

1240

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

CRA-S-1592-SBA of 2005

Date of decision: September 28, 2017

Municipal Council, Phagwara

.....Appellant

Versus

Tarsem Lal

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: None.

Mr. K.S. Sidhu, Advocate for the respondent.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by judgment dated 10.02.2005 passed by Judicial Magistrate, Phagwara, in compliant No.124 of 29.07.2003, by which the learned trial Court recorded the order of acquittal of the respondent, Municipal Council has filed the present appeal.

Mr. K.S. Sidhu, Advocate appears for the respondent.

Private compliant was filed by the Municipal Council under Section 219 and 195-A of the Punjab Municipal Act, 1911 (for short 'Municipal Act'), on the ground that the respondent-Tarsem Lal had made construction contrary to the sanctioned plan and therefore, had violated the provisions of Municipal Act and consequently, was lodged to be punished for criminal offences under the said Act.

I have gone through the impugned judgment and the reasons recorded therein. I have also heard learned counsel for the respondent.

Learned trial Court has given the reasons for acquittal in Para 10 of the impugned judgment. I quote the same as under:-

“10. Perusal of Statement of PW1 Surinder Kapoor reveals that the sanctioned site plan is not proved on record. Therefore it cannot be held that accused raised construction against sanctioned site plan at site at G.T. Road, Phagwara. The notices allegedly issued to the accused under Section 195-D and receipt of these notices by the accused and thereafter issuance of second notice under Section 195-A are not proved. Thus in the absence of notices being brought on record it cannot be concluded that any notice was issued by Municipal Council Phagwara upon accused. Similarly the photo copy of site plan showing said unauthorized construction is placed with the complaint but it is not proved on record. Therefore it cannot be concluded that the accused raised alleged unauthorized construction or the alleged construction was against sanctioned site plan as no sanctioned site plan is brought on record. Undisputedly accused deposited Rs.18,375/- vide receipt Ex.P1 but case of the complainant is that he has deposited this amount as penalty. However, case of the accused is that this amount was deposited when he got another site plan for raising further construction. In the absence of both the site plans being brought on record by the complainant and in the absence of two notices allegedly being issued and received by the accused it cannot be concluded that the amount of Rs.18,375/- was paid by the accused as penalty. Therefore, the only conclusion that can be drawn that the complainant failed to prove its case against the accused to the extent that accused raised construction against sanctioned site plan or any notice was ever issued to the

accused and accused after receipt of notice refused to abide by it and another notice was ever issued to the accused and thereafter accused raised any alleged unauthorized construction.”

Perusal of the above reasons clearly show that for the sake of filing the complaint, Municipal Council Phagwara filed the complaint and therefore, did not bother to properly prove its case. On the contrary, it merely completed formality of filing criminal case against the accused and nothing more. No care was taken to bring the sanctioned site plan and violations made by the respondent by pointing out the same subsequently from the sanctioned site plan. Nothing such was done. The reasons recorded in the impugned judgment are sound and no interference is required to be made in the appeal against acquittal.

Dismissed.

(A.B. CHAUDHARI)
JUDGE

September 28, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No