

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

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

Dated this, the 3rd day of September 2025.

CMP : 6930/2024 in CC 88/2016

(Cr. No. 423/2011 of Rajakkad Police Station)
(CBCID Cr. 689/CR/EOW II/KTM/11)

Petitioner/Accused : Benny Thomas, Aged 44/2016, Kunnel
no.14. House, Chemmannur Kara,
Udumbanchola Village, Idukki.

(By Advocate. Sri. V.R. Syamprasad)

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

(Crime no.423/2011 of Rajakkad Police
Station).

(CBCID Cr. 689/CR/EOW II/KTM/11)

(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.14, in CC 88/2016 on the file of this court, seeking discharge, in the case.

2. Petition averments are, as follows:-

Petitioner is the accused no.14 in the above case. The offences alleged against the accused/petitioner are under sections 406, 420, 120B r/w 34 IPC and sections 4, 5, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The petitioner has no relation with the accused companies. The petitioner never seen the complainant nor made any demand of money from the complainant. There is no material on record to connect the petitioner with the offences alleged. The petitioner is falsely implicated in the above case. On consideration of the police report and the documents sent along with the police report, the only possible conclusion is that the charge against the petitioner is groundless. 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 120B, 406, 420 r/w 34 IPC 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 Schemes 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 88/2016 on the file of this court, is a case based on the final report filed by the Deputy Superintendent of Police, CBCID EOW-II, Kottayam, against accused 15 in numbers, alleging offences punishable, under sections 120B, 406, 420 r/w 34 IPC, sections 5, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

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

Accused nos. 2 to 9, during the period from 2007 till 2011, 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, in furtherance of their common intention, and by committing criminal conspiracy, with intend to cheat public, and to obtain wrongful gain, accused no. 2 as the Managing Director, and accused nos. 3 to 9 as the Directors, formed accused no.1 company named Nano Excel Corporation Limited Company on 26/02/2010 and created a website with the help of Amandeep Singh (CW14), 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 appointed accused nos. 10 to 15 as promoters and sponsors of the accused company and they worked as promoters of the above companies, being fully aware about the illegal business conducted by the accused company and 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 Excel Power Corporation, and also by promising products, which the accused know to be that of low quality, fraudulently and dishonestly induced CW1 K.J. Kurian to deliver Rs. 1,80,000/- on 17.01.2011, CW2 Leelamma Kurian to deliver Rs. 1,98,000/- on 17.01.2011, CW3 Shelji to deliver Rs. 52,000/- on 01.02.2011, CW4 P.J. George to deliver Rs. 52,000/- on 01.02.2011 and CW5 T.V. Chacko to deliver Rs. 24,000/- on 19.01.2011, and thereafter, neither gave profits as promised, nor returned the amount obtained and thereby committed cheating on general public, including CW1 to CW5, and thereby accused committed offences punishable u/s. 120B, 406, 420 r/w 34 IPC and sections

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 K.J. Kurian, by preferring an First Information Statement, at Rajakkad Police Station on 12/09/2011, alleging as follows:

"എന്നെ ചെമ്മണ്ണാർകാരൻ കുന്ദേൽ വീട്ടിൽ ബെന്നി തോമസ് എന്നയാളും, ആലുവക്കാരൻ C.N. സുരേന്ദ്രൻ എന്നയാളും ചേർന്ന് നാനോ എക്സൽ എന്ന സ്ഥാപനത്തിൽ പണം നിക്ഷേപിച്ചാൽ ആയുഷ്കാല പെൻഷനും ആയുഷ്കാല ബോണസും ലഭിക്കുമെന്ന് പറഞ്ഞ് വിശ്വസിപ്പിച്ച് എൻറെ പേരിൽ 1,80,000/- രൂപയും, ഭാര്യ ലീലാമ്മ കുര്യൻറെ പേരിൽ 1,98,000/- രൂപയും വാങ്ങിയശേഷം കബളിപ്പിച്ച കാര്യം പറയാൻ വന്നതാണ്. ഞാൻ രാജകുമാരിയിൽ 26 വർഷമായി ദേവമാതാ ഹോസ്പിറ്റൽ സ്ഥാപിച്ച അവിടെ ഡോക്ടറായി സേവനം ചെയ്തു വരുകയാണ്. ഞാൻ MBBS പാസ്സായ ആളാണ്. ക്രിസ്ത്യൻ RC വിഭാഗത്തിൽ പെട്ട ആളാണ്. Mob: 9446136170 ആണ്. ഞാനും ഭാര്യയും മക്കളും ഒരുമിച്ച് ആശുപത്രിക്ക് അടുത്തുതന്നെ വീട് വെച്ച് താമസമാണ്. 2008 മുതൽ SBI Life Insurance policy യിൽ കുന്ദേൽ ബെന്നി തോമസ് അംഗീകൃത ഏജൻ്റ് എന്ന നിലയിൽ എൻറെ ഭാര്യയുടെ പേരിൽ policy എടുപ്പിച്ച് കൃത്യമായി പണം അടച്ച് രസീത് തന്ന് വിശ്വാസം പിടിച്ച് പറ്റിയ ശേഷം 17.1.2011 തീയതി രാവിലെ 7:30 മണിക്ക് എൻറെ രാജകുമാരിയിലുള്ള വീട്ടിൽ വന്ന് ബെന്നി തോമസിനോടൊപ്പം ഉണ്ടായിരുന്ന ആലുവക്കാരൻ C.N. സുരേന്ദ്രൻ നായരും ഒന്നിച്ച് നാനോ എക്സൽ കോർപ്പറേഷൻ ലിമിറ്റഡ് എന്ന സ്ഥാപനത്തിൻറെ ഗുണങ്ങളെപ്പറ്റി വിവരിച്ച് നാനോടെക്നോളജി പ്രകാരം ജല കണങ്ങളിൽ നിന്ന് കുറഞ്ഞ ചിലവിൽ വൈദ്യുതി ഉല്പാദിപ്പിച്ച് ആയത് ലാഭകരമായി വിറ്റ് അതിൽ നിന്നുള്ള വരുമാനം ഷെയർ ഹോൾഡേഴ്സ് ആയ എനിക്കും ഭാര്യക്കും ബോണസിനത്തിൽ നല്ല വരുമാനം വീതം വച്ച് തരുമെന്നും കൂടാതെ ജീവിതകാലം മുഴുവൻ 5,300/- രൂപ പ്രകാരം മാസംതോറും പെൻഷൻ ലഭിക്കുമെന്ന് പറഞ്ഞ് വിശ്വസിപ്പിച്ച് എൻറെ പേരിൽ 1,80,000/- രൂപയുടെ ചെക്ക് (ചെക്ക് നമ്പർ-3962-UBI രാജകുമാരി ശാഖ), ഭാര്യയുടെ പേരിൽ 1,98,000/- രൂപയും (ചെക്ക് നമ്പർ -004702-UBI രാജകുമാരി ശാഖ) 17.1.2011 തീയതി രാവിലെ 7:30 മണിക്ക് എന്നിൽ നിന്നും കൈപ്പറ്റിയ ശേഷം നാനോ എക്സൽ എന്ന സ്ഥാപനത്തിന് അവർ തന്നെ അവരുടെ രണ്ട് പേരുകളിൽ നിന്നും അയച്ചശേഷം എനിക്ക് കൗണ്ടർ ഫോയിൽ തന്നിട്ടുള്ളതുമാണ്. അതിനുശേഷം 6.2.2011-ൽ എൻറെ പേരിൽ

49,275/- രൂപയും ഭാര്യയുടെ പേരിൽ 65,892/- രൂപയും നാനോ എക്സൽ കോർപ്പറേഷൻ ലിമിറ്റഡ് സ്ഥാപനത്തിൽ നിന്നും ചെക്ക് ആയി അയച്ചു കിട്ടിയിട്ടുള്ളതും, ആയത് ഞാൻ ബാങ്ക് മുഖാന്തിരം വാങ്ങി എടുത്തിട്ടുള്ളതാണ്. ആയതിനുശേഷം നാളിതുവരെ കമ്പനിയിൽ കമ്പനിയിൽ നിന്നും യാതൊരുവിധ രേഖകളോ പണമോ ലഭിക്കാത്തതിനെ തുടർന്ന് ഞാൻ ബെനി തോമസുമായും C.N. സുരേന്ദ്രൻ നായരുമായും ഫോണിൽ ബന്ധപ്പെടാൻ ശ്രമിക്കുമ്പോൾ അവർ ഫോൺ അറ്റൻഡ് ചെയ്യാതെ ഒഴിഞ്ഞുമാറി എന്നെയും ഭാര്യയെയും കബളിപ്പിച്ചുകൊണ്ടിരിക്കുകയാണ്. അടച്ച പണത്തിന്റെ രേഖയായി policy സർട്ടിഫിക്കറ്റ് മൂന്ന് മാസത്തിന് ഉള്ളിൽ അയച്ചു തരുമെന്ന് പറഞ്ഞ് വിശ്വസിച്ചിരുന്നതും ലഭിച്ചിട്ടില്ലാത്തതുമാണ്. ബെനി തോമസും, C.N. സുരേന്ദ്രൻ നായരും ചേർന്ന് എന്നിൽ നിന്നും 1,80,000/- രൂപയും ഭാര്യയിൽ നിന്നും 1,98,000/- രൂപയും വാങ്ങി ബോണസായും പെൻഷനായും നല്ല തുക തിരികെ ലഭിക്കുമെന്ന് പറഞ്ഞ് വിശ്വസിച്ചിച്ച് വാങ്ങിയെടുത്ത ശേഷം 1,15,167/- രൂപ തിരിച്ചുനൽകി. ബാക്കി തുക 2,62,833/- രൂപ എന്നിൽ നിന്നും ഭാര്യയിൽ നിന്നും കബളിപ്പിച്ച് എടുത്തിട്ടുള്ളതാണ്. സംഭവസ്ഥലം രാജാക്കാട് പോലീസ് സ്റ്റേഷൻ നിന്നും 8 k.m. കിഴക്ക് മാറിയാണ്".

8. In the First Information Report, registered on 12/09/2011, the accused arrayed are, 1. Benny, S/o. Thomas, Kunnel House, Chemmannur, Udumbanchola Village, Idukki and, 2. C.N. Surendran Nair, Aluva.

9. After investigation, the Investigating Officer, Deputy Superintendent of Police, CBCID EOW-II, Kottayam, filed final report, against accused 15 in numbers, accused no.1 Nano Excel Enterprises Private Limited, represented by Harish Babu Maddineni, accused no. 2 Harish Babu Madineni, accused no. 3 Patric Thomas, accused no.4 Chinna Rao Swayamvarappu, accused no.5 Radha Sundhara Raja, accused no.6 Prasanthu Sundar Rajah, accused no.7 P.P. Renga Reddy, accused no. 8 Meera Harish K., accused no. 9 Lagatapathy Sarath Babu @ Sarath, accused no.10 P.D. Lonappan, accused no.11 C.D. Tisserent, accused no.12 P.P. Francis, accused no.13 S. Swaminathan, accused no.14 Benny Thomas and accused no.15 C.M. Surendran Nair, 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, 51 witnesses cited by the Investigating Officer, and CW1 to CW5 are the persons, who are alleged to be cheated by the accused.

10. Hence, in the First Information Statement, preferred by CW1, specific allegations of fraudulent inducement and obtaining money are alleged against the accused/petitioner Benny Thomas. In the statements u/s. 161 Cr.P.C. of CW1, produced along with the final report also, the involvement of accused no.14/ Benny Thomas is specifically alleged by CW1. It is specifically alleged by CW1, in the First Information Statement preferred by him and in his statements u/s.161 Cr.P.C. that, he was induced to join in the accused company by the petitioner Benny Thomas and he deposited money in the accused company in his name and in the name of his wife Leelamma Kurian (CW2) through the agents of the company, petitioner Benny Thomas and one Surendran Nair at Aluva (accused no.15, now no more).

11. CW2 Leelamma Kurian, the wife of CW1/defacto complainant also in her statement u/s. 161 Cr.P.C. has categorically stated about the fraudulent inducement made by the petitioner Benny Thomas, to deposit money in the accused company and her husband giving money by way of cheque for Rs. 1,80,000/-, for depositing in the name of her husband and cheque for Rs. 1,98,000/- for depositing in her name in the power package of the accused company to the petitioner Benny Thomas and Surendran Nair on 17/01/2011.

12. CW3 Shelji, CW4 P.J. George and CW5 P.V. Chacko, also in their statements u/s. 161 Cr.P.C. produced along with the final report, have categorically stated that, they came to know about the accused company as told by the petitioner and Surendran Nair and they deposited money in the accused company as per the fraudulent inducement made by the petitioner and Surendran Nair and they entrusted

the money to the petitioner, for depositing in the accused company.

13. CW6 Leanmary Kurian and CW7 Linda Sara Kurian, the daughters of CW1 and CW2 also in their statements u/s. 161 Cr.P.C., have categorically stated specific allegations of fraudulent inducement and obtaining money by the petitioner. The bank account details of CW6 and CW7, and the bank account details of accused no.14/petitioner also produced along with the prosecution records to prove the offences alleged.

14. Hence, CW1/defacto complainant in the First Information Statement and in his statements u/s. 161 Cr.P.C. and CW2 to CW7 in their statements u/s. 161 Cr.P.C., have categorically stated about the inducement made by the petitioner Benny Thomas to deposit money in the accused company. Hence, the contention of the petitioner that the petitioner has no acquaintance with the defacto complainant, and he had no contact with the defacto complainant and witnesses, stated in the discharge petition is not correct. As stated above CW1/defacto complainant in the First Information Statement and in his statements u/s. 161 Cr.P.C. and CW2 to CW7 in their statements u/s. 161 Cr.P.C., have specifically stated about the inducement made by the petitioner Benny Thomas, to deposit money in the accused company.

15. Hence, as per the final report, a strong prima facie case is made out against the accused/petitioner Benny Thomas.

16. 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.

17. As stated above, in this case, as per the prosecution records, a strong prima facie case is made out against the accused no.14/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.14/petitioner, for the offences alleged in the prosecution case.

18. Hence, this discharge petition filed by accused no.14, 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 3rd day of September, 2025.)

Sd/-
Additional Chief Judicial Magistrate,
Thrissur.