

(2011) 01 DEL CK 0209
In the Delhi High Court
Case No : Criminal Rev. P No. 397 of 2010

A.P. Narang

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0209

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : R.K. Handoo and I.D. Vaid, Vikas Pahwa and Suchiti Chandra, for the Appellant; Suchiti Chandra, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—These two revision petitions have been filed by the two office bearers of a Group Housing Society viz. M/s IRCON Employees CGHS Ltd. aggrieved by the order dated 17th February, 2010 directing framing of charge against the Petitioners u/s 420/471/120B IPC.

2. This Court in Civil Writ Petition No. 10006/2004 had directed CBI to investigate about the genuineness of societies to whom land had been allotted by the DDA. On the basis of these directions, an FIR was registered on 7th November, 2006 under provision of Prevention of Corruption Act alleging conspiracy of officials of Registrar of Cooperative Society and four office bearers of Petitioner society including Petitioners. CBI investigated into the affairs of the society and about the genuineness of the society and gave a finding that all the members of the society were genuine and no case under Prevention of Corruption Act was made out for allotment of land by DDA to the society on the basis of fraud or deception. However, while doing this investigation CBI considered that the resignation letter of one of the members viz. Mr. V.K. Talwar was not genuine and it was a forged document. There is no doubt that Mr. V.K. Talwar was a genuine member of the society. There is no dispute that apart from paying initial membership fee of Rs. 100/- he did not make any payment to the

society either towards purchase of land despite demand notices or subsequently during construction of the flats of the society towards construction. There is no dispute that there were several other members with similar position and they had resigned from the society and the Managing Committee of Society had sent a list of such members who had resigned from the society to Registrar. There is also no dispute to the fact that society had from time to time sent demand letters to Mr. V.K. Talwar and Mr. V.K. Talwar contributed "zero" amount towards construction or towards purchase of land. However, Mr. V.K. Talwar told CBI that the resignation letter on record of the society did not bear his signatures and was a forged letter. It is also not in dispute that Mr. V.K. Talwar had not made any complaint either to police or to any other authority that he was wrongfully not considered for allotment of the flat. It is on record that society constructed only 110 flats for those 110 members, who had made payment towards purchase of land as well as towards construction. Under these circumstances, the Petitioner has stated that no offence of cheating was made out against the Petitioners since essential ingredients of offence were not present. 3. Section 415 IPC which defines cheating reads as under:

3. Section 415. Cheating Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation. A dishonest concealment of facts is deception within the meaning of this section.

4. Presuming that letter of Mr. V.K. Talwar was forged that would show that Mr. V.K. Talwar had not resigned and had continued to be a member. He had not paid a single paise towards cost of land or towards construction. Thus, the issue of deceiving him fraudulently or dishonestly, so that he delivers any property to any person or issue of inducement by an act or omission of Petitioners does not arise. If he had not resigned he was liable for expulsion because of non-payment of dues as per rules and bye-laws of the society. He did not hold any vested right in the society by being member despite not making payment towards construction of the flats. Thus, no presumption can be drawn that he was holder of any property. A membership of a society is not a property. Only that membership of the Group Housing Cooperative Society matures into property where the member contributes towards construction of the flats and towards purchase of land for flats. If he does not contribute either towards purchase of land or towards construction, he does not hold any property right in the Cooperative Group Housing Society and Group Housing Society is not bound to allot him any flat. Under these circumstances, I consider that no offence u/s 415 or 420 IPC was made out against the Petitioners.

5. As far as offence u/s 471 IPC is concerned, it only seems that this prosecution

was motivated. Mr. V.K. Talwar's resignation letter was forwarded to Registrar of Cooperative Society in 1998. From 1998 till 2006 when CBI filed its report Mr. V.K. Talwar himself had not complained about his resignation being forged. He was very well aware that he had not paid a single paisa towards construction of flats of the society. He knew that flats had come up and he was not being considered as member of the society. If he was aggrieved that his resignation was forged one, he would have complained to Registrar of Cooperative Society about this. It only seems that while CBI was investigating about the genuineness of the society, Mr. V.K. Talwar found it as an opportunity to claim a flat on the ground of alleged forgery of his resignation letter and made this complaint that his resignation letter was forged. Still it is not his case that at any point of time he had offered to the society the amount as demanded by the society. Under these circumstances, I consider that his stand of a forged resignation letter after such a long period was only a change of colours and nothing more.

6. In view of my above discussion, I hereby allow both the petitions. The order dated 17th February, 2010 passed by learned ACMM-I/East/KKD is hereby quashed.