

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.4602 OF 2016

Sanjeevkumar s/o.Harakchand Kankariya,
Age: 57 years, Occ. Business/Agri.
R/o. 8, Raj Tower, Opp. Athiti Hotel,
Jalana Road, Aurangabad,
Tq. & Dist. Aurangabad. **APPLICANT**

VERSUS

1. The State of Maharashtra,
Through Mukundwadi Police Station,
Aurangabad.
2. Suresh Baburao Sangewar,
Age: 45 years, Occ. Building
Inspector [Service],
Office Address: Ward No.'F',
Municipal Corporation, Aurangabad
Tq. & Dist. Aurangabad. **RESPONDENTS**

...

Mr.Dhananjay M.Shinde, Advocate for the
applicant
Mr.S.Y.Mahajan, Addl.P.P. for Respondent/
State
Mr.Deelip Bankar Patil, Advocate for
respondent no.2

...

**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 07.03.2017
Pronounced on : 15.03.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. This Application is filed praying therein for quashing the FIR bearing Crime No.66/2016, registered with Mukundwadi Police Station, Aurangabad, for the offences punishable under Section 188 of the Indian Penal Code as well as under Sections 52, 53 and 54 of the Maharashtra Regional & Town Planning Act, 1966.

2. The learned counsel appearing for the applicant invites our attention to an averments in the Application and grounds taken therein and submits that, the Municipal Corporation has granted relaxation in side margins as per commencement Certificate, and sanction plan dated 30th December, 2012. Therefore, there is no substance in the allegations in the FIR that the applicant has not kept side margins as per Rules, and

violated the conditions imposed while granting permission for construction. It is submitted that the Corporation has granted relaxation in side margins since the applicant shown his willingness to transfer some portion of the land to the Municipal Corporation for approach road to the adjacent plot owners, who are having plots behind the applicant's land. Therefore, the side margins kept by the applicant is as per sanctioned plan, hence, no offence is made out. The construction carried out by the applicant is as per sanctioned plan as well as revised sanctioned plan. The applicant has paid premium time to time for alteration and relaxation of the conditions imposed while sanctioning the plan. The learned counsel invites our attention to the various documents placed on record. It is submitted that the applicant filed the application under Section 44 of the MRTTP Act, seeking

permission for further development. In spite of an application filed by the applicant for further construction, the said application was not decided within stipulated period of sixty days, as provided under sub-section [5] of Section 45 of the Maharashtra Regional & Town Planning Act, 1966 [for short 'said Act']. Therefore, in view of the aforesaid provisions in case the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of application, in that case, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days. It is submitted that the FIR against the applicant is filed without following due process of law enumerated under Sections 52 and 53 of the said Act thereby even if the construction is illegal, then the Corporation is bound to

issue notice under Section 53. Thereafter, the aggrieved person if wish, can apply for construction permission. After granting permission the notice issued under Section 53 would automatically stands withdrawn or otherwise. If the permission is refused, then the aggrieved person can avail remedy as per law. In the present case, no mandatory procedure is followed and without the same, directly offence is registered, which is nothing but sheer abuse of process of law.

3. It is submitted that the Division Bench (at Principal Seat) of the Bombay High Court in the case of ***Mahesh Shivram Puthran Vs. Commissioner of Police & ors.***¹ has taken a view that without prior sanction under Section 142 of the MRTP Act, the offence cannot be registered. It seems that, in the present case, the FIR is registered against the applicant without obtaining sanction.

1 2011 [3] Bom.C.R. [Cri.] 526

It is submitted that, the police machinery cannot lodge FIR for the offence punishable under Section 188 of the IPC. It is submitted that, if the authority wants to prosecute the accused under Section 188 of the IPC, then they must apply before the Competent Court under Section 195 of the Code of Criminal Procedure. Therefore, relying upon the averments in the application, grounds taken therein and annexures thereto, the relevant provisions of the said Act, and the judgment cited across the Bar, the learned counsel appearing for the applicant submits that the FIR deserves to be quashed and set aside.

4. On the other hand, the learned APP appearing for respondent-State, relying upon the investigation papers, submits that the prosecution has collected sufficient material, and on the basis of the said material, trial can proceed. He submits that, the applicant has carried out unauthorized

construction and created third party rights. The innocent citizens have been cheated by him by attempting to sell the commercial premises, without making buyer aware about the fact that there is no permission by the Corporation for such unauthorized construction. He submits that, by way of carrying out unauthorized construction and not leaving proper margins in construction as undertaken, the applicant has not only violated the conditions of permission, but is involved in the alleged commission of offences.

5. The learned counsel appearing for respondent no.2, relying upon the averments in the affidavit-in-reply filed by respondent no.2, made following submissions:

6. By way of instant Criminal Application, the applicant is praying to quash the Crime No.66/2016 registered with

Mukundwadi Police Station, Aurangabad, on 22.01.2016 for the offences punishable under Section 188 of the IPC as well as under Sections 52, 55 and 54 of the MRTTP Act, 1966. It is submitted that, respondent no.2 is a Building Inspector. He has inspected the premises and found that, there are gross violation of the commencement certificate [building permission] dated 30.08.2014, which is in force. Thereafter, he had filed complaint, pursuant to which the aforesaid crime has been registered. The applicant has suppressed the material facts from this Court. On this count itself, the Criminal Application deserves to be dismissed.

7. It is submitted that, it is pertinent to note that, the situation of the plot of the applicant is that, on three sides there are roads. As per the building bye-laws, the side margins are required to be left as follows:

- i] Towards south : [24 mtrs. wide road]
required side margin 4.5 mtrs.
- ii] Towards west : [7.5 mtrs.wide road]
required side margin 4.5 mtrs.
- iii] Towards North :[9 mtrs. wide road]
required side margin 4.5 mtrs.
- iv] Towards East : [Rear side]
required side margin 6 mtrs.

8. The rear side margin is as per the height of the building. Initially, the applicant has submitted a proposal along with the building plan [building permission] to the Municipal Corporation, Aurangabad, for sanction of commencement certificate [building permission] to him. The applicant had agreed to leave 7.5 meters road to the rear side. In token thereof, the applicant was to give additional FSI and some relaxation side margin. Accordingly, the commencement certificate was issued on 30.12.2011.

9. It is further submitted that, the applicant did not act upon the aforesaid commencement certificate dated 30.12.2011. Accordingly, the same was lapsed. Therefore, no reliance can be placed over the same as the same is not in force. The applicant himself has submitted a fresh proposal for issuance of fresh commencement certificate along with the building plan to the Municipal Corporation, Aurangabad. In the said building plan, the width of the plot has been shown more than the earlier. Considering the said proposal, a fresh commencement certificate dated 12.05.2014 was also issued to the applicant. The above said fresh commencement certificate dated 12.05.2014 is also not in force, as again the applicant has submitted further proposal for the revised permission.

10. We have carefully considered the submissions of the learned counsel appearing

for the applicant, learned APP appearing for respondent—State, and the learned counsel appearing for respondent no.2. With their able assistance, we have perused the averments in the application, annexures thereto, and also the reply filed by respondent no.2, annexures thereto, the judgment cited across the bar by the learned counsel appearing for the parties, and also the relevant provisions of the MRTP Act, and the investigation papers made available by the learned APP appearing for the State. Upon reading an allegation in the FIR in its entirety, *prima facie*, an alleged offences have been disclosed. There is sanction as contemplated under the relevant procedure before registering the offence by the Competent Authority. The defence raised by the applicant is that, he sought permission for further construction by taking recourse to Sections 44 and 45 of the MRTP Act. Though

the permission is not granted by the Corporation, in view of provisions of Section 45 in case the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of application, in that case, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days. The said defence cannot be considered at the stage of considering the prayer for quashing of the FIR, otherwise it would lead to adjudication of disputed questions of fact.

11. In our *prima facie* opinion, when the applicant has carried out the alleged construction for commercial purpose, it was incumbent upon him to adhere to the conditions on which the permission was granted. Ultimately commercial premises are to be sold and utilized by the buyers. In

absence of permission by the Corporation, constructing of such premises and selling out it to the third parties as alleged by the Investigating Officer, and creating third party rights, that too, without making them aware that the said construction is carried out without permission may amount to cheating. By any stretch of imagination, the First Information Report cannot be quashed, when the allegations in the FIR disclosed an ingredients of the alleged offences. It is settled law that, while exercising writ jurisdiction or jurisdiction under Section 482 of the Criminal Procedure Code, at the time of considering the prayer for quashing the FIR, when an investigation is in progress, this Court is not supposed to find out the truthfulness or falsity of the allegation or to consider the defences raised by the accused. Once the Court is convinced that, on reading the allegations in the FIR,

the alleged offences have been disclosed, the Court may leave the matter for further investigation to the Investigating Officer. The Supreme Court in the case of "**State of Haryana Vs. Bhajan Lal**"² has taken a view that, the investigation is an exclusive domain of the Investigation Officer as long as the said investigation is in accordance with law, and no any other person or courts are supposed to interfere in such investigation.

12. Therefore, for the reasons aforesaid, when the FIR is under investigation, and an investigation is going on in accordance with law, there is no reason to cause interference in such an investigation. In that view of the matter, we are not inclined to entertain the prayer for quashing the FIR, hence, Criminal Application stands rejected. We clarify that

2 AIR 1992 SC 604

an observations made herein above are *prima facie* in nature.

[K . K . SONAWANE]
JUDGE

[S . S . SHINDE]
JUDGE

DDC