

Form J(1)

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

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

CRR 372 of 2022

**Ratan Lal Nath
Vs.
The State of West Bengal**

**For the petitioner : Mr. Sweta Bhatta, Adv.,
Mr. Yashraj Roy, Adv.**

For the State : Ms. Sreyashee Biswas, Adv.

**For the K.M.C. : Mr. Goutam Dinda, Adv.,
Mr. Anindyasundar Chatterjee, Adv.**

Judgement on : 25.07.2022.

Bibek Chaudhuri, J.

Invoking Section 482 of the Code of Criminal Procedure the accused/petitioner has prayed for quashing of the proceeding in connection with Netaji Nagar Police Station Case No. 216/2015 dated 19th June, 2015 under Section 401A of the Kolkata Municipal Corporation Act. It is submitted by the Learned Advocate for the petitioner that on the basis of a complaint in pursuance of a notice dated 27th January, 2014 issued by the *de facto* complainant under Section 401 of the said Act upon the petitioner, Netaji Nagar Police Station Case No. 101 dated 27th April, 2014 was registered.

On due investigation, Police submitted charge-sheet against the petitioner for committing offence under Section 401(A) of the Act before the Learned Municipal Magistrate, 4th Court at Calcutta. The petitioner faced trial. The Learned Magistrate on conclusion of trial passed judgement on 18th May, 2015 convicting the petitioner for committing offence punishable under Section 392 of the Kolkata Municipal Corporation Act. The petitioner was sentenced to pay fine of Rs. 2,500/- each, in default, to suffer simple imprisonment for a period of 10 days each. The petitioner paid the fine amount. Subsequently, on 19th June, 2015 the *de facto* complainant lodged another complaint on 19th June, 2015 against the petitioner on the basis of which Netaji Nagar Police Station Case No. 216 was registered.

The contents of the said FIR is replicated hereinbelow:-

"The premises under reference was inspected by the department and found that R.C.C. Framed/Brick Masonry Structure is being erected upto the 2nd floor level without obtaining Sanction from KMC.

Notice u/s 401 of the C.M.C. Act' 80 has been served on 27.01.2014 and posting 1st time municipal guard watch on N.A. along with police intimation on 27.01.2014 requisition for Round-the-clock police posting was send to the local police station on 07.02.2014. The Person Responsible is proceeding with the unauthorized construction without paying any heed to the departmental action. The premises is situated in a congested area and if the construction is allowed to stand, the same will create several hazards such as Fire, Traffic, disruption

of drainage, sanitaryation and water supply. Moreover, the construction has been in a haphazard manner without following the norms and practice of Civil Engineering and as such may collapse at any times causing human lives.

Considering the gravity of the situation and safety of adjoining structure as well as safety of the public in general, it is suggested that action under Section 401(A) of C.M.C. Act, 1980 as amended may be taken against the person responsible or any other person who has conspired to make the above-mentioned unauthorized construction.

Assistant Engineer (C)
Building Department, Br-X
Astt. Engg. (Bldg)
KMC (Br. X)"

It is contended by the Learned Advocate for the petitioner that the Police authority cannot register a new case under Section 401A of the said Act on the basis of a notice dated 27th January, 2014 because of the fact that on the basis of the said notice a Police case being Netaji Nagar Police Station Case No. 101 dated 27th April, 2014 was registered, charge-sheet was filed against the petitioner and the petitioner was convicted and sentenced to pay fine of Rs.2,500/- each, in default, to suffer simple imprisonment for 10 days each. The petitioner paid the fine amount. Therefore, on the basis of the notice dated 27th January, 2014 second FIR cannot be initiated.

The Learned Advocate for the Kolkata Municipal Corporation submits that the first case was registered initially for construction of a building by the petitioner without

sanctioned plan issued by the Kolkata Municipal Corporation. Subsequent to the disposal of the case arising out of Netaji Nagar Police Station Case No. 101 dated 27th April, 2014 the disputed property was inspected by the Officers of Kolkata Municipal Corporation. They found that the petitioner was making further construction. Therefore, the competent authority under Kolkata Municipal Corporation Act filed complaint against the petitioner. It is learnt from the submission made by the Learned Advocate for the State of West Bengal that Police duly investigated into Netaji Nagar Police Station Case No. 216 dated 19th June, 2015 and on completion of investigation submitted final report. The *de facto* complainant was not agreeable to accept the final report submitted by the Investigating Officer and he filed a petition against the said final report praying for further investigation.

The said narazi petition filed by the *de facto* complainant was allowed by the Trial Court and further investigation of the case is going on.

The issue that falls for determination in the instant revision is as to whether two criminal proceedings can be initiated on the basis of a notice dated 27th January, 2014. It is not in dispute that on the basis of the said notice a proceeding under Section 401 (A) of the Kolkata Municipal Corporation Act was registered and on filing of the charge-sheet in the said case trial was conducted and the accused was held guilty for violating the provisions of the Kolkata Municipal Corporation Act and/or rules made thereunder. On the basis of the selfsame notice the *de facto* complainant cannot file a subsequent

complaint alleging further illegal construction in the disputed premises. If the *de facto* complainant wanted to take any penal action against the petitioner for illegal construction of a building in the disputed premises, it was obligatory for the complainant to send a fresh notice to the offenders. Notice dated 27th January, 2014 cannot be used for initiation of a subsequent proceeding on selfsame allegation which was the subject-matter of a previously instituted case and the accused persons faced trial and were already convicted.

In view of the above discussion, this Court is of the view that subsequent proceeding in connection with Netaji Nagar Police Station Case No. 216/2015 being in violation of the provision of the Kolkata Municipal Corporation Act and Rules made thereunder on the basis of a notice dated 27th January, 2014 is bad in law and liable to be quashed.

Accordingly, further proceedings in Netaji Nagar Police Station Case No. 216/2015 dated 19th June, 2015 under Section 400(A) of the Kolkata Municipal Corporation Act be quashed. The instant revision is, thus, **disposed of** on contest.

However, this order will not restrict the Kolkata Municipal Corporation Authority to take proper step in accordance with law against the petitioner for violation of any provision of the said Act and/or the rules made thereunder subsequent to 19th June, 2015.

(Bibek Chaudhuri, J.)