


MHKO030027322020 	<u>ORDER BELOW EXH.8 IN R.C.C.</u> <u>NO.680/2020.</u> State of Maharashtra Vs. Shubhangi A. Patil and other
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Heard learned counsel Shri.Randive for accused and learned A.P.P. Shri. Veerkar.

2. Perused the application and say.

3. This is an application for discharge of the accused on the ground that without waiting for one month as contemplated under section 53 of Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred as the Act), offence under section 52 of the Act has been registered. Notice was issued on 12.10.2018. Without waiting for statutory period of one month, the offence is lodged on report and registered on 03.11.2018. So, the FIR and the charge-sheet is premature. Hence, it is prayed to discharge the accused.

4. Learned A.P.P. has resisted the application on the ground that notice was issued on 12.10.2018 and then offence has been registered. There is *prima facie* sufficient evidence to frame the charge and hence the charge-sheet was filed. Hence, it is prayed to reject the application.

5. In this behalf section 52 and 53 of the Act needs to be understood. Section 52 says : "*Penalty for unauthorized development or for use otherwise than the conformity with development plan (1) Any person who, whether at his own instance or at the instance of any other person commences, undertakes or carries out development*

or institutes, or changes the use of any land—

(a) without permission required under this Act; or

(b) which is not in accordance with any permission granted or in contravention of any condition subject to which such permission has been granted;

(c) after the permission for development has been revoked; or

(d) in contravention of any permission which has been duly modified, shall, on conviction, be punished with imprisonment for a term which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees for every day during which the offence continues after conviction for the first commission of the offence.....”.

6. Section 53 of the Act says “Power to require removal of unauthorized development : 1) Where any development of land has been carried out as indicated in sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner a notice requiring him, within such period, being not less than one month, as may be specified, therein after the service of the notice, to take such steps as may be specified in the notice, (a) in cases specified in clause (a) or (c) of sub-section (1) of section 52, to restore the land to its condition existing before the said development took place,

(b) in cases specified in clause (b) or (d) of sub-section (1) of section 52, to secure compliance with the conditions or with the permission as modified:

Provided that, where the notice requires the discontinuance of any use of land, the Planning Authority shall serve a notice on the occupier also.....”

7. It is important to note is that implicate in the offence under section 53 of the Act is the offence under section 52, because no accused can be said to have committed offence under section 53 unless he has committed also offence under section 52. In a sense the basic offence one under section 52 of the Act of unauthorised construction. On joint reading of both these section 53 of the Act comes into play only when offence under section 52 is committed. So unless section 52 occurs no question of Section 53 of the Act coming into play arises and it not *vice versa*.

8. So, the submission that unless the prosecution wait for one month as contemplated in section 53 of the Act, the offence cannot be registered. The intention of section 53 is giving of notice to the said person to restore the land to its existing condition before the said development. But that does not mean that offence committed by him gets washed out.

9. By invoking section 53 of the Act, the legislation has not barred take criminal action under the Act. At the most by enacting the said provision the legislation intended to give an opportunity to avoid civil litigation, if any. The present Act is not like case under Negotiable Instruments Act wherein non compliance of prerequisite notice only the offence is made out. The present Act is independent and the moment it is found that there is unauthorized development or use otherwise than conformity with development plan the offence is committed, though the objection may have been raised by the party to the Corporation. If such is

allowed it would defeat the very intend and spirit of the present Act and the planned development of the city around the State. So, the objection that after the receipt of the notice till thirty days or period mentioned in notice was not elapsed, the FIR is premature, holds no water.

10. The defence failed to point out exact provision which debars the corporation or police to register the offence immediately. Moreover, it appears that the offence under section 52(b) of the Act is *prima faice* made out to frame charge from the charge sheet. Hence, the submission that the FIR and charge-sheet is premature holds no water it needs to be turn down. There is *prima facie* sufficient evidence to frame charge against the accused. The application for discharge being devoid of merit, is liable to be rejected. Hence, the order :-

ORDER

1. Application is rejected.
2. Case is posted for framing of charge against accused.

Date: 02.11.2023.

(Shailesh A. Bafna)
Chief Judicial Magistrate,
Kolhapur.