

Criminal Revision

Present: The Hon'ble Justice Ashim Kumar Roy

Judgment On : 23-03-2010.

C.R.R. No. 1714 of 2009

**Raja Ram Saraf
versus
State of West Bengal & Anr.**

POINTS:

Quashing of a charge sheet----Charge sheet filed under Section 401 of Kolkata Municipal Corporation Act ----Charges of construction during renovation work----Charges, if satisfying the Statutory requirements---Section 401A, Kolkata Municipal Corporation Act.

FACTS:

In this Criminal Revision, quashing of the impugned charge-sheet, has been sought for, on the ground that on the evidentiary materials collected by the police and on the allegations made in the complaint no offence punishable under Section 401A , of the Kolkata Municipal Corporation Act, is made out and the entire construction has been regularized by the Kolkata Municipal Corporation upon accepting necessary fees and charges amounting to Rs. 8,79,918/-.

However, Kolkata Municipal Corporation claimed that whether offence has been committed or not, i.e., a pure question of fact and can only be decided during the trial.

HELD:

The impugned charge-sheet is not at all tenable either in law or in facts. In this case the allegations made against the petitioner were that of lowering the floor link through renovation work at the ground floor. There was no allegation that such construction endangered human life, or any property of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic was disrupted or was likely to be disrupted or was likely to cause a fire hazard. There is no material justifying submission of impugned charge-sheet against the petitioner. Apart from that it is an admitted position that the Learned Special Officer, K.M.C. has come to a definite finding that "*the deviated unauthorized constructions are not so grave and serious though there are some infractions of building rules but in my considered opinion those are not so serious.*" It may also be noted that such finding was never been disputed by the K.M.C. and same has already reached its finality. Moreover, pursuant to the order of the Learned Special Officer, the K.M.C. has accepted statutory fees and charges from the petitioner and the construction has been regularized.

PARAS—3&4

For Petitioner : Mr. Tarique Quasimuddin

For State : Mr. Kashem Ali Ahmed

For K.M.C. : Mr. Raghunath Chakraborty
Ms. Sreyashee Biswas

THE COURT:

1. Invoking Section 482 of the Code of Criminal Procedure the petitioner has approached this Court for quashing of a charge-sheet under Section 401 of the Kolkata Municipal Corporation act relating to G.R. Case No. 631 of 2004 now pending before the Learned Metropolitan Magistrate, 9th Court, Calcutta, arising out of Park Street Police Station Case No. 64, dated 15.3.2004.

2. In this criminal revision, quashing of the impugned charge-sheet, has been sought for, on the ground that on the evidentiary materials collected by the police and on the allegations made in the complaint no offence punishable under Section 401A of the Kolkata Municipal Corporation Act is made out. In addition to that, the Learned Counsel of the petitioner heavily relied on an order passed by the Learned Special Officer Building, Kolkata Municipal Corporation (KMC), in connecting with a proceeding under Section 400 (1) of the Kolkata Municipal Corporation Act. It was contended that the entire construction has been regularized by the Kolkata Municipal Corporation upon accepting necessary fees and charges amounting to Rs. 8,79,918/-.

On the other hand, the Learned Counsel appearing on behalf of the Kolkata Municipal Corporation as well as the Learned Counsel appearing on behalf of the State opposed the prayer for quashing. According to them whether offence has been committed or not, i.e., a pure question of fact and can only be decided during the trial. They further contended that the purported finding of the Special Officer is absolutely without jurisdiction.

3. Now, having considered the rival submission made on behalf of the parties and considering the materials on record and relevant provisions of law as well as the Case Diary, I am of the opinion that the impugned charge-sheet is not at all tenable either in law or in facts. The provisions of Section 401A of the Kolkata Municipal Corporation Act is quoted below;
“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, 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.”

4. In this case the allegations made against the petitioner were that of lowering the floor link through renovation work at the ground floor. There was no allegation that such construction endangered human life, or any property of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic was disrupted or was likely to be disrupted or was likely to cause a fire hazard. Having carefully perused the Case Diary, I have also not found any material justifying submission of impugned charge-sheet against the petitioner. Apart from that it is an admitted position that the Learned Special Officer, K.M.C. has come to a definite finding that *“the deviated unauthorized constructions are not so grave and serious though there are some infractions of building rules but in my considered opinion those are not so serious.”* It may also be noted that such finding was never been disputed by the K.M.C. and same has already reached its finality. Moreover, pursuant to the order of the Learned Special Officer, the K.M.C. has accepted statutory fees and charges from the petitioner and the construction has been regularized.

In the result, this criminal revisional application succeeds and the impugned charge-sheet stands quashed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)