

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 26 OF 2021

Criminal Appeal under 374 (2) of Cr.P.C against the Judgment made in Crl.A.No.82 of 2019 dated 16.01.2021 on the file of the Court of the Sessions Judge at Adilabad preferred aggrieved by the Judgment made in C.C.No.197 of 2013 dated 28.12.2018 on the file of the Court of the Special Judicial Magistrate of First Class, Mobile (PCR), Adilabad.

Between:

Pallikonda Laxmi, w/o Shenker, aged about 55 years, Occ-Housewife, R/o H.No. 2-5-189/1, Qilla, Tripally locality Adilabad.

...APPELLANT(ACCUSED/RESPONDENT)

AND

1. The Municipality, Adilabad, rep. by its Commissioner.

...RESPONDENT(COMPLAINANT/APPELLANT)

2. The State of Telangana, rep. by its Public Prosecutor, High Court, Hyderabad.

...RESPONDENT

IA NO: 2 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the conviction and sentence imposed in the Judgment dt. 16-1-2021 passed in Crl.A.No. 82 of 2019 on the file of the Sessions Judge at Adilabad.

Counsel for the Appellant : SRI. GAJANAND CHAKRAVARTHI

Counsel for the Respondent No.2 : PUBLIC PROSECUTOR

Counsel for the Respondent No.1: None Appeared

The Court made the following: JUDGMENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.26 of 2021

JUDGMENT:

1. The complainant/municipality filed a private complaint under Section 200 Cr.P.C alleging offence under Section 340 of A.P.Municipalities Act.
2. One Medhari Saikiran, who was an employee in the municipality was authorized by the Commissioner of Municipality to depose on behalf of the municipality. He examined himself as P.W.1 and marked Ex.P1 authorization dated 27.08.2018 issued by the Commissioner and three notices dated 27.12.2012, 07.01.2013 and 30.01.2013 were marked as Exs.P2 to P4.
3. Learned Magistrate found that it is for the municipality to prove that the house was constructed in violation of approved plan and mere service of notices under Exs.P2 to P4 will not suffice. No photographs were even filed to prove that there was any contravention of the approved plan. Further, the payment of Rs.10,000/- for regularization of building cannot be presumed as an admission made by the accused in respect of the violation. On the said grounds, learned Magistrate acquitted the appellant.

4. Municipality carried the case in appeal to the Sessions Court. Learned Sessions Judge, on the basis of statement made by P.W.1 that the appellant had filed for regularization of the building, found that there was violation of the building permission. The reasoning given by the learned Sessions Judge was that once the application for regularization is made, it will be only under the circumstances of violation of actual plan. Further, there was no dispute that no such application was filed under the building regularization scheme. Accordingly, learned Sessions Judge reversed the order of acquittal and sentenced to pay fine of Rs.49,184/-, in default, to undergo simple imprisonment for a period of six months vide judgment in Criminal Appeal No.82 of 2019, dated 16.01.2021.

5. As seen from the record, P.W.1 stated that the application for regularization was filed by paying Rs.10,000/-. Neither the proof of payment nor the application was filed before the trial Court. In the absence of any such application, the question of the Court relying upon an oral assertion made by P.W.1, who did not have any personal knowledge of such application being filed nor filing a copy of the said application, the said assertion cannot be relied upon. Learned Sessions Judge in order to consider that there was a building regularization plan and Rs.10,000/- was paid ought to

have adduced additional evidence if any produced by the municipality. Only on the basis of oral assertion, a well reasoned judgment of acquittal cannot be set aside. The reversal of acquittal by the learned Sessions Judge is only on the basis of statement made by P.W.1 for which claim of P.W.1, supporting documents were not filed.

6. In the said circumstances, the order passed by the learned Sessions Judge in Criminal Appeal No.82 of 2019, dated 16.01.2021 has to be set aside and accordingly set aside.

7. In the result, the Criminal Appeal is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

Sd/-C.V.MALLIKARJUNA VARMA
JOINT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Principal District & Sessions Judge, Adilabad (With Records)
2. The Special Judicial Magistrate of First Class, Mobile (PCR), Adilabad. (with records)
3. The Commissioner, Adilabad Municipality, Adilabad.
4. Two CCs to PUBLIC PROSECUTOR, High Court for the State of Telangana at Hyderabad [OPUC]
5. One CC to Sri GAJANAND CHAKRAVATHI ,Advocate (OPUC)
6. Two CD Copies

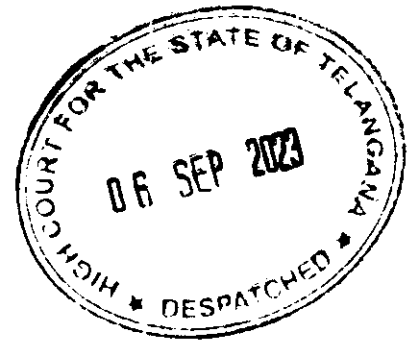
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HIGH COURT

KS,J

DATED:12/07/2023



JUDGMENT

CRLA.No.26 of 2021

ALLOWING THE CRL.A.

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