

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 760 of 2004

The Kolkata Municipal Corporation.

-Vs-

Larsen & Toubro Ltd.

For the Appellant : Mr. Alok Kumar Ghosh
Mr. Nilanjan Chatterjee

For the Respondent. : Mr. Ayan Bhattacharjee
Mr. Amitava Mitra
Ms. Antara Chowdhury

Heard on : 23.11.2022

Judgment on : 03.02.2023

Ananya Bandyopadhyay, J. :-

1. A Special leave to appeal under Section 378(4) of the Code of Criminal Procedure against the judgment and order dated 08.06.2004 passed by the learned Additional Sessions Judge, 9th Fast Track Court, Bichar Bhavan, Kolkata, allowing the Criminal Appeal No. 2/2004 by setting aside the order of learned Municipal and Metropolitan Magistrate, Calcutta in Case No. 643C of 1996 under Section 202(1)/204 of the Calcutta Municipal Act was granted on 25.11.2004.
2. A complaint was lodged before the Court of Learned Municipal & Metropolitan Magistrate on 13.09.1996 against the respondent company for displaying advertisement through wall painting to

the public view over northern wall of 112 B, Cossipore Road, Without obtaining permission under Section 202(1) of the Kolkata Municipal Corporation Act, 1980 from the Kolkata Municipal Corporation and for non-payment of the advertisement tax under Section 204(1) of the said Act.

3. Subsequently, Mr. Sandip Das, the authorized representative of the respondent company herein was examined under Section 251 of the Code of Criminal Procedure reading out the provisions under Section 202(1)/204 of the Kolkata Municipal Act, 1980 to which he pleaded not guilty and claimed to be tried.
4. The prosecution cited one witness and the defence cited none.
5. The Learned Municipal & Metropolitan Magistrate Court as aforesaid by a judgment dated 30.09.2003 ordered as follows:

“ that the accused company Larsen & Toubro Ltd. is found guilty for committing offence under Section 202(1)/204 of the Calcutta Municipal Corporation Act, 1980, and convicted under Section 255(2) of the Cr.P.C. The accused company is sentenced to pay fine of Rs. 42,400/- (Rupees Forth Two Thousand Four Hundred) Only, according to the provisions of Section 612 of the Calcutta Municipal Corporation Act, in default to D.W.”

6. The aforesaid Court's judgment was based on the consideration that the accused company was responsible for the alleged advertisement displayed by its bona fide agent viz. M/s Joy Enterprises for public views resulting in the increase in the business interest of the accused company, though the alleged

advertisement was displayed by its agent and accordingly was held guilty for not selecting prior permissions from the Kolkata Municipal Corporation.

7. Being aggrieved by the aforesaid judgment dated 30.09.2003 passed by the court of Learned Municipal & Metropolitan Magistrate, Criminal Appeal No. 2 of 2004 was preferred before the learned Additional District & Sessions Judge, 9th Fast Track Court, Kolkata and vide a judgment dated 08.06.2004 the aforesaid Criminal Appeal was allowed, setting aside the order passed in Case No. 643C/96 acquitting the accused/appellant from the charge under Section 202(1)/204 of the Calcutta Municipal Corporation Act, 1980 against which the instant appeal was filed after a grant of Special Leave by this Hon'ble Court.
8. Ld. Advocate for the appellant, Mr. Alok Kumar Ghosh, submitted that Id. Appeal Court while allowing the appeal made certain observations contrary the intent and purport of the issues in dispute which are as follows:

***“a) No where it is stated either in complain or in the evidence by the complaint that the appellant instructed M/s. Joy Enterprises to display such advertisement*”.**

b) Section 207 incorporates a presumptive clause against the person/persons on whose behalf the advertisement purports to be, unless the contrary is proved.

c) As soon as the Learned Trial Court came to the conclusion that the advertisement in

question was made by M/s. Joy Enterprises no adverse presumption can be taken up against the said Company.

d) The learned Magistrate proceeded with the wrong notion that the appellant Company was liable for the act of M/s. Joy Enterprises because the business interest of the company might be increased by such advertisement.

e) Chapter XIV of the Kolkata Municipal Corporation Act does not make any provision holding a Company liable for displaying advertisement by another person or persons even assuming that the business interest of the company is increased by such advertisement.

f) The position could have been otherwise if the complainant was able to show that the accused Company authorized M/s. Joy Enterprises to display such advertisement in public view.

g) If one Company or organization displayed an advertisement in the name of another organization/Company without being duly authorized by the same, the later cannot be held liable for the former.”

9. Ld. Advocate for the appellant further submitted that

“iv) One Sri Sandip Das being the representative of the accused Company held talks with the concerned Department of the Corporation for amicable settlement when the complain was lodged and the notice was issued.

v) That said Sri Das sent a letter to the Deputy Municipal Commissioner, Advertisement forwarded by the local councilors.

vi) On 11.05.2022 (Exhibit-6) the Assistant Licence Officer in response to the said letter of the accused Company requested to meet for discussion to settle the dispute out of Court amicably.

vii) Sandip Das by another letter dated 22.07.2002(Exhibit-7) again requested for settlement of the dispute amicably.

viii) There was a meeting on 15.11.2002 but amicable settlement failed.

ix) The concerned authority of the advertisement department by a letter dated 22.11.2002 (Exhibit-8) asked the said Sri S. Das the representative of the respondent Company to make payment of the dues but no payment was made.”

10. The learned Appeal Court failed to consider the provisions enunciated in Section 207 of the Kolkata Municipal Corporation Act concerning presumption in case of contravention.
11. The learned Advocate for the respondent/company submitted that the High Court can its interfere with an order of acquittal in its limited scope where the said order is perverse or is manifestly illegal and referred to the following cases, viz.,
12. **Khedu Mohton & Ors. Vs. State of Bihar¹.**

“3. It is true that the powers of the High Court is considering the evidence on record in

¹ 1970(2) SCC 450

appeals under Section 417, Cr.P.C. are as extensive as its powers in appeals against convictions but that Court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge has found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal.”

13. **Tota Singh & Anr. Vs. State of Punjab 1987².**

“6. The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW.2 and PW.6 were either unreasonable or perverse. What the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This

² 1987 (2) SCC 529

Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possible arrived at by any court acting reasonably and judiciously and is, therefore liable to be characterized as nerverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence erroneous.”

14. The Ld. Advocate for the respondent company further referred to the decision cited in **S. Guin & Ors. Vs. Grindlays Bank Ltd,(1986 (1) SCC 654 (Para 3 & 4)** emphasizing the fact that it will not be prudent for this Court to interfere with the order of acquittal after a lapse of twenty six years concerning an offence

which is technical in nature without any moral turpitude ascribed to it.

15. It was further argued that in view of the decision cited in **S.K. Alagh Vs. State of U.P. & Ors. (2008) 5 SCC 662 (Para 16)**. The learned trial Magistrate erroneously attributed the concept of vicarious liability applying the provision of presumption under Section 207 of the Kolkata Municipal Corporation Act.
16. It was further submitted by the learned advocate for the respondent company that the conviction could not be sustained under Section 202(1) of the Kolkata Municipal Corporation Act since the same is not penal in nature and no presumption under Section 207 of the said Act can be taken which is attributable to Section 202(4) read with Section 202(5) of the said Act. It was further contended that the charge under Section 204 read with Section 209 of the said Act cannot be sustained. Adverse presumption cannot be drawn on the ground of voluntary participation of the respondent company in a settlement proceeding without prejudice to its rights and contentions.
17. Mr. Sandip Das, the Marketing officer of the respondent company was authorized to represent the same.
18. On his examination under the provision of Section 313 Cr.P.C. certain questions were put to him. The translation of the questions and the corresponding reply to the same are replicated as follows:

Q: Witness in his evidence has stated that in the year 1995-96, M/s Joy Enterprises giving the name of your company had given advertisement in their places, but your company did not give any money to the corporation for that purpose and did not mention any fee and the corporation for the payment of Rs. 21,200/- what do you say in this regard?

Ans: Our L & T Company did not advertise any painting on the wall. It was done by the distributor of the company M/s. Joy Enterprise. Therefore, the company is not liable to pay any money. Corporation can collect fine or advertisement fees from M/s. Joy Enterprise.

Q. From the evidence of the witness it can be seen, regarding the incident you had written many letters to the Corporation on behalf of the L & T Cement Company to resolve the dispute through discussions and also held meetings with the corporation. What do you say about this?

Ans. Yes, but whatever letters I have written to the corporation or had spoken to the same was only on behalf of the distributor. Not on behalf of the L & T Cement Company.

19. On 13.12.1995 the appellant corporation sent a notice to M/s. Joy Enterprise inter alia stating that "it is seen that you have

displayed a good number of advertisements on wall painting). You are liable to pay taxes, in advance under Section 204(1) of the Calcutta Municipal Corporation Act, 1980.”

20. On 23.05.1996 a notice was issued to the respondent company on similar ground, to pay a sum of Rs. 21,200/-. Thereafter, the case No. 643 of 1994 under Section 202(1)/204 of the Calcutta Municipal Corporation Act, 1980 was instituted against the respondent company.
21. The appellant Corporation issued a notice to M/s. Joy Enterprise on 13.12.1995. However, did not initiate any proceeding against the same. The Appellant Corporation relied on such document marked as Ext. 2 but did not cite any plausible explanation to provide respite to M/s. Joy Enterprise and relieved it for reasons persisting within its domain. M/s. Joy Enterprise should have been made a party to the case filed before the Trial Court enabling it to discern the conundrum regarding the relationship between M/s. Joy Enterprise and the respondent company to implicate the same on the ground of vicarious liability and resolve the quandary. If notices were issued to both M/s. Joy Enterprise and respondent company for contravention of the provisions of Section 202(1) & Section 204(1) of the Calcutta Municipal Corporation Act, 1980 on separate dates with a gap of five months involving the same and identical issues what prevented the appellant Corporation to seek explanation from M/s. Joy Enterprise to absolve it from discharging its legal responsibility and thereafter

institute a case against the respondent company is not conspicuous.

22. Ext. 5 and Ext. 7 revealed M/s. Joy Enterprise to be the bona fide stockist of Calcutta (North) for Advertising through wall painting at Cossipore area.
23. The authorized representative of the respondent company during his examination under Section 313 Cr.P.C. acknowledged M/s. Joy Enterprise to be their distributor. The dictionary meaning of the word 'distributor' denotes an agent who supplies goods to retailers and the word 'stockist' means a retailer that stocks goods of a particular type for sale". The word 'retailer' means a person or business that sells goods to the public in retailing small quantities for use or consumption rather than for resale".
24. In view of the above definitions and documents marked as Exts. 5 & 7, M/s. Joy Enterprise was the stockist for advertising through wall painting within a limited jurisdiction of Calcutta (North) as relied upon by the respondent company.
25. In the document marked as Ext. 8 relied upon the respondent company, the Municipal Secretary inter alia observed as follows:

"The Corporation has statutory right to impose fees and charges and taxes for any kind of display of advertisement on any hoarding, kiosk, wall, iron post etc visible from Public Street and place. So any advertise is statutory beyond to pay fees and charges and taxes to the Corporation.

In the instant case, the product of your company has been displayed on wall. As a producer you cannot avoid your obligatory duties to pay taxes etc. to the Corporation. On your failure for doing so a case was initiated in the court of Ld. 2nd Municipal Magistrate. If you clear your dues we shall submit a petition before the Ld. Court to close the same”.

26. The contentions of the appellant Corporation in its communication dated November, 22, 2002 addressed to the respondent company are self contradictory. It has been categorically mentioned any advertiser is statutorily bound to pay fees and taxes to the Corporation. In the next paragraph of the said communication it is stated that the respondent company as a producer is obligated to pay the taxes etc.
27. The appellant corporation failed to establish the respondent company to have advertised its product directly or to have directed M/s. Joy Enterprise to advertise its product on its behalf. The respondent Company's product to have been on display to the public view cannot attract its liability to pay the fees, charges and taxes, without cogent evidence to substantiate such display to have been accomplished at the instance of the respondent company to fall within the purview of Section 207 of the Kolkata Municipal Corporation Act, 1980. It is incumbent upon the prosecution to prove its case, rather than buttress the laches of the opposite party. The appellant company failed to produce any

document whereby the respondent company had authorized M/s. Joy Enterprise to advertise its product on its behalf. It is an admitted fact that M/s. Joy Enterprise has been into business relationship within the respondent company however the extent, role, terms and conditions of such business transactions have not been expressed or mentioned. The appellant company did not cite any corroborative evidence to fortify its case.

28. Under the facts and circumstances of the case, the specific role of the respondent company is indistinct and incomprehensible as to whether it has been directly instrumental in advertising its product or legally entrusted any other agency to advertise its product on its behalf and cannot be held responsible under Section 202(1)/204 of the Calcutta Municipal Act.
29. In view of the above discussions, the appeal is dismissed.
30. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
31. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)