

**IN THE COURT OF MUNICIPAL MAGISTRATE, 2<sup>nd</sup>**  
**COURT, CALCUTTA**

PRESENT: **AVISEK MINJ** (J.O. Code: -WB01520),  
Municipal Magistrate, 2<sup>nd</sup> Court, Calcutta.

[On this 30<sup>th</sup> day of March, 2026]

Complaint Case No 18 of 2025

C.N.R: WBCS 03 000076-2025

REGN No.: - 18 of 2025

TR- 19 of 2025

STATE OF WEST BENGAL

Vs.

1. Krishna Kuntala Chatterjee
2. Soumitra Dhar
3. Ranjana Dutta
4. Shambhu Mondal

.....Accused persons

Instant case initiated based on complaint filed by the complainant namely Dr. Srimoyee Basu, Vector Control officer, Vector control department (Health), Kolkata Municipal Corporation.

COMPLAINANT	State of West Bengal
REPRESENTED BY	Shri Partha Halder, Ld. A.P.P
ACCUSED PERSON(S)	1. Krishna Kuntala Chatterjee 2. Soumitra Dhar 3. Ranjana Dutta 4. Shambhu Mondal
REPRESENTED BY	Ld. Advocate namely Anirban Dutta, Sweta Modi & Sibojyoti Chakrabarti for the accused persons.

**FORM B**

Date of Offence	21.04.2025
Date of complaint	21.04.2025

Date of Charge sheet	Not applicable
Date of plea	26.06.2025
Date of commencement of Evidence	01.08.2025
Date on which Judgment is reserved	NIL
Date of the Judgment	<b>30.03.2026</b>
Date of the Sentencing Order, if any	<b>30.03.2026</b>

**Accused details:**

Rank of the Accused	Name of Accused	Date of Arrest/ Surrender	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 Cr.P.C.
1	Krishna Kuntala Chatterjee	21.05.2025 Surrender	21.05.2025	Sections 496A/610 of KMC Act.	Acquitted	NIL	NIL
2	Soumitra Dhar	21.05.2025 Surrender	21.05.2025	Sections 496A/610 of KMC Act.	Acquitted	NIL	NIL
3	Ranjana Dutta	21.05.2025 Surrender	21.05.2025	Sections 496A/610 of KMC Act.	<b>Convicted</b>	<b>Pay fine of Rs.20,000/ - i/d S.I for six months</b>	NIL
4	Shambhu Mondal	21.05.2025 Surrender	21.05.2025	Sections 496A/610 of KMC Act.	Acquitted	NIL	NIL

**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
PW-1	Sreemoyee Basu	Vector Control Officer cum defacto complainant
PW-2	Sumit Das	Ward Vector Control in Charge, KMC

B. Defence witnesses, if any: No defence witness adduced;

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
DW -1	Ranjana Dutta	Defence Witness

C. Court witnesses, if any: No Court witness adduced;

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
1	Exhibit- P1	Received copy of notice
2	Exhibit-P2	Complaint
3	Exhibit-P3 series	Photographs

B. Defence Exhibits:

Sl. No.	Exhibit Number	Description
1	Exhibit- D1	Received copy of letter dated 05.09.2016
2	Exhibit- D2	Received copy of letter dated 04.08.2017

3	Exhibit- D3	Letter dated 03.11.2017
4	Exhibit- D4	Letter dated 02.01.2019
5	Exhibit- D5	Letter dated 09.07.2022
6	Exhibit- D6	Letter dated 17.06.2025
7	Exhibit- D7	Reply dated 04.07.2025
8	Exhibit- D8	Original Money receipt

**C. Court Exhibits:**

Sl. No.	Exhibit Number	Description
NIL	NIL	NIL

**D Material Objects:**

Sl. No.	Material Object Number	Description
NIL	NIL	NIL

## **JUDGMENT**

**Factual Matrix:** -

- 1.** Instant case was lodged by the **defacto complainant namely Dr. Srimoyee Basu**, Vector Control officer, Vector control department (H), Kolkata Municipal Corporation relating to the mosquito breeding in the case premises no. 22/1E, Monohar Pukur Road, ward-85, Borough-VIII Kolkata-29.
- 2.** In the complaint, defacto complainant alleged that accused persons failed to comply with the requisition of the notice served upon them under section 496A of KMC Act, 1980 to remove the collection of water due to

block which is a breeding place for mosquitos or likely to become. Defacto complainant alleged that accused persons failed to comply the notice within seven (7) days from 25.02.2025. Date of service of notice is 25.02.2025. On 06.03.2025, officials of the corporation visited the case premises and observed that directions mentioned in the notice were not complied by the accused persons. Thereby, this case was filed before the Sr. Municipal Magistrate court, Calcutta by the defacto complainant.

**3.** On 23.04.2025, Court of the Ld. Senior Municipal Magistrate received the complaint along with the requisites from the Kolkata Municipal Corporation. On the same date, case was registered as complaint case and the record was transferred to this court for disposal. This court received the case record on the same day and taken cognizance. Thereby issued summons upon the accused persons u/s 496A/610 of KMC Act.

**4.** On 21.05.2025, all the accused persons appeared before this court and were enlarged on bail.

**Plea u/s 274 of BNSS: -**

**5.** The substance of accusation was read over U/S 496A/610 of KMC Act in respect of the offence committed in the premises no.22/1E, Manohar Pukur Road, Kolkata-29 to the effect that accused persons are responsible for unhygienic condition and stagnation of water and garbage at the above stated premises. Plea were read over and explained to the accused persons to which they pleaded not guilty by saying “Ami Nirdosh” and claimed to be tried and hence, the trial commenced.

**Evidence adduced in this case: -**

- 6.** To prove the case, the prosecution examined two witnesses. Defacto complainant namely Dr. Srimoyee Basu deposed as PW-1 and witness namely Sumit Das adduced evidence as PW-2. During the evidence, three documents are marked as Exhibit on behalf of the prosecution witnesses.
- 7.** After closure of the evidence of prosecution, the accused persons were examined as per provision u/S 351 of BNSS (S.313 Cr.P.C). At the time of such examination, on being asked, accused Ranjana Dutta stated that she is willing to adduce her evidence in support of her contention and the remaining three accused persons denied to adduce any evidence in their behalf. A petition under section 315 Cr.P.C (section 353 BNSS) submitted on behalf of the accused Ranjana Dutta, volunteering to adduce evidence. Thereafter, the evidence of accused Ranjana Dutta was recorded as DW-1. Thereafter, the evidence was closed on 12.03.2026.

**Argument by the Defence side: -**

- **Argument on behalf of Accused Ranjana Dutta and Soumitra Dhar: -**
- 8.** On behalf of accused namely Ranjana Dutta written argument submitted by the Ld. Advocate.
  - 9.** In the written argument, it is submitted that on 25.01.2025 VCO, KMC issued notice u/s 496A of KMC Act to all the accused persons. It is also pointed out that prior to the said notice accused Ranjana Dutta has written several letters/representations to the concerned authorities/departments including the

KMC pointing out her grievance towards blocked drain and mosquito bleeding in her premises. Ld. Advocate for the accused Ranjana submitted that KMC instead of looking into the grievances of her, in order to shed off their responsibility has issued notice u/s 496A of KMC Act and commenced prosecution against the present accused persons.

**10.** Ld. Advocate for the accused Ranjana harped on the point that no assistance from the KMC or any other authority has been received in respect of letters sent by the accused Ranjana. Therefore, the accused Ranjana Dutta is innocent. The evidence adduced by the prosecution is insufficient and prosecution has miserably failed to prove the case beyond reasonable doubt.

**11.** Thereafter, Ld. Advocate on behalf of the accused namely Soumitra Dhar submitted that no notice served upon him as he does not reside in the case premises since long as he works outside Kolkata. Ld. Advocate submitted that accused Soumitra Dhar was not aware of the said notice so he could not comply to the direction as stated in the said notice. No notice was served upon him so the case of the prosecution does not stand against the accused Soumitra Dhar.

**12.** Ld. Advocate further stated that photographs exhibited in this case by the prosecution witness are not in compliance with the provisions enumerated in the Bhartiya Sakshya Adhinyam. No certificate relating to the photographs were submitted in this case thereby provision of section 63 of BSA not complied. In this case, no water testing was done by the KMC authorities before prosecuting against the accused persons.

- **Argument on behalf of Accused Sambhu Mondal and Krishna Kuntala**

**Chatterjee: -**

**13.** Ld. Advocate for accused Sambhu Mondal and Krishna Kuntala Chatterjee has submitted that no separate notice was issued or served upon the said accused persons. Ld. Advocate further submitted that notice was served on 25.02.2025 upon Ranjana Dutta and she has deposed in her evidence as DW-1 that she received notice only on her behalf. Pointing out the dates, Ld. Advocate submitted that notice was served on 25.02.2025 and seven (07) days' time was given to the accused persons to comply such notice, but the Ward VCI namely Sumit Das did not come within seven days instead of that he visited on 06.03.2025. Ld. Advocate stated that as the concerned authority did not come within the time mentioned in the notice, so any criminal proceeding against the accused persons is not valid as per law. Ld. Advocate also submitted that no spot note submitted by the VCO during their evidence before this Court. No document is available on the record showing that notice was served upon above accused persons namely Sambhu Mondal and Krishna Kuntala Chatterjee. Ld. Advocate also pointed that PW-2 namely Sumit Das during his examination in chief has stated that on 23.03.2025 and then said on 23.04.2025 this case was lodged, but both dates are wrong as case was lodged on 21.04.2025. Ld. Advocate thereby submitted that the witness Sumit Das is unaware of the facts of the case in respect of the proceedings or actions were taken by his department.

**14.** With regard to the photographs exhibited as P3 series, Ld. Advocate stated that the date mentioned in the photograph of the first visit is written as

25.02.2025 but the date below signature of Ward VCI, Borough VIII is written as 06.03.2025. Relating to this, Ld. Advocate pointed out that it can be clearly presumed that the first photograph was not taken on the first visit but it was taken on some other date or during the second visit.

**15.** Ld. Advocate also stated that KMC has received Rs.315/- from Soumitra Dhar for cleaning private drain and flushing of the case premises on 17.06.2025. The receipt is marked as Exhibit D8 in this case. Ld. Advocate stated that if KMC has taken the money for cleaning the drain then accused persons cannot be prosecuted in the Court as money has already been given.

**Argument by the Prosecution: -**

**16.** Ld. A.P.P in his argument stated that Section 280 of the KMC Act explicitly states that cleaning and maintaining of the private drain are not the responsibility of the Kolkata Municipal Corporation. Cleaning and maintaining of the private drains are the responsibility of the owner and occupiers of the said premises.

**17.** Ld. A.P.P stated that all the prosecution witnesses have categorically stated relating to the violation of the notice by the accused persons as it is the responsibility of the residents of such building to maintain the cleanliness of their premises.

**18.** Ld. A.P.P stated that seven (7) days' time was given to the accused persons to comply to the notice, but accused persons failed to comply the same. Accused Ranjana Dutta received the notice and signed in the notice as recipient as well as witness. Accused person Soumitra Dhar replied to the KMC. Ld. A.P.P stated

that except Ranjana Dutta all other accused persons denied to receive the notice.

Therefore, the instant case is valid and fit case against the accused persons.

**19.** Ld. A.P.P countering the defence argument stated that no testing of water is required as the accused persons themselves have written many letters pointing out the dangerous condition of the drain and the issue of growth of mosquitoes and germs in their premises. So, the accused persons have themselves admitted the said fact.

**20.** Countering further the arguments made by the Ld. Advocate for the accused persons namely Sambhu Mondal and Krishna Kuntala Chatterjee that concerned authority did not come within the time mentioned in the notice i.e., seven (7) days, so any criminal proceeding against the accused persons is not valid as per law, Ld. A.P.P stated that as per section 582 of KMC Act, any person responsible as per the KMC Act and rules can be prosecuted within six months from the date of commission of such offence or date on which continuance of such offence was first brought to the notice of the corporation. Thereby, there is nothing wrong on the part of the authorities concerned to visit the case premises on 06.03.2025 and to take appropriate action against the accused persons.

**21.** Therefore, Ld. A.P.P submitted that the allegation against the accused person has been proved beyond reasonable doubt and the accused persons are liable to be convicted for the offence alleged against them.

**Points for consideration: -**

**A.** Whether the accused persons guilty of offence U/S 496A/610 of Kolkata Municipal Corporation Act, 1980?

- B.** Has the prosecution been able to prove its case beyond reasonable doubt?
- C.** Whether there was any stagnation of water due to open or blocked drain in the case premises?
- D.** Whether the accused persons are liable for the offence u/s 496A KMC Act for not complying the notice served by the Kolkata Municipal Corporation?
- E.** Whether the notice has been served properly upon the accused persons as per the provision of the section 496A of KMC Act?
- F.** Whether the accused persons are the person responsible for accumulation or stagnation of water and mosquito breeding spot?

**Decision with reasons:**

**22.** The Penal provisions mentioned in the Kolkata Municipal Corporation Act, 1980 are to ensure the health, safety and urban order by deterring negligence and the non-compliance of the orders passed by the authorities. Stagnation of water or accumulation of waste by the owner or the occupier of a premises leads to spread of various diseases in that certain area and even sometimes to the larger area. The instant case has been filed as the accused persons failed to comply to the notice to clean the water stagnation due to blockage in the drain, which is a breeding place for mosquitoes or likely to become so.

**23.** Before evaluating the evidences adduced in this case on behalf of the prosecution and the defence, it is pertinent to go through the offences alleged by the prosecution against the accused persons. In the instant case, accused persons are alleged to have committed offence under section 496A/610 of KMC Act, 1980.

Section 496A of KMC Act read as follows:

**S.496A. Prevention of mosquito breeding** - “(1) If, in the opinion of the Municipal Commissioner, any mosquito breeding pool, ditch, tank, well, pond, swamp, quarry, hole, drain, cesspool, watercourse, pit, cistern, desert or air-cooler, ground, underground, or overhead tank or any collection of water, or any land on which water may, at any time, accumulate, is or likely to become a breeding place of mosquitoes or, in any other respect, becomes a nuisance, the Commissioner may, by notice, require the owner or occupier or the person having control thereof to take all or any of the following actions:-

(a) to clean, or drain off or remove water therefrom, or to provide cover thereto, or

(b) to treat the same in such physical, chemical or biological method as may consider suitable in the circumstances, or

(c) to fill up unwholesome water body:

*Provided that any unwholesome water body may be filled up only after compliance with the provisions of section 4C of the West Bengal Land Reforms Act, 1955, by the owner or the person having control thereof.*

(2) No person shall keep, or permitted to be kept or maintained, within any premises or land any collection of stagnant or flowing water which, in the opinion of the Municipal Commissioner, is, or is likely to be, a breeding place for mosquitoes, unless such collection of water is treated in such manner as may effectively prevent the breeding of mosquitoes.

(3) All borrow pits dug in the course of construction and repairs of buildings, roads, or embankments shall be deep and connected with each other in the formation of a drain directed towards the lowest level and properly sloped for discharge into a river, stream, channel, or drain, and no person shall create any isolated borrow pit which is

likely to cause accumulation of water which again, in tum, may breed mosquitoes.

(4) The owner or occupier or any person having control of any premises or land shall not keep therein any bottle, tyre ( old or new), vessel, can, container or receptacle in such manner as may allow it to collect, or to retain, water which may breed mosquitoes, and shall clean and dry such bottle, tyre ( old or new), vessel, can, container or receptacle at the interval of seven days.

(5) The owner or occupier or any person having control of any premises or land shall wrap the openings of the vent-pipes and the outlets of septic tanks with proper mosquito-proof nets and shall maintain covering slabs of septic tanks to prevent entry and exit of mosquitoes.

(6) The owner or occupier or any person having control of any premises or land shall seal the overhead tanks, cisterns or water receptacles to prevent mosquito breeding, and shall provide safe ladder for making the overhead tanks or cisterns or water receptacles approachable in order to facilitate inspection of the water therein by the Municipal authorities or the officers of the Corporation, as the case may be.

(7) If the owner or occupier or any person on whom the notice under sub- section (1) is served on fails or refuses to take the measures, or adopt the method of treatment, specified in such notice within the time specified therein or contravenes the foreground provisions under this section, the Municipal Commissioner himself or any officer duly authorized by him may take such measures or adopt such treatment, specified in such notice within the time specified therein, and recover the cost of doing so from the owner or the occupier of the premises, as the case may be, by way of levying special conservancy charges , at such rate as may be determined by the Mayor in Council, and shall also be liable to a penalty which shall not be less than rupees one thousand but which may extend to rupees one lakh only.”

Section 610 of KMC Act reads as follows:

**S.610. Punishment for certain offences.**— “(1) Whoever— (a) contravenes any provision of any or the sections, sub-sections, clauses or provisos, or any other provision, of this Act mentioned in column I of Schedule VI, or (b) fails to comply with any order or direction lawfully given to him or any requisition lawfully made to him under any such section, sub-section, clause or proviso or other provision, shall be punishable—

*(i) with fine which may extend to the amount, or with imprisonment for a term which may extend to the period, specified in that behalf in column 3 of the said Schedule or with both, and*

*(ii) in the case of a continuing contravention or failure, with an additional fine which may extend to the amount specified in column 4 of the said Schedule for every day during which such contravention or failure continues a after conviction for the first such contravention or failure.*

*(2) Notwithstanding anything contained in sub-section (1) or in section 199 or elsewhere in this Act, within a period of six months from the date of coming into force of section 6 or the Calcutta Municipal Corporation (Amendment) Act, 1992 (hereinafter in this sub-section referred to as the said date), every person engaged on the said date in any profession, trade or calling in 531 [Kolkata] as specified in Schedule IV, either by himself or by an agent or representative, shall obtain the certificate or enlistment referred to in sub-section (1) of section 199 in respect of the period from the 1st April, 1990 till the date immediately before the said date in accordance with the provisions of section 199 and the rules, if any, made under section 600.*

*(3) Whoever commits any offence by contravening the provisions of sub- section (2) shall he punished with fine in accordance with the provisions or this section.”*

**24.** Going through the above sections, it can be said that in order to prove the allegations it need be seen that the Municipal commissioner has found the case premises to be likely to become a mosquito breeding site or a place of public nuisance due to water stagnation. Thereby, served notice upon the owner or the occupier or the person having control over the case premises to take appropriate steps as per notice. After that the owner or the occupier or the person having control over the case premises has failed or refused to take measures as per the said notice.

**25.** In order to determine the truth, it is pertinent to go through the evidence adduced on behalf of the prosecution and the defence. On behalf of prosecution and defence, both oral as well as documentary evidences have been adduced in this case. In the case of ***Jaysing v. State of Maharashtra, 1998 SCC OnLine Bom 633***, the Hon'ble Court regarding appreciation of evidence opined that:

*“30.9-B. It should be borne in mind that the law of appreciation of evidence is not that the evidence of an independent witness should be ipso facto accepted and that of a interested or enmical witness mechanically rejected. The law is that the evidence of a witness should only be accepted if it is in tune with probabilities and read as a whole has a ring of truth.”*

The Hon'ble Supreme Court in the case of ***State of Punjab v. Hari Singh, (1974) 4 SCC 552*** held that:

*“16. As human testimony, resulting from widely different powers of observation and description, is necessarily faulty and even truthful witnesses not infrequently exaggerate or imagine or tell half truths, the Courts must try to extract and separate the hard core of truth from the whole evidence. This is what is meant by the proverbial saying that Courts must separate “the chaff from the grain”. If, after considering the whole mass of evidence, a residue of acceptable truth is established by the prosecution beyond any reasonable doubt the Courts are bound*

*to give effect to the result flowing from it and not throw it overboard on purely hypothetical and conjectural grounds.”*

**26.** In order to prove the allegation against the accused persons, on behalf of prosecution, two witnesses have adduced oral as well as documentary evidence in this case. It is pertinent to go through the evidence of the prosecution witnesses thoroughly one after another.

**Evidence of PW-1 namely Sreemoyee Basu, the Vector Control Officer cum defacto complainant: -**

PW-1 deposed that the premises No. 22/1E, Monoharpukur Road falls within the area of her jurisdiction. **Since the month of January, the ward VCI Sumit Das had reported that there is a pipe leakage at the case premises, which has resulted in stagnant water and presence of larvae. Additionally, there was an open catch-pit and breeding of larvae was found therein.** It was gathered that there are four owners of the said premises namely Krishna Kuntala Chatterjee, Ranjana Dutta, Soumitra Dhar and Sambhu Mondal. Ranjana Dutta had a conversation with the ward VCI and ward medical officer. **Krishna Kuntala Chatterjee resides at the top floor of the case premises but she did not cooperate during inspection.** She further deposed that she had visited the case premises on 25.02.2025 and found it to be in same conditions. The premises was under lock and key on the said date. She had also observed water leakage and accumulation and a catch-pit with Aedes larvae breeding. Notice was issued

on the same date. It was not served on 25.02.2025. Ward VCI had informed that the notice was served subsequently. The notice was prepared by ward VCI and bears her (PW 1) signature and the same has been marked as Exhibit P1 in the instant case. **She has further deposed that Ranjana Dutta had received the said notice. She further stated that the premises was inspected after 7 days and it was found in the same condition. The premises was in the same conditions for 1-1.5 months and thereafter case was filed on 21.04.2025.** The complaint prepared by the borough VCI bearing her signature and the same was marked as Exhibit P2 in the instant case. She has further stated that the case area is posh and has several buildings. Several malaria cases have been reported at the case area. Condition of the case premises has made it vulnerable.

During her cross-examination, PW-1 stated that **Ranjana Dutta had informed the VCI and the medical officer that the premises would be cleaned but the other are not cooperating. The ward VCI had sought to converse with Krishna Kunatala Chatterjee, but there is no document to indicate such. She further stated that notice was served prior to filing of case of the present nature. She further stated that Sambhu Mondal had not directly received the notice. Ranjana Dutta had received the notice. The tenure of 56 days is from the date of notice i.e. 25.02.2025.** She denied all negative averments during her cross examination.

**PW-2 namely Sumit Das being the VCI, deposed in his evidence that:**

The premises No. 22/1E, Monoharpukur Road falls within the area of his jurisdiction. The premises was under inspection since the month of January and the field team that visited the case premises had reported about the condition of the premises to him. Thereafter he had visited the case premises on 25.02.2025 and observed that **there was collection of water in a pit and further the drainage water had accumulated, due to leakage and there was presence of aedes larvae.** He has further deposed that the premises belongs to Krishna Kuntala Chatterjee, Ranjana Dutta, Soumitra Dhar and Sambhu Mondal. He identified Ranjana Dutta before the Court. He further stated that the above-named persons were told to clean the premises and considering that the case premises is vulnerable a **notice was issued on 25.02.2025. Ranjana Dutta had received the said notice.** He did not find the other accused persons at the premises at the time. He had clicked photographs of the case premises and the same has been marked as Exhibit P3 series in this case. **The premises was inspected after one week and it was found to be in the same condition. On 06.03.2025, proceedings were initiated for filing of a case.**

During his cross-examination, PW-2 has stated that sample was collected from the case premises. He cannot state anything about testing of the sample. The premises was inspected twice by him. **Ranjana Dutta was found at the premises and as such her signature was endorsed. Krishna**

**Kuntala Chatterjee did not cooperate in the same manner as Ranjana Dutta. Krishna Kuntala Chatterjee was present in the premises but refused to any conversation with him.** Krishna Kuntala Chatterjee resides at the top floor of the case premises. The sample was collected in a container but there is no slip or report to indicate the same. The water accumulation was observed at the back side of the case premises. A joint notice was issued for all the accused persons. The notice which bears the signature is the only notice that was issued and has been produced. PW 2 has denied all negative averments during his cross examination.

**27.** In the instant case, corroboration can be found in the statements made by the prosecution witnesses. PW-1 and PW-2 both remained consistent and could not be shaken. Going through the evidence of both PW-1 and PW-2, it can be observed that there is no suspicion in the evidence of both the witnesses. PW-1 and PW-2 stand the test of cross-examination.

**28.** In order to disprove the allegation, on behalf of accused no.3 namely Ranjana Dutta, she herself adduced evidence as DW-1. It is pertinent to go through the evidence of the defence witness i.e., accused no.3 namely Ranjana Dutta.

**DW-1 namely Ranjana Dutta, the accused no.3, deposed in her evidence that:**

She resides at 22/1E, Monhar Pukur Road. Krishna Kunatala Chatterjee reside at the third floor of the case premises. DW-1 has further stated that **she had raised various complaints against Krishna Kuntala Chatterjee regarding the condition of the case premises. She does not pay the common expenses and she throws garbage from her floor. She is also responsible for the drainage pipe being damaged. The condition of the drainage pipe had led to a situation of mosquito breeding at the case premises.** She has further stated that she had informed the matter to the Councilor, Ward No. 85 on 05.09.2016. The complaint letter was duly received and the same was marked as Exhibit D1 in this case. DW-1 has further deposed that she had informed the matter to the OC, Lake PS on 04.08.2017. The complaint letter was duly received and the same was marked as Exhibit D2 in this case. DW-1 has further deposed that she had sent a letter dated 03.11.2017 to the Mayor in charge Park and Square regarding cleaning the locked and covered garage spaces etc. and it bears her signature and the same was marked as Exhibit D3 (objected to) in this case. Case. DW-1 has further deposed that she had sent a letter dated 02.01.2019 to their Councilor relating to take proper and earliest solutions of the daily health related problems faced by her and it bears her signature and the same was marked as Exhibit D4 (objected to) in this case. DW-1 has further deposed that she had sent a letter dated 09.07.2022 to the Mayor, KMC relating to issues in her locality and it bears her signature and the same was marked as Exhibit D5 (objected to) in this case. DW-1 has

further deposed that she had sent a letter dated 17.06.2025 to the Executive Engineer Civil, Building Department KMC relating to drainage obstruction at the premises no. 22/1E, Monhar Pukur Road, Kolkata-29 and it bears her signature and the same was marked as Exhibit D6 (objected to) in this case. Reply dated 04.07.2025 received from the Executive Engineer, Civil Building Department, Borough VIII, KMC and the same marked as Exhibit D7 (objected to) in this case. The original money receipt being no. 003803 dated 17.06.2025 relating to Fee for cleaning private drain etc. including flushing and the same marked as Exhibit D8 (objected to) in this case.

During her cross examination, DW-1 has stated that the building is a G+III storey building. She resides at the first floor of the said premises. Soumitra Dhar resides in the second floor. Third floor belongs to Krishna Kuntala Chatterjee and Sahini Chatterjee. One garage space and purchaser of common facility belong to Sambhu Mondal. The drainage line and sewerage line is used by all the residents of the building. She has further stated that the KMC had issued notice to her and she had received the notice on her behalf. She had submitted letter to KMC in the year 2025 to know the condition of their drainage system and what necessary step to be taken in this regard. She has also submitted money for inspection. KMC had issued a reply to her stating that the issue is internal problem. She had not communicated to the others persons responsible after receiving the reply from KMC. Except Soumitra Dhar, she had not intimated relating to the letter dated

17.06.2025 to the other persons responsible. She further deposed that Soumitra Dhar and she had deposited fee to KMC for cleaning of drainage.

During Cross examination made by Ld. APP, DW-1 has stated that all the responsibility of the building maintenance is to be borne by all of them. All the residents have the common drainage passage and line. She has further stated that the **notice dated 25.02.2025 issued by KMC to all other residents of the said building. But they were informed by the KMC. She further stated that she came to know from the KMC officials that Krishna Kuntala Chatterjee refused to endorse the said notice.** She further stated that KMC had given seven days' time to clean the drain. They had not sent any letter to KMC praying for extension for cleaning of drain. She further stated that she had an issue due to the drainage problem. She denied that they had created the drainage problem unanimously.

**29.** In order to substantiate or disprove the allegation, prosecution witnesses and defence witnesses produced many documentary evidences which are marked as exhibit in this case. It is pertinent to thoroughly scrutinize the documentary evidence exhibited on behalf of the prosecution as well as of the defence.

**Documentary evidence of the prosecution:**

**Exhibit P-1** is a notice u/s 496A of KMC Act. It appears from the said notice that it was issued on 25.02.2025 by Sreemoyee Basu, VCO, KMC to

all the accused persons of the case premises in question. It further appears that the notice was received by Ranjana Dutta on 25.02.2025 and she is also the witness of acceptance of such notice. It also appears from Exhibit P1 that Sumit Das, Ward VCI visited the case premises on 06.03.2025 and found that the notice was not complied by the recipients of the notice.

**Exhibit P-2** is a complaint submitted before the Court by Sreemoyee Basu, VCO, KMC on 21.04.2025. In the said complaint it appears that the accused persons failed to comply with the requisition of the notice u/s 496A of KMC Act, 1980 within seven days from 25.02.2025. It appears that time of 56 days was given and the date of offence is mentioned as 21.04.2025.

**Exhibit P-3 (series)** is the photograph taken by Sumit Das, Ward VCI on 25.02.2025 on his first visit and Exhibit P3/1 is the photographs which was taken on 06.03.2025 on his second visit to the case premises.

**Documentary evidence of the accused person no.3:**

**Exhibit D1:** The received copy of letter dated 05.09.20216 regarding the barring the ground floor where garages, store room and care taker room etc. are there.

**Exhibit D2:** The receipt copy of letter dated 04.08.2017 to O/C, Lake PS.

**Exhibit D3:** Letter dated 03.11.2017 to the Mayor of Park and Square regarding dangerous condition prevailing inside the building which are causing immense growth of mosquito.

**Exhibit D4:** Letter dated 02.01.2019 to the Councilor relating to take proper and earliest solutions of the daily health related problems faced by her.

**Exhibit D5:** Letter dated 09.07.2022 to the Mayor, KMC relating to issues in her locality.

**Exhibit D6:** Letter dated 17.06.2025 to the Executive Engineer (Civil), Building Department KMC relating to drainage obstruction at the case premises.

**Exhibit D7:** Reply dated 14.07.2025 received from the Executive Engineer (Civil), Building Department, Borough VIII, KMC.

**Exhibit D8:** the Original Money receipt dated 17.06.2025 relating to fee for cleaning private drain etc. including flushing.

**30.** It is cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving beyond reasonable doubt lies on the prosecution. In the case of ***Akram Khan v. State of West Bengal, 2010 SCC OnLine Cal 1787***, the Hon'ble court observed that:

*“41. It is well-settled that credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. Marginal mistakes and minor inconsistencies cannot demolish the prosecution case. It cannot be disputed that truth may also suffer from infirmity when projected through human process. The prosecution is required to prove the charge beyond any reasonable doubt. It is not that such proof must be beyond all doubt.*

*It is not necessary for the prosecution in order to establish the guilt of the accused person to “dot every ‘i’ and cut every ‘i’ What matters is how far the prosecution could prove the charge beyond the scope of any confusion or controversy.”*

**31.** In order to properly adjudicate the case, it is pertinent to determine the question that whether the notice has been served upon the accused persons or not. It clearly appears from the documentary as well as oral evidence that the notice was received by Ranjana Dutta. In the notice, there is only the endorsement of the accused no.3 namely Ranjana Dutta. So, there is no doubt relating to service of notice upon the accused no.3.

In the cross examination of PW-2 on behalf of accused no.1 namely Krishna Kuntala Chatterjee, witness stated that he contacted with the Krishna Kuntala Chatterjee, but she did not cooperate in the same manner as Ranjana Dutta. Krishna Kuntala Chatterjee was present in the premises but refused to any conversation with him. This fact has been elucidated properly by the cross-examination as nothing has been brought on record

by the accused person to counter such statement. Same fact has also been corroborated in the examination-in-chief of PW-1, cross examination of the PW-1 on behalf of the accused no.1 and cross-examination of DW-1 by prosecution. On going through the documents exhibited in this case, it appears that notice has not been endorsed by the accused Krishna Kuntala Chatterjee. There is no noting of the Ward VCI namely Sumit Das or any official of the corporation that the accused namely Krishna Kuntala Chatterjee has refused to receive the notice or put her signature on the said notice to receive the same. There is no documentary evidence in the record to show that the accused namely Krishna Kuntala Chatterjee was intimated relating to the notice u/s 496A of KMC Act on 25.02.2025. During the evidence PW-2 namely Sumit Das stated that Ranjana Dutta received the notice and he did not find other accused persons at the premises at the time of service of the notice. All these above observations raise doubt relating to service of notice upon the accused Krishna Kuntala Chatterjee.

Accused no. 2 namely Soumitra Dhar in his statement u/s 313 Cr.P.C (s. 351 of BNSS) stated that he got to know about the notice from Ranjana Dutta. To another question asked during statement under section 313 Cr.P.C, accused person no.2 stated that he visited the corporation office regarding the issue in the drain. Ranjana and him are trying to clean the premises. The question which arises that whether the accused person Soumitra Dhar was intimated during the notice period or after the filing of

the complainant in the instant case. Notice u/s 496A of KMC Act bears only the endorsement of Ranjana Dutta. PW-1 and PW-2 did not state anything in details relating to the manner of service of notice or any refusal on the part of accused person namely Soumitra Dhar while service of the notice. Accused Ranjana Dutta as DW-1, in her cross-examination stated that she received the notice on her behalf. This raises doubt relating to the service of notice upon the accused namely Soumitra Dhar. Ld. Advocate for the accused person Soumitra Dhar also stated during the argument that Soumitra Dhar does not live at the case premises as he works outside Kolkata.

With regard to the service of notice upon accused person namely Sambhu Mondal, it can be stated that there is nothing in the oral and documentary evidence adduced in this case to show that the notice was served upon accused namely Sambhu Mondal.

**Therefore, it can be drawn that among the four accused persons notice has been served properly upon accused persons namely Ranjana Dutta only. Service of notice upon the rest of the three accused persons has been found to be not satisfactory and doubtful.**

**32.** It has been held in various cases that omission to cross-examine the witness on a material point implies that such part of testimony has been un-

challenged. In the case of **A.E.G. Carapiet v. A.Y. Derderian**, AIR 1961

**Cal 359**, the Hon'ble court held that:

*“9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses.”*

In the instant case, accused person namely Ranjana Dutta could not shake the prosecution case by cross-examining the prosecution witnesses and also by giving her own evidence as DW-1. Accused Ranjana Dutta has not been able to bring anything on record showing that she was not aware of the notice and the directions stated therein or any other cogent reason for not complying the directions in the notice within the stipulated time.

**33.** On scrutiny of the evidences available on the record both oral and documentary, relating to the question that whether there was any stagnation of water due to blocked drain in the case premises or not. In this regard, accused no.3 namely Ranjana Dutta herself has admitted the fact through her

evidence as DW-1 that there was issue relating to garbage accumulation and drainage pipe problem due to which they had mosquito breeding situation at the case premises. Evidence adduced by the prosecution witness no.1 and 2 stands corroborated by the evidence adduced by the DW-1. From the examination of the accused persons under section 313 Cr.P.C, it appears that accused persons have admitted the fact that there is stagnation of water and presence of larvae due to drain leakage in the case premises. In the case of *Rajender @ Rajesh@ Raja Vs. State (NCT of Delhi)*, **Criminal appeal no.1889 of 2010**, the Hon'ble Supreme Court held that a statement made by the accused under section 313 Cr.P.C can be used as an aid to credence to the evidence led by the prosecution. Considering the above observations, **the point of Consideration no. C is found affirmative in favour of the case of the prosecution.**

**34.** To determine the question that whether the accused persons are liable for the offence u/s 496A KMC Act for not complying the notice served by the Kolkata Municipal Corporation and accused persons are the person responsible for stagnation of water and mosquito breeding, it is pertinent to go through the evidences adduced in this case. PW-1 in her evidence stated that **the premises was inspected after 7 days of service of notice and it was found in the same condition. The premises was in the same conditions for 1-1.5 months and thereafter case was filed on 21.04.2025. PW-2 in his evidence corroborated the statement of the PW-1.** PW-2 also

stated that he had clicked photographs of the case premises. Said photographs have been marked as Exhibit P3 series in this case. **The premises was inspected after one week of notice service and it was found to be in the same condition. On 06.03.2025, proceedings were initiated for filing of a case.** This shows that the accused persons on whom notice was served failed to comply the direction as per the notice. From 25.02.2025 till 06.03.2025, no step was taken by the accused persons to comply the direction or to improve the condition of the premises as alleged by the complainant. Accused person no.3 Rajana Dutta stated in her evidence as DW-1 that **Krishna Kuntala Chatterjee does not pay the common expenses and she throws garbage from her floor. She is also responsible for the drainage pipe being damaged. The condition of the drainage pipe had led to a situation of mosquito breeding at the case premises. During the recording of statement of the accused persons under section 313 Cr.P.C, accused person namely Soumitra Dhar stated that there is a slum area next to the premises and the people of the slum are throwing things which has affected the drainage.** Any of the facts which are within the knowledge of a person that must be proved by that person only. Section 109 of the BSA clearly indicates relating to such. In the case of *Prithipal Singh v. State of Punjab, (2012) 1 SCC 10*, it has been held that a fact which is especially in the knowledge of any person then the burden of proving that fact is upon him and that it is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. In the

instant case nothing has been brought on record by the accused persons by oral or documentary evidence showing that the stagnation of water or accumulation of garbage was due to interference of a third person. Nothing substantial has been brought on evidence by the accused persons that they are not responsible for the stagnation of water and thereby for breeding of mosquito in the case premises. Based on the above observation, **it can be concluded that the point of consideration no. D and F are decided in favour of the prosecution.**

**35.** During the argument, Ld. Advocate for the accused persons stated that the money was taken by KMC on 17.06.2025 from accused Soumitra Dhar of Rs.315/- for cleaning the private drains etc., including flushing at the case premises. So, the accused persons cannot be prosecuted in this case. It is to be noted that corporation has accepted money for doing the work of cleaning the case premises, but by giving money accused persons cannot be relieved from the charges as alleged by the prosecution in this case. Section 496A of KMC Act prescribes for mandatory imposition of penalty which shall not be less than rupees one thousand but which may extend to rupees one lakh only in cases where the allegation are proved beyond reasonable doubt at the end of the trial.

**36.** Argument of the defence that photography exhibited by the prosecution witness is inadmissible in the instant case as it lacks the prescribed requisites. Exhibit P-3 series has been submitted by PW-2. PW-2 submitted that

he clicked photographs of the case premises and photographs have been clicked using his mobile phone and printed outside. In this regard, in the case of *Laxmipat Choraria v. State of Maharashtra, 1967 SCC OnLine SC 30*, the Hon'ble Supreme Court laid down that:

*“...if the court is satisfied that there is no trick photography and the photograph is above suspicion, the photograph can be received in evidence. It is, of course, always admissible to prove the contents of the document, but subject to the safeguards indicated, to prove the authorship.”*

In the instant case, photographs have been taken by PW-2 when he visited the premises. Photographs have been submitted to show the condition of the case premises. Here in the instant case, the accused persons namely Ranjana Dutta and Soumita Dhar have accepted the fact that the case premises is not clean due to blocked drain. There is no doubt with regard to this fact as the accused persons have themselves accepted the same during their statement recorded under section 351 of BNSS.

**37.** To establish an offence under section 496A/610 of KMC Act, it is crucial to prove that notice has been served upon the persons responsible by the officials of the corporation following the rules in such regard. In the instant case, as discussed above, notice u/s 496A has been found to be properly served upon the accused person namely Ranjana Dutta. Notice upon the rest of the accused persons are not found to be properly served as the

materials available on the record against them raises doubt relating to service of notice upon them.

**Epilogue:** -

**38.** A cohesive consideration of the points discussed above shows that accused persons are related to the case premises. **All the points of consideration are decided in favour of the prosecution with regard to the accused person namely Ranjana Dutta only. The prosecution has been able to establish beyond reasonable doubt, the allegation against the accused person namely Ranjana Dutta. Due to lack of proper service of notice, allegation against the accused persons namely Soumitra Dhar, Krishna Kuntala Chatterjee and Shambhu Mondal are found to be not established by the prosecution in the instant case.** The accused persons namely Soumitra Dhar, Krishna Kuntala Chatterjee and Shambhu Mondal are therefore entitled to the benefit of doubt and of acquittal.

**39.** Hence, it is

**ORDERED**

that the accused person namely **Ranjana Dutta is found guilty** for committing offence under section 496A of the Kolkata Municipal corporation Act. Accordingly, she is convicted u/s 278(2) of the BNSS.

Accused persons namely **Soumitra Dhar, Krishna Kuntala Chatterjee and Shambhu Mondal are found not guilty** for offence under section

496A of the Kolkata Municipal corporation Act. Accordingly, they are acquitted u/S 278(1) of BNSS. and discharged from their respective bail bonds.

**40.** Now it's 12:45 P.M.

**41.** The convict is taken into custody. The court will hear the convict on the points of sentence at 01.10 P.M. Convict be produced then.

**42.** Inform all concerned.

Typed by me.

(AVISEK MINJ)  
*Municipal Magistrate*  
*2<sup>nd</sup> Court, Calcutta.*  
(J.O. code- WB01520)

(AVISEK MINJ)  
Municipal Magistrate,  
2<sup>nd</sup> Court, Calcutta.  
(J.O. code- WB01520)

**Later at 01:10 P.M:**

1. The convict namely Ranjana Dutta is produced before me and she is hereby given an opportunity of being heard on the question of sentence.
2. The Ld. A.P.P. and the Ld. Advocate for the convict is present.
3. The Ld. Advocate for the convict submits that his client is innocent. The Ld. Advocate for the convict prays for pardon.
4. Heard the Ld. A.P.P. on the point of sentence.
5. Ld. Counsel for the convict has highlighted about the financial constraints of the convict.
6. Considering the nature of the offences committed, this court finds that release of the convict on probation u/s 401 of BNSS would not serve any purpose but if done would have an impression in her mind that commission of these types of grave and serious offences would have no practical consequence. In this case, although the

convict found to be first time offender but she has found to have committed the offence deliberately. Therefore, releasing the convict on probation would not serve any practical purpose.

7. Considering the fact and circumstances of the case, this court hereby penalizes the convict and directs her to pay fine of **Rs. 20,000/- (Rs. Twenty thousand only)**. **In default of payment of the total fine amount, she would have to suffer simple imprisonment for a period of six (06) months.** The Judicial Cashier is directed to do needful in this regard.

As per Section 404 of the BNSS and in compliance of the order of the Hon'ble High Court of Calcutta in CRA No. of 64 of 2014 and CRA No. 36 of 2011 and in pursuance of Rule 192A and 192B of Calcutta High Court Criminal Rules and Order, let a copy of this judgment be made available to the convict free of cost forthwith. She has also made aware of her right to prefer an appeal with legal aid (in the language understandable to her).

8. Instant case is thereby disposed of.

9. Sureties concerned be released from their liabilities. Let a copy of this be forwarded to Clerk in Charge, Bail Bond Register, for information and necessary actions.

10. D.A is directed to note in the relevant register.

11. Update C.I.S.

Typed by me.

(AVISEK MINJ)  
*Municipal Magistrate*  
*2<sup>nd</sup> Court, Calcutta.*

(J.O. code- WB01520)

(AVISEK MINJ)  
Municipal Magistrate,  
2<sup>nd</sup> Court, Calcutta.

(J.O. code- WB01520)