
(1986) 09 BOM CK 0032

In the Bombay High Court

Case No : Criminal Revision Application No's. 506 and 569 to 638 of 1981

Bhalchandra Ramchandra Nimkar

APPELLANT

Vs

Badrudin Mohamed Hemani and Others

RESPONDENT

Date of Decision : 25-09-1986

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 398

Citation : (1986) 3 BomCR 631

Hon'ble Judges : B.G. Kolse-Patil, J

Bench : Single Bench

Advocate : R.N. Dhorde, S.B. Patil, P.P, for the Appellant; M.S. Nargolkar, for Respondents 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

B.G. Kolse-Patil, J.—This Revision Application is directed against the order of conviction dated July 18, 1981 passed by the learned Judicial Magistrate, First Class (P.M.C.), Pune.

2. The brief narration of the facts in this case is as under:-

About 11 a.m. on 5-11-1980, the Octroi Department of the Municipal Corporation, Pune, received a telephone call from one Mohan Joshi informing that Matadors Nos. MTD 7105 and MTD 7884 were carrying goods without payment of octroi charges. He further informed that the Matadors were standing at Narangi bag locality within the limits of Pune Municipal Corporation. The complainant along with other officers from the said Department immediately rushed to Narangi Bag by a jeep. The matadors, containing goods, were standing there. The Octroi Superintendent and the other officials also followed the complainant. Respondent Nos. 1 and 3 (original accused Nos. 1 and 3) were also present there. They were questioned about the receipts of the payment of octroi in respect of the said goods. They were unable to produce the receipts. On the contrary, an attempt was made by accused Nos. 1 and 3 to produce a receipt of

the Octroi paid by them to Pimpri Chichwad Nagar Palika. There was a scoring of the number of the vehicle on it. The number appeared to be MTD 7884. Thereafter, the vehicles were taken to Navapul Naka No. 24. The statement of accused No. 1 was recorded. The necessary papers in respect of the goods in the matadors were seized. On 3-12-1980, in pursuance of the order of the learned Magistrate, the goods were inspected, valued and assessed. The goods were valued at Rs. 13,750/-. The octroi leviable on these goods was Rs. 412/50 p.

3. Accused Nos. 1 to 5 are the partners of the firm named as M/s. Nitin Roadways, doing its business of transport agency. Accused No. 6 to 9 are the traders. On 2-5-1981, a complaint was filed under sections 398, 149, 457, 466(1) and (2) of the Bombay Provincial Municipal Corporation Act, 1949. Process was issued by the learned Magistrate and the matter was adjourned to July 24, 1981 for the appearance of the accused.

4. However, on an oral application made by accused No. 1, the matter was taken on Board on July 18, 1981. Accused No. 1 pleaded guilty on behalf of all the accused. The learned Magistrate accepted the plea and convicted all the accused u/s 398 of the Act and sentenced them to pay a fine of Rs. 60/- each, i.e. to suffer S.I. for 12 days.

5. Against the order for sentence, the petitioner-complainant Checking Naka Officer, Octroi Department, Pune Municipal Corporation has filed this Cr. Revision for the enhancement of fine.

6. Shri Dhorde, appearing for the petitioner-Pune Municipal Corporation submitted that the fine levied by the learned Magistrate is very meagre. The tendency of evading octroi has become the common practice of the traders. With the connivance of the Transporters, the octroi is being evaded. He further submitted that though all the accused were served with the notices to appear before the Court on or after July 24, 1981, accused No. 1 moved the Court by an oral application to take the matter earlier and the matter was taken on board on July 18, 1981. Accused No. 1 pleaded guilty for all the accused. The learned Magistrate imposed a fine only to the extent of covering the octroi evaded. He submitted that section 398 of the Act empowers the Court to impose a fine ten times the octroi evaded. The learned Magistrate, therefore erred in imposing a fine equal to the amount of the octroi evaded only. He further submitted that this is a fit case where the fine should be enhanced. In support to this arguments, he relied on the observations of this Court in (Cr. Rev. Application No. 329 of 1981, decided on March 5, 1984).

7. Shri Nargolkar, the learned Counsel appearing for the first five respondents (original accused Nos. 1 to 5) distinguished the case cited by Shri Dhorde two counts, viz. (1) the accused in the case cited had acted with pre-plan and (2) there was a deliberate false representation made by the accused to the Municipal Corporation. He further submitted that, here in the present case, it cannot be said that there has been a prior meeting of minds of the accused. There was also

no false representation made by the accused to the Municipal Corporation. Alternatively he submitted that this is the first and the last offence of the accused since the accused have left the business. He, therefore, prayed for leniency.

8. The instances of this kind are not uncommon. The transporters in collusion with the traders undertake to transport the goods without paying the octroi. The tendency has to be checked somewhere. The crime in question is an economic offence against the society at large. In my opinion, it was a deliberate act committed by the accused to deprive the Corporation, a public body of its legitimate revenue.

9. I, therefore, propose to award punishment to all the accused. The fine imposed is increased to five times the fine imposed by the learned Magistrate to meet the end of justice.

10. In the result, the Revision Application is allowed. The order of conviction passed by the learned Magistrate is confirmed and the order of sentence is modified. The fine of each of the accused is enhanced to five times the fine levied by the learned Magistrate. In default, the respondents to suffer S.I. for two months. Fine to be paid within a period of three months from today. Fine, if already paid, to be appropriated towards the fine now imposed. The fine amount if recovered to be paid to the Pune Municipal Corporation. Rule is made absolute accordingly.