

23.02.2022

Item No.68
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 352 of 2020
(Via Video Conference)

Biswak Mukherjee
versus
The State of West Bengal & Ors.

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973 filed for challenging the order dated 30.12.2019 passed by learned Senior Municipal Magistrate, Kolkata in Case No. 1061 of 2019 pending before the learned Senior Municipal Magistrate, Kolkata arising out of Survey Park Police Thana Case No. 1191 of 2019 dated 20.12.2019 under Section 618 of the Kolkata Municipal Corporation Act.

Mr. Sekhar Basu, Sr. Adv.,
Mr. Sourav Chatterjee,
Ms. Sayanti Santra ... For the Petitioner.

Mr. S. N. Mookherjee, Ld. Advocate General,
Mr. S. G. Mukherjee, Ld. P.P.,
Ms. Sreyashee Biswas ... For the State.

Mr. Raj Dip Ray,
Mr. Anindya Sundar Chatterjee,
Mr. Goutam Dinda ... For the K.M.C.

The present revisional application has been preferred challenging the order dated 30.12.2019 passed by learned Senior Municipal Magistrate, Kolkata in Case No. 1061 of 2019 arising out of Survey Park Police Thana Case No. 1191 of 2019 dated 20.12.2019 under Section 618 of the Kolkata Municipal Corporation Act.

The subject matter of grievance in respect of the order complained of is the following observations made by the learned Magistrate :

“Hence, the Deputy Commissioner of Police, East Division, Kolkata is directed take necessary disciplinary

action against the concerned Officer-in-Charge, Survey Park PS responsible for non-registration of FIR in spite of receiving an information disclosing commission of a cognizable offence in compliance with the solemn mandates of the Hon'ble Apex Court and the Court shall be informed of the action so taken by him.

The concerned Officer-in-Charge, Survey Park PS is directed to appear in person before the Court and to file written show-cause why the necessary proceeding under penal provision of law shall not be initiated against him for his dereliction/avoidance/neglect of duty and disobey/violation/breach of law as mandated by the Hon'ble Court."

The learned Magistrate amongst others relied upon a judgement of the Hon'ble Supreme Court in Lalita Kumari Vs. Govt. of U.P. reported in AIR 2014 Supreme Court 187. Paragraph 111 of the said judgment was referred by the learned Magistrate and consequently the Deputy Commissioner of Police, East Division, Kolkata was directed to take necessary disciplinary action against the concerned Officer-in-Charge, Survey Park PS and a direction was also passed upon the concerned Officer-in-Charge, Survey Park PS to appear in person before the Court and file written show-cause as to why the necessary proceeding under penal provision of law shall not be initiated against him.

At the relevant point of time when the information was received by the police station regarding unauthorized

construction, there was no specific guidelines or procedures laid down for the police officers to take action in co-ordination with the Municipal authorities responsible for deciding unauthorized construction.

Pursuant to the direction passed by this Court on 04.10.2021, a Standard Of Procedure has been prepared in consultation with the police authorities represented by Deputy Commissioner of Police, Cyber Crime, Lalbazar, Kolkata and also the DYCE (C)/BLDG/South West Building Dept., Kolkata Municipal Corporation and both the government departments have agreed amongst themselves to adhere to the Procedures which are as follows :

“i. On an information of an unauthorized construction by a private person before an Officer-in-Charge of a Police Station, the concerned Officer-in-Charge, either by himself or by a Sub-Inspector of Police, who has been endorsed with the complaint, without any delay, will write to Executive Engineer (Civil), KMC of local borough having jurisdiction to let the police know if the construction alleged is unauthorized or not, as mentioned in section 588 (2) (i) KMC Act.

ii. The KMC authority, after receipt of information as mentioned in Sl. (i), will inspect said construction site without delay and submit a report to concerned Officer-in-Charge of the Police Station within 07 (seven) working days, stating if the construction is authorized or not.

iii. On getting a report from KMC authority that said construction is unauthorized, the Officer-in-Charge will direct a Sub-Inspector of the Police Station to register a case under provisions of KMC Act, treating the information alongwith KMC report as FIR and investigate the case.

iv. If the report of KMC authority does not reveal any unauthorized construction, then the information may be filed and diarised and private informant should be informed of the result within 07 (seven) working days.”

In view of the settled Procedures to be adopted and the fact that the police authorities are not the proper authorities to address on the issue of unauthorized construction which is within the domain of experts of the field and is to be decided by engineers associated with the Municipal authorities, I am of the opinion that the police authorities should not be saddled in the midst of a litigation for inaction for which they are not expert to decide. Henceforth, if the Procedures laid down above, are not followed, the concerned Officer would be held responsible for dereliction of duty.

Having regard to the steps taken and the Procedures so adopted, I am of the opinion that the police authorities particularly in this case the Officer-in-Charge, Survey Park Police Station, petitioner herein, should be given an opportunity and as such, the part of the order wherein the Deputy Commissioner of Police, East Division, Kolkata was asked to take disciplinary action against the petitioner herein

and also the part of the order which directed the petitioner to file written show-cause explaining as to why necessary proceeding under penal provision of law shall not be initiated against him for his dereliction/avoidance/neglect of duty and disobey/violation/breach of law is hereby set aside.

So far as the trial of the case is concerned, the same would proceed in accordance with law. The learned Senior Municipal Magistrate, Kolkata is directed to take the same to its logical conclusion and not to insist on appearance and filing written show cause by the petitioner.

With the aforesaid observations, the revisional application being CRR 352 of 2020 is allowed to the limited extent as stated above.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)