

CRM-M-2531-2018

1

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

Sr. No.271

CRM-M-2531-2018

Date of decision : 23.8.2022

Jasjit Deo

.....Petitioner

VERSUS

State of Punjab and another

..... Respondent(s)

CRM-M-33328-2017

Date of decision : 23.8.2022

Kulvinderjeet Kaur Dhami

.....Petitioner

VERSUS

State of Punjab and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Jasraj Singh, Advocate for the petitioners

Mr.PS Pandher, AAG, Punjab

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

AMAN CHAUDHARY, J.

By way of this common judgment, two petitions involving common facts and issues, which had been filed by two sisters, daughters of Late Sh Charan Singh Dhami are being disposed.

In CRM-M-2531-2018 filed Jasjit Deo and CRM-M-33328-2017 filed by petitioner Kulvinderjeet Kaur Dhami, prayer has been made under Section 482 Cr.P.C. for quashing of FIR No.184 dated 25.5.2006 (Annexure P1) registered under Sections 36 of the Punjab Apartment and

Property Regulation Act, 1995 (for short 'the Act') at Police Station Sadar, District Hoshiarpur and all the subsequent proceedings arising therefrom including the order dated 28.9.2010 passed by learned JMIC, Hoshiarpur, whereby both the petitioners had been declared as a proclaimed offenders. For the sake of brevity, the facts are being taken from CRM-M-2531-2018.

A Perusal of the record reveals that the FIR, in question was registered on the report filed by Additional Chief Administrator, PUDA, Jalandhar, against the petitioner and other co-accused having unauthorisedly converted the land measuring 19 kanals 10 marlas bearing khasra no. 71//1, 10,11/1 situated at village Khwaspur, District Hoshiarpur into unathorised colony without obtaining the licence from the competent authority.

Learned counsel appearing on behalf of the petitioners submits that as per Section 38 of the Act, compounding of any offence under it is permissible either before or after institution of proceedings for prosecution. In this regard, learned counsel adverts to an order dated 30.12.2014 passed by the office of Municipal Corporation, Hoshiarpur appended to the petition as Annexure P-9, to submit that a compounding fee of Rs.1.76 lakhs was deposited, pursuant to which regularization certificate was issued as mentioned in the aforesaid Annexure.

Learned counsel further submits that the continuation of the prosecution based on the FIR would be an abuse of process of law, as the petitioners had deposited the compounding fee, pursuant to which, a regularization certificate had also been issued to the petitioners.

With regard to the order dated 18.9.2010 declaring the petitioners as proclaimed offenders, learned counsel for the petitioners submits that the order has been passed without complying with the mandate under Sections 105-A and 105-B of the Code of Criminal Procedure. He further submits that the petitioners are British citizens and residing in England for a long time. Copies of the passports of the petitioners have been appended to their respective petitions and averment to this effect has been made in para 4 of the petitions, in view of which fact, the report of Lambardar as also the serving constable in relation to the proclamation proceedings, is also to the aforesaid effect. Learned counsel for the petitioners further submits that the FIR in question was lodged against seven persons, five of whom belong to her family that included her mother, sisters and two more persons, namely, Saroj Rani and Manjit Kaur daughter of Amar Chand. He further submits that their mother, namely, Surender Kaur Dhami had preferred a similar petition i.e. CRM-M-24090 of 2015 under Section 482 Cr.P.C. for quashing of the same very FIR and this Court vide judgment dated 18.4.2017 (P-10 (colly)), quashed the same qua the petitioner therein on the same grounds, as have been raised in these petitions.

Learned counsel for the respondent appearing in the present case had admitted to the compounding of the offences in view of the deposit of the fee of Rs.1.76 lakh for issuance of the regularization certificate. He further submits that in the case relied upon written instructions had been received by him from the Additional Chief Administrator, PUDA Jalandhar

that PUDA would not pursue the criminal proceedings in the light of the impugned FIR.

Heard the learned counsel for the parties.

Section 38(2) of the Act permits compounding of any offence either before or after institution of proceedings for prosecution. In view of the said provision, compounding fee amounting to Rs.1.76 lakhs was deposited by the petitioners and pursuant to which, regularization certificate had been issued. A perusal of order dated 18.4.2017 passed by this Court, reveals that written instructions from Additional Chief Administration, Jalandhar Development Authority had been received by the learned counsel for the respondent that offence being seen as compounding in view of the fee of Rs.1.76 lakhs having been deposited towards regularization, as such, PUDA would not pursue criminal prosecution in light of the impugned FIR. Based on the aforesaid categoric stand on behalf of complainant-PUDA, Coordinate Bench of this Court in view of its considered view had found that continuation of prosecution in the light of the impugned FIR would be nothing but an abuse of process of law and consequently had quashed the FIR, qua the petitioner therein, who is the mother of the petitioners. Once the same FIR stands quashed qua one of the accused, the continuation of prosecution in furtherance of the same FIR against the other co-accused i.e. the petitioners would be an abuse of process of law, particularly in view of the fact that the compounding fee of Rs.1.76 lakhs paid by the petitioners as also their mother, namely Surender Kaur Dhami, upon which the allegation regards the colony having been carved out did not survive. Furthermore, the complainant-PUDA having taken a conscious decision of not pursuing

criminal prosecution in light of the impugned FIR, in the case filed by the mother of the petitioner, the same would enure in favour of petitioners as well.

The same basis of quashing the FIR, namely; deposit of compounding fee of Rs.1.76 lakhs as also the decision not to pursue the criminal prosecution by complainant-PUDA, as relied upon by the learned counsel for PUDA in these cases as well, both the petitions are allowed. Impugned FIR No.184 dated 25.5.2006 (Annexure P1) registered under Sections 36 of the Act at Police Station Sadar, District Hoshiarpur and all the subsequent proceedings arising therefrom are hereby quashed qua the present petitioners.

It is further observed that in view of the above, even the order dated 28.9.2010 (Annexure P5) passed by learned JMIC, Hoshiarpur, whereby the petitioners were declared as proclaimed offenders would also not survive.

23.8.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No