

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

CRM-M-12652-2016

Date of Decision: February 15, 2023

Jagdish Raj and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajeshwar Singh Thakur, Advocate for the petitioners.

Mr. R.S. Khaira, DAG, Punjab.

Mr. Ashish Grover, Advocate for respondent Nos.2 and 3.

DEEPAK GUPTA, J.(Oral)

In Criminal complaint No.210 of 2004 filed by respondent No.2-Punjab Urban Planning and Development Authority, the four petitioners and two others were convicted by the Court of learned Chief Judicial Magistrate, Gurdaspur, vide judgment dated 14.02.2012 under Section 36 of the Punjab Apartment and Property Regulation Act, 1955 (hereinafter referred as 'the Act') for contravening the provisions of Sections 3, 5 & 21 of the Act, punishable under Section 36 of the Act. However, vide separate order of the even date, all the convicts including the petitioners were released on probation. The complainant of the case i.e. respondent No.2 filed revision (Copy Annexure P-2) against the above said order, whereby the petitioners had been released on probation. Vide order dated 03.03.2016 passed by learned Addl. Sessions Judge, Gurdaspur in Criminal Revision No.46 of 2012, the order dated 14.02.2012 releasing the petitioners and others on probation was set aside. The matter was remanded to the Trial Court with the direction to make clear the punishment for each violation of the Act, after hearing on quantum of sentence.

2. It is against the above said order dated 03.03.2016 that this petition under Section 482 Cr.P.C. is filed for quashing the said order.

3. It is contended that petitioners did not prefer the appeal against the conviction, as they were in fact the victims and the right to file the appeal was not available to them under Section 372 Cr.P.C. The impugned order could not be passed by remanding the matter in a revision, as no appeal was filed by the respondent-complainant. Complainant could have filed appeal under Section 377 Cr.P.C., but it did not prefer to do so and that learned Addl. Sessions Judge, Gurdaspur, did not have the power to remand the matter under Section 397 Cr.P.C. It is also contended that conviction has been wrongly recorded because the petitioners are not the colonizers nor any colony has been carved out and in fact, the petitioners were the General Power of Attorney holders of Gurpal Singh, who has since died.

4. Respondents have defended the impugned order by pointing out that different sentences under Section 36 of the Act have been provided for violation of different provisions of law and therefore, the matter has been rightly remanded to the Trial Court with a direction to make it clear as to for which violation of law, which sentence is to be imposed, after hearing the convicts-petitioners on quantum of sentence.

5. Having considered submissions of both sides, this Court finds no merit in the present petition.

6. Concededly, petitioners did not challenge the conviction recorded by learned Trial Court, vide judgment dated 14.02.2012. It is only respondent No.2-complainant, who challenged the order, whereby petitioners were directed to be released on probation. Section 374 (3)

Cr.P.C. gives right to any person convicted on a trial held by a Magistrate of the First Class to file appeal, even in respect of whom an order has been made or sentence has been passed under Section 360 Cr.P.C. Meaning thereby, petitioners could very well challenge their conviction as well as the order of releasing them on probation but they preferred not to do so. Once it is so, petitioners now cannot plead that their conviction has been wrongly recorded by the Trial Court.

7. The First Appellate Court was faced with the challenge only with respect to the order of the Trial Court, whereby petitioners were released on probation. The question is that whether revision against the order releasing the petitioners on probation, was maintainable. The contention of the petitioners to the effect that appeal should have been filed by the respondent-complainant against the order of probation, has no merit.

8. Section 377 Cr.P.C. is applicable to the appeal, which is to be filed by the State Government against sentence. Since in the present case, conviction was recorded in a private complaint filed by respondent No.2, therefore Section 377 Cr.P.C. is not applicable.

9. Section 372 Cr.P.C. reads as under:-

“372. No appeal to lie unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

10. It is evident from the proviso to Section 372 Cr.P.C. that although the victim has been given a right to prefer an appeal, but such an appeal can be filed only against the order passed by the Court -

- (i) acquitting the accused, or
- (ii) convicting for lesser offence, or
- (iii) for imposing inadequate compensation.

11. The aforesaid provision does not give right to the complainant of the case or the victim to file an appeal against an order, whereby accused has been released on probation. In these circumstances, appeal could not have been filed by respondent No.2-complainant and so, revision passed against the order of the Trial Court, releasing the petitioners on probation, was maintainable.

12. Proceeding further, learned Trial Court recorded conviction of the petitioners under Section 36 of the Act for contravening the provisions of Section 3, 5 and 21 of the Act. Section 36 of the Act reads as under:-

“36.(1) Any promoter who, without reasonable cause, fails to comply with or contravenes the provisions of sections 3, 6, 9 (save as provided in sub-section (2) of this section) or section 15 shall, on conviction, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.

(2) Any promoter who contravenes the provisions of section 9 by misusing any amount advanced or deposited with him for any purpose other than the purposes mentioned in section 9, shall, on conviction, be punished with imprisonment for a term which shall not be less than six months and which may extend to five years, or with fine which shall not be less than two thousand rupees and which may extend to ten thousand rupees or to the amount in respect of which the offence was committed, whichever is greater, or with both.

(3) Any promoter or estate agent who, without reasonable excuse, fails to comply with, or contravenes, any other provision of this Act or of any rule made thereunder, or does not pay the penalty imposed on him by the competent authority, shall, if no other penalty is expressly provided for the offence, be punished on conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (Central Act of 1974), it shall be lawful for a Judicial Magistrate of the First Class to pass on any person convicted of any offence under this Act, a sentence of imprisonment or of fine or both as provided in the relevant section of this Act, in excess of his powers under section 27 of the said Code.

(5) The fine imposed under sub-sections (1), (2) or (3) may be recovered as an arrears of land revenue and out of the fine so recovered, the Judicial Magistrate may award such amount as he deems fit to the person from whom the advance or deposit was obtained by the promoter or the estate agent, as the case may be.”

13. It is evident from the above said provisions that different punishments have been provided for violation of the different contraventions of the Act. Therefore, learned Addl. Sessions Judge, Gurdaspur was correct in remanding the matter to the Trial Court to clarify the punishment for each violation after hearing the petitioners on quantum of sentence.

14. In view of the above, it is held that there is no merit in this petition. The same is hereby dismissed.

February 15, 2023
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(DEEPAK GUPTA)
JUDGE

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