



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.123 OF 2023

Rahul s/o Rajendra Jain, Aged 43 years,
Occ. Business, R/o Kusumkunj, Mangilal
Plot, Amravati, Tq. & Dist. Amravati.

... PETITIONER

VERSUS

1. The State of Maharashtra through,
Additional Chief Secretary, Home
Department, Mantralaya, Mumbai 32
2. The Commissioner of Police,
Amravati City, Amravati, Amravati
Office At Camp, Amravati.
3. PSO City Kotwali Police Station,
Amravati.
4. Mrs. Nilima Aaraj, Senior Police
Inspector and investigating Officer,
Presently Posted at Police Station
City, Kotwali, Amravati.
5. Suhas Nandkishore Chavhan
(Informant) Aged about – Major,
Occu. Service, Presently working as
Sub-Engineer, and Inspection Officer,
Circle -2, Amravati Municipal
Corporation, Amravati.

... RESPONDENTS.

WITH

CRIMINAL APPLICATION NO.259 OF 2023

Suhas s/o Nandakishor Chauhan, aged
43 years, Occu. Service, R/o Vidhyut
Nagar, Behind V.M.V. College, Amravati,
Tq. And Dist. Amravati.

... APPLICANT

VERSUS

The State of Maharashtra, through :
Police Station Officer, City Kotwali
Police Station, Amravati, Tq. And
Dist. Amravati.

... NON-APPLICANTS.

WITH

CRIMINAL APPLICATION NO.258 OF 2023

Ajay s/o Rambhau Vinchurkar, aged 48
years, Occ. Service, R/o Kiran Nagar to
Farshi Stop Road, Subhash Colony,
Amravati, Tq. & Dist. Amravati.

... PETITIONER

VERSUS

The State of Maharashtra, through
Police Station Officer, City Kotwali
Police Station, Amravati, Tq. & Dist.
Amravati.

....NON-APPLICANT

Shri F.T. Mirza, Advocate a/w Shri Shaml J. Kadu, Advocate for the
petitioner (in Cri.W.P 123/2023).

Shri A.S. Mardikar, Senior Advocate a/b Shri Ved Deshpande,

Advocate for the applicant. (in Criminal Application Nos.258/2023 and 259/2023.

Shri Anup Badar, Addl.PP for the State.

Shri Ishant V. Tambi, Advocate for the Intervener.

CORAM : VINAY JOSHI AND M.W. CHANDWANI, JJ.

RESERVED ON : 18.12.2023.

PRONOUNCED ON : 11.01.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

1. By invoking inherent jurisdiction of this Court, the petitioner/applicants are seeking to quash the First Information Report bearing Crime No.540 of 2022 registered with the Kotwali Police Station, Amravati City for the offence punishable under Section 304-A, 308 read with Section 34 of the Indian Penal Code ('IPC'). All proceedings relating to the same First Information Report ('FIR) raises a common issue for consideration hence, they are taken together for disposal.

2. Since anticipated things happened at the cost of five human lives we recall a proverb 'Think of devil and devil is here'. An old dilapidated building consisting of ground plus two floors collapsed on 30.10.2022 claiming life of five innocent labourer. Initially, the crime was registered under Section 304-A of the IPC at the instance of

applicant Suhash Chauhan a Deputy Engineer (designated Officer) at Municipal Corporation, Amravati, who has been arraigned as an accused during the course of investigation. Applicant Suhas Chauhan was the Executing Authority of the administrative orders passed by the Municipal Commissioner. He owns a responsibility of regulating the construction and other related activities within the jurisdiction of Amravati Municipal Corporation (for short hereinafter referred to as 'the Corporation').

3. A building known as 'Rajendra Lodge and Commercial Building' situated at Prabhat Square, Amravati was in dilapidated ruins condition which led to declare it as a dangerous felling in (C-1) category. The Corporation has issued notices to the owner and occupants of the tenement in terms of Section 264, 268 and 397A of the Maharashtra Municipal Corporation Act (for short 'the MMC Act'). 1st and 2nd floor of the building was occupied by a lodging house owned by applicant Rahul Jain. Ground floor consisting of five shops was owned by different persons. The 100 years old building became dangerous and declared so. Ground floor occupants have procured a Structural Engineers Stability Certificate of the ground floor premises. In response to the notices, 1st and 2nd floor was demolished by its owner applicant Rahul Jain on 23.07.2022. However the ground floor portion

was not demolished. One of the shop owner Mr. Shaha started repairs work which resulted into collapsing of entire structure. In said mishap five workers burried under debris and died.

4. Initially, applicant Suhas Chauhan (the Corporation Officer) has lodged the report against one of the shop owner Harshal Shaha and Sushila Shaha, who became a cause for collapse by starting repairs without permission. Registration of crime has rolled the process of investigation. During the course of investigation, applicant Suhas Chauhan (Deputy Engineer) and applicant Ajay Vinchurkar (Sectional Engineer) as well as applicant Rahul Jain (owner of 1st and 2nd floor) were arraigned as an accused by adding Sections 304, 308 read with Section 34 of the IPC. Both employees of the Corporation i.e. Suhas Chauhan and Ajay Vinchurkar have questioned the tenability of prosecution stating that they have no role in the alleged mishap. Likewise, applicant Rahul Jain also sought to quash FIR stating that he has already demolished 1st and 2nd floor however he has been falsely implicated. Ill fated widow of one of the deceased has intervned in all petitions/applications by blaming applicants jointly responsible for the occurrence. In short intervener has endeavoured to impress that applicants are also equally responsible with Shaha couple for mishap, which resulted into loss of lives and therefore, the resistance.

5. For the sake of convenience it would be apposite on our part to make brief reference of the events in tabular form, as below :

Dated	Event
31.07.2019	First notice of the Corporation under Sections 264, 268 and 397A of the MMC Act to all occupants of the building.
28.02.2020	Second notice of the Corporation as above.
09.03.2020	Reply by applicant Rahul Jain to the Corporation to the notice of eviction dated 28.02.2020 and seeking time for demolition.
12.03.2020	Communication of Rahul Jain to the Corporation seeking time to demolish his 1 st and 2 nd floor structure.
17.07.2020	Similar letter of Rahul Jain to the Corporation seeking time for demolition.
09.06.2021	Communication by the Corporation to Electricity Board for disconnecting electric supply of the entire building.
10.06.2021	Letter by Rahul Jain to ground floor occupants directing to vacate for demolition of 1 st and 2 nd floor.
11.06.2021	Letter by ground floor occupant Mr. Shaha to applicant Rahul Jain requesting to carefully remove 1 st and 2 nd floor structure.
14.06.2021	Letter by application Rahul Jain to the Corporation requiring Corporation to demolish the structure, as ground floor occupants did not vacate.
21.06.2021	Reply letter by ground floor occupant Mr. Shaha to applicant Rahul Jain asking to demolish 1 st and 2 nd floor structure immediately.
19.07.2021	Communication by the Corporation to Local Police directing to vacate the entire building being dilapidated.
18.08.2021	Communication by the Corporation to all occupants for immediate demolition of entire structure.
03.09.2021	Letter by Applicant Rahul Jain to the Corporation requesting to demolish the structure.
25.11.2021	Reminder letter by the Corporation to Electricity Board for disconnection of electric supply.
17.06.2022	Letter by the Corporation to all occupants directing to demolish entire building within 7 days.

20.07.2022	Letter by the Corporation to all occupants as above.
23.07.2022	1 st and 2 nd floor structure was partially removed by applicant Rahul Jain.
22.07.2022	Letter by Mr. Shaha to the Corporation and applicant Rahul Jain requesting to immediate demolition of structure.
19.09.2022	Letter by all ground floor occupants to the Corporation and Rahul Jain for removal of debris lying on the ground floor.
30.10.2022	Entire building collapsed

6. In addition, we would take a note that ground floor occupant Mr. Shaha has filed Regular Civil Suit No.458 of 2021 against the Corporation and others restraining them from demolishing the suit structure in pursuance of demolition notices dated 28.02.2020 and 18.02.2021. In said suit, Mr. Shaha sought temporary injunction however it was rejected by the Trial Court vide order dated 29.03.2022. Ground floor shop occupants have procured a Structural Stability Report from Structural Auditor Chetan T. Prajapati dated 01.09.2021. The intervener has produced several communications. He has also produced photographs depicting the position of entire building, position after removal of 1st and 2nd floor, and debris lying on the top of the ground floor.

7. Undisputedly, the Corporation has issued several notices for removal of ruins and dilapidated structure. 1st and 2nd floor owned by applicant Rahul Jain was removed on 23.07.2022, whilst remaining

structure entirely collapsed on 30.10.2022. Moreover, there is no dispute that while one of the ground floor occupants Mr. Shaha has started repairs work, the entire structure collapsed taking life of 5 laborers. At the instance of the report lodged by the Officer of the Corporation, crime was registered against the ground floor shop owner/occupant Mr. Shaha who started repairs work. During the investigation, the Police have arraigned the Corporation Officers (Suhas Chauhan and Ajay Vinchurkar) and 1st and 2nd floor owner Rahul Jain as an accused.

8. The blame game started after collapse of the building. The stand taken by the Corporation Officers (Suhas Chauhan and Ajay Vinchurkar) is quite similar whilst the stand of Rahul Jain (1st and 2nd floor owner) is distinct. Certainly stand of ground floor occupant Mr. Shah would be different, but he is not before the Court. Everyone endeavoured to shift blame on the other, claiming certain excuses.

9. Learned Senior Counsel Mr. Anil Mardikar made exhaustive submissions on behalf of the Municipal Officers (Suhas Chauhan and Ajay Vinchurkar) which are setout below :

i) Applicants Corporation Officers were bona fidely

discharging their official duty.

- ii) Applicant Suhas Chauhan himself has issued statutory notices for demolition.
- iii) Applicants have issued notices to all occupants for vacating the premises for removal.
- iv) Applicants have taken steps of issuing letter to MSEDCL for disconnection of electric connection to facilitate demolition work.
- v) Applicants have issued notices to concerned Police Authority seeking removal of occupants to facilitate demolition work.
- vi) Ground floor occupants submitted structural stability certificate stating that ground floor premises can be made good by repairs.
- vii) Civil Suit filed by the ground floor occupant Mr. Shaha against the Corporation is pending.
- viii) In pursuance of notices, 1st and 2nd floor was removed.

10. The entire action of the Corporation was *bona fidely* undertaken in discharge of lawful duty. At the most applicants can be blamed towards dereliction of duty amenable to the departmental action.

11. Learned Counsel Mr. Mirza appearing for the 1st and 2nd

floor owner Rahul Jain made following submissions :

- i) Since inception Rahul Jain was ready and willing to demolish 1st and 2nd floor structure in response to the notices.
- ii) Ground floor occupants have not removed themselves from the premises which has delayed removal of 1st and 2nd floor structure.
- iii) Applicant Rahul Jain has repeatedly issued notices to the ground floor owners for discontinuing their business activities and to co-operate for removal of 1st and 2nd floor structure.
- iv) Civil Suit was filed by the ground floor shop owner Mr. Shaha, which caused delay.
- v) In pursuance of notice, applicant Rahul Jain has demolished 1st and 2nd floor structure on 23.07.2022.
- vi) Applicant Rahul Jain has also removed the debris lying on the roof of ground floor.
- vii) Action against applicant Rahul Jain was *mala fide* and tainted.

12. Learned Counsel Mr. Tambi appearing for the intervener

made following submissions :

- i) Time to time notices were issued to all the occupants but they failed to remove the dilapidated structure.
- ii) Entire building falls under C-1 grade category which needs immediate demolition.
- iii) The Corporation Authorities though issued notices have not discharged their lawful duties within stipulated period.
- iv) The Corporation failed to take immediate action in terms of provisions of the MMC Act, which has resulted in the fatal collapse of building claiming five lives.
- v) The Corporation Authorities ought to have taken requisite steps in terms of Section 264 and 268 of the MMC Act.
- vi) 1st and 2nd floor occupant Rahul Jain intentionally caused delay in removing 1st and 2nd floor structure.
- vii) Rahul Jain has not removed 1st and 2nd floor structure in entirety, but only demolished walls and kept debris lying on the roof of the ground floor.

viii) All of them have conscious knowledge that their inaction may lead to cause death of the occupants and passerby.

13. Learned Addl. Public Prosecutor Mr. Badar has reiterated the stand taken by the intervener. Moreover he would submit that the investigation is at the verge of completion. During the course of investigation, several statements have been recorded depicting total willful negligence/inaction on the part of the applicants/petitioners. The reply-affidavit contains name of several witnesses stating that debris of 1st and 2nd floor were lying on the top of the ground floor. It was the duty of the Corporation Officers to demolish dangerous structure but they have not performed their duties faithfully. It is submitted that since the investigation is in progress, it cannot be throttled at initial stage. The uncontroverted allegations *prima facie* makes out a case for trial, hence urged for rejection.

14. Learned Senior Counsel Mr. Mardikar also attracted our attention to the order passed by this Court while granting pre-arrest protection to applicants Suhas Chauhan and Ajay Vinchurkar. It is argued that this Court while granting pre-arrest protection expressed that fault lies with Architecture and Structural Engineer furnishing

stability report. The Court also expressed that the Investigating Officer shall take necessary steps to book the real culprits. Moreover, it is argued that *prima facie* culpability cannot be attributed towards the applicants Suhas Chauhan and Ajay Vinchurkar. We are not much impressed by the observations of learned Single Judge made in the context of granting pre-arrest bail, which has its own periphery and different parameters. The matter has to be looked in broader perspective since the challenge is pressed to the very tenability of the prosecution that too at initial stage.

15. We have gone through the Structural Stability Certificate issued by the Architecture Chetan Prajapati. On examination and verification of the building as required under the provisions of 265A of the MMC Act, the Architect had issued a certificate stating that building falls in the C-1 category to be demolished immediately with all safety measures under the strict supervision of Structural Engineer. After taking various tests including Ultrasonic Pulse Velocity Test (NDT) and Rebound Hammer Test (NDT), he has drawn following Conclusions/recommendations in the report :

Conclusions :

1. *Quality of material is very poor.*

2. *Heavy corrosion of the Steel member is found.*
3. *Nondestructive test such as Rebound hammer test, UPV test shows Very Poor strength of concrete.*
4. *Major Cracks in column, beam and brick masonry wall is seen.*
5. *Leakages are seen at most of the places on wall and slab of the structure, due to which peeling of plaster and color is seen.*
6. *Major deflection in slabs of almost in all floors is found.*
7. *Overhead tank (OHT) is damaged.*
8. *Falling down of plaster and exposure of brick masonry at many places is found.*
9. *Additional Dead load is provided on floor by brick masonry.*
10. *Parapet wall of all floors is in worst condition.*
11. *Staircase case area is in satisfactory condition at this stage.*
12. *Ground floor walls are in satisfactory conditions at this stage and can be avoid demolishing or it will be as per site condition after course of demolition.*
13. *First floor walls (few walls) at entrance or wall above shop 3 and shop 4 are also in satisfactory condition but due repiaring work of ground floor slab or demolition work stability of wall will reduced.*
14. *It is very difficult to repair building as sudden failure of components of building is found during site inspection.*
15. *Only by hand contact to wall falling down of plaster at many places is found showing very low strength of material.*
16. *Algae growth is seen on components of building.*
17. *It is found that girder of adjoining building is rest/supported on walls of second floor hence it is necessary to avoid removal or demolition of west side wall of this building and therefore propping to this wall will required.*

Recommendation :

In view of the above conclusions and various tests carried out on the said structure/building and due situated in crowded area/traffic area “RAJENDRA LODGE & COMMERCIAL MARKET” has to be Evacuated Demolition Immediately but do not remove/demolished west side wall as it is found that attached building/detached building/neighbors building/adjoining building taken support from the wall of this building, and therefore propping to this wall will required to avoid collapse of wall (or as per site condition under the guidance of structural engineer). After reconstruction or providing support to adjoining building, Propping can be removed and also evacuated demolished of west side wall can be complete step by step. The said work is to be carried out under supervision of structural engineer strictly with all safety measures.

It is also possible to avoid removal of ground floor wall as at this stage it is in satisfactory condition (it is fully as per decision/requirement of all owners) and therefore it will be necessary to repair or reconstruct ground floor slab (temporary) without providing load on ground floor wall under supervision of structural engineer. It structure is not demolished fully or if ground floor wall is not demolished then it will be necessary to arrange structural inspection after every six months as quality of material is weak and age of building is more. In our opinion the said building will be structurally safe and stable after complete evacuated demolition and reconstruction of building.”

16. No one disputed that the entire structure was 100 years old, and in dilapidated condition. Time and again, notices have been issued by the Corporation for demolition by placing the structure in C-1 category. The Structural Stability Report though suggests that it is possible to avoid removal of ground floor however it was one of the

possibility. The entire tenor of report was that the building was in ruins, dilapidated condition. We would like to reiterate the final opinion of the Architect and Structural Engineer that “in our opinion the said building will be structurally safe and stable after complete evacuated demolition and reconstruction of building”, which is self speaking. Undoubtedly, the Corporation has issued the first notice on 31.07.2019 stating the building to be ruinous and totally in dangerous condition. The notice indicates that the building was approximately 100 years old. There is every possibility that it may collapse at any moment, which would take lives not only of occupants but of passersbys too.

17. It is the main contention of the learned Senior Counsel Mr. Mardikar that the Municipal Authorities did their best by issuing repeated notices to the occupants and made every endeavour to facilitate the demolition. Our attention has been invited to the notices dated 31.07.2019, 28.02.2020 and 18.08.2021 to impress that the Corporation Authorities have taken necessary steps for demolition. Moreover, it is emphasized that besides notices to the occupant, letters have been issued to MSEDCL (on 19.06.2021, 25.11.2022) for disconnecting the electric supply, as well as on 19.07.2021 letter was issued to the Police asking them to vacate the premises in terms of Government Resolution of the year 2015. It is submitted that since

Structural Stability Report was procured by the ground floor occupants as well as civil suit was pending, it caused delay in taking further action on the part of the Corporation. According to him, entire action of the Corporation was *bona fide* and at the most, negligence can be attributed towards the Officers. Moreover, it is submitted that by any stretch of imagination criminal liability cannot be fastened on the Officers of the Municipal Corporation.

18. We deem it necessary to reproduce Section 264 of the MMC Act which has set out the mechanism for the removal of dangerous structure :

“264. Removal of structures, etc., which are in ruins or likely to fall.

(1) If it shall at any time appear to [the Designated Officer] that any structure (including under this expression any building, wall, parapet, pavement, floor, steps, railings, door or window frames or shutter or roof or other structure and anything affixed to or projecting from or resting on any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, [the Designated Officer] may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair such structure or thing or do one or more of such things and to prevent all cause of danger therefrom.

(2) [The Designated Officer] may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith

or before proceeding to pull down, secure, remove or repair the said structure or thing, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and hand-rail if there be room enough for the same and [the Designated Officer] shall think the same desirable to serve as a footway for passengers outside of such hoard or fence.

(3) If it appears to [the Designated Officer] that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by [the Designated Officer] under sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) Where [the Designated Officer] is of opinion, whether on receipt of an application or otherwise, that the only or the most convenient mean by which the owner or occupier of a structure such as is referred to in sub-section (1) can pull down, secure, remove or repair such structure, is by entering any of the adjoining premises belonging to some other person 3[the Designated Officer] after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing authorise the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of [the Designated Officer] shall be a sufficient authority to the person in whose favour it is made, or to any agent to person employed by him for this purpose, after giving to the owner of the premises reasonable written notice of his intention so to do, to enter upon the said premises with assistants and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing any work under this section, as little damage as can be, shall be done to the adjoining owner's property and the owner or occupier of premises for the benefit of which the work is done, shall-

(i) cause the work to be executed with the least practicable delay;

(ii) pay compensation to any person who sustains damage by the execution of the said work.”

19. The statute itself vests variety of powers and provide mechanism for enforcing the obligation. The Authorities are empowered to take all forcible measures against such occupants as permissible in law. Section 268 empowers the Authority to forcibly vacate the building in certain circumstances. The plain, duty and obligation is to ensure that dangerous structures which are in ruinous state or likely to fall down are removed if they are in municipal limites. If the laws are not enforced, the result can only be total lawlessness.

20. No doubt the Corporation has initiated action in terms of Section 264 of the MMC Act on 31.07.2019. It was followed by two successive notices and issuance of letters to different authorities to facilitate demolition. However the question lingers in our mind whether is it sufficient for the Corporation Authorities, who are responsible and obliged to take the things to the logical end. Can the

Corporation shed its responsibility by merely issuing repeated notices without further action. Though the pendency of civil suit was pointed to us however temporary injunction was rejected meaning thereby there was no hurdle for the Authority to go on with the statutory obligation.

21. Learned Counsel Mr. Tambi took us through the observations of this Court in case of ***Suo Motu Public Interest Litigation No.1 of 2020 (High Court on its own motion (In the matter of Jilani Building at Bhiwandi) vs. Bhiwandi Nizampur Municipal Corporation and ors.) decided on 26.02.2022*** which reads as below “

“89. We have noted the provisions of law which recognize an obligation of the owners/occupants to maintain the premises so that they are safe for human living. In the event the structure/building dangerous, strict enforcement of the provisions of law is expected from the municipal authorities against the owners and the occupants of such structures/building. It is clear that variety of powers are available with such authorities to enforce such obligations. It is also a lawful duty of these officers not to turn a blind eye to the ruinous buildings, and by their inaction, bring about a situation that the building/structure collapses and residents lose their lives. In such event, not only the persons who own the building but also those who permit ruinous buildings to stand, become accountable and responsible for the consequence of such collapses. The tendency of those who knowingly permit occupation of ruinous buildings/structures is also required to be commented upon. If there is resistance of the occupants to vacate the buildings which are ruinous, then necessarily, not only in the interest of the residents of such building but also those who occupy the adjoining premises and those who are likely to be affected in the event of unfortunate

collapse, becomes a matter of serious concern. In such situations, it is expected that the authorities take all forcible measures against such occupants as permissible in law. If such occupants in this situation resist the action being taken and approach the Civil Court, the Civil Court in such a situation needs to be extremely slow as noted by the Co-ordinate Bench of this Court in Mohd. Talib Habib Shaikh (supra) as any interference by the Civil Court may endanger the lives of others.

90. In our considered opinion, there is an urgent need of a collective social consciousness to be inculcated in our fellow citizens living in unsafe buildings. The adamant attitude of residents to vacate the buildings which are declared to be ruinous needs to be strictly dealt. The municipal machinery needs to enforce the mandatory compliance of structural audits to be submitted by the owners of the buildings as per the requirement of law, failing which, actions need to be taken against such owners who do not undertake structural audit of old buildings. This is the need of the hour. There is yet another aspect, also there is no guarantee that the new buildings (less than 30 years old) are safe and would not collapse as the experience has shown. In regard to such buildings, the municipal authorities are required to take all precautions also of securing an undertaking from the developer/builder or from whosoever is constructing the building, that the entire structure of the building would be safe for its occupants on all aspects of its user, for the stipulated period as the law may require, and as to a declaration as to the safe life of the building in normal circumstances. In our opinion, in the absence of such guarantee and assurance of safety, the lives of the occupants can certainly be said to be unsafe to occupy the building, where such assurance has been compromised. Thus, all provisions under the law and the D.C. Regulations need to be strictly enforced on this front.

91. We also note from the current statistics which are made available by the Mumbai Municipal Corporation on its website that there are 407 dilapidated buildings in Mumbai. There may be similar structures within the Municipal jurisdiction of Corporations in the vicinity of Mumbai and other places. The planning authorities, therefore, are required to take emergent actions in regard to such ruinous structures and save innocent lives being lost in possible

building collapse. Various enactments conferring powers with the Municipal Corporation are replete with provisions strengthening the hands of the municipal officers to take action against such dilapidated buildings. The concerned officers not only need to be vigilant but also inculcate a willingness to take actions, and that too, by overcoming all odds and possible interferences/hindrances which may be created by unscrupulous, unconscionable and corrupt elements, in obstructing their lawful discharge of duties. There may be extraneous forces which may operate in this situation and derail any action to be taken in respect of a dilapidated building. However, as it would be the ultimate accountability and responsibility on the municipal officers, in the event of an unfortunate building collapse, the officers need to overcome all such pressures and discharge their duties with utmost accountability as obligated in law.

....

93. *We also cannot forget the role of the municipal officers and its law officers in not showing promptness and/or in delaying to move the Courts for vacating any orders passed on illegal constructions and dilapidated buildings. They cannot remain mute spectators in the event the situation requires a stay or injunction, warranting to be urgently vacated. The Municipal Commissioner needs to take appropriate actions on the concerned officials, if it is found that prompt actions are intentionally not being taken or are delayed for extraneous purposes and for unexplainable.”*

22. The above observations speaks for itself largely emphasizing the role and responsibility of the Municipal Officers while enforcing the statutory duty. There is no denial that the MMC Act authorizes the Corporation to demolish the structure in certain exigencies. However, apparently for three years, the Corporations has only issued notices but did nothing more than that. Since inception i.e.

from the first notice dated 31.07.2019, the Corporation was well aware that building was in dilapidated condition and at the verge of collapse at any moment, which would be dangerous for the occupants and passersby. Besides categorizing building in C-1 category still for next three years the building was not demolished for one or the other reason but finally on 30.10.2022, it did happen as expected right from the first notice. Such building may not immediately collapse, but venerable, the occupant thereof must consider themselves lucky till their fortune changes. It is a question of fact for consideration whether total inaction on the part of the Corporation can be mere negligence or intentional connivance or something more than that. In law, an omission is a failure to act, which generally attracts different legal consequences. In the criminal law, an omission will constitute an *actus reus* and give rise to the liability when the law imposes a duty to act and the person is in breach of that duty.

23. Final report has not been filed meaning thereby the Investigating Agency has not arrived on the particular conclusion that under which penal Sections the final report is to be filed against Municipal Officers. Several statements have been recorded as well as various notices forms the part of record. Therefore, at this preliminary stage it is not possible for us to form a definite opinion that no *prima*

facie case exists against the applicants. The object of Section 482 of Code of Criminal Procedure (the Code) is to prevent abuse of the process of Court and to secure the ends of justice. It is well settled that the power under Section 482 of the Code should be used sparingly and with circumspection to achieve the said object. Exercise of jurisdiction under the inherent power at initial stage despite triable material amounts to throttling the process of law at the very initial stage. It is a matter of trial to establish as to why the Corporation has slept over and allow to exist a life risk on public road for long three years.

24. This Court in case of *Municipal Corporation of Greater Mumbai vs. State of Maharashtra and ors. 2014(6) Bom.C.R.860* has laid down guidelines in paragraph 9 of the decision pertaining to cases falling in the category C-1. Particularly, guideline no.(c) reads as below :

“c) The Corporation shall consider the report of Structural Engineer appointed by the owners and/or occupants classifying the building as dilapidated and dangerous. If the owners and/or the occupants bring conflicting reports on the status of the building, the Corporation shall refer the matter to Technical Advisory Committee (TAC) under the Chairmanship of Director (ES&P) with at least 3 other members, viz. City Engineer, Chief Engineer (DP) and Chief Engineer (P&D)”.

25. There is no explanation whether the Structural Stability Report has been referred to the Technical Advisory Committee. Everything is a matter of trial and therefore, at this stage, we are not inclined to exercise our jurisdiction in favour of the Corporation Officers.

26. So far as the case of applicant Rahul Jain is concerned, absolutely we are not convinced to hold that the *prima facie* case does not exist against him. It is argued by the intervener that only upper walls have been removed but entire debris were kept lying on the top of the ground floor. Rather accumulation of debris making uneven load joined the cause for collapse. Though Rahul Jain has made a stout claim that he is law abiding person and has removed 1st and 2nd floor on 23.07.2022 but it is an empty compliance. Unless the debris have been removed, it cannot be treated that he has complied the notice under Section 264 of the Act. If debris are not entirely removed, it is a mere eye-wash.

27. The reply filed by the State says that some of the statements are on the point that Rahul Jain has desisted workers from removing the debris and left it to the fate of the ground floor occupants. Moreover, ground floor occupants also issued a notice to

Rahul Jain seeking removal of debris, but he did not. The cause of collapse cannot be pin pointed which may be because of multiple reasons. The intervener has tendered several photographs (page 123 to 128) to show that demolition of 1st and 2nd floor was half done and debris are still lying. Though Rahul Jain has claimed that he has removed the debris however it is a matter of trial to establish as to when and to what extent debris have been removed. Therefore, certainly a *prima facie* case exist against Rahul Jain to put him on trial.

28. In plethora of judgment, the Supreme Court has laid down the guidelines that regard to exercise of jurisdiction by this Court under Section 482 of the Code. In case of ***State of Haryana vs. Bhajan Lal*** 1992 SCC (Cri) 426, the Supreme Court has listed the categories of cases when the power under Section 482 of the Code can be exercised by the Court. These principles or the guidelines were reiterated in several decisions. It emerges from the series of decision that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint *prima facie* establish the case. The courts have to see whether the continuation of the prosecution amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the court comes to a

conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under Section 482 CrPC. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether *prima facie* discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact. In the backdrop of above legal position, we have tested the facts of this case but unable to agree the submission made by the petitioner's about absence of *prima facie* material.

29. The argument has also been advanced on the point that in any eventuality the provisions of Section 304 of the IPC would not attract. At this stage, we constrain ourselves from making exhaustive comments in this regard. Section 304 of the IPC is punishing section for the offence of culpable homicide as defined under Section 299 of the IPC. Section 304 can be divided into two parts. The first imposing harsh punishment if the act was done with the intention of causing death or of causing such a bodily injury as likely to cause death, whilst second part imposes comparatively less punishment if the act is done with the knowledge that it is likely to cause death but in absence of intention. Always in cases under 304 of the IPC, the question arose about establishing either intention or knowledge about likelihood of

consequences. One of the meaning given in the Oxford Dictionary of the word “knowledge” is :

“The fact of knowing a thing, state, etc or (in general sense person, acquaintance, familiarity gained by experience”). Acquaintance with a fact, perception, or certain information of a fact or matter, state of being aware or informed, consciousness (of anything). The object is usually a proposition expressed or implied, e.g., the knowledge that a person is poor, knowledge of his poverty.”

30. Knowledge of the existence of a particular fact is an element of the offence, such knowledge is established if a person is aware of high probability of its existence, unless he actually believes that it does not exist. The knowledge can be established by an affirmative or circumstantial evidence during the trial. Herein the facts are peculiar wherein statutory notices were given branding the building to be extremely dangerous for human life. In that perspective the matter needs to be viewed. It is too early to express, in case of proof whether the death is caused by mere rash and negligent act (includes omission) or the omission with due knowledge of consequences.

31. In sum and substance the Municipal Authority who are obliged to perform its statutory duties and functions have not done

their duty assiduously. If done, could have saved the lives. Likewise, *prima facie* case is made out that owner of 1st and 2nd floor by non removal of debris contributed the cause of collapsed. At this stage there is no material to hold that the said owner has fully complied the statutory notice which is disputed question of fact. *Prima facie* case exists against all applicants to put them on trial. In above peculiar facts, we are not inclined to exercise our extra ordinary powers to stifle the prosecution. We would clarify that all above observations are made on *prima facie* basis for disposal of quashing of proceedings which has no impact on the merits of the case.

32. While parting with, we express our deep pain as to how no one is bothering about human life. When the structure is dangerous strict enforcement of the provisions of law is expected from every quarter. Instances are not few that despite vesting of vast powers, strict forcible measures have not been taken resulting into loss of lives. We may bent upon to think that violation of laws cannot take place without the active connivance. Nebulous approach to such important facets touching to the lives of the citizens is a matter of concern.

33. In view of the above, both applications and petition stands

dismissed.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

Later on :

34. After pronouncement of the judgment, learned Counsel Shri Kadu appearing in Criminal Writ Petition No.123 of 2023 would submit that the petitioner desire to challenge this order before the higher forum and till that period interim order be continued. While issuing notice on 15.02.2023, we have passed interim order that 'investigation shall go on but charge-sheet shall not be filed against the Petitioner without obtaining leave of this Court'. Since interim protection is running till date, to facilitate the petitioner to challenge this order, we hereby extend interim protection by four weeks from today.

35. Later on, learned Counsel Shri Digvijay Singh holding for Shri Ved Deshpande appearing for the applicants of Criminal Application Nos.259/2023 and 258/2023 reiterated the same prayer. We are also extending the same interim relief in both applications.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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