

**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL REVISIONAL JURISDICTION**  
**Appellate Side**

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**C.R.R. 668 of 2018**

**Netai Sil**

**Versus**

**The State of West Bengal & Another**

**For the Petitioner :** Mr. Ranadeb Sengupta, Adv.

**For the KMC :** Mr. Anindya Sundar Chatterjee, Adv.  
Mr. Goutam Dinda, Adv.

**For the State :** Mr. Ranabir Roy Chowdhury, Adv.

**Heard on :** 13.06.2025

**Judgment on :** 25.06.2025

**Ajay Kumar Gupta, J:**

1. By filing this present application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner/convict assailed the judgment and order dated 20.03.2018 passed by the Learned Additional District and Sessions Judge, Fast Track Court No. II, Bichar Bhawan, Calcutta in connection with Criminal Appeal No. 98 of 2016 whereby the Learned Sessions Judge dismissed the appeal and affirmed the Judgment and Order dated 21.09.2016 passed by the Learned Municipal Magistrate, 3<sup>rd</sup> Court, Calcutta in M.F. 331 of 2014 under Section 401(A) of the Kolkata Municipal Corporation Act, 1980.

2. By the said Judgment and Order dated 21.09.2016, the Learned Municipal Magistrate convicted the present petitioner and sentenced to undergo simple imprisonment for 6 months and also to pay a fine of Rs. 5,000/-, in default, to suffer simple imprisonment for one month.

3. The brief facts of the case are relevant for disposal of this instant case as under:

**3a.** On the basis of a complaint lodged by Assistant Engineer (Civil), Building Department, Borough - III with the Officer-in-Charge of Beliaghata Police Station regarding illegal construction, an FIR was registered. Upon completion of investigation, Charge Sheet has been submitted against the petitioner and one other accused for alleged commission of offence punishable under Section 401(A) of the Kolkata Municipal Corporation Act, 1980. During the trial, the prosecution, in support of its case, examined 4 witnesses and also produced documentary evidence marked as Exhibit 1 to 9.

**3b.** Upon considering both oral and documentary evidence, the Learned Magistrate found the petitioner guilty of the charge framed and, accordingly, convicted and sentenced him as aforesaid.

**3c.** Being aggrieved by and dissatisfied with the said impugned order of conviction and sentence, the petitioner herein preferred an appeal before the Learned Chief Judge, City Sessions Court, Calcutta by filing an appeal being Criminal Appeal No. 98/2016. The said appeal was admitted and transferred to the Learned Additional District and Sessions Judge, Fast Track Court – II, Bichar Bhawan, Calcutta, for its disposal.

**3d.** After conclusion of hearing of both the parties, Learned Judge finally affirmed the said impugned Judgment and the appeal was dismissed on contest without cost. Hence, this present Criminal Revisional application.

**4.** Learned counsel appearing on behalf of the petitioner vehemently argued and submitted that prosecution witnesses P.Ws. 1 and 2 were the local witnesses. During their examination-in-chief, they failed to identify the petitioner or the owner, nor did they depose anything incriminating against him. Despite this, the prosecution did not declare them hostile and is, therefore, bound by their evidence.

**5.** It was further submitted that the P.W. 3, the Investigating Officer did not furnish any documentary evidence to prove that Sanjay Das was the promoter. Accordingly, he was acquitted. He further could not produce any document to show that the present petitioner is the owner and responsible for such illegal construction by reliable evidence. Further, no neighbours supported the case of the prosecution.

**6.** It was further submitted by the learned counsel that the Exhibit Nos. 3 and 9 (photographs of the construction site and day to

day inspection report) relied by the prosecution are not confronted with the petitioner in his examination under Section 313 of the CrPC. Accordingly, the Learned Trial Court has violated the principles of free and fair criminal trial by not giving an opportunity to the petitioner to controvert and by affording opportunity to explain the circumstances. Therefore, the entire trial would be vitiated and he is liable to be acquitted. However, the Learned Appellate Court did not consider these facts while dismissing the appeal. Therefore, he prays for setting aside of the judgment passed by the Learned Additional District and Sessions Judge, Fast Track Court – II, Bichar Bhawan, Calcutta in this revisional application.

**7.** Learned counsel further submitted that the Corporation Engineer did not conduct any test to ascertain the structural safety of the building in accordance with Rules 133 to 136 of the KMC Rules and Evidence Act. No Structural Stability Certificate was furnished either. Hence, there is no evidence to show that the construction made therein endangered human life, property or public utilities like water supply, drainage, sewerage and disruption of road traffic. Consequently, the petitioner is not liable for any offence punishable under Section 401(A) of the KMC Act.

**8.** Per contra, learned counsel appearing on behalf of the Kolkata Municipal Corporation vehemently raised objection of the prayer of the learned counsel appearing on behalf of the petitioner and further submitted that the prosecution has fully corroborated the case of illegal construction over the land in question. When the construction was going on, the P.W. 4, Samresh Dutta held an inspection at the site and also issued 'Stop Work Notice'. On further inspection on 28<sup>th</sup> August, 2014, despite Stop Work Notice, he discovered that illegal construction work was still in progress. At the time of examination of Section 313 of CrPC, the petitioner himself admitted that he is the occupier, which falls within the ambit of a 'person' as under Section 401(A)(1) of the KMC Act.

**9.** The original owner was Tarapada Sil, the father of the petitioner. Upon his demise, by way of succession, the petitioner became the owner of the said land. Therefore, as an occupier or any person or the owner, if he constructs an illegal construction without any sanctioned plan, then he is liable for commission of offence punishable under Section 401(A) of the KMC Act. Considering the entire oral and documentary evidence as adduced by the prosecution, the Learned Trial Court had held the petitioner as guilty and sentenced the petitioner accordingly. After hearing both the parties,

the Learned Appellate Court has affirmed the said judgment and order of conviction and sentence and finally dismissed the appeal. There is limited scope in this Revisional application to interfere with the impugned Judgment and Order passed by the Learned Trial Court as well as the Learned Appellate Court.

**10.** At the same time, the learned counsel appearing on behalf of the State submitted that alleged violation under Section 313 of CrPC is baseless. The Learned Trial Court has categorically put several questions according to circumstances of the case under Section 313 of the CrPC, where the petitioner himself admitted being the occupier of the said building, where the illegal construction was made despite Stop Work Notice issued by the KMC. According to the KMC engineer, such construction posed a serious risk to human life, public safety, municipal utilities and road traffic, especially considering the congested locality where the building stood.

**11.** Heard the learned counsels for both the parties and upon perusal of the impugned Judgments passed by both the Learned Courts below, this Court finds both the Courts below have concurrent findings that the petitioner is the occupier who has constructed the illegal construction over his land. Construction work done in the land

in question is totally unauthorized and without any sanction plan. The petitioner carried out further construction even after issuing Stop Work Notice reflecting blatant disregard for municipal laws. The oral and documentary evidences adduced by the witnesses convincingly established that the construction on plot of land belongs to the Petitioner.

**12.** The fact of illegal construction has been fully established by the oral evidence of P.Ws. 3 and 4 respectively. The Petitioner was examined under Section 313 of the CrPC, but he failed to give any valid explanation or produce any contrary evidence. No defence witnesses have been examined by the accused person to discard the oral and documentary evidence brought on record by the prosecution to negate the prosecution case. The petitioner also failed to prove that the construction of the building was an authorized one as per the sanction plan or with permission of the Kolkata Municipal Corporation.

**13.** The petitioners were also unable to prove that the construction was stable. It is common knowledge that in the urban areas, people construct building without sanction plans, without due approvals and pose grave danger to the human life and safety. Such

act violates the KMC Act and necessitates strict enforcement. Section 401A was enacted specifically to penalize unauthorized construction and deter future violation. The provision of Section 401A of the KMC Act is set out as under for ready reference:

***“401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.- (1) Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person, who, being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act, or the rules made thereunder as endangers or is likely to endanger human life, or any property of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees.***

*Explanation. - “Person” shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new*

*building or additional floor or floors of any building as aforesaid.*

*(2) The offence under sub-section (1) shall be cognizable and non-bailable, within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).*

*(3) Where an offence under sub-section (1) has been committed by a company, the provisions of section 619 shall apply to such company.*

*Explanation. - "Company" shall have the same meaning as in the Explanation to section 619."*

**14.** Upon careful perusal and consideration of the K.M.C. Act, it reveals that any person who is/are being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of the Act, or the rules made thereunder as endangers or is likely to endanger human life, property, Corporation's water-supply, drainage, sewerage and may disrupt the road traffic and cause fire hazards, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees.

**15.** The sentence pronounced by the Learned Trial Court is, however, appropriate to the offence committed. Unauthorized

construction without any sanction plan warrants strict penalty and accused who is responsible for such construction is liable to be convicted accordingly.

**16.** The petitioner no. 1 is the owner/occupier who constructed building without any sanction plan. Therefore, he should be held liable for such unauthorized construction.

**17.** While it is true that the P.Ws. 1 and 2 did not support the prosecution case. However, a conviction can be based on sole witness. In the present case, the prosecution has adduced other witnesses who have corroborated the case of the prosecution with oral and documentary evidence. Apart from that, the petitioner himself admitted he was the occupier of the said building. The building was in the name of Tarapada Sil, who was the father of the petitioner and by way of succession, the present petitioner became the owner of the property. The same fact is not refuted by the petitioner either by way of defence witnesses or production of any document rather admitted during his examination under Section 313 of the CrPC. Accordingly, this Court does not find any illegality or perversity in the Judgments passed by both the Learned Trial Court and Learned Appellate Court. Therefore, this Court finds the

concurrent findings of both Learned Trial Court and Learned Appellate Court against the petitioner to be of sound reasoning and supported by credible evidence. Hence, call for no interference by this Court. Accordingly, the present application is devoid of merit and is liable to be dismissed.

**18.** Accordingly, **CRR 668 of 2018** is **dismissed**. Consequently, connected applications, if any, are also disposed of. The petitioner is directed to surrender before the Learned Trial Court for serving out his remaining sentence within 30 days from the date of this Judgment. In default, the Learned Trial Court shall exhaust all necessary procedure to bring him to serve out the remaining sentence in accordance with law.

**19.** Interim order, if any, is hereby vacated.

**20.** Let a copy of this Judgment be communicated to the Learned Trial Court for information and for taking necessary steps.

**21.** All parties shall act on the server copy of this Order and Judgment duly downloaded from the official *website* of this Court.

**22.** Urgent photostat certified copy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Ajay Kumar Gupta, J)**

P.A.