

**In the Court of the Senior Municipal Magistrate**

Kolkata

Present :

Surajit Mandal,

J O Code UID No.-WB993

Senior Municipal Magistrate,

Kolkata, Dist.- Kolkata

Case No.-1265 of 2017

CNR No. WBCS03-004518-2018

State

Vs.

Asgar ali @ Akbar Ali @ Monda and Sabana Khatun

Order No.-37

06-01-2023

Today is fixed for taking D.W.

Out of two accused persons on record, accused Akbar Ali @ Asgar Ali is present today in Court.

The other accused Sabana Khatun is absent. Ld. Advocate for the accused filed a petition u/s 317 Cr.P.C and prayed for taking evidence in the absence of the accused.

The prayer is considered and allowed.

One witness, accused Akbar Ali examined himself in support of the defence case. He produced one document which is marked as Exhibit-A.

The witness is cross-examined in full and is released.

At this stage, Ld. Advocate for the accused persons filed a petition u/s 319 Cr.P.C.

Heard Ld. Advocate for the accused persons.

It is submitted by Ld. Advocate for the accused persons that today the accused no. 1 Akbar Ali who deposed in this case as DW-1 has filed one agreement which is now marked as Exhibit-A. It is submitted that this is an agreement for construction of multi storied building at the case premises executed between accused no. 1 Akbar Ali and accused no. 2, Sabana Khatun on one side and between Md. Sajid Khan and Abdul Nasir Warsi on another side.

Ld. Advocate submitted that the accused persons of this case are the owners of the case premises in question. They had entered into an agreement with Md. Sajid Khan and Abdul Nasir Warsi for the purpose of promoting the said case premises. These two persons are contractors. It was agreed that these two persons who are the second party to the contract are entrusted with the development of the case premises. It was also agreed that the expenses for obtaining building sanction and no objection certificate shall be borne by the second party. Ld. Advocate further submitted that in para 4 of the said agreement it was agreed that the contractors shall carry out construction of multi storied building at their own cost. It was also agreed that the contractors shall construct the building as per KMC rules. It was also agreed that three flats will be provided to the owners after completion of the said construction.

Ld. Advocate for the accused persons submitted that these contractors being Sajid Khan and Abdul Nasir Warsi are the persons responsible for raising unauthorized construction at the case premises. For this reason it is now required that these persons should be made accused and they should be brought to trial in this case along with the other two accused persons, admittedly who are owners.

Ld. A.P.P raised objection. Ld. A.P.P today pointed out to the evidence of the witness /accused examined today as DW-1. Ld. A.P.P submitted that in the cross-examination the accused has stated that the alleged construction was raised by him and the promoter. He has admitted in cross-examination that in the course of investigation this document was not produced by the accused persons to the investigating officer. Moreover in the cross-examination accused has admitted that sanction was not obtained for raising additional floors above G+2 level.

Ld. A.P.P further submitted that this document is manufactured and is produced at this stage of the trial only for the purpose of misleading the course of trial.

Ld. A.P.P accordingly prayed for rejecting the prayer of impleading of two persons as named above being Sajid Khan and Abdul Nasir Warsi in this case.

I have heard both sides and perused the said agreement for construction.

Admittedly this document is not registered. In such a scenario where an unregistered agreement is produced, evidential value to such document can be given only if such document is proved by other means.

This document seems to have been attested by two witnesses. These two witnesses have not been produced and examined from the side of the defence for the purpose of proving the authenticity of the said document. Therefore, at this stage I do not find good reasons to rely upon the said document by considering it as genuine.

Moreover, this agreement seems to have been made in the year 2011. Today it is produced from the custody of the accused. So, at this stage this Court draws presumption that this document was all along in the custody of the accused.

Ld. Advocate for the accused persons did not made any satisfactory submission before the Court today as to why this document was not produced by the accused persons in the course of investigation before the investigating officer. More over it seems that charge of this case was framed way back on 15-09-2021. Since that time the trial has continued and during this period the accused persons faced trial. During the entire period there was no whisper of the existence of any such document in the custody of the accused persons.

At the time of examination of the accused persons u/s 313 Cr.P.C they have admitted that a G+5 storied building was constructed at the case premises. It is admitted that there is a sanctioned plan for construction of G+2 storied building at the case premises. It is also admitted that there is no sanction in respect of additional floors. The prosecution has stated in evidence that there is a sanction in respect of a G+2 storied building at the case premises.

When the case has almost reached the end of its trial stage, now the accused persons have come up with this document and have tried to implicate other persons in this case.

More over it seems that the defence has not produced any such evidence which would absolve the accused persons completely and the entire burden of raising unauthorized construction would shift on some other person.

As it has already been discussed above that the genuineness and authenticity of the document marked as Exhibit-A is questionable, at this stage I am not inclined to place reliance upon the said document.

After a thorough investigation, the investigating officer has charge sheeted only the two accused persons who are now facing trial.

So, in view of the entire discussion done above, I am not inclined to allow such a petition filed u/s 319 Cr.P.C by the accused persons.

Accordingly, the instant petition stands rejected.

As the accused persons have not desired/made any petition/prayer for adducing any further evidence/witness in support of their case, the evidence stands closed.

To 18-01-2023 for hearing argument.

D/C by me

Senior Municipal Magistrate,  
**Kolkata, Dist.- Kolkata.**

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