

(2008) 07 DEL CK 0097
In the Delhi High Court
Case No : Criminal Appeal No. 20 of 1994

MCD

APPELLANT

Vs

Ms. Kamlesh

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Delhi Municipal Corporation Act, 1957 — Section 332

Citation : (2008) 07 DEL CK 0097

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Maninder Acharya, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The Appellant/Complainant has filed the present appeal u/s 378(4) of the Code of Criminal Procedure against the acquittal order dated 10th August, 1993 passed by Shri R.S. Arya, Metropolitan Magistrate, Delhi.

2. According to the Appellant/Complainant, the accused was found raising unauthorized construction of two shops, four rooms, stair case and passage at the ground floor in premises No. 313, Thana Road, Village Shalimar, Delhi without the prior permission of the MCD Commissioner. Consequently, according to the Appellant/Complainant, the accused has committed an offence punishable u/s 332 of the Delhi Municipal Corporation Act in her capacity as owner/builder of the said property.

3. The learned MM in his impugned acquittal order has given as many seven reasons to reach the conclusion that the prosecution's case is not free from shadow of reasonable doubt. The learned MM has not only pointed out to discrepancy in the evidence of the MCD officers but also the fact that the recommendatory note for prosecution as well as the order sanctioning prosecution had been signed by the officials in a mechanical manner without

application of mind.

4. But in my opinion the most important reason given by the learned MM for acquitting the accused is that the Appellant/Complainant failed to conclusively establish that the accused was the owner of the property in which the alleged unauthorized construction was carried out. The accused through DW-1 had placed on record a Ration Card of her husband which clearly showed that she was a resident of Sarai Pipal Thala 193, in contrast to the property at Shalimar Bag in which the alleged unauthorized construction was being carried out. It is pertinent to mention that during the relevant period admittedly properties in Shalimar Village were not assigned any municipal number and therefore, also it cannot be held beyond doubt that the accused was the owner of the property in which alleged unauthorized construction was being carried out.

5. Ms. Acharya has drawn my attention to the evidence of DW-1/ Shri C.S. Rawat, LDC from Food and Supply Department wherein the said witness has deposed that he could not specifically state the date on which the said Ration Card relied upon by the accused had been issued as the relevant column was blank. However, in my opinion this would make no difference as it was for the Appellant/Complainant to prove its case beyond any reasonable doubt.

6. Consequently, the present appeal being devoid of merits is dismissed.