

(2002) 12 OHC CK 0046
In the Orissa High Court
Case No : Criminal Appeal No. 109 of 1988

Town Surveyor, Berhampur Municipality	APPELLANT
Vs	
Smt. Sarojini Choudhary	RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Orissa Municipal Act, 1950 — Section 264, 266, 385A, 99

Citation : (2003) 24 OCR 533

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : N.K. Mishra, C.R. Kar and N.R. Samal, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard Mr. N. Misra who appears and addresses this Court on behalf of Mr. N.K. Misra. Learned Counsel for the Appellant.

2. This appeal has been filed against the order of acquittal granted u/s 255(1), Code of Criminal Procedure by learned J.M.F.C., Berhampur in favour of the Respondent in 3 (a) CC No. 218 of 1986 (Tr. No. 193 of 1986) as per the impugned judgment dated 27th June, 1987.

3. It appears from the impugned judgment and the LCR that the Respondent faced the trial for the offence u/s 385-A of the Orissa Municipality Act (in short "the Act") on the allegation that she had constructed the first floor of her building standing on Assessment No. 13074 in Badokhemundi Street. Ward No. 19 within Berhampur Municipality without obtaining prior permission of the said Municipality as required under the provision in Sections 264 and 266 of the Act. Respondent took the plea of complete denial. In course of trial Appellant examined two witnesses and relied on documents marked Exts. 1 to 5. The trial Court on assessment of evidence did not find credibility in the evidence of P.W. I inasmuch as at the time of inspection no notice was served on the Respondent

and there was delay in launching the prosecution for about one year from the date of inspection. However, learned Magistrate has considered the same on the ground of limitation.

4. In course of hearing while unable to explain as to why notice of inspection was not served on the Respondent and why the documents of title and possession in the name of Respondent was not proved and why the delay in filing the complaint was not explained Learned Counsel for the Respondent stated that since the evidence of P.Ws. 1 and 2 shows that construction was made by the Respondent the impugned order of acquittal should be interfered with. This Court finds no reasonableness in that argument. Though the question of want of authorisation as required u/s 99 of the Act is concerned was not taken into consideration by the trial Court but on perusal of record this Court finds want of proper authorisation by the Executive Officer in accordance with the said provision of law. Be that as it may, the ground which the trial Court has assigned is not found to be illegal or erroneous so as to interfere with the order of acquittal.

The Crl. Appeal stands dismissed accordingly.