

Money Circulation Scheme or Money Cheating Scheme

Money Circulation Schemes throughout the nation is mushrooming under different guises and nomenclature, eating away monies of the gullible public by luring them to become rich overnight through money circulation schemes. This kind of cheating under various attractive captions have taken a major section of people from different walks of life to fall prey benefiting a section of people and huge loss of money to larger section of people. It is said that people are being cheated of Crores of Rupees by these companies all over India. This menace committed against the society is going unchecked.

Many small companies have mushroomed themselves in every nook and corner of the country. The promoters of the money circulation schemes through high profile campaign have entrapped lower middle class people eager to become rich overnight. By enrollment into such scheme one would be getting back the initial paid investment and keep gaining financially by enrolling new members. So also, the second set of enrollers keep multiplying and gain financially, fascinating every onlooker to get engrossed into such dubious money circulation schemes. Such a system of chain to work endlessly to provide profit to everyone concerned would ultimately breakdown at some stage, resulting the financial benefit to some who joined the scheme at initial stages (they will be none other than the promoters of the scheme), resulting in big financial loss to those who joined at a later stage. When a person fails to get his required clients or enrollers, the promoters of the scheme does not tell about the non-viability of the scheme but blame it as one personal failure.

The gullible people are taken unaware when the real picture of the money circulation schemes emerges. By the time the people realize that they were taken for a ride and cheated, it would be too late.

The Hon'ble Supreme Court in **Kuriachan Chacko and Ors. Vs. State of Kerla JT2008(7)SC614** has rightly observed as under:

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

How they operate- The Modus Operandi

The promoters of such schemes float companies with attractive names like viz. Wonder King Co. Miracle Co. Euro Life India Big way Golden Platinum Quest Herbal Life Merry Life Co. and the like to start with in a particular area and keep shifting over to new 1key areas on attaining saturation of member enrollments. The names of these companies itself speaks about their mensrea (guilty intention). While promoting the schemes they induce the Film stars, Politicians, Bureaucrats, Sportspersons, Engineers, Doctors etc., and honor them by organizing indoor and outdoor parties/functions with big fanfare to make the general public believe bona-fide of schemes, while enrolling other members in the chain with attractive and stylish titles to the enrolled members as Silver member, Gold member, Diamond member, Platinum member, so on and so forth. They also call them as Master Distributor, Super Distributor, Double Super Distributor etc., etc. They also use attractive slogans like Earn in rupees or dollars. Work from home Work four hours and earn Rs.50,000 per month U R the boss of your business, so enroll

immediately Earn up to Rs.35,000/- + Monthly by just working 2 hours at home Do u want to earn extra by sitting at Home? Then contact us Do u want to lose your weight, then contact us Your pathway to Heaven Enroll with us for Healthy and Wealthy life Do u want to travel in Benz Car within one year then enroll with us Sky is the limit with us, so enroll immediately, before u miss the bus Earn while you earn etc. Many of these companies are taking promotional trips to Bangkok, Singapore, Srilanka, Malaysia and other countries in the name of Conferences, Meetings etc. Locally also they conduct meetings, conferences in 5 star hotels. These dubious companies do whatever possible to attract gullible public. Ultimately the easy prey, the middle class building castles in the air, loses all their savings even at the cost of their blood relations, the kith and kin and are victimized. Worst sufferers in such schemes are none other than poor middle class women, retired persons, educated youth, unemployed men and women who lose their health, wealth in the chase of wild goose and dreams. Such schemes ultimately have destroyed the families and friendships

Do we have legal provisions in place to deal with these dubious MLM SCHEMES?

In India, money circulation schemes are banned under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Further, relevant sections under cheating Section 420 of IPC, Drugs and Cosmetics Act 1940, Drugs and Magic Remedies Objectionable (Advertisement) Act, 1954, are abundantly available to be invoked and effectively check and prevent progress of such dubious floated companies. Section 2 (c) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 defines a money circulation scheme as, 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.

Andhra Pradesh was the first state to Ban Money Circulation Schemes in the year 1965, much before the Central Government brought the Central Act in the year 1978 banning Money circulation Schemes in India through Prize Chits and Money Circulation Schemes (Banning) Act 1978.

Brief overview of the Prize Chits and Money Circulation Schemes (Banning) Act 1978

Section 2 is legislative dictionary and defines certain terms. The phrase 'Money Circulation Scheme' is defined in Clause (c) of Section 2. Section 3 bans money circulation schemes or enrolment as member to any such scheme or participation in such scheme. Sections 4 and 5 are penal provisions and prescribe punishment. Section 6 deals with offences committed by Companies. Section 7 authorizes Police Officer not below the rank of officer in charge of a police station to exercise power to enter and search premises and to seize things used for such scheme. Section 8 provides for forfeiture of newspaper and publication containing money circulation scheme. Section 9 declares that no Court inferior to the Court of Chief Metropolitan Magistrate or Chief Judicial Magistrate shall try any offence punishable under the Act. All offences punishable under the Act have been made cognizable under Section 10. Section 11 grants exemption from the operation of the Act to certain money circulation schemes. From the perusal of the above provisions, it is clear that the Act prohibits 'money circulation scheme'. Further, the Preamble of 1978 Act declares that it has been enacted "to ban the promotion or conduct of prize chits and money circulation schemes and for matters connected therewith and incidental thereto".

How the Offence of Cheating U/s 420 IPC is made out

For the application of penal provision of Section 420 IPC, there must be cheating as defined in Section 415 IPC. The said Section reads thus:

415. Cheating

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

Mere reading of the Section makes it clear that it requires the following ingredients to be satisfied:

1. Deception of any person;
2. (a) Fraudulently or dishonestly inducing that person;

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

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

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

There is an element of cheating in such MLM Schemes inasmuch as in most of the promoters induce the common public to part with money on the lure of doubling the amount or quick money and but for such representation and the benefit sought to be given under the scheme, the victims would not have acted on such representation. The Promoters of the scheme knew that the scheme was impracticable and unworkable. Therefore, the Section 415, IPC is squarely applicable and the promoters are liable to be punished u/s 420 IPC.

Judicial Pronouncements

The Supreme Court had examined this question in **State of West Bengal Vs Swapan Kumar AIR 1982 SC 949**. The Honâ€™ble Chief Justice Chandrachud, after taking note of legislative drafting, reshaped and rearranged the definition of 'Money Circulation Scheme', for the sake of clarity as:

Any scheme, (a) for the making of quick or easy money or (b) 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. The court has clearly explained the ingredients, which need to be fulfilled for a scheme to become a money circulation scheme. Thus, any scheme for the making of quick or easy money contingent upon the enrolment of members into the scheme is a money circulation scheme. Similarly, any scheme in which money or any valuable thing is received and a promise is made to return the money on the event of enrolling members into the scheme is also a money circulation scheme.

The Constitutional Validity of the constitutionality of the provision has already been examined and upheld by the Apex Court in **Srinivasa Enterprises Vs Union of India AIR 1981 504 SC** Justice V.R. Krishna Iyer, observed: Can you save moths from the fire except by putting out the fatal glow.

The Supreme Court has further stated that these types of schemes are prejudicial to the public interest and also adversely affect the efficacy of fiscal and monetary policy. While interpreting the definition of money circulation scheme, one has to look at the mischief, which the legislation has sought to remedy. The Study group headed by Dr. J.S. Raj constituted by the Reserve Bank of India in the year 1974 proposed the legislation. After studying the various schemes which were floated in the country during that time and taking into consideration the impact of such schemes on the economy, the Committee after extensive research and analysis have suggested for a ban on Prize chit and other schemes which were causing a great loss to the economy. A large amount of money that can be used for industrial and developmental activities are wasted on such illegal schemes. The Study group further observed that prize chits or benefit schemes benefit primarily the promoters and do not serve any social purpose. On the contrary, they are prejudicial to the public interest and also adversely affect the efficacy of fiscal and monetary policy. There has also been a public clamour for banning of such schemes; this stems largely from the malpractices indulged in by the promoters and also the possible exploitation of such schemes by unscrupulous elements to their own advantage. We are, therefore, of the view that the conduct of prize chits or benefit schemes by whatever name called should be totally banned in the larger interests of the public.

Recently, the Hon'ble High Court of Madras dismissing the petition filed by **FMCG Marketing Pvt. Ltd. v/s Union of India, Chief Secretary and Director General of Police Govt. of Tamilnadu** (Writ Petition) with reference to context observed in its landmark judgment that under promise or expectation of getting huge commission (easy or quick money) the public is lured to invest more money in such schemes and that it is only an imaginary profit. The Hon'ble High Court further observed that the event is enrollment of new members; the commission received is linked to such enrollment of new members into the scheme. Thus the so-called Multi-level marketing, though called by a very attractive name squarely falls within the definition of Money Circulation Scheme under the Act. Hence it is prohibited by the Act. The Madras High Court further observed that this MLM scheme creates a chain of customers and the long and unbroken chain ensures a large amount of easy money. The shorter and missing links in the chain results in earning lesser commission. Secondly, the person concerned does not get the value of money he pays. Thirdly, the companies collect service charges on the sale of goods. No service charge can be collected while the goods are sold. Apart from that, the MLM results in exploitation of personal influence of each and every distributor or his close relative. If a Superior officer or his ward involved in MLM, the subordinates are forced to become members in the chain.

Case study of Fraud Money Circulation & Multilevel Marketing (Name of the accused and victims changed)

The Delhi Police EOW busted a gang of cheats who were running a company in the name of M/s Kanchanjunga E-com Marketing Pvt. Ltd. having its office at North-West Delhi. The complainant Shivani Mittal and other 39 victims have filed a complaint with the police wherein they alleged that the directors and promoters of the aforesaid company had cheated them of Rs. 5500/- against each membership by inducing them on the pretext that they will earn lacs of rupees as per the schemes of the company within a span of five years in installments starting from 6th months onward. The company did not fulfill the promises and did not make the payment to the members/investors. All the 40

aggrieved persons had leveled allegations against the promoters and directors of M/s Kanchanjunga E-com Marketing Pvt. Ltd. for having committed cheating by inducing general public to invest in company. On this complaint a FIR u/s 406/409/420/422/120-B IPC & 3/4/5/6 Prize Chit Money Circulation (Banning) Act was registered and investigation was taken up by the police.

During the course of the investigation, it was learnt that the company was running a money circulation scheme under the name of Self Employment Yojana. The conditions of the scheme were:

1. If one becomes a member of the scheme after depositing an amount of Rs. 5500/-, he will get Rs. 10,000/- in a span of five years in installments starting from 6th months onwards, even if he makes no further member.
2. If the new member sponsors one subscriber within 30 days then the first such subscriber who brings in another one would be entitled to Rs. 30,000/-
3. Similarly, if one gets three such subscribers within 30 days, he would be entitled to Rs. 1 lac.
4. If one gets six subscribers within 30 days, he would earn Rs. 3 lacs. If one gets 12 such subscribers then he would get Rs. 10 lacs.
5. One can earn upto Rs. 10 lacs and commission from 10% to 46 % by sponsoring few members to the company.
6. The company was operating in different parts of India.

The investigation by the police revealed that the scheme floated by the company is nothing but a fraudulent pyramid style marketing scheme, which required endless stream of recruits to succeed. It involves an internal re-distribution of wealth from new to old entrants and no substantial trading in products or services takes place. The scheme of the company was not feasible as if one person enrolls six down line members and in turn each of them further enrolls six each, then at the twelfth level the number of persons enrolled becomes 200 crores. The company was not registered with Reserve Bank of India as a non-banking financial institution. The promoters and directors of the company induced the victims, collected money from them in the shake of membership fees, cheated them by making false promises and misappropriated the money of the investors and ran away by closing down their offices. The company had collected crores of rupees from the lacs of its members.

Caution for the general public

You should always remember that there is no free lunch and there is some catch when the money is claimed to be earned so easily and quickly. Therefore, they should be vigilant and should not enroll themselves into Multi Level Marketing Companies, Money Circulation Schemes, Network Marketing Companies and other such Companies and such schemes and get cheated. The general public should not encourage these types of schemes by enrolling themselves into the schemes and encouraging or enforcing others (mostly their friends & relatives) to join the scheme. You can play a very vital role and help the investigating agencies to curb such menace and nip it in the bud before it engulfs the gullible Public. In case you or any of your friend, relative is victim of such dubious MLM schemes, you may complaint against companies and promoters of such schemes to your nearest Police Station. It is to be noted that all the offences under the Act are Cognizable. Under Section 7 of the Act, a police officer not below the rank of an officer in charge of a police station can enter, if necessary by force, by day or night,

any premises which he has reason to suspect, are being used for purposes of conducting or promoting any money circulation scheme. He can search such premises and take into custody any person and produce before a Judicial Magistrate all such persons who have been concerned with the use of such premises connected with the promotion or conduct of any money circulation scheme. He can seize all things found in the premises, which are intended to be used, or reasonably suspected to have been used, in connection with any money circulation scheme. Under Section 8 of the Act the State Government can forfeit any newspaper or publication containing any material connected with the promotion or conduct of money circulation scheme.

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