

(1982) 09 BOM CK 0044

In the Bombay High Court

Case No : Criminal Revision Application No. 261 of 1982

Omkar Shrawan, through its partner Ramesh Omkar
Matturvaishya

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 20-09-1982

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 139

Citation : (1983) 1 BomCR 1

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : P.S. Patankar, for the Appellant; M.R. Suryawanshi, Public Prosecutor and R.S. Mohite, for the Respondent

Judgement

Sharad Manohar, J.—This revision application was originally filed against the order of conviction and sentence passed by the learned Judicial Magistrate, Pachora against the present petitioner, who was accused No. 1 in the proceedings before the learned Magistrate, and other accused of an offence u/s 139 of the Maharashtra Municipalities Act for having attempted to evade the payment of octroi duty. The amount of fine imposed was Rs. 2,659.70 ps. being equivalent to 10 times of the amount of octroi duty attempted to be evaded. Accused Nos. 2 to 4 are only the partners of the firm—accused No. 1. By some strange logic, the learned Magistrate passed a separate order of conviction and sentence against each of the partners of the firm, namely, accused Nos. 2 to 4 in addition to the firm—accused No. 1 and sentenced them similarly to pay the fine of Rs. 2,659.70 ps. each.

2. In the revision application, the learned Sessions Judge rightly rectified the mistake committed by the learned Magistrate in fastening the criminal liability separately upon each of the partners of the firm. However, the learned Sessions Judge who confirmed the order of conviction proceeded to impose the maximum amount of the fine permissible u/s 139 of the Maharashtra Municipalities Act.

Thus, the present petitioner-accused No. 1 was ordered to pay a fine of Rs. 2,659.70 ps. being the equivalent of 10 times of the amount of octroi duty attempted to be evaded.

As mentioned at the outset, this revision application was originally filed against the entire order of conviction and sentence. However, Mr. Patankar, the learned Advocate for the petitioner who argued the petition at length even on the question of conviction when the petition came up for admission before me, realised the fact that it was not possible for him to urge contentions so far as the order of conviction was concerned. He, therefore, made a statement before the Court that he was restricting his objection to the question of sentence only. Having regard to the totality of the circumstance which will be presently referred to, this Court found it reasonable to issue rule in the petition, but to restrict the same only to the question of sentence. The rule was made returnable today.

Mr. Mohite, the learned Advocate appeared for the Municipal Council & Mr. Suryawanshi appeared for the State as Public Prosecutor. Mr. Patankar who appeared for the petitioner invited my attention to the following dates. The date of alleged offence of evading the payment of octroi duty is 23-6-1978. It appears that this factum of evasion was noticed by the officers of the Council some time before 11-7-1978. A reply dated 14-7-1978 was given by the petitioner-firm to the Council. In the reply the petitioner stated the circumstances in which the octroi duty remained unpaid inadvertently. It was pointed out that the amount for the payment of the octroi duty had been, in fact, given to the driver of the vehicle, but, presumably, he committed the mischief, of non-payment of the octroi duty thus defrauding not only the Council but also the petitioner. In the reply, it was stated that the firm was prepared to pay the octroi duty immediately. The petitioner-firm did not stop there. As a matter of fact, the requisite amount of the octroi duty of Rs. 265.97 ps. was sent by the petitioner-firm to the Council by a money-order. However, the said money-order was not accepted by the Council and it was sent back to the petitioner-firm. It is somewhat intriguing as to why the amount was returned by the Council, because it was not as if that the Council had already taken the decision to institute prosecution against the petitioner-firm or against any of its partners. The complaint in question came to be filed by the Municipal Council against the petitioner-firm and its partners as late as on 18th November, 1978, that is to say, about 4 months after the date of the notice given by the them to the petitioner-firm and 5 months after the date of the actual offence. Whatever that may be, the fact remains that the Municipal Council chose not to accept the money-order and chose to file the prosecution against the petitioner-firm. But the prosecution itself was slightly delayed by the Council, explanation for which delay is not forthcoming at all.

3. It is unnecessary to set out the various reasons why both the courts were satisfied about the commission of the offence by the partnership firm because so far as the question of conviction is concerned, the conviction stands confirmed

and the present revision application does not relate to the same at this stage at all. What is required to be considered is as to whether the Sessions Court were justified in imposing the maximum sentence against the petitioner-firm.

4. Mr. Mohite for the Council invited my attention to section 139 of the Maharashtra Municipalities Act and contended that in the case such as the present one, really speaking, there is no discretion left to the Court in the matter of imposition of the fine. According to the learned Advocate there is a maxima of sentence fixed by the section itself. The sentence can, according to him, either be a sum of Rs. 200/- or 10 times the amount of the duty evaded or attempted to evade. Mr. Mohite contends that the minimum sentence in this case is Rs. 200/- or 10 times the amount of the duty evaded, whichever is larger.

5. I cannot accept Mr. Mohite's contention in this behalf. To my mind the key words and clue words in section 139 for deciding this aspect of the matter are "fine which may extend to". The very fact that it is allowed to extend to 10 times of the octroi duty or it is allowed to extend to Rs. 200/- means that neither the said amount of Rs. 200/- nor is the amount equivalent to 10 times of the duty evaded the minimum as fixed. There is no minima u/s 139 of the Act. There is only the maxima.

6. Coming then to the question as to what should be the amount of sentence in the present case, I must state at the outset that it is the maximum which has been awarded by both the courts below. This is probably because the courts were of belief that 10 times the amount of duty is the minimum that is prescribed by the Act. If this was not so, the sentence would not have been the exact multiple of 10 of the duty evaded. This being the position, it is clear that the courts have not applied mind their to the facts of the case there which are required to be considered while imposing the sentence.

The factual position does indicate that even though the firm had not played a positive role in the matter of evasion of duty, the firm had at least tried to take the advantage of the fact that the duty was evaded in the first instance and it had tried to connive at it. It is more than possible that when the firm realised that the amount of the duty was not paid by the driver, the firm tried to take a pot-luck; if the evasion had gone unnoticed, the firm would have forgotten everything about it conveniently. However, the fact, remains that immediately when the notice was given by the Council to the firm not only that readiness was shown by the firm to pay the amount immediately but, in fact, the amount was tendered by the firm within 10 days from the receipt of the notice. This is no doubt a mitigating circumstance in relation to the question of sentence. The petitioner-firm did not play a positive role in the matter of evasion of duty; all that the firm has done is that it tried to connive at the evasion on the part of the driver of the vehicle. The penitent conduct demands that the penalty in this case need not be an exemplary penalty. Having regard to this totality of the circumstance, I am of the opinion that a fine of Rs. 100/- to be paid by the petitioner-firm should meet the ends of justice. This amount of course, shall be

in addition to the amount of the octroi duty payable by the firm to the Council. In view of the fact that the amount has not in fact been paid (although tendered) from 23-6-1978 till this date that is to say, for nearly 4 years, it is but just and proper that the firm should be also required to pay interest on the said amount of Rs. 265.97 ps. Mr. Patankar & Mr. Mohite both agree that together with interest, the total amount of octroi duty should be Rs. 400/-.

7. The rule earlier issued is, therefore, made partly absolute. The order of conviction passed by both the courts below stands confirmed. So far as the order of sentence is concerned, the order directing the firm to pay a sum of Rs. 2,659.70 ps. is hereby quashed and set aside and in its place the following order is passed :

The petitioner-firm shall pay a sum of Rs. 100/- as fine for the offence of which it is convicted. The petitioner-firm shall also pay a sum of Rs. 400 to the Municipal Council. Both the fine and the amount of Rs. 400 of the octroi duty with interest shall be paid within 15 days from today.

Mr. Patankar informs the Court that the entire amount of fine of Rs. 2659.70 ps. is already deposited by the accused in the Court. If that is so, from but of the said amount, a sum of Rs. 400/- shall be paid by the Court to the Municipal Council, a sum of Rs. 100/- shall be retained as fine payable to the Government, and the balance of the amount shall be refunded to the accused-firm forthwith.