

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

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

Dated, this the 29th day of **April, 2026.**

CMP : 4012/2025 in CC 116/2020

(Cr. No.1205/2011 of Thrissur Town East Police Station)

(CB Cr. 988/CB/TSR/2011)

Petitioner/Accused : Muhammed Asharaf, S/o. Saidalavi,
no. 14. Puthan Peedikayil House, Chelakkara,
Thrissur District.

(By Adv. Sri. Naveesh C.N.)

Respondent/ : State represented by the Detective
Complainant Inspector-II, Crime Branch, Thrissur.

(Crime no.1205/2011 of Thrissur Town
East Police Station).

(CB Cr. 988/CB/TSR/2011)

(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. This is a petition filed u/s. 239 Cr.P.C., by the accused no.14, in CC 116/2020 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 r/w 34 of the Indian Penal Code and sections 3, 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. All the allegations against the petitioner are false and the charge against the accused/petitioner is groundless. No specific overt act is alleged against the petitioner. The petitioner was not entrusted with any money or property by the witnesses or the defacto complainant. The material witnesses did not speak about the presence and involvement of the petitioner. Hence, the offences punishable under sections 406 and 420 of the Indian Penal Code will not get attracted against the petitioner. Petitioner did not act as a promoter of the company as per section 2(69) of the Companies Act. Omnibus and vague statement regarding the presence of the petitioner in a meeting allegedly conducted by the 1st accused company is not sufficient to attract the offence prima facie against the petitioner. In *Thermax Ltd (M/s) and Others v. K.M. Johny and Others*, reported in 2011 KHC 4892, the Honourable Supreme Court of India held that "No specific allegations against the officers of the company maintainability of the complaint - held in the absence of specific details about the overt acts committed by the officers of the company, no person other than the company can be prosecuted under the complaint". Witnesses were persons who obtained shares from the Nano Excel Company and the same was produced before the Honourable Court. When a share certificate was issued, in favour of the witnesses, they cannot plead the offence of cheating or other offences alleged under the Prize Chits and Money Circulation Schemes Act. As per section 3 of the Act, No person shall promote or conduct any prize chit or money circulation scheme or enroll as a member to any such chit or scheme or participate in it, otherwise, or receive, or remit any money in pursuance of such chit or scheme. For the sake of argument, the accused herein admits that they would promote a money circulation scheme conducted by the Nano Excel Company named Binary Club Systems. It is

most respectfully submitted that, then only one crime will lie against the petitioner herein. One more final report has been filed by the police before the Hon'ble Court and cognizance was taken. Hence, no case under Sections 3, 4, and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 will lie against the petitioner. Otherwise, it will violate Section 300 (Double Jeopardy) of the Criminal Procedure Code and Article 20(2) of the Indian Constitution. There is no specific allegation against the petitioner. The Honourable High Court of Kerala in Vinode V. Luka v. State of Kerala through Justice G. Girish (2025 KHC OnLine 1695) held that "S.403, S.420, S.120B, S.409, S.418, S.34 - Criminal proceedings against a Manager of a financial establishment for alleged Whether a general allegation that cheating and fraud employees of a firm compelled depositors to invest, without specific indictment against a particular employee, is sufficient to sustain criminal charges against that employee -- Held, a general and superficial allegation without specific indictment is insufficient to sustain criminal charges against an employee". In the light of the above stated grounds, 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. The arguments raised in the petition that the accused has not committed any offence or conducted any money circulation scheme or there is no direct or indirect involvement in the case are not correct. There are sufficient ingredients to constitute the offences under sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and 120B, 406, 420 r/w 34 of the Indian Penal Code. The accused/petitioner is a Promoter of Nano group of Companies. The activities undertaken by the accused clearly amount to a "Money circulation scheme" as defined under the Prize chits and money circulation scheme

(Banning) Act, 1978. Ingredients of the offences under section 120B, 420 and 406 r/w 34 of the Indian Penal Code are well surfaced in this case. Hundreds of customers complained that they were cheated. Crores of rupees were collected by the accused by operating the scheme. Moreover, low quality products were sold by the company by making false representation. The accused had the intention to cheat from the very inception, and inducement from the side of the company and the accused persons, and delivery of property upon such inducement, are well established from the statements and documents produced by the prosecution. There is also entrustment of money to the company. The common intention of the accused at the time of inducement prima facie establishes the offence of cheating under sections 406 and 420 r/w 34 of the Indian Penal Code. The ingredients of Section 34 of the Indian Penal Code are attracted in the context of money circulation scheme, common intention refers to the shared objective among promoters and participants to engage in activities that leads to financial gain through deceitful means, which includes inducing new members to join under false pretenses sharing the ill-gotten gains derived from the contributions of new members. The malafide deed of the accused such as, printing and publishing for the purpose of sale or distribution, documents for the purpose of inviting and inducing persons to enroll as a member or participate in money circulation scheme is very much clear from the evidence collected. In *Achamma Chacko v. Government of Kerala and Others* reported in 2007 (2) KLT SN 68, it was held that, the mere conduct of the parties is sufficient to presume the offence under the Prize Chits and Money Circulation Schemes (Banning) Act. In *Gold Quest International Pvt. Ltd. and Another v. State of Tamil Nadu* 2003 0 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. From the documents seized like bank account statements, brochures, etc., it is clear that, the accused were doing the business of money chain and the accused were committing cheating. 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 116/2020 on the file of this court, is a case based on the final report filed by the Detective Inspector-II, Crime Branch, Thrissur, against accused 16 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, in furtherance of their common intention, and by committing criminal conspiracy, with intend to cheat public, and to obtain wrongful gain, in the month of June 2007, accused no. 4 as the Managing Director and accused no.6 as the Director, created accused no.1 company Nano Excel Enterprises Private Limited for conducting money chain business by importing low quality products from abroad and registered the said company on 12/07/2007, and created a website with the help of Amandeep Singh (CW14), the Director of a software company named Roots Infocom at Ludhiyana, Punjab for network marketing, and conducted money circulation business through the website, and appointed accused no.5 as the Director of the said company on 06/06/2009, and thereafter, with the same intention to commit cheating, accused nos. 4 to 6 as the Directors and accused no.s 7 to 10 as the Shareholders, created accused no.2 company named Nano Excel Power Corporation Limited on 01/01/2010, and changed its name to Nano Excel Corporation Limited on 26/02/2010, thereafter, accused nos. 4, 5, 10 as the Directors and accused no.s 8, 9, 11 to 13, as the Shareholders, formed accused no.1 company Nano Power Corporation Limited on 13/05/2010, and later on 01/07/2010, entered into a Memorandum of Agreement (MOA) on BOOT (Build, Own, Operate and Transfer) basis with Arunachal Pradesh Government for starting a Hydro Electric Project in the name of company named Nano Excel Power Corporation Limited, which was not in existence at that time, and appointed accused no.s 14 to 16 as the local business promoters, and promoted illegal products and illegal money circulation business through the website, and through brochures and advertisements, and through classes at various hotels in Thrissur, and by making false promise of returning ten times more amount within a short span of time as Royalty Club Bonus, and by promising Direct Referral Bonus to the members enrolling new members under them, and Binary Bonus on enrolling more members under them in the company, and also by promising income and specific unit of power for a period of 50 years on depositing money in the power package, and also by promising nano technology based products which the accused

know to be that of low quality, fraudulently and dishonestly induced CW1 Seenath to deposit total amount of Rs. 36,000/- on 07.12.2009 as per ID no.s 88373, 88409 and 88422, CW2 Shafeer to deposit total amount of Rs.48,000/- on 27.02.2010 as per ID no.s 155082, 155083, 155085 and 155088, CW3 Fathima to deposit Rs.12,000/- on 01.06.2010 as per ID no. 228192, CW4 Amina to deposit Rs.12,000/- on 01.06.2010 as per ID. no. 228127, CW5 Naseera to deposit Rs.12,000/- on 01.06.2010 as per ID. no. 228091 and CW6 Sahala to deposit Rs.12,000/- on 01.06.2010 as per ID. no. 215088, directly in the office of the accused company at Paliyam Road, Thrissur, and thereby altogether obtained an amount of about Rs. 358 crores from the general public, including Rs. 1,32,000/- from CW1 to CW6, and thereafter, neither gave profits as promised, nor returned the amount obtained and thereby committed cheating and illegal money circulation business and misappropriated the money obtained and thereby accused committed 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.

7. The prosecution in this case was initiated by CW1/defacto complainant Seenath, by preferring a complaint u/s. 190(1)(a) Cr.P.C., before the Honourable Chief Judicial Magistrate Court, Thrissur, against accused 8 in numbers, accused no.1 Madadineni Halish Babu, accused no.2 Patric Thomas, accused no.3 Karthikeyan, accused no.4 G. Murugan, accused no.5 Reneesh, accused no.6 **Muhammad Asharaf K.F.**, accused no.7 Pramodkumar K. and accused no.8 Shabeer T., alleging offence punishable under section 420 r/w 34 of the Indian Penal Code.

8. The said complaint was forwarded to the Station House Officer, Thrissur Town East 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. 1205/2011 of Thrissur Town East Police Station, was registered on 20/07/2011.

9. After investigation, the Investigating Officer, Detective Inspector-II, Crime Branch, Thrissur, filed final report, against accused 16 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 Patric Thomas, accused no.6 S.V. Chinna Rao, accused no.7 P.P. Ranga Reddy, accused no. 8 Meera Harish K., accused no.9 Radha Sundara Raja, accused no.10 Prasanth Sundar Rajah, accused no.11 Chedella Subhashini, accused no.12 Kumari Rajah, accused no.13 Lagatapati Sarath Babu @ Sarath, accused no.14 Muhammed Asharaf, accused no.15 Pramod Kumar and accused no.16 Shabeer T., alleging offences punishable under sections 120B, 420, 406 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, 45 witnesses cited by the Investigating Officer, and CW1 to CW6 are the persons, who are alleged to be cheated by the accused.

10. CW1 to CW6 are the witnesses who are stated to have deposited money in the accused companies. The statements under section 161 Cr.P.C. of CW1 to CW6, and the statements under section 161 Cr.P.C. of CW7 to CW12, who are stated to be the employees of the accused companies at Thrissur and the statements under section 161 Cr.P.C. of CW14 Amandeep Singh, who is stated to have created the website for the accused companies and CW28 Shinoy, would clearly reveal the illegal money circulation business conducted by the accused companies, and the cheating committed by the accused in the guise of illegal money circulation business. The statements of witnesses under section 161 Cr.P.C. produced along with the final report would clearly go to show that, the accused and the accused companies deviated from the object and purpose stated in the Memorandum Of Association and Articles of Association of the accused companies, and engaged in illegal money circulation

scheme, and committed cheating on several persons, and obtained crores of rupees, by engaging in illegal money circulation business, in the name of accused companies, and also committed cheating by giving false promises. Various documents, including the bank account statements of the accused companies, seized and produced along with the final report, to prove the offences alleged against the accused.

11. In the complaint preferred by CW1/defacto complainant Seenath itself, this petitioner/accused no.15, was arrayed as an accused. CW1, in her statements u/s. 161 Cr.P.C., produced along with the final report also, the involvement of accused no.14 Muhammed Asharaf, is specifically alleged. The bank account statement of the petitioner/accused no.14 Muhammed Asharaf also, seized by the investigating officer and produced along with the final report to prove that, the accused/petitioner obtained commission from the accused companies by conducting the illegal money circulation business. Hence, as per the final report, a strong prima facie case is made out against the accused/petitioner Muhammed Asharaf.

12. Hence, the contention of the petitioner in the discharge petition that, the material witnesses did not speak about the presence and involvement of the petitioner, is not at all true. The statements of witnesses and the documents produced along with the final report would clearly go to show that, the accused conducted illegal money circulation business with intend to commit cheating and this petitioner worked as a promoter, promoting the illegal money circulation business of the accused companies and took an active role in committing cheating and earned more than Rupees three crores, as commission in different ID numbers, by conducting illegal money circulation business, in the name of the accused companies.

13. 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.

14. 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.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.

15. 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 29th day of April, 2026.)

Sd/-
Additional Chief Judicial Magistrate,
Thrissur.