൈപ്പറ്റിയിട്ടുള്ളതും അതുവഴി റോയൽറ്റി ക്ലബ്ബിൽ മെമ്പറായിട്ടുള്ളതുമാണ്. സംഖ്യ കൈപ്പറ്റുന്ന സമയം പവർ പെ്രാജക്ട് ഷെയർ സർട്ടിഫിക്കറ്റും നാനോ ഉൽപ്പന്നങ്ങളും നൽകാമെന്ന് പ്രതികൾ വാഗ്ദാനം ചെയ്തിട്ടുള്ളതുമാണ്. എന്നാൽ പ്രതികൾ അപ്രകാരം പ്രവർത്തിച്ചിട്ടില്ലാത്തതുമാണ്."

**12.** Hence, all the allegations of fraudulent inducement, obtaining money, cheating etc., are alleged against the accused stated in the complaint, by CW1/defacto complainant. As stated above, this petitioner was not arrayed as accused in the complaint preferred by CW1/ defacto complainant and CW1 has not made a whisper about this petitioner/accused no.19, in the complaint filed by him. CW1 has no case that, he even knows this accused no.19/petitioner**,** in the complaint preferred by him. It is to be noted that, since the complaint filed almost immediately after CW1 realised the cheating, if the petitioner/accused no.19, had played a role in cheating him or his wife Joicy Lalu (CW2) on behalf of the accused companies, he should have definitely mentioned the name of the petitioner, in the complaint preferred by him.

13. In the final report, CW1 to CW3, are alleged to be the victims of cheating involved in this case. In the statement u/s. 161 Cr.P.C. of CW1 to CW3, it is stated that, in the classes and programmes conducted by the company, top level promoters

of the company including this petitioner had explained about the benefits that will be received on joining in the accused company.

14. As stated above, CW1/defacto complainant has no case in his complaint filed in court that, this petitioner Bijesh, was also present in the class participated by him at Lulu International Convention Centre and Casino Hotel. In the statement u/s. 161 Cr.P.C., of CW1, he has not stated any reason for not mentioning the name of this petitioner, in the complaint filed by him. Moreover, in the statements u/s. 161 Cr.P.C. of CW1 to CW3, except making a vague averment that, this petitioner also took part in the classes conducted by the accused company, no specific role is alleged against the petitioner, by CW1 to CW3. They have no specific case that, this petitioner/ accused, dishonestly and fraudulently induced them in person and on the basis of the said inducement, they deposited money in the accused companies.

15. In **Vijukumar R. v. State of Kerala,** reported in **2024 ICO 634**, the **Honourable High Court of Kerala,** held as follows:-

"9. S.239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What S.239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by S.240 to frame in writing a charge against the accused. The order for the framing of the charge is of a far - reaching nature and it amounts to a decision that the accused is not entitled to discharge.

10. At the stage of framing charges even a very strong suspicion founded upon materials before the Special Judge, which leads him to form presumptive opinion as

to the existence of the factual ingredients constituting the offences alleged, may justify the framing of charges. In Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya and Others (1990 (4) SCC 76 :: 1990 ICO 3711) the Apex Court held thus: -

"From the above discussion it seems well settled that at the S.227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

25. While considering the application seeking discharge of an accused on the ground that there are no materials to presume the guilt of the accused, the Court has bounden duty to apply its judicial mind to the available materials. It is profitable to extract the observation of the Supreme Court in V.C.Shukla v. State through CBI (1980 SCC (Cri) 695 :: 1979 ICO 223). In V.C.Shukla, the Apex Court held thus: —

"**8.There can be no doubt that the stage of framing of the charges is an important stage and the court before framing the charge has to apply its mind judicially to the evidence or the material placed before it in order to make up its mind whether there are sufficient grounds for proceeding against the accused..... We may, however, point out that we are in complete agreement with the principle, involved in the cases discussed above, that an order framing charges against an accused undoubtedly decides an important aspect of the trial and it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing charges.**"

**16.** In **Pushpendra Kumar Sinha v. State of Jharkhand**, reported in **2022**

**ICO 1492,** the **Honourable Supreme Court of India,** held that, "**18. It is a well settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission of offence by the Accused was possible. Indeed, the Court has limited scope of enquiry and has to see whether any prima-facie case against the Accused is made out or not. At the same time, the Court is also not expected to mirror the prosecution story, but to consider the broad probabilities of the case, weight of prima-facie evidence, documents produced and any basic infirmities etc."**

17. According to the prosecution case, this accused/petitioner is termed as the business promoter of accused nos. 1 to 3 companies. Hence, it is the admitted case of the prosecution that, this petitioner/accused does not hold any official position in any of the accused companies, accused no.1 company Nano Excel Enterprises Private Limited, or accused no. 2 company Nano Excel Power Corporation Limited/Nano Excel Corporation Limited or accused no. 3 company Nano Power Corporation Limited. Even as per the prosecution, this petitioner/accused, is not the director, nor shareholder, nor holding any recognised official position in the company, as per the companies act, in the accused nos. 1 to 3 companies. The allegation in the charge against accused nos. 14 to 22 are, "പ്രധാന ബിസിനസ് പ്രൊമോട്ടർമാരിൽ പെട്ട 14 മുതൽ 22 വരെ പ്രതികളുമായി ചേർന്ന് ഗൂഢാലോചന നടത്തി " There is no single document produced on the prosecution side to show, atleast primafacie that, this petitioner/accused no.19, was officially appointed as the business promoter, of any of the accused companies. There is no single document revealed as per the prosecution records, to show atleast primafacie that, this petitioner/accused no.19 was appointed as the business promoter, for promoting the business of accused nos. 1 to 3 companies.

18. The term promoter is defined in Rule 2(d) of the Prize Chits and Money Circulation Schemes (Banned) Kerala Rules, 1979, as follows:-

"Promoter" means a person conducting a prize chit or money circulation scheme at the commencement of the Act and desiring to constitute such chit or scheme pursuant to sub section(1), Sec. 12 for winding up business relating to such chit or scheme.

19. In this case, there is no single document produced along with the prosecution records to show atleast primafacie that, this accused/petitioner was the promoter, conducting money circulation scheme on behalf of the accused nos. 1 to 3 companies, as defined under Rule 2(d) of the Prize Chits and Money Circulation Schemes (Banning) Kerala Rules, 1979.

20. Section 2(69) of the Companies Act also defines the term promoter. As per section 2(69) of the Companies Act 2013, "Promoter" means a person (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Sec. 92; or (b) who has control over the affairs of the company directly or indirectly whether as a share holder, director or otherwise, or (c) in accordance with the whose advice, the directions or instructions the board of directors of the company is accustomed to act: provided that nothing in sub clause (c) shall apply to a person who is acting merely in a professional capacity."

21. The annual return filed by the accused nos. 1 to 3 companies during the relevant period, as provided u/s. 92 of the Companies Act, 2013, is not produced along with the prosecution records. The prosecution records does not reveal that, this petitioner/accused no.19 was person named as promoter in the prospectus of accused nos. 1 to 3 companies or identified as promoter by the accused nos. 1 to 3 companies

in the annual return referred to in section 92 or that this petitioner, was a person who was having control over the affairs of the company, directly or indirectly or that, on whose advice, the Board of the Directors of the company is accustomed to act. Hence, even as per the prosecution records, this accused/petitioner is not promoter, either as per the Prize Chits and Money Circulation Schemes (Banning) Kerala Rules, or as per the Companies Act, 2013.

**22.** Very recently, the **Honourable High Court of Kerala, in Vinode V. Luka v. State of Kerala, reported in 2025 KHC OnLine 1695**, in a similar case under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, held as follows:-

*"5. Admittedly, the petitioner was working as Manager in the establishment by name 'LIS' which was run by the first accused as Managing Trustee and accused nos.2 and 3 as the partners. The fourth accused is stated to be the Chairman of the above establishment, and the 8th accused, the partner of a sister concern of that partnership firm.* ***It is pertinent to note that, apart from a general and superficial allegation that the employees at the office of the establishment by name 'LIS' had also compelled the depositors to invest in the financial business being conducted by the above firm, there is absolutely no specific indictment as against the petitioner herein. There is no case for any of the depositors that the petitioner herein was entrusted with any amount, or that the petitioner herein had collected any amount from the depositors after fraudulently and dishonestly inducing them to believe that their amounts would be doubled, if they are making investments in the firm conducted by accused Nos.1 to 3.*** *Going by the provisions contained in S.6 of the Prize Chits and Money Circulation (Banning) Act, 1978, if an employee of a firm or other association of individuals has to be held liable for the offence committed by the firm, it has to be shown that he was in - charge of, and was responsible to the firm for the conduct of business of such firm. It is further provided thereunder that if a Manager, Secretary or other Officer of any such company or firm has to be attributed*

*personally with the criminal liability in respect of the offence committed by such firm, it has to be shown that such offence was committed with the consent or connivance of, or is attributable to any neglect on the part of such Manager, Secretary or officer, as the case may be.*

*7. It is clear from the aforesaid provision of law that if a person has to be held liable for an offence committed by a company, firm or other association of individuals, it is the incumbent responsibility of the prosecution to establish that such person was in charge of, and responsible to the conduct of business of such company, firm or association of individuals. Likewise, it is clear from sub Section (2) of S.6 stated above that, if an Officer, Secretary or Manager of a company, firm or association of individuals has to be held personally liable for the offence committed by such association or firm, the prosecution has to establish that such offence was committed with the consent or connivance of, or it is attributable to, any neglect on the part of such Secretary, Manager or other officer of that firm. As far as the present case is concerned, there is absolutely nothing on record to show that the offence involved was committed with the consent or connivance of the petitioner, or that it is attributable to any neglect on the part of the petitioner. So also, there is nothing brought out from the final report and other records relied on by the prosecution that the petitioner, in his capacity as Manager, was in charge of, and responsible to the company and the conduct of business of the company. In that view of the matter, it has to be stated that the offence alleged in these cases, against the petitioner, are not brought out from the final report and other records relied on by the prosecution. Therefore, the request in these petitions to quash the proceedings against the petitioner in the aforesaid cases, is perfectly justifiable."*

**23.** In this case also, there is absolutely no specific indictment, as against the petitioner herein. There is no case for the prosecution that, the petitioner was entrusted with any amount, or that, the petitioner had collected any amount from the

depositors, after fraudulently and dishonestly inducing them to believe that, the money deposited by them would be doubled, if they are making investment in the accused companies. There is no material even, primafacie as per the prosecution records to prove that, petitioner was in charge of and was responsible to the conduct of the business of accused companies. There is no material revealed as per the prosecution records, to show atleast primafacie that, the offences alleged were committed with the consent or connivance of or is attributable to any neglect on the part of petitioner. None of the official documents of the company, shows any connection, between the petitioner and the accused nos.1 to 3 companies. Even the persons, who are alleged to be cheated, have not made any specific allegations, about the involvement of this petitioner in the transactions with them, on behalf of the accused nos.1 to 3 companies. There is no material even primafacie, revealed as per the prosecution records, to frame charge against the petitioner, for the offences alleged in the case.

**24.** Hence, after considering the police report and the documents sent along with the police report, under section 173 Cr.P.C., and after hearing both sides, I am of the view that, there is no sufficient ground for proceeding against the accused no.19 /petitioner, for the offences alleged in the case. Hence, petition allowed and accused no.19/petitioner is discharged for the offences alleged against him, in the above case.

**25.** Hence, petition allowed.

( Dictated to the Confidential Assistant, typed by her directly to the computer, corrected and pronounced by me in the open court this, the 20th day of August, 2025)

Additional Chief Judicial Magistrate,
Thrissur.