

**Emperor Vs. Visram Valji**

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**SooperKanoon Citation :** [sooperkanoon.com/339576](http://sooperkanoon.com/339576)

**Court :** Mumbai

**Decided On :** Nov-28-1934

**Reported in :** (1935)37BOMLR102

**Judge :** John Beaumont, Kt., C.J. and ;N.J. Wadia, J.

**Appeal No. :** Criminal Application for Revision No. 330 of 1934

**Appellant :** Emperor

**Respondent :** Visram Valji

**Judgement :**

John Beaumont, Kt., C.J.

1. These are applications in revision in which the applicant applies against his conviction by the Special Magistrate, First Class, Broach, under Section 96 of the Bombay Municipal Boroughs Act (XVIII of 1925). He was convicted in twelve different cases and fined Rs. 50 in respect of each conviction. In ten of the cases the convictions were upheld by the Sessions Judge and in the other two cases the Sessions Judge has made a reference to this Court as he thought that the convictions were not justified.

2. The Bombay Municipal Boroughs Act, 1925, in Section 61 gives power to a Municipality to make bye-laws. Then by Section 73, Sub-section (5), a Municipality may impose a terminal tax on goods imported into or exported from the terminal

tax limits. Then Section 95 provides that an officer demanding octroi by the authority -of the Municipality shall tender to every person introducing or receiving anything on which the tax is claimed, a bill specifying the animal or goods taxable, the amount claimed and the rate at which the tax is calculated. Then Section 96, which is the section under which the prosecution was launched, provides that where any animal or goods passing into a municipal borough are liable to the payment of octroi, 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 any such animal or goods upon which payment of the octroi due on such introduction has neither been made nor tendered, shall be punishable with fine. The Broach City Municipality have made a by-law which in substance carries out the terms of Section 96 of the Bombay Municipal Boroughs Act, 1925. It provides that every person who with the intention to defraud the Municipality causes or abets the introduction of, or himself introduces or attempts to introduce, within the terminal tax limits and every person who with like intention causes or abets the removal of or himself removes or attempts to remove out of such limits any goods which are liable to the terminal tax but upon which payment of the proper amount of terminal tax has neither been made nor tendered, or who in any manner wilfully defrauds or attempts to defraud the Municipality of its terminal tax revenue or abets any such fraudulent act or attempt shall, upon conviction before a Magistrate, be punished with fine. The Broach City Municipality has also made certain rules many of which would be relevant on a consideration of the question whether the present applicant is liable to tax ; but, in the view which I take of the matter, it is not necessary to consider these rules in any detail, I would, however, note in passing that rule (4) provides that the terminal tax shall be payable on import and shall be paid to the Naka Karkun on his tendering a terminal bill for the same ; and it is admitted in this case that in fact no terminal bill has been tendered.

3. Now the facts giving rise to the prosecution are that the applicant who is a contractor agreed to do certain work in connection with the new Narbada Bridge which is being constructed by the B. B. & C. I. Railway Company over the river Narbada, the bridge being just, outside the limits of the Broach Municipality. Certain goods to be used in connection with the contract were consigned to the

applicant at Broach railway station which is alleged by the-prosecution to be within the terminal tax limits, and then those goods were sent on by rail to the Narbada Bridge siding which is outside the terminal tax limits. That was the position in the ten cases in which the convictions were upheld by the Sessions Judge ; but in the other two cases the goods were consigned direct to the Narbada Bridge siding. The contention of the applicant has always been that in the circumstances he was not liable in respect of these goods for any terminal tax, since the goods were never in fact consigned to him, within the terminal tax limits, but were really consigned to him at the Narbada Bridge siding. His further contention is that if any tax is payable on the goods, the party liable is the railway company and not himself, because he alleges that under his contract with the railway company the goods become the property of the railway company. These questions are questions which may require the attention of a civil Court. But I can see not the slightest ground for suggesting that the contentions were not put forward bona fide. Everything has been done by the applicant quite openly, and there was no-attempt made to conceal any of the facts from the municipal authorities or to remove any goods surreptitiously from within the terminal tax limits. The question, therefore, is whether in denying the liability to the tax the accused can be charged with having done something with intent to defraud the Municipality. The view taken by the learned Sessions Judge is that the claim of the applicant to be exempt from the tax is not well-founded, and that therefore he has endeavoured wrongfully to deprive the Municipality of their tax and that the intention to defraud the Municipality must be inferred. I am unable to accept that view. If it is right, it seems to me that every defendant in a suit on a money claim, who bona fide sets up a defence which fails, could be said to intend to defraud the plaintiff, which seems to me a misuse of language. I think an intention to defraud, which no doubt generally has to be inferred from the conduct of the accused, must necessarily involve something in the nature of cheating. Section 96 and the bye-law made under it postulate that the Municipality is entitled to the tax, and anybody who seeks to deprive it of that tax by wrongful means can be charged. But a bona fide allegation-that the tax is not payable, which allegation is subsequently proved to be ill-founded, cannot justify a finding that there was an intention to defraud. I do-not mean to suggest that the setting up of a claim of right to exemption from the

tax would necessarily be conclusive in showing that there was no intention to defraud. I can well imagine cases in which it might be held that the claim to exemption was not made bona fide and that the conduct of the accused showed an intention wrongfully to deprive the Municipality of a tax justly due. But to my mind, to justify a conviction, facts must be proved from which the Court can infer that there was an intention to defraud, that is to say, in some way to cheat the Municipality out of their tax.

4. Mr. Coyaji for the opponent Municipality has referred to a decision of this Court in *Emperor v. Harjivan Valji* (1925) 28 Bom. L.R. 115, The facts of that case are quite different from the facts of the present case, and the decision can, therefore, be distinguished. But I feel bound to say that I am quite unable to follow or adopt the reasoning of Mr. Justice Fawcett. He considers that the word 'defraud' is popularly used in a sense which differs from its legal sense and that a man may be said in a popular sense to intend to defraud whenever he resists a claim which is well-founded in law, and that in this statute the word is used in its popular sense. I do not agree with the learned Judge. To my mind 'defraud' always denotes some form of dishonesty. But even if the learned Judge were right in thinking that the expression 'intend to defraud' has one meaning in law and another in popular usage, I fail to see why the Court should give to the expression its popular, rather than its legal, meaning in a penal statute as against an accused person. Such a construction infringes the principle that penal statutes must be construed strictly. In my opinion in the present case there is no reason whatever for thinking that the claim of the applicant to be exempt from the tax is not bona fide, and no intention to defraud is proved. Whether the claim is well-founded or not, I do not propose to consider. In my opinion there being no intention to defraud, the convictions were wrong and must be set, aside. Fines to be refunded.

**N.J. Wadia, J.**

5. I agree.