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IN THE COURT OF METROPOLITAN MAGISTRATE,
55TH COURT, VILE PARLE, MUMBAI.

(Presided over by P. H. Kharwade)

JUDGMENT U/S.355 OF CR.P.C.

Exh.B-1

- a] The serial number of the case : 5518266/SS/2015
CNR No.:-MHMM25-002794-2015
- b] The date of the commission of the offence : On or before 08/06/2015
- c] The name of the complainant (if any) :Municipal Corporation of Greater Mumbai (MCGM)
Through Assistant Law Officer (ALO)
of R/South Ward
Shri.H.D. Mali
- d] The name of the accused person and his parentage and residence :Mr. Vyomesh Rameshchandra Thakkar
Age : 47 Yrs. Occ :- Service
R/o :- Flat No.C-802, Panchsheel Heights Co-operative Housing Society, Mahavir Nagar, Kandivali(W), Mumbai.
- e] The offence complained of or proved. :The offence under section 347C punishable under section 471 of The

Mumbai Municipal Corporation Act,
 1888 (in short MMC Act).

- f] The plea of the accused and his examination (if any) : The accused pleaded not guilty.
- g] The final order : The accused is acquitted as per final order.
- h] Date of the Order 24.02.2019

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**Appearance :- Shri. H.D. Mali learned ALO for the complainant
 Shri.H.K. Devani and Shri.P.N. Kothari learned Advocates
 for the accused.**

JUDGMENT

(Delivered on this 24th day of February, 2020)

After considering material available on record, following points arose for my determination. I recorded my findings against each of them for reasons to follow :-

	<u>Points</u>	<u>Finding</u>
1	Does the prosecution prove that, on or before 08/06/2015 in Flat No.C-802, Panchsheel Heights Co-operative Housing Society, Mahavir Nagar, Kandivali(W), Mumbai, the accused has made alterations and amalgamation or caused such alterations and amalgamation to be made in said existing flat originally constructed for human habitation, for the purpose of using it or causing it to be used as a godown, warehouse, workshop, workplace, factory, stable or motor garage, without the written permission of the Municipal Commissioner of Greater Mumbai in contravention of section 347C of the Mumbai	No.

	Municipal Corporation Act, 1888 ?	
2	What is the offence, if any, proved against the accused ?	None.
3	What order ?	As per final order.

R E A S O N S

As to points no.1 to 3 :-

2] In order to bring home guilt of accused, the prosecution has examined PW 1 Komal Nandkumar Bhoi (Junior Engineer) at Exh.04. The accused has not examined any witness in his defence.

3] The defence of the accused as appearing from his statement under section 313 of the Criminal Procedure Code and cross examination of witnesses is that of the total denial and false implication.

4] I heard arguments advanced by learned Assistant Law Officer and learned Advocate for the accused.

5] As per the testimony of PW 1 Komal, while she was working as a Junior Engineer in R/South Ward of Municipal Corporation of Greater Mumbai, she was authorised to inspect the site after receiving complaint, to do self detection of dilapidated buildings and to submit its report to superior officer by virtue of authority given by Deputy Municipal Commissioner Shri.Bharat Marathe. One complaint was filed by Mr. Manish Seth about additions and alterations in C and D wing of Panchsheel Heights Co-operative Housing Society, Mahavir Nagar, Kandivali(W), Mumbai. Hence, she conducted

inspection of the site i.e. Flat No.C-802 of Panchsheel Heights and found that, two flats were amalgamated. Position of window of the living room and kitchen was changed. Those alterations were made beyond approved plan. Hence, she prepared First Inspection Report accordingly vide Exh.06. Thereafter, notice vide Exh.07 as per section 347C of the MMC Act was issued for restoration of site to its original. Thereafter, she conducted second inspection of the site and found that, notice has not been complied with. She prepared Second Inspection Report accordingly vide Exh.11. Thereafter, as per directions of Assistant Engineer, she prepared Offence Sheet vide Exh.12.

6] PW 1 Komal admitted in her cross examination that, she has not collected any document prior to issue of notice to show as to who were assessee of the flats before amalgamation. She did not state in whose presence she has conducted inspection. She has not collected any document before issue of notice to show whether the accused was owner or occupier of the site. She has not sought any expert opinion to show whether there was danger to the stability of the building due to alleged alteration. She does not have personal knowledge as to when alleged alteration or amalgamation have been done. She has not collected any document to show whether the accused was in exclusive possession of concerned flat. She has not issued prior notice to the owner or occupier of the site before conducting inspection.

7] Perusal of case record shows that, PW 1 Komal testified about visiting the site and finding that, the two flats were amalgamated and alterations were made beyond the approved plan by changing the position of window of living room and kitchen in the site. However, she

did not state whether those alterations were made by the accused. Moreover, no document has been filed on record to show ownership of the accused over the site where alterations and amalgamation were allegedly made. The prosecution has not filed any document on record to show whether the accused was in possession of the site in question. Sufficient evidence has not been adduced to show whether the accused has made alleged alterations and amalgamation in the alleged site, having regard to not filing any document in respect of ownership and occupancy over the site. Thus, sufficient evidence has not been adduced to establish as to how accused was concerned with the site.

8] PW 1 Komal further deposed of issuing notice and non-compliance thereof as per second inspection. The issuance of notice is not necessary ingredient of the offence under Section 347C of the MMC Act. Therefore, evidence of PW 1 Komal about issuance and service of notice to accused is not helpful to the prosecution. Moreover, issuance of notice cannot extend the period of limitation for filing the complaint. The offence punishable under Section 471 read with Section 347C of the MMC Act is punishable with fine up to Rupees Twenty Five Thousand. Hence, limitation for filing complaint is three months in view of Section 514 of the MMC Act. Perusal of case record shows that, the offence was detected on the first inspection on 08/06/2015. Hence, the instant complaint must have been filed on or before 08/09/2015. However, the instant complaint is filed on 30/11/2015 which shows that, the complaint is not filed within the prescribed period of limitation. Hence, accused is not liable for punishment in view of Section 514 of the MMC Act.

9] In order to sustain act of officer visiting the premises on behalf of Municipal Corporation, it is necessary that, prior notice must be given to the occupants of the building before visiting the premises. Cross examination of PW 1 Komal shows that, she has not issued any prior notice before effecting entry in concerned premises as required under Section 488 of the MMC Act. Moreover, evidence available on record shows that, PW 1 Komal has not maintained a field diary to show whether she has visited the premises. Hence, her action is bad in law.

10] No document is filed by the prosecution to prove delegation of any power to Deputy Municipal Commissioner which has been further delegated to PW 1 Komal for inspecting the alleged premises, finding alteration therein and preparing Offence Sheet against the accused. For want of proof of delegation of powers to Deputy Municipal Commissioner, act of the PW 1 Komal by conducting inspection of the alleged site and finding alterations and amalgamation therein cannot be said to be done with valid authority.

11] Evidence available on record does not appear to be sufficient and reliable to hold the accused guilty of carrying out alterations and amalgamation in the existing flat, without permission of Municipal Commissioner in view of having no sufficient proof of delegation of powers to PW 1 Komal, not issuing prior intimation before visiting the site, not filing extract of field diary, want of proof of concern of the accused with the offence and filing the complaint beyond the prescribed period of limitation. Hence, the accused has not incurred any criminal liability for the purpose of punishment under Section 471 read with Section 347C of MMC Act. Prosecution thus, failed to bring

home guilt of the accused beyond any reasonable doubt. I have therefore, recorded my findings as against points number 1 and 2 in the negative. Hence, the accused is entitled for acquittal. In the result, I proceed to pass the following order :-

ORDER

- The accused is acquitted of the offence under Section 347C punishable under Section 471 of The Mumbai Municipal Corporation Act, 1888 vide Section 255 (1) of the Code of Criminal Procedure, 1973.
- His bail bonds shall stand cancelled. He is set at liberty.
- He is directed to furnish bail in the sum of Rs. 10,000/- under Section 437-A of the Code of Criminal Procedure, 1973.
- Judgment is pronounced in the open Court.



Digitally signed by
Prashant Haribhau
Kharwade
Date: 2020.03.09
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(P.H. Kharwade)

Metropolitan Magistrate,
55th Court, Vile Parle, Mumbai.

Date : 24.02.2020.

Judgment Dictated on :- 24.02.2020

Judgment Transcribed on :- 24.02.2020

Judgment Signed on :- 24.02.2020