

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-828-MA-2012 (O&M)

Date of decision : 28.11.2015

State of Haryana

...Applicant

Versus

Madan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mrs. Neelam Kashyap, DAG, Haryana.

Mr. Vaneet Soni, Advocate for the respondent.

JITENDRA CHAUHAN, J. (Oral)

The applicant, State of Haryana, seeks leave to appeal against the impugned judgment dated 04.05.2012, passed by the learned Sub Divisional Judicial Magistrate, Tohana, Distt. Fatehabad, thereby, acquitting the accused-respondent in case FIR No.206 dated 13.06.2007, registered under Section 7 (1) 10 of the Haryana Development & Regulation of Urban Areas Act, 1975 (for short, the Act of 1975).

Brief facts of the case, as noticed in para No.2 of the impugned judgment, are reproduced as under:-

“2. Brief facts of the prosecution case are that on 13.06.2007, a letter No.1585 dated 11.06.2007 from the

office of DTP, Fatehabad, was received to the police with a request to register the criminal case against Madan Singh son of Nand Singh, resident of Makod Sahib (Punjab) for the commission of an offence punishable under section 10 of the Act of 1975 with the facts that the aforesaid person had transferred the agricultural land comprised in khewat No.644, Khatoni No.838 Khasra No.194//13/1, 13/2, 18/1, 18/2 and 23 situated at Tohana, after carving out the plots therein to his vendees thereby converting the user thereof without obtaining the license for the same as envisaged under Section 3 of the Act 1975 and as such the aforesaid land comprised in khasra no.194//13/1, 13/2, 18/1, 18/2 and 23 had been sub divided into plots of various size by him by executing the sale deeds executed in favour of different persons either himself or as power of attorney of Pawan Kumar. The details of the sale deeds executed by him was also given along with the letter under reference. Since the aforesaid person had violated the provisions of Section 7(1) of the said Act, the FIR was requested to be registered. On the basis of the aforesaid complaint, FIR of this case was registered and the matter was investigated. During the investigation of this case, accused was arrested.

Certified copies of the sale deeds in question were collected. Statement of the witnesses as envisaged under Section 161 of Cr.P.C. were recorded. After completion of investigation, challan was presented before the Court against the accused facing trial.”

On finding a prima facie case against the accused, he was charged under Section 10 of the Act of 1975, to which he pleaded not guilty and claimed trial.

In order to substantiate its case against the accused-respondent, the prosecution examined the following witnesses:-

PW-1, Pala Ram, Patwari, proved mutation Ex.P1 and Akshijra, Ex.P2, which were given by him to the Investigating Officer of the case.

PW-2, Pale Ram, ME, proved the report, Ex.PW2/A which was sent by him to the police. During his cross-examination, he stated that he had not got conducted the demarcation of the land sold by the accused to his vendees with the land comprised in khasra No.194.

PW-3, ASI Madan Lal, collected the copies of six sale deeds executed by the accused in favour of different persons from the Registration Clerk, Tohana.

PW-4, Devender Kumar, Registration Clerk, Office of Sub

Registrar, Tohana, brought the record of the sale deeds and proved the copies of sale deeds and Special Power of Attorney No.194 dated 01.12.2003.

PW-5, Kitab Singh, Junior Engineers, office of District Town Planner, Hisar, proved complaint Ex.PW5/A, the detail of the sale deeds executed by the accused as Ex.PW5/B and the site plan/urban area plan of Tohana as Ex.PW5/C. During his cross-examination, he stated that he had not got demarcated the land in question.

PW-6, Inspector Nar Singh, proved recording of formal FIR in this case as Ex.PW6/A and endorsement on ruqqa in this regard as Ex.PW6/B.

PW-7, Inspector Hans Raj, partly investigated this case and collected the documentary evidence. During his cross-examination, he deposed that he also had not got the land in question demarcated.

PW-8, DSP Balbir Singh (Retd.) arrested the accused in this case.

The statement of the accused under Section 313 Cr.P.C. was recorded by putting all the incriminating material/evidence coming against him, which he denied and pleaded false implication. In defence, he tendered in evidence information received by him from Sub Registrar, Tohana, as Ex.D1; Statement of Vijender Bhardwaj,

Tehsildar, recorded in case No.189 dated 17.03.2007, pertaining to FIR No.291 dated 23.09.2006, titled as “State Vs. Krishan Parbhakar” as Ex.D2; copy of the memo regarding regularization of unauthorized colony produced on the case file of FIR No.291 (ibid) as Ex.D3; copy of statement of Pala Ram recorded in criminal case No.410 of 2007, pertaining to FIR No.175 of 2007, P.S. City Tohana titled as “State Vs. Phool Kumar” as Ex.D4; and copy of order of the regularization of unauthorized colony by DOD Chandigarh as Ex.D5.

After hearing learned counsel for the parties and perusing the material evidence on record, the learned trial Court acquitted the accused-respondent of the charge framed against him.

Hence, the present application for leave to file appeal against the impugned judgment of acquittal.

I have heard learned counsel for the parties and gone through the record.

In this case, the allegation against the accused-respondent is that he sub-divided the agricultural land measuring more than 1000 square yards into plots and sold the same to the respective vendees vide separate sale deeds, thereby, committing an offence punishable under Section 10 of the Act of 1975. In order to prove its case, the prosecution was required to lead evidence to show that the vendees of the accused changed the use of the land from agricultural to that of the

residential, commercial or industrial. On the contrary, almost all the prosecution witnesses have admitted during their cross-examination that they never got the land in question demarcated.

PW1, Pala Ram, Patwari, has admitted in his cross-examination that the entire land sold by the accused is lying vacant except the construction of one Kotha. Thus, the unauthorized change of the land use could not be proved in this case. A perusal of the document, Ex.D5 further reveals that the said unauthorized colony comprised in khasra No.194 had been regularized by the Government. The prosecution did not get the land demarcated to prove that the construction had been raised by the vendees of the accused on the land beyond the boundaries of the land/colony which has been regularized.

In the present case, the prior sanction of the District Magistrate was required to be obtained as per the provisions of the Act of 1975. However, the sanction obtained from the District Magistrate exercising the power of the District Town Planner, available on the file, was not got proved by the prosecution, nor the same was tendered into evidence.

When the facts and circumstances of the present case are considered in totality, it cannot be said that the prosecution has been able to prove its case against the accused-respondent beyond a shadow of reasonable doubt and the benefit thereof, has rightly been accorded

to the accused-respondent. Accordingly, this Court is of the considered opinion that the impugned judgment of acquittal recorded by the learned trial Court is a well reasoned judgment and there is no scope for interference in the same.

In view of the above, the present application is dismissed.

Leave declined.

28.11.2015

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(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to the Reporter ? : Yes / No