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(2025) 10 TEL CK 1239

In the Telangana High Court

Case No : Criminal Petition No.15497 Of 2024

Vyamasani Madhavi and another APPELLANT

Vs

State of Telangana RESPONDENT

Date of Decision : 31-10-2025

Acts Referred:

- Indian Penal Code, 1860 — Section 34, 420
- Telangana Protection of Depositors of Financial Establishments Act, 1999 — Section 2, 5
- Chit Funds Act, 1982 — Section 3
- Code of Criminal Procedure, 1973 — Section 164

Citation : (2025) 10 TEL CK 1239

Hon'ble Judges : Juvvadi Sridevi, J

Bench : Single Bench

Advocate : Y.Soma Srinath Reddy, D.Shashi Preetham, S.Madhavi

Final Decision : Allowed

Judgement

Juvvadi Sridevi, J

1. This Criminal Petition is filed by the petitioners-accused Nos.2 and 3 seeking to quash the criminal proceedings against them in C.C.No.4 of 2023 pending on the file of the learned Principal District and Sessions Judge, Hanumakonda, registered for the offences under Section 420 read with Section 34 of the Indian Penal Code (hereinafter referred as 'IPC') and Section 5 of the Telangana Protection of Depositors of Financial Establishments Act (hereinafter referred as 'the TSPDFE Act').

2. Heard Sri Y.Soma Srinath Reddy, learned counsel, representing Sri D.Shashi Preetham, learned counsel for the petitioners and Smt.S.Madhavi, learned Assistant Public Prosecutor for the State-respondent No.1. Even after service of notice, none appeared on behalf of the unofficial respondent No.2. Perused the record.

3. In brief, the case of the prosecution is that accused No.1 is the Chairman of

Sudhathri Chit Funds, while the petitioners-accused Nos.2 and 3 are the Managing Director and Executive Director of the said Chit Fund Company, respectively. The respondent No.2 and his wife, who are retired Government employees, had received certain amounts as retirement benefits. With the intention of making a secure investment for their future, they were exploring various investment options and, in that process, came into acquaintance with the accused No.1. By virtue of the said acquaintance, the accused No.1 introduced the petitioners-accused Nos.2 and 3 to the respondent No.2 and his wife, and all the accused induced them to invest in their chit schemes, assuring good returns. Believing their representations, the respondent No.2 subscribed to three chits of Rs.10,00,000/- each and six chits of Rs.5,00,000/-each, and regularly paid the installments as per the rules and regulations of the chit. Subsequently, the accused Nos.1 to 3 introduced another scheme offering an attractive rate of interest between 24-30%, and on such inducement, the respondent No.2 and his family members invested a further sum of Rs.19,75,500/-, apart from a total investment of Rs.56,36,400/- in the nine chits. Upon completion of the chits, when the respondent No.2 and his family members sought to encash the maturity amount of Rs.76,11,900/-, the accused Nos.1 to 3 deliberately delayed, evaded, and postponed repayment under various pretexts and failed to discharge the legally enforceable liability. Thereby, the accused Nos.1 to 3 had committed the offences under Section 420 read with 34 of IPC and Section 5 of the TSPDFE Act.

4. Learned counsel for the petitioners submits that the petitioners-accused Nos.2 and 3 are nothing to do with the alleged offences. It is contended that there was neither any dishonest intention nor fraudulent inducement on the part of the petitioners-accused Nos.2 and 3. Mere failure to repay the amount, in the absence of mens rea, does not constitute the offence of 'cheating'. There is no material on record to suggest that the transaction was tainted with fraudulent intent from its inception. So also, the provisions of the TSPDFE Act are not attracting to the facts of the case as there was no deposit into financial establishment, any offence as alleged in the present case would be subject matter of the Chit Fund Act, which is self-sustaining Act. It is further submitted that there is no incriminating material to justify the prosecution of the petitioners-accused Nos.2 and 3. He relied upon a Common Order dated 11.09.2024 passed by this Court in CRL.P.No.10494 and 10597 of 2024. Hence, he prayed to quash the proceedings against the petitioners-accused Nos.2 and 3.

5. On the other hand, learned Assistant Public Prosecutor appearing for the State-respondent contended that there are triable issues and factual aspects to be examined by the learned trial Court and it is not a fit case to quash the proceedings against the petitioners at this juncture and the matter is to be decided after conducting full-fledged trial by the learned trial Court and prayed to dismiss this Criminal Petition.

6. Having regard to the submissions advanced on either side and upon a careful

perusal of the material available on record, it is evident that accused Nos.1 to 3 were conducting a chit fund business, in which respondent No.2 and his family members had subscribed to nine chits. Upon completion of the said chits, a total sum of Rs.56,36,400/- became due. In addition thereto, an amount of Rs.19,75,500/- was further invested by the respondent No.2 for the purpose of earning a higher rate of interest. The sole allegation levelled against the petitioners-accused Nos.2 and 3 is that they failed to repay the said amount upon completion of the chits.

7. It is a well-settled principle of law that, in order to constitute the offence of cheating, there must be a dishonest or fraudulent intention present at the very inception of the transaction. In the present case, the charge sheet reveals that the respondent No.2 and his family members have joined the chits and they were ended in the year 2021 itself. Thereafter, the respondent No.2 also invested an amount of Rs.19,75,500/- with the accused Nos.1 to 3. It is also settled that mere failure or inability to repay an amount does not, by itself, constitute the offence of cheating in the absence of any fraudulent or dishonest intention from the inception. Therefore, the allegation that the petitioners-accused Nos.2 and 3 had a dishonest or fraudulent intention to cheat the respondent No.2 from the very beginning of the transaction is unsustainable.

8. It is a well-settled principle of law that, in order to constitute the offence of cheating under Section 420 of IPC, there must be fraudulent or dishonest intention at the very inception of the transaction. In the absence of such initial intention, subsequent failure to discharge a contractual or financial obligation, would not amount to the offence of cheating. In the present case, a perusal of the charge sheet discloses that the respondent No.2 and his family members had subscribed to several chits conducted by the accused Nos.1 to 3, which concluded in the year 2021. Thereafter, the respondent No.2 believed the accused persons and stated to have further invested an amount of Rs.19,75,500/- with the said accused persons for the purpose of earning a higher rate of interest. However, there is nothing on record to indicate that, at the time of entering into the said transactions, the petitioners-accused Nos.2 and 3 had any dishonest or fraudulent intention to deceive the respondent No.2. It is also a settled proposition of law that mere failure to repay the amount due, without the presence of mens rea from the inception, cannot constitute the offence of cheating. Therefore, the allegation that the petitioners-accused Nos.2 and 3 had dishonest or fraudulent intention to cheat the respondent No.2 right from the inception of the transaction is unsustainable.

9. In so far as Section 5 of the TSPDFE Act is concerned, it is pertinent to note that chit fund is not a financial establishment and Section 2(c) of TSPDFEA defines 'Financial Establishment", as under:

"'Financial Establishment', means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a cooperative society owned or controlled by any State

Government or the Central Government or a banking company as defined under Clause (c) of Section 5 of the Banking Regulation Act, 1949".

10. It is pertinent to note that the Chit Funds Act, 1982 (for short, "the Act, 1982") is a complete code in itself, specifically enacted to regulate the conduct of chit fund business and to redress grievances arising therefrom. The Act provides a comprehensive mechanism for the resolution of disputes and also incorporates penal provisions, including Section 76, which is intended to deal with any misconduct or contravention within the chit fund operations. Furthermore, when a special enactment such as the Act, 1982 governs a particular field, it shall prevail over the general laws by virtue of the settled principle of generalia specialibus non derogant. In this regard, the presence of the non obstante clause under Section 3 of the Act, 1982 further reinforces its overriding effect over general enactments. Accordingly, Section 5 of the TSPDFE Act has no application to the facts of the present case.

11. Upon a meticulous examination of the averments contained in the charge sheet, it remains unexplained as to why the Investigating Officer failed to record the statements of the petitioners-accused Nos.2 and 3 under Section 164 of the Code of Criminal Procedure, particularly when they are stated to have voluntarily confessed their guilt. Furthermore, no independent witnesses have been examined by the Investigating Agency to corroborate or substantiate the allegations levelled against the petitioners-accused Nos.2 and 3. It is also significant to note that the chit fund company, through which the alleged transactions were carried out under the management and supervision of the accused No.1 and the petitioners-accused Nos.2 and 3, has not been arrayed as an accused in the charge sheet. A careful perusal of the material placed on record reveals that the dispute is of a purely civil in nature. Consequently, the initiation of criminal proceedings against the petitioners-accused Nos.2 and 3 is untenable. In such circumstances, the essential ingredients necessary to constitute the offences under Section 420 of IPC and Section 5 of the TSPDFE Act, are not made out. Consequently, subjecting the petitioners-accused Nos.2 and 3 to undergo the rigours of trial would serve no purpose, and the continuation of the criminal proceedings against them would amount to an abuse of the process of law and therefore, the same are liable to be quashed.

12. Accordingly, this Criminal Petition is allowed and the criminal proceedings against the petitioners-accused Nos.2 and 3 in C.C.No.4 of 2023 pending on the file of the learned Principal District and Sessions Judge, Hanumakonda, are hereby quashed. As a sequel, pending miscellaneous applications, if any, shall stand closed.

