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(1963) 08 BOM CK 0017

In the Bombay High Court

Case No : Criminal Appeal No. 272 of 1963

The Ratnagiri Municipal Borough — APPELLANT

Vs

Dr. Shantaram Hari Ketkar — RESPONDENT

Date of Decision : 16-08-1963

Acts Referred:
Bombay Municipal Boroughs Act, 1925 — Section 73

Citation : (1963) 65 BOMLR 787 : (1964) MhLj 155

Hon'ble Judges : Shah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shah, J.—The Ratnagiri Municipal Borough has filed this appeal by its Chief Officer Dattatraya Laxman Nene against the order of the learned Judicial Magistrate, First Class, Ratnagiri, acquitting the accused Dr. Shantaram Hari Ketkar, an Ayurvedic Physician, of the charge u/s 96 of the Bombay Municipal Boroughs Act, 1925. The accused was alleged by the Borough Municipality to have brought within the octroi limits of the town of Ratnagiri a Hillman car in January 1962 and to have fraudulently evaded the payment of octroi duty in respect thereof. The accused contended that he was not using the car within the municipal limits since he had his two dispensaries outside the municipal limits and that he was only using the car for bringing him home in the town of Ratnagiri for lunch, dinner and rest. He further contended that the motor car did not fall within the definition of the word ''goods'' as used in the charging section of the Act and, therefore, even if it was held that he was using the car within the octroi limits of the Municipality, he was not liable to pay the duty. The learned Magistrate found that to the extent that the accused had to come back to his house in Ratnagiri town for lunch, dinner and rest he did use the Municipal roads and, therefore, he was using the car within the municipal limits. He further held that a motor ear was not ''goods'' within the meaning of the Act and that, therefore, he was not liable for payment of octroi duty. The learned Magistrate

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further held that even if the car was liable to such payment, the accused had not fraudulently evaded the same, and that, therefore, he was not guilty of the offence charged against him. In the result, the accused was acquitted and discharged. It is against this order that the Borough Municipality has filed the present appeal in this Court.

In support of this appeal it was urged by Mr. Rege, the learned Counsel for the Municipality, that the learned Magistrate was in error in holding that a motor car was not ''goods'' within the meaning of the Act. He referred me to the definition of ''goods'' as given in the Sale of Goods Act, 1930; Bombay Sales Tax Act, 1953; and Indian Tariff Act, 1934. He also, invited my attention to a decision of the English Court in Behnke v. Bale Shipping Co. [1927] 1 K.B. 649 Apart from these definitions and the decision, it seems to me that there is no reason why a motor car should not be classified as ''goods''. It is certainly a movable property in the sense that unless its engine is switched on, it does not move of its own accord like a human being and, therefore, it must be classified as ''goods''. In the Indian Sale of Goods Act ''goods'' is defined as any movable property except actionable claims, etc. As already stated, a motor car is a movable property as much as a cycle or a motor cycle. It was conceded by the learned advocate for the accused that a simple bicycle would be ''goods'' so also a motor cycle. If so, it is difficult to understand why a motor car should not be classified as ''goods''. A motor car is specifically included in the category of goods by the Bombay Sales Tax Act, 1953. Schedule II to that Act, which refers to special goods, which are chargeable with sales tax u/s 10 of the Act, in item 6 therein specifies motor vehicles including motor taxi cars, motor cycles etc. as special goods. In the Indian Tariff Act, 1934, motor cars and taxi cabs imported completely assembled are specified as goods chargeable with customs duty in item 75(1) of Section 15 in the First Schedule to that Act, The decision cited by Mr. Rege says that a ship is ''goods'' under the Sale of Goods Act. If a ship could be ''goods'', and it should be noted that a ship moves by motive power, there is no reason why a motor car, which also moves by a motive power, cannot be classified as ''goods''. In my opinion, the learned Magistrate was obviously in error in his finding that a motor car was not ''goods'' within the meaning of Section 73 of the Bombay Municipal Boroughs Act, 1925.

2. It cannot, however, be said that the accused had fraudulently evaded the payment of octroi duty chargeable on the Hillman car brought by him within the municipal limits of Ratnagiri. It appears that he had a genuine doubt in his mind as to whether a motor car was chargeable with octroi duty under the Bombay Municipal Boroughs Act. He also appears to have been doubtful as to whether when he was using the car mainly for going to his dispensary which was situated outside the Ratnagiri town, he could be said to have been using the car within the municipal limits. It appears that for these reasons he did not pay the octroi duty chargeable on the car. It does not appear that he had any fraudulent intention of depriving the Municipality of the duty. In my opinion, therefore, the learned Magistrate was right in acquitting the accused of the charge framed

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against him. In the result, the appeal fails and is dismissed.

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