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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER 2018

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL REVISION PETITION No.655 OF 2018

BETWEEN

1. Mr. Sahaji P.B.,
S/o. Balakrishna Paniker,
Aged about 46 years,
Manager, Sree Gokulam Chits & Finance
Company Private Limited,
No.336, Karunashree Layout,
Medalli, 2nd Stage, Kitthaganuru,
Bengaluru-560036.
& also at 16th Cross,
Sampige Road, Malleshwaram,
Bengaluru-560003.

2. Mr. Gopalan A.M.
S/o. Chathu,
Aged about 71 years,
Chairman & Managing Director,
Sree Gokulam Chits & Finance
Company Private Limited,
No.28, Mutthugramani Street,
Mahailapure, Chennai-600004.
& also at No.49, Aarcot Road,
Kodabakkam, Chennai-600024.

...Petitioners

(By Sri. Amar Kumar T.S., Advocate)

AND

State of Karnataka
Rep. by Station House Officer,
Malleshwaram Police Station,
Rep. by SPP
High Court of Karnataka,
Bengaluru-560001.

...Respondent

(By Sri.Nasrulla Khan, HCGP)

This Criminal Revision Petition is filed under Section 397 read with 401 Cr.P.C. praying to set aside the order dated 21.04.2018 at Annexure-A passed by the LVI A.C.M.M., Bangalore and direct the Trial Court to discharge the petitioners herein in C.C.NO.3503/2014.

This Criminal Revision Petition coming on for admission this day, the court made the following:

ORDER

This revision petition is filed under Section 397 read with 401 Cr.P.C. The petitioners have questioned the legality of the order dated 21.4.2018 passed by the LVI Additional Chief Metropolitan Magistrate, Bengaluru, in C.C. 3503/2014 declining to discharge the petitioners in relation to offences punishable under Sections 4 and 76 of Chit Funds Act, 1982 (hereinafter for short referred to as 'the Act') and Section 420 of the Indian Penal Code.

2. Briefly stated the events that have culminated into filing of this revision petition are as follows : -

The first petitioner is working as Manager in the branch office of Sree Gokulam Chit and Finance Company Limited ('Chit Company' for short), No.240, 16th Cross, Sampige Road, Malleswaram, Bengaluru. The second petitioner is the Chairman and Managing Director of the said chit company which has its head office at Chennai. The Malleswaram Police, Bengaluru, i.e., the respondent herein, registered an FIR against the petitioners in Crime No.112/2013 at the instance of the Deputy Registrar of Chits, North Range, Bengaluru. The said Registrar alleged that the petitioners were unauthorisedly conducting the chits bearing no. G2G/2534/15, G3G700/19, G3G/745/KDM/16-18 in the branch office of chit company at Malleswaram. The Deputy Registrar also alleged that the petitioner did not obtain prior sanction as required under Section 4 of the

Act and a commencement certificate under Section 9 (2) of the Act and thereby they committed an offence punishable under Section 420 of IPC and Section 76 of the Act. The police filed charge sheet in the Court of Magistrate. At the time of framing charge the petitioners argued for their discharge, but the learned Magistrate came to conclusion that the trial needs to be held for resolving the controversy raised by the petitioners. It also referred to observation made by the Sessions Judge while granting anticipatory bail.

3. The learned counsel for the petitioners assails the impugned order raising the points that the petitioners are not doing chit business at Bengaluru; the chit groups in respect of which FIR was registered are being conducted at Chennai. Sanction as required under Section 4 of the Act was obtained from the concerned authority at Chennai before commencement of the chits. Chit Company has a branch office at

Bengaluru, but the actual chit transaction including auction of chits is being held at Chennai only. For opening a branch office, permission as required under Section 19 is taken, a document evidencing the same was handed over to investigation officer. The same is filed with the charge sheet. He argued that since no lot or auction is held at Bengaluru; and that mere collection of subscription amount from the subscribers at Bengaluru does not constitute a chit transaction, there was no need to obtain sanction at Bengaluru separately for the chit groups in respect of which the petitioners are prosecuted. He highlighted the point that conjoint reading of Section 4 and Section 19 of the Act does not lead to an interpretation that sanction is very much necessary merely because branch office is opened without actually doing a chit transaction as defined in Section 2 (b) and (e) of the Act. Therefore, he argues that the petitioners are required to be discharged of the offences as there are no materials to frame charge against them. The trial Court has thus committed an error in not discharging the petitioners, the impugned order does not stand to legal reasoning.

4. The learned High Court Government Pleader has contended that the decision taken by the learned Magistrate to frame charge is legally sustainable. Though Chit Company has its registered office at Chennai, it is doing business through Bengaluru branch also. There are many subscribers at Bengaluru. Subscription amount is collected at Bengaluru. The subscribers entered into agreements with the Chit Company at Bengaluru and in this view, sanction as required under Section 4 was very much necessary. The petitioners have not obtained sanction and since this violation constitutes an offence punishable under Section 76 of the Act, the learned Magistrate has come to right conclusion about existence of prima facie materials to frame charge. There is no infirmity in the

order impugned. He relies upon a judgment of the High Court of Kerala in the case of ***Sheeba Kuries Limited vs State of Kerala and Others [WP (C) 13649/2014 (E)].***

5. The above argument actually leads to interpretation of Sections 4 and 19 of the Act. The undisputed position is that the Chit Company has its Head Office at Chennai and a branch officer at Bengaluru. The chits, G2G/2534/15, G3G700/19, G3G/745/KDM/16-18 in respect of which the petitioners have been prosecuted, were commenced at Chennai by obtaining sanction as required under Section 4 of the Act from the prescribed authority at Chennai. There are subscribers to these chits at Bengaluru; and the charge sheet materials indicate that the subscribers entered into agreement with the chit company at Chennai. The branch office at Bengaluru

collects subscription from them, but bidding for chit is held at Chennai, not at Bengaluru.

6. If Section 4 of the Act is seen, what it envisages is necessity of obtaining prior sanction from the State Government within whose jurisdiction chit is to be commenced or conducted. That means before commencement of every chit, a separate sanction has to be obtained.

7. Section 19 (1) of the Act deals with opening of new place of business. For opening a new place of business, prior approval of the Registrar within whose territorial jurisdiction the registered office or the principal place of business is situated has to be obtained. In other words Section 19 (1) deals with opening of a new place of business within the State where Chit Company has its registered office or principal place of business; and in that event also prior approval is necessary. According to Section 19 (3), if

the new place of business is situated in a State other than the State where the principal place of business (origin State), the Registrar of that State where a new place of business is to be commenced exercises as much power as the Registrar of origin State exercises. Section 19 (4) states that 'place of business' includes any branch office, sub office or any place of business where the chit business may be conducted by such person. "Prior approval" found in Section 19 (1) does not take the meaning as obtaining of sanction before commencement of every chit. It is like obtaining permission. Section 19 (4) rather explains the phrase "place of business" as inclusive of branch office, sub office or any place where chit business is conducted. Section 2 (b) of the Act defines the word or expression 'chit', but when it is read in conjunction with Section 2 (e), the meaning of another terminology 'conducting of chit' can be deciphered. It means entering into chit agreement and conducting of auction. Mere collection of subscription amount at a place other than principal place of business cannot be brought within the ambit of Section 19 (4) of the Act. In fact the High Court of Kerala in the decision cited by learned High Court Government Pleader has taken the view as under : -

> *"15. As far as the claim of the petitioner is concerned, if the petitioner is only conducting collection centre or an office is set up for enquiries alone, the same would not amount to "place of business" for conducting chit business nor does it amount to a branch office for chit business. Whereas, if the petitioner enters into an agreement with the subscribers and pays prize amount by determining the prized subscribers either by way of lot, auction or tender form these collection centres, it will amount to non-compliance of the provisions of the Act. It is for the 2nd respondent to verify whether any such business is being conducted in the premises in question".*

8. Therefore, sanction under Section 4 of the Act is required only when actual chit transaction is conducted. Mere collection of subscription amount by the branch office or sub office is not a chit transaction. Sanction is also required when chit is commenced by entering into agreements with subscribers and auction held at a new place of business including a branch office or sub office. This being not the position in the case on hand, sanction was not necessary.

9. As regards Section 420 IPC, none of the subscribers has complained of being cheated by the petitioners. There are no materials for framing charge under Section 420 IPC.

10. The above discussion takes me to conclude that the impugned order is not sustainable. Mere observation of the Sessions Court at the time of granting anticipatory bail that the contents of complaint are questions of fact, cannot be a reason for taking a

decision to frame charges. Independent application of mind to charge sheet materials is absolutely necessary and expected. Therefore, the petition under Section 397 Cr.P.C. is allowed. The order dated 21.4.2018 in C.C.3503/2014 on the file of LVI ACMM, Bengaluru, is set aside. The petitioners are discharged of the offences punishable under Section 76 read with Section 4 of the Chit Funds Act and Section 420 IPC.

Sd/-
JUDGE

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