

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APL) NO.150 OF 2011****WITH****CRIMINAL APPLICATION (APPP) NO.432 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 Mankhurd 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.1225/2010 registered with Mankhurd Police Station, Mumbai dated 10th 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 Shri Mohd. Ishtiyahq Samiullah Shah at Indiranagar Zopadpatti, First Lane, 30 Feet Road, 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 Sakharan Vishnu Sonawadekar, the Recovery Clerk, then working with the Office of District 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 Mohd. Ishtiyahq Samiullah Shah 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 Shri Mohd. Ishtiyahq Samiullah Shah is concerned, perusal of the Judgment and

Order dated 1st August 2023 passed by the 42nd learned Metropolitan Magistrate, Dadar, Mumbai, indicates that, prosecution has failed to produce on record the notice as contemplated under the provisions of the said Act and to prove it. The PW-1 Sakharam Vishnu Sonawadekar has admitted the fact that the tower erected by the accused persons was already removed on 20th December 2010 i.e. immediately after lodgment of the crime. The trial Court has further observed that prosecution has failed to prove that accused persons have illegally erected the said mobile tower on the said structure. 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.150/2011, Criminal Application (APPP) No.432 of 2019 does not survive and is accordingly disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)