

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

CRIMINAL APPEAL NO.1419 OF 2004

Municipal Corporation of Greater Bombay)
through P.P.Dhawade, Legal Assistant of)
R/Central Ward, Municipal Corporation of)
Gr.Mumbai, having office at Mahapalika)
Marg, Fort, Mumbai-400 001)....Appellant

V/s.

1) Smt.Sharda Sanghvi)
Gala No.63, Indraprastha Shopping Center)
Basement, S.V.Road, Borivali (W), Mumbai)

2) The State of Maharashtra)....Respondents

Mr.Jayant Bardeskar along with Mr.Kunal Waghmare for appellant-MCGM.

Mr.Anuj Tiwari-amicus curiae present.

Mr.Sagar Agarkar APP for respondent no.2-State.

CORAM : K.R.SHRIRAM,J

DATE : 3.3.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment passed by the Metropolitan Magistrate 39th Court, Vile Parle, Mumbai on 11.1.2002 acquitting Respondent no.1 (accused) for offences punishable under section 351 read with section 475 A(1)(b) of Mumbai Municipal Corporation Act (MMC Act).

2. The acquittal order was passed not only on the merits but

also because the complaint was beyond time.

3. Section 514 of the M.M.C Act reads as under :-

“514. Limitation of time within which complaints of offences punishable under this Act shall be entertained.

No person shall be liable to punishment for any offence made punishable by this Act, unless complaint of such offence is made before a Presidency Magistrate within the time hereinafter prescribed in that behalf, namely:

(a) if the offence be against the provisions of section 155, within six months next after the commission of such offence;

(b) if the offence be against the provisions of sections [223, 229A, 240, 258] 272(1), [272(5), 274(1), 274(1A)], 281, 284, [287B(2)] or 390 [or any bye-laws framed under section 461(b),] within three months next after the commission or discovery of such offence.

(c) if the offence be against any other provision of this Act, within three months next after the commission of such offence.]”

4. Since the offence charged is under Section 351 of Mumbai Municipal Corporation Act, clause-(c) of section 514 will be applicable.

5. Nobody appears for accused. Therefore, the Court appointed Mr.Anuj Tiwari, as Amicus curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Mr.Tiwari, learned Amicus Curiae.

6. The chronology and dates and events read as under :-

Dates	Events
12.05.1999	Officers of Appellant found work of un-authorized enclosure of basement.
3.07.1999	Notice U/s.351 of MMC Act was issued by the ward officer, wherein it was pointed out that accused has carried out un-authorized work in contravention of Section 342 and 347 of the MMC Act. Accused was called upon to submit his statement in writing within 7 days from the receipt of the notice.
20.07.1999	File placed before ward officer who after scrutinizing the file came to the conclusion that the said work is totally un-authorized and hence, gave approval to follow further process.
21.07.1999	Ward officer issued reasoned order/final order to Accused pointing out that he has submitted no documents to prove authorization of the said work. Accused was further requested to remove the work mentioned in the notice u/s. 351 of the act within 15 days of the receipt of the order failing which the same will be demolished by the corporation. The said order was served on Accused on the same day.
	Long Cause Suit No.6073 of 1999 in the City Civil Court, Bombay filed by Mr. Arun N. Shah & Ors. which included Accused. The Plaintiffs therein were directed to reply to the notice U/s. 351 within 10 days and the concerned ward officer was directed to consider the same on merits.
01.11.1999	Accused through his Advocate replied to the notice U/s. 351, which was received by the

	concerned ward officer on 5.11.1999.
04.04.2000	Second reasoned order passed by the Ward Officer stating that the reply given is not satisfactory and does not prove the authorization of the un-authorized work. Accused was directed to remove the un-authorized work within 15 days of the receipt of the said order failing which the same will be demolished by the officer of the corporation. This was served on accused on the same day 4.4.2000.
20.04.2000	The officer of Appellant upon inspection of the premises found that Accused failed to comply with the requisitions made to him as per order U/s. 351 of the MMC Act and thereby being liable for punishment U/s. 475-A (1) (b) of the MMC Act.
20.07.2000	Complaint filed before the Metropolitan Magistrate Vile Parle, Mumbai bearing case No.10189/ME/2000.
11.01.2002	Judgment and order passed by the learned Metropolitan Magistrate Vile Parle, Mumbai acquitting Accused.

7. Therefore, the order under section 351 was passed on 4.4.2000. Mr.Bardeskar for appellant relied upon the judgment of learned single judge of this Court in the matter of ***Municipal Corporation of Greater Bombay Vs. M.S.Bhivandiwala & Anr.***¹ to submit that 3 months period will only commence after discovery of such offence which means when the inspection post the order of

1 1986(2) Bom.C.R.495

4.4.2000 was taken and that date will be 20.4.2000, and hence complaint was within time. Mr.Tiwari Amicus curiae is right in submitting that *M.S.Bhivandiwala (supra)* is not applicable to the facts and circumstances of this case because in *M.S.Bhivandirwala (supra)* the charging section was section 274 of the B.M.C Act and the limitation applicable will be clause-(b) of section 514 of M.M.C.Act and not clause-(c) as in this case. In clause (b) it says “.....within three months next after the commission or discovery of such offence. Whereas in clause (c) it only says “.....after the commission of such offence”.

8. Mr.Bardeskar also relied upon a judgment of a learned single Judge of this court in ***C.R.Ramkrishna Pillai & Ors. Vs.Municipal Commissioner & Anr.***² to submit that it would be a continuing offence and therefore, limitation would not apply.

First of all, that was not the case before the trial Court.

Secondly, this judgment of *C.R.Ramkrishna (supra)* also will be not applicable to the facts and circumstances of the case in hand. In *C.R.Ramkrishna (supra)* the prosecution was lodged under section 353-A of B.M.C. Act 1888 for occupation of the building without requisite occupation certificate. The members of the society

² 2002(Cri.Supp.) Bom.C.R.304

who had occupied their flats continued to occupy the flats despite the orders passed by the concerned authority and therefore, it was considered as a continuing offence.

In the case at hand, the prosecution is lodged not under section 353-A of the B.M.C Act 1888 but under Section 351 of the B.M.C Act. The question of continuing offence does not arise because within 15 days of passing the order of 4.4.2000, BMC could have gone ahead and removed the unauthorized portion. Section 351-(a) provides for written notice be given in case of unauthorized erection to show cause why such building or work shall not be removed, altered or pulled down and clause-(b) provides that the designated officer shall require the said person on such day and at such time and place to attend personally or by an agent and show sufficient cause why such building or work shall not be removed, altered or pulled down. Sub-section 2 of section 351 says if such person shall fail to show sufficient cause, the designated officer may remove, alter or pull down the building or the work and the expenses shall be paid by the said person. Therefore, when it passed its order on 4.4.2000, appellant had come to a conclusion that structure of accused was unauthorized/illegal. In its order dated 4.4.2000 appellant has come to the conclusion that notice structure are unauthorized and liable for demolition and called upon accused to remove/demolish notice

structure within 15 days from the date of service/receipt of reply failing which same shall be demolished at the risk and cost of accused. Therefore, no question of continuing offence arose and within 15 days of receipt of notice, if respondent no.1 had not removed or demolished the notice structure, appellant was empowered to go and demolish/remove notice structure.

9. Mr.Bardeskar for appellant further submitted that the offence would have been committed within 15 days of receiving the order of 4.4.2000 (Exh.18) as accused had not removed/demolished the notice structure and 3 months period will commence from the date of receipt of the notice. In Exh.18 there is an endorsement by BMC Mukkadam Bhoir that the order was served on same day i.e., 4.4.2000. I must also note that the inspection after the order of 4.4.2000 (Exh.18) was carried out on 20.4.2000. 15 days from 4.4.2000 would have expired on 19.4.2000 and that is why appellant went to inspect on 20.4.2000. 3 months period as prescribed under section 514(c) would have therefore commenced on 20.4.2000 and hence expired on 19.7.2000. Admittedly, the complaint was filed on 20.7.2000. Therefore, it was beyond time. The appeal has to be dismissed and is hereby dismissed.

10. High Court Legal Services Committee to award fees of the learned Amicus Curiae fixed at Rs.10,000/-.

11. I am tempted to observe that possibly appellant was aware that 3 months period would expire on 19.7.2000 and has deliberately lodged the complaint on 20.7.2000. Of course, it is too late in the concerned matter to do something but I would expect the Municipal Commissioner to take note of this and shall give proper instructions to the concerned officers. The complaint ought to be lodged much before the 3 months period gets over.

(K.R.SHRIRAM,J)