

(2005) 07 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 193-SBA of 1997

Municipal Committee

APPELLANT

Vs

Varinder Kumar

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Punjab Municipal Act, 1911 — Section 78, 81

Citation : (2006) 142 PLR 484 : (2005) 4 RCR(Civil) 439 : (2005) 4 RCR(Criminal) 660

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Ram Kanwar and P.K. Gupta, for the Appellant; Deepa Dubey, for K.S. Dadwal, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This criminal appeal has been filed by Municipal Committee, Mariana against the acquittal of the respondent in a criminal complaint filed by the appellant u/s 78/81 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act).

2. In the complaint, it was alleged that on 7.3.1994, the accused imported 12 bags of Rubber Chappel through Samam Goods Carrier, Jalandhar and the vehicle, in which the goods were imported, entered the municipal limits of Municipal Committee, Haryana, without paying any octroi. The said vehicle was chased by Ram Rakha, Clerk, Municipal Committee, on the information of octroi clerk. Subsequently, the vehicle was found parfed in the open area of Mohalla Pahari Gate and by that time, the goods were unloaded by the accused. When he could not show the octroi receipt, the goods were seized by the octroi clerk. The accused was alleged to have imported the goods without paying the octroi with mala fide intention. Thus, he was alleged to have committed the offence u/s 78 of the Act. It has been further alleged that the octroi payable on the aforesaid goods amounted to Rs. 138.65, on which the accused is also liable to pay penalty

to the tune of Rs. 2,773/-.

3. In the aforesaid complaint, the accused-respondent was summoned to face trial. After his appearance, the appellant was afforded number of opportunities to lead evidence to prove the allegations, but it failed to lead any evidence. Ultimately, the evidence of the appellant was closed by order of the Court on 28.5.1996 and thereafter, the complaint was dismissed on 30.5.1996 by Judicial Magistrate, 1st Class, Hoshiarpur and the respondent was acquitted.

4. Counsel for the appellant submits that the trial Court has committed a procedural irregularity while closing evidence of the appellant by order of the Court. The appellant was not provided sufficient opportunities to lead its evidence. He further submits that on 28.5.1996, Ram Rakha, Clerk of the Municipal Committee was present in the Court, but neither his statement was recorded nor his presence was recorded by the trial Court and evidence of the appellant-committee was closed by order of the Court. Counsel further submits that the complainant was also present in Court, but this statement was also not recorded.

5. On the other hand, counsel for the respondent submits that on 28.5.1996, no witness was present in the Court. The complainant though was present, but did not offer himself to be examined as a witness. In spite of several opportunities, when the appellant failed to lead any evidence, the trial Court closed evidence by order of the Court. Counsel submits that there is no irregularity or illegality in the impugned order.

6. After hearing counsel for the parties and perusing the record of the case I do not find any merit in this appeal. The allegation in the complaint is that the accused imported 12 bags of rubber chappal in the municipal limits of Haryana without payment of octroi, which according to the complaint was Rs. 138.65. As per the averments made in the complaint, when the respondent did not show receipt of the octroi the imported goods were seized. The alleged occurrence took place in the year 1994, The trial Court provided four opportunities to the appellant to lead its evidence, but it did not examine any witness. On 28.5.1996, when evidence of the appellant was closed by order of the Court, no witness was present. The submission of counsel for the appellant that Ram Rakha Clerk, was present in the Court, but neither his statement was recorded nor his presence was marked by the trial Court, cannot be believed. Even in this appeal, the appellant has not explained any sufficient reason as to why on four dates, they could not lead any evidence.

7. Keeping in view the aforesaid facts, the fact that the alleged occurrence took place in the year 1994 and the total octroi payable was only Rs. 138.65, I do not find any ground to set aside the impugned order of acquittal and remand the case for fresh trial.