

(2013) 03 P&H CK 0146

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-30656 of 2011 (O and M)

Gurbachan Singh and Another

APPELLANT

Vs

Punjab Urban Planning and
Development Authority

RESPONDENT

Date of Decision: March 21, 2013

Citation: (2013) 4 RCR(Criminal) 232

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: Mandeep Singh Sachdev, for the Appellant; Ashish Grover, for the Respondent

Judgement

Mehinder Singh Sullar, J.

The matrix of the facts & material, culminating in the commencement, relevant for deciding the instant petition and emanating from the record is that the complainant-respondent Punjab Urban Planning and Development Authority (for brevity "the complainant PUDA") has filed the criminal complaint (Annexure P2) against accused Tara Singh son of late Dalip Singh, Gurbachan Singh son of Darshan Singh (petitioner No. 1) and his son Tarwinder Singh (petitioner No. 2) u/s 36 read with Sections 3, 5, 8, 9, 14(2), 15 & 18 of the Punjab Apartment and Property Regulation Act, 1995 (hereinafter to be referred as "the Act") and Section 120B IPC. The case set up by the complainant-PUDA, in brief in so far as relevant, inter-alia, was that accused Tara Singh was the share holder of the land in question. All the accused have hatched a criminal conspiracy, set up a colony by dividing the aforesaid land into residential, commercial & industrial plots, without obtaining any licence or permit and without paying the prescribed fees, in lieu of change of use of land, from the competent authority. Thus, they have contravened the provisions of Sections 3 and 5 of the Act. The accused have sold several plots (mentioned therein in the complaint) in the aforesaid colony to different persons, after the commencement of the Act. It was further claimed that the accused were not holding a certificate of registration as promoter. Even they did not submit any application

for registration as promoter as required u/s 21 of the Act for setting up the colony by dividing the indicated land into residential, commercial and industrial purposes or for any other construction purposes. The accused thus carried on business of promoter & estate agent and set up a colony as defined u/s 2(1) of the Act and contravened the provisions of sections 3, 5, 8, 9, 14(2), 15, 18 & 21 of the Act, which are punishable u/s 36 of the Act and also section 120B IPC. In the background of these allegations, the complainant-PUDA filed the criminal complaint (Annexure P2) against the accused, in the manner depicted here-in-above.

2. As the complaint was filed by the complainant-PUDA in its official capacity, therefore, recording of preliminary evidence was dispensed with and the accused were ordered to be summoned by the trial Court, by virtue of summoning order dated 8.7.2004 (Annexure P3).

3. Having recorded the pre-charge evidence, the trial Court discharged the petitioners-accused, by way of order dated 25.10.2010 (Annexure P4).

4. Aggrieved thereby, the revision petition (Annexure P5) filed by the complainant-PUDA was accepted by the revisional Court, by means of impugned order dated 4.8.2011 (Annexure P1).

5. The petitioners-accused did not feel satisfied and preferred the present petition to quash the impugned order (Annexure P1), invoking the provisions of section 482 Cr.PC. That is how I am seized of the matter.

6. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant petition in this context.

7. Ex facie, the celebrated argument of learned counsel that since it is not proved on record that the plots were carved out and sold prior to or after the commencement of the Act, so, the trial Court has rightly discharged the petitioners-accused, but the revisional Court committed a legal mistake to direct them to face the trial of pointed offences, is neither tenable nor the observations of Hon"ble Apex Court in case [Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra](#), are at all applicable to the facts of the present case, wherein, it was observed as under (para 15):-

It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge of the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the

evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not.

8. Sequently, it was held by this Court in case [M.L. Wadhwa Vs. M.M. Rehani and another](#), that "at the stage of framing of charge, the Court is only to see whether a triable issue arises from the pre-charge evidence led by the prosecution or not."

9. Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the petitioners-accused in the instant controversy.

10. As is evident from the record that there are direct allegations that the petitioners and their other co-accused have hatched a criminal conspiracy, set up a colony by dividing the aforesaid land into residential, commercial & industrial plots, without obtaining any licence or permit and without paying the prescribed fees, in lieu of change of use of land, from the competent authority. Thus, they have contravened the provisions of Sections 3 and 5 of the Act. They have sold several plots (mentioned therein in the complaint) in the indicated colony to different persons, after the commencement of the Act. The main grounds, which appear to have been weighed with the trial Court to discharge the petitioners-accused, were that (i) it is not proved on record that the colony was carved out and the plots were sold for residential, commercial and industrial purposes without obtaining any licence or permit from the competent authority and (ii) the complaint (Annexure P2) was filed by the complainant-PUDA after the expiry of period of limitation.

11. Here, to my mind, the trial Court has slipped into a deep legal error in this regard. Although Tara Singh accused was stated to be the co-sharer of the land in question, but the petitioners-accused have hatched a criminal conspiracy, carved out the colony and sold the plots as his attorney in complete violations of the aforesaid provisions of the Act in the manner depicted here-in-above. They are directly involved in the commission of offences in question. Moreover, the impugned sale deeds (Annexures P7 to P12) are between February, 2004 to April, 2004. The complainant-PUDA has filed the complaint (Annexure P2) in the Court on 8.7.2004. In that eventuality, it cannot possibly be said that the complaint was filed after the expiry of statutory period of limitation, as contemplated u/s 468 Cr.PC, as contrary held by the trial Court and urged on behalf of the petitioners. Therefore, there is ample evidence on record to involve the complicity of the petitioners-accused in this relevant connection.

12. Above-all, it is now well settled principle of law that at the stage of framing the charge, the Court has to prima facie consider, whether there is sufficient ground for proceeding against the accused or not and the Court is not required to appreciate the evidence sufficient for conviction, at this stage.

13. A similar question was considered by the Hon"ble Supreme Court in case [State of M.P. Vs. S.B. Johari and Others](#), . Having interpreted the provisions of Sections 227/228 of the Cr.P.C., it was ruled that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction of the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. Such intricate questions of sufficiency of evidence for conviction are not required to be determined at this initial stage of framing of charges, as has been done by the trial Court in the instant case.

14. Thus, if the nature of accusation of criminal conspiracy, material evidence, legal position and totality of the facts and circumstances of the case, as discussed here-in-above, are put together, then, to me, the conclusion is inescapable that there is an ample evidence on record to frame the charges against the petitioners. In this manner, it cannot possibly be saith at this initial stage that there is no sufficient evidence against the petitioners to frame the charges, they are innocent and have been falsely implicated in the complaint (Annexure P2). Therefore, the contrary submissions of learned counsel for petitioners "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances, as the ratio of the law laid down by Hon"ble Apex Court in State of M.P."s case (supra) "mutatis mutandis" is applicable to the facts of the instant case and is the complete answer to the problem in hand.

15. Not only that, the matter was correctly examined, all the contentions relatable to the appreciation of evidence, now sought to be urged by the counsel for petitioners, have already been duly considered, negated and the revisional Court has rectified the mistake committed by the trial Court, through the medium of impugned order (Annexure P1), which, in substance, is as under:-

The perusal of the record shows that the order passed by the learned Addl. Chief Judicial Magistrate is not as per law. Firstly, the complainant has stated that the accused had set up a colony by dividing the land shown in the jamabandi Ex. C1 without obtaining licence from the competent authority, which is more than 1000 sq. meters. There is nothing in his cross examination to show that the area was less than 1000 sq. meters. Otherwise also, copy of jamabandi Ex.C1 has been placed on the record in which Tara Singh was shown having 1/7 share in the land 32 kanals 14 marlas. The complainant has also prepared the site plan Ex.C2, which is on the record showing the roads, etc. already constructed and the plots in the property in dispute. As per the Act, the total area of the colony is to be taken in which the colony has been carved out. At the stage of charge, the court is to see prima facie case whether charge is made out or not. Secondly, Ex.C13 document is on the record, which is report of Rakesh Kumar dated 30.5.2004 in which also it is held that the area is more than 1000 sq. meters. Further, I find that copies of the sale deeds have

been placed on the record. As per Ex.C4, Gurbachan Singh son of Darshan Singh as attorney of Tara Singh sold the area 10 marlas 180 sq. ft. by showing the dimensions 301 x 751 and the number has been given to that plot as 185 and the plot no. 184 has been shown on one side and plot no. 186 has been shown on the other side. This sale deed is of 17.12.2003. The other sale deed Ex.C5 is also of 3.2.2004, which was also executed by Gurbachan Singh as general power of attorney of Tara Singh regarding House No. 191 measuring 7 marlas 83 sq. ft. total 1532 sq. ft. and roads have been shown on two sides, etc. In this sale deed, a room and boundary wall have been shown. In the earlier sale deed, Ex.C4 also, a room and boundary wall have been shown to be constructed. Similarly, the other sale deed Ex.C11/A was also executed by Gurbachan Singh. In this case also, one room has been shown as constructed and on one side plot, street etc. have been shown. Similarly, there is certified copy of other sale deed endorsement on which is Ex.C7 showing the same executed by Tarwinder Singh, attorney of Tara Singh. In this property also, the number has been given to the property and one room has been shown as constructed. This sale deed is also of 20.2.2004. Ex.C8 sale deed is of 12.3.2004. Ex.C9 sale deed is of 31.3.2004. Ex.C10 sale deed is dated 15.4.2004. The complaint has been filed in the court on 8.7.2004. Keeping in view the documentary evidence placed on the record, in no way, it can be held that the complaint is time barred. Similarly, one line cross examination of Shub Lata PW that colony has been constructed 10/15 years ago, cannot be believed in the presence of execution of sale deeds in the year 2003-2004. Again in all the properties, one room has been shown constructed. The whole property was owned by Tara Singh and the sale deeds have been executed by Gurbachan Singh and Tarwinder Singh, being attorneys. There is no cogent documentary evidence on record to come to the conclusion that the colony has been constructed about 10-15 years back, especially in view of the sale deeds, which are executed in the year 2003-2004. Further, I find that mere fact that the Patwari has stated that in the jamabandi, the property has been shown as abadi itself does not prove that colony was constructed in the year 1998-99. He himself in the cross examination has stated that he cannot tell without seeing the khasra girdawari, where the construction has been raised and which is cultivable area. Therefore, from the record, I find that the colony has been carved out in more than 1000 sq. meters area. The sale deeds have been executed in the year 2003-2004 by the attorneys of Tara Singh. Therefore, in no way, it can be held that the complaint is time barred. 15. Learned counsel for the petitioner has cited 2009(3) RCR (Cri) 145 S.C. in which, it is held that even with evidence of single witness, Magistrate could proceed to frame charge. It is also held that when the evidence is offered u/s 244 Cr.P.C. by the prosecution, the Magistrate has to consider the same and if he is convinced, the Magistrate can frame the charge. I have gone through this citation. This citation fully applies to the facts of the present case.

16. The learned counsel for petitioners did not point out any material/ground, muchless cogent, so as to warrant any interference in the impugned order

(Annexure P1) of revisional Court.

17. Meaning thereby, the revisional Court, after taking into consideration and appreciating the entire material on record in the right perspective, has recorded the cogent grounds in this relevant behalf. Such order (Annexure P1) containing valid reasons, cannot possibly be interfered in the exercise of extra ordinary jurisdiction of this Court, u/s 482 Cr.PC, unless and until, the same is illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioners, so, the impugned order (Annexure P1) deserves to be and is hereby maintained in the obtaining circumstances of the case.

18. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

19. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of complaint (Annexure P2), as there is no merit, therefore, the instant petition is hereby dismissed as such. Needless to mention that nothing observed, here-in-above, would reflect, on the merits of the complaint case, in any manner, during the course of trial, as the same has been so recorded for a limited purpose of deciding the present petition in this relevant direction.