

FORM -:- A

IN THE COURT OF SENIOR MUNICIPAL MAGISTRATE CALCUTTA
-:- PRESENT -:- Smt. Parijat Kumar (JO Code No. WB-01111) Senior Municipal Magistrate <u>Calcutta</u>
GR CASE NO. 79 OF 2023
T. R. NO.
CNR NO. WBCS03-000143-2023
Case under Section 401A/392 r/w 584/610 and section 618 of Kolkata Municipal Corporation Act, 1980.
Delivery date of Judgment: 06th day of June, 2026.
Details of the FIR/ Police Station – The instant case is in connection with Shyampukur Police Station Case No. 15 dated 17.02.2022

COMPLAINANT	-:-	STATE OF WEST BENGAL
PRESENTED BY	-:-	Sri Somraj Dhar, Learned A.P.P. Senior Municipal Magistrate Court, Calcutta
Name of accused persons	-:- -:-	(1). Sankar Mitra (2). Chanchal Mitra (filed for ever) (3). Sunil Singh
Represented by	-:-	Ld. Advocate, Souvik Ghosh

FORM -:- B

Date of Offence	-:-	17.02.2022
Date of FIR	-:-	07.02.2022
Date of Charge-Sheet	-:-	21.03.2023
Date of Framing of Charge	-:-	16.07.2024
Date of commencement of evidence	-:-	01.10.2024
Date on which judgment is reserved	-:-	Not Applicable.
Date of the judgment	-:-	06.06.2026
Date of the sentencing order, if any	-:-	Not Applicable.

-:- **ACCUSED DETAILS** -:-

Rank of the accused	Name of Accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428 CrPC.
01.	Sankar Mitra	Voluntarily surrendered	16.11.2022	401A/392 r/w 548/610 and section 618 of KMC Act	Acquitted	N.A	N.A
02.	Chanchal Mitra	(filed for ever)					
03.	Sunil Singh	Voluntarily surrendered	16.11.2022	401A/392 r/w 548/610 and section 618 of KMC Act	Acquitted	N.A	N.A

FORM -:- C

-:- **LIST OF PROSECUTION/DEFENCE/COURT WITNESSES** -:-

A. PROSECUTION :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
01.	Goutam Das	Assistant Assessor Collector, Assessment Collection Department, North, KMC
02.	Laxman Chandra Bera	Assistant Engineer, Building Department, Borough – I, KMC
03.	Swapan Dutta	Sub-Assistant Engineer, Building Department, Borough – I, KMC
04.	S.I Kanti Singha	Investigating Officer of this case

B. DEFENCE WITNESSES, IF ANY :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
Nil	Nil	Nil

C. COURT WITNESSES, IF ANY :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
Nil	Nil	Nil

-:- LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS -:-

(A). PROSECUTION :-

Sl. No.	Exhibit Number	Description
01.	Exhibit-P1/PW1	Demand Details
02.	Exhibit-P2/PW1	Inspection Book
03.	Exhibit-P3/PW2	Certified copy of Notice
04.	Exhibit-P4/PW2	Service Return
05.	Exhibit-P5/PW2	Police Intimation
06.	Exhibit-P6/PW2	Written Complaint
07.	Exhibit-P7 collectively/PW2	Day to Day Inspection Report
08.	Exhibit-P8 collectively/PW2	D-sketch map and Infringement Statement
09.	Exhibit-P6/1/PW4	Endorsement
10.	Exhibit-P9/PW4	Formal FIR
11.	Exhibit-P10/PW4	Endorsement
12.	Exhibit-P11/PW4	Rough sketch map
13.	Exhibit-P12 collectively/PW4	Photographs
14.	Exhibit-P13 collectively/PW4	Notice u/s 91 Cr.P.C to Assessor Collector and reply
15.	Exhibit- P14 collectively/PW4	Notice u/s 91 Cr.P.C to Assistant Engineer and reply
16.	Exhibit-P15 collectively/PW4	Notice u/s 91 Cr.P.C to Fire Department and reply
17.	Exhibit-P16 collectively/PW4	Notice u/s 91 Cr.P.C to Shyambazar Traffic Guard and reply`
18.	Exhibit-P17 collectively/PW4	Notice u/s 91 Cr.P.C to the Water Supply Department and reply
19.	Exhibit-P18 collectively/PW4	Notice u/s 41A Cr.P.C to the accused persons

(B). DEFENCE :-

Sl. No.	Exhibit Number	Description
	Nil	Nil

(C). COURT EXHIBITS :-

Sl. No.	Exhibit Number	Description
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Nil	Nil	Nil
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(D). MATERIAL OBJECTS :-

Sl. No.	Material Object Number	Description
Nil	Nil	Nil

1.Facts of the case

1.1. The case of the prosecution as is revealed from the record revolves around offences attracting sections 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as KMC Act) allegedly committed by Sankar Mitra and Sunil Singh (hereinafter referred to as accused).

The case was set in motion on written complaint filed by Assistant Engineer (AE), (Civil), Building Department, Br-I, Kolkata Municipal Corporation namely Laxman Chandra Bera on 15.02.2022 against Sankar Mitra, Chanchal Mitra and Sunil Singh and others relying on departmental inspection report and other relevant documents prepared by Sub Assistant Engineer (SAE), Building Department, KMC namely Swapan Dutta. On the basis of the written complaint a specific case being Shyampukur P.S. Case No. 15 dated 17.02.2022 was registered and the case was endorsed to S.I G.K.Shaw and S.I. Kanti Singha of Shyampukur P.S for investigation.

1.2. Going through the written complaint, the principal allegation appears to be unauthorized construction flouting the rules and regulations of KMC Act and building rules promulgated in reference to it. Sankar Mitra, Chanchal Mitra and Sunil Singh and others were found to be the Persons Responsible for undertaking said unauthorized construction work at B/16/H/2, Haralal Mitra Street, Ward-07, Br-I (hereinafter referred as the case premise). It is the specific allegation of the prosecution that on inspection by the department it was detected that there had been construction of RCC column and RCC slabs at the ground floor at the said premise without obtaining any sanctioned plan, preparatory to such work. As mandated under KMC Act, notice u/s 401 of the said Act vide number 487 was

served upon Sankar Mitra, Chanchal Mitra and Sunil Singh and others on 07.02.2022 and intimation of the same was sent to Shyampukur P.S on the same date. Subsequently, during re-inspection on 11.02.2022 Sankar Mitra, Chanchal Mitra and Sunil Singh and others were found to be continuing the unauthorized construction in the case premise in blatant defiance of the stop work notice. Furthermore, the defacto complainant expressed that the legality of the unauthorized construction, structural stability of the existing structure and workmanship are unknown to their department and if continuance of the same is allowed, it may cause danger to human lives as because the building may collapse any moment. Moreover, the construction has been done without following the norms and practice of civil engineering. Due to the said unauthorized construction, safety of the public in general is compromised.

1.3. Considering the gravity of the situation, complaint was lodged against the Sankar Mitra, Chanchal Mitra and Sunil Singh and others u/s 401A of the KMC Act after completion of all necessary official formalities required to be taken up at the end of the complainant's department, on being prima facie satisfied about the nature and commission of the offence and Sankar Mitra, Chanchal Mitra and Sunil Singh and others covered under the status of 'Persons Responsible' in short PR under the said Act.

1.4. After receiving the complaint, formal FIR was drawn up and Shyampukur P.S. Case No. 15 dated 17.02.2022 was initiated against Sankar Mitra, Chanchal Mitra and Sunil Singh and others which ultimately came to a natural end on filing Charge sheet no. 12 dated 21.03.2023 against Sankar Mitra, Chanchal Mitra and Sunil Singh. Eventually, Chanchal Mitra passed away and the case was filed forever against him.

1.5. On the basis of charge-sheet so submitted in connection with this case, cognizance was taken by this Court.

1.6. The accused persons subsequently surrendered before this court and they were enlarged on bail. Thereafter, the copies of police report and relevant documents or relevant extracts thereof forwarded with the police report under section 173 of the

Cr.P.C. were furnished to the accused persons, free of cost, in accordance with the provisions of Section 207 of the Cr.P.C.

1.7. After compliance of the provision enshrined under section 207 of the Cr.P.C, upon consideration of police report and the documents sent with it under section 173 of the Cr.P.C, after hearing both sides, the Court formed opinion that there was sufficient ground for presuming that the accused persons have committed offence triable and punishable under Section 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980. On 16.07.2024 formal charge under Section 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980 was framed against the charge-sheeted accused persons. The contents of the charge was read over and explained to them. The accused persons pleaded to be not guilty and claimed to be tried and accordingly, this Court proceeded into trial for the examination of the witnesses.

1.8. Subsequently, after completion of the evidence of prosecution, as per mandate of law the accused persons were examined under section 313 of the Code of Criminal Procedure on 10.06.2025 by putting the necessary questions before them which transpired during trial. During the examination of the accused it was stated before this court that they do not intend to adduce evidence and as a result the defence witness was closed. The defence case as it appears from the trend of cross-examination of the witnesses and from the answer given by the accused persons at the time of their examination under section 313 of the Code of Criminal Procedure is denial of the prosecution case with stress on their innocence. After hearing both sides on the points of argument this date was fixed for delivery of judgment.

- **Argument on behalf of Prosecution**

The prosecution opened the argument stating that they have successfully brought home the charges framed against the accused on the basis of cogent, reliable and unrebutted evidence, both oral and documentary. It is further submitted that the main aim of the Kolkata Municipal Corporation Act is to amend and consolidate the laws relating to the municipal affairs of Kolkata. Whereas it is imperative to obtain sanctioned plan before initiating any construction work within the

jurisdiction of Kolkata Municipal Corporation u/s 396 of the Act, the accused persons completely disregarding the same have raised illegal construction on the case premise. There is direct and substantial evidence in support of the same. Furthermore, it must be taken into account that such unauthorized construction which still exists is not only a source of continuous menace for the immediate locality and the society at large but also hinders the natural growth of a city and cannot be ignored. The nature of the unauthorized construction at the said premise also poses a serious threat to the safety of human life and limb and may disintegrate the services providing basic amenities at or around the case premise. He prayed for conviction of the accused u/s 401A and other sections under which they have been charged.

- **Argument on behalf of Defence**

Ld. Advocate for the defence submitted that the accused have been falsely arraigned in this case without completing the prerequisites for filing of such complaint. He completely denied the charges framed and argued that the accused persons are not persons responsible within the meaning of section 401A/392/618 of KMC Act. He stated that the documents have been manufactured along with the address of the accused. Pin code of the case premise has not been mentioned. In the Stop Work Notice number of stories is not mentioned. The Stop Work Notice has not been signed by any independent witness. He pointed out towards the anomalies in the FIR and Infringement Statement. The name of the accused is not mentioned in the demand details. In view of the above arguments, Ld. Defence Counsel prayed for acquittal of the accused.

2. Points for determination

2.1. As the accused persons have been charged under sections 401A/392 r/w sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980, so the prosecution is required to prove the following points.

a. Whether the accused persons constructed/ erected or attempted to so construct/ erect or conspired to so construct/ erect new construction of three storied structure had been constructed at the case premise in contravention of the

provisions of the Kolkata Municipal Corporation Act, 1980 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?

b. Whether the accused persons erected or commenced to erect new three storied structure at the case premise or executed any of the works specified in the sections 390 of the Kolkata Municipal Corporation Act, 1980 except with the previous sanction of the Municipal Commissioner, in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 in relation to such erection of building or execution of work on payment of such fees as may be determined by the Corporation?

c. Whether the accused persons failed to comply with any notice, order or requisition issued under any provisions of the Kolkata Municipal Corporation Act, 1980 or otherwise contravened any of the provisions of the said Act? AND

d. Whether the prosecution has been able to prove all the charges or any of the charges against the accused person and whether the accused is liable to be convicted and punished accordingly?

3. Burden of Proof and Onus Probandi

3.1. At this juncture it is necessary to refer some of the guiding principles of appreciation of evidence in criminal jurisprudence. The discussion should start referring to sections 101 and 102 of the Indian Evidence Act, 1872.

S. 101- Burden of proof.- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

This section is based on the rule, i.e. **incumbit probation qui dicit, non qui negat**- the burden of proof of proving an act rest on the party who substantially

asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof.

S. 102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person whom would fail if no evidence at all were given on either side.

This section embodies a test for ascertaining on which side the burden of proof lies. The prosecution having brought the charges against the accused is thus bound to prove the same or else the matter would fail. The accused on the other hand, must be presumed to be innocent until proven guilty. Presumption of innocence is a human right though subject to statutory exception. The nature of the offence, its seriousness and gravity have to be taken into account into this consideration [Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, 2011 Cr LJ 705 : (2010) 13 SCC 657]. Though for the prosecution this burden is initial and may be discharged by production of relevant evidence requiring the onus of proof to shift on the accused.

The extent of this proof in criminal cases is proof beyond reasonable doubt as the potential consequences for the other side are severe. But that does not mean absolute, metaphysical certainty which is practically impossible to achieve. Instead it requires a level of certainty that would satisfy a reasonable person. At the same time, the doubt cast on such proof produced by the prosecution must be reasonable, meaning it must be based on logic and commonsense and not on speculation or prejudice.

3.2 It is also necessary to note that it always the quality of the witnesses and not their quantity that is crucial for the just adjudication of a case. And the veracity of a witness can be best judged by comparing the ocular evidence with the available documentary exhibits.

List of prosecution witnesses is already provided (Supra) (Form no. C).

The list of all exhibited/admitted documents is already provided (Supra) (Form no. C).

In consideration of the above principles, the evidence forwarded by the prosecution must be discussed in detailed to determine if the ingredients of charges framed have been proved or not.

4. Decision with Reasons

4.1 The quintessence of the prosecution case is unauthorized construction within the purview of the KMC Act and non-compliance of directions/notices issued thereunder, thereby, attracting both penal provisions being 392/401A read with section 610 and section 618 of the KMC Act and demolition of the impugned construction by Court as provided under section 584 of the KMC Act.

4.2 At the onset it is necessary to mention that prosecution has brought charges under the above mentioned provisions against accused Sankar Mitra and Sunil Singh referring them to be “*Persons Responsible*” in short PR for raising such construction.

4.3 It is also relevant to note that Kolkata Municipal Corporation Act being a special Act has delineated a specific window for initiating trial of the cases of instant nature before Court under section 620 of the said Act. The relevant provision is reproduced hereunder:

S. 620 Prosecutions- Save as otherwise provided in this Act, no Court shall proceed to the trial of any offence punishable by or under this Act except on the complaint of, or upon information received from the Municipal Commissioner or any person authorized by him by general or special order in this behalf.

Kolkata Municipal Corporation has issued Circular No.173 of 2019-2020 dated 04.03.2020 whereby Municipal Commissioner of Kolkata delegated his power under the KMC Act vide section 48, which reads as follows:

“ It is hereby ordered that the structure of delegation of Municipal Commissioner’s Power regarding various aspects of the Building Department of KMC will henceforth be as mentioned below:

Generation of ‘Stop work’ Notice u/s 401 of KMC Act – SAE (C/Building)/of concerned Borough/Ward

Notice u/s 401A of the KMC Act- Action against construction of building in contravention of the provisions of the Act or Rules- AE(C/Building)/of concerned Borough/Ward upon obtaining report from SAE(C/Building)/of concerned Borough/Ward.

4.4 In consonance to the said provision, Lakshman Chandra Bera bearing the post of Assistant Engineer (AE), Civil, Building Department, Br-I, KMC having jurisdiction over the case premise being no. B/16/H/2, Haralal Mitra Street, Ward-7, Br-I lodged the present complainant. He was assisted by Sub Assistant Engineer (SAE) of his Borough namely Swapan Dutta examined as PW-3 in conceptualizing the case. Investigating Officers i.e. S.I G.K.Shaw and S.I. Kanti Singha (PW-4) were endorsed with the investigation of the case and S.I G.K.Shaw prepared the formal FIR to initiate Shyampukur P.S. Case No. 15 dated 17.02.2022. The representative of Assessment Department has been examined as PW-2.

4.5 At this stage, whether the evidence adduced from the side of the prosecution is enough to prove the case beyond reasonable doubts, is the matter which needs elaborate discussion. Prosecution has taken the lead to establish its case. The witnesses are all office bearers. Be that as it may, considering the nature of the offences with which the accused have been charged and the requirement of technical expertise to perceive the same, office bearers are the best witnesses on condition that they are able to prove the charges satisfactorily.

4.6 A detailed reading of both oral and documentary evidence on record suggest that the process of this case was set into motion when SAE examined as PW-3 visited the case premise on 07.02.2022 along with AE Lakshman Chandra Bera during routine inspection. This led to detection of construction of RCC column and RCC slabs at the case premise. They did not find any display board at the site of the construction and on demand nobody present at the site and engaged in construction work could produce any valid document in support of the construction work which led them to conclude that the said construction is unauthorized in nature. On further inquiry, they came to know that accused and others were the persons responsible for raising such construction. On that date no body could

produce any sanction in respect of construction at the case premises. The said situation prompted SAE to take action and he prepared a Stop Work Notice u/s 401 KMC Act bearing his signature. The Stop Work Notice was received by Sankar Mitra by putting his signature. The certified copy of said notice and SR have been marked as **Exhibit-P3** and **Exhibit-P4** respectively.

At this stage it is necessary to refer Section 591 of the KMC Act.

S. 591 Admissibility of document or entry as evidence – A copy of any receipt, application, plan, notice, order or other document or any entry in a register in the possession of any municipal authority shall, if duly certified by the legal keeper thereof or other person authorized by the Municipal Commissioner in this behalf, be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters and transactions.

In view of the above provision the certified copies of the documents as produced by the AE and confirmed by the SAE are admissible in this case.

SAE also prepared an inspection report on the basis of which AE sent police intimation to Shyampukur P.S for restraining unauthorized construction at the case premise. Said certified copy of police intimation has been marked as **Exhibit-P5**. Subsequently, they revisited the case premise on 11.02.2022 and found the unauthorized construction being continued in blatant defiance of the Stop Work Notice. Accordingly, SAE prepared a report . On the basis of the said report AE Lakshman Chandra Bera lodged written complaint/FIR at Shyampukur P.S against the accused/PR. The said written complaint duly signed by PW-2 has been marked as **Exhibit-P6**. During the several visits at the case premise, Day to Day Inspection report was prepared reflecting the findings at the case premise and the corresponding steps taken by the department which has been collectively marked as **Exhibit-P7**. As the construction work was not stopped a proposal for demolition was made and the matter was referred to superior authority. Format, Calculation, D/Sketch and Infringement Statement has been marked as **Exhibit-P8 collectively**.

The total area of unauthorized construction was ascertained to be 446 sq. mtrs. At that time the construction was raised upto three stories. No sanction plan was issued from their department for any construction at the case premise. The Sub Assistant Engineer examined as PW-3 has corroborated PW-2 in totality. Both PW-2 and PW-3 deposed that the construction at the case premise was done without any sanctioned plan issued from their office and that no LBS/ESE report was found in respect of the alleged construction. There was no document of structural stability or quality of material used. Additionally, due to raising of such kind of unauthorized construction, there is every possibility of the construction causing damage to the drainage, sewerage system and water supply. There is possibility of disruption of road traffic and fire hazard and there is every possibility of causing danger to human life and property.

4.7 Adhering to the cardinal principle of initial burden of proof on the prosecution, it is evident that in the cases of instant nature the prosecution must prove the following to succeed:

- i) The corpus delicti i.e. the unauthorized construction.
- ii) Involvement of the accused in raising such unauthorized construction being person responsible.

4.8 A detailed discussion of the evidence on record has to be undertaken to determine the factum probandum.

4.9 **Exhibit-P3** is the **Stop Work Notice**.

Section 401 KMC Act is the underlying provision.

Exhibit-P3 is notice no. **487** issued to PR Sankar Mitra, Chanchal Mitra, Sunil Singh and others for stopping all construction work including addition and alteration at premise no. B/16/H/2, Haralal Mitra Street, Ward-7, Br-I dated 07.02.2022. **Exhibit-P4** is the return of service of the Stop Work Notice. Both **Exhibit-P3** and **Exhibit-P4** have been prepared by SAE, examined as PW-3 who had deposed that the said notice was duly served and received by Sankar Mitra putting his signature thereon. PW-3 had not acquired the signature of any independent witness to prove such service further.

4.10 Next document is the **Police Intimation** marked **Exhibit-P5**. PW-2 admitted that police intimation to O.C, Shyampukur P.S was issued referring to notice u/s 401(1) of KMC Act being served on the persons responsible in reference to the case premise requesting followup action in prevention of unauthorized construction therein. To pursue the same further information given relates to the specifications of Stop Work Notice, status and nature of unauthorized construction. The nature of unauthorized construction is RCC slab casting at ground floor roof supported by RCC columns.

4.11 The **written complaint** marked **Exhibit-P6** was filed against PR, Sankar Mitra, Chanchal Mitra, Sunil Singh and others on 15.02.2022. The gist of the written complaint can be produced in the following manner:

- The case premise was inspected by Building Department, Br-I, KMC and unauthorized construction was found undergoing.
- It was found that the P/R(s) have constructed of RCC slab at ground floor without taking any permission from KMC. To stop progress of unauthorized construction notice u/s 401 (vide sl no 487 dt. 07.02.2022) of KMC Act 1980 has been issued upon P/R(s) and Police Intimation has been sent to the concern PS on 07.02.2022.
- During further inspection on 11.02.2022 in the aforesaid premises found that the P/R(s) have resumed the construction work and shuttering work at first floor roof level supported by RCC column is going on defying the Stop Work Notice u/s 401 of KMC Act 1980, dt. 07.02.2022.
- Hence, written complaint was lodged u/s 401A of the KMC Act against the person responsible.

4.12 At this stage it is necessary to discuss the **Day to Day Inspection Report** marked **Exhibit-P7** collectively to grasp the various stages before the filing of written complaint. The relevant document shows a hand drawn sketch of the case premise which is not to scale. There are two parts to the sketch i.e. plan and section. The sketch shows construction of one storied structure connected to Haralal Mitra Street. On perusal of the daily entries, the depositions of PW-2 and

PW-3 are corroborated to the effect that on inspection it was found that PR has constructed RCC slab at ground floor roof supported by RCC columns. On demand PR could not produce any valid document for such construction and as a result Stop Work Notice was issued. PI was submitted. Even then the construction continued defying notice after which FIR was lodged. Entry dated 26.02.2022 shows that a two storied RCC frame structure was already raised at the case premise.

4.13 **Format, Calculation, D/Sketch and Infringement Statement** have been marked **Exhibit-P8 collectively**. The format shows that P.R has constructed three storied RCC roof frame structure which is also evident from the D/Sketch. Infringement Statement shows that several provisions of KMC Building Rules 2009 have been violated. In violation of Rule 62 no open space has been provided in either side of the construction including back and front. FAR is found to be 3 where the required quantum is 1.75. Hence, Rule 69 has been violated. 100% ground coverage is found where the permissible limit is 60%. Hence, Rule 70 has been violated. Furthermore, nothing is known regarding structural design, quality of materials used and workmanship. As such, Rules 133 and 134 have been violated. The total area of unauthorized construction is 446 Sqm.

4.14 During investigation I.O being S.I, Kanti Singha deposing as PW-4 narrated that on 15.02.2022 S.I G.K.Shaw was endorsed with the investigation of this case. The relevant endorsement has been marked as **Exhibit-P6/1**. On the basis of the written complaint S.I G.K.Shaw had prepared the formal FIR marked as **Exhibit-P9**. Then he was transferred and PW-4 was endorsed with the investigation of the case. The relevant endorsement has been marked as **Exhibit-P10**. Thereafter, he visited the PO on 23.05.2022 and saw that there was a three storied building in that premise. There was no display board at the case premise. He specifically noted the case premises to be B/16/H/2, Haralal Mitra Street, Ward-7, Br-I. He prepared the rough sketch map with index marked **Exhibit-P11** and took photographs of the PO which were printed and produced during his examination and were marked as **Exhibit-P12 collectively with objection**. The statements of Ranju Kundu and

Manmohan Singh were recorded u/s 161 Cr.P.C. who have been duly cited in the charge sheet as corroborative local witnesses. These witnesses stated that there were several small rooms which were in damaged condition and reconstruction has been done but they could not reveal any name as to who were responsible for the construction at the case premise. He could not find the FIR named accused at the spot. There was no display board at the site. During investigation PW-4 issued several notices u/s 91 Cr.P.C to Assessor Collector, Assistant Engineer, Building Department, Fire Department, Shyambazar Traffic Guard and Water Supply Department. The relevant documents have been marked as Exhibit-P13 collectively to P17 collectively.

He issued notices u/s 41A Cr.P.C upon accused. They received the notices. The said notices have been marked as **Exhibit-P18 collectively**. The accused could not produced any document in support of the alleged construction. No sanction was received from KMC.

Subsequently, charge sheet no. 12/2023 of 21.03.2023 u/s 401A of KMC Act was filed against accused persons and is tagged with the record.

4.15 **Corpus delicti** means that before seeking to prove that the accused is the author of the crime it must be established that the crime charged has been committed. The strongest proof of corpus delicti in the instant case is to prove the existence of a construction which is unauthorized under the KMC Act and rules framed thereunder.

4.16 Before embarking on further discussion, it is necessary to discuss the provisions related to requirement of sanction before construction and consequences of contravention thereof. The relevant provisions being sections 390 (1) (a)/ (k), 393, 396, 398 of Kolkata Municipal Corporation Act, 1980 read with Rule 3 and 4 of Kolkata Municipal Building Rules, 2009 are enumerated for understanding the gravity of the offences alleged.

Section 390- In this Chapter, unless the context otherwise requires-

(1) the expression “to erect a building’ means-

(a) to erect a new building on any site, whether previously built upon or not.

(k) to make any addition to a building.

S. 393, Erection of building.- Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form together with such fees including Drainage Development fee and containing such information as may be prescribed:

Provided that the Corporation may also levy fees under this section with retrospective effect.

Section 396 provides for sanction or provisional sanction or refusal of building or work.

S. 398. When building or work may be proceeded with.- (1) Where within a period of sixty days or, in cases falling under clause (b) to clause (m) of Sub-section (1) of section 390, within a period of thirty days of the receipt of any notice under section 393 or section 394 or of any information under section 395 the Municipal Commissioner does not refuse the sanction to the erection of any building or the execution of any work or, upon refusal, does not communicate the refusal to the person who has given the notice, such person may make a representation in writing to the Mayor.

Provided that if it appears to the Municipal Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Municipal Commissioner may withhold sanction to the erection of the building or the execution of the work for such period, not exceeding six months, as he may deem fit, and the period of sixty days or, as the case may be, the period of thirty days, specified in this sub-section , shall be deemed to commence from the date of the expiry of the period of which the sanction has been withheld.

(2) Where the erection of a building or the execution of a work is sanctioned the persons who has given the notice shall erect the building or execute the work in accordance with such sanction and shall not contravene any of the

provisions of this Act or the rules or the regulations made thereunder or of any other law in force for the time being.

(3) If the person as aforesaid or any one lawfully claiming under him does not commence the erection of the building or the execution of the work within two years of the date on which the erection of the building or the execution of the work is sanctioned, he shall give notice under section 393 or , as the case may be, under section 394 for fresh sanction and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.

(4) Such person shall, before commencing the erection of the building or the execution of the work within the period specified in sub-section (3), give notice to the Municipal Commissioner of the proposed date of commencement of such erection or such execution:

Provided that if the commencement does not take place within fifteen days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf.

The relevant provisions of Kolkata Municipal Corporation Building Rules, 2009 which must find mention here are as follows:-

Rule 3. Prohibition of erection of building without Building Permit.- (1) No person shall erect a new building, or re-erect, or make addition to, or alteration of any building, or cause the same to be done as specified in section 392, without obtaining a sanction in the form of a Building Permit from the Municipal Commissioner under the Act, and without obtaining such permission for development from the concerned authority as may be required under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. XIII of 1979).

Rule. 4. Notice for erection or alteration of a building.- (1) Every person who intends to erect a new building on any site whether previously built upon or not or re-erect or make addition to or alteration of any building shall apply for sanction by giving notice in writing to the Municipal Commissioner.

4.17 The trend of evidence as forwarded by prosecution suggests that on the basis of routine inspection, SAE (PW-3) along with AE Lakshman Chandra Bera visited the case premise and found construction of RCC column and RCC slabs were being done at the case premise without any sanction plan. As such Stop Work Notice was issued and Police Intimation was sent on the same date. It is further deposed that Stop Work Notice was defied and construction was carried on. It was found during re-inspection that the construction was continued defying Stop Work Notice. Hence, complaint was lodged by AE Lakshman Chandra Bera. As the construction work continued D/Sketch and Infringement Statement were prepared and the matter was referred to Superior Authority. I have already discussed the infringement statement which revealed violation of Rule 62, 69, 70, 133 and 134 of the KMC Building Rules 2009. The area of the unauthorized construction is stated to be 446 sqm. In the day to day inspection report it is noted that work was in progress. There is no confusion regarding the identification of the case premise which is B/16/H/2, Haralal Mitra Street, Ward-7, Br-I. Investigating Officer prepared rough sketch map locating the PO. But the surrounding premises have not been located. I.O had taken several photographs of the PO marked **Exhibit-P12 collectively**. But neither I.O seized the instrument for preparing these photographs nor produced any certificate u/s 65B of the Indian Evidence Act. He admitted that from the photographs it cannot be ascertained as to who took the photographs along with the particular time, date, place and the device with which the photographs have been taken. He admitted that no certificate has been submitted. Other than manually writing address over photographs, the premise number is not apparent from the photographs. Such certification being mandatory for accepting any evidence in secondary form and due to lack of the ingredients of accepting these photographs as primary evidence, no evidentiary value can be attached to such photographs. But I.O being PW-4 confirmed the presence of three storied structure for which he did not get any valid documents. He did not get any sanction plan either from the accused or from KMC, Building Department.

Let us scan now through the cross-examination of the prosecution witnesses.

AE stated that the official works are done as per direction of superior authority. PIN code of a particular place is necessary for identifying the same. Demarcation of boundary of the premises is also required. There is no particular mention of construction in the Stop Work Notice and there is no seal. There is no mention of PIN code and the particulars of the person to whom the notice was served, in the service return of the notice. There is no mention of independent witness in the service return. He had not put his signature over the same. As per local inquiry, he ascertained the name of persons responsible. There is no mention of the names of any witnesses. (Exhibit-P5 and P6 were shown to witness) On the basis of inquiry at their department, he ascertained that there is no sanctioned plan. The FIR was prepared in a format and there is no mention who has typed it. The FIR was lodged on 15-02-2022 at Shyampukur P.S. There is no mention of PIN code in FIR and Day to Day Report dated 07.02.2022. There is mention of demolition case number over the document. There is no official seal over the Day to Day Report. There is no mention in the Day to Day Report to whom the Stop Work Notice was served and the time. The names of the Persons Responsible is not mentioned in the day to day report. They do not avail guard posting on all occasion. (Exbt-P8 collectively is shown to the witness) There is no mention of PIN code. They did not receive any complaint from any source as on 16.03.2022. In the D/sketch and Infringement Statement, the PIN code and the date as well as who prepared the same have not been mentioned. There is no official seal over the same. At the spot, no report is prepared. No specific time of visiting the case premises is mentioned. On routine inspection several wards are inspected. Generally, the FIR, Stop Work Notice, Police Intimation etc., are prepared in format and there is no endorsement of superior officer. He did not collect any document against the Persons Responsible. Only the Assessment Department can provide assessee number.

SAE stated that the official works are done as per direction of superior authority. In their Borough office his superior officers are Assistant Engineer

and Executive Engineer. They conduct all the duties as per instruction of superior officers. Generally when stop work notice is issued, no D/case gets started at that time. It is not possible to obtain any number of D/case when stop work notice is issued. There is mention of a D/case number over the Stop Work Notice. It can be assumed that it was written on subsequent occasion. PIN code of a particular place is necessary for identifying the same. Demarcation of boundary of the premises is also required. There is no particular mention of construction in the Stop Work Notice and there is no seal. He could not state the status of the accused persons in connection with the case premises. (The exhibit-P8 collectively is shown to the witness) There is no specific details of the complainant. The PIN code of the case premises has not been mentioned. During the month of February 2022, he got transferred from Br-I. He did not prepare the Infringement Statement and D/sketch and format for sending proposal. It is fact that as he got transferred by that time it is not proper to put his signature over any such document. There is no mention of PIN code and the particulars of the person to whom the notice was served, in the service return of the notice. There is no mention of independent witness in the service return. He had not put his signature over the same. As per local inquiry, he ascertained the name of Persons Responsible. There is no mention of the names of any witnesses. (Exhibit-P5 and P6 is shown to witness) On the basis of inquiry at their department, he ascertained that there is no sanctioned plan. The FIR was prepared in a format and there is no mention who has typed it. The FIR was lodged on 15-02-2022 at Shyampukur P.S. There is no mention of PIN code in FIR and day to day report dated 07.02.2022. There is mention of demolition case number over the document. There is no official seal over the Day to Day Report. There is no mention in the Day to Day Report to whom the Stop Work Notice was served and the time. The names of the Persons Responsible is not mentioned in the Day to Day Report.

SAE further stated that they do not avail guard posting on all occasion. (Exbt-P8 collectively) There is no mention of PIN code. They did not receive any complaint from any source as on 16.03.2022. In the D/sketch and Infringement Statement, the PIN code and the date as well as who prepared the same have not been mentioned. There is no official seal over the same. At the spot, no report is prepared. No specific time of visiting the case premises is mentioned. On routine inspection several wards are inspected. Generally, the FIR, Stop Work Notice, Police Intimation etc., are prepared in format and there is no endorsement of superior officer. He did not collect any document against the Persons Responsible. Only the Assessment Department can provide assessee number.

IO stated that he had submitted all the documents in connection with this case. All the documents that they rely on are mentioned in Form A of charge sheet. Since 20.05.2022 after endorsement of this case and till submission of charge sheet he caused investigation in connection with this case. On 17.02.2022 at 6.55 hours the information was received as mentioned in the formal FIR. Prior to 17.02.2022 no information was received in connection with the case premises. In the formal FIR, the date of letter of complaint by complainant has not been mentioned. When they submit charge sheet, it is done after permission obtained from superior. In the rough sketch map no seal or endorsement of superior officer is there. From the rough sketch map, it cannot be ascertained that the exact location and the surrounding areas at north, south, east and west of the PO. There is no official seal of police station over the endorsement marked as Exhibit-P10/PW4. The names of the accused persons are not mentioned in the synopsis. The status of the accused persons have not been mentioned in the letter of complaint and in the brief fact of the charge sheet. I was posted in Shyampukur P.S since the year 2022 to 2024. Local patrolling for 24 hours is conducted by his PS. No information or complaint was received in connection with the case premises during local patrolling. He did not receive any complaint in connection with the case

premises u/s 618 of KMC Act. He did not arrest any mason or labour during the course of my investigation. He could not state the GDE number related to alleged inspection of the case premises. He could not recall the number of vehicle that was used for inspection. He did not seize any agreement or affidavit during the course of investigation. He did not verify identity cards of the accused. It is fact that PIN code and the jurisdiction of particular Police station is necessary for identification of a premises of a area. In the charge sheet, formal FIR, letter of complaint and all the notices as well as in the documents supplied by KMC, there is no mention of the PIN code and the relevant police station to identify the premises. In the notices u/s 91 Cr.PC issued to Executive Engineer, Assistant Engineer, Br-I and Fire Department, he had not put his signature. He could not state whether after conducting spot verification, the reports were submitted by the concerned department or not. He did not seize any agreement or affidavit during the course of investigation. He did not verify identity cards of the accused.

From the nature of the cross-examination it appears that Ld. Advocate tried to question identification of the case premise on the basis of non-availability of pin code to describe the case premise. Even though pin code has not been mentioned in all the documents, in the Stop Work Notice it is mentioned as Kolkata-03. It must be mentioned that Day to Day Inspection Report was produced from the official custody by Assistant Engineer himself who had himself lodged the written complaint. Each and every details need not be mentioned in all the documents and from the collective reading of the documents produced by the Assistant Engineer and further confirmed by the Sub-Assistant Engineer gives a clear picture of the steps taken by the department. The legal validity of the S.R would be discussed while discussing the ingredients of Section 618 of the KMC Act. Infringement Statement has been duly signed by Assistant Engineer. Non receipt of complaint from other departments cannot be used to doubt the evidence produced by the prosecution in support of the presence of unauthorized construction at the case premise.

Ld. Advocate also questioned the Rough Sketch Map and it is evident that from the same the surrounding of the P.O cannot be ascertained.

Replying notice u/s 91 Cr.P.C, the Water Supply Department confirmed the presence of under construction building at the case premise.

4.18. Section 392 of the KMC Act provides that no person shall erect or commence to erect any building or execute any of the works specified in section 390 except with the previous sanction of the Municipal Commissioner and in accordance with the provisions of this Chapter (ch-22) and of the rules and the regulations made under the KMC Act in relation to such erection of building or execution of work. Schedule VI of the Act provides the respective penalty.

4.19 It is clear from the above evidence that prosecution has established presence of unauthorized construction at the case premises undertaken without taking due permission of the KMC. The nature of such construction pertains to the penal provision u/s 392 of KMC Act. The corpus delicti is thus proved.

4.20 Moving on to the next penal provision, section 401A of the Act starts with a non obstinate clause and stipulates that 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. Here “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.

4.21 There is a basic difference in the nature of unauthorized construction covered under section 392 and section 401A of the KMC Act. Whereas the former covers within its ambit any unauthorized construction the latter does not punish every deviation but only those which contain gravity of endangering human life, limb and property along with dismantling the basic civic amenities.

In this particular case it is well established that no sanction was taken for construction at the case premise. The investigation Officer during the course of investigation had issued several notices u/s 91 Cr.P.C for obtaining reports of the various departments being affected by any unauthorized construction. Pertinent to note that I.O was supplied with Infringement Statement during investigation. The relevant document has been marked as **Exhibit-P14 collectively**. Fire Department revealed that any unauthorized construction built without inspection or supervision from Fire Department creates high probability that such structures may endanger human life and safety. The relevant document has been marked as **Exhibit-P15 collectively**. In this respect notification no. 279/DS/FS/O/C-1/F1A-3196, dated 08.07.2023 has been referred. Traffic Department reported that they did not found any obstruction due to the construction at the case premise. The relevant document has been marked as **Exhibit-P16 collectively**. Water Supply Department reported that they inspected the case premise where they found an under construction structure but they did not found any disruption of water supply. The relevant document has been marked as **Exhibit-P17 collectively**.

4.22 It must be perceived that the instant case is related to a building which stands without any form of sanction. Thus, the entire construction process has been taken up skipping every vigilance protocol of government specially structural assurance of any technical person either government empanelled or private. Structural stability certificate of the case premise is not available. The building rule infringement specifically states that nothing is known regarding the materials used and structural stability.

4.23 In this situation the alleged unauthorized construction at the case site can be a catalyst leading to a catastrophe which may claim the life of the people using the

building or the locality and can damage government property and basic amenities. Answering Ld. A.P.P for the prosecution, Assistant Engineer and Sub-Assistant Engineer of KMC narrated during their examination-in-chief that no LBS/ESE report was found in respect of the alleged construction. There was no document of structural stability or quality of material used. Additionally, due to raising of such kind of unauthorized construction, there is every possibility of the construction causing damage to the drainage, sewerage system and water supply. There is possibility of disruption of road traffic and fire hazard and there is every possibility of causing danger to human life and property. The Inspection Report prepared by SAE mentions that the premises is situated in a congested area and if the construction is allowed to stand, the same will create several hazards such as Fire, Traffic, Disruption of Drainage, Sanitation and Water Supply. Moreover, the construction has been in a haphazard manner without following norms and practices of civil engineering and as such may collapse at any time causing human lives. The defence has failed to dismantle the prosecution case with regard to the particular fact that this construction is not endangering human life or property or that there is no possibility of any fire hazard or disruption of traffic or disruption of water supply, drainage or sewerage system. There is also no other evidence that the said unauthorized construction has been demolished. At this juncture it is pertinent to discuss the observation made by The Hon'ble Supreme Court of India relying upon several precedents; in **Dipak Kumar Mukherjee v. Kolkata Municipal Corporation, in Civil Appeal No. 7356 of 2012** on 8 October, 2012, which is quoted as follows:—

“8. What needs to be emphasized is that illegal and unauthorized constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan.

The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorizedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

27.....It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

In **Sandhya Pal & Anr vs The Kolkata Municipal Corporation : W.P. No.- 11225 (W) of 2018** it has been observed that : The authorities cannot ignore the dicta of the Supreme Court in Dipak Mukherjee's case laid down in para 8.

In **K. Ramadas Shenoy v. Chief Officers, Town Municipal Council : (1974) 2SCC 506** the Hon’ble Apex Court has been pleased to observe that : An illegal construction.....materially affects the right to or enjoyment of the property by persons residing in the residential area.

In **Lakhu Dubey vs The Kolkata Municipal : WP 85 of 2014** it has been held that: **Unauthorized structures are a real threat to life and limbs and it is common knowledge that many an accident, including fatal accidents, have**

occurred by such unauthorized constructions collapsing without prior warning.

4.24 In this instant case, considering the evidence as adduced by the prosecution in this respect it can be concluded that the alleged unauthorized construction raised at the case premises is of such a nature which is sufficient to attract the provision as enshrined under section 401 A of the Kolkata Municipal Corporation Act. Any construction without sanction has to be deemed unsafe as sanction is granted after examining structural safety aspects and after clearance from the fire services authorities. Section 400 contemplates action in all cases of unauthorized construction, be it unauthorized construction in contravention of the applicable building rules, be it commencement of construction without sanction of building plan or be it deviation from sanction. **(Partha Dey vs The Kolkata Municipal Corporation : WP 85 of 2014).**

4.25 The second consideration is the relation of the accused persons with the unauthorized construction at the case premise. It is the duty of the prosecution to prove them as persons responsible for under taking said unauthorized construction within the explanation as stipulated in section 401A KMC. Section 400(1) defines “the persons at whose instance” applicable for the entire chapter 22 of the KMC Act including section 401 and section 401A.

The relevant provisions are noted for ease of discussion:

Section 400. Order of demolition and stoppage of buildings and works in certain cases and appeal.- (1).....

Explanation- In this Chapter, “the person at whose instance” shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations or additions if any, or does it by himself.

S. 401. Order of stoppage of buildings or works in certain cases.- (1)

Where the demolition of any heritage building or the erection of any building or the execution of any work has been commenced or is being carried on without or contrary to the sanction referred to in section 396 or in contravention of any

condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the rules or the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

S. 401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.- (1).....

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.

4.26 In this respect the KMC authority concerned through its Assistant Engineer i.e. PW-2 and Sub-Assistant Engineer i.e. PW-3 revealed that they found Sankar Mitra Sunil Singh and Chanchal Mitra to be the persons responsible for the unauthorized construction at the case premise. Accordingly, they initiated the process through issuance of notice upon the said persons at whose instance the unauthorized work has been commenced and subsequent reporting in the name of above persons were made. FIR was also lodged against the same persons. After police investigation finally charge sheet was filed against the same accused. Accused Chanchal Mitra passed away and the case was filed for ever against him on 24.08.2023.

4.27 During investigation, I.O received the assessment details **marked Exhibit-P13 collectively** which shows that Anila Debi is the recorded owner of the case premise. Prosecution also produced the evidence of Assistant Assessor Collector, Assessment Collection Department (North), namely Goutam Das examined as PW-1. He produced Computerized Demand Details marked **Exhibit-P1** and the Inspection Book of 1st quarter 1998-1999 marked as **Exhibit-P2**. From these documents also Anila Debi is found as the recorded owner.

PW-1 admitted that the name of accused does not appear in the assessment details. AE stated that he did not collect any document against the Persons Responsible. SAE stated that he cannot say the status of accused persons in connection with the case premise. He only ascertained the names of accused on the basis of local enquiry but the names of witnesses examined in such enquiry have not been mentioned. He did not collect any document against the persons responsible. I.O stated that the names of the accused persons are not mentioned in **Exhibit-P10**. The status of accused persons have not been mentioned in the letter of complaint and in the brief facts of charge-sheet. He did not arrest any mason or labour during the course of investigation. He did not seize any agreement or affidavit during investigation. He did not verify the identity cards of the accused. Thus, prosecution could not produce any evidence relating the accused with the case premise or the construction therein. Moreover, accused have denied any relation with the case premise during examination u/s 313 Cr.P.C.

4.28 Hence, in view of the materials available in record both oral and documentary and the admission of the accused during examination under section 313 Cr.P.C and further arguments of both the sides it is clear that prosecution has proved the unauthorized construction at the case premise but failed to prove the relation of the accused persons with the same.

4.29 Therefore, it can be concluded by saying that the prosecution has failed in proving the charges under Sections 392/401A of the Kolkata Municipal Corporation Act framed against the accused persons namely Sankar Mitra and Sunil Singh beyond reasonable doubt.

4.30 The accused persons are also charged for commission of offence punishable under Section 618 of the Kolkata Municipal Corporation Act. For convenience, the Section is reproduced here:

“ whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to one thousand rupees, and in the case

of a continuing failure of contravention, with an additional fine which may extend to one hundred rupees for every day after the first during which he has persisted in such failure or contravention.”

4.31 The penalty under this section would get attracted if the prosecution successfully proves issuance of notice upon the accused. **Exhibit-P3** is notice no. **487** issued to PR Sankar Mitra, Chanchal Mitra, Sunil Singh and others for stopping all construction work including addition and alteration at premise no. B/16/H/2, Haralal Mitra Street, Ward-7, Br-I dated 07.02.2022. **Exhibit-P4** is the return of service of the Stop Work Notice. Both **Exhibit-P3** and **Exhibit-P4** have been prepared by SAE, examined as PW-3 who had deposed that the said notice was duly served and received by Sankar Mitra putting his signature thereon. PW-3 had not acquired the signature of any independent witness to prove such service further.

AE stated that the particulars of the person upon whom the notice was served is not mentioned in the S.R. No independent witness has been named in the S.R. SAE stated that when the Stop Work Notice is issued, D/case is not initiated but even then the D/case number is mentioned in the Stop Work Notice. The nature of construction is not mentioned in the Stop Work Notice and no official seal appears over it. AE had also stated the same thing. SAE supported AE and stated that no independent witness has been named in the S.R. The accused have denied to receive any such notice.

4.32 So at this stage, it would be safe to hold that the prosecution has not succeeded in proving service of stop work notice upon the accused persons, beyond reasonable doubts. Accordingly it can be stated that the prosecution has failed in proving the specific charge framed against the accused persons u/s 618 of the KMC Act, 1980.

4.33 At this stage it necessary to discuss section 584 of the KMC Act which reads hereunder:

S. 584. Power of Municipal Magistrate to direct payment of fine and demolition of unlawful work.- If, under this Act or the rules or the regulations made thereunder, any person is, in respect of any unlawful work, liable-

(a) to pay a fine, and also

(b) to demolish such work,

a Municipal Magistrate may, in his discretion, direct such person to pay the fine and also to demolish the work.

4.34 The power as enshrined in 584 of the KMC Act is discretionary in nature. Furthermore the language used therein qualifies the exercise of such discretion in cases where “any person” has been found liable for any unlawful work done by him in contravention of the KMC Act or the rules or the regulations made thereunder for which has been determined to pay both fine and demolish such work. Thus, payment of fine and demolition of unlawful work under S.584 of the KMC Act are not disjunctive. Meaning that due to the use of the word “and also”, the principles of interpretation suggest that said provision does not provide a choice between payment of fine and passing order of demolition. Order for payment of fine and that of demolition are not mutually exclusive. Court may exercise jurisdiction under S. 584 of KMC Act if prosecution succeeds in establishing the accused liable to pay fine under this Act for unauthorized construction which must be demolished. After wide discussion of the evidence in hand it has been concluded without doubt that the the prosecution has miserably failed in establishing the accused as the persons responsible for the unauthorized construction at the case premise. This definitely frees accused from the liability to pay fine without which even if the construction is unauthorized under KMC Act, this court has no jurisdiction to pass any order of demolition under section 584 of the Act as because prosecution failed to establish accused as the persons who can be directed to demolish such work.

4.35 At this juncture it is also pertinent to mention herein that in the case of Romeo Das VS The Kolkata Municipal Corporation & Ors. (IA NO. GA/1/2022 APOT 162 OF 2022 WITH WPO 2468/2022) the Hon’ble High

Court at Calcutta held that, “Since the issue of whether or not, the Municipal Magistrate has power to order demolition under Section 584 of the Kolkata Municipal Corporation Act while convicting a person under Section-401A of the said Act for making illegal/unauthorized construction, is to be decided by a Larger Bench to be constituted by the Hon’ble Chief Justice, we are of the view that the order of demolition, in the present case, which ultimately stems from the order of the Municipal Magistrate, should be temporarily stayed until the aforesaid issue is decided by the Larger Bench. We accordingly, order so.

We, however, clarify that this order will not, in any manner, stand in the way of the Corporation proceeding against the alleged unauthorized construction under other provisions of the Kolkata Municipal Corporation Act, 1980, observing due procedure.”

Consequently, no order is passed under section 584 of the KMC Act.

4.36 However, any construction work which is carried out without the sanction as referred to in section 396 of the Kolkata Municipal Corporation 1980 or in contravention of any provisions of the said Act and the rules and regulations made thereunder is liable to be demolished. If the Corporation is able to detect unauthorized and illegal construction work, a stop work notice is generally served. Thereafter, the Municipal Commissioner deals with it u/s 400(1) or the Mayor In Council deals it u/s 400(8) of the said Act. U/s 400(1) the case is disposed of by hearing where the structure may be demolished/partly demolished/ fully retained considering degree of violation of Rule as well as structural safety. In cases where there is any danger and/or violation of rule, Kolkata Municipal Corporation may directly demolish the structure without giving chance of hearing u/s 400(8).

To conclude the matter, prosecution has failed in proving the guilt of the accused beyond reasonable doubt.

As a result the prosecution case fails and the accused are entitled to an order of acquittal.

5. Hence, it is.

O-R-D-E-R-E-D,

that the accused persons namely **Sankar Mitra and Sunil Singh** are found **not guilty** of the offences punishable under section 401A/392 read with section 610 and section 618 of the Kolkata Municipal Corporation Act, 1980 and they are accordingly acquitted in accordance with the provisions of Section 248 (1) of the Code of Criminal Procedure, 1973.

No order is passed u/s 584 of the KMC Act.

The accused are released from their bail bonds.

The sureties are discharged from the bail bonds.

The case stands disposed off on contest.

Note in the concerned register and upload in CIS.

6. Let a copy of this judgment be sent to the Municipal Commissioner, Kolkata Municipal Corporation for information.

Dictated & Corrected by me

Senior Municipal Magistrate,
Kolkata,

Senior Municipal Magistrate,
Kolkata,