prevailing upon the learned Appellate Court, as comprised in the appellant rather deliberately delaying the making of an expeditious decision, upon the appeal, as became preferred by him against the verdict of conviction, as, made upon him, by the learned Court, thereupon hence there was no occasion for the learned Appellate Court to make the order of 14.09.2021. Necessarily for evident non-existences thereof, it could not proceed to determine interim compensation nor it could proceed to make any interim directions upon the complainant. Even otherwise it was also legally incumbent upon the learned First Appellate Court, to order that in case there is allowing of the appeal, as preferred before it, by the accused-convict, thereupon the interim compensation, as determined, be restored or refunded to the accused – convict, by the complainant. However, the afore directions, as legally required to be made by the learned First Appellate Court, while being seized with an application, under Section 148 of the NI Act, are not existing, hence in the order, as, made on 14.09.2021. Therefore, on the afore ground also, it suffers from an infirmity.

8. Further there onwards, through an order made on 08.10.2021, for failure on the part of the appellant to make the afore payment, rather within the apposite stipulated period, he proceeded to order for launching of recovery proceedings against the convict – appellant, one Rajesh Kumar. The afore made order is also challenged before this Court.

9. As stated (supra), though, for the reasons (supra), finality is assignable, to Annexure P-3. Nonetheless in the larger interests of justice, and, for revering verdicts pronounced by the Hon'ble Apex Court, hence mandating, that upon the Appellate Court concerned, proceeding to suspend the execution of sentence of imprisonment imposed, upon the petitioner, by the learned Convicting Court, it becoming incumbent upon it, to direct the convict to deposit some portion of the cheque amount. Therefore, upon revering the afore mandate of law, as made by the Hon'ble Apex Court, and, also de hors finality being assignable to Annexure P-3, this Court deems it fit to proceed to interfere with it, and, also proceeds to set aside, the order made on 14.09.2021, and, on 08.10.2021, with a direction to the convict / petitioner herein to, within one month from today, deposit 15% of the cheque amount before the learned Appellate Court concerned.

10. Disposed of.

11. Pending application stands disposed of.

Order accordingly.

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PUNJAB AND HARYANA HIGH COURT

Before: Jasjit Singh Bedi, J.

CRM-M-45483-2017 Decided on: 25.04.2022

Harneet Kaur Petitioner

Versus

State of Haryana & Anr Respondents

Present:

Mr. Manmohan Saroop, Advocate for the Petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), Section 3, 7, 10 – Code of Criminal Procedure, 1973 (2 of 1974), Section 468, 482 – FIR under Haryana Development and Regulation of Urban Areas Act -- Quashing of FIR – Maximum sentence is three years -- Limitation of three years to take cognizance -- Sale deed was executed on 28.04.2011 -- Communication dated 23.02.2012 was sent by the DTP, Kurukshetra to Superintendent of Police on 28.09.2016 leading to the registration of the FIR on 29.09.2016 -- Respondent no.2 was aware of the alleged offence, if any, on 01.12.2011/13.12.2011 and, therefore, the court could have taken cognizance within three years of that date i.e. 01.12.2014/13.12.2014 -- Report u/s 173 Cr.PC was submitted on 17.08.2017 -- Thus, the court could clearly not have taken cognizance beyond the period of limitation prescribed under Section 468 Cr.PC -- Petition allowed and the FIR u/s 10 of Haryana Development and Regulations of Urban Areas Act, 1975 along with all consequential proceedings emanating therefrom are hereby quashed.

(Para 12-14)

Cases referred:

1. Mahipal Vs. State of Haryana 2018(2) RCR (Criminal) 5.

2. Anil Sharma & Anr. Vs. State of Haryana & Anr. 2013(16) RCR (Criminal) 83.

3. Janak Raj Vs. State of Haryana 2002(4) RCR (Criminal) 248

4. Telu Ram Vs. State of Haryana 1994(2) RRR 665

5. Ram Chander Vs. State of Haryana 1994(2) R.R.R. 663

***

JASJIT SINGH BEDI, J. --

The prayer in this petition under Section 482 Cr.PC is for quashing of FIR No.561 dated 29.09.2016 under Section 10 of Haryana Development and Regulations of Urban Areas Act, 1975 registered at Police Station Sadar, Thanesar, District Kurukshetra along with all consequential proceedings emanating therefrom.

2. The brief facts of the case are that petitioner was the owner in possession of agricultural land measuring 09 Kanal 4 Marlas, situated within the revenue estate of village Bajidpur, Tehsil Thanesar, District Kurukshetra. The petitioner had sold this land to 04 persons namely Sh. Gagan Chawla, Rakesh Kumar, Sh. Mata Ram and Smt. Renu. The vendees purchased this land jointly for a total sale consideration of Rs.28,75,000/- (Rs.28 lacs 75 thousand) vide a registered sale deed no.1220 dated 28.04.2011.

3. Much after the execution of this sale deed the respondent no.2 allegedly sent a back dated letter dated 28.09.2016 to the Superintendent of Police, Kurukshetra requesting therein to register an FIR under Section 10 of the Haryana Development and Regulations of Urban Act, 1975 against the petitioner. Acting on the complaint of respondent no.2 an FIR bearing No.561 dated 29.09.2016 under Section 10 of Haryana Development and Regulations of Urban Areas Act, 1975 at Police Station Sadar, Thanesar, District Kurukshetra was registered against the petitioner. As per the petitioner the police registered the FIR without conducting an enquiry into the matter and without conducting any fair investigation presented the challan against the petitioner on dated 17.08.2017 and based on the report under Section 173 Cr.PC charges came to be framed against the petitioner(Annexure P-4).

4. The contention of the petitioner is that she has not committed any offence as alleged in the FIR. She has not carved out any plot or divided the land into plots for residential /industrial/ commercial purposes. That being the position, no question of obtaining the licence under Section 3 of the Haryana Development and Regulations of Urban Areas Act, 1975 would arise. Since the petitioner had sold the agricultural land in the name of four persons jointly, it cannot be said that the land had been sold in the shape of plots. Further in the sale deed nowhere was it mentioned as to which area had been sold to which buyer. He further contended that there was delay of more than five years in lodging the FIR against the petitioner. The sale deed was executed on 28.04.2011. The authorities had the knowledge of the offence having been allegedly committed on 01.12.2011/13.12.2011 but the FIR came to be registered only on 29.09.2016. The report under Section 173 Cr.PC came to be submitted on 17.08.2017. He thus contended that the registration of the FIR was barred by limitation and court could not have taken cognizance of the same.

5. The learned Counsel for the respondent-State has filed a reply dated 10.05.2018. As per para 4 of the said reply the contention of the State is that the sale deed had been executed in favour of four persons who were not related to each other and, therefore, though ostensibly the land was sold jointly, but in reality she had sold the land/plots to them separately but in a clandestine manner. The sale deed was registered jointly in their names just to circumvent the provisions of the HUDA Act. Thus she had contravened the provisions of Clause 7(i) of the said Act. It was further contended that it was only when the matter came to the knowledge of the respondent, that information was supplied to the police and, therefore, there was no delay on the part of the respondent no.2.

6. I have heard counsel for both the parties at length.

7. Before proceeding in the matter, it would be necessary to examine the relevant extracts of Section3, Section 7(i) and Section 10 of the Act which are reproduced hereinbelow:-

> *“ **Section 3. Application for licence** (1) Any owner desiring to convert his land into a colony shall, unless exempted under Section 9, make an application to the Director, for the grant of licence to develop a colony in the prescribed form and pay for it such fee and conversion charges as may be prescribed.*
>
> ***Section 7. Prohibition to advertise and transfer plots**:-*
>
> *Save as provided in Section 9, no person including a property dealer shall:-*
>
> *(i)* ***without obtaining a licence under Section 3, transfer or agree to transfer in any manner plots in a colony or make an advertisement or receive any amount in***

***respect thereof**;*

(ii) erect or re-erect any building in any colony in respect of which a licence under Section3, has not been granted.

(iii) erect or re-erect any building other than for purposes of agriculture on the land sub-divided for agriculture as defined in clause (aa) of Section 2 of this Act.

***Section 7A. Registration of certain documents** (as applicable on the date of registration of sale deed by the petitioner):-Notwithstanding anything contained in any other law for the time being in force, where any document is required to be registered under the provisions of Section 17 of Indian Registration Act, 1908, purporting to transfer by way of sale or lease any vacant land having **an area of less than one hectare in an urban area** as may be notified specifically by the government from time to time for the purposes of this Section, **no Registration Officer appointed under the above said Act shall register any such document unless the transferor produces before such Registration Officer a no-objection certificate issued by the Director or an office authorized by him in writing in this behalf, to the effect that the said transfer does not contravene any of the provisions of this Act and its rules** and such no objection certificate shall be issued, with in ninety days of the date of receipt of the application for the same provided that-*

(a) if the area of vacant land, which is proposed to be transferred does not exceed one thousand square meters, the above said no objection certificate shall be issued within thirty days of the date of receipt of application by the Director, where-

(i) the land is situated in a colony for which a license has been issued under Section 3 of this Act, or

(ii) the transfer proposed is as a result of family partition, in inheritance, succession or partition of joint holdings not with the motive of earning profit, or

(iii) the transfer is in furtherance of any scheme sanctioned under any law;

(b) if the above said application for grant of no objection certificate submitted to the Director or an office authorized by him in writing in this behalf is not disposed off through an order in writing within the prescribed period of ninety days or thirty days as described in this section, the no objection certificate shall be deemed to have been granted;

(c) all applications for grant of no objection certificate shall be accompanied by the following documents:

(i) title of land

(ii) draft copy of registration deed

(iii) an affidavit to be effect that the site is covered under this Section, if the area of the land does not exceed one thousand square meters.

Section 10-Penalties (1) any person who contravenes any of the provisions of this Act or the rules made thereunder or any of the conditions of a licence granted under section 3 shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine:

Provided that where any of the provisions of section 9 are contravened, the punishment of imprisonment shall not exceed six months.

(2) Without prejudice to the provisions of sub-section (1), the Director or any other officer authorized in writing by him in this behalf may, by notice, served by post and if a person avoids service, or is not available for service of notice, or refuses to accept service, then by affixing a copy of it on the outer door or some other conspicuous part of such premises, or i n such other manner as may be prescribed, call upon any person who has committed a breach of the provisions referred to in the said sub-section to stop further construction and to appear and show cause why he should not be ordered to restore to its original state or to bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, any building or land in respect of which a contravention such as is described in the said sub-section has been committed and if such person fails to show cause to the satisfaction of the Director or such authorized officer within a period of seven days, the Director or such authorized officer may pass an order requiring him to restore such land or building to its original state or to bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, with in a further period of seven days.

(3) If the order made under sub-section (2) is not carried out within the specified period, the Director, or any other officer authorized in writing by him in this behalf may, himself at the expiry of the specified period, take such measures, as may appear necessary to give effect to the order and the cost of such measure shall, if effect to the order and the cost of such measure shall, if not paid on demand being made to him, be recoverable from such person as arrears of land revenue:

Provided that even before the expiry of the period mentioned in the order under sub-section (2),if the Director or such authorized officer is satisfied that instead of stopping the construction, the person continues with the contravention, the Director or such authorized officer may himself take such measures, as may appear necessary, to give effect to the order and the cost of such measures shall, if not paid on demand being made to him, be recoverable from such person as arrears of land revenue.”

Section 468 Cr.PC is also reproduced herein below:-

“*i)* *Except as otherwise provided elsewhere 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.*

ii) *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**.*

iii) *For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.*

8. The relevant judgments of this court in this regard are reproduced hereinbelow:-

In ***Mahipal Vs. State of Haryana 2018(2) RCR (Criminal) 5*** it was held as under:-

"*After hearing counsel for the parties, I find merit in the submissions made by counsel for the petitioners. The District Town Planner, Kaithal vide its letter dated 15.02.2012 has reported the matter to the Superintendent of Police, Kaithal with a clear averment that the petitioners/accused, by way of sub-dividing his lands into plots for residential, industrial/commercial purpose without obtaining a licence from the Director General, Town and Country Planning Haryana, Chandigarh as required under Section 3 of the Haryana Development and Regulation of Urban Area Act,1975, has contravened the provisions of Section 7 of the Act which constitutes an offence punishable under Section 10 of the Act. Therefore, it was reported by the District Town Planner, Kaithal on 15.02.2012 that the petitioners have committed an offence prior to 15.02.2012. The FIR was registered on 25.06.2015 on the basis of this very letter and later on, the report under Section 173 Cr.P.C. was submitted on 25.01.2017 and only thereafter, the cognizance was taken by the trial Court. The arguments raised by counsel for the State that it is a continuing offence within the meaning of Section 472 Cr.P.C. and, therefore, a fresh period of limitation shall begin to run at every moment of time during which the offence continues, in my opinion will not apply in the present case as the nature of the offence do not make it a continuing offence.*

In ***Anil Sharma & Anr. Vs. State of Haryana & Anr. 2013(16) RCR (Criminal) 83*** it was held as under:-

" As the punishment provided for the offence under section 10 of the Act is imprisonment of either description that may extend to three years, as per section 468 Cr.P.C., the limitation for taking cognizance of the said offence is 3 years from the date of commission of the offence. The last sale deed is dated 5.7.2007 and taking it straight, it appears that taking of cognizance of the offence on the FIR lodged on 11.9.2012 was barred by limitation.

Though, learned State counsel has argued that the authorities under the Act came to know about the sale deeds late, yet no such plea appears in the FIR.

The matter of limitation came up for hearing in the prosecution brought under the Act in Nand Lal and Telu Ram's cases (supra). In those cases, challan was presented before the court after expiry of period of limitation prescribed under section 468 Cr.P.C. Here, the very FIR has been lodged after expiry of period of limitation as prescribed for the offence under section 468 Cr.P.C.

Summing up my aforesaid discussion, I find that the given facts do not make out a prima facie case under section 10 of the Act. Moreover, taking cognizance of the offence on the date of lodging of the FIR was barred. In these circumstances, the FIR deserves to be quashed. Resultantly, the petition is allowed and FIR No.128 dated 11.9.2012 (Annexure P1) registered at Police Station Farrukh Nagar, District Gurgaon for an offence punishable under sections 7(1) and 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 alongwith all the subsequent proceedings arising out of the same is quashed.

In ***Janak Raj Vs. State of Haryana 2002(4) RCR (Criminal) 248*** it was held as under:-

"*Any contravention of the provisions of the Act is punishable under Section 10 of the said Act. It has been provided therein that any person, who contravenes any of the provisions of this Act or the Rules made thereunder or any of the conditions of a licence granted under Section 3 shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. As referred to above, the FIR in question was registered on 08.11.1983 on the basis of letter dated 08.07.1983, received from the District Town Planner, Ambala. Along with said letter, list of sale transactions was attached by way of annexure. As per the said list, sale transactions had taken place on 7.9.1982. If the District Town Planner had sent letter dated 8.7.1983 to the police for the registration of the FIR on account of violation of the provisions of the Act, it can be presumed that the authorities had come to know about the alleged contravention on 8.7.1983. Police had registered the FIR on 8.11.1983. It is admitted case of the parties that the challan was submitted in the Court on 11.11.1986 i.e. more than three years after the registration of the formal FIR on 08.11.1983.*

Under Section 468(1) Criminal Procedure Code it has been provided that no court shall take congnizance of an offence of the category specified under sub-section (2) after the expiry of period of limitation. As per sub-section (2) of Section 468, period of limitation shall be (a) 6 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; and (c) three years if the offence is punsiable with imprisonment for a term exceeding one year but not exceeding three years. Under Section 469 Criminal Procedure Code, it is provided that period of limitation in relation to an offender shall commence (a) on the date of offence; or (b) where the commission of the offence was not known to the person *aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier. Section 473 Criminal Procedure Code, provides for extension of period of limitation in certain cases. It has been provided that any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.*

In the present case, as referred to above, the maximum period of punishment provided under Section 10 of the Act is three years. That being so, the limitation for the Court to take cognizance of the offence shall be three years, from the date when the commission of offence was known to the person aggrieved i.e. District Town Planner. As referred to above, District Town Planner had informed the police, vide letter dated 8.7.1993 about the alleged offence having been committed by the accused. Police registered the FIR on 8.11.1983. Thereafter, police took more than three years in investigating the case and it was only on 11.11.1986 that the challan was submitted in the court. It was thereafter, that the court took cognizance of the offence. There is absolutely nothing on record to show that while submitting the challan, police had explained the delay in any manner, whatsoever. That being the position, in my opinion, the court was not competent to take cognizance of the offence or to serve the notice of accusation upon the accused petitioner. Furthermore, when the accused petitioner moved application before the learned Magistrate for his discharge, on the ground that the case was barred by time, learned Magistrate dismissed the said application on 09.08.1997, copy Annexure P-2, on the ground that notice of accusation had already been served upon him. In my opinion, continuation of the proceedings against the accused petitioner would be abuse of the process of law, especially when on the face of it, challan submitted in the court was beyond the period of limitation and the court had no jurisdiction to take cognizance of the said offence.

In **Telu Ram Vs. State of Haryana 1994(2) RRR 665** it was held as under:-

"It is not denied that the petitioners sold two plots of land each measuring one bigha to Ashok Kumar and Kaushalya Devi vide two separate sale deeds dated 15.06.1987. The case was got registered against the petitioners on 25.12.1990 i.e., after a period of three years, and challan was presented in court on 11.06.1991. Maximum sentence provided under the Act is three years and so also the period of limitation for launching prosecution of three years under Section 468 of Criminal Procedure Code. The case was thus registered and challan was presented in court after the period of limitation. It was argued on behalf of the respondent that the period of limitation in this case did not commence on the date of offence rather it commenced on 29.07.1989 when the commission of the offence came to the knowledge of the Field

Investigator. He referred to Section 469 of the Code which relates to the commencement of the period of limitation. Clause (b) of Sub Section of this Section provides that period of limitation in relation to an offender, shall commence where the commission of the offence was known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier. I am however, of the view that provisions of Section 469 are not applicable to the facts of this case because it was nowhere alleged by the Field Officer that commission of offence had not come to his knowledge prior to the day when he gave information to the police. In fact the transfer was effected vide registered documents. In the absence of any averment to the effect it cannot be presumed that commission of offence was not known to the person who gave information to the police. In this case, FIR was lodged after the expiry of period of limitation and when the court took cognizance of the offence delay was not condoned under Section 473 of the Code. In these circumstances the trial is vitiated. ***Nand Lal v. State of Haryana, 1987(2) RCR 467*** *is an authority on this point.*

In ***Ram Chander Vs. State of Haryana 1994(2) R.R.R. 663*** it was held as under*:-*

" Ram Chander and his son Dushayant Kumar residents of Gurgaon owned agricultural land in Khewat No.126, Khata No.172, Killa No.13 totalling 18 Kanals 5 Marlas. However, out of this they sold 4 Kanals 2 Marlas agricultural land to Israil son of Issaq and Asar Khan son of Amin Khan on 17.09.1987. However, on 22.09.1990 the present FIR has been registered under Section 10 of the Haryana Development and Regulation of Urban Area Act, 1975. The present petition has been moved under Section 482 Cr.PC of the Criminal Procedure Code alleging that since the challan has not been presented within a period of 3 years the FIR is liable to be quashed because it is now barred by virtue of Section 468 of the Criminal Procedure Code. In this case, the factual position that the sale was made on 17.09.1987 and the FIR was registered on 22.09.1990, is undisputed. It has also not been controverted in para 9 of the reply filed by the District Town Planner Enforcement, Faridabad, dated 29.07.1991.

In ***State of Punjab v. Sarwan Singh, AIR 1981 Supreme Court 1054,*** *it was observed that the objection of putting a bar of limitation on prosecution was clearly to prevent the parties from filing cases after a long time. In* ***Nand Lal v. State of Haryana, 1987(2) RCR 467****, prosecution after expiry of the period of limitation under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975, was disliked. Consequently, the present petition moved under Section 482 of the Criminal Procedure Code, succeeds and the FIR in question is hereby quashed.*

*Petition allowed.***"**

9-11 *(sic.)*

12. A perusal of the Section 10 of the HUDA Act would show that the maximum sentence is three years and in terms of Section 468 Cr.PC the limitation period for taking cognizance is also three years.

13. In the present case the sale deed was executed on 28.04.2011 (Annexure P-2). A perusal of the FIR would reveal that a show cause notice was issued to the petitioner on 01.12.2011/13.12.2011. Quite interestingly a communication dated 23.02.2012 was sent by the DTP, Kurukshetra to Superintendent of Police, Kurukshetra on 28.09.2016 leading to the registration of the FIR on 29.09.2016 (page 44 of the paper book). The challan in the present case was submitted on 17.08.2017. A perusal of the dates as enumerated hereinabove would show that the respondent no.2 was aware of the alleged offence, if any, on 01.12.2011/13.12.2011 and, therefore, the court could have taken cognizance within three years of that date i.e. 01.12.2014/13.12.2014. Therefore, in the present case the report under Section 173 Cr.PC was submitted on 17.08.2017 i.e. almost after 06 years of the discovery of the offence on 01.12.2011/13.12.2011. Thus, the court could clearly not have taken cognizance beyond the period of limitation prescribed under Section 468 Cr.PC as has been pointed out in various judgments (supra).

14. In view of the aforesaid settled legal position, the present petition is allowed and the FIR No.561 dated 29.09.2016 under Section 10 of Haryana Development and Regulations of Urban Areas Act, 1975 registered at Police Station Sadar, Thanesar, District Kurukshetra along with all consequential proceedings emanating therefrom are hereby quashed.

Petition allowed.

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PUNJAB AND HARYANA HIGH COURT

<u>Before: Sureshwar Thakur, J.</u>

Criminal Revision No. 258 of 2022 (O&M) Decided on: 11.02.2022

Ashok Aggarwal Petitioner

Versus

State of U.T., Chandigarh and another Respondents

Alongwith

Criminal Revision No. 265 of 2022 (O&M), Dinesh Bansal v. State of U.T., Chandigarh and another

Present:

Ms. Sarika Gupta, Advocate for the petitioner(s) (in both cases).

Mr. Anil Kumar Lamdharia, Advocate for respondent No. 1 – U.T., Chandigarh (in both cases)

(Through Video Conferencing)

Negotiable Instruments Act, 1881 (26 of 1881), Section 138, 148 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 374, 389 – Cheque bounce case -- Conviction u/s 138 NI Act – One year RI and Rs.60 lacs as compensation – Appeal against – Suspension of sentence with pre-condition of deposit of 20% of cheque amount given as compensation – Sustainability of – Direction(s) appears to be oppressive, especially given that a sum of Rs. 60 lakhs became assessed -- Necessarily, also it