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Charanjeet Vs. Dda and Another

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Court : Delhi

Decided On : Sep-11-2001

Reported in : 94(2001)DLT334; 2002(61)DRJ20

Judge : Mr. S.K. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 313, 397 and 401; Delhi Development Act, 1957 - Sections 4, 14, 20(2), 29(2), 31(3) and (5), 49 and 49(2)

Appeal No. : Crl. R. No. 101/97

Appellant : Charanjeet

Respondent : Dda and Another

Advocate for Def. : Ms. N.A. Khan and ; Mr. O.P. Saxena, Advs.

Advocate for Pet/Ap. : Mr. O.P. Faizi and; Mr. Ashish Aggarwal, Advs

Judgement :
ORDER

S.K. Agarwal, J.

1. This petition under Sections 397/401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is directed against the judgment and order dated 19th

December, 1996 passed by the Court of Ms. I.K. Kochhar, Addl. Sessions Judge, New Delhi, dismissing the appeal of the petitioner, upholding his conviction under Section 29(2) of the Delhi Development Act (for short, 'DD Act') and the sentence of fine of Rs. 4,000/-, in default of payment of fine SI for 30 days.

2. Facts in brief are: on 8.3.1994, P.K. Thapliyal, junior engineer (surveyor), inspected the premises No. F-77, Jagat Puri, Delhi (hereinafter referred to as 'the premises'), and found a shop under the name and style of M/s. Sangam Sanitary Store, functioning on the ground floor; five persons were working there at the time of inspection. The premises under the Master Plan and Zonal Development Plan No. E-8, could only be used for residential purposes. The report prepared at the spot along with the other papers were submitted to the officer concerned for grant of sanction for prosecution as mandated under Section 49 of the DD Act. After grant of sanction, complaint under Section 29(2) of the DD Act was filed against the petitioner. The petitioner pleaded not guilty to the charge. The prosecution in support of its case examined P.K. Thapliyal, junior engineer PW-1, who proved inspection report/FIR regarding non-conforming use of the premises Ex. CW-1/A; previous sanction granted by the competent authority under the DD Act Ex. CW-1/B; complaint under Sections 14 read with 29 (2) of the DD Act Ex. CW-1/C; land use plan, Ex. CW-1/D; Zonal Map, Ex. CW-1/E; Sales-tax certificate marked-A; and resolution of the D.D.A. Ex. CW-1/F. CW-2, Sunil Kumar, LDC from the Sales-tax Department, was also examined, who stated that Sales-tax number was allotted to M/s. Sangam Sanitary Store, functioning at the said premises, of which petitioner was the proprietor. The petitioner in his statement under Section 313 Cr.P.C. pleaded that he is innocent and has been falsely implicated.

3. Learned trial court vide judgment and order dated 30.1.1996, held the petitioner guilty and sentenced him as noticed-above. The petitioner's appeal was dismissed by the impugned judgment and order dated 19.12.1996 by learned Addl. Sessions Judge, which is under challenge in this Revision.

4. I have heard learned counsel for parties and have been taken through the record.

5. Learned counsel for petitioner referring to the cross-examination of CW-1, argued that as per complainant's own evidence, all papers were not submitted to the sanctioning authority while requesting for grant of sanction under Section 49 of the DD Act. It was argued that the sanction was granted without application of mind and, thereforee, the very institution of the complaint was bad in law and the impugned order of conviction is liable to be set aside on this ground alone. Learned counsel for respondent argued to the contrary. In order to appreciate the rival contentions reference to Section 49 of the DD Act would be necessary. It reads as under:-

'49. Sanctions of prosecution

(1) No prosecution for any offence punishable under this Act (other than an offence referred to in sub-section (2) shall be instituted except with the previous sanction of the Authority or as the case may be, the local authority concerned or any officer authorised by the Authority or such local authority in this behalf.

(2) No prosecution for any offence for failure to comply with the order of the officer referred to in sub-section (3) of section 31 and punishable under sub-section (5) of that sanction shall be instituted except, with the previous sanction of the Administrator or any officer authorised by him in this behalf.'

6. The mandate of the Section is clear. For prosecuting a person for any offence under Section 29(2) of the DD Act, the previous sanction of the authority is necessary. As per the settled law, grant of sanction is not an empty formality. It enables the authority concerned to consider whether on the basis of the material placed before it, sanction ought to be granted or not. Reference in this regard can be made to the observations of the Apex Court in State of Bihar Vs . P.P. Sharma, : 1991 CriLJ1438 .

7. To re-call the facts in this case, CW-1, Mr. P.K. Thapliyal, the Surveyor admitted that full papers of the case were not produced before the sanctioning authority. He admitted 'it is correct that full facts of the case were not placed before the sanctioning authority. I have made about 150 cases and in none of the cases sanction has been declined.' In addition to this, perusal of the sanction Ex. CW-1/B

itself shows, complete non application of mind by the sanctioning authority. The sanction is on the cyclostyled proforma. It is captioned as 'previous sanction under Section 4 of the DD Act instead of Section 49. The sanctioning authority in the first paragraph took note of the report dated 8.3.1994 of the field staff, regarding non-conforming use of the building in violation of Zonal Development Plan No. E-8; even the premises number is not mentioned; in the second paragraph, it was noticed that sanction under Section 49 of the Act was required, that he was duly authorised to grant the sanction; in the third paragraph it mentions that the sanctioning authority was authorised by the Delhi Development Resolution No. 137 dated 27.7.1979, to grant sanction. Paragraph four of sanction reads as under:-

'4. AND WHEREAS I A.K. Acharya Addl. Secretary Delhi Development Authority have carefully seen the report and the other relevant records of the cases and I am M/s. Sangam Sanitary Store has/have committed an offence under section 14 of DD Act, 1957, punishable under section 20(2) ibid.'

8. Perusal of the above shows that the sanctioning authority had seen the report and 'relevant record of the cases'. It is nowhere the case of the DDA that file of any other case was sent to the sanctioning authority. thereforee, question of his considering papers of other cases did not arise. Further in this para sanctioning authority recorded that the offence is punishable under Section 20(2) of the ibid, whereas offence is punishable under Section 14 read with Section 29(2) of the Act. Although in the other paragraphs Section 29(2) of the DD Act is mentioned, yet these glaring errors even in the cyclostyled proforma were not noticed. If the sanctioning authority had even slightly applied his mind, such errors would not have gone unnoticed. All this shows complete non-application of mind by the sanctioning authority. No effort was made to prove the sanction by leading additional evidence when this objection was specifically taken.

9. For the foregoing reasons, the complaint against the petitioner without proper sanction under Section 49 of DD Act was incompetent. Accordingly, the impugned judgment and order holding the petitioner guilty and sentencing him are set aside. The petitioner is acquitted.

10. It is, however, clarified that nothing in this order shall prevent the authority from launching fresh prosecution against the petitioner, after necessary survey and proper sanction, if the premises are still being put to non-conforming use. With the above observations, petition stands disposed of.

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