

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APL) NO.142 OF 2011****WITH****CRIMINAL APPLICATION (APPP) NO.262 OF 2019**

Shri Pankaj Satish Khattar,
Dy. General Manager (Legal & Secretarial)
Tata Teleservices (Maharashtra) Limited,
having its corporate office at Plot No.D-26,
TTC Industrial Area, MIDC Sanpada,
Turbhe, Navi Mumbai-400 703.

.....Applicant

Vs.

State of Maharashtra
(At the instance of Trombay Police
Station, Mumbai)

.....Respondent

Mr.Ganesh Bhujbal for the Applicant.

Mr.S.V.Gavand APP, for the Respondent-State.

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**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 7th MARCH, 2024.

Oral Judgment (Per A.S.Gadkari, J):

1) This is an application under Section 482 of Cr.Pc. for quashing of LAC No.109/2010 registered with Trombay Police Station, Mumbai dated 15th December 2010 under Section 3(Z) and 2(6) of the Maharashtra Slum Areas (Improvement, Clearance and Re-Development) Act, 1971 (for short 'the said Act'). Applicant is accused No.2 in the said crime.

1.1) Record indicates that by an order dated 29th June 2011 Rule and interim-relief was issued in favour of the Applicant.

2) Applicant was working as a Dy. General Manager (Legal and

Secretarial) with Tata Teleservices (Maharashtra) Limited.

2.1) It is the prosecution case that, mobile tower of the said company was erected on the house/hutment of original Accused No.1 Smt. Zubeda Mohd. Yusuf Shaikh at Room No.360, Mahatma Phule Nagar, Mankhurd, Mumbai. As necessary permission under the law was not obtained from the Competent Authority by the company of the Applicant, the said crime was registered at the behest of the informant Ravindra Devre, a Clerk, then working with the Office of Dy. Collector, Mumbai.

3) The contention of learned Advocate for the Applicant is two fold; (i) prior notice to the Applicant and/or original owner of the said house/hutment before lodging of present crime under Section 3(Z) and 2(6) of the said Act was not served upon them and (ii) during the pendency of the present Application, the co-accused namely Smt. Zubeda has been acquitted by the trial court.

3.1) As far as the first contention is concerned, after perusing record we find that, the concerned Authority has in fact not issued and served a notice as contemplated under the provisions of the said Act upon the Applicant.

3.2) As far as the second contention i.e. acquittal of co-accused Smt. Zubeda Shaikh is concerned, perusal of the Judgment and Order dated 5th January 2022 passed by the 42nd learned Metropolitan Magistrate, Dadar, Mumbai, indicates that, as per the evidence produced by the prosecution,

after issuance of notice to the said accused, she complied with its directions, removed the mobile tower from the said place and despite the said fact the police have filed present crime against the said co-accused and Applicant. The trial Court has specifically observed that the said co-accused has not committed any crime and the prosecution has also failed to prove it. The trial Court, therefore, gave clean acquittal to the said co-accused.

4) The evidence adduced before the trial Court by the prosecution in the above case is *mutatis mutandis* applicable to the Applicant herein. As per the observations made by the trial court, after issuance of notice to the original Accused No.1, the Applicant's company had immediately removed the said mobile tower and despite the said fact present crime is registered against him.

5) In view of the above, continuation of the present proceedings arising out of the aforestated crime against the Applicant will be a sheer abuse to process of law and needs to be quashed and set aside.

5.1) In view thereof, Application is allowed in terms of prayer clause (a). Rule is made absolute in the aforesaid terms.

6) In view of disposal of Criminal Application (APL) No.142/2011, Criminal Application (APPP) No.262 of 2019 does not survive and is accordingly disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)