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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 4585/2014

JETHANANAD

..... Petitioner

Represented by: Ms.Neha Garg, Advocate

versus

THE STATE & ORS

..... Respondents

Represented by: Mr.Amit Ahlawat, APP
Mr.Rajesh Dwivedi, Advocate for
Mr.A.K.De, Advocate for R-2 and
R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER

% **08.09.2016**

1. Jethanand : the petitioner, is the complainant. Proceeding under Section 190 read with Section 200 of the Code of Criminal Procedure he alleged that respondents No.2 and 3, who are husband and wife, have committed offences punishable under Sections 380/406/420/506/34 IPC.

2. As per the complaint, the accused came to his house in the month of September, 2000 and told him that they were going to start a chit fund from October 15, 2000, which would end on May 07, 2002 requiring him to become a member of the chit fund for 20 months. They informed him that 19 members had been enrolled and only one more was needed. He became a member and deposited with them 18 instalments totalling ₹3,71,450/-. He made entries in his ledger for the payments made. At the time of the 19th

instalment he desired to be made the payment. The two accused agreed. He paid the 19th instalment and as told by the accused went to them after three or four days to collect ₹4,35,000/-. They avoided making payment. He along with his son went to the house of accused on May 16, 2005 and was told by respondent No.3 that her husband had just been released from jail and had developed good relations with the underworld and if he demanded money he would be liquidated. At that time respondent No.2 took out a revolver and threatened to kill him.

3. Soon thereafter the two accused absconded. On December 18, 2005 respondent No.2 came to his house to see his accounts stating that he wanted to settle the same. He showed him the original ledger and at that time he had to attend a telephone call. He went to the bedroom and when he returned he saw respondent No.2 missing as also his ledger.

4. In the pre-summoning proceedings the petitioner deposed on oath as per the complaint. One Lok Chand appeared as CW-3 to affirm the fact that the two accused had induced the petitioner to join the chit fund and pay ₹25,000/- per month over 20 months. He claimed that many a times in his presence the two accused offered and promised to repay money to the petitioner citing financial constraints.

5. Vide order dated March 04, 2013 learned Metropolitan Magistrate held that from the complaint and the testimony case was made out to proceed only against respondent No.2 and that too for an offence punishable under Section 420/506(i) IPC. Accordingly, summons were issued only to respondent No.2.

6. The petitioner preferred a Revision and vide order dated July 18, 2014 the learned ASJ-05, West District, Delhi opined that in addition to the

offences punishable under Section 420/506(i) IPC case was made out to issue summons to respondent No.2 for the offence punishable under Section 406 IPC. The learned Judge held that no case was made out to issue summons against respondent No.3.

7. From the facts noted hereinabove I wonder as to how an offence could be made out under Section 406 IPC, a fact accepted by learned counsel for the petitioner and therefore I take the argument no further.

8. However, I fail to understand as to how come an offence being committed by respondent No.2 for an offence punishable under Section 380 IPC has not been made out. From the facts noted hereinabove it is apparent that the petitioner has not only stated in the complaint but even deposed in his affidavit that on December 18, 2005 accused No.1 came to his house and as he went to answer the telephone call he committed theft i.e. removed his original ledger. I also fail to understand as to on what basis the two courts below have held that no case of cheating was made out against respondent No.3.

9. Accordingly, the petition is disposed of modifying the two impugned orders summoning accused No.1 for offences punishable under Section 380/506(i) IPC and accused No.1 and 2 for offences punishable under Section 420/34 IPC.

PRADEEP NANDRAJOG, J.

SEPTEMBER 08, 2016
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