
(1985) 01 GUJ CK 0028
In the Gujarat High Court

M.S. Upadhyaya

APPELLANT

Vs

Mistri Jayantilal Hargovinddas and Another

RESPONDENT

Date of Decision : 16-01-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 468
Gujarat Panchayats Act, 1961 — Section 192A, 192A
Penal Code, 1860 (IPC) — Section 406

Citation : (1985) 2 GLR 1108

Hon'ble Judges : J.P. Desai, J

Bench : Single Bench

Judgement

J.P. Desai, J.—The respondents in these appeals were tried before the learned Judicial Magistrate, Mansa in different Criminal Cases for an offence punishable u/s 192-A of the Gujarat Panchayats Act, 1961 (hereinafter to be referred to as "the Act") on the allegation that they brought within the octroi limits of the Nagar Panchayat of Mansa in Vijapur Taluka their public carriers without payment of octroi duty and thereby committed this offence. These appeals involve common question of law and some common questions of facts and, therefore, with the consent of the learned advocates, they are heard together and are being disposed of by this common judgment.

2. The facts leading to the filing of these Criminal Cases are stated in details in the judgment delivered by the learned Judicial Magistrate in all these cases and, therefore, it is not necessary to reiterate them in this judgment. The allegations "made in all the cases are almost of similar nature. There is only difference in dates in some of the cases, but the fact is that each of these complaints was filed on the same day, viz. 12-2-77. To indicate as to what is the case of the prosecution against the accused in these cases, I would refer to the facts of Criminal Case No. 841 of 1977 out of which Criminal Appeal No. 1315 of 1979 has arisen. On 12-12-1977 Manharlal Shankerlal Upadhyaya, serving as the Secretary of Mansa Nagar Panchayat filed this criminal complaint against Jayantilal Hargovinddas Mistry, owner of Shri Rajesh Transport Co., and alleged

therein that the accused had brought within the octroi limits of Mansa Nagar Panchayat his truck. He further alleged that the accused was "bound to pay octroi in respect of the said truck and he knew that he was bound to pay the same but with intent to defraud the municipality, he brought within the octroi limits his truck without payment of octroi on the same and it was kept within the octroi limits of the Nagar Panchayat and had thereby committed the offence of not paying octroi which he was liable to pay. It is also alleged in this case that a notice was sent by registered post and it was received by him and another notice was sent through a peon but the accused did not accept the same and hence it was thrown on his body. On these allegations the complaint was filed. It was ordered to be registered and summons was ordered to be issued against the accused by the learned Judicial Magistrate. It may be mentioned here that it is nowhere mentioned in this complaint as to on what date or in which month or in which year the truck was brought within the limits of the Nagar Panchayat of Mansa. It was stated in the complaint that the complainant was authorised by the General Body of the Nagar Panchayat by a resolution dated 31-8-1977 to file the complaint. In the complaints of other accused also similar allegations were made with some difference here or there, but it is pertinent to note that even in those complaints, the date, month or year of bringing the trucks within the octroi limits have not been mentioned. Then on 13-2-1978 applications were given in all the cases by the complainant stating therein that the offence of non-payment of octroi was a continuing offence and therefore, there was no bar of limitation as provided by Section 468 Criminal Procedure Code. It was also stated in the said applications that even if the complaint was barred by Section 468 of the Criminal Procedure Code, then the delay may be condoned. In these applications also it is nowhere mentioned as to on what date or in which month or in which year the truck was brought within the limits of the Nagar Panchayat without payment of octroi duty. The facts of these applications did not disclose that the complainant had no knowledge about [the entry of these vehicles soon after they were brought within the limits of the Nagar Panchayat and, when he came to know about the same later, and, therefore, the complaints could not be filed earlier. In all these applications it is stated that inquiry was made from the office of the R.T.O. as to when the vehicle was registered and at which address and after getting confirmation from the R.T.O. on 24-6-1977 that the vehicles were registered in the names of these respective accused and the address was given as that of Mansa. these complaints were filed after obtaining sanction from the Nagar Panchayat.

3. The learned Judicial Magistrate, without applying his mind whether the offence was a continuing "one or whether the facts stated in the complaints made out sufficient cause for condoning the delay or whether in the interest of justice delay should be condoned, passed an order as follows below "the applications in all the cases:

Heard. In view of the circumstances mentioned in the application the delay caused in filing the complaint is condoned.

Thereafter, the plea of the accused was recorded, and the evidence of the prosecution was also recorded. It seems that the accused in each of these cases gave application on 15-11-1978 stating therein that the complaint was barred by Section 468 of the Criminal Procedure Code as filed more than six months after the commission of the alleged offence and the delay was condoned without giving any opportunity to the accused and the accused may be permitted to crossexamine the complainant with regard to the question of limitation. The learned Judicial Magistrate passed an order below all these applications to the effect that the delay was condoned on 13-2-1978 by his predecessor and hence the request made vide Ex. 12 cannot be granted and accordingly the said applications of the accused in all the cases were rejected. The learned Judicial Magistrate, on appreciating the evidence recorded before him in all the cases reached the conclusion that the complainant was unable to establish in any of the cases that the accused had brought within the limits of Mansa Nagar Panchayat their trucks and. therefore, it was not possible to say that they had committed the alleged offence. The learned Judicial Magistrate thought it unsafe to rely upon the oral evidence of the officials of the Nagar Panchayat and the documents produced by them. The learned Judicial Magistrate acquitted the accused in all these cases. Being dissatisfied with the said order of acquittal, the original complainant has filed these appeals.

Section 192A of the Act reads as follows:

Where any animal or goods passing "into a gram or nagar are liable to the payment of octroi, any person, who with the intention of defrauding the gram panchayat or nagar panchayat as the case may be because or abets the introduction of or himself introduces or attempts to introduce within the octroi limits of such gram or nagar, any such animal or goods upon which payment of the octroi due on such introduction has neither been made or tendered, or who fails to comply with any direction given by the officer demanding the octroi by the authority of panchayat with reference to the introduction of the animal or goods within the octroi limits shall be punished, on conviction, with fine which may extend to ten times the amount of such octroi or to fifty rupees, whichever may be greater.

The punishment provided for the said offence is only that of fine. When the punishment for the above offence is only fine. the period of limitation after the expiry of which the Court cannot take cognizance of the said offence is six months. The period of limitation as per Section 469, Cri. Pro. Code commences from the date of the offence, or where the commission of the offence was not known to the person aggrieved by the offence, the first day on which such offence comes to the knowledge of such person; or where it was not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence. Section 473 of the Code of Criminal Procedure says that notwithstanding anything contained in the provisions of Sections 467 to 472, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the

circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. In all these cases, it is pertinent to note that in none of the complaints the date of actual offence is mentioned. When the provisions of the Code require that the complaint should be filed within a particular period from the date of the commission of offence, it is necessary that the date of the offence is mentioned in the complaint. The learned Judicial Magistrate who is called upon to take cognizance of a complaint in which the date of the offence is not mentioned will not be in a position to know whether the complaint is filed within the period of limitation. It appears that after the process was ordered to be issued i.e. after cognizance was taken by the learned Judicial Magistrate applications were submitted on behalf of the complainant in all the cases, requesting the Court to condone the delay caused in filing the complaints. In all these applications, it is mentioned that the offence was a continuing one. It is also mentioned in all these applications that the complainant used to see the public carriers almost daily within the limits of Mansa Nagar Panchayat. It is also mentioned in all these applications that the accused was bound to pay octroi on every occasion the vehicle was brought within the limits of Mansa Nagar Panchayat. It is also mentioned in these applications that an inquiry was made from the R.T. authorities as regards the registration of the respective vehicles and the address given therein and those details were received from the office of the R.T.O. on 24-6-1977 and, therefore, the complaint was within limitation, but in any case the delay may be condoned. The learned Judicial Magistrate below all these applications passed the following order:

Heard. In view of the circumstances mentioned in the application the delay caused in filing the complaint is condoned.

It appears that in most of the cases, the accused were already served and the advocates had filed appearance on their behalf. Even then the orders were passed below the applications for condoning the delay without hearing the learned advocates for the accused. Thereafter, when the evidence of the complainant was being recorded, applications were given in all these cases on behalf of the accused that the delay was condoned without giving the accused an opportunity to have their say and, therefore, the accused may be permitted to cross examine the complainant on the question of limitation and the question of limitation may first be decided by the Court. The learned Judicial Magistrate, after hearing the learned advocate for the complainant and the learned advocate for the accused dismissed all these applications observing that earlier the learned Judicial Magistrate had on 13-2-1978 passed an order condoning the delay and therefore, the learned Judicial Magistrate was not in a position to go into this question again and with these observations the applications were rejected. It may be mentioned here that Mr. S.M. Pirzada was the learned Judicial Magistrate who had earlier issued the process and who had condoned the delay, while he was transferred thereafter when the matter came up for hearing and the learned Judicial Magistrate Mr. W. A. Uraizee was the Magistrate who dismissed the applications filed by the accused during the trial wherein the accused had

requested that the complainant may be permitted to be cross examined on the question of limitation. Now, so far as the question of limitation is concerned, it is true that the accused did not, file any Revision Application before the Sessions Court or before this Court challenging the order passed by the learned Judicial Magistrate. But simply because the accused did not do so, it does not mean that the question of limitation cannot be agitated in this Court. I, therefore, propose to consider the question of limitation though, of course, I may make it clear that I am not inclined to dispose of the appeals only on the ground of limitation because even on merits I am inclined to confirm the orders of acquittal passed by the learned Judicial Magistrate. The question of limitation is an. important one which requires to be considered and, therefore I am considering the same.

4. With respect to the learned Judicial Magistrate Mr. S.M. Pirzada who took cognizance of the offence and who condoned the delay in filing the complaints in this case, the complaint does not disclose, as I stated earlier, the date of the offence and the learned Judicial Magistrate should not have issued process without ascertaining as to what was the date or dates of the offence according to the prosecution in the present case. The complainant being a public servant, it was not necessary to examine the complainant u/s 200. Cri. Pro. Code but when the complainant did not disclose the date of the offence, the learned Judicial Magistrate should not have mechanically issued the process and he ought to have called the complainant and examined him, u/s 200 of the Code for gathering details from him as regards the date of the offence in each case. So far as the question of condoning delay is concerned, the applications filed in these cases do not, on the face of it, disclose any cause which can be said to be a cause for condoning the delay. It is not mentioned in the applications that the complainant did not know till a particular date that the offence was committed. It is also not mentioned in the complaint that the complainant did not know till a particular date that the particular accused had committed the offence. On the contrary, it appears from the applications in all the cases that the complainant very well knew that these public carriers were brought within the octroi limits and were seen by him almost daily for a period of more than six months before the filing of these complaints. Simply because the complainant gathered some information from the office of the R.T.O. on 24-6-1977, that cannot be a cause for condoning the delay in fact it appears that as per the say of the complainant, he knew right from the beginning from the day the vehicle was brought within the octroi limits that the vehicle was brought in the said limits and even then nothing was done till these complaints were filed in the month of February 1978. I may mention here that even the Nagar Panchayat passed resolutions in the month of February 1977 sanctioning the prosecution of the accused in all these cases. That means that the Nagar Panchayat even came to know before February 1977 that these offences were committed by these accused and the Panchayat even took decision in that month to prosecute the accused. The Panchayat had thus sufficient material to file complaints against the accused even in the month of February 1977 and even then no action was taken upto February 1978. The

complainant has also mentioned in the complaint that whenever the vehicle was brought within the octroi limits, the accused was bound to pay octroi. This statement is, on the face of it, an incorrect statement of law. Octroi is only to be paid for the first time when the vehicle is brought within the octroi limits for consumption, use or sale as the case may be. Section 2(20) of the Act says that "octroi" or "octroi duty" means a tax on the entry of goods into a gram or nagar, for consumption use or sale therein. This clearly, shows that octroi is to be paid only once and that too at the time of the first entry for consumption, use or sale as the case may be. Even the complainant admitted in his evidence that octroi is required to be paid only once and that is obvious. The complainant also mentioned in the applications that the offence was a continuing one. Now, if non-payment of octroi was made an offence, then certainly we can say that the offence continues till the octroi is paid and that way, the offence will be a continuing one, but Section 192A penalises the introduction of goods which are liable to the payment of octroi within the octroi limits upon which the payment of the octroi due on such introduction has neither been made nor tendered. What is made punishable is not the non-payment of octroi but introduction of goods or animals on which octroi duty though payable is not paid is an offence and that offence is complete as soon as the goods or animals are introduced within the octroi limits. In view of this, it cannot be said with any stretch of imagination that the offence punishable u/s 192A of the Act is a continuing offence.

5. The learned advocate for the original complainant as well as the learned Additional Public Prosecutor appearing on behalf of the State drew my attention to a decision of this Court "reported in State v. Bhavani Industries and Ors. 24(1) G.L.R. 664 wherein it is held that default in making payment under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was a continuing offence and, therefore, Section 468(2) was not applicable. The gist of the offence is non-payment of the amount required under the said Act and it is obvious that till the amount is paid, the offence continues. This decision, therefore, does not support the contention of the complainant that the offence punishable u/s 192A of the Act (Gujarat Panchayats Act, 1961) is a continuing one. My attention was also drawn to a decision of the Supreme Court reported in Bhagirath Kanoria and Others Vs. State of M. P., wherein also it is held that offence of non-payment of contribution by employer to provident fund is an offence, that offence continues till the payment is made. Non-payment is, on the face of it, a continuing offence. In the case of introduction of a vehicle within the octroi limits without payment of octroi, the offence is complete on introduction because what is made punishable is not non-payment of octroi but introducing the goods or animals within the octroi limits, which goods or animals are liable to octroi duty. Hence, this decision of the Supreme Court also does not support the contention of the complainant that this is a continuing offence. The learned Judicial Magistrate, with respect to him, without considering any of these aspects and without considering the facts stated in the application for condonation of delay, which facts, on the face of it, do not disclose any reason for not filing the

complaints earlier, simply passed a non-speaking order below all these applications stating therein vaguely that in view of the circumstances mentioned in the applications, the delay was condoned. He has not considered whether the offence was a continuing one. He has not considered as to how it can be said that there was any reason whatsoever for not filing the complaints earlier when the applications do not disclose any such cause. On the contrary as I stated earlier, it shows that the complainant very well knew that the public carriers of the accused were introduced within the octroi limits according to him and he knew about the same and even then no action was taken upto February 1978, inspite of the fact that the Nagar Panchayat passed a resolution in the month of February 1977 to prosecute these accused.

6. In the case of *State of Punjab Vs. Sarwan Singh*, the scope and object of Section 468 is explained. The Supreme Court has observed, while dealing with the scope of Section 468 as follows:

The object of Criminal P.C. in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant, must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.

If we apply the test laid down by the Supreme Court in the above case, then it is clear on the face of it that the complainant side was negligent in not filing the complaints upto February 1978 and, therefore, this was not a fit case for condoning delay.

7. In the case of *Bhagirath Kanoria v. State of M.P.* (supra), the Supreme Court reached the conclusion that the offence of non-payment of contribution by employer to provident fund was a continuing offence and that way, the question of bar of limitation did not apply, but the Supreme Court at the same time observed at para 12 drawing the attention to the provisions of Section 473 of the Code which empower the court to take cognizance of the offence even after the expiry of the period of limitation if the Court is satisfied, that it is necessary to do so in the interest of justice. Then the Supreme Court observed that the argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. The Supreme Court further observed in that case that in cases of such a nature, the Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions. will give due weight and consideration to the provisions contained

in Section 473 of the Code. A learned single Judge of this Court also in the case of *State of Gujarat v. Chimanlal Gordhanbhai* 19 G.L.R. 603 made similar observations while dealing with a case under the Sales-tax Act. It appears that in that case it was found that, the accused was an economic offender and tax dodger committing deliberate and calculated crime and this Court observed that such economic offenders responsible for shattering the economy of the country must be penalised and the Court must have due regard to the words it is necessary so to do in the interests of justice of Section 473 of the "Code. The learned single Judge of this Court, with respect, very rightly held. that the words it is necessary so to do in the interests of justice do not take colour from. the preceding word regarding satisfaction, of delay and the second part of the section, therefore, is not restricted to the words in the first part. But these observations made by the Supreme Court as well as this Court cannot be understood as laying down that in cases of all economic offences, the Court must always take cognizance in exercise of discretion u/s 473 of the Code without considering the question whether looking to the facts of the case, it is in the interest of justice to do so. If such a view is taken, then Section 468 of the Code will be rendered nugatory. In fact, the Legislature has lifted the bar of Section 468 in case of continuing offences by enacting Section 472 in the Code itself and with regard to certain economic offences, by enacting the Economic Offences (Inapplicability of Limitation) Act, 1974. Certain enactments have been enumerated in the Schedule of the aforesaid Act. The Legislature has thus expressed its clear intention by making provision in the above Act that provisions of Sections 467 to 473 contained in Chapter XXXVI of the Code of Criminal Procedure shall not apply to offences punishable under the enactments specified in the said Schedule. It cannot, therefore, be said that while dealing with economic offences punishable under the enactments other than those mentioned in the Schedule of the aforesaid Act, the Court must always, without considering the facts of the case, say that it is in the interest of justice to take cognizance even after the expiry of the period of limitation and take cognizance u/s 473 of the Code. In view of this, it is difficult to read the observations made by the Supreme Court and by this Court as laying down that in all economic offences, the Court must always take it that the interest of justice requires that cognizance may be taken even after the expiry of the period of limitation when the delay in filing the complaint is not satisfactorily explained.

8. In the present case, the learned Judicial Magistrate, with respect to him, has not at all applied his mind to the question whether it was necessary in the interest of justice to condone the delay. The learned Judicial Magistrate has condoned the delay on the grounds mentioned in the application. The learned Judicial Magistrate did not apply his mind to this aspect but simply passed a non-speaking order which cannot, with respect to the learned Judicial Magistrate, be said to be a judicial, order "at all. This is clearly a case in which the complainant's side was utterly negligent in not filing the complaint for a long period - for a period of about one year even after the Nagar Panchayat had

sanctioned the prosecution. I fail to understand how it can be said in a case of this type that the interest of justice required that cognizance should be taken even after the period of limitation. In my opinion, therefore, the observations made by the Supreme Court in the case of *State of Punjab v. Sarwan Singh* (supra) aptly apply in the present case. Even in that case before the Supreme Court, the accused was charged for an offence of criminal breach of trust punishable u/s 406 I.P.C. on the allegation that he had misappropriated amounts deposited with him as a cashier of one Co-operative Society. That was also an offence of a serious nature by an employee of a Co-operative Bank and even then the Supreme Court took the view that the prosecution against the accused in that case was barred by limitation. Hence I am inclined to hold that there was no ground for condoning the delay looking to the facts and circumstances of these cases, and the interest of justice did not require in any of these cases that cognizance should have been taken after the expiry of the period of limitation. The orders of acquittal recorded in all these cases can, therefore, be supported on the ground that the prosecution was barred by limitation. But I do not propose to dispose of these appeals on this ground. The learned Judicial Magistrate has entered into the merits in all the cases and I also propose to do so.

9. Now, we again revert back to Section 192A of the Act. A careful reading of Section 192A of the Act shows that the person who himself introduces or causes or abets the introduction of an animal or goods is liable to punishment provided by the said section. A person cannot be punished under this section simply because he happens to be an owner of certain goods. There must be some evidence to show that the said person either himself introduced the goods within the octroi limits or that he abetted the introduction of the same. Unless this is established, a person cannot be convicted u/s 192A of the Act simply because he happens to be the owner of the same. There is not an iota of evidence to show that the public carriers in any of these cases were introduced by any of these accused, assuming that they were introduced within the octroi limits for use as contemplated by Section 2(20) which defines "octroi" or "octroi duty". There is evidence in almost all these cases that goods of some persons were brought in these public carriers and octroi was paid on those goods. The learned Judicial Magistrate has not relied upon the evidence in this regard for the reasons given by him in his judgment to which I shall refer hereafter. But assuming that goods of other persons were brought within the octroi limits of Mansa in these public carriers, it cannot be said that the public carriers were brought within the limits of Mansa Nagar Panchayat for use as contemplated by Section 2(20) of the Act. It must be shown that the vehicle was brought within the limits of Mansa Nagar Panchayat for use i.e. for carrying on the business of transport because it appears in all these cases that the public carriers are used for transport business. Simply because in all the cases except Criminal Appeal No. 1319 of 1979 (Cri. Case No. 846 of 1977) addresses given while getting the vehicles registered with the Regional Transport Authority are of Mansa, it cannot be said that the vehicles

must have been brought within the octroi limits of Mansa Nagar Panchayat for use as contemplated u/s 2(20) of the Act. It cannot be said with any stretch of imagination that the vehicles were brought within the octroi limits of Mansa Nagar Panchayat for use simply because on one or more occasions goods of some other persons might have been brought in those public carriers within the octroi limits of Mansa Nagar Panchayat. The complainant has stated in almost all these cases that he used to see these vehicles standing at Mansa within the octroi limits of Mansa Nagar Panchayat. It is difficult to believe that the complainant will sit silent for such a long period if he had seen the vehicles within those limits. There is no reasonable explanation given by the complainant as to why he sat silent for such a long period if he used to see these vehicles standing within the limits of octroi almost daily from the day the vehicles were brought within the said limits as alleged by him. Other persons of the Mansa town must also have seen the vehicles and some of them could have been examined to establish that fact. But no such person is examined.

10. So far as bringing the goods within the octroi limits of Mansa Nagar Panchayat is concerned, there are simply entries from the registers maintained at the octroi check-post about bringing of the goods of others in these vehicles within the octroi limits of Mansa Nagar Panchayat. The person who made these entries is not examined. The persons who brought the goods in these vehicles have not been examined. The persons whose goods were brought in these vehicles are also not examined. It is true that the register maintained at the octroi check-post is a public document and entries from the said register are admissible in evidence without any further proof. That shows that formal proof is not necessary, but that does not mean that the prosecution is absolved from leading any evidence to prove the correctness of the entries in these registers, particularly when the said fact is challenged in all these cases. In all these cases, the accused challenge this allegation of the prosecution and, therefore, the learned Judicial Magistrate was justified in taking the view that he was not inclined to rely upon the entries in the registers which were again produced at a belated stage, when none was examined to prove the correctness of the contents thereof. It cannot be said that this view of the learned Judicial Magistrate is not a reasonable or probable view.

11. In all these cases, an effort has been made by the prosecution to show that the notices were sought to be served upon the accused through a peon of the Panchayat but the accused did not accept the same and, therefore, it was thrown on the persons of the accused. The learned Judicial Magistrate has not thought it safe to rely upon the evidence of the peon of the Panchayat, observing that the provisions of Section 192A of the Act require that the presence of two panchas should be secured if the notice cannot be served in the normal way upon the accused and that notice is required to be affixed on the property in the presence of the panchas, which has not been done in the present case. It cannot be said that the view taken by the learned Judicial Magistrate in this regard is not a reasonable or proper one. The question whether the accused refused to accept

the notice as alleged by the prosecution is also not material in the present case because the gist of the offence is not non-compliance with the notice or refusal to accept the notice but the gist is introduction of the vehicle on which entry is not paid, as discussed by me earlier. I may also mention here that in some of the cases, it appears that notice sent by registered post was served on the accused. In Criminal Appeal No. 1320 of 1979 arising out of Criminal Case No. 847 of 1977, it appears that notice dated 2-5-1977 was sent "by registered post to the accused and it was refused and hence received back by the sender i.e. complainant. In view of this, service can be deemed to have been effected on this accused by registered post. But it is pertinent to note that no question was put to the accused in this regard. Similar is the case so far as Criminal Appeal No. 1319 of 1979 arising out of Criminal Case No. 846 of 1977 is concerned. In that case, it appears that notice dated 15-2-1977 was sent by registered post and was accepted by the accused. Same is the case in Criminal Appeal No. 1317 of 1979 arising out of Criminal Case No. 844 of 1977. Notice was served by registered post in that case. In Criminal Appeal No. 1318 of 1979 arising out of Criminal Case No. 845 of 1977, notice was sent by registered post but refused by the accused. But it is pertinent to note that no questions were put to the accused in any of these cases u/s 313 Cri. Pro. Code drawing their attention to this piece of evidence. In view of this, this circumstance cannot be taken into consideration. In a very recent judgment reported in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, it is held that the circumstances which are not put to the accused while examining him u/s 313 of the Code cannot be used against him. Hence this circumstance loses its importance if any.

12. So far as Criminal Appeal No. 1319 of 1979 arising out of Criminal Case No. 846 of 1977 is concerned, the address given while getting the registration of the vehicle is given as Sabdalpur which is outside the octroi limits of Mansa.

13. The learned Judicial Magistrate has, as stated a little earlier, observed in his judgment that there was no reference to any of the registers in the complaints and that the persons who had made entries in the registers were not examined and the registers were produced at a very late stage and, therefore, he was not inclined to place reliance upon the said registers. When the learned Judicial Magistrate in the above circumstances thought it unsafe to hold, on the oral evidence of the complainant and other witnesses who are servants of Mansa Nagar Panchayat and simply on the production of these registers, that the prosecution had failed to establish that these goods were brought in these public carriers within the octroi limits of Mansa Nagar Panchayat as per the entries in the said registers, it cannot be said that the view taken by him is in any way unreasonable or a reasonably improbable view.

14. So far as Criminal Appeal No. 1321 of 1979 (orig. Criminal Case No. 848 of 1977) is concerned, the complaint has been filed against Patel Rambhai Joitaram & Co. and partner of the said firm Shivshankar Laxmiram Pandya. We do not know who are the other partners in the said firm. It is not known as to why the

other partners are not prosecuted. In absence of any evidence on record to show that this Shivshankar Laxmiram Pandya introduced the vehicle within the octroi limits of the Nagar Panchayat, it cannot be said that Shivshankar Laxmiram Pandya who is a partner in this firm committed any offence, assuming that the vehicle was introduced within the octroi limits of the Nagar Panchayat for use as contemplated by Section 2(20) of the Act. It is doubtful whether the firm can be prosecuted or punished for an offence punishable u/s 192A of the Act because the firm acts through its partners and it is only one or more partners of the firm who will be responsible for introducing the vehicle within the octroi limits.

15. In Criminal Appeal No. 1319 of 1979 (orig. Criminal Case No. 846 of 1977), it appears that goods of Devikrupa Hardware and those of Ambica Hardware were introduced within the octroi limits without payment of octroi on the same in the public carrier of the accused Joitaram Revabhai. So far as Criminal Appeal No. 1310 of 1979 (Criminal Case No. 846 of 1977) is concerned. it appears that a notice was served upon Joitaram calling upon him to show cause why he should not be prosecuted for an offence punishable u/s 192A of the Act. It is pertinent to note that this notice, Ex. 30, was in respect of the octroi so far as the goods transported in this vehicle are concerned and not with regard to the vehicle itself. It seems that Joitaram gave a reply, Ex. 31 to this notice stating therein that the receipts and driver memo were handed over at the octroi Naka with regard to these goods but even then care will be taken that no mistake is committed in future. The accused, of course has stated in his statement u/s 313 of the Code with regard to this notice that immediately on receiving the said notice, he had gone to the office of the Nagar Panchayat and orally stated that the notice was false, but threats were given and, therefore he gave such a reply. Now, whether what is stated "by the accused is true or false is not of any importance in this case because that notice was pertaining to octroi on the goods transported in this vehicle and not with regard to the octroi leviable on this vehicle itself. At the most, it can be said from Exs. 30 and 31 that the goods of Devikrupa Hardwares and Ambica Hardwares were transported on 5-11-1976 in the vehicle of the accused and that they were introduced within the octroi limits of the Nagar Panchayat without payment of octroi duty on the same. It is pertinent to note that even though such a notice as Ex. 30 was given on 10-11-1976 to the accused, no action was taken against him upto February 1978. Anyway, this circumstance does not in any way advance the case of the prosecution that the public carrier of the accused was introduced for use within the octroi limits of the Nagar Panchayat of Mansa by this accused. It may be mentioned here even at the cost of repetition that so far as this accused is concerned, the address to the R.T.O. is given as that of Sabdalpur which is outside the octroi limits of Mansa Nagar Panchayat.

16. The discussion made above will go to show that there is no evidence except the bare evidence of the complainant and his witnesses who are all servants of the Mansa Nagar Panchayat to establish the case of the prosecution that the public carriers of these accused were introduced within the octroi limits of Mansa

Nagar Panchayat. There is also no other evidence except the bare oral evidence of these witnesses together with entries in the registers the correctness of which is not established by leading other evidence as discussed earlier, to show that goods of some persons were brought within the octroi limits of Mansa Nagar Panchayat in these public carriers. In view of this, it is difficult to say that the learned Judicial Magistrate committed any error in acquitting the accused in all these cases. The view taken by him cannot be said to be an unreasonable or an impossible view so as to call for interference with the orders of acquittal passed in these cases. The result is that there is no merit in any of these appeals and hence they are dismissed. Mr. B.D. Shukla, learned advocate for the appellants seeks leave to appeal to the Supreme Court. These matters do not involve important question of law which requires to be decided by the Supreme Court. Hence the leave is refused.