

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR No. 3003 of 2022

With

CRAN 6 of 2024

CRAN 8 of 2025

Mahendra Baid

Vs.

State of West Bengal & Anr.

For the Petitioner	: Mr. Ajitesh Pandey Mr. Md. Zohaib Rauf
For the State	: Ms. Sreyashee Biswas
For the KMC	: Mr. Goutam Dinda Mr. Anindyasundar Chatterjee
Hearing concluded on	: 31.01.2025
Judgment on	: 25.04.2025

Uday Kumar, J:-

1. This revisional application, preferred under Section 482 of the Code of Criminal Procedure, for quashing of the proceedings of M.F. Case No. 1065 of 2018, pending before the Learned Senior Municipal Magistrate, Kolkata, arising out of Jorasanko P.S. Case No. 235 of 2018, under Section 401A of the Kolkata Municipal Corporation Act, 1980 (hereinafter, the "KMC Act"). The petitioner, Mahendra Baid, seeks quashing of the proceedings only on the ground that it is tainted by a fundamental illegality from the very inception, specifically a blatant

disregard for the mandatory procedural safeguard enshrined in Section 620 of the KMC Act.

- 2.** The factual matrix, as presented before this Court, reveals that the petitioner's late father held recorded ownership of the premises at 43, Barwaritalla Road, Kolkata. A sanctioned building plan, bearing No. 2014030029 and issued in 2014, authorized construction at the said premises. Subsequently, the Kolkata Municipal Corporation (KMC) issued a show cause notice dated 17.03.2017, invoking Sections 400(1) and 416 of the KMC Act, alleging deviations from the sanctioned plan. Following a hearing by the direction of the KMC, they permitted the petitioner to retain the construction, contingent upon the submission of an affidavit and the payment of the stipulated retention fees. The petitioner duly complied with these conditions, culminating in the approval of the D-sketch plan. However, the factual matrix took a criminal turn with the registration of Jorasanko P.S. Case No. 235/2018, predicated on a complaint lodged by one Ashish Kundu, identified as an Assistant Engineer. The gravamen of the complaint was that the petitioner had undertaken the construction of a partition wall without obtaining the requisite sanction, thereby purportedly endangering human life. Consequently, a charge-sheet was filed on 27.07.2018, invoking the punitive provisions of Section 401A of the KMC Act.
- 3.** The petitioner assailed the proceeding on the principal ground that the statutory condition articulated in Section 620 of the KMC Act mandating a complaint by the Municipal Commissioner or a person authorized by

him, was not fulfilled. This Section unequivocally mandates that no court shall entertain a trial for any offence punishable under the Act except upon a complaint initiated by the Municipal Commissioner himself or a person duly authorized by him in this specific regard. Ancillary to this primary contention, the petitioner also asserted that the non-service of a 'Stop Work' notice under Section 401 of the KMC Act and the absence of any prior verification of the property's ownership before the institution of these criminal proceedings.

4. Mr. Ajitesh Pandey, learned advocate appearing on behalf of the petitioner vehemently argued that the very foundation of the proceeding suffers from a patent illegality. The crux of his argument lies in the fact that the proceeding under Section 401A of the KMC Act was set in motion by a written complaint emanating from an individual, the aforementioned Assistant Engineer, whose authority to initiate such a serious criminal action remains unsubstantiated by any discernible documentary evidence of specific authorization from the Municipal Commissioner. Learned Counsel for the petitioner contended that this act of initiating prosecution by an allegedly unauthorized individual strikes at the very root of the statutory scheme envisioned by Section 620 of the KMC Act.
5. Mr. Pandey contended that this action is in direct contravention of Section 3A of the KMC Act, which pertains to constructions that may endanger human life by imposing undue load on structures without proper consideration of their repercussions, thus violating the relevant provisions of the Act.

- 6.** Further amplifying his challenge, learned counsel for the petitioner underscored the absence of a mandatory 'Stop Work' notice preceding the initiation of the FIR. Moreover, he vehemently asserted the petitioner's complete lack of connection with the property in question at the time of the alleged unauthorized construction, emphasizing that the recorded owner was the petitioner's deceased father. He argued that this fundamental aspect of ownership was not verified before the petitioner was falsely implicated in the present case. The allegation of construction without a sanctioned plan and the subsequent lodging of the FIR were characterized as baseless and malicious, rendering the entire proceeding fundamentally flawed and deserving of immediate quashing. The argument was succinctly put: a valid complaint under Section 401A can only be filed by a person explicitly authorized by the Municipal Commissioner, and no such authorization exists on the record of this case.
- 7.** Consequently, it was argued that the initiation of the proceeding is fundamentally flawed in law and warrants immediate quashing. It is argued that a valid complaint under Section 401A of the Act can only be filed by a person duly authorised by the Municipal Commissioner, and in the present case, no such authority exists on record.
- 8.** Per contra, Mr. Gautam Dinda, the learned counsel representing the Kolkata Municipal Corporation (KMC) stoutly defended the legality and propriety of the ongoing proceeding. He submitted that the construction of the partition wall on the first floor of the premises at 10, Tara Chand Dutta Street, Ward No. 43, constituted an unauthorized act in blatant

violation of the KMC Act, specifically Sections 390/393/401A of the KMC Act. The KMC's counsel argued that this construction, by increasing the structural load without a sanctioned building plan, posed a direct threat to the safety of the building and the public at large.

9. He further contended that the construction of a brick partition wall inherently leads to a substantial change of the building's load, squarely falling within the ambit of constructions deemed potentially dangerous under Section 3A of the KMC Act. He emphasized the unequivocal prohibition against any construction, be it internal or external, by any individual, irrespective of their relationship with the property (owner, tenant, lessee, or otherwise), without the prior and explicit sanction of the Corporation.
10. In an attempt to justify the initiation of the criminal proceedings, the KMC's counsel pointed to an Inspection Report dated 20th July, 2018, submitted by the Sub-Assistant Engineer. He argued that based on this report, the Executive Engineer issued a 'Stop Work' notice under Section 401 of the Act and simultaneously lodged a complaint through Assistant Engineer Ashish Kundu, culminating in the registration of the FIR. He also mentioned the dispatch of a police intimation slip to Jorasanko P.S. and the subsequent formal initiation of a complaint under Section 401A.
11. Crucially, the Corporation placed strong reliance on Municipal Commissioner's Circular No. 28 of 2015-2016, dated 20.06.2015. This circular, according to the KMC, specifically authorizes the Assistant Engineer of the respective Borough/Ward to take action in cases of unauthorized construction, including the crucial step of lodging FIRs

under Section 401A of the Act. The KMC argued that this circular, aimed at the prevention, monitoring, and handling of unauthorized and insecure buildings, explicitly vests the Assistant Engineer, through a Memo issued by the SAE/AE(C/Building) of the concerned Borough/Ward, with the sanctioned authority to initiate action against constructions carried out in contravention of the Act or its attendant rules. This authority, the KMC contended, inherently includes the power to lodge an FIR with the Officer-in-Charge to apprehend the person responsible for unauthorized construction under Section 401A of the KMC Act, 1980, if deemed necessary. Based on this, the learned advocate for the KMC earnestly prayed for the dismissal of the revisional application, asserting the absence of any legitimate ground warranting the quashing of the proceeding.

12. The learned advocate for the KMC further sought to address the petitioner's reliance on a notification, arguing that it came into effect after the unauthorized construction of the wall. Regarding the potential danger to human life, the KMC's stance was that this is a matter requiring expert determination and constitutes a pure question of fact that can only be adjudicated by the Trial Court after the recording of evidence.

13. Addressing the crucial issue of the 'Stop Work' notice, the learned advocate for the KMC referred to a report dated 23rd December, 2024, purportedly submitted by the Executive Engineer, evidenced by Memo Executive Engineer/C/Building Borough – 4 and 5. Based on this report, the KMC asserted that a 'Stop Work' notice under Section 401 of

the KMC Act, 1980, was indeed served upon the person responsible for the unauthorized construction on 20th July, 2018. Simultaneously, a police intimation slip was allegedly sent to the local police station, Jorasanko, on the same date, and the Department lodged an FIR under Section 401A of the KMC Act, 1980, to halt the unauthorized construction of the brick wall at the first floor of the premises situated at 10 Tara Chand Dutta Street, Ward No. 43, Borough – V.

14. The core questions that emerge for determination are threefold:

- i. Whether the proceeding initiated under Section 401A of the KMC Act is legally unsustainable due to a lack of compliance with the mandatory provisions of Section 620 of the said Act.
- ii. Whether the alleged absence of a ‘Stop Work’ notice under Section 401 of the KMC Act renders the present prosecution illegal and without jurisdiction.
- iii. Whether, in light of the facts and circumstances presented, the continuation of this prosecution constitutes an abuse of the process of law, warranting its quashing under the combined powers of Section 401 and Section 482 of the Code of Criminal Procedure.

15. Before delving into the merits of the rival submissions, it is imperative to discuss to the relevant statutory provisions. Section 401(1) of the KMC Act empowers the Municipal Commissioner to issue an order requiring the cessation of construction if it is carried out in contravention of the Act or its rules. Section 401A, on the other hand, creates a substantive criminal offence for unauthorized constructions

that pose a danger to human life or are likely to disrupt essential civic infrastructure. Crucially, Section 620 of the KMC Act acts as a gatekeeper to criminal prosecutions under the Act, stipulating that no Court can proceed to trial except upon a complaint initiated by the Municipal Commissioner or a person specifically authorized by him in this behalf.

- 16.** Upon a meticulous examination of the materials placed before this Court, the contention of the petitioner regarding the non-compliance with Section 620 of the KMC Act appears to hold significant weight. The FIR and the subsequent charge-sheet clearly indicate that the complaint which triggered the present criminal proceedings was lodged by Mr. Ashish Kundu, an Assistant Engineer of Borough IV–V. However, the crucial missing link is the demonstrable evidence of specific authorization granted to Mr. Kundu by the Municipal Commissioner to initiate a criminal prosecution under Section 401A of the KMC Act. While the KMC heavily relies on Circular No. 28 of 2015–2016, this Court finds that a general circular empowering Assistant Engineers to take action against unauthorized constructions may not, ipso facto, equate to the specific authorization mandated by the unambiguous language of Section 620 for the initiation of criminal proceedings. The initiation of a criminal prosecution is a serious matter with significant consequences for the accused, and the legislature, through Section 620, has consciously placed the responsibility for authorizing such action either directly with the Municipal Commissioner or with an individual specifically empowered by him for this purpose. The KMC has failed to

produce any specific order or document demonstrating such specific authorization in favour of Mr. Ashish Kundu to lodge the present complaint under Section 401A of the KMC Act.

- 17.** The reliance placed by the KMC on the judgment reported in 2018 (2) CHN (CAL) 677, interpreting the interplay between Sections 401/400/401 of the KMC Act, does not detract from the fundamental requirement of proper authorization under Section 620 for initiating a criminal prosecution. While the judgment elucidates the distinct roles of these Sections, it does not dilute the mandatory nature of Section 620 concerning the locus standi to initiate criminal proceedings.
- 18.** Furthermore, the contention of the KMC that the Circular dated 20.06.2015 suffices as authorization under Section 620 is not persuasive. Section 620 speaks of authorization "in this behalf," implying a specific empowerment to initiate a criminal complaint for a particular offence or a class of offences. A general empowerment to take action against unauthorized constructions, which may include administrative measures, cannot be automatically construed as a blanket authorization to initiate criminal prosecutions, especially given the explicit language of Section 620.
- 19.** The judgment cited by the petitioner, 2010 SCC Online Cal 751, while dealing with a different factual scenario involving minor deviations, underscores the importance of the KMC's own assessment of the nature and gravity of the alleged violation. In the present case, the KMC vehemently asserts the dangerous nature of the unauthorized construction. However, this assertion does not cure the fundamental

defect in the initiation of the prosecution by an allegedly unauthorized individual.

20. Turning to the second question regarding the ‘Stop Work’ notice, while the KMC claims its issuance on 20th July, 2018, the crucial aspect of *service* of this notice upon the petitioner or any person responsible for the alleged unauthorized construction remains shrouded in ambiguity. The KMC has failed to produce any acknowledgment of receipt or any other cogent evidence demonstrating that the ‘Stop Work’ notice was indeed served. Section 401A contemplates prosecution for the *continuation* of unauthorized construction *after* being directed to stop. In the absence of demonstrable proof of service of a ‘Stop Work’ notice, the very foundation for invoking Section 401A becomes questionable. The report dated 23rd December, 2024, referred to by the KMC, which postdates the initiation of the proceedings by a significant period, without any accompanying proof of contemporaneous service, does little to bolster the KMC’s claim.

21. Finally, addressing the third question concerning the abuse of process, this Court is mindful of the limitations inherent in exercising its revisional or inherent jurisdiction under Section 482 CrPC. This jurisdiction is to be exercised sparingly and with circumspection. However, the Hon’ble Supreme Court in the landmark judgment of *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, has laid down specific categories where the High Court can justifiably quash criminal proceedings. One such category is where there is a legal bar to the institution or continuation of the proceedings. In the present case, the

apparent non-compliance with the mandatory requirement of Section 620 of the KMC Act constitutes such a legal bar. Furthermore, as held in *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749, a criminal trial should not be permitted to proceed when its very initiation is legally flawed.

- 22.** In the present factual matrix, the initiation of the prosecution by an individual whose specific authorization to do so has not been demonstrated, coupled with the lack of conclusive proof of service of a 'Stop Work' notice, casts a serious doubt on the legality and sustainability of the proceedings. Allowing such a flawed prosecution to continue would, in the considered opinion of this Court, constitute an abuse of the process of law.
- 23.** In view of the foregoing analysis and the legal principles enunciated, I conclude that the initiation of M.F. Case No. 1065 of 2018, arising out of Jorasanko P.S. Case No. 235 of 2018, under Section 401A of the Kolkata Municipal Corporation Act, 1980, suffers from a fundamental legal infirmity due to the apparent non-compliance with the mandatory provisions of Section 620 of the said Act, regarding proper authorization for the initiation of the complaint. Furthermore, the lack of conclusive proof of service of a 'Stop Work' notice under Section 401 raises serious concerns about the applicability of Section 401A. Consequently, I find that the continuation of these proceedings would be an unwarranted and unjustifiable exercise, amounting to an abuse of the process of law.
- 24.** In the interest of justice and to prevent the continuation of a legally unsustainable prosecution, this Court deems it fit to exercise its

inherent powers under Section 482 of the Code of Criminal Procedure to quash the impugned proceedings.

- 25.** Accordingly, M.F. Case No. 1065 of 2018, pending before the Learned Senior Municipal Magistrate, Kolkata, arising out of Jorasanko P.S. Case No. 235 of 2018, initiated under Section 401A of the Kolkata Municipal Corporation Act, 1980, is hereby **quashed**.
- 26.** The revisional application stands **allowed**.
- 27.** Connected applications, CRAN 6 of 2024 and CRAN 8 of 2025 are disposed of accordingly.
- 28.** Interim order, if any, stands vacated.
- 29.** The petitioner is directed to file a copy of this order with the relevant police station and the concerned court.
- 30.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)