

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

CRIMINAL APPLICATION NO.122 OF 2018

Municipal Corporation of Gr. Bombay
Legal Assistant (R/S Ward)

... **Applicant**

V/s.

Mr. Prasad Babu Shetty & Anr.

... **Respondents**

Mr. Kunal Waghmare, i/by N.A. Shaikh for the Applicant.

Ms. R.M. Gadhvi, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 22nd MARCH 2018

PC.:

1. This is an application under Section 378(4) of Cr.P.C. for leave to file appeal against the Judgment and Order dated 22.08.2018 passed in C.C.No.4851/SS/2014 by the learned Metropolitan Magistrate, 55th Court, Vile Parle, Mumbai, thereby acquitting the respondent for the offence punishable under Section 471 of the Mumbai Municipal Corporation Act, 1888.

2. Heard the learned counsel for the applicant and perused the record.

3. Respondent No.1 was charged with an offence punishable under Section 471 of the Mumbai Municipal Corporation Act, 1888. It is the

allegation against the respondent that, he made change in user from residential purpose to commercial purpose of his Flat No.B-08 situated at Kanakiya Park II, Kandivali (E), Mumbai. That, a notice under Section 347(B) was issued to him and he was directed to restore the premises in its original user, but he did not comply with the said notice, and therefore, the present crime is registered.

4. The evidence on record indicates that, the applicant corporation has failed to adduce cogent and sufficient evidence to even draw an inference that, the said premises in question was infact earlier used as a residential premises. As the applicant has failed to prove the basic and necessary fact to substantiate its case, the Trial Court has acquitted the respondent for the offence charged against him.

5. After perusing the entire record, this Court is of the opinion that, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

6. No case is made out for grant of leave.

7. Application is accordingly rejected.

(A.S.GADKARI, J.)