

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

CRIMINAL APPEAL NO. 35 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) Shri Ashok R. Dube
Near Hotel Hema,
Near Ashirwad Industrial Estate No.3,
Rammandir Road, Goregaon(W),
Mumbai - 400 104.
- 2) The State of Maharashtra
Having its office at Fort ... Respondents

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None for the Appellant.
None for Respondent No.1.
Mrs. A. S. Pai, A.P.P. for Respondent No.2 - State.

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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, Vile Parle, Mumbai in Criminal Case No.1767/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 was prosecuted by the learned Magistrate for the offence punishable under Section 475-A read with Section 351 of the MMC Act on the allegation that in spite of notice having been issued to him under Section 351 of the MMC Act for removal of the unauthorized structure or show sufficient cause for existence of the structure, respondent no.1 failed to do either of these acts and thus committed the said offence.

3 On merits of the case, the learned Magistrate found that the complaint case filed by the appellant Corporation against respondent no.1 was barred by limitation, as the case had been initially filed after expiry of period of three months of time as prescribed under Section 514 (c) of MMC Act. Therefore, by the Judgment and order dated 8th March, 2001, the learned Magistrate acquitted respondent no.1 of the said offence. Not being satisfied with the same, the appellant corporation is before this Court in the present Appeal.

4 Nobody is present on behalf of the appellant or respondent no.1. Considering the long pendency of this case and also the mandate of Section 386 of the Code of Criminal Procedure, I have decided to go ahead with the final hearing of the Appeal, in the absence of the appellant as well as respondent no.1. Accordingly, I have heard the learned A.P.P. for the respondent no.2 - State of Maharashtra. I have carefully gone through the impugned judgment and order and record of the case.

5 It is seen from the record that the notice issued under Section 351 of the MMC Act was served upon the respondent no.1 on 3rd January, 1999 and the respondent was to comply with the requirements of notice within a period of seven days from the receipt of the notice. If the respondent upon whom such a notice is served fails to comply with the requirements of notice, offence punishable under Section 475-A read with Section 351 of the MMC Act is completed. In the instant case, as respondent no.1 failed to comply with the requirements of notice within the stipulated period, the offence was completed on 11th September, 1999 and, therefore, the prosecution against respondent no.1 ought to have been launched on or before 10th September, 1999.

However, the same has not been done and the complaint had been filed on 27th January, 2000, much after the expiry of the limitation period. Obviously, the complaint was barred by law of limitation and the learned Magistrate could not have taken cognizance of the complaint. The learned Magistrate, therefore, was right when he recorded the finding of acquittal of respondent no.1. No case is made out for making any interference in the impugned judgment and order. The Appeal deserves to be dismissed. The Appeal stands dismissed.

(S. B. SHUKRE, J.)