

WBCS010004862025



Presented on : 10-07-2025
Registered on : 10-07-2025
Decided on : 20-07-2026
Duration : 1 years & 10 days

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
FAST TRACK COURT NO.1, CITY SESSIONS COURT, CALCUTTA.**

Koustuv Mukhopadhyay
Additional Sessions Judge,
Fast Track, 1st Court,
City Sessions Court, Calcutta.
J. O. CODE NO. WB-01059

Criminal Appeal No. 89 of 2025

1. Ganesh Mahato

.....Appellant.

Vs.

**1. The State of West Bengal,
2. Assistant Engineer(C), Kolkata Municipal Corporation.**

.....Respondents.

Arising out of the judgment and order dated 16.06.2025 passed by Ld. Senior Municipal Magistrate, Calcutta in connection with Criminal Misc. Case No.746 of 2018 u/s 401A/392 of KMC Act.

Date of delivery of Judgment : 20th day of July, 2026.

JUDGMENT

1. This Criminal Appeal under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS”), is directed against the judgment and order dated 16.06.2025 passed by the Ld. Senior Municipal Magistrate, Calcutta (hereinafter referred to as the “Ld. Magistrate”) in

connection with Criminal Misc. Case No. 746 of 2018. By the said judgment, the Ld. Magistrate convicted the appellant for committing offences punishable under Section 401A/392 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the “KMC Act”).

2. The convict/appellant, namely Ganesh Mahato, was sentenced to suffer simple imprisonment for one (01) month and to pay a fine of Rs. 50,000/- for the offence under Section 401A of the KMC Act, in default of which he was directed to suffer simple imprisonment for three (03) months. He was further sentenced to pay a fine of Rs. 2,500/- for the offence under Section 392 of the KMC Act, and in default of payment, to suffer simple imprisonment for one (01) month.

Brief facts of the case

3. The appellant/convict, namely Ganesh Mahato was allegedly involved in raising unauthorized construction at premises No. 1/2/H/1 Rutamji Parsi Road. The Assistant Engineer, Subrata Biswas of the Building Department (Civil), Borough No. I, alleged that the construction was carried out without obtaining the necessary sanction from the Kolkata Municipal Corporation, in defiance of stop-work notices and in violation of multiple provisions of the KMC Act.

4. On the basis of the said complaint, a case was registered vide FIR No. 122 dated 16.05.2018, and investigation was entrusted to SI Md. Mokbul Hossain, who after completion of the investigation submitted a charge sheet against the convict/appellant. Charges were thereafter framed accordingly.

5. The prosecution examined two witnesses in support of its case.

6. PW 1, Subrata Biswas, the then Assistant Engineer, stated that on 04.04.2018 he received a report from SAE Goutam Sengupta regarding new construction at premises No. 1/2/H/1 Rutamji Parsi Road, where a five-storied structure had been erected with columns above the second floor. Finding no

sanctioned plan, a stop-work notice was issued. On 05.05.2018, further construction up to the third floor was reported, in violation of the notice, following which he lodged the FIR.

7. PW2, stated that upon taking over the investigation, he visited the premises and also narrated the process of investigation.

8. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr.P.C. His defence was one of denial and innocence. He specifically denied having undertaken construction in violation of the KMC Act.

9. Upon consideration of the evidence on record, the Ld. Magistrate found that the prosecution had successfully established the ingredients of the offence under Section 401A/392 of the KMC Act against the convict/appellant Ganesh Mahato. Accordingly, he was convicted and sentenced as stated above.

10. Being aggrieved by the said judgment and order, the present appeal has been preferred by the convict/appellant.

11. The Ld. Advocate for the appellant contended that the prosecution failed to establish the charge under Section 401A/392 of the KMC Act and that the Ld. Magistrate passed the judgment in a hurried manner without proper consideration of the material evidence.

12. On the other hand, the Ld. Advocate for the KMC (Respondent No. 2) submitted that the construction was carried out without any sanctioned plan and that the order of conviction and sentence did not suffer from any illegality.

13. The Ld. Advocate for the State (Respondent No. 1) also supported the impugned judgment and prayed for dismissal of the appeal.

14. The point for determination in this appeal is whether the Ld. Municipal Magistrate was justified in passing the judgment and order of conviction and sentence against the appellants?

DECISION WITH REASONS

15. I have carefully considered the evidence on record.

16. From the materials available, it is evident that the prosecution has successfully established that the appellant/convict carried out construction without obtaining any sanctioned plan. The appellant failed to adduce any evidence to show that such construction was duly authorized.

17. In view of Section 106 of the Indian Evidence Act, the burden lay upon the appellant to prove that he had obtained the requisite sanction, which he failed to discharge.

18. Accordingly, it is held that the prosecution has proved the offence under Section 401A/392 of the KMC Act against the appellant/convict.

19. I find no illegality in the impugned judgment of conviction passed by the Ld. Magistrate.

20. However, with regard to the quantum of sentence, considering the age of the appellant and the fact that he admitted his involvement during the pendency of the appeal and prayed for leniency, I am of the view that the sentence imposed is somewhat harsh.

21. In my considered opinion, while the conviction deserves to be upheld, the sentence requires modification.

22. The memorandum of appeal is sufficiently stamped.

23. Hence, it is

ORDERED

that the instant Criminal Appeal be and the same is partly allowed.

24. The conviction of the appellant, namely Ganesh Mahato, under Section 401A/392 of the KMC Act, 1980 is affirmed. However, the sentence is modified.

25. The appellant is sentenced to suffer imprisonment till the rising of the Court and to pay a fine of Rs. 37,500/- for the offence under Section 401A of the KMC Act, in default he shall suffer simple imprisonment for three (03) months.

26. He is further directed to pay a fine of Rs. 2,500/- for the offence under Section 392 of the KMC Act, and in default, to suffer simple imprisonment for one (01) month.

27. The appellant is directed to surrender before the Ld. Trial Magistrate within one month to serve the sentence and pay the fine, failing which the Ld. Trial Magistrate shall take necessary steps in accordance with law.

28. Any order of stay stands vacated.

29. The appeal is thus disposed of.

30. Let a copy of this judgment along with the TCR be sent to the Court of Ld. Senior Municipal Magistrate, Calcutta for information and necessary action.

31. Let a copy of this judgment be uploaded in the CIS within 48 hours from now as per Rule 186A of CrPO of Hon'ble High Court, Calcutta.

32. Office to make necessary entry in the germane registers.

Dictated & corrected by me.

(Koustuv Mukhopadhyay)
(WB-01059)
Additional Sessions Judge,
Fast Track, 1st Court,
City Sessions Court, Calcutta.

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