

MHKO160004012016



Order below Exh.14 in
Reg.Cri.Case No.60/2016

Accused filed this application to discharge him from the case under Section 239 of the Cr.P.C.

2. Accused states that this case has been filed against him under Section 54 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the MRTP Act). After filing of the charge-sheet, a charge under Section 54 of the MRTP Act was framed against him. Thereafter learned A.P.P. filed an application for addition of charge under Section 216 of the Cr.P.C. The application was allowed and an additional charge under Section 52(1)(a) of the MRTP Act was framed against the accused. The accused stated that the said MRTP Act is not applicable to the Malkapur Nagarparishad which is 'C' Class Municipal Council on whose instance the FIR has been lodged. The provision of the MRTP Act is not applicable to the properties in the jurisdiction of the Malkapur Nagarparishad. Therefore, charges against the accused are groundless and the investigation is faulty. Hence, the accused prayed to be discharged of the case.

3. Learned APP for the State filed his reply at Exh.17 stating that this application is not tenable because a charge has already been framed against the accused. Accused will have to file a revision before the Hon'ble Sessions Court under Section 397 of

Cr.P.C against the order of addition of the charge. There are sufficient material and documents on record against the accused to frame charge under Section 52 of the MRTP Act. The said order has been passed on considering the material and documents. Accused has raised the construction without the permission of the Nagarparishad. The MRTP Act is applicable to this case. Court has already taken cognizance. Prosecution needs to be given an opportunity to prove its case. The charges against the accused are not groundless. Hence, Ld.APP prayed to reject the application.

4. Accused relied on State of Karnataka through CBI Vs. C. Nagarajaswamy (2005) 35 AIC 112. It has been held in the citation that, “Sanction for prosecution – It is sine qua non for taking cognizance – Proceedings initiated without sanction would be null and void.”

5. Accused relied on Mahesh Shivram puthran Vs. Commissioner of Police and Others 2011 (3) Bom.C.R.(Cri.) 526. It has been held in Paras 8,9,11 and 15 of the citation that, “In view of scheme of Section 142, read with scheme of Section 53 and 53(6) of MRTP Act, in particular, prosecution could be instituted only by authorized officer upon taking prior sanction of specified authority. F.I.R. could not be registered by Police Officer on his own. F.I.R. registered without prior sanction of specified authority. F.I.R. quashed.”

6. Heard learned advocate for the accused and learned APP for the State at length. Perused record and documents below Exh.23 and citations filed by the accused. My learned predecessor has taken

cognizance against the accused and framed charge against the accused under Section 54 of the MRTP Act. Thereafter prosecution filed an application under Section 216 of Cr.P.C. for addition of the charge under Section 52(1)(a) of the Act. The said application was allowed on merit and matter was kept for framing of additional charge under Section 52(1)(a) of the MRTP Act. Thereafter accused has filed this application under Section 239 of the Cr.P.C. The accused argued that the Act is not applicable to the Malkapur Nagarparishad which is 'C' Class Municipal Council. The learned advocate for the accused argued that the informant who has lodged the FIR has not taken previous sanction under the MRTP Act. After perusal of record, this Court finds that prosecution needs to be given an opportunity to prove that whether sanction has been obtained or not as per Section 142 of the MRTP Act. Already a charge has been framed against the accused at Exh.07. This court finds sufficient material against the accused to frame additional charge under Section 52(1)(a) of the MRTP Act. The construction raised by the accused are prima-facie seen to be without permission of the concerned Nagarparishad. At this stage, a detail inquiry cannot be conducted. From the perusal of the citation submitted by the accused, the citations are not applicable to this case because in this case, the FIR has been lodged by Suresh Dattatraya Gandhi who is a senior clerk of the Malkapur Nagarparishad who is seen to have been authorized to lodge the report as per the MRTP Act. Therefore, this court finds that the prosecution needs to be given an opportunity to prove its case. It is seen that the accused has continued his construction after receipt of the notice of the Malkapur Nagarparishad. The said construction is to be seen whether it is according to law or not. Therefore, this court finds that there are

grounds against the accused to continue the prosecution. The addition of the charge is important and necessary to decide the real dispute between the parties on merit. The accused would be given an opportunity to put forth his defense after framing of additional charge. The citations filed by the accused are not helpful to the accused because the facts of the citations and the facts of this case are different. Lastly this court finds that the application needs to be rejected in the interest of the justice. Hence, I proceed to pass the following order.

ORDER

The application Exh.14 is hereby rejected.

Date :- 30/12/2023

**(Amol Shriram Shinde)
Judicial Magistrate, F.C.,
Malkapur-Shahuwadi,
Dist. Kolhapur**