

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.10 OF 2016

Sangli Miraj and Kupwad City Corporation ... **Applicant**

V/s.

Chougule Industries Ltd. & ors. ... **Respondents**

Mr.Umesh Mankapure for the applicant.

Mr.Anilkumar K. Patil for respondent nos.1, 2 & 4.

Mr.A.R. Kapadnis, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 11th JUNE 2018.

P.C. :

1. This is an application for leave to appeal filed by the original complainant Sangli Miraj and Kupwad City Corporation for seeking to challenge order dated 15th December, 2012 passed by the learned JMFC, Sangli in SCC No.2092 of 2005 by which the complaint filed by it, for offence punishable under Section 398 read with 481 of the Bombay Provincial Municipal Corporation Act, 1949 came to be dismissed for want of prosecution.

2. Heard the learned advocate appearing for the applicant/ Municipal Corporation which vehemently argued

that the learned Trial Court erred in dismissing the complaint for want of prosecution and deprived the applicant/original complainant of an opportunity of hearing. As against this the learned Advocate appearing for respondent nos.1, 2 and 4 argued that the very substratum of prosecution case is lost as demand notice on the basis of which the complaint came to be moved was ultimately quashed and set aside by the learned Appellate Court in Municipal Appeal No.5 of 2005 by invoking power under Section 406 of the Bombay Provincial Municipal Corporation Act, 1949.

3. I have carefully considered the rival submissions and perused the record made available. Demand notice dated 7th July, 2005 came to be issued to the contesting respondent alleging evasion of Octroi and amount of Rs.2,89,582/- came to be demanded towards the evasion of Octroi as well as penalty thereon. As the contesting respondent failed to satisfy the dues, the applicant/complainant Corporation lodged the Summary Criminal Case alleging commission of offences under Sections 398 read with 481 of the Bombay Provincial Municipal Corporation Act, 1949. Ultimately on 15th December, 2012, the complaint came to be dismissed for want of prosecution as the complainant failed to remain present even despite receipt of the notice issued on the motion of Court.

4. It was not necessary to dwell upon the issue as to whether proper opportunity of hearing was granted or not to the applicant/complainant because in the meanwhile the contesting respondent had challenged the demand notice by preferring the appeal before the learned Civil Judge, Senior Division Sangli by invoking power under Section 406 of the Bombay Provincial Municipal Corporation Act, 1949 and the same appeal came to be allowed by the Judgment and order dated 16th April, 2013 by the said Court. The demand notice dated 7th July, 2005 which formed the basis of the prosecution came to be set aside by the learned Appellate Court.

5. The parties are not disputing the fact that the order passed in Municipal Appeal No.5 of 2005 on 16th April, 2013 quashing the demand notice has attained the finality. In this view of the matter, no case for grant of leave is made out. The application is therefore rejected.

(A.M.BADAR J.)