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

CRIMINAL WRIT PETITION NO. 344 OF 2005

1. Shri. Nirmal Lalchand Bhatewara,
Aged about 47, by occupation-trader,
c/O. Deepa Distributor,
residing at Lane No.3,
Opposite Mahadeo Mandir, Dhule.
2. Shri. Sanjay Lalchand Bhatewara,
Aged about 40, by occupation-trader,
c/O. Deepa Distributor,
residing at Lane No.3,
Opposite Mahadeo Mandir, Dhule. ..PETITIONERS

VERSUS

1. Shri. Sitaram Elchand Patil,
Deputy Octroi Superintendent
(Retired), Dhule Municipal
Council, Dhule.
2. The State of Maharashtra,
3. The Commissioner,
Dhule Muncipal Corporation,
Parola Road, Jhansi Ravi Chowk,
Dhule 424001. ..RESPONDENTS

Mr Joydeep Chatterji, Advocate for petitioners;
Mr S.P. Shah, Advocate h/f Mr P.S. Shendurnikar,
Advocate for respondent Nos.1 & 3;
Mr V.S. Badakh, Addl. Public Prosecutor for
respondent No.2;

CORAM : N.W. SAMBRE, J.

DATE : 6th FEBRUARY, 2017

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ORAL JUDGMENT :

Criminal Case No. 1768 of 1995 came to be initiated by respondent No.1 against the petitioners in the Court of Judicial Magistrate, First Class, Dhule through a complaint case alleging offence punishable under Sections 420 of the Indian Penal Code and under Section 139 of the Maharashtra Municipalities Act, 1965. It is claimed in the complaint that the applicants are partners of the firm, who were acting as dealers and/or distributors of various products of Hindustan Lever Limited, Bombay for entire Dhule district. It is claimed that amongst other material that was brought within limits of Dhule Municipal Council is subject to payment of octroi and the applicants-accused by giving false declaration evaded to pay octroi of Rs.3884/- by bringing goods within local limits of Municipal Council for period from 01/07/1993 to 30/07/1994. As such, prosecution in question.

2. Learned Chief Judicial Magistrate, Dhule

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on 18th November, 1995 having perused the complaint, statement of complainant and documents produced, ordered issuance of process against the applicants-accused for offence punishable under Section 420 of the Indian Penal Code and under Section 139 of the Maharashtra Municipalities Act, 1965. It is these proceedings which are questioned in the present writ petition seeking quashing of the proceedings and order of issuance of process.

3. Mr. Chatterji, learned Counsel for the petitioners would urge that even upon accepting what has been stated in the complaint as it is, offence punishable under Section 420 of the Indian Penal Code is not made out against the applicants, particularly ingredients thereof are not satisfied. He would invite attention of this Court to the judgment of the Apex Court in the matter of **S.W. Palanitkar and others vs. State of Bihar and another** reported in (2002) 1 SCC 241 and **Indian Oil Corporation vs NEPC India Limited and others**, reported in (2006) 6 SCC 736 so as to claim that

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necessary ingredients of Section 420 of the Indian Penal Code are not followed.

4. He would then invite attention of this Court to the verification of the complainant and his deposition so as to submit that *prima facie* involvement of the present applicants cannot be inferred in the offence in question.

5. Per contra, learned A.P.P. and learned Counsel for the respondent Nos. 1 and 3 would submit that this Court is not required to analyze the pleadings and evidence brought on record. According to them, what is required to consider is, whether the complaint discloses *prima facie* offence against the applicants or not. Learned Counsel then would invite attention of this Court to the pleadings in paragraph-6 of the complaint so as to submit that there is enough material to infer *prima facie* involvement of the applicants in the crime in question.

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6. Having considered the rival submissions, it is required to be noted that the incident in question of alleged evasion of payment of octroi is based on invoice dated 24th June, 1992 to 7th April, 1993, in which period, it is claimed that the goods to the extent of value of Rs.1,74,199/- were brought in the municipal limits of Dhule by evading octroi of Rs.3884/-. The complaint speaks of invoice date, so also, truck number, boxes brought and value of the goods.

7. In verification, it is claimed that truck carrying goods of applicants was checked on 1st April, 1993 and upon verification of voucher, evasion of octroi of Rs.3884/- was noticed.

8. In the evidence of complainant-officer, he was unable to narrate as to whether goods were also sent by the applicants-accused to the other places viz., Sindhkhda, Dondaicha, Shahada, Shirpur, for which octroi could be levied by the complainant. He has then accepted that Exhibit-35 contains wrong

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entries, wherein amount was claimed twice. He has then claimed that he has no knowledge from where the goods were brought and where dispatched to which destination. He then admits that there was mistake in the notice of complainant issued to the accused persons.

9. If cumulative effect of evidence of the complainant, particularly, his cross examination is assessed in the light of contents in the complaint preferred against the applicants for offence punishable under Section 420 of the Indian Penal Code and in view of discussion referred above, it has to be inferred that necessary ingredients of Section 420 of the Indian Penal Code are not established. Appropriate support to that effect can be drawn from the judgment of Apex Court in the matter of **Indian Oil Corporation**, cited supra, particularly paragraph-32 thereof, which reads thus:

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"32. The essential ingredients of the offence of 'cheating' are : (i) deception of a person either by making a false or misleading representation or by other action or omission (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."

10. Similarly, from the judgment of the Apex Court in the matter of **S.W. Palanikar and others**, cited supra, particularly paragraph-10 thereof, which reads thus :

"10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any

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property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

11. In view of the fact that the contents of the complaint and evidence of the complainant *prima facie* does not disclose satisfaction of the ingredients of Section 420 of the Indian Penal Code for making out an offence against the applicants, in my opinion, case for showing indulgence is made out.

12. There is one more aspect of which this Court must take note of is, the alleged evasion is claimed in 1993, for which complaint came to be initiated in 1995. In 2005, this Court while entertaining present petition has stayed further prosecution of the applicants. Considering the

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maximum punishment that is provided and in view of the aforesaid observations, in my opinion, this Court is required to entertain present writ petition, particularly in the backdrop of what has been observed in foregoing paragraphs. As such, present writ petition is allowed in terms of prayer clause (a).

(N.W. SAMBRE, J.)

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