

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

**CRM No.M-15188 of 2016
Decided on: 26.09.2017**

Mahipal and others

....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Rishabh Lohan, Advocate for the petitioners.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioners have prayed for quashing of FIR No.213 dated 25.06.2015, registered under Section 10 of the Haryana Development and Regulation of Urban Area Act, 1975 at Police Station Pundri, District Kaithal and all consequential proceedings arising therefrom.

Counsel for the petitioners submits that the FIR was registered on 25.06.2015 with the allegations that vide Memo No.311 dated 15.02.2012, the District Town Planner, Kaithal has directed the Superintendent of Police, Kaithal for initiating legal action and for registration of the FIR. However, the FIR was got registered beyond a period of 03 years. Counsel for the petitioners has further submitted that even the report under Section 173 Cr.P.C. has been presented in this case on 25.01.2017 i.e. again after a period of about 1½ years from the date of registration of the FIR. It is, thus, contended on behalf of the petitioners that the FIR which was registered beyond a period of 03 years which is a maximum punishment provided for an offence under

Sections 7 and 10 of the Haryana Development and Regulation of Urban Area Act, 1975, the prosecution of the petitioners is barred as per provisions of Section 468(2) Cr.P.C. which provides a bar to take cognizance after a lapse of 03 years period of limitation. Counsel for the petitioners has further submitted that for the purpose of commencement of period of limitation as per provisions of Section 468 Cr.P.C., the period in relation to an offence shall commence on the date of the offence.

It has further been argued by counsel for the petitioners that as per provisions of Section 190 Cr.P.C., a Magistrate can take cognizance of an offence on receiving a complaint of facts which constitute an offence or upon a police report of such facts. It is further submitted that the police report as defined under Section 2(r) of Cr.P.C., is a report forwarded by a police officer to a Magistrate under sub-section(2) of Section 173 Cr.P.C. Accordingly, it is submitted that the report which has been submitted by the police under Section 173 Cr.P.C. on 25.01.2017 makes it apparently clear that the cognizance taken by the trial Court in the present case is barred by the period of limitation as prescribed under Section 468(2) Cr.P.C. Counsel for the petitioners in support of his arguments has relied upon ***“Janak Raj vs State of Haryana”, 2002(4) RCR (Criminal) 248***, where the following observations has been made by this Court:-

“5. I have heard the learned Counsel for the parties and have gone through the record carefully.

6. Any contravention of the provisions of the Act is punishable under Section 10 of the said Act. It has been provided therein 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. As referred to above, the FIR in question was registered on 8.11.1983 on the basis of letter dated 8.7.1983, received from the District Town Planner, Ambala. Along with said letter, list of sale transactions was attached by way of annexure. As per the said list, sale transactions had taken place on 7.9.1982. If the District Town Planner had sent letter dated 8.7.1983 to the police for the registration of the FIR on account of violation of the provisions of the Act, it can be presumed that the authorities had come to know about the alleged contravention on 8.7.1983. Police had registered the FIR on 8.11.1983. It is admitted case of the parties that the challan was submitted in the court on 11.11.1986 i.e. more than three years after the registration of the formal FIR on 8.11.1983.

7. Under Section 468(1) Criminal Procedure Code it has been provided that no court shall take cognizance of an offence of the category specified under sub-section (2) after the expiry of period of limitation. As per sub-section (2) of Section 468, period of limitation shall be (a) 6 months if the offence is punishable with fine only; (b) one year if the offence is punishable with imprisonment for a term not exceeding one year; and (c) three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Under Section 469 Criminal Procedure Code, it is provided that period of limitation in relation to an offender shall commence (a) on the date of offence; or (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first

day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier. Section 473 Criminal Procedure Code, provides for extension of period of limitation in certain cases. It has been provided that any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.

8. In the present case, as referred to above, the maximum period of punishment provided under Section 10 of the Act is three years. That being so, the limitation for the Court to take cognizance of the offence shall be three years, from the date when the commission of offence was known to the person aggrieved i.e. District Town Planner. As referred to above, District Town Planner had informed the police, vide letter dated 8.7.1983 about the alleged offence having been committed by the accused. Police registered the FIR on 8.11.1983. Thereafter, police took more than three years in investigating the case and it was only on 11.11.1986 that the challan was submitted in the court. It was thereafter, that the Court took cognizance of the offence. There is absolutely nothing on the record to show that while submitting the challan, police had explained the delay in any manner, whatsoever. That being the position, in my opinion, the court was not competent to take cognizance of the offence or to serve the notice of accusation upon the accused petitioner. Furthermore, when the accused petitioner moved application before the learned Magistrate for his discharge, on the ground that

the case was barred by time, learned Magistrate dismissed the said application on 9.8.1997, copy Annexure P2, on the ground that notice of accusation had already been served upon him. In my opinion, continuation of the proceedings against the accused petitioner would be abuse of the process of law, especially when on the face of it, challan submitted in the court was beyond the period of limitation and the court had no jurisdiction to take cognizance of the said offence.

9. For the reasons recorded above, present petition is allowed. FIR and all subsequent proceedings taken thereon, including the notice of accusation and order dated 9.8.1997, copy Annexure P2, are hereby quashed.

Petition allowed.”

On the other hand, learned counsel for the State submits that since the letter issued by the District Town Planner, Kaithal was written to the Superintendent of Police, Kaithal well within the period of limitation, the registration of the FIR subsequently even after the expiry of period of limitation, in view of Section 472 Cr.P.C. will be deemed to be within limitation.

After hearing counsel for the parties, I find merit in the submissions made by counsel for the petitioners. The District Town Planner, Kaithal vide its letter dated 15.02.2012 has reported the matter to the Superintendent of Police, Kaithal with a clear averment that the petitioners/accused, by way of sub-dividing his lands into plots for residential, industrial/commercial purpose without obtaining a licence from the Director General, Town and Country Planning Haryana, Chandigarh as required under Section 3 of the Haryana Development and Regulation of Urban Area Act, 1975, has contravened the

provisions of Section 7 of the Act which constitutes an offence punishable under Section 10 of the Act. Therefore, it was reported by the District Town Planner, Kaithal on 15.02.2012 that the petitioners have committed an offence prior to 15.02.2012. The FIR was registered on 25.06.2015 on the basis of this very letter and later on, the report under Section 173 Cr.P.C. was submitted on 25.01.2017 and only thereafter, the cognizance was taken by the trial Court. The arguments raised by counsel for the State that it is a continuing offence within the meaning of Section 472 Cr.P.C. and, therefore, a fresh period of limitation shall begin to run at every moment of time during which the offence continues, in my opinion will not apply in the present case as the nature of the offence do not make it a continuing offence.

In view of the judgment in *Janak Raj's case (supra)*, I find that the registration of the FIR as well as the submissions of the report under Section 173 Cr.P.C., are much after the 03 years period prescribed under Section 468(2) Cr.P.C., therefore, the present petition is allowed and the FIR No.213 dated 25.06.2015, registered under Section 10 of the Haryana Development and Regulation of Urban Area Act, 1975 at Police Station Pundri, District Kaithal and all other consequential proceedings arising therefrom are hereby quashed.

(ARVIND SINGH SANGWAN)
JUDGE

26.09.2017
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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No