

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 290 OF 2023

**ALOK KHETAN
-VS-
STATE OF WEST BENGAL & ORS.**

For the Petitioner	: Mr. Sourav Chatterjee, Ld. Sr. Adv. Mr. Arijit Dey, Ld. Adv. Mr. Oisani Mukherjee, Ld. Adv.
For the State	: Mr. Ramashis Mukherjee, Ld. Adv. Mr. Utsav Dutta, Ld. Adv.
For the K.M.C.	: Mr. Sreyashee Biswas, Ld. Adv. Ms. Puja Goswami, Ld. Adv.
Reserved on	: 03.09.2026
Pronounced on	: 23.09.2026

UDAY KUMAR, J.: –

1. The challenge in this revision application preferred under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973, is directed against an order dated December 15, 2022 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in Cr. M.S. No. 154 of 2018, arising out of Girish Park Police Station Case No. 23/2018 dated February 01, 2018, under Section 401A of the Kolkata Municipal

Corporation Act, 1980. The learned Magistrate, by the said order, was pleased to reject the petitioner's application for discharge filed under Section 239 of the Code of Criminal Procedure and fixed the date for framing of charge.

- 2.** To put the controversy in a nutshell, the foundational facts giving rise to the present proceeding are that on February 01, 2018, the Assistant Engineer (Building Department, Borough-IV & V) of the Kolkata Municipal Corporation filed a written complaint at the Girish Park Police Station enclosing a report of the Sub-Assistant Engineer (Civil) dated January 31, 2018, alleging that unauthorized construction work was being carried on at the ground floor of premises no. 20, Baranasi Ghosh Street, Kolkata, by the petitioner herein, described as the owner, which was allegedly hazardous and likely to cause a building collapse, endangering human lives.
- 3.** Upon receipt of such complaint, Girish Park P.S. Case No. 23/2018 was registered, and upon completion of investigation, a charge-sheet came to be submitted on June 19, 2018 under Section 401A of the KMC Act against the present petitioner. It is also a matter of record that a quashing application moved earlier by the petitioner before this Court (C.R.R. No. 3435 of 2018) was not pressed and stood dismissed on November 17, 2021, with liberty to the petitioner to agitate all points of discharge before the learned trial court at the appropriate stage. Pursuant thereto, the petitioner filed an application under Section 239 Cr.P.C., which culminated in the impugned order of rejection.

4. I have heard the learned counsel for the petitioner as well as the learned counsel representing the State and the Kolkata Municipal Corporation. I have also meticulously perused the materials on record, including the impugned order of the learned Municipal Magistrate, the police report, the charge-sheet, and the relevant statutory provisions.
5. The primary submission advanced on behalf of the petitioner is centred on the civil profile and holding structure of the property in question. It is argued that premises no. 20, Baranashi Ghosh Street was originally owned by five companies, wherein the petitioner's father represented one company, and the petitioner is merely a director. My attention has been drawn to a partition and administration suit, being C.S. No. 280 of 2016, instituted on the Original Side of this Court by one of the companies, which was decreed on settlement, allocating specific portions of the property to the plaintiff company while keeping other portions undivided and jointly retained by the other four companies. The cornerstone of the petitioner's argument in this regard is that the building is exceptionally ancient, that only minor, permissible repair works with temporary partitions were executed strictly in terms of the High Court decree, and that no new construction or hazardous structural additions were ever undertaken. Furthermore, it is vociferously contended that mandatory pre-requisite notices under Sections 548 and 557, as well as Sections 400 and 401 of the KMC Act, were never served upon the petitioner, and that the initiation of the connected criminal proceeding without a proper physical inspection report is completely vitiated in law. Lastly, learned counsel for the

petitioner submitted that cognizance was defective under Section 190 Cr.P.C. read with Section 580 of the KMC Act.

6. Per contra, the learned counsel for the opposite parties has strenuously supported the impugned order. It is submitted that the charge-sheet, the police report, and the categorical statements of witnesses under Section 161 Cr.P.C. recorded during investigation specifically naming persons such as Dhanraj Agarwal and Ravindra Kumar Karnani clearly implicate the petitioner as a person responsible for carrying on unauthorized construction without any sanctioned plan. It is further argued that Section 401A of the KMC Act targets hazardous and unauthorized constructions and does not contemplate prior service of notice as an absolute statutory pre-requisite to launch criminal proceedings where public safety is imperilled.
7. Having considered the rival submissions and upon a careful appraisal of the record, the core questions that arise for determination in this revisional application are:

firstly, whether the learned Municipal Magistrate committed any patent illegality, perversity, or jurisdictional error in holding that a *prima facie* case existed for framing charges under Section 401A of the KMC Act; and

secondly, whether the existence of a civil partition decree or the alleged non-service of prior municipal notices renders the charge "groundless" under Section 239 of the Cr.P.C., thereby inviting interference by this Revisional Court.

8. Apropos the first question for determination, I must remind myself of the well-settled legal parameters governing the discharge of an accused under Section 239 of the Code. The legal position stands authoritatively elucidated by the Hon'ble Supreme Court in the landmark decision of *Sajjan Kumar v. Central Bureau of Investigation* [(2010) 9 SCC 368]. The Apex Court has enunciated that while a criminal court must not act merely as a post office or a mouthpiece of the prosecution, and must evaluate the broad probabilities and basic infirmities of a case, it is equally barred from conducting a roving inquiry into the pros and cons, sifting documents with a fine-tooth comb, or weighing the probative value of defence evidence as if it were conducting a full-fledged trial. If the materials on record disclose a state of facts upon which a reasonable judicial mind can form an opinion that the accused might have committed the offense, the framing of charge is fully warranted.
9. Examining the impugned order on the touchstone of these principles, I find myself unable to accept the contentions raised by the petitioner. The learned Magistrate has rightly observed that at the stage of Section 239 Cr.P.C., the court's scrutiny is strictly limited to assessing whether a *prima facie* case exists to proceed to trial. The police report and the materials collected during investigation do contain statements and recitals pointing toward the petitioner's connection with the structural activities at the premises. Accordingly, the first question is answered in the negative, against the petitioner.
10. Moving forward to the second question for determination, having considered the defences raised by the petitioner, namely, that the

property is governed by a partition decree of this Court (C.S. No. 280 of 2016), that only minor and permissible repairs were undertaken, and that no unauthorized construction took place, I am of the view that these are essentially matters of defence. They belong to the realm of evidentiary proof which must be established by leading cogent, unimpeachable oral and documentary evidence during the course of the trial. These disputed questions of fact cannot be accepted as gospel truth at the threshold stage to short-circuit and stifle a criminal prosecution. Similarly, the technical objections regarding the non-service of prior notices under the KMC Act do not eradicate the foundational existence of a *prima facie* cognizable accusation under Section 401A, which deals with unauthorized and hazardous structures posing immediate risks to the public, the second question is also answered in the negative, against the petitioner.

11. It is trite law that this Revisional Court does not sit as a second court of appeal. We are not expected to re-appreciate raw evidence or substitute our own subjective assessment for a legally tenable view taken by the trial court, unless the order suffers from a glaring defect of jurisdiction or perversity. The learned Magistrate has applied his judicial mind correctly and judiciously and has recorded reasons for rejecting the said discharge application preferred by the petitioner, as such I find no such infirmity in the order impugned warranting interference of this Court.
12. As a result, the criminal revision application, being **C.R.R. No. 290 of 2023**, fails and is accordingly **dismissed**.

13. The impugned order dated December 15, 2022 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in Cr. M.S. No. 154 of 2018 is hereby **affirmed**.
14. The learned Trial Court is directed to proceed expeditiously with the framing of charges and the subsequent trial in accordance with law, without granting unnecessary adjournments to either of the parties.
15. Interim orders, if any, stand vacated.
16. Let a copy of this judgment be transmitted down to the Learned Trial Court forthwith along with the Trial Court Records.
17. There shall be no order as to costs.
18. Case diary, be returned to the Learned Counsel for the State.
19. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)