

(1984) 11 DEL CK 0049

In the Delhi High Court

Case No : Criminal Revision Appeal No. 259 of 1979

R.P. Bajaj and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251
Delhi Development Act, 1957 — Section 29(2)

Citation : (1984) 2 Crimes 952 : (1985) 8 DRJ 139 : (1985) 1 RCR(Criminal) 298

Hon'ble Judges : G.R. Luthra, J

Bench : Single Bench

Advocate : D.C. Mathur, D.R. Sethi and V.K. Makhija, for the Appellant;

Judgement

G.R. Luthra, J.

(1) The petitioners R.P. Bajaj and M/s.Sawan Paints were convicted by a Metropolitan Magistrate, Delhi of an offence punishable u/s 29(2) read with section 14 of the Delhi Development Act (for short "the Act") and sentenced each of them to pay a fine of Rs. 500.00 . It was directed that in default of payment of fine, R.P. Bajaj shall undergo simple imprisonment for three months. Both went in appeal which was dismissed on September 24, 1979 by Sh. R.D. Aggarwal, Additional Sessions Judge, Delhi. The present petition is directed against the aforesaid conviction and sentence.

(2) On 26th June 1976 Shri S.K. Taneia, (Public Witness 2) Junior Engineer of Delhi Development Authority (hereinafter referred to as DDA) inspected a vacant plot of land measuring 500 sq. yards bearing No. 13, Kaushalya Park, opposite G. Block Market, Hauz Khas, New Delhi. He found that the aforesaid plot was being used for storage of sanitary and hardware goods. O.I inquiry, he came to know that M/s. Sawan Paints, petitioner was a partnership firm of which R.P. Bajaj was a partier ,in charge and responsible to the firm for the conduct of the business of the said firm. Shri Taneja made a report Ex. P2. On receipt of that report in the office, an Additional Secretary (prosecutions) sent a notice to Shri R.P. Bajaj,

petitioner to the effect that the latter should show cause within 15 days from the date of the issue of the notice as to why action should not be taken against the latter-under section 14 read with section 29(2) of the Act are having used the aforesaid plot for commercial purpose as against the permissible use of the same for residential purposes. One Krishan Kumar sent reply Ex. P7 dated 15th August 1976 to the Additional Secretary, D.D.A.to the effect that the plot was commercial one. that the same was being used as such and that, Therefore, there was no misuse of the plot.

(3) After obtaining necessary sanction tinder the Act, the Secretary, Dda filed a complaint(Ex.p8) for prosecuting the petitioners for committing an offence u/s 29(2) read with section 14 of the Act because they had put the plot to commercial use in contravention of the Master plan of Delhi which permitted the use of the plot for residential purposes.

(4) As required by section 251 of the Code of Criminal Procedure, particulars of the alleged offence were stated to R.P. Bajaj, petitioner both in his individual capacity as well as representing the firm. In reply to the same, R.P. Bajaj made the following statement :

"I am keeping a godown on this land. I do not know if this land can be used for residential purposes only."

(5) The prosecution examined Sh. S.K. Taneja (Public Witness 2) who supported the entire prosecution version. The prosecution also examined Shri A.K.. Srivastava, Udc, (Public Witness 1) who is only a formal witness because he proved the original minute book of D.D.A. containing the resolution (copy Ex.P-1) relating to the authorisation of an officer on special duty and the Secretary of D.D.A. to institute prosecution and other proceedings on behalf of D.D.A.

(6) In his statement u/s 313 Cr. P.C. R.P. Bajaj on behalf of himself as well as on behalf of Sawan Paints expressed his ignorance as to who was using the plot for storing sanitary and hardware goods. It was denied that Sawan Paints was a partnership firm and that be was a partner thereof. He stated that the case was false and that he was innocent. He showed ignorance if the plot could be used for residential purposes only.

(7) The first point that was urged by the learned counsel for the appellant was that it did not stand proved from any evidence on record that M/s. Sawan Paints was a partnership firm and that R.P. Bajaj was partner of the same.

(8) The only evidence which is relied upon by the D.D.A. consists of statement of S.K. Taneja (Public Witness 2). He stated in examination-in-chief that M/s. Sawan Paints was a partnership firm and that R.P. Bajaj was in charge of and responsible to M/s. Sawan Paints for conduct of its business. But the cross-examination shows that the aforesaid statement is without any basis. He admitted that he did not see any partnership deed at the spot and that he could not say as to who were the other partners of M/s. Sawan Paints. That indicates

that he had no knowledge or basis for saying that M/s. Sawan Paints was a partnership firm. According to him, he made inquiries from R.P. Bajaj as well as his brother Ram Nath Bajaj and that he came to know about the facts on the said basis. But that statement is belied by his report Ex. P-2. There is a printed column No. 6 in that report to the effect, "Details of site enquiries with signature of person(s) from whom made." Against that column it is mentioned, "Mr. Ram Nath Bajaj, brother of partner." That clearly means that no inquiry was made from R.P. Bajaj. Public Witness 2 says that R.P. Bajaj was present. But that also seems to be wrong when there is no mention of presence of R.P. Bajaj or inquiry having been made in the aforesaid report.

(9) It is, Therefore, obvious that both the report Ex. P 2 and the statement of Public Witness 2 are absolutely useless. Learned counsel for D.D.A., however, laid great stress on the statement of R.P. Bajaj which was recorded in reply to the notice u/s 251 Cr.P.C. That statement has already been reproduced above. Learned counsel contended that that clearly showed that it was R.P. Bajaj who was using the plot as a "godown".

(10) But the aforesaid statement of R.P. Bajaj is hardly relevant and admissible. The said statement could be of use if it amounted to plea of guilty. Then he could be convicted and sentenced there and then u/s 252 Cr.P.C. by the learned Magistrate. But that was not so. This statement of an accused, Therefore, could not be taken as evidence against him.

(11) It is very important to note that during his statement u/s 313 Cr.P.C. R.P. Bajaj denied that he was using the plot in question. He has also denied that there was any partnership firm carrying on business under the name and style of M/s. Sawan Paints or that he was a partner thereof, In this respect, it is very important to note that it was one Krishan Kumar who sent letter dated 15th August, 1976 (Ex. P 7) on behalf of M/s. Sawan Paints & Electrical Store to the Additional Secretary of Delhi Development Authority. That means that it was Krishan Kumar who was having dealings on behalf of M/s. Sawan Paints with D.D.A. and there is probability that R.P. Bajaj did not have any connection with the same.

(12) Under these circumstances R.P. Bajaj could not be convicted and sentenced. May be, that M/s. Sawan Paints & Electrical Store are having possession of the plot but since that business was not prosecuted through a proper person, conviction and sentence of the said business is also not sustainable. The said business should have been prosecuted, through Krishan Kumar who wrote the latter Ex. P 7.

(13) Under the circumstances I accept the revision petition, set aside the judgments of the courts below and also set aside the conviction and sentence of the petitioners and acquit them.