

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1570 OF 2017

Jasmine Mahendrabhai Jani ...Petitioner
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. Milind Gyani, Advocate for Petitioner.
Mr. Kunal Waghmare, Advocate for MCGM.
Mr. Arfan Sait, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 14th SEPTEMBER, 2022.

P.C. :-

1. The Petitioner is prosecuted for an offence under Section 347-C of Mumbai Municipal Corporation Act (for short 'M.M.C. Act'). The complaint was filed before the Court of learned Metropolitan Magistrate 55th Court, Vile Parle, Mumbai which was numbered as C.C. No.18319/SS/2015. The complaint was filed through Junior Law Officer of Mumbai Municipal Corporation. On the same day process was issued against the Accused vide order dated 30th November, 2015.

2. The brief allegations in the complaint are that on 10th June, 2015 inspection and examination of the premises was conducted by Junior Engineer which is owned by the Accused. It was found that unauthorized additions and alterations were made

in existing structure and thereby contravened provisions of Section 347-C of M.M.C. Act. Notice was issued to the Accused and they were called upon to reinstate the structure to its origin. The notice was served on 3rd August, 2015. The Junior Engineer again inspected and examined the premises on 26th September, 2015 when it was found that the Accused have failed to comply the requisition lawfully made upon them under Section 347-C and punishable under Section 471 of the said Act.

3. The Petitioner challenged the proceedings before the Sessions Court by preferring Revision Application No.6 of 2016. Vide order dated 18th February, 2017 revision application was dismissed and order dated 30th November, 2015 issuing process by the Metropolitan Magistrate was maintained.

4. Learned Advocate for the Petitioner submitted that the complaint was barred by the law of limitation. The order issuing process was passed without application of mind. Section 347-C is not applicable. The learned Sessions Judge has rejected the revision application without appreciating the legal issues urged by the Petitioner.

5. The Respondent Nos. 2 and 3 has filed affidavit-in-reply

dated 2nd December, 2017. The Petitioner has filed rejoinder to the affidavit-in-reply.

6. Learned Advocate for Respondent Nos. 2 and 3 submitted that, the complaint makes out the the offence under Section 471 r/w Section 347-C of M.M.C. Act. The complaint was filed within limitation. Inspite of opportunity given to the Accused by issuing notice the requisition was not complied by them. The complaint is not barred by law of limitation. The learned Sessions Judge has rejected the revision application with reasons does not call for any interference. The defence of the Accused cannot be accepted at this stage. On 26th September, 2015 the designated officer confirmed the non-compliance of the notice on 25th July, 2015 and thereafter lodged the complaint 30th November, 2015 and the complaint was filed within a period of three months as required under Section 514 of M.M.C. Act.

7. One of the contention of the Petitioner is that the complaint was filed beyond the limitation prescribed by Section 514-C of M.MC. Act. In the affidavit-in-reply filed by the Respondents it is stated that the knowledge of amalgamation without permission was gathered by M.C.G.M on 10th June, 2015 upon taking inspection. The complaint was filed on 13th November,

2015 which is after a period of more than five and half months from date of knowledge which is beyond the period of limitation. This Court in the case of *Jayashree Chandrakatn Sangoi V/s. D.P. Mokashi passed in Criminal Writ Petition No.1478 of 1991* has dealt the similar issue wherein it was contended on behalf of the Accused that the prosecution is barred in view of Section 514-C of the Bombay Municipal Corporation Act, 1888. As per the said provision the prosecution has been launched within three months after the commission of the offence. This Court had observed that there is not provision in the Act that before launching the prosecution for the offence committed under Section 353-A or notice should be issued in fairness notice was issued by the Corporation but that does not extend the statutory limit prescribed by the Act and that cannot be set up by the defence for sustaining the prosecution which is filed beyond three months. Whereas, learned counsel for the Respondent relied upon the decision of this Court in the case of *C.R. Ramkrishna Pillai & Others V/s. Municipal Commissioner and another* wherein it was observed that continued occupation of building without obtaining completion certificate is continuing offence and the prosecution for that within three months of last date of occupation is proper.

8. The decision relied upon learned counsel for the Respondent is delivered in different context. In the present case the Respondents had knowledge about the contravention on 10th June, 2015 and the complaint was filed on 30th November, 2015. Complaint is barred by limitation. It is also pertinent to note that the learned Magistrate had mechanically issued the process which reflects complete non-application of mind. Considering the aforesaid circumstances, the order issuing process and proceedings are required to be quashed and set aside.

ORDER

- i. The order issuing process dated 30th November, 2015 passed by learned Metropolitan Magistrate 55th Court, Vile Parle, Mumbai in Criminal Case No.18319/SS/2015, and order dated 18th February, 2017 passed by Additional Sessions Judge, City Sessions Court, Borivali Division, Dindoshi, Mumbai rejecting Criminal Revision Application No.6 of 2016 and proceedings in C.C. No.18319/SS/2015 are quashed and set aside;
- ii. The writ petition is allowed in above terms and stands disposed off.

[PRAKASH D. NAIK, J.]