
(1994) 01 P&H CK 0099
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 702 of 1993

Himat Rai Nagpal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-01-1994

Acts Referred:

Citation : (1994) 2 RCR(Criminal) 91 : (1994) 2 RRR 140 : (1994) 1 RRR 727

Hon'ble Judges : S.S.Grewal, J

Advocate : S.S. Goripuria, Rajnish Narula, P.S. Saini, Advocates for appearing Parties

Judgement

S.S. Grewal, J. (Oral)

1. This revision is directed against the order dated 15.7.1993 passed by Additional Sessions Judge, Panipat.

2. In brief facts relevant for the disposal of this petition are that State of Haryana through District Town Planner, Karnal, exercising powers of Director, Town and Country Planning Haryana, filed complaint against the present petitioner under Section 12(1)(b) of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the Act) on the allegations that the land in dispute as described in the complaint situated within the revenue limits of village Patti Ansare tehsil and district Panipat which was being used for agriculture purposes, was declared as controlled area under the Act vide State Government notification dated 10th of September, 1971 published on 21st of September, 1971. It was further alleged that the petitioner in contravention with the provision of Section 7(1) of the Act changed the user of land by raising construction thereon without the permission of Director Town and Country Planning and thereby committed an offence punishable under Section 12(1)(b) of the Act. The Building Inspector of the District Town Planner visited the spot on 6th of April, 1978 and reported about the illegal constructions said to have been made by the accused with the purpose to construct a commercial building. He reported further construction from time to time. Thereafter show

cause notice was sent to the petitioner on 28.4.1978 whereby he was also directed to stop construction but the petitioner continued the construction and completed his building. After obtaining necessary permission from the District Town Planner, complaint was filed against the petitioner. After recording preliminary evidence petitioner was summoned for committing offence punishable under Section 12(1)(b) of the Act. After appearance of the petitioner precharge evidence was also recorded which included evidence of PW.1 R.C. Aggarwal, District Town Planner, Karnal and PW.2 Vijinder Singh, Building Inspector. The trial Magistrate vide his order dated 11th of September, 1990 held that no case against the accused (present petitioner) has been made out which if rebutted would warrant his conviction and keeping in view the provisions of Section 245 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) the accused (present petitioner) was discharged.

3. Aggrieved against the order of the trial Magistrate, the State of Haryana, filed revision petition which was accepted by Additional Sessions Judge, Panipat vide his order dated 15th of July, 1993. The order of the trial Magistrate was set aside and the matter was again remanded back to the trial court for deciding the case on merits. The petitioner has filed the present revision petition against the order of Additional Sessions Judge, Panipat dated 15.7.1993.

4. The learned counsel for the parties were heard.

5. Today copy of the statement of PW. 1 R.C. Aggarwal, District Town Planner, recorded by the trial Court has been filed wherein it is specifically mentioned that the land in dispute is situated at a distance of 11 kilometers from Panipat. Under Section 4(1) of the Act, the State Government could by notification declare any area adjacent and within a distance of 8 kilometers on the outer sides of the boundary of any town, or two kilometers on the outer side of the boundary of any industrial or housing estate, public institution or an ancient and historical monument specified in such notification to be a controlled area under the Act. Since the distance of the land in dispute is 11 kilometers from Panipat as deposed to by Town Planner himself, the State Government could not by notification declare the land in dispute as a controlled area, vide notification issued as far back as 10th of September, 1971. It is for the complainant to prove affirmatively that the land in dispute has been lawfully declared as a controlled area under the Act. It is also significant to note that from the evidence on the record admittedly the notification contemplated under Section 4(1) of the Act has been published only in one newspaper other than that published in English. This too is in direct violation of the mandatory provisions of subsection (2) of Section 2 of the Act which contemplates that the government shall also cause the contents of the declaration made under subsection (1) to be published in at least two newspapers printed in a language other than English.

6. Show cause notice was given to the petitioner on behalf of the complainant to stop construction as far back as 28.4.1978 and the maximum imprisonment for the offence under Section 12(1)(b) of the Act is three years and no cognizance

can be taken for the offence after lapse of three years. Admittedly the Town Planner had given the permission to file the present complaint on 9.8.1983, and thereafter the present complaint was filed on 6th of November, 1985 in view of clause (b) of subsection (1) of Section 469 of the Code, as it had come to the notice of the complainant that the present petitioner had started raising construction on the land in dispute as early as 28.4.1978. The period of limitation in the instant case for taking cognizance under Section 468 the Code shall commence from 28.4.1978 and not from 9.8.1983 when the sanction for prosecution was granted by the Director Town and Country Planning. Since the period of limitation has already lapsed the trial Court could not take cognizance with regard to the offence alleged to have been committed by the petitioner in the year 1978 or thereabout. The delay in filing the complaint in the instant case can in no way be attributed to the present petitioner. In view of the facts and circumstances of the present case, the petitioner had raised construction on his own land, it cannot be said by any strength of imagination that the construction was illegal or by raising such construction the petitioner would be presumed to have committed a continuing offence.

7. It was held by the apex Court in *State of Punjab v. Sarwan Singh*, AIR 1981 SC 1054. that:

"The object of Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 12 of the Constitution. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."

For the forgoing reasons, the impugned order passed by the Additional Sessions Judge, Panipat is hereby reversed and that of the trial court is restored. This petition is accordingly allowed.