

(2001) 01 GUJ CK 0066
In the Gujarat High Court

Case No : Criminal Revision Application No. 44 of 1988

John Hamilton Christian

APPELLANT

Vs

Blue Bird Agency and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 398, 398, 401, 401
Criminal Procedure Code, 1973 (CrPC) — Section 251, 254(1), 255(2), 313, 360
Surat Municipal Corporation Octroi Rules — Rule 13(1), 13(2), 21, 28, 6

Citation : (2001) 3 GLR 1929

Hon'ble Judges : H.H. Mehta, J

Bench : Single Bench

Advocate : Yogen Purohit, for Prashant G. Desai, for the Appellant; N.G. Nagarkar, N.K. Majmudar and B.Y. Mankad, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

H.H. Mehta, J.—The original complainant of Municipal Case No. 786 of 1982 which was pending on the file of the learned Judicial Magistrate, First Class (Municipal), Surat has by filing this Criminal Revision Application u/s 397 of the Criminal Procedure Code, 1973 (for short "Cr. P.C.") challenged the correctness, legality and propriety of judgment dated 26th August, 1987 rendered by the learned Judicial Magistrate, First Class (Municipal), Surat (who will be referred to hereinafter as "the learned Magistrate") in aforesaid Municipal Case No. 786 of 1982.

2. Here in this present Criminal Revision Application, revision petitioner was the original complainant and revision opponent Nos. 1 to 5 were the accused Nos. 1 to 5 respectively in aforesaid case, and therefore, the parties will be referred to herein after as the complainant and respective accused persons respectively at appropriate places.

3. The facts leading to this Criminal Revision Application in a nutshell are as

follows :

On or about, 26th July, 1982, the original complainant who is serving as a Octroi Inspector in Surat Municipal Corporation, Surat, lodged his complaint against accused Nos. 1 to 5 who are the revision opponent Nos. 1 to 5 respectively, in this present Criminal Revision Application. As per the complaint, the accused No. 1 is a partnership firm and accused Nos. 2 to 5 are the partners in the said partnership firm i.e., accused No. 1. It is the case of the complainant that the accused No. 1-Partnership Firm had imported certain articles like Tooth Paste, Tooth Powder, Tooth Brush, Talcum Powder etc. etc. from one Colgate Palmolive (India) Limited from Bombay. It was doubted by the responsible officers of the Surat Municipal Corporation that the accused have not paid adequate and sufficient octroi for such articles imported by them in the City of Surat. On or about 8th December, 1981, the Octroi Officer of Surat Municipal Corporation addressed one letter to Colgate Palmolive (India) Ltd. requesting them to furnish particulars with regard to goods and value thereof, imported by the accused No. 1 during the period from April, 1980 to November, 1981. In response to said letter dated 8th December, 1981, the Colgate Palmolive (India) Ltd. furnished certain particulars in three different statements under covering letter dated 5th January, 1982. On the basis of that letter received from Colgate Palmolive (India) Ltd., the Surat Municipal Corporation addressed another letter dated 27th January, 1982 to the accused No. 1 directing the accused No. 1 to furnish the particulars with regard to goods imported during the period from 1st December, 1979 to 31st December, 1981. It is the case of the complainant that the accused No. 1 did not furnish sufficient particulars, and therefore, there was an exchange of letters in between the Surat Municipal Corporation on one side and the accused No. 1 on other side. In continuation of that correspondence in between the Surat Municipal Corporation and the accused No. 1, the accused No. 1 requested Corporation to grant certain further period so as to enable the accused No. 1 to furnish particulars but that request was refused by the Corporation.

Thereafter, in exercise of powers conferred upon the Commissioner or the Officer in charge in that behalf, the Surat Municipal Corporation issued a requisition as per Rule 21 of the Surat Municipal Corporation Octroi Rules (same will be referred to hereinafter as the "Rules" for the sake of convenience) which have come into force with effect from 10th November, 1975. That requisition was received by the accused on or before 7th June, 1982. It was required by the accused to furnish the particulars within seven days from the date of receipt of the requisition. It is the case of the complainant that the accused have failed to furnish the particulars as per requisition made under Rule 21 of the said Orders, and therefore, on or about 6th July, 1982, the complainant lodged his complaint against the accused for an offence punishable u/s 398 of the Bombay Provincial Municipal Corporations Act, 1949 (the same will be referred to hereinafter as the "B.P.M.C. Act" for the sake of convenience), and also under Rule 28 of the said Rules for contravention of Rules 21 and 13(1) of the said Rules and also for the offence punishable under Rule 19 of the said Rules for contravention of Rule 6 of

the Standing Orders.

4. It appears from the record that all the accused appeared before the Court through their learned Advocate Shri S. J. Pujara. It also appears from the record that the learned Magistrate adopted the procedure prescribed under Chapter XX of the Criminal Procedure Code, 1973. This procedure is prescribed for trial in summons cases by the learned Magistrate. It appears from the record that pleas of all the accused were recorded u/s 251 of the Cr. P.C. at Exhs. 6 to 10. The accused pleaded not guilty to the charge for which their pleas were recorded. Thereafter, the learned Magistrate recorded the evidence of the complainant as well as witnesses produced in support of prosecution as per Section 254(1) of the Cr. P.C. It further appears that the complainant produced and proved certain documents in support of the case of the prosecution. On evidence being declared as closed by the prosecution, further statements of the accused were recorded u/s 313 of the Cr. P.C. Thereafter, the learned Magistrate heard the arguments of the learned Advocates for both the parties, and thereafter, on perusal of the record and proceedings and evidence led by the complainant, the learned Magistrate rendered his judgment on dated 26th August, 1987 in aforesaid case. By that judgment, all the accused were convicted for the offences punishable under Rule 28 of the Rules for contravention of Rule 13(2) and 21 of the Octroi Rules and also for contravention of Rule 6 of the Standing Order. The accused were also convicted u/s 255(2) of the Cr. P.C. for main offence punishable u/s 398 of the B.P.M.C. Act. By aforesaid judgment, each accused was sentenced to pay a fine of Rs. 100/- for each offence for contravention of Rule 13(2) and Rule 21 of the Octroi Rules and Rule 6 of the Standing Orders, meaning thereby all the accused were ordered to pay a fine of Rs. 1500/- for all the aforesaid three offences.

5. By aforesaid judgment, the learned Magistrate sentenced only accused No. 1 and directed to pay an amount of octroi in the sum of Rs. 59,861-21 Ps. and fine of Rs. 1,78,583-63 Ps. i.e., in all Rs. 1,81,083-63 Ps. It is specifically mentioned in the judgment that the accused Nos. 2 to 5 were not sentenced separately for the offence punishable u/s 398 of the B.P.M.C. Act.

6. Being aggrieved against and dissatisfied with the said judgment, the original complainant has preferred this Criminal Revision Application challenging the order with regard to non-infliction of sentence on accused Nos. 2 to 5 for the offence punishable u/s 398 of the B.P.M.C. Act.

7. I have heard Shri Yogen Purohit, the learned Advocate for and on behalf of Shri Prashant G. Desai, the learned Senior Advocate for the Petitioner, Shri N. G. Nagarkar, the learned Advocate for the respondent Nos. 2, 4 & 5, Shri N. K. Majmuadar, the learned Advocate for the respondent No. 3 and Shri B. Y. Mankad, the learned A.P.P. for respondent No. 6-State. I have examined the impugned judgment which is challenged in this Criminal Revision Application. I have also taken into consideration one affidavit-in-reply filed by the revision opponent No. 2.

8. Shri Purohit has argued that in this case, the learned Magistrate has erred by not inflicting sentence on accused Nos. 2 to 5, though they were held guilty and convicted for the said offence. He has drawn my attention to Section 398 of the B.P.M.C. Act. By citing Section 398 of the B.P.M.C. Act, he has argued that once Magistrate has convicted the accused for an offence punishable u/s 398 of the B.P.M.C. Act, the learned Magistrate has no other option except to punish accused with fine which may extend to ten times the amount of such toll or octroi or two hundred fifty rupees, whichever may be greater. He has further argued that word "shall" is used in between the words "made nor tendered" and the words "on conviction" in Section 398 of the B.P.M.C. Act, and therefore, the learned Magistrate has not passed an order of conviction and sentence as per the law, and thus, the order of conviction for accused Nos. 2 to 5 for an offence u/s 398 of the B.P.M.C. Act for which no sentence is inflicted, is bad in law, and therefore, the same is required to be set aside. During the course of arguments, he has also drawn my attention to Section 401 of the B.P.M.C. Act which reads as follows :

Section 401

"Offence by Companies, etc. :-

Where a person committing an offence under this Act, or any rule, by-law, regulation or standing order is a Company, or a body corporate, or an association of person (whether or other officer or person concerned with the management thereof, and every partner of the firm shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence."

9. Looking to Section 401 of the B.P.M.C. Act, each partner of a firm is liable to be sentenced separately but the liberty is given to such partner to prove that the offence was committed without his knowledge or consent, and in that event, no separate sentence can be imposed. Looking to Section 401, if such a partner fails to prove that the offence was committed without his knowledge or consent, then he should be held guilty by giving deeming effect, and therefore, as per arguments of Shri Purohit, the learned Magistrate has not taken into consideration the provisions of Section 401 of the B.P.M.C. Act. Shri Purohit has further argued that from the judgment, it appears that the learned Magistrate has indirectly taken into consideration the provisions of Section 401 of the B.P.M.C. Act, because he has convicted accused Nos. 2 to 5 separately for an offence punishable u/s 398 of the B.P.M.C. Act, but he thought it fit not to inflict any sentence separately on each of accused Nos. 2 to 5. Looking to Section 398 of the B.P.M.C. Act, when the word "shall" is used, the learned Magistrate is required to sentence each accused Nos. 2 to 5 separately for an offence u/s 398 read with Section 401 of the B.P.M.C. Act.

10. Shri Nagarkar has argued that when the accused No. 1-Firm is already convicted by the learned Magistrate and sentenced to pay a fine of Rs.

1,79,583-63 Ps. it is not necessary to inflict separate sentence on accused Nos. 2 to 5. He has further argued that if such interpretation is accepted, then in this case each accused will be required to pay a fine of Rs. 1,79,583-63 Ps. which will come to Rs. 8,97,918-15, and this amount will not be just and proper only for an octroi of Rs. 59,681-21 Ps.

11. Shri N. K. Majmudar, the learned Advocate for the revision opponent No. 3 has argued that if this Court comes to a conclusion that each accused Nos. 2 to 5 is liable to be sentenced separately for an offence u/s 398 of the B.P.M.C. Act, then they will not have an opportunity of being heard on the point of sentence which may be inflicted by this Court.

12. Looking to the facts and circumstances of this case and considering the submissions made by each party, this Criminal Revision Application deserves to be allowed, and accordingly it is allowed. The order of conviction passed by the learned Magistrate against accused Nos. 2 to 5 is hereby confirmed and the order with regard to non-infliction of sentence on accused Nos. 2 to 5 separately for the offence punishable u/s 398 of the B.P.M.C. Act by the learned Magistrate is hereby set aside.

13. It is desirable in the interest of justice to give an opportunity of being heard to the accused Nos. 2 to 5 on the point of "infliction of sentence on the accused Nos. 2 to 5 separately" for an offence punishable u/s 398 of the B.P.M.C. Act. As this opportunity can only be given by the learned Magistrate, this is a fit case in which the Municipal Case No. 786 of 1982 deserves to be remanded back to the learned Magistrate with specific directions, and accordingly, Municipal Case No. 786 of 1982 is remanded back to the learned Magistrate with the following directions :

(i) The learned Magistrate is directed to afford fullest opportunity of being heard to accused Nos. 2 to 5 separately on the point of "sentence only" for an offence punishable u/s 398 of the B.P.M.C. Act for which their conviction is not disturbed by this Court.

(ii) Before passing an order of sentence as per Section 255(2) of the Cr. P.C. strictly on merits and in accordance with law, he shall take into consideration Section 398 of the B.P.M.C. Act and Section 360 of the Criminal Procedure Code, 1973 of which reference is there in Section 255(2) of the Cr. P.C.

Rule is made absolute to the aforesaid extent. Record and proceeding of the case, if received by this Court, be sent back immediately to the trial Court. As this case is of the year 1982, the learned Magistrate is directed to dispose of the case as early as possible preferably within three months from the date of receipt of writ from this Court.

14. Application allowed.