

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

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

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Dated, this the 7th day of **November, 2025.**

CMP : 4647/2025 in CC 88/2016
(Old CMP no: 917/2018 of the Hon'ble Chief Judicial Magistrate
Court, Thodupuzha.)

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

Petitioner/Accused : Radha Sundara Rajah, D/o. Swami
no. 5 Sundara Rajah, 345 – Jalvayu Vihar,
Kukatappally, Hyderabad – 500 072.

(By Adv. Sri. Sunil Pyloth)

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 Sri. Ananthakrishnan P.A., Assistant
Public Prosecutor, Court of Additional
Chief Judicial Magistrate, Thrissur.)

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

Order : Dismissed.

ORDER

1. These are petitions filed by the accused no.5 Radha Sundara Rajah in

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

2. Petition averments are, as follows:-

The petitioner is the accused no.5, in the above case. The offences alleged against the accused are under sections 120B, 406, 420 r/w 34 of the Indian Penal Code, and 3, 4, 5 and 6 of the of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Accused no.8, is totally innocent of the offences alleged against her and she has not committed any offence as alleged in the prosecution case. The charge sheet, would clearly go to show that, there is no direct or indirect involvement of the petitioner, in the crime. Nowhere in the Memorandum of Association of the company, accused no.5, is named as a director or a promotional shareholder. Prosecution not able to produce any document to show that, the petitioner was involved in the business, in any manner. Petitioner is only a housewife and even according to the prosecution, the only role attributed to the petitioner is that, she purchased some shares, in the company, at the time of its formation. Nowhere in the final report, it is stated that, the petitioner received any profit, in any form or that, money was transferred to the account of petitioner, or that, the petitioner received any benefit from the company. The petitioner not enrolled any person in the company, nor promoted the activities of the company. The Investigating Officer, filed the final report, without even verifying the fact, whether the petitioner was a director or Managing Director, of the accused companies. Accused no.8, has absolutely no role in the day-to-day affairs of the accused companies, and she is only a shareholder of these companies. She cannot be fastened with any criminal liability, on account of she being a share holder of the said companies. The entire proceedings pursuing to the final report as against the accused no.5, is clearly an abuse of process of court, and she is unnecessarily dragged into the criminal proceeding, by the Investigating Officer. The prosecution does not have a case that, the petitioner had enrolled any person, earned any money or conducted any activities, to promote the business of the

company. As per the Companies Act, the liabilities of the share holder is limited. The Honourable High Court of Kerala, in CRL. M.C. 6172/15, dated 15/09/2015, held that, the shareholder who is not involved in business, cannot be charged for the offence punishable under section 420 IPC. The Investigating Officer has deliberately made a false statement to the effect that, petitioner is a promotional share holder of the company. There is no such term, as promotional shareholder. The liability of a share holder in a company, is limited to the value of shares held by him. There is absolutely no material or document, produced or relied on by the prosecution, to show that, the petitioner is the Managing Director, Director, Manager, Promoter or any person, in charge of the business of the accused companies. Not a single document produced by the Investigating Officer, to show the involvement of accused no.8, in the above case. She has absolutely no role to play, in any of the affairs of the company. Accused no.5 is a housewife, and a native of Hyderabad and not even visited Kerala, where the defacto complainant and others were allegedly cheated. She only purchased, some shares in the company. No money was transferred to the account of the petitioner, as profit. She has no connection with the conduct of the business of accused companies. A share holder has only an interest in the company arising under its Articles of Association, measured by the sum of money for the purpose of liability and buy a share in the profit. There is no document to show that, she took an active role in the conduct of the business of accused companies. The offences are alleged to have been committed, at the time when the Companies Act, 1956 was in force. Certain provisions under the Companies Act, 1956 will have to be looked into to understand the case of the prosecution. The provisions u/s. 13, 20 to 23, Sec. 33, Sec. 146, 149, Sec. 252 to 256, Sec. 264 and Sec. 303 of the Companies Act, 1956 would clearly show that, the petitioners are not involved even legally, since the liability of a shareholder on a company is limited to the liability of their shares. The petitioner had approached the Honourable High Court of Kerala, for quashing the proceedings. The Honourable High Court of Kerala, had directed the Honourable

Chief Judicial Magistrate, to consider the discharge petition and stated as follows, *“The accused can approach the Court below under section 239 Cr.PC. In cases the prosecution is not able to prove that the accused is not a director, or a person, who has promoted the business of the company or he was an intermediary, who has also promoted the business of the company, the offence against the accused will not lie. The Court below shall consider all the said aspects and pass orders on such application that may be filed by the accused. before the Court below. With the said liberty to the accused, these Crl.M.C.s. are closed”*. Petitioner is innocent and has not committed any offences, as alleged in the prosecution case. The petitioner is not the director of the accused companies. The prosecution has no case that, the petitioner is responsible for the conduct of the business of the company. No witness has stated that the petitioner has any involvement in the business of the accused companies. Holding bank account cannot be considered as evidence against the petitioner. Hence, seeks to discharge the petitioner/accused, in the above case.

3. Objection was filed by the learned Assistant Public Prosecutor, as follows:-

The entire averments in the petition are factually incorrect and legally unsustainable. The petition is devoid of merit and hence liable to be dismissed. The petitioner is the Director and shareholder of the Nano group of companies. Petitioner had a thorough knowledge, about the functioning of the Nano group of companies, at the time of registration itself. Petitioner looted money from general public and the accused companies not functioned as per the objectives and guidelines, stated in the certificate of incorporation. This petition is filed only with the malafide intention to drag the proceedings. Thus all accused in the above case in furtherance of their common intention, to get wrongful gain for them, by cheating the public and committing criminal breach of trust and they conducting Money Circulation Scheme and also published misleading advertisement in the marketing of Nano technology

products and announced Nano Power Corporation Ltd., company shares through network marketing system. After registration of companies, petitioners, not functioned as per the objectives and guidelines mentioned in the Certificate of Incorporation, Memorandum of Association and Articles of Association, which clearly shows their dishonest intention. There is prima facie evidence against the petitioner and documents produced before the court, reveals the role of each petitioner/accused in the commission of offences. Crores of rupees were collected by the accused by conducting illegal money circulation scheme. Fraudulent intention from the very beginning is clearly evidence from the conduct of the accused. The malafide activities of the accused from printing and publishing and distributing documents to conduct money circulation business are clear from the prosecution records. 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 members. Moreover, at the time of framing of charge, the probative value of the materials on record, cannot be gone into. From the documents seized and produced, the involvement of the accused is clearly established. In 2024 (4) Crimes 276 (J&K), the Honourable High Court of Jammu & Kashmir held that, at the time of framing charge or discharge of accused, there has to be proper application of mind by the magistrate. Test regarding sufficiency of proof, which court is required to apply at the final disposal of the case, are not to be applied at the stage of framing charge. In 2025 (1) Crimes 329 (SC), the Honourable Supreme Court of

India held that, at the time of framing of charge, even a very strong suspicion founded upon materials and presumptive opinion would enable court to frame charge against the accused. In 2025 (1) Crimes 242 (SC) the Honourable Supreme Court of India held that, by its very nature, discharge is at a higher pedestal than acquittal. 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 of the Indian Penal Code and sections 5, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

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

Accused no.s. 2 to 9, during the period from 2007 till 2011, with intent 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 intent 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 under sections 120B, 406, 420 r/w 34 of the Indian Penal Code 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 കുന്നേൽ 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 ലീലമ്മ കുര്യൻറെ പേരിൽ 1,98,000/- രൂപയും വാങ്ങിയശേഷം കബളിപ്പിച്ച കാര്യം പറയാൻ വന്നതാണ്. ഞാൻ

രാജകുമാരിയിൽ 26 വർഷമായി ദേവമാതാ ഹോസ്പിറ്റൽ സ്ഥാപിച്ചു അവിടെ ഡോക്ടറായി സേവനം ചെയ്തു വരുന്നുണ്ട്. 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 കന്നേൽ ബെന്നി തോമസ് അംഗീകൃത ഏജൻ്റ് എന്ന നിലയിൽ എൻ്റെ ഭാര്യയുടെ പേരിൽ policy എടുപ്പിച്ച് കൃത്യമായി പണം അടച്ച് രസീത് തന്ന് വിശ്വാസം പിടിച്ച് പറ്റിയ ശേഷം 17.1.2011 തീയതി രാവിലെ 7:30 മണിക്ക് എൻ്റെ രാജകുമാരിയിലുള്ള വീട്ടിൽ വന്ന് ബെന്നി തോമസിനോടൊപ്പം ഉണ്ടായിരുന്ന ആലുവക്കാരൻ C.N. സുരേന്ദ്രൻ നായരും ഒന്നിച്ച് നാനോ എക്സൽ കോർപ്പറേഷൻ ലിമിറ്റഡ് എന്ന സ്ഥാപനത്തിൻ്റെ 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 മാസത്തോറും പെൻഷൻ ലഭിക്കുമെന്ന് പറഞ്ഞ് വിശ്വസിച്ചിച്ച് എൻ്റെ 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 എൻ്റെ 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 ബെന്നി തോമസുമായും C.N. സുരേന്ദ്രൻ നായരുമായും ഫോണിൽ ബന്ധപ്പെടാൻ ശ്രമിക്കുമ്പോൾ അവർ ഫോൺ അറ്റൻഡ് ചെയ്യാതെ ഒഴിഞ്ഞുമാറി എന്നെയും ഭാര്യയെയും കബളിപ്പിച്ചുകൊണ്ടിരിക്കുകയാണ്. അടച്ച പണത്തിൻ്റെ രേഖയായി policy സർട്ടിഫിക്കറ്റ് മൂന്ന് മാസത്തിന് ഉള്ളിൽ അയച്ചു തരുമെന്ന് പറഞ്ഞ് വിശ്വസിച്ചിരുന്നതും ലഭിച്ചിട്ടില്ലാത്തതുമാണ്. ബെന്നി 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 Corporation Limited, represented by Harish Babu Madineni, 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. Swami Nathan, 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. CW14 Amandeep Singh, in his statement u/s. 161 Cr.P.C., stated that, "In March 2008 Harish Babu Maddineni contacted me to develop a website for his business on the name of Nano Excel Enterprises Pvt. Ltd., for selling various products through network marketing system, which was later on also used for Nano Excel Corporation Ltd. As per the requirements of Harish Babu Maddineni, MD

Nano Excel, for his business I have developed the website and hosted the same in data center located on US in April 2008. We have provided the services of software development, web hosting and SMS services to his company till June 2011.” He further stated that, “The method of joining in the Nano Excel is as follows: When a new member deposits money in company's bank account or with any branch, the company issues a unique PIN number in his sponsor's member panel, By using that PIN, a member can fill up registration form and select the desired package. After that unique ID number and password is allotted to that member by the system. With the help of this, ID number and password, that member can login into his personalized member area to view this downline business later on. In the member area there is no facility to view upline Information. Every week commission is generated by the system on data specified by the company people and commission list is downloaded from the website by company people for distribution of commission. The business plan is as follows: There are four types of income (1) Direct Referral bonus is given to direct referral sponsor of a new sales. (2) Binary Referral bonus is given on the basis of business volume generated by the member on his left and right downline team. Ceiling limit of 1,30,000 is applicable on this binary referral bonus per week. (3) Royalty Bonus is given to the leaders on qualification of the status as star, ruby, pearl, diamond etc. (4) Royalty Club Bonus. The member who purchased the royalty club bonus package is allotted a different ID number in this club. This is a universal club having 4 level board system which splits on completion of all the 15 positions and members of that specific board will get the Royalty Club Bouns and they are further promoted to the next level in the board. In this way he can get the benefit 10 times as per the sales of the company. As per the record of website database, the company has made a sales turnover of Rs. 3,58,60,51,841 (three hundred fifty eight crore sixty lakh fifty one thousand eight hundred forty one) by selling 414274 ID units to 206194 different persons across India, UAE and Philippines. The total commission generated by the system is 3,02,17,32,403 (Three hundred two crore,

seventeen lakh, thirty two thousand and four hundred three).”

11. From the statements of witnesses and documents produced on the side of prosecution, it is clear that, accused company, conducted money circulation scheme, violating the objectives and purpose, stated in the Memorandum of Association and Articles of Association, of the company.

12. Accused no.8 Meera Harish is the wife of the main accused in this case, Harish Babu Madineni(accused no.2). Accused no.6 Prasanth Sundar Rajah is the brother of Meera Harish, and accused no.5 Radha Sundar Rajah is the sister of accused no.10 Prasanth Sundar Rajah. The Form no.1, produced along with the Certificate of Incorporation of the company named Nano Excel Power Corporation Limited, would go to show that, accused no.5 Radha Sundra Rajah, was the promoter and the first subscriber to the Memorandum Of Association, of the company named Nano Excel Power Corporation Limited. The account opening forms produced by the Investigating Officer, incorporated with the prosecution records, would go to show that, accused no.5 Radha Sundra Rajah, also was authorised to operate the account of the company, named Nano Excel Corporation Limited.

13. Hence, the contention of the petitioner, in the discharge petition that, she was a mere shareholder and not involved in the activities of the company, does not appear to be true. As stated above, the account opening form of the account of Nano Excel Corporation limited at State Bank of India, Mudhapur Branch, Hyderabad, would go to show that, accused no.8. Meera Harish and accused no.5 Raja Sundar Raja, were also the persons along with the accused no.2 Director, Harish Babu Madineni, having authorisation to operate the bank account of the said company.

14. It is true that, share holders have only limited liability, to the value of their shares. But, if the share holders engage in fraudulent and illegal activities, they

can be held personally liable. As stated above, in this case, as per the prosecution records, accused no.5 Radha Sundara Rajah, was not a mere shareholder, but she was the shareholder having authorisation to operate the account of the company, along with accused no.2, the director, Harish Babu Madineni.

15. 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.

16. 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.5/petitioner. 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 finding that, there is sufficient ground for proceeding against the accused/petitioner, for offences punishable under sections 120B, 406, 420 r/w 34 of the Indian Penal Code and Sections 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, alleged in the prosecution case.

17. Hence, this discharge petition filed by accused no.5/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 7th day of November, 2025.)

Sd/-
Additional Chief Judicial Magistrate,
Thrissur.