

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 2221 of 2019

With

CRAN 1 of 2020

Gautam Das

-vs-

The State of West Bengal & Ors.

For the Petitioner	: Mr. Sandip Ghosh Mr. Subroto Das Mr. Debayan Ghosh Mr. Aziz Amin
For the K.M.C.	: Mr. Gautam Dinda Mr. Anindya Sundar Chatterjee
For the State	: Mr. S.K. Mukherjee, Ld. PP Mr. Arijit Ganguly Mr. Sanjib Kumar Dan
Heard on	: 26.7.2022
Judgment on	: 29.07.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been preferred for quashing the charge-sheet being no. 305 of 2016 dated 31.12.2016 filed in connection with Beliaghata police station case no. 10 dated 5.1.2016 under Section 401A of the Kolkata Municipal Corporation Act 1980.

2. It has been contended by the petitioner that on or about 2.12.2015 the opposite party no. 2 lodged a complaint before the Officer-in-charge of the Beliaghata police station in connection with 43, Barwaritalla Road, Kolkata-700010 alleging certain unauthorised construction against the petitioner being the person responsible, in alleged violation of the sanctioned municipal building plan of the said premises being building plan no. 2014030029 dated 14.7.2014. Followed by the said complaint, concerned authority of the Kolkata municipal Corporation (hereinafter referred to as KMC) filed a case report in respect of such violation and/or deviation in connection with the construction of a partly four-storied and partly five storied building.

3. Prior to the said complaint, at the instance of the opposite party no. 2, a complaint was initiated under Section 400 (1) read with Section 416 followed a show cause notice under Section 416 (5) of the KMC Act in respect of the premises in question for alleged unauthorised construction being the deviation from the original sanctioned plan dated 14.7.2014 and show cause notice dated 17.3.2017 was served upon the petitioner in this regard. On the basis of a hearing which took place on 5.6.2017 the concerned authority of KMC was inter alia pleased to allow the petitioner to retain the construction along with change of user subject to submission of an affidavit declaring on oath that no construction whatsoever in the subject premises without prior sanction from the authority will be undertaken.

4. Following the direction contended in the said order dated 6.6.2017, the petitioner duly affirmed an affidavit dated 24.8.2017 and paid demanded

amount towards retention fees and/or regulation of unauthorised construction and for change of user being a sum of Rs. 19,13,747/- in favour of the KMC only after which the D-sketch plan was approved by the KMC.

5. In pursuance of aforesaid case report submitted by concerned authority, Beliaghata P.S. started aforesaid Beliaghata P.S. Case No. 10 dated 05.01.2016 and on 27.7.2018, a charge-sheet has been filed against the petitioner under Section 401A of the said act before the learned Metropolitan Magistrate although the charge-sheet appeared to have been prepared on 31.12.2016.

6. Mr. S. Ghosh, learned advocate for the petitioner submits that rule no. 26(2)(a) of the Kolkata Municipal Corporation Building Rules 2009 prescribes for sanction of the permitted deviation during execution of work and in accordance with the aforesaid rules the petitioner duly submitted a revised D-sketch plan before the concerned municipal authorities and upon due consideration of the said D-sketch plan on or about 24.10.2016, the same was sanctioned by the municipal authorities and it was made much prior to the date of submission of the charge-sheet before the learned Metropolitan Magistrate.

7. Mr. Ghosh, learned advocate for the petitioner further submits that in any event after the due sanction of D-sketch plan, no construction whatsoever was undertaken in the premises in question. In fact, the charge-sheet filed by the police authorities at the behest of the opposite party no. 2 has become redundant and the said police case cannot be permitted to be proceeded with in view of the aforesaid facts and circumstances of the case. He further

submits that there has been no continuance work of whatsoever nature in the premises in question beyond the scope and ambit of the revised D-sketch plan referred to above. Accordingly the said police case arising out of Beliaghata P.S. Case No. 10 dated 05.01.2016 and the proceeding on the basis of purported charge-sheet being no. 305/16 dated 31.12.2016 under Section 401(A) of the said act cannot be continued or placed for trial.

8. In this connection, Mr. Ghosh, learned advocate for the petitioner has drawn my attention to the charge-sheet wherefrom it appears that the charge-sheet was made ready on 31.12.2016 under Section 401A of the KMC Act but it was submitted before the court after expiry of more than one and half year i.e. on 27.7.2018. He has further drawn my attention to the order passed in demolition case no. 03-D/III/2017-18 dated 5.6.2017 by the concerned authority OSD (Building) of KMC of which ordering portion runs as follows:

“Considering all the available information and document placed with the file, statement of P.R. and keep due regards to the spirit of law, the structure constructed deviating from sanction plan as shown in D. Sketch is allowed to retain along with change of use (Short fall of car parking 4 nos.) subject to submission of affidavit declaring on oath that no construction what-so-ever in the impugned premises without prior sanction from the authority will be done. All the requisition of W.B.F and E.S. are to be complied as risk & cost of applicant/P.R. P.R. have to deposit the demand fees after due concurrence of authority within 30 days from the date of issue of order, failing which action for demolition will be taken on approval of authority, cost of demolition may be recovered from P.R. on approval of authority.”

9. He has further drawn my attention to annexure P-4 which is a money receipt granted by the KMC in favour of the petitioner amounting to Rs.19,13,747/-

10. In this connection Mr. Ghosh has also drawn my attention to proviso to Section 619A(1) of the KMC Act of which stipulates that no offence of the contravention of any condition subject to which sanction was accorded for the erection of any building or the execution of any work shall be cognizable if such contravention relates to any deviation from any plan of such erection or execution sanctioned by the municipal commissioner which is compoundable on payment of an amount under the rules and regulation relating to building under the said act and Section 621(1) of the Act provides that the municipal commissioner or any person authorized by him in this behalf may either before or after the institution of any proceedings compound any offence punishable by or under the said Act.

11. Learned advocate for the KMC concedes that in view of the aforesaid order passed by KMC in aforesaid Demolition Case No. 03-D/111/2017-18 and in view of the compliance of the said order by the petitioner, the proceeding under Section 401 under the KMC act is not tenable at this stage.

12. Having considered the facts and circumstances of the case and that after the charge-sheet got ready on 31.12.2016, the aforesaid hearing took place on 5.6.2017 before the officer on special duty in demolition case no. 03-D/III/2017-18 and on the basis of hearing in the said proceeding, the KMC authority allowed the deviation from sanctioned plan keeping the spirit of the law along with change of its user subject to submission of affidavit declaring on oath and also subject to deposit the demand fees and also considering the fact that in compliance of the said order, the petitioner deposited the said

amount of Rs. 19,13,747/- before the KMC authority on 24.8.2017 and also in view of the fact that the offence is compoundable in nature, I find that filing of the charge-sheet in the above backdrop before the court on 27.7.2018 i.e. after compliance of the aforesaid direction made by the KMC, has become redundant and it would be a mere abuse of the process of the court, if the present proceeding is allowed to be continued, as there is no chance of conviction of the petitioner in view of aforesaid facts and circumstance of the case.

13. In view of the above CRR 2221 of 2019 is allowed.

14. The application being CRAN 1 of 2020 is also disposed of.

15. Let all further proceedings in connection with Beliaghata police station case no. 10 dated 5.1.2016 under Section 401A of the Kolkata Municipal Corporation Act 1980 is hereby quashed.

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

(AJAY KUMAR MUKHERJEE, J.)