

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4180/2002**

**Date of Decision: 09.09.2009**

SQN. LDR. P.J.B. KHURANA (Retd.) & ORS. .... Petitioners  
Through None.

versus

STATE & ANR. .... Respondents  
Through Ms. Santosh Kohli, APP.

**CORAM:**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

: **MOOL CHAND GARG,J**(*Oral*)

1. This is a petition filed under Section 482 Cr.P.C. against the impugned order passed by the Additional Sessions Judge dated 23.09.2002, who was pleased to dismiss the revision petition filed by the petitioner against the order framing charges against them under Sections 341/384/506/34 IPC by the Metropolitan Magistrate vide his order dated 05.12.2001.

2. Briefly stating, the facts of the case are, that the complainant, Sh. Atul Aggarwal in his complaint dated 16.06.1998 alleged that he was forced to deliver a cheque of Rs.20,000/- of current date and other post dated cheques amounting to Rs.40,000/- to the accused persons in favour of the Members  
Crl.M.C.4180/2002

of a Managing Committee of Society, namely, Nagarjuna Co-operative Group Housing Society Ltd. for becoming a member of the said Society as the entry fee, which was over and above the charges payable for the membership of the said Society. It is the case of the complainant that to force him, the accused persons even disconnected the water supply of his flat bearing No. E-403 and it is for that reason that he filed the complaint.

3. The trial Court has taken note of the circular issued by the then Registrar, Co-operative Societies dated 14.12.1999 which clearly goes to show that charging of entry fee by the Group Housing/House Building Society was illegal and is not supported by the provisions of Act and Rules.

4. The complainant also placed on record photocopies of the letters dated 05.03.1998, 15.04.1998 and 09.05.1998, written to the complainant by the accused G.S. Bedi in his capacity as a Secretary and two letters written by the Administrative Officers of the aforesaid Society which go to show that the complainant was being pressurized to deposit the amount of Rs.60,000/- as entry fee and was also threatened with some action against him on his failure to deposit the aforesaid amount and it was on that basis that the complainant filed a complaint which resulted into filing of a challan against the accused persons under Sections 341/384/34 IPC. Since there was threat extended to the complainant by the accused persons for forcing him to meet the illegal demands charged under Section 506 IPC was also made out vide order dated 05.12.2001.

5. I have gone through the order passed by the learned ASJ who has taken note of all these facts while dismissing the revision filed by the petitioners. Some of the observations made by the learned ASJ, which gives

the reasons for which the revision petition was dismissed, are reproduced for the sake of reference:

“4. The conduct of the complainant in stopping the payment of cheque and filing civil suit lend support to his version that he gave the cheque under tremendous pressure and protest. Compromise, if any, in the civil suit does not wipe out the offence. Offence u/S 384 and 506(ii) IPC are non-compoundable. The contention of the petitioner that they were not present at the spot and did not give any threat cannot be decided at this stage. The same is a matter of evidence. Probative value of statement cannot be seen at the stage of charge as per decision of the Hon’ble Supreme Court in AIR 1996 SC 1744 and 2001(1) AD SC 1560.

5. To my mind third provision to rule 34A lays down that first Registrar has to fix and notify the transfer fee and only then the society can charge the same. I am unable to accept the argument that this rule empowers the society to charge transfer fee without there being any notification from the Registrar. The counsel for the petitioner wanted me to hold that so long as there is no notification from the Registrar, the society is free to charge any amount it likes. The argument does not appeal to mind. Recently Division Bench of our own Hon’ble High Court held in CW 524/1998 decided on 09.08.2002 that charging of entry fee is illegal.

6. At this juncture, I may mention that rule 77 empowers the Registrar to issue such directives as he considers necessary for successful conduct of the business of cooperative society. Vide letter dt. 14.12.1999 referred to above the Registrar directed the society not to charge any entry fee from the persons eligible for taking possession of the flat in the society. This directives debar the society from charging amount permitted by third proviso to rule 34A. This letter is subsequent in time to insertion of third proviso to rule 34A and has the effect of superseding the said proviso. Bye laws of the society cannot over ride the Act and the Rules.

7. Yet another arguments raised by the counsel for the petitioner is that there is no allegations of force or threat and so ingredient of Section 384 IPC are not fulfilled. I am unable to follow. Section 384 IPC does not require instant fear of death or injury. The same is required only in Section 386 IPC which is aggravated from Section 384 IPC. Giving impression that membership would not be transferred, transferee would not be allowed to live peacefully and enjoy the water supply is insufficient threat of prospective injury.

8. Lastly, the counsel for the petitioner submitted that challan was for offence u/s 341/384/34 IPC only whereas the Id. MM added Section 506 IPC also in over jealousy. The argument is untenable. The Court is not bound by provision of law mentioned in the charge sheet. The allegations in the

complaint do contain threat and make out an offence of criminal intimidation.

9. For the foregoing reasons the revision fails and is dismissed.....”

6. Nothing has been brought to my notice as to how this petition can be entertained which is in the nature of second revision and is clearly barred by the provisions contained under Section 397(3) Cr.P.C. and which reads as under:

**“397. Calling for records to exercise powers of revision.**

1. xxxx
2. xxxx
3. If an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

7. In the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr. (2005) 2 SCC 571, the Apex Court observed as under:

5. It may also be noticed that this Court in Rajathi v. C. Ganesan (1999) 6 SCC 326 said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

8. This Court has also taken a similar view in the judgments passed by this Court in the cases of Chander Bose Vs. Ved Prakash & Ors. 2009(4) AD

(Delhi) 20 and Gajraj Singh Tomar Vs. State & Ors. 2009 (3) AD (Delhi)  
741. wherein this Court has taken the view that unless and until exceptions  
circumstances arise and miscarriage of justice is shown, which makes out a  
case for interference by this Court in exercise of its powers under Section  
482 Cr.P.C. are brought to the notice of the Court, the second revision  
petition cannot be entertained.

9. The matter has been called twice but nobody has appeared for  
petitioner. Even a perusal of the petition does not show as to what are the  
special circumstances which require interference by this Court under Section  
482 Cr.P.C.

10. Accordingly, the petition is dismissed as it is without cause of action.

11. Interim orders stand vacated.

12. Parties to appear before the Trial Court on 03.11.2009.

13. The trial Court shall proceed with the matter expeditiously and in  
accordance with law.

**MOOL CHAND GARG,J**

SEPTEMBER 09, 2009  
anb