

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-5294-2021
Date of Decision.:28.02.2024

Krishan Kumar Alawadhi

.....Petitioner

Vs.

State of Haryana and Others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Randhir Singh, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J. (ORAL)

By way of this petition filed under Section 482 Cr.P.C., prayer is made to quash FIR No.405 dated 14.09.2016 registered at Police Station Bhupani, District Faridabad under Sections 10, 7A of Haryana Development and Regulation of Urban Areas Act, 1975 and all the subsequent proceedings arising therefrom.

2. FIR was lodged on the complaint of District Town Planner (Enforcement Faridabad) as per which Sai Estate through its partners Hem Raj Gupta, Jai Parkash, Sher Singh and Raj Kumar are the owners of land measuring 23 Kanal 11 Marla in the Revenue Estate of Village Tikawali, Tehsil and District Faridabad by virtue of sale deed No.7809 dated 07.08.2015 and sale deed No.10061 dated 11.09.2015 registered at Sub-Registrar office Faridabad. The said land falls in the urban area of

Faridabad. It was alleged that said Sai Estate through its partners subdivided the land in the shape of illegal colony by laying road/passages on the land in violation of Section 7(i) of the Act unauthorizedly. They further allegedly sub-divided the land into plots for residential purposes without obtaining necessary licenses from Director Town and Country Planning Haryana. After completion of investigation challan against the said four accused i.e. partners of Sai Estate was submitted before the Trial Court.

3. Further allegations are that petitioner Krishan Kumar Alawadhi, retired Tehsildar; and Gurdev Singh the then Tehsildar, Faridabad had violated the provisions of Section 7A of the Act by registering sale deeds No.8760 dated 25.08.2015 and 8229 dated 28.10.2016 (copies Annexure R-1 and R-2), as executed by the Sai Estate, without obtaining required 'No Objection Certificate' from the concerned department. Supplementary challan *qua* both of them i.e. petitioner Krishan Kumar Alawadhi; and Gurdev Singh was prepared. However sanction to prosecute the petitioner was applied vide letter dated 24.11.2020 to the Financial Commissioner, Revenue and Additional Chief Secretary to the Government of Haryana, under Section 197 Cr.P.C. to prosecute the petitioner and the co-accused Gurdev Singh. Said sanction has not been granted till date due to which challan has not been filed. In the meantime, the co-accused Hem Raj Gupta, Jai Parkash, Raj Kumar and Sher Singh have since been acquitted by the Trial Court vide judgment dated 02.08.2022.

4. Seeking quashing of the FIR, the short submission made by

learned counsel for the petitioner is that alleged offence was committed wayback in 2015/2016 when the two sale deeds were allegedly registered by the petitioner without obtaining necessary NOC, in violation of Section 7A of the Act.

5. Learned counsel contends that offence in question is punishable under Section 10 of the Act and the maximum sentence provided for the said offence is 3 years. Learned counsel has then drawn attention towards Section 468 of the Code of Criminal Procedure so as to contend that no Court can take cognizance of an offence after expiry of the period of limitation and that the period of limitation for any offence which is punishable with imprisonment for a term exceeding one year but not exceeding three years; is three years. Learned counsel further contends that the period of three years had already elapsed much prior to even seeking the sanction by the State under Section 197 Cr.P.C. so as to prosecute the petitioner. That sanction has still not been obtained and so in all these facts and circumstances the FIR in question deserves to be quashed.

6. Though learned State counsel has drawn attention towards Section 470 (3) Cr.P.C. so as to contend that while computing the period of limitation, the time required for obtaining the sanction of the competent authority is required to be deducted but it is conceded by learned State counsel that the period of three years had expired even prior to the letter dated 24.11.2020 whereby sanction of the competent authority to prosecute the petitioner was sought.

7. I have considered submissions of both the sides and have perused the record.

8. It is not in dispute that offence in question under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975, is punishable with the maximum sentence of three years. No Court can take cognizance of an offence punishable with imprisonment for a sentence more than one year but up to three years, beyond the period of three years. In this case the two sale deeds in question which were registered by the petitioner and co-accused in their capacity as Naib Tehsildar/Tehsildar, were in August 2015 and October, 2016. The period of limitation commences from the date of offence as per Section 469 Cr.P.C. As such, the limitation to take cognizance of the offence *qua* the petitioner expired on 28.10.2019.

9. However in the present case the letter for seeking sanction to prosecute the petitioner under Section 197 Cr.P.C. was sent to the competent authority on 24.11.2020 i.e. much after the expiry of the period of limitation.

10. In ***“State of Haryana and others Vs. Ch. Bhajan Lal and others”*** 1992 AIR 604, Hon’ble Supreme Court has laid down the guidelines as to the cases in which High Court can exercise its extraordinary power to quash the FIR under Section 482 Cr.PC. It was held as under: -

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

channelised and inflexible guide of myriad kinds of cases wherein such power should be exercised:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. The present case squarely falls under guideline No.(f) as mentioned in ***Bhajan Lal’s case*** because even if challan against the petitioner is now filed after obtaining sanction, the same will be statutorily

barred by limitation and the Court will not be in a position to take cognizance of the offence.

12. In view of the aforesaid factual legal position, this Court is of the considered view that continuation of any proceedings arising out of the FIR will be sheer wastage of time.

12. Consequently, FIR No.405 dated 14.09.2016 registered at Police Station Bhupani, District Faridabad under Sections 10, 7A of Haryana Development and Regulation of Urban Areas Act, 1975 and all subsequent proceedings arising therefrom, are hereby quashed qua the petitioner.

Allowed.

(DEEPAK GUPTA)
JUDGE

February 28, 2024
Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No