

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

+ **CRL.M.C. 3768/2012**

% Reserved on: 29th September, 2016

Decided on: 7th October, 2016

MANGE RAM JAIN & ORS.

..... Petitioners

Represented by: Mr. Fanish K. Jain, Adv.

versus

JATINDER KUMAR JAIN

..... Respondent

Represented by: Mr. Subhiksh Vasudev, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 3rd August, 2012 summoning the petitioners Mange Ram Jain, Sanjiv Jain, Umesh Jain, Ashish Jain, Deepak Jain and Harish Chander Kaushik on the complaint of respondent for offences punishable under Sections 430/34 IPC and petitioner No.2 Sanjiv Jain additionally for offence punishable under Section 506 IPC, the petitioners prefer the present petition.

2. Respondent filed a complaint before the learned Metropolitan Magistrate stating that petitioner Harish Chander Kaushik had been appointed as Administrator of the Atma Vallabh Cooperative Group Housing Society (in short 'the Society') for the last six months and there were certain issues between the society and the complainant which were substantially settled and the complainant made payment of ₹72,680/- towards outstanding amount of home loan with DCHFC. However the petitioners ganged up together to create circumstances so that the complainant was left with no

option but to sell his house. It is alleged that inspite of paying water boring charges of ₹1000/- in March, 2010 and also the monthly maintenance charges of ₹700/-, on 11th October, 2010 the petitioners disconnected the water supply of the complainant's flat thus depriving him even of the basic daily activities like bathing etc and they had to go to their relatives nearby. On 28th October, 2010 when the complainant met the Administrator, he informed that there are certain dues of DCHFC towards home loan which had to be cleared and till then the water connection of respondent could not be restored. It is alleged that the Administrator lightly said "Dues to bahana hai, tereko nikalna hai". Further allegations against petitioner No.2 Sanjiv Jain are that on 1st November, 2010 around 8.00 AM in the morning he came to the flat of the complainant and stated that he was a Central Government officer and was right hand of Shri Lal Krishna Advani, thus he would get the respondent involved in a false case and he would spend rest of his life in Tihar jail as he would use his good connection with local police. The complainant examined himself on oath and reiterated the allegations made in the complaint.

3. Learned Metropolitan Magistrate noting the provisions of Section 430 IPC found prima facie sufficient material to summon all the petitioners under Sections 430/34 IPC and Sanjiv Jain also for Section 506 IPC.

4. The contention of learned counsel for the petitioners is that admittedly even on the documents filed by the respondent along with the complaint, there is an admission that there is dispute about dues towards the respondent. Further a status report was called by the learned Trial Court from the police which informed that up to date liability of the complainant was ₹3,82,665/- including the loan liability of DCHFC Bank amounting to ₹17,503/- and

complainant was issued a notice for recovery of maintenance charges of ₹3,58,222/- on 29th November, 2005 which he had duly received. Despite calling the complainant for settling the dues towards water consumption, he failed to appear. It was clarified that drinking water was supplied by Delhi Jal Board and was not boosted through the booster pumps thus the complainant was availing drinking water supply which was not disconnected and only the water which was used for cleaning purposes was discontinued.

5. Learned counsel for the petitioners further submits that essential ingredients of Section 430 IPC i.e. “mischief” were missing and thus petitioners could not have been summoned under Sections 430/34 IPC. Moreover, petitioner No.6 Harish Chander Kaushik was the Administrator and thus under Section 128 of the Delhi Cooperative Societies Act, 2003 (in short ‘the Act’) he was a public servant. Under Section 30 of the Act he had the power to control the affairs of the society. Since petitioner No.6 was appointed under Section 37 of the Act as Administrator of the society without any sanction under Section 197 Cr.P.C. he could not be prosecuted.

6. This Court need not delve into the aspect whether proceedings can continue qua petitioner No.6 since he was the Administrator for the reason that even on the complaint of the respondent though it is stated that the outstanding dues were cleared however, there is an admission of default in payment of the charges. Whether the dues are still pending or not is an issue of civil liability. Section 425 IPC which defines “Mischief” provides as under:-

“425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or

diminishes its value or utility, or affects it injuriously, commits "mischief". Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly."

7. Thus one of the essential ingredients of the offence of "Mischief" is 'wrongful loss or damage to any person by causing destruction of any property or making a change which diminishes its value.' As noted above, the dispute between the parties was with regard to the dues towards the complainant which was an admitted fact and even on an erroneous calculation thereof temporary disconnection of the supply would not cause either destruction of the property or diminishing its value. Calcutta High Court in the decision reported as 1969 CrL.L.J. 242 (Vol. 75, C.N.57) H. Khan Vs. V.M. Arathoon & Anr. while dealing with a case where the opposite party switched off the current to the complainant's installation in the garage and denied him the current which was subject matter of the complaint, upheld the order of the Chief Presidency Magistrate who dismissed the complaint as under-

"It appears that the electric supply line has been disconnected. Mere disconnection of the electric supply without any change in the 'corpus' of the property (of which there is no dependable indication) does not constitute mischief. The complaint be dismissed under S.203 of the Code of Criminal Procedure."

8. In an unreported decision of the Calcutta High Court in Criminal Revn. No.1441 of 1962 (Cal.) Samir Kumar Ganguly vs. Joynarain

Agarwalla, it was held that disconnecting the electric supply does not amount to destruction of property and that it does not also amount to bringing about such a change as destroys or diminishes its utility or value, for, as soon as connection is restored, the electric supply will be resumed.

9. Thus on the basis of the averments in the complaint itself, the necessary ingredients of the offence of “Mischief” as defined under Section 425 IPC are missing. Consequently, the impugned order summoning the petitioners under Sections 430/34 IPC is required to be quashed.

10. As regards Section 506 IPC qua Sanjiv Jain is concerned, on the averments in the complaint and the deposition of the complainant, element of threat is made out which could have caused alarm to the complainant. Hence I find no reason to recall the summons issued to petitioner No.2 Sanjiv Jain for offence punishable under Section 506 IPC.

11. Petition is disposed of, quashing the summons issued against the petitioners for offence punishable under Sections 430/34 IPC only.

(MUKTA GUPTA)
JUDGE

OCTOBER 07, 2016
‘v mittal’