* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on: 08th May, 2025***
Pronounced on: 26th September, 2025

\+ **CRL.REV.P. 656/2013, CRL.M.A. 17320/2013**

GOPAL DIKSHIT
S/o LATE SHRI R.B DIKSHIT.
R/o HOUSE NO.50 ISHWAR NAGAR,
NEW DELHI .....Petitioner

Through: Mr. Siddharth Luthra, Sr. Advocate (Through V.C.) with Mr. Ravjot Singh, Ms. Akanksha, Mr. Kausher Hussain and Mr. Sougat Patra, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION
Through
Standing Counsel
Delhi High Court, New Delhi .....Respondent

Through: Mr. Rajesh Kumar, SPP, CBI with Ms. Mishika Pandita and Mr. Mohd. Changez Ali Khan, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Criminal Revision Petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the *Petitioner/Gopal Dikshit* against ***Order on Charge dated 25.10.2013 and Charge dated 29.10.2013 framed*** under Section 120B read with Sections 420/468/471 IPC and Section 13(2) read with Section 13(1) of Prevention of Corruption Act, 1988 ('PC Act'), ***by learned Judge-II, CBI, Delhi*** in CC No.16/2009, arising out of RC No.DAI-2006-A-0064.

2. ***Brief facts of the case*** are that the Petitioner is a member of Indian Administrative Service (IAS) and had a distinguished service of 35 years, of working in various capacities in Government Organizations which involve Planning, Institutional strengthening, etc.

3. A Complaint dated 29.12.2006 was received from Mr. Vikas Kumar Pathak, Sub-Inspector, CBI ACB, New Delhi, with the allegations against the Petitioner that while serving as the Registrar of Co-operative Societies, Delhi ('*RCS, Delhi*') from 09.07.1997 to 11.07.1999, he had approved Freeze List of members of the Naval Technical Officers Cooperative Group Housing Society (CGHS) ['*NTO, CGHS']* and also passed an Order expelling members, in violation of the provision of Delhi Co-operative Society Act, 1972 and Delhi Go-operative Society Rules, 1973 ('*DCS Act* and *DCS Rules'* respectively.

4. A *Preliminary Enquiry* was undertaken, on which present RC No.DAI-2006-A-0064 on 29.12.2006. Petitioner moved an Application under Section 197 Cr.P.C. on 05.11.2009 seeking discharge for *want of Sanction*. However, he did not press the same and sought liberty to take the plea at the stage of arguments on charge.

5. The *Order on charge has been challenged on the ground* that the relevant documents of NTO, CGHS came for approval of the Petitioner only after the verification was done by the subordinate officers, namely Inspector, Dealing Assistant (DA), Assistant Registrar (AR), Deputy Registrar (DR) and lastly by Joint Registrar (JR) of the RCS, Delhi, and the

Petitioner had no reason to doubt the acts of all these officials who are presumed to have done their duty honestly and in good faith, unless there are reasons to believe to the contrary. This is also evident from the perusal of File No.47/97/GH/Coop./East Vol. I & II of the Note Sheet and correspondence File maintained by RCS Office in respect of NTO, CGHS.

6. The Prosecution witness *Lakshmi Kant Sharma* had stated that the verification and scrutiny of the documents was done by the Subordinate Officers of the RCS, Delhi whenever the documents were received from the Management Committee of the Society, and it was only thereafter, the list of members recommended by the said Subordinate Officers would be placed for approval before the Petitioner/Registrar, RCS Delhi.

7. Directives issued under the Rule 77 of the DCS by the Cooperative Department, clearly reflects that the Petitioner/Registrar, RCS Delhi and his Subordinate Officers had taken all necessary steps while approving the proposal of the Management Committee of NTO, CGHS. Before the expulsion of members of the NTO, CGHS, Notices were issued repeatedly in accordance with the Rules, as laid down under the DCS Act and DCS Rules.

8. Conduct of Lt. Commander Hakam Singh was overlooked by CBI, who, despite being aware, had failed to appear in the expulsion proceedings. Moreover, he has not even been cited as prosecution witness by the CBI. In this regard reliance has been placed on *Anand Lok Co-op group Housing Society vs. Registrar of Co-op Societies,* 1996 SCC Online Del 736.

9. It is submitted that ***none of the ingredients of the offences under Section 120B read with Sections 420/468/471 IPC and Section 13(2) read with Section 13(1) of PC Act, are made out against the Petitioner***.

10. In support of this contention reference has been made to the case of *Deepak Gaba vs. State of U.P.,* (2023) 3 SCC 423, *Vimla (Dr.) vs. Delhi Administration,* AIR 1963 SC 1572, *Bandekar Bros P Ltd. vs. Prasad Vasudev Keni and Others,* (2020) 20 SCC 1, *Mohd. Ibrahim vs. State of Bihar,* (2009) 8 SCC 751, *State vs. Dr. Anup Kumar Srivastava,* (2017) 15 SCC 560, *Dilawar Balu Kurane vs. State of Maharashtra,* (2002) 2 SCC 135, and *State vs. Selvi,* (2018) 13 SCC 455.

11. It is contended that the perusal of the documents filed along with the Chargesheet, reflects that as per the practice established, the documents submitted by the NTO, CGHS, pertaining to the to the Freeze List of members were repeatedly verified by the subordinate officers of the Petitioner and only after thorough verification by them and ensuring all statutory requirements were met, the Freeze List of members was sent to the Petitioner for approval.

12. Various Noting Files which were collected during investigations, revealed that the Freeze List of members of NTO, CGHS could be approved as 280, as the strength of the Society had been cut short from 300 due to non-submission of their fresh affidavits and non-availability of their whereabouts. All the affidavits were checked and re-checked on 09.09.1997.

13. The AR, RCS, Delhi, in his Noting dated 17.09.1997, raised his concern about not receiving intimation of the enrollment of 236 members between the 30.06.1986 to 09.09.1997. This concern of AR, RCS, Delhi, was acknowledged and considered by the DR and JR of the RCS, Delhi, on 24.09.1997.

14. Noting of 06.10.1997 states that fresh affidavits of 277 members were collected from the NTO, CGHS, but it failed to submit the affidavits of 3 members. Hence, Freeze list strength of 277 members was approved.

15. On 13.10.1997, the File of NTO, CGHS came up for consideration before the Petitioner/Registrar, RCS, Delhi, who noted that before such proposals are put up/recommended, it must be ensured that there is no complaint pending against the society and the society has not failed in its statutory obligations such as conducting of elections, audit, etc. in time. Subject to this, proposal put up is approved.

16. The Petitioner has asserted that he had directed his subordinate officers JR, DR, AR and DA of the RCS, Delhi to ensure that all statutory obligations are fulfilled and only then the NTO, CGHS proposal should be approved.

17. On 17.10.1997, the DA of the RCS, Delhi, stated that there is no complaint against the Society and the election and audit have been carried out. Hence, the list was approved and forwarded to the DDA and the findings were endorsed by the AR, RCS, Delhi.

18. On 15.01.1998, AR (P), RCS, Delhi had noted that as per the RCS File, the Society had submitted the details of 75 members on 30.12.1984 and that the list of 277 members as approved, was violative of the position as on 30.06.1986. In light of this, the AR (P), RCS, Delhi stated that complete verification is required and directed the Society to clarify the non-submission of the list of members enrolled up to 30.06.1986 and to produce bank accounts/pass books as well as ration cards especially of those members who enrolled between 13.12.1984 and 30.06.1986. He further stated that the issue was discussed with the DR and JR, RCS, Delhi and they wanted to examine the matter *de novo*.

19. The said Order was endorsed by DR (P), JR and DR (NP), RCS Delhi. On 23.02.1998, the AR, RCS, Delhi, concluded that no adverse conclusion can be drawn regarding the strength of the members of the Society and stated that the strength of the Society can be accepted. On 06.03.19.98, the DR, RCS, Delhi, stated that the Audit Reports are indicative that the enrollment of the members in the Society is proper and while accepting the observations of the AR, RCS, Delhi, recommended the approval of the Freeze List of the members.

20. On 23.03.1998, the AR, RCS, Delhi, again stated that the NTO, CGHS had enrolled 300 members and that the same was checked and scrutinized and it was found that they had been enrolled before 30.06.1986 and the Audit Report also confirmed it. AR, RCS, Delhi, further stated that "*the Society has followed all statutory requirements"* and the approved List may be forwarded to DDA.

21. On 27.03.1998, relying on the categorical re-affirmations by the Zonal AR and DR (C/ND) about the detailed verification of the records, the AR (P), RCS, Delhi, stated that the List be sent to the DDA. On 28.07.1998, after all procedural requirement were met and no discrepancy of any nature was found, the Freeze List was approved and sent to DDA, which is endorsed by AR, RCS as well as the Petitioner/ Registrar, RCS, Delhi.

22. It is contended that during investigations, CBI preferred to pick and choose certain documents in their own way for falsely alleging that a *prima facie* case is made out against the Petitioner, which is evident from the fact that the Court proceedings File of the Court of RCS, Delhi has not been produced by the CBI, before the learned Special Judge. It has also not been considered that expulsion of members of the NTO, CGHS was done only after giving repeated Notices. The proposal of Management Committee of the NTO, CGHS stated that all defaulter Members were given opportunity.

23. Thereafter, during expulsion proceedings before the Office of RCS, Delhi, the Petitioner/Registrar, RCS, Delhi, gave an opportunity to all 48 defaulting members by sending Notices through Registered Post on 06.10.1998, as is noted in the Noting file.

24. It has not been appreciated by learned Special Judge that on 06.10.1998, only three (*Nand Kishore, Devender Kumar Arora and AMS Chabbra)* of the 48 defaulter members appeared and sought one month's time to pay the dues and the time was granted to make payments till 05.11.1998. However, they failed to make the payments and thereafter, Devender Arora and AMS Chabbra did not appear. Nand Kishore's request to make part-payment, was rejected by the President of the Society. Therefore, these persons were expelled from primary Membership. It has also not been considered that other 45 defaulter members did not appear on 06.10.1998 despite Notices.

25. The Petitioner then directed the President of the Society to publish their names in leading Newspaper and asked them to appear on 21.10.1998. However, despite the Publication done in the leading Newspaper, these 45 persons did not appear and they were also expelled from primary membership, as is also evident from the documents annexed along with the Chargesheet.

26. Letter of Lt. Commander Hakam Singh dated 24.08.1998 has not been considered which clearly indicated that he was aware of the expulsion proceedings before the Management Committee of the NIG, CGHS, but he chose not to appear before the Management Committee. Hence, his case like other defaulting member for expulsion, was forwarded for approval to the office of RCS, Delhi.

27. It is asserted that entire case of CBI against the Petitioner, is based on the statement of Lt. Commander Hakam Singh, but his statement has not even been recorded or relied upon by the CBI and in absence of the same, no criminal liability can be fastened on the Petitioner.

28. At the stage of framing charge, the ***Court must apply its mind to the question*** as to whether there is any ground for presuming the commission of offence by the accused. In the present case, no *prima facie* case can be made against the Petitioner.

29. In this regard reliance has been placed on *Birla Corporation Ltd. vs. Asventz Investments & Holdings Ltd.,* (2019) 16 SCC 610, *Sunil Bharti Mittal vs. CBI,* (2015) 4 SCC 609, and *Pepsi Foods Ltd. vs. Special Judicial Magistrate,* (1998) 5 SCC 749.

30. It is further submitted that Expulsion Order dated 18.11.1998 attained finality, as none of the expelled Members ever challenged it under Sections 79 and 80 of DCS Act. Hence, the allegations against the Petitioner are an afterthought and without any basis.

31. Furthermore, the Directives under Rule 77 of DCS Rules dated 08.11.1983, 17.06.1986, 02.07.1986 and 26.03.1986 issued by the Cooperative Department, Government of Delhi, clearly reflects that the enrollment and acceptance of resignations, is prerogative of the Management Committee of the Society. Despite this, the Petitioner/Registrar, RCS, Delhi and his subordinate officers had taken all necessary steps while approving the proposal of the Management Committee of NTO, CGHS.

32. It is further contended that the Petitioner during the relevant period, was serving as a '*public servant'* being the Registrar in RCS, Delhi. However, ***no sanction under Section 197 Cr.P.C. has been taken by the CBI*** for taking cognizance of the offences alleged against him. Section 197 Cr.P.C. is a *sine qua non* for taking cognizance for commission of an offence and prosecution of the public servant.

33. Reliance has been placed on *A. Srinivasulu vs. State,* 2023 SCC OnLine SC 900, *Suneeti Toteja vs. State of U.P.,* 2025 SCC OnLine SC 433, *Enforcement Directorate vs. Bibhu Prasad Acharya,* (2025) 1 SCC 404, *Prof. N.K. Ganguly vs. CBI, New Delhi,* (2016) 2 SCC 143, and *CBI vs. B.A. Srinivasan,* (2020) 2 SCC 153.

34. It is further contended that the Petitioner had been provided indemnity from prosecution under Section 95 of the DCS Act, 1972 under which he was discharging his duties. It is contended that there is no evidence whatsoever that Petitioner was a part of conspiracy under Section 120B IPC. Furthermore, there is no evidence to show the commission of offence of cheating, forgery or using the forged documents.

35. *It is therefore submitted that the impugned Order on Charge, be set aside and he be discharged.*

36. ***CBI in its detailed reply*** has taken *preliminary objection* that present Revision Petition is not maintainable in terms of Section 19(3)(C) of the PC ACT, 1988. Reliance has been placed on *Arun Kumar Jain vs. CBI*, whereby the Court had held that Revision filed under PC Act, 1988 is not maintainable as specifically barred by a statutory provision.

37. The impugned Order has been passed after scrutiny of evidence and hearing of arguments of both the parties. It is a well-reasoned Order which does not suffer from any illegality. Therefore, there is no merit in the present Revision Petition.

38. ***On merits***, all the averments made in the Petition are denied. It is stated that apart from the concerned supporting officials, Petitioner was also supposed to satisfy himself about the genuineness of the Freeze list of Members by going through the documents or by other means available to him, before approving the same. He had signed the Orders in a mechanical way without viewing the annexed documents and without apply his judicious approach. Learned Trial Court has duly scrutinized all incriminating evidence before reaching at the *prima facie* conclusion.

39. It is further submitted that the evidence gathered by CBI would be looked into minutely at the time of trial, by the learned Trial Court. The witness Lt. Commander Hakam Singh, who had Membership No.9, had sent a Letter dated 24.08.1998 pointing out the illegalities committed by the Society to the Petitioner/Registrar, RCS, Delhi.

40. Furthermore, Section 197 Cr.P.C. could not be extended to cover the illegal activities of public servant in the garb of official duties. The protection is available to save public servants from *malafide* harassment while *bonafidely* discharging their official duties.

41. Moreover, the sanction under Section 19(3)(C) of the PC ACT, 1988, is also not required as the Petitioner had already retired at the time of taking of cognizance on the Chargesheet, by the learned Trial Court.

42. *It is therefore submitted that the present Petition is without merits and is liable to rejected.*

43. ***Petitioner in his Rejoinder*** has reaffirmed the assertions made in the Petition. He, in his written submissions has stated that as per the case of *Prof. N.K. Gangully* (supra), sanction for prosecution is mandatory under Section 197 Cr.P.C. Moreover, prosecution is barred under Section 95 of DCS Act, 1972. The contentions made in the Petition, are reiterated.

44. ***Respondent CBI in its brief synopsis*** has also reiterated the assertions made in its Reply and has detailed the formation of the Society and enrolment of the members at different point of time. It is reasserted that the expulsion of Members, was legal.

45. Moreover, the fake resignations of 217 members were shown fraudulently and 134 new Members were enrolled on 31.03.1999, in violation of Rule 77 of DCS Rules. 370 new Members were enrolled by the Society in addition to the 300 members shown in September 1997. There was no intimation sent by the Society to RCS office for enrollment of these additional 370 members.

46. The expulsion of the 48 Promoter Members under Rule 36 of DCS Rules, was initiated by the Society. The Order on 18.11.1998 of the Petitioner mentions that the expulsion of 48 defaulter members had been issued due to default committed by them. This assertion is incorrect, as promoter Lt. Commander Hakam Singh had sent a Letter dated 24.08.1998 stating that he was unaware about his expulsion and requested the Registrar that the proceedings of the Society may be stopped due to the reason mentioned by him in the said Letter.

47. Lt. Commander Hakam Singh had raised some very serious issues about the Society and requested that the Society Managing Committee be directed to call in General House Meeting with due Notice to all its

Members. The Letter was kept pending and the Order dated 18.11.1998 expelling various members including him was passed by RCS.

48. The opinion of the GEQD was that the signatures available on the backside of Members bearing membership Nos.203, 201, 195, 230, 101, 40, 250, 46 and 29, did not tally with their specimen signatures.

49. It is stated that defaulter members were not present in spite of Notice sent by registered post. This aspect as to whether Notices were actually sent to Hukum Singh and other members, has to be seen during trial.

50. *It is therefore submitted that the charges have been rightly framed by CBI and present Petition is liable to be dismissed.*

Submissions heard and record perused.

51. The core issue before this Court is to ascertain whether the Ld. Special Judge erred in finding that a *prima facie* case exists against the Petitioner for the framing of Charges. At the stage of framing charges, the Court is not required to conduct a *mini-trial or thoroughly evaluate the evidence*. The standard is to determine if the material on record, taken at face value, discloses the existence of all the ingredients constituting the alleged offence and raises a "*grave suspicion*" against the accused.

52. The Petitioner has raised the contentions which fall in three main categories:, *firstly* Expulsion of Members; *secondly, that no prima facie* offences are disclosed and *thirdly,* bar on prosecution of the Petitioner for want of Sanction.

53. The first two grounds revolve around the approval of the Society's list of Members and the subsequent expulsion of original Members.

Expulsion of Members and Approval of the Freeze List:

54. As per the case of the Prosecution, Naval Technical Officers CGHS Society was registered on 07.12.1983 with 64 promoters *vide* Registration No. 997 in the office of RCS, West Delhi.

55. The inquiry revealed that there were 48 Members, the Affidavits dated 08.09.1983 of all these Members along with the list of Members, was submitted with the RCS Office. The RCS files reflected that the Society passed a Resolution to have a Membership in the multiples of 15, as desired by Assistant Registrar. Accordingly, 11 new Members were enrolled on 19.03.1984. Their Affidavits were duly sent to the RCS on 11.06.1984. The Assistant Registrar *vide* Letter dated 21.01.1985, informed the Society about the defects in the new enrolment Members from the Membership No. 65 to 75 and stated it to be against the Rules and sought an additional List of Members. Several reminders from January, 1985 till 23.11.1989 were sent, but they all remained unresponded.

56. The RCS File further reflected the resignation of Mr. D.K. Arora and B.S. Taneja dated 14.01.1988. These names were deleted from the List dated 15.09.1997. The Society Membership, as per the records of RCS Office till 31.03.1994, was 73 only, which is corroborated by the Noting on the reverse side dated 17.09.1997 of the then Assistant Registrar. Till then, all was in Order.

57. The difficulty started in 1997. The investigations reflected that as per the record of RCS, the Society had placed a list of 300 Members as existing on 30.06.1986 including 75 old Members, on 02.09.1997 through Sh. Nand Kishore (A-3), the then Secretary. The documents containing list of 300 members, Affidavits of the honorary President of the Society, list of

Promoter Members, Audit Reports, Membership Register and Proceeding Register and the list of old Managing Committee Members, were also submitted on that date.

58. The Petitioner contends that the expulsion of 48 members was carried out in strict compliance with Rule 36 of the Delhi Co-operative Societies (DCS) Rules, 1973. Rule 36 is extracted as under:

> ***"36. Procedure for expulsion of members***
> *(1) Notwithstanding anything contained in the bye-laws, any member, who has been persistently defaulting in payment of his dues or the payment of claims made by a housing society for raising funds to fulfill its objects, has been failing to comply with the provisions of the bye-laws regarding sales of his produce through the society or, other matter in connection with his dealings with the Society or who, in the opinion of the Committee, has brought disrepute to the Society or he has done other acts detrimental to the interest or proper working of the Society, the Society may, by a resolution passed by a majority of not less than three fourth of the members entitled to vote who are present at a general meeting, held for the purpose, expel a member from the Society. Provided that no resolution shall be valid, unless the member concerned has been given an opportunity of representing his case to the general body and no resolution shall be effective, unless it is approved by the Registrar.*
> *(2) Where any member of a Co-operative Society proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the President of the Society. On receipt of such notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting, to be held not earlier than a period of one month from the date of such notice and to show cause against*

expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body shall proceed to consider the resolution.
(3) When a resolution passed in accordance with Sub-rule (1) or (2) is sent to the registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiry as to whether full and final opportunity has been given under Sub-rule (1) or (2) give his approval and communicate the same to the Society and the member concerned with in a period of a 6 months. The resolution shall be effective from the date of approval, (amended on 24.5.1982)
(4) Expulsion from membership may involve forfeiture of shares held by the member. The share shall be forfeited with the prior permission of the Registrar. In that event, the value of the share forfeited shall be credited to the reserve fund of the Society.
(5) No member of a Co-operative Society who has been expelled under the foregoing sub-rules shall be eligible for re-admission as a member of that Society or for admission as a member of any other Society of the same class for a period of three years from the date of such expulsion. Provided that the Registrar may, on an application either by the Society or the member expelled and in special circumstances, sanction the readmission or admission, within the said period, of any such member as a member of the said Society or of any other Society of the same class, as the case may be. Before going such sanction for readmission or admission by the Registrar, an opportunity of hearing may be given to both the Society and member concerned, (amended on 24.5.1982).”

59. This Rule prescribes an elaborate procedure to be followed while expelling members. As held in Anand Lok (supra) *“the only enquiry which is envisaged, as per Sub-rule (3) of Rule 36 to be made by the Registrar,* *while granting his approval, is that whether full and final opportunity has been given under Sub-rule (1) or (2) to the member concerned."*

60. The Petitioner asserts that repeated Notices were issued to the defaulting Members through registered post and Public Notice in the Newspaper and opportunities were given to clear their dues. He further argues that the Expulsion Order of November 18, 1998, was never legally challenged by the expelled Members and therefore, attained finality.

61. The Prosecution refutes this by asserting that the entire expulsion process was fraudulent from its inception. Several original Members testified as prosecution witnesses (PWs) that they were incorrectly shown as having resigned or expelled. *PW1/Sh. Surender Singh* stated he never resigned nor received any intimation of his expulsion. *PW2/Sh. Om Prakash* stated that the claim of his resignation was "factually incorrect". *PW5/Sh. P. Rajgopalan and PW6/Sh. Krishna Pal* gave similar statements that they never resigned from their Membership.

62. A specific issue was raised regarding Lt. Comdr. Hukum Singh, a Promoter Member who was also expelled. The Petitioner claims that Lt. Comdr. Hukum Singh was aware of the proceedings but chose not to appear, even after his name was published in the Public Notice issued in the Newspapers.

63. The most critical piece of evidence in this regard is the Letter dated 24.08.1998 from Lt. Commander Hukum Singh addressed to the Petitioner. This Letter was received by the RCS office well before the Petitioner passed the final expulsion order on 18.11.1998. He pointed out serious illegalities and requested that the Society's proceedings be stopped.

64. The Petitioner's argument that Lt. Cdr. Singh failed to appear despite Notice, does not take away the contents of his Letter. The Letter served as a direct notice to the Petitioner about the alleged fraud. To ignore such a complaint from a promoter Member and proceed to approve the expulsion order, *prima facie* points towards complicity in intentionally overlooking the manipulations in preparing the List of Members. The argument that Lt. Comdr. Singh failed to appear for the proceedings, is of little consequence to assert that all was in order despite he having formally brought the illegalities to the Registrar's attention.

65. These statements suggest that the grounds and process for initiating expulsion proceedings were fabricated. Moreover, it requires trial to ascertain whether Notices were actually sent is a matter of trial and there existed any cogent reason to expel these Members by conjuring a compliance of procedural requirements.

66. The Records and the Note dated 08.10.1997 in the RCS File, reflects that fresh Affidavits of 277 Members had been collected from the Society, which were recommended for approval of the freeze strength of the Society as 277. These Affidavits however, are not available on record. The proposal was approved by Gopal Dixit, the Petitioner, *vide* Note Sheet dated 13.10.1997.

67. Prima facie, it is established that the approval was given by the Petitioner to the Freeze List despite there being no Affidavits on record and also when the Record prima facie reflected that there was no proper documentation to show expulsion and the manipulation in induction of New Members, is writ large in the File Notings.

68. Further, the ***Audit Report*** from 1983 to 1988 and 1992 to 1997 and Sh. Ajit Gaur from 1988 to 1992, submitted by Shri M.S. Darel who were appointed as Auditors by the RCS Office, which confirmed that the Audit Reports submitted by the Managing Committee of the Society, ***were false***. The Balance Sheets which show inflow of funds, attached with these Audit Reports, was not supported by the enclosed Statement of the Bank Account No. CN 59 of Delhi State Cooperative Bank, Janpath, New Delhi.

69. Pertinently, the Entries merely reflected that there was interest accrual and no margin money of new Members, had been deposited. There was only a credit of Rs.7400/- as on 15.10.1983, while if new 225 Members had been inducted, the credit should have been Rs.2,25,000/-. It *prima facie*, thus, reflected that the list of 225 Members, as reflected on 30.06.1986 was a fake list. The Auditors' Report of M.S. Darel and Ajit Gaur, was not based on true facts and was merely submitted to complete their formality. The Auditors could not be traced during the investigation. *It is prima facie disclosed from the investigations that all the documents that were submitted by the Managing Committee/co-accused before the RCS, were incomplete and were false and manipulated documents.*

70. The Note dated 15.09.1997 of Dealing Clerk Devendra Kumar Dwivedi, (A-7), justified that the Society had retained original documents regarding the additional Members enrolled before 30.06.1986 which were now being submitted. The delay in submission of the documents by the Society was also justified by stating that Society did not require approval of RCS, as these Members were enrolled before 01.07.1986. The Note further stated that after having thoroughly examined the proposal of the Society, it was found in order and recommended the List of 277 Members to be forwarded to DDA as freeze list. Pertinently, 23 Members out of 300 Members were deleted on the ground of being out of touch and not taking interest in the Society. *The deletion of these Members was in violation of Rule 36 DCS Rules, 1973.*

71. The Note dated 17.09.1997 of the then Registrar, wrongly mentioned that there was no information till 0909.1997 of the enrolment of 236 instead of 225 Members of the Society, before 30.06.1986. In less than a month, the Society underwent change in its Membership from 73 to 277. This List of 277 Members was approved by Sh. Gopal Dixit, 13.10.1997. It is pertinent to observe that these Notings were being approved despite the documents filed with RCS, reflected that they were not complete and were manipulated documents. ***Again, this reflects the complicity of the Petitioner in the criminal acts.***

72. Further, RCS Note dated 20.01.1998, reflects that the Society was asked to submit Bank Account, Passbook as well as copy Of Ration Card in respect of the Members who were enrolled from 14.12.1984 to 30.06.1986. The Letter was issued to the Society on 21.01.1998 under the signatures of P.D. Sharma, Deputy Registrar (A-5). Later, the Respondent submitted the Letter dated 19.02.1998 under the signatures of Nand Kishore (A-3), Secretary, along with the copy of Passbook, Ledger Statement, Ledgers of the Society and Audit Report, but expressed its inability to submit the Ration Cards.

73. These documents of the Society were put by Sh. Devendra Kumar Dwivedi, Dealing Assistant (A-7), in a misleading manner justifying the glaring falsehood of the documents submitted by the Society. Further, he misled by mentioning that the Society did not deposit the amount collected from its Members, as apparently it was utilized by the Society to meet its own expenses. It was endorsed by M.L. Verma, Assistant Registrar (A-4), P.D. Sharma, Deputy Registrar, (A-5), Sh. L.K. Sharma, Joint Registrar and then has been approved by Petitioner Gopal Dixit. The copy of a List was sent to DDA for land allotments.

74. Prima facie, it was evident that the List Of Members was manipulated as there was no cogent documentation to establish the enrolment of 225 Members before 30.06 1986. Pertinently, the Application Forms and Affidavits of the new 225 Members is evidently not available.

75. The Petitioner's primary defence is that under the directives issued under Rule 77 of the DCS Rules, the enrolment of members and acceptance of resignations, are the prerogatives of the Management Committee of Society. It is contended that his Office had a limited role in scrutinizing the committee's decisions.

76. While the Management Committee does have primary responsibility for these functions, the Registrar's office is not merely a rubber stamp. The Registrar has a duty to ensure that Society functions in accordance with the law and is expected to intervene in cases of fraud or illegality.

77. The prosecution's case is that the Management Committee was acting fraudulently by showing fake resignations and expelling original members to induct new ones. When such serious allegations, supported by internal Notings and external complaints like that of Lt. Comdr. Singh, were brought to the Registrar's attention, he had a duty to investigate rather than mechanically approve the committee's proposals.

78. The petition has contended that he acted in *good faith*, relying on the hierarchical verifications conducted by his Subordinate Officers, namely the

Dealing Assistant, Assistant Registrar (AR), Deputy Registrar (DR), and Joint Registrar (JR). He contends that this was the established practice and that there was no procedure established in this regard. He has contended that he had no reason to doubt the Notings put up to him for final approval. He further points to his own Noting dated 13.10.1997, where he explicitly directed his Subordinates to ensure compliance with all statutory obligations before the proposal is approved.

79. However, as rightly argued by the Prosecution, this Noting does not absolve him of his responsibility, especially given several significant red flags in the record. The Society's membership abruptly increased from 73 to 277, a change that warranted heightened scrutiny. More importantly, a formal Noting was made on January 15, 1998, by the Assistant Registrar (Planning), who raised serious concerns about the validity of the member list and suggested that senior officers, including the Deputy Registrar, wanted to *"examine the matter de novo"*. Despite this internal warning advising a fresh examination, the Freeze List was ultimately approved by the petitioner. This action, in the face of explicit internal doubts, raises a grave suspicion about his role.

80. It is prima facie shown that despite there being no complete set of documents, the Noting approved the List of new members, which again clearly shows that showing that there was connivance amongst the officials of the RCS, who had submitted wrong Noting for approval of the List of 277 Members which was finally approved by the Petitioner. It was the duty of the petitioner to cross check and verify the Notings and other documents.

81. The Petitioner cannot assert that he had merely signed the Notings without checking the documents and the file. The Petitioner being the Head of the office of Registrar, had the ultimate responsibility to check the veracity of the Notings and its correctness before giving the final approval. The officials subordinate to him had prepared wrong Notings, which were approved by the Petitioner thereby reflecting his complicity in the commission of the offences.

82. The Petitioner claims that there is no evidence to show he had a dishonest intention from the inception, made any misrepresentation, or personally used any forged documents. He argues that the essential ingredients for *cheating and forgery*, are absent.

83. This argument overlooks the principle of criminal conspiracy. If a conspiracy is established *prima facie*, every conspirator is held responsible for the acts committed by the co-conspirators in furtherance of that conspiracy. The prosecution's case is that the Office Bearers of the Society created and used forged documents; such as manipulated proceeding registers and false resignation claims, and consequently cheated the original Members out of their rightful membership.

84. While the Petitioner may not have personally created these documents, his alleged role was to give these fraudulent actions the stamp of official approval, thereby allowing the cheating to be completed. By approving documents and proceedings that he allegedly knew or had reason to believe were based on falsehoods, he is *prima facie* considered to have used forged documents as genuine, in furtherance of the conspiracy.

85. The dishonest intention is inferred from his alleged act of ignoring clear warnings and approving the proposals, which resulted in wrongful loss to the original members and wrongful gain to others.

86. The petitioner contends that there is no material on record to suggest a "*meeting of minds*" or *an agreement* between him and the other co-accused to commit any illegal act. He argues that the prosecution has failed to show any direct evidence of his involvement in the alleged conspiracy.

87. It is a settled principle of law that a criminal conspiracy is rarely hatched in the open and is usually proven by circumstantial evidence. At the stage of framing charges, the court must consider if the circumstances, taken as a whole, point towards a grave suspicion of an agreement. In this case, the prosecution relies on various events; such as the submission of a fraudulent list of members by the society's office bearers, the presence of discrepancies in the society's records, including a sudden surge in membership and a lack of corresponding financial entries, the existence of specific warnings on the official file, including a note from the AR (P) advising a "*de novo*" examination, and a Complaint/Letter from a promoter member, Lt. Comdr. Hakam Singh

88. The alleged act of knowingly approving a manipulated list, which facilitated the illegal removal of members, forms the basis of the conspiracy charge. These circumstances, when viewed collectively, are sufficient to raise a suspicion that the Petitioner was acting in concert with the other co-accused. Therefore, the material on record is sufficient to frame charges for these offenses.

89. The learned ASJ in the impugned Order, has rightly held that a *prima facie* case is disclosed against the Petitioner along with the other co-accused persons. Before concluding, it may be noted that L.K. Sharma, Joint Registrar has been made a witness when in fact his involvement in the entire events was similar to that of RCS, as he was the person just before the

Petitioner who approved all these Notings. A mechanical approval, particularly when the file contained notes advising a *de novo* examination, raises a grave suspicion about his complicity.

90. The investigating Agency for the reasons best known to it, may have cited L.K. Sharma as a witness but that does not in any manner enure to the benefit of the Petitioner wherein the *prima facie* involvement of the Petitioner in the commission of the offences, is clearly made out.

Bar on Prosecution:

91. The Petitioner has sought an escape from Prosecution for these irregularities and has raised two contentions in this regard. He has argued that the prosecution is barred for **want of sanction under Section 197 Cr.P.C**., as the alleged acts were performed while discharging his official duties. He also claims indemnity ***under Section 95 of the DCS Act, 1972***.

92. This argument is untenable at this stage. The CBI has correctly contended that sanction under the PC Act is not required as the Petitioner had retired at the time of cognizance.

93. In S.A. Venkataraman vs. The State, [1958] SCR 1037 while dealing with the requirement of Sanction under the *pari materia* provisions of Prevention of Corruption Act, 1947, it was laid down that the protection under the concerned provisions would not be available to a public servant after he had demitted his office or retired from service.

94. In regard to the immunity available to an accused, the Apex Court in Parkash Singh Badal vs. State of Punjab, (2007) 1 SCC 1 has held as under:

> *"**20**. The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions*

> *of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity."*

95. *Thus, this plea of the Petition is not tenable.*

96. The Petitioner also seeks refuge under ***Section 95 of the DCS Act***, 1972, claiming that it provides him indemnity from prosecution for acts performed while discharging his duties under the Act. For ease of reference, the relevant provision is extracted as under:

> ***"95. <u>Indemnity</u>:***
> *No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority in respect of anything in good faith done or purporting to have been done under this Act."*

97. The same logic, as in requirement of a sanction discussed above, applies to the immunity claimed under the DCS Act, which is available only for acts done in "***good faith".*** The existence of 'good faith' is the question to be determined at trial.

98. The core of the prosecution's case is that the petitioner did not act in good faith; rather, it is alleged that he was a conspirator in a scheme to illegally oust original Members and approve a fraudulent list. The claim of *good faith* is a defence that must be proven during the trial, and cannot be a threshold bar to the proceedings.

<u>Conclusion:</u>

99. The material placed on record by the prosecution, including the witness testimonies, the Noting in the files of the RCS office, and the

Complaint by Lt. Cdr. Hukum Singh, is sufficient to establish a *prima facie* case and raise a grave suspicion against the Petitioner for the offences alleged. The defences raised by the Petitioner involve disputed questions of fact, which are the subject matter of trial. There is no illegality or perversity in the impugned Order on Charge of the Ld. ASJ.

100. There is no merit in the present Revision Petition, which is hereby dismissed.

101. Needless to state that observations made herein are not an expression on the merits of the case.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 26, 2025/*R/N*