Dept. of Non-Banking Companies, Reserve Bank of India and State of Maharashtra Vs Arihant Finance and Chit Fund (P.) Ltd. and Others

Court: Bombay High Court

Date of Decision: Jan. 18, 1989

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Reserve Bank of India Act, 1934 â€" Section 45I, 45J, 45K, 45K(4), 58B

Citation: (1991) 70 CompCas 231

Hon'ble Judges: A.D. Tated, J

Bench: Single Bench

Advocate: Vijay Pradhan, instructed by Crawford Bayley and Co. in C.A. Nos. 631 and 631 of 1981 and C.M. Kothari, in C.A. No. 989 of 1981, for the Appellant; V.P. Vashi, Neelam Vashi, in Respondent Nos. 1, 2, 3, 5, 6 and 8 and C.M. Kothari, for Respondent No. 13 in C.A. No. 631 and 632 of 1981, for the Respondent

Judgement

A.D. Tated, J.
These two Appeals Nos. 631 of 1981 and 632 of 1981 have been preferred by the complainant, Shri B.N. Chikarmane,

Deputy Chief Officer, Department of Non-Banking Companies, Reserve Bank of India, Bombay Regional Office, against the judgment and order

dated August 18, 1980, in Criminal Cases Nos. 298/S of 1979 and 299/S of 1979 passed by the learned Additional Chief Metropolitan

Magistrate, 19th Court, Esplanade, Bombay, and the third Appeal No. 989 of 1981 has been filed by the State of Maharashtra against the

judgment and order in Criminal Case No. 298/S of 1979.

2. In Criminal Case No. 298/S of 1979, the accused were charged for the offence punishable under Sections 58B(5)(a) and 58C of the Reserve

Bank of India Act, 1934, for collecting Rs. 43,000 by way of deposits by the accused Nos. 1 to 12 between November 1, 1977, and January 28,

1978, in contravention of the prohibitory order dated November 1, 1977, issued by the Reserve Bank of India. In Criminal Case No. 299/S of

1979, accused Nos. 1 to 12 were prosecuted for the offence punishable under Sections 58B(5)(a) and 58C of the Reserve Bank of India ,Act for

collecting Rs. 5,86,000 by way of deposits between October 1, 1976, and March 31, 1977, in contravention of direction No. 4 of the 1973

Directions.

3. Accused No. 1 is a company doing its business under the name and style ""Arihant Finance and Chit Fund Pvt. Ltd."" having its office in Bombay

and accused Nos. 2 to 12 are the directors of accused No. 1. Accused No. 1 is a miscellaneous non-banking company. The said company has

been conducting a prize chit scheme styled as ""Arihant Small Saving Group Scheme"" since October, 1974, and subscriptions were accepted in the

said scheme from the members of the said scheme. It is alleged by the complainant that the company accepted deposits in contravention of the

Directions issued by the Reserve Bank of India and collected huge amounts. It is alleged that the accused, in contravention of direction No. 4 of

the Directions issued by the Reserve Bank of India in 1973, between October 1, 1976 and March 31, 1977, accepted Rs. 5,86,000 by way of

deposits and thereby committed an offence punishable under Sections 58B(5)(a) and 58C of the Reserve Bank of India Act. In the other criminal

case, it was alleged that the Reserve Bank of India passed a prohibitory order dated November 1, 1977, and accused Nos. 1 to 12, in

contravention of the said prohibitory order, collected Rs. 43,000 by way of deposits and thereby committed an offence punishable under Sections

58B(5)(a) and 58C of the Reserve Bank of India Act.

4. The accused were charged for the offences mentioned above. They pleaded not guilty to the charge and claimed to be tried. The defence of the

accused in both the cases was that the scheme run by them fell within sub-para (2) of para 2 of the Directions issued by the Reserve Bank of India

on August 23, 1973, and also on June 20, 1977, and as such the prohibition against collecting deposits from the subscribers of the scheme was not

applicable to them. Their further defence was that they advanced loans and what was found to have been collected by them was the repayment of

loans advanced by them and as such they were not liable for the offences alleged against them.

5. The learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Bombay (Shri M.H. Jadhav), accepted the defence and

acquitted the accused of the offences mentioned above.

6. Feeling aggrieved, as stated earlier, the complainant preferred two appeals and the State preferred one appeal against the acquittal of the

accused.

7. Learned counsel, Shri V.G. Pradhan, appearing for the complainant, submits that the learned trial Magistrate did not properly understand the

nature of the scheme run by the accused and also did not understand the requirements of the scheme to fall within sub-para (2) of para 2 of the

1973 and 1977 Directions issued by the Reserve Bank of India and as such he wrongly held that the accused did not commit the offences alleged

against them. He also submits that the learned trial Magistrate was not right in finding that the prosecution did not prove that the amounts alleged to

have been collected by the accused were not repayments made by the persons who had obtained loans from accused No. 1 company. He submits

that the prosecution has proved that the chit fund scheme run by the accused was not a conventional chit fund scheme falling within sub-para (2) of

para 2 of the Directions of 1973 and 1977 issued by the Reserve Bank of India and, therefore, the collections made by them from the subcribers

were ""deposits"" within the term defined in Section 45-I(bb) of the Reserve Bank of India Act, 1934, and Sub-clause (d) of para 3 of the

Directions issued on August 23, 1973, and sub-clause (c) of para 3 of the Directions issued on June 20, 1977, by the Reserve Bank of India.

8. The evidence of Shri Vasant Dattatray Gore, PW-1, and Shri Vasant Govind Damle, PW-2, recorded in both the cases proves the nature of

the scheme run by the accused. Their evidence shows that accused No. 1 was conducting a prize chit fund scheme. Subscriptions were received

by accused No. 1 from the members in instalments. As per the scheme, if the subscription was not regularly paid, the amount already paid by the

subscriber was liable to be forfeited. Each subscriber could participate in a lot which was drawn periodically for the prize amount. In case a

member got the prize, he was not required to make further subscription and he could not take part in the subsequent lots. No interest was payable

to the subscribers. The subscribers could take loan from the company based on the subscriptions already made. The period of the scheme was 60

months and the subscription was not liable to be repaid on demand. Shri Vasant Govind Damle, PW-2, had inspected the books of account of

accused No. 1 company and on such inspection he found that the company had accepted deposits after the prohibitory order was served. The

evidence of Shri Damle, PW-2, shows that the accused submitted returns about the deposits received by them and those returns are at exhibit P-6.

These returns show that for the half year ending on September 30, 1976, the company had collected an amount of Rs. 19,69,000 and by the end

of March 31, 1977, they had received amounts to the tune of Rs. 25,55,000. It shows that during the period from September 30, 1976, to March

31, 1977, the company received an amount of Rs. 5,86,000. The prohibitory order was passed by the Reserve Bank of India on November 1,

1977. It is at exhibit P-1 in Criminal Case No. 298/S of 1979 and as per that order which was received by the managing director, accused No. 2,

on November 7, 1977, the accused were prohibited from accepting deposits from the public under the scheme run by them. The evidence of Shri

Gore, PW-1, shows that the accused had collected the amount of Rs. 43,000 after receipt of the prohibitory order during the period from

November 7, 1977, to January 28, 1978.

9. It is not disputed that the accused could collect the subscriptions in case their scheme fell within sub-para (2) of para 2 of the Directions issued

by the Reserve Bank of India on August 23, 1973, and June 20, 1977. Para 2 of both the Directions is the same and it reads thus :

2. Extent of the Directions.--These directions shall apply to every non-banking institution, which is a company, not being a banking or an

insurance company, and which carries on any of the following types of business :

(1) collecting whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in instalments by way of contributions, or

subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service

charges to or in respect of any savings, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilising the monies

so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes-

(a) 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 ;

(b) 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, howsoever called, on the termination of the scheme or

arrangement or on or after the expiry of the period stipulated therein.

(2) managing, conducting or supervising as a promoter, foreman or agent of any transaction or arrangement by which the company enters into an

agreement with a specified number of subscribers that every one of them shall subscribe a certain sum in instalments over a definite period and that

every one of such subscribers 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 agreement be entitled to the prize amount ;

Explanation.--For the purposes of this sub-paragraph, the expression ""prize amount"" shall mean the amount, by whatever name it be called, arrived

at by deduction from out of the total amount subscribed at each instalment by all subscribers, (a) the commission charged by the company or

service charges as a promoter or a foreman or an agent, and (b) any sum which a subscriber agrees to forgo, from out of the total subscriptions of

each instalment, in consideration of the balance being paid to him.

(3) conducting any other form of chit or kuri which is different from the type of business referred to in sub-paragraph (2) above ;

(4) undertaking or carrying on or engaging in or executing any other business similar to the business referred to in sub-paragraphs (1) to (3).

10. The definition of the term ""deposit"" appearing in the Directions dated August 23, 1973, at Clause (d) of para 3 reads thus :

(d) ''deposit'' means any deposit of money with and includes any amount borrowed by a company, but does not include-

(i) any money received or collected under a transaction or arrangement referred to in sub-paragraph (2) of paragraph 2."" (rest not produced as not

relevant)

11. The definition of the term ""deposit"" in Clause (c) of para 3 of the Directions dated June 20, 1977, reads thus :

(c) ''deposit'' shall have the same meaning as assigned to it in Section 45-I(bb) of the Reserve Bank of India Act, 1934 (2 of 1934).

12. Clause (bb) of Section 45-I of the Reserve Bank of India Act, 1934, reads thus : --

(bb) ''deposit'' shall include, and shall be deemed always to have included, any money received by a non-banking institution by way of deposits,

or loan or in any other form, but shall not include amounts raised, by way of share capital, or contributed as capital by partners of a firm.

13. A company running a conventional chit fund which falls within sub-para (2) of para 2 of the Directions of the Reserve Bank of India dated

August 23, 1973, and June 20, 1977, has been allowed to accept money from subscribers and such subscriptions have been excluded from the

term ""deposit"" as per the definitions reproduced above. To appreciate the distinguishing features between the conventional chit fund and the prize

chit fund, it is necessary to go through the contents of sub-para (1) and put the same in juxtaposition with the contents of sub-para (2) and find out

the exact distinction between the two categories. In a similar case instituted on the complaint of the same complainant, Shri B.N. Chikar-mane,

their Lordships of the Gujarat High Court in B.N. Chiarmane v. Modern Savings and Trading Units Pvt. Ltd. [1982] 52 Comp Cas 400 of the

report set out the following table showing the distinguishing features of the two schemes (at page 411) :

Prize chits /benefit schemes Conventional chits

(para 2(1)) (para 2(2))

1. Subscriptions for these schemes may be 1. Subscriptions may be collected only by

collected by periodical instalments or in one instalments during the stipulated period.

lump

2. The number and amount of prizes/gifts to be 2. No such prizes are given in conventional chit.

awarded in each group is decided by the The concept of ''prize amount'' offered in a

foreman on an ad hoc basis and prizes are conventional chit is different. The prize amount is

offered to the holders of lucky numbers drawn arrived at by deduction from the amount of the

by lot either by way of cash or articles. total amount subscribed at each instalment by all

subscribers :

(a) foreman"s commission charges or service

charges as promoter, foreman or agent ; and

(b) discount which the subscriber agrees to

forgo in consideration of the balance being paid

to him.

3. The amount distributed by way of prizes or 3. The entire amount of the total subscription

representing cost of gifts represents only a collected at each instalment less the amount of

fraction of the amount collected from the the foreman"s commission or service charges,

subscriber by foreman/company. etc., and the discount is given away as prize

amount to each of the subscribers in turn, by

drawing lots or by auction or by tender or in

such other manner as may be provided for in the

agreement with the result that each and every

subscriber gets the prize amount in his turn

which is not the case in prize chits.

4. It is not necessary that there should be a 4. A definite and specified number of

specified number of subscribers at the initial subscribers have to enter into an agreement with

stage though a target of the number of the foreman at the initial stage.

subscribers may be set out in the scheme

5. The winner of the prizes or gifts may or may 5. All the subscribers, even after getting the prize

not be required to pay subscription till maturity amount have to pay the amount of instalments till

of the scheme. the maturity of the scheme.

6. These schemes are neither of a self-liquidating 6. Conventional chits are of self-liquidating

nature nor do they have characteristics of mutual nature and partake the character of a mutual

benefit schemes, though they are so called in benefit scheme. The foreman/company is entitled

some cases. After payment of the prizes or only to stipulated commission for service

bonus (refund of the subscriptions in some charges, etc., and the entire balance amount

cases), the entire balance left is appropriated by collected at each instalment less discount, if any,

the company as its income or profit. Moreover, is given as prize amount to every one of the

every one of the subscribers does not get prizes. subscribers in turn as determined by lot or

auction or by tender or in such other manner as

may be provided for in the agreement.

14. Under the scheme run by the accused, there were to be 5,000 subscribers, but the company started the scheme only with 4,000 subscribers

leaving the number of subscribers as a floating number, as subscribers could be added in the scheme till the number of subscribers reaches 5,000.

The prize amount was not being arrived at by deduction from out of the total amount of subscription at each instalment by all subscribers (a) the

commission charged by the company or service charges as promoter, foreman or agent, and (b) the discount which the subscriber agreed to forgo

in consideration of the balance being paid to him. The company had not entered into any agreement with the specified number of subscribers at the

initial stage as to what amount was to be deducted from the total subscription, while paying the prize amount to the subscriber who becomes

entitled thereto on the drawing of lots. The subscribers who got the prizes were not required to pay the further instalments till the maturity of the

scheme. Therefore, taking into consideration all those distinguishing features, the chit fund scheme run by the accused company was not a

conventional chit fund scheme falling within Sub-clause (2) of para 2 of the Directions of the Reserve Bank. Therefore, the collections made by the

company were not exempted from the term ""deposit"". Those collections, therefore, have been rightly characterised by Shri Gore, PW-1, and Shri

Damle, PW-2, as deposits which the accused company could not receive under the chit prize scheme run by them. Their Lordships of the Gujarat

High Court in the case referred to above have fully discussed the relevant provisions of the Reserve Bank of India Act, 1934, and the Directions

issued by the Reserve Bank of India in exercise of its powers under Sections 45J and 45K of the Reserve Bank of India Act and it is not

necessary for me to go through the same provisions again in order to demonstrate that the scheme run by the accused was not a conventional chit

fund scheme and that under the provisions of the Reserve Bank of India Act and the Directions issued by the Reserve Bank, they were not entitled

to collect subscriptions under the scheme. I am in respectful agreement with the reasoning in the Division Bench decision of the Gujarat High Court

referred to above.

15. It takes me to consider the defence that the amounts collected by the accused were by way of repayment of loans made by them to the

subscribers and, therefore, they could not be termed as deposits. Learned counsel, Shri Vashi, for the accused contends that Shri Gore, PW-1,

and Shri Damle, PW-2, have admitted that the company gave loans to the subscribers and the subscribers were repaying the loans. He submits

that the prosecution did not prove what amounts were collected by the accused by way of subscription and what amounts were collected by way

of repayment of loans, and, therefore, the accused were entitled to benefit of doubt on that ground. Learned counsel for the appellant, on the other

hand, contends that the accused have admitted in their statement submitted to the Reserve Bank of India on January 19, 1979, that they collected

subscriptions to the tune of Rs. 4,66,800 during the period from July, 1977, to October, 1977, and the amount of Rs. 71,670 during the period

from November 1, 1977, to January 28, 1978. He pointed out that the prohibitory order was served on the managing director, accused No. 2, on

November 7, 1977, and as per the statement dated January 19, 1977, the amount collected during the period from November 7, 1977, to January

28, 1978, works out to Rs. 43,000. He submits that the accused have nowhere stated in their statement dated January 19, 1977, exhibit P-5 that

out of the amount of Rs. 43,000 collected during the aforesaid period, any amount was by way of repayment of loans. On the contrary, the

statement shows that it was the subscription collected by the accused. He also referred to the statements submitted by the accused to the Reserve

Bank of India on February 16, 1977, and June 30, 1977, exhibits P-3 and D-1 in Criminal Case No. 298/S of 1979 wherein the accused have

stated the subscriptions collected by them and there was no mention therein that any of the amounts was by way of repayment of loans. He also

pointed out the returns dated September 30, 1976, and March 31, 1977, exhibit P-6 submitted by the accused to the Reserve Bank of India

wherein they have shown their collection by way of subscription only and there is no mention of any repayment. According to learned counsel, it

clearly rules out the defence that the amounts alleged to have been collected by the accused in the two cases included the repayment of loans. It is

pertinent to note that the accused are in possession of the account books they have maintained. Those account books were inspected by Shri

Damle, PW-2. Shri Damle, PW-2, has not taken charge of those account books. Had the amounts alleged to have been collected by the accused

during the period under consideration been amounts collected by them by way of repayment of loans, the accused would have produced their

account books in support of their defence, but they have not done so. Learned counsel for the accused contends that it is not the duty of the

accused to produce their account books and to prove the defence set up by them. He submits that the prosecution should have proved by cogent

evidence that the collections made by the accused did not include repayment of loans. I am unable to agree with learned counsel. The accused

have personal knowledge as to what collections they have made by way of subscription from the subscribers and what amount they have

recovered by way of repayment of loans advanced by them. When the prosecution has proved even from the statement of the accused that they

have collected subscriptions to the extent alleged by the prosecution, it was for the accused to show from their account books that though in their

statements they have mentioned that they have collected those amounts by way of subscription, it was a wrong statement and as per their accounts,

those collections were by way of repayment of loans. From the mere statements appearing in the evidence of Shri Gore, PW-1, and Shri Damle,

PW-2, that the accused company had advanced loans and had received some amount towards repayment, it cannot be inferred that the amounts

of subscription which the accused have admitted to have received during the aforesaid period were nothing but the repayment of loans advanced

by the accused. It is pertinent to note that the accused had filed a writ petition in this court being Miscellaneous Petition No. 1797 of 1977, a copy

thereof has been produced at exhibit P-8. This copy has been duly used by the defence while cross-examining the prosecution witnesses and it is

nowhere suggested by the accused that it is not a true copy of the writ petition they had filed. At para 11, the accused have stated the amounts

collected by them by way of subscription and also the amounts they had advanced as loans to the members. As per that statement, they had

collected money by way of subscription from members as follows :

Rs.

Up to June, 1975 3,65,940

Up to June, 1976 12,57,210

Up to June, 1977 12,58,850

From June, 1977, to October, 1977 4,66,800

33,48,800

16. As against the above subscriptions, they had advanced loans to members as under :

Rs.

Up to June, 1975 1,35,400

Up to June, 1976 12,65,400

Up to June, 1977 11,73,200

From June, 1977, to October, 1977 4,66,800

30,10,500

17. They have also mentioned therein the prizes given to the members during the aforesaid period as follows :

Rs.

1974-75 15,315

1976 68,085

1977 92,106

1,65,505

The writ petition was declared on December 16, 1977, and in the writ petition it was nowhere mentioned what amounts they had received by way

of repayment of loans during the relevant period. Accused Nos. 1 and 2 filed their written statements dated July 14, 1980, and accused Nos. 3 to

9 and 12 filed their written statements also dated July 14, 1980, as per the statements made by them during their examination u/s 313, Criminal

Procedure Code. In those statements also, they have not stated what was the amount by way of repayment of loans out of the collections made by

them during the period for which they have been charged. They have also not mentioned therein that the statements submitted by them to the

Reserve Bank of India regarding the collections made by them and referred to above were in any way wrong. It is pertinent to note that accused

No. 2 was the managing director of accused No. 1. He admitted that the company had collected a total amount of Rs. 43,000 after the prohibitory

order was issued. But he stated that the said amount was accepted by way of repayment of loans and not as deposits. It is for the accused to show

that the amount collected by them disregarding the prohibitory order of the Reserve Bank of India was only by way of repayment and this they

could have very well shown, had the defence been true. The accused would have produced their account books in their defence and would have

shown that the collections made by them were only by way of repayment of loans. This has not been done by the accused. On the contrary, in the

statements"" referred to above they have clearly admitted that the collections made by them for which they have been indicted were by way of

subscription from members. The learned trial Magistrate, regarding the defence that the amounts collected by the accused were by way of

repayment of loans, observed thus at para 7 of his judgment :

The books of account are not produced before the court. Hence we are not in a position to know as to what amounts were recovered by way of

repayment of loans. But Shri Damle admits that the company was not prohibited from recovering the loans which were advanced by it. The

contention of the defence is that they had accepted certain amounts by way of repayment of loans and that fact is not mentioned in the report. It

has to be noted that, as mentioned above, the present company, accused No. 1, is covered by the provisions of sub-para (2) of para 2 of the

Directions and in view of the definition of the term ""deposit"", the amount or the amounts recovered by way of subscription or instalments under a

particular agreement from subscribers will not come within the ambit of the term ""deposit"". If so, accused No. 1, company, or the directors have

not committed any offence alleged by the prosecution. Secondly, if the amounts were recovered on account of loans, these amounts also cannot be

treated as deposits. Hence, after considering the evidence on record and the provisions of the Directions dated August 23, 1973, I have come to

the conclusion that the prosecution has not proved the charge in both the cases. If the prosecution had produced the books of account and if it had

shown that certain amounts were accepted neither by way of subscription nor by way of repayment of loans, the fate of the case would have been

otherwise.

18. I have already indicated that the learned trial Magistrate did not properly understand the difference between a prize chit fund scheme and a

conventional chit fund scheme. I have already indicated that the scheme run by the accused was not a conventional scheme falling under sub-para

(2) of para 2 of the Directions issued by the Reserve Bank of India. Therefore, the amounts collected by the accused by way of subscription were

clearly deposits within the meaning of the term used in those Directions and Section 45-I(bb) of the Reserve Bank of India Act, 1934. I have also

referred to the evidence of Shri Damle, PW-2, wherein he has stated that he has not seized the books of account of the accused. The books of

account of the accused are with them and, therefore, it was not for the prosecution to produce those books of account. It was for the accused to

produce those books of account in support of their defence. The statements already submitted by the accused to the Reserve Bank of India and

referred to above clearly indicate that collections made by them were by way of subscription. There is nothing on record to show that these were

not subscriptions from subscribers but they were repayment of loans by the members. Therefore, the learned trial Magistrate was completely

wrong in the reasoning that he has given at para 7 of his judgment, reproduced above. The prosecution has proved beyond reasonable doubt that

the chit fund scheme run by the accused was not a conventional chit fund scheme and that it was nothing but a prize chit fund scheme which is

covered by sub-para (1) of para 2 of the Directions issued by the Reserve Bank of India and, therefore, the accused were not entitled to recover

subscriptions which are nothing but deposits from the members thereof. The accused, by recovering large amounts from the subscribers to the

prize chit fund run by them, have clearly violated the Directions of the Reserve Bank of India appearing in para 4 of their Directions. They have

also flagrantly violated the prohibitory order issued by the Reserve Bank of India under Clause (4) of Section 45K of the Reserve Bank of India

Act and thereby in both the cases they have committed the offences punishable under Sections 58B and 58C of the Reserve Bank of India Act.

Consequently, the acquittal of the accused, recorded for the offences mentioned above by the learned trial Magistrate, will have to be set aside and

the accused will have to be convicted and sentenced for those offences.

19. In the present case, as stated by accused No. 2 in his written statement dated July 14, 1980, the chit fund scheme was started by them with a

very lofty object of infusing and inculcating the habit of saving in the public in the right direction and in the right channel. The accused have collected

more than Rs. 33,00,000 during the period from 1975 to 1977. As compared to the huge amounts they have collected, the prize money they have

distributed during the aforesaid period is a paltry sum of Rs. 1,65,505. Under the scheme run by them, each and every subscriber could not get the

prize and what the subscriber used to get after the period of 60 months was the principal amount of Rs. 1,800 which he had subscribed and a

paltry amount of Rs. 100 only. The returns submitted by the accused to the Reserve Bank of India clearly indicate that large sums were distributed

amongst ten directors by way of remuneration and the accused were showing colossal loss in running the scheme. On considering the nature of the

scheme run by the accused, it cannot be said that it was in the interest of the public that the accused were running the scheme as professed by

them. In this connection it is instructive to reproduce what the Supreme Court observed in Srinivasa Enterprises, Represented by the Managing

Partner, Peddi Venkateswarlu and Others Vs. Union of India (UOI), Represented by Ministry of Law, Justice and Company Affairs and Others,

of the report, his Lordship Krishna Iyer J. observed thus (at page 466 of 51 Comp Cas) :

The quintessential aspects of a prize chit are that the organizer collects moneys in lump sum or instalments, pursuant to a scheme or arrangement,

and he utilises such moneys as he fancies, primarily for his private appetite and for, (1) awarding periodically or otherwise to a specified number of

subscribers, prizes in cash or kind, and (2) refunding to the subscribers the whole or part of the money collected on the termination of the scheme

or otherwise. The apparent tenor may not fully bring out the exploitative import lurking beneath the surface of the words which describe the

scheme. Small sums are collected from vast numbers of persons, ordinarily of slender "means, in urban and rural areas. They are reduced to

believe, by the blare of glittering- publicity and the dangling of astronomical amounts, that they stand a chance--in practice, negligible --of getting a

huge fortune by making petty periodical payments. The indigent agrestics and the proletarian urbanites, pressured by dire poverty and doped by

the hazy hope of a lucky draw, subscribe to the scheme although they can ill-afford to spare any money. This is not promotion of thrift or

wholesome small savings because the poor who pay, are bound to continue to pay for a whole period of a few years over peril of losing what has

been paid and, at the end of it, the fragile prospects of their getting prizes are next to "nil" and even the hard-earned money which they have

invested hardly carries any interest. They are eligible to get back the money they have paid in driblets, virtually without interest, the expression

"bonus" in Section 2(a) being an euphemism for a nominal sum. What is more, the repayable amount being small and the subscribers being

scattered all over the country, they find it difficult even to recover the money by expensive dilatory litigative process.

20. The above observations are applicable on all fours to the chit fund scheme run by the accused. The accused had issued pamphlets as per

exhibit P-7 and pass-books as per exhibit P-4 which gave a very attractive picture of the scheme and unless the whole thing is considered by an

extraordinary brain, one cannot find the real profiteering motive of the accused behind the scheme. People have been lured by the propaganda that

they get prizes of far more than the amount they have subscribed and also that they are entitled to bonus. By such allurement, the accused have

been able to collect large amounts and those amounts are said to have been given to the subscribers by way of loans. If we see the list of loans

given by the accused appearing in exhibit P-l, one is surprised to see that loans to the extent of Rs. 95,000, Rs. 75,000 and Rs. 35,000 have been

advanced to some of the members. Each member used to subscribe Rs. 1,800 in 60 instalments and it is surprising to see that the loan to a single

subscriber amounts to Rs. 95,000 and other similar amounts. Such a scheme by shrewd persons can work very well to their great advantage and

to the detriment of the public in general. As said by the Supreme Court, if a subscriber who subscribes to the. scheme to the extent of Rs. 1,800

only is denied the return of his amount or the prize he cannot rush to the court of law for recovering the amount as the expenses by way of stamp

duty, court-fee, etc., are likely to deter him from taking legal steps and the promoters of such scheme can benefit to a large extent at the cost of a

large number of subscribers. This is the reason why the Central Government, in 1978, passed the Prize Chits and Money Circulation Schemes

(Banning) Act, 1978.

21. Learned counsel for the accused, Shri Vashi, says that accused Nos. 4, 7 and 9 are dead and accused No. 6 is bed-ridden with a paralytic

attack. Shri Pradhan, advocate, appearing for the appellant, accepts the statement made by Shri Vashi regarding the death of accused Nos. 4, 7

and 9 and the crippled condition of accused No. 6. Learned counsel for the appellant and learned counsel for the respondents are both unanimous

on the point that it is accused No. 2 who was the managing director of the company and was running the scheme and was in charge of the chit fund

scheme run by the company as per the evidence on record and, therefore, u/s 58C, only accused No. 1, the company, and accused No. 2 who

was the managing director of the company in charge of the scheme and was conducting the business of the company, are liable to be convicted and

punished u/s 58B read with Section 58C of the Reserve Bank of India Act. Consequently, I convict accused Nos. 1 and 2 of the offence

punishable u/s 58B(5)(a)(i) read with Section 58C of the Reserve Bank of India Act, 1934.

22. Before awarding the sentence, it is necessary to hear accused No. 2 on the sentence. I have heard accused No. 2 about the sentence to be

imposed on him. Section 58B(5)(a) provides for sentence of imprisonment extending up to three years and fine which may extend to twice the

amount of the deposit received by the accused. The sentence of imprisonment as well as fine are required to be imposed. Taking into consideration

the fact that more than ten years have elapsed from the date of the commission of the offence and also taking into consideration that the company is

defunct and the person who is liable to be punished as a managing director of the company is merely an insurance agent earning about Rs. 2,000 to

Rs. 3,000 per month having a family of six persons depending on him, I think the sentence of imprisonment till the rising of the court and fine of Rs.

15,000 (Rs. 5,000 in Criminal Appeal No. 631 of 1981 and Rs. 10,000 in Criminal Appeal No. 632 of 1981) or in default R. I. for six months in

each case and fine of Rs. 15,000 in each case to accused No. 1 will meet the ends of justice in each of the two cases. Hence, the following order :

ORDER

23. Criminal Appeal No. 631 of 1981 is partly allowed. The acquittal of accused Nos. 1 and 2 by the trial Magistrate is set aside and accused

Nos. 1 and 2 are convicted of the offence punishable u/s 58B(5)(a)(i) read with Section 58C of the Reserve Bank of India Act, 1934. Accused

No. 1, i.e., the company, is sentenced to pay a fine of Rs. 15,000. Accused No. 2 is sentenced to imprisonment for a day till the rising of the court

and to pay a fine of Rs. 5,000 or in default to suffer R. I. for six months.

24. Criminal Appeal No. 632 of 1981 is partly allowed. The acquittal of accused Nos. 1 and 2 by the trial Magistrate is set aside and accused

Nos. 1 and 2 are convicted of the offence punishable u/s 58B(5)(a)(i) read with Section 58C of the Reserve Bank of India Act, 1934. Accused

No. 1, i.e., the company, is sentenced to pay a fine of Rs. 15,000. Accused No. 2 is sentenced to imprisonment for a day till the rising the court

and to pay a fine of Rs. 10,000 or in default to suffer R. I for six months.

25. Both the appeals against the rest of the accused are dismissed.

26. Criminal Appeal No. 989 of 1981 filed by the State, in view of the decision of the similar appeals referred to above, does not survive.

27. Accused No. 2, at his request, is granted two months time to pay the fine.

28. Accused No. 2 has undergone a day"s imprisonment.