IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No.M-5486 of 2010
Date of Decision: 22.12.2017

Atul Goel ....Petitioner

Versus

Central Bureau of Investigation, Chandigarh
and another ....Respondents

Crl. Misc. No.M-18446 of 2010

Tejinder Pal Singh ....Petitioner

Versus

Central Bureau of Investigation, Chandigarh
....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Cheema, Sr. Advocate
with Mr. Pawan Girdhar, Advocate
for the petitioner
in ***Criminal Misc. No.M-5486 of 2010.***

Mr. Atul Nehra, Advocate
for the petitioner
in ***Criminal Misc. No.M-18446 of 2010.***

Mr. Sumeet Goel, Advocate
for respondent-CBI.

Mr. Sukant Gupta, Addl. P.P. for U.T. Chandigarh/
respondent No.2 in ***Crl. Misc. No.M-5486 of 2010.***

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DAYA CHAUDHARY, J.

By this judgment of mine, two petitions bearing ***Criminal Misc. No.M-5486 of 2010*** and ***Criminal Misc. No.M-18446 of 2010*** shall stand disposed of as in both the petitions, the prayer is for quashing of same

FIR i.e FIR No.RCCH02007A0003 dated 20.02.2007 for offence under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 read with Section 120-B IPC

However, for the sake of convenience, the facts are being derived from ***Criminal Misc. No.M-5486 of 2010.***

The present petition has been filed under Section 482 Cr.P.C for quashing of FIR No.RCCH02007A0003 dated 20.02.2007 for offence under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 read with Section 120-B IPC and subsequent proceedings thereto, registered at Police Station CBI, ACB, Chandigarh.

Written statements have been filed by all the respondents.

Mr. R.S. Cheema, learned senior counsel for petitioner-Atul Goel in ***Criminal Misc. No.M-5486 of 2010*** submits that the petitioner has falsely been implicated in the case, whereas, no role has been attributed to him. On perusal of contents of FIR and the investigation conducted, no offence is made out in any manner and the said FIR is an abuse of process of law. Learned senior counsel also submits that even the name of the petitioner does not find figure in the FIR and the only allegations against him are that certain violations had been made in construction of the Theatre by converting it into a multiplex. No incriminating material has come during investigation of the case. At the most, it can be a case of violations if any and the same could have been compounded by depositing compounding fee. Learned senior counsel further submits that on the same allegations, co-accused of the petitioner, namely, Kewal Singh Dhillon filed ***Criminal Misc. No.M-2746 of 2010*** and FIR qua him has been quashed. The violations which were reported vide letter dated 16.04.2004 were compounded by the Estate Office after approval of the competent authority and compounding fee so demanded vide letter dated 11.08.2005 was also deposited vide receipt dated 02.09.2005. Learned senior counsel also submits that the allegations of violations in the building were existing and reported on 10.01.2006. The conversion charges should have been demanded as per new rates in the new policy, which came into existence with effect from the date of new notification dated 13.03.2006. Said policy could not be made applicable retrospectively. It was not to be applied to the proposed sanctioned plans submitted and approved in the year 2001 and 2003. The proposed plan was approved by the Chairman, PAC in the year 2001 and 2005. The full and final conversion charges were also deposited in the year 2004 as per provisions of Sections 15 and 18 of the Capital of Punjab (Development and Regulation) Act, 1952 (here-in-after to be referred as `the Act') and the FIR, in dispute, is liable to be quashed.

Learned senior counsel for the petitioner has also relied upon judgments of Hon'ble the Apex Court in cases ***Maharashtra State Electricity Distribution Company Limited and another vs Datar Switchgear Limited and others (2010)10 Supreme Court Cases 479, S.K. Alagh vs State of Uttar Pradesh and others (2008)5 Supreme Court Cases 662, Maksud Saiyed vs State of Gujarat and others (2008)5 Supreme Court Cases 668, Sunil Bharti Mittal vs Central Bureau of Investigation (2015)4 Supreme Court Cases 609, Iridium India Telecom Limited vs Motorola Incorporated and others (2011)1 Supreme Court Cass 74, Thermax Limited and others vs K.M. Johny and others (2011)13 Supreme Court Cases 412*** and judgment of Delhi High Court in case ***Avnish Bajaj***

vs State 2008(6) AD(Delhi) 381, in support of his contentions.

Mr. Atul Nehra, learned counsel for the petitioner-Tejinder Pal Singh in ***Criminal Misc. No.M-18446 of 2010***, submits that the petitioner has falsely been implicated in the case, whereas, no offence is made out against him. The proposed sanctioned plan on Form `B' was issued in terms of provisions of Rules 7, 8 and 9 of the Punjab Capital Development and Regulation Act and no permission was granted for occupation of the building. Learned counsel also submits that the said proposed sanctioned plan was issued as per rules and no occupation was permitted. Learned counsel further submits that it has wrongly been mentioned in the final report that the proposed plan on Form `B' has been issued without charging final conversion and composition charges. The Central Bureau of Investigation has concealed certain material facts, whereas, full and final conversion charges as per Conversion policy dated 17.11.2000 for conversion of existing Cinema into Multiplex were already deposited after getting approval from Chief Administrator of the Architectural Control vide memo dated 16.08.2001. The final conversion charges of Rs.2035320/- were paid on 21.09.2004 (in addition to Rs.1,04,75,413/- which were already deposited vide receipt dated 21.12.2001). The total and final demand for conversion charges was Rs.1,25,10,643/- (1,04,75,413+20,35,230). The demand of conversion charges was recalculated vide letter dated 06.09.2004 and it was reduced as per rules. This fact had already been clarified by the Chandigarh Administration as per reply/affidavit, which is on record as Annexure A-14. Learned counsel also submits that the final composition charges under Rule 5 for deviation in the plans were already paid much before issuance of the proposed sanctioned plan on 19.06.2006. The violations were compounded by the Estate Office after approval of the competent authority and compounding fee of Rs.12,15,875/- was demanded which was deposited vide receipt dated 02.09.2005. At the end, learned counsel for the petitioner submits that the FIR and consequent proceedings are liable to be quashed in view of provisions of Section 18 of the Act as no cognizable offence is made out. The case of the petitioner is also at par with co-accused ***Kewal Singh Dhillon***, against whom, the FIR had already been quashed by this Court.

Mr. Sumeet Goel, learned counsel for Central Bureau of Investigation has strongly opposed the submissions made by learned counsel for the petitioner. He submits that Sh. T.P. Singh, S.D.O (B), Sh. Brij Mohan, Assistant Engineer and Sh. Sandeep Sharma, Draftsman entered into criminal conspiracy with the petitioner and co-accused Kewal Singh Dhillon during the year 2006. Petitioner-Tejinder Pal Singh, S.D.O(B) extended undue favour while sanctioning building plan and granting occupation certificate by deliberately suppressing the serious violations of Building Laws and by not charging the conversion/composition charges which resulted into huge loss to the State Exchequer. It has come into investigation conducted by Central Bureau of Investigation that petitioner-Tejinder Pal Singh joined as SDO Buildings in the month of February 2006. Thereafter, in pursuance of criminal conspiracy, the petitioner, Shri Brij Mohan and Sandeep Sharma, by misusing/abusing their official position, overlooked all the violations and issued occupation certificate vide letter dated 28.09.1982. It was an act of cheating, which has resulted into huge loss to the tune of Rs.6,28,87,305/-

and same has been done just to give benefit to the owner/leasee of the building. On completion of investigation, a charge sheet was issued to six accused persons including the present petitioner. The case is fixed for arguments on the issue of faming of charges but because of interim order, the proceedings could not be undertaken by the trial Court. Learned counsel also submits that the role of the petitioner-accused came into knowledge at the time of submission of the final report under Section 173 Cr.P.C. Not only there are violations of the sanctioned building plan but wrong dimensions have been given in the revised building plan and possession of the building was given without having any occupation certificate. It has come in the investigation and the final report that the construction was raised under the supervision and direction of accused petitioner in violation of relevant provisions of the Act. The violations in construction of Multiplex was the result of criminal conspiracy entered into in connivance with co-accused. Due to that criminal conspiracy, the building was constructed in contravention of the sanctioned building plan and thereafter submitted a revised building plan by concealing the actual dimensions of the building which had already been erected. The building was occupied by the accused company without having occupation certificate as required under Rule 18 of the Act. Not only the violations were overlooked but height of the building, illegal use of basement, construction of extra cabins by reducing the area, the undue benefit was given to co-accused. He also submits that neither the accused-petitioner nor the owner of the building ever applied for issuance of occupation certificate. The building was illegally occupied by the lessor without putting any condition to the owner of the building to obtain occupation certificate, whereas, there was a specific condition that conversion charges would be finally verified at the time of grant of occupation certificate.

Mr. Sukant Gupta, learned counsel for the Union Territory submits that the site for Dhillon Theatre, Manimajra, Chandigarh was originally allotted to M/s Dhillon Brothers Private Limited by the Notified Area Committee (NAC) Manimajra, Chandigarh, which was subsequently merged with Municipal Corporation, U.T Chandigarh in the year 1994. The allotment of the site was made by the Municipal Corporation, U.T., Chandigarh. During pendency of this petition, Chandigarh Administration was impleaded as party respondent and was asked to file reply. The conversion charges were to be accepted by the Municipal Corporation, Chandigarh but no occupation certificate was obtained due to which, the disputed site was ordered to be resumed by the Secretary, Municipal Corporation, Chandigarh Administration vide order dated 21.09.2007. Against said resumption order dated 21.09.2007, an appeal was filed by the aggrieved party before the Chief Administrator, U.T. Chandigarh which is pending adjudication.

Heard the arguments of learned counsel for the parties and have also perused the impugned FIR and other documents available on the file.

Briefly, the facts of the case as made out in the petition are that co-accused Kewal Singh Dhillon was allotted a plot for construction of Cinema at Notified Area Committee, Manimajra, U.T. Chandigarh vide allotment letter dated 16.01.1980. The construction was raised as per terms and conditions of the allotment letter. The occupation certificate was also issued on 28.09.1982. Said Cinema hall was running till 2001. In the year 2000, the Chandigarh Administration formulated a scheme by issuing notification known as "Multiplex Theaters and Conversion of Existing Cinema into Multiplex Theatre Scheme 2000" to promote tourism and entertainment industries just to provide better quality entertainment to the residents of Chandigarh. In pursuance of said notification, M/s Dhillon Brothers Private Limited entered into an agreement with E-City Entertainment (India) Private Limited for setting up of a new Multiplex Theatre known as `Fun Republic'. It was leased out for a period of 25 years and the lease deed agreement was registered with Sub Registrar, Chandigarh. As per terms and conditions of the lease deed, the building was to be constructed under the supervision of M/s E-City Entertainment (India) Private Limited. Said company was in direct correspondence with Chandigarh Administration relating to work of demolition, construction, building, operation and running the Entertainment Centres including the Multiplex. The whole old existing structure was removed and a new building was to be constructed after obtaining requisite licence as the entire demolition, architectural, planning, construction, designing, drawings, approvals, sanctions, operations, management and payment of conversion/composition fees and running of the Multiplex was sole responsibility of the E-City Entertainment (India) Private Limited. The FIR was registered against owner of the building-Shri Kewal Singh Dhillon against M/s E-City Entertainment (India) Private Limited as also against the petitioners-Atul Goel and Tejinder Pal Singh and Brij Mohan, Assistant Engineer and Sandeep Sharma, Draftsman. The allegations were there against the Company as well as SDO Building. There were allegations of criminal conspiracy that without depositing the conversion charges and without having occupancy certificate, the possession of the premises was handed over to the Company.

Accused-Kewal Singh Dhillon, filed ***Criminal Misc. No.M-2746 of 2010*** for quashing of FIR qua him on the ground that he has nothing to do with the allegations as the building, in dispute, was with the Company and there was no role for violation of any rule or policy. He was to sign the documents being the original allottee of the site. He had nothing to do with the violations and any lapse for not having occupancy certificate. The FIR qua Kewal Singh Dhillon was quashed vide order dated 31.03.2010. While allowing the petition filed by Shri Kewal Singh Dhillon, then counsel appearing for the Central Bureau of Investigation had also admitted that only the documents were to be signed by Kewal Krishan being the original owner of the site and M/s E-City Entertainment (India) Private Limited was responsible for violations/lapses and issuing Forms `J' and `K'. The relevant portion of order dated 31.03.2010 is reproduced as under :-

> *" Mr. Sidhu has not been able to point out either from the report of the CBI or from any other document as to how the petitioner has connived with SDO in issuing Form `B'. Form `B' is the prescribed form which is to be issued by Chandigarh Administration for releasing of the sanctioned building plans. In the present case, the building plans/drawings including the revised drawings/plans were prepared by the lessee through Architect and there is no role of the petitioner in that, except the same was signed in the capacity of owner of the building. Similarly, there is no role of the petitioner in violation of Rule 18 of the said Act. Rule 18 applies to permission to occupy and this permission to occupy can only be issued on Form `F' and not in Form `B' as mentioned by the Investigating Agency. Form `F' is issued by the competent authoirty on an*

application made by the owner in Form `D' and on receipt of application in form `D' with attachment, the Estate Officer inspects the building to ascertain the violation, if any, as per Rule 18A(iii)(b). In the present case, the SDO Building has released the sanctioned revised drawing in form `B' on 19.06.2006 which was submitted on 29.9.2003 and same was approved by the Plan Approval Committee (PAC) on 8.4.2004 and conveyed on 16.4.2004, 4.4.2005 and again on 11.8.2005. Moreover, there cannot be any violation of Rule 18 as the Occupancy Certificate has not yet been issued.

As far as offence of criminal conspiracy of the present petitioner is concerned, the petitioner has nothing to do with the charges of Form `B' as the same were to be paid by the lessee and all the amounts were paid by the lessee only and even the petitioner has not made payment of any amount. He was to get a fixed rent of Rs.5.00 lacs per month. Moreover, with regard to role of the present petitioner, it has been observed by the Hon'ble Judge while granting anticipatory bail to the petitioner that the petitioner cannot be held liable only on the ground that he had signed the documents. The relevant portion of the order dated 16.4.2009 while granting anticipatory bail to the petitioner, is reproduced as under :-

> *" To my mind without anything more it would be far fetched to say, at least at this stage, that since the accused-applicant signed the applications, he was party to criminal conspiracy. The fact that he had signed the documents has not been denied by him. His plea is that he signed the documents because as per the procedure only owner could have signed them. Otherwise, he relies on lease deed as per which the entire responsibility*

was that of the lessee. If lessee commits acts of commissions and omissions singularly or in conspiracy with public servants, it does not mean, ipso facto, that the owner of the premises is also guilty. Principle of vicarious liability is unknown to criminal jurisprudence."

Section 15 of Capital of Punjab (Development and Regulation) Act, 1952 provides for penalty in case of breach of rules. Section 18 of the Act has given the procedure for prosecution which is reproduced below"

"18. Proceudre for proseuction :-

No Court shall take cognizance of any offence punishable under this Act or any rule made thereunder except on the complaint of, or upon information given by the Chief Administrator or any other person authorized by him in this behalf."

Moreover, Section 4 Cr.P.C lays down that where special statutes provides a special procedure, the provisions of special act shall prevail and as such, no offence under Section 420 IPC is made out. Apart from the above, Mr. Sidhu also admitted that there is no role of the present petitioner except to sign the documents and all the allegations/lapses or irregularities are against the lessee."

By stating that in view of agreement arrived at between the parties, the co-accused was responsible for the violations committed during construction of the building and in applying or filling up certain forms as required by the Administration on various occasions and that civil litigation was pending between the parties.

The final report was filed by the Central Bureau of Investigation, wherein, the allegations have been levelled against the petitioner that Form `B' dated 19.06.2006 was issued dishonestly by considering old Occupation Certificate dated 28.09.1982 and undue favour was shown in sanctioning of Building Plans and granting Occupation Certificates in favour of M/s Dhillon Brothers Private Limited. It has also been mentioned that there are serious violations of Building by Laws and without charging Final conversion and composition charges, a huge loss has been caused to the State. It was also the allegation that issue of violations was reported by the area JE on 10.01.2006 and as per report of Draftsman dated 31.01.2006, major violations existing in the building. Admittedly, the SDO (Building) issued proposed sanctioned plan on Form `B' dated 19.06.2006 in terms of Rules 7, 8 and 9 of the Act. No permission was granted for occupation of the building vide proposed sanctioned plan on Form `B'. Said plan was approved prior to joining of Sh. T.P. Singh, SDO (B) by the Plan Approval Comittee on 08.04.2005 consisting of senior officers from Estate Office, Department of Planning and Architecture, Fire Department, Chief Engineer U.T., Public Health Engineering Department of the Chandigarh Administration. It is clear from the report of the Committee that conversion charges, composition charges and compounding charges as finally calculated were approved by the PAC and Finance Department, Chandigarh, Estate Officer and it was paid by the petitioner on demand before 19.06.2006 i.e before release of said plan. Meaning thereby, the petitioner had deposited full and final conversion charges as per conversion policy dated 17.11.2000 for conversion of existing cinema into Multiplex and approval of Chief Administrator of the Architectural control was also obtained.

As per contention of learned counsel for the petitioner, the final conversion charges of Rs.20,35,230/- were paid on 21.09.2004 (in addition to Rs.1,04,75,413/- already deposited vide Receipt dated 21.12.2001). The final demanded conversion charges were deposited with the Estate Office by M/s Dhillon Brothers Private Limited. Thereafter, the demand of conversion charges were re-calculated vide letter dated 06.09.2004. It was clarified by the Chandigarh Administration in its affidavit dated 30.05.2011 filed by Sh. V.K. Jain, S.D.O (Buildings), Estate Office, U.T. Chandigarh. The deposit of composition fee and conversion fee is clear from letter dated 16.04.2004 sent by the Assistant Estate Officer to M/s Dhillon Brothers Private Limited. Vide letter dated 06.09.2004, a demand to deposit composition fee and conversion charges to the tune of Rs.28,11,180/- was made to M/s Dhillon Brothers Private Limited. A receipt, in lieu thereof, was also issued against Serial No.2946 dated 21.12.2001.

It has also come on record that the petitioner Company has deposited Rs.4,68,530/- vide receipt dated 24.04.2006 subsequent to the clarification received from the competent authority by the Estate Officer, U.T. Chandigarh through letters dated 21.02.2006, 16.03.2006 and 31.03.2006. The proposed plans were released by the petitioner only after getting approval regarding Composition under Rule 5 of the Act.

As far as allegations of violations reported vide letter dated 16.04.2004 are concerned, the same were compounded by the Estate Office after approval by the competent authority i.e PAC and for that, the compounding fee of Rs.12,15,875/- was demanded vide letter dated 11.08.2005. The said amount was also deposited vide receipt dated 02.09.2005. Thereafter, the final order was passed by the Assistant Estate Officer. The allegations for violation of the building were not taken into consideration and it was diverted prior to issuance of the sanctioned proposed plan on 19.06.2006. As far as allegations of violation of the building and prior to issuance of the sanctioned proposed plan dated 19.06.2006 are concerned, the said violations were reported by the concerned JE as is clear from the reply filed by the Chandigarh Administration by way of affidavit dated 30.05.2011. The objections dated 10.01.2006 raised by J.E pertains to mis-use of the building but there was no violation of the building and it was not to be considered while issuing the proposed plan. The relevant paras are reproduced as under :-

> *"There is mention in FIR that JE's report dated 10.1.2006 revealed existence of violations like use of passage wall for exhibition of painting, provision of restaurant and bar instead of offices at fourth floor and construction of cabins at ground floor against the submitted plan. As regards this, it is stated that largely these are the issues pertaining to misuse for which proceeding under the relevant provisions were pending and the proceedings file of the same was transferred to Municipal Corporation vide letter dated 13.7.2006. Now the Estate Officer of the Municipal Corporation Chandigarh being competent authority is dealing with this matter."*

Moreover, the proposed plan was approved by the Chairman PAC in the year 2001 and 2005 after depositing full and final conversion charges in the year 2004 which was prior to notification dated 13.03.2006.

Sections 15 and 18 of the Act which are relevant in the present case, are reproduced as under :-

> *" Section 15 of the Capital of Punjab (Development and Regulation) Act 1952 provides for penalty in case of breach of rules. Section 18 of the Act has given the procedure for prosecution which is reproduced below :*

> *"18. Procedure for prosecution-*
>
> *No court shall take cognizance of any offence punishable under this Act or any rule made thereunder except on the complaint of, or upon information given by, the Chief Administrator or any other person authorized by him in this behalf.'*
>
> *Moreover, Section 4 Cr.P.C lays down that where special statutes provides a special procedure, the provision of special act shall prevail and as such no offence under Section 420 IPC is made out."*

There are allegations of conspiracy between the petitioner and co-accused but there is no evidence on record. Even in the final report filed under Section 173 Cr.P.C, there is no allegation of conspiracy. Only the allegations of objections and violations along with diversion from revised plan are there. There is no allegation that some undue favour was done for some ulterior motive or consideration.

Section 5 of the Act raises a bar to the erection of building in contravention of Building Rules and stipulates that no person shall erect or occupy any building at Chandigarh in contravention of any building rules made under Sub Section (2) of the Act.

Section 15 of the Act prescribes the penalty for breach of the Rules. In case, any continuing contravention is there then an additional fine can be imposed. In case of any erection or re-erection in contravention of the Building Rules, the Chief Administrator is competent to require the building to be altered or demolished by giving a written notice to the owner within a period of six months from the beginning of the construction or on its completion.

As per proviso to Section 15 of the Act, the Chief Administrator may instead of requiring alteration or demolition may accept by way of compensation any sum as he may deem appropriate.

Similarly, Section 18 of the Act prescribes the procedure for prosecution and creates a special procedure by laying down that no Court can take cognizance of any offence punishable under the Act or any Rule made thereunder except on the complaint or upon information given by Chief Administrator.

There is no evidence on record that the petitioner ever visited or met any official or there was any interaction with the co-accused officers/officials. In case, there are certain deviations of the rules or violations thereof, the appropriate action could have been taken by imposing penalty or by asking the concerned party to deposit the charges. There is no evidence of conspiracy except the allegations of violation or non-compliance of some of the provisions. As far as penalties and violations for wrongful user are concerned, it has been clarified that the same became leviable after sanctioning of the plan and the issue of unauthorized user has been dealt with in accordance with law. All approvals are conditional subject to rectification of the violations, if any. It is not a case that the penalties were waived off or procedure was not followed. The allegations are there of the violations only and also for non-deposit of the amount by taking undue advantage at the instance of co-accused officers, whereas, as per case of the petitioner, the second revised plan was duly signed and submitted by his authorized signatory.

Accordingly, by considering these facts and provisions as discussed above, there are no allegations of criminal conspiracy but it is a case of civil nature and in case, the violations are there of any sort, the same could be rectified or some of the violations could be compounded with penalty.

In view of the above, the present petition is allowed and FIR No.RCCH02007A0003 dated 20.02.2007 for offence under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 read with Section 120-B IPC and subsequent proceedings thereto, registered at Police Station CBI, ACB, Chandigarh are hereby quashed.

However, the respondent authorities are at liberty to communicate to the petitioners owner/leasee in case any violations in erection/re-erection of the building are there which are compoundable by way of deposit of penalty as per provisons of law.

(DAYA CHAUDHARY)
JUDGE

22.12.2017
gurpreet

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No