

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

(Sr. No.265)

CRM-M-39035 of 2016

Date of Decision:-February 07, 2017

SURENDER VERMA

.....Petitioner

V/S

STATE OF HARYANA

.....Respondent

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

Present : Mr. Yogesh Goyal, Advocate
for the petitioner.

Mr. Surender Singh, AAG Haryana.

A.B. Chaudhari, J.

By the present petition, the petitioner has put to challenge the order dated 07.05.2016 (Annexure P1) passed by JMIC Palwal in FIR No. 184 dated 25.04.2001 under Section 420,467,468,471,120-B IPC registered at P.S. Hodal, District Faridabad(Annexure P-4) confirmed in revision by Additional Sessions Judge Palwal by order dated 12.10.2016(Annexure P10).

Heard learned counsel for the rival parties. It is not in dispute that the petitioner was working as Joint Registrar, Hodal and his duty was to register sale deeds. Case of the prosecution is that in the year 2001, a complaint was received by Deputy Commissioner, Faridabad alleging that the land vesting in the Gram Panchayat in village Hodal had been sold by the residents illegally. Pursuant to the complaint that was received by SP Faridabad, FIR was registered. Insofar as the petitioner is concerned the only

allegation against him in the FIR is that he was responsible for registration of the sale deeds and that too without verifying the status of the land whether that belonged to the Gram Panchayat or otherwise, he had forged and conspired in registering the sale deeds. It is on the basis of these allegations the offences were registered against the petitioner. The petitioner filed application before the learned trial Judge inter alia on the ground that no sanction contemplated under Section 197 Cr.P.C was obtained before filing the prosecution. Even on merits, it was stated by him that in the performance of his duties as Joint Registrar, has acted in the official course of his business. The sale deeds were of the year 1996. Apart from that even on merits, he contended that a departmental enquiry was held against him and a categorical finding was recorded therein that the land in respect of which complaint was made was not the Gram Panchayat or Government land and therefore the petitioner was not responsible or had not done anything wrong in registering the sale deeds. Apart from that, learned counsel for the petitioner also pointed out to me the evidence that was recorded by the Magistrate and following is the extract of evidence of PW2 Kapoor Singh, Halqa Girdawar, Palwal.

“It is correct that according to our records, this land is not reserved for any community purposes. It is true that this land is in the ownership of Patti Tihab and Patti Tihab is recorded as Jumla Mustarka Malkan (Bisbedar/owners). This land, according to our records does not vest in the Panchayat/Nagar Palika or Government.”

Heard learned counsel for the rival parties. Perused the entire

records. At the outset, I quote the following portion from the revisional order which reads thus:

“3. The brief facts are that a complaint was forwarded from the office of Deputy Commissioner Faridabad addressed to Superintendent of Police Faridabad on 24.4.2001 with the subject for lodging FIR against the sellers/buyers/officials for illegal sale of Jummla Mustarka Malkhan land in Hodal. The allegations were that the land measuring 36 kanal 10 Marla falling in Khewat /Khatoni no. 358/441 rect. no. 133, Killa no. 2(4-0),3/1(6-10), rect.no. 478(101-13) Gairmumkin Johar, rect. no. 481(15-7) Gairmumkin Johar in Hodal patti Tihab which is the ownership of Jumla Musatarka Malkan and Deegar Haqdaran patti Tihab and vests in Gram Panchayat has been illegally sold by some residents of Hodal. The Government of Haryana had issued Gazettee Notification on 11.02.92(copy enclosed) vide which the Punjab village Common Lands Act 1961 was amended and all such types of land became Shamlat Deh and vested in Gram Panchayats. The copy of Jamabandi showing this land as Shamlat deh in view of the amendment ordered by Haryana Government is also enclosed. It is also worth mentioning here that Killa no. 478(10-13) and 481(15-7) are Gairmumkin Johar thus this land vests in Gram Panchayat. The detail of the transactions which have taken place is given in Annexure A. It would be seen that the sellers sold the land to one Shri Prem

Chand son of Parsadi resident of Ward No. 2 Hodal who further sold this land to Shri Tipper Chand son of Ram Lal, Trilok Chand son of Tiper Chand and others, the details of which is given in Annexure B. Since by this action the sellers, buyer and the revenue officers have illegally and in contravention of the provisions of Act sold this land, the FIR should be registered against them and further legal action may be taken at once.

4. The FIR No. 184 of P.S. Hodal was got registered on 25.04.2001 and the prosecution had sought the sanction to prosecute the applicant/accused on 16.3.2002 but the State of Haryana vide letter bearing no. 465 dated 27.2.2006 declined the sanction. It was submitted that the challan has been prepared by SI/SHO P.S.Hodal on 30.01.2001 much prior to obtain the permission from the State, whereas the challan has been submitted before the court on or about 15.12.2007. It is crystal clear that the fact pertaining to the non-grant of sanction by the State of Haryana was knowingly and intentionally concealed by the I.O of P.S.Hodal at the time of filing or submitting the challan before this court.”

It is clear from the reading of the above that the State of Haryana has specifically denied sanction that was sought in the present FIR against the petitioner. Whether or not the sanction was refused or granted at the relevant time would make no difference as the fact remains that the sanction was not granted by the State of Haryana for prosecution qua the

present petitioner. Apart from that, the petitioner was prosecuted in a departmental enquiry and it was found that the land did not belong to Gram Panchayat or the Government, as complained of. That is also evident from the evidence quoted above. The courts below have concurrently found that sanction under Section 197 Cr.P.C for filing the prosecution against the petitioner who was working as Joint Registrar was not necessary. In my opinion, since the petitioner had registered sale deeds in his official capacity as a Joint Registrar and there is nothing on record to show contrary to the same, I think the sanction under Section 197 Cr.P.C was really required. Apart from that, the fact that the sanction was declined by the State Government was taken note of by the trial court. Thus this is a case where sanction was infact refused and was required if the same was not refused before filing any prosecution in criminal court qua the petitioner. Apart from that, as pointed out from the evidence above, the land does not belong to Gram Panchayat or the Government. In the result the prayer made in the petition will have to be accepted. Hence I make the following order.

ORDER

- i. CRM-M 39035-2016 is allowed.
- ii. Rule is made in terms of the prayer clause which reads thus:

Petition under Section 482 for setting aside the order dated 07.05.2016 (Annexure P-1) passed by Ld. Judicial Magistrate Ist Class, Palwal in case FIR No. 184 dated 25.04.2001 (Annexure P-4) under Section 420,467,468,471,120-B IPC registered at P.S.Hodal, District Faridabad or order dated 03.10.2016 (Annexure P-2) passed by

Ld. Additional Sessions Judge, Palwal and order dated 12.10.2016 (Annexure P-10) passed by JMIC Hodal be set aside and the petitioner be discharged.

February 07, 2017

Rajeev

(A.B. Chaudhari)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No