

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

**CRR No. 4087 of 2013 (O&M)
Date of Decision: 31.07.2015**

Punjab Urban Planning and Development Authority, now Greater
Ludhiana Area Development Authority

.....Petitioner

Vs.

Gurmit Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Mr. Damandeep Singh, Advocate
for respondents No.2 to 4.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO

RAMESHWAR SINGH MALIK J.

Instant criminal revision petition is directed against the impugned judgment dated 20.3.2013 passed by the learned Additional Sessions Judge, Ludhiana, upholding the order dated 1.8.2011 passed by the Judicial Magistrate 1st Class, Ludhiana, whereby complaint of the petitioner under Section 36 of the Punjab Apartment and Property Regulation Act, 1995 ('Act of 1995' for short), was dismissed.

Briefly put, facts of the case, as noticed by the learned trial court, in para 1 of its impugned judgment, are that complainant-

petitioner filed complaint under Section 36 of the Act of 1995, alleging that complainant-Society is a State Government authority created under the Act of 1995 as per the Punjab Government notification No. 2/3/92/2/HG/11/4168 dated 10.9.1998. The Additional Chief Administrator, PUDA, Ludhiana, accorded sanction for prosecution of the accused for contravening the provisions of the abovesaid Act. In exercise of powers mentioned in the above notification, Sh. G. Ramesh Kumar, IAS, Additional Chief Administrator, PUDA, Ludhiana, authorized Jagjit Singh Bedi, JE Officer of Additional Chief Administrator, PUDA, Ludhiana to sign and file the complaint vide sanctioned letter dated 9.8.2006. As such, the complaint was filed on behalf of the complainant authority through Jagjit Singh Bedi, J.E. on behalf of Additional Chief Administrator, PUDA, Ludhiana. Accused Nos. 1 to 3 were owners of the land bearing khasra Nos. 1//16/2,24/2,25/1,18,22,23,5//1,2,3 situated in village Bhamian Khurd, Tehsil and District Ludhiana, as per registered sale deed executed by accused Nos. 1 to 3 jointly, vide sale deeds and vasika Nos. 14498 dated 20.8.99, 273 25 dated 28.3.2000, 25900 dated 28.3.2000, 6011 dated 18.8.2000, 7597 dated 25.1.2000, 27295 dated 28.3.2000, 25225 dated 31.1.2000, 1855 dated 15.5.2000, 50 dated 4.4.2000, 49 dated 4.4.2000. Accused No.4 was having the power of attorney appointed by accused No.1 to 3, as such, accused No.4 was also liable for the commission of offence committed by all the accused. All the accused committed the offence with common criminal conspiracy with each other and were fully aware of the fact that no colony could be

developed without obtaining prior permission from the competent authority under the Act of 1995. The aforesaid land was more than 1000 sq. mtrs in area. It was divided by the accused into small plots for residential, commercial, industrial and other building purposes and developed the aforesaid land into colony as defined in Section 2 (1) of the Act of 1995. At the spot, this area was sub-divided into small pieces upon which, many houses were constructed and some foundations were laid down. The officers of the complainant authority inspected the abovesaid land and verified at the spot. According to the spot, a true plan of the same was prepared and it depicted the true state of affairs at the spot. The same was attached and clearly showed that this land was fully developed into a colony. Accused, who acted as a promoter, developed the land into a colony and sold the parts in full and partially and plots out of the same to some other persons. Consequently, accused strictly falls within the definition of promoter as defined under Section 2 (Y) of the Act of 1995. As per Section 3, there were certain liabilities of the promoter and according to Section 5, any promoter, who desired to develop a land into colony, shall make an application in the prescribed form alongwith prescribed information and with the prescribed fee to the competent authority for grant of the permission for the same. The accused was not a registered promoter as required under the Act of 1995 and further, he did not obtain any licence or permission for the development of a land into a colony from the competent authority and further the accused, also contravened sections 3,6,9 and 15 of the abovesaid Act. The accused also committed breach and contravened

the other provisions of the Act of 1995. As such, accused committed an offence under Section 36 of the Act of 1995. Accused did not obtain any licence from the competent authority and even did not submit any application alongwith the prescribed fee and requisite papers as provided under the Act of 1995. The Act of 1995 came into force on 15.10.1995 and accused, after the commencement of the Act of 1995, transferred several plots in the aforesaid colony developed by them in the utter disregarded and contravention of the abovesaid Act of 1995. Accused transferred some plots through sale deeds to Paramjit Singh son of Amar Singh 1 kanal vide vasika No. 14498 dated 20.9.99, Jarnail Singh son of Santa Singh 500 sq. yards, vide vasika No. 7597 dated 25.1.2000, Tarlochan Singh son of Hakam Singh 1 kanal vide vasika No.25252 dated 31.1.2000 etc. The accused engaged himself in business as promoters and Estate agents and developed a colony as defined under Section 2 (1) of the Act of 1995 and contravened the provisions enshrined in Sections, 3,5,6,8,9,12,14,15,18 and 21 and other provisions of the Act of 1995 which is punishable under Section 36 of the Act of 1995. Immediately, on gaining the knowledge of the offence committed by accused, sanction was accorded on 9.8.2009 by the competent authority where the complainant was duly authorized to sign the complaint and to file the same. Complainant-petitioner prayed that accused be tried and punished accordingly.

After recording pre-charge evidence led by the complainant-petitioner, accused respondents were summoned and they appeared before the court. A prima facie case was found to be

made out and accordingly, accused were charge sheeted. They pleaded not guilty and claimed trial.

In order to prove its case, complainant-petitioner examined 3 PWs, besides producing on record other relevant documentary evidence. After closing of the evidence of the complainant, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure ('Cr.P.C.' for short). All the incriminating material brought on record was put to the accused. They denied all the allegations, pleaded false implication and claimed complete innocence, however, did not lead any evidence in defence.

After going through the evidence brought on record and hearing both the learned counsel, learned trial court came to the conclusion that complainant has failed to prove its case, bringing home guilt against the accused. Consequently, complaint was dismissed vide impugned judgment dated 1.8.2011. Feeling aggrieved, complainant filed its appeal which also came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 20.3.2013. Hence this criminal revision petition.

Learned counsel for the petitioner submits that learned courts below have misdirected themselves, while passing their respective impugned judgments. He further submits that the complainant has produced on record cogent and convincing evidence, which was sufficient to record the conviction of the respondents-accused. However, since the learned courts below have failed to appreciate the true facts of the case as well as relevant provisions of law, applicable thereof, the impugned judgments are not

sustainable in law. He prays for setting aside the impugned judgments, by allowing the present petition.

Per contra, learned counsel for the respondents submits that petitioner has miserably failed to prove its case. No evidence worth acceptance was produced by the complainant-petitioner before the learned trial court. He further submits that learned courts below have proceeded on a factually correct and legally justified approach, while passing the impugned judgments and the same deserve to be upheld. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present one is not a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of both the impugned judgments would show that learned courts below have considered each and every relevant aspect of the matter, before arriving at their respective judicious conclusions. The evidence led by the complainant-petitioner was rightly not found sufficient to record the conviction. The impugned judgments have not been found to be suffering from any patent illegality or error of law and the same deserve to be upheld.

It is the settled proposition of law that whenever two views

are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in ***Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.*** The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of ***Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015).***

The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in ***Upendra Pradhan's case*** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that

there is a long distance between 'may be' and 'must be'.

*31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court.* *Xxx xxx xxx*

xxx xxx

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.”
(Emphasis Supplied)

*11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:*

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on

the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was

right in granting him benefit of doubt. The view which favours the accused/appellant has to be
Page 16 16 considered and we discard the
opposite view which indicates his guilt. We are
also of the view that the High Court should not
have interfered with the decision taken by the
Additional Session Judge, as the judgment
passed was not manifestly illegal, perverse, and
did not cause miscarriage of justice. On the
scope of High Court's revisional jurisdiction, this
Court has held in Bindeshwari Prasad Singh v.
State of Bihar, (2002) 6 SCC 650, "that in
absence of any manifest illegality, perversity and
miscarriage of justice, High Court would not be
justified interfering with the concurrent finding of
acquittal of the accused merely because on re-
appreciation of evidence it found the testimony of
PWs to be reliable whereas the trial Court had
taken an opposite view." This happens to be the
situation in the matter before us and we are of
the view that the High Court was wrong in
interfering with the order of acquittal of Upendra
Pradhan passed by the Additional Sessions
Judge."

During the course of arguments, learned counsel for the
petitioner could not point out any jurisdictional error or patent illegality

in either of the impugned judgments passed by both the learned courts, which may warrant taking a different view by this Court. In such a situation, no interference is warranted at the hands of this Court and the impugned judgments deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

31.7.2015
Ak Sharma