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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1280 OF 2014**

Vijay Kumar Gupta ... Applicant

Versus

The State of Maharashtra and another ... Respondents

Smt. Reema Mishra for the applicant.

Smt. P.P. Bhosale, A.P.P. for State.

Mr. H.E. Pimpale for B.M.C.

**CORAM : M.L. TAHALIYANI, J.
DATED : MARCH 24, 2015**

P.C.

Admit. By consent heard finally.

2. The applicant is prosecuted by respondent no. 2 Municipal Corporation of Greater Mumbai for the offence punishable under section 471 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) for not complying with the notice issued to the applicant under section 381 of the said Act.

3. The applicant is staying in flat no. 29 on 4th Floor at Gulmanor Cooperative Housing Society Ltd. Strand Road, Colaba, Mumbai. A complaint

was made to respondent no. 2 by the occupant of flat no. 12 on second floor that there was leakage in his bathroom from the flats above. The officers of respondent no. 2 therefore, visited and inspected the spot. After inspection of flat no. 12 and 21, they were informed by the occupier of flat no. 21 that some major alterations and additions have been made by the applicant in his flat no. 29 situated at 4th floor. Therefore, notice was given to the applicant under section 381 of the said Act to remove the nuisance within fifteen days from the date of the receipt of the notice. The notice was dated 25th June, 2014. The same was admittedly received by the applicant. The contention of the applicant is that there was no leakage from his flat and that he has been falsely implicated at the instance of the occupiers of flat nos. 12 and 21.

4. During the course of hearing, I have gone through the inspection note and the notice issued to the applicant. I have also gone through the complaint. The relevant portion of the inspection note reads as under :

“In this case on receipt of the complaint from Miss. A.B. Colabawalla telephonically on 19/10/2014, site under reference i.e. flat no. 12, 2nd Floor, the Gulmanor Premises Co.op. Hsg. Soc. Ltd. is visited on 19/06/2014, wherein it was observed that ceiling of the bathroom/W.C. of flat no. 12, having leakage of water. Flat just above flat no. 12, i.e. flat no. 21 at 3rd Floor was also inspected wherein it was observed that ceiling of bathroom/W.C. of flat no. 21 is also having a same problem at same location. However, the tenant/owner/occupier of flat no. 21 informed this office concerned staff that leakage problem is from flat no. 29 i.e.

flat of Mr. Vijaykumar Gupta, who has done major additions/alterations in his flat. The said premises was not inspected by this office as owner/occupier of flat no. 29 not allowed this office concerned staff to inspect the premises.”

The relevant portion of the complaint can be reproduced as under :

“That upon inspection and examination of the above mentioned premises in pursuance of the complaint from Ms. A.B. Colabawalla & Ms. Keshmira Cobewalla, occupant of 2nd floor, the officer of complainant Mrs. Sneha G. Nabar, Jr. Engineer authorized u/s. 381 by Mr. Vasant Prabhu, DMC Z-1 on 25.6.14, had visited the premises in question on 19.6.14 and found the premises of original complainant where leakage observed in ceiling of bathroom and W.C. of flat no. 12 above premises of Ms. Cobewala of 2nd Floor & leakage from ceiling of bathroom and W.C. of flat no. 21 of 3rd floor was also observed of flat of Mr. Rajesh Gala, occupant. It was came to know that flat no. 29 situated on 3rd floor of Mr. Vijay Kumar Gupta, occupant had made major additions/alterations in his flat. Notice u/s. 488 was given & flat was observed.”

5. It is thus clear that the inspecting staff had not visited flat no. 29 which was occupied by the applicant. The notice as well as the complaint is absolutely vague and does not make out as to what kind of alterations and additions were made by the applicant and as to what manner he was responsible for the alleged nuisance. Learned advocate for respondent no. 2 was also unable to point out the exact cause of nuisance. It is seen from the inspection report, notice and the complaint that the inspecting party had not visited flat no. 29 of the applicant. It is difficult to understand as to how could they say that there was nuisance from flat no. 29. It is very obvious from the inspection note, notice and the complaint that the

allegations were based on the statement made by the occupier of flat no. 21. It is not understood as to what prevented the inspecting party to visit flat no. 29 and to locate the place and cause of nuisance. In my considered opinion, continuation of such prosecution is nothing but abuse of process of law. Therefore, prosecution needs to be quashed.

6. Hence, I pass the following order :

Prosecution pending against the applicant in the court of Metropolitan Magistrate, 41st Court, Shindewadi being Criminal Case No. 4103659/SS/14 is hereby quashed. The bail bond of the applicant, if any stands cancelled.

(JUDGE)