

10-01-2023
Subha
Item no. 55
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 1828 of 2021

Navneet Joshi @ Naveet Joshi
-versus-
The State of West Bengal & Anr.

Re : An application under Section 482 read with S.397 of the Code of Criminal Procedure.

Mr. Anirban Dutta
Mr. Sayantan Sinha
Mr. Aditya Roy
....for the petitioner.

Mr. Goutam Dinda
Mr. Anindya Sundar Chatterjee
....for the K.M. C.

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta
....for the State.

The present revisional application has been preferred challenging the proceedings of Hare Street P. S. Case No. 436 of 2016 dated 05.08.2016 under Section 401A of the Kolkata Municipal Act pending before the learned Municipal Magistrate, 2nd Court, Calcutta.

Learned advocate for the petitioner submits that earlier in respect of the same premises, Hare street Police Station Case No. 280 dated 16.05.2016 was registered for investigation under Section 401A of the K.M.C Act.

Attention of the court was drawn to the brief facts of the case in the chargesheet so submitted in connection with the earlier case to the extent that the present accused persons were involved in unauthorized construction of wooden mezzanine floor and partition of

walls of northern portion of premises no. 7, Red Cross Place, Kolkata – 1 without any sanctioned plan under the K. M. C Act and Rules.

It was alleged that there was every probability of endangering human life as the building may collapse because of such construction. The learned Magistrate after conducting the trial in the said case held the present petitioners to be not guilty of the offence punishable under Section 401A of the K.M.C Act and acquitted them of the charges. The certified copy of the said case being MF – 1143 of 2016 be kept with the record.

It has been contended that the chargesheet in connection with Hare Street P. S. Case No. 436 of 2016 dated 05.08.2016 would reveal that in respect of the same building i. e., 7, Red Cross Place, Kolkata – 1 at third floor it has been alleged that additional work of wooden mezzanine floor and partition walls were being constructed in violation of Section 401A of the K.M.C Act.

Having regard to the nature of the allegations in both the cases, I am of the view that the principle of test of sameness is satisfied in the present case. Hare Street P. S. Case No. 280 dated 16.05.2016 and Hare Street P. S. case No. 436 of 2016 dated 05.08.2016 is one and the same. As such, the subsequent proceedings being Hare Street P. S. Case No. 436 of 2016 dated 05.08.2016 is an abuse of the process of the court and the continuance of the same would result in miscarriage of justice.

Thus, all further proceedings arising out of Hare Street P. S. Case No. 436 of 2016 dated 05.08.2016 including the order dated 10.02.2021 is hereby quashed.

Consequently, the present revisional application being CRR **1828 of 2021** is **allowed**.

. Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]