Kuriachan Chacko & Ors vs State Of Kerala on 10 July, 2008

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Bench: D.K. Jain, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1044 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 4977 OF 2007

KURIACHAN CHACKO & ORS. ... APPELLANTS

VERSUS

STATE OF KERALA ... RESPONDENT

With

CRIMINAL APPEAL NO.1045 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 4978 OF 2007

C.N. RANEESH & ORS. ... APPELLANTS

VERSUS

THE STATE OF KERALA ... RESPONDENT

With

CRIMINAL APPEAL NO.1046 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 5214 OF 2007

P.V. CHACKO ... APPELLANT

VERSUS

THE STATE OF KERALA ... RESPONDENT

J U D G M E N T

C.K. THAKKER, J.

1. Leave granted.

2. The present appeals have been instituted by the appellants against the judgment and order dated 19th July, 2007 passed by the High Court of Kerala in Criminal Revision Petition No. 4126 of 2006 and companion matters. By the impugned order, the High Court dismissed revision petitions filed by the appellants herein as also by the State of Kerala.

3. To understand the issue raised in the present appeals, few relevant facts may be stated:

4. The appellants are partners of M/s LIS, Ernakulam, a partnership firm engaged in the business of sale of lotteries and magazines after collecting advance money. They floated a scheme known as "LIS Deepasthambham Scheme". The scheme was simple in its conception. A person has to pay Rs.625/- and purchase one unit of lotteries from the promoters. The promoters will make use of Rs.350/- to purchase 35 lottery tickets of the Kerala State Government each of Rs.10/- for the unit holder for the next 35 weeks. If the unit holder wins any prize up to Rs.5,000/- in the 35 draws, the promoters shall collect the amount and pay the same to the unit holder. If the unit holder wins any prize above Rs.5,000/-, the ticket shall be handed over to the unit holder for collection of the amount. The balance of Rs.275/- (Rs.625 - Rs.350) will be used to make the unit holder a subscriber of a magazine by name `Thrikalam' for one year. The said magazine would reproduce relevant and important materials from other magazines. It would also furnish necessary information about the lottery tickets which have won prizes.

5. The unit holder will be returned (paid) not only Rs.625/- which he had initially invested, but twice his investment i.e. Rs.1,250/- (less Rs.100/- as service charges for the promoters and legal deduction for tax, etc.) on an early date. As per the scheme, on sale of three tickets of Rs.10/- each, the Government would pay commission of 28% of which the promoters would share 25% with the unit holders. Likewise, the publisher of the magazine would give commission of 30% to the promoters and promoters would share 25% with the unit holders. All these amounts are available to the unit-holders. Under the scheme, in order of strict seniority, the senior most unit holder would be paid Rs.1,250/- as soon as the requisite amounts are available as commission with the promoters. The promoters, in addition to 28% commission for the lottery tickets, and 30% commission for the magazines, would also get commission for the prizes won by the tickets sold through them from the Government. Those amounts also would be entirely made available for payment to unit holders. If a unit holder is paid Rs.1,250/- before the expiry of 35 weeks, no lottery tickets will be purchased on his behalf thereafter. It is because he had already been paid the requisite amount. On the same reasoning, if the amount of Rs.1,250/- is paid to the subscriber before the expiry of one year, `Thrikalam' magazine would also not be sent to the subscriber thereafter. The price of unpurchased lottery tickets and unused magazines thereafter will be used by the promoters towards the payment of amount of Rs.1,250/- to other unit holders. According to the promoters, the scheme was viable as

well as workable. All persons would be able to double their investment at the earliest. No specific time, however, was given but it was assured that the amount would be doubled at the earliest and it would be paid on the basis of seniority. Under the scheme, the amount of Rs.1,250/- (double the investment by the unit holder) will be paid as soon as 14 more members are enrolled. The advantage of technology was borrowed. Passwords could be chosen. There was a web site for promoters. The unit holder could use his password and the site would reveal all details about the tickets purchased on behalf of the unit holder by the promoters. The unit holders thus would be able know the details of the tickets purchased for them by the promoters and would also able to ascertain whether any prizes had been won by any ticket purchased on their behalf by the promoters.

6. The idea appeared to be very attractive. Several persons participated and invested money. The membership collection during a short period of time reached to almost Rs.500 crores. Amounts were being paid to the unit holders initially very promptly--on many occasions even before the expiry of 35 weeks. More and more subscribers joined the queue. There was aggressive publicity and marketing through visual (TV) and printed media (pamphlets and newspapers). The scheme was proceeding very happily. More and more amounts were coming into the kitty of the promoters from unit holders.

7. Suddenly, however, there was a jolt to the scheme. Police Authorities registered a crime against the promoters for an offence punishable under Section 420 of Indian Penal Code (IPC), under the Prize, Chits & Money Circulation Scheme (Banning) Act, 1978 (hereinafter referred to as `the Act') and also under the Reserve Bank of India Act, 1934. Certain proceedings were initiated even earlier with which we are not concerned in the present proceedings. The learned Chief Judicial Magistrate, Ernakulam by an order, dated November 14, 2006, framed charge against the appellants herein for offences punishable under Section 420 read with Section 34, IPC and under Sections 4 and 5 read with Section 2(c) and 3 of the Act. He, however, discharged all the accused for the offences punishable under Sections 4 and 5 read with Sections 2(e) and (3) of the Act and also under Sections 45I(bb), 45S and 58B of the Reserve Bank of India Act, 1934.

8. Being aggrieved by the order passed by the trial Court, the accused as well as the State filed revision petitions in the High Court of Kerala. Whereas the accused were aggrieved by the order of the trial Court framing charge against them, the State was aggrieved by the order discharging the accused for certain offences under the Act and under the Reserve Bank of India Act, 1934.

9. A Single Judge of the High Court considered rival contentions of the parties and noted that the learned Additional Advocate General/Special Public Prosecutor fairly submitted that on the facts of the case Section 2(e) of the Act was not attracted. Similarly, there was no error on the part of the trial Court in not framing charge against the accused for offences punishable under the Reserve Bank of India Act, 1934. The High Court observed that though no express concession was made by the State, it was not seriously challenged by the prosecution that the trial Court had committed any error in discharging the accused.

10. The accused, on the other hand, strenuously contended that the trial Court was wholly wrong in framing charge against the accused for an offence punishable under Section 420 read with Section

34, IPC as also under Sections 4 and 5 read with Sections 2(c) and 3 of the Act and the said order was liable to be set aside ordering discharge of the accused in respect of all offences.

11. The High Court, after considering the rival contentions of the parties and referring to the relevant decisions on the point, held that the trial Court was right in discharging the accused for offences punishable under Sections 4 and 5 read with Sections 2(e) and 3 of the Act and also under the Reserve Bank of India Act, 1934. The High Court held that the trial Court was also right in framing the charge against the accused for offences punishable under Sections 4 and 5 read with Sections 2(c) and 3 of the Act and also under Section 420 read with Section 34, IPC. The High Court, therefore, confirmed the order passed by the trial Court and dismissed revisions of both the parties. The said order is challenged by the appellants-accused in present appeals.

12. On September 7, 2007, notice was issued by this Court. On February 22, 2008, the matters were ordered to be posted for final hearing on a non-miscellaneous day. That is how they are before us.

13. We have heard learned counsel for the parties.

14. The learned counsel for the appellants submitted that the trial Court and the High Court were right in discharging the accused for certain offences punishable under the Act and also under the Reserve Bank of India Act, 1934. The State has not preferred appeal against the said order and the decision has become final. He, however, contended that both the Courts were wrong in not discharging the accused for offences punishable under Sections 4 and 5 read with Sections 2(c) and 3 of the Act as also for an offence punishable under Section 420 read with Section 34, IPC.

15. It was submitted that the scheme formulated by the appellants could not fall within the mischief of `Money Circulation Scheme' as defined in clause (c) of Section 2 of the Act. If it is so, ban envisaged by Section 3 would not apply. Consequently, penal provisions of Sections 4 and 5 cannot be invoked. The Courts below were wrong in observing that prima facie, the provisions of the Act got attracted and appellants could not be discharged. Moreover, for application of Section 415, IPC, there must be fraudulent and dishonest intention which was not present in the instant case. Penalty provision of Section 420, IPC had, therefore, no application. Even there, the Courts were wrong in framing charge against the accused.

16. The learned counsel for the respondents, on the other hand, supported the order passed by the trial Court and confirmed by the High Court. It was submitted that both the Courts considered the relevant provisions of law, requisite ingredients under the Act and formed a prima facie opinion that the scheme in question was covered by definition clause 2(c) (Money Circulation Scheme) and the case was required to be gone into by a competent Court. Likewise, the Courts below observed that there was `cheating' as defined in Section 415, IPC and the accused could not be discharged. No fault can be found against the approach adopted by both the Courts and the appeals deserve to be dismissed.

17. Before we deal with the merits of the matter and reasoning of the Courts below, it would be appropriate if we refer to the relevant provisions of the Act.

18. The Preamble of 1978 Act declares that it has been enacted "to ban the promotion or conduct of prize chits and money circulation schemes and for matters connected therewith and incidental thereto".

19. Section 2 is legislative dictionary and defines certain terms. The phrase `Money Circulation Scheme' is defined in clause (c) which reads as under;

(c) "money circulation scheme" means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

20. The definition is not simple. Judicial notice thereof had been taken in the leading decision of this Court in State of West Bengal v. Swapan Kumar Guha, (1982) 1 SCC 561. Chandrachud, C.J. after taking note of legislative drafting, reshaped and rearranged Section 2(c) thus;

'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, on any event or contingency relative or applicable to the enrolment, of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

21. Section 3 bans money circulation schemes or enrolment as member to any such scheme or participation in such scheme. Sections 4 and 5 are penal provisions and prescribe punishment. Section 6 deals with offences committed by Companies. Section 7 authorizes Police Officer not below the rank of officer in charge of a police station to exercise power to enter and search premises and to seize things used for such scheme. Section 8 provides for forfeiture of newspaper and publication containing money circulation scheme. Section 9 declares that no Court inferior to the Court of Chief Metropolitan Magistrate or Chief Judicial Magistrate shall try any offence punishable under the Act. All offences punishable under the Act have been made cognizable under Section 10. Section 11 grants exemption from the operation of the Act to certain money circulation schemes.

22. From the perusal of the above provisions, it is clear that the Act prohibits `money circulation scheme'. The main question, therefore, is whether the scheme in question is a `money circulation scheme' covered by the Act?

23. In Swapan Kumar Guha, this Court had an occasion to consider the provisions of the Act. Interpreting the connotation `Money Circulation Scheme' and speaking for the majority, Chandrachud, C.J. observed:

> "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 recognised 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 drag- net 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 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".

24. Explaining the ambit and scope of the expression `Money Circulation Scheme', the Court proceeded to state;

> "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 enrolment of members into the scheme", (whether or not such money or thing is derived from the entrance money of the members of such scheme or their periodical

subscriptions). Two conditions must, therefore, 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 enrolment 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, on any event or contingency relative or applicable to the enrolment, of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

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 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".

25. The Court observed that besides the prize chits, the Act aims at banning `Money Circulation Scheme'. It is, therefore, necessary that the activity charged as falling within the mischief of the Act, must be shown to be a part of the scheme for making quick or easy money depending upon the happening or non- happening of an event or contingency relative or applicable to the enrolment of members into the scheme.

26. Referring to dictionary meanings, this Court proceeded to state;

> "Therefore, a transaction under which, one party deposits with the other or lends to that other a sum of money on promise of being paid interest at a rate higher than the agreed rate of interest cannot, without more, be a 'money circulation scheme' within the meaning of Section 2(c) of the Act, howsoever high the promised rate of interest may be in comparison with the agreed rate. What that section requires is that such reciprocal promises, express or implied, must depend for their performance on the happening of an event or contingency relative or applicable to the enrolment of members into the scheme. In other words, there has to be a community of interest in the happening of such event or contingency".

(emphasis supplied)

27. On the facts of the case, the Court held that it was not a `Money Circulation Scheme' and proceedings initiated against the accused were liable to be dropped.

28. Strongly relying on Swapan Kumar Guha and the observations of this Court, the learned counsel for the appellants contended that the point is directly covered by the said decision and the Courts below were not right in distinguishing it and in not discharging the accused.

29. We are unable to uphold the contention. We have closely gone through Swapan Kumar Guha and in our opinion, the case is clearly distinguishable. This Court, in that case, reproduced First Information Report (FIR) in toto. The Court then considered whether FIR prima facie disclosed an offence under the Act. The Court analyzed FIR `carefully, and even liberally' and came to the conclusion that the FIR against `Sanchaita Investments' and its partners (`accused' in that case) made in respect of following allegations;

(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.

30. The Court then proceeded to apply the provisions of the Act to the allegations of prosecution against the accused. According to the Court, the respondents did not allege, directly or indirectly, that the firm was promoting or conducting a scheme for the making of quick or easy money, dependent on any event or contingency relative or applicable to the enrolment of members into the scheme. Secondly, the FIR did not contain any allegation whatsoever that the 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 Court noted the contention of the learned counsel for the prosecution that the accused were promoting or conducting a scheme for making quick or easy money. According to the Court, however, such argument could not be upheld since it was fallacious. It was observed in the paragraph we have reproduced hereinabove that it would be arbitrary to hold that whoever makes `quick or easy money' should be punished. The Court noted some illustrative cases in which a person may be able to make `quick or easy money'; for instance, a lawyer who charges a thousand rupees (in early eighties, not now) for a Special Leave Petition lasting five minutes, 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. There are many other vocations and business activities in which people notoriously make quick money, e.g. builders and real estate brokers. From that, however, one cannot jump to the conclusion that they are all liable to be punished under Sections 4 and 5 of the Act.

31. The Court also took into account, apart from FIR, a detailed affidavit in reply filed in the High Court. Even in the said affidavit, there was no clear basis in respect of allegations, nor 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 on any event or contingency relative or applicable to the enrolment of members into the scheme. The `song' of the State was that the scheme conducted by the accused would generate black money and would paralyze economy of the country. The Court was conscious and alive of seriousness of the problem and observed that unquestionably a private party could not be allowed to issue `bearer bonds' by a back door. At the same time, however, such activities should be curbed by the Government by taking appropriate action in accordance with law. But if the activity does not fall within the definition of `money circulation scheme' within the meaning of Section 2(c) of the Act, no prosecution can be launched against them. Thus, the second ingredient of Section 2(c) of the Act, according to the Court, was totally absent.

32. In the instant case, both the essentials of Section 2(c) are present. The scheme provides for (i) making of quick or easy money, and (ii) it is dependant upon an event or contingency relative or applicable to the enrolment of members into the scheme. As observed by us, a member would be entitled to double amount only after his enrolment, additional 14 members are enrolled in the scheme. The second ingredient, namely, such payment of money is dependant on the "event or contingency relative or applicable to the enrolment of members into the scheme" is thus very much present. Swapan Kumar Guha, therefore, in our considered opinion, does not apply and carry the case of the accused further.

33. It was next contended that there is no obligation on the part of the unit holder to enlist/enroll more members into the scheme and, therefore, the scheme does not attract Section 2(c). The contention has no force. Section 2(c) no where provides that a member of the scheme must himself enroll other members and only in that eventuality, the provision of the Act would apply. The section does not provide for positive or dominant role to be played by a member of the scheme. In our opinion, the requirement of law is "an event or contingency relative or applicable to the enrolment of members into the scheme" and nothing more. The plain language of the section does not insist that such enrolment of members must be by the members already enrolled. It is impossible to read into the statutory provision such requirement which is not stipulated by Parliament. Upholding of the argument of the learned counsel would result in re-writing of the section, which is certainly not permissible in our constitutional system. The event or contingency on the happening of which the amount would become payable must be relative or applicable to the enrolment of the members into the scheme. It is immaterial by whom such members are enrolled. It may be by members, by promoters or their agents or by gullible sections of the society suo motu (by themselves). The sole consideration is that payment of money must be dependent on an event or contingency relative or applicable to the enrolment of more persons into the scheme, nothing more, though nothing less. In the present case, the second ingredient is very much present.

34. It was then contended by the learned counsel for the appellants that in the present case, all the promises have been fulfilled by the promoters and contract was complete inasmuch as for payment of Rs.625/- by the unit holder, he was given 35 lottery tickets each of Rs.10/- and thus an amount of Rs.350/- gets appropriated. Likewise, for the balance amount of Rs.275/- (Rs.625/- - Rs.350/-), he

has been made subscriber of a magazine `Thrikalam' for one year. Nothing, therefore, remains to be done thereafter by the promoters except the benefit which is likely to accrue in future. Such a scheme cannot be termed as a scheme for the making quick or easy money on any event or contingency relative or applicable to the enrolment of the members of the scheme.

35. We are unable to agree with the learned counsel. The Courts below rightly held that prima facie case had been made out against the accused. Both the ingredients necessary for application of Section 2(c) of the Act are present in the case on hand. The trial Court, for coming to that conclusion, referred to certain documents. The advertisement clearly declared that a member would get double the amount when after his enrolment, two members were enrolled under him and thereafter, 4 other persons were enrolled and after the rolled 4 persons, 8 persons were enrolled under them. Thus, only after 14 persons under the first enrolled person become members under the scheme, the first person would get Rs.1,250/- i.e., double the amount of Rs.625/- (1+2+4+8). The trial Court also noted that Kuriachan Chacko (Accused No.1) who proposed the project for implementation, described how the project would work from which also it is clear that the double amount will be given to a person who purchases a unit only after 14 persons are enrolled subsequent to him.

36. In the affidavit in reply filed in this Court, respondent State has relied upon a letter written to the Reserve Bank of India by the accused on October 9, 2004 wherein the scheme has been explained. The relevant part reads thus:

> 1. We are collecting Rs.625 from a person to be considered as a member of the Deepasthambham project.
>
> 2. The Rs.625 is intended as follows Rs.10 worth Kerala Lottery Ticket per week for 35 weeks : Rs.350/-

Rs.10 worth Thrikalam Tri-Monthly Collage Magazine one year subscription : Rs. 275/-

3. As such, we are collecting money in advance for the Kerala Lottery ticket and subscription of the Thrikalam magazine and not as DEPOSIT at all.

4. We are giving membership in a particular style--adopting the principle of Multi Level Marketing method. 1st Stage First One member joins 2nd Stage Below him Two members join 3rd Stage Below them Four members join 4th Stage Below them Eight members join Thus 14 members join below the first one.

5. From one membership we take 27% commission to be distributed in the three stages in the above manner. On collecting such commissions, we get Rs.1150/- from the members below him. Otherwise, when the 14th member joins, the commission reserved for the first member is paid.

6. The Rs.1150 paid to the first member is claimed by us as payment of double the amount he had entrusted and we explain it as "Refund and Commission" less our service charge.

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i.e. Refund           Rs.625
         Commission       Rs.625
                          -------
                          Rs.1250
Less Service Charge   Rs. 100
                          -------
                          Rs.1150
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7. Once the Rs.1150 is paid to the member, the membership is ceased, and no more ticket or Thrikalam will be given to him, even if the promised 35 tickets and one year Thrikalam are not yet over.

8. To justify this stand of ours, though the Rs.1150 paid is actually the commission, we term it as Refund and Commission so that the member shall not make any claim for the remaining tickets or Thrikalam.

9. If the member wish to get lottery ticket and Thrikalam again he has to join again by taking new membership.

10. The lottery commission available to us on Kerala Government Lottery is 28% alone. As the commission we are paying to the member is 27%, the margin for us is only 1%.

But then there will be a lot of other commissions on prizes bagged by the members which will add to our gain.

11. At the beginning, we offered the Superlotto and Thunderball online tickets also. But we stopped that since 2 months and now we are issuing only Kerala Govt. tickets. By October end, we will be purchasing a minimum of 1 lakh tickets every week i.e. 10 lakh rupees worth tickets in a week from Kerala Government.

37. The High Court also upheld the argument of the prosecution that the scheme was a `mathematical impossibility'. The promoters of the scheme very well knew that it is certain that the scheme was impracticable and unworkable making tall promises which the makers of the promises knew fully well that it could not work successfully. It could work for some time in that `Paul can be robbed to pay Peter' but ultimately when there is a large mass of Peters, they will be left in the lurch without any remedy as they would by then have been deceived and deprived of their money.

38. The Court, taking into account the scheme as a whole, recorded a finding thus:

> "The question therefore is very important as to whether the Scheme is a possibility or is only a tall false claim made to fraudulently induce persons to part with their money. In this context, it has to be seen that the profitable working of the Scheme is impossible from the very nature of the Scheme offered. Simple arithmetics reveal that utilising the amount of Rs. 625/-, only an amount of Rs. 180.50 will be available as

commission of which Rs. 24.25 is claimed by the promoter and Rs. 156.25 is offered for payment to the unit holders. The details of the same are given below:

Head	Amount	Commission		
		Total Percentage amount	For the Promoter Percentage/ amount	For the Subscriber Percentage/ Amount
Lottery Tickets	Rs.350/-	28% (Rs.98)	3% (Rs.10.50)	25% Rs.87.50
Magazine	Rs.275/-	30% (Rs.82.50)	5% (Rs.13.95)	25% Rs.68.75
Total	Rs.625/-	Rs.180.50	Rs.24.25	Rs.156.25

Deficit in each

If Rs.625/- were to be returned =625-156.25=Rs.468.75 Deficit in each If Rs.1250/- were to be returned =1250-156.25=Rs.1093.75 If the amount of Rs. 625/- were to be returned, there will be a deficit of Rs. 468.75. If double the amount i.e., Rs. 1,250/- were to be returned, there will be a deficit of Rs. 1,093.75. Therefore for every person for whom double payment is made, the promoter will have to make Rs. 1,093.75 and this obviously is paid to him from the money which subsequent subscribers pay as the price of the unit. Of course, I have not taken note of the uncertain commission which would be receivable by the promoter for prizes won by the unit holders through them. I have also not taken specific note of the savings in respect of unpurchased tickets and non-supplied magazines after the subscriber receives the double amount and closes the transaction before elapse of the period of 35 months. It must be evident for any discerning mind that this Scheme cannot work unless more and more subscribers join and the amount paid by them as unit price is made use of to pay the previous subscribers. The system is an inherently fragile system which is unworkable. Foolish, gullible and stupid persons alone may fall for the Scheme without carefully analysing the stipulations of the Scheme. It would be totally erroneous to assume that the offence of cheating would not lie if the persons deceived are gullible, unintelligent and stupid persons. The system and the law has a duty to protect such victims of crime also.

According to me, there is no reason to assume that the promoters had no contumacious intention and they embarked on the venture without any culpable motive on the honest assumption that the tickets sold through them will win prizes and sufficient commission will be available to pay double the amount to all the unit holders".

39. The Court also stated;

"I take note of the fact that inherently there is merit in the allegation of the prosecution that the

Scheme is so grossly unworkable that the persons who made representations to that effect and induced persons to part with money did entertain the contumacious intention. They knew fully well that unworkable false representations were being made. The obvious attempt, it can be presumed at this stage, was to induce persons by such false unworkable representations to part with money. Initially some subscribers can be kept satisfied to induce them and others similarly placed to join the long queue. But inevitably and inescapably later subscribers are bound to suffer unjust loss when they swallow the false promises and make payments".

40. The ratio laid down by this Court in State Of Madhya Pradesh v. Mir Basit Ali Khan & Ors., (1971) 2 SCC 96 has no application. In that case, the Court was considering the provisions of Section 420, IPC read with Section 120B. Obviously, it was not a case under 1978 Act.

41. On the facts and in the circumstances of the case, in our opinion, the Courts below were right in not interfering with the prosecution at the stage of framing of charge. We see no reason to interfere with the order.

42. So far as the offence punishable under Section 420 read with Section 34, IPC is concerned, it is true that for application of penal provision of Section 420, IPC, there must be `cheating' as defined in Section 415, IPC.

43. The said Section reads thus:

> 415. Cheating Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

44. Mere reading of the Section makes it clear that it requires the following ingredients to be satisfied;

1. Deception of any person;

2.(a) Fraudulently or dishonestly inducing that person;

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property, or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. [vide Ram Jas, (1970) 2 SCC 740; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168; S.W. Palamitkar v. State of Bihar, (2002)

1 SCC 241].

45. The trial Court as well as the High Court considered the facts of the case and held that there is element of cheating inasmuch as a representation was made by the accused that every unit holder will get double the amount invested by him; the representation was false, the maker of the representation was aware that the representation was not true and by such representation, he deceived the victim to believe the representation to be true and actuated him to act on such representation. The promoters induced common public to part with money on the lure of doubling the amount. Prima facie, the Courts were satisfied that but for such representation and the benefit sought to be given under the scheme, the victims would not have acted on such representation. It was, therefore, a case of application of Section 415, IPC. Prima facie case had been made out in absence of better explanation by the accused. If it is so, it could be said to be a case for application of Section 420 read with Section 34, IPC, of course, at this stage.

46. In our opinion, the Courts below have not committed any error in coming to such conclusion at the stage of framing of charge and no interference by this Court is, therefore, called for.

47. For the foregoing reasons, in our opinion, both the Courts below were right in framing the charge against the appellants and no illegality has been committed by them in coming to such conclusion. It is no doubt, true, that the above orders do not mean that the accused have committed such offences. It only means that a prima facie case has been made out to frame charge and at that stage, no interference is called for. We are, therefore, not inclined to interfere with the said order. The appeals deserve to be dismissed and are hereby dismissed.

48. Before parting with the matter, we may clarify that we may not be understood to have expressed any opinion on the merits on the matter one way or the other. All the observations made by the trial Court, by the High Court as well as by us in this judgment, must be construed as limited to the framing of charge and nothing more than that. As and when the main matter will come up before the Court for hearing, the Court will decide it on merits without being inhibited or influenced by the above observations.

49. Ordered accordingly.

.....J. (C.K. THAKKER) NEW DELHI,
.....J. JULY 10, 2008. (D.K. JAIN)