

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8490 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') to quash the proceedings in Calendar Case No.107 of 2018, pending on the file of the learned Chief Metropolitan Magistrate at Nampally, Hyderabad registered for the offences punishable under Section 420 and 406 read with 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short 'Act 1978').

2. The petitioner herein is accused No.2 in the aforesaid Calendar Case, and respondent No.2 is the *de facto* complainant. Respondent No.2 herein lodged the report with police alleging that:

“ i) He is working for a Company styled as 'M/s. Accenture' as an I.T. Admn, where he met with one Ch. Usha Rani, who is arraigned as accused No.1 in the aforesaid Calendar Case, and she lured him of getting huge returns with small investments by joining in e-Commerce business. He believed her, and when she asked him to invest Rs.2.5 lakhs, to which he expressed his inability, but she suggested to obtain a loan from the Bank. On one-day, the said girl, Ch. Usha Rani, called one person, by name Syed Muffasir, for loan process from ICICI Bank for an amount of Rs.2.5 lakhs, and on 27.06.2017, he got sanctioned bank loan for an amount of Rs.2,39,310/-, got credited in the account of the de facto complainant. On the very next day, the said girl - Usha Rani, instructed to transfer the whole amount to her bank account

No.10211610009924 with HDFC Bank. Accordingly, on 28.06.2017, he transferred an amount of Rs.1,89,000/-.

ii) On one day, she got arranged a meeting with the company members at Gachibowli in a Hotel, and about 40-50 members attended the meeting, and in the meeting, he came to know that the said girl - Usha Rani took his loan amount on the name of e-Commerce business, but actually it was Q-net business, which is a Multi-level Marketing by illegal way for their wrongful gain and it was a chain system/binary business.

iii) He further contended that the girl neither repaid the amount, nor paid any profits in the business and, therefore, he requested the police to take necessary action against accused No.1 and this petitioner, who is responsible for purchase of goods i.e., Imported Gifts/Goods etc., with the money she collected from the de facto complainant and transferred to the account of this petitioner.”

3. On the strength of the report, the police registered a Crime No.209 of 2017 of Central Crime Station, Hyderabad for the offences punishable under Sections 420 and 406 IPC and Sections 4, 5, and 6 of the Act 1978, and issued FIR.

4. On the strength of the FIR issued by CCS Chair Duty, D.D. Hyderabad, investigation taken up by the Sub-Inspector of Police, examined the *de facto* complainant, Sri K. Nagaraj, as LW.2, besides examining Sri V.S.N. Shashank Varma, Sri S.R. Vishnuvardhan Reddy, Sri Syed Muffasir, Sri P.L. Srinivas, Sri N. Rajesh and Sri F. Harriet Jasantha as LWs.2 to 7, and recorded their statements under Section 161 (3) of the Code. After collecting entire evidence, the Sub-Inspector of Police concluded that there is *prima facie* material to

proceed against this petitioner and other accused for the aforesaid offences and filed charge sheet before the XII Additional Chief Metropolitan Magistrate, Hyderabad.

5. At this stage, the petitioner - accused No.2 approached this Court by filing present Criminal Petition under Section 482 of the Code to quash the proceedings against him in Calendar Case No.107 of 2018, on the ground that the allegations made in the charge sheet do not constitute any offence, and in the absence of any specific allegation or whisper about the role played by him, the proceedings against him are liable to be quashed.

i) It is also contended that none of the allegations made in the charge sheet do not attract the offences punishable under Sections 4, 5 and 6 of the Act, 1978, and so also offences punishable under Sections 420 and 406 IPC since there is no entrustment of any amount to this petitioner to misappropriate the same, and to attract the offence punishable under Section 406 IPC.

ii) Similarly, the petitioner never cheated the *de facto* complainant to part with any amount or the property with a dishonest inducement and, therefore, none of the allegations made against this petitioner would constitute the aforesaid offences.

6. During hearing, learned counsel for the petitioner while reiterating the contentions, placed reliance on an unreported judgment

in **Naresh Balasubramaniam v. State of Karnataka**¹, rendered by a learned Single Judge of the Karnataka High Court, to contend that the role played by this petitioner would not constitute an offence punishable under Sections 4, 5 and 6 of the Act, 1978, and drawn the attention of this Court to page Nos.20 to 23 of the said judgment and on the basis of the findings of the learned Single Judge, he requested the Court to quash the proceedings against him.

7. Whereas, learned Public Prosecutor for the State of Telangana appearing on behalf of respondent No.1, while refuting the contentions urged by the learned counsel for the petitioner, argued that the allegations made against accused Nos.1 and 2, who conspired together, committed an offence punishable under Section 420 IPC, and that transfer of amount by accused No.1 to the account of petitioner and purchase of imported gifts/goods etc., for sale would attract the offences punishable under Sections 4, 5 and 6 of the Act, 1978 and, therefore the proceedings against the petitioner herein cannot be quashed at this stage.

8. Perused the material available on record.

9. The points that arise for consideration are as follows:

- (i) Whether there is any entrustment of amount with the petitioner - accused No.2, and misappropriated the same

¹. Judgment, dated 15.02.2017 in Crl.P. No.9308 of 2016

by him to constitute an offence punishable under Section 406 IPC?

- (ii) Whether the petitioner made any representation with dishonest intention to the *de facto* complainant to part with any amount, and if so, whether he committed any offence punishable under Section 420 IPC?
- (iii) Whether transfer of amount by accused No.1 to the account of the petitioner herein, purchase of imported gifts/goods etc., for sale under Prize Chit Money Circulation Scheme, constitute any offence punishable under Sections 4, 5 and 6 of the Act, 1978, if not, whether the proceedings against the petitioner are liable to be quashed in Calendar Case No.107 of 2018 for the offences punishable under Sections 420 and 406 read with 34 of IPC and Sections 4, 5 and 6 of the Act 1978

Point Nos.(i) & (ii):

10. According to the material on record including the complaint lodged by respondent No.2 with police, respondent No.2 had no acquaintance with the petitioner - accused No.2, and he never lured respondent No.2 to invest any amount in the business. But, the only allegation is that the amount got transferred by accused No.1 - Ch. Usha Rani, to the account of the petitioner herein, and in turn he purchased imported gifts/goods for business purpose. Therefore, the question of entrustment of any amount by respondent No.2 to the

petitioner herein does not arise, and there was no direct contact between the petitioner and respondent No.2 - *de facto* complainant to entrust any amount. Similarly, he never cheated respondent No.2 with a dishonest intention and induced him to part with any amount. Therefore, the allegations made in the complaint do not constitute any offence punishable under Sections 420 and 406 IPC, even if the allegations made in the charge sheet are accepted as true on its face value. Therefore, the allegations in the charge sheet do not constitute the offences punishable under Sections 420 and 406 IPC against the petitioner - accused No.2. Hence, the proceedings in Calendar Case No.107 of 2018 against the petitioner - accused No.2 in so far as the offences punishable under Sections 406 and 420 IPC are hereby quashed.

Point No.(iii):

11. The other offences allegedly committed by the petitioner are punishable under Sections 4, 5 and 6 of the Act, 1978. The petitioner denied commission of any offences. As per the material collected by the Investigating Agency during investigation accused No.1 along with the petitioner herein, who is an Agent, allegedly carrying on business, indulged in Money Circulation Scheme by selling some imported gifts/goods. Even the investigation so far done including the statements of witnesses recorded by the Investigating Agency, *prima facie*, reveals that the petitioner herein is one of the

agents in Q-net business situated at Bangalore. The investigation further reveals that accused No.1 lured respondent No.2 herein to invest some amount, got arranged the same and transferred to her account and in turn she transferred the amount to the account of petitioner herein for purchase of imported gifts/goods etc., for business purpose.

12. In view of the allegations, it is the duty of this Court to find out whether sales being undertaken by the petitioner herein along with accused No.1 in the name of Q.net falls within the Money Circulation Scheme. Money Circulation is defined under Section 2 (c) of the Act, 1978 in the following words:

“ 'Money circulation scheme' means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any A event or contingency relative or applicable to the enrollment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions.”

The prize Chit is defined under Section 2 (e) of the Act, 1978 in the following words:

“ 'prize chit' includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in instalments by way of contributions or subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilises the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes, namely:-

(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or gifts in cash or in kind, whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement;

(ii) refunding to the subscribers or such of them as have not won any prize or gift, the whole or part of the subscriptions, contributions or other monies collected, with or without any bonus, premium, interest or other advantage by whatever name called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein, but does not include a conventional chit;

Manufacturer, then wholesaler, and finally retailer, this is what normally is seen in any traditional business model. Multi-level Marketing is somewhat different.

Multi-Level-Marketing consists of the following:

“(1) In MLM (Multi-Level-Marketing), the sale is networked from individual to individual. This system already existed in India and many other companies are doing the same business of individual networking system. E.g. Amway, Oriflame, Modicare etc.,

(2) There is no place for intermediates in MLM business model. A consumer purchases the goods directly from the distributors out of his own will. Furthermore, the consumer may become a distributor or remain as a consumer himself.

(3) Also, the distributors get a commission for the sale he is undertaking. Such independent distributor has the power not only to sell the products of the company but also appoint other distributors under him. Finally, all of them can sell the company products and earn the value points or commission through the sale.

(4) At times in MLM business model, the products are also sold under direct sale marketing including, door to door sales and by exhibiting the products and also by institutional sale.

(5) The principle underlying this system is instead of having the wholesale dealer or retailer, the network marketing system enables the consumer himself to be the distributor to venture upon the marketing of the products.

(6) Finally, the profit is shared reasonably by the company to the distributors on the sale of every product and the distributors also become consumers of the products.”

Thus, the Multi-Level-Marketing system is distinct from traditional marketing system. In traditional marketing system, there is manufacturer, then wholesaler and finally retailer, later to the customer. In Multi-Level-Marketing system, the Distributor himself is the customer sometimes and distribution of profit and incentives is varying from traditional business.

13. In the present facts of the case, as narrated above, the procedure adopted by the petitioner for sale of products through Q.net business would fall within the Money Circulation Scheme, which is defined under the Act, 1978 *prima facie*. In **State of West Bengal v. Swapan Kumar Guha**², an identical question came up for consideration which directly relates to the Money Circulation Scheme. The Apex Court highlighted the ingredients of Money Circulation Scheme and the power of police to investigate into such offences. In the facts of the said judgment, Sanchaita Investments is a registered partnership firm consisting of three partners and with share capital of Rs.7000. The firm started its business in 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 at the rate of 12 per cent per annum. The commercial Tax Officer filed an F.I.R. against the firm and its partners alleging that the firm had been offering 48 per cent and later 36 per cent interest which showed that 'money circulation scheme' was being promoted and conducted

². (1982) 1 SCC 561

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 Act, 1978. It was alleged that the excess amount of interest was being paid in cash in a clandestine manner to the depositors, was not 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 meagre share capital received deposits over crores of rupees within a very short span of time. Consequently, the office of the firm and also the houses of the partners were searched and various documents and papers as also a large amount of cash were seized. The firm and its two partners then filed a writ petition in the High Court challenging the validity of the F.I.R. and the proceedings arising out of the same including the validity of the searches and seizures. The Single Judge of the High Court held in the circumstances of the case that the Act did not apply to the firm and that the searches and seizures were also illegal and hence quashed the proceedings and directed return of all documents and refund of cash monies seized to the petitioners therein. Further, the Apex Court held as follows:

“There is another aspect of the matter which needs to be underscored, with a view to avoiding fruitless litigation in future. Besides the prize chits, what the Act aims at banning is money circulation schemes. It is manifestly necessary and indeed, to say so is to state the obvious, that the activity charged as falling within the mischief of the Act must be shown to be a part of a scheme for making quick or easy money, dependent upon the happening or non-happening of any event or contingency relative or applicable to the enrolment of members into that scheme. A 'scheme,' according to the dictionary meaning of that word, is 'a carefully arranged and systematic program of action', a 'systematic plan for attaining some object', 'a project', 'a system of correlated things'. (see Webster's New World Dictionary, and Shorter Oxford English Dictionary, Vol. II), The Systematic programme of action 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. What that section requires is that such reciprocal promises, express or implied, must depend for their performance on the happening of an event or contingency relative or applicable to the enrolment of members into the scheme. In other words, there has to be a community of interest in the happening of such event or contingency. That explains Why Section 3 makes it an offence to "participate" in the scheme or to remit any money "in pursuance of such scheme". 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.”

14. The learned counsel for the petitioner drew the attention of this Court to paragraph No.66 of the Judgment in **Swapan Kumar Guha²**, wherein the Apex Court held as follows:

“Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the Court has mainly to take into consideration the complaint or the F.I.R. and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the Court has to

come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.”

Thus, the power conferred with the Court is to interfere with the investigation if the Court concludes that the allegations made in the complaint did not disclose requirements to constitute the offence.

15. In the case on hand, the material produced before the Court, as on today, would disclose the commission of offences *prima facie* punishable under Section 4 of the Act, 1978. In such case, the Court cannot stifle the legitimate prosecution by exercising power under Section 482 of the Code. In the same judgment, the Apex Court discussed about nature of business at length and finally concluded that crux of the question is, whether these allegations disclose an offence under Section 4 of the Act, 1978, viz., violation of Section 3 of the Act, 1978, even if all these allegations are deemed to be correct.

16. As per Section 3 of the Act 1978 no person shall promote, or conduct any prize chit or money circulation scheme, or enrol as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme.

Section 7 of the Act, 1978 provides:

“7. Power to enter, search and seize:-

(1) It shall be lawful for any police officer not below the rank of an officer in charge of a police station,-

(a) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary, any premises which he has reason to suspect, are being used for purposes connected with the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act;

(b) to search the said premises and the persons whom he may find therein;

(c) to take into custody and produce before any Judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any such prize chit or money circulation scheme as aforesaid;

(d) to seize all things found in the said premises which are intended to be used, or reasonably suspected to have been used, in connection with any such prize chit or money circulation scheme as aforesaid.

(2) Any officer authorised by the State Government in this behalf may-

(a) at all reasonable times, enter into and search any premises which he has reason to suspect, are being used for the purposes connected with, or conduct of, any prize chit or money circulation scheme in contravention of the provisions of this Act;

(b) examine any person having the control of, or employed in connection with, any such prize chit or money circulation scheme;

(c) order the production of any documents, books or records in the possession or power of any person having the control of, or employed in connection with, any such prize chit or money circulation scheme; and

(d) inspect and seize any register, books of accounts, documents or any other literature found in the said premises.

(3) All searches under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).”

Section 13 confers necessary powers to make rules and reads as under:

“13. Power to make rules.-

(1) The State Government may, by notification in the Official Gazette and in consultation with the Reserve Bank, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the office of the Reserve Bank to whom full information regarding any prize chit or money circulation scheme may be furnished under the first proviso to sub-section (1) of section 12, and the form in which and the period within which such information may be furnished;

(b) the particulars relating to the winding up plan of the business relating to prize chits or money circulation schemes.

[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.]”

17. In the present case also the Police Inspector himself lodged report by exercising power under Section 7 of the Act, 1978. When the search was conducted by the complainant and same disclosed commission of offence, the investigating agency can proceed to investigate into the offence and file final report either positive or negative subject to the material collected during investigation.

18. Section 13 conferred power on the State Government may, by notification in the Official Gazette and in consultation with the Reserve Bank, make rules for the purpose of carrying out the provisions of the Act, 1978.

19. In the present facts of the case, the State Government did not frame any rules, but some guidelines were issued by the Central Government. Whether the said guidelines were issued based on any power conferred on the Central Government or not is a question. Even if the Central Government is permitted to frame rules under Section 13 of the Act, 1978 the guidelines issued will have no statutory force. Therefore, those guidelines are mandatory but without any statutory force.

20. Even to proceed against a particular person for commission of offence under Section 4 of the Act, 1978 the investigating agency has to satisfy itself that the acts done by the petitioner would fall within Section 2 (c) of the Act, 1978. To constitute a scheme under Section 2 (c) of the Act, 1978 i.e. “money circulation scheme”, the requirements are as follows:

- “(i) there must be a scheme;*
- (ii) there must be members of the scheme;*
- (iii) the scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrolment of members into the scheme or there must be a scheme for the receipt of any money or valuable thing as the consideration for a promise to pay money on any event or contingency relative or applicable to enrolment of members into the scheme;*
- (iv) the event of contingency relative or applicable to the enrolment of members into the scheme will however not be in any way affected by the fact whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscription.”*

If those requirements are applied to the present facts of the case, there is a scheme and members are being admitted to gain quick or easy

money besides providing valuable gifts as incentives. Therefore, the scheme being run by the petitioner would fall within the provisions of Section 2 (c) of the Act, 1978 prima facie. If for any reason, the scheme would not fall within the provisions of Section 2 (c) of the Act, 1978 there is substance in the contention of the learned counsel for the petitioner.

21. Learned Public Prosecutor for the State of Telangana contended, based on the judgments, which he relied, and the statements of witnesses recorded during investigation, that the business being conducted by the petitioner would fall within the meaning of “Money Circulation Scheme” as defined under Section 2 (c) of the Act, 1978. He further contended that the acts committed by the petitioner i.e. Multi Level Marketing, the same would attract an offence punishable under Section 4 of the Act, 1978. He relied on a decision in **M/s. Apple FMCG Marketing Private Limited v. Union of India**³, wherein it was held as follows:

“The progress of the chain of customers, at some point of time, would get saturated and the distributor, who purchases the goods, will not find any purchaser/sub-distributor to sell or enroll afresh. At that time, due to the progress of the chain, in the manner stated above, such persons who would not find new members may be in lakhs or even millions. Therefore, lakhs or even millions of people are bound to lose their entire money of Rs.550/- (value of one starter kit). At the same time, major portion of 65% of the amount would be a gain to the petitioners-company since there would be no one share that money.”

³. 2005 WritLR 115

22. In view of the law declared in the judgments, referred supra, the acts committed by the petitioner attract Section 4 of the Act, 1978, as held by the Apex Court in **Kuriachan Chacko v. State of Kerala**⁴, wherein the Hon'ble Supreme Court held as follows:

“There is element of cheating inasmuch as a representation was made by the accused that every unit holder will get double the amount invested by him; the representation was false, the maker of the representation was aware that the representation was not true and by such representation, he deceived the victim to believe the representation to be true and actuated him to act on such representation. The promoters induced common public to part with money on the lure of doubling the amount. Prima facie, the Courts were satisfied that but for such representation and the benefit sought to be given under the scheme, the victims would not have acted on such representation. It was, therefore, a case of application of Section 415, IPC. Prima facie case had been made out in absence of better explanation by the accused. If it is so, it could be said to be a case for application of Section 420 read with Section 34, IPC, of course, at this stage.”

23. In another judgment of the High Court of Judicature at Bombay rendered in Anticipatory Bail Application No.327 of 2016 with Criminal Application No.361 of 2016, the Bombay High Court at length discussed about various schemes based on several judgments to find out whether the Act or omission done by the accused would fall within Section 2 (c) of the Act, 1978 and liable for punishment under Section 4 of the Act, 1978. In the said judgment, the Bombay High Court relied on **Kuriachan Chacko**⁴, **Amway India Enterprises v. Union of India**⁵ and **Gold Quest Private International Limited v. State of Tamil Nadu**⁶, held the scheme allegedly run by the accused

⁴. (2008) 8 SCC 708

⁵. 2007 (4) ALT 808 (D.B.)

⁶. (2014) 15 SCC 235

in the said complaint would fall within the provisions of Section 4 of the Act, 1978 so also under Section 420 of IPC.

24. In view of the law declared by the Apex Court, this Court and persuaded by the law declared by the Bombay High Court, it is difficult to accept the contention of the learned counsel for the petitioner that the petitioner did commit no offence. The learned counsel for the petitioner placed reliance on the judgment **Naresh Balasubramaniam**¹, rendered by a learned Single Judge of Karnataka High Court, which pertains to Q.net business, which is used at Bangalore. But, the learned Single Judge of the Karnataka High Court at page Nos.21 to 23 held as follows:

“Material of unimpeachable character pertaining to the activities of QNet have been produced before court. A perusal of the material and the charge sheet averments prima facie indicate that the activities of QNet and Vihan i.e., the multilevel marketing companies, do not constitute offences under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. the activities of the company do not fall within the definition of 'Money Circulation Scheme' under Section 2(c) of the Act, nor does it fall within the definition of 'Prize chit' under Section 2(e) of the Act. When the activities of these companies do not constitute either Money Circulation Scheme or Prize Chit, the offences under Sections 4 and 5 of the Act, do not even remotely apply to such activities and consequently charging the accused for such offences is unsustainable.

The reports of FICCI also specify that the absence of a clear legislation and regulatory framework for multilevel marketing companies, have led to severe problems for such companies operating in the country. The present case clearly demonstrates that fact. Legislation such as the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, which do not even remotely apply to the activities of multilevel marketing companies, are applied by the investigating authorities leading to disastrous results.

Further, a prima facie perusal of the FIR and the charge sheet reveals that the ingredients of the offences under Sections 417, 419 and 420 are not made out. The allegation pertains to payment of certain monies in anticipation of certain services and in the event of a deficiency of service, the appropriate course of action would be to initiate proceedings under the Consumer Protection Act, 1986 and not initiate criminal prosecution under the provisions of the IPC. The advisory issued by the Central Government in terms of the Model Framework Guidelines on Direct Selling also recognizes this fact and specifies that the entire activity of direct sellers and direct selling entities should be guided by the provisions of the Consumer Protection Act, 1986.

The Hon'ble Supreme court of India has repeatedly observed that criminal law should not be set in motion to settle civil disputes by giving such disputes a colour of criminality. In Sagar Suri vs. UP [(2000) 2 SCC 636] and Hiralal Bhagwati vs. CBI [(2003) 5 SCC 257, the Supreme court has observed that matters essentially of a civil nature should not be given a cloak of criminal offences and criminal proceedings should not be used as short cut for other remedies available in law. the court has further observed that in such instances, the jurisdiction under Section 482 ought to be exercised to quash such criminal proceedings.

The instant case is a typical case where criminal legislation which are not even remotely applicable to the circumstances of the case have been invoked to substantiate the charges. The dispute, if at all, is between a consumer and a direct seller and ought to be adjudicated under the provisions of the Consumer Protection Act, 1986. As a consequence, the FIR and the charge sheet are unsustainable and deserve to be quashed."

The judgment of the Karnataka High Court is not binding precedent, at best, it is having persuasive value. But, when the Apex Court held otherwise, the judgment of the Karnataka high Court needs no further consideration in this case.

25. Therefore, the allegations made against the petitioner herein, who is an Agent of Q.net business, and purchased imported goods/gifts with the money transferred by accused No.1 to his account

having collected from the *de facto* complainant *prima facie* constitutes an offence punishable under Sections 4, 5 and 6 of the Act, 1978. Therefore, it is difficult to quash the proceedings against the petitioner herein for the offences punishable under Sections 4, 5 and 6 of the Act, 1978, while quashing the proceedings against the petitioner for the offences punishable under Sections 420 and 406 IPC.

26. For the foregoing discussion, the present Criminal Petition is allowed in part, quashing the proceedings against the petitioner - accused No.2 in Calendar Case No.107 of 2018, pending on the file of the learned Chief Metropolitan Magistrate at Nampally, Hyderabad, for the offences punishable under Section 420 and 406 read with 34 IPC, while permitting the Court to proceed with further against the petitioner - accused No.2 along with other accused in the said Calendar Case for the offences punishable under Sections 4, 5 and 6 of the Act, 1978.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

September 06, 2018
Mgr