

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1783 of 2018

Md. Yunus @ Md. Younus and Others

Versus

The State of West Bengal and Another

For the Petitioners : Mr. Tarique Quasimuddein, Adv.
Mrs. Zainab Tahur, Adv.

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

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Faria Hossain, Adv.

Heard on : 14.02.2025

Judgment on : 12.03.2025

Ajay Kumar Gupta, J:

1. The petitioners challenged the correctness, legality and propriety of the Judgment dated 07.04.2018 passed by the Learned Additional District & Sessions Judge, Bench – II, City Sessions Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 119 of 2016 by filing this Criminal Revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

2. The aforesaid Criminal appeal was preferred by the Petitioners assailing the Impugned Judgment dated 23.09.2016 passed by the Learned Municipal Magistrate, 3rd Court, Calcutta in connection with Chitpore Police Station Case No. 50 of 2016 dated 25.02.2016 under Section 401A of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as 'KMC Act') being Case No. M.F. No. 170 of 2016.

3. By the said Judgment dated 23.09.2016, the Learned Municipal Magistrate, 3rd Court, Calcutta declared the petitioners herein as guilty under Section 401A of the K.M.C. Act and sentenced them to undergo Simple Imprisonment for six months each and to pay a fine of Rs. 5,000/- each, in default, to suffer further Simple Imprisonment for one month each.

4. The factual matrix of the instant case, leading to filing of this application, is as under: -

4a. One Tapas Laha, Assistant Engineer (C), Building Department, Kolkata Municipal Corporation, Borough – I lodged a written complaint before Chitpore Police Station alleging, *inter alia*, that the accused persons/petitioners herein made unauthorized construction at 14/5, B.T. Road, Kolkata – 700 002 without following norms and practice of civil engineering and, for that, the building may collapse at any time causing danger to human lives.

4b. On the basis of said written complaint, a case was registered being Chitpore Police Station Case No. 50 dated 25.02.2016 under Section 401A of the K.M.C. Act against the accused persons, namely, Md. Yunus, Md. Asif and Md. Nousad and initiated investigation.

4c. After completion of investigation, the Investigating Officer submitted charge sheet being Charge Sheet No. 64/16 dated 27.04.2016 under Section 401A of the K.M.C. Act against the accused persons/petitioners herein and sent the case for trial before the Learned 3rd Municipal Magistrate at Calcutta. In turn, the Learned Magistrate framed charge against the accused persons under Section 401A of the KMC Act and commenced trial. After considering the oral and documentary evidence, the Learned Magistrate found the

construction was unauthorized and held the accused persons guilty and sentenced them as aforesaid.

4d. Being aggrieved by and dissatisfied with the said Judgment of conviction and sentence dated 23.09.2016, the petitioners have filed Criminal Appeal being No. 119/2016 before the Learned Additional District and Sessions Judge, Bench – II, City Sessions Court at Calcutta. After hearing both sides, the appeal was dismissed affirming the Impugned Judgment dated 23.09.2016 passed by the Learned Municipal Magistrate, 3rd Court, Calcutta.

4e. Feeling aggrieved with the said observation made by the Learned Additional District and Sessions Judge, Bench – II, City Sessions Court at Calcutta, the petitioners filed this application praying for setting aside the same. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

5. Learned counsel, Mr. Tarique Quasimuddein with Mrs. Zainab Tahur appearing on behalf of the Petitioners submitted that both the Learned Courts below overlooked the role and status of the petitioners. Accused persons were merely tenants in premises no. 14,

B.T. Road, Kolkata – 700 002 under the landlords, who resides in another building just near the subject building.

6. The landlords attempted to evict them by using machinery of Kolkata Municipal Corporation claiming that the petitioners trespassed into the said premises and erected unauthorized construction on the land owned by the original landlords i.e. P.Ws. 1 and 4.

7. It was further argued that they were residing as tenants since long in the said building without any danger of human life. It cannot be said that the building posed a danger of collapse which is a requisite for establishing the offence punishable under Section 401A of the KMC Act. The Petitioners never constructed any portion of the said alleged building.

8. It was further submitted that the prosecution especially the P.W. 1, Abdul Kalam Azad, who is the landlord of the said premises situated at 14, B.T. Road, deposed that he has not taken any legal action for eviction despite claiming the petitioners are trespassers of his land.

9. No other sufficient oral and documentary evidence was produced before the Learned Magistrate to show that the occupiers or

trespassers or tenants had constructed the building situated at 14, B.T. Road, though the complainant lodged for unauthorised construction at 14/5, B.T. Road, a totally separate premises. Allegations made against the petitioners, that they have constructed the said building, are not sufficient and/or sufficed them as guilty of the offence punishable under Section 401A of the KMC Act. Therefore, they are liable to be acquitted. As such, the impugned judgments passed by the both the Learned Courts below are liable to be set aside.

SUBMISSION ON BEHALF OF THE KOLKATA MUNICIPAL CORPORATION:

10. Per contra, learned counsel appearing on behalf of the Kolkata Municipal Corporation submitted that during trial, the prosecution has examined four witnesses and all the witnesses have corroborated that the petitioners have constructed two storied building. A 'Stop Work Notice' was also issued to them which they have acknowledged but failed to comply with. As such, a complaint was lodged against them before Chitpore Police Station.

11. During investigation, local witnesses deposed that the building was constructed by the accused persons. Therefore, the petitioners were found guilty and sentenced in accordance with law.

The said judgment was also affirmed by the Learned Appellant Court. Therefore, there is no merit in the present Criminal Revisional application and is liable to be dismissed.

12. Learned counsel appearing on behalf of the Kolkata Municipal Corporation further added that the construction, which was located at the land of P.W. 1, was unauthorised and built without any sanction plan. No explanation has been assigned by the accused persons regarding such illegal construction. When there is no sanction plan and the construction was made without any stability or strength, then there is every possibility of causing harm to the human lives and properties when it collapsed at any point of time. Therefore, the Judgment passed by the Learned Magistrate does not suffer any illegality or erroneous and, thus, it needs not require to interfere with in any manner.

SUBMISSION ON BEHALF OF THE STATE:

13. Learned counsel appearing on behalf of State produced the Case Diary and submitted that the accused persons constructed the two storied building on the land of P.W. 1 and P.W. 4, who also corroborated the prosecution case. Therefore, there is no illegality in the Judgments passed by both the Learned Courts below. Therefore, this Criminal Revisional application is liable to be dismissed.

DISCUSSIONS AND ANALYSIS BY THIS COURT:

14. I have heard the rival arguments and submissions of the parties and upon perusal of the evidence and Judgments passed by both the Learned Courts below, this Court finds prosecution has examined four witnesses and produced some documents to prove that the accused persons have constructed the two storied building at 14/5, B.T. Road in Ward No. 6, Borough – I. The allegations of the complainant were that after inspection by the KMC authority, it was found that frame structure of two storied building has been completed at the aforementioned location.

15. The said unauthorised construction was in progress when a ‘Stop Work Notice’ under Section 401 of the KMC Act dated 25.02.2016 was issued and served. Based on the complaint, a case was initiated and trial eventually commenced. Ultimately, the case was decided against the Petitioners, convicted and sentenced them in accordance with law.

16. However, upon careful perusal of the record, it appears that the accused persons claimed themselves as tenants of the premises No. 14, B.T. Road, owned by the landlords i.e. P.Ws. 1 and 4. In turn, the P.W. 1, Abdul Kalam Azad and P.W. 4, Mahatab Uddin Ahmed specifically deposed that they reside at 19, B.T. Road, Kolkata. Out of

them, Mohatab Uddin Ahmed made a complaint for unauthorised construction on his land.

17. Both P.W. 1 and P.W. 4 claimed themselves as landlords of 14, B.T. Road, Kolkata and during cross-examination, P.W. 4 admitted that there is no existence of premises no. 14/5, B.T. Road. But, P.W. 1 admitted that the accused persons are the trespassers of his land situated at 14, B.T. Road, P.S. – Chitpore, Kolkata though the claim of the petitioners is that they are only tenants. Petitioners are tenants or trespassers are not the subject matter to be decided.

18. From the entire evidence of P.Ws. 1, 2, 3 and 4, this Court does not find any relation with the accused persons with the alleged premises, where the unauthorised construction was alleged to be found at 14/5, B.T. Road. The premises nos. 14 and 14/5, B.T. Road are not the same and similar as appeared from the evidence of the prosecution witnesses.

19. In course of hearing, the learned counsel appearing on behalf of the petitioners/accused persons drew attention to this Court an order passed by a Co-ordinate Bench of this Court on 15.01.2024 passed in W.P.A. 22957 of 2023 (Saddam Ghoshi Vs. The Kolkata Municipal Corporation & Ors.). The operative portion of the

said order is stipulated herein for necessary consideration in the instant case as, *inter alia*, as under:-

“The petitioner complains of illegal and unauthorized construction at 14/5, B.T. Road, Ward No. 6, Borough-1 of the Kolkata Municipal Corporation.

A report has been filed by the learned advocate representing the Corporation signed by three engineers of the Corporation on January 2, 2024.

The report mentions that the premises was inspected and it was found that a construction of partly two storied and partly single storied RT Shed exists at the subject premises. The building is an old one but the actual age of the construction could not be ascertained. Local enquiry prima facie reveals that the building is more than twenty years old. No new construction has been found at the time of inspection. The occupiers/owner, however, failed to produce the sanction plan in support of the existing construction.

It appears from the submission made on behalf of the petitioner and the private respondent that the petitioner is the son-in-law of the private respondent. Due to the acrimonious relationship in between the parties, the petitioner lodged a complaint alleging unauthorized construction against the private respondent.

The report of the Corporation suggests that the building is nearly two decades old. No new construction has been found at present.

It is settled law that writ petitions ought not to be entertained for settling personal scores. A construction which in existence without any objection for more than two decades cannot suddenly be held to be unauthorized on the complaint of a private party who does not have cordial relationship with the person responsible for making construction.”

20. This Court would also like to quote the provisions enumerated in Sections 401A and 619 of the KMC Act, 1980 for better understanding and for the sake of ready reference as under:

“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.

619. Offences by companies. - *(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence*

and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. --For the purposes of this section, --

(a)"company" means a body corporate, and includes a firm or other association of individuals; and

(b)"director" in relation to a firm means a partner in the firm."

21. Considering the above facts and circumstances and going through the oral and documentary evidence and the aforesaid

provisions, this Court is of the opinion that the prosecution has failed to prove that the petitioners/accused persons have constructed the building as alleged by the Assistant Civil Engineer of Building Department, Borough – I, KMC/Complainant at premises no. 14, B.T. Road, Ward No. 6, Borough – I, wherein the petitioners are residing since long either as tenants or occupiers or trespassers.

22. It is also not corroborated by the prosecution witnesses that the petitioners have constructed unauthorised construction at 14/5, B.T. Road, Ward No. 6, Borough – I of the Kolkata Municipal Corporation.

23. P.W. 1 and P.W. 4 admitted that petitioners are the trespassers in premises no. 14, B.T. Road. The claim of the Kolkata Municipal Corporation is that two storied frame work was constructed without sanction plan at 14/5, B.T. Road Ward No. 6, Borough – I.

24. The representative of the Corporation, specifically signed by three engineers of the Corporation, filed a report before a Constitutional Court in WPA No. 22957 of 2023. Wherein it was mentioned that the premises was inspected and found construction of partly two storied and partly single storied RT Shed exists at the subject premises at 14/5, B.T. Road Ward No. 6, Borough – I. The

building is an old one but the actual age of the construction could not be ascertained. On local enquiry, it prima facie reveals that the building is more than twenty years' old. No new construction has been found at the time of inspection. The occupiers/owners, however, failed to produce the sanction plan in support of the existing construction.

25. Even if, for the sake of argument, it is acceptable that the said structure was constructed without any sanction plan, then also the corporation or the prosecution is required to prove with cogent and reliable evidence that the construction was actually done by the accused persons/petitioners herein. No such evidence found from the prosecution to establish that the present petitioners have constructed the said building/structure. Prosecution further fails to prove particular date, time or year of such illegal construction. Although, it is admitted by the P.W. 1 and P.W. 4 that the petitioners are the trespassers and they are the owners of premises no. 14, B.T. Road. It reveals from the record that there are two premises i.e. 14 and 14/5, B. T. Road. Both are situated in Ward No. 6, Borough – I of the Kolkata Municipal Corporation. But, the prosecution fails to establish that both the premises are same and similar.

26. The Learned Trial Court, in its judgment, noted that, based on the arguments presented on behalf of the accused, the construction was claimed to be structurally stable. However, no effort was made by the accused to dispel the doubts raised in the Court's mind regarding its safety, even during the argument stage. This lack of initiative and reluctance on the part of the accused compelled the Learned Court to conclude that the unauthorized construction was neither safe nor stable for habitation. Consequently, the case was decided in favour of the prosecution, leading to the conviction of the petitioners.

27. This Court does not find the observations made by the Learned Trial Court satisfactory, as tenants or trespassers may often raise such pleas regarding the safety and stability of the structure. This is typically done to avoid eviction from long-occupied premises, such as one located at 14, B.T. Road.

28. In the light of above discussions, this Court does not repose confidence that the prosecution has been able to prove the charge against the accused persons/petitioners beyond reasonable doubt that the petitioners have constructed the alleged building/structure at premises no. 14/5, B.T. Road, Ward No. 6, Borough – I. Accordingly, this Court is of the opinion that there is a need to

interfere with the Judgments and Orders passed by both the Learned Courts below.

29. Accordingly, the Judgment dated 07.04.2018 passed by the Learned Additional District & Sessions Judge, Bench – II, City Sessions Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 119 of 2016 affirming the Judgment dated 23.09.2016 passed by the Learned Municipal Magistrate, 3rd Court, Calcutta in connection with Chitpore Police Station Case No. 50 of 2016 dated 25.02.2016 under Section 401A of the Kolkata Municipal Corporation Act, 1980 being Case No. M.F. No. 170 of 2016 is hereby set aside.

30. Accordingly, **CRR 1783 of 2018** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

31. Let a copy of this Judgment be sent to the Learned Courts below for information.

32. Case Diary, if any, is to be returned to the learned counsel for the State.

33. Interim order, if any, stands vacated.

34. Parties shall act on the server copies of this Judgment uploaded on the official website of this Court.

35. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)