

...PETITIONER

...RESPONDENT

4. That as per the Haryana Development and Regulation of Urban Areas Act, 1975, Section 2 (c) defines the colony which is reproduced below:

Section 2(c):

2. Definition,- In this Act, unless the context otherwise requires, -

(a) to (bb) xxxx xx xx

(c) "colony" means an area of land divided or proposed to be divided into plots or flats for residential, commercial, industrial, cyber city or cyber park purposes or for construction of flats in the form of group housing or for the construction of integrated commercial complexes or for division into plots for low-density eco- friendly colony, but an area of land divided or proposed to be divided:

- i. For the purpose of agriculture; or
- ii. As a result of family partition, inheritance, succession or partition of joint holding not with the motive or earning profit; or
- iii. In furtherance of any scheme sanctioned under any other law; or
- iv. By the owner of a factory for setting up a housing colony for the labourers or the employees working in the factory; provided there is no profit motive; or
- v. When it does not exceed one thousand square meters or such less area as may be decided from time to time in an urban area to be notified by Government for the purposes of this sub- clause, shall not be a colony.

5. That further as per Section 3 of the aforesaid Act, there is necessity to obtain a licence for developing a colony in any urban area and Section 7 prohibits to advertise and transfer the plots without obtaining the licence under Section 3 and further as per Section 7A, any document which is required to be registered under Section 17 of the Registration Act purporting to be transferred by way of sale/lease any agricultural land having an area less

than 2 Kanals in an urban area as may be notified specifically by the government from time to time for the purpose of this Section then he has to obtain a No Objection Certificate by the Director or any officer authorized on his behalf and further Section 9 of the aforesaid Act had provided exemption from obtaining licence in certain cases and Section 9(b)(i) provided that where the land does not exceed 4000 sq. meters and is situated within the limits of Municipal Area, there is exemption from taking the licence and Section 10 of the aforesaid Act provided that if any person who contravene any provision of this Act or rules made thereunder shall be punishable with an imprisonment for a term which may extend upto 3 years and shall also liable of fine.

6. Learned counsel for the petitioner further submits that the FIR was lodged on 14.12.2016 and the challan was presented on 23.03.2021, which is beyond the period of 3 years provided under Section 468(2) of Cr.P.C. As such, in view of the bar under Section 468(2) of Cr.P.C., after the lapse of a period of 03 years from the date of occurrence, the Magistrate cannot take cognizance of an offence. The reliance is placed upon ***Janak Raj vs. State of Haryana, 2002(4) RCR Criminal 248, Mahipal versus State of Haryana, 2018 RCR (Criminal) 5***, whereby, this Court had quashed the FIR under Section 7 of the Act, on the ground that the cognizance was taken by the concerned jurisdictional Magistrate, after the lapse of a period of 03 years provided under Section 468(2) of Cr.P.C.

7. Per contra, learned State counsel opposes the prayer made by the petitioner, on the ground that the probable defence of the petitioner cannot be seen at this stage and the target date, in view of the judgment of the constitutional Bench of the Hon'ble Supreme Court of India in ***Sara Mathew vs. Institute of Cardio Vascular Diseases, 2014(2) SCC 62***, would be the date on which, the FIR was registered and not the date on which, the concerned

jurisdictional Magistrate takes the cognizance.

8. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the FIR was registered on 14.12.2016 and as such, any sale deed before 13.12.2013 is clearly beyond the period of limitation of 03 years provided under Section 468(2) of Cr.P.C. The sale deeds of the land in question were registered in the year 2011 and 2012. Thus, the case of the petitioner would clearly breach the threshold of Section 468(2) of Cr.P.C.

9. In view of the judgment passed in *Janak Raj (supra)* and *Mahipal (supra)*, this Court finds that the registration of the FIR as well as subsequent submission of final report under Section 173 of Cr.P.C., are much after the 03 years i.e. the period of limitation prescribed under Section 468(2) of Cr.P.C. Therefore, the present petition is allowed. The FIR No.330 dated 14.12.2016 (Annexure P-1) registered under Section 7-A of Haryana Development and Regulation of Urban Areas Act, 1975 and all other consequential proceedings arising therefrom are hereby quashed qua the petitioner only.

December 14, 2023

manisha

(HARPREET SINGH BRAR)
JUDGE

- | | | |
|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |