

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3173 OF 2016**

Smt. Mridula Chakraborty Petitioner

Vs.

1 Mr. Himmat Mali,
Junior Law Officer, MCGM,
Borivali, Mumbai.

2 The State of Maharashtra Respondents

Ms. Priyanka Gosh a/w Mr. Vivek Shukla i/by Anjali Awasthi
for the Petitioner.

Mr. Ranjeet Thorat, Senior Advocate a/w Ms. Surekha
Sonawane, Mr. Kunal Waghmare for Respondent no.1- MCGM

Mr. S.R. Agarkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 31st January, 2017

P.C.

1 The petitioner herein is the Principal of School by name Vidya Shikshan Prasarak Mandal, Akshara School situate at R.S.C. 12, Plot No.1, Sector 8, Charkop, Kandivali (West), Mumbai. Respondent no.1, the officer of Mumbai Municipal Corporation ("MMC" for short) has filed Court Case No.550 1947/SS/16 in the Court of Metropolitan Magistrate, 55th Court at Vile Parle, Mumbai, alleging commission of offence under

Section 353-A of the Mumbai Municipal Corporation Act (“MMC Act” for short) punishable under Section 471 of the said Act. The complaint alleges that upon inspection and examination of the premises of Akshara School by the Sub-Engineer of MMC on 1st February, 2016, it was found that it is occupied by the petitioner without obtaining Occupation Certificate from the Municipal Commissioner, MMC, as required under Section 353-A of MMC Act. The MMC had therefore sent notice on the same day calling upon the petitioner to vacate the premises immediately. When the premises were again inspected on the next day i.e. on 2nd February, 2016, it was found that the petitioner had failed to comply with the requisition contained in the notice. As such, she had committed the offence under Section 353-A of the MMC Act punishable under Section 471 of that Act. On receipt of the complaint, on 11th February, 2016, the trial court issued process returnable on 22nd March, 2016. The petitioner received the summons and appeared before the court on 22nd March, 2016. However, thereafter she remained absent on three consecutive dates without assigning any reason for the absence. Hence, the trial court issued a bailable warrant against her to secure her presence. On 26th July, 2016, the petitioner presented an application for cancellation of bail. As the petitioner was neither present in the court on that date nor she had furnished bail, the trial court rejected the application with an observation that there was no chance of securing the presence of the

petitioner. Thereafter on 30th August, 2016, the petitioner filed the present petition challenging only the order of issuance of bailable warrant. Later she amended the petition to seek the relief of quashing of the complaint in addition to setting aside the order of issuance of bailable warrant.

2 Ms. Gosh, the learned advocate for the petitioner submits that the complaint as filed by the respondent is not maintainable. According to her, the complaint ought to have been filed by the Municipal Commissioner himself. As pointed out by Mr. Thorat, the learned Senior Advocate appearing for respondent no.1, there can be no substance in this argument since the respondent has been duly authorised by the Municipal Commissioner under Section 68 of the MMC Act to file the complaint. The said fact is not only mentioned in the complaint itself but is also established by production of the authority.

3 The second contention of the petitioner is that there is nothing on record of the proceedings to indicate that the trial court had applied its mind as regards sufficiency of the material for issuance of process against the petitioner. Ms. Gosh submits that the trial court was under mandatory statutory obligation to apply its judicial mind before issuing the process. According to her, the process had been issued in a mechanical manner.

4 The petitioner does not dispute that there is no occupation certificate obtained in respect of the building of Akshara School. The claim of the petitioner is that the application therefor has been made and the same is under consideration of MMC. Therefore, there could be no prosecution of the petitioner. The argument needs to be rejected for two reasons. Firstly pendency of an application for grant of Occupation Certificate cannot be a justification for committing breach of the provision of Section 353A MMC Act. Secondly, Mr. Thorat points out that the petitioner has earlier pleaded guilty for the same offence in the year 2014 and was sentenced to pay fine of Rs.10,000/- and in default to suffer simple imprisonment for 10 days. He produces certified copy of the Plea of the petitioner recorded in CC No.8362/SS/2014 and the order passed thereon. The petitioner paid fine on the same day i.e. on 30th December, 2014. In the circumstances, there is no question of quashing of the proceedings against the petitioner.

5 As regards issuance of non-bailable warrant, the record of the proceedings shows that the order therefor was completely justified. Absence of the petitioner on three occasions resulted into issuance of bailable warrant in the sum of Rs.5,000/-. Thereafter instead of remaining present in the court on the next date of the matter, the petitioner sent an application for cancellation of warrant through her advocate which was rejected by the trial court because the petitioner had

neither surrendered to the warrant nor remained present in the court alongwith application for cancellation of the warrant. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)