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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 26th February, 2019

\+ CRL.M.C. 3739/2016

SUMER CHAND GUPTA & ORS ..... Petitioners
Through: Petitioner no.1 in person

versus

C B I ..... Respondent
Through: Mr. Sanjeev Bhandari, SPP with Mr. Prateek Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The Central Bureau of Investigation (CBI) had registered first information report (FIR) no. RC06/2006-EOU-IX, New Delhi on 02.11.2006 and took up investigation into offences allegedly committed under Section 120B read with Section 420, 468, 471 of Indian Penal code, 1860 (IPC) and substantive offences under Sections 420, 468, 471 IPC. Upon conclusion of investigation, a report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.PC) was submitted in the court of the Chief Metropolitan Magistrate (CMM) seeking trial of the petitioners for the aforementioned offences. The CMM took cognizance and issued process after securing the presence of the petitioners and in compliance with the provision of Section 207 Cr. PC, the question of charge was considered. By order dated 07.10.2013, the CMM found

no case for charge made out, he, *inter alia*, observing that the opinion of Government Examiner of Questioned Documents (GEQD) was only a piece of corroborative evidence and there was no substantive evidence available. The petitioners were thus discharged. But, the said order was challenged by the CBI in the court of Sessions by Crl. Revision No.150/2015, the petitions having been allowed by order dated 22.03.2016, the revisional court, *inter alia*, opining that crucial evidence had been glossed over, the approach of the CMM to minutely scrutinize the evidence at the stage of consideration of charge being improper. The order of discharge was set aside by the revisional court by order dated 22.03.2016, the matter being remanded back to the CMM for framing of charges.

2. The petitioners challenged the above mentioned order of the revisional court by the present petition invoking the inherent power and jurisdiction of this court under Sections 482 and 483 of the Cr. PC read with Article 227 of the Constitution of India.

3. When the petition came up for the first time before the court on 04.10.2016, interim relief was granted to the petitioners permitting them to appear before the trial court through counsel. The said order was extended by the subsequent order. The petition, however, came to be dismissed in default on 01.08.2018, there being no appearance on the part of the petitioners. On the application (Crl. M.A. 31778/2018) the petition was revived, by order dated 11.09.2018, subject to deposit of cost of Rs.20,000/- with Delhi High Court Legal Services Committee. The matter thereafter came up for hearing on the main

petition on 03.12.2018, when one of the petitioners was present seeking adjournment. The matter was adjourned on that day with caution that there shall be no further adjournment.

4. Once again, the first petitioner is present today only to seek an adjournment on the ground that his counsel is again not available. This cannot be permitted to go on.

5. Having heard and having gone through the record, this court finds no merit in the contentions raised in the petition. The revisional court has noted the prosecution case succinctly as under :-

> *"15. The case of prosecution is based on documentary as well as oral evidence. As per allegations made in the charge sheet, respondent Sumer Chand Gupta became member of Sri Durga CGHS even when he was not eligible and he had given false affidavit for membership. He is alleged to have forged signatures of 22 persons in the Enrollment Forms and Membership Register. He is also alleged to have been able to take over the affairs of the society in 1997 by introducing 33 members against the existing vacancy which included himself, his family members, relatives and friends. He is also alleged to have filled up the Enrollment forms, forged signatures of so called members in the election Register, got his son Sachin Gupta elected as President, daughter Shipra Gupta as Treasurer and Vijay Kumar Bansal as Secretary of the society. He is further reported to have paid 35% cost of the land to DDA through respondent Vijay Kumar Bansal by raising loans from friends / private financial institutions. Respondent Sumer Chand Gupta in conspiracy with respondent Sachin Gupta and*

Shipra Gupta is alleged to have issued cheques to 22 fraudulent members. He is further alleged to have forged signatures of the members in the Nomination Forms and Election Proceeding Register, took resignation of 92 old members and paid their deposit money himself by way of cheques and cash. He is also alleged to have never submitted the documents to the RCS or to the members regarding the society such as books of accounts, resignations / enrollment etc. IO of the case has recorded statement of several witnesses under section 161 Cr. PC to prove the allegations against respondent Sumer Chand Gupta. The main witnesses are Dr. Biswanath Kundu, Dilip Kumar Banerjee, Anita Bansal, Ashish Gupta, Ashok Kumar Gupta, Ashok Kumar, Balesh Gupta, Kamal Bansal, Kamlesh Gupta, Kishan Chand Gupta, Kusum Gupta, narender Kumar Jain, Nirmal Gupta, Promod Kumar Gupta, Prashant Sharma, Raj Rani, Ram Niwas Singla, Satish Kumar Gupta, Surender Kumar Gupta, Surender Kumar, Vijay Kumar Bansal, Vinod Kumar Gupta, Vipul Singla, Y. Surya Prasad, A Bimla Swami, Bikas Jyoti Bhatacharya, Suhrit Kumar Ghosh, Subra Ganguly, Amitava Dutta, B.N. Neogi, Prashant Kumar Basu, N.C. Mondal, Anirudh Ray, Suranjit Deb, Dilip Sarkar, Kaushik Ray, Sisir Das, L.K. Dutta, J.K. Mitra, Arpan Kumar Das, D.N. Ghosh, Dilip Kumar Banerjee, Dr. B.N. Kundu, Ajay Gupta, S.S. Gaur, Handuba, Rajbir Singh, Ravinder and Anish.

16. The prosecution witnesses namely Ashish Gupta, Pramod Kumar Gupta, Vinod Kumar Gupta, Kamal Bansal, K.C.Gupta, Raj Rani, Kamlesh Gupta, Balesh, Surender Kumar, Ram Avtar, Satish Kumar and Ashok Kumar have denied and stated that they were not *members of the society and they also did not receive any amount from the society. The witnesses namely Nirmala, Anita, Prashant Sharma and Kusum have denied their signature in the Nomination Forms of Sumer Chand Gupta, Sachin Gupta, Shipra Gupta, Prashant Sharma, Anita, Shilpi Gupta and Ramesh Chand Gupta in the Election File.*

17. Allegation against respondent Sachin Gupta is that he was elected President of the society on the basis of elections conducted in 1998 in conspiracy with his father Sumer Chand Gupta, sister Shipra Gupta and maternal uncle Vijay Kumar Bansal. He is alleged to have paid 65% cost of the land to DDA and had been corresponding with the DDA about the land allotment and took possession of the land in 2000. He is also alleged to have signed various registers of the society containing the forged signature of fraudulent members. As per the case of CBI, respondent Sachin Gupta was not eligible to become member of the society as his wife Divya Jain was member of another CGHS Society namely Martand Society. He is alleged to have issued 22 cheques from the account of society to 22 fraudulent members of the society in the capacity of President of the Society. The IO enquired a number of witnesses and recorded their statement u/s. 161 Cr. PC., who have stated that they were not members of the society and also did not receive any payment from the society.

18. Allegation against respondent Shipra Gupta is that she was elected as Treasurer of the Society in 1998 on the basis of elections conducted in conspiracy with her father Sumer Chand Gupta, brother Sachin Gupta and maternal uncle Vijay Kumar Bansal. She is alleged to *have taken over the affairs of the society in conspiracy with other respondents by introducing 27 fraudulent members. She is also alleged to have issued cheques from the account of society in the capacity of Treasurer in the name of 22 fraudulent members.*

19. As per case of CBI, respondent Vijay Kumar Bansal was part of a team of respondent Sumer Chand Gupta and he was elected as Secretary of the Society in 1998. He is alleged to have accompanied Sumer Chand Gupta when fraudulent members were introduced in the society. He is alleged to have been actively involved / associated with the affairs of the society as Secretary and forwarded payment of Rs.1.34 Cr. to DDA for payment of 35% cost of the land allotted to the society. He was also partner of Antriksha Construction Company which was awarded constructed work of the boundary wall of the society.

20. The GEQD reports reveal that the documents were allegedly forged by respondent Sumer Chand Gupta. His signature has matched on document D-9 i.e. resignation cum receipt of deposit money of 92 old members, DDA File, record of Central Bank of India and cheques seized from OBC.

21. As per the case of the prosecution, documents of the society relating to resignation and enrolment of new members were never submitted for verification in RCS Office for the purpose of approval. Section 40 of the Delhi Co-operative Societies Act, 2003 (hereinafter to be referred as "The DCS Act") prescribes the manner as to how any member of a co-operative society can be expelled. Section 86 of the Act provides the ground of expulsion of a member. Chapter III of the Delhi Co-

operative Societies Rules pertains to members of Co-operative Society and their rights and liabilities. Rule 19 prescribes the conditions to be complied with for admission to membership. The new members were introduced / admitted and resignation of old members were taken in flagrant violation of the rules and regulations as contained in The DCS Act. The act of respondents do not only point out to the irregularities allegedly committed by them in violation of the provisions contained in The DCS Act but also amount to criminal action. As the documents itself were forged for the purpose of induction and expulsion of the members of the society and for the purpose of election, therefore, their act is punishable under the provisions of IPC."

6. Having regard to above facts and evidence gathered in support, this court endorses the view taken by the revisional court that the minute scrutiny undertaken by the CMM to direct discharge of the petitioners was inappropriate and uncalled for. The evidence *prima facie* supporting the case to the above effect cannot be overlooked. There is sufficient evidence available to support the allegations of forgery and other acts of commission and omission leading to the offences allegedly having been committed.

7. The petition is dismissed.

R.K.GAUBA, J.

FEBRUARY 26, 2019
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