

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 714 OF 1998

Shivaji Mahadeo Parve	... Appellant.
Versus	
Indrajit Banarasidas Agarwal & Anr.	... Respondents.

Mr.R.M.Pethe for the Appellant.
None for the Respondents.

CORAM : S.B. SHUKRE, J.

DATED : 13TH JUNE, 2016.

P.C. :

1] This is an appeal preferred against the judgment and order dated 11th February, 1994 rendered in Summary Criminal Case No.736 of 1988 by Judicial Magistrate First Class, Pune.

2] By the said impugned judgment and order, the learned Magistrate has acquitted the Respondents of the offences punishable under Rule 29 of the Octroi Rules.

3] I have heard learned Counsel for the Appellant. Nobody is present on behalf of the Respondents. Since the appeal is very old,

in view of the mandate of Section 386 of CrPC, it has been heard in the absence of the Respondents. I have also carefully gone through the record of the case including the impugned judgment and the order.

4] It is seen from the complaint filed in this case by the Appellant that the offence alleged against the Respondent was that when he was asked to stop his vehicle carrying certain goods, so as to enable the concerned Municipal Officer to check the goods from the view point of satisfying himself about collection of the Octroi at the import Naka, the Respondent did not stop the vehicle and fled from the spot alongwith vehicle in question.

5] The powers to stop the vehicle for ascertaining payment of the Octroi and examining the goods liable to Octroi arise from Rule 12 and also 23 of the Octroi Rules. These powers, as per the complaint, were exercised by the authorized Municipal Officer. But, because of fleeing away from the spot together with the vehicle by the Respondent, there was a breach of the Rules 12 and 23 of the Octroi Rules, for the breach of which the penalty has been provided under

Rule 29 of the Octroi Rules. This was basically the nature of the complaint.

6] On perusal of the impugned judgment and order, I find that the learned Magistrate completely ignored the said nature of the complaint and misdirected himself in deciding the case. The learned Magistrate, in aparent misunderstanding and confusion of the facts held that no offence was proved by the prosecution against the Respondent that he had mis-utilized the escort pass, defined under Rule 2(4) of the Octroi Rules. In fact, this was not a case involving issuance of any escort pass and its mis utilization. This was a case where in the powers were sought to be exercised under Rule 12 and 23 of the Octroi Rules and the Respondent did not cooperate with the authorized Municipal Officer to enable him to exercise those powers. The impugned judgment and order, therefore, have to be termed as perverse and not arising from the facts of the case. In my opinion, this is a fit case for making interference for setting aside the impugned judgment and order. However, considering the fact that the Respondent needs to be given full opportunity to defend himself in

this case, instead of recording any finding of fact in exercise of this Court's Appellate Jurisdiction, it would be proper that the matter is remanded back to the trial Court for reconsidering the same afresh from the stage of arguments.

7] In the result the appeal is allowed and the impugned judgment and order are hereby quashed and set aside. The matter is remanded back to the trial Court for a decision afresh in accordance with law. The trial Court shall give an opportunity of hearing to both sides and decide the case in accordance with law as early as possible and in any case within a period of three months from the date of receipt of the order of this Court.

(S.B. SHUKRE, J.)