

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

1. CRM-M No.11116 of 2009 (O&M)

Satnam Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

2. CRM-M No.21537 of 2012 (O&M)

Satnam Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

Date of decision: 16th February, 2017

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Saurav Khurana, Advocate for the petitioner.

Mr. Gurinderjit Singh, Dy. Advocate General, Punjab
for respondent No.1/State.

Mr. Ashish Grover, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Since both these petitions under Section 482 Cr.P.C. are by the same petitioner/accused against the same set of respondent/complainant and revolving around similar proposition of law and so intrinsically intertwined with each other and would subserve the ends of justice if both of them are taken up and decided together.

For better understanding of the factual scenario which has led to institution of these two petitions, it is essential to retrace the steps and

have a re-look as to how these two petitions have come about. The undisputed facts which are not in any manner bone of contention or disagreement between the two sides are that one Hazara Singh son of Soorta Singh (since deceased) along with his son Satnam Singh (present petitioner in both the matters) were prosecuted by the Punjab State through its Junior Engineer, office of Urban Estate Officer, Punjab by filing a complaint bearing No.500/2 dated 11.07.1995 (hereinafter referred to as, 'the first complaint') under Section 11(1) read with Sections 3(1) and 8(1) of the Punjab Regulation of Colonies Act, 1975 (in short, 'the old Act') now repealed by virtue of provisions of Section 46 of the newly legislated the Punjab Apartment and Property Regulation Act, 1995 (in short, 'the new Act') with effect from 02.08.1995.

The gamut of allegations was that deceased Hazara Singh happened to be the owner of land bearing Khasra No.276 Min, village Tung Pai Suburban Abadi, Vishal Vihar, Amritsar as per jama bandi pertaining to the year 1992-93 and who had appointed his son (present petitioner) to be his lawful attorney. It is alleged that the accused in the complaint have divided this land into five or more plots for the purpose of transfer for residential, commercial, industrial or any other purpose and thus have set up a colony as defined under Section 2(c) of the old Act. It has been alleged that they have sold off this property to nine purchasers whose details with area, sale price, date of registration of the

sale deeds along with khasra numbers have been duly depicted in the complaint which needs to be reiterated here as well.

It is alleged that the accused have not obtained any license as required under Section 4(2) of the old Act for setting up such a colony and therefore, have contravened the provisions of Section 3(1) of this Act which is punishable by virtue of Section 11(1) of the old Act.

CRM-M No.11116 of 2009 is in respect of the first complaint and which has a chequered history when the Court of learned Additional Chief Judicial Magistrate, Amritsar through orders dated 06.12.1999 finding no evidence as to the commission of offence has dismissed the complaint at the pre-summoning stage. It is worthwhile to refer here that consequent upon filing of criminal revision by the complainant, the Court of learned Additional Sessions Judge, Amritsar through judgment dated 20.02.2002 set aside these orders of the learned lower Court and remanded the matter back to the trial Court to proceed ahead into it in accordance with law. That is how a new impetus was given to the complaint of the State.

It was subsequent thereto the accused appeared before the Court of learned Additional Chief Judicial Magistrate and it was thereupon after due recourse to the process of law the Court of learned Judicial Magistrate 1st Class, Amritsar vide orders dated 25.08.2008 ordered framing of the charges against accused under Section 3(1) and 8(1) of the old Act. The accused challenged the very order framing

charges before the Court of learned Additional Sessions Judge by way of criminal revision in terms of Section 397 Cr.P.C. and through judgment dated 25.02.2009, the revision petition stood dismissed. It is against this very order, the present petitioner has come up in this petition under Section 482 Cr.P.C. seeking exercise of inherent powers of this Court for setting aside the orders dated 25.08.2008 framing charges against the accused by the Court of learned Judicial Magistrate 1st Class, Amritsar and which was upheld through impugned order dated 25.02.2009 by the Court of learned Additional Sessions Judge.

It is worthwhile to refer here that this Court vide orders dated 22.05.2009 had ordered that further proceedings in the case before the trial Court shall remain stayed and that is in itself illustrative how the proceedings before the trial Court have been put in abeyance.

It is by a second attempt by the complainant/State, another complaint bearing No.496/2 dated 06.07.1995 (hereinafter referred to as, 'the second complaint') was preferred by the State against the same set of accused under Section 11(1) read with Sections 3(1) and 8(1) of the old Act on the allegations that the accused petitioner before this Court in exercise of powers of authorized attorney holding General Power of Attorney of the owner accused Hazara Singh (since deceased) had sold plots for the purpose of construction of buildings in violation of the provisions of the old Act and detailed names of nine persons with area, sale price, khasra numbers and date of sale deeds so executed which may

be read as part of this judgment as well, which is well enumerated in the complaint.

CRM-M No.21537 of 2012 is in respect of the second complaint wherein by the same quirk of fate, the Court of learned Additional Chief Judicial Magistrate, Amritsar through orders dated 27.11.1999 dismissed the complaint. The State went in for revision and the Court of learned Sessions Judge, Amritsar through judgment dated 19.09.2002 while accepting the revision, set aside the orders of dismissal of the complaint and directed the trial Court to proceed ahead into the complaint after summoning the accused and that is how the prosecution against accused proceeded ahead into the matter.

It is worthwhile to refer here that in-between there has been much adoption of recourse to various provisions of law and it is vide orders dated 06.03.2012 the Court of learned Additional Chief Judicial Magistrate framed charges under Sections 11(1), 3(1) and 8(1) of the old Act against the accused. It would not be out of place to mention here that accused Hazara Singh by that time had since died and thus, the proceedings against him stood abated. It is this very order which the present petitioner/accused in the second petition has challenged before this Court by virtue of Section 482 Cr.P.C. seeking exercise of inherent powers by this Court and vide orders dated 23.07.2012, this Court in consequence of the orders passed in the other criminal petition on the same very terms had stayed further proceedings before the trial Court.

Thus, it is by this very meanderings through legal maze, both these matters have come about to be heard and disposed off by this common order.

Heard Mr. Saurav Khurana, Advocate representing the petitioner; Mr. Gurinderjit Singh, Deputy Advocate General, Punjab on behalf of respondent No.1/State; Mr. Ashish Grover, Advocate for respondent No.2 and perused the records of both the cases.

As is the stand of the two sides that trickles from their submissions vociferously made before this Court, the alleged instances of execution and registration of the sale deeds have taken place between the period April 1993 to September 1993 in both the cases thus, the occurrence having taken place in the year 1993 when the old Act was in operation as the new Act had come into being after 02.08.1995 and the old Act stood repealed by the new Act by virtue of the provisions enshrined under Section 46 of the new Act. The same makes it sufficiently clear that the repealing of this old Act shall not affect the previous operation of the Act or anything duly done or suffered thereunder as well as any offence committed under the provisions of that very Act. Therefore, leaves no scope to doubt that it would be the provisions of the old Act which would ultimately prevail upon in the present set of circumstances. The very provisions of Section 13 of the old Act lays down as follows:

“13. Prosecution – No prosecution for any offence punishable under this Act shall be instituted without the previous sanction of the Director.”

Thus, the very wording of this provision in the old Act emphatically and sufficiently makes it clear that there cannot be any institution and prosecution of a person accused of an offence under the old Act without the previous sanction of the Director. To the very query of the Court, learned counsel for the complainant/respondent No.2 could not satisfactorily answer as to the fulfillment of these mandatory requirements. Though it finds mention that sanction so accorded for the prosecution of the accused by the Administrator, Urban Estate exercising the powers of Director (Housing) under the old Act was attached but the counsel was squarely at loss of words when confronted with the same, as neither any such document while perusing the records of the case had shown to be legally and legitimately annexed with these two complaints as the list of documents attached along with the complaints does not refer to any such document. Under what provisions of law the same is sought to be brought about subsequently and belatedly in the deposition of PW3 Ajaib Ram Junior Assistant as PW3/A (PW4/A in the second complaint) when the exhibited documents as per the own admission of the counsel representing the complainant is only a copy neither proved by the person who accorded the sanction nor by the person from the original records of the Department and nor the same has been duly proved from the official

record by the competent person dealing with such matters, and thus in the light of the law laid down in '**Sait Tarajee Khimchand and others v. Yelamarti Satyam and others**' 1972(4) SCC 562, mere exhibiting of a document does not dispenses with its proof, further puts a big question mark over the very legality, validity and acceptability of such a document. Neither any evidence has been led to show that the person who has so accorded this sanction was having delegation of powers of Director of the complainant Department and which document too has never been brought forward on the records, thus a serious intentional remiss by the concerned complainant to obviate due recourse to justice.

To the mind of this Court, a document which does not form part of the complaint and never relied and annexed to at the time of its filing, subsequently cannot be taken on the records without recourse to process of law by way of additional evidence, further undermines the case of the complainant. Rather in the cross-examination this witness PW3 Ajaib Ram accepts the fact that no specific resolution was passed delegating the powers in favour of the official who has signed this so termed and alleged to be a sanction for prosecution and when this witness accepts in his cross-examination as has been pointed out by learned counsel for the complainant that there is no notification delegating the powers by the Punjab Government in favour of the official who signed the same. Thus, in the totality of the same on account of there being lack of due according of sanction for prosecution as mandated by Section 13

of the old Act renders institution of the complaint and prosecution of the accused a total nullity in the eyes of law.

The second point that is sought to be brought about is over the prosecution of the present petitioner Satnam Singh as it is duly accepted by the learned counsel for the complainant that the principal owner of the property has since passed away. The alleged power of attorney which has led to execution of the sale deeds is by an agent of this deceased person. Judicially speaking, power of attorney is described as an authority whereby one is set in the turn, stead or place of another to act for him or in the other simpler words, is an instrument by which a person is authorized to act as an agent of the person granting it. Section 2 of the Power of Attorney Act, 1882 empowers the donee of Power of Attorney to do anything in and with his own name and signatures by the authority of the donor of the power. Thus, once such an authority is granted, the Power of Attorney Act, 1882 recognizes that everything done by the donee shall be as effectual in law as if it had been done by the donee of the power in the name and with the signatures of the donor thereof.

In the present case, the owner-father deceased Hazara Singh has given authority to his agent-son in acknowledgement that whatever act the agent does is by virtue of the power in the nature and with the signatures of the donor thereof in the capacity which is totally personal in character and to fasten a person with a criminal liability necessitates

malafide intention to do such an act intentionally. Learned counsel for the complainant could not highlight anything as to the element of criminal conspiracy between the principal and the agent to show that the agent had the knowledge to do such an illegal act and it is purely with a bonafide act and conduct he has executed the sale deeds possibly as flows from the records on account of inability of the father due to the old age and ill-health. Thus, it is clear from the records before this Court that there is absolutely no averment, allegation or evidence either of common intention of the petitioner to share any such criminal act to be done with his co-accused. The mere fact that the petitioner was the holder of Power of Attorney of his father or was associated with him as his son to the mind of this Court, the petitioner can by no means be saddled with the criminal liability punishable for any such offence for which this Court seeks support from '**Mohammed Sheriff v. State of Kerala**' 2000(4) RCR (Criminal) 813 holding that a son cannot be held responsible vicariously in such an eventuality.

Thus, in the light of what has come up in these discussions, the prosecution of the petitioner, that too after more than 23 years when the proceedings before the trial Court had remained stayed throughout for such a long period of decades shows the very futility of this prosecution which further compounds this serious remiss on the part of the complainant who has failed to diligently pursue the matter throughout and thus, impels this Court to exercise inherent powers under Section 482

Cr.P.C. thereby allowing both the present petitions and setting aside the orders dated 25.08.2008 of learned Judicial Magistrate 1st Class, Amritsar and judgment dated 25.02.2009 of learned Additional Sessions Judge, Amritsar in CRM-M No.11116 of 2009, as well as orders dated 06.03.2012 of learned Additional Chief Judicial Magistrate, Amritsar in CRM-M No.21537 of 2012.

Both the petitions stand allowed in those terms. However, as has been brought to the notice of this Court that the Government of Punjab, Department of Housing and Urban Development has issued notification No.12/2/2013-5Hg2/2245 dated 26.06.2013 whereby by amending the new Act, provisions for compounding of the offence under various provisions and violation of developing unauthorized colonies have been brought about and thus, the complainant is well within his rights to have recourse to this policy for compounding of the offence and the violations, if so permissible in this policy and this order shall not come in the way of doing so, if so desired.

Disposed off. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

February 16, 2017

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No