IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 427 OF 2001

Altaf Ahmed Shaikh ..Applicant

Versus

R. B. Desai & Anr. ..Respondents

Mr. Abhay Khandeparkar, Sr. Advocate a/w. Arun Mehta a/w. Aniket Srivastav i/b. M/s. Akshar Laws for Applicant.

Smt. Madhuri More for Respondent No.1.

Mr. Arfan Sait, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 14 SEPTEMBER 2023

JUDGMENT :

1. The Applicant was the original Accused No.2 in case No.1/S/96 before the Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai. At the conclusion of the trial, the applicant was convicted for commission of the offence punishable under section 478 of the Mumbai Municipal Corporation Act (hereinafter referred to as 'MMC Act') and was sentenced to pay a fine of

Rs.500/- and in default of payment of fine to suffer S.I. for three months. The Applicant was also convicted for commission of the offence punishable U/s.478(I)(A) of the MMC Act and was sentenced to pay a fine of Rs.1,75,955/- and in default to suffer S.I. for one year. He was also convicted for commission of the offence punishable U/s.478(I)(B) of the MMC Act and was sentenced to pay a fine of Rs.250/- and in default to suffer S.I. for one month.

2. The Trial Court convicted the accused No.3 M/s. Perfect Transport Company in the similar manner as that of the present applicant. This Judgment and order dated 20.01.2001 passed by the Trial Court was challenged before the Court of Sessions at Greater Mumbai, in Appeal No.27 of 2001. That Appeal was partly allowed. The conviction and sentence of the original Accused No.3 was set aside on the ground that the accused No.3 was not a legal entity. However, conviction and sentences of the present applicant were maintained. The Applicant has challenged both these orders in the present criminal revision application.

3. Heard Mr. Abhay Khandeparkar, learned Senior counsel for the Applicant, Smt. Madhuri More, learned counsel for the Respondent No.1 and Mr. Arfan Sait, learned APP for the State/Respondent No.2.

4. The prosecution case is that, on 05.04.1996 when Shri. Ramesh Arothe who was working in the Octroi Department of the B.M.C. as a Supervising Inspector and his colleague were taking round during night, they observed a truck bearing No.MH04-C-62 parked on R.A.Kidwai road. Its driver could not produce any documents regarding the goods and in particular the documents regarding payment of octroi. The truck and the goods were seized. The Applicant approached the authorities for release of the truck. He also approached this Court by filing a Writ Petition for release of the truck and the goods. Pursuant to the order of this Court, the truck and the goods were released on the applicant's executing his undertaking. The prosecution continued for evasion of octroi and resulted in his conviction, as mentioned earlier.

5. During the trial, the prosecution examined PW-1 Ramesh

Arothe, Supervising Inspector in the Octroi department of the B.M.C. and Shri. Ashok Shelke, Octroi Inspector, as PW-3. The Applicant has not examined himself. PW-2 Vishwanath Shegal was working in the Octroi Vigilance. When his deposition was going on, since he misbehaved and was referring the writing on his palm of his right hand, his further evidence was not recorded. The learned Magistrate then recorded the statement of the applicant. The applicant did not examine himself on oath. The learned Trial Judge accepted the prosecution evidence and in particular relied on the undertaking filed by the applicant accepting that he was the importer, and convicted him. The Appellate Court accepted the reasons given by the trial Court and dismissed the Appeal; as far as the applicant is concerned.

6. Learned Senior counsel Shri. Khandeparkar submitted that, the applicant was a mere transporter and he was not an importer. The prosecution did not make the owner as an accused. Only the owner could be an importer as defined under the said provisions of the MMC Act. Therefore, the observations of both the courts are not correct. Section 478(I)(A) and Section 478(I)(B) as

stood then at the time of commission of offence are as follows:

Section 478-1A. Penalty for evasion of octroi.

Where any articles imported in Brihan Mumbai are liable to the payment of octroi, any person who, with the intention of evading payment of the tax introduces or attempts to introduce or causes or abets the introduction of any such articles within the limits of Brihan Mumbai, upon which payment of octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which shall not be less than five times but which may extend to ten times the amount of the tax payable.

Section 478-1B. Penalty for breach of octroi rules.

Whoever contravenes any provisions of the rules made under section 195-1B or fails to comply with any requisition lawfully made under any such provision shall, on conviction, be punished, for each such offence, with fine which may extend to two hundred and fifty rupees.

7. Those sections are deleted as of today since 2017. Shri. Khandeparkar relied on the admission given by PW-1 in his cross-examination that the applicant was not the importer of the goods.

8. Learned counsel for the Respondent No.1 supported both the impugned Judgments and orders. She submitted that the

evidence of PW-1 and PW-3 sufficiently establishes the offence. The learned Trial Judge has also imposed proper sentence and, therefore, there is no merit in the revision application.

9. I have considered these submissions. The prosecution case is narrated by the PW-1 and it is supported by PW-3. PW-1 has described as to how they seized the truck with goods. There were no documents showing payment of Octroi. There was no satisfactory documentary proof tendered by the driver when the truck was seized regarding payment of octroi. The applicant himself approached the authorities for release of the goods. PW-1 has deposed that the truck was seized during night round on 05.04.1996. They recorded the statement of the driver of the vehicle Shri. Mithailal. One Javed Shaikh attended their office on 06.04.1996, but he was unable to produce any documents connected with the goods. On 08.04.1996, one Altaf Hussein approached their office claiming the goods. Since the goods were claimed by two different persons, they issued letter to the owner of M/s. Perfect Transport Company. The letter was issued on the basis of the documents submitted by the applicant. On 10.04.1996, they

received a letter through Advocate of the applicant. The letter of the Advocate was issued on instructions of the present applicant Altaf Shaikh. It was mentioned in the letter that the applicant was carrying on the business of transportation of goods in the name and style of M/s. Perfect Transport Company. This letter is produced on record at Exhibit P-3. The applicant approached this court for release of the truck. From the record, it appears that, this Court on the Original jurisdiction passed an order dated 18.04.1996 in O. S. W. P. No.745 of 1996 directing the applicant to remain present before the Deputy Assessor and Collector (Vigilance) on 20.04.1996 and comply with all the formalities for the release of the goods. The authorities were directed to release the goods after completion of the formalities and on the applicant's giving a bank guarantee of sum of Rs.50,000/-. After that, the applicant executed various documents which are produced on record collectively at Exhibit-5 which included Minutes recorded by the authorities and the Applicant's undertaking. His undertaking is very crucial in the present case.

In the cross-examination of this witness the questions were asked about the procedure of seizure of the truck. PW-1 stated that the octroi assessed was paid by the applicant after the order was passed by this Court. He denied the suggestion that the applicant did not attempt or evade to pay the octroi duty on the goods. In the last line, there is a stray admission that the applicant was not the importer of the goods in question. PW-3 has supported the evidence of PW-1.

10. The only argument which was strongly made by Shri. Khandepar was in respect of admission given by PW-1. However, it can be seen that, it was a stray admission and it goes against the prosecution case itself. There is no basis for such admission and, therefore, it cannot be taken into account. This admission is actually destroyed by the undertaking filed by the applicant himself. That undertaking is on record and is part of Exhibit-5. The undertaking specifically incorporates his case in paragraph-2 that, he was the transporter/importer of the consignments loaded in the truck No.MH04-C-62 which was intercepted on 05.04.1996 for evasion of octroi and that he requested the Municipal Corporation to levy and recover the octroi due on the said consignments. The

statement of the applicant was recorded by the learned Magistrate in the applicant's defence. It was mentioned that the authorities were demanding exorbitant amount of Rs.3 lakhs, but one time octroi was paid by the applicant by increasing the value of the goods. The octroi was of Rs.35,000/-. This figure is not disputed by the applicant in the trial.

11. Thus, it is clear that, it is the applicant's own case that he was the importer. Under the Bombay Municipal Corporation (Levy) of Octroi Rules, 1965, the 'Importer' is defined as follows:

> "Importer" shall mean the person who imports the articles into Greater Bombay and shall also include the person who owns the articles at the time of the import or whose name is shown in the Import Bill as importer."

12. Therefore, there is no substance in the arguments that, no offence is made out against the applicant. The amount of octroi is also not disputed. Therefore, the Trial Court has imposed minimum sentence as per the said figure. Looking at the case from all the aspects, I do not see any reason to interfere with the impugned order and in particular the order of the Sessions Court

whereby the Appellant's conviction and sentences are confirmed.

13. In view of this discussion, the Application is dismissed and is disposed of.

(SARANG V. KOTWAL, J.)