

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

CRIMINAL APPLICATION No. 229 OF 2018

M/s.PS Developers & Ors.

...Applicants

Versus

The Maharashtra Pollution Control Board & Anr.

...Respondents

Mr.Niranjan Mundargi i/b.Mr.Siddharth R. Karpe for the Applicants.

Ms. A.R.Patil, APP for Respondent No.1-State.

Ms. Jaya J. Bagwe for Respondent No.2

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 15 MARCH 2019**

P.C.:

1. This Criminal Application is filed under section 482 of the Code of Criminal Procedure.
2. This Criminal Application is directed against the order dated 07.12.2015 passed by the learned Chief Judicial Magistrate First Class, Pune in R.C.C. No. 1222 of 2015 thereby issuing process under section 15 read with section 16 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006.

3. As per case of the complainant i.e., the Maharashtra Pollution Control Board (for short "Board"), the Board is having a policy decision if the construction is above more than 20,000 sq. meters and also as per Environment Impact Assessment Notification, 2006, then the environment clearance certificate is required to obtain for construction beyond 20,000 sq. meters.

4. Heard submissions. Perused complaint. In paragraph No. 9 of the complaint, the complainant has specifically stated that the applicants/accused have started construction having total built up area more than 20,000 sq. meters without obtaining such Environment Clearance. The words are started from "have started construction". This is not the requirement to constitute an offence. The construction should be complete more than 20,000 sq. meters.

5. The learned counsel for the applicants/accused has produced the plan. The Principal Secretary, Environment Department had written a letter dated 02.02.2015 to the applicants/accused wherein it was mentioned that the applicants have completed the construction of total built up area admeasuring 19959.06 sq. meters. It appears that the applicants/accused

want to construct more than 20,000 sq meters and accordingly they have made correspondence with the Municipal Corporation, other authorities and the Environment Department.

6. Undoubtedly, if the construction is going beyond 20,000 sq. meters, then the environment clearance certificate is required to obtain, is a rule and this is not to be breached. However, there is no *prima facie* material to show that the construction is beyond 20,000 sq. meters. Hence, the order of issuance of process is hereby quashed and set aside. Criminal Application is allowed in terms of prayer clause (b).

(MRIDULA BHATKAR, J.)