

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.339 OF 2016

SMT.NEETA VINAY MASURKAR)...APPLICANT

V/s.

ANIL N. SHAH AND ANOTHER)...RESPONDENTS

Ms.Vrishali Raje I/b. Mr.Thakur and Mrs.Neeta Masurkar,
Advocate for the Applicant.

Mr.Sanjog Parab, Ms.Sulabha Rane I/b. Parab & Associates,
Advocate for Respondent No.1.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th OCTOBER 2018

P.C. :

1 This is an application for leave to appeal in order to challenge judgment and order dated 29th August 2016 passed by the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, in Case No.410 2392/SS/2009, which was a complaint case filed by the Municipal Corporation of Mumbai against the respondent no.1 Anil N. Shah for the offence under

Section 347-C punishable with Section 471 of Mumbai Municipal Corporation Act, 1888. The application is at the instance of a private person, who lodged a complaint to the Mumbai Municipal Corporation on 22nd January 2009 which ultimately ended in filing the subject criminal complaint by the Mumbai Municipal Corporation against the respondent no.1 alleging offence under Section 347-C of the Mumbai Municipal Corporation Act punishable with Section 471 of Mumbai Municipal Corporation Act, 1888 (to be hereinafter referred to as Corporation Act for the sake of brevity). The punishment prescribed for this offence is fine - minimum amount of which is Rs.5,000/- and maximum thereof is upto Rs.25,000/-.

2 Heard the learned counsel appearing for the applicant for sufficient length of time. She took me through the entire evidence adduced by the parties before the learned trial court – oral as well as documentary. By relying on reply dated 2nd March 2009 filed by respondent no.1 to the notice alleging contravention issued under Section 347-C of the Corporation Act, the learned

counsel argued that though mother of the respondent no.1 was owner of Flat No.13, the notice was replied by respondent no.1 wherein he has accepted the fact that he is occupying the subject garage. My attention was drawn to first Inspection Report dated 21st February 2009 as well as second Inspection Report dated 20th March 2009 and it is argued that the inspection report itself shows that the garage was being used for storing gymnasium material and it was an air-conditioned garage. This, according to the learned counsel, depicts unauthorized change of user of the garage by the respondent no.1. It is further argued that when the respondent no.1 is accepting the occupation of the garage, not numbering the garage or non-service of the notice or irregularity in service of notice pales into insignificance. With this, it is argued that arguable case is made out, and therefore, leave needs to be granted.

3 I have heard the learned counsel appearing for respondent no.1/original accused. He drew my attention to the complaint filed by the Mumbai Municipal Corporation and argued

that the said complaint was in respect of Flat No.15 with which the respondent no.1 is not at all concerned. He is owner of Flat No.8 and his mother was owner of Flat No.13. Hence, the complaint as framed and filed rightly resulted in dismissal by the learned trial court. It is further argued that original user is not proved by the Corporation and change of user is not established in the wake of second inspection report.

4 I have carefully considered the rival submissions and also perused the entire record and proceedings made available. It is well settled that in criminal matters if the view taken by the learned trial court in recording acquittal is a plausible view based on material on record, then even if some other view is possible, the view taken by the learned trial court in acquitting the accused cannot be disturbed. In the case in hand, the prosecution has utterly failed to establish what was the original use authorized by the Corporation in respect of the subject premises. It was claimed to be sanctioned for use as garage, but there is no material placed on record to substantiate this contention. Even if it is assumed

that the subject premises were meant for use as a garage, the complaint filed by the Mumbai Municipal Corporation is in respect of Flat No.15. The respondent no.1 is not at all concerned with the Flat No.15. In criminal case proof beyond all reasonable doubts is required. Evidence on record do indicate that the respondent no.1 is owner of Flat No.8 and his mother was owner of Flat No.13.

5 The notice dated 24th February 2009 issued by the Mumbai Municipal Corporation directs respondent no.1 to discontinue the user as studio and gymnasium within seven days. Then, the premises were inspected on 20th March 2009. This second inspection report candidly shows that the subject premises were used for parking Maruti Swift vehicle bearing Registration No.MH-01-PA-3890. Apart from this vehicle, some material used for gymnasium and aluminum racks were also found to be stored in that garage. However, the principal use as per the inspection report seems to be for parking the vehicle.

6 In the light of this material, it cannot be said that the learned trial court has not taken a plausible view in acquitting the respondent no.1 of the offence alleged against him.

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

8 The application is rejected.

(A. M. BADAR, J.)