

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-393-MA-2013

Date of Decision:12.08.2015

PUNJAB STATE THROUGH J.E., PUDA BATHINDA

.....Petitioner

Vs.

GURCHET SINGH AND ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Grover, Advocate
for the petitioner.

Mr. Sukhdeep Singh Bhinder, Advocate
for respondents No.1 to 3.

Mr. Sukant Gupta, Advocate
for respondents No.4 and 5.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J. (Oral)

1) Punjab State through J.E., Office of Additional Chief Administrator, PUDA has come in appeal seeking leave to appeal against judgment dated 22.03.2013 passed by Chief Judicial Magistrate, Bathinda vide which respondents were acquitted in a criminal complaint under Section 36 read with Section 3, 4, 5, 8, 9, 14(2), 15, 18 and 21 of Punjab Apartment & Property Regulation Act, 1995 and under Section 120 IPC. Prosecution was launched on the ground that accused No.1, 2, 3, 4, 5, 6 and 9 are the joint owners of the land bearing khasra No.4757/min in

Bathinda according to revenue record. Accused No.7 and 8 are the attorney holders of accused No.1, 5 and 6. Accused sold their land measuring 39911 square yards that is 33371 square metres by dividing into residential plots to different persons which is more than 100 square metres and the same is in violation of Section 2(i) of Punjab Apartment & Property Regulation Act, 1995. It was alleged that the accused have contravened the provisions of Section 3 and 5 of the aforesaid Act without obtaining licence and without moving any application to the competent authority. The accused were claimed to be not holder of certificate of registration as promoter. Even they did not submit any application for registration as promoter as required under Section 21 of the Act for setting up the colony by dividing their land into residential and commercial purposes.

2) Since the complaint was filed in official capacity, therefore, recording of preliminary evidence was dispensed with. Complainant also led pre-charge evidence. After closure of pre-charge evidence during the proceedings, it was found that Jalour Singh, Som Dutt and Prem Lata were dead. Proceedings qua dead persons were abetted. Jagroop Singh was declared to be P.O. Accordingly, remaining accused were charge-sheeted under Section 36 of the Punjab Apartment and Property Regulation Act, 1995. Request of the accused was accepted, to cross-examine the complainant after charge. Cross-examination of Ramesh Kumar-complainant was recorded. The accused did not intend to further cross-examine CW1 to CW9 and the cross-examination earlier recorded was sought to be read in evidence. Accordingly, post charge evidence was closed. Statement of accused under Section 313 Cr.P.C. was recorded.

The main issue that emerges from the prosecution story is that whether

selling of land measuring 39911 square yards to different persons out of joint land by the respondents amounted to sale of plots more than 100 square metres for residential purpose to different persons, thereby converting the land into colony and as such punishable under Section 36 of Punjab Apartment and Property Regulation Act? Admittedly, there was a joint holding of the accused and no partition has taken place by metes and bounds. In the absence of such partition, each co-sharer would be deemed to be in possession of every parcel of land, till their joint status is severed by way of partition. Concept of co-sharer has been well defined with reference to number of principles in a well-known judgment of **AIR 1961, Punjab 528 (DB), Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram.**

One of the principle highlighted therein is in consonance with the aforesaid proposition of law, that each of the co-sharer in undivided property would be deemed to be in possession of each and every parcel of land till the land is partitioned by lawful means. Even, if sale of specific khasra numbers out of joint land is made, the same would amount to sale of share. I am squarely fortified in my view on the strength of Full Bench judgment of this Court in **1981 PLJ 204 (FB), Bhartu v. Ram Sarup.** In the present case, if the prosecution story is tested on the basis of aforesaid proposition, it will be found that there is no partition amongst the share holders who subjected the land measuring 39911 square yards to sale to different vendees. Therefore, status of vendors would remain that of joint owners and the vendees would get the share out of joint land, irrespective of the fact that they have purchased specific portion or specific khasra number. There is nothing on record, suggesting that at any point of time, partition was effected amongst the vendors/accused, separating their shares out of joint land. The recital in the sale-deeds makes it abundantly clear that the

vendors were having defined shares in the joint land. No effort has been made by the prosecution to adduce evidence of separation of share in any manner. The prosecution story is that the accused are not holding a certificate of registration as a promoter. The accused have also not submitted any application for registration as promoter, although, they have allegedly set up a colony by dividing the aforesaid land into residential/commercial plots. Apparently, there is no such division of land by the competent Court. Shares of vendors remained undivided in the revenue record. Even sale of specific khasra number out of joint land cannot be treated to be sale of specific khasra number rather it amounts to sale of share in view of legal possession as discussed above.

3) As regards the prosecution version that the accused have acted as a promoters, apparently, there is no material on record to prove that the owners/respondents are promoters. No development work has been carried out on the spot. There is nothing on record to state that any external developmental work has been carried out by the respondents in any manner. No incriminating material has come on record, suggesting any roads, water supply, sewerage drainage system, electric supply being paved by the respondents in any manner. In the absence of such activities, having not undertaken by the respondents, in any manner, they cannot be treated to be promoters. Only one person has constructed the area i.e. Navneet Kumar who is not even vendee under the respondents.

4) Prosecution has miserably failed to prove the alleged allegation of promoter in the complaint. The allegation of setting up of colony is equally lacking in material particulars. Since the prosecution has to stand on its own legs in order to prove culpability of the accused beyond all

reasonable doubts, therefore preponderance of any probability has no ground for its consideration. There is no convincing evidence on record, presuming the accused to be promoters. Moreover prosecution has also failed to lead any evidence showing segregation of share of the vendors, by metes and bounds, at any point of time. Mere selling of land is not an offence until and unless it is demonstrated by the prosecution that the accused have set up some colony and acted in pursuance thereof as promoters. Even the revenue record produced by PW-1-Sukhmander Singh was materially lacking when he admitted that the record produced by him was incomplete. No connecting mechanism in the form of khasra numbers and mutations are forthcoming, endorsing any factum of alienation of land. Even one of the complainant witness i.e. Suresh Kumar while appearing as CW-4 has admitted that the vendor Jalour Singh executed the sale deed from the joint khata of the undivided property and he purchased the same along with others for the purposes of dairy farming. The business of dairy farming is exempted under the Act and does not fall in any of the offence mentioned in the said Act. The plea of the prosecution that accused have no licence for carving out a colony is also equally fallacious. Cross-examination of complainant witness Gurvinder Kaur while appearing as CW-5 assumed significance, inasmuch as that she pleaded ignorance as to in what configurational context of land, she is deposing in the Court. Merely selling of land is not an offence. Complainant himself while appearing as PW-10 has admitted that the area falls within Municipal limits. Once area falls in the Municipal limits, then it is obligatory upon the complainant to enquire whether the area falls under any of the town planning scheme or not? Since the area sold in sale deeds, does not show any provision for road and path, therefore, alleged carving out a colony cannot be presumed

by any incriminating material on record. Very fact that the land falls within the Municipal limits and the complainant could not show that area falls under any of the land scheme, no such contemplation can be presumed at the instance of the accused-respondents. Apparently, the complainant went ahead to presume that the respondents acted as promoters in carving out some colony by selling 100 square yards' plots to different persons. Basic concept of co-sharer-ship and non-availability of material on record show that respondents have not committed any culpable act under the act in the context of paving any sewerage, water supply, road system and drainage, electricity supply etc. and therefore, prosecution could not prove the guilt of the respondent to the hilt and beyond all reasonable doubt.

5) The view expressed by the trial Court in acquitting the respondents cannot be faulted with. The findings of acquittal cannot be converted into findings of conviction on the basis of evidence of record. Resultantly, finding no merits in this application for leave to file appeal, the same is dismissed.

August 12, 2015
SwarnjitS

(RAJ MOHAN SINGH)
JUDGE