

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.5755 OF 2018

ORDER:

This petition is filed, under Section 482 of Criminal Procedure Code (for short "Cr.P.C."), by the petitioners/A-3 & A-4 to quash the proceedings in Crime No.846 of 2017, pending on the file of Saroornagar Police Station, Rachakonda District, for investigation, registered for the offences punishable under Sections 406, 420 read with 34 of Indian Penal Code (for short "I.P.C."), Section 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short, "A.P.P.D.F.E Act") and Sections 4 & 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short, "P.C.&M.C.S.B Act").

2. Heard Sri P.Sriharsha Reddy, learned counsel for the petitioners, Sri K.Ramakoteswara Rao, learned counsel for the 1st respondent and learned Public Prosecutor for the State of Telangana representing the 2nd respondent-State. Perused the material on record.

3. The petitioners are Accused Nos.3 & 4 in the said crime and residing at different places in United States of America. The *de facto* complainant filed a complaint under Sections 406, 420 read with 34 of I.P.C., Section 5 of A.P.P.D.F.E Act and Sections 4 & 5 of P.C.&M.C.S.B Act alleging that the Accused Nos.1 & 2 have cheated them and other depositors to a tune of crores of rupees with an intention to extract money and thus, committed criminal breach of trust. In nutshell, the case of the *de facto* complainant is that he along with others are the victims of the machinations and

scheming brain of Accused Nos.1 & 2 along with Accused Nos.3 & 4 and the contention of the petitioners is that the petitioner No.1 is the son of Accused Nos.1 & 2 and the petitioner No.2 is the wife of petitioner No.1 and daughter-in-law of Accused Nos.1 & 2. The specific allegation made against the petitioners is that Accused No.1 used to spend lakhs of rupees, even for his grandson's function. At the same time, the Accused No.1 along with the petitioners have willfully cheated the *de facto* complainant and others by educating his children to make them acquire higher qualification and secure employment in United States of America long ago with the money he collected from various subscribers of the chit. The Accused Nos.1 & 2 also transferred the property in the name of the petitioner Nos.1 & 2, who in turn executed certain documents in favour of third parties.

4. Mamidi Manik Reddy, Accused No.1, collected the chit amount for the benefit of the subscribers of the chit, they are E.Mahipal Reddy, K.Jyothi Rani, K.Pushpalatha, E.Anasuya, K.Vikhyath Reddy, to a tune of Rs.25,00,000/-. The chit period was over by August, 2017. As far as the remaining chits are concerned, the *de facto* complainant and others have been regularly remitting the chit amount, being the subscribers, but the accused have closed the shop and are not available even to discuss about the repayment of the amount. Thus, the accused have committed default in payment of more than crores of rupees to various persons.

5. The accused gave three cheques to the *de facto* complainant drawn on Andhra Bank, Tarnaka Branch, bearing Nos.000080,

000061 & 000086, for Rs.2,00,000/-, Rs.2,00,000/- & Rs.1,00,000/- respectively. Again the accused gave three cheques drawn on the same bank, bearing Nos.000136, 000057 & 000058, for Rs.15,00,000/-, Rs.15,00,000/- & Rs.10,00,000/- respectively to the *de facto* complainant. On presentation of the said cheques for collection, the cheques were returned with an endorsement “insufficient funds”. Thus, the accused cheated the *de facto* complainant and others intentionally to have wrongful gain for themselves and to cause wrongful loss to the *de facto* complainant and several other depositors and committed criminal breach of trust.

6. The further contention of the *de facto* complainant is that the Accused No.1 settled all his properties in the name of his wife Renuka, his son Rajsheel Reddy, the petitioner No.1 herein, his daughter-in-law Chandana Kesi Reddy, the petitioner No.2 herein and his daughter Ragini and others, who are all part of his conspiracy. The main accused Manik Reddy’s children, who are also other accused, are now living in United States of America on their employment and working at BJ’s Wholesale as Senior SAP Basis Administrator at 37, Autumn Ridge Dr, Hopkinton MA01748, with their ill-gotten money. The accused has several means and performed his grandson’s birthday in “N Convention”, near Hi-Tech City, by spending Rs.50,00,000/-, which is inclusive of food at a cost of Rs.2,200/- per plate and also served liquor to the invitees in the function and, therefore, with the amount of the *de facto* complainant and others, who being the subscribers of the chit, the accused led an aristocratic life and caused serious loss to the *de facto* complainant and others. Hence, the *de facto* complainant

lodged the above complaint in Saroornagar Police Station, Rachakonda District.

7. On the strength of the above complaint, the Saroornagar Police Station, Rachakonda District, registered a case in Crime No.846 of 2017, for the offences punishable under Sections 406, 420 read with 34 of I.P.C., Section 5 of A.P.P.D.F.E Act and Sections 4 & 5 of P.C.&M.C.S.B Act.

8. The present criminal petition is filed by Accused Nos.3 & 4, who are the son and daughter-in-law of Accused No.1, to quash the proceedings in Crime No.846 of 2017, on the ground that they have nothing to do with the offences punishable under any of the Sections referred supra and they did not collect any amount from the *de facto* complainant and other chit subscribers. The petitioners have nothing to do with the business of the Accused Nos.1 & 2, who are the parents of the petitioner No.1. The *de facto* complainant has lodged the complaint only with a view to harass the petitioners by getting a crime registered by Saroornagar Police under various penal provisions of law, but the Saroornagar Police also registered the crime even without making any enquiry as to whether these petitioners are residing in India or not and such registration itself is an illegality committed by the Police. It is also further contended that none of the allegations made in the complaint do not disclose any of the offences and, hence, the petitioners request to quash the proceedings in Crime No.846 of 2017, pending on the file of the Saroornagar Police Station, Rachakonda District, registered for the offences punishable under

Sections 406, 420 read with 34 of I.P.C., Section 5 of A.P.P.D.F.E Act and Sections 4 & 5 of P.C.&M.C.S.B Act.

9. The respondent No.1 filed counter affidavit reiterating the allegations made in the complaint while asserting that father of the petitioner No.1, with the money collected from various subscribers including the Respondent No.1, converted the same into immovable property, gold ornaments, etc., and filed I.P.No.50 of 2017 and a detailed counter affidavit was also filed in the said I.P. about the fraudulent transfers to defraud the subscribers. The accused have defrauded various subscribers to a tune of Rs.10,02,79,500/- even as per the admissions made in I.P.No.50 of 2017, but with a view to defraud the subscribers including the Respondent No.1, the Accused No.1 transferred Rs.29,04,000/- from Account No.057811100000867, Andhra Bank, Tarnaka Branch, Hyderabad, on 20.03.2017 to the joint NRI Account No.006901078620, Habsiguda Branch, Hyderabad, of the accused Nos.3 & 4, petitioners herein. The petitioners herein transferred the above mentioned amount on 21.03.2017 in favour of L.N. Industries from whom the immovable properties bearing Plot Nos.101 & 109, admeasuring 1262.18 square yards and 351.03 square yards respectively, total admeasuring 1613.21 square yards, in Survey Nos.593, 590/A, 576/AA, situated at Patighanpur, Patancheru, was purchased for a sale consideration of Rs.29,04,000/-. The said amount was duly emanated from the account of Accused No.1 and on transfer of the said amount into the account of Accused Nos.3 & 4/petitioners herein, the petitioners herein paid the sale consideration to the land owners of M/s.L.N. Industries. Thus, the property acquired in the name of

the petitioners herein is only a fraudulent transaction. It is also further contended that the above mentioned property was purchased in the name of Accused No.4/Petitioner No.2 herein on 19.11.2016. She in turn again divided the said extent of 1613.21 square yards into three plots i.e., 965 square yards, 297.18 square yards and 351.03 square yards respectively and sold the same through three different sale deeds on 27.11.2017 in favour of Sai Surya Developers, represented by Satish Chandra Gupta by way of Agreement of Sale-cum-GPA with possession. Thus, as on 27.11.2017, when the three sale deeds were executed by Petitioner No.2 herein, the I.P.No.50 of 2017 was already filed. In fact, the present FIR was also registered on 28.11.2017. Thus, the petitioners herein also played fraud by getting the amount transferred from the account of Accused No.1 to their account and acquired huge property with the amount the Accused No.1 collected from various subscribers and, therefore, the petitioners herein are also liable for punishment for various offences referred above.

10. During hearing, learned counsel for the petitioners contended that the petitioners have nothing to do with the transactions alleged and except purchase of property by Petitioner No.2, no role has been played by these petitioners and the petitioners herein are admittedly residing in United States of America, but purchased the property with the amount transferred by Accused No.1 to the account of Petitioner No.2 in her name and again sold the same under three different Agreement of Sale-cum-GPA to a third party. Thus, the petitioners 1 & 2 did commit no offence, except the petitioner No.2 purchasing the property and

sale of the same and none of the allegations made constitutes any offence punishable under Sections 406, 420 read with 34 of I.P.C., Section 5 of A.P.P.D.F.E Act and Sections 4 & 5 of P.C.&M.C.S.B Act.

11. Learned counsel for the petitioners also placed reliance on the judgments of the Apex Court reported in **Indian Oil Corpn. v. NEPC India Ltd. and others¹** and **State of West Bengal and Others v. Swapan Kumar Guha and Others and State of West Bengal and Others v. Sanchaita Investments and others²**.

Based on the law laid down by the Apex Court in the two judgments, the learned counsel for the petitioners, Sri P.Sriharsha Reddy, requested this Court to quash the proceedings against the petitioners in Crime No.846 of 2017.

12. The Respondent No.1 filed a detailed counter affidavit along with material papers to satisfy the Court about the illegal transaction of transfer of amount from the account of Accused No.1 to the account of Accused No.4/Petitioner No.2 herein and purchase of property and, thus, petitioners herein also played fraud by getting the amount transferred from the account of Accused No.1 to their account and acquired huge property with the amount of the Accused No.1 collected from various subscribers and, thus, committed a serious offence and prayed to dismiss the criminal petition.

13. Considering rival contentions and material, the point that arise for consideration is:

¹ (2006) 6 Supreme Court Cases 736

² (1982) 1 Supreme Court Cases 561

“Whether the allegations made in written report of *de facto* complainant lodged with 1st respondent constitutes any of the offences punishable under Sections 406, 420 read with 34 of Indian Penal Code, Section 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 and Sections 4 & 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978, and, *prima facie*, if not, whether the proceedings in Crime No.846 of 2017, pending on the file of Saroornagar Police Station, Rachakonda District, are liable to be quashed?”

14. The petitioners 1 & 2 are admittedly residing in United States of America on their employment and the relationship between the Accused Nos.1 & 2 and the petitioners herein is also not in dispute. The only role they allegedly played as per the complaint is that the Accused No.1 transferred Rs.29,04,000/- from his account bearing Account No.057811100000867, Andhra Bank, Tarnaka Branch, Hyderabad, on 20.03.2017 to the joint NRI Account No.006901078620, Habsiguda Branch, Hyderabad, of the Accused Nos.3 & 4, petitioners herein and that the petitioners herein transferred the above mentioned amount on 21.03.2017 in favour of M/s.L.N. Industries from whom the immovable properties bearing Plot Nos.101 & 109, admeasuring 1262.18 square yards and 351.03 square yards respectively, total admeasuring 1613.21 square yards, in Survey Nos.593, 590/A, 576/AA, situated at Patighanpur, Patancheru, was purchased for a sale consideration of Rs.29,04,000/-. The said amount was duly emanated from the account of Accused No.1 and on transfer of the said amount into the account of Accused Nos.3 & 4/petitioners herein, the petitioners herein paid the sale consideration to the land owners of M/s.L.N. Industries. Thus, the property acquired in the name of

the petitioners herein is only a fraudulent transaction. It is also further contended that the above mentioned property was purchased in the name of Accused No.4/Petitioner No.2 herein on 19.11.2016. She in turn again divided the said extent of 1613.21 square yards into three plots i.e., 965 square yards, 297.18 square yards and 351.03 square yards respectively and sold the same through three different sale deeds on 27.11.2017 in favour of Sai Surya Developers, represented by Satish Chandra Gupta by way of Agreement of Sale-cum-GPA with possession. Thus, even if these allegations are accepted on its face value as true, would it constitute any of the offences punishable under Sections 406, 420 read with 34 of I.P.C. or under Section 5 of A.P.P.D.F.E Act or under Sections 4 & 5 of P.C.&M.C.S.B Act?

15. The first offence allegedly committed by the petitioners is punishable under Section 406 of I.P.C. To constitute an offence punishable under Section 406 of I.P.C., i.e., criminal breach of trust, the petitioners have to satisfy that there was an entrustment and that the amount was appropriated by the accused themselves for their own or appropriated the amount for any of the purpose other than as directed by the person, who entrusted the amount.

16. Dishonest misappropriation of property is defined under Section 403 of I.P.C., which reads as follows:

“Dishonest misappropriation of property - Whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

17. Section 405 of I.P.C. defines the criminal breach of trust,

which reads as follows:

“Criminal breach of trust — Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

18. In **Indian Oil Corporation’s Case (Supra 1)**, the Apex Court discussed that what amounts to an offence of breach of trust and it was further observed as under:

- a) a person should have been entrusted with property; or entrusted with dominion over property;
- b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;
- c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.”

19. Thus, to constitute an offence punishable under Section 406 of I.P.C., it must be shown *prima facie* that the beneficial interest in the property, in respect of which the offence is alleged to have been committed, was vested in some person other than the accused, and that the accused held that property on behalf of that person. A relationship is created between the transferor and transferee, whereunder the transferor remains as owner of the property and the transferee has legal custody of the property for the benefit of the transferor himself or transferee has only the custody of the property for the benefit of the transferor himself or someone else. At best, the transferee obtains in property entrusted

to him only special interest limited to claim for his charges in respect of its safe retention, and under no circumstances does he acquire a right to dispose of that property in contravention of the condition of the entrustment *vide* **Jaswantrao Manilal Akhaney v. State of Bombay**³. The word 'entrustment' is not defined, but, it is used in Section 405 IPC. The word 'entrusted' in the section is very important. Unless there is an entrustment, there can be no offence under the section as held in **Ramaswami Nadar v. State of Madras**⁴. Therefore, the basic requirements to bring home the accusation under Section 406 IPC are "**entrustment**" and whether "**the accused acted with dishonest intention or misappropriated it**", converted it to his own use to detriment of the person, who entrusted it, as held in **Sadhupati Nageswara Rao v. State of Andhra Pradesh**⁵. Thus, in view of the law declared by the Apex Court, to constitute an offence under Section 406 IPC i.e., criminal breach of trust, the prime requirement is entrustment of property.

20. As seen from the allegations made in the complaint, nothing was entrusted to Accused Nos.3 & 4/petitioners herein by the *de facto* complainant, but the entrustment was allegedly made to Accused No.1, who is the father of the petitioner No.1 and at best, the transfer of amount to the account of the petitioner No.2 by Accused No.1 and purchase of the property by the petitioners do not constitute an offence punishable under Section 406 of I.P.C., as it would not constitute an offence as defined under Section 405 of I.P.C. Thus, in the absence of any entrustment of property and

³ AIR 1956 SC 575

⁴ AIR 1958 SC 56

⁵ AIR 2012 SC 3242

its appropriation for their benefit or contrary to the direction given by the *de facto* complainant, the petitioners cannot be proceeded for the offence punishable under Section 406 of I.P.C.

21. The other offence allegedly committed by the petitioners is punishable under Section 420 IPC. Section 420 IPC deals with punishment of cheating and dishonestly inducing delivery of property. To constitute an offence punishable under Section 420 IPC, there must be a cheating and there must be a dishonest inducement of a person so deceived to deliver any property or any valuable security.

22. The word “cheating” is defined under Section 415 of Cr.P.C., which reads as follows:

“Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”

23. The offence of cheating is established when the accused thereby induced that person to deliver any property or to do or to omit to do something which he would otherwise not have done or omitted, as held by the Apex Court in **Mahadeo v. State of Bengal**⁶.

24. Thus, the main ingredients to constitute an offence punishable under Section 420 IPC are that there must be cheating coupled with dishonest intention to part with any property, etc. To

⁶ AIR 1954 SC 724

constitute an offence of cheating and dishonestly inducing delivery of property, the prosecution has to firstly prove that there is dishonest intention from the very beginning, which is a *sine qua non* to hold that the accused is guilty of the commission of said offence, as held by the Apex Court in **Joseph Salvaraj Vs. State of Gujrat**⁷. Even if the allegations made in the complaint are accepted to be true and correct, the petitioners cannot be said to have committed the offence of cheating. Since the petitioners were not at all in picture at the time when the complaint alleged to have spent money in improving any property, neither any guilty intention can be attributed to them nor can there possibly be any intention on their part to deceive complainant, as held by the Apex Court in **Mitra v. State of Madhya Pradesh**⁸. The offence of cheating is established when the accused thereby induced that person to deliver any property or to do or to omit to do something which he would otherwise not have done or omitted, as held by the Apex Court in **Mahadeo's Case (6 supra)**. Thus, the main ingredients to constitute an offence punishable under Section 420 IPC are that there must be cheating coupled with dishonest intention to part with any property.

25. In **V.Y.Jose and another v. State of Gujarat and another**⁹, the Apex Court highlighted the ingredients to constitute an offence punishable under Section 420 IPC at paragraph 14, which read thus:

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

⁷ AIR 2011 SC 2258

⁸ AIR 2003 SC 1069

⁹ (2009) 3 Supreme Court Cases 78

- i) deception of a person either by making a false or misleading representation or by other action or omission;
- ii) fraudulently or dishonestly inducing any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.”

26. In the present case, the petitioners, who are Accused Nos.3 & 4, are residents of United States of America and they did not commit any cheating or dishonestly induced the *de facto* complainant to deliver any property or valuable security to any person. In the absence of any dishonest inducement by these petitioners, the allegations made in the complaint against these petitioners do not constitute an offence punishable under Section 420 IPC, even if the allegations made in the complaint are accepted on its face value as true and correct.

27. In **Nagawwa v. Veeranna Shivalingappa Kojalgi**¹⁰, the Apex Court held that the appellant therein has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation and hence, it would not attract offence punishable under Section 420 IPC. In **ALPIC Finance Ltd v. P.Sadasivan and another**¹¹, while dealing with an offence punishable under Section 420 IPC, the Apex Court reiterated the

¹⁰ (1976) 3 SCC 736

¹¹ (2001) 3 Supreme Court Cases 513

ingredients to constitute an offence punishable under Section 420 IPC at paragraph 10, which read as follows:

“The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.”

28. In view of the above, to deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of fraud or deceit.

29. In **Thermax Limited and others v. K.M.Johny and others**¹², the Apex Court laid down certain principles to constitute the offences punishable under Sections 406 and 420 read with 34 IPC, which are extracted hereunder for better appreciation:

“34. The principles enunciated from the above-quoted decisions clearly show that for proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.

42. We have already noted that the offence alleged in the criminal complaint filed by Respondent No. 1 is under Sections 405 and 420 IPC where under no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than Appellant No. 1-Company can be prosecuted under the alleged complaint.

49. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the Appellants. For these reasons, the order passed by the Judicial Magistrate First Class, Pimpri in CC No. 12 of 2002 on 20.08.2007 and the judgment of the High Court dated 11.01.2008 in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent No. 1 herein is quashed.”

30. As discussed above, in the absence of any deceit and dishonest inducement of any person to part with any property or valuable security, the petitioners herein cannot be driven to undergo trauma of trial in a criminal prosecution, since

¹² (2011) 13 Supreme Court Cases 412

undergoing trial in criminal case will have serious consequence on life and liberty.

31. Therefore, the allegations made against the petitioners/Accused Nos.3 & 4 in the report lodged with the police in Crime No.846 of 2017 *prima facie* do not constitute the offences punishable under Sections 406 & 420 IPC.

32. The other offence allegedly committed by the petitioners is punishable under Section 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999. Section 5 of A.P.P.D.F.E. Act reads as follows:

“Where any financial establishment defaults in the return of the deposit either in cash or in kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the promoter, Manager or Member of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakhs.”

33. The word “financial establishment” is defined under Section 2(c) of A.P.P.D.F.E. Act, which reads as follows:

““Financial Establishments” means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949).”

34. In the present case, the petitioners are not running any financial establishment, even if the allegations made in the complaint are accepted on its face value as true and correct.

Accused No.1 is running a chit business, which is governed by Chit Funds Act, 1982, but they did never collect any deposit from any person including these petitioners. Apart from that the question of these petitioners collecting any deposit or acquiring any property in their name with the amount collected by the parents of the Petitioner No.1, who are Accused Nos.1 & 2, does not arise. To treat any amount kept with a person or an institute, there must be relationship of depositor and depositor between the parties agreeing to pay the same on agreed terms between the parties. In the present case, the *de facto* complainant allegedly subscribed a chit and paid monthly subscriptions of the chit along with other subscribers, but the Accused No.1 did not repay the chit amount after the closure of the chit. Therefore, such transactions are governed by the Chit Funds Act, 1982, and not by the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999. Therefore, the petitioners/Accused Nos.3 & 4, who are the residents of United States of America, did not receive any amount as deposited and there was no relationship of depositor and depositor between these petitioners and the *de facto* complainant. Consequently, these petitioners cannot be saddled with any criminal liability for the offence punishable under Section 5 of A.P.P.D.F.E. Act, as the allegations in the report lodged with the police in Crime No.846 of 2017 do not constitute an offence *prima facie* punishable under Section 5 of A.P.P.D.F.E. Act.

35. The other offences allegedly committed by the petitioners is punishable under Sections 4 & 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. To constitute the

offences punishable under Sections 4 & 5 of P.C.&M.C.S.B. Act, the transaction of accepting money deposits from public, investing them in high-risk investments earning huge unaccounted profits and paying to the depositors interest at a rate much higher than the agreed rate in a clandestine manner does not fall within the definition of “money circulation scheme”.

36. The facts of **State of West Bengal’s Case (2 supra)** are that Sanchaita Investments is a registered partnership firm consisting of three partners with a share capital of Rs.7,000/-. The firm started its business in the year 1975 as financiers and investors and in its business, it had been accepting loans or deposits from the general public, for different periods repayable with interest @ 12% per annum. The Commercial Tax Officer filed an FIR against the firm and its partners alleging that the firm has been offering 48% and later 36% interest, which showed that ‘money circulation scheme’ was being promoted and conducted for the making of quick and easy money, that prizes or gifts in cash were also being awarded to agents, promoters and members of the firm, and that the partners of the firm thus had been carrying on business in violation of Section 3 of the P.C.&M.C.S.B. Act. It was also alleged that the excess amount of interest was being accounted for and resulted in accumulation of black money, the firm used to invest the monies received from the depositors in high-risk investments earning huge amount of unaccounted profits, the investments made by the firm and the earnings from the investments also resulted in generation of black money, and because of the allurements of high rate of interest offered to the depositors, a major part of which was given in unaccounted black money, the firm with

a meager share capital received deposits over crores of rupees within a very short span of time, but the Apex Court held as follows:

“(1) The definition of the expression ‘money circulation scheme’ contained in Section 2(c) of the Act does not comprehend within its scope any and every activity “for the making of quick or easy money”. Two conditions must be satisfied before a person can be held guilty of an offence under Section 4 read with Sections 3 and 2(c) of the Act. In the first place, it must be proved that he is promoting or conducting a scheme for the making of quick or easy money and secondly, the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrolment of members into that scheme. In other words, there has to be a community of interest in the happening of such event or contingency.

A ‘scheme’ is a carefully arranged and systematic programme of action. The systematic programme has to be a consensual arrangement between two or more persons under which, the subscriber agrees to advance or lend money on promise of being paid more money on the happening of any event or contingency relative or applicable to the enrolment of members into the programme. Reciprocally, the person who promotes or conducts the programme promises, on receipt of an advance or loan, to pay more money on the happening of such event or contingency. Therefore, a transaction under which one party deposits with the other or lends to that other a sum of money on promise of being paid interest at a rate higher than the agreed rate of interest cannot, without more, be a ‘money circulation scheme’ within the meaning of Section 2(c) of the Act, howsoever high the promised rate of interest may be in comparison with the agreed rate. He who conducts or promotes a money-spinning project may have manifold resources from which to pay fanciful interest by luring the unwary customer. But, unless the project envisages a mutual arrangement under which, the happening or non-happening of an event or contingency relative or applicable to the enrolment of members into that arrangement is of the essence, there can be no “money circulation scheme” within the meaning of Section 2(c) of the Act.

(2) The police do not have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses

the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in *Khwaja Nazir Ahmad* case will apply. The court has then no power to stop the investigation. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received.”

37. The Constitution Bench of the Apex Court, in paragraphs 64 & 65, discussed about the scope and concluded that on consideration of relevant material, the Court satisfied that if an offence is disclosed, the Court will normally not interfere with the investigation into the offences and will generally allow the investigation into the offences to be completed for a collected material proving the offences; if, however, on consideration of the relevant material, the Court satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same, as any investigation, in the absence of any offence being disclosed will result in unnecessary harassment to an individual, whose liberty and property may be put to jeopardy for nothing.

38. Thus, in view of the law declared by the Apex Court, when the Court finds that there was no material to constitute an offence against these petitioners/Accused Nos.3 & 4 under Sections 4 & 5 of P.C.&M.C.S.B. Act, the Court can exercise its power under Section 482 of Cr.P.C. and quash the proceedings.

39. Coming to the facts of the present case, the petitioners/Accused Nos.3 & 4 never did any business i.e., money circulation schemes, as defined under Section 2(c) of P.C.&M.C.S.B. Act, except accepting transfer of an amount of

Rs.29,04,000/- from the account of Accused No.1 to the joint NRI account of petitioners herein/Accused Nos.3 & 4 and purchased the property. Such transaction do not constitute the offences punishable under Sections 4 & 5 of P.C.&M.C.S.B. Act.

40. Learned counsel for the 1st respondent would mainly contend that the amount collected by Accused No.1 was himself admitted by committing default in payment of different amounts to various creditors and the same is quantified at Rs.10,02,79,500/- and the amount due to the 1st respondent is about Rs.27,10,000/-, who is creditor No.1 in the sundry creditors list. Even assuming that the Accused No.1 had committed such default to the sundry creditors shown in the schedule annexed to the insolvency petition, the Accused No.1 will be responsible for such repayment, but not these petitioners/Accused Nos.3 & 4, who are residing in United States of America on their employment. The learned counsel for the 1st respondent also produced the Bank Account Statements of the Accused No.1 and the petitioners herein. Even if those transactions are accepted to be true on its face value, such transfer of amount by Accused No.1 to the joint NRI Account of the petitioners/Accused Nos.3 & 4, purchase of the property by the petitioners in the name of the petitioner No.2/Accused No.4 and again sale of the same through three different sale deeds in favour of Sai Surya Developers, represented by Satish Chandra Gupta by way of agreement of sale-cum-GPA would not constitute any of the offences referred supra.

41. Section 482 of Cr.P.C. confer limited jurisdiction on this Court to interfere with the investigation pending with the Police

and such power can be exercised only to implement the orders passed on the Court, to prevent abuse of process of law or to meet the ends of justice.

42. Keeping in view the scope of powers of the Court in **State of Haryana v. Bhajan Lal**¹³, the Apex Court laid down certain guidelines, which reads as follows:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

¹³ 1992 Supp. (1) SCC 335

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

43. As per the guideline No.3, where the allegations made in the FIR or complaint on its face value and the evidence collected in support of the same, if accepted, would not constitute a cognizable offence, the Court can bound to exercise its power to quash the proceedings at the threshold itself.

44. In ***R.P. Kapur v. State of Punjab***¹⁴, this Court laid down the following principles:

“(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

45. In ***(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others***¹⁵, the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous,

¹⁴ AIR 1960 SC 866

¹⁵ AIR 1990 SC 494

vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. in that event there would be no justification for interference by the High Court.

46. In ***State of Karnataka v. L. Muniswamy and Ors.***¹⁶, the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

47. If the law laid down by the Apex Court is applied to the present facts of the case and by applying the principle laid down in **Indian Oil Corporation's Case (1 supra)**, certainly the Court is

¹⁶ AIR 1977 SC 1489

under obligation to exercise its powers under Section 482 of Cr.P.C. to quash the proceedings to avoid unlawful harassment of innocent persons. The Apex Court in paragraph 12, while referring to the judgments reported in **Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre** [(1988) 1 SCC 692], **State of Haryana v. Bhajan Lal** [1992 Supp (1) SCC 335], **Rupan Deol Bajaj v. Kanwar Pal Singh Gill** [(1995) 6 SCC 194], **Central Bureau of Investigation v. Duncans Agro Industries Ltd.** [(1996) 5 SCC 591], **State of Bihar v. Rajendra Agrawalla** [(1996) 8 SCC 164], **Rajesh Bajaj v. State NCT of Delhi** [(1999) 3 SCC 259], and **Medchl Chemicals & Pharma (P) Ltd. V. Biological E. Ltd.** [(2000) 3 SCC 269], held as follows:

“(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

48. Similarly, cognizance is a matter of serious concern. In **Pepsi Foods Ltd. v. Judicial Magistrate**¹⁷, the Apex Court held as follows:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

49. If these principles are applied to the present facts of the case, as discussed above, the allegations made in the written report lodged with the police, which is the basis to set the criminal law into motion, do not constitute any of the offences *prima facie* punishable under Sections 406, 420 read with 34 of I.P.C., Section

¹⁷ (1998) 5 SCC 749

5 of A.P.P.D.F.E Act and Sections 4 & 5 of P.C.&M.C.S.B Act, even if the allegations in the written report are accepted to be true.

50. In view of my forgoing discussion, I find that none of the allegations made in the complaint constitute the offences punishable under Sections 406, 420 read with 34 of I.P.C., Section 5 of A.P.P.D.F.E Act and Sections 4 & 5 of P.C.&M.C.S.B Act *prima facie*. Consequently, the proceedings against the petitioners are liable to be quashed exercising power under Section 482 of Cr.P.C.

51. In the result, the Criminal Petition is allowed quashing the proceedings in Crime No.846 of 2017, on the file of Saroornagar Police Station, Rachakonda District, registered for the offences punishable under Sections 406, 420 read with 34 of I.P.C., Section 5 of A.P.P.D.F.E Act and Sections 4 & 5 of P.C.&M.C.S.B Act against the petitioners herein/A-3 & A-4.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 02-08-2018

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NO.5755 OF 2018

Date: 2nd August, 2018

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