

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

Criminal Writ Petition No.2759 of 2022

Mr Nilesh Kishore Shah
Age 45 Indian Inhabitant
(Having their address at A-503
A-WING SAI GOVIND CO-Operative
CHS Near P.N.Bank, Mathuradas Road
Kandivali (West), Mumbai-400067 ... Petitioners.
(Orig.Accused)

Versus

1. State of Maharashtra
2. Mumbai Municipal Corporation
(through the PEST CONTROL,Officer,
R/SOUTH ward Kandivali (West)
Mumbai-400067.
3. Mumbai Municipal Corporation
(Through, the Assistant Municipal
Commissioner R-South Ward Near
Swimming Pool, Kandivali (West)
Mumbai-400067.
- 4.The Commissioner Mumbai Municipal
Corporation Near CST MUMBAI,
5. Dy.Municipal Commissioner R/South
Ward M.G Road,Kandivali-West, Mumbai ... Respondents
(Orig.Complainants)

Mr Ashok Kumar Dubey i/b SAVJ Law Solution for the
Petitioner.

Mr RM Pethe, APP for State.
None for the respondent No.2 to 5.

Coram : R. N. Laddha, J.

Date : 6 November 2023.

P.C. :

Heard Mr Ashok Kumar Dubey, the learned Counsel appearing on behalf of the petitioner and Mr RM Pethe, the learned Additional Public Prosecutor for the State.

2. The petitioner has challenged the order dated 22.10.2019 passed by the learned Metropolitan Magistrate, 55th Court, Vile Parle, Mumbai, in CC No.5505965 under Sections 381-A read with 471 of the Mumbai Municipal Corporation Act, 1888 (for short 'MMC Act').

3. It reveals from the record that the Assistant Law Officer of Mumbai Municipal Corporation filed a complaint alleging that the petitioner, who is a member of the society, located near Punjab National Bank, Kandivali (West), Mumbai, kept an unauthorised single LDPE water storage tank in his bathroom. The WC loft was not mosquito-proof, which made it a potential breeding ground for mosquito. The inspection was carried by the officer, who was delegated the powers by the Deputy Municipal Commissioner under Section 68 of the

MMC Act. The complaint alleges that the petitioner committed an offence punishable under Section 381-A, read with 471 of the MMC Act. Learned Counsel submitted that on the complaint lodged by the officer of the corporation, the learned Magistrate issued a process under Sections 381-A and 471 of the MMC Act. The said order of issuance of a process is under challenge.

4. The learned Counsel for the petitioner submitted that the order itself shows a total non-application of mind on the part of the learned Magistrate. The complaint was filed in a casual manner and was intended to cause harassment to the petitioner, as is evident from the affidavit in reply filed by the respondent in other companion matters.

5. The material placed on record demonstrates that the inspection was conducted, and the subsequent prosecution was initiated at the request of a particular individual. Learned Counsel for the petitioner submitted that two societies are currently embroiled in a dispute with the builder in question, and there are other pending suits in the City Civil Court at Dindoshi regarding conveyance. The present prosecution is a result of this dispute, and therefore, it is a malicious prosecution.

6. After reviewing the material placed on record, it reveals that the entire process was initiated after the builder filed a complaint with the municipal corporation. The allegations are vague and suggest that an unauthorised storage tank was kept in a non-mosquito-proof condition, which could lead to mosquitoes breeding.

7. In the instant case, the process is issued under Section 381A of the MMC Act, not under Section 381B, which deals with the apprehension of mosquito breeding due to water collection. The learned Counsel for the petitioner stated that the petitioner will take necessary precaution to prevent mosquito breeding. The municipal corporation has the right to inspect the flats to ensure that the flat owners have taken necessary safety precautions. However, this part of the complaint is not relevant to the issuance of the process.

8. The only remaining question is whether Section 381A of the MMC Act has been violated. The allegation is not that the petitioner is drawing water without authorisation and storing it in a water tank. There are no allegations that the storage tank in the flat is causing any damage to the stability of the structure. As per Section 381A of the MMC Act, no new well, tank, pond, cistern or fountain can be dug or

constructed without the prior written permission of the Commissioner. However, in this case, there are no allegations that any tank was constructed or that the land was dug for the purpose of constructing a well, pond, or fountain. Clause (a) of Sub-Section 2 of Section 381A of the MMC Act specifies that the terms ‘to fill up’ or ‘demolish’ are in relation to digging and constructing. Therefore, this Section is only applicable when there is digging or construction of a well, tank, etc. The allegations in the present complaint do not fall under the provisions of Section 381A. None of the ingredients of Section 381A of the MMC Act are satisfied, which justifies the discontinuation of the prosecution. It is important to note that penal statutes are required to be strictly construed, and hence, the prosecution deserves to be quashed.

9. In view of this, the petition is allowed in terms of prayer clause (b) which reads thus:

“(b) After perusing the record and proceedings of the Ld. Metropolitan Magistrate 55th court, in respect of the Complaint No.5505965/SS/2019 for the offences punishable under section 381A r/w 471 of MMC Act and the process issued on 22/10/2019 be quashed and set aside.”

[R. N. Laddha, J.]