

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 735 of 2015

Anil Kumar Banerjee

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Sandipan Ganguly, Adv.

Mr. Debapratim Guha Adv.

Ms. Anchita Sarkar, Adv.

For the K.M.C

:Goutam Dinda, Adv.

Mr. A.S. Chatterjee, Adv.

For the State

:Mr. Narayan Prasad Agarwala, Adv.

Mr. Patick Bose, Adv.

Heard on

:20.06.2023, 20.07.2023, 17.08.2023,
25.08.2023, 04.09.2023, 22.09.2023

Judgment on

: 17th October, 2023

Bibhas Ranjan De, J.

- 1.** This revision application has been filed with a prayer for quashing of the proceeding in connection with the charge sheet being no. 263/14 dated 25.09.2014 pending before the Ld. Metropolitan Magistrate, Calcutta & Judicial Magistrate, 1st Class outside Metropolitan area, arising out of Park Street Police Station Case no. 584 dated 13.11.2013 under Section 401A of the Kolkata Municipal Corporation Act (for short K.M.C).
- 2.** A letter of complaint was lodged by the opposite party no. 2, Samir Baran Das, Assistant Engineer (civil), Building K.M.C., Borough-VII against Abdul Razzaque, Anil Banerjee (petitioner) and others alleging, inter alia, that an unauthorized construction was made at the roof top of the five storied building (G+4) situated at premises no. 40/1, Rafi Ahmed Kidwai Road, Kolkata 700016 by the above mentioned accused persons.
- 3.** The unauthorized construction at the rooftop of the G+4 storied building was made with tin shed and brick wall, endangering human life, water supply, drainage, sewerage, road traffic and was also likely to cause fire hazard at the said

premises of the building and also no permission of K.M.C. was taken before the said construction which violated section 401A of the K.M.C Act.

- 4.** Learned senior advocate Mr. Sandipan Ganguly appearing on behalf of the petitioner has submitted that petitioner is a developer who entered into an agreement with the owner of the premises no. 40/1, Rafi Ahmed Kidwai Road, Kolkata 700016 for construction of a five storied building (G+4). Accordingly, petitioner constructed the said building and sold out the flats according to the shares mutually decided in terms of agreement. Mr. Ganguly, has further submitted that both the developer and owner sold out the entire roof right by two deeds of conveyance to two different individuals to the extent of 50% each prior to lodging of complaint.
- 5.** Before parting with, Mr. Ganguly has submitted that there is no mentioning of any construction on the roof in any of the deeds executed by the petitioner and owner of the said premises.
- 6.** Ld. Advocate, Mr. Goutam Dinda appearing on behalf of the K.M.C has submitted that the complaint was lodged on the basis of report of inspection of the premises held by Sub

Assistant Engineer (c)/ Building attached to K.M.C who noticed an unauthorized construction on the roof top.

- 7.** Ld. Advocate, Mr. Narayan Prasad Agarwala, appearing on behalf of the State has relied on the materials collected during investigation and submitted that the deeds of conveyance regarding roof right referred to on behalf of the petitioner were executed in violation of the order passed by State Consumer Dispute Redressal Commission.
- 8.** It appears from the record as well as case diary that complaint was investigated and charge sheet was submitted against the petitioner. From the case diary, it appears that State Consumer Dispute Redressal Commission passed an order promulgating injunction on 06.06.2012 and order was challenged before National Consumer Dispute Redressal Commission where the parties were directed to maintain status quo and for not creating any third party right on 22.11.2012.
- 9.** Here I am not dealing with any act in violation of order passed by Dispute Redressal Commission. In case of any violation of order of commission, parties are at liberty to take necessary action before the commission.

- 10.** In this case, I am concerned with the liability of illegal construction within the meaning of Section 401A of K.M.C Act.
- 11.** It is not disputed that deed of conveyance executed by the petitioner and owner of the premises were collected during investigation. On careful perusal of the schedule of the deed it comes to my view that entire roof right was sold by the petitioner and owner of the premises to the extent of 50% to two different individuals. There is nothing mentioned about any structure in the schedule of the deeds. Therefore, by no stretch of imagination I can hold that petitioner is involved in any unauthorized construction.
- 12.** It is now settled that where allegation made in the complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, the power under Section 482 of CrPC can be exercised to prevent abuse of process of court or otherwise to secure the ends of justice.
- 13.** In this case, two deeds collected during investigation clearly spells out a fact that entire roof right without any kind of construction was sold out by the petitioner. Therefore, I have no hesitation to hold that the proceeding in connection

with charge sheet being no. 263/14 dated 25/09/2014 is liable to be quashed in connection with the petitioner **only**.

14. With the aforesaid observation, the revision application being no. CRR 735 of 2015 stands allowed.
15. Interim order, if there be any, stands vacated.
16. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
17. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]