

*Sequeira*

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

*CRIMINAL APPEAL NO. 995 OF 2002*

Pune Municipal Corporation,  
through Shri Arvind Anantrao  
Lokhande, Aged 48 years,  
Occupation-Service Checking  
Naka Nirikshak, Assessor and  
Collector of Octroi Pune  
Municipal Corporation.

.. Appellant

Vs

1. State of Maharashtra.
2. Shri Indrajeet Banarasidas  
Agarwal, residing at Survey  
No.116 Kalas Alandi Road,  
Pune -411 015.
3. Shri Harisingh Nainsing Bist,  
(Driver) Survey No.116,  
Kalas, Alandi Road.  
Pune – 411015

.. Respondents

Mr.Rajdeep Khadapkar, for the Appellant.

Mr.P.H.Gaikwad-Patil – Additional Public Prosecutor, for  
Respondent - State.

*Coram : N.M.Jamdar, J.  
Date : 28 June 2017.*

***Oral Judgment :***

Pune Municipal Corporation has filed this Criminal Appeal challenging the judgment and order passed by the Judicial Magistrate First Class, Pune dated 24 February 1999 acquitting the accused in respect of the offence punishable under section 398 of Bombay Provincial Municipal Corporations Act, 1949 (BPMC Act) and the relevant Octroi Rules.

2. Complaint was filed by the Appellant-Municipal Corporation in the Court of Judicial Magistrate, First Class, Pune alleging that the Respondents have committed offence punishable under section 398 of the BPMC Act and the Standing order No.28 read with Octroi Rule No.29. According to the Appellant, vehicle of the Respondents carrying certain leviable goods was intercepted on 11 May 1998 wherein, it was found that 92 bags gutka was imported in Pune city without payment of octroi. The driver did not produce any documents regarding payment of octroi. When the Criminal Case No.97 of 1998 was tried by the learned Magistrate, it was the defence of the Respondents that they had imported the said goods, on 8 May 1998 and in the process of distribution of the said goods, out of enmity, the officers of the Appellant-Corporation stopped the vehicle and thereafter filed the complaint. The learned Magistrate accepted the defence of the Respondents and also found that the case of the Appellant-Corporation regarding manipulation in records by

the Respondents was not proved. Accordingly, the learned Magistrate acquitted the Respondents of the offences charged.

3. Heard Mr.Rajdeep Khadapkar learned counsel for the Appellant-Corporation, and the learned APP Mr.P.H.Gaikwad-Patil, for Respondent-State.

4. Mr.Khadapkar for the Appellant-Corporation submitted that the reasoning of the learned Magistrate that the Respondents were in process of distributing the goods imported on 8 May 1998 on 11 May 1998, is not correct as what was imported as the goods imported on 8 May 1998 were weighing 410 kgs. while the goods found on 11 May 1998 were 575 kgs. It is not possible to accept the said submission. This ground has been taken in the memo of the appeal, however, the weight of the goods is neither mentioned in the complaint nor it is a case put to the Respondents under section 313 of Code of Criminal Procedure. Throughout it has been the case of the Appellant that 100 bags imported on 8 May 2017 and what was intercepted on 11 May 1998 was 92 bags. Therefore, if the learned Magistrate has come to the conclusion that the bags had become 92 because of process of distribution, it cannot be said that the conclusion is perverse.

5. It was the defence of the Respondents that the goods in question which were intercepted on 11 May 1998 were already

imported on 8 May 1998. The witness of the Appellant-Corporation had categorically stated that they had not examined aspect of payment of octroi on 8 May 1998 before filing complaint.

6. The case was put against the Respondents accused was that they had manipulated record i.e. Exhibit 7 by making an entry in respect of Bill no.276. The Appellant has not been able to prove this case. The witness of the Appellant admitted that no complaint to the superior was made when the Appellant alleged to have forced this witness to change the record. Furthermore, this witness did not recall any other instance that happened during this time span except this fact, which was found to be not believable by the learned Magistrate. There is no perversity in drawing this inference.

7. The incident has taken place on 11 May 1998. Even for these goods, subsequently, octroi was paid and refund has been sought. Levy of octroi has now been abolished by the Municipal Corporation. Appeal has come up for hearing after fifteen years.

8. In the result, I do not find that there is any perversity in the conclusion reached by the learned Magistrate so as to warrant reversal of the order of acquittal. Appeal is accordingly dismissed.

*(N.M.Jamdar, J.)*