

17.02.2023

Item No.5
Ct.No.34
dc.

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

C.R.R. 2498 of 2021

**Prithwiraj Ghosh & Another
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Kallol Kumar Basu,
Mr. Kaushik Kundu,
Mr. Mrinal Das,
Mr. Raja Adhikary,
Md. Jannat ... For the Petitioners.

Md. Anwar Hossain,
Ms. Sreyashee Biswas ... For the State.

Mr. Goutam Dinda,
Mr. Anindyasundar Chatterjee ... For the K.M.C.

The subject-matter of challenge in the present revisional application relates to Rabindra Sarobar Police Station Case No. 136 of 2018 dated 21.07.2018 under Section 401(A) of the KMC Act, 1980 and the order No. 21 dated 18.11.2021 passed by learned Senior Municipal Magistrate, Kolkata in Case No. 1049 of 2018 wherein the learned Senior Municipal Magistrate was pleased to dismiss the prayer for discharge advanced by the petitioners under Section 239 of the Code of Criminal Procedure.

The present petitioners viz. Prithwiraj Ghosh and Anjan Ukil were implicated in the aforesaid case pursuant to the charge-sheet filed against them by the investigating officer on or about 31.03.2021.

The petitioner no.1 is a Structural Engineer and the petitioner no.2 is a Licensed Building Architect.

The present case was initiated on the basis of a complaint filed by Assistant Engineer(C)/Bldg./Br.VIII with the Officer-in-Charge, Rabindra Sarobar Police Station on 07.07.2018 in respect of Premises No. P-387, Hemanta Mukhopadhyay Sarani, Ward No. 86, Borough-VIII. It was alleged that one Soumyajit Gupta was constructing a building in the aforesaid premises without any sanctioned plan. Such construction, if allowed to stand, according to the engineer/complainant, it may collapse at any date endangering human life and water supply, drainage sewerage or the road or the road traffic and may cause fire hazard. As such, it was prayed for registering FIR under Section 401A of the KMC Act, 1980.

On conclusion of investigation, charge-sheet was submitted by the investigating officer against the present petitioners and the others before the jurisdictional court.

The present petitioners filed an application under Section 239 of the Code of Criminal Procedure praying for discharging them in view of the nature of the service rendered by them. The learned Senior Municipal Magistrate, Kolkata rejected the same by its order dated 18.11.2021 and fixed the next date for framing of charges.

It was submitted by the petitioners that they have been informed that the property being P-387, Hemanta Mukhopadhyay Sarani, Ward No. 86, Borough-VIII which was alleged to have an illegal construction had been regularised by the KMC authorities. Accordingly, a report was called for by this Court to ascertain and justify the contentions and as

such, the KMC authorities by an order dated 02.01.2023 passed by this Court was directed to submit a report. On 18.01.2023, a report was submitted on behalf of the KMC authorities that an additional floor over sanctioned G+IV storied residential building which was constructed in deviation from the sanctioned plan vide B.P. No. 2015080001 dated 02.04.2015 has by an order been regularised by the Special Officer (Building) on 17.08.2022 and subsequently approved in Mayor-in-Council meeting vide Item No. M-18.14 dated 26.11.2022. The requisite fees for retention charges of the said unauthorised construction have been deposited by the owner of the said property.

This Court by its order dated 18.01.2023 directed the Executive Engineer, Br.VIII (Building Department) to produce the file relating to the order passed by the Special Officer (Building) in connection with Premises No. P-387, Hemanta Mukhopadhyay Sarani, Ward No. 86, Borough-VIII. The said file was produced before this Court on 31.01.2023 and it was found that on the basis of structural stability certificate issued by the Structural Engineer, the Special Officer (Building) was pleased to pass its order dated 17.08.2022 which was subsequently approved by the Mayor-in-Council. By further order dated 31.01.2023, this Court directed the KMC authorities to frame a guideline for cases where they have for unauthorised construction informed the police authorities for invoking the powers under Section 401A of the KMC Act and a decision was taken for initiating demolition case. This court further directed that wherever there has been

regularisation, there must be a guideline of the KMC authorities wherein the structure is regularised pursuant to a structural stability certificate issued by structural engineers.

On 16.02.2023 a report has been submitted before this Court which reflects a resolution being adopted by the Members, Mayor-in-Council which is quoted below :

“The Members of the Committee suggested that in a particular case where any unauthorized construction was regularized upon payment of fees and charges u/s 400(1) of the KMC Act, 1980, the criminal proceedings pending for violation before the same is regularized, initiative be taken to compound the cases in terms of KMC Act, 1980 so that the principle of ‘double jeopardy’ is avoided.”

The said report also reflects that an office order being No. 03 of 2020-2021 dated 04.02.2021 has been directed to be issued by all the Executive Engineer (C)/Building of Borough I to XVI for furnishing the premises numbers.

Having considered the present nature of the case and the policy adopted by the KMC authorities along with the fact the locus of the present petitioners who are the Structural Engineer and the Licensed Building Architect and are professionals who cannot be beneficiaries in respect of the subject property, I am of the opinion that further continuance of the proceedings under the changed circumstances would be an abuse of the process of law which would result in miscarriage of justice.

Accordingly, all further proceedings arising out of Rabindra Sarobar Police Station Case No. 136 of 2018 dated

21.07.2018 as also the Case No. 1049 of 2018 pending before the learned Senior Municipal Magistrate, Kolkata are hereby quashed.

The revisional application being CRR 2498 of 2021 is, thus, allowed.

All pending connected applications, if any, are consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)