

(2001) 08 P&H CK 0157

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10672-M of 2000

Hari Chand Dewan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Citation : (2001) 4 AICLR 831 : (2002) 3 LJR 319 : (2002) 1 PLR 421 : (2002) 2 RCR(Civil) 637 : (2001) 4 RCR(Criminal) 653

Hon'ble Judges : V.M.Jain, J

Advocate : Mr. R.K. Jain, Advocate. Mr. Yash Pal, Advocate., Advocates for appearing Parties

Judgement

V.M. Jain, J.—This is a petition under Section 482 Cr. P.C. filed by the accusedpetitioner, seeking the quashment of the FIR, bearing No. 46 dated 5.2.2000, registered under Sections 7/10 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the Act), in Police Station, Saraikhwaja, District Faridabad, being an abuse of the process of Court.

2. In the petition, it was alleged that petitioner No. 1 was abroad due to his employment in the United Nations and had appointed petitioner No. 2 as his general attorney. vide General Power of Attorney, dated 19.1.1996. It was alleged that on the instructions of petitioner No. 1, petitioner No. 2 had sold the land to Vanita Aggarwal and Rajesh Gupta, in equal shares, vide registered sale deed dated 7.8.1997. It was alleged that the District Town Planner, Faridabad. lodged the aforesaid FIR without obtaining necessary sanction, as required under Section 11 of the Act. It was further alleged that no offence had been committed by the petitioners. inasmuch as petitioner No. 2 had sold the land only under the instructions of petitioner No. 1, being his attorney and had not committed any offence.

3. In the written reply filed by SI Jai Veer Singh, SHO, Police Station, Khawaja, it was alleged that necessary sanction, as required under Section 11 of the Act, was accorded by the District Magistrate to prosecute the accused. It was alleged

that said sanction was accorded only against petitioner No. 2, even though prima facie case was made out against both the petitioners. It was prayed that the petition may be dismissed.

4. I have heard the learned counsel for the parties and have gone through the record carefully.

5. The learned counsel for the accusedpetitioners has submitted that from the written reply, it would be clear that the prosecution has been launched only against petitioner No. 2 (general attorney of petitioner No. 1), whereas no sanction to prosecute petitioner No. 1 has been accorded. It has been submitted that in the absence of any sanction, petitioner No. 1 could not be prosecuted, whereas petitioner No. 2 being the general attorney could not be prosecuted in the present case, as he had acted on the directions of petitioner No. 1 and had not committed any offence. Reliance has been placed on the law laid down by this Court, in the case reported as "Inderwati v. The State of Haryana and others", (19963) 114 PLR 128 and "Sri Krishan v. State of Haryana," 1995(2) RCR(Crl.) 543.

6. There is considerable force in these submissions of the learned counsel for the petitioners. As referred to above, no sanction to prosecute petitioner No. 1 was accorded, as required under Section 11 of the Act. Thus, no prosecution could be launched against petitioner No. 1, in the absence of any sanction. So far as petitioner No. 2 is concerned, he had executed the sale deed as the attorney of petitioner No. 1. He had acted on the directions and advise of petitioner No. 1. In (19963)114 PLR 128 (supra), it was held by this Court that where the attorney had executed the sale deed on the directions of the owner, only the owner could he prosecuted and not the attorney. In the reported case, the sanction to prosecute was accorded only against the attorney and not against the owner. It was under those circumstances that it was held by this Court that on the basis of the sanction neither Inderwati (owner) could be prosecuted nor Sarvotam Sharma (attorney) could be prosecuted and the prosecution against them would not be valid. Similarly, in 1995(2) RCR 543 (supra), the petition filed by the attorney, seeking the quashment of the FIR, was allowed by this Court, holding that the criminal liability could not be fastened upon his and if at all the original owner, on whose directions the attorney had acted, could be prosecuted.

7. In view of the law laid down by this Court in the aforesaid authorities, in my opinion, the aforesaid FIR and all subsequent proceedings taken thereon against petitioner are liable to be quashed.

8. For the reasons recorded above, the present petition is allowed and the FIR and all subsequent proceedings initiated against the petitioners are hereby quashed.