State Of West Bengal & Ors vs Swapan Kumar Guha & Ors on 2 February, 1982

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Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, A. Varadarajan, Amarendra Nath Sen

PETITIONER:
STATE OF WEST BENGAL & ORS.

Vs.

RESPONDENT:
SWAPAN KUMAR GUHA & ORS.

DATE OF JUDGMENT02/02/1982

BENCH:
CHANDRACHUD, Y.V. ((CJ)
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CHANDRACHUD, Y.V. ((CJ)
VARADARAJAN, A. (J)
SEN, AMARENDRA NATH (J)

CITATION:
1982 AIR 949 1982 SCR (3) 121
1982 SCC (1) 561 1982 SCALE (1)38
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D 1991 SC1260 (69)
R 1991 SC2176 (51)
R 1992 SC 604 (23,52,61,74,101)
RF 1992 SC1930 (2)

ACT:
Prize Chits and Money Circulation Schemes (Banning) Act 1978 (43 of 1978) Ss. 2(c), 2(e), 3, 7 and 13-'Money Circulation Scheme'-What is-Firm Accepting deposits from public-Payment of interest at 48% per annum though deposit receipt indicate only 12%-Whether promotion of money circulation scheme'-Whether 'offence' committed under the Act.
Criminal Procedure Code 1973, S.154, 156,157-F.I,R.-Cognizable offence- Necessity of disclosure-No cognizable

of- fence disclosed-Court justified in quashing the investigation.

Criminal Trial-F.I.R.-Condition precedent to commencement of investigation-Police have no unfettered discretion to commence investigation-Power to investigate to be exercised as provided in Cr. P.C.

Interpretation of Statutes-Rule of strict interpretation of penal statutes-Whether affects primary test that language used in enactment when clear and plain to apply.

Words & Phrases-'Money circulation scheme'-What is-Meaning of.

HEADNOTE:

The firm 'Sanchaita Investments', commenced its business on July 1,1975, its three partners, the three respondents in the appeal contributing a total capital of Rs. 7,000/-. The firm carried' on business as financiers and investors and in its business the firm accepted loans or deposits from the general public for different periods repayable with interest at 12% per annum. Under the terms of deposits, the depositors had a right to withdraw the deposit with the firm at any time. In case of premature withdrawal the depositors were to lose interest of 1%. Under the terms and conditions of the deposit the firm had also the liberty to repay the amount with interest to any depositor at any time before the expiry of the stipulated period of deposit without giving any reason. The firm was carrying on its business on a very extensive scale.

In the year 1978 Parliament passed the Prize Chits and Money Circulation Schemes (Banning) Act 1978. The Act came into force on December 13, 1978 and section 12 provided a two years period ''for winding up every kind of business relating to prize chits and money circulation schemes.
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On 13th December, 1980 the Commercial Tax officer lodged a complaint of violation of the Act by the firm with the police. The FIR stated that the firm had been offering fabulous interest at 48% per annum lo its members, later reduced to 36% though the loan certificate receipts showed the rate of interest to be 11% only. The amount in excess of 12% clearly indicated that the 'Money Circulation Scheme' was being promoted and conducted for the making of quick and/or easy money and that prizes and for gifts in cash were also awarded to agents, promoters and members, and that the firm and its three partners in conducting such money circulation schemes had violated section 3 of the Act and were therefore punishable under section 4. On tho same day the office of the firm was searched by the police and a sum of Rs. 42 lakhs was recovered. The residences of the partners were also searched and large amount of cash as well

as documents were seized. Certain lists of agents seized during the investigation showed that code numbers were assigned to many of the agents and that the agents had acquired large properties at various places and had also started new business activities. The partners were arrested and enlarged on bail.

The firm and its partners filed a writ petition in the High Court challenging the validity of the F.I.R. and the proceedings arising out of it including the validity of the searches and seizure of documents, papers and cash. It was contended that the F.I.R. does not disclose any offence under the Act which does not apply to the firm and that there was no violation of any provisions of the Act. The petition was contested by the State Government contending that the payment of interest by the firm and its partners at the clandestine rate of 36% against the bank rate of 12% in the context of the scheme promoted and conducted by the firm was tantamount to an activity which was banned under the Act. and that in the process of its working, the scheme of the firm generated quick and easy money so as to render such scheme or arrangement a 'money circulation scheme' within the meaning of the Act. The High Court held that the Act did not apply to the Firm and that the searches and seizures were wrongful, illegal and improper and quashed the proceedings and directed the return of all documents and the refund of the cash seized.

In the appeals to this Court it was contended on behalf of the State Government that: (I) the question of applicability of the Act will only come up for consideration after the investigation has been completed and all relevant materials have been gathered on such investigation and that at the investigation stage, the Court does not interfere and also does not quash any proceedings before the investigation has been completed, (2) materials which had been gathered as a result of the investigation indicate that though the loan certificate stipulate interest to be paid @ 12% much larger sum by way of interest ranging between 36@ to 48% was actually paid to the depositions, in cash in a clandestine manner, depriving and defrauding the revenue of its legitimate dues, (3) the nature of business carried on by the firm indicates that the firm is conducting a 'Money circulation scheme' thereby violating s. 3 of the Act, and (4) the searches have been carried out in accordance with s. 7 of the Act and the cash money and other books and documents have been lawfully seized

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On behalf of the respondents it was contended that: (I) Investigation has to be done when an offence is disclosed for collecting materials for establishing an offence and any investigation when no offence is disclosed by the F.I.R. and the other materials, means unnecessary harassment for the firm and its partners and illegal and improper deprivation of their liberty and property, (2) even if all the

allegations in the F.I.R. and in the other materials before the Court are accepted to be correct, the said allegation do not go to show that the firm is conducting a money circulation scheme and do not disclose any offence under the Act, (3) if no offence under the Act is disclosed and the Act has no application, there cannot be any question of any search or seizure under the Act, and (4) to be a chit fund or a money circulation scheme, an element of uncertainty or luck is essential and in so far as the transactions carried on by the firm are concerned, the said element is nowhere.

Dismissing the appeals.

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HELD: By the Court

1. The investigation which has been commenced upon the First Information Report is without jurisdiction and must, therefore, be quashed. No further investigation shall take place in pursuance or on the basis of the F.I.R. dated December 13, 1980 lodged by the Commercial Tax officer, Bureau of Investigation. [143 D]

2. The documents, books, papers, cash and other articles seized during the investigation shall be retained by the police in their custody for a period of two months and will be returned, on the expiry of that period, to persons from whom they were seized. [148 C]

[Per Chandrachud, C.J. and Varadarajan J.]

1. Two conditions must be satisfied before a person can be held guilty of an offence under section 4 read with sections 3 and 2 (c) of the Act. In the first place, it must be proved that he is promoting or conducting a scheme for the making of quick or easy money and secondly, the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrollment of members into that scheme. [132 P-G]

2. Besides the prize chits, what the Act aims at banning is money circulation schemes. 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 enrollment of members into that scheme. [133 E-F]

3. 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 tho agreed rate of interest cannot, without more, be a 'money circu-

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lation 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 section 2 (c) requires is that the reciprocal promises, express or implied, must depend for their performance on the happening of an event or contingency relative or applicable to the enrollment of members into the scheme. [134 A-B]

In the instant case it seems impossible to hold on the basis of the allegations in the F.I.R. that any offence can be said to be made out prima facie under section 3 of the Act. In the first place, the F.I.R. 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 enrollment of members into the scheme. Secondly, the F.I.R. 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 F.I.R. bears the stamp of hurry and want of care. It seems to assume, 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 is 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 enrollment of members into the scheme. [135 D-G]

4. 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. [135 G]

5. There is no allegation even in any of the affidavits filed on behalf of the State and its officers that the depositors and the promoters are animated by a community of interest in the matter of the scheme being dependent upon any event or contingency relative or applicable to the enrollment of members into it. That being an essential ingredient of the offence charged, it cannot be said in the absence of any allegation whatsoever in that behalf, that there is "reason to suspect" the commission of that offence within the meaning of section 157 of the Code of Criminal Procedure, so as to Justify the investigation undertaken by the State authorities. [138 B-D]

6. The rule of strict interpretation of penal statutes does not In any way affect the fundamental principle of interpretation, that the primary test which can safely be applied is the language used in the Act and, when the words are clear and plain, the court must accept the expressed intention of the legislature. [139 B]

7. The investigation can be quashed if no cognizable offence is disclosed by the F.I.R. The judiciary should not interfere with the police in matters which are within their province It is surely not within the province of the police to . investigate into a Report which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. [142 B-C]

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8. The condition precedent to tho commencement of investigation under section 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under section 157 of the Code. Their right of inquiry as conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R. prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences on the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received. [142 D-F]

W.H. King v. Republic of India [1952] SCR 418, 424; M.V. Joshi v. M.U. Shimpi, [1961] (3) SCR 986, 993-994; R.P. Kapur v. The State of Punjab [1960] (3) SCR 388, 392-393; S.N. Sharma v. Bipen Kumar Tiwari [1970] (3) SCR 946; State of West Bengal v. S.N. Basak [1963] (2) SCR 52; Jehan Singh v. Delhi Administration [1974] (3) SCR 794 and King-Emperor v. Khwaja Nazir Ahmed 71 I.A. 203, referred to.

9. The power to investigate into cognizable offences must be exercised strictly on the condition on which it is granted by the Code. [142 G]

Prabhu Dayal Deorah v. The District Magistrate, Kamrup, [1974] 2 SCR 12, 22-23, referred to.

10. The State Government, the Central Government and the Reserve Bank of India must be given a reasonable opportunity to see if it is possible, under the law, to institute an inquiry into the affairs of the firm and in the meanwhile to regulate its affairs. Such a step is essential in the interests of countless small depositors who, otherwise will be ruined by being deprived of their life's savings. [147 H; 148 A-B]

[Per A.N. Sen, J.]

1. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interest of justice becomes necessary to collect materials for establishing the offence, and for

bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the deteriment of the cause of justice and the society at large. [170 F-H; 171 A] 126

2. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious deteriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. [171 A-C]

3. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made is disclosed or not, the Court has mainly to take into consideration the complaint of the F.I.R. and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials. the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that the offence is disclosed the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand the Court on a consideration of the relevant materials is satisfied that no offence ii disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual. [171 G-H; 172 A-B]

W.H. King v. Republic of India [1952] SCR 418, 424; M.V. Joshi v. M.U. Shimpi, [1961] (3) SCR 986, 993-994; R.P. Kapur v. The State of Punjab [1960] (3) SCR 388,392-393; S.N. Sharma v. Bipen Kumar Tiwari [1970](3) SCR 946; State of West Bengal v. S.N. Basak [1963] (2) SCR 52; Jehan Singh v. Delhi Administration [1974] (3) SCR 794 and King-Emperor v. Khwaja Nazir Ahmed 71 I.A. 203 referred to.

4. The word 'scheme' has not been defined in the Act. It has however, has been defined in the Rules. Cl. 2 (g) of the Rules state that a "scheme means a money circulation scheme or as the case may be a prize chit as defined in cl. (c) and (e) respectively of s. 2". The word 'scheme' as contemplated in s. 2 (c) of the Act is therefore, to be money circulation scheme within the meaning of the Act. To be money circulation scheme, a scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrollment of the members into the

scheme. The scheme has necessarily to be judged as a whole, both from the view point of the promoters and also of the members. [181 B-D]

In the instant case investment of monies with the firm have been made with the expectation of getting interest @48% and a big part of in black in a clandestine manner. The transaction cannot be considered to be a scheme for the making of quick or easy money, though it may offend against revenue laws or any other law. Transactions in black money do not come within the mischief

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Of this Act. Judged from the point of view of the depositors, it cannot. therefore, be said that their investment in the firm for high return by way of interest part of which is above board and a part of which is clandestine, will form any part or a scheme for making easy or quick money, [t 81 D-H; 182 A-B]

5. There is nothing to indicate that the firm makes any investment ill consultation with its depositors. The materials indicate that the firm indulges in high risk investments and also advances monies to political parties. Neither of these acts are illegal and do not go to show that the firm makes easy or quick money. The materials however show that the firm pays a larger amount by way of interest than payable on the basis of the rates stipulated in the loan certificate and the excess amount of interest is paid to the depositor in a clandestine manner. This does not, in any way, indicate the existence of any scheme for making quick or easy money. [182 C-E]

In the instant case the requirements of a money circulation scheme are not satisfied. As there is no money circulation scheme, there can be no scheme as contemplated in the Act in view of the definition of scheme in the Rules. The materials, appear to disclose violation of revenue laws. The materials do not disclose that the firm is promoting or circulating money circulation scheme and the question, therefore, of any violation of s. 3 of the Act does not arise. [182 G-H]

In the instant case as the firm is not conducting or promoting a money circulation scheme, and as no case is made that the firm is conducting or promoting a chit fund, the Act cannot be said to be applicable to the firm. [183 A]

6. As no offence under the Act is at all disclosed, it will be manifestly unjust to allow the process of criminal code to be issued or continued against the firm and to allow any investigation which will be clearly without any authority. [184 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11 29 of 1981.

(Appeal by special leave from the judgment and order dated the 12th March, 1981 of the Calcutta High Court in Matter No. 2829 of 1981.

AND CIVIL APPEAL No. 1130 OF 1981 (Appeal by special leave from the judgment and order dated the 5th March, 1981 of the Calcutta High Court in Matter No. 2829 of 1980) Somnath Chatterjee, M. Ramamurthi, S. C. Birla, for the Appellants in C.A.. 1129/81 and C.A. 1130/81 A.R. Sen, (For r.1 in C.A. 1130/81) S. S. Ray, (For r.2 in CA. 1130/81), Kapil Sibal, (For r.1 in C. A. 1129/81), B. Gupta & T.R. Bose, (for r.1 in CA. 1130/81) and Rathin Das with them.

S.S. Ray, (For r. 6), Tarun Kumar Bose, D. Mandal, Miss Bina Gunpta & O.P. Khaitan with him for Respondents Nos. 5 & 6 in the Appeals.

K. L. Hathi & Mrs. H. Wahi for the Intervener-Mrs. Sarla Sahedad Puri.

The following judgments were delivered:

CHANDRACHUD, C. J. My learned Brother A.N. Sen has dealt fully with the various points argued before us. I agree respectfully with his judgment, but desire to add a few words in view of the importance which this matter has acquired by reason of the immense circulation of 'black money' clearly and almost concededly involved in the affairs of the firm which is facing a prosecution.

These appeals by special leave arise out of the judgment dated March 5, 1981 of a learned single Judge of the Calcutta High Court in Matters Nos. 2829 of 1980 and 37 of 1981. The appeals are, in substance, by the State of West Bengal while the contesting respondents are a firm called 'Sanchaita Investments' and its three partners, Swapan Kumar Guha, Sambhu Prasad Mukherjee and Beharilal Murarka. The two Matters in the Calcutta High Court were in the nature of writ petitions under article 226 of the Constitution which were filed by the firm and its partners for quashing an investigation commenced against the firm. Allowing the writ petitions, the High Court issued a writ of Mandamus directing the State Government and its concerned officers to "forthwith recall, cancel and withdrew the First Information Report .. and all proceedings taken on the basis thereof", since the searches, seizures and arrests made in pursuance of the said F.I.R. are, according to the High Court, illegal and without jurisdiction. It has directed that the books, documents and moneys seized during the search be returned to the firm and its partners, including a sum of Rs. 52,11,930.

The short question for consideration in these appeals by special leave is whether the F.I.R.. Lodged by the commercial Tax officer, Bureau of Investigation, against the firm and its partners discloses an offence under section 3 of "The Prize Chits and Money Circulation Schemes (Banning) Act", 43 of 1978. The Act, which was passed by the Parliament, came into force on December 13, 1978 and the two years' period allowed by section 12 for winding up every kind of business relating to Prize Chits

and Money Circulation Schemes expired on December 12, 1980. The F.I.R.., which was lodged the next day on December 13. reads thus:

"To The Deputy Superintendent of Police, Bureau of Investigation, 10, Madan Street, Calcutta-72.

Sir,
On a secret information that 'Sanchaita

Investments' of 5-6, Fancy Lane, Calcutta, is carrying on business of promoting and/or conducting prize chit and/or money circulation scheme enrolling members of such chit and/or scheme, participating in those, and/or receiving and remit- ting monies in pursuance of such chits and/or scheme in violation of the provisions of the Prize Chits and Money (Circulation Schemes (Banning) Act, 1978, inquiry was held secretly to verify correctness or otherwise of the aforesaid secret information. Enquiry reveals that the said 'Sanchaita Investments' is a partnership firm, partners being Shri Bihari Prasad Murarka, Shri Sambhu Mukherjee and Shri Swapan Kumar Guha and that it was floated in or around 1975. Enquiry further reveals that the said firm had been offering fabulous interest @ 48% per annum to its members until very recently. The rate of interest has of late been reduced to 36% per annum. Such high rates of interest were and are being paid even though the loan certificate receipts show the rate of interest to be 12% only. Thus, the amount in excess of 12% so paid clearly shows that the 'Money Circulation Scheme' is being promoted and conducted for the making of quick and/or easy money. Prizes and/or gifts in cash were and are also awarded to agents, promoters and members too.

In view of the above, Sarvashri Bihari Prasad Murarka, Sambhu Mukherjee and Swapan Kumar Guha appear to have been carrying on business in the trade name of Sanchaita Investments' in prize chits and money circulation scheme in violation of section 3 of the Prize Chits and Money Circulation Schemes l,(Banning) Act, 1978 and are therefore, punishable under section 4 of the said Act. Necessary action may therefore, be kindly taken against the aforesaid offenders along with other accomplices as provided in the law. Yours faithfully, Sd/-

Commercial Tax officer, Bureau of Investigation."

Section 4 of the Act provides that whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both, provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees. Though the F.I.R. is riddled with the "and/or" clauses more appropriate in deeds of conveyancing, it is clear firm its tenor and is common ground that the gravamen of the accusation against the accused is that they are conducting a 'money circulation scheme'. The reference in the F.I.R. to 'prize chits' rejects but a common human failing to err on the safe side and the notorious effort of draftsmen to embrace as

much as possible so that no argument may be shut out for want of pleading. Since the sole question for consideration arising out of the F.I.R., as laid, is whether the accused are conducting a money circulation scheme, it is necessary to understand what is comprehended within the statutory meaning of that expression.

Section 2(c) of the Act provides:

> " '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 A event or contingency relative or applicable to the enrollment 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."

Grammar and punctuation are hapless victims of the pace of life and I prefer in this case not to go merely by the commas used in clause (c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I, therefore, consider it more safe and satisfactory to discover the true meaning of clause (c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences.

Commas or no commas, and howsoever thoughtfully one may place them if they are to be there, I find it impossible to take clause (c) to mean that any and every activity "for the making of quick or easy money" is comprehended within its scope. For the matter of that, I cannot believe any law to ban every kind of activity for making quick or easy money, without more, on pain of penal consequences. It is far too vague and arbitrary to prescribe that "whosoever makes quick or easy money shall be liable to be punished with fine or imprisonment". For then, in the absence of any demarcation of legitimate money-making activities from those which fall within the ban, the question whether the penal provision is attracted in a given case will depend upon the will and temper, sweet or sour, of the magistracy. Besides, speaking of law and morals, it does not seem morally just or proper to say that no person shall make quick or easy money, especially quick. A person who makes quick money may do so legitimately by the use of his wits and wisdom and no moral turpitude may attach to it. One need not travel after to find speaking examples of this. Indeed, there are honourable men (and now women) in all professions re-

cognised traditionally as noble, who make quite quick money by the use of their talents, acumen and experience acquired over the years by dint of hard work and industry. A lawyer who charges a thousand rupees for a Special Leave Petition lasting five minutes (that is as far as a Judge's imagination can go), a doctor who charges a couple of thousands for an operation of tonsillitis lasting ten minutes, an engineer, an architect, a chartered accountant and other professionals who

charge likewise, cannot by any stretch of imagination be brought into the dragnet of clause

(c) Similarly, there are many other vocations and business activities in which, of late, people have been notoriously making quick money as, for example, the builders and real estate brokers. I cannot accept that the provisions of clause (c) are directed against any of these J categories of persons. I do not suggest that law is powerless to reach easy or quick money and if it wills to reach it, it can find a way to do it. But the point of the matter is that it will verge upon the ludicrous to say that the weapon devised by law to ban the making of quick or easy money is the provision contained in section 2(c) of the "Prize Chits and Money Circulation Schemes (Banning) Act".

In order to give meaning and content to the definition of the expression 'money circulation scheme' which is contained in section 2(c) of the Act, one has, therefore, to look perforce to the adjectival clause which qualifies the words "for the making of quick or easy money". What is within the mischief of the Act is not "any scheme, by whatever name called, for the making of quick or easy money"

> simpliciter, but a scheme for the making of quick or easy money, "on any event or contingency relative or applicable to the, enrollment 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 their periodical subscriptions). Two conditions must, therefore, be satisfied before a person can be held guilty of an offence under sec. 4 read with secs. 3 and 2(c) of the Act. In the first place, it must be proved that he is promoting or conducting a scheme for the making of quick or easy money and secondly, the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrollment of members into that scheme. The legislative draftsman could have thoughtfully foreseen and avoided all reasonable controversy over the meaning of the expression 'money circulation scheme' by shaping its definition in this form:
>
> 'money circulation scheme' means any scheme, by whatever name called,
>
> (i) for the making of quick or easy money, or
>
> (ii) for the receipt of any money or valuable thing as the consideration for a promise to pay money, B On any event or contingency relative or applicable to the enrollment 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 subscription;

I have reshaped the definition, in order to bring out its meaning clearly, without adding or deleting a single word or comma from the original text of section 2 (c). The substance of the matter is really not in doubt: only the form of the definition is likely to create some doubt as to the meaning of the expression which is n defined and, therefore, I have made a formal modification in the definition without doing violence to its language and indeed, without even so much as altering a comma.

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 enrollment 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 enrollment of members into the programme. Reciprocally, the person who promotes or con- ducts 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 enrollment of members into the scheme. Ir; 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 enrollment 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.

Numerous persons lend their hard-earned monies in the hope of earning high returns. It is notorious that, eventually, quite a few of them lose both the principal and the interest, for no project can succeed against the basic laws of economics. Sharp and wily promoters pay A's money to and B's to in order to finance interest at incredible rates, and eventually, then high-risk investment made by them at the cost of the credulous lenders fails, the entire arrangement founders on the rock of foolish optimism. The promoters, of course, have easy recourse to gadgets of the law of insolvency. It is difficult to hold that the lender, himself a victim of the machinations of the crafty promoter, is intended by the Act to be arraigned as an accused. I do not think that any civilised law can intend to add insult to injury.

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 F.I.R. 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 (48% per annum to its members, which rate of interest was later reduced to 36% 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 annum only; and (3) The fact that interest was paid in excess of 12% 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 F.I.R. 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 enrollment of members into the scheme. Secondly, the F.I.R. 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 F.I.R. bears on its face the stamp of hurry and want of care. It seems to assume, what was argued before us by Shri Som Nath 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 enrollment 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.

In answer to the writ petitions filed by the accused in the Calcutta High Court, affidavits were filed on behalf of the pro-

secuting agency, which do not improve matters in any way. The affidavit filed by Arun Kanti Roy, Deputy Secretary, Finance Department, Government of West Bengal, alleges that:

> (i) The actual payment of a very high rate of interest against the professed rate of 12% attracted huge amounts of idle money into circulation .
>
> (ii) The investment of money as collected is not under the regulatory control of the Reserve Bank of India or any other agency of the State dealing with credit control in relation to the country's economy;
>
> (iii) The pooling of the purchasing power and the financial resources and the unfettered deployment thereof have resulted in the concentration of tremendous economic power in the hands of a few, posing a potential threat to the equilibrium of

the country's economy;

(iv) The entire process is speculative in nature and directed towards luring away the investing public to the speculative market for making quick and easy money;

(v) The very basis of the so-called contractual arrangement between the firm and its depositors is founded on the fraudulent device to assure to the people a high rate of interest, the major portion of which is paid through unaccounted for money, thereby encouraging the growth of such unaccounted money in the hands of the investing public;

(vi) The professed rate of interest is a mere subterfuge to provide a cloak of bona fides and legality to the under hand transactions, through which unaccounted for money comes into play in the market generating further unaccounted for money, a part whereof goes back to the depositors in the form of the balance of interest over 12% paid in cash, month by month;

(vii) The firm did not have enough income or resources so as to be able to pay interest at such high rates;

(viii) The irresistible conclusion, therefore, is that interest was being paid out of the capital itself;

(ix) "The depositor becomes a member of the investment scheme of the firm by subscribing to it and the payment of the quick and easy money by way of high rate of interest is dependent upon the period of investment and/or efflux of time which are very much relative and/or applicable to the membership of the depositors of the scheme to which the depositor agrees to subscribe"; and

(x) In the process of its working, the scheme of the firm generates quick and easy money so as to render such scheme or arrangement a 'money circulation scheme' within the meaning of the Act.

The Assistant Commissioner of Police Shri Sunil Kumar Chakravarty has adopted these pleas and statements in his own affidavit It is clear from these averments that even at the stage when the State of West Bengal and its concerned officers submitted detailed affidavits to the High Court, there was no clear basis for alleging and no material was disclosed to show that, prima facie, the firm was promoting or conducting a scheme for making quick or easy money which was dependent upon an event or contingency relative or applicable to the enrollment of members into that scheme. The burden of the State's song is that the scheme conducted by the accused generates black money and will paralyse the economy of the country. These are serious matters indeed and it is unquestionable that a private party cannot be permitted to issue bearer bonds by the back door. The fact that the accused are indulging in an economic activity which is highly detrimental to national interests is a matter which must engage the prompt any serious attention of the State and Central Governments.

But the narrow question for our consideration is whether on the basis of the allegations made against the accused, there is reason to suspect that they are guilty of an offence under section 4 read with sections 3 and 2 (c) of the Act. The allegation which we have reproduced in clause (ix) above from the affidavit of Arun Kanti Roy is the nearest that can be considered relevant for the purpose of section 2 (c) of the Acts. But even that allegation does not meet the requirement of that section since, what it says is that "the payment of quick and easy money by way of high rate of interest is dependent upon the period of investment and/or efflux of time which are very much relative and/or applicable to the membership of the depositors of the scheme to which the depositor agrees to subscribe". This is too tenuous to show that the scheme is dependent upon an event or contingency of the description mentioned in section 2(c), apart from the fact that the only participation which is alleged as against the depositors is that they become members of the "investment scheme" by subscribing to it. There is no allegation even in any of the affidavits filed on behalf of the State of West Bengal and its concerned officers that the depositors and the promoters are animated by a community of interest in the matter of the scheme being dependent upon any event or contingency relative or applicable to the enrollment of members into it. That being an essential ingredient of the offence charged, it cannot be said in the absence of any allegation whatsoever in that behalf, that there is "reason to suspect"

> the commission of that offence within the meaning of section 157 of the Code of Criminal Procedure, so as to justify the investigation undertaken by the State authorities.
>
> My learned Brother, A.N. Sen J., has considered exhaustively the various authorities cited at the Bar by both the sides on the question as to the power of the courts to quash an investigation. I fully concur with his careful analysis of those authorities and would content myself with a broad indication of the trend of law bearing on the subject.
>
> Shri Ashok Sen and Shri Siddhartha Shankar Ray pressed upon us with considerable insistence the principle reiterated in W.H. King v. Republic of India, (that a statute which creates an offence and imposes a penalty of fine and imprisonment must be construed strictly in favour of the subject. The principle that no person can be put in peril of his life and liberty on an ambiguity is well- established. But, as observed in M. V. Joshi v. M.U. Shimpi when it is said that penal statutes must be construed strictly, what is meant is that the court must see that the thing charged is an offence within the plain meaning of the words used and it must not strain the words: "To put it in other words, the rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute", and that in case of doubt, the construction favourable to the subject should be preferred. But I do not think that this rule of strict interpretation of penal statutes in any way affects the fundamental principle of interpretation, that the primary test which can safely be applied is the language used in the Act and, therefore, when the words are clear and plain, the court must accept the expressed intention of the Legislature. It is unnecessary to pursue

this matter any further in view of the fact that the language of section 2(c) is, in my opinion, clear and admits of no doubt or difficulty.

In R.P. Kapur v. The State of Punjab, the question which arose for consideration was whether a first information report can be quashed under section 561-A of the Code of Criminal Procedure. The Court held on the facts before it that no case for quashing the proceedings was made out but Gajendragadkar J., speaking for the Court observed that though ordinarily, criminal proceedings instituted against an accused must be tried under the provisions of the Code, there are some categories of cases where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases where the allegations in the F.I.R. Or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises and it is a matter merely of looking at the F.I.R. Or the complaint in order to decide whether the offence alleged is disclosed or not. In such cases, said the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused.

In S.N. Sharma v. Bipen Kumar Tiwari, a first information report was lodged naming an Additional District Magistrate (Judicial) as the principal accused. His application under section 159 of the Criminal Procedure Code asking that the Judicial Magistrate should himself conduct a preliminary inquiry was dismissed, but the Court observed that though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases, an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution and that the High Court could issue a writ of mandamus restraining the police from misusing their legal powers.

Shri Som Nath Chatterjee has placed great reliance on the decision of this Court in State of West Bengal v. S.N. Basak, in which it was held that the statutory powers given to the police under sections 154 and 156 of the Code of Criminal Procedure to investigate into the circumstances of an alleged cognizable offence without authority from a Magistrate cannot be interfered with by the exercise of powers under section 439 or under the inherent powers conferred by section 561 A of the Code. It must be remembered that no question arose in that case as to whether, the allegations contained in the F.I.R. disclosed any offence at all. The contention of the accused in that case was that the statutory power of investigation given to the police under Chapter XIV of the Code is not available in respect of an offence triable under the West Bengal Criminal Law Amendment (Special Courts) Act 1949 and that being so, the investigation undertaken by the police was without jurisdiction. That contention was negatived and, therefore, the application filed by the accused under sections 439 and 561A of the Code was dismissed .

In Jehan Singh v. Delhi Administration, the application filed by the accused under section 561-A of the Code for quashing the investigation was dismissed as being premature and incompetent, but that was because the Court found (per Sarkaria J. page 797) that prima facie, the allegation in the F.I.R., if taken as correct, disclosed the commission of a cognizable offence by the accused.

The only other decision to which I need refer is that of the Privy Council in King-Emperor v. Kawaja Nazir Ahmad, which constitutes, as it were, the charter of the prosecution all over for saying that no investigation can ever be quashed. In a passage oft-

quoted but much-misunderstood, Lord porter, delivering the opinion of the Judicial Committee, observed; "In their Lordships' opinion, however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under section 491 of the Criminal procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then.' (pp. 212-213) I do not think that this decision supports the wide proposition canvassed before us by Shri Som Nath Chatterjee. In the case before the Privy Council, similar charges which were levelled against the accused in an earlier prosecution were dismissed. The High Court quashed the investigation into fresh charges after examining the previous record, on the basis of which it came to the conclusion that the evidence against the accused was unacceptable. The question before the Privy Council was not whether the fresh F.I.R.. disclosed any offence at all. In fact, immediately after the passage which I have extracted above, the Privy Council qualified its statement by saying;

"No doubt, if no cognizable offence is disclosed, and still more, if no offence of any kind is disclosed, the police would have no authority to undertake an investigation."

If anything, therefore, the judgment shows that an investigation can be quashed if no cognizable offence is disclosed by the F.I.R. It shall also have been noticed, which is sometimes overlooked, that the Privy Council took care to qualify its statement of the law by saying that the judiciary should not interfere with the police in matters which are within their province. It is surely not within the province of the police to investigate into a Report which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases.

The position which emerges from these decisions and the other decisions which are discussed by Brother A.N. Sen is that the condition precedent to the commencement of investigation under section 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmed (supra) will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.

There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. I may, in this behalf, usefully draw attention to the warning uttered by Mathew J. in his majority judgment in Prabhu Dayal Deorah v. The District Magistrate, Kamrup to the following effect:

> "We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by Law."

For these reasons, which, frankly, are no different from those given by my learned Brother A.N. Sen, I am of the opinion that the investigation which has been commenced upon the First Information Report is without jurisdiction and must, therefore, be quashed. I do accordingly and direct that no further investigation shall take place in pursuance. Or on the basis of the F.I.R. dated December 13, 1980 lodged by the Commercial Tax Officer, Bureau of Investigation, with the Deputy Superintendent of Police, Bureau of Investigation, Madan Street, Calcutta.

I am free to confess that it is with considerable regret that I have come to the conclusion that the investigation must be quashed. If the State authorities had applied their mind carefully to the requirements of section 2 (c) of the Act, this appeal might have had a different story to tell, the bare outlines of which I must now proceed to narrate.

The firm 'Sanchaita Investments' commenced its business on July 1, 1975, its three partners contributing a total capital of Rs. 7000 (Rupees seven thousand). On December 25, 1978 an advertisement appeared in the "Hindu" in the name of firm, claiming falsely that its business was "approved by the Reserve Bank of India". Since the representation was likely to mislead the public, the Reserve Bank advised the firm in May 1979 too issue a suitable corrigendum, which the firm did.

On July 6, 1979, Shri Rudolph L. Rodrigues a Member of the Lok Sabha, wrote a confidential letter to Shri Charan Singh, the then Deputy Prime Minister, complaining that the business of the firm was "a cover-up for a parallel banking system for black money". A copy of Shri Rodrigues' letter was forwarded by the Director, Department of Economic Affairs, Ministry of Finance, to the Chief Officer, Department of Non-Banking Companies, Reserve Bank of India, Calcutta, for inquiry. By his letter dated August 7, 1979 the Chief officer pointed out the difficulty in directing investigation into the affairs of the firm since, its capital being less than Rs. One lakh, it did not come within the definition of a Non- Banking institution as provided in section 54 (c) of the Reserve Bank of India Act, 1934. On September 13, 1980 the Deputy Secretary Finance Department Government of West Bengal, wrote a letter to the Chief Officer requesting him to examine the question whether the business of the firm came within the purview of the prize Chits and Money Circulation Schemes (Banning) Act, 1978 and if not, under which Act the affairs of the firm could be regulated. On October 1, 1980, Shri Ashok Mitra, Finance Minister for the State of West Bengal, wrote a letter to Shri Venkataraman, Finance Minister to the Government of India, complaining that the firm was involved in high-risk investments and that large amounts of public moneys were kept in deposit with the firm, which were not subjected to any regulatory control. The letter of Shri Ashok Mitra appears to have been handed over informally to Dr. K.S. Krishnaswamy, Deputy Governor of the Reserve Bank, who, by his reply dated October 22, 1980, informed Shri Mitra that the legal department of the Reserve Bank was of the opinion that the mere acceptance of loans by the firm would not ordinarily be covered by the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. There was further correspondence on the subject between the authorities of the Government of India and the State Government, but nothing came out of it.

The Act came into force on December 13, 1978 and immediately on the expiry of the two years' period of grace allowed by it, the F.I.R. was lodged against the firm on December 13, 1980. On that day, the office of the firm at 5-6, Fancy Lane, Calcutta, was searched by the police, during the course of which a sum of Rs. 42,16,530 (Rupees forty two lacs, sixteen thousand, five hundred and thirty) was recovered. The amount was tied in separate bundles of notes of different denominations. Several books of accounts were also seized during the search.

On the same date, a search was carried out at the residence of Shambbu Prasad Mukherjee, a partner of the firm, when the following articles were seized:

(1) One pass-book of Syndicate Bank, Gariahat Branch, Calcutta, in the name of "Apcar Ave Toon", 9, Royd Street, Calcutta-17. (The account was in a fictitious name and the pass-book shows that a sum of Rs. Twenty-eight crores was lying in credit in that account).

(2) A sum of Rs. 9,95,000 (Rs. nine lacs ninety-five thousand) tied in separate bundles of notes of the denomination of Rs. 100 and 50.

(3) A country-made 6 chamber revolver, with one bullet inside.

From the house of another partner, Biharilal Murarka, certain account books were seized.

During the course of investigation until January 8, 1981 when it was stopped by an order of this Court, as many as eighty places were searched by the police and a large number of documents were seized. It is apparent from these documents that the firm was paying to its depositors interest at the rate of 48 per cent upto September 1979 and 36 per cent thereafter for a short period. The interest was paid to each depositor every month by the agents who called on each depositor personally for that purpose. The interest in excess of 12 per cent was invariably paid in cash. The on coming elections to legislative bodies in 1980 appear to have led to reduction in the rate of interest, since the firm's circulating capital was needed by "political parties". Which parties, I do not know, but this much is fairly certain from the facts which have emerged before us that the funds available to the firm were diverted frequently for the use of political parties.

Certain lists of agents were seized during the investigation which show that Code numbers were assigned to at least 84 of them. The agents have acquired large properties at various places, consisting of lands, apartments, cars etc. Some of the agents have started new business activities.

A staggering revelation which came to light as a result of the searches at the office of the firm is that, as of September 1, 1980, the firm was holding deposits to the tune of Rs. 73,51,23,000 (Rupees seventy-three crores, fifty-one lacks, twenty-three thousand and five hundred). These deposits were received by the firm from persons drawn from all parts of the country, the pride of place belonging to Calcutta, Bombay, Delhi, Madras and Hyderabad. Remittances also appear to have been received by the firm from overseas clients. A compilation prepared by the State authorities in pursuance of an interim order passed by this Court shows that the total amount of deposits made by persons who had deposited a sum of Rs. 10,000 or less each comes to Rs. 11,49,40,950 (Rupees eleven crores, forty-nine lacs, forty- thousand, nine hundred and fifty).

The documents relating to the account in the fictitious name of "Apcar Ave Toon" show that a person alleged to bear that name was introduced to the Syndicate Bank, Gariahat Branch, Calcutta by the firm's partner Sambhu Prasad Mukherjee. The pass-book relating to the account (Current Account No. 210) shows that the account was opened with a cash deposit of Rs. 28 lacs. A total sum of Rupees twenty seven crores, ninety seven lacs eighty six thousand and odd was deposited in that account until December 6,1980, all deposits being in cash. Such cash deposits varied often between 50 to 80 lacs at a time. The amount of nearly Rs. 28 crores was withdrawn from the account steadily

from November 11, 1980. The account was closed on December 6, 1980, that is, a week before the F.I.R. was lodged on December 13, 1980. Some of the entries in the pass-book do not tally with the Bank's Ledger.

A study of Current Account No. S-502 in the name of the firm with the United Bank of India, High Court Branch, Calcutta, shows that the firm had invested several lacs of rupees in various concerns numbering about forty. Lacs of rupees have been transferred by the firm to various concerns.

Documents seized from the office premises of the firm show that the partners and their family members are insured with the L.I.C. in heavy amounts. They have acquired large properties, particularly in Bombay.

Several offices and concerns in Bombay were searched by the police and interesting discoveries were made. Their magnitude and variety are too large for the scope of this judgment. I will close this narrative by saying that the income-tax returns of Shambhu Prosad Mukherjee reveal that he had shown a sum of Rs. 8,00,000 as prizes received from Delhi Lotteries in 1979 and that the firm has not filed any income-tax return after the financial year ending June 30, 1977. It had asked for an extension of time on the ground that its accounts were not finalised but the Department rejected that prayer on December 9, 1980. With further indulgence they have managed cleverly to secure is not yet known.

These facts disclose a bizzare state of affairs. A token capital of Rs 7,000 has begotten a wealth of crores of rupees within a span of five years. A bank account opened by the firm in a fictitious name had a sum of Rs. twenty-eight crores in it, which was withdrawn within a week before the lodging of the F.I.R. Interest was being paid to depositors at the incredible rate of 48 p.c. p.a. The firm had no ostensible source of income from which such exorbitant amounts could be paid and its account books, such as were seized from its head-office, give no clue to its income or its assets. The partners of the firm have become millionaires overnight. Clerks and Chemists that they and some of their agents were in 1975, to-day they own properties which will put a prince to shame. "Rags to riches" is how one may justly describe this story of quick and easy enrichment. There is no question that this vast wealth has been acquired by the firm by generating and circulating black money. Indeed, rightly did Shri Ashok Sen appearing for the firm, ask us to be free to proceed on the assumption that the exorbitant amount of interest was being Paid from out of unaccounted money.

In these circumstances though I see no alternative save to stop all further investigation on the basis of the F.I.R. as laid, no offence being disclosed by it under section 4 of the Act, I am unable to accept the contention of Shri Ashok Sen that all documents, books papers and cash seized so far during the investigation should be returned to the firm and its partners forthwith. The firm appears to be on the brink of an economic crisis, as any scheme of this nature is eventually bound to be. Considering the manner in which the firm has manipulated its accounts and its affairs, I have no doubt that it will secret the large funds and destroy the incriminating documents if they are returned to it. The State Government, the Central Government and the Reserve Bank of India must be given a reasonable opportunity to see if it is possible, under the law, to institute an inquiry into the affairs of the firm and, in the mean while, to regulate its affairs. I consider such a step essential in the

interests of countless small depositors who, otherwise, will be ruined by being deprived of their life's savings. The big black money bosses will take any loss within their stride but the small man must receive the protection of the State which must see to it that the small dopositors are paid back their deposits with the agreed interest as quickly as possible. I therefore direct that the documents, books, papers, cash and other articles seized during the investigation shall be retained by the police in their custody for a period of two months from to-day and will be returned, on the expiry of that period, to persons from whom they were seized, subject to any lawful directions which may be given or obtained in the meanwhile regarding their custody and return.

With this modification, I agree respectfully with Brother A.N. Sen that the appeals be dismissed.

VARADARAJAN J. I agree with the judgment and the final order proposed by the learned Chief Justice.

AMARENDRA NATH SEN, J. This appeal by special leave has been filed by the State of West Bengal and three officers of the State against an order passed by a learned single Judge of the Calcutta High Court. The facts material for the purpose of this appeal have been fully set out in the judgment of the learned single Judge of the Calcutta High Court. The facts material for the purpose of this appeal may, however, be briefly indicated :

> Sanchaita Investments is a partnership firm duly registered under the Indian Partnership Act. Sanchaita Investments (hereinafter referred to as the firm) has its principal place of business at Nos. 5 and 6 Fancy Lane, Calcutta. Shambhu Prasad Mukherjee, Bihari Lal Murarka and Swapan Kumar Guha are the three partners of the Firm. The capital of the partnership firm is Rs. 7,000/-. The firm carries on the business as financiers and investors and in its business the firm accepts loans or deposits from the general public for different periods repayable with interest @ 12% per annum. Under the terms of deposits, the depositors have a right to withdraw their deposits with the firm at any time before the expiry of the fixed period of the deposit. In case of premature withdrawal, the depositors however loses interest of 1% and is paid interest @ 11% per annum. Under the terms and conditions of the deposits, the firm has also the liberty to repay the amount with interest to any depositor at any time before the expiry of the stipulated period of the deposit and in the event of such repayment by the firm, the firm is not required under the terms and conditions of the deposit or loan, to give any reason. It appears that the firm has been carrying on its business on a very extensive scale.
>
> In the year 1978, the Parliament passed an Act called the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereinafter referred to as the Act).
>
> On the 13th December, 1980, the Commercial Tax Officer, Bureau of Investigation, lodged a complaint of violation of the Act by the firm with the Police. The F.I.R. has been set out in full in the judgment of the learned Trial Judge and the same reads as follows :

" 13.12.1980 The Deputy Superintendent of Police, Bureau of Investigation, 10, Madras Street.

Calcutta-72
Sir,
On a secret information that 'Sanchaita

Investments' of 5 and 6 Fancy Lane, Calcutta, is carrying on business of promoting and/or conducting prize chit and/or money circulation scheme enrolling members of such chit and/or scheme participating in these, and/or receiving and remitting monies in pursuance of such chits and/or scheme in violation of the provisions of the prize chits and money circulation scheme (Banning) Act, 1978. Inquiry was held secretly to verify correctness or otherwise of the aforesaid secret information. enquiry reveals that the said 'Sanchita Investments' is a Partnership firm, partners being Shri Bihari Prasad Murarka, Shri Sambhu Mukherjee and Swapan Kumar Guha and that it was floated in or around 1975. Enquiry further reveals that the said firm had been offering fabulous interest @ 48% per annum to its members until very recently. The rate of interest has of late been reduced to 36% per annum. Such high rates of interest were and are being paid even though the loan certificate receipts show the rate of interest to be 12% only. Thus, the amount in excess of 12% so paid clearly shows that the 'Money Circulation Scheme' is being promoted and conducted for the making of quick and/or easy money, prizes and/or gifts in cash were and are also awarded to agents, promoters and members too. In view of the above, Saravsree Bihari Prasad Murarka, Sambhu Prasad Mukherjee and Swapan Kumar Guha appear to have been carrying on business in the trade name of 'Sanchaita Investments' in prize chits and money circulation scheme in violation of section 3 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1976 are therefore, punishable under S. 4 of the said Act. Necessary action may, therefore, be kindly taken against the aforesaid offenders along with other accomplice as provided in the law.

Yours faithfully Sd/- Illegible 13.12.1980 Commercial Tax Officer, Bureau of Investigation."

On the 13th of December, two of the partners of the firm were arrested. The office of the firm and also the houses of the partners were searched. Various documents and papers were seized and a large amount of cash was also seized from the office and also from the residence of one of the partners. Two partners who were arrested were, however, thereafter enlarged on bail.

The firm and its two partners, namely, Shambhu Prasad Mukherjee and Bihari Lal Murarka filed this writ petition in the High Court challenging the validity of the F.I.R. and the proceedings arising out of the same including the validity of the searches and seizure of documents, papers and cash. The respondents in the writ petition were six. The first respondent was the State of West Bengal, Respondents No. 2 was the officer who had lodged the F.I.R.., Respondent No. 3 was the Assistant Commissioner of Police and Superintendent of Police, Bureau of Investigation, and respondent No. 4 was the Investigating officer in the cases pending before the Chief Metropolitan Magistrate

Calcutta. Respondent No. S was the Reserve Bank of India and Respondent No. 6 was the Union of India.

In brief the case made by the firm and its partners in the writ petition is that the firm is a non-banking financial institution which carries on business of accepting deposits or loans from the general public on terms and conditions mentioned in the agreement of loan or deposit, pays interest to persons who invest or advance money to the firm in terms of the agreement between the parties and repays all amounts received from the parties with interest in terms of the agreement between the parties. The further case made by the writ petitioners in the writ petition is that the amounts which they receive from parties are reinvested by them and out of the investments made by the firm, the firm pays the interest to the depositors and also the principal amount deposited by them in terms of the agreement between the parties. In the writ petition there is a denial of the allegations made in the F.I.R.. and the case is further made that even if the allegations made in the F.I.R.. are assumed to be correct, there cannot be any question of any violation of the Act and no offence under the Act is disclosed. It is the positive case of the writ petitioners in the writ petition that the Act has no application to the firm. In the writ petition, the validity of the F.I.R.. and the proceeding arising therefrom is challenged mainly on the ground that the F.I.R. does not disclose any offence under the Act which-does not apply to the firm and there can be question of any violation of any provisions of the Act which has no application to the firm at all.

In answer to the averments made in writ petition, an affidavit affirmed by Shri Arun Kanti Roy, was filed on behalf of respondent Nos. 1 and 2, an affidavit affirmed by Shri Sunil Kumar Chakravorty on behalf of respondents Nos. 3 and 4 was filed and an affidavit affirmed by Shri Rani Annaji Rao on behalf of the Reserve Bank of India was also filed. In the affidavit affirmed by Arun Kanti Roy, Deputy Secretary, Finance Department and Ex-officio Director of Small Savings, Government of West Bengal, on behalf of Respondents No. 1 and 2, that is, the State of West Bengal and Shri B.K. Kundu, there is an assertion that the Respondents come within the mischief of the Act and they have violated S. 3 of the Act. The relevant averments are contained in paragraphs 6, 7, 8 and 9 of the said affidavit and it is necessary to set out the same in their entirety:

> "6. With reference to paragraphs 3 and 4 of the petition, I say that the petitioner firm accepts loans and/or deposits from all and sundry for varying periods without any authority of law. Although the professed rate of interest of such deposit is at the rate of 12% per annum, the petitioner firm was actually paying interest at the rate of 48% per annum, which was recently reduced to 36% per annum. The actual payment of such high rate of interest against the professed rate of 12% attracts huge amount of idle money into circulation and the investment of money as collected is not under the regulatory control of the Reserve Bank of India or any other agency of the State dealing with credit control in relation to the country's economy. The receipt of such money from the members of public at such high rate of interest is without any fetters as against the case of the receipt of money by banking companies as also non-banking companies which are regulated under different provisions of law, to which I will crave reference at the time of hearing, if necessary The pooling of the purchasing power and/or the financial resources and the employment thereof being unfettered has

resulted in the concentration of tremendous economic power in the hands of a few posing a potential threat to the equilibrium of the country's economy. The term of the deposit are unilaterally determined without any scrutiny by the Reserve Bank of India or with reference to the norms as to the credit control which the said Bank lays down and follows from time to time. The acceptances of such deposits from the members of public with unrestricted use of the moneys so collected are completely repugnant to the accepted modes of public savings and investment thereof for generation of goods and services contributing to the economic growth of the country. The entire process is speculative in nature and directed towards luring away the investing public to the speculative market for making quick and easy money. These are some of the activities which are sought to be banned by the banning provisions of the said Act, which has replaced similar regulatory measures contained in the several directions issued by the Reserve Bank of India under the Reserve Bank of India Act, 1934, to the various financial institutions and non-banking companies. The present Act is applicable not only to such companies but also to individuals and firms. All allegations contrary to and save as aforesaid are denied.

7. With reference to paragraph 5 of the petition I call upon the petitioner to disclose full particulars of their deposit scheme, which is disclosed will go to show that the terms and conditions are wholly arbitrary and contrary to the economic norms. The very basis of the so called contractual arrangement between the petitioner firm and its depositors is founded on the fraudulent device to assure the people with a high rate of interest, the major portion of which is paid through unaccounted for money, thereby encouraging growth of such unaccounted for money in the hands of the investing public. The professed rate of interest is a mere subterfuge to provide a cloak of bona fide and legality over the under-hand transactions through which unaccounted for money comes into play in the market generating further unaccounted for money, a part thereof goes back to the depositors in the form of the balance of interest over 12% paid in cash month by month. All allegations contrary to and save as aforesaid are denied.

8. With reference to paragraph 8 of the petition I say that the petitioners have been very much working on the above scheme to which the depositors have subscribed. Whether such deposits are one time deposits and whether such deposits actually earn income in excess of the interest actually paid to the depositors or a matter of detailed investigation, which were in progress until the same was stopped by the order of the learned Court of Appeal passed on 8th January, 1981. From whatever particulars are so far available to the answering respondents it can be stated that the firm did not have so much income as the quantum of interest that was being paid by it and the irresistible conclusion from such state of affairs is that payment of interest was being made out of capital itself. All allegations contrary to and save as aforesaid are denied.

9. With reference to paragraph 7 of the petition I reiterate the statements made hereinbefore and deny all allegations contrary thereto. I specifically deny that no

quick or easy money is accepted or received by the depositors or lenders or that payment of any such money is not contemplated or made by the firm as purported to be alleged. The depositor becomes a member of the investment scheme of the company by subscribing to it and the payment of the quick and easy money by way of high rate of interest is dependent upon the period of investment and/or efflux of time which are very much relative and/or applicable to the membership of the depositors of the scheme, to which the depositor agrees to subscribe. In the process of its working the scheme of the firm generates quick and easy money so as to render such scheme or arrangement as a money circulation scheme within the meaning of the said Act. All allegations contrary to and save as aforesaid are denied.

The following further averments contained in paragraph 22 and in paragraph 30 of the said affidavit may also be noted:

"22 .....

I further say that payment of interest at the clandestine rate of 36% or 46% as against the aforesaid rate of 12% is in the context of the scheme promoted and conducted by the petitioners tantamount to activity which is banned under the banking provisions of the said Act.

30 .....

No question of the depositors being ruined should arise if the petitioners had been running their business on sound economic line and had invested the fund collected from the depositors in safe and sound investment. The very fact that the petitioners are apprehensive of innumerable depositors being ruined goes to show that they engaged themselves and also the depositors in the speculative market and have rendered the investment insecure by reasons of the very nature of the business i.e. money circulation scheme transacted by them. In the affidavit affirmed by Shri Sunil Kumar Chakraverty, Assistant Commissioner of Police and Deputy Superintendent of Police, Bureau of Investigation, Government of West Bengal, Finance, Taxation Department and filed on behalf of Respondents Nos. 3 and 4, the deponent adopts the statements made in the affidavit of Arun Kanti Roy and the deponent denies that the searches and seizures were unlawful and illegal. The deponent further stated that as a result of the searches effected a mass of documents and a large amount of cash had been seized and the documents were being scrutinised.

In the affidavit affirmed by Shri Rani Annaji Rao, filed on behalf of Reserve Bank of India, the deponent has stated that the Reserve Bank of India which has no regulatory control over the firm has been unnecessarily made a party to the proceeding. It has been further stated in the said affidavit that as desired by the parties and the Court, the Reserve Bank of India was placing the materials which had come to the knowledge of the Reserve Bank. In this affidavit reference has been made

to certain correspondence between the State Finance Minister, Union Finance Minister and the Deputy Governor of the Reserve Bank of India and also to various queries made and the enquiries made by the Reserve Bank of India. It has been further stated that the view of the legal department of the Reserve Bank on the basis of the enquiries made had Been indicated to the Finance Minister of the State of West Bengal. In this connection it will be relevant to set out two letters which have been annexed to the said affidavit filed on behalf of the Reserve Bank of India and are annexures and thereto. Annexure is the copy of a letter addressed by Shri Ashok Mitra, State Finance Minister to the Union Minister for Finance and the said letter reads as follows:

"Informally handed over to DG (K) at Calcutta.

Ashok Mitra D.O. No. IM. 28-2-80 Calcutta, October 1, 1980 Dear Shri Venkataraman, In the context of the action being taken by the Government of West Bengal under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, a question has arisen whether an organisation called 'Sanchaita Investments, with the address at 5 & 6, Fancy Lane, Calcutta-1 come within the purview of the above Act. A reference in the matter has been made by our authorised officer under the above act to the Chief officer, Department of Non. Banking Companies, Reserve Bank of India, Calcutta today. I am enclosing a copy of an advertisement published by the above organisation in the local newspapers as also a copy of a loan certificate receipt issued by the said organisation. I may mention that the authorised officer has issued notice under the above Act to a "Sanchaita Savings Scheme (P) Ltd." which is to be distinguished' from 'Sanchaita Investments'. It appears that the organisation called "Sanchaita Investments" is receiving large amount of monies from the public ostensibly as loans, and in lieu they are issuing loan certificates receipts. While we have no documentary evidence, the news is strongly circulating in the market that the organisation is in fact offering rates of interest as high as 30 to 40 per cent even though the loan certificate receipts indicate a rate of interest of 12 per cent only. There seems reasonable grounds for suspicion that this organisation is involved in extremely high-risk investments which only can enable them to pay such rates of interest. Since the security of monies deposited by the public is involved, we would suggest that a thorough enquiry be conducted by the Government of India into the activities of this organisation particularly for finding out whether they are infringing provisions of any relevant status. It is felt necessary to conduct such an investigation on an urgent basis since large amounts of public monies are reported to be kept with this organisation, which does not seem as yet to have subjected to any regulatory control. We are meanwhile awaiting a reply to our reference (copy enclosed) to the Reserve Bank of India regarding the applicability of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 to this organisation.

With regards, Yours sincerely, Sd/- Ashok Mitra Shri R.V. Venkataraman, Union Minister for Finance, North Block, New Delhi-110001"

Annexure is a letter by Shri K.S. Krishnaswamy, Deputy Governor of Reserve Bank to Dr. Ashok Mitra, State Finance Ministry. The said letter is also here further set out:

> D.O. DNBC No. 2020/102 (Gen) LO-80/81 22nd Oct., 1980 Sanchaita Investments My Dear Ashok, You might recall that during my recent visit to Calcutta, you had sent me a copy of your o. Letter dated October 1, 1980 to Shri Venkataraman, Union Minister for Finance as also of a letter dated September 30, 1980 addressed to our Chief Officer, DNBC, Calcutta, in connection with the above firm. I have had the position examined by our Legal Department. According to them (vide extract of the note dated 17th October, 1980, enclosed for your confidential information) the acceptance of loans simpliciter by the firm by issue of receipts (as per the specimen received by us from our Calcutta Office) without floating any scheme or arrangement would not ordinarily be covered by the definition of "Prize Chit" and hit by the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. However, you may also like to consult your Legal Adviser on the subject
>
> 2. As you may know, there are a few writ petitions pending in the Calcutta High Court where the interpreta-

tion of section 2 (e) of the Banning Act is involved. In that context I have thought it advisable to write to you on a confidential basis, rather than send a separate official reply. I shall therefore be grateful if you could leave instructions with your staff to keep this matter and the views of our legal department strictly confidential. With warm regards, Sd/- K.S. Krishnaswamy Dr. Ashok Mitra, Minister of Finance"

> Further supplementary affidavits had also been filed. On consideration of the facts and circumstances of this case and the materials which were placed before the learned Judge, the learned Judge came to the conclusion that the Act did not apply to the firm and the learned Judge further held that the searches and seizures were also wrongful, illegal and improper; and in view of his finding the learned Judge quashed the proceedings and directed the return of all documents and the refund of cash monies seized, to the writ- petitioners. It appears from the judgment of the learned Judge that the matter had been very fully argued before him and the learned Judge in an elaborate judgment had considered the arguments advanced before him and thereupon recorded his findings and passed the order allowing the said writ petition.
>
> Against the judgment and order passed by the learned Judge, the State of West Bengal and its three officers have preferred this appeal with special leave granted by this Court. The writ petitioners, the Reserve Bank of India and Union of India have been made respondents in this appeal. It does not appear that Union of India has participated in the proceedings before the learned Judge and no affidavit on behalf of the Union of India appears to have been filed before the learned Judge.

Mr. Som Nath Chatterjee, learned counsel appearing on behalf of the appellant has attached the judgment under appeal on the main ground that the learned Judge in this extraordinary jurisdiction should not have held that the Act has no application to the Respondent Firm and should not have on the basis of the said finding interfered with the investigation into the affairs of the firm. Mr. Chatterjee contends that the question of applicability of the Act will only come for consideration after the investigation has been completed and all relevant materials have been gathered on such investigation. It is the contention of Mr. Chatterjee that at the investigation stage, the Court does not interfere and does not quash any proceedings before the investigation has been completed. In support of this contention, Mr. Chatterjee has referred to a number of decisions of this Court. I shall consider the relevant decisions referred to by Mr. Chatterjee at the appropriate time. Mr. Chatterjee has submitted that after the investigation has been completed and all relevant materials have been gathered a charge under the Act may or may not be framed against the appellant firm for violation of the provisions of the Act. It is his submission that if the materials collected do not indicate any infringement of the Act, no charge against the firm will be preferred, and all the accused persons will be discharged; if, on the other hand, materials gathered disclose an offences under the Act, proper charge against the accused persons will be framed and it will be open to the accused persons to raise the plea in the course of the prosecution that no offence under the Act has been committed by them and the Act has no application to the transactions of the firm and to the firm.

In the case of State of West Bengal v. S.N. Basak, this Court held at page 55-56 as follows:-

"The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and s. 156 with investigation into such offences and under these section the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the Police to investigate cannot be interfered with by the exercise of power under s. 561-A of Criminal Procedure Code. As to the powers of the Judiciary in regard to statutory right of the police to investigate, the Privy Council in Ring Emperor v. Khawaja Nazir Ahmed (1944) L.R.I.A. 203, 212 observed as follows :-

'The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under s. 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then. It has sometime been thought that s.

> 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so, the section give no new powers, it only provides that those which the Court already inherently possesses shall be preserved and is inserted as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent powers had survived the passing of that Act.' With the interpretation which has been put on the statutory, duties and powers of the police and of the powers of the Court, were in accord. The High Court was in error therefore in interfering with the powers of the police in investigating into the offence which was alleged in the information sent to the officer incharge of the police station".

In the case of State of Bihar and Anr. v. J.A.C. Saldhana and Ors., this Court at p. 39-40 observed:

> "The next contention is that the High Court was in error in exercising jurisdiction under Art. 226 at a stage when the Addl. Chief Judicial Magistrate who has jurisdiction to entertain and try the case has not passed upon the issues before him, by taking upon itself the appreciation of evidence involving facts about which there is an acrimonious dispute between the parties and given a clean bill to the suspects against whom the first information report was filed. By so directing the learned Addl. Chief Judicial Magistrate the judgment of the High Court virtually disposed of the case finally. As we are setting aside the judgment of the High Court with the result that the case would go back to the learned Additional Chief Judicial Magistrate, it would be imprudent for us to make any observation on facts involved in the case. There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the Superintendent over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under S. 190 of the Code its duty comes to an end. on a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in S. 173 (B), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate".

Same views have been reiterated by this Court in the other decisions which were cited by Mr. Chatterjee. In the case of S.N. Sharma v. Bipan Kumar Tiwari, this Court at p. 951 referred to the observations of the Privy Council in the case of King Emperor v. Khwaja Nazir Ahmed which have been quoted in the judgment of this Court in the earlier decision and then proceed to hold at pp. 951-952:

> "Counsel appearing on behalf of the appellant urged that such an interpretation is likely to be very prejudicial particularly to officers of the judiciary who have to deal with cases brought up by the police and frequently give decisions which the police dislike. In such cases, the police may engineer a false report of a cognizable offence against the judicial officer and may then harass him by carrying on a prolonged investigation of the offence made out by the report. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers".

Relying on these decisions and the principles enunciated therein, Mr. Chatterjee has argued that the learned Judge clearly erred in interfering with the investigation and quashing the proceedings at the stage of investigation before framing of charges against the accused persons. Mr. Chatterjee argues that there is no allegation of mala fide in the instant case and the learned Judge has also come to a conclusion that there is no case of any mala fide on the part of the appellants. Mr. Chatterjee has submitted that the materials which have been gathered as a result of the investigation which could be carried on only for a short while go to indicate that the transactions of the firm are not above board and they are not what they pretend or purport to be. It is his submission that materials gathered clearly indicate that though the loan certificates stipulate interest to be paid @ 12% a much larger sum by way of interest ranging between 36% to 48% is actually paid to the depositors, and the amount which is paid in excess of the rate stipulated in the loan certificates is paid in cash in a clandestine manner, depriving and defrauding revenue of its legitimate dues. Mr. Chatterjee comments that the payment of interest in this clandestine manner at a very high rate which is not shown or other-

wise accounted for results not only in generation of black- money, but paralyses the economy of the State. Mr. Chatterjee has further commented that in view of this allurement to the depositors of payment of large sums of money in a clandestine manner, the firm which has a share- capital of only Rs. 7000 has succeeded in alluring depositors and the deposits received by the firm with the capital of Rs. 7000 now exceed crores of rupees. Mr. Chatterjee submits that a firm which carries on clandestine business of this nature is not entitled to invoke the extra- ordinary jurisdiction conferred on the Court under Art. 226 of the Constitution.

Mr. Chatterjee has contended that the violation of S. 3 of the Act has been alleged and it is his contention that the nature of business carried on by the firm indicates that the firm is conducting a

'Money Circulation Scheme'. According to Mr. Chatterjee, 'Money Circulation Scheme' by virtue of its definition in S. 2 (c) of the Act means any scheme' by whatever name called, for the making of quick or easy money. It is his argument that the transactions disclose that the firm and the depositors are both trying to make quick or easy money, the scheme being that the depositors will deposit money against certificate stipulating interest to be paid @ 12% but they will in fact be paid interest at a much higher rate and thereby make quick or easy money and the firm invests the money received from the depositors in such transactions as to enable them to earn easy or quick money. Mr. Chatterjee has further argued that money circulation scheme has to be interpreted to mean any scheme 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 enrollment 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 subscription. Further investigation according to Mr. Chatterjee, can only show whether the scheme of making quick or easy money depends on any contingency relative in the enrollment of members into the scheme. Mr. Chatterjee submits that the question of proper interpretation of the provisions of the Act and also of what money circulation scheme means, should come up only after investigation has been completed and all relevant materials have been collected. It is Mr. Chatterjee's submission that the interpretation of the provisions of the Act aud particularly what 'Money Circulation Scheme' means, is not to be made in a hypothetical way in the absence of relevant materials being gathered on completion of investigation. Mr. Chatterjee has argued that after all the materials have been collected on completion of the investigation, it may be that materials may show that the firm is not conducting a Money Circulation Scheme and no charge against the firm may at all be preferred; if however, on the other hand, the materials, indicate that the firm is conducting a money circulation scheme and a charge is preferred, it will be open to the accused persons to take the defence that the business conducted by them is not one which will be considered to be a money circulation scheme within the meaning of the Act. As I have earlier observed, the main grievance of Mr. Chatterjee is that the Court should have interfered at the stage of investigation and quashed the proceedings.

Mr. Chatterjee has next contended that S. 7 of the Act, clearly empowers a Police officer not below the rank of an officer-in-charge of a police station to enter, search and seize in the manner provided in the said section. It is Mr. Chatterjee's contention that the searches have been carried out duly in terms of the provisions contained in the said section and cash money and other books and documents have been lawfully seized in terms of the provisions contained in the said section. Mr. Chatterjee has further submitted that even if there had been any irregularity in the matter of searches and seizure, the searches and seizure are not rendered illegal and void as a result thereof. Various decisions were also referred to by Mr. Chatterjee in support of his submissions.

Mr. A.K. Sen, learned counsel appearing on behalf of the firm has submitted that the learned Judge on a proper consideration of all the relevant materials and the provisions of the Act has correctly come to the conclusion that no offence under the Act is disclosed and the Act has no application to the firm and in that view of the matter the Learned Judge was perfectly justified in quashing the proceeding against the firm, and in directing the return of the documents and cash money seized by the police to the firm. Mr. Sen has argued that investigation has to be done when an offence is disclosed for collecting materials for establishing an offence. It is the argument of Mr. Sen that if no

offence is disclosed there cannot be any investigation and any investigation when no offence is disclosed by the F.I.R. and the other materials, means unnecessary harassment for the firm and its partners and illegal and improper deprivation of their liberty and property. Mr. Sen submits that it is no doubt true that when an offence is disclosed, the Court normally does not interfere with the investigation into an offence. He, however, contends that when no offence is disclosed, it, indeed, becomes the duty of the Court to interfere with any investigation which is improperly and illegally carried on to the serious prejudice of the persons. In support of this contention Mr. Sen has referred to the decision of the Judicial Committee in the case of King Emperor v. Khwaja Nazir Ahmed (supra) and has relied on the following observations at p. 213:

> "No doubt, if no cognizable offence is disclosed and still more, if no offence of any kind is disclosed, the police would have no authority to undertake investigation.
>
> In this connection, Mr. Sen also referred to the decision of this Court in the case of R.P. Kapur v. State of Punjab and has placed very strong reliance on the following observations at p. 393:
>
> "Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person."

Mr. Sen has also referred to the decision of this Court in Jehan Singh v. Delhi Administration; in which the aforesaid observations made by Gajendragadkar, J. in the case of R.P. Kapur v. State of Punjab, (supra) have been reproduced and reiterated. Mr. Sen further points out that in the case of S.N. Sharma v. Bipin Kumar Tiwari (supra), this Court at p. 951 recognises that "in appropriate cases the aggrieved person can always seek remedy by invoking powers of the High Court under Art. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers".

Mr. Sen has argued that the Learned Judge having properly appreciated the legal position has made the correct approach to the consideration of the present case. It is his argument that the Learned Judge has carefully considered the materials which have been placed before him including the F.I.R. and he has properly analysed the provisions of the Act and on a proper interpretation of the Act and on a proper appreciation of the materials which were there before the Learned Judge, the Learned Judge has come to the conclusion that no offence under the Act is disclosed and the Act has no application to the firm. Mr. Sen argues that for a proper appreciation of the question whether the materials disclose any offence under the Act, it is imperative to interpret the Act. He contends that it will not be a proper approach to leave the question of interpretation to the stage after the investigation is complete, as according to Mr. Sen, there can be no investigation unless an offence

has been disclosed. Mr. Sen argues that if the materials do not disclose any offence, no investigation can be permitted to find out whether as result of the investigation an offence may be disclosed or not. Mr. Sen submits that investigation can legitimately go on, once an offence is disclosed for collecting materials for establishing and proving the offence. It is the contention of Mr. Sen that the case of the-appellants is that the firm is conducting money circulation scheme which is banned by the Act. Mr. Sen argues that to find out whether the firm is conducting a money circulation scheme, it is necessary to consider what a money circulation scheme is within the meaning of the Act and to find out whether on the materials alleged in the F.I.R.. and also in the affidavits, it can be said that the business carried on by the firm is one in the nature of conducting a money circulation scheme. Mr. Sen has argued that the learned Judge in his judgment has correctly interpreted what constitutes 'money circulation scheme' within the meaning of the Act, and it is the argument of Mr. Sen that such interpretation is absolutely essential to find out whether the allegations made in the F.I.R. make out a case that the firm is conducting a money circulation scheme. Mr. Sen submits that the materials on record including the allegations made in the F.I.R. even if they are all assumed to be correct, do not go to show that the firm is conducting a money circulation scheme; and, in that view of the matter there can be no investigation, if no offence under the Act is disclosed. Analysiag the F.I.R. and the other materials which have been placed before the Court, Mr. Sen submits that the materials go to indicate-(1) that the firm is accepting deposits or loans from the public for a term against loan certificates which stipulate payment of interest @ 12%; (2) though interest is stipulated to be paid @ 12%, the firm, in fact, is paying interest at a much higher rate. It used to pay interest @48% previously and is now paying interest @ 36%. The amount of interest paid in excess of the stipulated rate of 12% is paid in cash in a clandestine manner to the depositors. The excess amount of interest paid is not accounted for and results in accumulation of black-money; (3) the firm invests the monies received from the depositors in high risk investments earning huge amount of unaccounted profits. The investments made by the firm and the earnings from the investments made, also result in generation of black-money; (4) because of the allurement of high rate of interest offered to the depositors, a major part of which is given in unaccounted black-money, the firm which has a share-capital of about Rs. 7000 only has received deposits over crores of rupees.

It is the contention of Mr. Sen that even if all these allegations which are there in the F.I.R. and also in the other materials which have been placed before the Court are accepted to be correct, the said allegations do not go to show that the firm is conducting a money circulation scheme and do not disclose any offence under the Act. Mr. Sen in this connection has commented that though in the F.I.R. it has been alleged that the firm is carrying on business of promoting Prize Chits; no such case was sought to be made out before the Learned Judge or before this Court and there are no allegations or materials to show that the firm is carrying on business of promoting prize chit; and the only case that has been sought to be made before the Trial Court and also this Court is that the firm is carrying on business of conducting or promoting money circulation scheme. Mr. Sen has argued that the money circulation scheme has been defined in S. 2 (c) of the Act to mean "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 considera-

tion for a promise to pay money, on any event or contingency relative or applicable to the enrollment 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 subscription". According to Mr. Sen, the essential requirements of a money circulation scheme are (1) There must be a scheme for the making of quick or easy money on any event of contingency relative or applicable to the enrollment of members into the scheme whether or not such money is derived from the entrance money of the members of such scheme or periodical subscription; or (2) there must be a scheme for the receipt of any money or valuable thing as the consideration for promise to pay money on any event or contingency relative or applicable to the enrollment of members into a scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or from periodical subscription. Mr. Sen submits that neither F.I.R. nor any of the other materials go to show that the business carried on by the firm is, in any way, in the nature of conducting or promoting a money circulation scheme. In this connection Mr. Sen has drawn our attention to the statement of objects for the passing of this enactment. Mr. Sen has further submitted that this enactment which is in the nature of penal one has to be construed in the event of doubt or ambiguity in a manner beneficial to the party against whom any accusations is made.

Mr. Sen has further argued that the rules framed under the Act can also be taken into consideration for proper interpretation of the Act and the learned Judge in the instant case was justified in referring to the rules in construing the provisions of the Act. In this connection Mr. Sen has referred to the decision in Ex parte Wier In re Wier and has relied upon the following observations at p. 879;

> "We do not think that any other section of the Act throws any material light upon the proper construction of this section, and if the question had depended upon the Act alone we should have had great doubt what the pro per construction was; but we are of opinion that, where the construction of the Act is ambiguous and doubtful on any point, recourse may be had to the rules which have been made by the Lord Chancellor under the authority of the Act, and if we find that in the rules any particular construction has been put on the Act, that it is our duty to adopt and follow that construction".

Mr. Sen in this connection has drawn our attention to the relevant rules and he has argued that the rules leave no room for doubt that the Act has no application to the firm and no offence under the Act has been disclosed by the firm. Mr. Sen has submitted that the construction of the Act by the Learned Judge is correct and it is his submission. that in view of the provisions of the Act properly interpreted, there cannot be any doubt that the Act has no application to the interest case and there can be no question of any violation of the said Act by the firm. It is the submission of Mr. Sen that the approach and the reasoning of the learned Judge are both sound. Mr. Sen has next contended that the search and seizure carried on in the instant case are also illegal and unjustified. It is the argument of Mr. Sen that if no offence under the Act is disclosed and the Act has no application, there cannot be any question of any search or seizure under the Act. Mr. Sen has argued that the search and seizure. done in the instant case have also not been done in confirmity with the provisions of law. Mr. Sen has submitted that learned judge has correctly come to the conclusion that the search and seizure in the instant case were also illegal. In this connection Mr. Sen referred to a number of decisions.

Mr. Ray and Mr. Sibal who followed Mr. Sen mainly adopted the submissions made by Mr. Sen. Mr. Ray, further contended that to be a chit fund or to be a money circulation scheme, an element of uncertainty or luck is essential. It is the argument of Mr. Ray that in so far as the transactions carried on by the firm in the instant case are concerned, the said element is no where there. Mr. Ray, in this connection referred to the definition of conventional chit and has argued that the conventional chits have not been brought within the purview of this Act. Mr. Ray has drawn our attention to the decision of this Court in the case of Srinivasa Enterprises v. Union of India in which the validity of the Act came to be challenged in this Court and was upheld by this Court.

The appeal before us has been argued at great length. A number of decisions have also been cited from the Bar. I have already referred to some of the decisions which were cited before us. I do not propose to consider all the case which were referred to in the course of argument by the learned counsel appearing on behalf of the parties as I do not consider the same to be necessary. As I have already stated that the matter appears to have been elaborately argued before the learned Trial Judge who in his judgment has fully set out the relevant facts and circumstances of the case has noted the arguments which were advanced before him and the learned Judge has also referred to a number of decisions. I may, however, note that Mr. Chatterjee, appearing on behalf of the appellants, has made a grievance before us that some of the decisions cited by him have not been considered by the learned Judge. Though the matter has been argued at great length, yet, to my mind, the case appears to rest, in a fairly short compass.

In my opinion, the legal position is well-settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. The observations of the Judicial Committee and the observations of this Court in the various decisions which I have earlier quoted, make this position abundantly clear. The prepositions enunciated by the Judicial Committee and this Court in the various decisions which I have earlier noted, are based on sound principles of justice. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harrassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interest of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequen-

ces and the offender may go unpunished to the deteriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious deteriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court

normally does not interfere with the investigation of a case where an offence has been disclosed. The decision on which Mr. Chatterjee has relied are based on this sound principle, and in all these cases, an offence had been disclosed. Relying on the well- settled and sound principle that the Court should not interfere with an investigation into an offence at the stage of investigation and should allow the investigation to be completed, this Court had made the observations in the said decisions which I have earlier quoted reiterating and reaffirming the sound principles of justice. The decisions relied on by Mr. Chatterjee, do not lay down, as it cannot possibly be laid down as a broad proposition of law, that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation even if no offence is disclosed. While adverting to this specific question as to whether an investigation can go on even if no offence is disclosed, the judicial Committee in the case of King Emperor v. Khwaja Nizam Ahmed (supra) and this Court in R.P. Kapur v. State of Punjab (supra), Jehan Singh v. Delhi Administration (supra), S.N. Sharma v. Bipin Kumar Tiwari (supra) have clearly laid down that no investigation can be permitted and have made the observations which I have earlier quoted and which were relied on by Mr. Sen. As I have earlier observed this proposition is not only based on sound logic but is also based on fundamental principles of justice as a person against whom no offence is disclosed, cannot be put to any harassment by the process of investigation which is likely to put his personal liberty and also property which are considered sacred and sacrosanct into peril and jeopardy.

Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the Court has mainly to take into consideration the complaint or the F.I.R. and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

In the instant case, the offence complained of is violation of the Act. For a proper adjudication of the case and for a proper appreciation of the question, it, therefore, becomes necessary to consider the relevant materials and also the provisions of the Act for being satisfied as to whether the relevant materials go to indicate any violation of the Act and disclose any offence under the Act. The materials are mainly contained in the F.I.R. which has been earlier set out in its entirety. An analysis of the F.I.R. mentions the following allegations on the basis of which the said F.I.R. has been lodged: -

> 1. Sanchaita Investments is a partnership Firm. Its partners are Behari Prasad Murarka, Sri Sambhu Mukherjee and Sri Swapan Kumar Guha The firm was started in and around 1975.

2. The Firm had been offering fabulous interest @ 48% to its members until very recently. The rate of interest has of late been reduced to 36% per annum.

3. Such high rate of interest were and are being paid even though the loan certificate receipts show rate of interest to be 12% only.

4. Thus, the amount in excess of 12% so paid clearly shows that 'Money Circulation Scheme' is being promoted and conducted for the making of quick and/or easy money, prizes and/or gifts

5. Prizes or gifts in cash are also being awarded to agents promoters and members too.

6. In view of the above, Sarvshri Behari Prasad Murarka, Sambhu Mukherjee and Swapan Kumar Guha appears to have been carrying on the business in the trade name of 'Sanchaita Investments' in prize chits and money circulation Scheme in violation of S. 2 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978.

The other materials are contained in paragraphs 6, 7, 8, 9, 22, 27 and 30 of the affidavit and the two documents, namely, the article published in the Newspaper 'Business Standard' dated 1611.1980 and the documents seized in the course of searches. I have earlier set out in extenso the statement made in the said paragraphs of the affidavit filed on behalf of the State. A copy of the article has been enclosed to the affidavit filed on behalf of the State. The document seized in the course of searches and handed over to Court in the course of the arguments was a letter addressed by an officer of the Air Force to the firm in which the officer makes a grievance that the Firm which was paying interest @ 48% has now reduced the same to 36% in view of advances made to political parties. The letter further records the fact that the firm hopes to pay the enhanced rate of interest of 48% in the near future. An analysis of these materials suggest that the firm is carrying on activities of accepting deposits from the members promising to pay them interest on such deposits at an agreed rate of 12% as stipulated in the loan certificate; but, in fact, it has been paying interest to them at much higher rate of interest The materials further indicate that the firm is making high risk investments of the monies received from the depositors and has also been advancing monies to political parties.

The crux of question is whether these allegations disclose an offence under the Act namely, violation of S. 3 of the Act even if all these allegations are deemed to be correct.

The question whether these allegations disclose an offence under the Act and can be the basis for any suspicion that an offence under S. 3 of the Act has been committed or not, must necessarily depend on the provisions of the Act and its proper interpretation.

The Act has been enacted for implementing the recommendations of a Study Group of the Reserve Bank of India under the Chairmanship of Shri James S. Raj the then Chairman of the Unit Trust of India, constituted for examining in depth the provisions of Chapter IIIB of the Reserve Bank of

India Act, 1934 and the directions issued thereunder to Non-Banking Companies in order to assess their adequacy in the context of ensuring the efficacy of the monetary and credit policies of the country and affording a degree of protection to the interests of the depositors who place their savings with such companies. Paragraph 2 of the Statement of objects and Reasons of the Act states:

> "Prize chits would cover any kind of arrangement under which moneys are collected by way of subscriptions, contributions, etc. and prizes, gifts, are awarded. The prize chit is really a form of lottery. Its basic feature is that the foreman or promoter who ostensibly charges no commission collects regular subscriptions from the members. Once a member gets the prize, he is very often not required to pay further instalments and his name is dropped from further lots. The institutions conducting prize chits are private limited companies with a very low capital base contributed by the promoters, directors or their close relatives. Such schemes confer monetary benefit only on a few members and on the promoter companies. The Group had, therefore, recommended that prize chits or money circulation schemes, by whatever name called, should be totally banned in the larger interests of the public and suitable legislative measures should be undertaken for purpose."

The relevant portion of paragraph 3 of the Statement of objects and Reasons reads as follows:-

> The Bill proposes to implement the above recommendation of the Group by providing for the banning of the promotion or conduct of any prize chit or money circulation scheme, by whatever name called, and of the participation of any person in such chit or scheme. The Bill provides for a period of two years within which the existing units carrying on the business of prize chits or money circulation schemes may be wound up and provides for penalties and other incidental matters."
>
> It is, therefore, clear that the main object of the Act is to ban promotion or conduct of any Prize Chit or money circulation scheme, by whatever name called, and of the participation of any person in such chit or scheme. S. 2 of the Act deals with definitions. Money Circulation Scheme is defined in S. 2 (c) in the following words:-
>
> "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 enrollment 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."

Prize Chit is defined in S. 2 (e) in the following terms:-

> "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 unit, 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 benefits, thrift or any other scheme or arrangement by whatever name called, and utilises the monies so collected or any part thereof cr 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 termina-

tion of the scheme or arrangement, or on or after the expiry of the period stipulated therein, but does not include a conventional chit.

A Conventional Chit which is specifically excluded in the definition of prize chits in S. 2 (c) (ii) is defined in S. 2 (a) as follows -

> "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 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".

S. 3 of the Act the violation of which alleged reads:-

> "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."

S. 7 of the Act provides:

> "(1) It shall be lawful for any police officer not below the rank of an officer in charge of a police station:
>
> (a) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary any premises which he has reason to suspect, are being used for

purposes connected with the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act;

(b) to search the said premises and the persons whom he may find therein;

(c) to take into custody and produce before any judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any such prize chit or money circulation scheme as aforesaid;

(d) to seize all things found in the said premises which are intended to be used, or reasonably suspected to have been used, in connection with any such prize or money circulation scheme as aforesaid.

(2) Any officer authorised by the State Government may:-

(a) at all reasonable times, eater into and search any premises which he has reason to suspect, are being used for the purposes connected with, or conduct of, any prize chit or money circulation scheme in contravention of the provisions of this Act;

(b) examine any person having the control of, or employed in connection with, any such prize chit or money circulation scheme;

(c) order the production of any documents, books or records in the possession or power of any person having the control of, or employed in connection with, any such prize chit or money circulation scheme; and (3) All searches under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973".

S. 13 confers necessary powers to make rules and reads as under:-

"(1) The State Government may, by notification in the Official Gazette and in consultation with the Reserve Bank, make rules for the purpose of carrying out the provisions of the Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:-

(a) the office of the Reserve Bank to whom full information regarding any prize chit or money circulation scheme may be furnished under the first proviso to sub section (1) of Section 12, and the form in which and the period within which such information may be furnished;

(b) the particulars relating to the winding up plan of the business relating to prize chits or money circulation schemes."

The complaint alleges violation of S. 3 of the Act. In other words, the complaint is that the firm is promoting or conducting a prize chit or a money circulation scheme. The definition of prize chit has been earlier set out. I have also earlier analysed the F.I.R. and the other materials on the basis of which the complaint is made and the materials which have been placed before the Court. The materials do not indicate any thing to disclose that the firm is promoting or conducting any prize chit. I may also here note that no arguments have been advanced on behalf of the appellants that the firm is promoting or conducting any prize chit; and in my opinion, rightly, as the allegations do not give any indication whatsoever of any case of a prize chit being promoted or conducted by the firm. The argument on behalf of the appellants has been that the firm is promoting or conducting a money circulation scheme. Though the Statement of objects and Reasons of the Act may suggest that the prize chit and a money circulation scheme are more or less of like nature, yet, in view of the separate definitions of these two being given in cl. 2 of the Act and in view of the further fact that S. 3 speaks of prize chit or money circulation scheme, each of the aforesaid must be considered to be separate and distinct for the purposes of the Act; and promoting or conducting either prize chit or any money circulation scheme or both must be held to he an offence under the Act.

I shall now proceed to consider whether the materials disclose that the firm is promoting or conducting a money circulation scheme I have already set out the definition of money circulation scheme as given in S. 2 (c) of the Act. On a plain reading of the said definition, the requirements of a money circulation scheme are:

(i) there must be a scheme;

(ii) there must be members of the scheme;

(iii)the scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrollment of members into the scheme or there must be a scheme 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 enrollment of members into the scheme;

(iv) the event of contingency relative or applicable to the enrollment of members into the scheme will however not he in any way affected by the fact whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscription.

On a proper interpretation of this definition, it clearly appears that the condition in the said definition 'on any event or contingency relative or applicable to the enrollment 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 subscription' qualifies both the provisions contained therein, namely, (i) money circulation scheme means a scheme by whatever name called, for the making of quick or easy

money, (ii) or money circulation scheme means any scheme for the receipt of any money or valuable thing as the consideration for the promise to pay money. Taking into consideration the language used in the section and particularly the two commas, one after the words "easy money" and the other after the words "pay money", it becomes clear that this stipulation is intended to cover both; and the interpretation contended for by Mr. Chatterjee that the further provision in the definition namely, "on any event or contingency relative or applicable to the enrollment of members into the scheme, whether or not such money or thing is derived from entrance money of such scheme or periodical subscription" applies only to the second part, namely, money circulation scheme 'means any scheme, by whatever name called, for the receipt of any money or valuable thing as the consideration for a promise to pay money, is not sound '. On this interpretation, of Mr. Chatterjee, the provision in the definition, namely, 'money circulation scheme means any scheme by whatever Dame called for the making of quick or easy money' will indeed become vague and meaningless.

For properly appreciating whether the offence of promoting or conducting a money circulation scheme is disclosed or not, it becomes necessary to consider whether the materials, even if they are all accepted to be correct, indicate that the business carried on by the firm satisfies the requirements of money circulation scheme and disclose an offence under the Act.

The materials show that the firm accepts loans or deposits from general public for a term against loan certificates which stipulate payment of interest @12%. Materials also indicate that the firm pays stipulated amount of interest and further pays a much larger amount of interest in a clandestine manner to the persons who invest their monies in the firm against loan certificates. The materials further indicate that the persons who have invested their monies with the firm against loan certificates used to receive, in fact, the stipulated amount of interest @ 12% and also used to receive an additional sum as further interest @ 36% in a clandestine manner. The materials also indicate that this further rate of interest @ 36% paid clandestinely in additional to the stipulated rate of 12% has been reduced now to 24%, because of investments by the firm with political parties. In other words, the materials go to show that though the rate of interest stipulated in the loan certificate was 12% the firm used to pay altogether interest @ 48% previously and is now paying interest @ 36% inclusive of payment of interest stipulated in the loan certificate. The materials also indicate that the firm invest the deposits or loans received from the general public in high risk investments. The materials, however, do not show that the payment of interest at the stipulated rate of 12% or at any enhanced rate in excess of the stipulated rate depends on any event or contingency or relative or applicable to the enrollment of any new depositors. The materials also do not indicate that the firm makes any discrimination in the matter of payment of interest to its depositors. The materials also do not indicate that the payment of interest to the depositors whether at the stipulated rate or at the enhanced rate is dependent on any element of chance and the materials do not indicate that any kind of gifts is made by the firm to the depositors in addition to the payment of interest.

The first question that requires to be considered is whether these materials go to indicate that there is any scheme The word 'scheme' has not been defined in the Act. The word 'scheme', however, has been defined in the Rules, in cl. 2 (g) thereof. Cl. 2 (g) of the Rules state that a "scheme means a money circulation scheme or as the case may be a prize chit as defined in cl. (c) and (e) respectively

of s. 2". The word 'scheme' as contemplated in S. 2 (c) of the Act is therefore, to be money circulation scheme within the meaning of the Act. To be a money circulation scheme, a scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrollment of the members into the scheme. The scheme has necessarily to be judged as a whole both from the view point of the promoters and also of the members. Even if it be assumed that the firm may be considered to be the promoter and the persons who invest their monies in the firm are members, the question has still to be considered whether investments of the monies with the firm in expectation of getting interest @ 48% and a big part of it in black in clandestine manner, can be said from the view point of the depositors that the investment is for the making of quick or easy money. If any individual invests is money in expectation of getting a high return, say 50% or more and there is nothing clandestine in the transaction which is above board, can it be said that the investment is for making easy money or quick money ? Various individuals may invest their monies in their business which may yield very high profits. Many individuals also may indulge in speculative business in expectation of high return of their money and may succeed or may not succeed in speculative transactions. If such transactions are made openly and not in violation of any law, I have no doubt in my mind that it can never be said that such investment has been made for making quick or easy money, and such transactions can never come within the scheme for making easy or quick money as enumerated in the Act. The further question that, however, arises for consideration is whether the position will be any different, if a part of the transaction is not above board and is secretive in nature. To my mind, that will not make any difference and the transaction cannot be considered to be a scheme for the making of quick or easy money, though the transaction may offend against revenue laws or any other law. Transactions in black money do not come within the mischief of this Act. Judged from the point of view of the depositors, it cannot, therefore, be said that their investment in the firm for high return by way of interest, part of which is above board and a part of which is clandestine, will form any part of a scheme for making easy or quick money. It is further to be noted that this return on investment by way of interest is not dependent on any event or contingency whatsoever and has nothing to do with any event or contingency relative or applicable to the enrollment of any new members, even if the depositors be assumed to be members.

Judged from the point of view of the firm, there is nothing to indicate that the firm makes any investment in consultation with its depositors. The materials only indicate that the firm indulges in high risk investments and also advances monies to political parties. Neither of these acts appears to be illegal and they do not go to show that the firm makes easy or quick money. lt is no doubt true that the materials go to show that the firm plays a larger amount by way of interest than payable on the basis of the rates stipulated in the loan certificate and the firm pays the excess amount of interest to the depositors in a clandestine manner. The clandestine manner of payment of interest in excess of the stipulated rate does not, in any way, indicate the existence of any scheme for making quick or easy money. It is again to be pointed out that in any event the mate rials do not indicate that the payment of interest by the firm in excess of the stipulated rate is in any way dependent on any event or contingency. There is nothing to indicate any scheme for the receipt of the money by the firm from its depositors as a consideration for promise to pay the interest in excess of the stipulated rate and also to pay back principal amount on the expiry of the term dependent in any way on any event or contingency relative or applicable to the enrollment of new depositors, considering the depositors to be members. I am, therefore, of the opinion, that not any, of the

requirements of a money circulation scheme is satisfied in the instant case. As there is no money circulation scheme, there can be no scheme as contemplated in the Act in view of the definition of scheme in the Rules. The materials, appear to disclose violation of revenue laws. They, however, do not disclose any violation of the Act. The materials do not disclose that the firm is promoting or conducting money circulation scheme and the question, therefore, of any violation of S. 3 of the Act does not arise in the instant case. As the firm is not conducting or promoting a money circulation scheme, and as no case is made that the firm is conducting or promoting a chit fund, the Act cannot be said to be applicable to the firm. In my opinion, it does not become necessary to refer to the rules for coming to the conclusion. I may, however, add that a consideration of the rules also clearly lends support to the conclusion to which l have come. I find that the learned Judge has very carefully and elaborately considered all the aspects in his judgment and in the course of elaborate discussion, he has noted all the contentions raised by the parties and has carefully considered them. The learned Judge on a careful consideration of all aspects and on a proper interpretation of the Act, has expressed the view that no offence under the Act is disclosed against the firm which does not conduct or promote money circulation scheme or a chit fund and the Act has no application to the firm. It may also be noted that the learned Judge has also in his judgment referred to the report of the Reserve Bank and the opinion of the learned Advocate General of the State which lent support to the view taken by the learned Judge. The view expressed by the learned Judge that the materials do not disclose that the firm is promoting or conducting a money circulation scheme and the Act has, therefore, no application to the firm meets with my approval and I agree with the same.

Before concluding it will be proper to refer to the decision of this Court in the case of Srinivas Enterprises v. Union of India which were relied on before the learned Judge and has been considered by me. In this case, the validity of the Act was challenged before this Court while upholding the validity of the Act for reasons stated in the judgment, Krishna Iyer, J. who spoke for the Bench observed at p. 514 as follows:-

> "In many situations, the poor and unwary have to be saved the seducing processes resorted by unscrupulous racketeers who glamourize and prey upon the gambling instinct to get rich quick through prizes. So long as there is the restless spell of a chance, though small, of securing a prize, though on paper, people change. the prospect by subscribing to the speculative scheme only to lose what they had. Can you save moths from the fire except by putting out the fatal flow ? Once this prize facet of the chit scheme is given up, it becomes substantially a 'conventional chit' and the ban of the law ceases to operate. We are unable to persuade ourselves that the State is wrong in its assertion, based upon expert opinions that a complete ban of prize chits is an overall or excessive blow. Therefore, we decline to strike down the legislation on the score of Article 19 (1) (f) and (g) of the Constitution."

As I have earlier noticed the materials in the instant case do not disclose any element of chance in the matter of business carried on by the firm. It may however, be said that these observations which were made while dealing with a case of chit fund are not of very great assistance while considering what may be a money circulation scheme within the meaning of the Act.

As no offence under the Act is at all disclosed, it will be manifestly unjust to allow the process of criminal code to be issued or continued against the firm and to allow any investigation which will be clearly without any authority.

In the view that I have taken, I do not consider it necessary to deal with other aspects namely, as to whether the searches and seizures were lawfully and properly done.

I, therefore, hold that the proceedings against the firm and its partners arising out of the F.I.R. must be quashed as the F.I.R. and the other materials do not disclose any offence under the Act and as such no investigation into the affairs of the firm under the Act can be permitted or allowed to be continued. I, accordingly, quash the proceedings against that firm and its partners and order that no investigation under the Act into affairs of the firm is to be carried on or continued.

I agree with the final order proposed by the learned Chief Justice in regard to the return of the documents, books and cash.

The appeal, therefore, fails and is dismissed. I, however, make no order as to costs.

The Judgment in Civil Appeal No. 1130 of 1981 will also govern Civil Appeal No. 1129 of 1981.

N.V.K. Appeals dismissed.