

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRR 292 of 2022
With
CRAN 6 of 2022
(This CRAN not found in file)**

**Jaspal Singh
Vs.
The State of West Bengal & Ors.**

Mr. Ayan Bhattacharya
Mr. K. K. Tiwary
Mr. Kusal Kumar Mukherjee
Mr. Rahul Das
...for the petitioner

Md. Anwar Hossain
Ms. Sreyashee Biswas
...for the State

Mr. Goutam Dinda
Mr. Anindya Sundar Chatterjee
...for the K.M.C.

Item No. 56

Heard & Judgment on: 15.12.2022

Bibek Chaudhuri, J.

The petitioner has approached this Court under Article 227 of the Constitution of India praying for quashing of further proceedings in connection with New Market Police Station Case No. 110 of 2021 dated 21st April, 2021 under Section 401A of the Kolkata Municipal Corporation Act including the order dated 19th February, 2021 passed by the learned Municipal Magistrate, 2nd Court at Calcutta in Criminal Misc. Case No.1282 of 2018.

Suffice it to mention that Criminal Misc. Case No.1282 of 2018 was filed against one Bimal Paswan and two others alleging commission of offence under Section 618 of the Kolkata Municipal Corporation Act, 1980 (hereinafter described as the KMC Act). It is not in dispute that the said proceeding under Section 618 of the KMC Act is registered as a petty case (summary triable case) as the penalty prescribed under the said provision is only fine of Rs.1,000/-. It is also pertinent to mention that the aforesaid criminal Misc. Case was registered on the basis of the G.D. Entry No.1408 dated 16.09.2018. The said G.D. Entry refers to an incident of certain unauthorized construction inside a premises under the name and style of 'Anarkali Restaurant' against the masons who were carrying on such alleged unauthorized construction.

The learned Municipal Magistrate vide order dated 19th February, 2021 found that in spite of issuance of warrant of arrest, police did not take step for execution of the same. It was further held by the learned Magistrate that in view of Section 620 of the KMC Act no Court shall proceed to the assault of any offence punishable by or under this Act except on the complaint of, or upon information received from the Municipal Commissioner or any person authorized by him by general or special order in this behalf. Since the proceeding under Section 618 of the KMC Act was initiated *su motu* by the police, the learned Magistrate found the said proceeding not being filed in accordance with law and accordingly, the accused persons were released under Section 258 of the Code of Criminal Procedure.

Surprisingly enough, in the same order the learned Magistrate found that G. D. Entry No.1420 dated 16th September, 2018 revealed an allegation of unauthorized construction inside the above named restaurant. Thus, he held that in the proceeding of the said restaurant the petitioner herein is liable to be prosecuted under Section 401A of the KMC Act for construction of building in contravention of the Act or the Rules made thereunder. On such observation the learned Magistrate directed the jurisdictional police station to start F.I.R. against the present petitioner.

Mr. Ayan Bhattacharya, learned advocate for the petitioner submits that when in a proceeding under Section 618 of the KMC Act the accused persons were released by the learned Magistrate holding, inter alia, that there was no complaint made by the KMC or any authorized person on behalf of the KMC to initiate the proceeding under Section 618 of the KMC Act, he cannot on the basis of the same G.D. Entry direct registration of a police case against the owner of the restaurant.

It is further submitted by him drawing my attention to page 20 of the application (Annexure P-2) that the present petitioner filed a writ petition being W.P. 474 of 2018 in this Court praying for regularization of the alleged unauthorized construction against the Corporation. The said writ petition was disposed of by this Court vide order dated 28th September, 2018 directing the Corporation to initiate proceedings under Section 401 of the KMC Act against the petitioner. Subsequently, the said proceeding was initiated by the KMC and the alleged unauthorized construction was regularized under Section 401 of the KMC Act. After regularization of such construction, the petitioner cannot be prosecuted for unauthorized construction.

The learned advocate on behalf of the Kolkata Municipal Corporation frankly submits that the Corporation has no grievance against the petitioner and further proceedings in connection with New

Market Police Station Case No. 110 of 2021 dated 21st April, 2021 under Section 401A of the Kolkata Municipal Corporation Act may be quashed. However, it is also submitted by him that since an offence under Section 401A is a cognizable offence, a case can be registered on the basis of a complaint by any person.

Having considered the submissions made by the learned counsels for the parties, I like to record at the outset that the impugned order dated 19th February, 2021 is inherently fallacious. When a case under Section 618 of the KMC Act instituted on the basis of a G.D. Entry is triable under Section 258 of the Code of Criminal Procedure and the accused is released, the same incident cannot be treated as the basis of a cognizable offence under Section 401A of the KMC Act. Moreover, the Corporation by an order under Section 400 of the KMC regularized the alleged illegal construction made by the petitioner. When a construction is regularized by the Corporation, subsequent FIR for unauthorized construction cannot stand.

In view of the above discussion, this Court is of the firm view that further continuation of New Market Police Station Case No. 110 of 2021 dated 21st April, 2021 under Section 401A of the Kolkata Municipal Corporation Act against the petitioners will be a gross abuse of the process of the Court and, therefore, is liable to be quashed.

Accordingly, the instant revision is **allowed** on contest.

Further proceedings in connection with New Market Police Station Case No. 110 of 2021 dated 21st April, 2021 under Section 401A of the Kolkata Municipal Corporation Act for the aforesaid unauthorized construction as ventilated in G.D. Entry No.1420 dated 16th September, 2018 is quashed.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)