IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-9209 of 2016 (O&M)
Date of Decision: December 07, 2016

Raman Puri and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.Harpreet S. Multani, Advocate
for the petitioners.

Mr.Vikramjit Singh, Addl. Advocate General, Haryana
for the respondent-State.

Respondent No.2-in person.

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INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Rajiv Kumar Khare, for quashing of FIR No.334 dated 27.07.2015 under Sections 420 and 406 IPC registered at Police Station Khadki Daula, District Gurgaon and all the subsequent proceedings arising therefrom.

Notice of motion was issued and learned State counsel as well as respondent No.2-in person appeared and contested the petition. Reply was also filed by the State.

Before start of arguments, respondent No.2 was asked that a legal aid counsel can be provided to him but he stated that he will pursue his case himself.

I have heard learned counsel for the petitioners, respondent No.2-in-person as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, FIR was registered on the written complaint of respondent No.2. The brief facts as per the prosecution are that complainant along with his wife Ruby Khare, is the allottee of Flat No.1603 on 15th floor, Tower I, Sector-82, Gurgaon, in an under construction group housing colony "Universal Shivganesh Buildcon Pvt. Ltd.". It is stated that complainant was asked to pay EDC+IDC at the rate of ₹382/- per sq.ft., as was mentioned in the payment plan in two installments of 50% each in July 2011 and August 2012. Later on, complainant came to know through RTI application that rate of EDC was ₹258.093 lakh per acre and IDC was ₹625/- per sq. mtr. They fixed the rate at ₹382/- and levied the same from the complainant. When they issued form LCIII or LOI, the applicable EDC+IDC rate came down to ₹275/- per sq.ft. However, complainant was asked to pay ₹382/- per sq.ft. It is also in the FIR that builder collected money before obtaining licence and building plan approval in February 2011 whereas licence is dated 05.06.2011. It is further stated that as per Clause 7 of said licence "the licensee shall not give any advertisement for sale of shops/flats/floor in colony before approval of layout plan/building plan". The builder received the building plan approval on 17.05.2012 and they fraudulently collected ₹7,42,547/- before obtaining the licence and then ₹13,09,186/- before obtaining the building plan approval with full knowledge of facts of causing illegitimate monetary gains to themselves and loss to complainant. It is also in the FIR that this act on their part is blatant violation to Clause 7 of DTPE.

The perusal of the FIR itself shows that the main grievance of the complainant is firstly regarding the EDC+IDC rates, secondly that the company violated the Rules and specifically Clause 7 that they have given advertisement before the sanctioning of the plan etc. and they have taken money before obtaining the licence.

It is not contested at the time of arguments that the colonies are governed by Haryana Development and Regulation of Urban Areas Act, 1975. Section 7 of the said Act prohibits to advertise and transfer plots which states that no person including a property dealer shall, without obtaining the licence under Section 3 , transfer or agree to transfer in any manner plots in a colony or make an advertisement or receive any amount in respect thereof. Section 10 provides the penalty for the violations and it provides the penalty which states that any person who contravenes any of the provisions of this Act or the rules made thereunder or any of the conditions of a licence granted under section 3 shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. It is also stated/provided that where any of the provisions of section 9 are contravened the punishment of imprisonment shall not exceed six months. Section 11 states that no prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Director or any officer authorized in writing by him in this behalf.

In the FIR itself, it is written that accused have violated the terms and conditions of the licence. Therefore, the dispute between the parties is squarely covered under the Haryana Development and Regulation of Urabn Areas Act, 1975. As there is specific Act dealing with the offences committed under the Act, therefore, offences under Sections 420 or 406 IPC are not made out in this case. Furthermore, there is nothing on the record to show that the intention of the accused was to cheat the complainant. Even, it is not the case of the complainant that money was taken but no work was done. As argued, flats were not constructed within time and possession was not handed over within time, for which, as per the above-said Act, the complainant is entitled to other remedies but in no way, offence under Section 420 or 406 IPC is made out.

Moreover, the present petitioners are Directors of the company and there is nothing in the FIR nor any specific role has been attributed against these petitioners. As argued, the company has not been made accused in this case also. It is settled law that in criminal jurisprudence, there is no concept of vicarious liability except specifically provided in the Act. When the company is not made accused, the Directors cannot be held vicariously liable. Further, no specific role has been attributed to present petitioners in the FIR.

The copy of the agreement has been placed on the record. In the agreement, it is written that IDC shall mean Infrastructure Development Charges as recoverable under the Provisions of the Act and shall include interest thereon/carrying cost of the Company, at the rate charged by the DTCP or 18% per annum, whichever is higher. In the agreement, EDC has also been defined that EDC shall mean the External Development Charges as recoverable under the Provisions of the Act and shall include interest etc. Therefore, the perusal of the agreement shows that the offence, if any, has been committed, it has been committed under the Haryana Urban

Development Laws and as per Section 11 of the said Act, no prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Director or any officer authorized in writing by him in this behalf. No previous sanction of the Director or any person authorized in writing has been obtained before getting registered the FIR.

In view of the above discussion, I find that the registration of the FIR in the present case is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. FIR No.334 dated 27.07.2015 under Sections 420 and 406 IPC registered at Police Station Khadki Daula, District Gurgaon and all the subsequent proceedings arising therefrom, are hereby quashed.

December 07, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**