

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.223 OF 2018

The Assistant Commissioner Nashik
Municipal Corporation ... Applicant
Versus
The Director / Manager
Mobile Telecommunication Limited and anr. ... Respondents

Mr. Rupesh Lanjekar for Applicant.
Mr. Raveen Palekar for Respondent No.1 (through VC)
Ms. Rashmi Tendulkar, APP for Respondent-State.

CORAM : M.M. SATHAYE, J.

DATE : 10 SEPTEMBER, 2026

P.C. :

1. Heard the learned Counsel for the parties.
2. The Applicant Municipal Corporation is seeking leave to file challenging the order of acquittal of Respondent No.1 as a result of order dated 05.04.2017 passed by the Jt. Judicial Magistrate First Class, Nashik in S.C.C. No.3119 of 2011 by which the complaint was dismissed for default.
3. Learned Counsel for the Applicant submitted that for only absence on two days (stated in the impugned order), the complaint has been dismissed while the earlier roznama shows that the complaint was diligently attended.
4. Learned Counsel for Respondent No.1 – accused submitted that

the amount of octroi has already been paid, however, only on the issue of penalty, the complaint was filed in 2011 and which remained pending for a long time and the witness for the Petitioner Corporation himself did not remain present for cross examination, therefore the complaint was rightly dismissed for default.

5. I have considered the rival submissions and perused the record.

6. Respondent-Accused has been acquitted way back in April 2017. The complaint itself shows that Respondent No.1-accused had paid the octroi dues amount of Rs.1,62,268/- by a cheque and after its recovery, a demand notice was sent charging 10 times penalty. On an allegations that the penalty amount was not paid, the complaint was filed under Sections 398, 399 and 481 of the Bombay Provincial Municipal Corporations Act, 1949 (as it then existed) and Rule 40 of Nashik Municipal Corporation (Octroi) Rules, 2005.

7. I have perused the roznama. It appears that the Petitioner had filed an Affidavit of examination in chief and Documents in March 2016. It further appears that from December, 2016 onwards, Respondent No.1 accused was not present; therefore, bailable warrant was issued. After securing the presence of Respondent No.1, the representative of the Petitioner – Municipal Corporation or its witness remained absent on 22.02.2017 and 08.03.2017. On these two dates, the accused was present, however, the Applicant was not present.

8. Learned Magistrate has already considered the long pendency of the complaint and the fact that it was was not further prosecuted

on the said two dates. From the roznama, as explained above, it appears that the Petitioner – Complainant or his witness was not present for cross-examination. Therefore, the complaint has been dismissed for want of prosecution.

9. Considering the nature of offence involved and the fact that the octroi amount has already been paid and further considering the fact that the Municipal Corporation, despite having its staff and machinery at its disposal, did not prosecute the complaint and did not keep the witness present for cross-examination, the order of dismissal passed by the Magistrate does not require interference.

10. In that view of the matter, no case for leave is made out.

11. The Criminal Application is rejected. Leave is refused.

(M.M. SATHAYE, J.)