

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

Criminal Appeal No.1182 of 2006

Municipal Corporation of the
City of Pune,
through Shri Deepak Jagannath
Kulkarni, Age 51 years, Occu.Service,
as Checking Naka Officer of Octroi
Office, Pune

... Appellant
(Orig.Complainant)

Versus

1. M/s V.M. Matere,
Through Vishnu Mahadeo Matere,
Resident of Flat No.7, Plot No.67,
Sukhvani West Building,
Nehru Nagar, Telco Road, Pimpri,
Pune.

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2. Shri Namdeo Gangadhar Padval,
Resident of 141, Neeraj Apartment,
Pimpri, Nehru Nagar, Pune-18.

3. State of Maharashtra,
(Copy to be serviced upon

Learned Government Pleader).

...Respondents

(Nos.1 and 2 Orig.Accused)

Mr Vishwanath Patil a/w Kewal Ahya a/w Laukik Deshmukh
for appellant/PMC.

Ms Meghna Gowalani (appointed Advocate) for respondents
No.1 and 2.

Mr AR Kapadnis, APP for the State.

Coram : R. N. Laddha, J.
Reserved on : 4 October 2023.
Pronounced on : 28 November 2023.

Judgment:

Heard learned Counsel for the parties.

2. The appellant/original complainant has preferred this appeal against the judgment and order dated 11.03.2004 passed by the learned Judicial Magistrate (First Class), PMC Court, Pune, in CC No.3 of 2002. By the said judgment and order, the learned Magistrate acquitted the accused/respondents No.1 and 2 of the offence under Section 398 of the Bombay Provincial Municipal Corporation Act, 1949 (for short, 'the Act') and Standing Order No.28 and Rule 29 of Octroi Rules framed under the Act.

3. It is the case of the prosecution that on 22.09.2001, Mr DJ Kulkarni, a Checking Naka Officer of the Pune Municipal Corporation ('the PMC'), was on duty on Nagar road when the accused imported a Tata Hitachi machine within the Municipal limits of PMC. The accused/respondents No.1 and 2 were asked to provide the original bill and documents to prove the payment of octroi. They presented a delivery-cum-challan bill and octroi receipt dated 31.1.2001 for

Rs.30,141/-. However, upon examining the bill, it was found that the machine's actual value was Rs.36,00,000/-, but the accused had shown the value of the machine as Rs.10,04,700/-. Based on this value, octroi of Rs.30,141/- was paid. The accused were issued a demand notice dated 23.10.2001 through RPAD. Subsequently, they paid the deficit amount of octroi of Rs.41,859/-. Therefore, the prosecution alleges that the accused willfully defrauded the PMC by not paying the requisite octroi. Consequently, Mr DJ Kulkarni, the Checking Naka Officer, filed a complaint before the learned trial Court.

4. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of a witness, namely Deepak Jagannath Kulkarni(PW 1), the Checking Naka Officer, only. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to be thereafter recorded, consisting of denial and false implication. After hearing the learned Counsel for the parties, the learned trial Court acquitted the accused/respondents No.1 and 2.

5. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the appellant/PMC has

preferred this appeal.

6. In order to appreciate the controversy, it will be relevant to refer to Section 398 of the Act, which reads thus:

“Penalty for evasion of octroi or toll : Where any vehicle, animal or goods imported into the limits of the City are liable to the payment of toll or octroi any person who, with the intention of defrauding the Corporation, causes or abets the introduction of or himself introduces or attempts to introduce within the limits of the City any such vehicle, animal or goods upon which payment of the toll or octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which may extend to ten times the amount of such toll or octroi or to two hundred and fifty rupees, whichever may be greater.”

7. After examining the available evidence, it is clear that the appellant/PMC demanded Rs.41,859/- in its notice dated 23.10.2001. The accused received this demand notice on 12.12.2001. The notice stated that if the amount of Rs.41,859/- is not paid, then legal action may be taken against the accused for paying less octroi. However, the accused had already paid this amount on 30.10.2001 and had complied with the notice dated 23.10.2001. This establishes the fact that the accused had paid the balance amount as demanded by the PMC prior to receiving the notice. Additionally, although the alleged incident dates back to 22.09.2001, the complaint

was lodged only on 17.01.2002, after a delay of approximately four months. There is no explanation provided for the delay in filing the complaint. It has been almost 22 years since the alleged incident occurred. The offences in question are only subject to monetary penalties, and the octroi amount was already settled before the demand notice was received.

8. In view of this, there is no merit in this appeal, and the same is liable to be dismissed. Accordingly, this appeal stands dismissed.

[R. N. Laddha, J.]