

RCC No. 243/2008
State/Shailendra Singh

Order Below Exh. 172
(Passed on 10.02.2023)

Accused No. 8 Shailendrasingh Kiransingh Sisodiya has filed application for discharge u/sec. 239 of Cr.P.C..

2. It is averred in the application that the applicant /accused No. 8 was in service in Agenta Motors at Medical Square, Nagpur. It is alleged against him that he imported vehicles in the city of Nagpur by evading Octroi. It is the case of prosecution that in order to evade octroi in furtherance of common intention with Octroi agent, the accused had forged the receipt which were issued by the Corporation on account of recovery of octroi for Onions. Therefore, Crime No. 165/99 registered for the offence punishable u/sec. 420, 467, 468, 471, 114 r/w 34 of IPC.

3. It is further averred in the application that applicant was the employee of M/s. Agenta Motors and the role of applicant was to give money to the Agent who deposit octroi at the Naka and the Agent submit receipt for the same. The Authorities have collected receipts which are in the name of Dhiraj Godghate who was Commission Agent and he used to deposit Octroi on every Truck of the Dealer. He did conspiracy with NMC employees and committed the alleged fraud.

4. It is further averred that the police authority has recorded the confessional statement of accused No. 1 Dhiraj Golghate and also recorded the statement of witnesses. They have not mentioned involvement of

accused No. 8 in the alleged crime in their statements. The applicant has lodged FIR on 29.09.1999 against accused No. 1 Dhiraj and others which was registered as Crime No. 196/99 for the offence punishable u/sec. 420, 468, 471 of IPC at Imamwada Police Station, Nagpur. It is revealed from the Charge Sheet that main culprit is accused No. 1. However, police authority falsely implicated accused No. 8 in the present case. There is no sufficient ground to proceed against accused No. 8. There is no prima facie case made out against accused No. 8. He has not committed any illegal act. There is no documentary evidence against him. There is no link or nexus between the accused No. 8 in the alleged crime. Hence, it is prayed that accused No. 8 be discharged.

5. The learned APP has filed say and resisted the application. It is contended that accused was working at Aditya Agency. He alongwith other accused manipulated the Octroi receipts and on the basis of forged receipt paid octroi only of Rs. 100/- and grabbed the remaining amount, and thereby committed the alleged offence. The accused is involved in the crime. Case is pending since 2008. However, charge is yet not framed. Present application is filed only with intention to delay the trial. Hence prayed that application be rejected.

6. Heard Ld. Adv. for accused No. 8 and A.P.P.. From rival contentions of both the parties, following points arise for my determination, my findings thereon with reasons are as under :-

Points	Findings
1. Whether accused No. 8 is entitled for discharge ?	... In the negative.
2. What order ?	... As per final order.

REASONS

7. Perused documents on record. Charge sheet No. 36/2000 is filed on 15.05.2000 against accused No. 1 Dhiraj Golghate, accused No. 2 Rajiv Kohale, accused No. 3 Nikhil Kusumger, accused No. 4 Prakash Jain, accused No. 5 Harish Munot (discharged), accused No. 6 Jawahar Rawal, accused No. 7 Y. Jagannathan, accused No. 8 Shailendrasingh @ Bablu (present applicant), accused No. 9 Doma Kamble, accused No. 10 Ashok Junghare(abated) and accused No. 11 Sudhakar Hud(Abated), accused No. 12 Anil Somkuwar, accused No. 13 Dnyaneshwar Gaikwad, accused No. 14 Shankar Ukad and accused No. 15 Harilal Tambe (abated). It is alleged against accused No. 1 to 15 that in furtherance of their common intention, statutory obligation of paying octroi duty was not fulfilled by accused No. 1 to 15 and they misrepresent goods as "Onion" and not "30 vehicles Luna" for which Rs. 6000/- octroi duty was required to be paid however, they paid only Rs. 100/- evaded to pay octroi duty as per rule and thereby committed an offence of cheating and forgery and therefore charge sheet is filed against them for the offence punishable u/sec. 420, 467, 468, 471, 114 r/w 34 of IPC.

8. The learned adv. for accused No. 8 argued that he is not at all involved in the alleged offence. Accused No. 1 Dhiraj Golghate was the Commission Agent. He used to deposit the amount on every Truck of the dealers and used to collect the receipts and deposited to the Accountant of the dealer. Accused No. 1 did conspiracy with NMC employee and committed alleged fraud. Further he has argued that accused No. 8 lodged complaint at Imamwada Police Station against accused No. 1 Dhiraj Golghate which is registered as C.R. No. 196/1999. He has filed copy of

FIR No. 116/99 dated 29.09.1999.

9. I have perused copy of FIR No. 196/99 dated 29.09.1999. It shows that said FIR filed by complainant Harish Amol Munot who was owner of Ajay Motors Private Limited having showroom and workshop of Kinetic Engineering Motors and Bajaj Depo Limited situated at Medical chowk, Rambag Road, Nagpur. It has specifically stated in the FIR that accused No. 8 Shailendra Sisodiya was the Manager of Ajay Motors Pvt. Ltd.. According to accused No. 8 on 27.09.1999, 30 vehicles TFR Luna of Kinetic company sent by Truck No. MH12/UA-4006 and reached at their showroom on 28.09.1999. On 28.09.1999 the concerned officer of NMC handover receipt of Octroi mentioning goods as "Onion" thereon and octroi duty of Rs. 100/- only. It has further stated in the FIR that for octroi duty amount of Rs. 37,400/- already paid to Agent accused No. 1 Dhiraj Rambhau Golghate. However, he did not deposit octroi duty and cheated them and therefore FIR registered against him for the offence punishable u/sec. 420, 468 and 471 of IPC.

10. Prosecution has filed show cause notices issued to the accused, invoices, bill for octroi slips. It appears that in the column of description of goods in octroi slips, goods mentioned as "Onion" and scribing the word "Onion" written word "Luna". It prima facie shows that octroi receipts were manipulated and forged. It prima facie appears that accused No. 1 has manipulated the said receipts and being employee of Ajay Motors Pvt. Ltd., or Ajanta Motors Pvt. Ltd. present accused has knowledge about the said manipulation. Merely filing statement of account, showing that amount was already paid to the Agent for paying octroi duty is not sufficient. It is necessary to find out whether accused No. 8 was also getting commission

in evasion of octroi duty and whether he was also involved in the alleged offence.

11. Admittedly, company is not impleaded in the charge sheet however, that is not the ground to discharge the accused for cheating and forging the documents for evasion of octroi duty. Though later on owner/Manager of Ajay Motors Pvt. Ltd. has filed FIR against accused No. 1 for the offence of cheating and forgery, merely filing of FIR cannot be a ground to discharge accused from the present case. Whether accused was actively involved in the alleged offence or not, it can be find out during the trial. Fact finding trial is very necessary hence, at this stage I am not inclined to discharge the accused No. 8 from the present case. Hence I answer the point No. 1 accordingly.

As to Point No. 2 :-

12. In view of discussion about point No. 1, I pass the following order :-

ORDER

Application is rejected.

Nagpur.
Date :10.02.2023

(S.T. Dande)
Chief Judicial Magistrate,
Nagpur.