

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.395 OF 2011

Mayur K. Shroff & Anr

...Petitioners

Versus

The Municipal Corporation of Greater Mumbai
& Ors

...Respondents

Mr. Surel S. Shah a/w Shivani Shinde, Advocate for Petitioners.
Smt. Madhuri More, Advocate for Respondent Nos.1 & 2-MCGM.
Mr. A.R. Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 7th SEPTEMBER 2023

PC :

1. The Petitioners have challenged the order dated 24th June 2009 passed by the Metropolitan Magistrate 41st Court at Shindewadi, Dadar, Mumbai in Court Case No.4100040/SW/2009 issuing process under Section 354 r/w 475-A of Mumbai Municipal Corporation Act 1881 (for short “said Act”).

2. Heard Mr. Surel S. Shah learned Counsel for the Petitioner, Smt. Madhuri More learned Counsel for the Respondent Nos.1 and 2 and learned APP Mr. A.R. Patil, for the State.

3. The Petitioners are the owners of the building No.231-233-235 situated at Shaikh Memon Street, Zaveri Bazar, Mumbai. On 11th March 2009, there was fire in the building causing heavy damage to the building. The remaining major portion of the building became dangerous. Therefore, the Mumbai Municipal Corporation issued notice dated 11th March 2009 under Section 354 of the said Act for pulling down the entire building. Another notice was sent on 15th May 2009 and one more notice was sent on 18th May 2009. The Junior Engineer inspected the building on 6th June 2009 and found that the notice was not complied with. Therefore, for non-compliance of the notice, the complaint was filed under Section 354 r/w 475-A of the said Act.

4. Learned Counsel for the Petitioners submitted that the correspondence between the Petitioners and the Municipal Corporation shows that after 11th March 2009, the Municipal Corporation had appointed an agency to demolish the dangerous portion and to remove the debris and hence, the notice already stood complied with. Learned Counsel for the Petitioner referred to the letter dated 3rd June 2009 issued by the Assistant Municipal

Commissioner C-Ward to the Petitioners which supports this contention. He submitted that therefore, no offence is made out and the process should not have been issued. He also invited my attention to the letter dated 26th June 2009 wherein, it was mentioned that the bills of the contractors was paid vide cheque dated 25th June 2009 drawn on Union Bank of India, Abdul Rehman Street branch and hence the Petitioners had cleared the payment of Rs.3,69,150/-. He submitted that therefore the offence is not made out at all and the process deserves to be quashed and set aside.

5. Learned Counsel appearing for the Respondent No.1 submitted that the complaint was filed on 24th June 2009 and the payment was made through the cheque dated 25th June 2009 and the letter sent to the Petitioner was of dated 26th June 2009, therefore, the payment was made after the complaint was filed and the offence was completed. Therefore, the process was rightly issued.

6. Mr. Shah invited my attention to the subsequent

development which is recorded by the Intimation of Disapproval (I.O.D.) dated 21st January 2010 for reconstruction of the building. The commencement certificate was also issued on 17th June 2010. He submitted that, as of today, the repair works and restructuring of the building is completed since past many years.

7. I have considered these submissions. The letter dated 3rd June 2009 issued by the said Assistant Municipal Commissioner C-Ward addressed to the Petitioners categorically mentions that as per the Petitioner's written request on the same date i.e., 11th March 2009 and considering the emergency, spot quotations were immediately invited in presence of the Petitioners for removal of debris from collapsed building and removing / pulling down the dangerous / dilapidated building due to fire incident, as there was doubt regarding the number of persons trapped below the debris. Contractor's quotation of Rs.3,21,000/- for removal of debris, clearance of site in all respect and removing / pulling down the dangerous / dilapidated building due to fire incident; was the lowest of all quotations. Hence it was accepted in the presence of the Petitioners and the work was allotted to the contractors

immediately. Significantly, the letter clearly mentions that the work was completed by the Contractors on the date when the letter was sent. That letter also refers to the notice dated 11th March 2009 issued under Section 354 of the said Act. Thus, this letter itself clearly mentions that the work of pulling down the dangerous building was already over by 3rd June 2009. The only remaining question was of making actual payment of the Contractor's bills.

8. Thus, it can be seen that the notice under Section 354 for removal of the dangerous structure was already complied with. The structure was demolished and the debris was removed as is reflected in the said letter dated 3rd June 2009. In spite of that, the Junior Engineer submitted a report on inspection carried out on 6th June 2009 for the notice under Section 354 was not complied with. This report is against the statement made by the Assistant Municipal Commissioner in his letter dated 3rd June 2009. Apart from that, even otherwise the said letter indicates that the notice under Section 354 of the said Act had stood complied with. Therefore, no offence was made out. Though the payment was

made little late, that could have given rise to penalty for late payment but the fact remains that the dangerous structure was immediately removed and at the instance of the Petitioners themselves. Therefore, no offence was made out.

9. Apart from that, as pointed out by Mr. Shah as of today, even Municipal Corporation had granted IOD and then C.C. for the structure which is now completed.

10. Considering all this discussion, the continuation of the proceeding would not be in the interest of justice and the impugned order deserves to be set aside.

11. Hence, the following order:

ORDER

i) Rule is made absolute in terms of prayer clause

(b) which reads thus:

“b. That after calling for Record and proceedings from the office of Ld. Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai in respect of Court Case No.4100040 SW/2009 this Hon’ble Court be

pleased to examine the legality, validity and propriety of the order of issuance of summons dated 24.6.2009 passed by Ld. Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai in Court Case No.4100040 SW/2009 (Exh. 'K-1' to this petition) and quash and set aside the same;"

(SARANG V. KOTWAL, J.)