

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

CRM-M-2815-2018

Date of decision : 08.01.2024

PHOOL SINGH

....Petitioner

Versus

STATE OF HARYANA AND ANR

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. S.K. Kaushik, Advocate for the petitioner.

Mr. R.K. Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.828, dated 27.09.2016 registered for the offences punishable under Sections 7 & 7A of the Haryana Development & Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'the Act'), at Police Station Sadar Hisar, District Hisar and all proceedings subsequent thereto.

2. As per the contents of the FIR, it has been alleged as under :

“From District Town Planner. To the Superintendent of Police Hisar, Memo No. 537, dated 26.03.2014, Subject: Infringement of "The Haryana Development & Regulation of Urban Areas Act, 19975- Lodging of FIR against- M/s Mohan Enterprises through Sh. Phool Singh S/o Ram Chander, H. No. 41, Professor Colony, Balsamand Road, Hisar. It is brought to your kind notice that, M/s Mohan Enterprises through Phool Singh S/o Ram Chander, R/o H. No. 41, Professor Colony, Balsamand Road, Hisar are the owner of land in Khewat Khatoni No.705 bearing Mutation No.

4167, Khasra No. 229//2/2, 9, 12, 22 of measuring approximately 4.25 Acre, situated in the revenue estate of Village Mirzapur, Tehsil Hansi, District Hisar. He has laid a system of unauthorized roads for developing the land in the form of unauthorized colony without obtaining the licence from the Director, Town & Country Planning, Haryana, Chandigarh as required under Section 3 of the Haryana Development & Regulation of Urban Areas Act, 1975. Location of the site of unauthorized colony is attached herewith. Thus the above said person contravened the provision of Section 7(i) & (ii) of the said Act. This Act of the part of above mentioned person constitutes an offence punishable under Section 10 of the Act. The place of occurrence of said offence falls within the jurisdiction of the Police Station Sadar, Hisar. The offence committed as mentioned above may be got investigated and FIR registered. A copy of FIR may be sent to this office for record and reference. The sanction of prosecution from District Magistrate, Hisar may please be obtained before putting the challan in the Court as required under Section 11 of the said Act. DA/Annexure: 1. Urban Area Plan, Hisar. 2. Photograph of unauthorized colony. 3. Copies of Nakal Mutation. Sd/- District Town Planner, Enforcement, Hisar. Endst. No.538 dated 26.03.2014. A copy is forwarded to the Deputy Commissioner, Hisar for information & necessary action please. District Town Planner, Enforcement, Hisar”

3. Ld. Counsel representing the petitioner while assailing the FIR has raised three-fold submissions. Firstly, it has been submitted that the present prosecution is hopelessly barred by time and thus there is a bar under Section 468 Cr.P.C. from taking cognizance beyond the prescribed period of limitation. Secondly, Counsel has submitted that there is no valid sanction for prosecution as required under Section 11 of the Act. The third submission raised is on the facts counsel for the petitioner submits that the

land in question was purchased by a partnership firm and it is only the petitioner who has been arraigned as accused in the present proceedings.

He relies upon **Johnson Alexander vs. State of CBI, ACB, 2015(2) R.C.R (Criminal) 364, Anil Sharma and another vs. State of Haryana and another, 2013(16) R.C.R. (Criminal) 83, Janak Raj vs. State of Haryana, 2002(4) RCR(Criminal) 248, Hari Chand Dewan vs. State of Haryana, 2001(4) RCR (Criminal) 653, M/s Shanti Trading Company and another vs. State of Haryana and another-CRM-M-7558-2017 decided on 23.01.2019 and Amarjeet Singh vs. State of Haryana – CRM-M-784-2011 decided on 17.10.2012.**

4. Counsel representing the respondent/State however submits that as per settled law Section 482 Cr.P.C. to quash the prosecution proceedings cannot be invoked only on the ground of limitation. More so when the Court is yet to take cognizance of offence as 468 Cr.P.C. is subject to 473 Cr.P.C. and not *vice versa*. He further submits that the Sanction Order (Annexure R-1) has been placed on record along with the status report filed by way of affidavit of Kaptan Singh, HPS, DSP, Law & Order, Hisar dated 25th of August, 2023 and thus it cannot be said that the prosecution is without proper sanction. It has been also contended by Mr. Ambavta that as per the pleadings raised in the petition itself the partnership firm was dissolved and was no more in existence on the time the prosecution was launched and thus the plea w.r.t. impleadment of the firm cannot sustain.

5. Having heard rival contentions of the parties and after going through records of the case, this Court finds that the present petition deserves to be dismissed.

6. In order to appreciate the rival contentions it will be apt to peruse Section 468 and Section 473 of the Code, which read 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.]

473. Extension of period of limitation in certain cases.—

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

7. Joint reading of the aforesaid provisions would reveal that provision as contained under Section 473 has place of pride over Section 468. Definitely on the day that Court takes cognizance of the offence, the Court would apply its mind and comes to the conclusion as to whether the prosecution has made out a case for condoning the delay and whether the cognizance should be taken beyond the prescribed period or not. Likewise the Order of Sanction dated 13th of April, 2022 passed by District Magistrate has been placed on record. Section 11 of the Act prescribes the Director as a Sanctioning Authority along with any other officer authorized in writing by him in that behalf. The question: '*whether District Magistrate has been authorized in writing by the Director or not?*' would be considered by the Court before taking cognizance.

8. In view of admitted case of the petitioner that the partnership firm was no more in existence and stood dissolved even prior to the launching of the prosecution, this Court does not find any reason to go into the aforesaid question. Consequently, the present petition is dismissed.

January 08, 2024
Dpr

(Pankaj Jain)
Judge

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