



2025:DHC:7379



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Reserved on: 21st May, 2025******Pronounced on: 27th August, 2025***

+ CRL.M.C. 1186/2023&CRL.M.A. 4551/2023

BHIM SAIN ARORA & ORS.

.....Petitioners

Through: Ms. Neha Kapoor and Mr. Kaushal
Mehta, Advocates.

versus

STATE

.....Respondent

Through: Ms. Priyanka Dalal, APP for the
State.

SI S.K. Singh, Section-4, EOW.

Mr. Jatin Sehgal, Mr. Adhirath Singh,
Mr. Viren Bansal and Ms. Alisha
Sharma, Advocates for Complainant(s)**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'CrPC'), has been filed seeking the following prayers: -

“In view of the above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-



(a) allow the present petition and set aside the order dated 8.2.2023 passed by the court of Ld ASJ-03, N/W, Rohini Courts Sh Babru Bhan in Cr Rev 331/2022 titled "Bhim Sain Arora & Ors versus State" in FIR No. 70/2019 P.S EOW U/S 406/409/420/120B IPC and Section 4/5/6 PCMS Act and discharge the petitioners;

(b) Call for the Trial Court records from the court of Ld CMM Sh Rohit Gulia in Cr Case No. 115/2020 titled "State Versus Bhim Sain Arora" in FIR No. 70/2019 P.S EOW u/s 409/420 IPC r/w 120B and Section 4/5/6 of Prize Chits and Money Circulation Schemes(Banning) Act;

(c) Pass any other further order as this Hon'ble court may deem fit and proper in the facts of the present case;"

2. In the present case, FIR No. 70/2019, under Sections 406/409/420/120B of the Indian Penal Code, 1860, (for short, 'IPC'), and Sections 4/5/6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, (for short, 'PCMCS Act') was registered at Police Station Economic Offences Wing, on the basis of the complaint filed by one Saurabh Gupta and 20 other complainants wherein, they alleged that Bhim Sain Arora (Petitioner No.1), Kanchan Arora (Petitioner No.2), his wife and Paras Arora, his son, (who was kept in Column No. 12 of the chargesheet) were known to them for last 20 years and they used to run a company in the name of Multicity Chit Fund Pvt. Ltd., Petitioner No.3/accused company, having its registered office in Gurugram, Haryana. It was alleged that the said persons, since inception, were operating their business of chit fund in Ashok Vihar, Delhi and were carrying their activities related to finance/public funds under various names/companies. It was further alleged that during the said period, the petitioners while acting in conspiracy had lured the complainants to invest/deposit the money with them under the pretext of running committees



with the promise of good return at the time of maturity. It was further alleged that on further inducement by the petitioners, the complainants had also introduced their family members/relatives into various committees, chit fund schemes run by alleged persons/petitioners herein and they invested their hard earned money in the said schemes. Thus, in said manner, the petitioners have cheated the complainants to the tune of Rs. 3 Crores approximately for the sake of committee and deposit money for interest and Rs. 21,18,600/-, under the head of chit fund which were paid by the complainant *via* cash, cheques, RTGS transfer from time to time.

3. During investigation, statements under Section 161 of the CrPC were recorded of the victims/complainants and the relevant documents were obtained from them regarding their investment in the company of the petitioners and it was revealed that the petitioner No.1 used to run the business of chit fund/committee in 4-5 groups of approximately 20 members each. After going through the schemes floated by the petitioners, complainants had invested on his assurance in the said scheme, with alluring 15-28% return per annum and that interest used to remain with the petitioner No.1 for further capital appreciation and after some time, he used to add them into the funds of the investors which he held in lieu of interest. It was further revealed during investigation that on the assurance of the petitioners, complainants had invested in their company for the return of their payments whenever required, however, later the petitioners requested to extend further time to repay and further allure the complainants with good interest return,



but till date they did not even repay the principal amount invested by the complainants. It was further revealed that initially the petitioners used to pay the interest regularly, however, in January 2019, they called the investors and informed them that they do not have money to repay and in 2019, they sold their house and fled away without paying the complainants/investors. During investigation, the search of the house of the petitioners was conducted and a laptop containing all the records of the investment of the investors, *i.e.*, Chit fund, committee, loan amount etc., was found. The petitioners, during interrogation, admitted to the amount invested by the investors as a loan for 18% per annum interest to the tune of Rs.2,86,20,000/-.

4. During investigation, it was revealed that the amount so deposited by the investors for the chit fund has been siphoned off to the personal account of the accused persons/petitioners and the said company, as per report from Reserve Bank of India, has not been registered and it was not authorized to collect money from the investors as per the guidelines/norms of RBI. It was further observed that the said amount deposited by the investors was further transferred into various other accounts of the subsidiary companies formed by the petitioners and then, utilized by them for their own personal use. It was further revealed that the petitioners were authorized signatories of their company named, Multicity Chit Fund Pvt. Ltd., petitioner No.3, since inception. On completion of investigation, chargesheet was filed before the Court of competent jurisdiction against the petitioners and the aforesaid company.



5. Learned Chief Metropolitan Magistrate based on the allegations made in the chargesheet framed charges for the offences punishable under Sections 409/420 read with Section 120B of the IPC and Sections 4/5/6 of the PCMCS Act against all the accused persons *vide* order dated 19.07.2022. The said order was challenged by way of Criminal Revision Petition No. 331/2022 before the learned ASJ and the same was dismissed *vide* order dated 08.02.2023. Hence, the present petition has been filed assailing the impugned order on charge passed by learned CMM.

6. Learned counsel for the petitioners has submitted that charges for the offences punishable under Sections 409/420 of the IPC cannot coexist together and is not *prima facie* maintainable as the ingredients of both these offences are altogether different. It is further submitted that the learned CMM has wrongly distinguished the judgment of Hon'ble Supreme Court in **N. Raghavender v. State of Andhra Pradesh**¹, by observing that the said judgment is not related to consideration on charge and the same was rendered academically. It is further submitted that learned ASJ had erred in concluding that the Court with the aid of Section 221 of the CrPC can frame charge for both the offences, however, conviction can be made only for the one offence. It is further submitted that the charge for the offence punishable under Sections 409/420 of the IPC is not simultaneously maintainable as nothing has been revealed from the charge sheet which could show that the petitioners

¹ (2021) 18 SCC 70



have misappropriated the funds invested by the complainant. It is submitted that the present dispute is purely civil in nature. Reliance has been placed on **Delhi Race Club Ltd. v. State of Uttar Pradesh**², to contend that although the offence of breach of trust and cheating involved dishonest intention, yet they are mutually exclusive and different in their foundation. In case of criminal breach of trust, the offender is lawfully interested with the property and he dishonestly misappropriate the same, whereas in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any such property. This shows that both these offences cannot coexist simultaneously. Reliance has also been placed on the judgment of Coordinate Bench of this Court in **Wolfgang Reim & Ors. v. State & Anr.**³, to contend that a person cannot be charged with offence of cheating and criminal breach of trust simultaneously for the same transaction as for the offence of cheating the dishonest intention must exist at the inception of transaction, whereas, for criminal breach of trust, the dishonest intention comes at the later stage after the person has been entrusted with or has dominion over the subject property. Reliance has also been placed on the judgement of Hon'ble Guwahati High Court in **Mahindra & Mahindra Financial Services Ltd. v. M/s Delta Classic Pvt. Ltd.**⁴, to contend that a person cannot be charged on the same facts for the offence of criminal breach of trust, as well as the offence of cheating.

² (2024) 10 SCC 690

³ 2012: DHC: 3908

⁴ 2009 SCC OnLine Gau 105: 2010 Cri LJ 4591



7. Learned counsel for the petitioners has further submitted that the learned ASJ has incorrectly held that petitioners used to collect money from the investors in their capacity as the agents of their company. However, there is not a single averment in the charge sheet in respect of the fact that the petitioners used to collect money in in the said capacity and it cannot be concluded on the basis of allegations levelled in the charge sheet that they were acting as agents of Multiplicity Chit Fund Company. It is the case of the petitioners that no offence as such has been committed by the company and in absence of any offence having been committed by the said company, the petitioners cannot be charged for the offence punishable under Section 409 of the IPC. It is further submitted that there is no vicarious liability of a director of a company as per law. It is further submitted that the petitioners had never induced or deception any of the complainants to invest nor there was any *mens rea* on their part to cheat the complainants. It is pointed out that as per the case of complainants, they were dealing with the petitioners for past two decades and were withdrawing committees from time to time and the same shows that petitioners never intended to cheat them. Therefore, the charge for the offence punishable under Section 420 of the IPC is not made out. Reliance has been placed on **Vesa Holdings Pvt. Ltd. v. State of Kerala**⁵, to argue that for constituting the offence of cheating, the complainant(s) is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is the case of the petitioners that they never intended to cheat the complainants at all and in the present case, a civil

⁵ (2015) 8 SCC 293



dispute has been given the colour of a criminal dispute. Moreover, in the present case has been registered belatedly after a span of 20 years.

8. Insofar as the charge for the offences punishable under PCMCS Act are concerned, it is submitted that both the courts below have not given any findings in respect of said offences. It is further submitted that the activity carried on by the petitioners cannot be considered as running “Prize Chit” or “Money Circulation Scheme” as defined under Section 3 of the PCMCS Act. Reliance has been placed on **State of West Bengal v. Swapan Kumar Guha & Ors.**⁶, to contend that the clandestine manner of payment of interest in excess of the stipulated rate does not in any way indicate existence of any scheme for making quick or easy money. It is thus prayed that the impugned order framing charge passed by learned CMM be set aside and the petitioners be discharged in the present case FIR.

9. *Per contra*, learned APP for the State, assisted by learned counsel for the complainants, has submitted that allegations made in the present FIR against the petitioners are serious in nature inasmuch as they had siphoned off the money which was entrusted with them for returns by the complainant(s). It is further submitted that the learned ASJ had rightly observed that the charge for the offences punishable under Sections 409/420 of the IPC can be framed against the petitioners with the aid of Section 221 of the CrPC. It is

⁶ (1982) 1 SCC 561: AIR 1982 SC 949



the case of the complainant that the petitioners had dishonestly induced the complainant to with their hard-earned money and the said money was entrusted with the petitioners for the purpose of investment. However, the petitioners with the intent to deceive the complainants had misappropriated the said money for their own personal use. It Is further submitted that the findings of learned ASJ are correct and the conviction of the petitioners after the trial can be sustained for either of the offences with which they have been charged.

10. Regarding the charges for the offences punishable under PCMCS Act, it is submitted that the perusal of the charge sheet and the documents as well as the statements with it *prima facie* discloses the commission of offences under the PCMCS Act and the learner Trial Court at the stage of framing of charge is not required to conduct a mini trial at that stage and is only required to determine a *prima facie* case against the petitioners. Insofar as the delay in registration of FIR is concerned, it is submitted that the petitioners were running the subject schemes for several years and they continued to take money from several individuals till 2019. It is submitted that the contents of FIR and the statements of the victims recorded during the investigation would show that the money taken from the complainant(s) were invested over a period of time on the promise of returns. However, when there was inability on the part of the petitioners to repay the sum of money the complainant(s) had filed the complaint based on which FIR in the present case was registered.



11. It was further submitted that during the course of investigation and the documents collected from the petitioners, it was revealed that the money taken from the complainant and other investors was further transferred into various accounts which were handled by the petitioners and the said money was used by them for their personal purposes. It is the case of the complainants that the manner in which the petitioners have taken their money and thereafter sold their assets shows that they intended to deceive and siphon off the money received from the complainants. Thus, it is prayed that the impugned order on framing charge as upheld by learned ASJ in revision does not suffer from any infirmity or perversity and the present petition is to be dismissed.

12. Learned counsel for the complainant has relied on following precedents to oppose the present petition: -

- i) Pinku Roy v. Ranjit Debnath & Anr.⁷,**
- ii) Sanghi Brothers (Indore) Pvt. Ltd. v. Sanjay Choudhary & Ors.⁸;**
- iii) Supriya Jain v. State of Haryana & Anr.⁹, Criminal Appeal No. 1780 of 2023;**
- iv) Amit Kapoor v. Ramesh Chander & Anr.¹⁰**

⁷ LNIND 2108 GAU 49: CRL.PET./379/2013 decided *vide* judgment dated 04.01.2018 by learned Single Judge of Gauhati High Court

⁸ (2008) 10 SCC 681

⁹ (2023) 7 SCC 711; 2023 INSC 595



13. Heard learned counsels for parties and perused the record.

14. The main thrust of argument of learned counsel for the petitioners is that the charge for the offences punishable under Sections 420/406 of the IPC cannot go together as ingredients of the both the said offences are exclusive to one another. Reliance is placed on judgment of Hon'ble Supreme Court **Delhi Race Club (1940) Limited and Ors. (supra)** wherein, it was observed and held as under: -

“Difference between criminal breach of trust and cheating

35. This Court in its decision in *S.W. Palanitkar v. State of Bihar* [*S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under : (SCC p. 246, paras 9-10)

“9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted : (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving

¹⁰ (2012) 9 SCC 460



him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

36. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:

In order to constitute a criminal breach of trust (Section 406 IPC)

- (1) There must be entrustment with person for property or dominion over the property, and
- (2) The person entrusted:
 - (a) Dishonestly misappropriated or converted property to his own use, or
 - (b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:
 - (i) Any direction of law prescribing the method in which the trust is discharged; or
 - (ii) Legal contract touching the discharge of trust (see : *S.W. Palanitkar* [*S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129]).

Similarly, in respect of an offence under Section 420IPC, the essential ingredients are:

- (1) Deception of any person, either by making a false or misleading representation or by other action or by omission;



(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : *Harmanpreet Singh Ahluwalia v. State of Punjab* [*Harmanpreet Singh Ahluwalia v. State of Punjab*, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620]).

37. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405IPC, punishable under Section 406IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415IPC, punishable under Section 420IPC.

39. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in *Hari Prasad Chamaria v. Bishun Kumar Surekha* [*Hari Prasad Chamaria v. Bishun Kumar Surekha*, (1973) 2 SCC 823 : 1973 SCC (Cri) 1082] as under : (SCC p. 824, para 4)

“4. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the



respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.”

40. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction



i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

44. At the most, the Court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.



45. Even if the Magistrate would have issued process for the offence punishable under Section 420IPC i.e. cheating, the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.

46. It has been held in *State of Gujarat v. Jaswantlal Nathalal* [*State of Gujarat v. Jaswantlal Nathalal*, 1967 SCC OnLine SC 58 : AIR 1968 SC 700 : (1968) 2 SCR 408] : (SCC OnLine SC para 8)

“8. The term “entrusted” found in Section 405IPC governs not only the words “with the property” immediately following it but also the words “or with any dominion over the property” occurring thereafter—see *Velji Raghavji Patel v. State of Maharashtra* [*Velji Raghavji Patel v. State of Maharashtra*, 1964 SCC OnLine SC 185 : AIR 1965 SC 1433 : (1965) 2 SCR 429] . Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see *Jaswantrao Manilal Akhaney v. State of Bombay* [*Jaswantrao Manilal Akhaney v. State of Bombay*, 1956 SCC OnLine SC 46 : AIR 1956 SC 575 : 1956 SCR 483] . The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an “entrustment”.”

47. Similarly, in *CBI v. Duncans Agro Industries Ltd.* [*CBI v. Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045] this Court held that the expression “*entrusted with property*” used in Section 405IPC connotes that the property in respect of which criminal breach of



trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under : (SCC pp. 607-608, para 27)

“27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression “entrusted with property” or “with any dominion over property” has been used in a wide sense in Section 405IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression “entrusted” appearing in Section 405IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression “trust” in Section 405IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee.”

(emphasis supplied)



48. The aforesaid exposition of law makes it clear that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In case of sale of movable property, although the payment may be deferred yet the property in the goods passes on delivery as per Sections 20 and 24, respectively, of the Sale of Goods Act, 1930.

“20. *Specific goods in a deliverable state.*—Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

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24. *Goods sent on approval or “on sale or return”.*—When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer—

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.”

49. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : *Lalit Chaturvedi v. State of U.P.* [*Lalit Chaturvedi v. State of U.P.*, (2024) 12 SCC 483 : 2024 SCC



OnLine SC 171] and *Mideast Integrated Steels Ltd. v. State of Jharkhand* [*Mideast Integrated Steels Ltd. v. State of Jharkhand*, 2023 SCC OnLine Jhar 301] .]

50. The case at hand falls in Category 1 as laid in *Nagawwa* [*Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] referred to in para 17 of this judgment.

51. If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the Court of the Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have prima facie lost the period of limitation for filing such a civil suit.

52. In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law.”

15. In the aforesaid case the facts were that the complainant therein had supplied goods to the accused and since they failed to make the payment, the complainant filed against them a complaint and after conducting the inquiry under Section 202 of the CrPC, the learned Trial Court had issued summons to the accused persons therein for the offence punishable under Section 406 of the IPC. It is in the aforesaid circumstances, the Hon’ble Supreme Court ruled that the case was one of an unpaid seller. In the present case, the allegation is with respect to the petitioners running a chit fund company and alluring the complainants to get their money deposited with them for investment in various companies and chit fund schemes. It is the case of the prosecution that



the petitioners were running the business of chit funds/committees of 4-5 groups approximately 20 persons each with a promise of return of 15 to 28% interest per annum and those interests also remained with the petitioners for further capital appreciation.

16. It is the case of the prosecution that in 2019, the petitioners sold their house and fled away without paying the complainant/victims (investors) either the principal amount or the interest. Material has been placed on record by the prosecution to show that the properties were purchased by the petitioners from the money invested by the complainants as well as siphoning off funds from the account of the company, accused/petitioner No.3, to their personal accounts as well as other accounts in the name of entities run by them. The details of amount invested by the victims in the chit funds groups, committees' group, and loan for 18% per annum interest in the firm of petitioner no. 1 is reproduced as under: -

**ANNEXURE-A/1.****DETAIL OF AMOUNT INVESTED BY THE INVESTORS IN THE CHIT FUND GROUP, COMMITTEE'S GROUP AND LOAN FOR 18 % PER ANNUM INTEREST IN THE FIRM OF THE ALLEGED BHIM SAIN ARORA.**

| S.N o | Name Detail & of victim. | Detail amount invested in of chit fund group | Detail amount invested in Committee groups (Mostly invested in cash) | Detail of amount invested in the scheme of loan on interest. (Invested in cash) |
|----------|-------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Mr. Rakesh Verma S/o Sh Sohan Lal Verma R/o H.No 85, AP Block, Shalimar Bagh, New Delhi. Age 50 | 1) In Multicity chit fund No MC 46. He has invested in two chits and total amount of Rs 88,000/- (Through Cheque) have been invested by him from 29/06/2018 till 31/12/2018. 2) Multicity chit fund No MC 50. he has invested in one chit and total amount of Rs 15,000/- (Through Cheque) have been invested by him from 01/11/2018 till 31/12/2018. 3) Multicity chit fund No MC 49. He has invested in two chits and total amount of Rs 9,000/- (Through Cheque) have been invested by him from 01/10/2018 till 28/11/2018. | 1) Total amount of Rs 3,39,250/- (Cash) invested in the committee No.1 (In cash) 2) Total amount of Rs 80,750/- (cash) invested in the committee No.2 (payment has been submitted in cash) | Total amount of Rs.20,00,000/- (Twenty lakhs) given in cash to Mr. B.S Arora. for 18 % annual interest. (copy of receipt has been given by alleged B.S Arora to the complainant.) |



| | | | |
|------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sohan Lal Verma R/o H.No 95, AP Block, Shalimar Bagh, New Delhi. | amount invested by him in the name of Verma Electronics is 397960/- (Through Cheque) out of 5 Lakhs . 2) Multicity chit fund No. MC 47. He had invested total amount of Rs 3,02,000/- (Through Cheque) out of Lakhs 5 Lakhs have been invested. | (Cash) out of Rs 13 Lakhs invested in committee No.1 in cash. 2) Total amount of Rs 7,11,750/- (Cash) out of Rs 10 Lakhs invested in the committee No.2 and the said committee has been withdrawn by him in cash. 3) Total amount of Rs 5,70,200/- (cash) out of Rs 12 Lakhs invested in committee No.3 in cash. 4) Total amount of Rs 161,900/- (Cash) out of Rs 13 Lakhs invested in the committee No.4 in cash. 5) Total amount of Rs 3,39,300/- (Cash) out of Rs 10 Lakhs invested in the committee No.5 | Sain Arora on loan is Rs 44 lakhs (Cash) on 18 % per annum interest and accused B.S Arora issued cheques against the said amount. Total amount given to Bhim Sain Arora by his wife Neelam Verma on loan is Rs 8 lakhs (Cash) on 18 % per annum interest and accused B.S Arora issued cheques against the said amount. Total amount given to Bhim Sain Arora by his daughter Poonam Verma on loan is Rs 5 lakhs on 18% per annum interest and accused B.S Arora issued cheques against the said amount. Total amount given to Bhim |
|------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



| | | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------------|
| | | 4) Multicity chit fund scheme No 43. He has invested Rs. 3,02,000/- (Through Cheque) and the chit was withdrawn by him and amount received is 4,32,500/- on 11/12/2018. | | |
| 2 | Mr Rahul Natu S/o Sh R.D Natu R/o A- 55, 2 nd Floor, Sharda Puri, Ramesh Nagar, Delhi. | He had invested in three Chit fund group of Ms Bhim Sain Arora 133,000/- (Through Cheque) (Three chit fund 1) In chit fund 1 he had invested 54000/- (Through Cheque) 2) In chit fund 2 he had invested 54000/- out of 100,000 :- 54000/- (Through Cheque) In chit fund No-3 he had invested 25,000/- out of 50,000/- (Through Cheque) | | |
| 3 | Ms Manju Khurana W/o Mr Dinesh Khurana R/o A-10, Bhagat Singh Marg, Kewal park, Adarsh Nagar, Delhi | She has invested 18,00,000/- (17,50,000/- as lending money on interest & two chit fund of Rs 6000/- Each) (Through Cheque) | | |
| 4. | Ms Taniya Satija R/o H.No 114, Suraksha Enclave, Pitampura, Delhi | She has invested Rs. 7,60,000/- (Through Cheque) as lending money on interest in the company of Mr Bhim Sain Arora | | |
| 5. | Mr Ramesh Verma S/o Sh | 1) Multicity chit fund scheme MC No 46. total | 1) An amount of Rs 1,61,500/- | Total amount given to Bhim |



| | | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | | Sain Arora by his son Gaurav Verma on loan is Rs 5 lakhs on 18 % per annum interest and accused B.S Arora issued cheques against the said amount. |
| 6. | Mr. Virender Kumar Khanna @ Pawan Khanna S/o Late Sh Om Prakash Khanna R/o F-17, Deshbandu Gupta market, karol Bagh, Delhi. | | 1) Amount of Rs 4,56,000/- (Cash) out of Rs 5,00,000/- invested in the committee No-1 of Mr. Bhim Sain Arora by him. 2) Amount of Rs 5,53,450/- (cash) out of 6,00,000/- invested in the committee No.2 3) Amount of Rs 7,39,600/- (cash) out of 8,00,000/ invested in the committee No.3 4) Amount of Rs 9,09,850/- (cash) out of 10,00,000/ invested in the committee No.4. 5) Amount of Rs 7,11,750/- (cash) out of 8,00,000/ invested in the committee No.5. | |



2025:DHC:7379



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| 7. | Mr. Amit Kumar S/o Sh Narinder Kumar R/O H.No QU-143A, Pitampura, Delhi. | | | <p>He had invested Rs 15,00,000/- (Cash) Lakhs in the Loan scheme of Mr Bhim Sain Arora.</p> <p>His father Sh Narinder Kumar had invested :- 5,00,000/- (Cash)</p> <p>His mother Smt Sushma Arora had invested :- 1,00,000/- (Cash) 06/05/2017 :- 1,00,000/- (Cash) on 18 % per annum interest to alleged Mr Bhim Sain Arora.</p> |
| 8. | Mr Avneet Singh Arora S/o Sh Narinder Kumar R/O H.No 143A, Pitampura, Delhi. | | 1) Amount of Rs 4,56,000/- (cash) out of Rs 5,00,000/- invested in the committee No-1 of Mr. Bhim Sain Arora by him. 2) Amount of Rs | |



| | | | | |
|----|--------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | 5,53,450/-(cash) out of 6,00,000/- invested in the committee No.2 3) Amount of Rs 7,39,600/-(Cash) out of 8,00,000/ invested in the committee No.3 4) Amount of Rs 9,09,850/-(Cash) out of 10,00,000/ invested in the committee No.4. 5) Amount of Rs 7,11,750/-(Cash) out of 8,00,000/ invested in the committee No.2 | |
| 9. | Mr Vikas Gautam R/O E-1603, Apex Athena, Sector-75, Noida | | | He had invested Rs. 94,34,500/- (Cash) in the Loan scheme of Mr Bhim Sain Arora (On 18 % per annum interest) out of which Mr Bhim sain Arora had returned only 14,00,000/-. |
| 10 | Mr. Himanshu Gupta S/o Sh Ved Prakash Gupta R/o MD-20, Vishakha | | | He had invested Rs. 40,00,000/- (Cash) in the Loan scheme of Mr |



| | | | | |
|-----|------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Enclave, Pitampura, Delhi-34. | | | Bhim Sain Arora.(On 18 % per annum interest) Mr Bhim sain Arora issued the cheque against the said payment. |
| 11. | Smt Ramkali Gupta W/o Sh Ved Prakash Gupta R/o MD-20, Vishakha Enclave, Pitampura, Delhi-34. Age 70 Yrs | | | She had invested Rs. 40,00,000/- (Cash) in the Loan scheme of Mr Bhim Sain Arora.(On 18 % per annum interest) Mr Bhim sain Arora issued the cheque against the said payment. |
| 12. | Mr Sandeep Verma S/o Sh Surender Kumar Verma R/O H.No 81, AP- Block, Shalimar Bagh, New Delhi. | In Multicity chit fund No 43. he had invested in three chits vide No 14,15,16 (Through Cheque) and total amount of Rs 9,06,000/- (Through Cheque) have been invested by him from 31/07/2017 till 10/01/2019. (One committee of Rs 4,20,000/-(Through Cheque) has been received on 10/01/2019. Thereafter, total pending amount is 4,86,000/- (Through Cheque) in this group | 1)Total amount of Rs 161,500/- (Cash) invested in the committee No.1. 2)Total amount of Rs 7,11,750/- (Cash) invested in the committee No.2 3)Total amount of Rs 5,70,200/- (Cash) invested in the committee No.3. 4)Total amount | He had invested Rs. 31,50,000/- (Cash) in the Loan scheme of Mr Bhim Sain Arora.(On 18 % per annum interest) |



| | | | | |
|-----|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|--|
| | | 2) In Multicity chit fund No 45. Vide chit No 07 & 08. he had invested in two chits and total amount of Rs 88,320/- (Through Cheque) have been invested by him from 30/06/2018 till 31/12/2018. | of Rs 1,61,900/- (Cash) invested in the committee No.4 5)Total amount of Rs 3,39,300/- (cash) invested in the committee No.5 | |
| 13. | Mr Jawahar lal Sehgal S/O late Sh Ram Lubaya Sehgal R/O H.No 216A, 2 nd Floor, Dhaka, Pramanand Chowk, New Delhi | 1)In Multicity chit fund No MC 43. he had invested total amount of Rs 4,42,500/- (Through Cheque) have been invested by me from 26/07/2017 till 15/03/2018. 2) In Multicity chit fund No MC 42. I have invested total amount of Rs 128360/- (Through Cheque) from 26/07/2017 till 15/03/2018. 3. Amount invested by Mrs Shashi Sehgal W/O Mr Jawahar Sehgal in the Multicity Chit fund Pvt Ltd. is Rs. 1,95,000/- (Through Cheque) 4. Amount invested by Mr. Brij Mohan Sehgal (Son of Mr Jawahar | | |



| | | | | |
|-----|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|-----------------------------------------------------------------|
| | | <p>Sehgal) in the Multicity Chit fund Pvt Ltd. is Rs. 1,95,000/- (Through Cheque)</p> <p>5. Amount invested by Sh Sandeep Sehgal (Son of Mr Jawahar Sehgal) in the Multicity Chit fund Pvt Ltd. is Rs 1,95,000/- (Through Cheque)</p> <p>6. Amount invested by Mrs Monika Sehgal (daughter of Mr Jawahar Sehgal) in the Multicity Chit fund Pvt Ltd. is Rs 1,95,000/- (Through Cheque)</p> <p>7. Amount invested by M/s Sehgal Enterprises (proprietor of Sandeep Sehgal) in the Multicity Chit fund Pvt Ltd. is Rs 1,95,000/- (Through Cheque)</p> | | |
| 14. | Mr. Saurabh Gupta S/o Shri Krishna R/o H.No 7/7,3 rd Floor, East Patel | 1) Multicity chit fund scheme MC No 46. Total amount invested by him in the name of S.S enterprises is 44,160/- (Through Cheque) out | 1) Total amount of Rs 3,39,250/- (Cash) invested in the committee No.1. | He had invested Rs. 20,00,000/- (Cash) in the Loan scheme of Mr |



| | | | | |
|-----|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|------------|
| | | <p>No MC 47. he had invested total amount of Rs 44,160/- (Through Cheque) out of 2 Lakhs have been invested by from 29/06/2018 till 31/12/2018.</p> <p>3) In Multicity chit fund No MC 43. He had invested in one chits and total amount of Rs 3,02,2000/- (Through Cheque) have been invested and he had withdrawn the fund of Rs 4,37,500/- . (Through Cheque)</p> <p>4) In Multicity chit fund No MC 40. I have invested in one chit and total amount of Rs 1,31,520/- (Through Cheque) out of total 1,50,000/- . (Through Cheque)</p> | in the committee No.2. | interest) |
| 15. | Ms. Ritika Arora D/o Sh Gulshan Arora R/O C-4/24, 1 st Floor, Sector-15, Rohini Delhi. | She had invested total 60,440/- (Through Cheque) Rupees from August 2017 till 8/12/2018 in the Multicity chit fund scheme of Mr Bhim sain Arora. | | |
| 16. | Ms. Geetika Arora D/o Sh Gulshan Arora R/O C-4/24, 1 st Floor, Sector- | She had invested total 60,440/- (Through Cheque) Rupees from August 2017 till 8/12/2018 in the | | |



| | 15, Rohini Delhi. | Multicity chit fund scheme of Mr Bhim sain Arora. | |
|-----|--------------------------------------------------------------------------------------------|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17. | Manoj Kumar S/o Sh Munni Lal R/O N- 28/D-207, Wazirpur Industrial Area,. | | He had invested total 1,08,480/- (Cash) Rupees from 02/08/2018 till 12/01/2019 in the committee's scheme. Every month he had deposited Rs 18,000/-(Cash) to Mr Bhim Sain Arora from his saving.(copy of receipt of payments are enclosed)* |
| 18. | Vijay S/o Sh Munni Lal R/O N-28/D- 207, Wazirpur Industrial Area, Delhi | | He had invested total 3,19,500/- (Cash) Rupees from 19/07/2017 till 12/01/2019 in the committee scheme of Mr Bhim Sain Arora some time he had deposited an installment of Rs 20,000/- (cash) sometime its 15,000/- (Cash) to Mr Bhim Sain Arora. (Copy of receipt enclosed) |
| 19. | Smt Geeta W/o Sh Dharmender | | She had invested total 6000/- (Cash) |



| | | | | |
|----|--------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| | R/O N-28/D-207, Wazirpur Industrial Area, Delhi. | | Rupees from 07/10/2018 till 12/01/2019 in the committee scheme of Sh Bhim Sain Arora. Every month she had deposited 1500/- (Cash) Rs to Mr Bhim Sain Arora (copy of receipt of payments are enclosed) | |
| 20 | Mr. Varun Sharma S/o Sh R.D Sharma R/O H.No H.No 18, Sector-14A Vasundhra, Ghaziabad | | Chit Fund, committees and Interest, he had invested 4,55,250/- (Cash) in the company of Mr Bhim Sain Arora | |
| 21 | Ms Archana Satija R/o H.No 138, 2 nd floor, MP Enclave, Pitampura, Delhi. | | She had invested Rs. 25,000/- (Cash) per month for 20 months in the committee scheme of Mr. Bhim sain Arora. | She had invested Rs. 35,60,000/- (Cash) in the Loan on 18% interest in the company of Mr. Bhim Sain Arora. |

17. Similarly, details of the transactions from the chit funds groups to the personal account of the petitioners/accused are as under: -

**ANNEXURE-A/2**

DETAIL OF SOME OF THE UNSCRUPULOUS TRANSACTIONS FROM THE CHIT FUND GROUP TO THE PERSONAL ACCOUNT OF ACCUSED PERSONS ARE AS FOLLOWS:-

| S.No | Date | Amount Transfer | Account No. in which transfer fund | Beneficiary. |
|------|------------|-----------------|------------------------------------|----------------------------------------------------------|
| 1 | 06/03/2019 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 2 | 06/03/2019 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 3 | 20/02/2019 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 4 | 20/02/2019 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 5 | 07/01/2019 | 1,00,000/- | 520101214421364 | Bhim Sain Arora |
| 6. | 04/01/2019 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 7 | 04/01/2019 | 25,0000/- | 520101214421364 | Bhim Sain Arora |
| 8 | 04/01/2019 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 09 | 01/01/2019 | 20,000/- | 520101214421364 | Bhim Sain Arora |
| 10. | 16/12/2018 | 27,000/- | 520101208201358 | Kanchan Arora. |
| 11 | 09/12/2018 | 50,000/- | 520101214421364 | Bhim Sain Arora |
| 12 | 08/12/2018 | 15,000/- | 520101214421364 | Bhim Sain Arora |
| 13 | 04/12/2018 | 70,000/- | 510101003800856 | Great India Finance Company (proprietor Bhim Sain Arora) |
| 10 | 04/12/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 11 | 04/12/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 12 | 26/11/2018 | 50,000/- | 520101214421364 | Bhim Sain Arora |
| 13 | 23/11/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 14 | 21/11/2018 | 50,000/- | 520101214421364 | Bhim Sain Arora |
| 15 | 17/11/2018 | 16,000/- | 520101208201358 | Kanchan Arora. |
| 16. | 04/11/2018 | 1,40,000/- | 510101003800864 | BSA Finance Company(proprietor Bhim Sain Arora) |
| 17 | 01/11/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 18 | 01/11/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 19 | 15/10/2018 | 1,00,000/- | 520101208201358 | Kanchan Arora. |
| 20 | 14/10/2018 | 1,00,000/- | 520101214421364 | Bhim Sain Arora |
| 21 | 04/10/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 22 | 15/09/2018 | 35,000/- | 510101003801550 | Hariom collection (proprietor Bhim Sain Arora) |



| | | | | |
|-----|------------|----------|-----------------------|----------------------------------------------------------|
| 23 | 14/09/2018 | 55,000/- | Vide cheque No 448798 | Self withdrawn. |
| 24 | 05/11/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 25 | 03/11/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 26 | 15/08/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 26 | 15/08/2018 | 81,000/- | 510101003800864 | BSA Finance Company(proprietor Bhim Sain Arora) |
| 27 | 12/08/2018 | 79,500/- | 510101003801550 | Hariom collection (proprietor Bhim Sain Arora) |
| 28 | 02/08/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 29 | 02/08/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 30 | 11/07/2018 | 70,000/- | 510101003800864 | BSA Finance Company(proprietor Bhim Sain Arora) |
| 31 | 02/06/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 32 | 08/05/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 33 | 10/04/2018 | 74,000/- | 510101003801550 | Hariom collection (proprietor Bhim Sain Arora) |
| 34 | 25/03/2018 | 74,000/- | 520101207934823 | B.S Arora and Sons HUF (proprietor Bhim Sain Arora) |
| 35 | 15/03/2018 | 27,035/- | 510101003800864 | BSA Finance Company(proprietor Bhim Sain Arora) |
| 36 | 15/03/2018 | 37,050 | 510101003800856 | Great India Finance Company (proprietor Bhim Sain Arora) |
| 37 | 03/03/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 38 | 03/03/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 39 | 05/02/2018 | 70,000/- | 510101003800856 | Great India Finance Company (proprietor Bhim Sain Arora) |
| 40. | 03/02/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 41 | 03/02/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 42. | 04/01/2018 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 43 | 04/01/2018 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 44 | 04/01/2018 | 70,000/- | 510101003800856 | Great India Finance Company (proprietor Bhim Sain Arora) |



| | | | | |
|----|------------|------------|-----------------|----------------------------------------------------------|
| 45 | 03/01/2018 | 3,50,000/- | 510101003800864 | BSA Finance Company(proprietor Bhim Sain Arora) |
| 46 | 08/12/2017 | 70,000/- | 520101207934823 | B.S Arora and Sons HUF (proprietor Bhim Sain Arora) |
| 47 | 04/12/2017 | 3,50,000/- | 510101003800856 | Great India Finance Company (proprietor Bhim Sain Arora) |
| 48 | 02/12/2017 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 49 | 02/12/2017 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 50 | 09/11/2017 | 70,000/- | 520101207934823 | B.S Arora and Sons HUF (proprietor Bhim Sain Arora) |
| 51 | 02/11/2017 | 10,000/- | 520101208201358 | Kanchan Arora. |
| 52 | 02/11/2017 | 10,000/- | 520101214421364 | Bhim Sain Arora |
| 53 | 02/11/2017 | 70,000/- | 510101003800864 | BSA Finance Company(proprietor Bhim Sain Arora) |
| 54 | 18/10/2017 | 70,000/- | 510101003801550 | Hariom collection (proprietor Bhim Sain Arora) |
| 55 | 04/10/2017 | 1,40,000/- | 510101003800856 | Great India Finance Company (proprietor Kanchan Arora) |
| 56 | 13/09/2017 | 15,000/- | 520101214421364 | Bhim Sain Arora |
| 57 | 03/09/2017 | 70,000/- | 520101208201358 | Kanchan Arora. |
| 58 | 22/08/2017 | 30,000/- | 520101214421364 | Bhim Sain Arora |

18. The prosecution has also placed on record details of the chit funds groups where the petitioners had withdrawn the amount in the name of subsidiary company, chit fund company run by them, which are as under: -

**ANNEXURE-A/3.**

DETAIL OF CHIT FUND GROUP WHERE ALLEGED WITHDRAWN THE AMOUNT HIMSELF IN THE NAME OF HIS SUBSIDIARY COMPANY.

| S.No | Detail of Multicity Chit Fund Groups. | Detail of chit fund withdrawn by the alleged himself in the name of his subsidiary company. |
|------|---------------------------------------|---------------------------------------------------------------------------------------------|
| 1. | Multicity chit fund group No MC 33 | 1) Great India Finance Company. |
| 2. | Multicity chit fund group No MC 34 | 1) BSA Finance Company. 2) Great India Finance Company. 3) Paras Arora |
| 3. | Multicity chit fund group No MC 38. | 1) Hariom Collection |
| 4. | Multicity chit fund group No MC 40. | 1) BSA Finance Company. 2) Great India Finance Company. 3) Hariom Collection. |
| 5. | Multicity chit fund group No MC 41. | 1) BSA Finance Company. 2) B.S Arora and Sons. |
| 6. | Multicity chit fund group No MC 42. | 1) Great India Finance Company. |
| 7. | Multicity chit fund group No MC 43. | 1. BSA Finance Company. 2. Great India Finance Company. |
| 8. | Multicity chit fund group No MC 44. | 1. BSA Finance Company 2. B.S Arora and Sons. 3. Paras Arora. |
| 9. | Multicity chit fund group No MC 45. | 1. BSA Finance Company - 2 Chits |



| | | |
|-----|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| | | 2. B.S Arora and Sons HUF-1 Chits 3. Great India Finance Company-2 Chits. 4. Hari Om Collection;- Chits |
| 10. | Multicity chit fund group No MC 46. | 1. Great India Finance Company |
| 11. | Multicity chit fund group No MC 47. | 1. B.S.A Finance Company. 2. Hari Om Collection. |
| 12. | Multicity chit fund group No MC 48. | 1. BSA Finance Company. 2. Great India Finance Company. |
| 13. | Multicity chit fund group No MC 49. | 1. Great India Finance Company. 2. Hari Om Collection |

19. In the present case, the transactions were ongoing. The complainants/victims continued to invest with the petitioners over a period of time on their assurance of giving them returns as pointed out hereinabove. It has also come on record that the petitioners continued to retain the alleged interest accrued to the investors for its further appreciation. It has also come on record that the monies were fraudulently transferred from the account of



chit funds company run by the petitioners to their personal account or account of other entities run by them.

20. In these circumstances, at this stage, dishonest intention on part of the petitioners to induce the investors to make investments to them with no intention to return cannot be completely ruled out. It is not the case of the petitioners that they had further invested the amounts for return or otherwise. In these circumstances, during the course of the trial, the petitioners can demonstrate that they had no such dishonest intention at that relevant point of time, then the offence punishable under Section 420 of the IPC would not be made out. However, the fact that the money invested by these investors were fraudulently transferred to the accounts run by the petitioners and other companies' *prima facie* amounts to commission of the breach of trust as defined under Section 405 of the IPC. Admittedly, the money was invested by the complainants and the petitioners being the directors of accused company, petitioner No.3, had dominion over the said money and without express consent of the said investors, money was transferred to other bank accounts of the petitioners. At the stage of charge, the learned Trial Court has framed charges for the offences punishable under Section 420 of the IPC as well as Section 409 of the IPC and it can proceed to do so in view of the provisions of Section 221 of the CrPC, which reproduced thus: -

“221. Where it is doubtful what offence has been committed.—(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the



accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or 112 that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.”

(emphasis supplied)

21. At this stage, it will be relevant to refer to a judgment delivered by a three Judge Bench of the Hon’ble Supreme Court in **Sunil Kumar Paul v. State of West Bengal**¹¹. The appellant therein was tried for the offence

¹¹ 1964 SCC OnLine SC 260: AIR 1965 SC 706



punishable under Section 409 of the IPC and was convicted and sentenced by the learned Trial Court/Special Judge for the said offence. On an appeal being filed assailing the conviction by the appellant before the High Court, the High Court while agreeing with the appellant's contention held that no offence punishable under Section 409 of the IPC has been made out. However, it was held that Section 420 of the IPC has been committed by the appellant and accordingly, his conviction was altered from an offence punishable under Section 409 of the IPC to Section 420 of the IPC for cheating the employees of the State Bank, Barrackpore. This finding of the High Court was assailed before the Hon'ble Supreme Court and while examining the applicability of Section 236 of the CrPC, 1898, (corresponding to Section 221(1) of the CrPC, 1973), it was observed and held as under: -

“15. It is urged for the appellant that the provisions of Section 236 CrPC would apply only to those cases where there be no doubt about the facts which can be proved and a doubt arises as to which of the several offences had been committed on the proved facts. Sections 236 and 237 read:

“236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of



trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

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237. If, in the case mentioned in Section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.”

The framing of a charge under Section 236 is, in the nature of things, earlier than the stage when it can be said what facts have been proved, a stage which is reached when the court delivers its judgment. **The power of the court to frame various charges contemplated by Section 236 CrPC therefore arises when it cannot be said with any definiteness, either by the prosecutor or by the court, that such and such facts would be proved.** The court had at the time of framing the charges, therefore to consider what different offences could be made out on the basis of the allegations made by the prosecution in the complaint or in the charge submitted by the investigating agency or by the allegations made by the various prosecution witnesses examined prior to the framing of the charge. **All such possible offences could be charged in view of the provisions of Section 236 CrPC as it can be reasonably said that it was doubtful as to which of the offences the facts which could be ultimately proved would constitute.** The facts which must have been alleged prior to the stage of the framing of the charge in the present case must have been what had been stated in the charge-sheet submitted by the investigating officer, 24-Parganas, which is printed at p. 3 of the appeal record. This charge-sheet narrates in the column meant for the name of offences and circumstances connected with it:



“that on 6th October, 1956 Sunil Kumar Paul, a public servant in the employment of the office of the Sub-Divisional Health Officer, Barrackpore i.e. (clerk) dishonestly drew Rs 1763-6-0 excluding postal life insurance deduction of Rs 5-10-0 from the State Bank of India, Barrackpore Branch by submitting a false duplicate Estt. Pay Bill under head 39 for the month of September 1956 for the office of the said S.D.H.O., Barrackpore. The money drawn was not credited to the office of the Sub-Divisional Health Officer, Barrackpore”.

It is practically on these facts that the conviction of the appellant for an offence under Section 420 IPC has been founded. **It follows that the Special Court could therefore have framed a charge under Section 420 IPC at the relevant time if it had been of the opinion that it was doubtful whether these facts constitute an offence under Section 409 IPC as stated in the charge-sheet or an offence under Section 420 IPC.**

16. When a charge under Section 420 IPC could have been framed by the trial court by virtue of Section 236 CrPC that court or the appellate court can in law, convict the appellant of this offence instead of an offence under Section 409 IPC if it be of the view that the offence of cheating had been established. This would be in accordance with the provisions of Section 237 CrPC

In *Begu v. King Emperor* [52 IA 191] Sections 236 and 237 were construed by Viscount Haldane thus:

“The illustration makes the meaning of these words quite plain. A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made. That is what happened here. The three men who were sentenced to rigorous imprisonment were convicted of making away with the evidence of the crime by assisting in taking away the body. They were not charged with that formally, but they were tried on evidence which brings the case under Section 237.”



This was approved by this Court in *Ramaswamy Nadar v. State of Madras* [(1958) SCR 739, 747] . In this case, the accused, acquitted of an offence under Section 420 IPC was convicted by the High Court of an offence under Section 403 IPC. This Court held that the High Court could do so. On facts, however, this Court did not find the offence under Section 403, proved.

19. We therefore hold that at the trial of the appellant for an offence under Section 409 IPC, in this case, the appellant could have also been charged for an offence under Section 420 IPC in view of Section 236 of the Code of Criminal Procedure.”

(emphasis supplied)

22. The Hon’ble Supreme Court in **Delhi Race Club (1940) Limited and Ors. (*supra*)**, had come to the conclusion in the facts of the said case, as already noted hereinbefore, which were with respect to sale and purchase of certain goods, and therefore, ingredients of Section 406 of the IPC were not be made out. There is no doubt that the legal position is that a person cannot be convicted for Sections 409/420 of the IPC simultaneously. However, at the time of consideration on point of charge, in view of the provision of Section 221 of the CrPC, the learned Trial Court can proceed to frame the charge under both the offences.

23. Similarly, the other cases relied on by learned counsel for the petitioners are also distinguishable on facts from the present case. Reliance placed by the learned counsel for the petitioners on **Mahindra and Mahindra Financial Services Ltd. (*supra*)** is misplaced as in the said case



Coordinate Bench of this Court was dealing with a case assailing order taking cognizance, at the stage of summoning in a complaint case filed by the complainant therein and the provisions of Section 221 of the CrPC were not dealt with or discussed in the said case. In **Wolfgang Reim & Ors. (supra)**, Coordinate Bench of this Court was dealing with a petition seeking quashing of FIR, *inter alia*, registered under similar provisions as in the present case and the provisions of Section 221 of the CrPC were not dealt with by the Court at that stage. In **N. Raghavender (supra)**, the appellant therein was convicted by the learned Trial Court/Special Judge and his conviction was upheld by the High Court. In this case, the observations made by the Hon'ble Supreme Court were in a case of conviction after complete trial. However, in the present case, the trial is yet to commence and the order impugned herein is order framing charge.

24. It was also argued on behalf of the petitioner Nos. 1 and 2 that they are not 'agents' within the meaning of Section 409 of the IPC as they were 'Directors' of petitioner No.3/accused, Multicity Chit Fund Pvt. Ltd. The Hon'ble Supreme Court in **Shivnarayan Laxminarayan Joshi & Ors. v. State of Maharashtra**¹², while dealing with a similar contention, had observed and held as under: -

“5. Secondly, it was contended that substitution of one chose action for another will not amount to a breach of trust or conversion to his own use by the accused. In *R.K. Dalmia v. Delhi Administration* [AIR 1962 SC

¹² (1980) 2 SCC 465



1821 : (1963) 1 SCR 253 : (1962) 32 Com Cas 699] this Court while relying on authorities of the Lahore court and other courts has clearly found that a director is not only an agent but is in the position of trustee. This has been held in *People Bank v. Harkishen Lal* [AIR 1936 Lah 408, 409] which was approved by this Court. In this connection this Court observed as follows:

“Both Dalmia and Chokhani therefore had dominion over the funds of the Insurance Company. [AIR 1962 SC 1821 : (1963) 1 SCR 253 : (1962) 32 Com Cas 699] ”

6. In *Peoples Bank v. Harkishen Lal* [AIR 1936 Lah 408, 409] it was stated:

“Lala Harkishen Lal as Chairman is a trustee of all the moneys of the Bank”.

7. In *Palmer's Company Law*, 20th Edn., it is stated at p. 517:

“Directors are not only agents but they are in some sense and to some extent trustees or in the position of trustees.”

8. Similarly this Court pointed out that in case of *G.E.R. & Co. v. Turner* [LR (1872) 8 Ch App 149, 152] Lord Selborne observed:

“The directors are the mere trustees or agents of the company, trustees of the company money and property-agents in the transaction which they enter into on behalf of the company.”

9. The same view was taken in *Re Forest of Dean* [LR (1878) 10 Ch D 450, 453] wherein Sir George Jessel observed as follows:

“Directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control.”

10. This Court while approving the cases mentioned above observed as follows:

“We are, therefore, of opinion that Dalmia and Chokhani were entrusted with the dominion over the funds of the Bharat Insurance Company in the Banks. [AIR 1962 SC 1821 : (1963) 1 SCR 253 : (1962) 32 Com Cas 699] ”



11. Thus, this Court fully approved the law laid down by the cases mentioned above that a director was clearly in the position of a trustee and being a trustee of the assets which has come into his hand he had dominion and control over the same. A clear finding to this effect has also been given by the High Court at p. 33 of the judgment where the High Court has observed as follows:

“The property being an actionable claim against Rekhchand Gopaldas, Accused 1 as the managing director was entrusted with complete dominion over the right to recover the same under the said articles and as such he was capable of committing dishonest misappropriation or conversion of that actionable claim. The finding of the learned trial Judge on the point of entrustment, therefore, has to be upheld and we confirm the same”.

(emphasis supplied)

25. In view of the aforesaid discussion and in facts and circumstances of the present case, the impugned order framing charge dated 19.07.2022 passed by learned CJM insofar as it relates to framing of charges against the petitioners for the offences punishable under Sections 409/420 read with Section 120B of the IPC, is upheld.

26. The petitioners have also been charged for the offences punishable under Sections 4/5/6 of the PCMCS Act. The said charge in order to be sustained *qua* the petitioners must come under the definition of “Prize Chit” or “Money Circulation Scheme” as defined under clauses (e) and (c) of Section 2 of the PCMCS Act. Section 4 of the PCMCS Act provides for punishment for contravention of Section 3 of the said Act, which reads as under: -



“3. Banning of prize chits and money circulation schemes or enrolment as members or participation therein.—No person shall promote or conduct any prize chit or money circulation scheme or enrol as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme.”

27. Sections 2(a), 2(c) and 2(e) of the PCMCS Act reads as under: -

“2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “conventional chit” means a transaction whether called chit, chit fund, kuri or by any other name by or under which a person responsible for the conduct of the chit enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or certain quantity of grain instead) by way of periodical instalments for a definite period and that each 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 chit agreement, be entitled to a prize amount.

Explanation.—In this clause “prize amount” shall mean the amount, by whatever name called, arrived at by deducting from out of the total amount paid or payable at each instalment by all the subscribers,

(i) the commission charged as service charges as a promoter or a foreman or an agent; and

(ii) any sum which a subscriber agrees to forego, from out of the total subscriptions of each instalment, in consideration of the balance being paid to him;

(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 into the scheme, whether or



not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

(e) “prize chit” includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies 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 savings, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilises 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, namely—

(i) 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;

(ii) 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 by whatever name called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein,

but does not include a conventional chit;”

28. Learned counsel for the petitioners, regarding the offences punishable under provisions of PCMCS Act, has placed reliance on **Swapan Kumar Guha (supra)**, to contend that the act carried on by them cannot be considered as running “Prize Chit’ or “Money Circulation Scheme” as defined



under clauses (e) & (c) respectively of Section 2 of the PCMCS. The relevant portion of the observations made therein read thus: -

“8. 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 enrolment 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 enrolment 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 enrolment 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 enrolment 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.

10. The question as to whether the first information report prima facie 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. I have already reproduced in extenso the FIR lodged by the Commercial Tax Officer, Bureau of Investigation. Analysing it carefully, and even liberally, it makes the following allegations against the firm “Sanchaita Investments” and its three partners:

- (1) The firm had been offering fabulous interest at the rate of 48 per cent per annum to its members, which rate of interest was later reduced to 36 per cent per annum;
- (2) Such high rate of interest was being paid even though the loan certificate receipts show that interest was liable to be paid at the rate of 12 per cent per annum only; and
- (3) The fact that interest was paid in excess of 12 per cent shows clearly that a “money circulation scheme” was being promoted and conducted for the making of quick or easy money.

It seems to me impossible to hold on the basis of these allegations that any offence can be said to be made out prima facie under Section 3 of the Act. In the first place, the FIR does not allege, directly or indirectly, that the firm was promoting or conducting a scheme for the making of quick or easy money, dependent on any event or contingency relative or applicable to the enrolment of members into the scheme. Secondly, the FIR does not contain any allegation whatsoever that persons who advanced or deposited their monies with the firm were participants of a scheme for the making of quick or easy money, dependent upon any such event or contingency. The FIR bears on its face the stamp of hurry and want of care. It seems to assume, what was argued before us by Shri Somnath Chatterjee on behalf of the prosecution, that it is enough for the purposes of Section 2(c) to show that the accused is promoting or conducting a scheme for the making of quick or easy money, an



assumption which I have shown to be fallacious. An essential ingredient of Section 2(c) is that the scheme for making quick or easy money must be dependent on any event or contingency relative or applicable to the enrolment of members into the scheme. A first information report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.”

(emphasis supplied)

29. The Hon’ble Supreme Court in **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Others**¹³, while answering the issue, “Is a prize-less chit a prize chit?”, has observed and held as under: -

“**30.** So, the court was of the view that the Prize Chits and Money Circulation Schemes (Banning) Act was designed to fight the baser human instinct of gambling aroused by the prize element involved in the banned transactions. The court concluded that it was the prize element that brought it within the mischief of the Act and that without the prize element it would be no different from a Conventional Chit, considered harmless by the Parliament. We must notice here that in a “Conventional Chit” as defined in the Act, though every subscriber is entitled to the prize amount, some get it sooner than the others depending on the result of the auction or the draw and to the extent that it depends on a draw there is a slight element of chance. In the recurring deposit schemes such as the ones we are concerned with, even that element of chance is lacking. If “Conventional Chits” are not banned, it is a legitimate question to ask whether Parliament could have contemplated the banning of schemes not involving the element of the kind of harm intended to be prevented, even to the slight degree as in Conventional Chits?

34. We have already referred to the Bhabatosh and Raj Study Groups’ Reports and recommendations. In para 6.3 of the latter report the two

¹³ (1987) 1 SCC 424



common and basic features of prize chits by whatever name known were identified as the giving of prizes to the lucky ones and the refunding of subscription to everyone. These prize chits by whatever name known were recommended to be banned. It was this recommendation that was accepted by Parliament in enacting the Prize Chits and Money Circulation Schemes (Banning) Act. If this much is borne in mind it becomes evident that the two requirements mentioned in the two clauses (i) and (ii) of the definition are not to be read disjunctively; they are two distinct attributes of “Prize Chits”, each of which has to be satisfied. It is important to notice here that the Conventional Chit satisfies both the requirements of the definition of “Prize Chit”, since, as we have already pointed out, it involves both the “certain” and the “chance” elements, the certain element being the refund of the amount of subscriptions less the deductions and the chance element being the time of such payment, dependent on the result of the draw or auction. Yet the definition of “Prize Chit” expressly excludes the Conventional Chit obviously for the reason that the “chance” element is overshadowed by the “certain” element. If so, why should any construction be placed on the definition so as to bring in all recurring deposit schemes, even if they do not involve a chance element? Such a construction would reduce the definition to a near absurdity and render the reference to the giving or awarding of a prize or gift, a meaningless superfluity. If a Conventional Chit is not a “Prize Chit” by definition, there appears to be no logic in construing the definition to include a recurring deposit scheme. The argument is that the two clauses (i) and (ii) are to be read disjunctively and that they should not be read as if they are joined by the conjunction “and”. We do not agree. There is no need to introduce the word “or” either. How clauses (i) and (ii) of Section 2(e) have to be read depends on the context. The context requires the definition to be read as if both clauses have to be satisfied. There is nothing in the text which makes it imperative that it be read otherwise. The learned counsel urges that the expression “all or any of the following purposes” indicates that the purpose may be either the one mentioned in (i) or the one mentioned in (ii). We do not agree with this submission. Each of the clauses (i) and (ii) contains a number of alternatives and it is to those several alternatives that the expression “all or any of the following purposes” refers and not to (i) or (ii) which are not alternatives at all. In fact, a Prize Chit, by whatever name it may be called, does not contemplate the exhaustion of the entire fund by the giving of prizes; it invariably provides for a refund of the amount of subscription, less the deductions, to all the subscribers



or to those who have not won prizes, depending on the nature of the scheme. Clauses (i) and (ii) refer to the twin attributes of a Prize Chit or like scheme and not to two alternate attributes.”

30. As per the case of prosecution, as alleged by the complainants, the petitioners were carrying activity related to finance under various names/companies for chit fund/committee where they had allegedly allured the complainants to invest/deposit the money under the pretext of running committees with the promise of return at the time of maturity. The said investments were made on the promise of interest @ 28% per annum which remained with the petitioners for further capital appreciation and the same cannot be termed as giving or awarding periodically a prize chit or as a money circulation scheme. In view of the observations made by Hon’ble Supreme Court in **Swapan Kumar Guha (supra)** and **Peerless General Finance and Investment Co. Ltd. and Others (supra)** and in facts and circumstances of the present case, the petitioners cannot be stated to be running a “Money Circulation Scheme” or “Prize Chit” as defined within the meaning of clauses (c) & (e) respectively, of Sections 2 of the PCMCS Act.

31. In view of the aforesaid, the charges framed by the learned Trial Court/CJM *vide* order dated 19.07.2022 against the petitioners for the offences punishable under Sections 4/5/6 of the PCMCS Act are set aside.



32. The present petition is partly allowed and disposed of accordingly.
33. Pending applications, if any, also stand disposed of accordingly.
34. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case or on the pending trial against the present Petitioners and any observations made herein are only for the purpose of the present petition.
35. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.
36. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

AUGUST 27, 2025/bsr/ns