

: 1 : CASE NO. 4202148/SS/2012

Received on : 06/06/2012
Registered on : 06/06/2012
Decided on : 20/02/2015
Duration : YY--MM --DD
: 02 - 08 - 14

IN THE COURT OF THE METROPOLITAN MAGISTRATE,
41ST COURT, SHINDEWADI, DADAR, MUMBAI.
(BEFORE R. M. JADHAV)

Exhibit : 42

C. C. No.420 2148/SS/2012

Mumbai Municipal Corporation] ... Complainant
'M/E' Ward, Mumbai.]
(Through : Assistant Law Officer]
Shri. A. T. Rathod,)]

V/s.

Shrinath Keshav Payyade] ... Accused
Age : 36 Yrs. Occu. : Business]
Gala No.27 & 28,]
Majethia Industrial Estate,]
W. T. Patil Marg,]
Govandi, Mumbai.]

Charge : Offence under section 390 punishable under
section 471 of Mumbai Municipal Corporation
Act-1888.

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Appearance : Ld. L.A. Mr A. T. Rathod for MMC.
Ld. Adv. D. K. Sahu, Arjun Kode for accused.
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20
2012/15

J U D G M E N T
(Delivered on 20/02/2015)

1] The accused is tried for offence under section 390 punishable under section 471 of MMC Act, on the complaint filed by Asst. Legal Officer, of 'M/E' Ward.

2] In short facts of the case are as under :--

On 26/03/2012 Junior Engineer H. D. Deotale visited and inspected Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai. Upon inspection found trade making of kitchen food material with the help of eight worker by using electromotive power of 3.0 hp, without permission of MMC. One Anand Manjunath Poojari was present there at the above site. The Junior Engineer 'M/E' ward, prepared the inspection report and thereafter obtained sanction for prosecution of the accused. The Assistant Legal Officer, 'M/E' ward filed complaint in court.

3] My Ld. Predecessor issued process against the accused, under section 390 punishable under section 471 of



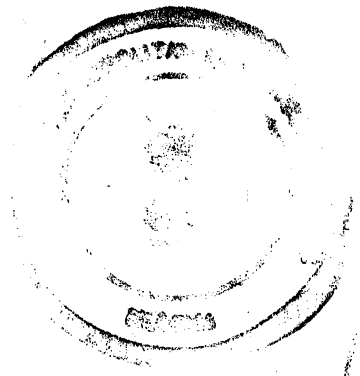
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MMC Act. The accused appeared and is on bail.

4] The plea of accused under section 390 punishable under section 471 of MMC Act was recorded below Exh.6. The accused pleaded not guilty and claimed to be tried. The statement of accused u/s 313 of Cr. P. C. is recorded. The defence of accused is of total denial.

5] Following points arise for determination, my findings together with reasons on the same are as below :-

Sr. No.	Points	Findings
1.	Does complainant proved that, on 26/03/2012 at Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai, the accused was found making kitchen food material, with the help of 8 worker by using electromotive power of 3.0 hp, without written permission of the competent authority and thereby committed offence punishable u/s 390 punishable under section 471 of MMC Act?	Not Proved
2.	What order ?	As per final order



20/2/15

REASONS

6] The complainant in order to prove the guilt of accused examined P. W. No.1 Junior Engineer Himanshu Devtale below Exh.15, P. W. No.2 Assistant Engineer, Ramchandra Kadam below Exh.23, P. W. No.3 Head Clerk Seema Pathak below Exh.29 and thereafter concluded its evidence.

7] Besides the oral evidence the complainant relied upon the authority letter of Himanshu Devtale Exh.16, inspection report Exh.17, offence sheet Exh.18, authority letter of P.W.2 Ramchandra Kadam below Exh.24, reply of accused Exh.25, license of health department Exh.26, deputation of powers and intimation of DMC Exh.30 & 33, authority letter of Legal Assistant Exh.34.

8] Heard Legal Assistant and Ld. Adv. for accused at length. Ld. Advocate for accused filed written notes of arguments below Exh.41.

20/12/15

AS TO POINT NOS. 1 AND 2 :-

9] The point No.1 & 2 are inter linked with each other therefore discussed cumulatively. It is the case of complainant that, on 26/03/2012 Junior Engineer H. D. Deotale visited and inspected Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai. Upon inspection found that Anand Manjunath Poojari the Supervisor of the trade was present at the site and found kitchen food material was prepared with the help of mixer, grinder and cutting machine, with the help of 8 workers by using electromotive power of 3.0 hp, without permission of MMC was going on. The Junior Engineer deposed accordingly. The P.W.2 Assistant Engineer deposed that he has accorded sanction for the prosecution of accused. The P. W.3 Head Clerk produced the deputation of powers and intimation of DMC and authority of L.A.

10] At the outset I would like to mention here that, P.W.3 produced on record, the deputation of powers and intimation of DMC and the authority letter of L.A. They are

2009
20/2/15

part and parcel of the office record, there is presumption under section 114(e) of Indian Evidence Act that, judicial and official act have been regularly performed. Except the suggestion of denial nothing came on record, which could discard the credibility of the above documentary proof. Therefore, I found no reason to disbelieve and discard the authorities produced on record.

11] On scrutinizing the evidence on record, it appears that the entire case to prove the guilt of accused rests upon the evidence of P.W.1 Junior Engineer Devtale who visited and inspected the Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai. P.W.1 deposed that upon inspection he found one Anand Manjunath Poojari was using electromotive power of 03.00 hp with the help of eight workers. Accordingly he prepared inspection report.

12] P.W.2 Assistant Engineer deposed that he directed the Junior Engineer to prepare the offence sheet for

23/11/2015

: 7 :

CASE NO. 4202148/SS/2012

prosecution of accused. The P.W.2 further deposed that the reply of M/s Sadguru Hotel i.e. of accused was received by office, vide Exh.25.

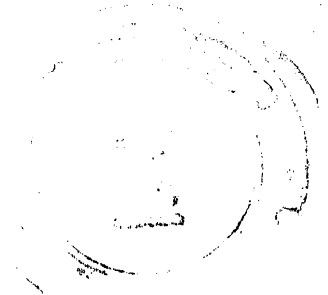
13] It is worthy to mention here that prosecution has produced on record the reply of accused below Exh.25. Prosecution also produced on record the license under section 394 of MMC Act granted to the M/s Sadguru Hotel below exh.26 and guidelines of BMC. On going through above evidence, it appears that the license under section 394 is granted to the inspected premises i.e. M/s Sadguru Hotel at Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai. The said license is for preparation and sale of eatables. It is worthy to mention here that the prosecution has produced on record the guidelines of BMC which goes to show that 'In case of activities like Hotel & Restaurant, when no motive power is employed for a main activity, but is required for ancillary one then, use of such motive power for ancillary activity, is permitted by issuing no objection letter. Admittedly in the case in hand, the inspected

20
/ 2012/15

premises is hotel and restaurant. The permission under section 394 is given to hotel and restaurant. It is the case of prosecution that, grinder, mixers were used for cutting vegetable with electromotive power. Naturally the electromotive power is used for ancillary activity like for cutting vegetables, fruits etc. as deposed by P.W.1. Therefore the permit under section 390 of MMC Act is not required. The prosecution produced on record, the reply below Exh.25, which is allegedly to be of accused. The accused denied the Exh.25 to be his reply. On going through reply Exh.25, it appears that it is given by one Keshav Payyade. On travelling through Exh.1 the name of accused is Shrinath Keshav Payyade. There is no evidence produced by the prosecution to show that Keshav Payyade and Shrinath Keshav payyade are one and the same person. Under the circumstances, it is difficult to hold that, Exh.25 is the reply of accused.

14] It is the defence of accused that he has not concern with the inspected premises I.e M/s Sadguru Hotel,

2012/115



Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai. The prosecution itself has produced on record the license under section 394 of MMC Act given to be above premises i.e. M/s Sadguru Hotel, Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai. Exh.26 goes to show that the license is given to one Shri Keshav Shina Payyade. As mentioned supra the name of accused as per Exh.1 is Shrinath Keshav Payyade. It is not the case of prosecution that Keshav Shina Payyade and accused are the same person. No evidence to that effect is produced on record by the prosecution. Under the circumstances, I found that prosecution has failed to establish the concern of accused with the disputed premises i.e. M/s Sadguru Hotel, Gala No.27 & 28, Majethia Industrial Estate, W. T. Patil Marg, Govandi, Mumbai. It is worth to mention here that, the prosecution also did not produced on record, any cogent reliable evidence to prove that, Anand Poojari has concern with the accused. Moreover, the so called Anand Poojari, who was found at the site, is not arrayed as accused. Under

25/10

20/2/15

the circumstance, the action taken by the prosecution against the present accused, is unwarranted and uncalled for.

15] On going through the offence sheet Exh.18, it appears that, one Shrinath Keshav Payyade is shown as owner of factory. Besides it is worthy to mention here that in item No.4(a), 6, 10 specifically the word factory is mentioned. It is the contention of Ld. Advocate for accused that hotel and restaurant do not come under the purview of factory. In support of this limb of argument he relied upon the decision in **B. Shivram G. Shetty Vs. State of Maharashtra & Others 1996(1) ALL MR 114**, wherein it was observed that "The use of power for grinding machine in hotel for cutting eatables does not convert the hotel into factory. Hotel is excluded from the definition of factory under section 2(m)(ii) of Factory Act."

16] In view of the above legal provision and the prosecution case, that accused, used electromotive power for grinding machine, does not convert the hotel of accused into

20/11/15

: 11 : CASE NO. 4202148/SS/2012

the factory. Hence, I found there is substance in the
contention of Ld. Advocate for accused.

17] To sum up prosecution has failed to prove the
concern of accused with the disputed premises i.e. Sadguru
Hotel. Moreover the use of electromotive power for ancillary
purpose i.e. for using grinding machine in hotel does not
required the permission under section 390 of MMC Act.
Therefore accused deserves to be acquitted. Accordingly, I
answer point No.1 & 2 in negative and in result I pass the
following order :-

: ORDER :

- i] Accused Shrinath Keshav Payyade is hereby
acquitted for the offence under section 390 punishable
under section 471 of MMC Act-1888.
- ii] The bail bond of accused stands cancelled.

Pronounced in open Court.

20/02/2015
(R. M. Jadhav)

Metropolitan Magistrate

Date : 20/02/2015

41st Court, Shindewadi, Dadar, Mumbai.

Application No 349/15
Applied on - 26/3/15
Ready on - 9/4/15
Delivered on 9/4/15

TRUE COPY

for 88A 9/4/15
Metropolitan Magistrate
41st Court, Shindewadi, Dadar
Mumbai