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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6210-2017 [O&M]

Date of Decision : March 11, 2019

Avtar Singh Johal and another Petitioners

Versus

The State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. B.S. Sidhu, Advocate,
for the petitioners.

Mr. APS Gill, DAG, Punjab
for respondent-State.

Mr. Aman Sharma and
Mr. Chirag Suri, Advocates,
for respondent No.2

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of Complaint No. 0200051 dated 3.8.2009 **Punjab Urban Development Authority Vs. Avtar Singh and another** (Annexure P/2); summoning order dated 12.07.2012 (Annexure P/3) and orders dated 15.4.2013 (Annexure P/4) and 16.09.2013 (Annexure P/5) whereby the petitioners were declared Proclaimed Offenders and order dated 7.10.2016 (Annexure P/10) passed by learned Judicial Magistrate Ist Class, Phillaur whereby application for dropping the proceedings was dismissed.

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2. Facts relevant for the purpose of decision of the present petition; that both the petitioners have come with the plea that they are residents of Canada. Petitioner No.1 left India in September, 1957 and since then, he is permanent resident of Canada, whereas petitioner No.2 was born and brought up in Canada only. However, they have ancestral property at village Jandiala, District Jalandhar, which they had sold on the basis of General Power of Attorney to Jaswant Singh and Rajnish Kumar. On the basis of said sale deed, the above said vendees became owners of the land they started carving out a colony in the said land. Respondent No.2 without verifying the record filed a complaint against the petitioners as per the provisions of Punjab Apartment and Property Regulations Act, 1995 (for short, "**1995 Act**") and learned Magistrate passed the order to summon the petitioners as accused. Petitioner No.1 came to India for a short while and had received the summons and appeared before the Court and was admitted to bail. Subsequently, both the petitioners were declared Proclaimed Offenders though as per the reports available on the file, they were residents of Canada only. Otherwise, the matter has been compounded as per law because as per policy of the State Government of Punjab dated 21.8.2013 (Annexure P/7), petitioners have deposited the required fee for regularization and have been issued Compounding Certificate dated 26.05.2016 (Annexure P/8). On the basis of said Compounding Certificate, an application was filed before learned Magistrate for dropping the proceedings against the petitioners on the basis of complaint, Annexure P/2, but the said application was dismissed vide order Annexure P/10 on the ground that they had already been declared as Proclaimed Offenders.

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3. Learned counsel for the petitioners while arguing on this point contended that first of all, the summoning order is not maintainable because on the relevant date, the petitioners were not residing in India and the property which was used for carving out colony and apartments was not sold by the petitioners, rather by the subsequent vendees of the present petitioners. As such, no offence was committed by the petitioners. Secondly, the said offence has otherwise been lawfully compounded on the basis of Compounding Certificate, Annexure P/8. Since the main offence, which is the basis of issuance of order declaring the petitioners as Proclaimed Offenders has gone and is legally not maintainable, the orders Annexure P/4 and P/5 whereby the petitioners were declared as Proclaimed Offenders, are also liable to be set-aside.

4. Learned counsel representing respondent No.2 affirmed the fact that Compounding Certificate (Annexure P/8) was issued and respondent No. 2 has no objection if the proceedings against the petitioners are dropped because nothing remains against them by now.

5. Having considered the said submission and appraisal of the record of this case, this Court is of the considered view that most relevant facts would be that at the relevant time, the petitioners were not available in India even, rather they were permanently residing in Canada. Secondly, the property which was sold for apartments and colonization purposes was sold by the subsequent vendees of the petitioners to whom the land was sold on the basis of GPA executed by the petitioners. The most important fact is that as per policy of the Government, the said offence has been compounded and proceedings in the main case have already been finalized on the basis of Compounding Certificate (Annexure P/8).

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6. Law on the point is settled that if initial action is not in consonance with law, all subsequent and consequential proceedings would go. Such a view was taken by Hon`ble Apex Court in **State of Punjab Vs. Davinder Pal Singh Bhullar and others Etc., 2012 (1) R.C.R. (Criminal) 126** wherein Hon`ble Apex Court observed as under:-

“72. It is settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim “ *sublato fundamento cadit opus*” meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.”

As per view taken by Hon`ble Apex Court in **Davinder Pal Singh Bhullar's case (supra)**, the orders impugned in this petition deserve to be set-aside.

7. Resultantly, the present petition stands allowed and Complaint No. 0200051 dated 3.8.2009 **Punjab Urban Development Authority Vs. Avtar Singh and another**(Annexure P/2), summoning order dated 12.07.2012 (Annexure P/3) and orders dated 15.4.2013 (Annexure P/4) and 16.09.2013 (Annexure P/5) whereby the petitioners were declared Proclaimed Offenders and order dated 7.10.2016 (Annexure P/10) passed by learned Judicial Magistrate Ist Class, Phillaur, are quashed.

(SHEKHER DHAWAN)
JUDGE

March 11, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes