

30-11-2022
Subha
Item no.19
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 373 of 2021
With
CRAN 2 of 2021

Parwez Alam @ Md. Perwez Alam
-versus-
The State of West Bengal & Anr.

Re : An application under Section 482 read with Section 401 of the Cr.P.C.

Md. Zohaib Rauf
.....for the petitioner.

Mr. Saibal Bapuli, Id. APP,
Mr. Arijit Ganguly
Mr. Sanjib Kumar Dan
....for the State.

Affidavit of service so filed be kept with the record.

Mr. Rauf, learned advocate appearing for the petitioner submits that the petitioner without an opportunity of being heard had to sustain the charge which was framed by the learned Municipal Magistrate, 2nd Court, Calcutta.

The case is under Section 401A of the Kolkata Municipal Corporation Act, 1980 and the allegations against the present petitioner is that the present petitioner being the promoter /developer, erected one floor over G + 3 storied building without any sanction plan from Kolkata Municipal Corporation.

Mr. Arijit Ganguly, learned advocate appears for the State and opposes the contentions advanced by the learned advocate appearing for the petitioner.

Learned advocate appearing for the petitioner has also taken up a plea that the present petitioner happens to be the resident and he has been described as a promoter/developer.

I direct that in course of trial, the prosecution would be under a strict obligation to prove the petitioner to be a promoter/developer responsible for construction of the additional floor without any sanction plan.

If the petitioner is only a common resident of the building without being a promoter or developer and not involved in any construction of the illegal floor, then in that case he should not be saddled with such a liability of facing the consequences of sentence and fine.

Learned Municipal Magistrate would adhere to the aforesaid observations in course of the trial and independently arrive at a finding regarding complicity of the present petitioner.

With the aforesaid observations, the present revisional application being CRR 373 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

