

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R 587 of 2016

Mr. Syed Nazmul Hossain & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners

: Mr. Soubhik Mitter,
: Mr. Samarjit Basu.

For the KMC

: Mr. Gopal Ch. Das,
: Mr. Goutam Dinda,
: Mr. Anindya Sundar Chatterjee.

Heard on: 28/07/2023

Judgment on : 14/05/2023

Rai Chattopadhyay,J.

1. The instant revision case is to challenge the proceeding pursuant to the FIR being New Market Police Station Case No. 226 of 2015 dated 27.05.2015, under Section 401A of the Kolkata Municipal Corporation Act, 1980. The revisionists have prayed quashing of the said charge sheet as well as procedure subsequent thereto now pending before the Municipal Magistrate, 3rd Court at Calcutta.

- 2.** The petitioners have founded their case principally on two grounds, firstly that the criminal case against them being a subsequent one to another lodged earlier (that is New Market Police Station Case No. 166 of 2009), on the selfsame cause of action is not maintainable. Also that the said earlier Case No. 166 of 2009, the petitioners have been exonerated after investigation as they were not sent up in the charge sheet filed by the police. The petitioners have urged that the present criminal case is only motivatedly lodged against them, the opposite party/authorities having not been successful in its earlier attempt to victimise the petitioner.
- 3.** Necessary facts in a nut shell require to be dealt with in this case may be stated in the following words.
- 4.** In 2004 the petitioners being the joint owners of the building situated at 109/3, Collin Street, Kol-700016, had entered into a development agreement with the developer namely M/s. Rani Constructions being represented by its partners. The agreement was for development of the building situated at the premises as mentioned above. Allegedly the construction made over 6th floor of the said building was without any plan sanctioned by the Kolkata Municipal Corporation and of such a nature to endanger the lives of people staying nearby and damaging the property. By virtue of the agreement between the parties, the rights and responsibilities as regards the construction to be made over there, were

bestowed upon the developer as named above. In 2009, the first police case was lodged, that is, New Market Police Station Case No. 166 of 2009. Charge sheet was submitted in the same on April 8, 2010, against the partners of the said developer company.

5. After the same, the petitioners were served by the opposite party/corporation a notice under Section 401 of the Act of 1980 dated December 3, 2012. The present complaint, that is, New Market Police Station Case No. 226 of 2015 dated 26.05.2015 under Section 401A was lodged against the present petitioners.
6. Thus, the petitioners have contended that the second complaint/police case on the selfsame allegations/charges would not be maintainable in the eye of law. Also that pursuant to the development agreement which admittedly is subsisting between the petitioners and the developers as mentioned above, the responsibility of construction or any deviation made therein entirely vests upon the developers and the petitioners would not have any connection thereto. Under such circumstance the petitioners have claimed in this case that none of the ingredients of offence as alleged against them can be seen to have been prayed on record by the complainant and as a matter of fact no tangible case exists at all, against the petitioners.

7. A report of the Engineers dated May 26, 2015 was lodged and treated as a FIR in this case. The same speaks *inter alia* as follows.
8. The premises at 109/3, Collin Street, Kol-700016, was inspected and found that RCC framed structure is being erected and staircase room is being constructed over the 6th floor level of the building. The Engineers in the said report, had identified such construction and covering of roof to be unauthorised. They found it hazardous and dangerous for the life and property in the surrounding area. In the said report recommendation was made for initiation of necessary action against the persons responsible under Section 401A of the said Act.
9. Mr. Soubhik Mitter is appearing for the revisionists/petitioners. He has ventilated innocence of his clients. He says that after handing over the property to the developer by dint of a duly executed agreement, for the purpose of developing the same, the petitioners would not be responsible or connected in any way with the process of development. Breach of sanctioned plan if any made in the process of development should be attributed to the concerned developers and not the present petitioners who though are owners but is not involved in the construction process. He further submitted that petitioner's case as above, would further fortify for the reason that on the selfsame allegations a criminal case is already pending in which the police has submitted charge sheet against the partners of the said development company. In view of the same, he says

that the second complaint on the selfsame allegation would not be maintainable.

10. Mr. Gopal Ch. Das has appeared for the respondent corporation at the outset. He had denied that New Market Police Station Case No. 166 of 2009 dated 14.07.2009 and New Market Police Station Case No. 226 of 2015 dated 27.05.2015 are with regard to the selfsame cause of action, as alleged by the petitioners. He would indicate that the said two cases are lodged due to two different breaches conducted as against the sanctioned plan of the said building. Thereafter he would further submit that the construction of the building has already been concluded and the same is handed over to the present petitioners being the owners. After the same being handed over to the present petitioners, further breach as to the due compliance of the sanctioned plan of building, could be noticed. Hence, the instant New Market Police Station Case No. 226 of 2015 dated 27.05.2015 under Section 401A of the Kolkata Municipal Corporation, 1980 was lodged. It is submitted further that at the time of lodging of the present complaint since the agreement of the petitioners with the said developers did not subsist anymore, there would not be any question of the developers being the alleged violators of law.

11. Section 401A of the Kolkata Municipal Corporation Act, 1980, has made provisions in case when there would appear contravention of the provisions of the Act or Rules in construction of a building. It says that

in such a case when contravention of provisions of Act or Rules in construction of building can be noticed, any person responsible by himself or other person on his behalf for such contravention, in constructing new building or additional floors in such a manner to endanger or likely to endanger human life and disruption of water drainage or sewerage or road traffic or any property of the corporation and also a likely to cause a fire hazard shall be punishable under the provisions of the said statute.

- 12.** From a plain reading of the above statutory provision, it appears that not the breach simplicitor of any provision of the said Act or Rules, in constructing a building, would be amenable to the provisions of the Kolkata Municipal Corporation Act, 1980, as above, thrusting a criminal liability upon the concerned person.
- 13.** The breach should be of that manner and extent as is likely to endanger or actually endangers human life and property by disrupting water supply, drainage, sewage or road traffic.
- 14.** Therefore, prima facie and sufficient material as against the present petitioner should have been available in the complaint as regards firstly, is contravening any specific provision of the said Act or Rules and secondly, is such contravention to have effect of endangering human life and property in the manner as described above.

- 15.** Unless the same, the said complaint cannot be termed to have brought on record with sufficient convincing material as regards the guilt of the accused persons, even prima facie. In that event, to proceed against the accused persons (in this case, the petitioners) would be an abuse of the process of Court, in view of the law settled in this regard.
- 16.** The basis of the first information report against the present petitioners is a report submitted by the engineers of the complainant Corporation. As discussed above, the engineers have stated in the said report dated May 26, 2015 that the premises is situated in a congested area and if allowed to stand, the same will create fire, traffic, drainage, sanitation and water supply hazards. The engineers have also mentioned that the alleged construction is de hors the norms and practices of civil engineering and may collapse at any point of time. However, the said report is not enclosed with any other particulars to substantiate such finding of the engineers or their apprehensions as above. It is specifically noted that the alleged construction is said to have been made without compliance with the engineering norms. It is further noted that the same has been termed to have a perilous effect as to the lives and properties surrounding the said building. Thus, findings would naturally involve objective consideration of the specific violation and as to how the threat is exposed on the basis of some mathematical calculations. No such detail is available with the report of the said engineers that leads this

Court to find that the information on the basis of which the first information report was drawn against the present petitioners were insufficient and not substantiated with adequate material supporting the decision of the engineers.

- 17.** Comparing the same with the settled legal principle that the complaint must disclose a prima facie case against the accused persons, or else, the same may not be considered to have established on record a case against the accused persons, with the first information report drawn against the present petitioners, in this case, as discussed above, the Court can arrive at a clear distinction thereof from the settled legal principle, as discussed above.
- 18.** The Court, thus, opines that the first information report against the present petitioners does not disclose a prima facie case against them so far as the alleged breach and offence is concerned. The Court further opines that the complaint as above is not sufficiently enriched with the appropriate materials, to go into a trial against the present petitioners. Therefore, the Court finds the present criminal case being New Market Police Station Case No. 226 of 2015 dated 27.05.2015 under Section 401A of the Kolkata Municipal Corporation Act, 1980 would be liable to be quashed.

19. Hence, it is ordered that the criminal case being New Market Police Station Case No. 226 of 2015 dated 27.05.2015 under Section 401A of the Kolkata Municipal Corporation Act, 1980 is quashed along with all the subsequent development pursuant to the said FIR.
20. Thus, the Criminal Revision no. 587 of 2016 is allowed and disposed of along with connected applications pending, if any.
21. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

RAI

CHATTOPADHYAY

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(Rai Chattopadhyay, J.)

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