

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1801 of 2018

**Pravans Pratap Singh & Another
Versus
The State of West Bengal & Another**

For the Petitioners : Mr. Dinendra Nath Chatterjee, Adv.
Mr. P. Sengupta, Adv.
Mr. B. Sengupta, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Sreyashee Biswas, Adv.

For the KMC : Mr. Goutam Dinda, Adv.
Mr. A. S. Chatterjee, Adv.

Heard on : 17.01.2025

Judgment on : 28.02.2025

Ajay Kumar Gupta, J:

1. By filing this present application under Sections 401/482 of the Code of Criminal Procedure, 1973, the petitioners have challenged the Judgment and Order dated 09.04.2018 passed by the Learned Judge, Bench – I, City Sessions Court, Calcutta in Criminal Appeal No. 18 of 2017.

2. By the said Judgment and Order dated 09.04.2018, the Learned Judge affirmed the Judgment dated 04.02.2017 passed by the Learned Municipal Magistrate, 3rd Court, Calcutta in M.F. Case No. 32 of 2016 under Section 401A of the Kolkata Municipal Corporation Act, 1980 (herein referred to as ‘the KMC Act’)thereby convicted and sentenced the accused persons/petitioners herein to suffer Simple Imprisonment for six months each and also to pay Rs. 5,000/ each, in default, to suffer Simple Imprisonment for one month more.

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

3a. On or before 06.01.2016, the petitioners carried out unauthorized construction at Premises No. 105/1B, Atul Sur Road,

Kolkata – 700 015, without obtaining any Sanction Plan from Kolkata Municipal Corporation. This construction endangers or is likely to endanger human life, property, the Corporation's water-supply, drainage, sewerage and may disrupt the road traffic and cause fire hazard.

3b. Based on the unauthorized construction, Assistant Engineer, Building Department, Borough – VII lodged a written complaint before the Officer-in-Charge, Tangra Police Station. The complainant alleged that the petitioners had carried out unauthorized construction at the aforesaid premises without any sanctioned plan. Consequently, a case was registered against the petitioners and initiated investigation.

3c. After completion of investigation, the Investigating Officer submitted charge sheet against the petitioners.

3d. The present petitioners underwent trial before the Learned Municipal Magistrate, 3rd Court at Kolkata on the charge under Section 401A of the KMC Act. After considering the evidence presented by the prosecution, the Learned Magistrate found them guilty under Section 401A of KMC Act mentioned above.

3e. Feeling aggrieved and dissatisfied with the said Judgment and Order of conviction and sentence dated 04.02.2017, the petitioners preferred appeal before the Learned Chief Judge, City Sessions Court at Calcutta being Criminal Appeal No. 18 of 2017.

3f. After admitting the appeal, the matter was transferred to the Learned Judge, Bench-I, City Sessions Court at Calcutta and the same was heard in presence of both sides and finally on 9th April, 2018 dismissed the appeal affirming the Order passed by the Learned Municipal Magistrate.

3g. Feeling aggrieved with the dismissal of the appeal, the present petitioners have filed this Criminal Revisional application.

4. Learned counsel appearing on behalf of the petitioners vehemently argued and submitted that the prosecution has failed to prove the case beyond a reasonable doubt. It further failed to demonstrate how the building endangers or is likely to endanger human life, property, Corporation's water-supply, drainage, sewerage and/or may disrupt the road traffic and cause fire hazard.

5. It was further submitted that the landlord has constructed the building at the aforesaid address after obtaining a sanctioned plan. The allegation of additional floor construction over the second floor is out and out false. Therefore, the instant Criminal Revisional application is required to be allowed and impugned judgments passed by both the Learned Courts below are liable to be set aside.

6. Learned counsel appearing on behalf of the Kolkata Municipal Corporation submitted that they have made two storied additional floors over the existing two storied floor, sanctioned by the Kolkata Municipal Corporation, without prior permission. The petitioner no. 1 is the owner and the petitioner no. 2 is the developer. Both are very much involved in such illegal construction of the additional floors. According to him, prosecution has been able to demonstrate the fact of alleged construction through oral as well as documentary evidences.

7. It was further submitted by the learned counsel appearing on behalf of the Kolkata Municipal Corporation that due to such construction of additional two floors over the existing two storied building was the reason where the whole building became unstable and unsafe for human in any manner. Therefore, the Judgment and

Order of conviction and sentence passed by the Learned Trial Court is not required to be interfered.

8. Furthermore, the Learned Judge, Bench – I, City Sessions Court at Calcutta also affirmed the order of the Learned Trial Court and dismissed the appeal filed by the petitioners. Accordingly, the instant Criminal Revisional application is also liable to be dismissed.

9. Learned counsel appearing on behalf of the State submitted that after investigation, the Investigating Officer found there was an illegal construction over the existing two storied building without any sanction plan or permission from the Kolkata Municipal Corporation. Both the additional floors would be definitely endangered or are likely to endanger human life, property, Corporation's water-supply, drainage, sewerage and may disrupt the road traffic and cause fire hazards.

10. The Learned Trial Court rightly held that the premises is situated in the congested area and there is every possibility of endanger the life of human being if the building collapse. Furthermore, if any fire hazardous would happen then it would create chaotic situation not only to the inhabitants of the said building but

also the inhabitants of the neighboring building. Therefore, Learned Trial Court rightly convicted and sentenced the accused persons. The said conviction and sentenced dated 04.02.2017 has also been affirmed by the Learned Judge, Bench – I, City Sessions Court at Calcutta.

11. The petitioners failed to bring sufficient reasons or grounds to interfere with the concurrent findings of both the Learned Courts below. Therefore, this Criminal Revisional application is liable to be dismissed.

12. Heard the learned counsels for the parties and upon perusal of the impugned Judgments passed by both the Learned Courts below, this Court finds initially two storied building was constructed over the Premises No. 105/1B, Atul Sur Road, Kolkata – 700 015 after obtaining Sanctioned Plan from Kolkata Municipal Corporation. But, subsequently, two additional floors were constructed without any sanction plan or prior permission from the Kolkata Municipal Corporation.

13. The said fact was fully established by the oral evidence of P.Ws. 1 to 5 respectively. The accused persons were examined under

Section 313 of the CrPC, but, failed to give any valid answers and also failed to produce any contrary evidence. No defence witnesses have been examined by the accused persons to discard the oral and documentary evidences brought on record by the prosecution to negate the prosecution case. The petitioners also failed to prove that the construction of additional two floors over the existing two storied building was as per the sanction plan or with permission of the Kolkata Municipal Corporation.

14. The petitioners were also unable to prove that the construction of additional two floors is stable. It is definitely parlance of the people that in the city, general people construct building without sanction plan, which caused a serious endanger to the human life and safety. The wrongdoer in the field of making unauthorized construction without any sanction plan or de hors of the Kolkata Municipal Corporation Acts and Rules cause a bad impact to the others. Therefore, a strict scheme or act was enacted under Kolkata Municipal Corporation and Section 401A was introduced to stop illegal construction so that life of the human being could be saved. The said Section was enacted for penalizing the persons who are involved in unauthorized construction. 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."

15. Upon careful perusal and consideration of the said 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.

16. The sentence pronounced by the Learned Trial Court is, however, appropriate when a person constructs unauthorized

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

17. The petitioner no. 1 is the owner and the petitioner no. 2 is the developer, who constructed the additional two floors without any sanction plan. Therefore, both are held liable for such unauthorized construction.

18. Accordingly, this Court does not find any sufficient or reasonable grounds to interfere with the concurrent findings of both the Learned Courts below. Accordingly, the present application is devoid of merit and is liable to be dismissed.

19. Accordingly, **CRR 1801 of 2018** is dismissed. Consequently, connected applications, if any, are also disposed of. Both the petitioners are directed to surrender before the Learned Trial Court for serving of their remaining sentences within 30 days from the date of this order. In default, the trial court shall exhaust all procedure to bring them to serve out the remaining sentence in accordance with law.

20. Interim order, if any, is hereby vacated.

21. Let a copy of Judgment be communicated to the Trial Court for information and for taking necessary steps.

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

23. 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.