(8) I, therefore, hold that the additional amount and solatium as envisaged by sub-section 23(1-A) and sub-section (2) respectively are payable only on the market value, as determined under clause 1 of section 23 and not on the amount as determined under clause thirdly of this sub-section. The interest as envisaged by section 28 of the Act is, of course, payable on the entire amount of compensation, i.e., the market value and the damages assessed under clause thirdly of sub-section (1) of section 23, as compensation essentially includes market value and the damages payable to a landowner on account of the acquisition of his land.

(9) For the reasons recorded above, the State Appeal is dismissed but with no order as to costs and the Cross-Objections filed by the landowner-claimants are allowed, as already indicated, with proportionate costs.

R.N.R.

Before Ujagar Singh, J.

DEV RATTAN,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 243 *of* 1988

July 29, 1988.

Haryana Development and Regulation of Urban Areas Act (VII of 1975)—*Ss.* 3, 7, 10 *and* 11—*Code of Criminal Procedure (II of* 1974)—*Ss.* 248 *and* 468—*Offence under section* 7 *punishable with three years imprisonment—Limitation for taking cognizance—Commission of offence under Section* 7—*Prosecution thereof—Trial Court framing charge under section* 10—*Accused whether can be discharged thereafter—State filing Criminal revision against order of discharge—Revision—Whether competent.*

Held, that according to the provisions of section 248 of the Code of Criminal Procedure, 1973 after framing of the charge if the Magistrate finds the accused not guilty he has to record an order of acquittal and if he finds the accused guilty, the accused has to be sentenced after hearing him on the question of sentence. There is no alternative for the Magistrate to pass any other order than the order of acquittal if he finds the accused not guilty. Hence it has to be held that an order of discharge could not be passed once the charge has been framed. (Para 7).

Held, that once the lower revisional Court has come to the conclusion that the discharge order amounted to an acquittal it has no further jurisdiction to deal with the matter as the acquittal can be challenged by the State in an appeal against acquittal which lies before the High Court. (Paras 6 and 7)

Held, that the limitation under section 468 of the Code of Criminal Procedure. 1973 and the following sections of the Code relate to an offence which is *prima facie* made out and not to an offence which is ultimately to be found to have been committed.

(Para 6)

K. S. Thapar, Advocate, *for the Petitioner*.

V. S Tomar, Advocate, *for the Respondent*.

JUDGMENT

Ujagar Singh, J.

This petition arises out of almost admitted facts. Dev Rattan petitioner was the owner of 14 Kanals 11 Marlas of agricultural land. He, without any licence from the Director under the provisions of section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter called the "Development Act"), carved out residential plots and sold an area of 16 Biswas each to four vendees, namely, Mohini Devi, Krishna, Ram Bharose and Brij Lal; total area sold,—*vide* four separate sale-deeds executed on 20th November, 1981, came to 3 Bighas 4 Biswas. After obtaining the sanction of the Director, as provided in section 11 of the Development Act, the District Town Planner, Karnal, sent a written complaint to the Senior Superintendent of Police, Karnal, on the basis of which formal FIR was registered on 8th February, 1983. After investigation, a report under section 173 of the Code of Criminal Procedure (hereinafter called the "Code"), was submitted before the ilaqa Magistrate on 17th May, 1984. After formalities, a *prima facie* case was found to have been made out under section 10 of the Development Act and the petitioner was accordingly charged by Shri P. L. Khanduja, the then Sub-Divisional Judicial Magistrate, Panipat,—*vide* order dated 9th November, 1984. The petitioner pleaded not guilty and the prosecution examined 3 witnesses by 16th January, 1986 when an application on behalf of the petitioner was made for his discharge. In the application it was submitted that only contravention of section 9 of the Development Act was involved and the same was punishable for imprisonment for a period of six

months under section 10 of the Development Act. It was further prayed in that application that taking contravention of said section 9 as having been committed and the offence being punishable for six months' imprisonment, the prosecution was barred by the provisions of section 468 of the Code. The trial Court presided over by Shri Dharam Pal, Judicial Magistrate 1st Class, Panipat, after hearing the counsel for both the parties, came to the conclusion that only contravention of said section 9 of the Development Act was involved and the offence being punishable only for six months' imprisonment, the prosecution was barred by the provisions of section 468 of the Code.

(2) The State took up the matter in revision which was heard by Additional Sessions Judge, Karnal, and after hearing the arguments it was held by that Court: (i) that the charge against the petitioner was framed under section 10 of the Development Act for contravention of section 7 thereof and, as the maximum punishment provided therein was 3 years, the question of bar of limitation does not arise, and (ii) that the trial Court had no jurisdiction to take up the matter after the framing of charge,—*vide* the said application for discharge of the petitioner from the said charge and, as a matter of fact, the order of discharge amounted to an acquittal.

(3) The petitioner has moved this criminal revision for challenging the order of the lower revisional Court for setting aside the order of the trial Court and for remanding the case for retrial.

(4) The counsel for the petitioner as also the counsel for the State have been heard at length and I have also gone through the facts of the case.

(5) Before discussing the facts and the law applicable thereto, it may be noted that Chapter 19 of the Code consists of sections 238 to sections 243 and the said sections deal with trial of warrant cases by Magistrates, instituted on police reports and a look at these sections clearly makes out that the Magistrate has to satisfy himself that the provisions of section 207 of the Code relating to formalities before framing of charge have been complied with. After considering the report of the police and the documents sent with it under sections 173 of the Code and after making such examination, if any, of the accused as the Magistrate thinks necessary and also after giving the prosecution and the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to

be groundless, he shall discharge the accused and record his reasons for so doing. These two steps were clearly taken by the predecessor of the present Presiding Officer as said above and, after considering all the necessary requirements, the predecessor of the present Presiding Officer came to the conclusion that the petitioner had committed an offence triable under the said Chapter, which he was competent to try and he could adequately punish the petitioner for a charge framed in writing, to which charge the petitioner pleaded not guilty. Thereafter, three or four prosecution witnesses were examined for evidence of the prosecution. At that stage of the proceedings, there was no question of discharging the petitioner. The stage of examining the prosecution witnesses was not yet over that this disputed application was filed with the above said prayer. After the prosecution evidence had been closed, the petitioner was to get an opportunity for leading evidence in defence and thereafter the Magistrate had to hear the arguments and decide the case on merits either by convicting and sentencing or by acquitting him. The trial Court presided over by Shri Dharam Pal went beyond its jurisdiction to discharge the petitioner and I do not think the reason for passing the order is based on blissful ignorance. Shri Dharam Pal had an experience of judicial service for about three years before he passed this order and it is not possible to believe that he did not know about these provisions meant for trial of warrant cases on the basis of police reports. Evidence of the prosecution had not been closed either by the prosecution or by order of the Court and it is not clear from the facts as to what persuaded him to pass an order of discharge. If at all he had to decide the case on the ground suggested in the said application, the petitioner was to be acquitted and not discharged as he has done in this case.

(6) The lower revisional Court has intelligently dealt with the matter and came to the conclusion that the discharge order amounted to an acquittal. After coming to this conclusion, he could not deal with the matter in a criminal revision as the acquittal can be challenged by the State in an appeal against acquittal, which lies before the High Court. Another patent error committed by Shri Dharam Pal, who was presiding over the trial Court, was that the limitation under section 468 and the following sections of the Code relates to an offence which is *prima facie* made out and not to an offence which is ultimately to be found to have been committed. In this case, the offence *prima facie* made out was punishable with three years' imprisonment and the police report was definitely within limitation as found by the lower revisional Court. The State

seems to have been misled to file a revision as the order passed was not of acquittal but of a discharge and the order also did not show the facts of the case at all as to when the police report was filed, as to whether the charge had been framed or not and also as to whether any witnesses have been examined or not. The trial Court conspicuously observed silence on these questions by accepting the said application and by discharging the petitioner.

(7) With the above discussion, I am of the view that the discharge order amounted to an acquittal as, according to the provisions of section 248 of the Code, after framing of the charge if the Magistrate finds the accused not guilty, he has to record an order of acquittal and if he finds the accused guilty, the accused has to be sentenced after hearing him on the question of sentence. There is no alternative for the Magistrate to pass any other order than the order of acquittal if he finds the accused not guilty. Once the lower revisional Court has come to the conclusion that the discharge order amounted to an acquittal, it has no further jurisdiction to deal with the matter.

(8) In this view of the matter, this petition is allowed and the order of the lower revisional Court is set aside. In case the State wants to challenge the order of the trial Court, it has to file a criminal appeal before this Court and seek condonation of delay if the State is so advised.

R.N.R.

Before M. M. Punchhi and Amarjeet Chaudhary, JJ.

AVTAR KRISHAN SOOD and another,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 3989 *of* 1988

August 4, 1988.

Haryana Urban Development Authority Act (*XIII of* 1977)—*Application for allotment of residential plot in a particular sector—Lots drawn for such allotment—Formal allotment letters not issued—Plots available in that particular sector—Denial of allotment to such allottees—Validity of action of the Government.*

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