

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.348 OF 2016

Niraj Ghanshyam Bidawatka ... **Applicant**

V/s.

Prasad Babu Shetty and ors. ... **Respondents**

Mr.Niraj Ghanshyam Bidawatka party in person.

Mrs.M.R. Tidke, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 26th SEPTEMBER 2018.

P.C. :

1. This is an application for leave to appeal filed by the applicant who happens to be the original complainant.
2. Heard the applicant who is appearing in person.
3. He argued that Paragraph 15 of the impugned judgment and order shows that the premises were used for commercial activities and the residential use of that premises is the fact which is not

disputed and therefore the impugned judgment and order is illegal and the matter deserves to be remanded for fresh consideration. It is further argued that notice issued by the Municipal Corporation of the Greater Mumbai is not disputed by the accused.

4. I have considered the submissions so advanced. I have also perused impugned judgment and order of acquittal so also the notice issued by the designated officer, Assistant Engineer (B & F), Municipal Corporation of the Greater Mumbai. That notice directs the respondents/original accused to stop and discontinued the unauthorised change of user i.e. commercial user and restore the residential premises to its original condition.

5. The learned Trial Court upon scrutiny of the evidence on record has held that the respondent/accused was using the premises for commercial activity. However, the learned Trial Court was pleased to acquit the respondent/accused by holding that the prosecuting agency has failed to establish the fact that the premises were meant for residential purpose. Nothing is pointed

out even to this Court that to show the said premises were meant for residential use. The view taken by the learned trial Court as such is perfectly in consonance with whatever material was placed before the learned Trial Court. Even before this Court nothing is pointed out to show that original user of the subject premises was residential.

6. In this view of the matter no case for consideration is made out, therefore the application is rejected.

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(A.M.BADAR J.)