

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No. 9857 of 2014

Date of decision : January 13, 2015

Bhupinder Singh and others,

..... Petitioners

v.

Jalandhar Development Authority and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Parminder Singh-I, Advocate
for the petitioners.

Mr. Ashish Grover, Advocate
for respondent No.1.

Mr. Deepak Garg, AAG Punjab
for respondent No.2.

- 1. Whether Reporters of Local Newspapers 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 ?**

Ajay Tewari, J (Oral)

This petition has been filed for setting aside the complaint dated 8.6.2009, summoning order dated 8.6.2009, and the order dated 22.12.2011 declaring the petitioners as proclaimed offenders.

The admitted facts are that the petitioners are all NRIs. The instant complaint was filed against them along with other persons under the Punjab Apartment and Property Regulation Act, 1995 on the allegations that they had carved out a colony in the land owned by them.

The categorical averment is that after filing of the complaint, the

petitioners had never visited Punjab. This fact is not denied. Apart therefrom, what has now transpired is that co-accused of the petitioners have been acquitted by the trial Court by holding that the respondent-Jalandhar Development Authority has not been able to even prove the existence of the colony. It is in these circumstances that this petition has been filed.

At the very outset, counsel for respondent No.1 has argued that the petitioners were obligated to move the Court declaring them as proclaimed offenders before coming to this Court and secondly, such a petition could not be filed through attorney. He has relied upon Roku Sandhu v. State of Punjab, 2012(4) AICLR 758 and Amit Ahuja v. Gian Parkash Bhambri, 2010(3) RCR (Criminal) 586. In both these cases, however, this Court had noticed different judgments in which primary test was taken to be the utility/futility of the prosecution and had taken a view favouring the respondent/s therein since futility test had not been satisfied. The futility test was resorted to by a Division Bench of this Court in Sudo Mandal @ Diwarak Mandal v. State of Punjab, 2011(2) RCR (Criminal) 453 and Gurmit Kaur v. State of Punjab, CRM-M No.13472 of 2000, decided on 6.9.2002, wherein it had been held that if the Court was convinced that there was no material which could lead to the conviction of the persons, a challenge to proclamation before the High Court/petition filed by the attorney would be maintainable.

In the circumstances, the propositions of law laid down in Roku Sandhu's case (supra) and Amit Ahuja's case (supra) would be distinguishable from the facts of this case which bear closure proximity with

Sudo Mandal @ Diwarak Mandal's case (supra) and Gurmit Kaur's case (supra). It is re-iterated that counsel for respondent No.1 has accepted that there is no fresh evidence available against the present petitioners which was not led in the case of the co-accused. Once the co-accused have been acquitted and there is no material before the Court which may lead to the conviction of the petitioners further trial against them would be an exercise in futility and consequently it is held that the facts of the present case are distinguishable from those of Roku Sandhu's case (supra) and Amit Ahuja's case (supra). Resultantly, this petition is allowed, the complainant, the summoning order as well as the order declaring the petitioners as proclaimed offenders are set aside.

(AJAY TEWARI)
JUDGE

January 13, 2015
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