

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.329 OF 2017
(For Leave to Appeal – By Private)**

Municipal Corporation of Greater Bombay
Through Legal Assistant Mr.Pravin Waradkar ... **Applicant**

V/s.
Saajan Ali & Ors.

... **Respondents**

.....

Mr.Kunal Waghmare, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 3rd AUGUST 2018.

P.C. :

1 This is an application for leave to appeal filed by the complainant – Mumbai Municipal Corporation for seeking to challenge the Judgment and Order dated 27/02/2017 passed by the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai in Case No.410 4826/SS/2011, whereby respondent/accused came to be acquitted for the offence under Section 351 punishable under Section 475-A of the Mumbai Municipal Corporation Act, 1888.

2 Heard the learned Advocate appearing for the applicant/original complainant at sufficient length of time. He drew my attention to the impugned Judgment and Order and so also to the complaint and evidence adduced by the Municipal Corporation before the learned trial Court. The learned Advocate argued that the trial Court erred in acquitting the respondent/accused despite sufficient evidence. My attention was drawn to the notice issued by the complainant-Corporation to the respondent/accused regarding change of user of the premises.

3 I have considered the submissions so advanced and also perused the material placed on record.

4 According to the case of the applicant, the respondent/accused has changed user of the premises from residence to commercial without issuing notice to the Corporation as contemplated by provisions of Section 342 of the Mumbai Municipal Corporation Act. Perusal of material placed on record does not show that the complainant-Corporation has adduced any evidence to show that the premises were meant for residential purpose only. In absence of evidence regarding original sanctioned user of the premises, it cannot be said that there is change of user by the accused.

5 In this view of the matter, no case for leave is made out.

6 The application is, therefore, rejected.

(A.M.BADAR J.)

**Raju
Dattatraya
Gaikwad**

Digitally signed by
Raju Dattatraya
Gaikwad
Date: 2018.08.07
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