HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No. 9197 OF 2023

ORDER:

This Criminal Petition is filed by the petitioners/accused Nos. 1 and 2 to quash the proceedings against them in C.C. No. 345 of 2019 on the file of the Judicial Magistrate of First Class for Railways, Guntur, Guntur District, for the offences punishable under Sections 420, 506 and 509 read with Section 34 of the Indian Penal Code (hereinafter referred to as "the Code") and Sections 4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereinafter referred to as "the Act").

2. The case of the petitioners is as follows:

The charge sheet does not disclose any incriminating material against them. The statements of the witnesses recorded under Section 161 Cr.P.C. do not implicate petitioner No. 2. Though there is no material attracting the ingredients of the alleged offences, the learned Magistrate took cognizance and registered the case as C.C. No. 345 of 2019. Petitioner No. 1 had paid substantial amounts to the subscribers but subsequently failed to repay the amounts. Section 420 of the Code is not attracted, as there was no dishonest intention at the time of receiving the amounts from respondent No. 2/defacto complainant and others. No allegations relating to the chit and money transactions are made against petitioner No. 2, and only bald and omnibus allegations are leveled against him. No incident took place on 20.11.2015, as alleged by the prosecution. There are discrepancies in the evidence and other material collected by the Investigating Officer. The dispute is civil in nature and that there was a delay of ten days in giving the report. There is absolutely no material to support the alleged offences and that continuation of the proceedings would amount to an abuse of the process of law.

3.Case of the prosecution in nutshell:

Petitioner No.1 approached respondent No.2 and requested her to join the chits maintained by her and to make deposits, promising to pay the bid amount and double of the matured deposit amount. On enquiry, respondent No.2 came to know that her relatives had also subscribed to the chits maintained by petitioner No.1. She accordingly joined the chits and paid substantial amounts. Believing the representations of petitioner No.1, respondent No. 2 also deposited Rs. 1,50,000. Several other persons had also joined as subscribers in the chits maintained by petitioner No.1. They are poor persons and facing financial difficulties. When respondent No. 2 and the others requested petitioner Nos.1,2 and other family members to repay the amounts, they abused and threatened them with dire consequences. Although petitioner No.1 promised to return the bid amounts and the deposited amounts, she failed to do so. Petitioner No.2 and other family members supported petitioner No.1 and abused respondent No. 2 and the others.

4. Heard Sri Prabhunath Vasireddy, learned counsel for the petitioners, and Smt. K. Lakshmi Priyanka, learned Assistant Public Prosecutor. Perused the petition and the material available on record.

5. Learned counsel for the petitioners would argue that there is no material to proceed against the petitioners, petitioner No. 2 is no way concerned with the alleged chits, petitioner No.1 had no dishonest intention when she received amounts from respondent No.2 and others and therefore, the ingredients of Section 420 of the Code are not attracted. It is further contended that the material does not prima facie disclose the commission of the alleged offences and that continuation of the proceedings would amount to an abuse of the process of law. Learned counsel relied up on the judgments of the Hon'ble Supreme Court in ***V. Ganesan v. State, represented by the Sub-Inspector of Police and Others***[1]; ***Hridaya Ranjan Prasad Verma and***

[1] 2026 (2) KLT 509

Others v. State of Bihar and Another[2]; and ***Archana Rana v. State of Uttar Pradesh***[3]***.***

6. Per contra, the learned Assistant Public Prosecutor submits that this is not the stage to consider the contentions of the petitioners, there are 22 victims, all are paid subscription amounts after being induced to subscribe to the chit schemes and make deposits, petitioner No.2, husband of the petitioner No.1 also participated in the alleged offences and the material prima facie indicates that the amounts were collected with dishonest intention and that the victims were cheated.

7. As seen from the record, basing on the report of respondent No.2, a case in Crime No. 60 of 2015 was registered for the offences stated supra and after completion of investigation, the Investigating Officer filed charge sheet for the said offences, against the petitioners who are wife and husband, and the same is registered as C.C. No. 345 of 2019.

8 In the judgment relied upon by learned counsel for the petitioners, ***Hridaya Ranjan Prasad Verma (supra)***, the Hon'ble Supreme Court held as follows:

> "In determining the question, it has to be kept in mind that the distinction between a mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct; however, such subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, at the time when the offence is said to have been committed. Therefore, intention is the gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep the promise subsequently, such a culpable intention at the beginning, that is, when he made the promise, cannot be presumed."

[2] (2000) 4 SCC 168
[3] (2021) 3 SCC 751

9. The facts in ***Archana Rana (supra)*** are different from the facts of the case at hand. In ***V. Ganesan (supra),*** it was held that, to constitute the offence of cheating, the intention to deceive must exist when the inducement is made and it is necessary to show that the person had fraudulent or dishonest intention at the time of making the promise, and mere failure to keep the promise subsequently cannot, by itself, be the basis for presuming that dishonest intention existed from the beginning.

10. It is settled law that, to establish the offence of cheating, the complainant must show that the accused had fraudulent or dishonest intention at the time of making the promise or representation. Such culpable intention at the inception of the transaction cannot be presumed merely from the subsequent failure to fulfill the promise. It must be supported by the relevant facts. In the present case, as seen from the material produced by the prosecution including the report of respondent No. 2 and the statements of the victims disclose that petitioner No.1 approached them, requested them to join the chits and induced them to make deposits, promising to repay the bid amounts and matured deposits with interest, but failed to repay the same.

11. Learned counsel for the petitioners submit that petitioner No.1 had repaid substantial amounts to the subscribers and subsequently became unable to repay the remaining amounts, and that there was no fraudulent or dishonest intention when she received the money. The learned Assistant Public Prosecutor, on the other hand, submits that this is not the stage to examine the merits of the case in detail and points out that as many as 22 victims suffered at the hands of petitioner No.1, and petitioner No. 1 collected not only subscriptions for the chits but also deposits, promising to repay double the amount after two years, but failed to do so.

12. Learned counsel for the petitioners further submits that the dispute is civil in nature and should not be converted into a criminal case. In this regard, it is to be noted that the Hon’ble Supreme Court in ***Inder Mohan Goswami***

and Another v. State of Uttaranchal and Others[4] held that the inherent jurisdiction of the High Courts under Section 482 Cr.P.C., though wide, must be exercised sparingly, carefully and with caution, and only when justified by the principles governing the exercise of that power under Section 482 Cr.P.C.

13. Further, the principles laid down in State of ***Haryana and others v. Bhajan Lal and others***[5] identify the recognised categories in which the inherent power may be exercised. These include cases where the allegations, even if taken at face value, do not constitute an offence; where the uncontroverted allegations and the material collected do not disclose the commission of an offence; or where continuation of the proceedings would result in an abuse of the process of the Court.

14. The inherent jurisdiction under Section 482 Cr.P.C. is extraordinary and must be exercised sparingly and with due circumspection. However, where the allegations in the FIR, charge sheet and accompanying material, even if accepted at face value and in their entirety, do not constitute the offences alleged, or where continuation of the proceedings is barred by law, this Court may exercise its inherent jurisdiction to prevent abuse of the process of the Court and to secure the ends of justice.

15. On careful perusal of the material on record, this Court finds that there is no sufficient material to proceed against petitioner No.2 and since he is the husband of petitioner No.1, he is arrayed as accused No.2. The crime was initially registered against the petitioners and other family members of petitioner No.1. After investigation, the Investigating Officer filed the charge sheet after deleting the names of the other relatives. The relationship of petitioner No.2 with petitioner No. 1, by itself, is not sufficient to conclude that he participated in the alleged offences. The allegations against him, apart from

[4] 2007 (12) SCC 1
[5] 1992 Supplement 1 SCC 335

the assertions that he abused and threatened the complainant and others, are bald and omnibus in nature. The material on record does not disclose a specific role played by him in the chit or deposit transactions. In these circumstances, continuation of the proceedings against petitioner No.2 would amount to an abuse of the process of the Court. The contentions raised by petitioner No.1, however, involve issues that require consideration during trial. Petitioner No.1 is therefore at liberty to raise all her contentions before the trial Court.

16. ***In the result***, this Criminal Petition is allowed in part, quashing the proceedings against petitioner No. 2/accused No.2 alone in C.C. No. 345 of 2019 on the file of the Judicial Magistrate of First Class for Railways, Guntur, for the offences punishable under Sections 420, 506 and 509 read with Section 34 of the Code and Sections 4 and 5 of the Act, and in respect of the petitioner No.1, this Criminal Petition is dismissed.

As a sequel thereto, the pending miscellaneous petitions, if any, shall stand closed.

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SUNITHA GANDHAM, J

Date:03.11.2026
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