

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

CRIMINAL WRIT PETITION NO. 2529 OF 2016

Amarendra R. Pargaonkar

..Petitioner

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Niranjana Mundargi a/w. Ms. Keral Mehta i/b. Prasanna A. Bhangale for Petitioner.

Mr. A. R. Patil, APP for State/Respondent No.1.

Ms. Madhuri More for Respondent No.2/MCGM.

CORAM : SARANG V. KOTWAL, J.

DATE : 30 JUNE 2023

PC :

1. Heard Shri. Niranjana Mundargi, learned counsel for the Petitioner, Shri. A. R. Patil, learned APP for the State/Respondent No.1 and Ms. Madhuri More, learned counsel for the Respondent No.2/M.C.G.M.

2. Rule. Rule is made returnable forthwith with consent of the parties.

3. The Petitioner has challenged the order dated 07/11/2014 passed by the Metropolitan Magistrate, 39th Court,

Vile Parle, Mumbai, in C.C.No.6882/SS/2014. He has also challenged the order dated 04/07/2016 passed by the Additional Sessions Judge, Greater Mumbai (M.C.G.M.), in Criminal Revision Application No.228 of 2015 whereby the order of issuance of process passed against the Petitioner was confirmed by learned Additional Sessions Judge.

4. The complaint is filed by a Junior Law Officer working with the Municipal Corporation of Greater Mumbai. The complaint is in cyclostyle format and only some blank spaces are filled with some details. From the complaint, the case of the complainant appears to be that, a Junior Engineer working with the M.C.G.M. had inspected the Petitioner's premises on 15/02/2014 and it was found that there was unauthorized additions and alterations. The complaint refers to a Notice dated 19/05/2014. The Petitioner was called upon to put the structure back to its original form. The notice was served on him on 19/05/2014. The Junior Engineer again inspected the premises on 10/07/2014. There was no change since the earlier notice. Therefore, according to the complainant, the Petitioner had failed to comply with the Notice

and, therefore, he had committed offence U/s.347C of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as 'MMC Act'), punishable U/s.471 of the said Act. Learned Magistrate using a rubber stamp passed an order which reads thus:

'Presented by LA on today. Issue process for the alleged offence against accused R.O.7/11/14.'

That order was challenged in the Revision Application before the Court of Sessions, as mentioned earlier. The said Revision Application was dismissed.

5. Learned counsel for the Petitioner submitted that the ingredients of Section 347C of the MMC Act are not made out in the complaint. There was non application of mind on the part of the learned Magistrate. The order issuing process did not even mention the section independently. He submitted that, even the Revisional Court committed an error in interpreting the section 347C of the MMC Act. According to the learned counsel there was no change of user. Only the living room was used as kitchen and some space was made for the Petitioner's son for studying. That

can hardly be called alteration. He relied on the Judgment passed by the Judge, City Civil Court, Dindoshi on 22/05/2018 in L.C. Suit No.1264 of 2014; whereby the Notices which are the subject matter of the present complaint were declared as illegal and the Mumbai Municipal Corporation was restrained from acting on those notices. A copy of the said Judgment is taken on record and marked 'X' for identification. Learned counsel makes a statement that, to the knowledge of the Petitioner, the said order is not challenged and there was no stay operating against that order.

6. Learned counsel for the Respondent No.2 tried to justify both the impugned orders. According to her, merely making alteration without permission would attract the provision of Section 347C of the MMC Act. She submitted that, learned Magistrate and learned Additional Sessions Judge have applied their minds in passing the impugned orders.

7. I have considered these submissions. The Notices dated 07/04/2014 and 19/05/2014 are annexed to this petition. It was mentioned in the Notice dated 19/05/2014 that the Petitioner had

carried out unauthorized conversion of kitchen in the sitting room and was using the living room as kitchen. He was directed to restore the living room and kitchen to their original condition. As per the complaint, no further details are mentioned as to how the approved plan was altered by making structural changes. In this context, the provision of Section 347C of the MMC Act are reproduced as follows:

“347C. No alterations to be made in buildings for human habitation without written permission of Commissioner.

No person shall without the written permission of the Commissioner or otherwise than in conformity with the terms of such permission make any alteration or cause any alteration to be made in an existing building originally constructed or authorised to be used for human habitation for the purpose of using it or causing it to be used as a godown, warehouse, workshop, work place, factory, stable or motor garage.”

8. The main ingredient of this section is in respect of alteration without permission for the purpose of using it or causing it to be used as godown, warehouse, workshop, work place, factory, stable or motor garage. It is not the case of the complainant that the Petitioner had made an alteration for using

the premises as godown, warehouse, workshop etc. Therefore, on the face of it, Section 347C of the MMC Act is not attracted in this case. If there is violation of any other section, it is neither mentioned in the Notice nor in the complaint. Therefore, I am restricting my consideration for applicability of Section 347C of the MMC Act. In my opinion, in the facts of this case, the said section is not attracted at all. Therefore, issuance of process under that section was not warranted and is liable to be set aside. Learned Additional Sessions Judge misinterpreted the provision of Section 347C of the MMC Act.

9. Apart from this, another important aspect in this matter is that the Petitioner had challenged the said notice dated 19/05/2014 in the aforesaid civil suit and the competent civil court had declared that notice to be illegal. On this ground also, the prosecution cannot go on based on the same notice. In this view of the matter, the petition must succeed.

10. Hence, the following order:

ORDER

i) Rule is made absolute in terms of prayer clause

(B); which reads thus:

“B) This Hon’ble court be pleased to quash and set aside the impugned order of issuance of process dated 07/11/2014 passed by the Ld. Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai in C.C.No.6882/SS/2014 and the subsequent order of the Ld. Sessions Court, Greater Mumbai, Mumbai in Criminal Revision Application No.228 of 2015 dated 04/07/2016 and proceedings in C.C.No.6882/SS/2014 pending on the file of the Ld. Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai be quashed and set aside.”

ii) The Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)