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

CRA-S-281-SBA of 2006

Date of decision: September 29, 2017

Punjab State through Junior Engineer

.....Appellant

Versus

Amar Kaur and others

.....Respondents

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

Present: None for the appellant.

None for respondents No.1 to 4.

Mr. M.K. Dogra, Advocate for respondent No.5.

A.B. CHAUDHARI, J (Oral)

This appeal was preferred by the State of Punjab through Junior Engineer, Urban Estates, Punjab, Amritsar, against judgment dated 22.02.2005 passed by Judicial Magistrate Ist Class, Amritsar, by which the learned trial Court acquitted the accused for the charge under Section 11(i) read with Section 3(i) and 8(i) of Punjab Regulation of Colonies Act, 1975 (for short 'Act of 1975').

None appeared for the appellant and respondents No.1 to 4.

Heard learned counsel for respondent No.5. Perused the impugned judgment and the reasons recorded therein.

Briefly stated, it was the case of the prosecution that the respondent-accused being the owners of the land were required to obtain licence for carving out the plots which they did not. According to the prosecution, therefore, they committed the aforesaid offences under the

Act of 1975. The accused persons were tried. The prosecution examined its star witness PW9-Satwinder Singh who was the only material witness and whose evidence was discussed by the learned trial Court. I have gone through the reasons recorded by the learned trial judge in so far as the charge is concerned. Learned trial Court has found that PW9-Satwinder Singh who was the star witness of the prosecution did not prove the prosecution case. The prosecution was filed by the Department just to show the filing of the prosecution. It has become a common experience that such prosecutions are filed by private complaints and thereafter, proper care is not taken to prove the cases by leading proper evidence that was accordingly, observed by the learned trial Court that PW9-Satwinder Singh did not produce before the Court the documentary evidence, which are available with the Department and on the contrary produce such documents, which did not have any signature of any person. This story of casual attitude of the Department must be deprecated. The learned trial Court has give the following reasons in its judgment in Para-10, which I quote here below:-

“In his cross examination, this witness stated that he visited the khasra no. 1665, 66, 67, 68 of Tung plain sub urban on 28.07.1994 and as per prosecution version these are the khasra numbers out of which accused had carved out 5 of more than 5 plots for the purpose of setting up of colony. In his cross-examination he stated that he had not prepared the site plan when he conducted the survey of the properties alleged to be sold by accused. He further admitted that site plan Ex.9D which had been attached with the complaint in it, the name of purchasers had not been mentioned as well as

it is not mentioned which area they have purchased. He further admitted in his cross-examination that except the sale deeds and the site plan which he has prepared, he is not having any document from which it could be ascertained that the accused had carved out a colony. He further admitted that he had not taken any photographs from which it could be find out that the plots which the accused had carved out, had acquired the shape of colony. Not only this he further admitted that site plan Ex.9/D is rough site plan. In my opinion in such like cases the site plan is an important piece of document because the charge against the accused is that they have sold away 6 or more than 5 plots in such a manner that their location make out the shape of colony. So in these circumstances, it was mandatory for the prosecution to prove the site plan from which it could be ascertained that the plots sold by accused had assumed the shape of colony. When the complainant of the case is saying that site plan of which they are relying is a rough site plan, then how the prosecution can say that the site plan which they had placed on record, be considered as a piece of evidence against the accused to convict them for the offence that they have carved out 5 or more than 5 plots. I have also perused the site plan Ex.D/D on which the prosecution places reliance. From this site plan nothing could be ascertained that which plot had been sold by accused to which of the person, which plots located in which area. Moreover, it is not signed by anybody. So how the reliance can be placed upon this document. So, in these circumstances, I have come to the conclusion that the prosecution has miserably failed to prove this fact that accused had carved out 5 or more than plots in such a manner that they had assumed the shape of colony. It was incumbent upon the complainant to show that the action of the accused falls within the mischief of relevant

provisions.”

Having seen those reasons, I find that the prosecution was conducted in a most casual manner by the Department. The documents which were basically required to be filed and produced were not even filed to show that the accused had carved out layout and there was no application filed by him for a licence apart from the fact that the site-plan that was sought to be brought on record was not authenticate site-plan, did not bear any signatures, did not produce any photographs, any other evidence to show that really the accused had carved out any plot on the site in question.

Upon perusal of the above reasons, it is clear that for the sake of filing the prosecution and completing the formality, the complaint case was filed before the trial Court. In that view of the matter, I find no merit in the present appeal. The same will have to be dismissed.

Dismissed.

(A.B. CHAUDHARI)
JUDGE

September 29, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No