

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

CRM-M-42023-2016 (O&M)

Date of Decision : 29.03.2023

Mukesh Aggarwal

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Shreenath A.Khemka, Advocate for the petitioner.

Mr. Ashok Singh Chaudhary, Addl. A.G., Haryana.

VIKRAM AGGARWAL, J

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure 1973 (for short 'the Code'), the petitioner is seeking quashing of FIR No.258 dated 08.09.2012, registered under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'the 1975 Act'), at Police Station Shahabad, District Kurukshetra. The petitioner also seeks setting aside of all resultant orders and proceedings including the final report under Section 173 of the Code (Annexure P-3) under Section 7/12 of the Punjab Scheduled Roads & Controlled Areas Act, 1963 (hereinafter referred to as 'the 1963 Act') and order dated 13.10.2016 (Annexure P-4) vide which charges were framed against the petitioner.

2. The allegation against the petitioner is that he had raised unauthorized construction on his land situated at Village Mohri, Tehsil Shahabad, District Kurukshetra which was within the controlled area as defines under the 1963 Act. As per the FIR, a show cause notice dated 04.05.2011 was issued, followed by an order dated 18.05.2011 for restoration of the site despite which the construction work was continued. The petitioner is alleged to have eventually constructed a godown in the controlled area.

3. The petitioner has laid challenge to the aforesaid proceedings on various grounds viz. limitation, no notification having been issued under Section 4 of the 1963 Act, no prior sanction having been taken, double jeopardy and the offence being compoundable and, therefore, there being no necessity of registration of an FIR. Elaborating on these grounds, Sh. Shreenath A.Khemka, learned counsel representing the petitioner has made strenuous efforts to convince the Court that the action of the respondent is de-hors the provisions of the 1963 Act as also the basic provisions of the Code.

4. On the point of limitation, learned counsel has drawn the attention of the Court to the provisions of Section 468 of the Code. It has been submitted that as per Section 468 (2)(c) of the Code, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation for taking cognizance by the Court is three years. Learned counsel has submitted that the maximum sentence provided under Section 12 of the 1963 Act is three years. It has been submitted that as per the own case of the respondent, the complaint was

submitted to the police on 20.07.2012 in pursuance of which the FIR was registered on 08.09.2012, the petitioner was arrested in 2013, the final report was submitted on 13.10.2016 and the charges were framed on 13.10.2016. It has been submitted that from the date of the complaint till the framing of the charges i.e. the date on which the Court took cognizance of the matter, more than four years had elapsed. It has also been submitted that even from the date of registration of the FIR, more than four years had elapsed. Learned counsel has submitted that the offence in question would not be a continuing offence as the godown of the petitioner had been demolished.

5. It has been submitted that there was no publication of any notification declaring the area in question to be a controlled area as a result of which, the action initiated was illegal.

6. Learned counsel has further contended that no prior sanction was obtained before initiating the prosecution which also makes the action of the respondent to be illegal and arbitrary.

7. Learned counsel has also contended that the action of the respondent in launching prosecution amounts to double jeopardy as the godown stood demolished. It has been submitted that a request for compounding of offence, made by the petitioner has also been rejected by the respondent which has been challenged by the petitioner by way of a separate writ petition i.e. CWP-31958-2019 which is pending adjudication before this Court.

8. Learned counsel has submitted that the aforesaid submissions would make it clear that the action of the respondent is completely illegal and arbitrary and the same deserves to be set aside. In support of his contentions, learned counsel has placed reliance upon a judgment passed by a Coordinate Bench of this Court in **Criminal Misc.No.M-15188-2016**, titled as **Mahi Pal and others vs. State of Haryana and others** decided on **26.09.2017**.

9. On the other hand learned counsel representing the respondent-State of Haryana has submitted that there is no illegality in the action initiated against the petitioner. Reference has been made to the detailed separate reply submitted by the respondent and the affidavit filed subsequently in compliance of the order dated 12.01.2018, passed in this case. It has been submitted that for the purposes of calculating limitation, it would be the judgment in the case of **Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases 2013 (4) CCR 555**. Reliance has also been placed upon the judgment of the Hon'ble Apex Court in the case of **Amritlal vs. Shantilal Soni & Ors. 2022 (86) Orrisa Cri. R. 545**.

10. I have considered the submissions made by learned counsel for the parties.

11. It would be essential to notice that though the FIR was registered under Section 10 of the 1975 Act, the final report was submitted for offence under Sections 7 read with Section 12 of the 1963 Act. Accordingly, the

charges were also framed under Section 7 (i)(ii) read with Section 12 of the 1963 Act.

12. The relevant parts of Sections 7 and Section 12 of the 1963 of the Act reads as under:-

“Section 7 (1)

No land within the controlled area shall, except with the permission of the Director [and on payment of such conversion charges as may be prescribed by the Government from time to time] be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brick-kiln or brick field or for quarrying stone, bajri, surkhi kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed.

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Section 12 (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) or 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 rupee] 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 to its 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 the 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.]”

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13. Reverting to the facts of the case, the pleadings of the parties show that with regard to the alleged unauthorized construction being raised by the petitioner, a show cause notice dated 04.05.2011 was issued. It was followed by an order dated 18.05.2011 for restoration of the site. When the construction did not stop, a complaint was submitted to the police on 20.07.2012 on the basis of which the FIR dated 08.09.2012 (Annexure P-1) was registered. The matter remained under investigation and final report was submitted on 20.10.2013 (as per the date given on the final report) and charges were framed on 13.10.2016. The title of the charge-sheet shows the date of institution to be 05.09.2016 meaning thereby that the final report was submitted in September, 2016.

14. The First question to be determined is as to whether the taking of cognizance by the Court on 13.10.2016 would be barred by the provisions of Section 468 of the Code. Section 468 of the Code lays down 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.

15. A perusal of Section 468 (2) (c) shows that the limitation for the offence in question is three years. Learned counsel has projected it to be a very simple case and the same being barred by limitation because the FIR was registered in 2012 and cognizance was taken in 2016 i.e. after three years. However, in the considered opinion of this Court, this would not be the case. A Constitution Bench of the Hon'ble Supreme Court of India was dealing with the issue in the case of Mrs. *Sarah Mathew (supra)*. The Hon'ble Constitution Bench examined the following two questions in the said case:-

3.1 (i) Whether for the purposes of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

3.2 (ii) Which of the two cases i.e. [*Krishna Pillai* [*Krishna Pillai v. T.A.Rajendran, 1990 Supp SCC 121*] or Bharat Kale [*Bharat Kale Damodar Kale v. State of A.P., (2003) 8 SCC 559*] (which is followed in *Japani Sahoo* [*Japani Sahoo v. Channadra Sekhar Mohanty, (2007) 7 SCC 394*]), lays down the correct law ?

The Hon'ble Constitution Bench answered the aforesaid questions as follows:-

“5.1 In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale [*Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559*] which is followed in *Japani Sahoo* [*Japani Sahoo v. Chandra Sekhar Mohaty, (2007) 7 SCC 394*] lays down the correct law. Krishna Pillai [*Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646*] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.”

16. A perusal of the law laid down by the Hon'ble Constitution Bench would show that the relevant date for the purposes of computation of period of limitation under Section 468 Cr.P.C. would be the date of the filing of the complaint or the date of institution of the prosecution and not the date on which the Magistrate took cognizance. In the present case, the first notice, as per the record was issued on 04.05.2011. It, therefore, means that this is

the date when the illegal construction came to the notice of the authorities. The order calling for restoration of the site was passed on 18.05.2011 and complaint to the police was submitted on 20.07.2012 which is clear from the FIR (Annexure P-1). The limitation would, therefore, be calculated from the date of knowledge of the illegal construction to the date of the filing of the complaint which is in any case less than three years. The argument of learned counsel that the date of taking of cognizance would be relevant, is, therefore, devoid of merit. In view of the judgment of the Constitution Bench of the Hon'ble Supreme Court of India, no reliance can be placed upon the judgment of the Coordinate Bench in **Mahi Pal's case (supra)**. The action of the respondent would be, therefore, within the period of limitation and would not be barred by the provisions of Section 468 Cr.P.C.

17. In so far as the argument with regard to no notification under the 1963 Act having been issued is also devoid of merit because as per the reply, a notification was indeed issued on 07.12.2009. Sanction was also taken which is also mentioned in the reply submitted by the respondent. The action would also not amount to double jeopardy as both actions are independent of each other. It is well known that civil action and criminal action can be initiated independently and initiation of both actions would not amount to double jeopardy. The argument that the offence was compoundable and, therefore, no FIR should have been registered, is also devoid of merit. As per the affidavit dated 01.02.2018, submitted by the Director, Town & Country Planning, Haryana in compliance of the order dated 12.01.2018, passed in the

present case, the request for regularization of the unauthorized construction was submitted on 20.01.2017 i.e. much after the registration of the FIR and even the same was rejected by the Department vide communication dated 01.02.2018 (Annexure R-3).

18. From the above, it becomes clear that the action initiated by the respondent is not illegal or arbitrary.
19. In view of the above, I do not find any merit in the present petition and the same is hereby dismissed.

(VIKRAM AGGARWAL)

JUDGE

29.03.2023

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No