

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-9740-2015****Reserved on : April 18, 2023****Date of Pronouncement : April 28, 2023**

Ashok Kumar Kukreja

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**Present:** Mr. Abhinav Oberoi, Advocate for the petitioner.

Mr. Amit Shukla, AAG Punjab.

HARKESH MANUJA, J

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made to quash the FIR No. 20 dated 07.03.2013 u/s 406/420 IPC registered at Police Station Mullanpur Garibdas against the petitioner and all subsequent proceeding arising therefrom including investigation report filed u/s 173 Cr.P.C.

2. Briefly stated, the facts of the case are that one House Building Society by the name of Sartaj Co-operative House Building Society was formed in the year 2010 and subsequently petitioner was elected as President of the its Management Committee. Society had purchased a huge chunk of agricultural land consisting of 44 acres in order to develop a Housing Project. For this purpose, Change of Land Use (CLU) was required, however, as per rules of GAMADA/PUDA, a private Society was required to possess at least 104 acres of land to start a mega project or to build a private housing society. Faced with this situation, a meeting of the

members of the Society was held and after thorough discussions and consideration, finding difficult to procure further land in such circumstances, it was decided to enter into MoU with other similarly situated persons or Builders to safeguard the interests of the members as well as of the Society. In pursuance of the same, a MoU was executed between the Society and M/s Altus Space Builders (Pvt.) Ltd. for which consent was granted in writing by total 204 members out of 276 members. According to this MoU, for one acre of land area, 1500 square yards of plotted residential area was agreed to be given to Sartaj Co-operative Society.

3. Regarding aforesaid, the Deputy Registrar issued show cause notice to the society under the provisions of Punjab Co-operative Society Act 1961 and in addition to that FIR No. 20 dated 07.03.2013 in question was got registered under Section 406/420 IPC, Police Station Mullanpur, Garibdas, District Mohali. In the FIR, it was alleged that as per provisions of Section 85(2)(x) & 85(2)(xxxviii) of the Punjab Co-operative Societies Act, 1961 (hereinafter referred as 1961 Act) and Rule 29 of 1963 Rules, no officer/Administrator/Authorized signatory of any House Building Society can sell or transfer any land purchased with the funds of its members without the prior permission of Registrar, Co-operative Societies, Punjab, Chandigarh.

4. By way of present petition, petitioner has prayed before this court for the quashing of this FIR and subsequent proceedings arising therefrom including the investigation report filed u/s 173 of Cr.P.C..

5. Learned counsel for the petitioner submits that MoU was entered with the builder after consent of 204 members of the society and

process was initiated by the petitioner after resolution was passed by the society, for which there cannot be any *mens rea* and dishonesty presumed against the petitioner. He further submits that there was no violation of Section 85(2)(x) & 85(2)(xxxviii) of the 1961 Act or even rule 29 framed there under as there was no sale or transfer, and by way of this MoU, it was merely decided to pool the land already held by both the parties for their larger benefit as a perusal of the MoU would make it clear that for every acre of land to be given by Sartaj Co-operative House Building Society, to the Altus Space Builders (Pvt.) Ltd., they were supposed to give back 1500 sq. yards of developed residential area. No property of the Society was misappropriated or converted by the petitioner to his own use and nobody was cheated by this Act as the land of the society was merely exchanged for obtaining plotted residential area. He also pointed out that the purpose of the Society was to give plotted area of the Society to the members and most of the members have been given Provisional Allotment letters and Plot Buyer Agreements also by Altus Space Builders (Pvt.) Ltd and hence, FIR under section 420, 406 of IPC, on account of violation of Section 85 of the 1961 Act, cannot subsist and is liable to be quashed.

6. On the other hand, learned State Counsel submits that as per the mandate of provisions of the 1961 Act, it was obligatory for the petitioner to take permission from the Registrar, Co-operative Societies, before entering into any such MoU. And therefore, FIR was rightly registered against the petitioner. He further submits that complaint was sent by Assistant Registrar, Co-operative Societies, Mohali to SSP Mohali, who after perusing the aforesaid complaint, sought legal opinion from Ld.

DDA Legal and on his recommendation, directed the SHO, Police Station Mullanpur to register the case/FIR u/ss 406/420 IPC and to commence with the investigation. He also submits that allegations were substantiated during the course of investigation and a report u/s 173 Cr.P.C. was prepared & presented before the Ld. Trial Court and now the matter was *sub-judice*, thus, he prays for the dismissal of the present petition.

7. I have heard learned counsel for the parties and gone through the paper-book of the case as well. This is an admitted fact that FIR in this case was registered on the basis of a complaint sent by Assistant Registrar, Co-operative Societies, Mohali to SSP Mohali, on account of non compliance of Section 85(2)(x) & 85(2)(xxxviii) of the Punjab Co-operative Societies Act, 1961 (hereinafter referred as 1961 Act) and Rule 29 of 1963 Rules. On the basis of this complaint, FIR 20 dated 07.03.2013 under Sections 406, 420 was registered against the petitioner. It is pertinent to note that *mens-rea* is an essential component for offence under section 406 as well as 420 of the IPC which is apparently missing in the facts & circumstances of the present case as admittedly the land of the society has neither been put to any personal use by the petitioner; nor any of the members of the society has complained of any loss. Additionally, it would also be appropriate to take notice of the fact that most of the members of the society have already accepted the residential plots offered by the Builder - Altus Society. In compliance of order dated 05.02.2019, status report dated 25.04.2019 was submitted by the state and it would be appropriate to reproduce the operative part of this same:-

“It is further stated that out of 279 members 262 members have been given Provisional Allotment Letters and 256 members have been given Plot buyer Agreements also. The remaining members shall be given provisional Allotment Letter as and when they will submit Proposal Form.”

8. As per latest letter dated 27.07.2022 in this regard, the number of members who have accepted the plots have almost reached to the maximum and it would also be appropriate to reproduce it below:-

“This is to certify that The Sartaj Co-Op. House Building Society Ltd. has total 279 members and out of these, 279 members have given their Proposal Form to Altus Space Builders Pvt. Ltd. as per terms & conditions of MOU dated 03.10.2015.

It is further stated that out of 279 members, 278 members have been given Provisional Allotment letters and 278 members have been given Plot Buyer Agreements also. The remaining one member shall be given Provisional Allotment Letter and Plot Buyer Agreement as and when he will approach the office.”

9. When initially 204 members approved the resolution to enter into the MoU in question and considering the present status when almost all members have indirectly ratified this resolution by accepting the residential plots with the Builder, allegations under section 406 and 420 of the IPC cannot stand merely on account of violation of Section 85 (2) (x) of the 1961 Act. At the most, non-compliance of Section 85(2)(x) & 85(2)(xxxviii) of the 1961 Act and Rule 29 of 1963 Rules, in the facts and circumstances of the present case may involve civil wrong only, as the petitioner acted in furtherance of lawful resolution passed by the Society.

10. Even the alleged violation of Rule 29 of 1963 Rules, on which primary reliance has been placed, is also doubtful which is reproduced hereunder:

“29. Restrictions On Transactions Of Officers And Past Officers With The Co-Operative Society :-

(1) - Section 85(2)- Without prejudice to the bye-laws, no officer of a cooperative society shall, without the prior permission in writing of the Registrar, have an interest directly or indirectly, otherwise than as such officer-

(a) in any contract made with the society; or

(b) in any property sold or purchased or leased by the Co-op. Society; or

(c) in any other transaction of the Co-op. Society, except as investment made or as loan taken from the Co-op. Society or the provision of residential accommodation by the Co-op. Society.

(2) No officer of a Co-operative Society shall without the prior permission in writing of the Registrar, purchase directly or indirectly, any property of a member of the Co-op. Society sold for the recovery of his dues to that Co-op. Society.

(3) The restrictions contained in this rule shall continue to apply for a period of two years after a person ceases to be an officer of the Co-op. Society.”

11. The alleged transaction cannot be called a sale or transfer in absolute terms, rather there has been exchange of lands between the petitioner's society and the builder and members of the society have duly received residential plots from the Builder and actively ratified the MoU. In the absence of any allegations by any member of society that property of the Society has been misappropriated or converted by the petitioner to his own use either directly or indirectly and anybody has been cheated by the

petitioner, in the facts and circumstances of the present case, alleged offences in FIR No. 20 dated 07.03.2013 registered under Section 406/420 IPC are not made out.

12. In view of the discussion made above, the petition is allowed. FIR No. 20 dated 07.03.2013 u/ss 406/420 IPC registered at Police Station Mullanpur Garibdas against the petitioner and all subsequent proceeding arising therefrom including investigation report filed u/s 173 Cr.P.C. are hereby quashed.

April 28, 2023
sanjay

[HARKESH MANUJA]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no