

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 478 OF 2004

Adhyatma Bandhu Gupta	.. Petitioner
Age. 54 years, Occ. Business,	[original
R/o. C/o. Concept Pharmaceuticals Ltd.,	accused No.1]
167, C.S.T. Road, Santacruz, Mumbai.	

Versus

1. Aurangabad Municipal Corporation	.. Respondents
Aurangabad. Through its authorized	
Officer/Octroi Superintendent	
Shri Ayubkhan Noorkhan Pathan	
Age. 47 years, Occ. Service,	
R/o. Aurangabad.	

2. The State of Maharashtra

Mr.L.D. Vakil, Advocate for the petitioner.
Mr.S.V. Kshirsagar, Advocate h/f. Mrs.Manjusha Deshpande,
Advocate for respondent No.1.
Mr.P.N. Kutti, A.P.P. for respondent No.2/State.

CORAM : Z.A. HAQ, J.

DATED : 22.11.2016

ORAL JUDGMENT :-

. Heard Mr.L.D. Vakil, Advocate for the petitioner, Mr.S.V. Kshirsagar, Advocate h/f. Mrs. Manjusha Deshpande, Advocate for respondent No.1 and Mr. P.N. Kutti, A.P.P. for respondent No.2/State.

02. Respondent No.1 – Aurangabad Municipal Corporation filed complaint against the present petitioner and two others contending that they are liable for prosecution and conviction under section 420 and 468 of the Indian Penal Code read with section 378 of the Bombay Provincial Municipal Corporations Act (hereinafter referred as “the Municipal Corporations Act”). The accusations in the complaint are that the accused have imported goods/items in the limits of city evading octroi and misrepresenting that the goods/items which were imported was Sodium and not “Sefatoxin Acid I.P.” for which octroi duty at the rate of 2.75% should have been paid. It is alleged in the complaint that other two accused i.e. Sudhir Pandharinath Tipre and R.V. Nagendra fabricated the documents and the present petitioner was the Managing Director and Chairman of Concept Pharmaceuticals Limited and the activities of the company were managed under his supervision.

. The learned Magistrate passed an order on 29th September, 2002 directing issuance of summons to the petitioner and other two accused for prosecution under section 398 of the Municipal Corporations Act and under sections 420 and 468 of the Indian Penal Code. The petitioner filed an application praying for recall of the

order directing issuance of process against him. This application was rejected by the learned Magistrate by order dated 31st March, 2003.

. The petitioner filed revision application before the Sessions Court, which is dismissed by the impugned order.

03. The order passed by the learned Magistrate directing issuance of process against the petitioner and the order passed by the Sessions Court dismissing the revision filed by the petitioner are challenged in this writ petition, substantially on the following grounds :-

(i) That the tenor of the complaint shows that the allegations of evasion of octroi and commission of offence are against the company and therefore the company should have been shown as accused in the complaint and because of failure on the part of the complainant to file complaint against the company, the prosecution of the petitioner is unsustainable. In support of this submission, the learned Advocate for the petitioner has relied on the following judgments:-

The judgments given by the Hon'ble Supreme Court in the cases of :-

(a) Aneeta Hada Vs. M/s. Godfather Travels and Tours Pvt. Ltd., (2012) 5 SCC 661.

(b) R. Kalyani Vs. Janak C. Mehta & Ors., (2009) 1 SCC 516.

(c) Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector & Anr., (2011) 1 SCC 176.

(ii) That in view of the provisions of section 481 of the Municipal Corporations Act, the complaint should have been filed by the Commissioner and as the complaint is not filed by the Commissioner but the Octroi Superintendent, the complaint is liable to be dismissed as untenable.

(iii) That there are no specific allegations against the petitioner attributing any role by him in the commission of the alleged offence.

04. Per contra, the learned Advocate for respondent No.1 has submitted that there is ample material on record which shows the involvement of the petitioner in the affairs and administration of the company, that undisputedly the petitioner had been the Managing

Director and Chairman of the company and that there are specific averments in the complaint that the complaint is filed by the Municipal Corporation and therefore the provisions of Section 481 of the Corporations Act will not be attracted. It is submitted that in paragraph No.1 of the complaint, it is stated that the Octroi Superintendent is authorized by the Municipal Corporation to file the complaint and therefore, it cannot be said that the complaint is not maintainable.

05. With the assistance of the learned Advocates for the respective parties, I have examined the documents placed on the record of the writ petition. It is not disputed by the petitioner that he had been the Managing Director and Chairman of the company. The emphasis of the learned Advocate for the petitioner is on the averments alleged in paragraph Nos.4 & 5 of the complaint, which contain specific accusations against accused No.2 - Sudhir Pandharinath Tipre and accused No.3 - R.V. Nagendra. It is argued on behalf of the petitioner that the complaint does not refer to any specific role of the petitioner in commission of the alleged offence. The submission made on behalf of the petitioner is overlooking the specific averment in paragraph No.1 of the complaint that the activities of the company are managed under the supervision of the

petitioner. Whether the respondent No.1 – Municipal Corporation would be successful in proving its accusation or not, cannot be a point of consideration at this stage. At this stage, it is required to be seen whether the complainant has made any accusations against the petitioner or not. It being undisputed that the petitioner has been the Managing Director and Chairman of the company and in view of the specific averments in paragraph No.1 of the complaint that the activities of the company are managed under the supervision of the petitioner and the petitioner is having overall control over Global Torters Private Limited, a sister concerned of Concept Pharmaceuticals Limited and the records of Global Torters Limited are also fabricated to facilitate Concept Pharmaceuticals Limited in evading the octroi duty, it cannot be said that there are no accusations in the complaint against the petitioner.

06. The submissions made on behalf of the petitioner that the complaint is not maintainable as Concept Pharmaceuticals Limited is not impleaded and is not being prosecuted cannot be accepted, in view of the accusations in the complaint. The accusations in the complaint are that the statutory obligation of paying octroi duty is not fulfilled by the petitioner and other two accused and they have misrepresented that the goods/items imported

are "sodium" and not "Sefatoxin Acid I.P." for which 2.75% octroi duty is required to be paid. The allegations are that the documents are tampered and fabricated by accused No.2-Sudhir Pandharinath Tipre and accused No.3-R.V. Nagendra and the activities are done under the supervision of the present petitioner. The judgments referred and relied upon by the learned Advocate for the petitioner are not of any assistance to the petitioner, considering the nature of the allegations in the present complaint.

07. The contention on behalf of the petitioner that the complaint is not maintainable as it is not filed by the Commissioner as required by section 481 of the Municipal Corporations Act, cannot be considered at this stage. The complaint is filed by the Municipal Corporation and therefore prima facie section 481 of the Municipal Corporations Act will not be attracted. Whether the complaint on behalf of the Municipal Corporation can be filed by the Octroi Superintendent on authorization, as stated in the paragraph No.1 of the complaint, will have to be examined at the trial after giving an opportunity to the respondent No.1-Municipal Corporation to prove its contention.

08. In view of the above, I do not find any

infirmity or illegality in the impugned order. The writ petition is dismissed. In the circumstances, parties to bear their own costs.

09. It is clarified that the considerations for deciding this writ petition are only for the purposes of dealing with the challenges raised at this stage to the legality of the order passed by the learned Magistrate, directing issuance of process against the petitioner.

[Z.A. HAQ, J.]