

G. Mohandas
v.
State of Kerala & Ors.

(Criminal Appeal No. 2992 of 2025)

15 July 2025

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court refusing to quash FIR against the appellants-officials of the Municipal Corporation and the builder u/s.13(1)(d) r/w s.13(2) of the Prevention of Corruption Act, 1988 and s.120-B IPC, wherein the builder in conspiracy with the officials constructed a commercial structure in a prohibited zone under the garb of the renovation permission.

Headnotes[†]

Prevention of Corruption Act, 1988 – s.13(1)(d) r/w s.13(2) – Penal Code, 1860 – s.120-B – Criminal misconduct – Criminal conspiracy – Appellant-builder and the officials of the Municipal Corporation conspired to facilitate the appellant in constructing the building in violation of the Rules – Officials granted the permit to the appellant for internal alterations/ renovation in the building even though not required – On the strength of the said permit, allegedly issued as a part of the conspiracy, the appellant demolished the existing building and constructed a four-storeyed commercial building in gross violation of the Rules – FIR against the officials of the Municipal Corporation, the appellant and the architect u/s.13(1)(d) r/w s.13(2) of the PC Act and s.120-B IPC – Filing of charge-sheet and framing of charges – Petition u/s.482 CrPC seeking quashing of the proceedings – Dismissed by the High Court – Interference:

Held: Not called for – From the very beginning, the appellant acted in conspiracy with the Municipal Corporation officials by giving a facade of legitimacy to his fraudulent actions and to establish

* Author

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a pre-emptive defence in case the illegal acts were exposed – Officials of the Municipal Corporation deliberately turned a blind eye to the fact that the appellant had commenced construction of a commercial structure by misusing the permit granted for making renovations and/or internal changes – Moreover, they even entertained the fraudulent application filed by the appellant seeking the regularisation of the patently illegal structure, which could not have been entertained since the construction of a commercial structure was not permissible as it fell within a prohibited zone – Thus, the necessary ingredients of the offences alleged clearly established from the allegations set out – Furthermore, these officials did not challenge the criminal proceedings, which is a tacit acknowledgment of the seriousness and *prima facie* validity of the allegations – Case of the architect, whose prosecution was quashed by the High Court, stands on an entirely different footing – He was merely discharging his professional obligations and had no prior knowledge of the criminal intent shared by the parties – Concerned authorities under obligation to take suitable action against the illegal construction raised by the appellant, uninfluenced by any extraneous circumstances – Kerala Municipality Building Rules, 1999. [Paras 13-18]

List of Acts

Constitution of India; Code of Criminal Procedure, 1973; Kerala Municipality Building Rules, 1999; Prevention of Corruption Act, 1988; Penal Code, 1860.

List of Keywords

Quashing of FIR; Permit for internal alterations/renovation; Conspiracy; Demolition of the building; Construction of commercial building in prohibited zone; Officials of the Municipal Corporation; Fraudulent actions; Establish pre-emptive defence; Regularisation of illegal structure.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2992 of 2025

From the Judgment and Order dated 16.01.2024 of the High Court of Kerala at Ernakulam in CRMC No. 330 of 2021

G. Mohandas v. State of Kerala & Ors.**Appearances for Parties***Advs. for the Appellant:*

R. Basant, Sr. Adv., Ms. Anzu. K. Varkey, Ms. Mahesh Sharma.

Advs. for the Respondents:

P.V. Dinesh, Sr. Adv., Harshad V. Hameed, Dileep Poolakkot, Mrs. Ashly Harshad, Ms. Anna Oommen, Anshul Saharan.

Judgment / Order of the Supreme Court**Judgment****Mehta, J.**

1. Heard.
2. Leave granted.
3. The appellant herein has approached this Court seeking exercise of jurisdiction under Article 136 of the Constitution of India for assailing the final judgment and order dated 16th January, 2024, passed by the learned Single Judge of the High Court of Kerala at Ernakulam¹ in Criminal Miscellaneous Case No. 330 of 2021, whereby the petition filed by the appellant herein under Section 482 of the Code of Criminal Procedure, 1973², seeking quashing of the FIR³, was dismissed.
4. Facts, in a nutshell, relevant and essential for the disposal of the appeal are noted hereinbelow.
 - 4.1 The appellant herein is the owner of the building⁴ bearing No. T.C No. 28/1830 in Survey No. 709 of the Vanchiyoor Village, District Thiruvananthapuram. He is accused of hatching criminal conspiracy along with officials of the Thiruvananthapuram Municipal Corporation⁵ and the architect (accused No.7) in raising construction of a new four-storeyed commercial building by demolishing the existing building without obtaining the necessary permission from the Municipal Corporation.

1 Hereinafter, referred to as the "High Court".

2 Hereinafter, referred to as the "CrPC".

3 FIR No. 03/2009/SIU-1.

4 Hereinafter, referred to as "disputed building".

5 Hereinafter, referred to as the "Municipal Corporation".

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- 4.2 The case of the prosecution is that the appellant, acting in furtherance of a prior conspiracy with the officials of the Municipal Corporation, submitted an application in Appendix-A under Rule 5(1) and Rule 144(1) of the Kerala Municipality Building Rules, 1999,⁶ to the Municipal Corporation, seeking permission to make alterations and internal changes to the pre-existing building. The concerned official of the Municipal Corporation granted a permit to the appellant in Appendix-C under Rule 11(3) of the Rules, limited to renovation of the existing/old building.
- 4.3 The prosecution alleges that, as a matter of fact, under the provisions of the Rules, no such permit was required for alterations and internal changes to the building. The officials of the Municipal Corporation granted the permit despite the knowledge that the internal renovation of the building could be carried out by the building owner *suo moto*, and no formal permission was required for the same under the Rules. On the strength of the said permit, which was allegedly issued as a part of the conspiracy, the appellant demolished the existing building located in Vanchiyoor Village, Thiruvananthapuram District, and constructed a four-storeyed commercial building in gross violation of the Rules. The prosecution was initiated on the basis of a complaint filed by a businessman, namely, Dr. Biju Ramesh, to the Secretary of the Municipal Corporation, alleging that the appellant, in conspiracy with the Municipal Corporation officials, had constructed the four-storeyed building for commercial usage in violation of the Rules.
- 4.4 Acting on the above complaint, the Vigilance and Anti-Corruption Bureau⁷, conducted a surprise inspection of the disputed building on 5th January, 2007. On receiving the report of the surprise inspection, the Government *vide* letter No. 6918/D1/2007/Vig. dated 31st July, 2007, accorded sanction to conduct a vigilance enquiry into the matter. The enquiry concluded that the appellant herein and various officials of the Municipal Corporation had conspired to facilitate the appellant in constructing the building in violation of the Rules and thereby the necessary ingredients of the offences punishable under Section 13(1)(d) read with

6 Hereinafter, referred to as the 'Rules'.

7 For short, "Vigilance Department".

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Section 13(2) of the Prevention of Corruption Act, 1988,⁸ and Section 120B of the Indian Penal Code, 1860⁹, were *prima facie* made out against the appellant and the erring officials.

- 4.5 After the enquiry report was submitted and a prosecution sanction was received from the Director of Vigilance Department, an FIR, bearing VC No. 3 of 2009 was registered on 19th March, 2009, against the officials of the Thiruvananthapuram Municipal Corporation, the appellant and the architect of the disputed building, under Section 13(1)(d) r/w Section 13(2) of the PC Act and Section 120-B of the IPC. The appellant was arrayed as accused No. 6, whereas accused Nos. 1 to 5 were officials of the Thiruvananthapuram Municipal Corporation. The architect of the disputed building was arrayed as accused No. 7.
- 4.6 The Investigating Officer concluded in the report under Section 173(2) CrPC that the indicted officials of the Municipal Corporation, as well as the appellant, were aware of the fact that no permit was required for the internal alterations/renovation in the existing building. They were also aware that the location of the disputed building fell within a zone where the construction of commercial buildings was strictly prohibited. In spite thereof, the appellant submitted the questioned application for permit posing it to be necessary under the Rules, and the officials of the Municipal Corporation granted the permit even though not required. Upon conclusion of the investigation, a chargesheet¹⁰ came to be filed against the appellant, the officials of the Municipal Corporation, and the architect (accused No. 7), in the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram.
- 4.7 Aggrieved, the appellant approached the High Court by way of Criminal Miscellaneous Petition No. 330 of 2021 under Section 482 of the CrPC, seeking quashing of the proceedings. It was the case of the appellant before the High Court that as a matter of fact, the permission was sought for and taken for renovation, alterations, and internal changes to the existing

8 Hereinafter, referred to as "PC Act."

9 Hereinafter, referred to as "IPC."

10 Final Report No.02 of 2020.

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building in a *bona fide* manner. However, before the renovation work could be undertaken, there was a heavy deluge of torrential rainfall which caused the building to collapse, and, therefore, the appellant was compelled to construct the new building. He urged that the appellant moved for regularisation of the disputed building and accepting the said prayer, the Municipal Corporation has raised a demand of Rs. 18,58,653/- for regularisation of the unauthorised construction, and once the regularisation is permitted on payment of the compounding charges, the criminality of the alleged act is erased.

- 4.8 The appellant further contended that the architect for the building in question, namely A. Dharamakeerthi, who was arrayed as accused No. 7, also approached the High Court by filing a petition under Section 482 of the CrPC, bearing Criminal Miscellaneous No. 2161 of 2020, and *vide* order dated 7th January 2021, the learned Single Judge of the High Court has quashed the proceedings against accused No. 7, namely A. Dharamakeerthi. Thus, the appellant is also entitled to the same treatment on parity.
- 4.9 However, the High Court did not find favour with the submissions of the appellant and dismissed the Miscellaneous Petition filed by him *vide* order dated 16th January, 2024, which is assailed in this appeal by special leave.

Submissions on behalf of the appellant:-

5. Shri R. Basant, learned senior counsel appearing for the appellant, vehemently and fervently submitted that the prosecution case, as set out in the chargesheet, does not disclose the necessary ingredients of the offences alleged against the appellant. He fervently contended that since the Municipal Corporation has already decided to compound the disputed construction, no element of criminality remains in the alleged infraction/deviation. He further submitted that the original building collapsed due to heavy rainfall, and that the appellant merely rebuilt the old structure. As per Mr. Basant, there was no violation of the Rules in raising the new construction, more so, when the application for regularisation has been accepted.
6. Shri Basant, therefore, urged that the appeal is fit to be accepted and the impugned order passed by the High Court, along with all

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the proceedings sought to be taken against the appellant, deserve to be quashed.

Submissions on behalf of the respondents:-

7. *Per contra*, Shri P.V. Dinesh, learned senior counsel appearing for the respondent-State, vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that the entire thrust of the appellant's case, that the building collapsed due to torrential rainfall after due permission for renovation, alterations, and internal changes was granted by the Municipal Corporation, is nothing but a figment of imagination.
8. No sooner after the complaint had been received regarding the illegal construction, the Vigilance Department issued a stop memo to the appellant on 27th November, 2006. In sheer defiance of the stop memo, the appellant continued the construction and raised a four-storey commercial building in a zone where the construction of commercial buildings was prohibited. Not only this, in order to cover up his fraudulent acts, the appellant even tried to get the unauthorised construction regularised by filing an *ex post facto* application even though no such regularisation was permissible as the zone where the disputed building was constructed was a non-commercial zone.
9. Learned senior counsel submitted that it is a different matter that the regularisation never took place, as the criminal acts of the appellant and the officials had already been exposed during the vigilance enquiry. He further contended that, following the dismissal of the petition filed by the appellant under Section 482 CrPC by the High Court, the Special Judge has already directed the framing of charges against the appellant and hence, the appellant has no valid existing grounds to assail the impugned order and the chargesheet.
10. He, therefore, urged that the appeal is devoid of merit and deserves to be dismissed, and that the order under challenge, as well as all the proceedings initiated against the appellant, ought to be allowed to continue in accordance with law.

Discussion and Conclusion: -

11. We have given thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and the material placed on record.

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12. It was not disputed and is also evident from the Kerala Municipality Building Rules, 1999, that there is no requirement whatsoever for seeking permission to make alterations, renovations, or internal changes in an existing building. Despite that, the appellant acted in conspiracy with officials of the Municipal Corporation and procured such permission, which was nothing but a precursor to the fraudulent design of raising construction of a commercial structure in a prohibited zone under the garb of the renovation permission.
13. Clearly thus, from the very beginning, the appellant acted in conspiracy with the Municipal Corporation officials by giving a facade of legitimacy to his fraudulent actions and to establish a pre-emptive defence in case the illegal acts were exposed.
14. After the complaint was registered against the appellant and other officials, the Vigilance Department was informed, and a stop memo dated 27th November, 2006 was issued to the appellant, prohibiting any further construction activity. In sheer defiance of the stop memo, a four-storeyed commercial building was constructed. Furthermore, the appellant attempted to legitimise his fraudulent criminal actions by seeking an order for the regularisation of the patently illegal construction.
15. From the above-stated sequence of events, it is evident that the appellant and the officials of the Municipal Corporation were acting hands in glove right from the time of granting permission to renovate the pre-existing building. The officials of the Municipal Corporation deliberately turned a blind eye to the fact that the appellant had commenced construction of a commercial structure by misusing the permit granted for making renovations and/or internal changes. Moreover, they even entertained the fraudulent application filed by the appellant seeking the regularisation of the patently illegal structure. Indisputably, the construction of a commercial structure was not permissible as it fell within a prohibited zone. Hence, the application for regularisation could not have been entertained. Inspite thereof, the conniving officials raised a demand for regularisation presumably to give legitimacy to the conspiratorial design. Thus, the necessary ingredients of the offences alleged are clearly established from the allegations set out in the prosecution's case.
16. The trial Court has already rejected the application filed by the appellant under Section 239 of the CrPC and has directed framing

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of charges against him and the officials of the Corporation who were charge-sheeted along with the appellant with the aid of Section 120B of the IPC. These officials have not challenged the criminal proceedings, which is a tacit acknowledgment of the seriousness and *prima facie* validity of the allegations. Needless to say, that the case of the architect, whose prosecution was quashed by the High Court, stands on an entirely different footing. He was merely discharging his professional obligations while preparing the architectural design for the building, without any active involvement in the alleged conspiracy or the execution of the illegal construction. There is no material on record to suggest his prior knowledge or participation in the criminal intent shared by the appellant and the Corporation officials. Hence, the appellant cannot claim parity with the architect, i.e., accused No. 7 in the chargesheet, and any reliance placed on the High Court's order quashing proceedings against the architect is wholly misplaced.

17. We direct that the concerned authorities shall be under an obligation to take suitable action against the illegal construction raised by the appellant, uninfluenced by any extraneous circumstances.
18. It is our firm opinion that the impugned order dated 16th January, 2024, passed by the High Court of Kerala in Criminal Miscellaneous Case No. 330 of 2021, does not suffer from any infirmity whatsoever so as to warrant interference by this Court. Hence, the present appeal fails and is being dismissed as being devoid of merit.
19. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal dismissed.

[†]*Headnotes prepared by: Nidhi Jain*