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 **17th** day of **December, 2025.**

CMP: 4034/2025 in CC 94/2016

(Cr. No. 378/2011 of Alathur Police Station)

(CBCID Cr. 799/CR/EOW-II/KTM/11)

Petitioner/Accused no. 15.	:	Baby Jose, S/o. Joseph, Pallipparambil House, Njalakom Kara, Kundam Palam Puthiya Road Bhagam, Thrikkakkara North Village, Ernakulam. (By Adv. Sri. Naveesh C.N.)
Respondent/ Complainant		State represented by the Deputy Superintendent of Police, CBCID EOW-II, Ernakulam Sub Unit. (Crime 378/2011 of Alathur Police Station, Thrissur.) (By Sri. Ananthakrishnan P.A., Assistant Public Prosecutor, Court of Additional Chief Judicial Magistrate, Thrissur.)
Petition	:	U/s. 239 Cr.P.C.
Order	:	Dismissed.

O R D E R

1. This is a petition filed u/s. 239 Cr.P.C., by the accused no. 15, in CC 94/2016, on the file of this court, seeking discharge, in the case.

2. Petition averments are, as follows:-

Petitioner is the accused no.15 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. 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 init, 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. 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 and 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 group of Companies. 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 beginning of the transaction. There is also entrustment of money to the company. 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 enrolement 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 primafacie 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 94/2016 on the file of this court, is a case based on the final report filed by the Deputy Superintendent of Police, CBCID EOW-II, Ernakulam Sub Unit**,**

against accused 17 in numbers, alleging offences punishable, under sections 406, 420, 120B r/w 34 of the Indian Penal Code, sections 4, 5 and 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, during the period 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 no. 4 as the Managing Director and Authorised Signatory, and accused nos. 5 and 6 as the Directors, formed accused no.1 company named Nano Excel Enterprises Private Limited Company on 12/07/2007, and thereafter, accused no. 4 as the Managing Director and Authorised Signatory, accused nos. 5 and 6 as the Directors, and accused no.s 7 to 10 as the Promotional Shareholders, formed accused no.2 company named Nano Excel Power Corporation Limited on 01/01/2010 and later changed its name to Nano Excel Corporation Limited on 26/02/2010, and thereafter, with the same intention to commit cheating by conducting illegal money circulation business, accused no. 4 as the Managing Director and Authorised Signatory, and accused nos. 7 and 13 as the Promotional Shareholders, formed accused no.3 company named Nano Power Corporation Limited on 13/05/2010, and created a website with the help of CW11 Amandeep Singh, 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 accused no.s 14 to 17, worked as promoters of the above companies, being fully aware about the illegal business conducted by the accused companies 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 ten times 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 P.S. Natarajan to deliver Rs. 12,000/- on 23/10/2009 and Rs. 12,000/- on 29/01/2010 in his name, Rs. 12,000/- on 11/03/2010 in the name of his daughter-in-law and Rs. 12,000/- on 30/04/2010 in the name of his son, CW2 Assainar Moitheen to deliver total amount of Rs. 3,00,000/- on various dates from 29/10/2010 onwards, CW3 A. Taj to deliver total amount of Rs. 1,98,000/- on various dates from 28/01/2010 onwards, CW4 Abdul Tahir to deliver total amount of Rs. 66,000/- on various dates from 29/08/2010 onwards, CW5 Faseela to deliver Rs. 12,000/- on 25/09/2010, CW6 Sainumuthu to deliver Rs. 12,000/- on 24/11/2010 and CW7 Muhammed Ali to deliver Rs. 18,000/- on 13/12/2010, and thereby altogether obtained more than 358 crores from the general public including Rs. 6,36,000/- obtained from CW1 to CW7, and thereafter, neither gave profits as promised, nor returned the amount obtained and thereby committed cheating on general public, misappropriated the money obtained and conducted illegal money circulation business, 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 P.S. Natarajan, by preferring an First Information Statement, to the Sub Inspector of Police, Alathur Police Station on 05/07/2011. In the First Information Report, registered on 05/07/2011, the accused arrayed are, Dr. Harish Madineni and Patric Thomas.

8. After investigation, the Investigating Officer, Deputy Superintendent of

Police, CBCID EOW-II, Ernakulam Sub Unit, filed final report, against accused 17 in numbers, accused no.1 Nano Excel Enterprises Private Limited represented by Harish Babu Maddineni, accused no. 2 Nano Excel Power Corporation Limited/Nano Corporation Limited represented by Harish Babu Maddineni, accused no.3 Nano Power Corporation Limited represented by Harish Babu Maddineni, accused no.4 Harish Babu Maddineni, accused no. 5 Chinna Rao Swayamvarapu, accused no.6 Patric Thomas, accused no. 7 Radha Sundara Rajah, accused no. 8 Prasanth Sundara Rajah, accused no.9 P.P. Renga Reddy, Accused no.10 Meera Harish K., accused no.11 Chedella Subhashini, accused no.12 Kumari Rajah, accused no.13 Sarath Babu Lagadapati, accused no.14 Muhammed Ashraf, accused no.15 Baby Jose, accused no.16 P.D. Lonappan and accused no.17 C.D. Tisserent, 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, 39 witnesses cited by the Investigating Officer, and CW1 to CW7 are the persons, who are alleged to be cheated by the accused.

9. It is true that, in the First Information Statement preferred by CW1/defacto complainant, he has not mentioned the name of this petitioner Baby Jose. But, CW1 to CW7, in their statements under section 161 Cr.P.C., have mentioned specifically the name of this petitioner and about the fraudulent inducement made by him to deposit money in the accused companies. They had stated that, they were involved in the group named Achievers International Foundation Group, under the leadership of main promoter Baby Jose.

10. CW9 Nidhun, who is stated to be an employee of the accused company in his statement under section 161 Cr.P.C., has stated in detail about the illegal money circulation business conducted by the accused company, and also about the promotion classes conducted by the accused company at various places and he has stated that, “കമ്പനി തൃശ്ശൂർ പേൾ റീജൻസി, കാസിനോ ഹോട്ടൽ, ടിച്ചൂർ ടവർ ഹോട്ടൽ, ലുലു

കൺവെൻഷൻ സെൻറർ എന്നിവിടങ്ങളിൽ മിക്ക ആഴ്ചകളിലും ബിസിനസ് മീറ്റിങ്ങുകൾ നടത്തിയിരുന്നു. അതിൽ കമ്പനി ഡയറക്ടർമാരും, പ്രമോട്ടർമാരും പങ്കെടുക്കുമായിരുന്നു. കമ്പനിയുടെ പുതിയ വാഗ്ദാനങ്ങൾ അവിടെ പ്രഖ്യാപിക്കുമായിരുന്നു. തൃശ്ശൂർ ജില്ലയ്ക്കു വെളിയിലും ഇതു പോലെ മീറ്റിങ്ങുകൾ സംഘടിപ്പിച്ചിരുന്നു. മലമ്പുഴ, നെല്ലിയാമ്പതി എന്നിവിടങ്ങളിൽ പുതിയ മെമ്പേഴ്സിനെ motivate ചെയ്യാൻ training programme മെയിൻ പ്രമോട്ടേഴ്സായ മുഹമ്മദ് അഷറഫ്, ലോനപ്പൻ, സജീവ് കരുൺ, ടിസറൻറ്, **ബേബി ജോസ്,** P.G. ജയൻ, പ്രമോദ് കുമാർ, ഫൈസൽ എന്നിവർ സംഘടിപ്പിച്ചിരുന്നു. തൃശ്ശൂരിൽ നടത്താറുള്ള മിക്ക പ്രോഗ്രാമുകളിലും ഓഫീസ് സ്റ്റാഫുകളും പങ്കെടുക്കുമായിരുന്നു. 2010 ജനുവരി, ഫെബ്രുവരി മാസങ്ങളിൽ കാസിനോ ഹോട്ടൽ, പേൾ റീജൻസി എന്നിവിടങ്ങളിൽ നടന്ന മീറ്റിങ്ങിൽ ഡയറക്ടർ ഹാരിഷ് ബാബു മദനീനിയും, പാട്രിക് തോമസ് എന്നിവർ പങ്കെടുത്തിരുന്നതായി എനിക്കറിയാം. കൂടാതെ, പ്രമോട്ടേഴ്സായ മുഹമ്മദ് അഷറഫ്, സജീവ് കരുൺ, പ്രമോദ് കുമാർ, ശശിന്ദ്രൻ, ഫൈസൽ, ജയൻ PG, **ബേബി ജോസ്,** ലോനപ്പൻ, ടിസറൻറ്, സ്വാമി നാഥൻ, മൊയ്തീൻകുട്ടി, P.N രാധാകൃഷ്ണൻ, C.R. രാധാകൃഷ്ണൻ, E.S. രാജൻ, K. ബാലകൃഷ്ണൻ. T.K. ബാലകൃഷ്ണൻ എന്നിവരും പങ്കെടുത്തിരുന്നു". He further stated that, "കമ്പനി വിതരണം ചെയ്തിരുന്ന പ്രൊഡക്ടുകൾ ചൈന, കൊറിയ, സിംഗപ്പൂർ എന്നിവിടങ്ങളിൽ നിന്ന് തുച്ഛമായ തുകയ്ക്ക് ഇറക്കുമതി ചെയ്ത് ഇന്ത്യയിൽ ആ പ്രൊഡക്ടുകൾ നാനോ ടെക്നോളജി പ്രകാരമുള്ളതാണെന്ന് പ്രചരിപ്പിച്ച്, വലിയ തുക വിലയിട്ട് വില്പന നടത്തി കമ്പനി മണി സർക്കുലേഷൻ ബിസിനസ്സാണ് നടത്തി വന്നിരുന്നത്. അതു മൂലം കമ്പനിയ്ക്കും, ഡയറക്ടർമാർക്കും പിന്നെ മേൽപറഞ്ഞ പ്രൊമോട്ടർമാർക്കും ബാക്കി തുകകൾ കമ്മീഷൻ ലഭിച്ചിട്ടുണ്ട് ".

11. The statements of witnesses and the documents produced along with the final report would go to show that, accused companies conducted illegal money circulation business deviating from the object and purpose of the companies stated in the memorandum of association and Articles of Association of the companies.

12. The bank account statement of the accused companies also seized during the course of investigation and produced along with the final report to prove the offences alleged in the case.

13. CW20 M. Murugan, the then Chief Manager, SBI, Palarivattom Branch, in his statement under section 161 Cr.P.C. stated that, "ഞാൻ സ്റ്റേറ്റ് ബാങ്ക് ഓഫ് ഇൻഡ്യ, പാലാരിവട്ടം ബ്രാഞ്ച് ചീഫ് മാനേജരായി ജോലി ചെയ്തു വരികയാണ്. എറണാകുളം CBCID EOW-II Dysp.-യുടെ ലെറ്റർ പ്രകാരം ബേബി ജോസ് എന്നയാളുടെ 30764910097 എന്ന അക്കൗണ്ടിലെ വിവരങ്ങൾ ഞാൻ പരിശോധിച്ചിരുന്നു. അതിൽ 2-1-2009 മുതൽ 1-4-2-11 വരെ ഇടപാടുകൾ നടന്നിട്ടുള്ളതിൽ പ്രധാനമായും നാനോ എക്സൽ എന്ന പേരിലും 30649625773 എന്ന അക്കൗണ്ടിൽനിന്നും വിവിധ തീയതികളിലായി 2009-ൽ 26,92,419/- രൂപ നിക്ഷേപമായി വന്നിട്ടുള്ളതും അതിൽ 24,48,950/- രൂപ പിൻവലിച്ചിട്ടുള്ളതായും, 2010-ൽ 65,47,611/- രൂപ നിക്ഷേപമായി വന്നിട്ടുള്ളതും 66,16,238/- രൂപ പിൻവലിച്ചിട്ടുള്ളതായും, 2011-ൽ 10,48,369/- രൂപ നിക്ഷേപമായി വന്നിട്ടുള്ളതും 11,31,013/- രൂപ പിൻവലിച്ചിട്ടുള്ളതായും മൊത്തം 1,02,88,399/- രൂപ ഡിപ്പോസിറ്റ് വന്നിട്ടുള്ളതായും 1,01,96,201/- പിൻവലിച്ചിട്ടുള്ളതായും 1-4-2011-ൽ 92,196/- രൂപ Balance ഉണ്ടായിരുന്നതായും കാണുന്നുണ്ട്".

14. Hence, as per the final report, a strong primafacie case is made out against the accused/petitioner Baby Jose.

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 primafacie case is made out against the accused, or not.

16. As stated above, in this case, as per the prosecution records, a strong primafacie case is made out against the accused no. 15/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. 15/petitioner, for the

offences alleged in the prosecution case.

17. Hence, this discharge petition filed by accused no. 15, 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 17th day of December, 2025).

Sd/-

Additional Chief Judicial Magistrate,
Thrissur.