

State Vs. Shriniwas B. Soni

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Court : Mumbai

Decided On : Aug-20-1963

Reported in : AIR1967Bom200; (1963)65BOMLR839; 1967CriLJ732; ILR1963Bom798

Judge : Shah, J.

Acts : Bombay Municipal Boroughs Act, 1925 - Sections 94(1) and 193A

Appeal No. : Criminal Appeal No. 320 of 1963 and Criminal Appln. No. 49 of 1963

Appellant : State

Respondent : Shriniwas B. Soni

Advocate for Def. : U.R. Lalit, Adv.

Advocate for Pet/Ap. : C.C. Vaidya, Asst. Govt. Pleader

Judgement :

(1) The State has filed this appeal against the order of acquittal passed by the learned Special Judicial Magistrate, First Class, for municipal cases at Sholapur, in favour of the accused Shriniwas B. Soni, who was charged with an offence under section 94 r/w section 193-A of the Bombay Municipal Boroughs Act, 1925. The case for the prosecution was that the accused was a yarn dealer doing business within the municipal limits of Sholapur. Suspecting that a large number of bales of

yearn were imported by the accused and brought within the octroi limits of Sholapur Municipality, without payment of octroi chargeable thereon the Chief Officer of the Municipality by notice (Ex. A) dated 24th July 1962, called upon the accused to supply to him information about the number of bales of yarn imported by him during the period from 1st April 1961 upto the date of the notice and other information in connection with those bales. The Octroi Superintendent reported to the Chief Officer on 21st August 1962, that no reply to the aforesaid notice was received from the accused. The Chief Officer then applied for necessary sanction as required by the Municipal Boroughs Act to prosecute the accused and this sanction was obtained on 27th August 1962. the present complaint was then filed by the Municipal Prosecutor narayan Keshav Shinde on 1st September 1962, charging the accused with an offence under S. 94 read with section 193-A of the Bombay Municipal Boroughs Act, 1925. The learned Magistrate was of the view that the notice issued by the Chief Officer dated 24th July 1962, was vague and that, therefore, the accused was not bound to send the information called for by that notice. The learned Magistrate accordingly held that the accused was not guilty of the offence charged against him and acquitted him thereof. It is against this order of acquittal that the State has filed the present appeal in this Court.

(2) In support of this appeal is was urged by Mr. Vaidya, the learned Asstt. Government Pleader, that the learned Magistrate was entirely in error in holding that the notice by the Chief Officer was vague. He contended that the notice in question was given in strict compliance with the provisions of section 94 of the Bombay Municipal Boroughs Act and that the Chief Officer had not called for any particulars from the accused, which were not warranted by the terms of that section. In order to appreciate this contention, it is necessary to reproduce the notice at this stage.

'This is to inform you that you has imported the yarn bales within the limit of the Sholapur Municipality from 1-4-1961. It is suspected that the Octroi duty on the same was not completely recovered. Hence the following information re; the imported yarn bales should be supplied to this office for setting right the matter.

1) Bale No. and Count, 2) The date on which the bale is imported. 3) The price of the bale, 4) Bale number of the owner and the date and total amount. 5) Octroi receipt number, if octroi is paid or escort receipt number and date. The vouchers, receipts of octroi duty paid etc. for the above details and the other original papers and the account books be shown.'

Now, Section 94 of the Bombay Municipal Boroughs Act 1925, which authorises the Chief Officer of a Borough Municipality or an Officer authorised by him in that behalf to call for certain information with regard to imported goods on which Octroi is payable, so far as material, runs as follows:

'94 (1) A person bringing into or receiving from beyond the Octroi limits of a Municipal borough any animal or goods on which octroi is payable shall when required by an office authorized in this behalf by the Chief Officer and so far as may be necessary for ascertaining the amount of tax chargeable,.

(a) permit that officer to inspect, examine, weigh, and otherwise deal with such animal or goods, and

(b) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature, which he may possess relating to such animal or goods.

(c) xx xx xx xx.'

(3) It clearly appears from the wording of the section that not only an office authorized by the Chief Officer but also the Chief Officer of the borough Municipality himself has power to call upon a person bringing into or receiving within the octroi limits of a municipal borough, any goods on which octroi is payable, to communicate to him any information relating to such goods, in order to enable him to ascertain the amount of tax chargeable on such goods. Such information in the present case would necessarily include the number of bales and the count of yarn. It will also include the date on which the bales were imported and the price of each bale. It will also include the number of the bill issued by the vendor of the bales together with its date and the total amount paid or payable in

respect thereof. Such information in case of any octroi having been paid, would also include the receipt number of such payment and the date thereof. Thus, so far as the notice in the present case is concerned, the information specifically required to be furnished by the accused in respect of the bales alleged to have been imported by him during the period mentioned in the notice does not go beyond the scope of S. 94 (1) of the Bombay Municipal Boroughs Act. It is, therefore, difficult to understand as to how the learned Magistrate could be of the view that the notice issued by the Chief Officer to the accused was vague. In my opinion, the learned Magistrate was not right in holding that the notice was vague and that therefore the accused by failing to comply with that notice had not committed any offence under S. 193-A of the Act.

(4) Mr. Lalit, the learned advocate for the accused, however, did not contend that the notice was vague as held by the learned Magistrate. His contention was that the provisions of S. 94 (1) of the Bombay Municipal Boroughs Act only applied at the time of the introduction of the goods into the octroi limits of a municipal borough and that they would have no application after the goods had passed into the town within those limits either after or without making payment of octroi chargeable thereon. He urged that the Naka karkun was a person authorised by the Chief Officer for the purposes of S. 94 (1) by the bye-laws of the Sholapur Municipality and that, since the Naka Karkun could exercise the powers conferred by that section only at the octroi Naka where he would be on duty, the provisions of the section would not apply after the goods chargeable with octroi had passed into those limits. Mr. Vaidya, the learned Assistant Government Pleader for the State, invited my attention to a Judgment of the learned Chief Justice in Criminal Reference No. 77 of 1962 (Bom), State v. Keshawalal Virchand Shah, decided on 10-12-1962 and submitted that the contention raised by Mr. Lalit in the present case was impliedly answered by the learned Chief Justice in that case. It appears that in that Reference the contention that was raised on behalf of the accused was that under S. 94 (1) the municipality could call for information only with regard to the specific goods which had been imported and had no power to ask for information as to what goods had been imported. The learned Chief Justice did not accept that contention and observed as follows:

'The better view in my opinion, is that under Clause (b) it is open to the Municipality to call for information in respect of goods on which octroi is payable i.e. goods which are liable to payment of octroi. The Municipality can, therefore call for information even in respect of goods which have escaped the tax and in respect of which the Municipality does not possess all the information so as to enable it to determine the correct amount of tax chargeable.'

These observations of the learned Chief Justice make it clear that the provisions of S. 94 (1) of the Act, can be availed of by the Municipality in cases where it is suspected that some goods chargeable to octroi had surreptitiously passed into the octroi limits of the Municipality. The decision of the learned Chief Justice would certainly imply that the powers conferred by S. 94 (1) of the Act, upon the Chief Officer can be exercised not only at the time when the goods chargeable to octroi are introduced within the octroi limits of the borough municipality but also after they have passed those limits and are received by the owner thereof in his shop or godown, as the case may be. Mr. Lalit, however contended that the point he had taken before me was not specifically taken before the learned Chief Justice in that Reference and that, therefore, it was necessary that it should receive fullest possible consideration in the Court before it could be finally decided. In my opinion, however even after giving the fullest possible consideration to all the arguments advanced by Mr. Lalit in support of his contention with regard to the construction of S. 94(1), it is difficult to accept that contention.

(5) Section 94(1) does not refer to any particular point of time when the powers conferred by that section can be exercised. In other words, the sub-section does not say that the Chief Officer or the Officer authorised by him may call for information envisaged by him any call for information envisaged by Clause (b) in relation to goods brought within the octroi limits of a borough Municipality and chargeable to octroi only at the time of the introduction of those goods within the octroi limits of municipal borough. Wherever the intention of the legislature was that something was to be done at the time of the introduction of the goods within the octroi limits, it has specifically so mentioned. For instance, under S. 96 of the Act, which provides penalty for evasion of octroi, it is specifically provided that any person who with the intention of defrauding the municipality, causes or abets the

introduction of or himself introduces or attempts to introduce within the octroi limits of the said borough.. . The offence contemplated by this section, it will appear, is committed at the time of the introduction of the goods which are liable to the payment of octroi within the octroi limits of the municipal borough i.e. at the Octroi Naka itself. Similarly, S.99 of the Act, provides for keeping account current of any person, mercantile firm or public body in lieu of levying octroi on introduction of goods by such person, mercantile firm or public body within the octroi limits of a borough municipality and in the course of the provision it refers to the time at which the octroi is paid. It says:

'The standing committee, it thinks fit, instead of requiring payment of octroi due from any person, mercantile firm or public body to be made at the time when the animals or goods in respect of which the octroi is leviable are introduced within the octroi limits of the municipal borough, may at any time direct that an account current shall be kept on behalf of the municipality of the octroi so due from such person, firm or body. '

From the words of this part of the section it will appear that the payment of octroi is to be made at the time of the introduction of the goods or animals within the octroi limits of the municipal borough. Here, again, there is a specific mention of the point of time at which the octroi chargeable on any goods is to be paid, that is to say, it is to be paid at the time of the introduction of the goods within the limits of the municipal borough i.e. at the Octroi Naka. No such words or expressions are used in S. 94 (1) of the Act. That sub-section refers only to the liability to comply with the requisitions of the Chief Officer or the officer authorized by him of a person bringing into, or receiving from beyond, the octroi limits of a municipal borough any animals or goods on which octroi is payable. It does not say that the requisitions contemplated by that sub-section can only be made at the time of the introduction of the goods or animals within the octroi limits at the octroi naka. The sub-section is worded in general terms and the requisitions contemplated by that sub-section can be made upon any person, who has received or brought within the octroi limits of a borough municipality any goods on which octroi is payable either at the time when the goods are introduced within the octroi limits or after they have passed into the octroi limits, and the duty to comply with such requisitions is cast upon the

person receiving such goods within the octroi limits or bringing them within those limits.

(6) Further, the expression 'Person receiving into octroi limits' in my opinion, is a significant one. It cannot be said that every merchant doing business in a municipal borough, should himself go to the octroi naka every time he imports goods from beyond the octroi limits for the purpose of his business, to bring them into the octroi limits of the town. he may be just sitting in his business premises, and receive the goods which may be brought to him by his servants or agents by some means of transport. If the operation of Section 94 (1) were to be confined only to the information being called for at the time of the introduction of the goods at the octroi naka, the expression 'person receiving the goods within the octroi limits' would militate against that construction. In my view, therefore, the scope of that section cannot be limited to a point of time when the goods chargeable to octroi are introduced within the octroi limits of the borough municipality. The construction contended for by Mr. Lalit would defeat the very purpose of the Act, since it is well known that goods are frequently imported within the municipal limits without payment of octroi. It is only with a view to meeting this contingency that sub-section (1) of S. 94 of the Act, empowers the Chief Officer or an officer authorized by him to call for necessary information from the person who has brought or received within the octroi limits goods on which octroi is payable but which has not been paid, in relation to such goods so as to enable him to ascertain the amount of tax chargeable on such goods. In my judgment therefore, there is no substance in the contention raised by Mr. Lalit.

(7) It was next contended by Mr. Lalit that non-compliance with the notice issued by the Chief Officer to the accused did not amount to an offence so that it could attract the penalty provided in S. 193-A of the Bombay Municipal Boroughs Act. He urged that by non-compliance with the requisitions contained in the notice of the Chief Officer, the accused did not omit to do or do any act in contravention of any provision of the Act or of any of the bye-laws made under the Act. In other words his contention was that neither the notice of the Chief Officer nor the requisitions contained in that notice, amounted to 'a provision of the Act' and that therefore, his client by failing to comply with that notice had not committed any

offence. In my opinion, there is no substance in this contention. Section 193-A undoubtedly provides a penalty for whosoever does or omits to do an act in contravention of any provision of the Act. Whenever we speak of a provision of the Act, however, it would include anything required to be done by an appropriate authority in exercise of the power conferred by any of the provisions of the Act. Section 94 (1) empowers the Chief Officer of a borough municipality or an officer authorized by him to call for certain information with regard to the goods imported by any particular person within the octroi limits for the purpose of ascertaining the amount of tax chargeable on such goods, and it also imposes a duty upon such person to supply information. This is certainly a provision of the Act, and it is in exercise of the power conferred by that provision that the Chief Officer issues a notice upon any such person calling upon him to supply information falling within the terms of the section. Such notice would be tantamount to a provision of the Act itself, and if such person fails to comply with that notice and does not supply the requisite information, he would be said to have omitted to do an act in contravention of the provision of the Act. Accordingly, it is not possible to accept Mr. Lalit's contention and the accused would certainly be held guilty of having failed to comply with the Chief Officer's notice and punishable under S. 193-A of the Act.

(8) In the result, the appeal will be allowed. The order of acquittal passed by the learned Magistrate shall be set aside and the accused shall be convicted of the offence under Section 94 read with Section 193-A of the Bombay Municipal Boroughs Act 1925, and sentenced to pay a fine of Rs. 30 in default to suffer simple imprisonment for ten days.

(9) Appeal allowed.