

(2009) 10 DEL CK 0309

In the Delhi High Court

Case No : Criminal M.C. No's. 1459-64 of 2006

Parivar Seva Sanstha and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Delhi Development Act, 1957 — Section 12, 14, 28, 29, 29(2)
Evidence Act, 1872 — Section 105
Societies Registration Act, 1860 — Section 6

Citation : (2009) 10 DEL CK 0309

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sushil Bajaj Sanjeev Sindhwani and Ekta Kalra, for the Appellant;
Rajesh Mahajan, for DDA, for the Respondent

Judgement

Kailash Gambhir, J.—By way of this petition filed u/s 482 Cr.P.C. the petitioner seeks quashing/setting aside of the orders dated 27.03.2002 and 17.02.2005 passed in criminal case No. 125/2006 based on complaint dated 26.03.2002 by the DDA u/s 14 r/w Section 29 (2) of the Delhi Development Act, 1957.

2. Brief facts of the case are as under:

The case of the respondent DDA is that on a report of its field staff vide report dated 26.12.2001 the petitioners have permitted/put to use the building bearing property No. O-22, Ground Floor, Lajpat Nagar-II, New Delhi to a non-conforming use by running a Nursing Home/Clinic which can be used only for residential purpose according to the Master Plan and Zonal Development Plan of the Zone D-19 referred to u/s 14 of the Delhi Development Act, 1957 and have thereby committed an offence punishable u/s 29 (2) of the said Act. As per the case of the DDA the petitioner Nos. 2 to 8 were President, Executive Secretary/Members and were responsible to petitioner No. 1 M/s Parivar Sewa Sansthan for the conduct of its business at the time the offence was committed.

3. Counsel for the petitioner raised two contentions to challenge the said complaint as well as the summoning order. Counsel for the petitioner submits that the complainant has not disclosed in the complaint as to why the petitioners should be made liable to face the criminal prosecution as nowhere in the complaint, the complainant has specifically alleged that how the petitioners were incharge and responsible for the day to day conduct of the business of the accused No. 1 Society. The contention of the counsel for the petitioner is that each and every member of the society cannot be held responsible but only those who at the time when the alleged offence was committed were incharge of and responsible for the day-to-day affairs of the accused society. Counsel further submits that it is for the complainant to specifically aver in the complaint that how all the office bearers and members could be made as an accused without disclosing as to what duties and responsibilities they were discharging at the time of the alleged commission of the offence. In support of his argument the counsel has placed reliance on the order of this Court dated 12.10.2007 passed in Crl. M.C. No. 4695/2005. The second submission of the counsel for the petitioner is that the case of the petitioner is squarely covered under the notification of the respondent dated 7.5.1999 whereunder Nursing Homes, guest houses and banks have been allowed to operate in the residential areas and in the face of such a notification the respondent No. 1 society who was running a nursing home could not have been prosecuted. The contention of the counsel for the petitioner is that with the promulgation of the said notification the respondent DDA could not have complained any violation on the part of the petitioners for violating Sections 14 & 29 of the DDA Act. The contention of the counsel for the petitioner is that there was no violation on the part of the petitioners so far as the running of nursing home was concerned as with the enforcement of the said notification the running of nursing home could not have been considered as violation of either master plan or the zonal plan. Counsel further submits that in the entire complaint, the respondent DDA has failed to point out specifically the alleged breach of the said notification dated 7.5.1999 by the present petitioners.

4. Refuting the said submissions of the counsel for the petitioner Mr. Rajesh Mahajan, counsel appearing for DDA submits that respondent DDA has filed the said complaint because there was a clear cut violation on the part of the petitioner violating Section 14 of the DDA Act as the use of the residential premises for nursing home was a non-conforming user clearly in contravention of the master plan and zonal plan and therefore, it cannot be said that there was no violation of the said provisions committed by the present petitioners. Mr. Mahajan further submits that the petitioner cannot derive any advantage of the said notification as the said notification carved out an exception to the said general provisions i.e. Sections 14 and 29 of the DDA Act and it was for the complainant to have established before the trial court that the case of the accused falls within the four corners of the said exception carved out through notification. Counsel has placed reliance on Section 105 of the Indian Evidence

Act in support of his argument.

On the other submission of the counsel for the petitioner, Mr. Mahajan submits that so far the order dated 12.7.2007 of this Court is concerned the same is not applicable to the facts of the present case as the said summoning order dated 27.3.2002 was quashed against one Dr. T.R. Black due to absolutely divergent circumstances. The contention of the counsel for the DDA is that the said Mr. Black was a British national and a practicing resident of U.K. and he was taken on the board of respondent accused Society in his capacity as Chief Executive Officer of Marie Stopes International. Counsel thus submits that taking into consideration the position of Mr. Black being a nominated director on the Board of the accused society and being a permanent resident of British National, the said summoning order qua him was quashed and so far the present petitioners are concerned, the said plea cannot be made available to them. Counsel further submits that sufficient allegations have been made by the respondent DDA against the petitioners by clearly stating that they were incharge of and were responsible to the accused No. 1 M/s Pariwar Seva Sansthan for the conduct of its business at the time when the offence was committed and such a clear averment fully satisfies the requirement of law. In support of his argument counsel for the respondent has placed reliance on the judgment of the Apex Court reported in 2007 (2) JCC (NI) 205 N. Rangachari v. Bharat Sanchar Nigam Ltd.

5. I have heard Id. Counsel for the parties at considerable length and gone through the record.

6. The first contention of the counsel for the petitioner is that the respondent complainant has not specifically alleged that how the petitioners who were merely members of the accused No. 1 society namely M/s. Parivar Seva Sanstha can be impleaded as an accused persons. The contention of the counsel for the petitioner is that no specific allegation has been leveled by the complainant that the petitioners have willfully violated any provision of the DDA Act or Rules framed thereunder but a mere averment that they were responsible officers of the accused No. 1 society in carrying out day to day affairs of the society. Counsel thus urged that the petitioners have been roped in as accused persons in a most mechanical and perfunctory manner.

7. On the other hand counsel for the respondent contended that it was clearly mentioned in the complaint that all the present petitioners were President, Executive Secretary and Members of the accused No. 1 Society who were responsible for the conduct of its business at the time of the commission of the offence and with the incorporation of such an averment, the petitioners cannot be heard to say that no specific role, disclosing the commission of the offence on the part of the petitioners was disclosed in the complaint as would be borne out from the complaint as well as from the petition. The accused No. 1 i.e. M/s. Parivar Sewa Sanstha was a Society who at the relevant time along with the present petitioners was found to have been running a nursing home in the

property bearing No. O-22 Ground Floor, Lajpat Nagar, New Delhi in contravention of the Master Plan/Zonal Development Plan of Zone D-19, thereby contravening Section 14 of the DDA Act punishable under the provision of Section 29(2) of the said Act. In the said complaint Dr. Mrs. Sudesh B. Dhall was impleaded as accused No. 2 and accused No. 3 Ms. Sudha Tewari had been made as a co-accused in her capacity as an Executive Secretary of the said Society, while others were impleaded being Members of the Society. u/s 6 of the Societies Registration Act 1860 every society registered under the Act, may sue or be sued in the name of the President, Chairman or Principal Secretary or Trustees as shall be determined by the rules and regulations of the society and in default of any such determination, the society can sue or be sued in the name of such person as has been appointed by the governing body of the society for the occasion. It would be relevant to reproduce Section 6 of the Societies Registration Act, 1860.

6. Suits by and against societies:

Every society registered under this Act may sue or be sued in the name of President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion.

8. Nowhere in the complaint the complainant has disclosed as to why and for what reasons the Members of the Society have been made as accused persons once the main office bearers of the society i.e. President and the Executive Secretary were impleaded as accused persons. No doubt the complainant has averred in the complaint that all these Members were In-charge and responsible for the conduct of business of the Society at the time of the commission of the offence but such a cyclostyled clause by filling in certain blanks in the complaint appears to be more ritualistic than confirming the basic requirement of law. Equally surprising is the stand of the petitioners who have failed to place on record the articles of association of the accused society or the memorandum of by-laws of the society or any other document to show the names of the office bearers of the society and the duties entrusted upon certain office bearers of the society for carrying on its day-to-day functions. Be that as it may, it would have been sufficient for the complainant to have impleaded any of the principal functionary of the society along with the society as accused persons instead of roping in all the members of the society to face the criminal prosecution, unless any specific role was ascribed to other members of the society on the date of the alleged commission of the offence. Although, Section 6 deals with suits, but by taking analogy of the same it can be safely assumed that for any offence committed by the society it can sue or be sued through its President, Chairman or Principal Secretary or any other office bearers authorized by the society for such purpose. In the absence of any specific averment made in the present complaint, against the members of the society I find that the respondent has filed the complaint against the present petitioner in a most mechanical and

perfunctory manner more so when the complainant has already impleaded the Executive President of the society. The summoning order dated 27.03.2002 and the said complaint therefore would not sustain against the present petitioners due to the lack of any specific averment made by the complainant against them attributing any specific role to them at the time of alleged commission of the offence.

9. Coming to the second submission of the counsel for the petitioner that with the enforcement of the Notification dated 7.5.1999, the petitioner society could run the activity of nursing home in the residential premises and therefore, there was no violation of Section 14 of the DDA Act which could be complained of by the respondent. For better appreciation of this contention, Section 14 and Section 29 of the DDA Act are reproduced as under:

14. User of land and buildings in contravention of plans:-After the coming into operation of any of the plans in a zone no person shall use or permit to be used and land or building in that zone otherwise than in conformity with such plan.

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force.

29. Penalties (1) Any person who whether any his own instance or at the instance of any other person or any body (including a department of Government) undertakes or carries out development of any land in contravention of the master plan or zonal development plan or without the permission, approval or sanction referred to in Section 12 or in contravention of any condition subject to which such permission, approval or sanction has been granted, shall be punishable-

(a) with rigorous imprisonment which may extend to three years, if such development relates to utilizing, selling or otherwise dealing with any land with a view to the setting up of a colony without a lay out plan; and

(b) with simple imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both, in any case, other than those referred to in Clause (a).

(2) Any person who uses any land or building in contravention of the provisions of Section 14 or in contravention of any terms and conditions prescribed by regulations under the proviso to that section shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence, with further fine which may extend to two hundred and fifty rupees for every day during which such offence continues after conviction for the first commission of the offence.

(3) Any person who obstructs the entry of a person authorized u/s 28 to enter into or upon any land or building or molests such person after such entry shall be

punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

10. The respondent complainant in the complaint has alleged violation of Section 14 of the DDA Act on the premise that the field staff of the DDA in the course of inspection on 26.12.2001 found the petitioners along with other accused persons running a nursing home in the premises bearing property No. O-22, Lajpat Nagar-II in contravention of the Master Plan/Zonal Development Plan on Zone D-19 instead of using the same for residential purposes in terms of the master plan and zonal development plan. In the said complaint the complainant has also stated that the said society is functioning at the ground floor area, the area under misuse measuring about 1500 sq. ft. The said misuse is described in the inspection report attached along with the complaint by the complainant. It is not in dispute between the parties that pursuant to the notification dated 7.5.99 activity of nursing home, guest house and banks were permitted in residential areas and in special areas but with certain conditions prescribed thereunder. It would be worthwhile to produce relevant para of the notification as under:

Nursing Home, Guest House and Bank shall be allowed in "residential plots" of minimum size of 209 sq. (facing a minimum road width of 18 mtres. Wide 19 mtres. In special area and 13.5 mtrs. In rehabilitation colonies) subject to the conditions laid down in the guidelines issued in this regard.

11. With the said notification in place the respondent DDA could not have filed a complaint complaining non-conforming use of residential premises being put to use for running a nursing home/guest house and banks unless running of such activity was not found to be in conformity with the other conditions concerning the width of the road and the size of the plot etc. A bare perusal of the entire complaint would show that nowhere in the complaint, the respondent DDA has specifically disclosed as to what was the size of the plot in which the nursing home was being run by the accused society and what was the width of the road facing the plot wherefrom the nursing home was being run and in the absence of the same the complaint filed by the respondent DDA lacked the basic facts and material which could have disclosed commission of an offence on the part of the petitioners contravening Section 14 of the DDA Act read with said Notification. It is not in dispute that inspection of the premises of the society was carried out by the field staff of the DDA after the enforcement of the said notification and therefore, the field staff in their inspection report ought to have disclosed the width of the road and the exact size of the plot wherefrom the accused society was running the nursing home and since no such particulars have been disclosed in the inspection report or in the complaint, therefore, the complainant respondent prima facie failed to disclose any violation on the part of the petitioners u/s 14 of the DDA Act.

12. It is no more res Integra that criminal prosecution cannot be launched against any person just in a routine manner or by adopting a careless approach.

Reliance can be placed on the case Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others,

Wherein the court held that summoning of an accused in a criminal case is a serious matter the order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support and would that be sufficient for the complainant to succeed in bringing charge home to the accused. The magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

Another case which can be relied upon is of: Nilesh Kumar Shah v. R.C. Khundra 1999 (1) JCC 172 (Delhi)

it was held before taking cognizance of a complaint the court is required to apply its mind to see whether on the basis of allegations in the complaint and the evidence, which may be placed before it in support thereof, a prima facie case for taking cognizance and summoning the accused is made out or not. It is not supposed to act merely as a post office or a rubber stamp for the prosecution. Of late it has come to the notice of the court that some of the subordinate courts are taking cognizance in complaints filed by public servants in a routine manner. This is not a proper practice

The court also made an observation by relying upon the judgment of Jacob Mathew Vs. State of Punjab and Another,

Court laid down guidelines to ensure medical practitioners are not harassed by criminal prosecution. Arrests should not be done in a routine manner and also complaint may not be entertained unless the complainant has produced prima facie evidence before the court.

The Government Body and its instrumentalities who are empowered with the authority to launch criminal prosecution have to be very careful, cautious and confident that the persons complained of are in clear breach of some penal provisions and sufficient material need to be placed with clear averments in the complaint, disclosing commission of cognizable offence on the part of the accused persons. Indisputably, criminal prosecution not only leads to cause serious harassment to such persons but certainly tarnish the image of such persons besides placing them in lower esteem in the society, and therefore, every care must be taken by such government bodies before launching any criminal prosecution against the citizens or the other juristic and legal entities. The DDA projected an irresponsible and a casual behavior unnecessarily causing hardship to the petitioners by not disclosing the facts related to width of road and exact size of the plot. DDA has also not disclosed as to how mere running of a nursing home in the residential premises could be in contravention of Section

14 of the DDA Act, once by that time said Notification dated 7.5.1999 was already in place. It appears that the concerned officers of the DDA did not take cognizance of the said notification at the time of carrying out field inspection, therefore, the said complaint based on such an inspection report cannot sustain.

In view of the above discussion, the order dated 27.03.2002 and complaint No. 125 of 2006 pending in the court of Ld. M.M. New Delhi are hereby quashed.