(1989) 01 BOM CK 0003

Bombay High Court

Case No: Criminal Appeal No"s. 631, 632 and 989 of 1981

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

Date of Decision: Jan. 18, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Reserve Bank of India Act, 1934 - 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 (para 2(1))	Conventional chits (para 2(2))

1. Subscriptions for these schemes may be collected by periodical instalments or in one lump	1. Subscriptions may be collected only by instalments during the stipulated period.
2. The number and amount of prizes/gifts to be awarded in each group is decided by the foreman on an ad hoc basis and prizes are offered to the holders of lucky numbers drawn by lot either by way of cash or articles.	2. No such prizes are given in conventional chit. The concept of ''prize amount'' offered in a conventional chit is different. The prize amount is arrived at by deduction from the amount of the 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 representing cost of gifts represents only a fraction of the amount collected from the subscriber by foreman/company.	3. The entire amount of the total subscription collected at each instalment less the amount of the foreman''s commission or service charges, 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 specified number of subscribers at the initial stage though a target of the number of subscribers may be set out in the scheme	4. A definite and specified number of subscribers have to enter into an agreement with the foreman at the initial stage.
5. The winner of the prizes or gifts may or may not be required to pay subscription till maturity of the scheme.	5. All the subscribers, even after getting the prize amount have to pay the amount of instalments till the maturity of the scheme.

6. These schemes are neither of a self-liquidating nature nor do they have characteristics of mutual benefit schemes, though they are so called in some cases. After payment of the prizes or bonus (refund of the subscriptions in some cases), the entire balance left is appropriated by the company as its income or profit. Moreover, every one of the subscribers does not get prizes.	6. Conventional chits are of self-liquidating nature and partake the character of a mutual benefit scheme. The foreman/company is entitled only to stipulated commission for service charges, etc., and the entire balance amount collected at each instalment less discount, if any, is given as prize amount to every one of the 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."

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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.