

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 59 OF 2005

Tanaji s/o Gangaram Kanote
Age 45 years, Occ. Services
As Octroi Checker, Nanded Waghala
Municipal Corporation, Nanded
R/o. Nanded

...Applicant

versus

Smt. Afsaribagum w/o Yonuskhan
Age major, Occ. Business-Country
Liquor Shop,
R/o. Mill Gate, Nanded

...Respondent

.....
Mr. M.D. Narwadkar h/f Mr. M.V. Deshpande, advocate for the applicant
Mr. H.I. Pathan, advocate for the respondent
.....

CORAM : V. K. JADHAV, J.
DATED : 31st JANUARY, 2019

ORAL JUDGMENT :-

1. The applicant, who is octroi checker of Municipal Corporation, Nanded, has filed this criminal revision application against the judgment and order passed by the Additional Sessions Judge, Nanded dated 4.11.2004 setting aside thereby the order passed by the learned Chief Judicial Magistrate, Nanded below Exh.25 dated 31.7.2003 in S.C.C. No. 2969 of 2001 and allowed the application Exh.25 and further quashed and set aside proceeding of S.C.C. No. 2969 of 2001 pending before the trial court.

2. Learned counsel for the applicant submits that the Additional Sessions Judge has mainly considered the point of limitation for quashing the proceedings of S.C.C. No. 2969 of 2001. Learned counsel submits that in terms of provisions of Section 428 of The Maharashtra Municipal Corporation Act 1949 (hereinafter for the sake of brevity referred to as "the Act of 1949"), no Magistrate shall take cognizance of any offence punishable under this Act, or any Rule, regulation or by-law, unless complaint of such offence is made before him, (a) within six months next after the date of the commission of such offence; or (b) if such date is not known or the offence is a continuing one within six months next after the commission or discovery of such offence. Learned counsel submits that in terms of provisions of Section 435 of the Act of 1949, in computing the period of limitation, the provisions of Sections 5, 12 and 14 of Indian Limitation Act 1908 shall, so far as may be, apply. Learned counsel submits that the Corporation claims that till receipt of monthly report from the State Excise department, Nanded, the Corporation was not aware about importing of liquor by the respondent-accused within the limits of Corporation. Furthermore, the said department has not given the specific date on which the said information was furnished to the Corporation. However, the counsel fairly admits that the Corporation has issued notice on 18.12.2000. Learned counsel

submits that what is relevant is the date of knowledge which is purely a question of fact and the said question of fact has to be decided on proved facts. Learned counsel submits that the respondent-accused has filed an application Exh.25 under Section 258 of Cr.P.C. for stopping the proceeding and thus, the applicant Corporation had no opportunity to prove the defence about the date of knowledge in respect of the said evasion of tax duties.

Learned counsel for the applicant in order to substantiate his submissions placed reliance on the judgment of this Court in the case of ***A.A. Shaikh vs. Motiram Javharmal Bafna and Co. and another, reported in 2014 (1) Bom.C.R. (Cri.) 660.***

3. Learned counsel for the respondent-accused submits that limitation starts from the date on which the offence is discovered. The learned counsel submits that it is not disputed that the applicant Corporation has issued notice to the respondent-accused on 18.12.2000 and even then the complaint bearing S.C.C. No. 2969 of 2001 came to be filed on 7.9.2001 i.e. after more than 8 months of the notice. There is clear cut violation of the provisions of Section 428 of the Act of 1949 and the learned Additional Sessions Judge has therefore, rightly quashed and set aside the proceeding of S.C.C. No. 2969 of 2001 on the point of limitation.

Learned counsel for the respondent in order to substantiate his submissions placed reliance on the judgment of this Court in the case of ***Chief Officer Municipal Council, Osmanabad vs. Smt. Heerabai Wakure and another, reported in 1990 (2) Mh.L.J. 918.***

4. On careful perusal of the record and proceedings, it appears that the applicant Corporation has issued notice to the respondent accused on 18.12.2000. The learned Additional Sessions Judge has considered the point of limitation in terms of provisions of Section 428 of the Act of 1949 from the date of knowledge. It is thus clear that even from the said date the complaint was not filed within six months and as such, cognizance thereof taken by the Magistrate is specifically barred in terms of provisions of Section 428 of the Act of 1949. So far as computation of period of limitation as provided under Section 435 of the Act of 1949 is concerned, the provisions of Sections 5, 12 and 14 of Indian Limitation Act 1908 are applicable for appeal or application referred to in the Chapter and certainly not to the limitation prescribed in the offences.

5. In the case of ***A.A. Shaikh vs. Motiram Javharmal Bafna and Co. and another (supra)*** relied upon by learned counsel for the applicant, this court has considered the question of date of

knowledge and further observed that the date of knowledge is question of facts and same has to be decided upon proved facts. However, in the instant case, the learned Additional Sessions Judge has considered the date on which the Corporation has issued notice to the respondent-accused. Even the same is not disputed by the Corporation. Thus, the question of date of knowledge of any later date is neither pleaded by the Corporation nor taken as a ground to compute the period of limitation from the said date. In view of the same, the aforesaid case relied upon by the learned counsel for the applicant is not applicable to the facts and circumstances of the present case.

6. In the case of ***Chief Officer Municipal Council, Osmanabad vs. Smt. Heerabai Wakure and another (supra)*** relied upon by learned counsel for the respondent-accused, even though in terms of provisions of Section 296(2) of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965, this Court had an occasion to consider the point of limitation, the provisions of the said Act of 1965 as to the limitation are akin to the provisions of the Act of 1949 and it is thus clear that the limitation starts running from the date on which the offence is discovered. In the instant case, even if the date of knowledge, as pleaded by the Corporation is considered, the offence was discovered on 18.12.2000 and even

then the complaint bearing S.C.C. No. 2969 of 2001 came to be filed before the Court on 7.9.2001 i.e. after more than a period of 8 months of the said notice. The learned Additional Sessions Judge has therefore, rightly quashed and set aside the proceedings of S.C.C. No. 2969 of 2001. Thus, I find no merit in the criminal revision application. Hence, the following order:-

O R D E R

Criminal revision application is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

rlj/