

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

CRI. WRIT PETITION NO. 4368 OF 2014

Mrs.Yasmin K. Cooper

... Petitioner.
(Org. Accused No.4)

V/s.

Municipal Corporation of Greater Mumbai
& Others.

... Respondents.

Mr. Abhinav Chandrachud i/by S.J. Singh, Advocate for the
Petitioner.

Mr. H.E. Pimple, Advocate for the BMC.

Mr.Ajay Patil, APP for the State.

CORAM : M.L.TAHALIYANI, J.

DATE : 09 JANUARY, 2015

P.C. :

1 Heard learned counsel Mr. Chandrachud appearing
for the Petitioner, learned Advocate Mr. Pimple for the BMC
and Mr. Ajay Patil, learned addition public prosecutor for the
State.

2 Heard finally at the admission stage by consent of
the parties.

3 The Petitioner is charge-sheeted for the offence
punishable under section 471 of the Mumbai Municipal
Corporation Act, 1888 for violation of the provisions under

section 381 of the Bombay Municipal Corporation Act. The Petitioner is staying at flat No. 5, 3rd floor, Noon Bakar, CHS Limited, 28, Motlibai Street, Agripada, Mubmai 400 008. Her premises were visited by the BMC Officers. Their relevant observations of the inspector can be reproduced from the inspection report as under :

“..... That, during the inspection on 18.07.2014 it was noticed and observed that the nuisance created due to storing household articles, plants & hazardous items in the parking zone (garage) i.e. inorganic material and surplus material including organic material storing in passage of 3rd floor.”

A notice was issued to the Petitioner by the Corporation. The Petitioner did not remove the nuisance within notice period and therefore, he has been charge-sheeted for the offence punishable under section 471 of the MCGM Act.

4 In the first place, it is very difficult to understand as to how the alleged acts of the Petitioner amount to nuisance. The Respondent No.1 has not stated anything as to the nature of organic or inorganic material kept in the garages nor the Respondent No.1 has stated as to what were the hazardous items kept in the garages. In fact duty of the Respondent No.1 and their officers was to mention the details

of the articles found in the garage and the passage of the 3rd floor. It was for the court to decide whether it amounted to nuisance or not. In the absence of details of the articles found at the said two places, it is impossible for the learned trial court to decide whether the acts of the Petitioner amounted to nuisance. In the circumstances, in my opinion, the proceedings pending against the Petitioner in the court of Metropolitan Magistrate, 41st Court at Shindewadi, dadar, Mumbai vide CC No. 4103124/SS/2014 need to be quashed.

5 Hence, I pass the following order.

- i. Writ Petition is allowed.
- ii. The proceedings pending against the Petitioner vide C.C. No. 4103124/SS/2012 before the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai shall stand quashed.
- iii. Petition stands disposed of accordingly.

(JUDGE)

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