

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

CRIMINAL APPEAL NO. 782 OF 2002

Municipal Corporation of Greater Bombay
Through Shri U.B. Mande,
Legal Assistant, K/East Ward
having office at
Mahapalika Bhavan, Mahapalika Marg,
Fort, Mumbai - 400 001

... Appellant

V/s.

1) Sunil Gajjar
Flat No.203, Chagle Dham, 102,
Kanku Wadi, Vile Parle (E),
Mumbai - 400 057.

2) The State of Maharashtra ... 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 14th March, 2001, passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai in Criminal Case No.16487/ME/99, 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 for an offence punishable under Section 475-A read with Section 351 of the MMC Act on the allegation that inspite of the notice having been issued to him under Section 351 of the MMC Act, for putting down structure alleged to be unauthorized by the corporation within the time stated in the notice, respondent no.1 did not remove the unauthorized structure and thereby committed an offence punishable under Section Section 475-A read with Section 351 of the MMC Act. On merits of the case, the learned Magistrate found that the action of filing of complaint for prosecution of respondent no.1 for the said offence taken by the appellant corporation was premature, as civil suit disputing the claim of the corporation that the structure was unauthorized, was pending before the City Civil Court, Mumbai and that injunction order dated 10th January, 2000 was in operation at the time of launching of the prosecution against the respondent. Therefore, the learned Magistrate acquitted respondent no.1 of the said

offence by his judgment and order dated 14th March, 2001. Being aggrieved by the same, the appellant corporation is before this Court.

3 Nobody is present on behalf of the appellant or respondent no.1. The Appeal is very old and deserves to be heard and disposed of finally in accordance with law without wasting any more time. Section 386 of the Code of Criminal Procedure casts a duty upon the Court to hear the appellant or the respondent only when both or any of them are or is present. This duty cast upon the Court further requires the Court to decide the Appeal by considering the record of the case. Accordingly, I have heard the learned A.P.P. for the respondent no.2 - State of Maharashtra, who is present before the Court and have carefully gone through the record and proceedings of the case including the impugned judgment and order.

4 The major ground on which respondent no.1 has been acquitted in the instant case is pendency of a Civil Suit in respect of the same dispute and operation of injunction order against the corporation on the date of filing of the complaint. The dispute in this case, relates to continuing with an unauthorized structure by

respondent no.1. This very contention of the corporation has been disputed by respondent no.1 and he claims that the structure is authorized. This dispute is precisely the subject matter of the civil suit being Suit No.4910 of 1999, pending at the relevant time before the City Civil Court, Mumbai. There is also no dispute about the fact that on the date of the complaint, there was an injunction order in operation passed by the City Civil Court, Mumbai. Therefore, the learned Magistrate was right that prosecution launched against respondent no.1 was premature. He has rightly acquitted respondent no.1 of the offence punishable under Section 475-A read with Section 351 of the MMC Act. No case is made out for interference in the impugned judgment and order. The Appeal deserves to be dismissed. The Appeal is dismissed.

(S. B. SHUKRE, J.)