

Learned Chief Judicial Magistrate, Nanded
vide order dated 26th July, 2001 in Summary
Criminal Case No. 3739 of 1999, in exercise of
powers under Section 255(2) of the Code of Criminal
Procedure, convicted the respondent-accused for the
offence punishable under Section 398 of the Bombay
Provincial Municipal Corporation Act, 1949

(2)

(hereinafter shall be referred to 'Corporation Act' for the sake of brevity) and sentenced him to pay penalty to the tune of Rs.79011/-, in default, to suffer simple imprisonment for two months, which is modified in Criminal Appeal No. 52 of 2001 by learned Sessions Judge, Nanded at the behest of respondent-accused, reducing the amount of penalty from Rs.79011/- to Rs.9217-50 ps.

2. Learned Counsel for the applicant would urge that learned Sessions Judge has taken non-pragmatic view. According to him, the fact remains that there has to be presumption against the respondent-accused, particularly when he was caught red handed qua non payment of octroi for goods which he has traded in earlier point of time than date of raid without paying an octroi. He would then urge that learned appellate Court should have remanded back the matter, if it was not satisfied with approach of the Corporation authorities and that of the Magistrate in proving offence under the provisions of Corporation Act for

(3)

evasion of octroi.

3. Learned Counsel for the respondent is absent.

4. It is required to be noted that learned Magistrate has presumed that there is evasion of octroi even for goods which were in the trade of respondent-accused prior to date of seizure of goods by the flying squad i.e. commission of offence in question of 6th October, 1999, whereas learned Sessions Judge has considered that there was hardly any material much less the notice to the respondent-accused calling upon him to produce octroi receipts so as to demonstrate that he has not paid octroi for period earlier to 6th October, 1999.

5. *Prima facie*, the view taken by learned Sessions Judge appears to be practical view, particularly in the light of reasons recorded in paragraph-10 of the judgment impugned. Learned

(4)

Sessions Judge has observed that original bill book seized by the complainant is not produced on record during the trial, from which, it was presumed by the Magistrate that octroi for the goods was not paid. Apart from above, it is to be noted that offence in question is old and 17 years back. At this juncture, by exercising revisional jurisdiction, no fruitful purpose will be served. Criminal Revision Application, as such, fails and stands rejected.

(N.W. SAMBRE, J.)

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