

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1954 OF 2016**

MFC Transport Pvt. Ltd.	.. Petitioner
v/s.	
Mumbai Municipal Corporation of Greater Bombay & Ors.	.. Respondents

Mr. Sanjay R. Haritwal for the petitioner
Mr. H.C. Pimple for the respondent Corporation

**CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 8th SEPTEMBER, 2016.**

PC.

1. Heard.

2. Rule. By consent made returnable forthwith. Mr. Pimple, learned Counsel appearing for the respondent Corporation waives service.

3. This petition under Article 226 of the Constitution of India challenges the action of the Deputy Assessor and Collector, (M.P.H.) - (respondent no.3) in taking possession a truck bearing No. AP24-X-7716 (said truck) on 1st July, 2016. This action of detaining the said truck was on account for non-payment of octroi in respect of goods being carried by the said truck in to Mumbai and consequent penalty on account of evasion / delayed payment of octroi. This demand is

made under the Mumbai Municipal Corporation Act (the Act). The respondent no.3 has assessed the goods in the said truck to an octroi of Rs.1.10 lakhs under the Act, which has admittedly been paid. However, the respondent no.3 is not releasing the said truck as he insists on payment of the further amount of Rs. 11.06 lakhs imposed as penalty.

4. Mr. Haritwal, learned Counsel appearing for the petitioner states that the respondent no.3 has no jurisdiction to impose any penalty for non-payment of octroi. The same can only be imposed consequent to a conviction in a criminal Court. Our attention is invited to the unreported decision of this Court in the case of *M/s. Shri Tirupati Balaji Metals Vs. Mumbai Municipal Corporation & Ors.* (Criminal Writ Petition No.3925 of 2011, decided on 16th January, 2012) wherein an identical issue as arising herein was considered and it was held that penalty for evasion of octroi can be imposed and recovered only on the offending party being convicted by a Criminal Court. In fact, this Court observed that the question of imposing penalty equivalent to 10 times of octroi payable cannot arise before conviction as the issue no longer *res integra* in view of the decision of this Court in *Sushmita Sen vs. Municipal Corporation of Greater Mumbai*, (2008), 2 Mah.L.J. 42.

5. In the present facts, it is an undisputed position that the Corporation has not even initiated prosecution in as much as no FIR has even been filed. In the above view, the respondent no.3 has no jurisdiction to continue to detain the vehicle for non-payment of penalty. This is particularly so as respondent no.3 has no jurisdiction to impose penalty in the absence of any conviction by a Criminal Court.

6. Mr. Pimple, learned Counsel appearing for the respondent Corporation is unable to show any distinction in the present facts which would warrant our taking a view different from that taken by this Court in M/s. Shri Tirupati Balaji Metals (supra). Nor is Mr. Pimple, the learned Counsel able to point out any provision under the Corporation Act which gives jurisdiction to respondent no.3 to impose penalty for non-payment / delayed payment of octroi and consequent detention of the vehicle carrying the offending goods.

7. In the above view, petition is made absolute in terms of prayer clause (a). The respondent Corporation is directed to immediately release the said truck.

(S.C. GUPTE, J.)

(M.S. SANKLECHA, J.)