

(1980) 02 GUJ CK 0001
In the Gujarat High Court
Case No : Criminal Appeal No. 835 of 1977

B.N. Chikarmane

APPELLANT

Vs

Modern Savings and Trading Units Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 20-02-1980

Acts Referred:

Reserve Bank of India Act, 1934 — Section 45J, 45K, 45O, 45O(3), 58B

Citation : (1980) 21 GLR 969

Hon'ble Judges : V.V. Bedarkar, J; M.K. Shah, J

Bench : Division Bench

Advocate : G.N. Desai, for the Appellant; K.M. Chhaya, Public Prosecutor, B.J. Shelat and R.A. Mishra, for the Respondent

Judgement

M.K. Shah, J.—The original complainant who filed a complaint on behalf of the Reserve Bank of India against the accused charging them for the offences under ss. 45O and 58B read with s. 58C of the Reserve Bank of India Act, 1934 ("the Act"), being aggrieved by an order or acquittal passed by the learned Metropolitan Magistrate, 9th Court, Ahmedabad, on 17th March, 1977, in Criminal Case No. 1370 of 1975, has preferred this appeal.

2. A few facts necessary to appreciate the points which arise in this appeal may be briefly stated.

3. Respondents Nos. 1, 2 and 3 are the original accused, accused No. 1 being the company and accused Nos. 2 and 3 being the managing director and director, respectively, of the said company. The appellant is the original complainant and, at the relevant time, he was the Deputy Chief Officer, Department of Non-Banking Companies, Reserve Bank of India. Respondent No. 4 is the State of Gujarat.

4. It was the prosecution case that accused No. 1 is a miscellaneous non-banking company within the meaning of clause (b) of para. (3) of the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973 ("the Directions") which

were issued by the Reserve Bank of India on 23rd August, 1973, in exercise of the powers conferred on it by s. 45J read with s. 45K of the Act. The company is a private limited company registered under the Companies Act having its registered office at Ahmedabad and it is promoting and running schemes in the nature of prize chits which chits are generally operated by enrolling members who are required to pay subscription of a specific amount for a specified period. Periodically lots are drawn and prizes are awarded to the holders of lucky numbers. In most of the schemes, the prize winning members are not required to pay further subscription but the subscription already paid till then is not refundable while in some schemes, the prize winning members continue as members and they are also entitled to a refund of the subscription on maturity of the scheme. Some schemes contain provisions for the granting of loans to the members by the company at the stipulated rate of interest which loans are repayable by monthly installments.

5. We are concerned with seven such schemes floated by the accused company which are at Exs. 9 to 15. By para. 4 of the said Directions, a copy whereof is at Ex. 3, the company was precluded from accepting deposits in excess of the limit prescribed in that para. which would be 25% of the aggregate of the paid-up capital and free reserves of the company. The company had a paid up capital of Rs. 2,000 only with no free reserves and the return which are at Exs. 4 to 8 showed that between September 30, 1973, and September 30, 1974, though the deposits had already exceeded the prescribed limit, the company continued to accept deposits to the extent of Rs. 31.7 lakhs. On coming to know about the contravention of the directions and finding that the company had continued to receive deposits in excess of the prescribed limit even after the issuance of the said Directions, which came into force from September 1, 1973 and that the mandate contained in the directions to reduce the deposits by a phased programme was not carried out, a complaint was lodged against the accused before the learned Magistrate on 22nd October, 1975.

6. It was the defence of the accused that what they received was subscription and not deposit and that their case fell under sub-para. (2) of para. 2 read with para. 3(1) (b) of the Directions; that the directions were, therefore, not applicable to the company.

7. On the evidence led, the learned Magistrate came to the conclusion that the case of the accused-company was covered by para. 2(2) of the Directions, because, what was collected was subscription under the schemes in which prizes had to be given. He, therefore, recorded a finding of not guilty against all the accused and acquitted them by his impugned order dated 7th March, 1977, which order of acquittal is the subject-matter of challenge in this appeal filed by the original complainant.

8. In order to appreciate the rival contentions raised on behalf of both the sides, it would be first of all necessary to have some idea about the legislative history and the provisions applicable in the instant case. The Directions were issued on

23rd August, 1973, in exercise of the powers conferred on the Reserve bank of India by s. 45L read with s. 45K of the Act. The Directions came into force on and from 1st September, 1973. At that time, the penal section on that statute book providing penalties, inter alia, for receiving deposits in contravention of the directions given under Chap. III-B, which includes the said sections and the section for failure to comply, inter alia, with the directions issued under sub-s. (3) of s. 45K, was s. 45-O. Sub-section (3) thereof is material for our purpose, the material portion whereof, reads thus :

"(3) If any non-banking institution -

(a) receives any deposits in contravention of any direction given to it under this Chapter; or

(b) fails to comply with the provisions of sub-section (6) of section 45K or with the directions issued under sub-section (3) of that section or clause (b) of sub-section (1) of section 45L.

every director or member of any committee of other body for the time being vested with the management of the affairs of the non-banking institution, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be punishable with fine which may extend -

(a) in the case of a contravention falling under clause (a), to twice the amount of the deposits received;

(c) in any other case, to two thousand rupees."

9. By the Reserve Bank of India (Amendment) Act, 1974, which came into force on 13th December, 1974, s. 45-O was deleted and Chap. V dealing with penalties was inserted, inter alia, containing s. 58B which substituted s. 45O. The material portion of s. 58B reads thus :

"58B. (5) If any person -

(a) receives any deposit in contravention of any direction given or order made under Chapter III-B; or

(b) issues any prospectus or advertisement otherwise than in accordance with section 45NA or any order made u/s 45J, as the case may be,

he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend, -

(i) in the case of a contravention falling under clause (a), to twice the amount of the deposit received; and ...

(6) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or any order, regulation or direction made or given or condition imposed thereunder, any person guilty of

such contravention or default shall be punishable with fine which may extend to two thousand rupees and where a contravention or default is a continuing one, with further fine which may extend to one hundred rupees for every day, after the first, during which the contravention or default continues."

10. By the very Act, that is, Act No. 51 of 1974, clause (bb) is added to s. 45I, and the said clause defines "deposit" in the following terms :

"(bb) "Deposit" shall include, and shall be deemed always to have included, any, money received by a non-banking institution by way of deposit, or loan or in any other form, but shall not include amounts raised, by way of share capital, or contributed as capital by the partners of a firm."

11. It may be noted that the word "deposit" had remained undefined till then so far as Chap. III-B is concerned, and it was for the first time that by clause (bb) inserted in s. 45I, the word "deposit" as it appears in Chap. III-B has been defined.

12. Now, turning to the Directions in Pt. I, para. 2, there are provisions concerning the extend of the directions. This clause is important and requires to be set out. It reads thus :

"2. Extent of the Directions. - These directions shall apply to every non-banking institution, which is a company, not being a banking or an insurance company, and which carries on any of the following types of business :-

(1) Collecting whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in installments 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 saving, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilising 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 -

(a) 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;

(b) 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, howsoever called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein.

(2) Managing, conducting or supervising as a promoter, foreman or agent of any transaction or arrangement by which the company enters into an agreement with a specified number of subscribers that every one of them shall subscribe a

certain sum in installments over a definite period and that every one of such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be provided for in the agreement be entitled to the prize amount."

13. This is followed by an Explanation which runs thus :

"For the purposes of this sub-paragraph, the expression "prize amount" shall mean the amount, by whatever name it be called, arrived at by deduction from out of the total amount subscribed at each installment by all subscribers, (a) the commission charged by the company as service charges as a promoter or a foreman or an agent and (b) any sum which a subscriber agrees to forgo, from out of the total subscriptions of each installment, in consideration of the balance being paid to him."

14. Sub-paragraphs 3 and 4 are not relevant for our purpose. In para. 3, by sub-para. (1) (d), the word "deposit" is defined and it reads thus : "(1) (d) "Deposit" means any deposit of money with and includes any amount borrowed by a company but does not include -

(i) any money received or collected under a transaction or arrangement referred to in sub-paragraph (2) for paragraph 2."

15. Rest of the clauses of this sub-para. are not important for our purpose, except clause (f), which defines "foreman" as meaning "a person who under the chit or kuri agreement or any other scheme or arrangement is responsible for the conduct of the chit or kuri or such scheme or arrangement."

16. That will take us to Pt. II, para. 4, the relevant portion whereof reads thus :

"On and from the 1st September, 1973 - ...

(b) no miscellaneous non-banking company shall receive any deposit, which together with any other deposits falling under the same category (as specified hereinafter), already received and outstanding on the books of the company, is in excess of the limits hereinafter specified in respect of each of the following categories of deposits, namely :-

(ii) in the case of any other deposit, twenty-five per cent. of the aggregate of the paid up capital and free reserves of the company ..."

17. The rest of the provisions of this para. are not relevant for our purpose.

18. A note may then be made of para. 5, the relevant portion whereof reads thus :

"(1) Where, as at the commencement of the business on the 12th September, 1973, the aggregate of deposits, of a miscellaneous non-banking company, of the kinds referred to in sub-clauses (i) and (ii) respectively of clause (b) of paragraph 4 is in excess of twenty-five per cent. of the aggregate of its paid-up capital and free reserves, such company shall secure that -

(a) at least one-third of the said excess shall be reduced before the 1st October, 1974;

(b) at least another one-third of the said excess shall be reduced before the 1st October, 1975; and

(c) the balance, if any, of the said excess shall be reduced before the 1st October, 1976,

by the repayment of the deposits as and when they mature for payment or in such other manner as may be necessary for complying with this provision

19. The rest of the provisions contained in the said para. and also the rest of the para. in Pt. II are not relevant for our purpose.

20. In Pt. III, in paras. 10 and 11, provisions are made for furnishing copies of balance-sheet and accounts to the Reserve Bank as also furnishing returns to the Reserve Bank, in the Schedule annexed to the said directions, with reference to its position as on the dates specified in the said Schedule.

21. A reference may also be made to the schemes which were floated by the company and which are at Exs. 9 to 15, some of which were floated before the directions came into force and some of the schemes, a member who receives a prize ceases to be a member with no liability to pay the future installments and with the provision that installments already paid would also not be refunded; while in some groups, there is no such provision; while certain groups contain a specific provision that he may continue to be member even after he gets the prize and would also be entitled to prizes which would be awarded thereafter. In order to get an idea of the schemes, we may look at one of the schemes, viz., the Diamond group scheme which was introduced on 25th February, 1974. This group limited the membership up to a maximum of 1,000 members and fixed a subscription of Rs. 50 every month payable for a period for 30 months with a provision that the benefit of loans and prizes would be continued up to 60 months. It also provided for giving loans to members on certain conditions by following a particular procedure. It limits the giving of loans every month (restricted to particular members only). It then provides that every fifth month, one lucky prize of Rs. 7,500 would be drawn on the 25th of every month and the prize winner will thereafter cease to be a member and the subscription paid by him will not be refunded to him while the loan, if any, taken by him will be adjusted against the prize. It also provides that on completion of the scheme, the total subscription amount of Rs. 1,500 together with dividend of Rs. 250 will be so refunded to those members whose loans are repaid while the same will be so refunded to the remaining members when their loan are repaid. It may be significant to note that in all these groups, except "Modern scheme", the name of accused No. 3, Rameshbhai Pujara, appears as the administrative director while the name of accused No. 2, Manubhai K. Vora, appears as the managing director; while in the Modern group which was opened on 25th April, 1973, Rameshbhai Pujara's name is shown as a director while the name of accused No. 2, Manubhai

Vora, is shown as the managing director.

22. A look may now be had to the returns which are at Exs. 4 to 8 which were filed by the accused-company in the form as per the Schedule to the Directions. The said returns were filed between October 14, 1974, and July 11, 1975, while in the last return which is in respect of the period from January 1, 1975, to September 30, 1975, the date is not mentioned.

23. These returns are with regard to the deposits with the company as the form itself shows. The form also shows that the company was incorporated on 25th January, 1972; that the financial year of the company was ending on 31st December, each year; and in Section (i) with regard to the deposits, etc., outstanding, in clause (ee) are set out any other deposits such as deposits collected in one lump sum or in installments by way contributions or subscription or as membership fees or admission fees or service charge to or in respect of any scheme or arrangement floated by the company, which would mean that the same would fall within para. 2, sub-para. (1), for the Directions. The paid up capital of the company is shown at Rs. 2,000 while the free reserves are shown at "nil". The position of the deposits as per the return dated September 30, 1973, is shown at Rs. 16,60,465 as it emerges from the return filed at Ex. 4. Ex. 5 is the return for the period up to March 31, 1974, and the deposits are shown at Rs. 27,68,000. In the next return, that is Ex. 6 which is for the period ending September 30, 1974, the deposits are shown at Rs. 4,767.70 and as per the next return, that is, Ex. 7, which is in respect of the period up to March 31, 1975, the same are shown at Rs. 67,44,000 and the least one that is Ex. 8, which covers the period up to September 30, 1975, in the column against deposits in Pt. II, nothing is shown and the column is kept blank.

24. It would be most significant to note that in Section (i) of Pt. I at Sl. No. IV, there is a specific column entitled "Exempted borrowings and receipts not counting as deposits [vide para 3(1) (d) (i) to (viii) of the Directions]." and sub-clause (h) thereof is entitled "Moneys received or collected under a transaction or arrangement referred to in para-returns, we find any of the deposits collected under the various schemes except Ex. 8 which is a futile attempt of transferring from col. III (ee) to IV (h). All the deposits collected under the schemes, as earlier stated, are shown in col. III (ee) entitled "Any other deposits such as deposits collected in one lump sum" as earlier set out, which would be covered by para. 2(1) of the Directions, and as rightly submitted by Mr. Desai, the learned advocate appearing for the appellant, on their own admission, as it emerges from the contents of Exs. 4 to 7 which are admittedly returns submitted on behalf of the first accused-company by their managing director, accused No. 2, and their director, accused No. 2, various deposits as earlier returned to have been shown as deposits which would fall within para. 2(2) of the Directions, and in this view of the matter, paras. 4 and 5 would apply to such deposits.

25. It is also significant to note that this is not a case of any inadvertence or mistake, as would be evident from the fact that whenever any such amount is

claimed to have been received under the exempted borrowings and receipts not counting as deposits, the same has been shown under col. IV (a) which sub-column is in respect of moneys received or collected under a transaction or arrangement referred to in para. 2(2) of the Directions. To illustrate, in Ex. 8, which is in respect of the period from January 1, 1975, to September 30, 1975, an amount of Rs. 8,315 has been shown in col. IV (a) under the exempted category as falling within para. 2(2) of the Directions and, therefore, not counted as deposits, and in the remaining returns, Exs. 4 to 7, against exempted category col. IV, the word "nil" is shown. It, therefore, cannot be said that the company or its directors were not conscious of the distinction between the deposits or moneys received which would fall within para. 2(1) and those which would fall under para. 2(2) of the Directions. Admittedly, as the paid up capital was Rs. 2,000, and there were no free reserves, these deposits which ran into lakhs of rupees, exceeded the limit of 25% of the paid up capital and free reserves and, therefore, they would be covered by the provisions contained in para. 4(b) (ii) as well as para. 5(1) (a) and (b).

26. The complaint was filed on 22nd October, 1975. Therefore, the period up to October 1, 1975, as set out in para. 5(1) (b) would be covered.

27. But apart from the admission on the part of the company and its managing director who are conducting the business of the company with regard to these deposits, there is cogent and reliable evidence on record to show that these deposits were collected in breach of the Directions as contained in para. 4(b) (ii) and that they were not reduced in breach of the provisions contained in para 5(1) (a) and (b) of the Directions. Paragraph 4(a) (ii) prohibits the company from receiving any deposit not falling within the category, (i) which deposit together with any other deposits falling under the same category, that is category (i), is in excess of the limits specified in the later part of the said sub-para., which limit is 25% of the aggregate of the paid up capital and free reserves of the company. The only thing which is required to be seen before holding that the transaction is covered by the provisions contained in para. 4(b) (ii) is to see whether the deposits fall within the excluded category as per the definition of deposits contained in para. 3(1) (d) (i), that is, to find out if it amounts to any money received or collected under a transaction or arrangement referred to in sub-para. (2) of para. 2. Broadly speaking, sub-para. (1) is in respect of transactions which are referred to in common parlance as a prize chit fund; while the transactions referred to in sub-para. (2) are called conventional chit funds. To appreciate the distinguishing features of these two categories, one has to carefully go through the contents of sub-para. (1) and put the same in juxtaposition with the contents of sub-para. (2) and find out the exact distinction between the two categories. On carefully going through the contents of the said two sub-paras. of para. 2, the distinguishing features of the two categories, viz., prize chits/benefit schemes and the conventional chits may be set out in juxtaposition in a table as set out below :

Prize chits/benefit schemes Conventional chits. (Para.2(1)) (para.2(2)) 1. Subscriptions for these schemes 1. Subscriptions may be may be collected by periodical collected only by instalments or in one lump sum. instalments during the stipulated period. 2. The number and amount of prize/ 2. No such prize are gifts to be awarded in each group given in conventional is decided by the foreman on an chit. The concept of ad hoc basis and prizes are "prize amount" chits is different. Prize offered in conventional offered to the holders of lucky amount is arrived at by numbers drawn by lot either by deduction from the amount way of cash or articles. of the total amount sub- scribed at each installment by all subscribers : (a) foreman's commission charges or service charges as promoter, foreman or agent; and (b) discount which the subscriber agrees to forgo in consideration of the balance being paid to him. 3. The amount distributed by 3. The entire amount of the way of prizes or representing total subscriptions collected cost of gifts represents at each installment less the only a fraction of the amount amount of foreman's commission collected from the subscriber or service charges etc., and the by foreman/company. discount is given away as prize amount to each of the subscriber in turns, by drawing lots or by auction or by tender or in such other manner as may be provided for in the agreement with the result that each and every subscriber gets the prize amount in his turn which is not the case in prize chits. 4. It is not necessary that there 4. A definite and specified should be a specified number of number of subscribers have to subscribers at the initial stage enter into an agreement with though a target of the number the foreman at the initial of subscribers may be set out stage. in the scheme. 5. The winner of the prize or 5. All the subscribers, even gifts may or not be required after getting the prize amount to pay subscription till have to pay the amount of maturity the scheme. of instalments till the maturity of the scheme. 6. These schemes are neither of 6. Conventional chits are of a self-liquidating nature nor self-liquidating nature and do they have characteristics partake the character of a of mutual benefit schemes, though mutual benefit scheme. The they are so called in some cases. foreman/company is entitled After payment of the prize or only to stipulated commission bonus (refund of the subscriptions for service charges, etc.,and in some cases) the entire balance the entire balance amount left is appropriated by the collected at each instalment company as its income or profit. less discount, if any, is given Moreover, every one of the as prize amount to every one of subscribers does not get prizes. the subscribers in turn as determined by lot or auction or by tender or in such other manner as may be provided for in the agreement.

28. Now, bearing this distinction in mind as they emerge form the reading of the contents of para. 2(1) as compared to the contents of para. 2(2) of the directions, it would be clear that by no stretch of imagination, any of the schemes which were floated by the company would fall within the category of the conventional chit funds scheme covered by para. 2(2), but they would squarely fall within the category of prize chit fund schemes, covered by para. 2(1)

29. The learned Magistrate, it seems, was carried away by the mention of the

word "prize" in the schemes and equated the said word "prize" with the word "prize amount", as it appears in sub-para. (2) of para 2, ignoring the real content of that word which is clearly different from a prize which would be awarded in a prize chit. None of the schemes shows that the company has entered into an agreement with a specified number of subscribers. Only a target is fixed of a particular number of subscribers but this target may be reached or may not be reached. The number may vary from month to month. In the first month of the floating of the scheme, a number of subscribers may join and till the scheme is completed, many others may join. But there is no guarantee that the target in every case will be reached. The number of subscribers, therefore, in the scheme floated by the accused-company remains floating. It is neither specified nor fixed. Can it be said that the company has entered into an agreement with a specified number of subscribers ?

30. Mr. Shelat, the learned advocate appearing for the accused, submitted that the maximum fixed under the scheme may be taken as a specified number. There is a fallacy apparent on the face of this argument. When the number is not fixed, how can it be said that the company has entered into an oral agreement, as submitted by Mr. Shelat, with a specified number ? The company enters into an agreement with a few subscribers from time to time till the target is reached. There is no agreement entered into at the initial stage or at any given time between the company on the one side and a specified number of subscribers on the other side. The schemes, therefore, floated by the company would not answer the description of a conventional chit as is contemplated under sub-para. (2) of para. 2 of the directions.

31. Again, there is no provision in the schemes that every one of the subscribers was subscribing a certain sum in instalments for a definite period, because in most of the schemes, on the subscriber getting the prize, he ceases to subscribe for the remaining instalments. Thirdly, there is no provision in the schemes that every one of the subscribers was, in his turn, in the manner provided in sub-para. (2), entitled to the prize amount. The schemes provide for the drawing of lots for prizes periodically in which only some subscribers will get the prize and, therefore, it would not be correct to say that every one of the subscribers will get the prize. Again, what is contemplated in sub-para. (2) is not the prize or gift as ins contemplated in sub-para. (1), but what is contemplated is a prize amount which is an entirely different concept form the concept of a prize or gift. The prize amount has to be arrived at by deduction, from out of the total amount to each instalment by all the subscribers, of the commission and the discount, if any. There is no such provision for granting the prize amount to each one of the subscribers in any of the schemes floated by the accused-company. It is thus clearly demonstrated that the deposits collected by the company under the various scheme floated by it are not deposits collected by floating conventional schemes of the description as are referred to in sub-para. (2) of para. 2 of the directions, but they are schemes answering the description, of prize chit fund schemes covered by the provisions contained in sub-para. (1) of para. 2 of the

directions as would be evident by going through the contents of the schemes, relevant portion whereof have been earlier set out.

32. Mr. Shelat then urged that, in order to be liable under the directions for breach thereof, the prosecution has to show that what was collected was by way of deposits and not subscription. In the submission of Mr. Shelat, and he relied on the evidence of the prosecution witnesses in this behalf, subscriptions were collected from the subscribers and not deposits, as such. We do not find any substance in this contention of Mr. Shelat. It is absolutely irrelevant as to whether the amount collected was by way of subscriptions, deposit or contribution or under any other name. What is relevant is whether they are monies collected 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 saving, mutual benefit, thrift or any other scheme or arrangement as is referred to in sub-para. (1). It specifically includes subscriptions. Money, if called subscriptions, therefore, would not make any difference but would be included in the same attracting provisions of sub-para. (1). They would amount to deposits if they fall within the purview of sub-para. (1) of para. 2 of the directions, that means, if moneys are collected by schemes which are in the nature of prize chit fund scheme. By referring to the contents of the schemes, we have shown earlier that they would not matter, because essentially what is to be seen is whether they are moneys collected for a particular purpose in a particular manner as set out in sub-para. (1), irrespective of the fact whether they are deposits or subscription or collections of any other nature as are set in sub-para. (1).

33. Mr. Shelat next urged that, in order to fall within category (1) as covered by sub-para. (1), the prosecution has to establish that moneys were collected by the company either as a promoter, foreman or agent or in any other similar capacity which not being established, the prosecution must fail. It is admitted by the company that they collected moneys. The schemes issued do show that they were acting as promoters or foreman. The company was to conduct the schemes, and the argument, therefore, that the fact that they were promoters, foreman or agents or collectors in any other capacity of the monies, is not established by the prosecution, has no substance. No such defence was taken. The returns were filled in on behalf of the company and signed by accused Nos. 2 and 3 in their capacity as managing director and director, respectively, of the accused-company.

34. In answer to questions put to accused No. 1, in his examination under s. 313 of the Code of Criminal Procedure, he did admit that under the various schemes, they were not collecting deposits but were collecting subscriptions from members. He also admitted that the company was doing the business of prize chit fund. He also admitted that 7 schemes were floated and from their customers subscriptions was taken.

35. In view of the material on record including literature in respect of the seven

schemes, there can be hardly any doubt that money were collected by accused No. 1-company as promoter or foreman or agent, or in any other capacity.

36. Mr. Shelat then submitted that these directions were issued in exercise of the powers conferred on the Reserve Bank of India by s. 45J and s. 45K. Section 45J, as pointed out by Mr. Shelat, contains provisions with regard to regulating or prohibiting the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money, etc., while s. 45K contains provision with regard to the power of the bank to collect information from non-banking institutions as to deposits and to give directions. In the submission of Mr. Shelat, s. 45K does not authorise the Reserve Bank of India to issue any direction with regard to the reduction of the amount of deposit already collected by the company at the time when the directions came into force. Section 45K(3) provided that "the bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non-banking institution or group of on-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received". The directions given in para. 5 with regard to reduction of deposits contends Mr. Shelat, cannot be said to be directions "in respect of any matters relating to or connected with the receipt of deposits" because the deposits has already been received and the directions for reduction, therefore, would cover a subject in relation to a reduction of the amount of deposit which would have nothing to do with receipt of deposits. We cannot persuade ourselves to accept the submission of Mr. Shelat, because the clause is wide enough to take within its sweep not only the direction with regard to the amount which the company may receive but the direction with regard to the amount which the company has already received. Such directions as are contained in para. 5(1) enjoining upon the companies holding deposits in excess of 25% of the aggregate of paid up capital and free reserves, to reduce the same by at least one-third before 1st October, 1975, and the balance before 1st October, 1976, are, in our opinion, directions, in respect of a matter relating to receipt of deposits. The said para. does not refer to and is not restricted merely to matters connected with physical receipt of deposits but refers to matters relating to or connected with receipt of deposits. Can it be said that giving directions to reduce the deposits by following a phased programme is a matter in no way relating to or connected with the receipt of deposits ? The answer is obviously "no". There is a nexus between the directions with regard to reduction in deposits already received and the receipt of deposits. It cannot be said that the directions with regard to reduction of deposits is not at all related to or connected with the receipt of deposits.

37. Mr. Shelat also urged that, if two interpretations are possible, the one that would help the accused in a criminal trial should be preferred in preference to the one which would jeopardises his liberty. In our opinion, two interpretations are not possible in this case. Only one interpretation, as per the view taken by us, is

possible. It has also to be borne in mind that the directions are given in public interest and, even if two interpretations were possible, the one that promotes the public interest will have to predominate over the one which subserves it.

38. It was lastly urged by Mr. Shelat that, in any event, so far as accused Nos. 2 and 3 are concerned, there is no overt act alleged in the complaint personally against them and there are no allegations that they knowingly and willfully committed breaches of the said directions given by the Reserve Bank. They are, therefore, not liable to any conviction.

39. Now, if we look to s. 450 which held the law till it was replaced by Act 51 of 1974 on and from 13th December, 1974, it contains provisions in sub-s. (3), inter alia, to the effect that every director or member of any committee or other body for the time being vested with the management of the affairs of the non-banking institution, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be punishable with penalties provided therein. Admittedly, accused No. 2 was the managing director and accused No. 3, the director of the company. Both of them were in charge of the business of the company as is clear from the fact that both of them had signed the returns; that their names are shown, as such, in the schemes (in most of the schemes, except one, the name of accused No. 3 is shown as the administrative director) and that it has been admitted that they have been doing this business and that they were the only persons whose names were shown as subscribers and who were the holders of shares in the memorandum of association of the accused-company filed as per Ex. 22 and that they were the signatories to all the returns filed under the Companies Act as also to the returns filed as per the directions given by the Reserve Bank. There is no doubt that they, in their capacity as directors, vested with the management of the affairs of the company, would be liable under s. 450(3) unless they proved that the contravention took place without their knowledge or that they exercised all due diligence to prevent it. This would be the position till s. 450 remained on the statute book, i.e., up to 13th December, 1974, on which date, by Act 51 of 1974, s. 450 was repealed and in its place were enacted ss. 58B and 58C. Section 58C provided thus :

"(1) Where a person committing a contravention or default referred to in section 58B is a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the contravention or default."

40. Thus, by virtue of that fact these two accused were in charge of and were responsible to the company for the conduct of the business of the company, they would also be guilty of the contravention along with the company as provided in s. 58C(1), unless they prove the facts required to be proved under the proviso. Mr. Shelat argued that beyond mentioning their names as accused Nos. 2 and 3 in the complaint and stating that summons of accused No. 1 company be served on accused No. 2, who was the company's managing director or the principal officer, there is nothing in the complaint showing that the said two accused were in charge of and were responsible to the company for the conduct of the business of the company and that, therefore, they cannot be held guilty for any such offence, as the prosecution alleges, to have been committed by the company.

41. We do not find any substance in this contention of Mr. Shelat. It is true, in order that accused Nos. 2 and 3 may be held responsible, the prosecution should show that they were in charge of and were responsible to the company for the conduct of the business of the company. There is ample material on record to justify such a conclusion. The memorandum of association at Ex. 22, various returns filed, which are signed by the two accused, their names shown as managing director and administrative director, or director, respectively, on the folders of the schemes issued at Exs. 9 to 15 and their having signed in that capacity on the returns filed before the Reserve Bank at Exs. 4 to 8 and the admission that these schemes were floated by them and moneys collected as subscriptions (though denying that they were deposits) and the evidence of the prosecution witnesses also in this behalf, clearly establish that they were in charge of and responsible to the company for the conduct of the business. It is true, the complaint in so many words does not mention this. But if we look to the charge which is at Ex. 18, in clear terms, it mentions that accused Nos. 2 and 3 at the relevant time were responsible officers of accused No. 1-company and that they were responsible for the business of accused No. 1-company and that, therefore, all the three accused committed the offence under s. 58C. They therefore, knew when the charge was framed, very clearly, that they had to meet the charge under s. 58C, also.

42. In this view of the matter, there is hardly any scope for argument that accused Nos. 2 and 3 are not liable to prosecution and conviction if found guilty on the charges levelled against the company along with them.

43. The above discussion shows that as the prosecution has brought home all the charges against all the accused with regard to the offence prior to 13th December, 1974, the accused would be guilty of the offence under s. 450, firstly, for breach of the direction contained in para. 4(b) (ii) of the Directions, because, after the coming into force of the Directions which came into force on 1st September, 1973, they did receive deposits which together with the deposits which were already with them on that date fall in the category II, that is. Residuary category to which all deposits not covered by category I belonged, since, as shown in the returns, the deposits amounted to Rs. 16,60,465 on

September 30, 1973, while the only deposits which could be had by the company would be to the extent of 26% of its paid up capital and free reserves, which being Rs. 2,000, the same could be up to the maximum of Rs. 500. This position emerges from the return, Ex. 4. As per return, Ex. 5, the deposits rose to Rs. 27,68,000 as on March 31, 1974. It would be thus seen that in contravention of para. 4(b) (ii), deposits were taken in excess of the permissible limit. This process continued after the Directions came into force. There was also a breach of the direction contained in para. 5(1) (a) because the deposits were not reduced to at least one-third of the excess before October 1, 1974. But on the contrary, more deposits were taken. The accused, therefore, would be guilty of the offence under s. 450 on two counts, viz., for breach of the direction contained para. 4(1) (iii) in accepting the deposits after coming into force of the directions and in not reducing the amount of the excess deposits by October 1, 1974, and thus, committing breach of the direction contained in para. 5(1) (a) of the Directions.

44. That will take us to the offence commencing from 13th December, 1974, when s. 58B was introduced repealing s. 450. The position as it emerges from a scrutiny of the return, Ex. 7, is that the deposits were increased to Rs. 67,44,000 as they stood on March 31, 1975. This would, therefore, amount to a breach of the directions contained in para. 4(1) (ii) of the Directions. It will also be seen that during this period, no reduction in the deposits was done, but on the contrary, there was an increase made therein. Now, if we look at the return at Ex. 8, the position is that no fresh deposits are accepted. But there is also nothing to show therein that the amount was reduced to the required limit by October 1, 1975, which would be the period relevant for our purpose as the complaint was filed in December, 1975. But as the evidence of Bhavanishankar, that is, the complainant shows, in spite of being informed, the deposits which were taken in contravention of para. 4 were not reduced, but they were actually increased. They would, thus be guilty of contravention of committing a breach of the Directions contained in para. 5(1) (b) for not reducing the deposits before October 1, 1975, and as this would be a transaction for the period of (sic) convicted for the offence under s. 58(5)(a) for receiving deposits in contravention of the Directions given under Chap. IIIB, that is, the Directions issued and they would also be of the directions with regard to the reduction of deposits as they had thereby made a default in complying with the directions issued.

45. The learned Magistrate did not apply his mind properly to the relevant provisions of law, as also to the meaning, purport and content of the directions issued. In his opinion, the schemes floated by the accused-company would be covered by para. 2(2) of the directions. He has, it seems, equated the words "prize amount" appearing in sub-para. (2) with the word "prize" appearing in sub-para. (1) without understanding the concepts projected by these words. In terms, in his judgment, he has referred to prizes being given by lots to subscribers as per the agreement and he has thereby crept into an error in

holding that this would be the prize amount. He was also led away by the fact that the company was taking subscriptions from its customers by monthly instalments and that, therefore, also, they would not be deposits. We have demonstrated earlier the unworthiness of this conclusion and the fallacy in the reasoning adopted by the learned Magistrate in arriving at this conclusion. The third reason which weighed with the learned Magistrate was that no interest was being paid to the subscribers on their subscriptions and that the amount of the subscription was not refunded on demand as a deposit would be refunded and that, therefore, also, the transaction will be covered by para. 2(2) of the Directions. This reasoning of the learned Magistrate is also based on a misconception and misreading of the contents of sub-para. 2. It seems, the learned Magistrate has gone on general notions about deposits, losing sight of the special concept of deposits under the Directions. We have elaborately dealt with that aspect of the concept arising under the relevant provisions of the Directions and shown the main features of distinction between the two concepts, as are embodied in sub-para. (1) and sub-para. (2) of para. 2 of the directions.

46. Thus, the order of the learned Magistrate acquitting the accused is clearly, erroneous and is based on reasons not sustainable. The result, therefore, will be the following order :

Appeal will have to be allowed setting aside the order of acquittal passed against the accused and substituting the same by an order of conviction against them on two counts : for the offence under s. 45-O for contravention of the Directions contained in para. 4(a) (ii) and para. 5(1) (a) for contravention of the Directions contained in para. 4(a) (ii) and under sub-s. (6) of s. 58B for default made in complying with the Directions contained in para. 5(1)(a). A notice will be issued to the accused for hearing with regard to sentence returnable on 6th March, 1980.

47. After the notice was issued against the accused for being heard with regard to the sentence to be passed in the instant case, accused No. 2, Manubhai K. Vora, that is, the managing director of accused No. 1-company is present personally, represented by the learned advocate for all the three accused, that is, the company as well as accused Nos. 2 and 3, and we have heard the learned advocate on behalf of all the three accused. We have also perused an affidavit filed by accused No. 2, Manubhai K. Vora, inter alia, stating that the company, in all, collected a subscription of Rs. 85,00,000 approximately in the seven schemes floated by it, out of which, a sum of about Rs. 76,00,000 has been refunded to the members who joined the schemes, by now. Mr. Shelat, therefore, submits that a lenient view may be taken and some token fine may be awarded by way of punishment to the accused.

48. Mr. G. N. Desai, the learned advocate appearing for the appellant, (original complainant) does, on the other hand, contend that in view of the fact that the accused went on flouting the directions and that they continued to accept the deposits beyond the prescribed limit even after s. 58B was enacted by Act 51 of

1974 with effect from 13th December, 1974, a strict view should be taken and not only a heavy fine, but some substantive sentence for the offence under s. 58B be also imposed.

49. In our opinion, looking to the nature of the offence and the gravity thereof, as also the special circumstances to which our attention has been drawn by accused No. 2 by his affidavit filed today, ends of justice will be met if a fine of Rs. 25,000 in respect of the contravention of the Directions not to accept deposits beyond the prescribed limit is concerned and fine of Rs. 2,000 for contravention of the Directions in connection with reduction of the deposits is concerned, is imposed and a token substantive sentence of a week is awarded to accused Nos. 2 and 3 for the offence punishable under s. 58B. The final order with regard to the sentence, therefore, will be as under :

On the first count for contravention of the direction contained in para. 4(a) (ii) of the Directions, a sentence of fine of Rs. 25,00 is awarded to each of the accused for the offence punishable under s. 450 of the Act, in default accused Nos. 2 and 3 to suffer s.i. for three months; and on the count of contravention of the direction contained in para. 5(1) (a) of the Directions, a sentence of fine of Rs. 2,000 is awarded to each of the accused and, in default, accused Nos. 2 and 3 suffer s.i. for one week, for the offence punishable under s. 450 of the Act. Each of the accused is also awarded a sentence of fine of Rs. 2,000 for contravention of the Directions contained in para. 5(1) (a) for the offence under sub-s. (6) of s. 58B of the Act, and with respect to the contravention of the direction contained in para. 4(a) (ii) punishable under s. 58B(5)(a), each one of accused Nos. 2 and 3 is sentenced to s.i. for one week as also a fine of Rs. 25,000 in default s.i. for three months, and accused No. 1, that is, the company, is sentenced only to a fine of Rs. 25,000.

50. Mr. Shelat, the learned advocate for the accused, applies for a certificate under art. 134(1)(c) of the Constitution. In our opinion, this is not a fit case for granting a certificate of fitness for appeal to the Supreme Court. The oral request of Mr. Shelat is, therefore, rejected. At the request of Mr. Shelat, six week's time is granted to the accused to surrender and to pay up the fine.