

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

**CRR No. 534 of 2020
CRAN 1 of 2020
D & I Taxcon Services Pvt. Ltd.
Vs.
The State of West Bengal & Anr.**

For the Petitioner	: Mr. Tapas Dutta, Adv.
For the State	: Mr. Swapan Banerjee, Adv. Ms. Purnima Ghosh, Adv.
Heard On	: 29.09.2020
Judgement On	: 09.10.2020

Subhasis Dasgupta, J. :-

The impugned order dated 3rd August, 2019 passed by the learned Chief Metropolitan Magistrate, Kolkata in Case No. C-89 of 2019, rejecting the prayer under Section 156(3) of the Code of Criminal Procedure is the subject matter of challenge in this revisional application under Section 482 of the Criminal Procedure Code.

Learned advocate for the revisionist submitted that pursuant to an order passed in writ petition No. 22350 (W) of 2013, a manufactured and fabricated sanctioned building plan in respect of a building situated at

premises No. 1B and premises No. 2 of Hare Street popularly called as “Nicco House” had been produced by Kolkata Municipal Corporation on 09.10.2018 with disclosure of fact that the aforesaid building was sanctioned in stages, and thereby causing the original sanctioned plan of the building to go suppressed and hidden. It was further submitted that the building plan was issued on 06.04.1893 being No. 10 in respect of premises No.1B & 2, Hare Street, Kolkata- 700001 for making construction of a single storied building, and thereafter whatever plan was managed to be obtained in support of the building in question was false, forged and fabricated having no nexus with the original.

Contention was raised by the learned advocate for the petitioner that the original of the sanctioned plan could not be produced in connection with writ petition No. 22350 (W) of 2013, and only the certified copy of the plan was produced, which was not the actual, authenticated copy of the original. Since the “Nicco House”, a 7th storied building was alleged to have raised without required sanction plan from K.M.C., the petitioner not only approached for demolition of the unauthorised construction of “Nicco House”, but also sought for an investigation to book the culprits including the certifying personnel in respect of the certified sanction plan of the building in question, by submitting a complaint before the concerned police station earlier, and the same not being acted upon, the petitioner in exercise of his right available under the Code of Criminal Procedure proceeded to obtain relief available under Section 156(3) Cr.P.C. soliciting an investigation by the police. It was alleged that unknown persons lying behind the creation of manufactured/fabricated

sanctioned plan for “Nicco House” had committed offence punishable under Sections 466/468,/ 474, 34 and 120B I.P.C.

Learned advocate further strenuously argued that the rejection of prayer under Section 156(3) Cr.P.C. was mechanically done without appreciating the position of the law in context with the facts made out in the petition under Section 156(3) Cr.P.C.

Learned advocate representing the State/opposite party raised objection submitting that the petitioner had already invited a proceeding for demolition of a 7 (seven) storied building, called as “Nicco House”, constructed about 100 years before, obtaining required sanction plan. By the instant prosecution, allegation of causing fabrication of sanctioned plan of building was raised by some unknown persons. Learned advocate for the State/opposite party supporting the order of the learned court below, submitted that learned Magistrate of the court below rightly rejected the prayer for investigation under Section 156(3) Cr.P.C., upon visualising an order passed in writ petition No. 301 of 2019 (Original Side), wherein no cognizable offence could be made out in connection with an enquiry held by the concerned police station over the issue of unauthorised construction of “Nicco House”.

The contention canvassed by the petitioner relates to manufacturing/forging or falsifying a sanctioned plan of a building without making production of original sanctioned plan, and causing the certified sanctioned plan to be produced in connection with a proceeding of writ petition No.301 of 2019 (Original Side), which according to petitioner was

forged one and not properly authenticated copy of the original sanctioned plan.

The learned court below had taken care of the order dated 1st July, 2019 passed in writ petition No. 301 of 2019 (Original Side), and rejected the prayer for police investigation under Section 156 (3) Cr.P.C. simply to prevent conflicting decision. There was another writ petition filed in connection with writ petition No. 2350 (W) of 2013, wherein there was direction for production of relevant records in response to an allegation raised therein for unauthorised construction of the entire building, called as “Nicco House”. The said writ petition came to be disposed of on 17.02.2020 i.e. about more than 5 months after the rejection of the prayer for investigation under Section 156(3) Cr.P.C. by learned court below on 3rd August, 2019.

Surprisingly the petitioner runs its office in the 2nd floor of “Nicco House”, there was a massive fire broke out on 27th March, 2009 in the 2nd floor of the same building causing petitioner to suffer huge financial loss. According to petitioner the building had no facility of fire fighting mechanism, and it was unauthorisedly built up, though the building was authorised to be raised for a single storied building. The moment when the petitioner started establishing its office in the 2nd floor in the “Nicco House”, subtleties of the building could not be taken into account.

Several writ petitions came to be filed both in appellate side and original side of this court alleging unauthorised construction of “Nicco House” with a prayer for demolition. It is evident from the order dated 02.03.2020 passed in writ petition No. 140 of 2019 (Original Side) that there is an appeal

pending before the Building Tribunal over the issue of sanctioning building plan for the building in question, in respect of 4th to 7th floor. The concerned police station duly communicated the order to the petitioner, dated 01.07.2019, passed in writ petition No. 301 of 2019 (Original Side) intimating that no cognizable offence could be found to have been established in connection with FIR submitted earlier, as the same was the product of the enquiry held by the concerned police station. The decision given in W.P. No. 301 of 2019 (Original Side) still goes unchallenged.

Taking aid of Section 156(3) Cr.P.C. petitioner proceeded to invite investigation against unknown persons. Having considered the rival submission of the parties, the court is of the view that the moment when the prayer for 156(3) Cr.P.C. was rejected by the learned court below, it had duly appreciated in terms of the materials produced before the Court below, and no apparent illegality is found committed by the learned court below.

Referring decision cited in **(2015) 6 SSC 287** rendered in the case of ***Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors.***, learned advocate for the petitioner candidly submitted that even after satisfying the pre-conditions, as laid down by the Apex Court in the said decision, the learned court below most illegally rejected the prayer for police investigation under Section 156(3) Cr.P.C.

While exercising power under Section 482 of the Code of Criminal Procedure this court is under obligation to consider whether the learned court below had duly exercised its discretion available under the law, or

alternatively the court below while rejecting the prayer under Section 156(3) Cr.P.C. had duly taken care of the principles of the law.

Upon perusal of the impugned order, this court is of the view that the discretion available to learned court below was the product of judicial discretion, which was lawfully and reasonably exercised, and in any manner the discretion so far as exercised by the learned court below cannot be branded to be perverse and illegal.

Another decision as referred by the learned advocate for the petitioner, reported in **(2019) 6 SCC 111**, rendered in the case of **S.K. Miglani Vs. State (NCT of Delhi)**, it appears that the ratio decided in the referred case would not be applicable in the given context of this case.

There is hardly anything in the impugned order requiring interference. The revisional application fails being without any merits.

With this observation, the revisional application along with its connected application stands disposed of.

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Subhasis Dasgupta, J.)