



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.219 OF 2014

Omprakash Agarwal and anr. ... Applicants  
Versus  
The State of Maharashtra and anr. ... Respondents

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Ms. Sonal Parab a/w Ms. Mukta Gadekar & Ms. Esha Rane i/b. Mr. Rajeev Sawant & Associates for the Applicants.

Mr. Tanveer G. Khan, APP for the Respondent -State.

Mr. P. P. Chavhan i/b. Ms. Komal Punjabi for Respondent No.2.

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**CORAM : M.M. SATHAYE, J.**

**DATE: 6<sup>th</sup> May, 2026**

**PC. :**

1. The Applicants/accused have filed this Revision Application challenging the Judgment and Order dated 30.06.2014, passed by the Additional Sessions Judge, Bombay, in Criminal Appeal No.181 of 2009. By the said impugned Order, the appeal filed by the Applicants has been dismissed, thereby confirming the Judgment and order dated 09.02.2009, passed by the learned Metropolitan Magistrate, 39<sup>th</sup> Court, Vile Parle, Mumbai, in C. C. No.1527/SS/2006, convicting the Applicants for offence punishable under Section 475A of the Mumbai Municipal Corporation Act, 1888 ('MMC Act', for short). The Magistrate Court sentenced the Applicants to undergo simple imprisonment of six months each, and to pay fine of Rs.10,000/- each, and in default to suffer simple imprisonment for a term of three months.



2. Applicant No.1 was the Secretary and Applicant No.2 was the Chairman of M/s. Shahin Apartment, Co-operative Housing Society Limited ('Society', for short) at the relevant time.

3. A complaint was received by Municipal Corporation from PW-3 Mr. Nissar Ahmed Qureshi that the Society building is in ruinous condition. Therefore, its junior engineer PW-1 Mr. Amit Jadhav visited the Society premises on 14.12.2005 and carried out inspection of the premises and found that the building is in dilapidated condition. PW-1 prepared notice as per the directions of his superior and sent it to the Applicants. By the said notice dated 17.12.2005, issued under section 354 of the MMC Act (Exh.P-9), the Applicants were called upon to carry out the requisite work and repair within 30 days. The notice was served on the Applicants by the building Mukadam (PW-2) Mr. Shaikh Mukhatar Shaikh Makhdam. He submitted the service report. PW-1 again visited the premises on 21.01.2006, and found that the Applicants have not carried out the repairs. Legal Assistant filed a complaint against the Applicants for non-compliance with the notice under Section 354 of the MMC Act. Process was issued. Applicants entered plea of not guilty and claimed to be tried.

4. Under Section 313 of the Criminal Procedure Code, 1973, ('CrPC', for short), the Applicants put forth a defence of complete denial and false implication. According to them after receipt of earlier notice, meeting of the Society was convened and defaulting members were listed. Since the Society did not have sufficient funds to carry out the repairs, it was resolved that pending dues by the defaulters



should be collected and the quotations be invited for the repair of the building. This fact was brought to the notice of the Municipal Authorities. Thus, it was pleaded that no *mens rea* can be attributed to them to commit the offence.

5. The Trial Court considered the oral and documentary evidence and convicted the Applicants as aforesaid. The Applicants then filed the said appeal challenging the conviction and sentence.

6. The Appellate Court on re-appreciation of the evidence found that the prosecution had proved that the portion of the building in question was found to be in ruinous condition during the inspection dated 14.12.2005, and 21.01.2006, and the Applicants have committed an offence by not complying with notice under Section 354 of the MMC Act. Accordingly, appeal was dismissed confirming the conviction and sentence.

7. Learned counsel for the Applicants, Ms. Parab submitted that during the pendency of the Revision, Applicant No.1 (Secretary of the Society) has expired. She has submitted as under.

7.1. She has drawn the Court's attention to the notice dated 17.12.2005 under Section 354 of the MMC Act, which was allegedly not complied with by the Applicants. It is submitted that the said notice required the Applicants to carry out repairs as under :-

*"1) To gunite and replaster underground suction tank and overhead tank.*

*2) To gunite/replaster and gunite outside and inside i.e. staircase portion only plaster from ground floor to terrace level.*



- 3) *To gunit columns, beams, R.C.C. staircase from ground floor to terrace level.*
- 4) *To make water proofing on terrace.*
- 5) *To provide C.C. pavement in the compound.*
- 6) *To gunit R.C.C. structural member of entire building i.e. columns, beams, chajjas, balcony.*
- 7) *To replace/repair gully trap chambers, inspection chambers, waste water pipes, rain water pipes etc.”*

7.2. That no action under Section 489 of the MMC Act, as in the opinion of the Authorities necessary for giving effect to the requirement of the notice, was undertaken by the Municipal Corporation.

7.3. That before the said notice dated 17.12.2005, an earlier notice dated 01.09.2005 was issued under the same provision calling upon the Applicants to do the same repair work, and pursuant thereto an Emergency General Body Meeting (EGM) was called on 18.09.2005. The agenda of the said meeting was to consider the notice received from the Corporation about completing the repair and to decide about collecting the repair fund from the Members. That in the minutes of the said meeting the name of the wife of the complainant - Mrs. R.N. Qureshi, is recorded to have large amount of arrears for her flat No.16 and it was also recorded that since the Society is of lower middle class people, it is difficult for the Members to arrange for huge sum required for the repairs, and therefore, the pending dues by the defaulters should be collected and the quotations be invited for the repairs of the building. That the minutes also recorded that the notice has been issued in the personal name of the office



bearers who are not personally responsible and they are doing honorary service but are required to face mental torture for filing cases against the defaulting members.

7.4. That after this Emergency General Body Meeting, the subject matter notice dated 17.12.2005, was again issued at the instant of the complainant.

7.5. During the pendency of the Revision Application, the Society building has been demolished in around June 2016, for the purpose of redevelopment. That notice was a result of a complaint at the instant of a defaulter. She relied upon the Judgment in **M/s. Silver Land Developers Pvt. Ltd. Vs. The State of Maharashtra and anr.** (Criminal Application No.408 of 2011 dated 15.03.2013 of this Court), in support of her case.

7.6 She also submitted that owing to redevelopment process, 19 members have vacated from the premises, and handed over the possession to the builder Shri Hari Developers. In June 2014, the Society had entered into redevelopment Agreement with the developer. Pursuant to execution of Redevelopment Agreement, in 2016, the building was demolished.

7.7. That there is no element of *mens rea* and the notice itself was illegal in as much as the Society was not in such ruinous condition, and therefore conviction based on non-compliance with such legal notice must be set aside.

7.8. Since the recovery of money was asked from the defaulters



including Mrs. Qureshi, a complaint was made to the Corporation resulting into the subject matter notice. That the action of Respondent – Corporation was not meritorious. That the offence under Section 475A is not made out. She also submitted that the fine under the impugned sentence is already paid.

8. On the other hand, the learned counsel Mr. Chavhan appearing for Respondent No.2 – Municipal Corporation submitted as under. That notices are properly served. That the action initiated against the Applicants was correct. That the action was initiated on the complaint of the one of the Member of the Society and both the Courts below have concurrently held that offence is made out and therefore no interference is required. He however fairly admitted that some time in 2016, the building was demolished for the purpose of redevelopment.

9. I have considered the rival submissions and perused the record including the impugned orders.

10. At the outset it is necessary to note that the Applicants were admittedly Secretary and Chairman at the relevant time. It is not in dispute that subject-notice was issued under Section 354 of the MMC Act and earlier also a notice dated 01.09.2005 was issued under same section calling upon the Applicants for same repair work. It is also not in dispute that on 18.09.2005, which is within a short period thereafter, the Society had called Emergency General Body Meeting and its minutes are produced on record. Perusal of the minutes of the said meeting, clearly indicates that the person who filed the



complaint with the Municipal Corporation, was concerned with a flat no. 16 in the Society in the name of his wife. It is also clear that the complainant's wife was defaulter for a large amount. It is also seen from the minutes that, the Society had immediately resolved to collect the pending dues so that necessary repairs can be undertaken. Thus, it clearly indicates that the Society, through the Applicants, even before the subject notice was issued, had taken action and there is clear intention to undertake the repairs. Therefore, this is not a case wherein intention/*mens rea* can be attributed to the Applicants, who are the office bearer of the Society.

11. It is also seen from the record that after the Emergency General Body Meeting took place, its minutes were informed to the Authorities of Municipal Corporation. However, in the meantime, the subject matter notice dated 17.12.2005 was issued.

12. Sections 475A and 354 of the MMC Act read as under :-

**475A. Punishment for commencing work contrary to section 347**

(1) A person to whom notice under [section 351 and 354] is served shall, on his failure to comply with the said notice,-

(a) for restoration of the foundation, plinth or floor, or structural members or load bearing walls, thereby endangering the life and property of any person occupying, resorting to or passing by such building or any other building or place in neighbourhood thereof, shall be punished with imprisonment for a term which shall not be less than three months but which may extend up to three years and with a fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees; and in the case of a continuing offence with a



further daily fine which may extend to one thousand rupees; or

(b) for removing, pulling down the unauthorised work, shall be punished with imprisonment for a term which shall not be less than one month but which may extend to one year and with a fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees and in the case of continuing offence with a further daily fine which may extend to five hundred rupees.

### **354. Removal of structures, etc., which are in ruins or likely to fall**

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, [subject to the provisions of section 342] and to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in



occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the *inter se* rights of the owners or tenants or occupiers, including right of re-occupation in any manner.

*Explanation* - For the purposes of this section, "the tenant" shall have the same meaning assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999.)"

(emphasis supplied)

13. Bare perusal of the said sections indicates that when the notice under Section 354 is served upon a person about a building in ruinous condition and on its failure to comply with the said notice 'for restoration of the foundation, plinth or floor, or structural members or load bearing wall, thereby endangering the life and property of any person occupying, resorting to or passing by such building or any other building or place in neighbourhood, shall be punished'.

14. Perusal of the concerned notice and the repair work demanded therein indicates that no such work about endangering life and property of any person occupying, resorting to or passing by such building was involved. This fact is also clear as sunshine from the admitted fact that till 2016, the building was standing and was



require to be demolished. It is therefore obvious that the Municipal Corporation had issued the subject-notice dated 17.12.2005 without proper checking and assessment of the strength of the structure at the relevant time. It was definitely not in such ruinous condition as to punish the office-bearers for non-compliance with such notice about the repair work. If the Municipal Corporation was really worried about loss of life and limbs of residents, it would have initiated action under section 489 of MMC Act as stated in subject-notice. No such action was taken.

15. The fact that the complainant was concerned with the flat in the Society and his relative's name is appearing in the defaulters' list with huge sum, is direct indication of the fact that because the pending dues were demanded by the Society under the control of the Applicants as its office bearers, a complaint was filed as a counter blast to the Municipal Corporation. The concerned officers of Respondent No.2 Municipal Corporation, seems to have acted at the behest of the such defaulter-Member and the subject matter notice seems to have been issued.

16. PW – 1 Junior Engineer, Amit Jadhav, has stated in his examination-in-chief that he has received the complaint from Mr. Qureshi residing in Flat No.16 of the Society building, and the said complaint was regarding the structure of the building in dilapidated condition.

17. The statement in the subject-notice that the building is in ruinous condition and likely to fall is found to be based on absolutely



erroneous assessment about the building. The building stood till 2016 which is 11 years after the said notice. Obviously, the subject-notice was issued without genuinely checking the condition of the Society building.

18. The Society's minutes of the Emergency General Body meeting dated 18.09.2005 clearly records that it was informed by the Managing Committee that due to non co-operation and non-payment of repair funds by some members, only part of the building repair work was carried out. The list of defaulting Members was recorded including Mrs. R. N. Quereshi for flat No.16. Members estimated the cost of repairs as per earlier notice and the estimated cost was around Rs. 15 Lakhs based on the report of the Surveyor and since the Society's members were lower middle class members, it was difficult for them to arrange such a huge amount in a short period and therefore majority of the members were of the opinion that the dues must be collected from the defaulting members. The minutes also make a reference to certain members of the Society who grouped together for harassment of the Managing Committee by not co-operating and non-payment of Society dues. The Society had resolved that the building repair work will be carried out as per the notice of the Municipal Corporation after recovery of dues from the defaulting Members including Mr. Qureshi.

19. Viewed in the light of what is observed above, when impugned orders are perused, it is seen that the Courts below have held that the Applicants can not discharge their legal obligations to comply with the notice by simply informing that the funds are not available and



they could have filed proceedings under Section 507 of the MMC Act, which provides for remedy to the owner of the building or land against the occupier who prevents complying with any provisions of the MMC Act. In the facts and circumstances narrated above, it can not be said that the Applicants who were the office-bearers were owners of the building or the land and it is inconceivable that non-initiation of action under Section 507 of the said Act, can result in the attribution of *mens rea* upon the office-bearers, who are doing honorary work of Managing Committee. The plea/defence that the Society did not have sufficient funds because of the defaulter members ought to have been considered by the Courts below.

20. On overall consideration of the facts and circumstances, the offence under Section 475A of the MMC is not made out.

21. For the reasons indicated above, conviction under the impugned order is found to be perverse and can not be sustained, requiring interference by this Court.

22. Accordingly, the Revision Application succeeds and the impugned order dated 30.06.2014 is quashed and set aside. Criminal Appeal No.181 of 2009 is allowed. The Judgment and order dated 09.02.2009, passed in C.C. No. 1527/SS/2006, is set aside, thereby acquitting both the Applicants from the offence under Section 475A of the MMC Act. Bail bonds and surety, if any, stand discharged.

**(M.M. SATHAYE, J.)**