

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

CRA-AS-173-2019

Date of Decision:05.09.2023

Punjab Urban Planning and Development Authority,
now Amritsar Development Authority

...Applicant

Vs.

Pritam Singh and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Ashish Grover, Advocate
 for the applicant.

 Mr.R.S Sidhu, Advocate
 for respondents No.1 to 5.

N.S.Shekhawat J.

1. The applicant has filed the present application under Section 378(4) Cr.P.C with a prayer to grant special leave to appeal against the impugned judgment dated 04.02.2016 passed by the Court of Chief Judicial Magistrate, Tarn Taran, whereby, the respondents were ordered to be acquitted of the charges framed against them under Sections 3,5,8,9,14(2),15,18,21 of Apartment and Property Regulation Act, 1995.

2. The brief facts of the complaint were that the respondents/accused were the owners of the land comprised in Khasra Nos. 29/1/1, 1/2/2/, 12/1, 9, 10, 27/23/1/1, 29/3/1, 27/22/1 situated in the area of Village Pandori Gala, Tehsil and District Tarn Taran and the respondents/accused had setup a colony by dividing the aforesaid land without obtaining a license for residential, commercial or industrial purposes, which was in contravention in the provisions of Sections 3 and 5 of the Act. As per the applicant/complainant, the accused

had sold several plots in the said colony, after the commencement of the Punjab Apartment of Property Regulation Act, which came into force on 15.10.1995, without making any application to the competent authority and were continuing the violation of the said provisions till the institution of the complaint. The accused were not holding a certificate of registration as a promoter, and had not submitted any application for regulation as promoter, as required under Section 21 of the Act, for setting up a colony by dividing the aforesaid land into the residential, commercial and industrial purposes. However, the accused carried out the business of the promoter and estate agent in violation of the law and had set up a colony and had contravened the provisions of Sections 3,5,8,9,14(2),15,18 and 21 of the Act.

3. After holding the complete trial, the Trial Court held that the applicant/complainant had failed to bring home the guilt of the respondents beyond any reasonable doubt and the complaint was ordered to be dismissed by making the following observations:-

At the outset, it is pertinent to mention that the allegations raised by the complainant do not find any substantiation from the limited evidence led by them. It has been alleged that unauthorised colonies have been constructed by the accused in cultivable land without obtaining prior license/sanction from Punjab Urban Development Authority, Amritsar. As such, it was the duty of the complainant to prove on record sale deeds vide which the plots have been sold by the accused to various persons, as alleged. However, not a single sale deed has been proved on record. Even it has not been pleaded by the complainant as to when the last sale deed was executed so as to complete offence punishable under Section 36 of the Act. The complainant has examined only two witnesses, both the witnesses have proved on record the documents pertaining to the

complaint and obtaining of the sanction alongwith relevant photographs. However, when CW-1 Amarjit Singh was cross-examined at length by the learned defence counsel, in the opening lines, he categorically admitted that the sale deeds were never taken into possession by him. He further admitted that he never conducted any survey of the area where unauthorised colonies have been constructed. He further categorically stated that he did not inspect any record except Jamabandi for the year 2007-08, which has been placed on record, nor he could specify the exact measurement of the area. CW-2 Hardeep Singh is a formal witness, he has merely proved on record a letter bearing No.488 dated 17.01.2012 qua obtaining the sanction before filing the present complaint.

4. Learned counsel for the applicant have vehemently argued that the impugned judgment passed by the Trial Court had not considered the testimonies of CW-1 Amarjit Singh and CW-2 Hardeep Singh. Learned counsel further submitted that the Trial Court had wrongly acquitted the respondents by observing that no sale deeds, vide which the plots have been sold by the accused to various persons, had been brought on record, whereas, there was sufficient evidence to show that the colony was setup as the area not less than 1000 square metre was divided without obtaining the license as required under the Act and even without being registered as promoter. Still further, the learned Court had mis-interpreted the cross-examination of the said witness. In fact, the said witness had stated that he never conducted any survey of the area, whereby unauthorized colony had been constructed, in the presence of the accused. Thus, it cannot be construed that no survey at all was conducted by the complainant. Rather the complainant had brought on record the survey report as Ex.C-3, site plan as Ex.C-4 and photographs of the plots as Ex.C-5 to Ex.C-11.

5. The submissions made by learned counsel for the applicant have been vehemently opposed by learned counsel appearing on behalf of the respondents by submitting that the applicant could not lead any evidence to show that the colony was carved out by the respondents/accused and the impugned judgment passed by the Trial Court was liable to be upheld.

6. I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

7. This Court is of the considered opinion that there is no substance in the arguments raised by learned counsel for the applicant. The Trial Court has correctly held that the applicant/complainant had completely failed to prove the sale deeds, vide which the colony had been carved out by the respondents and the plots were sold to several persons. Even CW-1 Amarjit Singh, had clearly admitted that sale deeds were never taken into possession by him. Unless, the sale deeds were taken into possession, it was impossible for the prosecution to prove the fact that the plots on the land in question had been carved out and were sold to different persons. Simple survey of the area to prove the factum of sale of plots would not advance the case of the prosecution in any manner. Apart from that, it was also apparent that CW-1 Amarjit Singh had admitted in the opening lines of his cross-examination that the sale deeds were never taken into possession by him. Moreover, when the survey was not conducted in the area in the presence of the respondents, no sanctity could be attached to such a survey. Further, admittedly, the survey was conducted without inspecting any record and the said witness could not even specify the exact measurement of the area. Apart from that, even as per the revenue record i.e Jamabandi for the year 2007-08 Ex. C-1, the possession and the cultivation of the respondents/accused

was established over the disputed khasra numbers and such a revenue record carries a presumption of truth. Thus, it cannot be stated that the colony was setup in the area without getting any license or approval from the competent authority and the impugned judgment is legally sustainable.

8. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the

consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867**, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

9. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on **11.07.2022**, Hon'ble the Supreme Court has held as under:-

"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High

*Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

10. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application for leave to appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the judgment dated 04.02.2016 passed by the Chief Judicial Magistrate, Tarn Taran is ordered to be upheld.

11. Resultantly, with the above-said observations made, the application for special leave to appeal stands dismissed.

05.09.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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