

**(2018) 04 CHH CK 0384**

**In the Chhattisgarh High Court**

**Case No :** Criminal Revision No. 577, 578 Of 2018, 1339 Of 2019

Amandeep Singh Saran And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

**Date of Decision :** 07-04-2018

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 239, 420, 482

Indian Penal Code, 1860 — Section 405, 409, 415, 420

Prize Chits Money Circulation Schemes (Banning) Act, 1978 — Section 2(c), 2(e), 3, 4, 5

Protection Of Depositors Interest Act, 2005 — Section 2(f), 2(i), 7, 10, 13

**Citation :** (2018) 04 CHH CK 0384

**Hon'ble Judges :** Rajendra Chandra Singh Samant, J

**Bench :** Single Bench

**Advocate :** Bhashkar Payashi, Vibhash Tiwari, Rohitashwa Singh, . Adil Minhaj

**Final Decision :** Dismissed

## Judgement

Rajendra Chandra Singh Samant, J

1. In all the above revision petitions, the applicants are common, the facts circumstances and evidence are also of similar nature, therefore, all are decided by this common order.

2. Cr.R. No. 577 of 2018 & Cr. R. 578 of 2018 have been brought against the order dated 11.09.2017, passed in Criminal Case No. 16911 of 2015 and Criminal Case No. 17129 of 2015 respectively, passed by the Chief Judicial Magistrate, Raipur by which the application under Section 239 of Cr.P.C. for discharge has been dismissed and charges have been framed in both the cases by order dated 18.09.2017 for the offence under Section 409, 420 of the Indian Penal Code and Section 4 of the Prize Chits Money Circulation Schemes (Banning) Act, 1978.

3. Cr.R. No. 1339 of 2019 has been brought against the order dated 11.03.2019, passed in Special Criminal Case No. 01 of 2018, passed by the Special Judge,

Bemetara, District Bemetara, by which, charges have been framed against the applicants for commission of the offence under Section 420, 409 of the Indian Penal Code and Section 3, 4 & 5 of the Prize Chits Money Circulation Schemes (Banning) Act, 1978 and Section 10 of Protection of Depositors Interest Act, 2005.

4. It is submitted by the learned counsel for the applicants in all the cases, that framing of charges against the applicants in all three cases is erroneous and illegal, as there had been no prima-facie case present against these applicants for framing of such charges. The FIR that has been registered in all the cases, firstly does not mention the names of these applicants as the persons, who have cheated the complainant. The applicant - Amandeep Singh Saran was one of the director of H.B.N. Dairy & Allied Limited in the year 1998 under the provisions of Companies Act, 1956. The applicant- Rakesh Tomar was also one of the directors for a limited period. It was the business of the company to seek investment from investors in the business of the company and part of the profit was assured to the investors. The CIS regulations were framed in 1999, subsequent to the initiation of the business of the company. SEBI has examined the business of this company by calling documents and held vide order dated 12.07.2013, that the business of the company was of collective investment scheme. As there had been some irregularities, therefore, the SEBI directed the company to discontinue the business. The company of the applicants then moved to make repayment to the investors. It is submitted that then SEBI by final order dated 12.02.2015 provided opportunity to the applicant to make repayment to the investors on or before 09.03.2015. The company has acted in accordance with the direction of SEBI and repaid the amount to various investors in Chhattisgarh. The property acquired from investments have been surrendered by the company, which is value of Rs.1400 Crores. Therefore, the applicants' company did not have any dishonest intention. As soon as the direction and orders were issued by the SEBI, the company of the applicants started making repayments to the investors from the year 2013, but then the offence against the company were registered in the year 2015. There does not exist sufficient material in the charge-sheet against the applicants for framing of charge. Because of the registration of FIR, the applicants' company is now unable to dispose of its property, which has become hindrance in making repayment to the investors. The applicants' company has challenged the order dated 12.02.2015 of SEBI, before the Securities Appellate Tribunal, Mumbai, in which the tribunal has ordered and directed SEBI to sale out the property surrendered by the company and make payment to the investors, which further shows that the company of the applicants had no intention to cheat the investors. SEBI has failed to sell out the properties surrendered by the applicants' company and on the other hand, it has directed the company of the applicants to do the same within a period of 26 days.

5. On an application filed by one Bhanuram, NCLT, Delhi has directed for liquidation of company by order dated 14.08.2018. SEBI has challenged the order of NCLT, Delhi in Supreme Court, in which, handing over the title deeds to

the resolution professional has been stayed. It is submitted that the investigation made by the police and the FIR registered has not been fair. The repayment to the investors has not been made so far, because of the failure of SEBI, for which, the applicants' company can not be held responsible. The offence under Section 409 of I.P.C. is not made out as there is no iota of intention on the part of the applicants to show that they have misappropriated or converted to their own use the property entrusted to them. Similarly, the offence under Section 420 of the Indian Penal Code is also not made out as the very ingredients for the offence of cheating, dishonest intention is totally missing. The activity of the applicants' company does not fall under the definition of Prize Chits, which is defined under Section 2 (e) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (in short 'the Act, 1978'). As there had been no scheme of drawing lots or winning prize for the subscribers of the investment company, therefore, the activity of the company was not in violation of Section 3 of the Act, 1978, therefore, not punishable under Section 4 of the Act, 1978.

2 It is also submitted that the offence under Section 10 of the Protection of Depositors Interest Act, 2005 (in short "the Act, 2005") is not made out. Firstly this Act gives protection to the depositors and not to the investors. The subscribers to the scheme of company are described as investors. Hence, the complainant, who is an investor does not fall under the category of depositor, which is defined under Section 2 (f) of the Act, 2005. The Competent Authority constituted under Section 5 of the Act, 2005 has a role to play under Section 7 of the Act, 2005, according to which, it is the Competent Authority, which has to examine the complaints of the depositors and proceed to secure the interest of the depositors, which has not been done. Therefore, there is no ground present to frame charge under Section 10 of the Act, 2005 against the applicants (in Cr.R. No.1339 of 2019) as there is no finding of the Competent Authority that the applicant company has committed fraudulent default as defined under Section 2 (i) of the Act, 2005. It is also submitted that the rules framed under Protection of Depositors Interest Rules, 2015 has also not been followed.

7. Reliance has been placed on the judgment of Binod Kumar & Ors. Vs. State of Bihar & Ors., reported in (2014) 10 SCC 663, in which the Supreme Court has held, that civil liability can not be converted to criminal liability and if it is done that is the abuse of process of law. In case of Madhavrao Jiwajirao Scindia & Ors. Vs. Sambhajirao Chandrojirao Angre & Ors, reported in (1998) 1 SCC 692, in which it was held that when prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima-facie establish the offence or not and that a breach of trust may be both civil wrong or criminal offence, but in certain situation, it would be predominantly civil wrong. It is submitted that same is situation in this case. Reliance has also been placed on the judgment of Supreme Court in Radha Pisharassiar Amma Vs. State of Kerala, reported in (2007) 13 SCC 410, in which the Supreme Court has held, that mens rea of the accused for commission of offence under Section 409, 467 was not found. It is submitted that in this case

also there is no mens rea present on the part of these applicants. Reliance has also been placed on the judgment of Supreme Court in *Sardar Singh Vs. State of Haryana*, reported (1977) 1 SCC 463, *S.K. Alagh Vs. State of U.P. & Ors*, reported in (2008) 5 SCC 662, *Umashankar Gopalika Vs. State of Bihar*, reported in (2005) 10 SCC 336. It is further submitted that in the case of *State of West Bengal & Ors. Vs. Swapan Kumar Guha and others*, reported (1982) 1 SCC 561, it was held, that the question as to whether the FIR prima facie the case discloses an offence under Section 4 read with Section 3 of the Act has to be decided in the light of these requirements of Section 2 (c) of the Act. It is submitted that the activity of the applicants' company is not covered under Section 2 of the Act, 1978. Therefore, framing of charge against the applicants in all three cases is totally erroneous, illegal without any basis. It is prayed that revision petition be allowed and the applicants be discharged from all the charges in all three cases.

8. Learned State counsel opposes the revision petitions and the submissions made in this respect. It is submitted that the applicant No.2 Rakesh Tomar (in Cr. R. No. 1339 of 2019) had earlier filed Cr.M.P. No.1526 of 2017 to quash the proceeding in criminal case No.17129 of 2015, which has been dismissed by order dated 03.11.2017. It was after passing of this order, the applicants filed application for discharge, hence, there being already an order present under Section 482 of Cr.P.C. of this Court, the revision petition filed are not maintainable. It is submitted that the material in the charge-sheet in all three cases contains evidence to show that the applicants had no intention to make any refund to the investors/depositors, therefore, intention of the applicants was fraudulent from the very beginning. The orders and the directions of SEBI have not been followed. Further the company of the applicants was not registered with SEBI, which is the requirement under the proviso to Section 11AA Sub-section (1) of SEBI Act, 1972. The applicants company has issued bond certificate for which the applicants had no authority to issue such bond and certificate. The Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 clearly provides under Section 3, that no persons other than collective investment management company which has obtained certificate under these regulations shall carry or on or sponsor or launch a collective investment scheme. Regulation 2(h) defines 'Collective Investment Management Company' means a company incorporated under the Companies Act, 1956 (1 of 1956) and registered with the Board under these regulations, whose object is to organise, operate and manage and collective investment scheme. The applicants' company was neither constituted as collective investment management company nor was registered under the scheme, 1999, which further shows that the intention of the applicant had been to defraud the investor/depositors from the very beginning.

9. It is further submitted that Section 3 of the Act, 1978 is clearly applicable in this case, as the activity of the applicants' company falls under the definition of money circulation. At present the applicants have been charged by the trial Court only for Section 3 read with Section 4 of the Act, 1978, whereas the charge

under Section 5 is also made out. The arguments submitted by the applicants side regarding irregularity in the initiation of the prosecution against the applicants is of no consequence, as the offences registered are cognizable, therefore, absence of any report of the Competent Authority under the Act, 2005 is not fatal to the prosecution, therefore, minor irregularities in the investigation do not vitiate the trial.

10. Reliance has been placed on the judgment of this Court in Cr.R. No.34 of 2018, between State of C.G. Vs. Gaurav Dewangan and other bunch of revision petition, decided on 11.09.2019, in which, the Sessions Judge had discharged the accused persons from the offence under Section 10 of the Act, 2005. The learned Coordinate Bench of this Court has allowed the revision petition and directed the trial Court to frame charges against the accused persons under Section 10 of the Act, 2005. It is also submitted that there is prima-facie case present for framing of charges, that have been framed against these applicants. Reliance has also been placed on the judgment of Supreme Court in case of Sajjan Kumar Vs. CBI, reported in (2010) 9 SCC 368 and it was held that It was for the trial Court to appreciate the evidentiary value, credibility or otherwise of the statement, veracity of various documents and take a decision accordingly and at the initial stage, even if there is strong suspicion, which leads to believe that there is ground for assuming that the accused has committed the offence, that shall be sufficient for framing charge. Reliance has also been placed upon the judgment of the Supreme Court in Dr. Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh and others, in Criminal Appeal No.1934 of 2019 decided on 21.01.2020.

11. It is further submitted that the documents and material that have been filed by the applicants in these revision petitions can not be taken into consideration, in view of the principle laid down by the Supreme Court in case of State of Orissa Vs. Debendra Nath Padhi, reported in (2005) 1 SCC 568, in which it was clearly held that no provision in Cr.P.C. grants the accused any right to file any documents at the stage of framing charge. Further in case of Superintendence and Remembrancer of Legal Affairs West Bengal Vs. Anil Kumar Bhunja, reported in AIR 1980 SC 52, it was held that even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused and similar was the view of Supreme Court in case of Amit Kapoor Vs. Ramesh Chander, reported in (2012) 9 SCC 460. It is submitted that the Hon'ble Supreme Court has cautioned the High Court to refrain from interfering at the stage of framing charges against the accused persons in the case of Om Wati (Smt.) & Another Vs. State, Through Delhi Admn. & Ors., reported in (2001) 4 SCC 333. The material available in all three cases clearly are against these applicants, which is quite sufficient for framing of charges. Hence, looking to the prima-facie case present against these applicants for framing of charges against them, the revision petitions are without any substance, which may be dismissed.

12 I have heard the learned counsel for the parties at length and perused the documents placed on record.

13 In Cr.R. No.577 of 2018, the complainant Rajendra Giri Goswami made a written complaint upon which FIR under Crime No. 22/2015 was registered against the directors and others, that the complainant was given inducement that on taking insurance policy from HBN Company, he will get refund of double amount in six years. Getting induced, he made deposit of Rs.66,000/- in five years and six months (Rs.1000/- per month) and was issued a certificate in which refund of Rs.92,250/- was promised. After the maturity, he deposited the bond in the office of the company and he was provided with a cheque of Rs.98,334/0 of Bank of Badoda. The complainant deposited the said cheque in his account, which was dishonoured.

14 In Cr.R. No.578 of 2018, the complainant Suraj Nirmalkar made a written complaint, upon which, FIR under Crime No. 142/2013 was registered against the directors of HBN Dairy and Allied Com. Limited Company and others. It is alleged that the company has given inducement to the public for making deposit in the company on assurance that they will get refund of double amount in six years, but no refund was made to the depositors after the maturity period.

15 In Cr.R. No.1339 of 2019, the complainant Tarabai Jangade lodged FIR under Crime No. 43/2017, against the agents and others that the complainant was given inducement that on taking insurance policy from HBN Dairy and Allied Limited Company, she will get refund of double amount in six years. Getting induced, she made deposit of Rs.50,000/- and was issued a certificate, in which, refund of Rs.1,00,000/- was promised on 24.03.2015. The complainant could not get any refund of the amount and on the contrary, the office of the company was closed and all the persons concerned went in hiding.

16. In the investigation, it has been found that the applicants are directors of that company, who have given inducement to numerous persons regarding their fraudulent schemes and taken deposits and none of them have been paid the refund. On this basis charge-sheets have been filed.

17. On perusal of the statements of the witnesses, it is seen that all of them stated that they have been cheated by the persons, who were concerned with HBN Dairy & Allied Company Ltd. SEBI examined the business of HBN Dairy & Allied Co. Ltd. and passed order on 12.07.2013, in which, it is mentioned in the first paragraphs, that HBN Dairies and Allied Limited company is illegally collecting money from public. Notice was issued to the company to explain about violation of the provisions of SEBI Act, in which company submitted that the scheme and plans of the company are not in the nature of collecting money, but the money is provided by the customers of HBN Dairies to facilitate its business. After examination of the reply to the notice, the applicants' company was directed to wind-up their business of making collections of money from public. This order is part of the charge-sheet. Reference of the applicants' side on the

final order of SEBI dated 12.02.2015, the order of NCLT 14.08.2018 and the order of Supreme Court dated 17.06.2019 is not present with any material present in the charge-sheet, therefore, these orders can not be taken into consideration.

18. There is no dispute that the applicants' company was entrusted with the property of the investors/depositors and that the applicants had taken delivery of the property I.e. the money from the investors/depositors. The intention of the applicants' company was fraudulent is the statement of witnesses and others. The applicants have been unable to establish that by any reason present, the applicants' company, which was Non Banking Company, had any authority to take such collections of money from the public. The order of SEBI is also not in favour of the applicants' company. Hence, the allegations present regarding dishonest intention of the applicants can not be discarded at this stage unless and until these applicants establish in the trial that their intention were bonafide. The submissions from the applicants side that the applicants had engaged in the business of collective investment scheme is not true statement, as it is mentioned in the order of the SEBI dated 12.07.2013, that the applicants had replied that their collections of money was not under the collective investment scheme. If the applicants want to proceed on this statement, that may be a line of defence and that defence can be examined in the trial. Hence, I am of this view that the acts alleged against these applicants are covered under the definition of criminal breach of trust under Section 405 of I.P.C. and cheating under Section 415 of I.P.C.

19. Money circulation scheme is defined in Section 2 (c) of the Act, 1978, which is as follows :-

"2(c). 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 event or contingency relative or applicable to the enrolment of members in to the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;"

(xx) The nature of the bond that has been issued to the complainant and others investors is a certificate, which mentions about plan, term and promises payment of maturity amount on the given date.

(xxi) It was held by the Supreme Court in case of State of West Bengal Ors. Vs. Swapan Kumar Guha, reported in (1982) 1 SCC 561 in paragraph -8, which is as under :-

"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 enrollment 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 enrollment 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 enrollment 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 enrollment 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."

22. In the present state of affairs, there appears to be evidence present to show, that the applicants company and their agents were engaged in promoting the scheme of the company by selling certificates with a promise of higher rate of interest on the eventuality of the plans of term, hence, it can be said that the activity of the applicants' company appears to be covered under Section 2 (c) of the Act, 1978 and therefore, promotion of such scheme, which is banned under Section 3 of the Act, 1978 is punishable under Section 4 of the same Act, 1978, regarding which, there is sufficient evidence present for framing of charge against the applicants.

23. As regards framing of charge under Section 10 of Protection of Depositors Interest Act, 2005, report of the Competent Authority does not appear to be a condition precedent for lodging of FIR or framing of charge against the persons concerned. Section 13 of the Act, 2005 empowers the Special Court to take cognizance of the offence without being committed the case to it. As the Court of

Sessions Judge is notified under Section 4 of the Act and also that there being no procedure prescribed for filing of complaint in this Act, shows that the provisions under the Code of Criminal Procedure are applicable, hence, lodging of FIR under Section 10 of the Act, 2005 is well within the law. Further there is evidence present that depositors were defrauded by the HBN Company in which the applicants are directors, which is prima-facie case for framing charge under Section 10 of the Act, 2005.

3 Hence, after considering on all the submission and the material present in the charge-sheet against these applicants, this Court is of the opinion that prima-facie case for framing of charge against these applicants, framed by the trial Court, is present. Hence, all the revision petitions are liable to be dismissed, which are dismissed accordingly.