



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 544 OF 2015

Mumbai Municipal Corporation	..	Appellant
v/s.		
Samalkumar Satyacharan Jana And Anr.	..	Respondents

WITH
CRIMINAL APPEAL NO. 548 OF 2015

Mumbai Municipal Corporation	..	Appellant
v/s.		
Bikas Ajit Choudhary And Anr.	..	Respondents

WITH
CRIMINAL APPEAL NO. 543 OF 2015
(NOT ON BOARD)

Mumbai Municipal Corporation	..	Appellant
v/s.		
Nirmal Kumar Dhara & Anr.	..	Respondents

WITH
CRIMINAL APPEAL NO. 545 OF 2015
(NOT ON BOARD)

Mumbai Municipal Corporation	..	Appellant
v/s.		
Mantosh Rajanikant Khatwa & Anr.	..	Respondents

WITH
CRIMINAL APPEAL NO. 546 OF 2015
(NOT ON BOARD)

Mumbai Municipal Corporation .. Appellant
v/s.
Kashinath M. Huzut & Anr. .. Respondents

WITH
CRIMINAL APPEAL NO. 547 OF 2015
(NOT ON BOARD)

Mumbai Municipal Corporation .. Appellant
v/s.
Debarata Ram Sasmal & Anr. .. Respondents

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Ms. Teja Katdare, a/w. Ms. Madhuri More, for the Appellant.
Mr. S.H. Yadav, APP, for State.

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CORAM : JITENDRA JAIN, J.

RESERVED ON: 15th SEPTEMBER, 2023

PRONOUNCED ON: 27th SEPTEMBER, 2023

JUDGMENT:

All these six appeals are filed by the Mumbai Municipal Corporation involving same offence, identical evidence, same charge and order of the Magistrate also delivered on the same day. Except the names of the accused all other things being same, these appeals are disposed of by a common order taking facts of Appeal No. 544 of 2015 as a lead matter.

2. This is an appeal filed by the Appellant/original complainant against the respondent/original accused challenging the order of the Metropolitan Magistrate dated 27th November 2014.

3. Brief facts are as under:

(i) On 16th November 2011, Licence Inspector of the Appellant/original complainant visited the premises of the accused and found two LPG lighters of 50ML each. On the same day, an inspection report was prepared stating that in the premises of the respondent/accused two LPG lighters of 50ML each has been found and the respondent/accused did not have the license to keep the said lighters and, therefore, there was an offence committed under section 394/471 of the Mumbai Municipal Corporation Act, 1888 (the Act).

(ii) On 7th December 2011, an application was filed by the License Department of the Corporation for issuing process for the offence committed by the respondent/accused.

(iii) On 12th June 2013, the Metropolitan Magistrate explained the charge to the respondent/accused. The charge was of committing an offence under section 394(1)(b) punishable under section 471 of the Act for keeping two LPG lighters each 50ML capacity without the license from the Corporation. The respondent/accused pleaded not guilty of the charge and hence the case went for trial.

(iv) The Corporation led the evidence of Mr. Anil Ghaisas, Licence Inspector as PW-1 and Mr. Siddharth Bansode, Senior

Inspector as PW-2.

(v) On 9th October 2014, the statement of the respondent/accused was recorded. The accused stated that it was not true that there were two gas lighters of 50ML each but it was kerosene lighters which were used.

(vi) On 27th November 2014, the Metropolitan Magistrate acquitted the respondent/accused primarily on the ground that PW-1 did not seize the gas lighters to verify the contents of the same from the laboratory to ascertain whether it contains butane, propane or their mixtures, etc. which required license to be obtained from the Corporation.

(vii) The Appellant/original complainant has challenged the aforesaid order of the Magistrate in the present appeal.

4. Heard learned Counsel for the Appellant and, with her assistance, perused the records of the lower court.

Analysis & Conclusions:

5. For deciding the present appeal, it is important to note sections 394 (1)(b) and 471 of the Act which reads thus:

“394. Certain articles or animals not to be kept, and certain trades, processes and operations not to be carried on, without a licence; and things liable to be seized, destroyed, etc., to prevent danger or nuisance

(1) Except under and in accordance with the terms and conditions of the licence granted by the Commissioner, no person shall—

(a)

(b) keep, or suffer or allow to be kept, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule M ;

(c)

(d)

(e)”

Schedule M PART III

Liquified Petroleum gases such as Butane, Propane or their mixtures etc.

471. Certain offences punishable with fine

Whoever—

(a) contravenes any provision of any of the sections, sub-sections or clauses mentioned in the first column of the following table, or of any regulation made thereunder; or

(b) fails to comply with any requisition lawfully made upon him under any of the said sections, sub-sections or clauses,

shall be punished, for each such offence, with fine which may extend to the amount mentioned in that behalf in the third column of the said table subject, however, to a minimum fine which shall not be less than fine mentioned in the fourth column of the said table.

Explanation.—The entries in the second column of the said table headed “Subject” are not intended as definitions of the offences described in the sections, sub-section and clauses mentioned in the first column, or even as abstracts of those sections, sub-sections and clauses, but are inserted merely as references to, the subjects of the sections,

sub-sections and clauses, the numbers of which are given in the first column.

<i>Sr. No.</i>	<i>Section, sub-section or clause</i>	<i>Subject</i>	<i>Fine which may be imposed</i>	<i>Minimum fine which shall be imposed</i>
120.	Section 394, sub-section (1) clause (a) (ii) and (b) to (f)	Certain articles not to be kept and certain trades, processes and operations not to be carried on without licence.	Twenty-five thousand rupees	Five thousand rupees

6. Section 394(1)(b) of the Act provides that except with the permission granted by the Commissioner, no person shall keep, or suffer or allow to be kept, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule M. Schedule M lists various items and one of them being liquified petroleum gases such as butane, propane or their mixtures etc.. Section 471 of the Act provides for the offences punishable with fine if there is a contravention of provision specified in the table therein. Section 394(1)(b) appears at serial no. 120 of the said table and the fine provided therein is minimum of Rs.5,000/- and maximum of Rs. 25,000/-. Section 471 which is invoked in the present case does not provide for any imprisonment but it only provides for the fine.

7. In the instant appeal, the Appellant complainant in evidence has not proved the contents of the alleged lighters. The

Inspector who visited the premises of the respondent/accused did not seize lighters under consideration. The Inspector also did not send the lighters to the laboratory to prove that the contents of the lighters were butane gas, propane or mixture. The respondent/accused in his statement before Magistrate has denied that these lighters contained gases but he stated that it were kerosene lighters. In my view, the Appellant complainant ought to have seized the lighters found during the course of the visit and should have sent the same to a laboratory for ascertaining whether the contents of the lighters were of items specified in Schedule M so as to prove the charge alleged against the respondent/accused. In the instant case, there is no evidence about the contents of the lighters mentioned in the inspection report nor any photographs of the lighters found at the time of inspection. Had the Appellant complainant done this exercise, the charge could have been proved but in the absence of the same, it is difficult for this Court to accept that the Appellant complainant has proved its case.

8. It is settled position that in such matters the charge has to be proved beyond doubt and if there is any doubt in the evidence to prove the charge then the benefit of the same has to go to the accused. In the instant case, although it may be summary proceedings as contended by the Appellant complainant in the appeal memo still if such action has to be taken then it is imperative for the Appellant complainant to prove its case by establishing the contents of the

lighters. In the present appeal, the Appellant complainant has failed to establish the same and, therefore, the Metropolitan Magistrate was justified in acquitting the respondent/accused.

9. In view of above, all the present appeals are required to be dismissed.

10. If the accused has given any bond then the same may be cancelled or returned. In case cash security is given then same may be returned to the accused within three months from today. If the accused are not available for returning the cash then the cash amount would be donated to Tata Memorial Cancer Hospital, Parel on behalf of the accused within one month from the expiry of three months specified above.

11. Appeals are disposed of accordingly. No order as to costs.

(JITENDRA JAIN, J.)