

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25410-2019

Date of Decision: 01.03.2024

Dr. Sumeet Sofat

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Petitioner in person

Mr. Shiva Khurmi, AAG Punjab

Sandeep Moudgil, J.

(1). This order shall dispose of CRM-M-25410-2019; CRM-M-25915-2019; CRM-M-25937-2019; and CRM-M-27204-2019 as the issues are inter-related. The petitioner seeks quashing of the FIR No.31 of 2006 under Section 36 of Punjab Apartment and Property Regulation Act, 1995 (in short, the PAPRA) registered at Police Station Sudhar, Jagraon; impugned order dated 29.09.2015 (Annexure P1) passed by SDJM, Jagraon and the order dated 20.09.2017 (Annexure P2) passed by Addl. Sessions Judge, Ludhiana and all subsequent proceedings initiated in pursuance thereto. CRM-M-25410-2019 is treated as the lead case.

(2). For the purpose of adjudication of these matters, it is necessary to reproduce the relevant extracts of the FIR and the same reads as under:-

“First Information Contents - A letter No.401-B dated 25-01-2006 was received from office of SSP, Jagraon, with order to register FIR. To SSP, Jagraon, Subject- Violation of Punjab Apartment & Property Regulation act, 1995, By constructing illegal colony, and to register FIR against the violators. Reference letter no.5864, dated 30-08-2005, you are hereby informed. PAPRA, 1995 has

been implemented from 15-10-1995 to stop illegal colonies in Punjab. Under this act, land measuring more than 1000 sq.mts, cannot be divided & converted into units for commercial, residential, industrial, or other purposes. In addition to this, section 21 of PAPRA, 1995 states that no person, promoter, real estate agent can do this work, without proper permission and authorisation from concerned officer of PUDA. After obtaining registration certificate from PUDA, section 5 of PAPRA, 1995 states that to develop a colony, proper permission is required from concerned officers of PUDA. No promoter can develop a colony without due permission. Section 36 of PAPRA, 1995 states that there is maximum imprisonment for 3 years or fine or both. It has come to notice of this office, that Harnek Singh, Balwant singh, Sadhu Singh s/o Teja singh s/o Tara Singh, Saudagar Singh s/o Harbans Singh s/o Teja singh, Satinder Kaur w/o Pritpal Singh s/o Bhupinder Singh s/o Kishan Singh r/o 2352/12, Jammu Colony Ludhiana, Sumeet Sofat & Sons (HUF), through karta, Sumeet Sofat s/o Dr Jagdish Rai, Malwinder Singh Grewal s/o Balbeer Singh Grewal s/o Takht Singh Grewal r/o 2, basti thana khel, Kapurthala road, Jalandar, (who has bought 1 bigha, 6 biswey, 13.5 biswaasi land in wasika no.18126 dated 18-12-2003 from Pritpal singh s/o Bhupinder Singh), and Bikkar Singh, Jagtar Singh s/o Sohan Singh s/o Ram Kishan, r/o 6, Vikas nagar, Pakhowal Road, Ludhiana (who have bought 2 bigha, 13 biswe, 7 biswaasi, land in wasika no.3091 on 6-5-2004 from Malwinder Singh), He also sold his ancestral property in khasra no.6186 in village Masuran, Distt.Ludhiana and developed it into illegal colony. This is violaton of PAPRA, 1995. These persons have violated section 21 of PAPRA, 1995 as they have not got license for developing colony. These people have also violated section 5 of PAPRA, 1995 as they have not obtained permission. These persons are developing illegal colony after violating provisions of PAPRA, 1995. Concrete roads have been constructed and electric poles

have been installed. Plots have been demarcated on site. Some plots have been raised till pilth level. This is clear from photographs clicked at site, which show that illegal colony is being constructed there. This is a fraud with people and government, and violation of section, 2(1), 3,5,21 of PAPRA, 1995. Records obtained by this office show that this illegal colony has caused financial loss to state because these persons have not paid any stamp duty or tax to government. These persons are converting agriculture land into plots. The registries of these lands are proof of this. These people have not obtained permission, or license from PUDA before carving out this illegal colony, and thus have violated sections 2(1), 3, 5, 21 of PAPRA, 1995, and this is also violation of section 36 of PAPRA, 1995. It is requested that you lodge FIR u/s 36 of PAPRA, 1995 & inform this office thereafter. Sd/- Narinder Singh, Assistant Engineer..”

(3). The petitioner who is appearing in person contends that the petitioner has been falsely implicated in the present FIR lodged in the year 2006 and after 7 years on 20.03.2013, on the false deposition of complainant, the prosecution moved an application under Section 319 CrPC against the petitioner and the same has been allowed by the trial court vide impugned order dated 29.09.2015 (Annexure P1) on the bald statement of the complainant without there being any collaborative evidence or fresh evidence and also the revision petition preferred by the petitioner against the said order has also been wrongly rejected vide impugned order dated 20.09.2017 (Annexure P2).

(4). It is then vehemently urged that all the seven accused in the main case have already been acquitted by the trial court vide order dated 30.03.2016 due to lack of evidence and in such circumstances by permitting the prosecution to summon the petitioner would be an exercise in futility moreso

when the petitioner could only be tried with other accused and not separately and that too after conclusion of the trial which has ultimately resulted into acquittal of the accused persons.

(5). The petitioner raised the argument that no colony in contravention of the PAPRA has been carved out by the petitioner and no land has been sold out of his share of property and moreover, there is no specific allegation against the petitioner in the FIR as a result of which the petitioner was declared innocent by the police after thorough investigation. He averred that the petitioner is not a vendor in any of the sale deeds which the complainant might be relying upon and he has not been found involved in any activity of colonization nor of selling the plots by bifurcating the land in violation of Section 36 of the PAPRA.

(6). On the other hand, learned State counsel submits that the courts below have rightly summoned the petitioner as the evidence appeared against him. He argued that the acquittal of the remaining accused cannot have the effect of nullifying or passing the order under Section 319 CrPC and also the petitioner cannot be allowed to seek quashing of the FIR and all consequential proceedings on this ground alone.

(7). Heard learned counsel for the parties and gone through the record.

(8). The petitioner himself in person has filed the revision-petition and has argued in person alleging that application under Section 319 Cr. P.C was wrongly allowed by learned Trial Court on examination in chief of the complainant without affording any opportunity of cross-examination and without there being any corroborative evidence. All the accused in the main trial have been acquitted due to lack of evidence and no purpose will be served

by summoning the petitioner to stand fresh trial under Section 319 CrPC. It is merit in the argument raised by the petitioner that his challan has been ordered to be separated from the other accused which could not be ordered and he could only be tried with the remaining accused.

(9). It is well settled that the power to proceed against any person, not being the accused before the court, must be exercised only where there appears during enquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The power conferred upon the court is also discretionary but is not to be exercised in a routine manner. It is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. The petitioner could have been summoned only if the Court was satisfied that he will in all likelihood be convicted but this is not so in the present case.

(10). In **Michael Machado and Another v. Central Bureau of Investigation and Another, (2000) 3 SCC 262**, the Supreme Court, on extensive consideration of the provision contained in Section 319 CrPC observed that the court must have reasonable satisfaction from the evidence already collected regarding two aspect: firstly, commission of offence and secondly, for such offence that other person could as well be tried along with the already arraigned accused. The relevant portion of the said judgment reads as under:-

"11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned

as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words "the court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.

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14. The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly-added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the court must seriously consider whether the objects sought to be achieved by such exercise are worth wasting the

whole labour already undertaken. Unless the court is hopeful that there is a reasonable prospect of the case as against the newly-brought accused ending in being convicted of the offence concerned we would say that the court should refrain from adopting such a course of action.”

(11). From perusal of the record, it can be seen that the petitioner was kept in column No.2 by the police during investigation. After framing of the charge against all the accused against whom the challan was presented, evidence was recorded and in the statement of PW1 Narinder Singh, Assistant Engineer, the name of petitioner appeared and an application under Section 319 CrPC was moved which was allowed by the learned trial court on 29.09.2015 and the petitioner was summoned for the offence under Sections 3, 5, 21 and 36 of the PAPRA.

(12). Apparently, there is no universal rule that in each and every case of acquittal of a co-accused, the case against an absconding co-accused has to be quashed. When the conclusion in the subsequent trial can be predicted with certainty that there is no chance of conviction of such co-accused, valuable time and resources of the trial court should not be wasted for holding such a trial. There can also be no quarrel over the proposition that no useful purpose would be served by compelling an accused to face a trial subsequently, where the main accused who has been tried earlier, has been acquitted or discharged due to paucity or non availability of evidence and there is no chance of better evidence being adduced in the subsequent trial or where the evidence against all the accused persons is inseparable and indivisible. But for arriving at such a conclusion and quashing the proceedings, the High Court has to carefully examine the nature of evidence already adduced in the concluded trial and the

nature of materials available against the absconding accused and the type of evidence which may or can be adduced against the accused who has not faced the trial. If the fate of the trial cannot be predicted with certainty, the proceeding should not be quashed.

(13). In the present petition, in so far as the prayer qua quashing of the FIR is concerned, a perusal of the judgment dated 30.03.2016 would show that the trial court categorically returned a finding that the allegations against the accused regarding they having established residential colony in the land in question is supported by evidence of PW1 Narinder Singh complainant only which is not sufficient enough for establishing the fact of the case of the prosecution beyond reasonable doubt as the same is not supported by deposition of Patwari or any revenue official and that being so, the sole evidence of the complainant was held to be not sufficient to constitute the proof of fact that the land where development was allegedly undertaken, fell in khasra numbers owned by the accused persons including the petitioner.

(14). The petitioner had been appearing in person before the trial court and conducting the cases lodged against him at Ludhiana and due to this reason, he moved an application for exemption through legal aid counsel but since there was miscommunication of order regarding issuance of non-bailable warrants by his counsel, the petitioner was under the genuine impression that since nothing adverse has been conveyed by his counsel, he need not to appear before the Court. In fact, Mr. Vivek Bhardwaj, Advocate ceased to appear as legal aid counsel and the petitioner was left unrepresented before the trial court and due to which reason, the petitioner was declared proclaimed person.

(15). This Court under the erstwhile Code of Criminal Procedure or the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has the inherent power to pass such orders as may be considered necessary to give effect to any order under this Code/Sanhita or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Such power can also be exercised suo motu. But it has to be exercised sparingly and with circumspection. It is to be exercised *ex debito justitiae* to prevent abuse of process of court, but should not be exercised to stifle legitimate prosecution. Reliance can be placed on **State of Haryana vs. Bhajan Lal, (1992) Suppl. 1 SCC 335.**

(16). While considering the prayer of the petitioner for quashing of proceedings in exercise of power under Section 482 CrPC, where the chances of conviction of the petitioner is bleak, delay in approaching the Court may not be a ground for rejecting the application if the Court is satisfied that allowing the proceedings to continue will be an exercise in futility and result in wastage of time and resources of the Court.

(17). In view of above discussion, the FIR No.31 of 2006 under Section 36 of PAPRA registered at Police Station Sudhar, Jagraon along with all subsequent and consequential orders/proceedings (which have been impugned in the connected petitions) in pursuance to the above-said FIR, stand quashed.

(18). Accordingly, the petition(s) stand allowed.

01.03.2024

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No