

Form J(1).
Item No.D/L.4
Court No.42

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

Present:

THE HON'BLE JUSTICE UDAY KUMAR

**CRR No.520 of 2022
WITH
CRAN/1/2022**

**BIPLAB SAHA AND ANR.
VS.
KOLKATA MUNICIPAL CORPORATION AND ANR.**

Appearance:

For the Petitioners : Mr. Abhra Mukherjee, Adv.
Mr. Sauradeep Dutta, Adv.
Mr. Arpayan Mukherjee, Adv.
Mr. Swakshar Kr. Mondal, Adv.
Mr. Himadree Ghosh, Adv.

For the Respondent-KMC : Ms. Sreyashee Biswas, Adv.
Ms. Puja Goswami, Adv.

For the Respondent-State : Mr. Utsav Dutta, Adv.

Heard on : 3rd September, 2026.

Delivered on : 3rd September, 2026.

Judgment (Oral)

UDAY KUMAR, J.:

1. Unauthorized and unlawful construction in a congested urban metropolis like Kolkata is not merely a civil infraction of municipal

rules; it is a direct assault on public safety, civic infrastructure, and the collective right of citizens to live in a safe and regulated environment. When developers and property owners choose to treat municipal sanction limits as mere suggestions rather than binding commands, the criminal law must step in to enforce discipline. The present criminal revisional application brings to the fore this very conflict, calling upon this Court to examine the legality, propriety, and correctness of concurrent findings of guilt returned by the Trial Court and First Appellate Court against the petitioners for committing an offence punishable under Section 401A of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the "KMC Act").

2. The genesis of the prosecution traces back to a written complaint lodged on 12th February, 2017, by Sri Jayanta Paul, Assistant Engineer (Civil), Building Department, Borough-III of the Kolkata Municipal Corporation (KMC). The core allegation was that the petitioners, Shri Biplab Saha (the developer and constituted attorney) and Smt. Shukla Das (the property owner), were raising an unauthorized four-storied (G+3) building at premises no. 26/D, Dr. Panchanan Mitra Lane, Kolkata-700 085, in gross and flagrant deviation from the sanctioned building plan (B.P. No. 2015030090 dated 31st March, 2016), which permitted construction strictly up to the first floor (G+1) due to the constraints of a narrow access passage. It was alleged that this unauthorized vertical expansion posed an imminent threat of structural collapse, endangering human

life and severely disrupting water supply, drainage, sewerage, and road traffic, besides creating grave fire hazards.

3. Upon receipt of the complaint, Beliaghata Police Station Case No. 34 dated 12th February, 2017, was registered under Section 401A of the KMC Act. Upon completion of investigation, the Investigating Officer submitted a charge sheet against both petitioners, and a charge was formally framed under Section 401A of the KMC Act on 5th July, 2018, to which the accused persons pleaded not guilty and claimed to be tried. During the trial, the prosecution examined seven witnesses, including municipal engineers, the investigating officer, and local residents, and brought on record sixteen material exhibits, including the sanctioned plan, stop-work notices, infringement statements, and the original development agreement, while the defence adduced no oral or documentary evidence.
4. By a judgment and order dated 13th March, 2019, the learned Municipal Magistrate, 3rd Court, Calcutta, in M.F. Case No. 96 of 2017, found both petitioners guilty and sentenced them to rigorous imprisonment for three years each and a fine of Rs. 50,000/- each, with a default stipulation. Being aggrieved, the petitioners preferred an appeal registered as Criminal Appeal No. 86 of 2019 before the City Sessions Court at Calcutta, which was subsequently heard and disposed of by the learned Additional Sessions Judge, Fast Track Court No. 2, Bichar Bhawan, Calcutta. The learned Appellate Court, by the judgment and order dated 7th February, 2022 affirmed the conviction under Section 401A of the KMC Act but modified the

sentence, the petitioner no. 1 (developer) was sentenced to simple imprisonment for three months and a fine of Rs. 50,000/-, while petitioner no. 2 (owner) was sentenced to imprisonment till the rising of the court and a fine of Rs. 50,000/-, with default clauses intact. It is this appellate order of affirmance that has been challenged in the instant revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure.

5. Both courts based their findings on the unrefuted oral testimonies of municipal engineers, PW 1 (Sub-Assistant Engineer), PW 4 (Assistant Engineer), PW 6 (LBS), and PW 7 (ESE), coupled with contemporaneous documents such as the sanctioned plan and the Building Rule Infringement Statement (Exhibit 8), which conclusively established that the permissible height limit was grossly violated. The infringement statement meticulously detailed deviations in front, side, and rear open spaces, FAR, ground coverage, and height, remaining entirely unrefuted during cross-examination. Furthermore, the identity of the premises was unequivocally tied to the petitioners through the original development agreement (Exhibit 15) and the candid admission of Smt. Shukla Das regarding her ownership during her examination under Section 313 of the Cr.P.C. The courts held that under Section 401A, when an unauthorized multi-story structure (G+3) is erected in a congested lane against a restricted G+1 sanction, the likelihood of hazard is a statutory presumption grounded in objective physical reality, meaning actual structural collapse or post-facto forensic proof is not a mandatory

prerequisite once illegal vertical expansion is proved from its inception.

6. In challenging the concurrent findings, Mr. Abhra Mukherjee, learned counsel appearing for the petitioners submits that both courts have committed grave errors in law and fact by failing to appreciate that the prosecution was not initiated by the Municipal Commissioner or any person authorized by him in compliance with the mandatory provisions of Section 620 of the KMC Act, making the prosecution void *ab initio* and defective.
7. Referring to the cross-examinations of PW 1 and PW 4, he submits that complaint was lodged and processed without proper prior approval of the Municipal Commissioner or the person authorised by him. He further contends that the initial FIR dated 30th October, 2016, was never acted upon, rendering the subsequent FIR dated 12th February, 2017, legally defective. Mr. Mukherjee argues that the prosecution failed to establish the foundational ingredients of Section 401A of the KMC Act, as official witnesses failed to bring on record legally admissible evidence proving actual danger to human life or public infrastructure. Furthermore, he urges that stop-work notices under Section 401 of the KMC Act were not properly served upon the owner or possessor in accordance with law, having been allegedly served upon a mason without specific names, and that the absence of a valid stop-work notice renders the proceeding void *ab initio*.
8. In addition to that learned counsel refers the non-examination of the Ward Councillor who raised the initial grievance, the lack of seizure

of building materials from the road, the absence of soil tests or structural stability audits, and the refusal by the courts below to grant the benefit of Section 360 of the Cr.P.C. or the Probation of Offenders Act as additional grounds of challenge. In support of these contentions, Mr. Mukherjee placed his heavy reliance on the decision passed in *Mahendra Baid v. State of West Bengal & Anr* (2025 SCC OnLine Cal 3666).

9. Per contra, Ms. Puja Goswami learned counsel appearing for the Kolkata Municipal Corporation vehemently supports the concurrent findings of guilt recorded by the both courts, and submits that the unauthorized vertical expansion from a sanctioned G+1 plan to a G+3 structure in a congested lane stands conclusively proved through unrefuted municipal records, the Building Rule Infringement Statement (Exhibit 8), and the development agreement (Exhibit 15) executed between the petitioners.
10. Ms. Goswami further submits that once unauthorized construction from its inception is established by the oral and documentary evidences, strict independent forensic proof of actual danger is not a mandatory prerequisite, as the statutory threshold under Section 401A encompasses potential hazards inherent to unverified high-rise expansions.

Points for Determination

11. Upon giving anxious consideration to the submissions advanced by the contesting parties, perusing the revisional application, and

meticulously examining the judgments and lower court records, the controversy crystallizes into three core questions for determination:

- i. whether the prosecution was vitiated at its inception due to non-compliance with Section 620 of the KMC Act or lack of proper service of stop-work notices;
- ii. whether the prosecution successfully established beyond reasonable doubt that the petitioners executed unauthorized construction so as to attract the penal consequences under Section 401A of the Act; and
- iii. whether the concurrent findings of guilt and modified sentences suffer from any patent illegality or perversity warranting interference in revisional jurisdiction.

12. Addressing the first question concerning the initiation of prosecution and statutory authorization under Section 620 of the KMC Act, along with the lack of proper service of stop-work notices, it is apposite to note that while institutional initiation requires administrative channelization, technical arguments concerning internal file movements or initial authorization cannot override or vitiate a prosecution that has successfully traversed through a full-fledged trial where substantive guilt is established beyond reasonable doubt.

13. Indubitably, the prosecution stems from a written complaint lodged on 12th February, 2017, by Sri Jayanta Paul, Assistant Engineer (Civil), Building Department, Borough-III of the Kolkata Municipal Corporation (KMC). The core allegation pertained to an

unauthorized four-storied (G+3) building raised at premises no. 26/D, Dr. Panchanan Mitra Lane, by the petitioners, Shri Biplab Saha (developer) and Smt. Shukla Das (property owner), in flagrant deviation from the sanctioned G+1 building plan.

14. The petitioners challenge the inception of the case under **Section 620 of the KMC Act**, which regulates the institution of legal proceedings by the Corporation. The petitioners contended during cross-examination of PW 1 (Sub-Assistant Engineer) and PW 4 (Assistant Engineer) that complaints were processed without proper prior administrative approval from the Municipal Commissioner or a competent authorized officer. It was further argued that stop-work notices under Section 401 of the KMC Act were not served upon the owner or occupier in strict compliance with the law, having been allegedly handed to an unnamed mason at the site, thereby rendering the entire proceeding void *ab initio*.
15. The foundational legal principle governing procedural infractions at the inception of a criminal case is whether a technical defect in administrative channelization or pre-trial notice survives a full-fledged trial where substantive guilt is established beyond reasonable doubt. Procedural norms regulating institutional sanction or internal file routing are directory in character when viewed post-trial, unless a mandatory statutory embargo creates an incurable nullity or causes grave, irremediable prejudice to the defence.

16. The defence has sought immense sustenance from the ruling in ***Mahendra Baid (Supra)***. However, that decision dealt with a petition for quashing proceedings at the threshold under Section 482 of the Cr.P.C. concerning a minor internal modification (a partition brick wall) where foundational procedural safeguards under Section 620 were found wanting. The ratio of ***Mahendra Baid (supra)*** is clearly distinguishable from a matter that has proceeded through a full-fledged trial involving seven prosecution witnesses and sixteen exhibits, culminating in concurrent findings of guilt by two lower courts based on substantive, unrefuted evidence of a massive unauthorized G+3 high-rise construction. Procedural technicalities at the threshold do not survive a completed trial where foundational guilt is thoroughly proved by robust ocular and documentary proof adduced during trial.
17. Upon a meticulous evaluation of the statutory provisions, the evidence on record, and the competing submissions restricted to this aspect, I arrive at the definitive legal finding that **the prosecution was not vitiated at its inception**, and the technical objections concerning Section 620 of the KMC Act and the service of stop-work notices are legally unsustainable. The administrative steps taken by the municipal engineering department sufficiently met the threshold for setting the criminal machinery in motion, and any minor procedural imperfection stood fully cured by the substantive evidence adduced during trial. The ratio of *Mahendra Baid* has no application to a matter involving a massive, flagrant

unauthorized vertical expansion that has undergone a complete trial. Accordingly, the first question for determination is answered in the negative, holding that the initiation of the prosecution and the subsequent proceedings suffered from no fatal illegality capable of rendering them void *ab initio*.

18. The second question that arises for determination in this revisional application is whether the prosecution successfully established beyond reasonable doubt that the petitioners executed unauthorized construction so as to attract the penal consequences mandated under Section 401A of the KMC Act of 1980. It is necessary to examine the statutory command, the evidentiary material brought on record, and the legal principles governing the presumption of hazard in municipal infractions.
19. The core charge against the petitioners, Shri Biplab Saha (developer) and Smt. Shukla Das (property owner), was anchored in the erection of an unauthorized four-storied (G+3) building at premises no. 26/D, Dr. Panchanan Mitra Lane, in blatant violation of the sanctioned building plan (B.P. No. 2015030090 dated 31st March, 2016), which permitted construction strictly up to the first floor (G+1) due to the severe spatial and width constraints of a narrow access passage.
20. To properly evaluate the charge, this court must look closely at the exact statutory language of Section 401A(1) of the KMC Act, which provides:

“401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.—(1)

Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person who being responsible by himself or by other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act, or the rules made thereunder as endangers or is likely to endanger human life, or any property of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees.

Explanation.—"Person" shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid."

- 21.** The petitioners have strenuously argued that the prosecution failed to bring on record any direct, independent forensic proof such as soil tests, structural stability audits, and external expert reports to demonstrate that the subject premises actually endangered human life or public infrastructure. He contended that the absence of such scientific verification, coupled with the non-examination of the local Councillor and the lack of seized building materials from the road, creates a fatal vacuum in the prosecution case.

- 22.** However, both the Trial Court and the First Appellate Court correctly held that under Section 401A, when an unauthorized multi-storey structure (G+3) is erected in a congested lane against a restricted G+1 sanction, the likelihood of hazard is a statutory presumption grounded in objective physical reality. The text of the statute uses the disjunctive expression "endangers or is likely to endanger," meaning actual structural collapse or post-facto forensic proof is not a mandatory prerequisite once illegal, unmonitored vertical expansion is proved from its inception.
- 23.** To test these assertions against the evidence on record, I have independently examined the testimonies of the municipal engineering officials, namely PW-1 (Sub-Assistant Engineer), PW-4 (Assistant Engineer), PW-6 (LBS), and PW-7 (ESE), alongside contemporaneous documentary exhibits. The record indisputably reveals that the sanctioned building plan (Exhibit 2) permitted construction strictly up to the first floor (G+1) due to the severe spatial and width constraints of a narrow access passage at premises no. 26/D, Dr. Panchanan Mitra Lane. In blatant defiance of this restriction, the petitioners proceeded to erect an unauthorized four-storied (G+3) structure, bringing them squarely within the mischief of Section 401A.
- 24.** The oral testimonies of municipal engineers, e.g., PW 1 (Sub-Assistant Engineer), PW 4 (Assistant Engineer), PW 6 (LBS), and PW 7 (ESE), coupled with contemporaneous documents such as the sanctioned plan (Exhibit 2) and the Building Rule Infringement Statement (Exhibit 8),

conclusively established that the permissible height limit of 6.7 meters was grossly violated.

- 25.** This illegal expansion was meticulously documented in the Building Rule Infringement Statement which detailed gross, unrefuted violation/deviations in front, side, and rear open spaces, FAR, ground coverage, and height **limits exceeding the permissible 6.7 meters**, remain entirely unrefuted during cross-examination. Furthermore, the identity of the premises was unequivocally tied to the petitioners through the original development agreement (Exhibit 15) and the candid admission of Smt. Shukla Das regarding her ownership during her examination under Section 313 of the Cr.P.C.
- 26.** Addressing the legal threshold under Section 401A, the text of the statute deploys the disjunctive expression "endangers or is likely to endanger". The legal ratio governing this provision dictates that when an unauthorized multi-storey structure (G+3) is illegally raised in a congested urban lane against a restricted G+1 limit, the likelihood of a hazard is a direct statutory presumption grounded in objective physical reality. Post-facto structural forensic audits or soil test reports are not mandatory prerequisites once the physical existence and illegal inception of an unmonitored high-rise expansion are conclusively proved through municipal records and ocular testimony. The physical reality of a towering illegal structure standing in a congested lane inherently creates the hazards contemplated by the legislature.

- 27.** Upon an independent evaluation of the facts, statutory framework, and evidence, I arrive at the definitive legal finding that the **prosecution successfully established the foundational and core ingredients of the offense under Section 401A of the KMC Act beyond a shadow of doubt.** The technical objections raised by the defense regarding the absence of external forensic audits or soil testing are legally misdirected and fail to displace the overwhelming weight of unrefuted ocular and documentary evidence. Accordingly, the second question is answered in the affirmative, holding that the unauthorized construction and its inherent hazards were fully proved.
- 28.** Addressing the third and final question that arises for determination in this revisional application is whether the concurrent findings of guilt returned by the two courts below suffer from any patent illegality, perversity, or misreading of evidence warranting interference in revisional jurisdiction, and whether the modified sentences imposed upon the petitioners call for any further leniency or modification. To properly address this aspect, it is necessary to examine the precise contours of this Court's revisional power under Section 401 read with Section 482 of the Code of Criminal Procedure, alongside the sentencing principles applied by the appellate court.
- 29.** It is a well-settled principle of criminal jurisprudence that revisional jurisdiction against concurrent findings of fact under Section 401 read with Section 482 of the Code of Criminal Procedure is extremely limited and not akin to a second appeal. This Court does not

routinely re-appreciate or re-weigh evidence unless there is a glaring defect, a patent perversity, or a gross miscarriage of justice resulting from a total misreading of the evidence on record.

- 30.** In the present case, a meticulous scrutiny of the judgments rendered by both the Trial Court and the First Appellate Court reveals that both courts evaluated the oral testimonies of the municipal engineering officials, the unrefuted Building Rule Infringement Statement (Exhibit 8), the sanctioned plan (Exhibit 2), and the development agreement (Exhibit 15) with utmost care. The defence failed to adduce any oral or documentary evidence to dislodge this mountain of incriminating material. Consequently, the concurrent findings of guilt recorded by the courts below are firmly rooted in evidence and suffer from no perversity or illegality.
- 31.** On the question of sentencing, the Trial Court had initially imposed a harsh sentence of three years of rigorous imprisonment along with a fine of Rs. 50,000/- each to both of the petitioners, treating a municipal infraction with excessive severity when they were held guilty under Section 401A of the Kolkata Municipal Corporation Act, 1980 (KMC Act).
- 32.** However, the First Appellate Court correctly rectified this imbalance by applying landmark Supreme Court sentencing jurisprudence (***Soman v. State of Kerala*, (2013) 11 SCC 382** and ***Alister Anthony Pereira v. State of Maharashtra*, [(2012) 2 SCC 648]**), which mandates that punishment must be proportionate, balancing deterrence and correction. The appellate court rightly bifurcated

culpability: recognizing that commercial developers who flout building laws for profit must face strict deterrence, it maintained the fine of Rs. 50,000/- while reducing the substantive sentence of petitioner no.1 (Biplab Saha) to three months simple imprisonment; and, showing humane consideration toward petitioner no.2 (Smt. Shukla Das) on account of her age and status as a passive owner, reduced her sentence of imprisonment till the rising of the court.

- 33.** Upon an exhaustive scrutiny of the record, the statutory framework, and the concurrent judgments rendered below, **I find no patent illegality, perversity, jurisdictional error, or gross miscarriage of justice warranting interference in this revisional jurisdiction.**

The prosecution successfully brought home the charge under Section 401A of the KMC Act beyond a shadow of doubt, and the appellate court exercised sound judicial discretion in tempering the substantive sentences to match the true proportionality of the offense. Accordingly, the third question for determination is answered in the negative as to any requirement for interference or further leniency, confirming that the impugned orders call for no disturbance whatsoever.

- 34.** In view of the aforesaid discussions, this court arrive at definitive conclusions, as are set out below:

First, on the interpretation and application of Section 620 of the Act of 1980, the legal position is settled that while institutional initiation of criminal complaints requires proper administrative channelization, technical arguments concerning internal file

movements or initial authorization cannot override or vitiate a prosecution that has successfully traversed through a full-fledged, exhaustive trial where substantive guilt is established beyond reasonable doubt. Procedural technicalities at the threshold stand cured by robust ocular and documentary proof adduced during trial, and summary precedents dealing with pre-trial quashing of minor internal alterations (such as *Mahendra Baid*) do not apply to large-scale, flagrant unauthorized vertical expansions.

Second, regarding the statutory threshold under Section 401A of the KMC Act, the deployment of the disjunctive expression "endangers or is likely to endanger" establishes that actual post-facto forensic proof, structural stability audits, or soil testing are not mandatory prerequisites for a conviction. When an unauthorized multi-storey structure (G+3) is erected in a congested urban access lane in blatant violation of a restricted (G+1) sanctioned plan, the likelihood of a public hazard is a direct statutory presumption grounded in objective physical reality.

Third, concerning the exercise of revisional jurisdiction under Section 401 read with Section 482 of the Code of Criminal Procedure, this Court cannot interfere with concurrent findings of fact rendered by two lower courts unless there is a glaring defect, perversity, or gross misreading of evidence. Where the foundational ingredients of an offense are established through unrefuted municipal records and expert testimonies, and where the appellate

court has correctly applied Supreme Court sentencing jurisprudence to balance deterrence and proportionality, bifurcating the culpability of a commercial developer from a passive owner, the concurrent findings and modified sentences remain entirely unimpeachable in law.

- 35.** Accordingly, the criminal revisional application, being C.R.R. 520 of 2022, is found to be devoid of merit and stands dismissed.
- 36.** There shall be no order as to costs.
- 37.** Interim orders, if any, stand vacated.
- 38.** All parties shall act on the server copy of this order duly downloaded from the official website of the Calcutta High Court.

(UDAY KUMAR, J.)

Saikat
Mukherjee (AR.CT.)

