

(2013) 08 P&H CK 0718

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM No. M-268 of 2013 (O and M)

Kamlesh Saini

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Haryana Development and Regulation of Urban Areas Act, 1975 - Section 10, 2(c)

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: Arvind Singh, for the Appellant; Gaurav Dhir, DAG, for the Respondent

Final Decision: Dismissed

Judgement

Sabina, J.

Petitioner has filed this petition u/s 482 of the Code of Criminal Procedure, 1973 seeking quashing of the FIR No. 270 dated 07.06.2012 u/s 10 of Haryana Development and Regulations Urban Area Act, 1975 registered at Police Station Civil Thanesar, District Kurukshetra and all the subsequent proceedings arising therefrom. Prosecution story, in brief, is that the petitioner had sold land vide sale deed (Annexure P-2) dated 16.12.2010 to carve out a colony without taking any permission in this regard.

2. Learned counsel for the petitioner has submitted that the petitioner had sold her entire share of property out of the joint land. Hence, criminal proceedings initiated against the petitioner were liable to be quashed. The land in question had not been divided so far by the purchasers. In support of his arguments, learned counsel has placed reliance on Matadin Vs. State of Haryana 2005(1) RCR (Criminal) 64 wherein it was held as under:-

Since there has been no division of land into plots by the petitioner, it cannot be said that he had created a "colony". If the purchasers divide 7 kanals of land into 7 plots

of one kanal each then the division can be said to have been carried out by them but not by the petitioner, who has sold a compact area of 7 kanals, which was whole and undivided. Prosecution of the petitioner would be an abuse of the process of the Court. Therefore, this petition is accepted. Charges framed against the petitioner and all subsequent proceedings, are hereby quashed.

3. Learned counsel has further placed reliance on Smt. Krishna Vs. State of Haryana 1992 (2) RCR (Criminal) 497 wherein it was held as under:-

In clause (ii) of section 2(c) of the Act, the reference to the land transferred by way of partition of joint holdings, succession or inheritance has been specifically exempted from the definition of "colony" under this Act. By no stretch of imagination it can be said that the sale of joint holdings by joint owners would fall under the definition of "colony" as a person cannot sell more than the area falling in his share in joint holding. Moreover, where two interpretations are possible then the one favourable to the accused is to be taken into consideration. Keeping in view the cardinal principles of criminal jurisprudence, benefit of doubt has to be given to the accused and the onus to prove the charge of criminal offence beyond reasonable doubt rests upon the prosecution, thus the petitioners are not liable for the alleged offence.

4. Learned State counsel, on the other hand, has opposed the petition and has submitted that the petitioner had sold her 5 kanals 5 marlas of land to three different persons. Statements of the purchasers were recorded during investigation, wherein they have stated that they have purchased the land for construction of residential houses and have also disclosed the share purchased by them out of the land sold by the petitioner.

5. A perusal of sale deed (Annexure P-2) reveals that the petitioner had sold her share measuring 5 kanals and 5 marlas out of the joint land to three persons by specifying their share out of the land sold by the petitioner. A perusal of Annexure R-1-statement of Pinkesh Kumar, Annexure R-2-statement of Krishan Kumar and Annexure R-3-statement of Naresh Kumar (purchasers) recorded during investigation, reveals that the said purchasers had purchased the land for construction of their residential houses. So far as purchaser Pinkesh Kumar is concerned, he has stated in his statement (Annexure R-1) that he had purchased 3 kanals 3 marlas of land out of the land sold by the petitioner. Krishan Kumar, purchaser has stated in his statement (Annexure R-2) that he had purchased 1 kanal 1 marla of land out of the land sold by the petitioner. So far as purchaser Naresh Kumar is concerned, he has stated in his statement (Annexure R-3) that he has purchased 1 kanal 1 marla of land out of the land sold by the petitioner.

6. In these circumstances, no ground to scuttle the criminal proceedings at the very threshold is made out. Challan has been presented in this case. Petitioner would be at liberty to take up all the pleas available to him during trial. The judgments relied upon by the learned counsel for the petitioners fail to advance the case of the

petitioner. Dismissed.