

**(1981) 12 BOM CK 0004**

**Bombay High Court**

**Case No:** Criminal Revision Application No's. 366 and 367 of 1981

Dombivli Municipal Council

APPELLANT

Vs

Sundrabai Khimji Chedha (Smt.)  
and Khimji Palan Chedha and  
Another

RESPONDENT

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**Date of Decision:** Dec. 3, 1981

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 473
- Limitation (Amendment) Act, 1965 - Section 5
- Limitation Act, 1963 - Section 10, 11, 12, 13, 14
- Maharashtra Municipalities (Amendment) Act, 1965 - Section 296, 296(2), 299
- Maharashtra Municipalities Act, 1956 - Section 137, 139, 296(2), 299

**Citation:** (1982) 1 BomCR 126 : (1982) 84 BOMLR 109

**Hon'ble Judges:** M.P. Kanade, J

**Bench:** Single Bench

**Advocate:** S.R. Chitnis, for the Appellant; J.C. Rajani and L.D. Nandu, for the Respondent

**Final Decision:** Allowed

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**Judgement**

M.P. Kanade, J.

The identical questions of facts and law are involved in these two criminal revision applications, hence they are heard together and disposed of by a common judgment. The facts leading to the Criminal Revision Application No. 366 of 1981 are that the petitioner is a Dombivli Municipal Council, duly constituted authority under the Maharashtra Municipalities Act, 1965. The respondent is the owner and the Proprietor of the shop under the name and style, "M/s. S.K. Cheda & Co." carrying on business at Pitre Chawl, Phadke Road, Dombivli (East). In the course of the business activities the respondent has been bringing and/or importing goods on which octroi is leviable. The respondent is bound to pay in law the correct octroi duty to the

petitioner.

2. It is the petitioner's case that by the end of the year 1977, it was noticed that respondent No. 1 has failed to pay proper octroi duty on certain goods and evaded the payment thereof imported within the municipal limits between September 16, 1977 to September 25, 1977. In order to ascertain the said facts, the petitioner-complainant called upon the respondent to furnish the particulars on the goods imported, their value, tax and octroi if paid on the same goods. In spite of such a requisition the respondent failed to furnish the particulars that were demanded by the petitioner-complainant. It appears that the petitioner wrote a letter to the manufacturers, wholesale distributors requesting them to give details of the goods supplied by them to the respondent in the relevant period. On the basis of the information received by the petitioner-complainant, the liability of the respondent towards the octroi duty was ascertained for the goods imported for which either less duty was paid or not on certain goods. After having ascertained the correct fact, the petitioner issued a notice dated August 8, 1978 to the respondent along with a demand bill asking for octroi duty. The respondent failed and neglected to pay the dues as per the notice and the demand bill. The notice was replied by the respondent on August 20, 1978. By the said reply the respondent requested the petitioner-complainant to put forth the case before the standing committee of the petitioner. In accordance with the request of the respondent, the petitioner-complainant called the meeting of the standing committee and the respondent was requested to appear before the standing committee meeting to be held on September 27, 1978. The respondent appeared before the standing committee but could not satisfy the members of the standing committee, so as not to take legal steps against the respondent for evasion of the octroi duty. The petitioner-complainant by their letter dated September 28, 1978 again called upon the respondent to comply with the notice and the demand bill dated August 8, 1978. By a Resolution No. 98(15) of the standing committee of the municipality, it was resolved that all legal steps against the respondents be taken and in that regard the President of the municipality was authorised to do or take such other further steps. In pursuance of the said resolution the President of the Municipal Council directed the then Chief Officer to institute a criminal case against the respondent u/s 137 read with sections 139 and 299 of the Maharashtra Municipalities Act, 1965. It is, therefore, the petitioner instituted Criminal Case No. 21 of 1979 against the respondent No. 1 Smt. Sundrabai and Criminal Revision Application No. 366 of 1977 in the Court of the Judicial Magistrate, First Class, Kalyan. Along with the complaint by way of precaution, the petitioner complainant filed an application u/s 473 of the Criminal Procedure Code, requesting the Court for taking cognizance of the offence after condoning the delay in instituting the said criminal proceeding. It appears that the learned Magistrate ordered that the Municipality has made out the case for condonation of delay and that the delay was condoned and the case was registered and the process was ordered to be issued against the respondents for offences u/s

137, 139 and 299 of the Maharashtra Municipalities Act, 1965.

3. The respondents appeared before the Court through their Advocates. The respondents filed an application May 5, 1980 praying that the complaint filed by the petitioner is time-barred and the prosecution is barred by the provisions of section 296(2) of the Maharashtra Municipalities Act, 1965 as it is fell beyond statutory period of six months. It is further prayed that the provisions of section 473 of Criminal Procedure Code, cannot be invoke for extending the period of limitation. It appears that the learned Magistrate by an ex parte order dated January 2, 1979, held that there is a sufficient cause to condone the delay and thereafter ordered to issue process against the respondents. The said application of the respondent dated May 5, 1980 was opposed by the petitioner by their reply dated May 26, 1980. It was contended by the petitioner that the order of extension of period of limitation dated January 2, 1979 cannot be reversed, cancelled or altered except by an appropriate order from the higher authority. It is further contended by the petitioner in para 4 of the reply that the accused was called upon to pay the requisite octroi duty when it was finally ascertained by the complainant that the relevant goods had been duly imported by the respondent within the municipal limits at the relevant time. It is on the basis of the said information and from ascertaining the facts that the respondents to pay the octroi duty for the goods so imported, the respondents having failed to comply with the complainant's lawful notice and demand, the respondents are said to have committed offence. It is further denied by the complainant that the complaint is beyond the period of limitation and that the provisions u/s 473 of the Criminal Procedure Code cannot be revoked. The said application filed by the respondent was heard by the learned Magistrate in the presence of the parties and by order dated July 22, 1980, the application filed by the respondent was rejected and the complaint was ordered to be proceeded according to law. The learned Magistrate proceeded to dismiss the said application on the ground that the order passed by his predecessor condoning the delay could not be reviewed or altered or re-hearing cannot be given in respect of the decision already rendered by his predecessor in the office. The respondent feeling aggrieved by the said judgment and order passed by the leaned Magistrate dated July 22, 1980, submitted two revision applications before the learned District Judge, Thane, challenging the legality, propriety and the correctness of the order passed by the leaned Magistrate. The two revision applications filed by the respondents were heard together by the learned Additional Sessions Judge, Thane, and disposed of the same, by a common judgment dated January 30, 1981. The revision application were allowed by the learned Additional Sessions Judge, while setting aside the order passed by the learned Magistrate, the original complaint No. 16 of 1979 and 21 of 1979 on the file of the Judicial Magistrate, First Class, Kalyan are dismissed as they were barred by limitation. Against the said order passed by the learned Additional Sessions Judge in the said two revision applications, the present two Revision applications have been filed by the respondent, which are disposed of by this

common judgment.

4. Shri S.R. Chitnis, the learned Counsel appearing in support of these revision applications submitted that inasmuch as the date of offence was not known to the complainant and on ascertaining these true facts a notice was sent to the respondent on August 8, 1973 and , therefore, the complaints which are filed on January 2, 1979 shall be within the period of limitation as provided by section 296(2) of the Maharashtra Municipalities Act, 1965. It is further argued by Shri Chitnis that the provisions of section 473 of the Criminal Procedure Code, should be treated as applicable to the penal proceedings initiated under the provisions of the Maharashtra Municipalities Act.

5. Shri J.C. Rajani, the learned Counsel appearing for the respondents in both the revision applications, submitted that the complainant for the first time at the end of 1977 or thereabout came to know that the accused has failed to pay the proper octroi duty on certain goods imported by them and that the accused have failed to pay or evaded the total octroi duty. In view of this clear admissions on the part of the complainant in para 3 of the complaint that for first time it came to know of the offence at the end of the year 1977 or thereabout, the complaint is clearly beyond the period of limitation u/s 296(2) of the Maharashtra Municipalities Act. The period of limitation shall commence from the said date, which would be clearly beyond the period of six months and accordingly the complaints were then rightly rejected as time barred. It is further argued by Shri Rajani, that the period of limitation of six months prescribed u/s 296(2) of the Maharashtra Municipalities Act, is absolute and the complaint if filed after the expiry of period of six months must stand dismissed as barred by limitation. With regard to the provisions of section 173 of the Criminal Procedure Code, it is submitted that it is not applicable to a complaint filed under special or local law and hence the application for condonation of delay cannot be maintained in the present proceedings.

6. Before I proceed to consider the rival contentions of the parties, it is necessary to state the penal section under which the present proceedings have been initiated.

7. Section 139 lays that where any animal or goods passing into a municipal area are liable to the payment of octroi, any person who, with the intention of defrauding the Council, causes or abets the introduction of or himself introduces or attempts to introduce within the octroi limits of the Council any such animal or goods upon which payments of the octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which may extend to ten times of the amount of such octroi or two hundred rupees, whichever may be greater.

8. Under the said appeal section, a person who imports the animal or goods within the municipal limits of a Council and makes default or evades to pay the octroi duty on such import, is liable to be convicted and punished with fine. Two important ingredients of the offences are that the goods must be imported within the limits of

Municipal Council and octroi duty for the same neither been paid or tendered. It is the complainant's case that the respondents imported the goods and evaded the payment of the octroi duty and thereby committed an offence punishable u/s 139 of the Maharashtra Municipalities Act.

9. Sub-section (2) of section 296 of the Maharashtra Municipalities Act, prescribes the period of limitation of six months. Sub-section (2) of section 296 lays down that no prosecution for any offence under this Act or the rules or bye-laws made thereunder, shall be instituted, except within six months next after the date of the commission of the offence, or if such date is not known or the offence is a continuing one within six months after the commission or discovery of such offence. The plain reading of sub-section (2) of section 296 indicates that the prosecution against the accused must be instituted within six months next after the date of the commission of the offence. So the period of limitation of six months starts from the date of the offence. It is conceded by the learned Counsel on either side that the commencement of the period of limitation shall be from the date of the offence. The latter part of sub-section (2) of section 296 lays down that if such date is not known the period of six months should start to run from the date of discovery of such offence. There is no dispute so far as to the first part of sub-section (2) of section 296, but the Counsel differs on the latter part of the said sub-section viz. :

"If such date is not known within six months after the discovery of offence."

Shri Chitnis the learned Counsel for the petitioners contended that the petitioners were not sure as to the date of importing the goods within the Municipal Council which were liable for an octroi duty. Informations were sought from the respondents, which was not supplied. It is thereafter the information was collected from the suppliers and on the basis of the said information a notice was sent on August 8, 1978. It is on that date the complainant discovered the commission of the offence by the respondents and from the date, the complaints which are filed against the respondents will be within limitation. Shri Rajani very vehemently argued that in view of the admission made in para 3 of the complaint, it is not open to the complainant to say that they had discovered the date of the offence on August 8, 1978. It is further contended by Shri Rajani that the time spent by the complainant ascertain the date of offence cannot be excluded for the purpose of computing the period of limitation. In view of these submission it is necessary to find out as to whether in the complaint in para 3 the complainant has admitted that, for the first time in the end of September 1978, or thereabout they came to know of the date of offence. I am not inclined to accept the submission of Shri Rajani, that the complainant has admitted in para 3 of the complaint that they had the knowledge of the date of offence for the first time at the end of the year 1977 or thereabout. The statement in para 3 has got to be read in the context of the entire complaint and the statements made therein. In para 4 of the complaint, it is clearly stated that as to how they discovered the date of offence. It is stated that the

complainant also wrote letters to the manufacturers, wholesalers and distributors such as Glaxo Laboratories India Ltd., requesting them to give the price of the goods supplied to the respondent from the period September 1, 1976 to December 31, 1977. From the particulars and the information submitted by the suppliers, it was noticed that the respondent had totally evaded the octroi duty on certain goods and paid lesser octroi on certain goods in the same "Medicine" but no medical goods were brought or imported by the respondents. From the reading of paras 3 and 4, it is clear that they had to ascertain the date of importation of goods and the date of offence committed by the respondents and thus they discovered on the basis of the said information and particulars issued by the suppliers. It is in this context, it cannot be said that the complainant had admitted in para 3 the date of knowledge of the offence committed by the respondents. It is also not possible to accept the submission of Shri Rajani that the time spent for the ascertainment cannot be excluded for the purpose of computation of the period of limitation. It is a well settled rule of construction of a statute provision that every word used in the section should be given its due meaning in order to ascertain the legislative intention. Where the language of the provision is manifestly clear and explicit, it has got to be construed as it stands. Where the words used in the provisions are plain, precise and un-ambiguous, the intention of the legislature is to be gathered from the language of the provision itself. In section 296(2) of the Maharashtra Municipalities Act, the words are,

".....If such date is not known or the offence is a continuing one within six months after the commission or discovery of such offence".

The word discovery of such offence will have to be given its plain meaning. The word discovery has not been defined in the Act. Therefore, it will be useful to refer to the dictionary meaning of the word "discovery". Webster's 3rd New International Dictionary, gives the meaning of the word discovery as "act", process or an instance of gaining knowledge of or ascertaining the existence of something previously unknown or unrecognized". It is, therefore, clear that if a date of offence is not known, then it must be discovered after due process or after ascertaining the true and correct information about the commission of the offence. In the instant case, it is the complainant's case that the date of the importation of the goods in the municipal limits was not known to them and on getting necessary information and particulars from the suppliers, they could ascertain the date and accordingly a notice dated August 8, 1978 was issued with a bill of demand. It is not clear from the record on what date the commission of the offence was known to the complainant. Shri Rajani the learned Counsel for the respondents rightly submitted that the period of limitation shall commence or start to run from the date of the discovery of the offence and it is for the complainant to clearly state the date of the discovery of offence and from that date period of six months shall commence in order to find out as to whether the complaint was within time or barred by limitation. In these circumstances, it would be necessary for the trial Court to record a finding as to the

exact date on which the discovery of the offence was known to the complainant and then find out as to whether the complaint is barred by limitation within the meaning of sub-section (2) of section 296 of the Maharashtra Municipalities Act, 1965.

10. Turning to the second submission of Shri Chitnis, that the provision of section 473 of the Criminal Procedure Code, shall be applicable to the present proceedings even if it is held that the complaint was filed after the expiry of the period of limitation. Chapter 36 has been introduced for the first time in the Code of Criminal Procedure. The question of delay in filing the complaint may be a circumstance to take into consideration in arriving at the final finding. Section 468 prohibits the Court to take cognizance of an offence, of the category specified in sub-section (2) of section 296 of Maharashtra Municipalities Act, after the expiry of the period of limitation.

11. In Clauses (a), (b) and (c) of sub-section (2) of section 468 of the Code of Criminal Procedure, the period of limitation is prescribed for different offences. Section 469 of the Code of Criminal Procedure states the commencement of the period of limitation. Sub-section (1) of section, 469 of the Code of Criminal Procedure states that the period of limitation, in relation to an offender, shall commence,---

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any Police Officer, the first day on which such offence comes to the knowledge of such person or to any Police Officer, whichever is earlier;

It is thus, sub-section (1) of section 469 gives the commencement of the period of limitation from the date of the offence. The present case falls under Clause (b) of section 468(1) of the Code of Criminal Procedure. Section 470 deals with exclusion of time in certain cases with which we are not concerned. Section 471 deals with the exclusion of date on which Court is closed. Section 472 deals with, of continuing offence and section 473 deals with the extension of period of limitation in certain cases and empowers the Court to condone the delay, as provided by section 5 of the Indian Limitation Act. These are the general provisions dealing with the period of limitation and the exclusion thereof. Here we are not concerned with the general provisions of the Code of Criminal Procedure. The offence alleged to have been committed by the respondents is under special statute namely the Maharashtra Municipalities Act, 1965. The Maharashtra Municipalities Act, 1965, does not deal with the exclusion of the period of limitation or restrict or prohibits a Court to entertain an application or take cognizance of the offence on condonation of delay for a sufficient cause shown by the complainant.

12. It is well known rule of construction of the statute that a particular enactment is not overruled by general enactment in the same statute. It may be laid down as a rule for construction of a statute that where a special provision and general provision are inserted which cover this same subject-matter, a case falling within the

words of the special provisions, must be governed thereby and not by the terms of the general provisions. The above rule applies not only when a special and general provisions are contained in the same Act, but even when they are contained in the different enactments. The general provisions must yield to special Act applicable to a particular subject-matter. Here we are not concerned with the general provisions of the criminal proceedings but the case clearly falls within the provisions of special and local enactment. It is, therefore, it must be seen as to whether the special enactment provides such a clause enabling the courts to condone the delay if a complaint is filed after the expiry of the period of limitation. As stated above, there is nothing in the Maharashtra Municipalities Act, 1965 empowering the Court to condone the delay. But it must be reserved that there are no restrictions whatsoever in the section which would debar the Court to give benefit of section 5 of the Indian Limitation Act to a complainant whose complaint is filed after the expiry of the period of limitation.

13. Sub-section (2) of section 29 of the Indian Limitation Act, lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply in so far as, and to the extent to which, they are not expressly excluded by such special or local law. The plain reading of section 296 of the Maharashtra Municipalities Act, 1965 does not exclude the application of the provisions contained in sections 4 to 24 of the Indian Limitation Act. It is in this view of the matter, the Court is not precluded to apply the provisions of section 5 of the Indian Limitation Act, to a complaint made under the provisions of the Maharashtra Municipalities Act, 1965. It is, therefore, the learned Magistrate, on the facts and circumstances of the case and the evidence if any available on the record must determine as to whether there was sufficient cause for condonation of delay. In the view that I have taken the learned Additional Sessions Judge, Thane, has committed an error in holding that the complaints filed by the petitioner are barred by limitation and, therefore, liable to be dismissed.

14. In the result, both these criminal revision applications are allowed. The judgment and order passed in both the cases are set aside. The matter is remanded to the learned Magistrate to give an opportunity to the parties to lead the evidence in order to ascertain the correct date of discovery of the offence in order to record a finding as to whether the complaints filed by the complainant are within the period or barred by limitation. The learned Magistrate if comes to the conclusion that the complaint is barred by limitation he will entertain the application for the condonation of delay filed by the complainant and dispose it in accordance with law. With these observations, the rule is made absolute.