

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

[241]

**CRM-M-18609-2023
Decided on :01.05.2023**

Sharanjit Kaur Dayal and another

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. Jasraj Singh, Advocate for the petitioners.

Mr. H.S.Sullar, Sr. DAG, Punjab.

Mr. Ashish Grover, Advocate for respondents No.2.

AMAN CHAUDHARY, J.

1. Present petition has been filed under Section 482 of Cr.P.C. for quashing of FIR No.184, dated 25.05.2006, registered under Section 36 of the Punjab Apartment & Property Regulation Act, 1995 (for short 'the Act') at Police Station Sadar, District Hoshiarpur and all the subsequent proceedings arising therefrom including the order dated 28.09.2010 (Annexure P-5) passed by the Ld. Judicial Magistrate Ist Class, Hoshiarpur whereby both the petitioners had been declared as proclaimed offenders.

2. A perusal of the record reveals that the FIR, in question was registered on the report filed by Additional Chief Administrator, PUDA, Jalandhar, against the petitioners and other co-accused having unauthorisedly converted the land measuring 19 kanals 10 marlas bearing khasra no. 71//1, 10,11/1 situated at village Khwaspur, District Hoshiarpur into an unathorised colony without obtaining the licence from the competent authority.

3. Learned counsel for the petitioners submits that compounding of any offence under Section 38 of the Act is permissible either before or after institution of

proceedings for prosecution. In this regard, he adverts to an order dated 30.12.2014 passed by the office of Municipal Corporation, Hoshiarpur, Annexure P-9, to submit that a compounding fee of Rs.1.76 lakhs was deposited, pursuant to which regularization certificate was issued. Thus, the continuation of the prosecution based on the FIR would be an abuse of process of law.

4. With regard to the order dated 28.09.2010 declaring the petitioners as proclaimed offenders, learned counsel submits that the same has been passed without complying with the mandate of Sections 105-A and 105-B of Cr.P.C., as the petitioners are British citizens, residing in England since long. Copies of their passports have been appended to this petition as Annexure P-3 and averments to this effect have been made in para 4 of the petition. The report of Lambardar as also the serving constable in relation to the proclamation proceedings, is also to the aforesaid effect. Learned counsel further submits that the FIR in question was lodged against seven persons, five of whom include their mother and sisters, whereas others are Saroj Rani and Manjit Kaur. Further that their mother, namely, Surinder Kaur Dhami, Jasjit Deo and Kulvinderjeet Dhami had preferred similar petitions i.e. CRM-M-24090 of 2015, CRM-M-2531-2018 and CRM-M-33328-2017 under Section 482 Cr.P.C. for quashing of the FIR in question. This Court vide judgments dated 01.03.2017/18.04.2017 (Annexures P-10 (colly.) and 23.08.2022 (Annexure P-11), quashed the same qua them on the same grounds as have been raised in the present petition.

5. Learned counsel for the respondent No.2 admits to the compounding of the offences in view of the deposit of the fee of Rs.1.76 lakh for issuance of the regularization certificate. He further submits that in the case relied upon written instructions had been received by him from the Additional Chief Administrator, PUDA Jalandhar that PUDA would not pursue the criminal proceedings initiated vide the impugned FIR.

6. Heard the learned counsel for the parties.

7. It is an admitted position that in view of the Section 38(2) of the Act, the compounding fee amounting to Rs.1.76 lakhs was deposited by the petitioners, pursuant to which, regularization certificate had been issued. A perusal of order dated 18.4.2017 passed by this Court, reveals that written instructions from Additional Chief Administration, Jalandhar Development Authority had been received by the learned counsel for the respondent that offence being seen as compounding in view of the fee of Rs.1.76 lakhs having been deposited towards regularization and, as such, PUDA would not pursue criminal prosecution. Based on the aforesaid categoric stand on behalf of complainant-PUDA, this Court in its considered view had found that continuation of prosecution in the FIR in question would be nothing but an abuse of process of law. Consequently, the FIR was quashed qua the co-accused of the petitioners. Once the same FIR stands quashed with regard the co-accused, the continuation of prosecution in furtherance thereof against the other co-accused i.e. the petitioners would also be an abuse of process of law, particularly in view of the compounding fee of Rs.1.76 lakhs paid, the allegation regards the colony having been carved out no longer survived. Furthermore, the complainant-PUDA having taken a conscious decision of not pursuing criminal prosecution, in the case filed by the co-accused, the same would enure in favour of petitioners as well.

8. Considering the fact that on the basis of deposit of compounding fee of Rs.1.76 lakhs as also the decision not to pursue the criminal prosecution by complainant-PUDA, as relied upon by the learned counsel for PUDA, the FIR in question has been quashed by this Court, thus the present petition is allowed. Impugned FIR No.184 dated 25.05.2006 (Annexure P-1) and all the subsequent proceedings arising therefrom are hereby quashed qua the present petitioners.

9. It is further observed that in view of the above, the order dated 28.09.2010 (Annexure P-5) passed by learned JMIC, Hoshiarpur, whereby the petitioners were declared as proclaimed offenders would also not survive.

[AMAN CHAUDHARY]
JUDGE

01.05.2023
Anjal

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No