

CRM-M-8065-2023

-1-

(204)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8065-2023

Date of Decision: 25.04.2023

RAKESH KUMAR & ANOTHER

... Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Divyam Singh, Advocate for
Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.0617 dated 28.09.2016 (Annexure P-2) registered under Sections 6, 7A and 12 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 at Police Station Samalkha, District Panipat, the report under Section 173 Cr.P.C. dated 26.04.2019 (Annexure P-3) under Sections 6, 7A and 12 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and all subsequent proceedings arising therefrom qua the petitioners.

2. The brief facts of the case are that the instant FIR was registered on the basis of a letter dated 09.07.2012 bearing memo No.386/SCA-38/11 which was written by the District Town Planner, Panipat to the Superintendent of Police, Panipat wherein the Investigating Agency was

CRM-M-8065-2023

-2-

informed that the petitioners had infringed the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. It was stated in the letter that the offenders/petitioners had neither applied for CLU permission nor had they restored the land. Directions were sought for the registration of an FIR. The copy of the letter dated 09.07.2012 is attached as Annexure P-1 to the petition.

3. On the basis of the said letter, an FIR No.0617 dated 28.09.2016 (Annexure P-2) registered under Sections 6, 7A and 12 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 at Police Station Samalkha, District Panipat came to be registered against the petitioners. The copy of the FIR is attached as Annexure P-2 to the petition.

4. Pursuant to the registration of the FIR, the chargesheet/final report under Section 173 Cr.P.C. was presented against the petitioners before the Court of Judicial Magistrate, 1st Class, Panipat on 26.04.2019. The copy of the said report is attached as Annexure P-3 to the petition.

5. Subsequent thereto, the sanction under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 was obtained from the District Magistrate, Panipat on 07.06.2019. The copy of the sanction is attached as Annexure P-4 to the petition.

6. The challan (Annexure P-3), the sanction order (Annexure P-4) and all subsequent proceedings arising therefrom are under challenge in this petition.

7. The learned counsel for the petitioners contends that as the maximum sentence prescribed was 03 years under Section 12 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, the cognizance could have been taken by the Court within a period of 03 years from the date of knowledge of the offence as envisaged under Sections 468 and 469 Cr.P.C. In the instant case, the complainant-Department was aware of the fact that an offence had been committed on 09.07.2012 on which date a letter dated 09.07.2012 (Annexure P-1) had been sent to the Superintendent of Police, Panipat for the registration of an FIR. However, the FIR came to be registered only on 28.09.2016 and the final report was presented only on 26.04.2019. Therefore, the Court could not have taken cognizance of the offence in question. He thus contends that the FIR, the report under Section 173 Cr.P.C. and all subsequent proceedings arising therefrom are liable to be quashed. Reliance is placed on the judgment of this Court in **Harneet Kaur Versus State of Haryana & another, CRM-M-45483-2017.**

8. On the other hand, the learned State counsel while referring to the reply dated 18.04.2023 by way of an affidavit of Om Parkash, HPS, Deputy Superintendent of Police, Samalkha (Panipat), contends that a perusal of the report under Section 173 Cr.P.C. would clearly establish the commission of the offence in question. Therefore, the FIR and the report under Section 173 Cr.P.C. were not liable to be quashed. He, however, concedes that there is no specific denial to the argument of the petitioners that the very cognizance was barred in terms of Sections 468 and 469 Cr.P.C.

CRM-M-8065-2023

-4-

9. I have heard the learned counsel for the parties.
10. Before proceeding further in the matter, it would be apposite to refer to the relevant provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. These are as under:-

Section 6, reads as under:-

“6. Erection or re-erection of buildings etc. in controlled areas.—Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation or lay out any means or access to a road on a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director:

Provided that no such permission shall be necessary for erection or re-erection of any building if such building is used or is to be used for agricultural purpose or purposes subservient to agriculture.”

Section 7A, reads as under:-

“7A. Power of relaxation.- The Government may, in public interest, relax any restrictions or conditions in so far as they relate to land use prescribed in the controlled area in exceptional circumstances.”

Section 12, reads as under:-

“Offence and penalties.- (1) Any person who-
(a) erects or re-erects any building or make or extends any excavation or lays out any means of access to a road in contravention 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 provision of sub section (1) of Section 7 or Section 10.

shall be punishable with [imprisonment of either description for a term which may extend to three years and shall also be liable] to fine which may extend to [fifty thousand rupees but not less than ten thousand rupees] and, in the case of a continuing contravention, with a further fine which may extend to [one thousand 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, by notice, served by post and if a person avoids service, or is not available for service of notice, or refuses to accept service, then by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, call upon any person who has committed a breach of the provisions referred to in the said sub-section to stop further construction and to appear and show cause why he should not be ordered to restore original state or to bring it in conformity with the provisions of the Act or the rules, as the case may be, any building or land in respect of which a contravention such as described in the said sub-section has been committed, and if such person fails to show cause to satisfaction of the Director within a period of seven days, the Director may pass an order requiring him to restore such land or building to its original state or to bring it in conformity with the provisions of the Act or the rules, as the case may be, within a further period of seven days.

(3) If the order made under sub-section (2) is not carried out, within the specified period, the Director may himself at the expiry of the period of this order, take such measures as may appear 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 arrears of land revenue:

Provided that even before the expiry of seven days period mentioned in the order under sub-section (2), if the Director is satisfied that instead of stopping the erection or re-erection of the building or making or extending of the excavation or laying out of the means of access to a road, as the case may be, the person continues with the contravention, the Director may himself take such measures as may appear 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 arrears of land revenue.]”

11. The relevant provisions of the Code of Criminal Procedure, 1973 are as under:-

Section 468 Cr.P.C. reads as under:-

“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.]”

Section 469 Cr.P.C. reads as under:-

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.”

12. This Court in the case of **Harneet Kaur Versus State of Haryana & another** (supra) held as under:-

“10. In the present case the sale deed was executed on 28.04.2011 (Annexure P-2). A perusal of the FIR would reveal that a show cause notice was issued to the petitioner on 01.12.2011/13.12.2011. Quite interestingly a communication dated 23.02.2012 was sent by the DTP, Kurukshetra to Superintendent of Police, Kurukshetra on 28.09.2016 leading to the registration of the FIR on

29.09.2016 (page 44 of the paper book). The challan in the present case was submitted on 17.08.2017. A perusal of the dates as enumerated hereinabove would show that the respondent no.2 was aware of the alleged offence, if any, on 01.12.2011/13.12.2011 and, therefore, the court could have taken cognizance within three years of that date i.e. 01.12.2014/13.12.2014. Therefore, in the present case the report under Section 173 Cr.PC was submitted on 17.08.2017 i.e. almost after 06 years of the discovery of the offence on 01.12.2011/13.12.2011. Thus, the court could clearly not have taken cognizance beyond the period of limitation prescribed under Section 468 Cr.PC as has been pointed out in various judgments (supra).”

[Emphasis supplied]

13. Coming back to the facts of the present case, apparently, the complainant-Department had the knowledge of the alleged commission of the offence on 09.07.2012. The FIR came to be registered on 28.09.2016 pursuant to which the report under Section 173(2) Cr.P.C. was submitted only on 26.04.2019. A perusal of Section 12 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 would show that the maximum sentence prescribed may extend to 03 years. Thus, a reading of Sections 468 and 469 Cr.P.C. would show that the Court would have taken cognizance only within a period of 03 years of the date of the knowledge of the offence i.e. 09.07.2012. However, in the instant, the report under Section 173 Cr.P.C. was presented only on 26.09.2019 and the sanction was granted even later on 07.06.2019 without which the Court could not have taken cognizance in any case. Therefore, from the date of the knowledge of the commission of the offence till the date when the sanction was granted

CRM-M-8065-2023

-9-

almost 07 years had elapsed. Thus, in the instant case, the Court could not have been taken cognizance beyond the period of limitation prescribed under Section 468 Cr.P.c.

14. In view of the above-said settled legal position, the present petition is allowed and FIR No.0617 dated 28.09.2016 (Annexure P-2) registered under Sections 6, 7A and 12 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 at Police Station Samalkha, District Panipat, the report under Section 173 Cr.P.C. dated 26.04.2019 (Annexure P-3) under Sections 6, 7A and 12 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and all subsequent proceedings arising therefrom are quashed qua the petitioners.

(JASJIT SINGH BEDI)
JUDGE

25.04.2023

JITESH

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