

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 193 of 2009**

- Jagannath, S/o Bhakturam Sahu, Aged about 45 years, R/o Tumgaon Road, Near Railway Crossing, Mahasamund, District Mahasamund (C.G.)

---- Appellant**Versus**

1. Nagar Palika Parishad, Mahasamund, District Mahasamund (C.G.)

---- Respondent

For Applicant	:	Mr. Manoj Paranjape, Adv.
For Respondent	:	Mr. Sudeep Agrawal, Adv.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****27.09.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 24.03.2009 passed by learned First Additional Sessions Judge, Mahasamund (C.G.) in Criminal Appeal No. 40/2007 whereby the appeal preferred by the appellant against the order of Judicial Magistrate First Class, dated 23.03.2007 has been dismissed and upheld the order passed by Judicial Magistrate First Class. The learned Judicial Magistrate has convicted the applicant under Sub-section 8 of Section 187 of Chhattisgarh Municipalities Act 1961 and sentenced him to pay fine of Rs. 1,000/- and he was directed to remove the unauthorized construction of his own expenses, otherwise the same will be removed by the Municipality and expenses will be recovered from the applicant.

2. Brief facts of the case are that, the respondent Nagar Palika Parishad filed a report before Judicial Magistrate First Class Mahasamund under Section 313 read with Section 187(8) of Chhattisgarh Municipalities Act with the averments that, in the

Municipal Limits of Municipality Mahasamund, the applicant herein had constructed a house contrary to the sanction order of the Municipality under Subsection 8 of Section 187 of Chhattisgarh Municipalities Act. It was alleged that on the application and map of the applicant, the permission for construction of the house, area of 584 sqfts was granted on 26.02.2002 on the land bearing khasra No. 681/10 & 682/14,. it was alleged in the complaint that instead of constructing a house on 584 sqfts of land, the applicant had constructed a house on 693.89 sqfts of land, for which no map was sanctioned. It was further alleged that without prior approval or sanction applicant has opened the door on the back side of the house, which is contrary to the provision of Section 187(8) of Chhattisgarh Municipalities Act, 1961. The Chief Municipal Officer, Mahasamund issued a notice on 20.06.2002 and directed to stop the construction and to close the door opened on the back side of the house and accused/applicant filed reply to the said notice. On 09.07.2002, second show-cause notice was issued to the applicant and on that, applicant filed his reply on 10.07.2002. Learned Judicial Magistrate First Class Mahasamund has registered the criminal complaint case No. 536/2005, and after hearing of both the parties convicted and sentenced the applicant by its judgment dated 13.12.2005. Against this order applicant has preferred a revision before the learned Sessions Judge and learned Sessions Judge vide its order dated 10.05.2006, allowed the revision and the matter has been remitted back to the Judicial Magistrate First Class. After appreciation of oral and documentary evidence, learned Judicial Magistrate, vide its order dated 23.03.2007, convicted the applicant under Section 187 (8) of Chhattisgarh Municipalities Act 1961 and sentenced him to fine of Rs. 1,000/- and he was also directed to remove the unauthorized construction at his own expenses otherwise the same will be removed by the municipality and expenses will be recovered from the applicant. Against that order, the applicant preferred an appeal under Section 374 of Cr.P.C before the First Additional Sessions Judge, Mahasamund and the learned Sessions Judge, vide its impugned judgment dated 24.03.2009, dismissed the same. Hence, this revision.

3. Learned counsel for the applicant submits that the learned Courts below have grossly erred in law as well as on the facts in convicting the applicant. Learned Courts below have failed to appreciate that the complainant is duty bound to adduce the evidence and the burden lies on complainant to prove the allegations and this burden cannot be shifted to the accused. There is no evidence on record which shows that the applicant has opened the door on the back side of the house after obtaining sanction of the municipality. He next submitted that the learned Courts below have failed to appreciate that without spot inspection and without submitting the report of spot inspection to the applicant, it could not be proved that applicant had constructed a house contrary to the previous sanction of the municipality under Sub-section 1 of Section 187. The learned Courts below have failed to appreciate that the house was constructed 20 years ago and the applicant has only reconstructed the walls of the house, and as far as the door is concerned, it has already been constructed with the house. He next submitted that the learned Courts below have failed to appreciate that complaint made by Municipality itself is not maintainable and the complaint can be entertained only in a case, where it is filed by municipality through its Chief Municipal Officer, but in the instant case even the statement of complaint has not been recorded. In support of his argument learned counsel for the applicant placed reliance in the matter of **Municipal Council v. Radha Bai** reported in **[1989 LawSuit (MP) 276]**

4. On the other hand, learned counsel appearing on behalf of respondent supported the impugned order of the Court below.

5. Heard learned counsel for the parties and perused the material on record including the impugned order.

6. B.R. Sahu, Sub-engineer (PW-1), after inspection of the constructed house, exhibited all the documents relating to the case that are map of the area (Ex. P/1-B), notice of construction (Ex. P/2) and reply (Ex. P/3) and admitted in his cross-examination that the door is constructed within the allotted land of 584 sqfts but on the other hand he admits that he did not go for spot

inspection. Kriparam Sahu (PW-2), who was also present during the inception of the house along with Sub engineer Shri B.R. Sahu and admitted in his cross-examination that applicant has only reconstructed the old walls of the house. Defence witness Lalli Patel (DW-1) stated that applicant has only repaired the roof of the house and except that no additional construction has been done.

7. In the matter of Municipal (Supra), High Court of MP has held in para 5 which reads thus:-

“..5. A reading in juxtaposition of the two provisions indicate that there is no conflict between the two Sections 313 of the M.P. Municipalities Act speaks of 'institution of a prosecution' while Section 468 of Code fo Criminal procedure speaks of 'taking cognizance by a Court; Section 313 of Municipalities Act debars a Council from instituting any prosecution on expiry of 12 months from the date of commission thereof. The Municipalities Act does not provide any forum of its own for trial of criminal cases. By virtue of Sub-section (2) thereof the prosecution has to be before ordinary criminal courts, Section 468, Cr.P.C. puts an embargo on the jurisdiction of the court in taking cognizance of an offence after expiry of the period of limitation prescribed therefor by that Section. Thus, though a Council may institute a prosecution within a period of 12 months next after the date of commission of such offence as prescribed by Section 313 of M.P. Municipalities Act, 1961, the Court shall be debarred from taking cognizance of the offence on expiry of period of 6 months if the offence be punishable with fine only unless the case be covered by any of the exceptions contemplated by Sections 469 to 473, Cr.P.C.”

8. It is clear from the oral and documentary evidence that house of the applicant was 20 to 25 years old which was also corroborated by K.P. Sahu (PW-2) in his cross-examination in para 4. Except that, applicant also stated in his reply that his house and door was constructed 20 years ago though complainant filed complaint on 26.02.2002. The prosecution witnesses have failed to prove that the door was constructed within the period of 6 months from the date of filing of the compliant.

9. In view of aforesaid discussion and in light of above principles, facts of the case, order dated 24.03.2009 passed by Additional Sessions Judge in respect of applicant Jagannath is liable to be and hereby set-aside.

10. Consequently, it is held that the conviction of the accused/appellant under this special enactment is liable to be set-aside by allowing the revision. Accordingly, the revision is allowed. Accused/appellant is acquitted of the charge of Sub-section 8 of Section 187 of Chhattisgarh Municipalities Act. Fine amount, if deposited by the applicant, be refunded to him.

**Sd/-
(Rajani Dubey)
JUDGE**

Vijay Sahu