

**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 : 7121/2024 in CC 93/2019

(Cr. No. 547/2011 of Thrissur Town West Police Station)
(CBCID Cr. 376/CB/THR/12) (376/CR/EOW II/KTM/12)

Petitioner/Accused : C.D. Tisserent, S/o. Devassy, Padoor
no. 16. Chalakkal House, Velloor Village, Desam.

(By Advocate. Sri. Anand K. Jose)

Respondent/
Complainant State represented by the Deputy
Superintendent of Police, Crime Branch,
Ernakulam.

(Crime no.547/2011 of Thrissur Town
West Police Station).

(CBCID Cr. 376/CB/THR/12)
(376/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 : Allowed.

ORDER

1. This is a petition filed u/s. 239 Cr.P.C., by the accused no.16, in CC 475/2019, on the file of this court, seeking discharge, in the case.

2. Petition averments are, as follows:-

There is no evidence to show that, the petitioner was the promoter of the accused companies. The prosecution has no case that, accused no.16/petitioner received any single money from any of the witnesses. There is no delivery of property, to the petitioner. Hence, offence punishable under section 420 of the Indian Penal Code, will not get attracted against the accused no.16/petitioner. The prosecution has not produced any document to show that the accused no.16 was appointed as a promoter of the accused companies. There is no allegation for the prosecution that, accused no.16/petitioner introduced the witnesses to any person. All the allegations against the accused no.16/petitioner, are baseless. 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 of the Indian Penal Code 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 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 93/2019 on the file of this court, is a case based on the final report filed by the Deputy Superintendent of Police, Crime Branch, Ernakulam, against accused 23 in numbers, alleging offences punishable, under sections 120B, 406, 420 r/w 34 of the Indian Penal Code, 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 nos.4 and 5 created accused no.1 company 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, the Director of a software company named Roots Infocom at Ludhiyana, Punjab and conducted money circulation business through the website and appointed accused no.6 as the Manager of the said company and thereafter, with the same intention to commit cheating, accused nos. 4 to 13 created company named Nano Excel Power Corporation Limited (accused no.2) on 01/01/2010 and changed its name to Nano Excel Corporation Limited and entered into an agreement 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 advertised the agreement with internet and media and through promoters, sold the shares promising good income and thereafter, accused nos. 4 , 6, 8 to 13, on 13/05/2010 formed another company named Nano Power Corporation Limited (accused no.3) and conducted money circulation business with the money obtained from the public and accused nos.14 to 23, being very well aware about the illegal business conducted by the accused companies, approached public giving false promises and accused through website and through brochures and advertisements, and through classes, 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 by 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, fraudulently and dishonestly induced CW1 Sivaraman to deliver Rs.

18,000/- on 10/12/2010, Rs. 18,000/- on 18/12/2010, CW2 John P.I. to deliver Rs. 1,80,000/- on 08/12/2010 and CW3 Jomy Anto to deliver Rs.18,000/- on 10/12/2010 and obtained money from CW4 to CW27 also, and thereafter, neither gave the profits as promised, nor returned the money obtained and thereby committed cheating and illegal money circulation business and misappropriated the money obtained and thereby accused committed offences punishable u/s. 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 Sivaraman @ Mani, by preferring a complaint u/s. 190(1)(a) Cr.P.C., before the Honourable Chief Judicial Magistrate Court, Thrissur, against accused 2 in numbers, accused no.1 Nano Excel Corporation Limited, represented by Managing Director and Chief Executive Officer, Harish Babu Madineni and accused no.2 Harish Babu Madineni, alleging offences punishable under sections 120B, 406, 417, 420, 468, 471 r/w 34 of the Indian Penal Code and sections 3, 4, 5, 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. 547/2011 of Thrissur Town West Police Station, was registered on 03/04/2012.

9. After investigation, the Investigating Officer, Deputy Superintendent of Police, Crime Branch, Ernakulam Unit, filed final report, against accused 23 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 and this petitioner is arrayed as accused no.16, in the final report.

10. Hence, in the complaint preferred by CW1/defacto complainant Sivaraman, this petitioner/accused no.16, was not arrayed as an accused. It is to be noted that, the complaint preferred by CW1 Sivaraman, is not a spontaneous First Information Statement, preferred by an aggrieved or a victim or an informant. The complaint preferred by CW1 Sivaraman, is a complaint, filed after much deliberations with the help of a lawyer and in such complaint CW1/defacto complainant Sivaraman, 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.16 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.16 C.D. Tisserent, would have been mentioned by CW1/defacto complainant Sivaraman, in the complaint preferred by him in court. As stated above, in the complaint preferred by CW1/defacto complainant, he has not made any single allegation against this accused no.16/petitioner. All the allegations of cheating alleged in the complaint are against the accused, named in the complaint.

11. Hence all the allegations of cheating etc., are alleged against the accused stated in the complaint, by CW1/defacto complainant. As stated above, this petitioner was not arrayed as an accused in the complaint preferred by CW1/defacto complainant and he has not made a whisper about this petitioner/accused no.16 C.D. Tisserent, in the complaint filed by him. In the statement u/s. 161 Cr.P.C. of CW1, produced along with the final report also, there is no single mentioning about this petitioner/accused no.16 C.D. Tisserent. CW2 to CW27 the other witnesses, who are alleged to have deposited money in the accused company, have also not mentioned the name of this petitioner/accused no.16 C.D. Tisserent, in their statements u/s. 161 Cr.P.C.

12. According to the prosecution case, this accused/petitioner is termed as the

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. There is no single document produced on the prosecution side to show, atleast prima facie that, this petitioner/accused no.16 was officially appointed as the promoter, of any of the accused companies.

13. 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.

14. In this case, there is no single document produced along with the prosecution records to show atleast prima facie that, the accused was a 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.

15. 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.”

16. 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.16 was a person named as a promoter in the prospectus of accused nos. 1 to 3 companies or identified as a promoter by the accused nos. 1 to 3 companies in the annual return referred to in section 92 or that the accused/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, the accused/petitioner is not a promoter either as per the Prize Chits and Money Circulation Schemes (Banning) Kerala Rules, or as per the Companies Act, 2013.

17. 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."

18. 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 prima facie, 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 prima facie 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 prima facie, revealed as per the prosecution records, to frame charge against the petitioner, for the offences alleged in the case.

19. 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/petitioner, for the offences alleged in the case. Hence, petition allowed and accused/petitioner is discharged for the offences alleged against him, in the above case.

20. 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 27th day of September, 2025.)

Sd/-
Additional Chief Judicial Magistrate,
Thrissur.