

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

CRI. REVISION APPLICATION NO. 20 OF 2015

Shri Mohan Renerao Patil

... Applicant.
(Org.Accused No.3)

V/s.

State of Maharashtra

... Respondent.

Mr. Prakash Naik i/by J.G. Reddy, Advocate for the Applicant.
Ms. V. S.Mhaispurkar, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 09th JULY, 2015

P.C. :

1 Heard. Admit. By consent of the parties, heard finally.

2 The applicant is facing trial for the offences punishable under sections 304(2), 336, 337, 338 and 427 read with section 34 of the Indian Penal Code. The incident in question had occurred on 8th of April, 2013 within the jurisdiction of Govandi Police Station, Mumbai. The old water pipeline of the Municipal Corporation had burst suddenly and the water entered into the hutment area. In the result, one person died due to drowning. Before I proceed further, it may be noted here that there was a new pipeline in the same area

for the same purpose. Actually the old pipeline was officially closed and was not supposed to function. The water was supplied through the old pipeline unauthorizedly. It need not be stated here that it was very clear to the corporation officers that this old pipeline might create serious problem at any time and, therefore, a new pipeline was installed for supply of water.

3 The case against the applicant was that he was working as Executive Engineer in the office of the Slum Rehabilitation Authority and that he was responsible for issuing commencement certificate without inspection of the old water pipeline. It may also be mentioned here that some BMC Officers, Developers and Builders of the said building have also been prosecuted in the present charge-sheet.

4 As already stated, the applicant is accused of issuing commencement certificate without fulfillment of the requisite conditions by the builders. The learned additional public prosecutor Ms. Mhaispurkar has submitted that in fact the L.O.I. should not have issued by the applicant as there was no clearance from the Hydrolic Engineer. It is submitted that had the L.O.I not been issued, the building would not have come up. This argument, in my opinion, is not relevant in the present charge-sheet inasmuch as the cause of bursting of the old pipeline is not due to the erection of new building. It is

clearly stated that the old pipeline had eroded. It was closed long back. The water was not supposed to be supplied through the said pipeline. During the course of the arguments, it has transpired that the old pipeline was opened temporarily under the orders of the competent officer of the municipal corporation during the month of 'Ramzan' to supply more water. However, thereafter, it was closed and no officer or official of the corporation was supposed to open the same. The pipeline was however opened on the date of the incident and the water was supplied. It is very clear from the charge-sheet that the building has nothing to do with the incident in question. The new pipeline has already come up which is not below the building in question.

5 During the course of hearing of the revision, application of one of the accused namely Arun Narayan Kadam, who was working as Engineer (M/East Ward), it was noted that the investigating officer had not recorded statement of the person who had opened the gate for supply of water. Therefore, it was difficult to ascertain that under whose authority the old pipeline was opened. As already stated that the water was not supposed to be supplied from the said pipeline. Therefore, it was necessary for the investigating officer to ascertain as to who had opened the pipeline for water supply and under whose authority. The statement of the person who is known as 'Chabiwala' has been recorded

recently during the pendency of the present revision. However, his statement also does not throw any light as to who had opened the pipeline and under whose authority. The Chabiwala could have been the best witness or he should also have been chargesheeted. He is not made accused in this case. However, his statement also does not help the prosecution in any manner.

6 Coming back to the case of the applicant, the irregularities committed by the applicant were not the cause of the incident. The applicant could have been departmentally chargesheeted for issuing the commencement certificate without requisite formalities. As far as L.O.I. is concerned, it was issued by the earlier officer. As such it cannot be said that the applicant had knowledge that issuance of the commencement certificate for erection of the building is likely to cause death of somebody. It was submitted by the learned counsel Mr. Naik for the applicant that in fact the applicant did not know that there was an old pipeline below the building. He came to know later on. Since the old pipeline was defunct, it was not necessary for the applicant to take inspection in this regard. In any event, the above discussion and the material collected by the investigating officer clearly indicate that the applicant cannot be fastened with any responsibility for bursting of the pipeline. The applicant in fact should not have

been charge-sheeted. At least his discharge application should have been granted by the learned Sessions Judge.

7 In the result, the revision application is allowed. The order passed by the learned Sessions Court in Sessions Case No. 997 of 2013 below Exh. 9 is set aside. The applicant is discharged of the charges levelled against him in the said sessions case.

8 The bail bond of the applicant, if any, stands cancelled.

9 Revision application is disposed of in the above terms.

(JUDGE)

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