

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Revision Application No.123 Of 2002.

The Kinwat Municipal Council
Dist. Nanded.
Through Its Chief Officer.

:: **Applicant.**

Versus.

(1) The State of Maharashtra.

(2) Dinkar s/o Bapurao Chadawar.
Age : 45 Years., Occ.: Business.
R/o.: Kinwat, Dist. Nanded.

:: **Non Applicants.**

Appearance =>

Mr. A.G. Godhamgaonkar, Advocate for the Applicant.

Mr. V.P. Kadam, Additional Public Prosecutor for the State of Maharashtra.

Mr. Amol Gandhi, Advocate for Non Applicant No.2.

CORAM : **V.M. DESHPANDE, J.**

DATE : **22nd JANUARY, 2015.**

ORAL JUDGMENT :-

Heard Mr. A.G. Godhamgaonkar, learned counsel for Kinwat Municipal Council, Mr. V.P. Kadam, learned Additional Public Prosecutor for the State of Maharashtra and Mr. Amol Gandhi, learned counsel for Non Applicant No.2.

[2] Feeling aggrieved by the Judgment and Order of acquittal passed on 28th February, 2002 by the learned Judicial Magistrate, First Class, (Court No.II) Kinwat, Dist.Nanded in R.C.C. No.52/2001 for the offence punishable under Section 52(1) of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as "the Act".), the Municipal Council, Kinwat is before this Court.

[3] The facts leading to the present Criminal Revision Application, in short compass are described herein-below :-

Sayyad Mujiboddin, who was examined as PW No.3 was serving as Regional Officer in Kinwat Municipal Council at the relevant time. On 5th January, 2001 he lodged written complaint against Non Applicant No.2, who according to the complainant was the President of political party, for starting unauthorized construction in the property bearing No.260, Ward No.13. According to the first informant, said plot belongs to the political party. Police Station Officer, Kinwat Police Station registered offence punishable under Section 52(1) of "the Act" *vide* CR No.3001/2001.

[4] Perusal of the judgment of the trial court shows that the trial court has acquitted Non Applicant No.2 – accused on the touchstone of Section 142 of "the Act". Section 142 of "the Act" is reproduced herein-under :-

"Sanction of prosecution.- No prosecution for any offence punishable under this Act or rules made thereunder shall be instituted or no prosecution instituted shall be withdrawn, except with the previous sanction of the Regional Board, Planning Authority, or as the case may be, a Development Authority or any officer authorised by such Board or Authority in this behalf."

It is to be noted that during the trial submission was made on behalf of the prosecution that sanction as required is not at all obtained.

[5] The Division Bench of this court in case of Mahesh Shivram Puthran Versus Commissioner of Police & Ors., reported in 2011(3) Bom.C.R. (Cri.) 526 has dealt the issue as to whether Section 142 of “the Act” is mandatory or not.?

The Division bench in paragraph No.9 of the said Judgment after reproduction of Section 142 of “the Act” observed as under :-

“..The language of this provision leaves no manner of doubt that the per-condition for even "institution of prosecution", is with the previous sanction of the specified Authority. As aforesaid, on noticing unauthorised development or use, it is the Planning Authority who has to first issue notice under Section 53(1) of the Act to enable the noticee (owner) to remedy the objectionable unauthorised development or use; and it is only upon failure to do so within the specified time, and, in absence of permission granted under Section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, the Planning Authority may proceed to prosecute the noticee / owner by virtue of Section 53 (6) of the Act. The prosecution, however, can be instituted only after previous sanction of the Regional Board or Planning Authority or, as the case may be, a Development Authority or any officer authorised by such Board or authority in that behalf. ”

(emphasis supplied by me.)

[6] In the present case, admittedly, previous sanction as required to prosecute Non-Applicant No.2 was not obtained. Even this fact is clearly admitted before this court also by Mr. A.G. Godhamgaonkar, learned counsel representing Kinwat Municipal Council. In that view of the matter, no fault can be located in the order of acquittal dated 28th February, 2002 passed by the learned Judicial Magistrate, First Class, Kinwat, Dist.Nanded (Court No.II) in R.C.C. No. 52/2001. Resultantly, Criminal Revision Application fails and it is dismissed.

Criminal Revision Application dismissed.

(V.M. DESHPANDE, J.)