

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 3281 of 2017

IA No. CRAN 4/2024

Hari Dam @ Haru Dam & anr.

Vs.

State of West Bengal & Anr.

.

For the Petitioners	:	Mr. Arindam Jana
For the Opposite party KMC		Mr. Gautam Dinda Mr. Aindya Sundar Chatterjee
For the State	:	Mr. Rana Mukherjee Ms. Baishakhi Chatterjee
Heard on	:	10.12.2024
Judgment on	:	17.12.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. Opposite party no. 2 herein lodged a complaint alleging commission of offence under section 401(A) Kolkata Municipal Corporation Act 1980 (in short Act of 1980) against the present two petitioners and another which

was registered as Maniktala Police Station Case No. 102 of 2016. The allegation leveled in said complain *inter alia* based upon a report from the Assistant Engineer (Civil) Building Department, wherefrom it is apparent that the petitioners were constructing a building at premises no. 16/5/H/37/18/12, B.B. Ghosh Sarani without any sanction plan from the concerned department, standing a serious chance of the same being collapsed endangering human life road safety and other hazards.

2. The concerned authority after completion of investigation in the above mentioned Maniktala station case no. 102 of 2016, submitted a final report in the form of charge sheet against the present petitioners. Ld Metropolitan Magistrate during trial examined five witnesses and also examined the petitioners under section 313 of Cr.P.C and thereafter passed judgment and order of conviction, sentencing them to suffer imprisonment of 6 months and to pay a fine of Rs. 2500/-, in default to suffer rigorous imprisonment for another one month.

3. The trial court while passed the judgment observed that the accused Haru dam and Naru dam were convicted earlier for committing similar type of offence as appearing in Exhibit 12 and they did not prefer any appeal against the said order of conviction. Form exhibit 12, it appears that on that occasion also, the accused persons were raising unauthorized construction and they were convicted under section 392/610 of the Kolkata Municipal Corporation Act, but since it was their first time offence they were only sentenced to pay fine of Rs. 2500/- each. Those two convicts who are petitioners herein deposited fine amount without challenging the same. It is also apparent from the impugned judgment that on the second

occasion present FIR was lodged when again there was casting of RCC Slab in portion of 2nd floor level with RCC stair, leading from 1st floor level to 2nd floor level in the same building and content of exhibit 5 was also not challenged during cross examination of Sub-Assistant Engineer.

4. The Trial Court further held that the construction raised in the case property is fully unauthorized and has been made in violation of municipal laws without any sanction plan. He further held that in a civilized society everyone is bound to follow building rules and regulations which are necessary to avoid various hazards in the context of public safety. The Trial Court specifically noticed that the accused persons are fully aware of illegal construction and have committed similar offence for the second time, and as such gravity of present offence is more. He further stated that it is immaterial whether the property stands in the name of petitioners or not.

5. Being aggrieved by that order of conviction by Trial Court, petitioners preferred criminal appeal no. 1 of 2017 before the ADJ, City Sessions Court who by the impugned judgment dated 5.9.2017, affirmed the judgment of the Trial Court, with specific observation that from the evidence of record, it is palpably clear that the said construction was not only unauthorized but also endangering human life, safety, system of drainage electricity etc. of that area. The Appellate court further held that though the convict Naru Dam and Haru Dam had taken a plea that they are not the owner or possessor of the case property but it appears that on earlier occasion, the stop construction notice was served upon convicted persons from the case property and not only that while the Trial Court awarded conviction for the first offence imposing sentence of fine only, they admitted their guilt and

deposited fine amount without challenging the order and thereby accepted the decision passed by the Trial Court.

6. The Appellate Court had taken it exceptionally that the present attempt of raising further unauthorized construction after admitting their guilt, for the first time is a clear example of defiance of the order of the court and for that purpose the Trial Judge was justified in not only imposing fine but also sentencing them for a period of six months each.

Relevant portion of judgment may be quoted below:-

“The main point argument of the Ld. Defence counsel was regarding sentencing the two accused persons in this case while they were previously imposed only fine for same kind of offence. It is the case where the offenders are same. At the time of first offence though Ld. Trial Judge found them guilty, but as it was their first offence, only imposed fine giving them an opportunity to correct themselves. But practically they did not follow the spirit of judgment passed in first case and thus they started and continued constructing unauthorizedly inspite of getting order of conviction. This attitude of the offenders was considered by the Ld. Trial judge second time and so no liberal approach was taken by the Ld. Judge for the conviction and thus along with fine she ordered for imprisonment, though they were found guilty under same section. Apparently it seems that the offence in two cases are same, but if the conduct of the convicts are fathomed, it could be easily apprehended about their disrespectful attitude and high handedness over the law and so in my opinion the sentence portion as passed by Ld. Trial judge is very much appropriate and correct one considering the conduct of them as a whole and thus in my opinion there is no irregularity or illegality in the said judgment for which interference is needed and thus it is affirmed and both the appeals are dismissed on contest.”

7. Mr. Jana learned counsel appearing on behalf of the petitioner argued that the court below failed to appreciate that the petitioners are not the owner of case property and there had been no document establishing there nexus with the said disputed property or alleged illegal construction. He further argued that the Courts below, while passed judgment of conviction became totally oblivious to the fact that the stop work notice was issued to the petitioners by the Assistant Engineering (Civil) , Building

department, in connection with previous proceeding on 09.11.2015 and no further notice was issued to the petitioners, directing them to stop construction in the said premises and not only that it has not been established during trial that the receiver of that stop construction notice of the earlier proceeding dated 09.11.2015 has any relation with the present petitioner.

8. I do not find any substance in the said argument made by Mr. Jana in view of the fact that section 392 or 610 of the Act of 1980 does not prescribe that the alleged unauthorised construction is to be raised by the owner. On the contrary section 392 starts with the words “no person shall erect.....” and section 610 prescribes punishment to the person, whoever contravenes any of the provision, shall be punished as mentioned in column 1 of schedule VI.

9. Mr. Jana also not disputed that on earlier occasion, similar allegations were levelled against the petitioners after issuance of stop construction notice, where the same petitioners were held guilty of offence and were sentenced to pay fine. Since the entire construction is unauthorised, as observed by the Courts below and since petitioners had admitted their guilt by depositing fine amount for commission of similar offence on previous occasion, the submissions made by Mr. Jana has got no substance. In the present context it is not in dispute that the entire construction was raised without having any building sanction plan and the court below rightly observed that such construction not only unauthorised but also endangering to human life, safety, system of drainage, electricity

etc. and the sentence was awarded noting the adamant attitude of the petitioners.

10. Mr. Jana in this context, submits that the property over which the alleged unauthorised construction has been raised may be a thika property and the petitioners who are being convicted are hawker by profession and in his usual fairness he further submits that the sentence of imprisonment awarded by the courts below is harsh for the petitioners in the context of their social background and also in view of the fact that being illiterate person they were not aware about the building rules, which may kindly be considered.

11. The incidence of illegal construction has assumed alarming proportions. In the last few decades, the menace of unauthorised constructions has been paying heavy price by every citizen within the Municipal area. Serious threat is posed to ecology and environment and at the same time such unauthorised construction is causing danger to the infructure consisting of water supply, sewerage, traffic movement etc. Supreme Court has repeatedly emphasised the importance of planned development of the cities and had passed directions for demolition of illegal constructions.

12. Any constructions whether residential or commercial must have an approved building plan from the competent authority before it can be registered. Corporation must take necessary step in ensuring that all constructions comply with legal and safety norms. It should further ensure that completed construction aligns with the approved plan before granting registration. In this context it should also made clear that under the Act of

1980, the punishment for offence prescribed in the schedule appears to be inadequate which encourages the wrong doer. Provision for more stringent punishment in case of construction without sanctioned plan, should be incorporated immediately by the lawmakers in the Act of 1980 and deterrent aims must be there in the Act to discourage the practice of unauthorized construction. Generally the process of regularization should be discouraged and can only be considered only if the building meets all safety and regulatory standards and fulfil all sanctioned plan requirements.

13. Form the fact and circumstance of the case, I find that the Courts below have not committed any mistake in convicting the accused persons who has established themselves as habitual offender in connection with the said unauthorised construction, nor I find any perversity or impropriety in the order impugned.

14. Having considered the submissions made on behalf of petitioner, in my opinion the convicts may be sentenced imposing exemplary penalty, thereby the sentencing part is hereby modified to the extent that both the petitioners namely Naru Dam and Haru Dam shall pay a sum equivalent to fine of Rs. 50,000/- each totalling Rs. 1 lakh to the Kolkata Municipal Corporation within a period of one month from the date of communication of the order, in default to suffer simple imprisonment for six months. In case of non-payment of said amount within the period they will surrender before the Trial Court for execution of sentence awarded. In the event of failure of non payment of said amount to the Corporation and surrender before the Trial court for execution of sentence, the Trial court will take

necessary steps after expiry of one month from this order, which includes issuance of warrant to compel their attendance for execution of sentence.

15. CRR 3281 of 2017 accordingly disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)