

**(1999) 01 BOM CK 0045**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 174 of 1992

Kolhapur Municipal Corporation

APPELLANT

Vs

M/s. Kolhapur Wines and others

RESPONDENT

**Date of Decision :** 22-01-1999

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 398, 69(1)  
Criminal Procedure Code, 1973 (CrPC) — Section 482  
Kolhapur Corporation of Octroi Rules — Rule 28

**Citation :** (1999) 1 ALLMR 533 : (1999) 5 BomCR 410 : (1999) BomCR(Cri) 410 : (1999) 3 BOMLR 331 : (1999) CriLJ 2545 : (1999) 1 MhLj 828

**Hon'ble Judges :** Pratibha Upasani, J

**Bench :** Single Bench

**Advocate :** S.M. Paranjape, for the Appellant; M.P. Galeria, Addl. P.P., for the Respondent

## Judgement

Dr. Mrs. Pratibha Upasani, J.—The petitioner has filed this criminal revision application being aggrieved by the order dated 21-5-1992 passed by Second Additional Sessions Judge, Kolhapur in Criminal Revision Application filed by respondent Nos. 1 and 2 herein, quashing the order of issuance of process passed by the Judicial Magistrate, First Class, Kolhapur.

2. I have heard Mr. Paranjape for petitioner and Mr. Galeria, Addl. Public Prosecutor for respondent No. 3 at length. I have also perused the proceedings. It appears that respondent Nos. 1 and 2, on number of occasions took the goods (liquor) within the limits of the Kolhapur City Corporation, without payment of any octroi, which was required to be paid to the petitioner Corporation. The petitioner, therefore, sent notice dated 21-11-1989 to respondents 1 and 2. However, there was no reply from their end. Therefore, second notice was sent to the respondents 1 and 2, However, again, there was silence from respondents 1 and 2. Therefore, petitioner from its own records, started enquiry, which was concluded on 25th December, 1989, and it was revealed that goods worth Rs. 32,81,260/- were transported without payment of any octroi on the said goods,

and that, the amount of octroi which was payable on these goods was Rs. 1,64,062/-. Petitioner therefore filed complaint in the Court of the Judicial Magistrate, First Class, Kolhapur on 16th of May, 1990. The learned Magistrate, after perusing the said complaint, issued process against the respondents 1 and 2, since accused had allegedly committed breach of Bombay Provincial Municipal Corporation Act, 1949, and the process was issued u/s 398 r/w Rule 28 of the Octroi Rules of the Kolhapur Corporation.

3. Respondents 1 and 2, being aggrieved by the order of issuance of process against them, filed Revision for getting it quashed. One of the grounds, it appears, taken by respondents 1 and 2 in their revision, was that the Commissioner, as per section 69 had to take prior approval of the Standing Committee before filing the complaint. It appears that the learned Sessions Judge accepted the said contention.

4. Mr. Paranjape, appearing for petitioner, so also, Mr. Galeria, Additional Public Prosecutor, appearing for the State, however, pointed out that process is issued u/s 398 of the Bombay Provincial Municipal Corporation Act, 1949, and sub-clause (1) of section 69 of the said Act would apply, and not sub-clause (2). They pointed out that only with respect to sub-clause (2) of section 69, prior approval of the Standing Committee is required and that, there is no violation of section 398 and therefore, it was not necessary for the petitioner to file a complaint against respondent Nos. 1 and 2, after obtaining prior approval of the Standing Committee. I find substance in what Mr. Paranjape and Mr. Galena have argued.

5. Mr. Paranjape and Mr. Galena also argued that when there is violation of section 398 of the Bombay Provincial Municipal Corporation Act, 1949, the penalty which is prescribed for evasion of octroi or toll, is ten times of such toll or octroi or two hundred and fifty rupees, whichever may be greater, and till the amount of penalty is not paid, the offence continues to be a continuing offence. This submission also appears to be reasonable.

6. After reading the complaint filed by the petitioner dated 16th May, 1990, it does appear that a prima facie case against respondents 1 and 2 is clearly spelt out. It is a question of loss of revenue to the public body to a substantial extent. Economic offences should not be dealt with lightly, and here, in my opinion, the Judicial Magistrate, First Class, Kolhapur, rightly issued process against respondents 1 and 2, and that, the learned Additional Sessions Judge, Kolhapur committed error in quashing the same. Hence, the following order :

Matter is remanded back to the Lower Court with a direction to proceed in accordance with law. All the points including the point of limitation, etc. are kept open. The learned Magistrate will proceed with the case as expeditiously as possible.

Criminal Revision Application No. 174 of 1992 disposed of. No order as to costs.

7. Remanded back.