

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 898 of 2022

Manmohan Lal Kapur & Anr.

-Vs-

The State of West Bengal & Anr.

For the Petitioners: Mr. Sandipan Ganguly, Sr. Adv.,
 Mr. S.D Majumdar, Adv.,
 Mr. Dipanjan Dutta, Adv.

For the State: Ms. Srayashee Biswas, Adv.

For the K.M.C: Mr. Goutam Dinda, Adv.,
 Mr. Anindya Sundar Chatterjee, Adv.

Heard on: 11th August, 2022.

Judgment on: 11th August, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioners have prayed for quashing of the proceedings in connection with M/F No.346 of 2016 (Criminal Misc. Case No.1308 of 2016), under Section 401A of the Kolkata Municipal Corporation Act, 1980, pending before the Court of the learned 3rd Municipal Magistrate Court, Calcutta, which arose out of Burrabazar Police Station Case No.228 dated 25th May, 2016 and all orders passed therein including the order dated 21st August, 2019 passed by the learned Municipal Magistrate, thereby arraigning the petitioner and others as co-accused

persons in the aforesaid case under the provision of Section 319 of the Code of Criminal Procedure and all consequential orders passed in the said proceeding including the orders dated 6th February, 2020 and 3rd March, 2020 suing warrant of arrest against the petitioners.

2. The factual background leading to the filing of the instant revision is succinctly narrated hereinbelow:-

3. The petitioners are the owners of the part of the building in question. The owners had leased out the property to a second party. The second party in turn sublet the said property to a third party. In view of certain constructions allegedly undertaken by the lessee/sub-lessee of the premises in question by way of raising temporary structure of mezzanine floor in one shop room in the disputed premises, the KMC Authorities found infractions of Building Rules under the Kolkata Municipal Corporation Act.

4. On the basis of a written complaint filed by the concerned officer of the Kolkata Municipal Corporation a police case being Burrabazar Police Station Case No.228 dated 25th May, 2016 was registered against the actual occupier/sub-lessee of the disputed premises under Section 401A of the Kolkata Municipal Corporation Act.

5. Following submission of charge-sheet, Case No.M/F 346 of 2016 was initiated against the occupiers. During trial, the witnesses on behalf of the prosecution were examined. After examination of all the witnesses, the learned Magistrate passed an order dated 21st August, 2019 holding, inter alia, that in the record of the Kolkata Municipal Corporation the

names of the petitioners along with others are recorded as occupiers/owners in respect of the disputed premises No.207, MG Road. It also appears in the record of the Corporation that M/s Mulidhar Tower Pvt. Ltd is the lessee under the petitioners. With the above finding, the learned Magistrate held that the recorded owners of the disputed premises have not been made accused in the case though they should be made co-accused as without the active knowledge of the recorded owner of the lesser or the lessee, no unauthorized construction could be undertaken at the premises by anybody. In view of such observation the learned Magistrate arraigned the petitioners as co-accused in the case as per the provision of Section 319(1) of the Code of Criminal Procedure.

6. Mr. Sandipan Ganguly, learned Senior Counsel on behalf of the petitioners submits that in view of the Constitution Bench decision in **Hardeep Singh vs. State of Punjab** reported in **(2014) 3 SCC 92**, the standard of proof employed for summoning a person as an accused under Section 319 of the Cr.P.C is higher than the standard of proof employed for framing a charge against an accused. The Hon'ble Supreme Court in **Hardeep Singh** observed as follows:-

“94.What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.”

7. Following the decision in **Hardeep Singh's** case, the Hon'ble Supreme Court in **Jogendra Yadav & Ors. vs. State of Bihar & Anr.** reported in **(2015) 9 SCC 244** was pleased to hold:-

“Thus, it does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.”

8. Mr. Ganguly has also referred to another decision in the case of **Periyasami & Ors. vs. S. Nallasamy** reported in **(2019) 4 SCC 342**.

Paragraph 10 of the aforesaid report is relevant and quoted below:-

“10. Learned counsel for the appellants relies upon a Constitution Bench judgment of this Court in *Hardeep Singh v. State of Punjab* to contend that satisfaction required to invoke the power under Section 319 of the Code to arraign an accused is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is only where strong and cogent evidence occurs against a person from the evidence laid before the court, such power should be exercised and not in a casual and cavalier manner. The Court held as under:

105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that

has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.PC. In Section 319 Cr.PC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”

9. The same principle is also laid down in a subsequent decision in the case of **Labhuji Amratji Thakor & Ors. vs. State of Gujarat & Anr.** reported in **(2019) 12 SCC 644**.

10. Mr. Ganguly next draws my attention to the evidence of PW5 Mukti Prakash Toong, who was posted as Sub-Assistant Engineer at Building Department, Br-IV and V of the Kolkata Municipal Corporation on 16th May, 2016. He inspected the spot as per direction of the Assistant Engineer. In his evidence he clearly stated that during investigation he found “only false ceiling work was done but mezzanine floor was not constructed. No building material testing done on the part of the corporation. Building was commercial but it is not mentioned in my report. No LBS, ESE supervision report submitted by the P/R in our office. Consequence of such unauthorized construction could not support

such consequences as mentioned in Section 401A of the K.M.C Act as only false ceiling was erected at the case premises.”

11. Thus, it is submitted by Mr. Ganguly that from the evidence of PW5 it is ascertained that no case is made out against the original accused persons who allegedly had taken out construction of a false ceiling in the disputed premises. Therefore, the petitioners cannot be roped under the provision of Section 319(1) of the Code of Criminal Procedure.

12. Mr. Goutom Dinda, learned Advocate for the Kolkata Municipal Corporation submits that the corporation has no objection if the proceeding is quashed as against the petitioners.

13. Ms. Sreyoshee Biswas, learned P.P-in-Charge has also supported the view of the learned Advocate for the Kolkata Municipal Corporation.

14. Having hearing the learned Counsels for the parties and on perusal of the impugned order dated 21st August, 2019 and also the subsequent orders passed against the petitioners, I am constrained to record that the learned Magistrate has indulged himself in roving enquiry against the petitioners. There is absolutely no evidence on record that lessees or sub-lessees of the disputed premises raised unauthorized construction in the premises with active knowledge, support and connivance of the recorded owners or the lessors i.e., the petitioners. This Court fails to understand as to how the learned Magistrate came to such finding in his order dated 21st August, 2019 when there is absolutely no evidence in this regard. A owner cannot be held liable for an unauthorized act of a tenant. Moreover, it is rightly pointed out by Mr. Ganguly that PW5 being the Sub-Assistant

Engineer of the Kolkata Municipal Corporation unequivocally stated that the specific act done by the lessee/sub-lessee of the disputed premises does not attract the penal provision under Section 401A of the Cr.P.C.

15. Thus, considering the materials annexed with the instant application and the ratio laid down by the Hon'ble Supreme Court in the case of **Hardeep Singh** (Supra) followed by the subsequent decisions mentioned above, this Court comes to an irresistible conclusion that the order dated 21st August, 2019 and all subsequent orders so far as it relates to the present petitioners are illegal, inoperative and abuse of the process of the court.

16. Accordingly the order dated 21st August, 2019 and all subsequent orders so far as it relates to the petitioners are set aside and the impugned proceeding being M/F No.346 of 2016 arising out of Criminal Misc Case No.1308 of 2016 is quashed as against the petitioners.

17. The instant revision is accordingly disposed of on contest.

(Bibek Chaudhuri, J.)