* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: April 08, 2015*
*Pronounced on: May 05, 2015*

\+ **CRL.M.C.2577/2014 & Crl.M.A.8678/2014**

G.S. GAINI & ORS. .....Petitioners
Through: Mr. Suhail Malik, Mr. Vikas Malik and Mr. Vivek Jaiswal, Advocates

versus

SANJAY CHIRIPAL ..... Respondent
Through: Mr. Harish Pandey, Mr. Manish Kumar and Mr. Mayak Upadhyay, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

## J U D G M E N T

Petitioners are the erstwhile Office Bearers of *Riviera Apartment Owners Housing Co-operative Society (hereinafter referred to as 'the Society')* who have been summoned as accused in a Criminal Complaint for the offences under Sections 406/409/477A read with Section 120-B of IPC on the allegations of falsification of accounts of the Society and for misappropriation of Society's funds.

Summoning order of 31st March, 2012 was assailed by petitioners by way of a criminal revision petition which stands dismissed vide impugned order of 9th December, 2013. The factual background, as noticed in the impugned order, is as under: -

> *"Brief facts leading to the present revision are that the revisionist were the members of the Managing Committee of Riviera Owners Co OP Housing Society Ltd. (hereinafter called as Society) which is registered under the provisions of Delhi Cooperative Societies Act. The complainant is one of the member of the Society, as he is having a flat bearing no.N-1 in the Complex of the society. It is the allegation of the complainant/ respondent against the revisionist that they have misappropriated the funds of the Managing committee for which audit of the accounts of society, under Rule 80 of Delhi Co-operative Societies Rules, 2007 was conducted for the period 2006, 2007, 2008 and 2009. Thereafter special audit report dt. 26.02.2010 for the period 2006 to 2007 and special audit report dt.19.05.2010 for the period 2007 to 2008 was submitted by the Auditor before the office of Registrar (hereinafter called as RCS). It is the case of the complainant/ respondent that as per the Audit reports submitted, many misappropriations committed by the Members of the Managing Committee during the period of 2006-2008 had surfaced as there are many entries for which there are no bills or vouchers and even the funds of the society were misappropriated by the revisionist for their personal benefits, specially for contesting the bail application of the revisionist. It is also the case of the complainant / respondent that out of the funds of the society, some cheques were issued in the name of persons who were neither the members of the society nor the employees of the society."*

In this petition, quashing of complaint No.21/1 *(Annexure P-1)* for the prosecution of petitioners for the aforesaid offences, summoning order *(Annexure P-2)* as well as the revisional court's order *(Annexure P-3)* is sought by learned counsel for petitioners on four grounds, which are as under: -

(i) That the courts below has failed to appreciate that the Special Audit Reports of Society for year 2006-2007 and year 2007-2008 have not attained finality as these Special Audit Reports have not been accepted by the office of RCS.

(ii) That Section 140 of *the Delhi Co-operatives Societies Act, 2003 (hereinafter referred to as 'DCS Act')* bars the taking of cognizance of the complaint in question as it pertains to falsification of records and misappropriation of societies' funds, which is expressly punishable under Section 118 of the *DCS Act*.

(iii) That Section 128 of the *DCS Act* expressly provides that the Office Bearers of the Cooperative Society are deemed to be the public servants within the meaning of Section 21 of IPC.

(iv) That Section 121 (2) of the *DCS Act* mandates without previous sanction of the Registrar of the Cooperative Societies, there cannot be any prosecution of the office bearers of the Society.

At the hearing, learned counsel for petitioners had placed reliance upon decisions in *Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.* (2013) 10 SCC 705; *State of Uttar Pradesh Vs. Paras Nath Singh* (2009) 6 SCC 372;

*General Officer, Commanding Vs. CBI* (2012) 5 SCR 599; *Subramanium Swamy Vs. Manmohan Singh* (2012) 3 SCC 64; *Anjani Kumar Vs. State of Bihar* (2008) 5 SCC 248; Crl. M.C. No. 353/2009 *Omveer Singh & Anr. Vs. State & Ors. decided on 17th February, 2014*; Crl. M.C.No.3422/2012 *Laxmi Narain Vs. Krishan Kumar & Anr. decided on 3rd January, 2014* and Crl. M.C.No.1506/2008 *R.V.Ahirwal Vs. K.K. Sachan & Anr.* decided on 3rd January, 2014 to contend that for criminal prosecution of petitioners, who are deemed to be public servants, prior sanction under Section 197 of Cr.P.C. is mandatory and in the instant case, respondent-complainant, who had already filed more than 50 civil/criminal cases against petitioners, has not obtained the mandatory sanction and so, impugned complaint and the summoning order deserve to be quashed.

To the contrary is the submission of learned counsel for respondent-complainant, who has placed reliance upon decisions in *Ajit Kr. Chakraborty Vs. State of West Bengal* 1999 Crl.J. 4636; *Waman Sambharjirao Duka Vs. Narhari Sambhajirao* AIR 1968 Bombay 124; *State of Uttar Pradesh Vs. Paras Nath Singh* (2009) Cri.L.J. SC 3069; *Om Kr. Dhankar Vs. State of Haryana* (2012) 3 SCALE 363; *Bholu Ram Vs. State of Punjab & Anr.* (2008) Cri. L.J. SC 4576 and *Chandan Kumar Vs. Basu Vs. State of Bihar* VI (2014) SLT 358 to contend that power of quashing the criminal proceedings at the summoning stage should be very sparingly exercised and in rarest of rare cases.

It was submitted on behalf of respondent-complainant that at this stage, the Special Audit Report can be relied upon and its approval by the

Registrar of the Cooperative Society is required to be considered at the stage of framing of the charge. It was further submitted that the *DCS Act* bars the initiation of civil/revenue proceedings, but not the criminal proceedings and so, the availability of the remedy under the *DCS Act* is no ground to quash the criminal proceedings. It was asserted by learned counsel for respondent that no prior sanction for prosecution of petitioners is required as the cheating or misappropriation has not been done by petitioners in the discharge of their official duty. Lastly, it was submitted that no sanction for the prosecution of the public servants for the offence under Sections 406/409/420 of IPC is required.

During the course of hearing, attention of this Court was drawn to an order of 19th July, 2008 of Registrar of Cooperative Societies vide which representation of respondent herein was disposed of by speaking order. Respondent's prayer for initiating proceedings under Sections 66/118 of the *DCS Act* and of grant of sanction under Section 121 of the *DCS Act* was declined by the Registrar of Cooperative Societies by observing that no criminality on the part of the Managing Committee has yet been established and the main object of the complaints against the Officer Bearers of the Society was to remove the Officer Bearers and that objective has been achieved as the Office Bearers of the Society have resigned. Pertinently, respondent herein had also filed an Arbitration case relating to the Special Audit Reports of the Society in question and the Award passed directs petitioners to reimburse ₹15,000/- jointly and severally to the Society in question and other claims of respondent herein were rejected.

Whether the Arbitral Award of 17th January, 2015 and the order of 19th July, 2008 of the Registrar, Cooperatives Societies have attained finality or not, was not brought to the notice of this Court and so, what impact the aforesaid Arbitral Award or the order of 18th July, 2008 would have on the criminal case is required to be considered by the trial court at the charge stage, as the factual position would become much clearer after the pre-charge evidence is recorded because both the sides would have an opportunity to effectively present their case at the said stage.

Upon hearing and on perusal of the impugned order, the complaint in question, the material on record and the decisions cited, I find that in *Chandan Kumar (supra)*, it has not been declared that no sanction for the offence under Sections 406/409/420 of IPC is required. It has been held in *Chandan Kumar (supra)* that the employees of the corporation would not be governed by Clause 12 (b) of Section 21 of IPC. However, the question of sanction was left open as was not required to be considered at the initial stage.

In the considered opinion of this Court, the question of sanction raised by petitioners is not required to be adjudicated upon at the summoning stage, but it would certainly fall for consideration at the stage of framing of charge. Summoning of petitioners as accused in the criminal complaint in question is on the basis of Special Audit Reports cannot be faulted with because the question of approval/acceptance of these Special Audit Reports by the Registrar of Cooperative Societies is an aspect which is not in the hands of respondent-complainant. However, at the charge stage, the question of approval/acceptance of Special Audit Reports is certainly required to be considered.

In the facts and circumstances of this case, it is deemed appropriate to direct the Registrar of Cooperative Societies to either approve/accept the Special Audit Reports on the basis of which petitioners are sought to be prosecuted in the complaint in question or to not accept these Special Audit Reports, within a period of three months from today, if already not accepted or rejected.

In the afore-said view of this matter, while refraining to quash the complaint in question and the summoning order, this petition is disposed of while leaving the question of obtaining of mandatory sanction under Section 197 of Cr.P.C., open to be considered by the trial court at the charge stage. While taking note of the peculiarity that respondent complainant has already lodged 50 civil/criminal cases against petitioners and the fact that petitioners are senior citizens, the petitioners are permitted to appear before the trial court through their counsel, who shall not seek unnecessary adjournments. This temporary exemption granted to petitioners shall continue till the order on charge is passed by the trial court.

This petition and the application are accordingly disposed of.

**(SUNIL GAUR)**
**JUDGE**

**MAY 05, 2015**
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