

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

CRIMINAL APPEAL NO. 785 OF 2002

Mumbai Municipal Corporation Through
Shri Sandesh D. Kondvilkar
Sr. Legal Assistant, having office at
Mahapalika Marg, Fort,
Mumbai - 400 001

... Appellant

V/s.

1) Shri Trarachand V. Vora
Pimpalkar Compound, S.No.267,
CST No.610(pt.),
Gen. A. K. Vaidya Marg,
Mumbai - 400 097.

2) The State of Maharashtra
Having its office at Fort

... 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 7th June, 2001, passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai in Criminal Case

No.14525/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 he had erected unauthorized structure. On merits of the case, the learned Magistrate found that there was no evidence to show any nexus between the structure and respondent no.1, with no documentary evidence having been produced on record to establish ownership of respondent no.1 over the structure. Service of notice also was not proved. Therefore, learned Magistrate acquitted respondent no.1 of the said offence by his judgment and order dated 7th June, 2001. Being aggrieved by the same, the appellant corporation is before this Court in the present Appeal.

3 The Appeal is very old. Nobody is present on behalf of the appellant or respondent no.1. Therefore, as per the

requirements of Section 386 of the Code of Criminal Procedure, I have heard the party which is present before the Court i.e. respondent no.2 - State through the learned A.P.P. and I have also gone through the record and proceedings including the impugned judgment and order.

4 It is seen from the impugned judgment and order that no documentary evidence was brought on record by the corporation establishing the ownership of the alleged unauthorized structure of respondent no.1. It is also seen that the service of notice upon respondent no.1 had not been duly proved. Therefore, the learned Magistrate was right in recording the finding of acquittal of respondent no.1 for 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.)