

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 137 of 2019

Vikas Sharma @ Vikash Kumar Sharma & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners

: Mr. Sandipan Ganguly,
Mr. Navanil Dey,
Mr. Diprav Deb.

For the K.M.C.

: Mr. Goutam Dinda,
Mr. Anindya Sundar Chatterjee.

For the State

: Ms. Shreyashee Biswas.

Heard on

: 17.01.2023

Judgment on

: 10.02.2023

Shampa Dutt (Paul), J.:

The present revisional application has been preferred against judgment and order dated December 21, 2018 passed by the Learned Judge, Bench – I, City Sessions Court, Calcutta affirming thereby the Judgment and Order dated January 24, 2017 passed by the Learned Municipal Magistrate, 3rd Court, Calcutta thereby convicting the petitioners under Section 401A of the Kolkata Municipal Corporation Act and sentencing them to suffer Simple Imprisonment for a period of 6(Six) months and to pay a fine of Rs. 5,000/- each in default to suffer further simple imprisonment for 1(One) month each in connection with Case No. M/F 219 of 2015 under Section 401A of the Kolkata Municipal Corporation Act, 1980.

The petitioner's case is that an Agreement of Sub-Lease dated September 01, 1999 was executed between the Jagadhatri Properties and Investments Private Limited, a company incorporated under the Companies Act, 1956, having its registered office as 23A, Netaji Subhas Road, Kolkata and the father of the petitioners namely, Late Ramlot Sharma, sole Proprietor of Bharat Plastic Industries, a merchant. As such the father of the petitioners by way of such execution became the sub-lessee of 1060 sq. ft. of area in the first floor of the premises no. 12, Armenian Street, Kolkata – 700 001 also numbered as 10/1, Portugese Church Street.

That as per Clause 2(II) of the said Agreement of Sub-Lease dated September 01, 1999 it was mentioned therein that out of the total 1600 sq. ft. of the lease area 800 sq. ft. is damaged with roof having fallen down and iron beams were rested on the walls and few more iron beams were to be placed and/or replaced. It was further mentioned therein that until the said portion is repaired and/or reconstructed with permanent covering the Sub-Lessee may cover it with tin and/or asbestos shed.

The petitioners state that they were arraigned as accused persons in connection with Burrabazar Police Station Case No. 365 dated June 12, 2015 under Section 401A of the Kolkata Municipal Corporation Act.

One Chanchal Kumar Dutta being the Assistant Engineer (Civil), Building Department, Borough – V, Kolkata Municipal Corporation lodged an FIR before the Burrabazar Police Station alleging inter alia that the petitioners have **constructed brick wall** and have fixed CI Sheets over the 1st floor roof level of 12,, Armenian Street, Kolkata **without any sanctioned plan** of Kolkata Municipal Corporation. Such Construction may collapse at any time and is endangered to human life.

That pursuant to the above mentioned FIR a case was started against the petitioners being M.F. Case No. 219 of 2015 under Section 401A of the Kolkata Municipal Corporation Act before the Court of the

Learned Municipal Magistrate, Calcutta and Judicial Magistrate, First Class outside Metropolitan Area.

After completion of the investigation the Investigating Agency submitted charge sheet vide Charge Sheet No. 06 dated January 25, 2016 under Section 401A of the Kolkata Municipal Corporation Act against the petitioners.

After commitment of the case, Charge under Section 401A of the Kolkata Municipality Act, 1980 was framed against the petitioners.

The charge were read over and explained to the petitioners to which they pleaded not guilty and claimed to be tried.

The Learned Municipal Magistrate, 3rd Court, Calcutta on completion of trial on January 24, 2017 convicted the petitioners under Section 401A of the Kolkata Municipal Corporation Act and sentenced them to suffer Simple Imprisonment for a period of 6 (Six) months and to pay a fine of Rs. 5,000/- each in default to suffer further simple imprisonment for 1 (One) month each in connection with Case No. M/F 219 of 2015 under Section 401A of the Kolkata Municipal Corporation Act, 1980.

Challenging the aforesaid Judgment and Order, the petitioner preferred a criminal revisional application before this Hon'ble Court vide CRR No. 371 of 2017 when His Lordship Hon'ble Justice Joymalya

Bagchi was pleased to dismiss the petition on non maintainability ground as the impugned order of conviction and sentence was an appealable one.

The petitioners then preferred a Criminal Appeal being Criminal Appeal No. 16 of 2017 before the Court of the Learned Judge, Bench-I, City Sessions Court, Calcutta.

The Learned Judge, Bench-I, City Sessions Court, Calcutta in Criminal Appeal No. 16 of 2017 **upheld the Order** of Conviction and Sentence passed by the Learned Municipal Magistrate, 3rd Court, Calcutta on January 24, 2017.

Mr. Sandipan Ganguly, learned counsel for the petitioner has submitted that the impugned order is bad in law as the both the Learned Courts failed to appreciate the version of P.W 2 namely, Purnendu Roy, Constable Lalbazar Photography Section (DD).

The impugned order requires the interference of this Hon'ble Court as the both the Learned Courts have not taken into consideration that P.W. 3 namely, Prakash Singh being the resident of the same premises has not corroborated the contents of the FIR. Moreover he has deposed in his Cross-examination that there is no illegal construction as alleged by the complainant and thus the entire impugned judgment is liable to be struck down by this Hon'ble Court.

That, both the Learned Courts acted purportedly as the deposition of P.W. 7 namely, Mukti Prakash Toong, SAE of the Building Department, Borough – V of Kolkata Municipal Corporation stated in his Cross-examination that he has no documents to prove a connection of the petitioners with the alleged unauthorised construction. As such it would be just and proper to set aside and/or quash the impugned order affirming thereby the order of conviction and sentence to prevent the abuse of the process of the court.

The only intention of the complainant is to wreck vengeance against the petitioners without any iota of materials.

The purported allegations even if they are taken at their face value and accepted in its entirety then also it does not make out any offence against the petitioner.

Both the Learned Courts failed to appreciate the fact that though P.W. 6 in his examination in chief has stated that the building in dispute is a century old building owned by the Rajputana Trading Company Private Limited. He was the representative of the said company. But in his cross examination he failed to file any authorization letter on behalf of the said company. Such failure goes to show about the mal-intention of the deponent only for harassing the petitioners and for evicting them taking a different way.

The conviction of the petitioners by the Learned Courts under Section 401A of the Kolkata Municipal Act is bad in law and is liable to be set aside by this Hon'ble Court.

Mt. Goutam Dinda learned counsel for the Kolkata Municipal Corporation has filed a report submitted by the executive Engineer of the corporation where in it has been stated that the unauthorized construction in this case has been demolished and at present there is no unauthorized construction on the roof of the premises in this case.

Ms. Shreyashee Biswas learned counsel for the State is also present.

Mr. Ganguly has relied upon the following rulings in support of his submission on behalf of the petitioner.

1. *Majjal vs State of Haryana, Criminal Appeal No. 818 of 2013, (2013) 6 SCC 798, on July 2, 2013.*

“6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two

short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order."

**2. Ananya Mukherjee vs The State of West Bengal & Anr.,
CRR 3859 of 2013, on 05.03.2014.**

It is the further contention of Mr. Ganguly that the judgment under revision is not a speaking order nor is it a reasoned judgment and as such the same being not in accordance with law is liable to be set aside in the interest of Justice.

Heard the learned counsels for both sides and the state. Perused the materials on record. Considered.

Section 401A of the Kolkata Municipal Corporation Act is as

follows:-

“[401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.- (1)

Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person who being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act, or the rules made thereunder as endangers or is likely to endanger human life, or any property of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees.

Explanation.--"Person" shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid.

(2) The offence under sub-section (1) shall be cognizable and non-bailable, within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Where an offence under sub-section (1) has been committed by a company, the provisions of section 619 shall apply to such company.

Explanation.--"Company" shall have the same meaning as in the Explanation to section 619].”

The evidence of PW 4 Chanchal Kumar Dutta the Assistant Engineer who deposed is as follows:-

“On 08.06.2015 I was posted as AE building department, Br. IV and V. On that very date one complaint was lodged by me to Burrobazar P.S. for unauthorized construction at 12 Aminuam Street against Bikash Sharma and Satyadeo. This is the said complaint, bears my signature, marked as Ext-4. One case report of SAE namely Mukti Prasad Toong was attached with the same. On 03.03.2015 my SAE namely Mukti Prasad Toong on the basis of telephonic complaint visited case premises land found construction of brick wall and fixing of C.I. shutter over of 1st floor roof level. On demand petitioner failed to show any valid document. SAE issued stop work notice. I informed the matter to local P.S. On further inspection dated 08.06.2015 SAE again visited P.O. and found continuation of work defying stop “work” notice. Thereafter I lodged the complaint.”

Though this witness did not visit the premises, the conduct of the petitioners is a matter of record.

Charge Sheet was filed on the basis of prima facie materials against the petitioners.

It is also found that evidence recorded by the trial court is clearly against the petitioner. All the witnesses have corroborated the case of the corporation authorities that the petitioners clearly made unauthorized construction on a very old tenanted premises in a very congested area. And in spite of notice to stop the work the petitioners defied the same and did not stop work of the unauthorized construction.

The Learned Magistrate considering the materials on record and the evidence rightly convicted the petitioners.

The Learned counsel for the state has stressed upon the evidence of PW 6 from where it is evident that in the year 1974 a portion of the same building had collapsed in which 5 persons were killed. The report of the then city architect and Municipal Commissioner submitted in the WRIT petition being no. 2 of 1974 challenging the summary demolition order is a matter of record.

The Supreme Court relying upon several precedents held in **Dipak Kumar Mukherjee Vs Kolkata Municipal Corporation & Ors., in Civil Appeal No. 7356 of 2012 on 8 October, 2012,** is as follows:-

“8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when

he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

27.....*It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.”*

In the present case it's a matter of record that in 1974 a portion of the same premises had collapsed killings five people. In spite of the said sad history and the condition of the building, without any sanctioned plan the petitioners defied the authorities and made

unauthorized construction and in spite of being asked to demolish the same continued with the unauthorized work.

Presently, it is submitted by the Kolkata Municipal Corporation that the illegal construction has been demolished and removed and at present there is no unauthorized construction, even so the fact remains that the petitioners had defied the authorities and carried out work which not only endangered the property but also life of persons living in and around the premises. Innocent people who are totally helpless against such high handedness which is in total disregard of their basic rights.

As such the interest of Justice requires that the people who could be victims in such cases are protected and an abuse of the process of the court/law is not allowed.

In the present case, there is sufficient evidence on record which proves that the petitioners have committed the offence in this case.

And it is apparent from the judgments that on due consideration the trial court and the appellate rightly decided the case.

But considering the fact that now that authorized construction has been totally removed and there is no unauthorized construction at present, the judgment and order dated December 21, 2018 passed by Learned Judge, Bench-I, City Sessions Court, Calcutta in Criminal

Appeal No. 16 of 2017 and the judgment and order dated January 24, 2017 passed by the Learned Municipal Magistrate, 3rd Court, Calcutta in M/F 219 of 2015, Registration No. 86809 of 2015, affirmed by the appellate court, **is modified** to the following extent:-

The substantive sentence of imprisonment is reduced till rising of the court and the fine imposed is enhanced to Rs. 50,000/- (fifty thousand only) in default to suffer simple imprisonment for two months.

The petitioners will surrender before the court of the Learned Magistrate within 30 days from the date of this order and judgment to serve out the sentence and pay the fine to the extent modified by this court in default will serve out the sentence in default of payment of fine.

CRR 137 of 2019 is accordingly disposed of.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)