

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

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

Dated, this the 27th day of **September, 2025.**

CMP : 4461/2024 in CC 46/2016

(Cr. No. 1835/2011 of Thrissur Town West Police Station)
(CBCID Cr. 5/CR/EOW II/KTM/12)

Petitioner/Accused : Bijesh, S/o. Sreedharan, Vaderiyattil
no. 19. House, Mundur, Avanoor Village,
Thrissur.

(By Advocate. Sri. Pramod K.)

Respondent/
Complainant State represented by the Deputy
Superintendent of Police, CBCID EOW
II, Sub Unit, Ernakulam.

(Crime no.1835/2011 of Thrissur Town
West Police Station).

(CBCID Cr. 5/CR/EOW II/KTM/12)

(By Smt. Dhannu Gireesh, Assistant
Public Prosecutor, Court of Additional
Chief Judicial Magistrate, Thrissur)

Petition : U/s.239 Cr.P.C.

Order : Dismissed.

ORDER

1. This is a petition filed u/s. 239 Cr.P.C., by the accused no.19, in CC 46/2016 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 120B, 406, 420 r/w 34 of the Indian Penal Code and sections 4, 5, 6 of the Prize Chits and Money Circulation Schemes (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 of the Indian Penal Code and sections 4, 5, 6 of the Prize Chits and Money Circulation Schemes (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 prima facie 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 enrolment of member. Moreover,

at the time of framing of charge, the probative value of the materials on record, cannot be gone into. There is prima facie 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 46/2016 on the file of this court, is a case based on the final report filed by the Deputy Superintendent of Police, CBCID EOW II, Sub Unit, Ernakulam, against accused 22 in numbers, alleging offences punishable, under sections 120B, 406, 420 r/w 34 of the Indian Penal Code and 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 Schemes (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. 4 to 10, formed accused no.2 company on 01/01/2010 and changed its name to Nano Excel Corporation Limited on 26/01/2010 and thereafter, accused nos. 4, 7, 9 and 10 to 13, formed accused no.3 company named Nano Power Corporation Limited, and entered into an agreement with Arunachal Pradesh Government for starting a Hydro Electric Power Project in the name of the said accused no.3 company and created a website with the help of Amandeep Singh (CW10), the Director of a software company named Roots Infocom at Ludhiyana, Punjab and created a website for network marketing and promoted illegal products and conducted illegal money circulation business and along with accused nos. 14 to

22, the main business promoters of the above companies, and accused being fully aware about the illegal business conducted by the accused nos. 1 to 3 companies, approached public with false promises and accused conducted promotion meetings and through the website, and through brochures and advertisements, and through classes, promoted the illegal business of money circulation scheme and by making false promise of getting more income 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 Power Corporation, and also by promising products, which the accused know to be that of low quality, fraudulently and dishonestly induced CW1 Tojo C.C. to deliver Rs.1,86,000/- on 21/06/2010, Rs.6000/- on 30/06/2010, Rs.3,60,000/- on 11/11/2010, CW2 Chakkunni to deliver Rs. 48,000/-, CW3 Valsa Chakkunni to deliver Rs.12,000/- and CW4 Glaison to deliver Rs.12,000/- and thereby altogether obtained a total amount of Rs. 6,24,000/- from CW1 to CW4 and thereafter, neither gave profits as promised, nor returned the amount obtained and thereby committed cheating on general public, including CW1 to CW4, and thereby accused committed offences punishable under sections 120B, 406, 420 r/w 34 IPC and sections 4, 5, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

7. The prosecution in this case was initiated by CW1/defacto complainant Tojo C.C., 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, alleging offences punishable under

sections 406, 418, 420, r/w 34 of the Indian Penal Code and 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. 1835/2011 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, Sub Unit, Ernakulam, 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, accused 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 of the Indian Penal Code and sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. In the final report there are, 47 witnesses cited by the Investigating Officer, and CW1 to CW4 are the persons, who are alleged to be cheated by the accused.

10. In the final report, CW1 to CW4, are alleged to be the victims of cheating involved in this case. It is true that, CW1/defacto complainant has not arrayed this

petitioner as accused in the complaint filed by him. But, in the statement under section 161 Cr.P.C. dated 04/07/2012 of CW1, CW1 has stated that, "അന്യായത്തിൽ പ്രതി പട്ടികയിൽ പറയുന്നവർ അല്ലാതെ കമ്പനിയുടെ വാശാനങ്ങൾ പ്രചരിപ്പിച്ച് ആൾക്കാരെ ക്യാൻവാസ് ചെയ്തിരുന്നത് കമ്പനിയുടെ കേരളത്തിലെ ടോപ്പ് ലീഡേഴ്സ് ആയ മുഹമ്മദ് അഷറഫ്, പ്രമോദ് കുമാർ, ജയൻ, ഷബീർ, ബിജേഷ്, അനിൽകുമാർ, Sajeev കരുൺ, Sajeev രാജൻ എന്നിവർ ആയിരുന്നു. അവർക്കെല്ലാം നല്ല രീതിയിൽ കമ്മീഷൻ കിട്ടിയിട്ടുണ്ട് എന്നാണ് എന്റെ അറിവ്." CW2 to CW4 also in their statements u/s. 161 Cr.P.C. have stated that, "കമ്പനിയുടെ എംഡിയെയും ഡയറക്ടർമാരെയും മറ്റും പരിചയപ്പെടുത്തി ആൾക്കാരെ കമ്പനിയിലേക്ക് ക്യാൻവാസ് ചെയ്തിരുന്നത് പ്രധാനമായും മുഹമ്മദ് അഷറഫ്, പ്രമോദ് കുമാർ, ജയൻ, ഷബീർ, ബിജേഷ്, അനിൽകുമാർ, സജീവ് കുമാർ, സജീവ് രാജ് എന്നിവർ ആയിരുന്നു. അവർക്കെല്ലാം നല്ല രീതിയിൽ കമ്മീഷനും കിട്ടിയിട്ടുണ്ട്."

11. CW5 Nidhun, who is stated to be an employee of the accused company also in his statement under section 161 Cr.P.C. has stated that, the directors and shareholders and the promoters including petitioner of the accused companies have obtained large amounts as commission through the illegal money circulation conducted by them. The bank account statement of the petitioner also seized by the Investigating Officer and produced along with the final report, to show that the petitioner obtained commission from the accused companies.

12. Hence, in this case, as per the prosecution records, a strong prima facie case is made out against the accused no. 19/petitioner. It is settled position of law that, at the stage of hearing on charges, the entire evidence produced by the prosecution is to be believed. In case, no offence is made out, then only, accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of framing charges, the Court has to satisfy, whether a prima facie case is made out against the accused, or not.

13. As stated above, in this case, as per the prosecution records, as per the statements of witnesses and documents produced, a strong prima facie case is made out against the accused no.19/petitioner. Hence, after considering the police report, and documents sent along with the police report, under section 173 Cr.P.C., and after hearing both sides, I am of the finding that, there is sufficient ground for proceeding against the accused no.19/petitioner, for the offences alleged in the prosecution case.

14. Hence, this discharge petition filed by accused no. 19/petitioner, stands dismissed.

(Dictated to the Confidential Assistant, typed by her directly to the computer, corrected and pronounced by me in the open court this, the 27th day of September, 2025.)

Sd/-
Additional Chief Judicial Magistrate,
Thrissur.