

(2002) 06 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Criminal M.M.O. No. 61 of 1999

Ashok Madan

APPELLANT

Vs

Director Town and Country Planning Deptt.

RESPONDENT

Date of Decision : 07-06-2002

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 251, 258, 309, 311, 319

Himachal Pradesh Town and Country Planning Act, 1977 — Section 15, 16, 17, 27, 31

Citation : (2002) CriLJ 4447 : (2002) 2 ShimLC 394

Hon'ble Judges : Lokeshwar Singh Patna, J

Bench : Single Bench

Advocate : K.D. Sood and Baldev Singh, for the Appellant; J.S. Guleria, Law Officer, for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Patna, J.—This petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India has been filed by petitioner-Ashok Madan seeking to quash complaint No. 49-3/94 filed against him by Director Town and Country Planning Department-respondent herein pending in the Court of Judicial Magistrate Ist Class (II), Shimla for commission of offences under Sections 38 and 39 of Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977).

2. The Act No. 12 of 1977 was enforced by the State Government in the area which comprised Shimla Planning Area from appointed day i.e. November 30th, 1977. The existing land use of Shimla Planning Area was prepared, published and frozen under Sections 15 and 16 of Act No. 12 of 1977 on 29-12-1977 and 14-3-1978 respectively. The Interim Development Plan for Shimla Planning Area was prepared u/s 17 of the Act which was published in the Himachal Pradesh Rajpatra on 31-3-1979. After publication of Interim Development Plan, permission of development of any land in Shimla Planning Area is to be obtained

from the respondent u/s 31 of the Act by the concerned parties.

3. The allegations against the petitioner made in the complaint were that he constructed nine storeyed building in village Patti Rehana, Mauza Jajhot in Shimla Planning Area in violation of the provisions of the Act without taking permission in writing from the respondent u/s 27 of the Act to change use of any land or carry out any development of the land after coming into operation of the Development Plan and thereby he unauthorizedly constructed the said building. Notice u/s 39 of the Act was issued to the petitioner by the respondent on 11-2-1994 and served upon him through registered post directing him to restore the land to its condition existing before the said development took place within a period of one month from the service of the notice. The petitioner did not comply with the directions contained in the said notice and, therefore, the complaint against him came to be filed before the Chief Judicial Magistrate, Shimla on 13-9-1994 for an offence punishable under Sections 38 and 39 of the Act. The learned Chief Judicial Magistrate on the same day on consideration of the allegations made in the complaint and after hearing the learned A. P. P. found sufficient reasons to proceed against the petitioner for commission of the offence under Sections 38 and 39 of the Act issued process in the form of summons for appearance of the petitioner on 7-11-1994. Thereafter, the matter was adjourned from time to time for one reason or the other. It was on 24-1-1996 bailable warrant in the sum of Rs. 500/- for the presence of the petitioner was ordered to be issued by the Chief Judicial Magistrate as summons issued to him were received back unserved with the report that he was avoiding service of summons. On 22-5-1996 the petitioner appeared along with the counsel. He was directed to furnish bail bond and surety bond in the sum of Rs. 3000/- each which was furnished, attested and accepted by the Chief Judicial Magistrate who adjourned the case for 4-7-1996. On 4-7-1996 the petitioner did not appear and an application for exemption of his personal appearance was filed. The case was assigned to Judicial Magistrate Ist Class (II), Shimla by the Chief Judicial Magistrate directing the parties to appear before the Assignee Court on 17-7-1996 at 10 a.m. The learned Judicial Magistrate accepted the prayer of the petitioner seeking his exemption from personal appearance and further directed that the petitioner should be present on 10-10-1996. Thereafter the case was adjourned for a number of dates on one pretext or the other. The petitioner appeared on 10-10-1996, 29-11-1996 and 4-1-1997 but no effective proceedings were conducted by the trial Magistrate. On 5-3-1997 the learned trial Magistrate directed the complainant-respondent to appear in person on 5-5-1997 but the complainant did not appear and ultimately notice was ordered to be issued to him on 5-5-1997 for his presence on 17-6-1997. Complainant-respondent again failed to appear on 17-6-1997 and fresh notice was issued to him to appear in person on 4-7-1997. Again the complainant-respondent was not properly served and the matter could not proceed further as the said day was declared as holiday. On 18-9-1997 an application was moved by the learned Additional District Attorney on behalf of complainant-respondent for exemption of the

complainant to appear in person before that Court on the said date which was accordingly allowed. It was only on 24-10-1997 when the complainant-respondent appeared. The learned trial Magistrate on consideration of the material on record and after hearing the learned Additional District Attorney and learned counsel for the petitioner found that prima facie case was made out against the petitioner for violations of Sections 38 and 39 of the Act and accusation to that effect was put to him to which the petitioner pleaded not guilty and claimed to be tried. The case was ordered to be listed on 19-3-1988 for the presence of the witnesses of the complainant-respondent. On 19-3-1998 Kuldip Sharma and Lekh Raj two witnesses were present but their statements could not be recorded as the third witness Rattan Singh Chandel, the officer-in-charge was not present due to the death of his father. The complaint was therefore, adjourned to number of dates for recording evidence of the witnesses but it could not be recorded for non-appearance of the complainant-respondent.

4. On examination of the entire zimni orders of the trial Magistrate, the complaint remained pending before the trial Magistrate from 23-9-1994 till 21-8-1999 and the matter was adjourned by the trial Magistrate on unwarranted and unjustified grounds. On number of hearings, the complainant did not care to appear before the learned trial Magistrate without showing sufficient cause and the trial Magistrate has been granting adjournment of the case in a very cursory manner which is uncalled for.

5. Now the petitioner has filed this petition seeking to quash the complaint inter alia on the grounds that the area where the building was constructed by him as a contractor is located outside the limits of Municipal Corporation, Shimla and many people have raised construction in that area without the permission of the concerned authorities. The Government has made policy to regularise all the buildings which were constructed up to 31-12-1996 and on the basis of the said policy the petitioner has also submitted plan on 26-6-1998 for retention of the building and for its regularization. Petitioner also wrote a letter to the complainant for withdrawal of the complaint since he has submitted building plan to the Municipal Corporation, Shimla for retention of the building and its regularization the complainant had assured the petitioner that the case would be withdrawn after the plans are sanctioned. In these circumstances, the petitioner prays that in the interest of justice the present case deserves to be dropped as the building in dispute is also likely to be retained, regularized by the competent authority for which purpose the process of regularization is in progress. According to the petitioner the building falls within the limit of Municipal Corporation, Shimla, the complaint therefore, cannot be maintained by the complainant and the action, if any, has to be taken by the Municipal Corporation, Shimla under the Municipal Corporation Act and Rules framed there under and not by the complainant. He also stated that the complaint filed by the complainant does not disclose commission of any offence and issuance of process against the petitioner by the trial Magistrate is gross abuse of the process of law and continuing the proceedings would result in manifest injustice to the

petitioner as well as resulting in great hardship to him. He also stated that the maximum sentence which can be imposed upon the petitioner under Sections 38 and 39 of the H.P. Town and Country Planning Act is 6 months or fine of Rs. 2000/-or both and in the present case petitioner has suffered mental agony and financial hardship for more than eight years therefore, continuing the proceedings would be an abuse of the process of the Court and the complaint deserves to be quashed.

6. The learned counsel for the petitioner contended that the petitioner was not the owner of the land and as such no proceedings could have been initiated against him by the complainant as he constructed the said building as a contractor and thereafter purchased built up structure only. Reliance has been placed on Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, and Common Cause, A Registered Society Vs. Union of India (UOI) and Others, in which it has been held in para 4, sub-para (2)(e) in common cause case that where the cases pending in Criminal Courts under I.P.C. or any other law for the time being in force are punishable with imprisonment up to one year, with or without fine. and if such pendency is for more than one year and if in such cases trials have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be and close such cases. In Common Cause-II their Lordships have said that in cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked u/s 251 whether they plead guilty or have any defence to make. The learned counsel when contended that till the decision is taken by Notified Area Committee under whose jurisdiction now the building would fall for retention of the building, the present proceedings should be stayed. Reference is made to two judgments of the Supreme Court in G.L. Didwania and Another Vs. Income Tax Officer and Another, and Commissioner of Income Tax, Mumbai Vs. Bhupen Champak Lal Dalal and Another etc., .

7. As against this the learned Law Officer contended that the complaint against the petitioner has been filed for violation of the provisions of the Himachal Pradesh Town and Country Planning Act before a competent Court of law and the trial Magistrate after satisfying itself found prima facie case against the petitioner and thereafter issued process against him. The petitioner on one pretext or the other has been delaying the proceedings. He contended that this Court while exercising the inherent jurisdiction u/s 482, Cr.P.C. or supervisory jurisdiction under Article 227 of the Constitution of India will not embark upon the issue whether the evidence led or proposed to be led by the prosecution would entail the conviction of the petitioner after conclusion of the trial or not. It is the prima facie satisfaction of the trial Magistrate to proceed with the case when the allegations set out in the complaint prima facie do constitute the offence on which cognizance is taken by the Magistrate.

8. I have given my thoughtful consideration to the various contentions of the

learned counsel on either side. At the very outset I may point out that from the record of the trial Magistrate, complainant has also filed application u/s 319, Cr.P.C. for impleading Tara Chand the owner of the plot on which the petitioner has constructed nine storeyed building unauthorisedly and the said application is still under consideration of the trial Magistrate. Section 38 of the Himachal Pradesh Town and Country Planning Act, 1977 prescribes penalty for unauthorised development or for use otherwise than in conformity with development plan by any person whether at his own instance or at the instance of any other person. The plain reading of this section makes it clear that any person whether at his own instance or at the instance of any other person is liable for prosecution if he violates the conditions imposed in Sections 38 and 39 of the Act. The contention of the learned counsel that the petitioner had constructed the building as a contractor and he was not the owner of the land cannot be accepted at this stage as later on he had purchased the built up structure and thereby has become the owner of the structure. Since the complainant has filed the application for impleadment of the owner of the land as co-accused with the petitioner it cannot be said at this stage that the allegations made in the complaint against him are vague, unfounded and baseless once the trial Court after satisfying itself ordered issuance of summons against the petitioner. The petitioner can take all available defences permissible under law to him in his pleadings before the learned trial Magistrate and could not be permitted in these proceedings to make his defences without taking them before the trial Magistrate who can go into all questions in trial.

9. The ratio of the judgment, in Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, is no longer a good law as held by the constitutional Bench of the Supreme Court in P. Ramachandra Rao Vs. State of Karnataka, in which it has been held as under (para 30 of Cri LJ) :-

(1) Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay's case, adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time limits or bars of limitation prescribed in the several directions made in Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others,

Raj Deo Sharma Vs. The State of Bihar, and Raj Deo Sharma Vs. The State of Bihar, could not have been so prescribed or drawn and are not good law. The Criminal Courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, Raj Deo Sharma Vs. The State of Bihar, and Raj Deo Sharma Vs. The State of Bihar, At the most, the periods of time prescribed in those decisions can be taken by the Courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors are pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be better protector of such right than any guidelines. In appropriate cases, jurisdiction of High Court u/s 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6)...

10. In the light of the above said judgment of the Supreme Court the contention of the learned counsel for the petitioner that since the proceedings are pending for the last more than eight years the complaint deserves to be dismissed as the maximum punishment in the present case which can be imposed by the trial Magistrate is six months or fine of Rs. 2000/- or both cannot be accepted.

11. The last contention that till the Notified Area Committee does not take the decision on the retention of the building at the request of the petitioner, the present proceedings shall be stayed is considered and deserves rejection. The proceedings remained pending before the learned trial Magistrate from 13-9-1994 till 21-8-1999 without any effective progress and thereafter the proceedings were stayed by this Court by order dated 30-11 -1999. The proceedings have been delayed to some extent by the petitioner and the complainant has also attributed for protraction of the proceedings before the trial Magistrate and the trial Magistrate has also dealt with the matter in a most cursory manner by granting exemptions for personal appearance of the petitioner or the complainant, and discharging the witnesses produced by the complainant on these grounds on a number of hearings.

12. It is by now well settled that powers of superintendence and inherent powers of the High Court should be exercised sparingly so as to avoid needless

multiplicity of procedure, unnecessary delay in trial, protraction of proceedings and gross injustice, more so, in a case where the prosecution has already been launched. The High Court in exercise of such powers is not to embark upon an enquiry as to the probability, reliability or genuineness of the allegations against the accused. However, the High Court may quash criminal proceedings if the allegations are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground to proceed against the accused. It is in view of this settled position in law that the present petition has to be considered and decided.

13. In *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, it is held :

3. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint, exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers u/s 482. It is now, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference by the High Court.

14. In *M.N. Damani Vs. S.K. Sinha and Others*, their Lordships held that for deciding whether the criminal proceedings should be allowed to continue or the same should be quashed two aspects are to be satisfied (I) whether the uncontroverted allegations, as made in the complaint prima facie establish the offence, and (2) whether it is expedient and in the interest of justice to permit a prosecution to continue. In the present case on a plain reading of allegations made in the complaint it appears that the trial Magistrate was satisfied that prima facie case was made out against the petitioner and thereafter process was issued to him. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue. This Court cannot say at this stage that there was no reasonable prospect of conviction resulting in the case after a trial. At this stage, there is nothing on record to infer that the allegations against the petitioner are baseless, inherently improbable or absurd. Therefore, this Court cannot interfere either in exercise of its power of superintendence under Article 227 of the Constitution of India and or inherent power u/s 482 of the Code of Criminal Procedure to quash the complaint.

15. Resultantly, this petition merits dismissal and it is accordingly dismissed. The parties through their counsel are directed to appear before the trial Magistrate on

June 21, 2002. The record of the trial Court shall be remitted by the Registry Office forthwith.

16. I make it clear that any observation made in this judgment may not be taken an expression of opinion on the merits of the case which shall be tried and decided by the trial Magistrate in accordance with law on its merit. The trial Magistrate is directed to decide the complaint without any further delay on or before October 31, 2002. Cr. M.P. No. 251 of 2001 is also dismissed having become infructuous.