
(2022) 11 TEL CK 0037
In the Telangana High Court
Case No : Criminal Petition No. 4212 Of 2019

M/S. Subhanjali Chit Fund Private Limited	APPELLANT
Vs	
State Of Telangana	RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 406, 420
Chit Funds Act, 1982 — Section 76
Telangana State Protection of Depositors of Financial Establishment Act, 1995 —
Section 5
Code of Criminal Procedure, 1973 — Section 482

Citation : (2022) 11 TEL CK 0037

Hon'ble Judges : K. Surender, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This petition is filed to quash the proceedings against the petitioners/A1 to A3 in Crime No.144 of 2019 on the file of Metropolitan Sessions Judge, Nampally, Hyderabad.
2. The facts of the case are that A1 firm represented by A2 and A3, who are the Managing Director and Director respectively of A1, collected monthly subscription of chit amounts and failed to pay prize bid amount of Rs.1,14,39,000/- and for the said reason, a complaint was filed which was investigated and charge sheet was filed for the offences under Sections 420 and 406 of IPC and Section 76 of Chit Funds Act, 1982 and Section 5 of the Telangana State Protection of Depositors of Financial Establishment Act, 1995 (for short the 'Act of 1995').
3. Sri Vedula Venkataramana, learned Senior Counsel appearing for M/s.Bharadwaj Associates for the petitioners would submit that; i) none of the ingredients of any of the penal provisions are attracted; ii) The chit transaction is purely civil transaction and for non-payment of chit money, the aggrieved have to approach the Civil Court; iii) Even assuming that chit fund was not registered

in accordance with the Chit Funds Act, it is for the chit subscribers to deal with the persons who are running the chits and it cannot be said that non-registration and running the same is a criminal offence; iv) When the complainant and other chit subscribers have willingly entered as a chit member, the principle of *pari delicto* would apply; v) When there is no deposit at all in chit transactions, the question of attracting the offence under the Act of 1995 does not arise; vi) The entire group of chit subscribers are struck only on account of police seizing the record and in the process of running chit funds business, the foreman would be custodian of the chit subscribers and it cannot be said that the petitioners are liable; vii) even admitting that there was shortage of any payment of chit amount, no offence under Section 406 or 420 of IPC are made out as none of the ingredients are attracted.

4. In support of his arguments, learned Senior Counsel relied upon the following judgments; i) Prof.R.K.Vijayasathya v Sudha Seetharam [(2019) 16 Supreme Court Cases 739] and argued that under Section 482 of Cr.P.C, a complaint can be quashed when the allegations in the complaint taken on their face value and accepted in its entirety, does not make out a criminal offence. Further, the High Court under Section 482 of Cr.P.C can exercise its jurisdiction to examine whether a case is essentially of a civil nature and when the bare reading of the complaint does not constitute a criminal offence, the proceedings are abuse of the process of the court; ii) Oriental Kuries Limited rep. by its Chairman P.D.Jose v. Lissa and others [(2019) 19 Supreme Court Cases 732], wherein it was held that the relationship between chit subscriber and chit foreman is a contractual obligation. Further, if a chit subscriber fails to make payment of installments that would jeopardize interest of the subscribers and the mechanism of chit fund system would fail; iii) Loop Telecom and Trading Limited v. Union of India and another [(2022) 6 Supreme Court Cases 762], it is argued by the learned Senior Counsel that when the defacto complainant subscribed himself to the running of chit business, rule of law offers protection by applying the principle of *pari delicto*, whereby unless it is shown that the participation is involuntary, the claim of the defacto complainant would fail. Admittedly, he has participated in running of chit voluntarily as evident from the complaint.

5. On the other hand, Sri B.Narasimha Sharma, learned counsel appearing for the 1st respondent would submit that every breach of contract cannot be a civil remedy. However, if the allegations disclose criminal offence, the same can be tried by the competent Criminal Court. In support of his contention, he relied on the judgment of the Hon'ble Supreme Court in the case of Indian Oil Corporation v. NEPC India Limited and others [(2006) 6 Supreme Court Cases 736]. He further submits that the petitioners have indulged in cheating the defacto complainant by taking the amounts which were due to him.

6. As seen from the documents filed in the charge sheet, the chit number, which was submitted to the Registrar was shown as Rs.1.00 Crore, however with the very same chit number, passbook was issued to the 2nd respondent for a chit of

Rs.2.00 Crore. The name of the defacto-complainant is not in the list of subscribers. The allegation that the amounts which were given by the firm were again taken back by the 2nd petitioner/A2 by misrepresentation and fraudulent means from the defacto complainant. The said fraudulent act of taking money of defacto complainant is stated by the witnesses who are enlisted as L.Ws.5 and 8. Further, if the chit amounts are not paid, Section 76 of the Chit Funds Act would attract.

7. The argument advanced by the learned Senior Counsel on behalf of the petitioners/Accused that the running of chit is a contract and for any grievance, the parties have to approach the civil court, cannot be disputed. However, in the present case, there are several allegations, that the amounts which were due to the defacto complainant were taken by A2 fraudulently. In the said circumstances, where the transactions and the acts done by the petitioners amounted to criminal offence or not can only be decided only during the course of trial. As seen from the complaint, there was deliberate misrepresentation, pursuant to which, the defacto complainant had parted with amounts. The said acts of inducement pursuant to which, the defacto complainant had parted with money attracts offence of cheating prima facie. Further, when the installments of chit amounts are paid, in the event of defalcation of the said amount and/or non-payment of the prize money would amount to criminal misappropriation.

8. The said acts would constitute an offence under Chit Funds Act and the Act of 1995 can be agitated only during the course of trial.

9. Accordingly, the Criminal Petition is dismissed. However, it is made it clear that the observations and findings in the present application are only for the purpose of deciding the case under Section 482 of Cr.P.C, wherein the petitioners have sought termination of criminal proceedings at the threshold. The trial Court, uninfluenced by any of the observations made herein shall come to its own conclusions on the basis of evidence adduced.

10. As a sequel thereto, miscellaneous applications, if any pending, shall stand closed.