

**Abdul Arshad and Others Vs. State of Kerala, Represented by the Public Prosecutor and Another**

**Abdul Arshad and Others Vs. State of Kerala, Represented by the Public Prosecutor and Another**

**SooperKanoon Citation :** [sooperkanoon.com/947349](http://sooperkanoon.com/947349)

**Court :** Kerala

**Decided On :** Aug-12-2011

**Judge :** K.T. Sankaran

**Appeal No. :** Bail Appl. Nos.5641 of 2011, 5776 of 2011 & 4642 of 2011

**Appellant :** Abdul Arshad and Others

**Respondent :** State of Kerala, Represented by the Public Prosecutor and Another

**Advocate for Pet/Ap. :** Sri. K. Ramakumar

**Judgement :**

B.A.Nos.5641 of 2011 and 5776 of 2011 are under Section 439 of the Code of Criminal Procedure. B.A.No.4642 of 2011 is for anticipatory bail, filed under Section 438 of the Code of Criminal Procedure.

2. The name of accused, rank in the case, Crime number, date of arrest and Bail Application number are shown below.

Sl.No.	Name of accused	Rank	Crime and P Statio
--------	-----------------	------	--------------------------

1	Abdul Arshad	A9	497/1 Sulth Bath
2	KunhumammadPradeepBaurajanShajiKrishnanArun. BPratheeshPreyeshJoseph	A8A2A3A4A5A6A7	491/1
3.	K.T. Gopinathan		Town North Polic Statio Erna

3. The offences alleged against the accused are under Section 420 of the Indian Penal Code and Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act No.43 of 1978) (hereinafter referred to as 'Prize Chits Act.')

4. The prosecution case is the following: Accused No.9 Abdul Arshad is the Managing Director of Bizarre Global Marketing Public Limited Company (hereinafter referred to as the Company). The Company was originally a Private Limited Company under the name Bizarre Marketing Systems Private Limited, which was incorporated on 2-11-2007. With effect from 18-6-2008, the name of the Company was changed as Bizzare Global Marketing Systems Private Limited. The Company became a Public Limited Company with effect from 14-7-2008. The allegation is that the accused persons induced several persons to subscribe to the membership and to take shares in the Company. The promise extended was that if they take shares, they will get commodities at reduced rates from the Supermarkets to be established by the Company at different places in the State. It was also promised that if those who take shares canvass other persons to take shares, the former would be paid commission. Campaigns were held by the accused to induce persons to invest money. It was promised that those who canvass more persons would get more and more commission. About a lakh people were thus induced to invest money. In the Wynad District alone, more than five thousand persons were so induced to invest money. The promise given by the accused was that within two years, they would get about eight times the money invested by them. The accused indulged in money chain business under the

pretext that they were floating shares of the Company. The investors did not get the returns or the money invested by them. The accused did not fulfil the promises and the investors were cheated.

5. The learned Public Prosecutor submitted that 36 cases were registered in Wynad District against the accused. Crimes were registered against them in other Districts also. It is submitted that the preliminary figures show that a sum of Rs.120 Crores was collected from the investors. A raid was conducted in the office of the Company. Only one computer could be located in the raid. In the two bank accounts located, transactions of only Rs.36 crores were found. It is necessary to find out where more than Rupees Eighty crores were siphoned off. The learned Public Prosecutor submitted that in brochure of the Company, a PAN Card number was shown. On investigation, it was revealed that the same relates to a firm in the State of Madhya Pradesh.

6. The learned Public Prosecutor submitted that the investigation of the cases registered in Wynad District is now being conducted by the Crime Branch. Investigating agency has sought the help of National Investigation Agency to find out whether the money collected from the people was utilized for anti national activities. Investigation revealed that when a person invested Rs.14,750/-, he was given 55 coupons of Rs.100/- each which could be used for purchasing commodities from the supermarkets to be established by the Company. A sum of Rs.750/- was taken as service charges and the balance Rs.8500/- would constitute the share of the investor.

7. Heard Senior Advocates Sri. M.K. Damodaran and Senior Advocate Sri. K. Ramakumar appearing for the petitioners and Sri. V. Tekchand, the learned Public Prosecutor.

8. Senior Advocate Sri. M.K. Damodaran submitted the following: The first petitioner in B.A. No.5776 of 2011 (Kunhumammad) is one of the Directors of "Bizarre Business Corporation Limited", a company registered under the Companies Act, 1956. Petitioners 2 to 7 therein are the "subscribers of shares and organizers employed by the said company. Out of 60,000 shareholders of the company, only 42 persons approached the police raising grievances. The

petitioners are prepared to pay off the entire liability to the said 42 persons. Majority of the shareholders have not come forward to withdraw amounts invested by them. In view of the provisions contained in Section 76, 205, 235 to 244, 621 and 624 of the Companies Act, the police was not justified in registering the Crimes against the petitioners. No offence under Section 420 of the Indian Penal Code or Sections 3 and 4 of the Prize Chits Act are made out against the petitioners. Powers of the police cannot be misused in matters relating to the affairs of the Company. The Companies Act is a self contained Act and it provides for prosecution in certain matters. Instead of resorting to the machinery provided under the Companies Act, prosecution cannot be initiated against the Company or its directors or members. Even under Section 621 of the Companies Act, a complaint in writing is required. All offences under the Companies Act are non cognizable. This is with the purpose that a few persons should not be allowed to meddle with the affairs of the Company and upset its functioning. Therefore, the police should not have registered the case at all. There is no specific allegation against the Company, its Managing Director or other Directors. It would appear that the grievance of the de facto complainants is that no profit was paid to them. Without there being a profit, dividend cannot be paid. No money circulation scheme is involved in the affairs of the Company. Even if all the allegations made by the de facto complainants are taken as true, no offence is made out. No element of cheating is established. No false representation was made by the Company. Therefore, Section 420 of the Indian Penal Code is also not attracted in the case. The senior counsel submitted that the petitioners are entitled to bail.

9. The petitioner is B.A.No.4642 of 2011 (K.T. Gopinathan) stated in the Bail Application thus: "Petitioner is an employee under Bizarre Business Corporation Limited, Ernakulam. He is working as the Chief Executive Officer of the Company. The business is owned and operated by one Abdul Arshad, who is the Chairman and Managing Director. Petitioner joined in the Company only on 1.9.2009, whereas the Company was in existence from January 2008 onwards. The Company in which petitioner is working has three subsidiary Companies, namely, Bizarre Global Marketing Systems Limited, Bizarre International Business Private Limited and Bizarre Business Corporation Limited. Petitioner herein is an employee of Bizarre Business Corporation Limited, which had been instituted for

the purpose of instituting a chain of Super Markets throughout Kerala.” Senior Advocate Sri. M.K. Damodaran submitted that the Petitioner in B.A. No.4642 of 2011 is entitled to get an order of anticipatory bail.

10. Sri K. Ramakumar, Senior Advocate, appearing for the petitioner in B.A. No.5641 of 2011 (Abdul Arshad) submitted that Nijas, who filed the petition before the police admitted that he himself misappropriated money paid by depositors. The Company collects shares and the amounts are invested in Supermarkets. The shareholders will get premium for the purchases made by them. The Company has paid Rupees Fifty Crores as commission, Rupees Seven Crores as taxes to Government and issued discount cards worth Rupees Thirty Crores. The Company purchased lands worth Rupees Fifty Crores in the name of the Company itself. If so, there is no cheating at all as alleged. Deriving excess profit does not amount to cheating or breach of trust. The business conducted by the Company is permissible business and it is legal. In the year 2002, the then Union Finance Minister stated in the Lok Sabha as to what would constitute multi level marketing and money chain activities. The business run by the Company comes within the parameters laid down by the Finance Ministry. Sri. Ramakumar also submitted that all the relevant records were given to the police and matters were explained to them. The bank accounts of the company were freezed. Custody of the petitioner was given to the police thrice. If bail is granted to the petitioner, there is no question of tampering with the evidence since all the documents were seized by the police. Whichever depositor wants to get back his money, the same will be paid by the Company. The Company was planning to establish supermarkets at 21 stations in the State of Kerala.

11. Sri V. Tekchand, the learned Public Prosecutor submitted the following: The activities in which the accused indulged themselves would clearly constitute a money circulation scheme within the definition of Section 2(c) of the Prize Chits and Money Circulation Schemes (Banning) Act. Persons involved in the money chain business of the Company are ranked just like officers are ranked in military service. Ranking is made depending on the business made by the person concerned by enrolling members. Pratheesh Chacko, who is one of the accused in several cases registered in Wynad District is ranked as ‘major’. Sri Tekchand

submitted that registration of crime under the Prize Chits Act or under Section 420 I.P.C. is not barred under Section 242 of the Companies Act. The provisions of the Companies Act do not bar initiation of criminal proceedings in respect of offences under the Prize Chits Act or the Indian Penal Code. The police does not investigate into the 'affairs of the Company' which come under the Companies Act. The Prize Chits Act and the offences thereunder are not covered by the Companies Act. Prize Chits Act is also a Central Act. It cannot be assumed that the Parliament was not aware of the provisions of the Companies Act when the Prize Chits Act was enacted. The offences under the Prize Chits Act are cognizable offences.

12. For the purpose of deciding the questions raised, it is necessary to refer to the relevant provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. (Central Act No.43 of 1978). Section 2 (c) defines "money circulation scheme" thus:

" "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."

Sections 3 and 4 of the Prize Chits Act read as follows:

"3. Banning of prize chits and money circulation scheme or enrolment as members or participation therein. - No person shall promote or conduct any prize chit or money circulation scheme, or enroll as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme."

"4. Penalty for contravening the provisions of Section 3. - Whoever contravenes the provisions of Section 3 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees or with both. Provided that in the absence of special and adequate reasons to the

contrary to be mentioned in the judgment of the Court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.”

13. The learned Senior Counsel appearing for the Petitioners relied on the decision of the Supreme Court in State of West Bengal v. Swapan Kumar Guha and others: (AIR 1982 SC 949 = (1982 (1) SCC 561) wherein it was held that the High Court under Article 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence no investigation should normally be permitted. Referring to the Prize Chits Act, and particularly money circulation scheme, it was held thus:

“Commas or no commas, and howsoever thoughtfully one may place them if they are to be there, if find it impossible to take cl.(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 ravel afar to find speaking examples of this. Indeed, there are honourable men (and now women) in all professions recognized 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.”

14. In Swapan Kumar Guha’s case, a partnership firm, consisting of three partners, was found to be offering interest at 48% per annum to its members and later reduced to 36% per annum. The loan certificates showed rate of interest only

at 12% per annum. Alleging that payment of the amount in excess of 12% showed that a 'money circulation scheme' was promoted, a case was registered against the partners of the firm. Writ Petition was filed by the partners for quashing the FIR and the proceedings. The Calcutta High Court allowed the Writ Petition State of West Bengal challenged the judgment in appeal before the Supreme Court. The appeal was dismissed. It was held that no 'money circulation scheme' was involved in the case.

15. In Kuriachan Chacko v. State of Kerala: (2007 (3) KLT 843), the facts of the case are stated in paragraph 4 of the judgment thus:

“The basic facts are simple. The petitioners are persons - partners of a firm and employees, who conduct a Scheme by name “LIS Deepasthambham Scheme.” The scheme is apparently simple in its conception. A person has to pay Rs.625/- and purchase one unit from the promoter. The promoter will make use of Rs.350/- to purchase 35 lottery tickets of the Kerala State Government lotteries each for Rs.10/- for the unit holder for the next 35 weeks. If the unit holder wins any prize upto Rs.5,000/- in the 35 draws in respect of the tickets, the promoter shall collect the same and pay the same to the unit holder. If he wins any prize above Rs.5,000/-, the ticket shall be handed over to the unit holder for collection. The balance of Rs.275/- will be used to make the unit holder a subscriber of a magazine by name “Thrikalam” for one year. The said magazine will reproduce relevant and important materials from other magazines. It will also furnish information about the lottery tickets which have won prizes.”

16. In Kuriachan Chacko's case, the Kerala High Court held that: “This is the ingredient of the offence of cheating and to my mind, at least, at this stage, until better explanations are forthcoming it must be assumed and presumed that the accused have committed the offence of cheating punishable under S.420 of the IPC.” It was also held that the transaction in question amounts to a 'money circulation scheme.'

17. The judgment of the High Court in Kuriachan Chacko's was challenged before the Supreme Court. The Supreme Court dismissed the Appeal in Kuriachan Chacko and others v. State of Kerala: (2008 (8) SCC 708). The Supreme Court

referred to State of West Bengal v. Swapan Kumar Guha and others: (AIR 1982 SC 949 = (1982 (1) SCC 561) and held thus:

34. 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 dependent 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 double amount only when after his enrolment, additional 14 members are enrolled in the Scheme. The second ingredient, namely, such payment of money is dependent 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.

35. 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) nowhere 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.

36. 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 rewriting of the section, which is certainly not permissible in our constitutional system.

37. 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.”

18. Applying the principles laid down by the Supreme Court in Kuriachan Chacko’s case, prima facie, it is to be concluded that the transaction in question would amount to a ‘money circulation scheme’ within the meaning of Section 2(c) of the Prize Chits Act.

19. Now, I shall consider the contention put forward by the Petitioners that going by the provisions of the Companies Act, the police was not justified in registering the Crime and in arresting the Petitioners.

20. Section 76 of the Companies Act provides to what extent a Company may pay commission to any person and in what cases it should not. Section 235 of the Companies Act provides that the Central Government may, where a report has been made by the Registrar under sub-section (6) or (7) of Section 234, appoint one or more competent persons as inspectors to investigate the affairs of a Company and to report thereon in such manner as the Central Government may direct. Section 237 provides for investigation of company’s affairs in other cases Section 239 provides for the powers of inspectors to carry investigation into affairs of related companies or of managing agent or associate etc. Section 241 provides for the interim report and final report to be made by the inspectors to the Central Government.

21. Sections 242, 621 and 624 of the Companies Act are extracted below for easy reference.

“242. Prosecution. - (1) If, from any report made under section 241, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate, whose affairs have been investigated by virtue of section 239, been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence and it shall be the duty of all officers and other employees and agents of the company, or body corporate, other than the accused in the proceedings, to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

(2) Sub-section (6) of section 240 shall apply for the purposes of this section, as it applies for the purposes of that section.”

“621. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government. - (1) No Court shall take cognizance of any offence against this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the Company, or of a person authorized by the Central Government in that behalf:

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers:

Provided further that the Court may take cognizance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorized by the Securities Exchange Board of India.

.....

.....

“624. Offences to be non cognizable. - Notwithstanding anything in the Code of Criminal Procedure, 1898 (5 of 1898), every offence against this Act shall be deemed to be non cognizable within the meaning of the said Code.”

22. Sri M.K. Damodaran, learned Senior Counsel referred to the decisions in (1997 (5) SCC 446, ILR 1980 (2) Kerala 426 and ILR (2) Kerala 209) in support of the contention that one of the shareholders of the company is not entitled to seek even an investigation of the affairs of the company. It is contended that if a shareholder cannot even resort to such a course, he is not entitled to set the criminal law in motion.

23. In Sri Ramadas Motor Transport Ltd. and others v. Tadi Adhinarayana Reddy and others: (1997 (5) SCC 446), it was held that the power to appoint an inspector to investigate the affairs of a company has to exercised by the Central Government after a proper preliminary scrutiny by the Registrar or the Company

Law Board, as the case may be. It cannot be instituted simply on the basis of allegations made by one shareholder. An investigation may seriously damage a company and should not be ordered without proper material gathered in the manner provided in the Companies Act.

24. In *V.A. Sumathy and another v. Digvijay Chit Fund (P) Ltd.* : ILR 1980 (2) Kerala 426, referring to Section 237 of the Companies Act, it was held that no investigation could be ordered merely because a shareholder feels aggrieved about the manner in which the company's business is being carried on. A Division Bench in *Premier Plantations Limited v. M. Ebrahimkutty and others*: ILR 2002 (2) Kerala 209) followed the judgment in *V.A. Sumathy's* case and held that the court should be satisfied that there are sufficient materials to show that affairs of the Company are such that an investigation is necessary under Section 237 of the Companies Act.

25. In order to deal with the aforesaid contention, it is also relevant to note Sections 6 and 10 of the Prize Chits Act, which read as follows:

“6. Offences by companies. - (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty

of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section - (a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.”

“10. Offences under this Act to be cognizable. - All offences punishable under this Act shall be cognizable.”

26. Section 6 of the Prize Chits Act specifically provides for offence by companies. Had it been the intention of the Parliament that no company or any person in charge of and responsible to the company shall be prosecuted for an offence under the Prize Chits Act, a specific provision like Section 6 would not have been incorporated in the Act. It is not as if no provision is made in the Act in respect of companies. A contention that a company or any person in charge of and responsible to the company is governed only by the Companies Act and the Prize Chits Act cannot be invoked against them is not available in view of the specific provision in the Prize Chits Act (Section 6) making them liable under the Act. The only interpretation that could be taken in such circumstances is that the provisions in the Prize Chits Act are in addition to the penal provision provided in the Companies Act. What is dealt with under the Prize Chits Act is different from the penal provisions in the Companies Act. Even assuming that there is overlapping, that does not take away the application of the Prize Chits Act in respect of an offence specifically provided therein. In view of the Explanation to Section 6 of the Prize Chits Act, firms and other association of individuals also come under the term ‘company’ for the purpose of Section 6. If the interpretation put forward by the petitioners is accepted, it would have the effect of holding that Companies are outside the purview of the Prize Chits Act. Such an interpretation cannot be accepted at all in view of the specific provisions in the Prize Chits Act. It cannot be said that if an individual conducts Prize Chits or money circulation scheme, he would be committing an offence under the Prize Chits Act but if the same act is committed by a company, there would be no offence. If it is taken so, even partnership firms or other association of individuals also would be able to put

forward such a contention in view of the definition of 'company' for the purpose of Section 6. Acceptance of the said contention would lead us to a situation where the provisions of the Prize Chits Act can be easily defeated by forming a partnership or incorporating a company for the purpose of conducting the activities which are prohibited under the Prize Chits Act.

27. The contention that the police cannot register the crime since the offences under the Companies Act are non-cognizable, is also without merit. Section 4(2) of the Code of Criminal Procedure provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the CrI.P.C., but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 10 of the Prize Chits Act specifically provides that offences punishable under the Act shall be cognizable. For the purpose of interpretation of the provisions of the Prize Chits Act, Sections 621 and 624 of the Companies Act cannot be sought in aid. Sections 621 and 624 of the Companies Act apply only in respect of the offences under the Companies Act. Those provisions cannot be imported into the Prize Chits Act. Section 242 and the penal provisions in the Companies Act do not bar taking cognizance of an offence under the Indian Penal Code.

28. The decision of the Madras High Court in *Vaidyanathan v. The Sub Divisional Magistrate, Erode and others*: A.I.R. 1957 Madras 65 supports the above conclusion. In *Vaidyanathan's* case, the Registrar of Companies addressed a letter to the Inspector General of Police stating that there was prima facie good case for police investigation and charging the officers of the Company for offences under Sections 406, 409 and 477-A of the Indian Penal Code. The letter of the Registrar was treated as a complaint and it was registered by the police. The then Managing Director of the Company filed Writ Petition seeking to restrain the investigation of the case by the police. It was contended that Section 242 and 630 of the Companies Act, 1956 would be a bar to the investigation by the police. Rejecting the contentions, it was held:

“(15) Section 630 of the Act by itself imposes no bar to the initiation of proceedings in a criminal Court even with reference to acts committed in relation to the affairs of a company, if those acts amount to offences like those punishable under Ss.406 and 409 IPC. Section 630 of the Act provides for a summary procedure. It authorizes an officer or an employee of the company, and only these two, to apply under S.630.

..... It is a little difficult to see any real basis for the contention of the learned counsel for the petitioner, that S.630 of the Act bars an investigation or prosecution for offences punishable under Ss. 406 and 409 I.P.C. Section 630 of the Act provides no statutory bar to the exercise of the jurisdiction vested in a police officer by Ss. 154, 156(1) and 157(1), Criminal P.C.

(16) The learned counsel for the petitioner next referred to the provisions of the Act dealing with the powers of the Registrar and the Central Government, and in particular to Ss. 234 and 242 of the Act. Section 242(1) is only an enabling provision, as the use of the word ‘may’ in the passage “the Central Government ‘may’ after taking such legal advice as it thinks fit prosecute such a person for the offence” indicates. By itself S. 242 (1) does not divest a police officer of the jurisdiction conferred upon him either under Ss. 154, 156 or 157, Criminal P.C. No more than S. 630 of the Act does S.242 bar the exercise of the jurisdiction of respondent 3 to investigate into a complaint of the commission of cognizable offences punishable under Ss. 406 and 409, Penal Code.”

29. For the aforesaid reasons, I am not inclined to accept the contentions put forward by Senior Advocate Sri. M.K. Damodaran that the registration of the Crime and the investigation of the same are illegal.

30. May be, the people who made deposits in the company wanted to make easy money. In a literate State like Kerala, it is really unfortunate that people get attracted to offers which on their face are unbelievable. Scams like the present one occur every now and then. Even then, people do not realize that it is not safe to rely on the false promises made by persons who run such institutions. This leads to the need for not only literacy but ‘financial literacy’ for the people.

31. In this context, I wish to quote the words of Justice R. Basant in Kuriachan Chacko v. State of Kerala: 2007 (3) KLT 843.

“Man’s quest to make quick and easy money-to live not by the sweat of his brow, has been the cause of his fall from the halo of virtue on this planet. The yearning to make quick and easy money by means fair or foul has been central to the concepts of unfairness and criminality in all societies at all times. Exploiting his own superior faculties-physical, mental, intellectual or spiritual, man has always attempted to arrogate to himself what belongs legitimately to his brother beings. Individuals, families, communities, nations, races and generations have attempted to do this. Visionaries and sublime societies have always attempted to avoid and eliminate such exploitation of man by man. But, unfortunately the story of human civilization is tragic tale of such unsuccessful attempts. The result is the inequitable and unjust world order that we are left to face.”

32. I am of the considered view that it is not proper to grant bail to the petitioners in B.A. Nos.5641 of 2011 and 5776 of 2011 at this stage, in spite of the fact they were arrested on 11.6.2011 and 10.6.2011 respectively. The petitioners are allegedly rich and powerful. If they are released on bail, there is every likelihood of their intimidating or influencing the witness or tampering with the evidence. The possibility of the petitioners making themselves scarce also cannot be ruled out. For the aforesaid reasons, B.A. Nos.5641 of 2011 and 5776 of 2011 are dismissed, without prejudice to their right, if any, for default bail under the proviso to Section 167(2) of the Code of Criminal Procedure.

33. The petitioner in B.A. No.4642 of 2011, who states that he is the Chief Executive of the Company has not so far surfaced. He seeks anticipatory bail. In a case of this nature, the discretionary relief under Section 438 of the Code of Criminal Procedure cannot be aspired by the petitioner, not can it be granted. If anticipatory bail is granted to the petitioner, it would adversely affect the proper and smooth investigation of the case.

For the aforesaid reasons, the Bail Applications are dismissed. The findings in this Order were necessitated since without the same, the contentions raised by the petitioners could not be dealt with. It is made clear that the findings rendered

above are intended only for the purpose of disposal of the Bail Applications.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**