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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15030-2021 (O&M)

Date of decision: September 02, 2023

Parminder Singh Gill

....Petitioner

versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Piyush Kant Jain, Advocate,
Mr. Raj Shekhar, Advocate for petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') seeking quashing of FIR No.60 dated 21.07.2012 (Annexure P-2) registered under Section 36(1) of the Punjab Apartment and Property Regulation Act, 1995 (for short 'Act of 1995) and Section 420 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, Sudhar, District Ludhiana, along with consequential proceedings arising therefrom, including the order dated 01.03.2019 (Annexure P-6) passed by learned Judicial Magistrate 1stClass, Jagraon whereby petitioner was summoned as an additional accused under Section 319 of Cr. P.C.; and order dated 31.08.2019 (Annexure P-11) whereby petitioner was declared as a Proclaimed Offender.

2. Learned counsel for petitioner submits that petitioner is a citizen of the United States of America (USA) and a person of Indian origin. He had migrated to USA several decades back. Copy of passport and driving licence of petitioner is contained at Annexure P-1. He submits that petitioner owned certain land situated at village Sudhar, Tehsil Raikot, District Ludhiana, Punjab. In the year 2010, he had appointed one Didar Singh as his General Attorney to manage and look after the same, and had also bestowed several rights *inter alia* right of alienation of said land.

2.1. He submits that in the years 2010 and 2011, Didar Singh sold portions out of the aforesaid land to various persons vide registered sale deeds. In the year 2012, FIR in question (Annexure P-2) was registered against the petitioner and Didar Singh, on the complaint of official of Greater Ludhiana Area Development Authority (respondent No.4) alleging that aforesaid sale of portions out of land in question vide registered sale deeds was done in violation of certain provisions of the Act of 1995 as the same amounted to setting up of an unauthorized colony.

2.2. Learned counsel would further urge that during investigation, petitioner was found innocent and exonerated. Challan was filed against Didar Singh and petitioner was put in column No.2 having been found innocent and no incriminating material against him.

2.3. Learned counsel further contends that as per sanction dated 26.02.2013 (Annexure P-4) issued by competent authority (respondent No.3) (which is a condition precedent before launch of prosecution) under the provisions of Section 38(1) of the Act of 1995, it was clearly recorded that sanction for prosecution was accorded only to proceed against Didar Singh and not against the petitioner. It was also stated therein that petitioner was found innocent.

2.4. Learned counsel further submits that during trial, an application dated 16.02.2019, under Section 319 Cr. P.C. was filed by the prosecution to summon the petitioner as an additional accused. However, neither mandatory sanction was taken before filing said application nor was the same taken at any later stage. He further canvasses that only allegation against the petitioner in the aforesaid application was that prosecution witnesses during depositions stated that plots were sold by the petitioner through his attorney – Didar Singh. On the basis of such sole allegation, petitioner was sought to be summoned as additional accused.

2.5. Learned counsel further argues that the aforesaid application was mechanically allowed by learned trial Court vide impugned order dated 01.03.2019 (Annexure P-6) by ignoring pivotal fact that allegation against the petitioner was already

part of the FIR in question and statements under Section 161 Cr. P.C., and the same was not found to be worthy for launching prosecution against the petitioner at the time of filing of challan.

2.6. Learned counsel further submits that since prosecution was fully aware that petitioner was a citizen and resident of USA, same being clearly recorded in the challan as well as in the head note of application under Section 319 Cr. P.C., the notice was sent to alleged address “Village Sudhar, District Ludhiana”. Concerned official who attempted service of notice at the said address reported vide service report dated 25.04.2019 (Annexure P-7) that petitioner was not residing at the said address and had shifted abroad.

2.7. Learned counsel would further urge that vide order dated 26.04.2019 (Annexure P-8), learned Court below, blatantly violating provisions of Cr. P.C., straightway proceeded to issue non-bailable warrants, despite the fact that address of the petitioner was of USA. Thereafter, due to non-execution of non-bailable warrants, an order of proclamation was issued.

2.8. Learned counsel further submits that vide order dated 31.08.2019 (Annexure P-11), petitioner was finally declared a ‘Proclaimed Offender’. Further argues that co-accused, namely Didar Singh against whom challan was filed in the Court, was finally acquitted of all the charges against him vide judgment dated 03.10.2019 (Annexure P-12).

2.9. Learned counsel further contends that even the alleged offences stand compounded vide certificate of compounding dated 06.02.2020 (Annexure P-13) issued by the competent authority of GMADA upon payment of compounding fee of Rs.9,48,500/-.

3. *Per contra*, learned State counsel, on instructions from police official, admits the aforesaid averments regarding compounding of offences and issuance of compounding certificate, upon payment of fee thereof.

4. I have heard learned counsel for the parties and gone through the record.

5. Vide order dated 06.04.2021 passed by a co-ordinate Bench of this Court then seized of the matter, further proceedings in the FIR in question were stayed till the next date of hearing. Reply by way of an affidavit dated 14.09.2021 filed on behalf of respondents No.2 to 4, is already on record. Relevant thereof reads as under:

“7. That in order to bring all unauthorized colony/ buildings into planning frame work and to provide basic services to the residents of the unauthorized/illegal colonies in the state of Punjab, the Government of Punjab had notified the policy vide notification dated 26.06.2013 for compounding/ regularization of unauthorized colonies/buildings in the state of Punjab under the provision of the Punjab Laws (special provision) Act, 2013. Copy of Regularization policy dated 26.06.2013 is annexed herewith as Annexure A-3.

8. That Sh. Didar Singh the Power of Attorney of the petitioner had applied for compounding of the colony in question namely Neal Enclave vide online application no. 154679 on 04.10.2013.

9. That Sh. Didar Singh the Power of Attorney of the petitioner could not meet the parameters mentioned in the policy dated 26.06.2013, hence the compounding certificate of the colony in question could not be issued at that time.

10. That the Government of Punjab had issued various policies for regularization of unauthorized/ illegal colonies/ buildings under the Punjab Laws (special provision) Act notified from time to time. In this regard a policy dated 18.10.2018 was issued by the State of Punjab for regularization of unauthorized/ illegal colonies/ buildings. It is pertinent to mention here that the applicant who had applied under the earlier policies can also opt the above said policy dated 18.10.2018 as per para 12(iv) of the ibid policy. Copy of Regularization policy dated 18.10.2018 is annexed herewith as Annexure A-4.

11. That Sh. Didar Singh the Power of Attorney of the petitioner had again applied for compounding of the colony in question namely Neal Enclave vide online application no. 506759 on 31.01.2019.

12. That in the meantime, the petitioner has been made accused vide Order dated 01.03.2019 (Annexure P-6) passed by the Court of Ld. Judicial Magistrate is Class, Jagraon while disposing-of the application filed under section 319 of Criminal Procedure Code filed by Assistant Public Prosecutor for the state on 16.02.2019.

13. That unauthorized colony namely Neal Enclave was compounded and regularization certificate for the same was issued by Competent Authority on 06.02.2020 vide letter no. 990 (Annexure P-13).

14. That in the present case the office of deponent had not issued prosecution sanction against the petitioner. As such he cannot claim any relief from the office of deponent.

15. That the petitioner has concealed material facts from this Hon'ble Court and filed the present petition after considerable delay, the present petition deserves to be out rightly dismissed qua the deponent in the interests of justice.

16. That the deponent is filing the present reply by way of affidavit at this stage and craves indulgence of this Hon'ble Court to file a detailed reply, if so directed.”

6. Perusal of the aforesaid reply reveals that unauthorized colony namely Neal Enclave was compounded and regularized and regularization certificate for the same has been issued by the competent authority, on 06.02.2020, vide letter No.990 *ibid*.
7. Co-accused of the petitioner has also been acquitted of the charge framed against him. No useful purpose would be served by keeping the criminal proceedings pending against the petitioner. In the considered view of this Court, it would be an appropriate case for exercise of power under Section 482 Cr.P.C. and to bring to an end the criminal proceedings initiated in the light of the impugned FIR.
8. For the reasons recorded above, the present petition is allowed. FIR No.60 dated 21.07.2012 (Annexure P-2) registered under Section 36(1) of the Act of 1995 and Section 420 of the IPC, at Police Station, Sudhar, District Ludhiana, along with consequential proceedings arising therefrom *qua* the petitioner, including order dated 01.03.2019 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Jagraon, whereby petitioner was summoned as an additional accused under Section 319 of Cr. P.C.; and order dated 31.08.2019 (Annexure P-11) whereby petitioner was declared as Proclaimed Offender, stand quashed.
9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 02, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No