

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 720 of 2021

Shaikh Naru

-vs.-

The State of West Bengal & Anr.

Mr. Ayan Bhattacharjee,
Mr. Soumava Mukherjee,
Md. Zohaib Rauf.

...For the Petitioner

Mr. Swapan Banerjee,
Ms. Purnima Ghosh.

...For the State

Mr. Anindya Sundar Chatterjee,
Mr. Goutam Dinda.

...For the K.M.C

Reserved on : 22.12.2022

Judgment on : 09.02.2023

Tirthankar Ghosh, J:-

The present revisional application has been preferred for quashing of the charge-sheet no 191 of 2018 dated 14.11.2018 as also the orders passed therein by the Learned Senior Municipal Magistrate, Kolkata under Section 401A of the Kolkata Municipal Corporation Act, 1980 which arose out of New Alipore Police Station case no. 99 dated 04.05.2018.

The allegation made in the charge-sheet were to the effect that on or before 11.12.2017 the accused person being the person responsible has committed an unauthorised construction without having any proper sanction plan from KMC Authority which may endanger human life and safety to the other adjoining property as well as cause disruption in respect of fire, drainage, traffic and water supply at premises 23A/49B DH Road, Kolkata-53, within the jurisdiction of New Alipore Police Station. In course of investigation photograph, real sketch map and relevant witnesses were examined and on conclusion of investigation a case under Section 401A of the KMC Act having been made out, charge-sheet was submitted against the petitioner being the person responsible for the offence.

Mr. Ayan Bhattacharjee, learned Advocate appearing for the petitioner referred to the documents enclosed along with revisional application and submitted that the present petitioner happens to be a hair stylist who intended to open a saloon and came across a demarcated ground floor space measuring around 800 Sq. Feet at premises No. 23A/49B DH Road which was running a coaching centre and whose tenancy was to be terminated on or about March, 2017. The petitioner checked the tenancy documents of the erstwhile tenants, commercial property tax receipts, inspection books in relation to the property, trade licenses of the erstwhile tenants which reflected long standing commercial usage and consented to execute a license agreement with the owner in terms of which he was not allowed to carry any construction activity except interior decoration on 24th May, 2017. The petitioner carried interior

wooden carpentry work which are approved terms as per Rule 3(2) of the Building Rules and also KMC Circular (DG Building Circular no. 9 of 2013-2014) for which no permission is required. It has been contended that the certificate of Enlistment being no. CE No. 00150402 was issued by KMC to run a saloon under the name of 'Twist Beauty Lounge' was renewed from time to time. It has been contended that a saloon is permitted business as per entry no. xxxi of Schedule VA of Section 435A of the KMC Act which permits non-residential use of residential premises on payment of prescribed fees. Learned Advocate contends that in the month of May/June, 2017 petitioner faced resistance from local councillor and as such the business could not commence and immediately was postponed. Various representations were made to KMC authorities as well as police authority seeking cooperation. On or about 09.12.2017 a complaint was filed against the petitioner alleging change of use of ground floor of premises from residential to commercial by a third party which led to the genesis of entire proceedings and subsequently on 11.12.2017 stop work notice was issued under Section 401 of KMC Act and the same was issued at a time when no work has been carried out and it was closed. The petitioner replied to the stop work notice on or about 02.05.2018 and the saloon resumed operation, consequently on 04.05.2018 FIR was registered under Section 401A of the KMC Act against the petitioner alleging illegal construction in the month of December, 2017. Learned Advocate argued that the ground floor of the existing building cannot be subject matter of the proceedings under Section 401A of the KMC Act as the same primarily pertains

to construction of new building and/or additional floor. By referring to the relevant provision learned advocate emphasised that the interior works cannot be classified as construction within the meaning of Chapter XXII of the KMC Act, 1980, which has been clarified in terms of Municipal Circular No.1 of 2019-2020. Learned Advocate referred to the document in its Circular and reiterated that there has been no un-authorized construction or any construction activity and there is nothing to suggest that there has been any threat of life or disruption relating to water supply, drainage or sewerage and possibility of any traffic disruption or fire hazard. The entire proceedings are malicious and malafide and the same as such should be quashed.

Mr. Goutam Dinda, learned Advocate appearing for the Kolkata Municipal Corporation submitted that the petitioner made unauthorized construction by making addition/alteration in the ground floor and also the change of use of the said building which is strictly prohibited under the KMC Act. Learned Advocate relied upon the sketch of the Map and submitted that there is unauthorized partition wall in the said premises, as well as unauthorized asbestos shed which is adjacent to the building. Whether the petitioner herein made the unauthorized construction or not is the subject matter of trial. Learned Advocate submitted that if it is found that in case Section 401A of the KMC Act is not applicable then at the end of the trial the provisions of Section 619(A) of the KMC Act can be invoked. Learned Advocate emphasized that the petitioner has approached this Court at a prematured stage based on documents for changing the facts of the case. The same cannot

be a subject matter of consideration at this stage when charge is yet to be framed by the trial Court.

Mr. Swapan Banerjee, learned Advocate appearing for the State submitted that investigation has revealed that petitioner is involved in unauthorized construction and as such no interference can be made by this Court.

I have considered the submissions advanced by the learned Advocate appearing for the petitioner, the KMC Authority as well as that of the State. While the learned Advocate for the petitioner has contended that variation in the interior of the premises do not come within the purview of unauthorized construction or additional construction being made, on the other hand State has contended that adjacent to the ground floor as the unauthorized asbestos shed has been constructed which by all probability can cause traffic hazard, sewerage/drainage disruption as also fire hazard the same constitutes an offence under Section 401A of the KMC Act. The plea of the petitioner that he is not responsible for the unauthorized construction is a question of fact and the same cannot be adjudicated at this stage.

In view of the aforesaid no interference is called for in the revisional application.

Accordingly, CRR 720 of 2021 is dismissed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

Subsequently, learned Senior Municipal Magistrate, Kolkata is directed to proceed with the trial of the case.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)