

(1992) 10 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 98-DBA of 1989

The State of Haryana

APPELLANT

Vs

S.K. Bajaj

RESPONDENT

Date of Decision : 29-10-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Punjab New Capital (Periphery) Control Act, 1952 — Section 12(1)

Citation : (1993) 103 PLR 507 : (1993) 1 RCR(Criminal) 666

Hon'ble Judges : B.S. Nehra, J;A.S. Nehra, J

Bench : Division Bench

Advocate : D.S. Bishnoi, D.A.G, for the Appellant; H.P. Verma, for the Respondent

Judgement

A.S. Nehra, J.—This appeal is directed against the judgment dated 7.5. 1988 passed by the Chief Judicial Magistrate Ambala, by which the accused was acquitted and it was held that the complaint is barred by time.

2. The District Town Planner, exercising the powers of Deputy Commissioner (Periphery) Haryana, Chandigarh, submitted a complaint, alleging therein that S. K. Bajaj son of Hukam Rai, the present accused, had committed an offence punishable u/s 12 (i) of the Punjab New Capital (Periphery) Control Act, 1952, (hereinafter called the Act) on the allegations that the accused had raised construction of two rooms. Varandha and kitchen on the land bearing Khasra

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102/1, 107/3.

Hudbust No. 115. of village Abdulaspur, Tehsil Kalka, District Ambala, in contravention of the provisions of Section 5 of the Act.

3. Sections 5 and 12(1) of the Act read as under :-

"5. Except as provided hereinafter, no person shall erect or re-erect any building

or make or extend any excavation, or lay out any means of access to a road, in the controlled area save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing".

"12 (1) Any person who-(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of this provisions of Section 4 or in contravention of any conditions imposed by an order u/s 6 or Section 7, or,

(b) uses any land in contravention of the provisions of subsection (1) of Section 11 ;

shall be punishable with fine which may extend to five hundred rupees and, in the case of a continuing contravention, with a further fine which may extend to fifty rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention."

4. Shri R. K. Vohra, District Town Planner, HUDA Chandigarh, appeared as PW-1 and stated that he was posted as District Town Planner. Panchkula, and that the Patwari made a report regarding the unauthorized construction laised by S.K Bajaj, copy of which is Exhibit PA and its plan is Exhibit PB. PW-1 identified the signatures of the Patwari on the report PW-1 further stated that they served a show cause notice Exhibit PC on S. K. Bajaj but S K. Bajaj did not send any reply to the notice and that, thereafter, a notice of 30 days was again issued to S. K. Bajaj, vide Exhibit PD

5. It has been further stated by PW-1 that, on 20 2 1985, another notice Exhibit PE was issued to S. K. Bajaj, by which the accused was directed to demolish the construction but he did not comply with the same. Patwari Jiwa Ram appeared as PW-2 and stated that S. K. Bajaj had raised unauthorised construction of two pacca rooms, kitchen, two pucca varandahs and one store on the land bearing Khasra Nos. 238/107/1 and 238/107/3, hudbust No. 115. situated in village Abulapur and he had submitted a report in this regard in the office on 13.12.1984. PW-2 has further stated that S. K. Bajaj had not obtained the permission for the above-mentioned construction.

6. After the closure of the prosecution evidence, the incriminating evidence appearing on the record was put to the accused and his statement in terms of Section 313 of the Code of Criminal Procedure was recorded. The accused pleaded innocence and false implication on the ground that he had raised construction of the house within the abadi of the village The accused also examined one witness, namely Om Parkash DW-1, in his defence. Om Parkash DW-1 has stated that the accused had raised construction on the land situated within abadi of village, Abdulapur.

7. The learned counsel for the appellant has argued that it stands established from the statement of R K. Vohra PW-1 and Jiwa Ram PW-2 that the accused had raised construction in the "controlled area". He has further submitted that this

position also finds support from the site plan Exhibit PG placed on the file and that, therefore the accused be held guilty and convicted for the commission of the offence.

8. The learned counsel for the accused assailed the case of the prosecution on three grounds, before the trial Court To begin with, he urged that the provisions of the Act extend to such part of the area in the State of Haryana as is adjacent to and within a distance of ten miles on all sides from the outer boundary of the land acquired for the capital of the State at Chandigarh as it existed immediately before 1.11.1986. In this regard, he further contended that R. K. Vohra PW-1 has admitted in cross-examination that village Abdulapur is situated at a distance of 21-22 Kilometres from the boundary of Chandigarh, and, as such, the present case does not fall within the purview of the Act.

9. On the other hand, it was argued on behalf of the prosecution that section 4 of the Act provides that Deputy Commissioner shall, within three months of the declaration under sub-section (1) of Section 3 deposit at his office and at such other places as he considers necessary, plans showing the area declared to be a "controlled area" for the purpose of the Act, signifying therein the restrictions applicable to the "controlled area". In the instant case, site plan Exhibit PG was duly published clearly showing village Abdulapur in the "controlled area". Thus, the plea taken up by the accused was not found tenable. Section 3 of the Act provides that the State Government may, by notification in the official Gazette, declare the whole or any part of the area to which this Act applies, to be a "controlled area" for the purpose of the Act. Section 4 of the Act requires the publication of the plans of the "controlled area", as mentioned above. In the instant case, plan Exhibit PG of the "controlled area" has been placed on the record. A perusal of this site plan clearly shows that village Abdulapur shown at point Exhibit PH falls within the "controlled area" The plea of the accused that village Abdulapur is situated at a distance of 21-22 Kilometres from the boundary of Chandigarh, was not found tenable and the same was rejected.

10. Secondly, it was argued on behalf of the accused before the trial Court that Section 15 of the Act provides that nothing in the Act shall apply to any building for residential purposes or for purposes subservient to agriculture in the abadi area of any village as defined in the revenue records. It was further argued by the learned counsel for the accused, that, since the accused had raised constructions for residential purposes in the abadi area of village Abdulapur therefore, the accused cannot be held guilty and convicted for the commission of the offence for which he has been charged. To counter this plea, it was argued that on behalf of the prosecution that, as per report Exhibit PF given by Lekh Raj Qanoongo, the accused raised construction on the land bearing Nos. 238/107/1 and 238/ 107/ . No khasra number is allotted to the land falling in the village abadi or reserved for village abadi. Report Exhibit PF clearly shows that the accused had raised construction on the land bearing the aforesaid khasra numbers. In these circumstances, the oral evidence led by the accused that he

had raised construction in the village abadi, cannot be accepted against the record. Consequently, the plea taken up by the accused was rejected by the trial Court.

11. Lastly, it was contended before the trial Court on behalf of the accused that it is the admitted case of the prosecution itself that the accused had raised construction on 13-12-1984 as per report Exhibit PA of the Patwari ; that the complaint was required to be filed in the Court within the period of six months ; but it was filed on 10-7-1985 ; and that, thus, the accused deserves to be acquitted on this ground. The trial Court accepted this contention of the accused and held that the complaint was filed after the expiry of six months and the offence alleged to have been committed by the accused is not a continuing offence. The trial Court held that the complaint was barred by time and the same was dismissed accordingly.

12. Mr. D. S. Bishnoi, Deputy Advocate General, Haryana learned counsel for the appellant-State, has submitted that the offence u/s 12(1) of the Act is a continuing one and the complaint could not be dismissed as barred by time inasmuch as, in the present case, the accused had not demolished the construction up to 15.1.1985, on which date the second notice Exhibit PD was found. It was further submitted by the learned counsel for the appellant that the complaint was filed on 10.7.1985, i.e. within six months from the date of the second notice which was issued on 15.1.1985. therefore, the trial Court has erred in holding that the complaint is barred by time u/s 468 of the Code of Criminal Procedure.

13. We have given our careful consideration to the material on the record. At the outset, we have no hesitation to hold that an offence disclosed u/s 12 (1), of the Act is a continuing one and a complaint could be instituted within six months from 15.1.1985, i. e. the date on which second notice was issued and the construction had not been demolished.

14. Section 468 of the Code of Criminal Procedure read as under :-

"468. Bar to taking cognizance after lapse of the period of limitation- 1) Except as otherwise provided else where in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation ;

(i) The period of limitation shall be--

(a) Six months, if the offence is punishable with fine only.

(b) one year if the offence is punishable with imprisonment for a term not exceeding one year ;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

xx xx xx."

15. This provision is confined only to those categories of offences which are punishable with fine only or with imprisonment not exceeding three years. Admittedly, clause (a) of sub-section (2) of this provision is applicable to this case. The object of the 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 prosecution 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 21 of the Constitution of India. 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 prosecution failing on the ground of limitation.

16. The learned counsel for the appellant has submitted that, in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. In support of his argument, he has relied upon Section 472 of the Code of Criminal Procedure. The learned counsel for the appellant has further submitted that, since this accused was raising construction in contravention of the provisions of the Act, therefore, he was directed through notice Exhibit PC, dated 27.12.1984, to stop further construction and that since the accused did not reply to this notice, therefore, again notice Exhibit PD dated 15.1.1985 was issued. He further submitted that the offence committed" by the accused is a continuing offence and that the complaint was filed within six months from the issuance of notice Exhibit PD. dated 15.1.1985, and, therefore, the same is within the period of limitation prescribed by Section 468 of the Code of Criminal Procedure and the accused is liable to be convicted u/s 12 (1) of the Act.

17. In *Best v. Butler and Fetzquibbon* (1932) 2 K. B. 108. the English Trade Union Act, 1871, made it penal for an officer or a member of a Trade Union to wilfully withhold any money, books, etc. of the Trade Union. It was held in that case that the offence of withholding the money was a continuing offence, the basis of the decision evidently being that every day that the moneys were willfully withheld, the offence was committed.

18. In *Verney v. Fletcher and Sons Ltd.* (1894) 1 K. B. 444. Section 10(1) of the Factory and Workshop Act, 1901, provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Section 135 provided the penalty for non-compliance of Section 10(1) while Section 146 provided that information of the offence shall be laid within three months after the date on which the offence comes to the knowledge of the Inspector. It was held that the breach of Section 10 (1) was a continuing breach and, therefore, the information was in time. Every day that the fly-wheel remained unfenced, the factory was run otherwise than in conformity with the Act of 10 1901 and, therefore, the offence defined in Section 1 was a continuing offence.

19. The third English case referred to is *The London County Council v. Worley* (1894) 2 Q. B. 826. in which Section 85 of the Metropolis Management Amendment Act, 1862, prohibited the erection of a building on the side of a new street in certain circumstances, without the consent of the London County Council. The Court construed Section 85 as creating two offences building to a prohibited height and, continuing such a structure already built after receiving a notice from the County Council. The Court held that the latter offence was a continuing offence.

20. The learned counsel for the accused has submitted that it came to the notice of the Department on 13.12.1984 that the accused had raised the aforesaid construction and that, since the complaint was not filed within six months from the date of the knowledge, therefore, the complaint filed by the appellant was liable to be dismissed u/s 468 of the Code of Criminal Procedure.

21. After hearing the learned counsel for the parties, we have no hesitation in holding that the offence u/s 12 (1) of the Act is a continuing offence and the complaint has been instituted within six months from 15-1-1985, i.e. the date on which second notice was issued and up to which the construction had not been demolished. .

22. In view of the above mentioned discussion, the appeal filed by the appellant-State is allowed, the judgment dated 7-5-1988 passed by the Chief Judicial Magistrate, Ambala, is set aside, and the accused is convicted u/s 12(1) of the Punjab New Capital (Periphery) Control Act and sentenced to pay a fine of Rs. 500/-.