



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Order: 18th April 2022**

+ **CRL.M.C. 2106/2013**
CENTRAL GOVERNMENT EMPLOYEES RESIDENTS
WELFARE ASSOCIATION Petitioner
Through: Mr. Sameer Chandra, Advocate

versus

NETERBALLABH & ORS Respondent
Through: Mr. Atul Kharbanda, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition filed under Section 428 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") read with Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking following reliefs:-

"a) Pass an order for quashing of impugned order dated 08/03/2013 passed by Shri Vijay Kumar Dahiya, Additional Sessions Judge, Dwarka Courts, New Delhi, in Criminal Revision No.81/12 in the case titled as "Central Govt. employees Vs. Neterballabh & Ors" whereby the Learned Sessions Judge upheld the order dated 22.05.2012 of dismissal of complaint passed by Shri Tarun Yogesh, Metropolitan Magistrate-01, Dwarka Courts, Delhi in Complaint Case No.3611/2011 of P.S. Delhi Cantt. titled as Lalit Kumar Tiwari Vs.



Neterballabh & Ors" filed under section 200 of the Code of Criminal Procedure, 1973 for commission of offences punishable under section 420/467/468/471/474/120-B/34 of Indian Penal Code, 1860, in the interest of justice;

b) Pass an order for quashing of the order dated 22.05.2012 of dismissal of complaint passed by Shri Tarun Yogesh, Metropolitan Magistrate-01, Dwarka Courts, Delhi in Complaint Case No.3611/2011 of P.S. Delhi Cantt. titled as Lalit Kumar Tiwari Vs. Neterballabh & Ors" filed under section 200 of the Code of Criminal Procedure, 1973 for commission of offences punishable under section 420/467/468/471/474/120-B/34 of Indian Penal Code, 1860, in the interest of justice;

c) The Learned Trial Court may kindly be directed to take the cognizance of commission of offences punishable under Section 420/467/468/471/474/120-B/34 and 406 of Indian Penal Code, 1860 and under other relevant sections of the Indian Penal Code, 1860, to issue summons to the respondents and try the criminal complaint bearing No.3611/11 of Police Station Delhi Cantt filed under section 200 of Code of Criminal Procedure, 1973 against the respondents in accordance with law;..."

2. The brief facts of the case are that the petitioner is the Central Government Employees, Residents Welfare Association, Delhi Cantt., which was recognized by the Government of India, Ministry of DOPT and registered under the Society Registration Act, 1960 and was having grant in aid from Government of India. The instant petition is filed by the Association through its President, who was legally authorized to initiate legal action by the members of Association in the General Body Meeting held on 3rd April 2011 as per their bylaws. Petitioner was further empowered to initiate legal actions against the misholdings and



illegalities committed by the respondents on the letter head of Resident Welfare Association (RWA).

3. The respondents proposed to celebrate Independence Day in the year 2010 but the petitioner refused to do so on account of shortage of funds in terms of the managing committee meeting held on 8th August 2010. On 12th October 2010, respondent No.4 got printed 2000 pamphlets and 5 bills from Headquarters Delhi Area, Printing Press, Delhi Cantt in the name of complainant organization without their consent and permission. On 9th January 2021 and 16th January 2021, respondents were given an opportunity to explain under what circumstances they have got printed cash receipt books and collected money in the name of the organization of the petitioner but the respondents left the meeting without being given an explanation. The petitioner Association submitted the report of the above said incident to the Chief Welfare Officer, Ministry of DOPT. It is alleged that the respondents continuously used the letter head of the petitioner Association and collected a sum of Rs.25,100/-for making members in the petitioner's Association.

4. On 3rd April 2011 the General Body Meeting was held and as per their bylaws, the decision was taken by 123 members to initiate criminal proceedings against the respondents. On 19th May 2011, a written complaint under Section 200 of Cr.P.C. was instituted by petitioner against the respondents. The petitioner examined himself as CW-1 in the Court. Vide order dated 22nd May 2012, complaint under Section 200 of the Cr.P.C. was dismissed by the Court below. On 8th June 2012, the petitioner filed a revision petition before the Revisional Court against the



order dated 22nd May 2012 passed by learned Metropolitan Magistrate, Dwarka Courts, Delhi (hereinafter “MM”). Vide order dated 8th March 2013, the criminal revision petition bearing CR No. 81/12 was dismissed by Additional Sessions Judge (hereinafter “ASJ”).

5. Hence, the instant petition under Section 482 of Code of Criminal Procedure, 1973 is filed.

6. Learned counsel for the petitioner submitted that the Court below has passed the impugned order arbitrarily, without application of judicious mind. It is also argued that the Court below has also failed to appreciate the fact that respondent did not give complete accounts with details of expenditures and the bills of purchase of articles. Rather the hand written vague account containing expenditure since March 2010 was submitted to the office of the Association, which caused wrongful gain to themselves and wrongful loss to the Association. Further, it is submitted that the Court below failed to appreciate that the respondents collected money and misappropriated the same. The money which was collected from the members of RWA was on forged and fabricated cash receipts and the members who contributed money were not aware that the respondents were collecting money without any authorization. Learned counsel further submitted that the act of the respondent was to cheat the public at large on the name of RWA and collected money on the forged and fabricated bills and receipts.

7. It is argued on behalf of the petitioner that both the Courts, i.e. Court of learned MM and learned ASJ, failed to appreciate that there is



prima facie sufficient evidence on record to summon the respondents for the commission of the offences under Sections 420/467/468/461/474/34/120-B and Sections 406/34 of Indian Penal Code (hereinafter "IPC"). It is further submitted that learned ASJ failed to appreciate that learned MM while dismissing the complaint under Section 200 Cr.P.C. exercised discretion in purely arbitrary manner and therefore the order passed by the Court below is contrary to the settled provision of law. To strengthen his arguments, learned counsel for the petitioner has relied upon following judgments of the Hon'ble Supreme Court:-

- a) ***Shivjee Singh vs Nagendra Tiwary & Ors (2007) 7 SCC 578;***
- b) ***Nupur Talwar vs. CBI & Anr (2013) SCC 465; and***
- c) ***Smt. Nagawwa vs. Veerana Shivalingappa Konjalgi & Ors (1976) 3 SCC 736***

8. Learned counsel for the petitioner submitted that Chapter XIV of Cr.P.C. enumerates contents for initiation of proceedings under Section 190, which forms part of the scheme of the chapter. The Magistrate may take cognizance of any offence either upon receiving a complaint of facts which constitute such offence; upon a police report of such facts; or upon receipt of information from any person other than a police officer or upon his own knowledge that such offence has been committed. Chapter XV and XVI contain various procedure which are required to be followed by the Magistrate taking cognizance such as issue of process, dismissal of complaint, committal of case to Sessions Court when offence is triable



exclusively by it under Sections 200, 202, 203, 204, 205, 208 & 209 which form part of this Chapter.

9. Learned counsel submitted that in view of the above facts and circumstances, the orders passed by the Court below are bad in law and contrary to the judgments of the Hon'ble Supreme Court and therefore, liable to be set aside.

10. *Per Contra*, learned counsel for the respondents submitted that the Magistrate concerned has passed the impugned order dated 22nd May 2012 after considering all the facts of the case as well as after going through the complaint, complainant's deposition recorded under Section 200 Cr.P.C. and report under Section 202 Cr.P.C. filed by SI Mahesh Soni. Therefore, there is no error in the judgment passed by learned MM. The Revisional Court has also after considering the reasoning given by learned Magistrate did not find any error and upheld the impugned order vide order dated 8th March 2013.

11. As per the complainant's own assertions, accused persons had collected money from political persons and members of complainants association upon the pretext of celebrating Independence Day on 15th August 2010. It is also averred in paragraph 12 of the complaint that some cultural programme was organized wherein political persons and officers were invited, though no flag hoisting was held. In complaint it is also contended that accused persons had handed over unused cash receipt book and Rs.18,848/- to Treasurer and similarly, in paragraph 20 of the complaint, it is also submitted that accused deposited a sum of



Rs.25,100/- in the account of Complainant Association. Learned counsel for the respondents submitted that bare reading of the complaint and the statement of the complainant recorded under Section 200 Cr.P.C., there is no offence made out against the respondents for offences punishable under Sections 420/467/468/461/474/34/120-B and Sections 406/34 of IPC.

12. Learned counsel for the respondents submitted that the instant petition is devoid of any merit and same is liable to be dismissed as the orders passed by the Court below were well reasoned and passed after considering the entire facts and circumstances of the case.

13. Heard learned counsel for the parties and perused the record.

14. Chapter XIV of Cr.P.C. enumerates conditions for initiation of proceedings. Under Section 190, which forms part of the scheme of that chapter, a Magistrate can take cognizance of any offence either on receiving a complaint of facts which constitute an offence or a police report of such facts or upon receipt of information from any person other than a police officer or upon his own knowledge, that such an offence has been committed. Chapters XV and XVI contain various procedural provisions which are required to be followed by the Magistrate for taking cognizance, issuing of process/summons, dismissal of the complaint, supply of copies of documents and statements to the accused and commitment of case to the Court of Sessions when the offence is triable exclusively by that Court. Sections 200, 202, 203, 204, 207, 208



and 209 Cr.P.C. which form part of these chapters and which have bearing on the question raised in this appeal read as under:

"200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-



(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall record his reasons for so doing.

204. Issue of process.- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or



(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrates having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint. (5) Nothing in this section shall be deemed to affect the provisions of section 87.

207. Supply to the accused of copy of police report and other documents. - In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) the police report;*
- (ii) the first information report recorded under section 154;*
- (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding there from any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;*



(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused: Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.- Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

(i) the statements recorded under section 200 or section 202, or all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 161 or section 164;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.



209. Commitment of case to Court of Session when offence is triable exclusively by it.-When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

15. An analysis of the above reproduced provisions shows that when a complaint is presented before a Magistrate, he can, after examining the complainant and his witnesses on oath, take cognizance of an offence. This procedure is not required to be followed when a written complaint is made by a public servant, acting or purporting to act in discharge of his official duties or when a Court has made the complaint or if the Magistrate makes over the case for inquiry/trial to another Magistrate under Section 192 Cr.P.C.

16. The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the



complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction.

17. In the instant case, learned ASJ upheld the impugned order dated 22nd May 2012 passed by learned MM. The Magistrate concerned dismissed the criminal complaint filed by the petitioner through its President against the alleged accused i.e. respondents herein after examining the complainant as CW-1 under Section 200 Cr.P.C. and considering the documents/annexures filed alongwith the complaint as Ex.CW1/A to Ex.CW1/O. After his examination under Section 200 Cr.P.C. learned MM directed the SHO of Police Station Delhi Cantt to conduct an inquiry under Section 202 Cr.P.C. before summoning the accused persons. After completion of enquiry under Section 202 Cr.P.C., SI Mahesh Soni filed reports dated 14th November 2021, 20th December 2011 and 30th January 2012. After perusing the complaint, deposition of complainant, report filed under Section 202 of Cr.P.C. and the final arguments/written synopsis filed on record, learned MM passed the following order:-

"11. Accordingly in view of the above said discussion with respect to absence of mens rea to constitute offences alleged against accused persons coupled with suppression of material fact of Complainant Association being a defunct association as on 19/05/2011, complainant's case against alleged accused persons is



dismissed under section 203 CrPC as there is no sufficient ground made out to summon the accused persons as no offence is made out against alleged accused persons on the basis of allegations made in the complaint. The complaint and asseverations made therein atmost disclose dispute between the ex-office members of the Defunct Association with regard to the Independence Day celebrations held on 15/08/2010 which has been mace basis for filing the present complaint against accused persons after approximately 9 months of the alleged dispute. Case file be consigned to record room.”

18. The complainant filed Criminal Revision bearing CR No. 81/12 before the Court of learned ASJ against the aforesaid order dated 22nd May 2012. Learned Sessions Court passed a reasoned order and dismissed the said Criminal Revision upholding the impugned order dated 22nd May 2012 passed by learned MM. The Revisionial Court has reached on the conclusion that as per the material available on record, the complainant has failed to establish that the respondents has committed any offence punishable under Sections 420/467/468/461/474/34/120-B and Sections 406/34 of IPC. The relevant portion of the judgment passed by learned ASJ is reproduced herein below:-

“11. So far as offence of cheating as alleged in the complaint and agitated during the course of arguments is concerned, the Ld. Trial Court has rightly observed in para 7 that respondents have handed over the unused cash receipt books and amount of Rs. 18,848/- to the treasurer and further deposited a sum of Rs. 25,100/- in the account of the complainant association and the said fact is also corroborated by the status report filed by the police. Therefore, the act alleged to have been committed on the part of the accused persons does not smacks of dishonest intention which is the basic



ingredients of the offence of cheating. Therefore dishonest intention appears to be absent right from the beginning in the present case as the respondents have collected the amount in the capacity of the office bearer of the association for organising Independence Day and this fact has also been admitted by the complainant in his complaint. Therefore, I have no hesitation to hold that no offence under section 420 IPC is made out.

12. Now coming to the next contention that respondents have committed forgery in preparing the forged documents but so far as the ingredients of forgery are concerned, there should be a fraudulent intention right from the beginning. Therefore fraud or deceit is the basic ingredient to constitute the offence of forgery. But from the bare averments of the complaint, no offence of forgery is made out as the accused allegedly after collecting the money got deposited the unused cash receipt to the treasurer alongwith remaining amount as well as the amount collected for making the members of the said organisation. Therefore, even from the bare averments of the complaint, no offence of forgery is made out and Ld. Trial Court has rightly observed in this regard in para 9 of the impugned judgment.

13. From the above discussion, I am of the opinion that counsel for the petitioners has failed to point out any illegality in the impugned order. So this petition is devoid of merits and is hereby dismissed.”

19. After going through the entire material on record, I find that the act alleged to have been committed on the part of the proposed accused persons did not smacks of dishonest intention which is the basic ingredients of the offence of cheating. Therefore dishonest intention appears to be absent right from the beginning in the present case as the respondents have collected the amount in the capacity of the office bearer



of the association for organising Independence Day. It is rightly held by both the Court below that no offence under Section 420 of the IPC is made out.

20. In the instant case from a bare perusal of the averments of the complaint it is evident that no offence of forgery is made out as the accused/respondents have collected money, got deposited the unused cash receipt to the Treasurer alongwith the remaining amount as well as the amount collected for making the members of the said organization. Therefore, the Court below has rightly held that no offence of forgery is made out against the respondents.

21. After considering the scheme of the statute, law laid down by the Hon'ble Supreme Court and the facts of the instant case, I do not find any reason to interfere with the impugned order dated 22nd May 2012 by invoking extraordinary jurisdiction under Section 482 of the Cr.P.C. The petition is accordingly dismissed.

22. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 18, 2022

Aj/MS