

CRIMINAL APPEAL NO.484 OF 2015

VERSUS

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WITH

CRIMINAL APPLICATION NO.793 OF 2015

VERSUS

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CORAM: A.I.S. CHEEMA, J.

DATED: 6th April, 2016.

ORAL ORDER :

1. Heard counsel for the appellant.

2. Question is :-

"When sanction to prosecute is required under Maharashtra Regional Town Planning, 1966 Act and the State case filed by the Corporation after filing F.I.R. has resulted in acquittal, can private individual prefer appeal claiming to be victim ?

3. Counsel for appellant submits that, the respondent Nos.1 to 5 (original accused) are neighbours of the appellant and they constructed their house, violating the building plan and sanction given by the Corporation and the appellant had filed complaints, because of which the Corporation gave sanction and on behalf of Corporation, one of its officers filed F.I.R. for prosecution of the respondents. It is stated that, although the complaints to the Corporation were filed by the appellant, the appellant was not cited as witness. Because of collusion between the officers of the Corporation with the accused, the prosecution was not properly conducted and the respondents got acquitted. It is stated that, the appellant should have been called as a witness in the said prosecution.

4. Perusal of the impugned order shows that, it was a State case. If there was conviction, appeal would have gone to Sessions Court. As such, in view of proviso to Section 372 of the Code of Criminal Procedure, this appeal will not lie to High Court.

5. But then, the question is whether the appellant can treat himself as the complainant or victim. Perusal of the record does not show that the F.I.R. was on the basis of the complaint of the present appellant. The F.I.R. was filed by the officer of the Corporation on the basis of the permission given by the Commissioner. The appellant was not even a witness in the criminal prosecution.

6. Section 52 of the Maharashtra Regional & Town Planning Act, 1966 provides for penalty for unauthorised development or for use other than in conformity with the development plan. The Section will have to be read with Section 53, which requires the Corporation to first give notice to the person who has attracted the provisions of Section 52, to make amend Section 142. In this context, Section 142 is also material. It reads :-

"142. Sanction of prosecution :

No prosecution for any offence punishable under this Act or rules made thereunder shall be instituted or no prosecution instituted shall be withdrawn, except with the previous sanction of the Regional Board, Planning Authority, or as the case may be, a Development Authority or any officer authorised by such Board or Authority in this behalf."

7. It is clear from the above that, the prosecution

cannot be filed without previous sanction of the Regional Board, Planning Authority, or as the case may be, Development Authority or any authorised person by such Board or authority in that behalf. This being so, after an acquittal has been recorded, it does not appeal to reason that a private party can prosecute the matter further treating himself as victim without the Corporation doing the needful. I do not find any reason to entertain the appeal. The appeal is declined to be entertained and is dismissed.

8. Consequently, Criminal Application No.793/2015 also does not survive and same stands rejected.

(A.I.S. CHEEMA, J.)

fmp/cri484.15