

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

CRM-M-28530-2017

Date of Decision: 21.11.2022

KAILASH RANI @ KAILASH DEVI Petitioner
Versus
STATE OF HARYANA AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Bhanu Partap Singh, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 482 Cr.P.C is seeking quashing of FIR No.540 dated 19.10.2016 under Sections 6 and 7 of The Punjab Scheduled Roads and Controlled Areas Restriction of Unregistered Development Act, 1963 (for short '1963 Act') registered at Police Station Shahbad, District Kurukshetra and police report dated 19.05.2017 filed under Section 173 Cr.P.C.

2. Shorn of unnecessary, the material facts emanating from record are that the petitioner is owner of land bearing Khasra No.79//27 situated in revenue State of Village Patti.

3. The aforesaid land has been declared as controlled land vide notification dated 12.12.1970 issued under the 1963 Act. The petitioner entered into a lease agreement dated 14.09.2006 with Idea Mobile Communication Limited whereby petitioner permitted the Mobile Company to erect its mobile tower for a period of 15 years. The respondent vide memo dated 18.02.2010 issued a notice calling upon the petitioner to show cause as to why she should not be prosecuted for the contravention of provisions of the Act and land should not be restored to

make it in conformity with the provisions of the Act and rules made thereunder. The petitioner did not reply to aforesaid notice within 7 days, however, as per respondent, the petitioner vide letter dated 30.12.2009 informed the respondent-State that aforesaid land has been leased to a Mobile Company so notice may be issued to Mobile Company. The respondent vide memo dated 13.04.2010 issued notice to Mobile Company calling upon them to show cause as to why they should not be prosecuted and land should be restored to its original State.

4. The respondent vide order dated 09.03.2010 followed by order dated 30.04.2010 ordered to restore the land. The respondent further vide memo dated 20.09.2010 requested the Superintendent of Police, Kurukshetra to register FIR against the petitioner for violating Sections 6 and 7 of 1963 Act. It is apt to mention here that respondent asked Superintendent of Police, Kurukshetra to register FIR in 2010 whereas impugned FIR came to be registered on 19.10.2016. The police after completing investigation presented its report under Section 173 Cr.P.C on 06.04.2017.

5. Learned counsel for the petitioner submits that maximum sentence prescribed for violation of provision of Sections 6 and 7 of 1963 Act is 3 years and as per Section 468 of Cr.P.C, Trial Court can take cognizance within 3 years from the date of commission of offence and in the present case admittedly offence, if any, was committed in 2006, thus, respondent was bound to file challan within 3 years from 2006 and in any case respondent came to know about the alleged offence in February, 2010, thus, 3 years at the most could be counted from the date of

knowledge i.e. February, 2010.

6. Learned State counsel submits that it is a continuing offence, thus, in terms of Section 472 Cr.P.C, the mandate of Section 468 is not applicable. She further submits that petitioner concededly leased her land in 2006 and Mobile Company constructed its tower in 2006 and in 2010 as well as 2016, the tower was existing, thus, it was a continuing offence and the limitation period as delineated under Section 468 Cr.P.C is not applicable. Learned State counsel in support of her contention cited judgment of Hon'ble Supreme Court in State of ***Bihar Vs. Deokaran Nenshi and another (1972) 2 SCC 890***. A two Judge Bench of Hon'ble Supreme Court has adverted with expression continuing offence.

7. With the able assistance of both sides, I have perused the record and heard arguments of both sides.

8. Before delving into issue involved, it would be appropriate to look at under Section 468, 469 and 472 Cr.P.C. which are reproduced as below:

“468. Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—
(a) six 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;

(c) three years, if the offence is punishable with

imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation.—

(1) The period of limitation, in relation to an offender, shall commence,—

(a) on the date of the 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.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

472. Continuing offence.—*In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.”*

It would be pertinent to notice here that neither 1963 Act falls in schedule annexed to The Economic Offences (Inapplicability) of Limitation) Act, 1974 nor there is any State amendment making Section 468 inapplicable to 1963 Act.

9. From the perusal of afore-stated sections, it is quite evident that Trial Court can take cognizance within 3 years if a maximum sentence prescribed is 3 years. In case of continuing offence, the limitation prescribed under Section 468 Cr.P.C is not applicable.

10. Section 7 of 1963 Act which is foundation of registration of FIR and challan before learned Trial Court provides that no land within controlled area shall be used except with the permission of the Director and on payment of such conversion charges as may be prescribed by the Government. Section 12 of the Act provides for prosecution and as per Section 14, the offence is compoundable. Section 7, 12 & 14 of 1963 Act for the ready reference are reproduced as below:

“Section 7. Prohibition on use of land in controlled areas:

(1) No land within the controlled area shall, except with the permission of the Director, be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brick-kiln or brick field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence from the Director on payment of such fees and under such condition as may be prescribed.

(2) The renewal of such licences may be made annually on payment of such fees as may be prescribed.

12. Offences and penalties.—(1) Any person who—

(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in con-

travention of the provisions of Section 3 or Section 6 or in contravention of any conditions imposed by an order under Section 8 or Section 10, or

(b) uses any land in contravention of the provisions of sub-section (1) of Section 7 or Section 10, shall be punishable with fine which may extend to ten thousand rupees and, in the case of a continuing contravention, with a further fine which may extend to five hundred rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1), the Director may order any person who has committed a breach of the provisions referred to in the said sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said sub-section has been committed, and if such person fails to do so within three months of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall, if not paid on demand being made to him, be recoverable from such person as an arrear of land revenue.

14. Composition of offences.—*(1) The Director or any person authorised by the Director by general or special order in this behalf may either before or after the institution of the proceedings compound any offence made punishable by or under this Act.*

(2) Where an offence has been compounded the offender, if in custody shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded.

11. The conceded position emerging from the record is that the petitioner is owner of the land in question; the petitioner leased out aforesaid land to a Mobile Company in the year 2006 for erection of mobile tower which was erected somewhere in between 2006 and 2010; the fact of erection of mobile tower came into the knowledge of authorities in 2010; the authorities issued notice to petitioner in 2010 which culminated into order dated 09.03.2010; the authorities in view of stand of the petitioner issued another notice to Mobile Company which also culminated into order dated 30.04.2010; the authorities lodged complaint with police authorities on 20.09.2010; FIR came to be registered on 19.10.2016 and challan came to be presented on 19.05.2017.

12. The dispute lies in the narrow compass. The issue involved in the present case is whether alleged offence is a continuing offence or not. If it is declared that alleged offence was not continuing offence, the limitation prescribed under Section 468 Cr.P.C shall be applicable whereas if it is held that it is a continuing offence, the limitation prescribed under Section 468 shall not be applicable.

13. The authorities indubitably came to know about the alleged offence in February, 2010. The notice under Section 12(2) of 1963 Act was issued on 18.02.2010. The authorities passed order dated 09.03.2010 whereby petitioner was directed to restore the land to its original state. It was further ordered that if the petitioner fails to comply with this order within 7 days, action under the Act including demolition of building with means of access shall be initiated without any further notice and at the costs of the petitioner. The authorities vide memo dated 13.04.2010

issued notice to Mobile Company which culminated into order dated 30.04.2010. In the order passed against the Mobile Company, it was ordered that if they failed to comply with the order, an appropriate action including demolition of building with means of access shall be initiated, without any further notice and costs of such measures shall be recovered from them. The petitioner admittedly leased out her land to Mobile Company which constructed tower in between 2006-2010.

14. From the perusal of section 7 of the Act, it is quite evident that as soon as land notified under the Act, 1963 is used, without prior approval of the Competent Authorities, violation attracting criminal liability takes place. The offence is complete as soon as without permission of the appropriate authority land is used for the purpose other than prescribed.

15. A Co-ordinate Bench of this Court while dealing with similar question in **Nagar Panchayat, Handiaya, District Sangrur Vs. Gallu Singh and others 2006 SCC online P & H 719**, while dealing with question of applicability of Section 468 Cr.P.C. in a case where building was constructed in violation of the provisions of the Act, has held that once the unauthorized work is completed, the offence is complete and authorities are bound to initiate proceedings within time delineated under Section 468 Cr.P.C. The relevant paragraphs of the judgment are reproduced as below:

“7. In the instant cases, notices were issued stating therein that the respondents had started construction without obtaining requisite sanction from the Nagar Council and they were asked to stop the construction

*and demolish the construction which they have so raised. I have perused the complaints in each case. It has been nowhere stated that after issuing the notice, the concerned respondent did not stop the construction and he/she continued to raise construction. In the complaint, only it was stated that the respondents did not comply with the notice. So what the respondents have not complied with in the instant cases is that they did not demolish the construction raised by them without obtaining requisite sanction. In that situation, in my opinion, the respondents did not commit any continuing offence. In a similar situation, the Andhra Pradesh High Court in *The Public Prosecutor, High Court of Andhra Pradesh, Hyderabad v. Katta Krishnamurthy*, 1997 Madras Law Journal Criminal 372, has held that once the unauthorised work is completed the offence is completed. No offence is made for keeping in existence the unauthorised construction or reconstruction. If the owner of the building does not comply with the notice issued by the Committee for removal of the unauthorised construction within a specified time, action can be taken by the Committee for giving due effect to the notice i.e. for removing the unauthorised construction and then to recover the expenses incurred for getting the unauthorised construction removed. But such an offence cannot be said to be a continuing offence. Once the construction is made without necessary permission, the offence is complete for once and for all. The offence committed for construction or reconstruction without applying for the necessary permission is complete as soon as the unauthorised construction is made.*

8. *Similar is the situation here. In the instant case*

also, it is not the case in the complaints that the respondents, in spite of the notice issued to them, did not stop construction and continued to raise further construction. Here the non-compliance is that they have not demolished the construction already raised by them.

9. *In another case, a Division Bench of the Assam High Court in Silchar Municipal Board v. Sudhir Chandra Das, 1972 Criminal Law Journal 534, has held that the offence under Section 176 of the Assam Municipal Act, 1956 for constructing the building without sanction is not a continuing offence. It has been held that once the building was constructed without sanction, the offence was complete and the said offence was not a continuing offence. Thus, in my opinion, in the instant case, the alleged offence against the respondents was not a continuing offence. The respondents have committed the offence of constructing the buildings without sanction as required under Section 189(1) of the Act and such an offence is punishable with a fine which may extend to five hundred rupees under Section 219 of the Act and for such an offence, Section 468 of the Code provides that no Court shall take cognizance of such an offence after lapse of period of limitation. It is also well settled, as held by the Supreme Court in Faridabad Complex Administration v. Yadu, 1997 (2) RCR (Civil) 415 (SC) : (1997-2) 116 P.L.R. 183 (S.C.), that if the owner of the building constructs the building without sanction from the Municipal Committee, a notice for demolition of unauthorised construction is not issued within six months of the date of construction, the building erected without sanction cannot be demolished. The limitation period*

prescribed for such an offence is six months. Even otherwise, in these cases, the respondents have already suffered a lot by facing long protracted trial. There are also ample provisions under the Act for compounding the unauthorised construction.

10. In view of the above, I do not find any ground to interfere in the impugned orders, passed by the Courts below, in exercise of the inherent power of this Court under Section 482 of the Code.

*A similar view has been expressed by another co-ordinate bench of this court in **Mahipal Vs State of Haryana 2017 SCC Online P&H 5570**. Relevant paragraphs of judgement read as:*

5. 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 subdividing 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.

6. 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.

7. 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.”

16. In the case in hand, the authorities came to know about the alleged offence in 2010 and restoration order under Section 12 of 1963 Act, was passed in 2010. A complaint was lodged with police in the year 2010 and FIR was registered on the basis of said complaint. Neither after 2010 complaint was lodged nor FIR was registered on the basis of any other information.

The Co-ordinate Benches of this Court in **Nagar Panchayat** (supra) and **Mahipal** (supra) has categorically held that violation of provisions of the Act stands completed as soon as building is constructed. In view of Constitution Bench of Hon'ble Supreme Court in **UOI Vs Raghubir Singh (1989) 2 SCC 754** and a five Judge Bench of Gujarat

High Court in **State of Gujarat Vs Gordhandas Keshavji Gandhi 1961**

SCOnline Guj 15, this Court is supposed to follow a judgment passed by a Co-ordinate Bench of this Court.

Respectfully following judgments of this Court, I find that offence in question stood completed as soon as tower was constructed and in any case, the authorities were supposed to initiate criminal proceedings within 3 years from 2010 because order of restoration was passed in 2010, police was intimated in 2010 and foundation of FIR rests upon complaint of 2010. It is shocking to note that complaint to police by a public authority was lodged in 2010 whereas FIR came to be registered in 2016.

17. There is another aspect of the matter. Order dated 18.02.2010 under 1963 Act was passed against the petitioner and order dated 13.04.2010 was passed against the Mobile Company. In spite of passing order against Mobile Company, neither complaint was lodged against the Mobile Company nor FIR was registered against Mobile Company which has actually constructed the mobile tower and at present using the mobile tower. The petitioner had leased out land in question but it is Mobile Company which had constructed tower and was using the land for the purpose of tower. The authorities knowing these facts initiated restoration proceedings against Mobile Company, however, as per their wisdom neither FIR was lodged against the Mobile Company nor challan was presented against the Mobile Company. The petitioner, if any, has violated the provisions of 1963 Act to the extent of leasing the property whereas it is Mobile Company which has actually constructed

mobile tower and violated the provisions of the 1963 Act. The respondent could not ignore conduct of the Mobile Company. The order dated 30.04.2010 was passed against Mobile Company still respondents have opted not to initiate criminal proceedings against the Mobile Company. It indicates that authorities have initiated proceedings as per their whims and caprices. Firstly, they opted not to initiate proceedings against Mobile Company and secondly FIR was registered in 2016 whereas orders under 1963 Act came to be passed in 2010 and police was intimated in 2010.

18. In view of above facts and findings, this court finds that limitation of three years prescribed under Section 468 Cr.P.C. is certainly applicable to case in hand. The present petition deserves to be allowed and accordingly allowed. The challan and consequent proceedings arising therefrom are hereby quashed.

19. Before parting with this judgment, Court would hasten to add that the respondent by order dated 09.03.2010 followed by order dated 30.04.2010 has ordered to restore the land in its original condition. There is no stay against aforesaid order, thus, respondents are at liberty to take appropriate steps, as permissible by 1963 Act or any other applicable law. Quashing of challan and subsequent proceedings would not deprive the State from taking appropriate other remedial steps which even otherwise State was supposed to take as per law.

(JAGMOHAN BANSAL)
JUDGE

21.11.2022

Ali

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No