

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

CRIMINAL APPEAL NO. 715 OF 1998

Shri Shashikant Namdeo Barathe ... **Appellant.**
Versus
 Shri Indrajit Bansaridas Agarwal & Anr. ... **Respondents.**

Mr.Manoj Badgujal h/f. Mr.Abhijeet P. Kulkarni for the Appellant.
None for Respondent No.1.
Mrs.G.P.Mulekar, A.P.P. for Respondent No.2-State.

CORAM : S.B. SHUKRE, J.

DATED : 17TH JUNE, 2016.

P.C. :

1] This is an appeal preferred against the judgment and order dated 11th February, 1994 delivered in Summary Criminal Case No.116 of 1991 by Judicial Magistrate First Class (P.M.C.), Pune, thereby acquitting the respondent No.1 of the offence punishable under Section 398 of the Bombay Provincial Municipal Corporation Act, 1949.

2] The respondent No.1 was prosecuted on the basis of the complaint lodged by the appellant that on 8th March, 1991, the

respondent No.1 by transporting the goods by vehicle i.e. One Tempo within the city limits of Pune corporation without paying the Octroi committed an offence punishable under Section 398 of the Bombay Provincial Municipal Corporation Act, 1949. On merits of the case the learned Magistrate found that there were several admissions given by the complainant's witnesses which indicate that the Octroi amount of Rs.1827/- was indeed offered to be paid by the respondent No.1 by cheque, but it was not encashed by the complainant. Therefore, the learned Magistrate found that there was no intention on the part of the respondent No.1 to commit any offence in this case.

3] Therefore, I have heard learned Counsel for the appellant and learned Asst. Public Prosecutor for respondent No.2-State. None for the respondent No.1. I have gone through the record including the impugned judgment and order.

4] It has been contended on behalf of the appellant-Corporation that the impugned judgment and order is illegal and perverse and therefore, the finding of acquittal recorded therein be

refrained. The learned Asst. Public Prosecutor for respondent No.2 submits that a proper order be passed in this matter.

5] I would have accepted the contention raised on behalf of the appellant had there been some evidence going against the respondent No.1. The appellant's own witnesses, it is seen, have given several admissions which show that there was no intention on behalf of the respondent No.1 to evade the Octroi which was of Rs.1827/-. These witnesses have admitted that the respondent No.1 had sent a cheque of Rs.1827/- towards payment of the Octroi, and that this cheque was received by the complainant but it was not en-cashed by the complainant. It is also an admitted fact that the Commissioner was never informed about offer of payment of Octroi so made by the respondent No.1 at the time of seeking of permission for prosecution of the respondent No.1. It is also an admitted fact that the respondent No.1 had offered payment of Octroi amount of Rs.1827/- at Vishrantwadi Octroi Post but it was not accepted. All these admissions only indicate that the respondent No.1 had no intention what so ever to evade the Octroi. The conclusion therefore, recorded

by the learned Magistrate cannot be faulted with. No sufficient grounds have been made out to enable me to interfere with this impugned judgment and order. The appeal deserves to be dismissed. The appeal stands dismissed.

(S.B. SHUKRE, J.)