

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

CRIMINAL APPEAL NO. 34 OF 2002

Mumbai Municipal Corporation Through
A.L. Tawade, Legal Assistant
(Being duly empowered under Section
68 of the Mumbai Municipal Corporation
Act, 1888, as amended upto date)

... Appellant

V/s.

1) Smt. Hema Francis D'souza
Hotel Hema, Near Ashirwad
Industrial Estate No.3,
Rammandir Road, Goregaon(W),
Mumbai - 400 104.

2) The State of Maharashtra ... Respondents

.....

None for the Appellant.

None for Respondent No.1.

Mrs. A. S. Pai, A.P.P. for Respondent No.2 - State.

.....

CORAM : S.B. SHUKRE, J.

DATED : OCTOBER 19, 2015.

ORAL JUDGMENT :-

This is an Appeal preferred against the judgment and order dated 8th March, 2001, passed by the learned Metropolitan Magistrate, 39th Court, Vileparle, Mumbai in Criminal Case No.1766/ME/2000, thereby acquitting respondent no.1 of the

offence punishable under Section 475-A(1)(b) read with Section 351 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “MMC Act”, for short).

2 Briefly stated, the facts of the case are as under:

Respondent no.1 who was running one hotel under the name and style “Hotel Hema” near Ashirwad Industrial Estate No.3, Ram Mandir Road, Goregaon West, Mumbai 04 had erected certain structure which was alleged to be unauthorized by the complainant - corporation. The notice under Section 351 of the Mumbai Municipal Corporation Act for removal of the unauthorized construction, unless sufficient cause was shown, was issued to the respondent no.1 and as respondent no.1 failed to show sufficient cause and also did not remove the unauthorized structure, the complaint was filed against respondent no.1 for having committed an offence punishable under Section 475-A read with Section 351 of the Mumbai Municipal Corporation Act. The charge was accordingly framed and it was read over and explained to respondent no.1. Respondent no.1 pleaded not guilty to the same and claimed to be tried, taking defence of complete denial. On merits of the case,

the learned Metropolitan Magistrate found that the complaint case had been instated much after the expiry of limitation period of three months and therefore, he could not take cognizance of the case. Accordingly, by the judgment and order dated 8th March, 2001, the learned Magistrate acquitted respondent no.1 of the offence with which she was charged in this case.

3 Nobody is present on behalf of the appellant. Respondent no.1 is also absent. None is present on her behalf. However, the learned A.P.P. is present on behalf of respondent no.2 - State of Maharashtra. Considering the mandate of Section 386 of the Code of Criminal Procedure, I have heard the party i.e. respondent no.2 - State, which is present before this Court through the learned A.P.P. I have also carefully gone through the record of the case including the impugned judgment and order.

4 It is not in dispute that under Section 514(c) of the Mumbai Municipal Corporation Act, 1888, the prosecution for the offence punishable under Section 475-A read with Section 351 of the Act must be launched within three months from the date of the offence. In the present case, notice in question was served upon the respondent no.1 on 6th September, 1999,

whereby she was called upon her to comply with the notice within seven days. Failure to comply with the requirements of notice within the stipulated period completes the offence and there was non-compliance within the stipulated period in this case. In this manner, in the present case, the offence was completed on 14th September, 1999. Therefore, the case ought to have been initiated for prosecution of respondent no.1 for the said offence within three months of 14th September, 1999 i.e. on or before 13th December, 1999. The complaint case, however, had been filed on 27th January, 2001, much after the expiry of the limitation period of three months. Therefore, the learned Magistrate was right in refusing to take cognizance of the offence and recording the finding of acquittal of respondent no.1. The view taken by the learned Magistrate is neither illogical nor perverse nor arbitrary. It warrants no interference from this Court. The Appeal deserves to be dismissed. The Appeal stands dismissed.

(S. B. SHUKRE, J.)