

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1525 OF 2019

Mehrunnisa Begum wd/o. Jamil Hussain
Age 65 years, Occu. Household,
R/o. Mominpura, Parbhani,
Taluka and District Parbhani .. Applicant

Versus

1. State of Maharashtra
Through Police Inspector,
Nanal Peth Police Station, Parbhani
2. Shrikant Malesh Kura,
Age Major, Occu. Sanitary Inspector,
R/o. C/o. Parbhani City Municipal Corporation,
Parbhani, Taluka and District Parbhani
3. Parbhani City Municipal Corporation,
Through its Commissioner, Parbhani .. Respondents

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Mr. A. P. Gaikwad, Advocate for applicant
Mr. M. M. Nerlikar, APP for respondent no. 1
Mr. S. S. Bora, Advocate for respondents no. 2 and 3

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**WITH
CRIMINAL APPLICATION NO. 115 OF 2020
IN APPLICATION NO. 1525 OF 2019**

1. Tilatara Bagum w/o. Saher Hussain Siddiqui,
Age 61 years, Occu. Household,
R/o. Mominpura, Parbhani,
Taluka and District Parbhani
2. Saber Hussain s/o. Gulam Hussain Siddiqui,
Age 63 years, Occu. Business,
R/o. Mominpura, Parbhani,
Taluka and District Parbhani. .. Applicants

Versus

1. Mehrunnisa Begum wd/o. Jamil Hussain
Age 65 years, Occu. Household,
R/o. Mominpura, Parbhani,
Taluka and District Parbhani .. Original applicant

2. State of Maharashtra
Through Police Inspector,
Nanal Peth Police Station, Parbhani
3. Shrikant Malesh Kura,
Age Major, Occu. Sanitary Inspector,
R/o. C/o. Parbhani City Municipal Corporation,
Parbhani, Taluka and District Parbhani
4. Parbhani City Municipal Corporation,
Through its Commissioner, Parbhani .. Respondents

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Mr. A. P. Gaikwad, Advocate for applicant

Mr. M. M. Nerlikar, APP for respondent no. 1

Mr. S. S. Bora, Advocate for respondents no. 2 and 3

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**CORAM : SUNIL P. DESHMUKH AND
NITIN B. SURYAWANSHI, JJ.**

DATE : 20th SEPTEMBER, 2021

PER COURT :

Criminal application no. 1525 of 2019 is filed by the applicant-accused for the relief of quashing of Regular Criminal Case No. 351 of 2019 pending on the file of Judicial Magistrate, First Class, Parbhani, for the offence punishable under section 52 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter, it be referred to as 'the said Act').

2. Respondent no. 2 – informant, on authorisation from Commissioner of Parbhani City Municipal Corporation, lodged First Information Report (FIR) in question at crime no. 65 of 2019 registered with Nanal Peth Police Station, Parbhani, for the offence

punishable under Section 52 of the said Act, alleging that the applicant has raised unauthorized/illegal construction, and thereby, committed an offence punishable under Section 52 of the said Act. After conducting investigation, a chargesheet was filed and the case is numbered as Regular Criminal Case No. 359 of 2019 in the Court of Civil Judge, Senior Division, Parbhani.

3. Learned Advocate for the applicant submits that the allegations in the FIR do not make out *prima facie* case against the applicant. The applicant has submitted application for regularization of the unauthorized/illegal construction. Therefore, the FIR is liable to quash and set aside.

4. Learned APP so also the learned advocate for respondents no. 2 and 3 opposed the prayer of applicant contending that in the trial court charge is already framed against the applicant and the recording of evidence has commenced.

5. Learned Advocate for the applicant by relying on decision of the Apex Court in the case of *Anand Kumar Mohatta and another versus State (Govt. of NCT of Delhi) Department of Home and another [criminal appeal no. 1395 of 2018 arising out of SLP (Cri.) No. 3730 of 2016]*, submitted that, even if chargesheet is filed, this court can entertain the prayer for quashing.

6. In the FIR in question, there are specific allegations of unauthorized/illegal construction on the part of the applicant. *Prima facie*, ingredients of Section 52 of the said Act are attracted in the present case. In view of the fact that, in the Regular Criminal Case, charge is already framed and recording of evidence is in progress, we do not find it appropriate to entertain the present application.

7. Though, the learned Advocate for the applicant has placed reliance in the decision of the Apex Court in the case of *Anand Kumar Mohatta (supra)*, there can be no dispute about the proposition laid down in the said case. However, in the facts of the present case, for the aforesaid reasons, we are not inclined to exercise our discretion in favour of the applicant. No merit is found in the criminal application and the same is hereby dismissed.

8. We make it clear that the observations here-in-above are *prima facie* and shall not influence the learned trial Judge at the time of giving decision in the trial.

9. In view of the dismissal of this application, criminal application bearing no. 115 of 2020 for intervention stands disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE