

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 511 OF 2002

Nashik Municipal Corporation,
Through Shri H.D.Phadol,
Octroi Superintendent, Nashik. ... Appellant.

V/s.

- 1) Manager, Tehcno Force Pvt.Ltd.
Shri Prakash Raghunath Dharankar,
D-34, M.I.D.C. Area, Ambad,
Nashik- 10.
- 2) State of Maharashtra. ... Respondents.

None for the appellant.

Hemant Telkar i/b. S.P.Salkar for respondent No.1.

Mrs.A.A.Mane APP for the State.

CORAM : S.B.SHUKRE, J.

DATED : 11th September 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 19th January 2001 passed by the Judicial Magistrate, First Class, Nashik in Criminal Case No.3162/1992 thereby acquitting the respondent of the offence punishable under section 398 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the “said Act” for short). Briefly stated, the facts of the case are as under:

The respondent had brought within the limits of Nashik Municipal Corporation certain goods valued at Rs.19,89,065/- without paying octroi on 29th November 1991. The Flying Squad of the Corporation intercepted the truck which was carrying these goods and found that octroi on the said goods was not paid. Therefore, an attempt was made by respondent No.1 for payment of octroi. There was also a demand made and the respondent No.1, as per the demand, paid the octroi amounting to Rs.55,695/- to the appellant- Corporation. However, penalty was not initially demanded by the appellant- Corporation from respondent No.1 and the demand in that regard was raised by the appellant later on. The respondent No.1 refused to meet the said demand contending that he had already paid octroi as per the initial demand made by the Corporation. Not satisfied with the stand taken by respondent No.1, the Municipal Corporation filed criminal case against respondent No.1 seeking his prosecution for an offence punishable under section 398 of the said Act. The respondent No.1 was, accordingly, prosecuted for the said offence and after consideration of the evidence available on record and arguments of both sides, learned Judicial Magistrate, First Class, by his judgment and order dated 19th January 2001, found respondent No.1 as not guilty and acquitted him of the said offence. Not satisfied with the same, the appellant is before this Court in the present appeal.

2. This appeal has been listed on board for final hearing since long period of time. It is about 13 years old. There is a need for this Court to consider disposal of old appeals as expeditiously as possible. When this appeal was called out for hearing today, nobody appeared on behalf of the appellant whereas learned counsel Mr.Hemant Telkar holding

for Advocate Mr.S.PSalkar was present on behalf of respondent No.1 so also learned A.P.P for the State. Considering the antiquity of appeal and also mandate of section 386 of Cr.PC., I have decided to go ahead with the hearing of this appeal in accordance with law. Accordingly, I have heard Mr.Telkar, learned counsel for respondent No.1. I have carefully gone through the record of the case and the impugned judgment and order.

3. It is seen from the impugned judgment and order that the learned Magistrate has found respondent No.1 as not guilty for the reason that the complainant- Corporation i.e. appellant herein did not adduce any evidence to prove the fact that respondent No.1 at the relevant time intended to defraud the Corporation by not paying octroi and penalty there upon. In fact, this is a case wherein respondent No.1 indeed paid the octroi in the sum of Rs.55,695/- immediately upon demand made in that regard by the appellant- Corporation. There is no dispute about this fact. If this is so, no fault can be found with the reasoning of learned Magistrate that something more was required to be shown by the complainant in order to attribute fraudulent intention to respondent No.1 and that evidence or circumstance pointing towards dishonest intention are absent in the present case. Therefore, I am of the view that no case for interference with the impugned judgment is made out. The appeal deserves to be dismissed.

4. Appeal stands dismissed.

(S.B.SHUKRE, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment.