

In the Court of the Senior Municipal Magistrate Kolkata

Present :

Smt. Parijat Kumar

J O Code UID No.-WB01111

Senior Municipal Magistrate,

Kolkata, Dist.- Kolkata

GR Case No.-324 of 2024

CNR No.-WBCS03-000363-2024

State

v

Raja Goswami @ Somnath Goswami

Anjan Chandra @ Anjan Kr. Chandra

Sibu Chandra @ Tarun Kr. Chandra

Order dated 04.06.2026

Today is fixed for delivery of judgment i/d W/A.

The accused persons on court bail are present today in Court.

Judgment which is written in separate sheet containing 39 pages is signed and delivered in open Court.

Hence, it is.

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

that the accused persons namely **Raja Goswami @ Somnath Goswami and Anjan Chandra @ Anjan Kr. Chandra** 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.

The accused are released from their bail bonds.

The sureties are discharged from the respective bail bonds.

that the accused persons namely **Sibu Chandra @ Tarun Kr. Chandra** is found guilty in respect of the charges framed against him for having committed offences punishable under sections 392/401A of the Kolkata Municipal Corporation Act, 1980 and he is accordingly convicted in accordance with the provisions of Section 248 (2) of the Code of Criminal Procedure, 1973.

Bail bond of the accused person/ convict is cancelled.

The convict is taken into custody.

The surety is discharged from the respective bail bond.

Now the question is whether it would be expedient to release the convict on probation in terms of the provision of Section 360 of the Code of Criminal Procedure, 1973 or the provisions of the Probation of Offenders Act, 1958.

It has already been established that the convict had undertaken the work of unauthorized/ illegal construction and which is of such a nature that it is endangering human life and property. The

consequences of any unauthorized and illegal construction may cause huge damage and loss to life and property. The offender did not show any kind of responsibility towards the society and violated the law deliberately. Such desperate attitude of the offender cannot be treated leniently. Having regard to all circumstances, it seems that releasing the offender on probation shall not be sufficient to meet the ends of the justice. The offender should be punished to prevent such miscarriage of justice.

So now before awarding any sentence, as per the provisions of law, the Court is duty bound to hear the convict on the question of sentence.

The factum of conviction and the prescribed punishment for the offences punishable under section 392/401A of the Kolkata Municipal Corporation Act, 1980 are explained to the convict and an opportunity is given to him to produce any material as well as to lead any evidence, if necessary before the Court, with regard to the quantum of sentence that may be passed. The convict as well as his Ld. Counsel are also given liberty to express their views with regard to the sentence for the particular offences.

The convict pleaded innocence and prayed for mercy of the court. Ld. Advocate on behalf of the convict prayed for taking a lenient view in awarding sentence.

Considered respective prayers. Also considered the age of the convict and his social status. The offence in respect of which sentence is being passed is grave in nature and has got huge social impact. It needs no further discussion and is crystal clear that if unauthorized constructions are not dealt with a strict view, a bad notion would reflect and a proper message to the society won't be given.

Decision on Quantum of Sentence

Now the question that remains to be answered is what sentence should be passed upon the convict. The offence u/s 401A of the Kolkata Municipal Corporation Act, 1980 is punishable with imprisonment for a term which may extend up to five years and also with fine which may extend to Rs.50000/-. The other offences under section 392 of the Kolkata Municipal Corporation Act of which the accused person has been held guilty is punishable with imprisonment which may extend up to six months or also with fine or both. In this case the intention of the convict must be taken into consideration. The convict has done construction at the case premises in unauthorized manner. He did not obtain any sanction for raising construction at the case premise. The convict has shown desperation in raising unauthorized building at the case premises.

Considering all such aspects, this Court is of the considered view that the convict deliberately abused established rules and laws and was well aware of the consequences of the alleged construction. His intention is quite clear from his activities. So at this stage it appears to this Court that a stringent punishment should be given to the convict. Accordingly, at this stage after having considered entire circumstances, this Court is of the considered view that passing of simple imprisonment upon the convict for a period till rising of the Court along with fine shall be just and reasonable.

So at this stage, having considered entire circumstances, it is

ORDERED.

that the convict namely **Sibu Chandra @ Tarun Kr. Chandra** to undergo simple imprisonment till the rising of the Court and also with fine of Rs. 50,000/- (Fifty Thousand only) , for the offence punishable under section 401A of the Kolkata Municipal Corporation Act, 1980. In default of payment of fine, to suffer simple imprisonment for three (03) months .

AND

the convict is also punished with fine of Rs. 2,500/- (Two thousand Five Hundred only), in default of payment of said fine to suffer Simple imprisonment for a term of one month for having committed offence punishable under section 392 of the Kolkata Municipal Corporation Act, 1980.

In case of imprisonment the sentences shall run concurrently.

The period of detention, if any, undergone by the convict during investigation, inquiry or trial of this case and before this date of conviction, be set off against the imprisonment imposed upon him and the liability of the convict to undergo imprisonment on conviction be restricted to the remainder, if any, of the term of imprisonment imposed upon him.

The convict is informed in the language understandable by him about his right to prefer appeal against this judgment including his right to avail of legal aid/ assistance in this regard. The convict has refused to avail legal aid.

Demolition of unauthorized, irregular, illegal and unlawful construction work.

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).

The Municipal Magistrate also has the power to direct demolition of unlawful construction in terms of Section 584 of the Kolkata Municipal Corporation Act, 1980. It is a discretionary power which must be exercised having regard to the larger public interest. Some basic things that need to be considered is that any construction without sanction where it apparently appears to be grossly violating the provisions of law and where it seems to be affecting the interest of the general public should be demolished.

For convenience section 584 is reproduced here:

Section 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 any 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.

Considering the documents exhibited, more so the infringement statement it appears that construction has been made in such a manner which is de hors the mandatory provisions of the KMC Act and further rules and regulations framed thereunder. Unless the building rules are implemented strictly the public safety and/or security cannot be maintained properly. The violation of the building rules is serious in nature and there is every chance of public nuisance and/or affection of the sanitation and ventilation of adjacent premises. The act of making unauthorized construction without sanctioned plan is a complete defiance of the provision of law and has to be reviewed seriously without any leniency.

Therefore, in this case it now appears that this is a fit situation where the discretion of the Court should be exercised as mandated in section 584 of the Kolkata Municipal Corporation Act.

At this juncture it is 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.”

As discussed above, after consideration of the observation made by the Hon'ble High Court, Calcutta with regard to exercise of discretionary power under Section 584 of this Act, this Court is not inclined to pass any order of demolition of the unauthorized construction undertaken by the convict over the case premises. However, as per further observation of Hon'ble High Court at Calcutta as reiterated above, this order shall not stand in the way of the Kolkata Municipal Corporation to proceed against the unauthorized, irregular, invalid, illegal and unlawful erection/construction work of the entire building at the case premise no. **B/104/H/4, Narkeldanga North Road, Ward-30, Br-III** under other provisions of the Kolkata Municipal Corporation Act, 1980 and/or relevant Rules/Regulations made thereunder.

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

Let a copy of this judgment be supplied to the convict free of cost.

The case stands disposed of. Note in the concerned register and upload in the CIS.

Dictated & Corrected by me

Senior Municipal Magistrate,
Kolkata,

Senior Municipal Magistrate,
Kolkata,

Later:-

Ld. Advocate for the convict **Sibu Chandra @ Tarun Kr. Chandra** filed a petition.

By the petition the Ld. Advocate for the convict stating that the convict **Sibu Chandra @ Tarun Kr. Chandra** intend to prefer an appeal before the Appellate Court and prayed for bail.

Considered the petition.

Prayer for bail during this period stands allowed for the ground stated in the petition.

The convict **Sibu Chandra @ Tarun Kr. Chandra** may find bail of Rs. 2000/- with one surety of like amount i/d to J.C.

If on bail to **05.07.2026** for awaiting order from upper forum.

Dictated & Corrected by me

Senior Municipal Magistrate,
Kolkata,

Senior Municipal Magistrate,
Kolkata,

Later:-

Bail bond furnished, which is found fit and accepted by this court.

Dictated & Corrected by me

Senior Municipal Magistrate,
Kolkata,

Senior Municipal Magistrate,
Kolkata,