

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-43028-2018

Date of Decision: 16.11.2022

Arjun Singh

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Manmohan Saroop, Advocate for the petitioner.

Mr. Munish Sharma, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

1. Prayer in the instant petition filed under Section 482 Cr.P.C. is for quashing FIR No. 567 dated 30.09.2016 (Annexure P-1) registered under Section 10 of the Haryana Development and Regulations of Urban Areas Act, 1975 (for short-'the Act') at Police Station Sadar, Thanesar, District Kurukshetra and all consequential proceedings arising therefrom.

2. Briefly, the petitioner was owner in possession of the agricultural land measuring 8 kanals, situated within the revenue estate of village Bajidpur, Tehsil Thanesar, District Kurukshetra. He had sold the aforesaid land to four persons, namely, Sarv/Shri Pardeep Katyal, Chattar Singh, Rajiv Kumar and Puran Chand, for a total sale consideration of Rs.16,00,000/- vide registered sale deed dated 25.01.2011 (Annexure P-2). After the execution of the aforesaid sale-deed, respondent No. 2-District Town Planner, Kurukshetra, had sent a back

dated letter to the Superintendent of Police, Kuruhshetra, to register an FIR under Section 10 of the Act against the petitioner. Upon receipt of the complaint, FIR No. 567 dated 30.09.2016 (Annexure P-1) was registered against the petitioner under Section 10 of the Act, without conducting any fair enquiry and the challan report under Section 173 Cr.P.C. (Annexure P-3) was presented before the Court against the petitioner on 21.05.2018 i.e. after expiry of a period of around 1 year and 7 months. Thereafter, the trial Court framed the charges against the petitioner vide charge-sheet dated 21.05.2018 (Annexure P-4). Hence, the present petition.

3. Learned counsel for the petitioner *inter alia* contends that FIR in question was registered on 30.09.2016 i.e. after a period of more than 5 years. The factum of knowledge is duly established from the communication dated 27.09.2011 (Annexure R-1) sent by respondent No. 2 to the Superintendent of Police, Kurukshetra. The FIR was got registered beyond a period of 03 years. Even report under Section 173 Cr.P.C., was presented after a period of about 1 year and 7 months from the date of registration of FIR. It is, thus, contended on behalf of the petitioner that the FIR which was registered beyond a period of 3 years which is a maximum punishment provided under Section 10 of the Act, the prosecution of the petitioner is barred as per provisions of Section 468(2) Cr.P.C. which provides a bar to take cognizance after a lapse of 3 years period of limitation. He further contends that the impugned FIR is liable to be quashing being hopelessly time barred, registered beyond the period of limitation envisages under Section 468 Cr.P.C. In support of

his contentions, learned counsel for the petitioner relies upon a judgment of this Court in ***Mahipal Vs. State of Haryana, 2018(2) RCR (Criminal) 5.***

4. On the other hand, learned counsel for the State contends that respondent No. 2 had sent the complaint vide office Memo No. 3676 DTP (KKR) UA-KKR dated 27.09.2011 (Annexure R-1) to the Superintendent of Police, Kurukshetra, for registration of FIR against the petitioner well within the period of limitation. Thus, registration of the FIR subsequently even after the expiry of period of limitation, in view of the Section 472 Cr.P.C. will be deemed to be within limitation.

5. I have heard learned counsel for the parties and carefully gone through the relevant record.

6. Admittedly, the petitioner had sold agricultural land measuring 8 kanals, situated within the revenue estate of village Bajidpur, Tehsil Thanesar, District Kurukshetra to four persons, namely, Sarv/Shri Pardeep Katyal, Chattar Singh, Rajiv Kumar and Puran Chand, for a total sale consideration of Rs.16,00,000/- vide registered sale deed dated 25.01.2011 (Annexure P-2). Respondent No. 2-District Town Planner, Kurukshetra, reported the matter to the Superintendent of Police, Kurukshetra, vide letter dated 27.09.2011 (Annexure R-1) with a clear averment that the petitioner by way of sub-dividing his land into plots for residential/industrial/commercial purpose without obtaining the licence from the Director, Town and Country Planning, Haryana, as required under Section 3 of the Act, has contravened the provisions of Section 7 of the Act which constitutes an offence punishable under Section 10 of the

Act. On the basis of aforesaid letter, FIR was registered against the petitioner on 30.09.2016 and later on, challan report under Section 173 Cr.P.C., was presented before the Court against the petitioner on 21.05.2018 i.e. after expiry of a period of around 1 year and 7 months and only thereafter, the cognizance was taken by the trial Court. The arguments raised by learned 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, will not apply in the present case as the nature of offence do not make it continuing offence.

7. In ***Mahipal's case supra***, it was held as under:-

“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 sub-dividing 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. 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.”

8. Reference at this stage can also be made to a judgment of

this Court in ***Janak Raj vs. State of Haryana, 2002(4) RCR (Criminal)***

248, where the following observations have been made by this Court:

“6. Any contravention of the provisions of the Act is punishable under Section 10 of the said Act. It has been provided therein that any person, who contravenes any of the provisions of this Act or the Rules made thereunder or any of the conditions of a licence granted under Section 3 shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. As referred to above, the FIR in question was registered on 8.11.1983 on the basis of letter dated 8.7.1983, received from the District Town Planner, Ambala. Along with said letter, list of sale transactions was attached by way of annexure. As per the said list, sale transactions had taken place on 7.9.1982. If the District Town Planner had sent letter dated 8.7.1983 to the police for the registration of the FIR on account of violation of the provisions of the Act, it can be presumed that the authorities had come to know about the alleged contravention on 8.7.1983. Police had registered the FIR on 8.11.1983. It is admitted case of the parties that the challan was submitted in the court on 11.11.1986 i.e. more than three years after the registration of the formal FIR on 8.11.1983.

7. Under Section 468(1) Criminal Procedure Code it has been provided that no court shall take cognizance of an offence of the category specified under sub-section (2) after the expiry of period of limitation. As per sub-section (2) of Section 468, period of limitation shall be (a) 6 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; and (c) three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Under Section 469 Criminal Procedure Code, it is provided that period of limitation in relation to an offender shall commence (a) on the date of 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. Section 473 Criminal Procedure Code, provides for extension of period of limitation in certain cases. It has been provided that any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in

the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.

8. In the present case, as referred to above, the maximum period of punishment provided under Section 10 of the Act is three years. That being so, the limitation for the Court to take cognizance of the offence shall be three years, from the date when the commission of offence was known to the person aggrieved i.e. District Town Planner. As referred to above, District Town Planner had informed the police, vide letter dated 8.7.1983 about the alleged offence having been committed by the accused. Police registered the FIR on 8.11.1983. Thereafter, police took more than three years in investigating the case and it was only on 11.11.1986 that the challan was submitted in the court. It was thereafter, that the Court took cognizance of the offence. There is absolutely nothing on the record to show that while submitting the challan, police had explained the delay in any manner, whatsoever. That being the position, in my opinion, the court was not competent to take cognizance of the offence or to serve the notice of accusation upon the accused petitioner. Furthermore, when the accused petitioner moved application before the learned Magistrate for his discharge, on the ground that the case was barred by time, learned Magistrate dismissed the said application on 9.8.1997, copy Annexure P2, on the ground that notice of accusation had already been served upon him. In my opinion, continuation of the proceedings against the accused petitioner would be abuse of the process of law, especially when on the face of it, challan submitted in the court was beyond the period of limitation and the court had no jurisdiction to take cognizance of the said offence.”

9. In view of the aforesaid settled legal position, the present petition is allowed and FIR No. 567 dated 30.09.2016 (Annexure P-1) registered under Section 10 of the Act at Police Station Sadar, Thanesar, District Kurukshetra and all consequential proceedings arising therefrom, are hereby quashed, qua the petitioner.

November 16, 2022

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**(ASHOK KUMAR VERMA)
JUDGE**

*Whether speaking/reasoned
Whether Reportable*

*Yes/No
Yes/No*