2012 CRI. L. J. 497 "Authorized Officers/A.C.F. (FLS), Yavatmal v. Mohammad Arif Ibrahim Solanki"

 BOMBAY HIGH COURT

(NAGPUR BENCH)

 Coram : 2 Mrs. V. K. TAHILRAMANI AND M. L. TAHALIYANI, JJ. ( Division Bench )

Criminal Writ Petition No. 494 of 2010, D/- 22 -6 -2011.

The Authorized Officers/Assistant Conservator of Forest (FLS), Yavatmal and Ors. v. Mohammad Arif Ibrahim Solanki and Anr. @page-CriLJ498

(A) Forest Act (16 of 1927), S.61A - FOREST - Forest offence - Confiscation of vehicle - After confiscation of vehicle, owner of vehicle provided opportunity to defend - Non-filing of any written statement by him was mere deliberate act so as to use it as plea of being unheard and challenge confiscation - There was service of notice to owner of vehicle with regard to confiscation - Silence or lame excuses by owner proved that he had failed to discharge burden cast upon him - Confiscation proper. (Paras 8, 9, 12)

(B) Forest Act (16 of 1927), S.2(6) - FOREST - WORDS AND PHRASES - Timber - Definition of - Wood, cut-up or fashioned or hollowed out for any purpose or not will remain timber - Teak wood converted into shutters and frames - Freshly prepared wooden stuffs are to be included in definition of Timber. (Paras 14, 15)

(C) Forest Act (16 of 1927), S.61A - FOREST - Forest offence - Vicarious liability - Owner of seized vehicle which was involved in forest offence cannot be allowed to plead ignorance of it, since vehicle was driven by his servant - Impossible for servant to use vehicle for transporting timber without permission of owner - Nature of evidence in such inquiry is not required to be strong as is required in criminal prosecution - Owner vicariously liable for act of his servant. (Para 16)

Cases Referred : Chronological Paras

AIR 2008 SC 1591 : 2008 AIR SCW 1761 11

1996 AIR SCW 4111 13

AIR 1987 Guj 9 13

T. A. Mirza, A. P. P., for Petitioners; A. V. Bhide, for Respondents.

Judgement

M. L.TAHALIYANI, J. :- This writ petition impugns the judgment and order dated 6th April, 2010 passed by learned Ad hoc Additional Sessions Judge, Yavatmal in Criminal Appeal No. 13 of 2007. Before we proceed further it is necessary to be noted here that said criminal appeal was once decided by the same Ad hoc Additional Sessions Judge on 7th June, 2008. Respondent No. 1 Authorized Officer/Assistant Conservator of Forest, being aggrieved by the said order, had filed writ petition in this Court being Writ Petition No. 491 of 2008. This Court (Coram : A.P. Lavande and P.B. Varale, JJ.) by order dated 10th December, 2009 directed fresh hearing of the appeal. Operative part of the order of this Court runs as under :

"12. In the result, therefore, the impugned judgment and order dated 7-6-2008 passed by the Additional Sessions Judge, Yavatmal in Criminal Appeal No. 13/2007 is quashed and set aside and the matter is remitted to the Additional Sessions Judge, Yavatmal for fresh decision in the light of the observations made above. The Appellate Court shall decide the appeal afresh in the light of the above observations, after considering the law laid down by the Apex Court as well as this Court in relation to Sections 61-A and 61-B of the Act. Since the matter pertains to the confiscation of the vehicle and the articles found in the vehicle which were seized in September, 2006 the learned Additional Sessions Judge, Yavatmal shall dispose of the appeal expeditiously and in any case within a period of three months from the date of appearance of the parties.

13. The parties shall appear before the Additional Sessions Judge, Yavatmal on 8-1-2010 at 11 a.m., and no separate notices shall be given to the parties.

14. Rule is made partly absolute in the aforesaid terms with no order as to costs."

2. In view of the directions issued by this Court the matter was heard by the learned Additional Sessions Judge and impugned order came to be passed on 6th April, 2010. The impugned order of the learned Ad hoc Additional Sessions Judge runs as under :

"The appeal is allowed.

The order dated 29-1-2007, passed by the Respondent No. 1 in P.C.R. No. 60/11, dated 28-9-2006 as regards confiscation of the vehicle No. MH-15/G-4931 belonging to the appellant is hereby set aside.

The seized vehicle No. MH-15/G-4931 be returned to the appellant on his suprutnama of ` 5,00,000/- (Five lakhs) which would stand cancelled on failure to challenge this order by the Respondent Nos. 1 to 3 by way of writ,

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appeal, revision etc.

Suprutnama before Respondent No. 1.

The appeal is disposed of accordingly.

Pronounced in open Court."

3. Before we proceed to examine the validity of the said order, it will be apt to state the facts of the case in brief which led to seizure of motor vehicle (Matador) No. MH-15/G-4931 and confiscation thereof by the Authorized Officer of Forest Department. Respondent No. 1 Mohammed Arif Solanki is registered owner of the Matador bearing Registration No. MH-15/G-4931. Respondent No. 2 Shalikram Domaji Jiwatode was admittedly working as driver of the said motor vehicle. The said motor vehicle was allegedly involved in the forest crime and was seized by the Forest Department. It is the case of the petitioners that on 29th September, 2006 Range Forest Officer of Hiwari and his subordinate officers, while they were on patrolling duty, on the basis of certain information, reached Forest Check Post at Akola Bazar and started checking the vehicles passing through the said Check Post. It is around 1.30 a.m. that the above-stated matador was intercepted at the Check Post. It was carrying six door shutters, eight window shutters and six door frames. All the articles were made of teak wood. It was also carrying one Diwan and one Sofa Set (3+2). The teak wood was suspected to be cut from Government Forest and, therefore, the driver of the vehicle was subjected to inquiry. The Respondent No. 2 could not give any satisfactory explanation with regard to possession of the shutters and door frames of teak wood. He had informed the Range Forest Officer and other officers accompanying him that the vehicle owner Mr. Mohammed Iqbal Solanki, resident of Hinganghat had directed him to go to Wai and contact Mohammed Rasool Hayat Sheikh. Accordingly respondent No. 2 Jiwatode contacted said Mohammed Rasool. It was further stated by him that on the instructions of said Mohd. Rasool, above-stated teak wood material was collected from one agricultural land. It was also stated by him that teak wood material was found concealed under some useless agricultural produce. The said material was to be transported to Hinganghat from the said agricultural land. Son of abovesaid Mohammed Rasool accom-panied the said matador. Further inquiry revealed that the said material was purchased by Mohammed Rasool from Gajanan Madhav Chutekar who was also known as Gajanan Kurpya. It was also revealed that said Ganajan Kurpya had cut the said teak wood from Beat No. 256 of Shekalgaon Forest Division and had prepared the abovestated teak material/furniture. After the inquiry, the vehicle and door frames, window shutters and door shutters were seized by the Range Forest Officer and they were produced before the Authorized Officer i.e. Assistant Conservator of Forest, Yavatmal. It is the case of petitioners that a valid statutory show cause notice was issued to respondent No. 1 on 15th January, 2007. The inquiry was held in presence of both the respondents and after recording statements of all the concerned persons, including respondent Nos. 1 and 2, the Authorized Officer came to the conclusion that the timber was forest produce and it was cut from Government Forest. He had also come to the conclusion that Matador MH-15/G-4931 was involved in commission of forest offence. It was also concluded by him that respondent No. 1 had not taken reasonable and necessary precaution to see that matador was not used in any forest offence. It appears from his order that he was of the view that respondent No. 1 has not been able to discharge his burden and, therefore, he was presumed him to be guilty of knowledge of commission of the said offence. In the result, the matador came to be confiscated under Section 61A(2).

4. Being aggrieved by the said order of the Authorized Officer, respondent No. 1 filed appeal under Section 61-D of the Indian Forest Act, 1927, as amended by the State of Maharashtra. As already stated, the appeal came to be decided in the year 2008. However, on filing of the writ petition by the petitioners the matter was remanded back to the Ad hoc Additional Sessions Judge for fresh hearing and deciding the matter in the light of the observations made by this Court. Fresh order passed by the Ad hoc Additional

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Sessions Judge (hereinafter referred to as the learned Judge) on 6-4-2010 is impugned in this writ petition. The said order has been reproduced hereinabove.

5. Before we advert to the merits and demerits of the case of the parties, we find it necessary to say something regarding the nature of final order passed by the learned Judge. The final order passed by the learned Judge is in the nature of interim order, inasmuch as the vehicle is ordered to be returned on execution of the bond of ` five lacs. The learned Judge should have taken note of the fact that the Sessions Judge under Section 61-D of the Indian Forest Act is empowered to confirm, modify or annul the order passed by the Authorized Officer. If at all bond was directed to be executed there should have been some conditions governing the custody of the vehicle by the respondent.

6. Be that as it may, we now proceed to examine the order of the learned Judge to decide whether it could be sustained or otherwise. Following three issues were raised before the learned Judge by respondent No. 1.

I) Show cause notice as provided in proviso to Section 61-B was issued to respondent No. 1.

II) Forest offence, if any, was committed without knowledge of respondent No. 1 ; and

III) the wooden frames and shutters seized by the Range Forest Officer and produced before the Authorized Officer did not fall under the definition of Timber.

7. As far as first issue is concerned, it is admitted position that respondent No. 1 is the registered owner of vehicle in question and, therefore, in view of the proviso to Section 61-B of the Forest Act he was entitled to get show cause notice to explain his position. The provision of show cause notice is made only with a view to give opportunity to the registered owner of the vehicle to defend himself effectively in the proceedings before the authorized officer. The learned Judge in his impugned judgment though has not categorically stated that there was no service of notice but it appears from the order of the learned Judge that impliedly he was of the view that there was no proper service of the statutory notice.

8. We have gone through the record and proceedings of the Authorized Officer and we have also gone through the order passed by the Authorized Officer which was impugned before the learned Judge. The Authorized Officer in his order at paragraph C(e) has stated that respondent Nos. 1 and 2 in their statements before the Enquiry Officer/Authorized Officer had stated that they had received all the papers pertaining to confiscation proceedings that they had also received show cause notices. It was stated by them before the Authorized Officer that they did not want to cross-examine any witness. It was further stated by them that the statements given by them on 21st January, 2007 should be treated as reply to the show cause notice. We have gone through the original statement of respondent No. 1 dated 24th January, 2007. Respondent No. 1 in his statement before the Authorized Officer had stated that he had received notice dated 15th January, 2007 and he had also received copies of the papers from page Nos. 1 to 61 and that he did not want to cross-examine anybody. He had admitted before the Authorized Officer that respondent No. 2 had transported the forest produce without having any valid pass for the same. He had pleaded guilty for the mistake committed by him. Similar statement was given by respondent No. 2 also. As such the finding given by the learned Judge with regard to the notice is not correct. Nobody prevented respondent Nos. 1 and 2 from filing their written reply before the Authorized Officer.It appears that respondent Nos. 1 and 2 have purposefully avoided to make any commitment before the Authorized Officer as they wanted all the options to be kept open to be raised whenever needed.

9. It need not be stated here that the nature of evidence in these type of departmental enquiries is not as strict as in the criminal prosecutions.Original records and proceedings of the Authorized Officer show that sufficient opportunity was given to both the respondents and particularly respondent No. 1 who was entitled for statutory notice under proviso to Section 61-B of the Forest Act. We, therefore,

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do not agree with the finding given by the learned Judge that there was no service of notice on the respondent No. 1.

10. Second issue raised before the learned Judge was regarding knowledge of respondent No. 1. The learned Judge in his judgment has stated that respondent No. 2 had contacted respondent No. 1 on telephone and had informed him that some domestic articles were to be transported from Wai to Hinganghat. It was submitted before the appellate Court that this was stated by respondent No. 1 in his statement before Forest Officer also. As such respondent No. 1 had no knowledge that the person who had hired the vehicle would be carrying forest produce in the said vehicle. It was, therefore, contended before the learned Judge that respondent No. 1 had discharged his burden to the satisfaction of the Forest Officer. The learned Judge had accepted the contention of respondent No. 1 and had given finding that respondent No. 1 had no knowledge of transportation of forest produce in the said vehicle. It appears that the learned Judge has not carefully examined record and proceedings of the Authorized Officer. It was noted by the Authorized Officer that respondent No. 1 had not only dishonestly played ignorance of the incident but had attempted to produce false documents which was found to be an afterthought by the Authorized Officer. It appears from the order of the Authorized Officer that Sk. Rasool Sk. Hayat, from whose premises articles were collected, had produced Bill No. 317, dated 12th April, 2007 issued by S. Kumar Furnitures, Yavatmal with a view to establish that it was validly purchased timber. The said contention was turned down by the Authorized Officer on the ground that there was no valid pass for transportation of the said timber from the place of the said vendor to the place of Sk. Rasool. The Authorized Officer was of the view that it was an afterthought on the part of Sk. Rasool. It was obvious that Sk. Rasool wanted to rescue the respondent No. 1. It may be noted here that value of the seized articles was not of much importance. As such it is obvious that everybody was interested in the vehicle and not the timber.

11. Though the learned Judge has taken note of the citations relied upon by respondent No. 1 and the appellant, but has failed to seriously consider the observations made by the Hon'ble Supreme Court in the case of State of West Bengal v. Mahua Sarkar, reported at AIR 2008 SC 1591. This case law was submitted before the learned Judge on behalf of the petitioners i.e. Forest Department. In the case before the Hon'ble Supreme Court there was seizure of Maruti Van. The vehicle was confiscated by the Authorized Officer. In an appeal before the Sessions Judge the order was confirmed. However, in the writ petition filed before the High Court, the High Court directed release of the vehicle. The matter was carried to the Hon'ble Supreme Court by the State of West Bengal. The Hon'ble Supreme Court in paragraph Nos. 7, 8, 9 and 10 of the said judgment has observed as under :

"7. A bare reading of sub-section (2) of Section 59-B makes the position clear that no order confiscating any tool, rope chain, boat, vehicle or cattle shall be made under Section 59-A if the owner thereof proves to the satisfaction of the Authorized Officer that such tool, rope, chain, boat, vehicle or cattle was used in carrying the timber or other forest produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use.

8. The language used is very clear. It is the owner who has to prove that the vehicle was used in carrying timber or other forest produce without his knowledge or connivance or that of his agent.

9. The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else will not suffice. There is another requirement that either he or his agent, if any, or the person in-charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the concerned person by sufficient material. As noted above, mere assertion in that regard could not be sufficient.

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10. The Forest Officer and the Appellate Authority clearly noted that the owner failed to establish his alleged lack of knowledge or connivance or taking necessary precaution. The High Court came to an abrupt conclusion and held that without knowledge of the owner of the vehicle driver was carrying forest produce illegally. The High Court held that unless the driver of the vehicle acted as an agent of the owner of the said vehicle and indulged in carrying forest produce illegally and that too with the knowledge and connivance of the owner, neither the vehicle could be confiscated nor could the owner be prosecuted for such alleged offence."

12. If one carefully goes through what is stated by the Hon'ble Supreme Court, it will be clear that mere assertion without anything will not be sufficient for the registered owner to discharge his burden. The requirement is that either he or his agent, if any, or person in charge thereof had to take reasonable and necessary precaution to see that the vehicle is not used for committing forest offence. As such, the burden on respondent No. 1 was to show by positive evidence that he has taken necessary precaution that his vehicle was not used for committing forest offence. A bare statement that his driver informed him that, the vehicle was hired for transporting domestic articles, is not sufficient to discharge the burden. While determining the burden imposed on the owner of the vehicle it was necessary for the Authorized Officer and the appellate Court to bear in mind the purpose of introduction of the provision for confiscation of vehicles by the Competent Authorized Officer irrespective of the result of the prosecution if any. The purpose, obviously, is to discourage the use of vehicles for committing forest offence and at the same time to cast strict liability on the owners of the vehicles to see that their vehicles are not used for such offences. The provision make it absolutely clear that by making a bare statement or keeping mum would not suffice. If the silence on the part of the owner or some lame excuse/explanation is accepted then the provision of confiscation of vehicle can never be effectively implemented. The purpose of the legislation need to be achieved and not frustrated. The burden on the owner and his agent is cast only with a view to strict implementation of the provisions with regard to confiscation of the vehicles involved in forest offences. In the present case the circumstances strongly indicate that the respondent No. 1 knew the nature of the goods to be transported. It is because of this reason that the material facts were suppressed by respondent No. 1 during the course of enquiry. It is noted that respondent No. 1 is not a very big transporter or fleet owner. In normal course it was expected that he would have spoken to the person who had hired the matador for transportation of the so-called household articles. He would have also fixed the amount of transportation charges. In our view, the conduct of respondent No. 1 during the period when his matador was stated to be hired and the offending goods were transported was highly suspicious. It was apparently a clandestine operation. Respondent No. 1 would not have been vicariously liable had it been the act of respondent No. 2 independent of intervention of respondent No. 1. Since respondent No. 2 had acted after having consulted respondent No. 1 and after having taken orders from respondent No. 1 and since conduct of respondent No. 1 was found to be suspicious, it follows that respondent No. 1 had not been able to discharge the burden cast upon him under the Act. As already stated by us, silence on the part of respondent No. 1 or some lame excuse given by him before the Authorized Officer could not have saved him from the liability fastened upon the owner of the vehicle used for commission of forest offence. As such, we are of the view that the learned Judge has not applied the ratio of the judgment of the Hon'ble Supreme Court properly to the facts of the case before him. Considering the material before the Authorized Officer, which obviously was placed before the learned Judge, we are of the view that respondent No. 1 had failed to discharge the burden cast upon him.

13. Third issue raised before the learned Judge was regarding the nature of articles found in the vehicle. It was contended that wooden frames and wooden shutters did not fall in the category of timber. The learned Judge

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has referred to the judgment of the Hon'ble Supreme Court in the case of Suresh Lohiya v. State of Maharashtra, reported at (1996) 10 SCC 397 : (AIR 1996 SC 4111). Relevant portion of the judgment runs as under :

"8. We may also state that according to us the view taken by the Gujarat High Court in Fatesang case (AIR 1987 Guj 9) is correct, because though bamboo as a whole is forest-produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest-produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from forest-produce having a distinct character. May it be stated that where a word or an expression is defined by the legislature, courts have to look to that definition; the general understanding of it cannot be determinative. So, what has been stated in Stroud's Judicial Dictionary regarding a 'produce' cannot be decisive. Therefore, where a product from bamboo is commercially different from it and in common parlance taken as a distinct product, the same would not be encompassed within the expression "forest-produce" as defined in Section 2(4) of the Act, despite it being inclusive in nature. That bamboo mat is taken as a product distinct from bamboo in the commercial world, has not been disputed before us, and rightly."

14. The learned Judge failed to note that in the case before the Supreme Court issue was interpretation of the definition of "Tree" under the Forest Act and not the definition of "Timber". Articles found in the said case were made from Bamboo. The observations made by the Hon'ble Supreme Court are in the context of Bamboo only. Secondly, it may be noted here that 'Tree' is covered by Section 2(4)(b)(i), whereas 'Timber' is covered by Section 2(4)(a). Basic difference between two categories is that Section 2(4)(a) covers both type of forest produce i.e. whether found in or brought from forest or otherwise and Section 2(4)(b)(i) covers forest produce found in or brought from the forest only. As such, the timber whether it was found in or brought from forest or otherwise is 'forest produce'. The timber is defined under Section 2(6) of the Forest Act as under :

"2(6) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;"

15. It is very clear from the definition of timber that whether it was cut up or fashioned or hollowed out for any purpose or not, it will remain timber. As such, even though teak wood was converted into shutters and frames, it remained to be timber. Moreover, frames and shutters were not complete frames and shutters, they appear to be semi finished frames and shutters.Obviously, the purpose was to carry them under the pretext that it was not forest produce. However, it cannot be ignored that despite converting the teak wood into frames and shutters it was being transported clandestinely at dead hours of night and was removed from the agricultural field where they were concealed under the heap of hay and other useless agricultural material. Therefore, we do not subscribe the view expressed by the learned Judge that the articles seized were not forest produce.

16. Briefly stated, it is abundantly clear from the above discussion that proper show cause notice was given to respondent No. 1 and sufficient opportunity was given to both the respondents of being heard. It is admitted position that respondent No. 2 was driver of the vehicle owned by respondent No. 1 and therefore, respondent No. 2 was working as agent of respondent No. 1 when he agreed to transport the goods from Wai to Hinganghat. Moreover, the circumstances in which and the time at which the goods were being transported was clearly indicative of the fact that it was clandestine operation. Respondent No. 1 cannot be allowed to play ignorance of it. It was not possible for respondent No. 2 to indulge in such offending operation without having permission from respondent No. 1. Even otherwise, the respondent No. 1 was vicariously liable for the acts of respondent No. 2. In the inquiries of this nature Doctrine of Vicarious Liability plays a vital role. As already indicated

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by us the nature of evidence in such a inquiry is not required to be as strong as is required in criminal prosecution.

17. In our considered opinion, the order of the Authorized Officer was based on the facts placed before him and did not suffer from any infirmity. The learned Ad-hoc Additional Sessions Judge had no scope to interfere with the order of the Authorized Officer. The appeal, should have been dismissed by the learned Judge. Hence, we are inclined to allow the writ petition and set aside the order of the learned Ad-hoc Additional Sessions Judge.

18. Therefore, the writ petition is allowed. Judgment and order dated 6-4-2010 passed by Ad-hoc Additional Sessions Judge, Yavatmal in Criminal Appeal No. 13 of 2007 is set aside. The order passed by the Petitioner No. 1 (Authorized Officer), dated 29-1-2007 in P.C.R. No. 60 of 2011, dated 28-9-2006 is restored.

Writ Petition stands disposed of accordingly. The interim order stands vacated.

 Petition allowed.

2012 CRI. L. J. 937 "Rajendra Jonko v. Supdt. of Police, Central Bureau of Investigation, Mumbai"

 BOMBAY HIGH COURT

 Coram : 1 R. C. CHAVAN, J. ( Single Bench )

Anti-Corruption Bureau, No. 270 of 2001, D/- 25 -11 -2011.

Rajendra Jonko v. Superintendent of Police, Central Bureau of Investigation, Criminal Appeal Mumbai and Anr.

(A) Prevention of Corruption Act (2 of 1947), S.5 -

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 CORRUPTION - PUBLIC SERVANTS - Possession of disproportionate assets - By public servant - Properties found in name of his wife, father and sisters - Failure by accused to show that they had any independent source of income - Evidence showing that money was flowing from Mumbai i.e. place of accused in favour of others including wife of accused - Evidence proving that assets were disproportionate to known source of income of accused - Conviction under S. 5(1)(e), (2), proper. (Para 18 to 22, 29)

(B) Prevention of Corruption Act (2 of 1947), S.5 - CORRUPTION - PUBLIC SERVANTS - SENTENCE IMPOSITION - Possession of disproportionate assets - By public servant - Sentence - Incident was 24 years old - Delay caused due to system cannot work to advantage of accused - Sentence imposed, proper. (Para 28)

Cases Referred : Chronological Paras

AIR 2006 SC 552 : 2006 Cri LJ 319 : 2005 AIR SCW 6208 13

2006 AIR SCW 4576 : 2006 Cri LJ 4598 18

2005 Cri LJ 2714 (Bom) 27

AIR 2004 SC 517 : 2004 Cri LJ 598 : 2003 AIR SCW 6501 13

2001 SAR (Cri) 196 (SC) 10

1998 SCC (Cri) 1000 25

1993 Cri LJ 2051 (Bom) 15

1992 (4) SCC 39 8

AIR 1988 SC 88 : 1988 Cri LJ 183 23

AIR 1980 SC 20 27

AIR 1980 SC 727 7

AIR 1979 SC 677 : 1979 Cri LJ 633 24

AIR 1978 SC 1745 : 1978 Cri LJ 1802 27

1977 Cri LJ 254 (SC) 14

AIR 1977 SC 796 8

AIR 1974 SC 773 14

AIR 1974 SC 171 7, 8

R. M. Agarwal, Sr. Counsel with Prakash Naik, for Appellant; Milind Sawant, Public Prosecutor, P. P. Bhosale, Addl. Public Prosecutor, for Respondents.

Judgement

JUDGMENT :- This appeal is directed against the conviction of the appellant, an Assistant Collector of Central Excise, for offence punishable under Section 12(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, the PC Act, 1988) and sentence of RI for 4 years with fine of ` 5,000/- or in default further imprisonment for 6 months inflicted by the learned Special Judge, Mumbai.

2. It was alleged that the appellant had received towards pay and allowances from 15-11-1979 to 12-11-1987 a sum of ` 1,40,034.45, interest from Banks amounting to ` 57,672.51 and had borrowed ` 65,600/- from State Bank of India. He thus had amount of ` 2,63,306.96 available to him. His expenses for the period were quantified at ` 82,207.04 and thus was likely to have saving to the tune of ` 1,81,099.32. But as on 12-11-1987, the appellant was possessed of assets worth ` 6,42,882.42/- and thus the assets were disproportionate to the tune of ` 4,61,783.10 to his known sources of income. These conclusions were reached upon investigation which commenced on receipt of information by PI Prabhakar Shinde. On completion of investigation, papers were sent to appropriate authority seeking sanction to prosecute the appellant. Upon receipt of sanction, charge-sheet was filed before the Special Court on 5-3-1990 for offence punishable under Section 5(2) r/w Section 5(1)(e) of the Prevention of Corruption Act, 1947 (for short, the PC Act, 1947).

3. The appellant pleaded not guilty to the charge of offence punishable under Section 5(2) r/w Section 5(1)(e) of the PC Act, 1947 on 28-11-1997. Since the appellant pleaded not guilty, he was put on trial at which prosecution examined in all 31 witnesses in its attempt to bring home guilt of the accused. The defence of the accused was that assets standing in the names of his wife Nirmala, sisters Rani and Munni and father were their own asset. He did not know if they had any independent source of income or not. The amounts were given by his father. He had not taken loan of ` 65,600/- from State Bank and had not purchased cars or house. He also filed a detailed written statement explaining his assets. After considering the evidence tendered, the learned Special Judge held that even if income as suggested by the appellant was taken into consideration, the assets were disproportionate by ` 3,86,570/- to the income of the appellant and, therefore, convicted and sentenced the appellant as

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mentioned earlier. Aggrieved thereby the appellant has preferred this appeal.

4. The appeal was first heard and allowed by judgment dated 30-6-2004 by Hon'ble Shri Justice D.G. Deshpande. The State challenged the order before the Supreme Court. By its judgment dated 25-9-2006 the Supreme Court set aside the judgment of this Court and directed that this Court shall decide the appeal on merits and if this Court comes to the conclusion that case for upholding the conviction is made out, this Court shall correct the error of the trial Court in handing down conviction under Section 13 of the PC Act, 1988 and shall convict the appellant of offence punishable under Section 5(2) r/w Section 5(1)(e) of the PC Act, 1947. This is why the appeal was re-heard.

5. I have heard the learned counsel for the appellant and the learned PP for the CBI. With the help of both the learned counsel, I have gone through the evidence. In respect of assets attributed to the appellant, the evidence collected is as under:-

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In addition to the above witnesses, other witnesses examined are:

PW-17 Dr. Saifee, the appellant's landlord at Indore who states that the appellant paid rent @ ` 700/- per month to him.

PW-24 Ram Raj Bharati, Under Secretary, Government of India who proves sanction to prosecute.

PW-27 Sunil Kumar of Biri Trading Company about income of the appellant's father (Exhibit-130),

PW-29 PI P.B. Shinde, Investigating Officer.

PW-30 PI Raman Tyagi, Investigating Officer.

6. The learned counsel for the appellant first submitted that the properties shown in the names of the appellant's father, wife or sisters would have to be excluded from being termed as the appellant's properties. He submitted that the charge does not show that the appellant was alleged to have held those assets benami. Therefore, according to him, since the charge does not show that the properties in the name of his relations were in fact owned by him, those properties ought to be excluded and if they are so excluded, the assets of the appellant are not at all disproportionate to his known sources of income. For this purpose, he relied on the following judgments-

7. In Jaydayal Poddar (Deceased) through L.Rs. and another v. Mst. Bibi Hazra and others, reported in AIR 1974 SC 171, the Supreme Court was considering the question of nature of onus and proof in respect of benami transactions in the context of provisions of Section 54 of the Transfer of Property Act. In para 6 of the judgment, the Court held as under:

.... The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale; and (6) the conduct of the parties concerned in dealing with the property after the sale. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1, viz. the source for determining whether the sale standing in the name of one person, is in reality for the benefit of another.

This judgment was followed up in Bhim Singh (dead) by L.Rs. and another v. Kan Singh, reported in AIR 1980 SC 727.

8. In Krishnanand Agnihotri v. State of M.P., reported in AIR 1977 SC 796, the Supreme Court considered the question of assets in the context of provisions of Section 5 of the Prevention of Corruption Act, 1947. The Court was considering, amongst other things, whether a sum of ` 11,180/- lying in fixed deposit with Allahabad Bank, Varanasi, in the name of Shanti Devi belonged to the appellant, a public servant, or to Shanti Devi. In this context, in para 26 the Court observed as under after relying on the judgment in Jaydayal Poddar's case (supra):

It is difficult to see how in the face of this overwhelming evidence it could be concluded that the sum of Rupees 11,180/- lying in fixed deposit in Shanti Devi's name was an asset belonging to the appellant. It must be remembered that the fixed deposit stood in the name of Shanti Devi and the burden, therefore, lay on the prosecution to show that Shanti Devi was a benamidar of the appellant. It is well settled that the burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises as a substitute for proof. (Vide Jayadayal Poddar v. Mst. Bibi Hazra, (1974) 2 SCR 90 : (AIR 1974 SC 171). It is not enough merely to show circumstances which might create suspicion, because the Court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence. Here, in the present case, no evidence at all was led on the side of the prosecution to show that the monies lying in fixed deposit in Shanti Devi's name were provided by the appellant and howsoever strong may be the suspicion of the Court in this connection, it cannot take the place of proof. It must, therefore, be held that the prosecution has failed to show that the sum of ` 11,180/- lying in fixed deposit in Shanti Devi's name belonged to the appellant.

This was followed up in P. Satyanarayan Murty v. State of Andhra Pradesh, reported in (1992) 4 SCC 39.

9. The learned counsel for the appellant submitted, relying on these authorities, that the difficulties of the prosecution in establishing that a transaction was benami do not relieve the prosecution of the onus to prove

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that the transaction was benami and that the Court cannot decide a case merely on the basis of suspicion. The learned counsel, therefore, submitted that the evidence tendered by the prosecution falls far too short of the standard of proof required to be tendered.

10. He further submitted that since the charge does not mention that the assets standing in the name of the appellant's relations were held by the appellant benami in the names of his relations, the evidence could not at all be looked into and for this purpose relied on a judgment of the Supreme Court in Shamsaheb M. Multtani v. State of Karnataka, reported in 2001 SAR (Criminal) 196. The judgment was rendered in the context of a different offence. In that case, there was no charge of offence punishable under Section 304-B of the IPC and that the charge was only under Section 302 of the IPC.

11. The learned PP for the CBI countered by submitting that the charge categorically mentions all these properties and the details furnished with the charge-sheet also show names of the persons who were shown to be the holders of the assets concerned. He submitted that most of the fixed deposit receipts or debentures are either in the name of the appellant's wife or the appellant or the appellant and the appellant's wife together, or one or two of the appellant's sisters with the appellant's wife or the appellant's daughter and the appellant's wife together, as indicated in the chart in the earlier part of this judgment. He submitted that the contention that the charge does not mention that the properties were held benami, therefore, has no substance. This charge categorically lists the properties and alleges that the appellant was possessed of those assets. Therefore, mere absence of use of the word 'benami' would not matter. The learned PP further rightly submitted that the crucial test would be whether the persons concerned have any independent source of income to have been able to acquire the assets. He submitted that the evidence would show all these assets were acquired with the income of the appellant. Therefore, this contention about failure to mention that the appellant owned assets benami in the names of his relations has to be rejected.

12. The learned counsel for the appellant next submitted that the assets standing in the name of the relations were acquired by the relations themselves and there is nothing to show that they were acquired with the appellant's funds. He pointed out that the appellant's father Birsingh Ho was a respectable cultivator in Chakradharpur District. Birsingh Ho's father Budhan Ho was in fact Mukhiya of the village. He submitted that Birsingh was cultivating the land and was also working as a part-time accountant with Biri Trading Company and was not a biri worker. Birsingh had two wives, having married the second after the first wife died. The appellant had Budhan Jonko and Sukhram Jonko as his real brothers, Uday Jonko as his step-brother, Savitri Jonko as his sister, Jamuna Jonko, Munni Jonko and Rani Jonko as step-sisters. He stated that the appellant's father-in-law Dharamdas Mundari was an Assistant Commssioner of Sales Tax and retired as Additional Secretary, Finance Ministry in the State Government. The appellant married Nirmala, the daughter of Dharamdas in 1981. Nirmala's uncles also held big posts in Food Corporation of India and as a Civil Surgeon. Therefore, according to him, the family had sufficient nucleus to provide for acquisition of assets in the names of Rani and Munni, the appellant's step-sisters and Nirmala, the appellant's wife, coming from the appellant's father and fatherin-law. The learned counsel also pointed out that there is nothing on the record to show that the investments came from the appellant.

13. He relied on a judgment of the Supreme Court in D.S.P., Chennai v. K. Inbasagaran, reported in 2006 Cri L J 319 : (AIR 2006 SC 552), where the Court was considering the assets standing in the name of a public servant's wife. In this context, the following observations of the Court may be usefully reproduced as under:

15. .... Therefore, the initial burden was on the prosecution to establish whether the accused has acquired the property disproportionate to his known source of income or not. But at the same time it has been held in a

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case of State of M. P. v. Awadh Kishore Gupta and others, reported in (2004) 1 SCC 691 : (AIR 2004 SC 517) that accused has to account satisfactorily the money received in his hand and satisfy the Court that his explanation was worthy of acceptance. In order to substantiate the plea taken by the accused that all the moneys which had been received belonged to his wife and in support thereof he has examined as many as 13 witnesses including himself, his wife and his son-in-law. D.W. 12 is the wife of the accused. She has deposed that the entire money belonged to her. She has admitted the raid on her house and she has also admitted that she has amassed the wealth by selling cycle rims and leather products without any bill and out of the money amassed by her she had persuaded her husband to deposit the same at various Banks. She has come forward and admitted the recovery of the foreign exchange at her house and she has accounted for the same. She has also admitted the recovery of the gold ornaments at her house and she has explained that she has purchased those gold ornaments. She has also submitted that some real estate was purchased out of self earning as well as the loan from the mother of the son-in-law and some contribution was made by the son-in-law and the son-in-law has also admitted. Likewise, D.W.8 - her son-in-law, Thiru S. Rajasankar also appeared in the witness box and admitted that he has also saved certain foreign exchange when he had gone on various visits abroad. He has also admitted to have carried some money to be deposited in the Bank. The accused has also come forward in the witness box as D.W.13 and has deposed that all the moneys belonged to his wife and when he came to know about the unaccounted money at his house, he gave his piece of mind to her. He has admitted that on one or two occasions money was carried by himself to be deposited in the account in Punjab National Bank and some money was also deposited on account of some of the members of the family by P.W. 8, S. Rajasankar, son-in-law. Therefore, under these circumstances, the respondent has explained the possession of unaccounted money.

16. .... It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the Income-tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge. It is very difficult to segregate that how much of wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being the public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the accused coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income-tax Department, it will not be proper to hold the accused guilty under the Prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case, he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and it belonged to his wife. Therefore, he has satisfactorily accounted for the recovery of the unaccounted money. Since the crucial question in this case was of the possession and the premises in question was jointly shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold husband guilty. Therefore, in these circumstances, we are of the opinion that the view taken by the High Court appears to be justified and there are no compelling circumstances to reverse the order of acquittal. Hence, we do not find any merit in this appeal and the same is dismissed.

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It may be seen from the above observations that the wife of the public servant in that case had a plausible explanation about the assets standing in her name. Such is not the case of the appellant's wife.

14. The learned counsel for the appellant submitted that the burden on the appellant can be discharged with evidence which would be enough to create a probability. He submitted that the degree of burden of proof on the appellant is not as high as that on the State. For this purpose, he relied on a judgment of the Supreme Court in Trilok Chand Jain v. State of Delhi, reported in 1977 Cri L J 254, wherein, in para 8, the Court held as under:

8. Section 4(1) of the Prevention of Corruption Act reads:

"Wherein any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempt to obtain, for himself or for any other person, any gratification other than legal remuneration or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

From a reading of the above provision it is clear that its operation, in terms, is confined to any trial of an offence punishable under S. 161 or S. 165, Penal Code or under Clause (a) or (b) of S. 5(1) read with sub-section (2) of that section of the Act. If at such a trial, the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the Court has to presume the existence of the further fact in support of the prosecution case, viz., that the gratification was accepted or obtained by the accused as a motive or reward such as mentioned in S. 161, Penal Code. The presumption, however, is not absolute. It is rebuttable. The accused can prove the contrary. The quantum and the nature of proof required to displace this presumption may vary according to the circumstances of each case. Such proof may partake the shape of defence evidence led by the accused, or it may consist of circumstances appearing in the prosecution evidence itself, as a result of cross-examination or otherwise. But the degree and the character of the burden of proof which S. 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under S. 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under S. 342, Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour; it is not necessary for him to establish his case beyond a reasonable doubt - see Mahesh Prasad Gupta v. State of Rajasthan, AIR 1974 SC 773.

15. Even this Court had held in N.P. Lotlikar v. C.B.I. and another, reported in 1993 Cri L J 2051, that the accused needs to establish only through preponderance of probabilities that the defence is plausible. There can be no doubt about this proposition. But unfortunately the material produced by the accused first, is restricted to his own father's income and properties, which is rendered improbable by proof of the fact that funds flowed, not from his father to him, but from him to his father. Secondly, while the appellant was keen to establish his father's sound financial position, when questioned about assets in the names of his other relations, the learned counsel submitted that it was for those others to explain and that it was not necessary for the appellant to furnish an explanation. I have considered these contentions. As the discussion to follow would show, the explanations furnished by

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the appellants are so unreasonable and unbelievable that the learned trial Judge could not but have rejected them. The appellant had not even made a case of his explanation being probable.

16. The learned PP submitted that the appellant too could have shown that the source of these investments in the names of Nirmala, Munni, Rani and Gunjan were from the income of Birchand Ho or Nirmala's father Dharamdas. The learned PP submitted that Nirmala, Rani, Munni or Gunjan are not shown to have any independent source of income. The learned counsel for the appellant submitted that it was not for the appellant to show whether these persons had any independent source of income or not. It would be for the prosecution to establish that they had no source of income. This contention could have been accepted but for the fact that the appellant took upon himself the task of explaining as to how his father was a man of means by submitting a written statement to supplement his statement under Section 313 of Criminal Procedure Code and also by annexing supporting documents. Thus, if he could explain the income of his father, there is no reason why he could not similarly come out with an explanation about the income of Nirmala, Munni and Rani, who are admittedly shown to be persons without any income. Therefore, though ideally the prosecution ought to have shown the source from which money came for each of these investments, failure to do so need not necessarily result in rejecting the prosecution case.

17. The learned PP submitted that it is not that the prosecution has not shown the source from where money for investments came. He pointed out that the appellant's father Birsingh Ho, who was supposed to be a man of means and supposed to have funded acquisition of properties by his daughters or daughter-in-law, in fact did not have money for the purchase of a house at Chakradharpur. He pointed out that the appellant's father was in fact working in a Biri factory on meagre wages as could be seen from the evidence of PW-29 PI Shinde. PW-30 Raman Tyagi had also stated that Birsingh Ho did not have much of income from cultivation or other activities. The learned PP also drew my attention to the evidence of PW-27 Sunil Kumar who was working for the Biri Trading Company where the appellant's father was employed. PW-27 Sunil Kumar had proved the statement of wages paid to Birsingh Ho from time to time, which is at Exhibit-130, which would show that the monthly wages paid to Birsingh Ho ranged between ` 98.50 in 1970 to ` 442/- in 1987. Therefore, according to the learned PP, Birsingh Ho could not at all have been in a position to finance the investments by his daughters or daughter-in-law.

18. The learned counsel for the appellant had an objection to receipt of evidence of PW-30 Raman Tyagi. According to the learned counsel, just as PW-29 PI Shinde had been authorised by order dated 2-11-1987 (Exhibit-140) to investigate into the crime in exercise of powers under Section 5-A(1) of the PC Act, 1947, similar authorisation was not issued in the name of Tyagi. Therefore, he submitted that the entire investigation carried out by Tyagi in Jharkhand, which includes evidence collected about the properties of Birsingh Ho and his income would have to be excluded from consideration. The learned PP submitted, and rightly in my view, that the order at Exhibit-140 authorised PI Shinde to conduct investigation with the assistance of other officers as well. Therefore, it is not that services of Raman Tyagi could not have been employed for the purpose of carrying out investigation. The learned counsel for the appellant relied on a judgment of the Supreme Court in State, Inspector of Police, Vishakha-patnam v. Surya Sankaram Karri, reported in 2007 All MR (Cri) 555 (SC) : 2006 AIR SCW 4576, on the question of unauthorised investigation. He submitted that Tyagi had no authority to investigate into the offences since there was no order issued in the name of Tyagi. It has, however, to be noticed that the Court observed in para 21 of its judgment as under:

21. It is true that only on the basis of the illegal investigation a proceeding may not be quashed unless miscarriage of justice is shown, but, in this case, as we have noticed hereinbefore, the respondent had suffered

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miscarriage of justice as the investigation made by P.W. 41 was not fair.

Therefore, the illegality of investigation per se would be unhelpful. It is not shown that the investigation carried out by Tyagi was not fair. In any case, Raman Tyagi stated in his deposition at Exhibit-145 that he had been asked by the S.P. Shri A.L. Verma to gather evidence about the income derived by the father of the accused and in pursuance of those directions he had gone to Chakradharpur. Though ideally Verma could have passed an order in the name of Tyagi as well just as he had passed the order in the name of PI Shinde, the absence of such order on record in itself would not make any material collected by Tyagi inadmissible in evidence. In any case, the evidence of PW-30 Tyagi is negative, in the sense that he states that Birsingh Ho did not own properties worth the name. The evidence about income from the Biri factory has been tendered by PW-29 PI Shinde himself.

19. The learned PP further submitted that if Birsingh Ho did have substantial income to finance the investments of his daughters in Mumbai, there would be no question of monies flowing from Mumbai, where the appellant was posted, to Jaraikela where Birsingh Ho was residing. He pointed out that consideration for purchase of a house at Chakra-dharpur from Akundi Sundaramma and loan advanced to her, in fact went from Mumbai to Chakradharpur by a circuitous route which has been duly traced by the prosection. Akundi Sundaramma was paid a sum of ` 49,500/- by cheque dated 13-3-1985 which is marked as Exhibit-F in the evidence of PW-28 Sujit Moitra, the Deputy Manager of State Bank of India, Jaraikela at the relevant time. On 13-3-1985 and 14-3-1985, Nirmala, the appellant's wife, had issued two cheques in favour of Akundi Sundaramma for ` 49,500/- and ` 50,500/- respectively. They were drawn on Nirmala's account No. 9897 from Chakra-dharpur Branch. The amount came from a draft for ` 1,00,000/- issued in the name of Birsingh Ho and Nirmala Jonko on 22-2-1985 from the State Bank of India, Fort, Bombay Branch, drawn on State Bank of India Jaraikela Branch. This was credited to account No. 9897 from where the consideration went for the purchase of property of Akundi Sun-daramma. The learned PP also pointed out that it is not an isolated transaction of money flowing from Mumbai to Jharkhand. He pointed out that on the same date, that is on 22-2-1985 another sum of ` 20,000/- was remitted by drawing a draft in the name of Birsingh Ho and Nirmala Jonko, payable at Jaraikela Branch of State Bank of India. This too was issued by State Bank of India, Fort Branch, Mumbai. On the same day another draft in the name of Nirmala Jonko and Munni Jonko for ` 52,500/- was issued by he State Bank of India, Fort-Bombay, payable at State Bank of India, Jaraikela. All these drafts have been identified in the course of 30 APEAL-270.01 evidence of PW-28 Sujit Moitra. The draft for ` 52,500/- was credited in Nirmala and Munni's account on 4-3-1985 vide extract of account Exhibit-132. The learned PP, therefore, rightly submitted that if Birsingh Ho was a man of means, amounts should have been remitted by him to his son at Mumbai rather than amounts flowing from Mumbai for purchase of property at Chakradharpur. Curiously remittances from Mumbai have been made in favour of persons which, in each case, includes the appellant's wife. Therefore, the contention that the persons in whose names the assets were acquired had their own source of income or that acquisition of assets was financed by the appellant's father Birsingh Ho was rightly rejected by the learned trial Judge as an eye-wash.

20. It would be interesting to note as to what the appellant states in his written statement to supplement his statement under Section 313 of Criminal Procedure Code. He stated that his father was the richest person from the village and therefore could educate all his children. He has filed on record certificates from Anchal Adhikari, Bandgaon and Sarpanchs of Gram Panchayats, Otar and Buddigoda to support his claim about the status of his father. The certificate of Anchal Adhikari, Bandgaon shows that the appellant's father owned land worth ` 90,000/-, possibly 3.12 hectares in area. The certificates of Sarpanchs of the two Gram Panchayats are similarly worded and both

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state that Birsingh Ho had about 8 to 10 acres of cultivable land from which he could save at least 80 quintals of paddy after the household expenses. The certificates show that one puda of paddy is about 12 to 15 quintals and the yield was about 15 pudas, that is about 225 quintals of paddy. It is not known whether 8 acres of land or 3 hectares of land could yield 225 quintals of paddy per annum.

21. Considering all this, the evidence tendered about investments was rightly accepted by the learned trial Judge, who had in fact given an allowance to the appellant by adding to his salary income. The income which the learned Judge took into consideration was ` 2,69,688/- against ` 1,40,188/- from salary. The learned Judge had also increased the likely savings to ` 2,44,688/- from ` 1,58,188/- shown in the charge. Even then the assets were found to be disproportionate to the extent of ` 3,87,570/-.

22. The learned PP submitted that though two cars are shown to have been purchased in the names of the appellant's sister and wife by taking loan, since they had no income, it is not clear as to how the loan was to be repaid. The appellant had stated in his written statement at Exhibit-152, in para 4, that the amounts standing in the name of his wife in the Nepean Sea Road Branch of State Bank of India were amounts received by her as gifts from her parents and the appellant's father from time to time, and therefore were stridhan. He submitted that as per the traditions of the tribal society of the accused, the accused was getting 25% agricultural produce of his family and that he was getting grain and cereal from his native place. Therefore, he had claimed that he could save 70% of his income. The learned Judge too had taken only 30% of the salary as the household expenditure. Therefore, this argument does not take the appellant's case further.

23. On the question of disproportionate assets, the learned counsel for the appellant referred to a judgment of the Supreme Court in State of Maharashtra v. Pollonji Darabshaw Daruwalla, reported in 1988 Cri L J 183 : AIR 1988 SC 88. The observations of the Court in para 13 of the judgment may be usefully reproduced as under:

13. However, these errors of approach and of assumption and inference in the judgment under appeal do not, by themselves, detract from the conclusion reached by the High Court that, in the ultimate analysis, the prosecution has not established the case against respondent beyond reasonable doubt.

The discussion of and the conclusion reached on the contents and parts (c) to (e) by the High Court tends to show that the disproportion of the assets in relation to the known source of income is such that respondent should be given the benefit of doubt though however, on a consideration of the matter, it cannot be said that there is no disproportion or even a sizeable disproportion. For instance, Shri. Bhasme is right in his contention that the acceptance by the High Court of the case of the alleged gift from the mother is wholly unsupported by the evidence. There are also other possible errors in the calculations in regard to point(e). The finding becomes inescapable that the assets were in excess on the known sources of income.

But on the question whether the extent of the disproportion is such as to justify a conviction for criminal misconduct under Section 5(1)(e) read with Section 5(2), we think, we should not, in the circumstances of the ease, interfere with the verdict of the High Court as, in our view, the difference would be considerably reduced in the light of the factors pointed out by the High Court. A somewhat liberal view requires to be taken of what proportion of assets in excess of the known sources of income constitutes "disproportion" for purpose of Section 5(1)(e) of the Act.

There can be no doubt about the proposition that merely because the assets are in excess of known sources of income, that in itself cannot amount to criminal misconduct, and unless the assets are shown to be disproportionate, the accused's conviction should not follow. In the case at hand, the disproportion held as proved by the learned Judge is significant.

24. The learned counsel for the appellant next submitted that the prosecution must fail because it is not shown that sanction for

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prosecution was accorded by authority competent to do so. He relied on a judgment of the Supreme Court in Mohd. Iqbal Ahmed v. State of Andhra Pradesh, reported in 1979 Cri LJ Page 633 : AIR 1979 SC 677 on the question of sanction to prosecute. The observations of the Supreme Court in para 3 of the judgment may be usefully reproduced as under:

.... It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficult (sicdefect) in the prosecution, the entire proceedings are rendered void ab initio.

25. In State of T.N. v. M.M. Rajendran, reported in 1998 SCC (Cri.) 1000, on which reliance was placed by the learned counsel for the appellant, the Supreme Court was again considering the question of a valid sanction and observed as under:

.... The High Court, has come to the finding that all the relevant materials including the statements recorded by the Investigating Officer had not been placed for consideration by the City Commissioner of Police, Madras because only a report of the Vigilance Department was placed before him. The High Court also came to the finding that although the Personal Assistant to the City Commissioner of Police, Madras has deposed in the case to substantiate that proper sanction was accorded by the City Commissioner of Police, the witness has also stated that the report even though a detailed one was placed before the Commissioner by him and on consideration of which the Commissioner of Police had accorded the sanction, it appears to us that from such deposition, if cannot be held conclusively that all the relevant materials including the statements recorded by the Investigating Officer had been placed before the Commissioner of Police. It appears that the Commissioner of Police had occasion to consider a report of the Vigilance Department. Even if such report is a detailed one, such report cannot be held to be the complete records required to be considered for sanction on application of mind to the relevant materials on records. Therefore, it cannot be held that the view taken by the High Court that there was no proper sanction in the instant case is without any basis. ....

26. The learned counsel for the appellant drew my attention to the evidence of PW-24 Ram Raj Bharti who was at the relevant time serving in the Ministry of Finance. The sanction at Exhibit-120 was signed by him as Under Secretary to Government of India. He stated that the President is the authority to sanction prosecution in such cases. But the officers of the level of Under Secretary are authorised to pass such orders. He stated that all the papers concerning the case of the appellant were sent by CBI to him. He sent those papers to the Minister with his short note and received the papers back after the Minister's approval. He states that after going through the papers he was satisfied that the officer had committed offence and accordingly he accorded sanction for prosecution. In cross-examination he stated that before the papers came to him, they were initially sent to the concerned Ministry but could not tell the date on which they were sent to the Ministry, or the date when the papers were considered by the Ministry and then sent to him. He denied the suggestion that while according sanction he took report of the CBI to be truthful, implying that he had applied his mind to the material.

27. The learned counsel for the appellant submitted that under the Rules of Business of Government of India, the Department, which is the cadre controlling authority, and not a particular officer of that Department, is the authority competent to accord sanction. There could be no doubt that Department would be sanctioning prosecution. But since the Department functions through individuals, approval by the Minister who

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heads the Department should be enough to indicate that the Department had authorised the prosecution of the appellant. The hierarchy in the Department obtained by the appellant by filing a query under the Right to Information Act which he has made available for my perusal, does not show that the Under Secretary was not authorised to issue sanction order. Therefore, reliance on the judgments of the Supreme Court in the State of Rajasthan v. Dr. A.K. Datta, reported in AIR 1981 SC 20 and Parmanand Dass v. State of Andhra Pradesh, reported in 1978 Cri LJ 1802 : AIR 1978 SC 1745, which deals with the factual question as to who was the sanctioning authority in those cases is unhelpful. For the same reason, it may not be necessary to discuss the judgment of this Court in Pravin Kumar v. The State, reported in 2005 Cri L J 2714. There is nothing to show that there is any defect in the sanction and therefore the objections on this count have to be rejected.

28. The learned counsel also submitted that the sentence inflicted upon the appellant is unduly harsh and since it pertains to incident 24 years ago, at this point of time maintaining that sentence would be unjust. The learned trial Judge has considered this aspect as well in para 24 of his judgment and has rightly held that delays caused due to the system cannot work to the advantage of the appellant who should have been served with just dessert long ago.

29. In view of the above, the appeal is dismissed. However, the order convicting the appellant is modified and the conviction of the appellant for the offence punishable under Section 13(2) r/w Section 13(1)(e) of the PC Act, 1988 is altered to that for the offence punishable under Section 5(2) r/w Section 5(1) (e) of the PC Act, 1947. The appellant shall surrender to his bail within a period of four weeks to suffer his sentence and if he does not, the learned trial Judge shall have him arrested and committed to prison.

 Appeal dismissed.

**2008 CRI. L. J. 2195 "Om Prakash Agarwala v. State of Jharkhand"**

 **JHARKHAND HIGH COURT**

 Coram : 1 D. G. R. PATNAIK, J. ( Single Bench )

Cr. M. P. 185 of 2005, D/- 10 -10 -2007.

Om Prakash Agarwala v. The State of Jharkhand and Ors.

Criminal P.C. (2 of 1974), S.482 - INHERENT POWERS - CRIMINAL PROCEEDINGS - AGRICULTURAL PRODUCE - COGNIZANCE OF OFFENCE - Criminal proceedings - Quashing of - Cognizance of offence u/S.48 of Market Act taken on basis of complaint lodged by secretary, market committee - No prior resolution passed by market committee to launch such prosecution as required u/S.18 - Complaint lodged without necessary powers - Not maintainable - Cognizance taken on basis there of - Liable to be quashed.

Bihar Agricultural Produce Markets Act (16 of 1960), S.18(2), S.48.

Jharkhand State Agriculture Produce Markets Rules, R.66.

Section 18 of the Act lays down powers and function of the market committee which overrides the powers granted to the Secretary under Section 66 of the Rules. The provisions of Rule 66 (i) of the Rules declares that as the chief executive officer of the market committee, the Secretary shall carry into effect the resolution of the market committee. Since under Section 18 (vi) it is Market Committee which is empowered to launch prosecution, it becomes imperative therefore that there should be a prior decision/resolution of the Market Committee to launch prosecution against any individual for violation of the provisions of the Act or Rules thereunder and such resolution shall be carried into effect by the Secretary. Thus, the decision to launch prosecution can be taken only by the Market Committee and only thereafter it can authorize the Secretary to file complaint. Power to grant sanction as aforesaid in the Secretary under the amended Rule 132 would also therefore be subject to prior decision or resolution taken by the market committee to launch prosecution.

The impugned order of cognizance and continuance of the criminal proceedings on complaint filed by the Secretary of the Agriculture produce Markets Committee is held to be without jurisdiction and without authority since no resolution/decision was passed by the committee to prosecute the petitioners, nor was any authorization by Agriculture Produce Market Committee given to the Secretary to launch prosecution.

The present complaint as lodged by the complainant had therefore to be held as not maintainable, and the entire criminal proceedings including the order of cognizance is liable to be quashed. (Paras 11, 12, 14)

Cases Referred : Chronological Paras

1998 (3) Pat LJR 205 5

1996 (2) East Cri C 124 (Pat) 5

1995 AIR SCW 2016 5, 13

P. K. Agarwala and S. L. Agarwala, for Petitioner; M/s. V. P. Singh and M. K. Roy, for Respondents.

Judgement

ORDER :- The petitioner has filed the instant application praying for quashing the entire criminal proceedings including the order of cognizance dated 12-2-2002 passed by the learned CJM, Ranchi in C/III Case No. 40 of 2002 for an offence under Section 48 of the Bihar Agricultural Produce Markets Act which is now pending in the Court of Sri Santosh Kumar, Judicial Magistrate, Ranchi.

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2. The case against the petitioner was registered on the basis of a complaint dated 11-2-2000 filed in the Court of the CJM, Ranchi, by the Agriculture Produce Markets Committee through its Secretary alleging inter alia that the accused persons are traders as defined under Section 2(w) of the Bihar Agriculture Produce Markets Act (hereinafter referred to as the Act) engaged in business of ply board, ply patti and other similar commodities which are agriculture produce as defined under Section 2(1) (a) of the Act vide notification of the State of Bihar vide SO No. 2531 dated 31-8-2000 published on 23-10-2000 in the official gazette. Pursuant to the notification, the Market Committee issued notice to the accused persons on 13-11-2000 followed by similar notices issued on 18-11-2007, 27-1-2001 by registered posts calling upon them to obtain licence and pay market fees as per rules under the Act, but the accused persons did not comply with the instructions. Contending that the act of the accused persons is in violation of Section 27 of the Act and Rules 82 and 98 of the Rules under the Act, which act is punishable under Section 48 of the Act, the complaint was filed. It is further stated that the Secretary under whose signature the complaint was filed is authorized to grant sanction under Rule 132 of the Rules under the Act as amended in 1996 and he has accordingly granted sanction for prosecuting the accused persons as required under Section 49 of the Act.

3. On receipt of the complaint, by order impugned dated 12-2-2002, the Chief Judicial Magistrate took cognizance of the offence under Section 48 of the Act and ordered issuance of summons against the accused persons directing them to appear and face trial before the transferee Court.

4. The petitioner has challenged the impugned order of cognisance and continuance of the criminal proceedings pursuant to the order of cognizance primarily on the ground that the complaint as filed by the Secretary of the Agriculture Produce Markets Committee is without jurisdiction and without authority since no resolution/decision was passed by the Committee to prosecute the petitioners, nor was any authorization by the Agriculture Produce Market Committee given to the Secretary to launch prosecution.

5. Sr. P. D. Agarwal, learned counsel for the petitioner explains that Section 18 of the Act deals with powers and duties of the market committee. Section 18(2)(vi) specifically empowers the committee to bring or launch prosecution against the alleged violator. Learned counsel explains that it is the market committee which has to decide as to whether the prosecution needs to be launched against any alleged violator and it is only after the resolution/decision of this effect is taken by the market committee that any prosecution under the Act can be launched. Learned counsel submits that in the instant case, no resolution/decision was taken by the market committee to launch prosecution against the petitioners. Rather, the Secretary has assumed the authority in purported exercise of powers under Rule 132 (as amended in 1996) to file prosecution against the petitioners, without there being any prior resolution taken or authorization made by the Market Committee. Relying in this context in support of his argument on decisions in the case of Secretary, Agriculture Produce Markets committee, D. K. District v. Varadaraya Shenoy and others (1995 (3) SCC 276) : (1995 AIR SCW 2016), Mahabir Pd. v. State of Bihar (1998 (3) PLJR 205) and M/s Kailash Chand Suresh Kumar and another v. State of Bihar, reported in (1996 (2) Eastern Criminal Cases 124), learned counsel submits that the Secretary has no authority under the provisions of the Act or the Rules made thereunder to file the present prosecution and on this ground alone, the criminal prosecution against the petitioner is liable to be quashed, Learned counsel submits further that the present prosecution having not been filed without previous sanction of the competent authority i.e. the Market Committee or the Director or Assistant Director any officer authorized by him as required under Section 49 of the Act read with the original Rule 132 of the Rules initiating of the prosecution is bad in law. Further grounds which appears to have been taken in the instant application is in respect of the vires of the amendment made in Rule 132 vide the government notification No. 92 dated 26-9-2006. Learned counsel for the petitioner further submits that the petitioner does not press this ground and prefers to confine his ground only to the maintainability of the complaint application on the grounds earlier mentioned.

6. Sri V. P. Singh, Senior Advocate representing opposite party No. 2 would counter the grounds advanced by the petitioner contending

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that the grounds are entirely misconceived and misleading and not maintainable. Learned counsel explains that the complainant in the present case is the Market Committee itself and not the Secretary of the Committee and, therefore, the question of grant of separate sanction for prosecution of the petitioner does not arise and neither does arise the question of authorization of the Secretary to launch prosecution. Referring to the Rule 132 as amended by the government notification dated 26-9-2006, learned counsel explains that the amended rule empowers the Secretary of the market committee to accord sanction for prosecution and therefore, the present complaint having been filed with sanction granted by the Secretary, there is no infirmity in the launching of the prosecution against the petitioner by virtue of the complaint petition. Learned counsel explains further that the requirement of Section 49(2) having been complied with by sanction for prosecution accorded by the Secretary under Rule 132 of the Act, the impugned order of cognizance does not suffer from any illegality.

7. For better appreciation of the grounds advanced, Section 49 of the Act may be referred as under :

Section 49. "Trial and cognizance of offences - (1) No Court inferior to the Court of a Magistrate of the second class shall take cognizance of or try, any offence under this Act or under the rules or bye-laws made thereunder.

(2) No Court shall take cognizance of alleged contravention of the provisions of this Act, the rules or bye-laws or of any order made thereunder except with the previous sanction of the authority prescribed in this behalf."

Section 2(j) of the Act defines "Market Committee" as a committee established under Section 6. Section 6 of the Act deals with the establishment of the Market Committee and reads as follows :

Section 6. "Establishment of the Market Committee - For every market area the State Government shall, by notification, establish a Market Committee."

Section 18 of the Act deals with powers and duties of the Market Committee. Section 18(2)(vi) explains the powers of the Market Committee which includes powers to launch prosecution against individuals who are alleged to have violated the provisions of the Act and Rules thereunder and it reads as follows :

Section 18(2)(vi). "To bring, prosecuting or defending any suit, action, proceeding, application or arbitration in regard to any matter on behalf of the Committee, or otherwise when directed by the Board."

Rule 66(i) of the Rules under the Act lays down powers and functions of the Secretary and lays down that the Secretary shall be the chief executive officer of the Market Committee and shall carry into effect the resolutions of the Committee.

Rule 66(xiv) lays down that the Secretary shall prefer complaint in respect of prosecution to be launched on behalf of the Market Committee and conduct proceedings, civil or criminal, in all Courts and tribunals or any authority on behalf of the Market Committee.

8. It is apparent from powers and functions as laid down under Section 66(i) that the Secretary shall carry into effect the resolutions of the Market Committee and he shall represent the Market Committee in respect of prosecution to be launched on behalf of the market Committee, either civil or criminal, in all courts including criminal.

9. From provisions of Section 18(6) of the Act, it is manifest that it is within the exclusive powers and duties of the Market Committee to bring prosecution or defend, in any proceeding.

10. Rule 132 (as amended by the notification of 1996), prescribes the authorities who are empowered to sanction prosecution and reads as under :

Rule 132 of the Rules : Authorities empowered to sanction prosecution : The following shall be substituted in the place of Rule 132 of the Rules :

"No Court shall take cognizance of any provision of the Act, Rules, byelaws or order of the Market Committee made thereunder except with the previous sanction of the Secretary of the Market Committee or Assistant Director or any officer authorized by him."

11. Learned counsel for the opposite party No. 2 has claimed that the complainant in the case in hand is not the Secretary, but the Agricultural Produce Markets Committee, itself. However, the contents of paragraph 3 of the complaint petition declares

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otherwise when it reads that "the Secretary who is the complainant of this case has granted sanction as required under Section 49 of the said Act. The Secretary is authorized to grant sanction under Rule 132 of the said Rules as amended in 1996."

It cannot therefore be disputed that the complaint was filed by the Secretary though in the name of the Agriculture Produce Market Committee, in purported exercise of powers under Rules 66 (XIV) of the Jharkhand State Agriculture Produce Markets Rules as has been declared by him in the complaint petition.

12. Section 18 of the Act which lays down powers and function of the Market Committee overrides the powers granted to the Secretary under Section 66 of the Rules as would be evident from the provisions of Rule 66(i) of the Rules which declares that as the chief executive officer of the Market Committee, the Secretary shall carry into effect the resolutions of the Market Committee. Since under Section 18(vi) it is the Market Committee which is empowered to launch prosecution, it becomes imperative therefore that there should be a prior decision/resolution of the Market Committee to launch prosecution against any individual for violation of the prosecution of the Act or Rules thereunder and such resolution shall be carried into effect by the Secretary. Thus, the decision to launch prosecution can be taken only by the Market Committee and only thereafter it can authorize the Secretary to file complaint. Power to grant sanction as aforesaid in the Secretary under the amended Rule 132 would also therefore be subject to prior decision or resolution taken by the Market Committee to launch prosecution.

13. In the case reported in (1995 (3) SCC 276 : (1995 AIR SCW 2016) (supra), the Supreme Court while dealing with the case of Karnataka Agriculture Produce Markets Act, 1966 has held that power to launch prosecution vests with the Market Committee and the functions in respect thereof are required to be carried out by the Secretary on behalf of the Market Committee. The power of the Committee and the function of the Secretary in the matter of prosecution of the offenders are independent and cannot be confused, nor can be distinguished between the powers of the Committee and the functions and duties of the Secretary be overlooked. The Apex Court has further held that it is for the Market Committee to decide whether or not the prosecution is required to be launched against an alleged violator and it is only after such decision is taken that the Secretary of the Market Committee can be authorized by the resolution or otherwise to file complaint and conduct the proceedings against the offenders for and on behalf of the Market Committee in the appropriate forum. The conclusive inference which can be drawn therefore is that it is only after the Market Committee has taken the decision to launch prosecution against any offender that sanction for prosecution on the basis of the decision of the Market Committee is required and it is only at a later stage that the Secretary in exercise of powers under the amended Rule 132 may sanction for prosecuting the offender.

14. The ratio laid down by the Apex Court and the High Court in all the cases referred to above, adequately applies to the facts and circumstances of the instant case. The present complaint as lodged by the complainant has therefore to be held as not maintainable.

15. In view of the above application, I find merit in this application. Accordingly, this application is allowed and the entire criminal proceedings including the order of cognizance dated 12-2-2002 passed by the learned CJM, Ranchi in C/III Case No. 40 of 2002 against the present petitioner pending in the Court of Sri Santosh Kumar, Judicial Magistrate or his successor Court is quashed.

 Application allowed.

**2008 CRI. L. J. 2794 "Agricultural Market Committee, Tenali v. Ananthu Subba Rao"**

 **ANDHRA PRADESH HIGH COURT**

 Coram : 1 Dr. G. YETHIRAJULU, J. ( Single Bench )

Cri. Appeal Nos. 1318 to 1320, 1323, 1326, 1328, 1330 to 1332, 1335 to 1341 of 2004, D/- 6 -10 -2007.

The Agricultural Market Committee, Tenali v. Ananthu Subba Rao and Anr. etc.

A.P. (Agricultural Produce and Live stock) Markets Act (16 of 1966), S.7, S.23 - AGRICULTURAL PRODUCE - LICENSE - Trading in notified area without licence - Is offence - Plea by accused that there is no necessity to get licence as they are doing business in Municipal Market - Held, not tenable.

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Section 29(1) prohibits municipality or local body to levy fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified area and the traders need not pay any fee for purchase or sale of agricultural produce, livestock or products of livestock and it is for the municipality to claim compensation from the agricultural market committee and it is obligation on the part of the marketing committee to pay the compensation to compensate the loss suffered by the local body or the municipality as the case may be, when the facility provided by such local bodies are utilized by the traders who obtained licence under the Agricultural Markets Act. But on that count, the traders are not exempted from obtaining licence under the Act and failure on the part of the accused in obtaining licences is an offence. Since they pleaded before the lower Court that they intend to obtain licence from the Marketing Committee and in view of the evidence adduced by the prosecution both oral and documentary, an offence can be said to have been made out against the accused and they are liable to be convicted for the offence under S. 7(1) read with S. 23. In the instant case, it is an undisputed fact that the Agricultural Market Committee did not provide separate markets for transacting the business but since the business in agricultural produce was done within the notified area of the Market Committee, the accused cannot escape from the liability. But in the light of the failure on the part of the Agricultural Committee in creating the facilities to the traders and it is that they are paying licence fee to the municipality, the sentence of imprisonment reduced to one day and fine of Rs. 5,000/-. (Paras 21, 23)

Cases Referred : Chronological Paras

(1989) 2 Andh LT 429 18

AIR 1983 SC 1246 17, 18

(1978) 1 Andh LT 257 18

AIR 1977 AP 147 (FB) 16

AIR 1968 SC 1408 18

K. Madhava Reddy, for Appellants; K. Siva Kumar Reddy and K. Raja Reddy, (for No. 1) Public Prosecutor (for No. 2), for Respondents.

Judgement

JUDGMENT :- All these appeals are preferred by the complainant the Agricultural Market Committee, Tenali, against the acquittal orders in C.C. Nos. 120, 115, 119, 128. 131, 127, 117, 123, 129, 126, 125, 116. 124, 118, 122 and 130 of 2001. dated 22-10-2001 respectively, on the file of I Additional Munsif Magistrate, Tenali, Guntur District, finding the accused not guilty for the contravention of the provisions of 7(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short the Act') as amended in 1987. The complainant-Agricultural Marketing Committee, Tenali is constituted under the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966.

2. The case of the prosecution is briefly as follows :-

The accused was doing business in agricultural produce in Tenali without getting licence for the year 1999-2000 under Section 7 (1) of the Markets Act, 1987. The accused has done vegetable business in the premises situated in Gandhi Municipal Vegetable Markets, Tenali, which is notified within the agricultural market area of Tenali, without obtaining licence from the Agricultural Market Committee in the year 1999-2000. The complainant issued notices to the accused on 14-2-2002 and the same was received by the accused. They gave reply stating that there is no necessity to get licence as they are doing business in the Municipal Market. Basing on the reply, a show cause notice was issued to the accused and the accused gave a reply with similar averments. Therefore, the Market Committee has decided to launch prosecution against the accused. Hence the complaints.

3. In order to prove the guilt of the accused, the complainant examined P.Ws. 1 and 2 and got marked Exs. P1 to P11. On defence side, D.W. 1 was examined and no documents were marked.

4. The lower Court, while finding the accused not guilty of the offences, observed that the date of notification under Section 4(4) of the Andhra Pradesh Markets Act was not clearly mentioned in Ex. P5-notification. It has held that the prosecution has not explained how Section 4(4) notification was issued on 21-10-1971 when the Gazette was issued on 28-7-1994 to regulate the agricultural products and livestock in the Agricultural Market Committee notified area from 7-10-1994. Therefore, the contention of the prosecution that Section 4 (4) notification was issued in the year 1971 itself cannot be accepted. In Ex. P7, under column 5, it was mentioned that the market for vegetable or fruits has to be established

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at Tenali and other places. P.W. 2 and Ex. P7 show that agricultural market is not yet established by the Agricultural Market Committee in the notified area. The market in respect of which, the accused were running the business, the municipality was conducting auctions for leasehold rights on the vegetable market. The market committee shall have to first establish markets in the notified area and shall declare by notification the limits of every market established by it to be known as market area. Mere notification under Section 3 of the Act notifying the area for the purpose of the Act would be of no consequence, unless the market committee establishes in the said notified area, the number of markets as the Government may from time to time direct by providing such facilities in the market as may be specified by the Government from time to time. The complainant has not produced any documents to prove that the Gandhi Municipal Vegetable Market established, maintained and controlled by the Tenali Municipality also included in the notified area. The lower Court further observed that the contention of the Agricultural Market Committee that as the entire Tenali taluk is notified area of the market committee, the Gandhi Municipal Vegetable Market also comes within the purview of the notified area of the Agricultural Market Committee, Tenali and as such the accused is liable to obtain licence under Section 7(1) of the Act cannot be accepted. The lower Court further observed that the accused need not obtain any licence under Section 7(1) of the Markets Act, unless, the Gandhi Municipal Vegetable Market is taken over by the Agricultural Market Committee, Tenali. Therefore, the accused is entitled to be given the benefit of doubt.

5. The learned counsel for the appellant submitted that the limits of market area has been declared under Section 3(3) of the Act, and the Market Committee was constituted under Section 4(1) of the Act and that Section 4(4) notification was also issued specifying the area, which comes within the limits of the marketing committee. As per Section 7(1) of the Act, the persons, who do not obtain licence for sale of the agricultural produce is liable for prosecution. Therefore, Section 7 of the Act obligates on the traders to obtain licence from the Agricultural Market Committee. The Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 was brought into force for regulation of purchase of sale of agricultural produce, livestock and products of livestock and to establish the markets in connection therewith. It was also intended to bring within the scope of the legislation all agricultural commodities, both processed and unprocessed, livestock and products of livestock, to empower the market committee to issue licences to traders in a notified area; to fix the minimum and maximum strength of the members of a market committee at twelve and sixteen respectively so as to accommodate various interests in proper proportions; to nominate representatives of growers of agricultural produce and owners of livestock and products of livestock up to 50% of the total strength of a market committee with a view to give adequate representation to the interests concerned and to pay to the municipalities or other local authorities compensation for loss of income of the local authority on account of the establishment of markets in the notified area by the market committees under the Act.

6. As per Section 2(vi), 'market' means a market established under sub-section (3) of Section 4 and includes market yard and any building therein. As per Section 2(xi) 'notified area' means any area notified under Section 3 of the Act. Section 2(xii) 'notified market area' means any area declared to be a market area by notification under Section 4 of the Act. Section 2 (xiii) defines that a 'person' means an individual or a company or an association of individuals whether incorporated or not, and includes in the joint Hindu family. Section 2(xvi), which was introduced through amendment of the year 1987, a 'trader' means the person licensed under sub-section (1) of Section 7 and includes the person in whose management the collection of fee is placed whether it is called a commission agent, ginner, presser, warehouseman, importer, exporter, stockiest or by whatever local name he is called.

7. Section 3 of the Act reads as follows :-

Declaration of notified area - (1) The Government may publish in such manner as may be prescribed a draft notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification.

(2) Such notification shall state that any objections or suggestions, which may be received by the Government from any person

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son within a period to be specified therein, will be considered by them.

(3) After the expiration of the period specified in the draft notification and after considering such objections and suggestions as may be received before such expiration, the Government may publish in such manner as may be prescribed a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the Government, may, by notification -

(a) exclude from a notified area, any area comprised therein; or

(b) include in any notified area, any area specified in such notification;

(c) declare a new notified area by separation of area from any notified area or by uniting two or more notified areas or parts thereof or by uniting any area to a part of any notified area :

Provided that where, as a result of declaration of a new notified area under this clause, the entire area comprised in an existing notified area is united to one or more notified areas, the said existing notified area shall stand abolished."

8. Section 4(3) reads as follows :-

"(a) Every market committee shall establish in the notified area excluding the scheduled areas such number of markets as the Government may, from time to time, direct from the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government from time to time, by a general or special order.

(b) Every market committee shall also establish in the notified area such number of markets as the Government may, from time to time, direct for the purchase and sale, solely of vegetables or fruits and shall provide such facilities in the market as may be specified by the Government from time by general or special order.

(c) The market committee shall declare, by notification, the limits of every market established by it under Clauses (a) and (b) (hereinafter referred to as the market area)."

9. Section 4(4) of the Act reads as follows :-

"As soon as may be after the establishment of a market under sub-section (3), the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of this Act in respect of any notified agricultural produce, livestock or products of livestock."

10. Section 7 of the Act reads as follows :-

"Trading etc., in notified agricultural produce, livestock and products of livestock in the notified area :-

(1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, dressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee.

Provided that the market committee may exempt from the provisions of this sub-section any person who carries on the business of purchasing or selling any notified agricultural produce, livestock or products of livestock not exceeding such value as may be prescribed;

Provided further that a person selling notified agricultural produce, livestock or products of livestock grown, reared or produced by him, shall be exempt from the provisions of this sub-section, but the Government may for special reasons to be recorded in writing, withdraw such exemption in respect of any such person;

\*[Provided also that the market committee shall not renew the licence granted under this section, unless the licensee pays all the arrears of amount due to it under provisions of this Act.]

\* Proviso added by Act 4 of 1987.

Explanation :- Nothing in the second proviso to this sub-section shall be construed as exempting a cross-objections-operative marketing society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, selling notified agricultural produce, livestock or products of livestock grown, reared

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or produced by any of its members.

(2) Nothing in sub-section (1) shall apply to a person purchasing notified agricultural produce, livestock or products of livestock for his own domestic consumption.

(3) A licence granted under sub-section (1) shall be in such form and subject to the payment of such fees, as may be prescribed :

Provided that no fees shall be charged for the grant of a licence -

(i) to the Khadi and Village Industries Commission;

(ii) to a cross-objections-operative marketing society referred to in explanation to sub-section (1);

(iii) to a person merely for curing, pressing or processing any notified agricultural produce or products of livestock.

(4) (a) A licence under sub-section (1) may be refused to a person -

(i) whose licence was cancelled and one year has not elapsed since the date of cancellation :

(ii) who has been convicted for an offence or been guilty of misconduct which, in the opinion of the market committee affects the said person's integrity as man of business;

(iii) in regard to whom the market committee is satisfied, after such inquiry as it considers adequate, that he is a benamidar for, or a partner with, any other person to whom a licence may be refused under sub-clause (i) or sub-clause (ii);

(iv) if, in the opinion of the market committee, the grant of a licence is likely to affect the transaction of purchase or sale in the market or the levy of market fees therefore.

(b) The Market Committee may, in accordance with such rules as may be made by the Government and after such inquiry as it deems fit, cancel or suspend any licence granted under sub-section (1) :

Provided that in the case of refusal to grant a licence or of suspension or cancellation of a licence, the applicant or licensee, as the case may be, shall be entitled to appeal to such officer and in such manner as may be prescribed.

(5) A person to whom a licence is granted under sub-section (1) shall comply with the provisions of this Act, the rules and the byelaws made thereunder and the conditions specified in the licence.

(6) Notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area."

11. As per Section 7(1) no person is entitled to do any transactions like purchase, sale and storage etc., without licence from the market committee.

12. Section 29 provides for compensation to the local bodies, which reads as follows :-

"Payment of compensation in respect of markets in municipalities and in areas within jurisdiction of other local authorities:- (1) Where in pursuance of Section 3, the Government notify any area comprised within the local limits of the jurisdiction of a municipality or other local authority, no such municipality or other local authority shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified area.

(2) The market committee of the notified area shall, out of its funds, pay every year to the municipality or other local authority, which was levying such fees immediately before the notification of the area, a sum equivalent to the licence fees levied by such municipality or other local authority during the period of one year immediately before the notification of the area, for a period of ten years as compensation for the loss of income of the municipality or the local authority on account of the establishment of markets in the area by the market committee."

13. So the scheme of the Act indicates that a notification will be issued prescribing the limits for establishment of marketing committee and also there is a notification regarding the committees, which come within the purview of the Act. As per Ex. P5 notification, 16 Km. radius was prescribed as market area of the committee of Tenali and whoever, does any of the activities covered under the above provisions, is required to obtain licence and he is prohibited from doing any such activities within the local area of the Market Committee without licence.

14. The learned counsel for the respondent-accused submitted that the marketing committee fail to establish separate markets for agricultural produce within the municipal limits and as the Municipalities Act continued

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to be in force in the market area, the traders cannot be penalized twice by way of licence fee by the municipalities and the market fee by the marketing committees. When there is a right for the market committee to insist on obtaining licence from it, there is an obligation also on the committee to see that the compensation is paid to the municipality or the local body or there must be an establishment of separate markets of its own to enable the traders to do business in that premises. Therefore, it cannot insist on obtaining licenses for doing business in the municipal market without complying its obligations.

15. On the other hand, the learned counsel for the appellant Market Committee represented that the Supreme Court as well as this Court made the position very clear regarding the powers of the market committee in prosecuting such persons if they fail to obtain licence from the Market Committee. In support of his contention, he relied on the following decisions :-

16. In Mamidi Satyanarayana Murty v. State of Andhra Pradesh, AIR 1977 AP 147, a Full Bench of this High Court held as follows :-

"There may be a single market or more than one market for each notified area. There is to be a marketing committee, which a body corporate and it operates over the entire notified area. The market committee has to set up one or more markets within the area of its operation as may be directed by the Government. Under Section 4, Clause (4), the Market area and such other area adjoining thereto as may be specified by the Government in the notification issued under that Section becomes the notified market area. Thus, the highest physical unit is the notified area and within the notified area is the notified market area pertaining to each market established by the marketing committee."

17. In Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246, while considering the scope of Section 7(6), the Supreme Court held that prohibition envisaged in Section 7 (6) against the purchase or sale of notified agricultural produce, livestock and products of livestock in notified market area outside market in that area is not violative of Article 19(1) (g) of the Constitution of India. It is further observed that having regard to the purpose and object of the legislation, it must be said that the registration imposed by sub-section (6) of Section 7 is a reasonable registration within the meaning of Clause (6) of Article 19 on the fundamental right of a citizen to carry on trade or business under Article 19(1)(g) of the Constitution of India.

18. In the Agricultural Market Committee, Bapatla v. Sri Laxmi Satyanarayana Rice Mill, Bapatla, 1989 (2) ALT 429 (DB), while considering the scope of Sections 4(4), 7 and 12 and Rule 47 of the Rules framed under the Act, a Division Bench of this High Court held as follows :-

"This decision was followed by this Court in Malia Papa Rao v. State of A. P. (1978 (1) ALT 257), Chennakesav Reddy, J., as he then was, held that on issuance of the notification under Section 4(4) of the Act, the Market Committee is entitled to regulate the purchase and sale of the notified agricultural produce within the notified are of the notified market area for the purpose of the Act and the trader is bound by the regulations and the market committee is entitled to collect licence fee under Section 7(1) of the Act read with Rule 47 of the rules and the market fee under Section 12 of the Act.

In view of the law thus laid down the question is whether the Market Committee has been providing any service to the traders. As seen earlier, the object of the Act is to regulate the sale and purchase of the notified agricultural produce within the notified market areas enjoined under sub-section (6) of Section 7 of the Act to eliminate exploitation by middle men, to bring growers and traders face to face, sale by open auction under the supervision of the Market Committee and to make prompt payment on the same date. The constitutional validity of S. 7(6) is upheld in Sreenivasa General Traders v. State of A. P. (AIR 1983 SC 1246) (supra). The services rendered need not directly be in correlation to the levy of the fee. The prime object of the Act is only to regulate the purchase and sale of the agricultural produce within the notified areas and within the notified market area. The entire benefit goes to the traders and also the growers in the notified area and the fee collected goes into the market fund. It is subjected to audit and control by the Government. The licence is regulated under the provisions of Section 7(1) read with the Rules. Rules 26 to 37 regulate the powers and trade services. The market fund shall be expended for all or any of the purposes enumerated under

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Section 15 of the Act. The expending money is subject to control by the Government and audit. The members of traders representing the Market Committee also get the power of control over the expenditure and the purpose for which the fund is to be expended in respect of the regulation of the notified agricultural produce within the notified area or the notified market area. What is collected is a fee and not a tax. In the written statement, it is specially stated as to what are the steps taken, expenditure incurred and how the fund is being expended. The Secretary of the Market Committee, who is examined as D.W. 1 has also stated in his evidence about these facts. We do not see any reason to disregard his evidence. In these circumstances we hold that the market is at an initial stage and is being developed from time to time and it is unreasonable to compel the Committee to provide all the facilities at a stretch and then collect the market fee. As seen earlier, the Supreme Court in Lakhan Lal v. State of Bihar, AIR 1968 SC 1408 has held that when the notification has been issued constituting the notified market area, the market Committee is entitled to collect the market fee. Same is the view of this Court as referred to earlier in Malla Papa Rao v. Government of A. P. (1978 (1) ALT 257). In this view, we must hold that what is collected is only a fee and not a tax and there is correlation between the fee collected and the services rendered and thereby the reasonable relation of quid pro quo has been established. No doubt there is no express special service rendered to the traders, but it is not necessary that every payer of the fee should be a recipient of the services rendered. General service to the body of traders and growers is sufficient. In this view, it must be held that both the Courts have committed a grave error of law in decreeing the suit."

19. In the present case, Ex. P5 is the notification under Section 4(4) of the Act issued by the Government on 30-7-1971 prescribing the limits of the Marketing Committee as 16 Km. radius around the Office of the Agricultural Market Committee, Tenali. Earlier to that Ex.P6-notification, dated 4-4-1969 was issued constituting the market committee but Ex. P7 is the notification authorizing the market committee to establish markets at some other places also. Ex. P10 is the G.O.Ms. No. 286, dated 5-7-1994 leasing out the commodities, which come within the purview of the market committee. So the above notifications indicate that the marketing committee exercised its power under the Act to comply the provisions and to achieve the objects of the Act. Though the marketing committee is not in a position to establish separate markets for marketing of agricultural produce, it is not prohibited from insisting on licence on the traders. Unless they get funds, it may not be possible for the marketing committee to provide facilities to the public who come to the market.

20. Section 29(2) indicates that if the markets created by the municipality or local body are utilised by the marketing committee, it has to pay compensation to such bodies, which it considers reasonable or the proportionate loss of income to the local bodies. No doubt it is the obligation on the part of the market committee to compensate the local bodies, provided the persons who are running the business in those markets, take licence from the Market Committee and pay market fee for the marketing of the commodities in those markets.

21. Section 29(1) prohibits municipality or local body to levy fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified area and the traders need not pay any fee for purchase or sale of agricultural produce, livestock or products of livestock and it is for the municipality to claim compensation from the agricultural market committee and it is obligation on the part of the marketing committee to pay the compensation to compensate the loss suffered by the local body or the municipality as the case may be, when the facility provided by such local bodies are utilized by the traders who obtained licence under the Agricultural Markets Act. But on that count, the traders are not exempted from obtaining licence under the Act and failure on the part of the accused in obtaining licence is an offence. Since they pleaded before the lower Court that they intend to obtain licence from the marketing committee and in view of the evidence adduced by the prosecution both oral and documentary, I am convinced that an offence is made out against the accused in all the appeals and they are liable to be convicted for the offence under Section 7(1) read with Section 23 of the Act.

22. In the result, the appeals are allowed. The acquittals recorded by the lower Court though the judgments dated 22-10 2003

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are set aside. Regarding the quantum of sentence, since the minimum sentence is prescribed under the Act and as I am inclined to impose lesser sentence than the minimum prescribed under the Act by recording special reasons, there is no necessity to give an opportunity to the accused for hearing on the quantum of sentence under Section 23 of the Act as the sentence of imprisonment shall not be less than six months and fine of Rs. 5,000/.

23. In the present case, it is an undisputed fact that the Agricultural Market Committee did not provide separate markets for transacting the business but since the business in agricultural produce was done within the notified area of the market committee, the accused cannot escape from the liability. But in the light of the failure on the part of the Agricultural Committee in creating the facilities to the traders, a lenient view is taken and as it is represented that they are paying licence fee to the municipality, I am of the view that the sentence of imprisonment for one day would meet the ends of justice and also to pay a fine of Rs. 5,000/-for each accused, in default to suffer Simple Imprisonment for one month.

24. In the result, the Criminal Appeals are allowed.

 Appeals allowed.

**2006 CRI. L. J. 255 "Dinesh Supari Traders v. A. P. M. (Regulations) Committee "**

 **KARNATAKA HIGH COURT**

 Coram : 1 MOHAN SHANTANAGOUDAR, J. ( Single Bench )

Crl. P. No. 3626 of 2004, D/- 23 -9 -2005.

M/s. Dinesh Supari Traders v. Agricultural Produce Marketing (Regulations) Committee, Kadur

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.114, S.65A - Criminal P.C. (2 of 1974), S.472, S.468 - LIMITATION - AGRICULTURAL PRODUCE - CONTINUING OFFENCES - COGNIZANCE OF OFFENCE - Failure to pay market fee - Complaint alleging offences under S. 114 - Limitation - Offence is a "continuing offence" - Last act of offence controls commencement of period of limitation - Offence alleged is governed by S. 472 and not S. 468 of Criminal P.C. - That apart, in interest of justice cognizance can be taken even after expiry of period of limitation qua S. 473, Criminal P. C.

The concept of "continuing offence" does not wipe out the originsl guilt, but keeps the contravention alive day by day.

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Continuing offence is a type of crime, which is committed over a span of time. A continuing wrong or a continuing offence is, after all, a continuing breach of duty which itself is continuing. If a duty continues from day to day, the non performance of that duty from day to day is a continuing wrong. Wrongful withholding of the market fees, to which APMC., is legitimately entitled to, cannot be said to be terminated by a single act, but would subsist for the period until the market fee in the offenders' possession is delivered or paid. It will be a recurring or continuing offence until the wrongful withholding is vacated or put an end to. Thus, as the petitioners have failed to pay the market fee assessed by the respondent, the offence also continued till lodging of the complaint. Each day that they failed to comply with the obligation to pay their market fee dues, they continued to commit the offence. Thus, the offence is a continuing offence. If the offence is held to be not continuous, then the guilty assessees who have not paid the prescribed market fee to the "Market Committee" can successfully evade the penal consequences of their acts and misdeeds by pleading the law of limitation. (Para 9)

In view of the above, the offence alleged against the petitioners will be governed by S. 472 of Cr. P. C., insamuch as, in the case of continuing offence, a fresh period of limitation shall begin to run every moment during which the offence continues. As to the period of limitation in a continuing offence, the last act of the offence controls the commencement of period of limitation. In the case of instantaneous crimes, the limitation begins to run with the consummation while in the case of continuous crimes, it only begins with the cessation of the criminal conduct or act. Thus, the offence which is complained against the petitioner namely, non-payment of market fee to "Market Committee" is a continuing of offence and that therefore, the period of limitation prescribed under S. 468 of Cr. P. C., cannot have any application to the present case, and the offence alleged against the petitioners will be governed by S. 472, Cr. P. C. (Para 10)

Further, looking to the scheme of the "Act" and the purpose and object for which the market fee is prescribed and collected, the interest of justice demands that the Court shall take cognizance of the offence, even after expiry of the period of limitation, in the interest of justice. Section 473, Cr. P. C. is in the nature of an overriding provisions according to which, notwithstanding anything contained in the provisions of Chapter 36 of the Code of Criminal Procedure, the Courts which are confronted with the provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contianed in S. 473, Cr. P. C. (Para 11)

Cases Referred : Chronological Paras

AIR 1973 SC 908 9

Jayakumar S. Patil, Sr. Adv. for Chandru and S. Shekar, for Petitioner; B. G. Sreedharan, for Respondent.

Judgement

ORDER :- Heard Sri Jayakumar S. Patil, learned senior counsel appearing for the petitioners, Sri B. G. Sreedharan learned counsel appearing for Respondent and perused the material on record.

2. By the impugned orders, the Court below has taken cognizance of the offence punishable u/S. 114 of Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 ('Act' for short) and ordered for issuance of process /summons against the petitioners. As the common facts and questions of law are involved in these matters, they are heard together and disposed of by this common order by consent of both the Advocates.

3. The petitioners in all these petitions are the licensees and market functionaries under the respondent, which is established under the provisions of Karnataka Agricultural Produces Marketing (Regulation) Act 1966 ('Act' for short) and are engaged in the business of buying and selling of notified agricultural produces in the respondent-Market Yard. As all these petitioners have failed to pay the market fees assessed by the respondent under the provisions of the 'Act' as mentioned in the respective demand notices, the complainant issued notice as contemplated u/S. 70 of the 'Act' calling upon the petitioners to compound the offence, if need be. As the petitioners neither paid the market fee nor compounded the offence, private complaints came to be lodged by the Secretary of the Marketing Committee for the offence

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punishable u/S. 114 of the 'Act'. As aforesaid, the learned Magistrate took cognizance for the offence

punishable u/S. 114 of the 'Act' and issued summons against these petitioners. The petitioners have sought for quashing the proceedings on the ground that :

(a) the complaints and other material on record do not disclose the ingredients of offence punishable u/S. 114 of the 'Act'.

(b) The complaints lodged by the Secretary of the Committee in all these matters are time barred and that therefore, the Court below should not have taken congnizance of the offence alleged against the petitioners.

4. Sri. Jayakumar S. Patil, learned Senior Counsel appearing for the petitioners vehemently submitted that there are assessment orders as such, assessing the liability of the petitioners to pay the market fees and hence the question of payment of market fees does not arise; that the 'Marketing Committee' has not passed any resolution authorizing its secretary to lodge complaints and that therefore, the complaints lodged by the Secretary are not maintainable; that the complaints filed in all these matters are time barred as the same are filed byond six months from the date of alleged offence. On these amongst other grounds, he sought for quashing the proceedings.

5. Per contra, Sri. B. G. Sreedharan learned counsel appearing on behalf of the respondent by filing his statement of objections, interalia contended that the complaints and other material on record prima facie disclose ample material against the petitioners for the offence punishable u/S. 114 of the 'Act'; that the 'Market Committee' in its meeting held on 24-3-2003 was pleased to resolve to initiate proceedings against the petitioners as they have evaded payment of market fee in question and duly authorized the Secretary of the 'Market Committee' to initiate prosecution against these petitioners; that the offence committed by the accused-petitioners is a continuing offence and that therefore, the limitation prescribed u/S. 468 of Cr. P. C., cannot be made applicable to the facts of these cases.

6. On perusal of the material on record it is seen that the demand notices are issued to the petitioners herein demanding certain sums of money towards arrears of market fee due by them to the 'Market Committee' for the years mentioned therein. The 'Market Committee' has assessed the market fee dues on the basis of the accounts submitted by the accused-petitioners herein for the relevant years. Further, it is relevant to observe here itself that though the petitioners had an opportunity of either to compound the offence u/S. 70 of the Act or to prefer an appeal to the Director of Agricultural Marketing or an officer authorized by him in that behalf within 30 days from the date of communication of such order of demand as contemplated u/S. 83-A(1) of the 'Act' , the petitioners have also not chosen to avail those remedies. Hence, as the assessments so made by the 'Market Committee' found in the demand notices remained unpaid and un-challenged, the same became final and executable. As these petitioners, against whom, the demand notices are issued did not pay the amounts in spite of repeated demand notices, the 'Market Committee' chose to lodge the complaints against these petitioners for the offence punishable u/S. 114 of the 'Act'.

7. Sri. B. G. Sreedharan learned counsel appearing for the respondent points out from the records maintained by the 'Market Committee' that a resolutuion has been passed by the Committee authorizing the Secretary to lodge complaints in question. Thus, the complaints lodged by the Secretary of the Market Committee are maintainable. The material on record discloses ample prima facie material against the petitioners for the offence punishable u/S. 114 of the 'Act', inasmuch as, it is not in dispute that the Market fees assessed and demanded by the Market Committee is not paid by the petitioners.

8. Thus, it takes me to next question as to whether the complaints are time barred or not.

The question as to whether a particular offence is a 'continuing offence' must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose for which it is intended to be achieved by constituting the particular act as an offence. A continuing offence is one, which is susceptible of continuance and is distinguishable from the one, which is committed once and for all. At this Juncture, it is useful to refer to Section-114 of the 'Act' which reads thus :

"114. Penalties for evasion of payment of

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fee, etc.:- Whoever evades the payment of any fee, or other amount due from him under this Act or the rules, or the regulations or bye-laws, shall, on conviction, be punished with fine which shall be a sum equal to three times the amount of fee or other amount due or three thousand rupees whichever is more and in the case of a continuing evasion with a further fine which may extend to two hundred rupees for every day during which the evasion is continued after conviction therefor."

From the aforesaid provision it is clear that the defaulter, on conviction, be punished with fine equivalent to three times of the amount of fee. If the defaulter does not pay penalty after conviction, he may be imposed further fine to the tune up to the extent of Rs.200/- per day till payment.

9. As could be seen from Section 65-A of the 'Act', if market fee levied by the 'Marketing Committee' is not paid by the assessee within stipulated period, then the assessee is liable to be levied penalty which is in the nature of revenue penalty up to the extent of 30% (thirty percent) of the original assessment. Considering the object and purpose of aforesaid provisions along with other provisions in the Act, this Court is of the opinion that the same is enacted to ensure the welfare of Market Committee of which the petitioners, traders, merchants and other market functionaries are the members. As such, the petitioners are unquestionably liable to pay the market fee to 'Market Committee' as and when they accrued due. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence.

According to Blacks' Law Dictionary (6th edition) "Continuing Offence" means, "type of crime which is committed over a span of time. As to period of statute of limitation, the last act of the offence controls for commencement of the period. A "continuing Offence" such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct which arises from that singleness of thought, purpose or action which may be deemed a single impulse."

The Apex Court in the case of State of Bihar v. Deokaran Nenshi and another reported in AIR 1973 Supreme Court 908 has explained the term "continuing offence" as under :

"Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to observe or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirements is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission, which constitutes an offence once and for all, and an act or omission, which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

The concept of "continuing offence" does not wipe out the original guilt, but it keeps the contravention alive day by day. Continuing offence is a type of crime, which is committed over a span of time. A continuing wrong or a continuing offence is, after all, a continuing breach of duty which itself is continuing. If a duty continues form day to day, the non-performance of that duty from day to day is a continuing wrong. Wrongful withholding of the market fees, to which APMC, is legitimately entitled to, cannot be said to be terminated by a single act, but would subsist for the period until the market fee in the offenders' possession is delivered or paid. It will be a recurring or continuing offence until the wrongful withholding is vacated or put an end to. Thus, as the petitioners have failed to pay the market fee assessed by the respondent, the offence also continued till lodging of the complaint. Each day that they failed to comply with the obligation to pay their market fee dues, they continued to commit the offence. Thus, I find it impossible to hold that the offence is not a continuing offence. If the offence is held to be not continuous, then the guilty assessees who have not paid the prescribed market fee to the 'Market Committee' can successfully evade the penal consequences of their acts and misdeeds by pleading the law of limitation.

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10. In view of the above, the offence alleged against the petitioners will be governed by Section 472 of Cr. P. C. inasmuch as, in the case of continuing offence, a fresh period of limitation shall begin to run every moment during which the offence continues. As to the period of limitation in a continuing offence, the last act of the offence controls the commencement of period of limitation. In the case of instantaneous crimes, the limitation begins to run with the consummation, while in the case of continuous crimes, it only begins with the cessation of the criminal conduct or act. Thus, I am of the clear opinion that the offence which is complained against the petitioner namely, non payment of market fee to 'Market Committee' is a continuing offence and that therefore, the period of limitation prescribed u/S. 468 of Cr. P. C., cannot have any application to the present case, and the offence alleged against the petitioners will be governed by Section 472 of Cr. P. C.

11. Even otherwise, the provision of Section 473 of Cr. P. C., does not bar the Courts in taking cognizance of such offences. Any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. Section 473 Cr. P. C., is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter-XXXVI of the Code of Criminal Procedure, the Courts which are confronted with the provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contained in Section 473 of Cr. P. C. Further, looking to the scheme of the 'Act' and the purpose and object for which the market fee is prescribed and collected, the interest of justice demands that the Court shall take cognizance of the offence, even after expiry of the period of limitation, in the interest of justice.

12. Looking from any angle, I do not find any illegality in the proceedings of the Court below. Consequently, these criminal petitions are liable to be dismissed as they are devoid of merit.

These criminal petitions are dismissed accordingly.

 Petitions dismissed.

**2006 CRI. L. J. 2292 "Abdul Rajak v. State of Madhya Pradesh"**

 **MADHYA PRADESH HIGH COURT**

 Coram : 1 A. K. SHRIVASTAVA, J. ( Single Bench )

Cri. Revn. No. 1360 of 2005, D/- 2 -2 -2006.

Abdul Rajak v. State of M.P.

Essential Commodities Act (10 of 1955), S.3 - M.P. Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order (1991), Cl.2(e) - ESSENTIAL COMMODITIES - CONFISCATION - AGRICULTURAL PRODUCE - Confiscation of soyabean - No cogent evidence to show that accused was carrying his business continuously and, therefore a "dealer" as defined in order - Upper ceiling limit to keep soyabean is 30 quintals - Therefore at the most quantity which was in excess of 30 quintals could have been confiscated - Soyabean which was found in possession of accused was of his own agricultural produce - Impugned order of confiscation is liable to be set aside. (Paras 6, 7)

Cases Referred : Chronological Paras

1995 (2) MPWN 197 2A

1964 (2) Cri LJ 465 : AIR 1964 SC 1533 2A, 5, 6

Siddhartha Gulati, for Petitioner; Yogesh Dhande, for Respondent.

Judgement

ORDER :- The order passed in this revision shall also govern the disposal of Criminal Revision No. 1359/2005 (Ashok Mahajan v. State of M.P.).

2. Feeling aggrieved by the judgment dated 23-08-2005 passed by Third Additional Sessions Judge, Fast Track Court, Khandwa dismissing the appeal filed by the application under S. 6(c) of the Essential Commodities Act, 1955 (in short 'the Act') whereby the order passed by the competent authority constituted under the Act (Collector) directed to confiscate Soyabean 51.70 quintals seized from the possession of applicant, this revision-petition has been filed.

2A. It has been contended by Shri Siddhartha Gulati, learned counsel for the applicant that if the entire case of the prosecution is considered in toto, it would be difficult to uphold the confiscation of the impugned soyabean. Learned counsel has submitted that the burden of proof that the applicant is a "dealer" was on the prosecution and further it was required to demonstrate by them that the applicant regularly carries on the business. The case of prosecution if stretched to the last point, at the most it would reveal that at one point of time the applicant was possessing the impugned Soyabean exceeding statutory limit and if that is the position, according to learned counsel, no confiscation can take place. To buttress his submission, learned counsel has placed heavy reliance on the decision of the Supreme Court Manipur Administration v. M. Nila Chandra Singh, AIR 1964 SC 1533 : (1964 (2) Cri LJ 465). An alternative submission has also been putforth by learned counsel that the upper limit to possess the Soyabean is 30 quintals and thus, only 21.70 quintals ought to have been confiscated and not the entire quantity i.e. 51.70 quintals. In that context, he has placed reliance on the single Bench decision of Murarilal v. State of M.P., 1995 (2) MPWN 197.

3. On the other hand, Shri Yogesh Dhande, learned counsel has argued in support of the impugned order.

4. Having heard learned counsel for the parties, I am of the view that both the revision-petition deserves to be allowed.

5. The term "dealer" has been defined under Cl. 2(e) in Madhya Pradesh Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991 (in short 'the order') which reads thus :

"(2)(e) "Dealer" means a person who is engaged or intents to engage in the business of purchase, sale or storage for sale of any one foodgrains specified in Schedule I in quantity of 10 quintals or more at any one time and in respect of all foodgrains taken together in quantity of 50 quintals or more at any one time, and in addition to the sugar 10 quintals all kinds of purlses 10 quintals, edible oils including hydro-generated vegetable oil i.e. vanaspati 5 quintals edible oil seeds 30 quintals. [x x x] at any one time whether on one's own account or in partnership or in association with any other person or as a commission agent or Adhatiya (not including Kachha Adhatiya)

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or miller and whether or not in conjunction with any other business, but does not include a person who -

(i) Stores any scheduled commodities produced by him by personal cultivation; and

(ii) does not engage in the business of purchase or sale of foodgrains."

If the definition of "dealer" envisaged in the said order is kept in juxtaposition to the definition of dealer of Manipur Foodgrains Dealers Licensing Order (1958), Cl. 2(a) which has been referred in the decision of M. Nila Chandra Singh (1964 (2) Cri LJ 465) (supra), it would reveal that both the clauses are akin to each other. It can be said that the term "dealer" defined in Cl. 2(a) of Manipur Foodgrains Dealers Licensing Order, is rather more narrower because there is stipulated presumption in the said order. However, the said statutory presumption is lacking from the definition of the dealer of the present order prevailing the State of M.P. By interpreting the word "dealer" the Supreme Court in the case of M. Nila Chandra Singh (supra), in para 7 has held that it is not a single casual or solitary transaction of sale, purchase or storage that would make a person a "dealer." It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the definition would be satisfied.

6. In the present case, the evidence of the Food Inspector is totally silent that the applicant carries on the business regularly. On the other hand, there is overwhelming material on record in order to show that the applicant is having its own agricultural land and the relevant documents were also filed in that regard. The Soyabean which was found in the possession of the applicant is of his own agricultural produce cannot be ruled out looking to the documents filed in that regard. It has specifically come in the testimony of the applicant that the entire bulk of the Soyabean was containing 11.70 quintals of his own and 40 quintals of other applicant of Criminal Revision No. 1359/2005. There is no dispute that the upper ceiling limit to keep the Soyabean is 30 quintals and, therefore, at the most the quantity which was in excess to 30 quintals could have been confiscated. However, in the present case, since it has not at all been proved by cogent evidence of the Food Inspector or any other evidence that the applicant carries on the business continuously, if at one point of time he was possessing the Soyabean excess to the limit prescribed under the law, I am of the view that the applicant cannot be stretched under the ambit and sweep of the term "dealer" as defined in the order. The decision of Supreme Court in the case of M. Nila Chandra Singh (1964 (2) Cri LJ 465) (supra) is fully applicable in the present case.

7. For the reasons stated hereinabove, the revision-petitions succeed and are hereby allowed. The impugned order passed by the appellate authority dated 23-8-2005 and the order passed by the competent authority dated 17-8-1999 are hereby quashed. The respondents are hereby directed to return the confiscated Soyabean to the applicants.

 Petition allowed.

**2004 CRI. L. J. 340 "Mysore Fruit Products Ltd., M/s. v. M/s. F. and V. (Spl.) A. P. M. Committee"**

 **KARNATAKA HIGH COURT**

 Coram : 1 HULUVADI G. RAMESH, J. ( Single Bench )

Cri. P. No. 25559 of 2001, D/- 13 -11 -2003.

M/s. Mysore Fruit Products Ltd. and others, Petitioners v. M/s. Fruits and Vegetables (Spl.) Agricultural Produce Marketing Committee, Bangalore, Respondent.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.114, S.117, S.117A - AGRICULTURAL PRODUCE - Purchase of agricultural produce without license and payment of fees - Prosecution for - Authorisation to file complaint - Record showed that resolution was passed by Market Commission authorising Secretary to file complaint - Complaint filed by Secretary, cannot be quashed.

Criminal P.C. (2 of 1974), S.482. (Paras 6, 15)

(B) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.114, S.117, S.117A - AGRICULTURAL PRODUCE - Purchase of agricultural produce by company without license and payment of fees - Prosecution of General Manager and Export Officer - Challenge as to on ground that Company was manned by Board of Directors and said persons were only employees of Company - Record showed that General Manager and Export Officer were persons who were more concerned with purchases of commodities - There were specific allegations in respect of duties discharged and their designations - Taking of cognisance against them, not improper.

Criminal P.C. (2 of 1974), S.482. (Para 7)

(C) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.114, S.117, S.117A - AGRICULTURAL PRODUCE - Purchase of agricultural produce without licence and payment of fees - Prosecution for - Limitation - Accused had entered into compromises to make payment and offence was compounded - Thereafter failed to make payment - Limitation would start from date of breach of promise and not from date of commission of offence of non-payment.

Criminal P.C. (2 of 1974), S.468(2)(b), S.482. (Para 12)

(D) Criminal P.C. (2 of 1974), S.204 - ISSUE OF PROCESS - AGRICULTURAL PRODUCE - Issue of process - Omission to specify offence - Specific allegations in complaint as regards violation of provisions of Karnataka Agricultural Produce Marketing (Regulation) Act - Omission to mention offences by Magistrate not fatal - Prayer for quashing of proceedings liable to be rejected.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.114, S.117, S.117A. (Para 14)

Cases Referred: Chronological Paras

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Paravatagonda v. Revanashiddayya, 2001 ~CriLJ341 Cri LJ 1446 : 2001 AIR - Kant HCR 658 : (2001) 3 Kant LJ 518 5

N. K. Singh v. M/s. Engineering General Workers Union, 1997 Cri LJ 3537 (kant) 5, 10

Secretary, Agricultural Produce Marketing Committee D. K. District v. Varadaraya Shenoy, 1995 AIR SCW 2016 : 1995 SCC (Cri) 503 5, 6

Municipal Corporation of Delhi v. Ram Kishan Rohatgi, 1983 Cri LJ 159 : AIR 1983 SC 67 5, 7

C. V. Nagesh, for Petitioners; C. S. Patil, for Respondent.

Judgement

ORDER :- This petition is filed assailing the order passed by the 7th Addl. C.M.M., Bangalore City in CC No. 16908/2000 (PCR No. 195/2000) by order dt. 23-9-2000 and also the order passed by the Prl. City S. J., Bangalore City in Crl. R. P. 60/2001 confirming the order of the C.M.M., by his order dt. 13-7-2001.

2. The brief facts are that the 1st petitioners is a Public Ltd. Company, registered under the provisions of the Companies Act, 1955. The 2nd and 3rd petitioners are the employees of the 1st petitioner company being the General Manager and the Export Officer respectively, wherein the said company is engaged in processing food products and as such it falls within the definition Trader as defined under the provisions of the Karnataka Agricultural Produce Marketing Act, 1966 (hereinafter referred to as 'the Act' for short). On inspection, on 7-8-1999 the officials of the said establishment noticed certain violations of the provisions of the Act and Regulations, wherein the said company was said to be processing mangoes and tomatoes into pulp and exporting to foreign countries and the said produce is notified as agricultural produce and the accused purchased the notified agricultural produce within the market area of the complainant without there being a licence and also without paying the 1% of the process fee on the purchases made which comes to the tune of Rs. 11,21,492/-. Hence the private complaint for violation of the provisions of Sections 114, 117 and 122 of the said Act for violation of Secs. 8, 65 (2) and 66 of the Act which are punishable under Ss. 114, 116, 117, 117-A and 122 of the Act. A demand notice has been issued to remit the said amount. In that regard, ultimately the cheque came to be issued by the petitioners and after a justing the initial amount paid, for non-payment of the remaining amount in spite of issuance of of legal notice, the authority referred the matter to the complainant authority to take suitable legal action in that regard. The accused compounded the offence on 30-6-2000 and issued a cheque for Rs. 2,50,000/- which was dishonoured and later the complainant authority passed a resolution authorising the complainant to file a complaint to take legal action on the said complaint; cognizance has been taken and issued process. The same has been assailed before the revision Court. The revision Court confirmed the said offence. Hence this petition has been filed on several grounds.

3. The main ground of attack is that the complaint is filed beyond a period of one year and the prescribed punishment is only fine or else upto simple imprisonment for six months also assailed regarding taking cognizance against the petitioners 2 and 3 stating that they are only employees and cognizance should have been taken against the Directors and one more aspect is regarding the fact that the Magistrate has not indicated as to what is the offence for which conizance is taken and also on the ground that the Secretary has filed the complaint without there being proper authorisation which is not maintainable.

4. The point that arises for consideration is whether the taking cognizance and issuance of process by the Addl. CMM Bangalore and confirmation of the said order by Prl. City Sessions Judge, Bangalore, are liable to be set aside.

5. It is the argument of the learned counsel for the petitioners while taking me through the various provisions of the Act alleged to have been committed udner Ss. 114, 116, 117 and 117-A and 120 of the Act submitted that for the violation of the said provisions, the punishment prescribed is fine or simple imprisonment for six months and the prosecution ought to have been launched within one year of the date of commission of the offence, as per Ss. 468 (a)(2)(b) of the Cr.P.C. He also argued on several other aspects regarding the fact that the petitioner has not made out any ground to attract the provisions of the Act itself. Apart from this submission regarding the dishonour of the cheque they ought to have proceeded under

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the N.I. Act and not to have invoked the provisions of the Act to prosecute the petitioners for having compound the offence.

Cases referred :

1. 1995 SCC (Cri) 503 : (1995 AIR SCW 2016)

2. 1983 Cri LJ 159 : (AIR 1983 SC 67)

3. 1997 Cri LJ 353 (Kant);

4. (2001) 3 Kant LJ 518 : (2001 AIR Kant HCR 658 : 2001 Cri LJ 1446)

6. The main contention of the learned counsel for the petitioner in respect of the complaint filed by the Asst. Secretary of the Authority reported in 1995 SC (Cri) 503 : (1995 AIR SCW 2016), Secretary Agricultural Produce Marketing Committee, D.K. District v. Varadaraya Shenoy. To clarify this position when the records were secured, it was found that the market committee under the Act shown to have passed a resolution to take legal action against the petrs. Therefore, the said contention of the counsel for the petitioners does not stand to reason.

7. Further, the contention of the counsel for the petitioners is in respect of making the petitioners 2 and 3 as parties on the ground that the petitioner No. 1 is the company registered under the Companies Act and stating that the company is manned by the Board of Directors and the petitioners 2 and 3 are only employees and as such the Magistrate ought not to have taken cognizance against the petitioners 2 and 3. In this regard, the decision relied upon by the counsel for the petitioners is (1983 Cri LJ 159 : (AIR 1983 SC 67), Municipal Corporation of Delhi v. Ram Kishan Rohtagi, wherein it is held that complaint against company, its Directors and Manager and when there is no allegation made against the Manager and Directors that they are responsible for conduct of business of the disputed simple - held proceedings could be quashed against Directors but not against Manager. Of course, in the instant case as noted the petitiones 2 and 3 are almost acting as General Manager and Export Officer who are more concerned with the purchase of the products and acting on behalf of the company. Nonetheless a specific averment is made in respect of the duties discharged and their designations. Under the circumstances, there is no reason to say that the cognizance taken against them is not in according with law.

8. Of course, in the citation it is stated as to quashing of the proceedings against the Directors and not against the manager.

9. The next contention of the learned counsel for the petitioners is that the complaint is clearly barred by S. 468, Cr.P.C. as it is filed beyond the period of limitation as the punishment prescribed is only fine or simple imprisonment upto six months.

10. However, the position is well settled in the citation reported in 1997 Cri LJ 3537, N.K. Singh v. M/s. Engineering General Workers Union, Bangalore, wherein it is held that in similar circumstances, when there is non-compliance of the settlement, it amounts to a continuing offence and does not take the shelter of S. 468, Cr.P.C. The complaint filed against such non settlement cannot be said to be barred by limitation.

11. Admittedly, in the instant case, there is liability on the part of the petitioners so as to make payment for violation of certain provisions of the Act. Ultimately, it is noticed that the petitioner entered into compromise and the offence has been compounded and after the compounding of the offence, cheque is shown to have been issued and ultimately the cheque came to be dishonoured. It is the contention of the learned counsel for the the petitioner that the complaint ought to have been filed under S. 138 of the N.I. Act, etc.

12. As far as the compounding of the offence is concerned, when the petitioners have agreed upon to make payment and having failed as per the promise and from that point the limitation starts runing and not exactly from the original date of offence committed for this purpose, the limitation commences once again from the date of breach of promise, i.e. on dishonour of cheque and for non-payment as undertaken since it is continuing offence.

13. It is the submission of the learned counsel for the petitioners that omission to specify offence renders the proceedings void.

14. However, it is to be noted in this regard in the complaint filed, it is specifically mentioned about the provisions of the said Act making specific allegation. As such, the question of mentioning the same by the Magistrate once again will not arise in the case on hand.

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15. It is also submitted by the learned counsel for the petitioners that the Secretary who has filed the complaint is not authorised to act upon as per the provisions of the Act, etc. In this regard, records have been called for from the Court below and on perusal, it is seen that the Market Committee headed by the Deputy Commissioner has passed a resolution authorising the Secretary to proceed in accordance with law. In view of the same, it cannot be said that the complainant has no authorisation to proceed against the petitioners. However, there is shown to be prima facie case to proceed against the petitioners based on the complaint filed by the complainant. In view of the overall discussion, I feel nothing warrants to quash the proceedings.

Accordingly, the petitioner is disposed of.

 Petition dismissed.

**2003 CRI. L. J. 518 "Srinivasa Hatcheries v. Agrl. Market Committee, Poosapatirega"**

 **ANDHRA PRADESH HIGH COURT**

 Coram : 1 S. R. K. PRASAD, J. ( Single Bench )

Crl. P. No. 4063 of 2001,D/- 8 -10 -2002.

Srinivasa Hatcheries, Petitioner v. Agricultural Market Committee, Poosapatirega and another, Respondents.

(A) A.P. (Agricultural Produce and Live Stock) Markets Act (4 of 1987), S.3, S.7(1) - AGRICULTURAL PRODUCE - Poultry group' - Whether includes 'chicks' - Notification issued to include Hens, Cocks and Ducks within purview of agricultural produce, livestock and products of livestock clearly excludes 'Chicks' - Person dealing with Chicks need not have license - His prosecution for dealing without license, liable to be quashed. (Para 9)

(B) Criminal P.C. (2 of 1974), S.482TRIAL - - Powers of Court - Scope - Court cannot look into genuineness of document which was not filed before Trial Court - Has to relegate matter to trial Court for decision on issue - Issue relating to jurisdiction of market committee to lodge criminal complaint in view of Govt. notification relegated to trial Court for decision.

A.P. (Agricultural Produce and Live Stock) Markets Act (4 of 1987), S.3 (Para 10)

E. V. Bhagiratha Rao, for Petitioner; Posani Venkateswarlu, for Respondent 1; Public Prosecutor for Respondent 2.

Judgement

ORDER :- Petitioner, who is accused in S.T.C. No. 28/2001 on the file of the learned Additional Judicial 1 Class Magistrate, Vizianagaram, invokes the inherent powers of this Court under S. 482, Cr. P.C. to quash the proceedings.

2. A brief resume of the backgrounds of facts is necessary. The petitioner is running a business in Hatcheries at Gunkalam village, Bhogapuram Mandal. The petitioner is represented by its Managing Director, Mr. K. Ashok Reddy. It is alleged by the 1st respondent that the petitioner was doing the business without license for the period from 1997-98 to 2000-2001 as contemplated under Section 7(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, 'the Act') and Act No. 4 of 1987. Therefore, it was called upon to obtain a license. Since the petitioner did not obtain license, prosecution was launched in S.T.C. No. 28/2001 for contravention of the provisions of the Act and Act No. 4 of 1987. The learned Magistrate took cognizance of the offence.

3. Learned counsel for the petitioner, Mr. E. V. Bhagiratha Rao, assails the order on two grounds. Firstly, he contends that the petitioner is dealing with chicks which do not form part of the Notification issued under Schedule II of G.O. Ms. No. 2095, Food and Agriculture (Agri-IV), dated 29-10-1968, wherein Poultry Group has been specified. The second contention is that Bhogapuram Mandal does not fall within the jurisdiction of the Agricultural Market Committee, Poosapatirega, and hence 1st respondent has no jurisdiction to lodge a complaint.

4. Learned counsel, Mr. Posani Venkateswarlu, appearing for the 1st respondent contends that chicks are the products of cocks and hens, and hence they are covered by the said Notification. It is also contended by him that Bhogapuram Mandal has been brought within the purview of the Agricultural Market Committee, Poosa-patirega, by a subsequent notification, dated 20-7-1996. Learned Public Prosecutor contends that this is not a fit case where the inherent powers of this Court can be exercised and the case has to be relegated to trial.

5. Adverting to the above contentions, Section 3 of the Act is extracted below.

"3. Declaration of notified area - (1) The Government may publish in such manner as may be prescribed a draft notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification.

(2) Such notification shall state that any

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 objections or suggestions which may be received by the Government from any person within a period to be specified therein will be considered by them.

(3) After the expiration of the period specified in the draft notification and after considering such objections and suggestions as may be received before such expiration, the Government may publish in such manner as may be prescribed a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the Government may, by notification -

(a) exclude from a notified area, any area comprised therein; or

(b) include in any notified area, any area specified in such notification; or

(c) declare a new notified area by separation of area from any notified area or by uniting two or more notified areas or parts thereof or by uniting any area to a part of any notified area :

Provided that where, as a result of declaration of a new notified area under this clause, the entire area comprised in an existing notified area is united to one or more notified areas, the said existing notified area shall stand abolished."

Under Schedule II of G.O. Ms. No. 2095, dated 29-10-1968, published in the Andhra Pradesh Gazette, dated 7-11-1968, Poultry Group has been brought within purview of agricultural produce, livestock and products of livestock under Section 3 of the Act. Group VII of the said Schedule II brings (1) Hens, (2) Ducks and (3) Cocks, within the purview of the Poultry Group.

6. The point that now falls for consideration is whether 'chicks' are the products of cocks and hens under the category of 'Poultry Group' ?

7. It is not stated in the said Notification that the products of the said Poultry Group come within its purview. It is specifically mentioned that Hens, Ducks and Cocks alone would be within the purview of the Notification. The Notification has clearly excluded chicks from the Poultry Group. It is also not mentioned that the Poultry Group includes the products derived from Hens and Cocks. But, under Group VIII-Products of Poultry Group-Eggs (Hens and Duck Eggs) are mentioned.

8. A close reading of the above Groups shows that chicks are not covered by the notification. A strict interpretation has to be given in respect of notification issued conferrire powers to collect Taxes or fees. Therefore, it cannot be said that the notification generally covers all the products derived from Hens and Cocks. When the Legislature intended to bring chicks within the purview of the notification, it should have done so by including chicks under the head of Poultry Group or Products of Poultry Group. there is a lacuna in not including chicks in the Notification. Persons who are dealing with chicks are certainly entitled to take advantage of the non-inclusion of chicks in the Notification, and they are entitled to claim benefit on that account.

9. It is also contended by the learned counsel for the petitioner that it is very difficult to determine the sex of chicks. It cannot be said that the said contention is without any force. I am of the considered view that the Notification has to be strictly construed and when chicks are not mentioned specifically in it, the petitioner is certainly entitled to take advantage of it. It is rightly contended by the learned counsel for the petitioner, when chicks are not included in the Notification, they will not come within the purview of Agricultural Market Committee and, therefore, the Market Committee cannot demand license to deal with chicks. Hence, the question of petitioner obtaining license for dealing with chicks does not arise as the 1st respondent-Market Committee has no right to demand license as chicks are not included under the Notification. I also hold that launching of prosecution against the petitioner for its failure to obtain license is bad for the fact that the 1st respondent has no right to demand license or any fees under law.

10. Coming to the second contention canvassed by the petitioner's counsel, this Court cannot look into any documents which are not filed before the lower Court. This Court, while exercising the powers under Section 482, Cr. P.C. to quash a criminal complaint, has to look at the complaint and

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 the sworn statements and the other material gathered alone. If fresh documents or material are filed subsequently, the matter has to be relegated to trial. This Court time and again has stated that this Court would not receive any documents or material for considering the validity of the proceedings when they were not made available before the lower Court at the time of taking cognizance.

In that view of the matter, I relegate the aspect whether the 1st respondent-Market Committee has got jurisdiction over Bhogapuram, by virtue of the Notification issued on 20-7-1996.

To sum up, I find that chicks are not included in the Notification and, therefore, no license is required to deal with the same. Hence, the proceedings in S.T.C. No. 28/2001 on the file of the learned additional judicial I Class Magistrate, Vizianagaram, are liable to be quashed, and accordingly the proceedings are quashed. The petition is allowed.

 Petition allowed.

2000 CRI. L. J. 2920 "Vijay Kumar v. Krishi Upaj Mandi Samiti"

 RAJASTHAN HIGH COURT

 Coram : 1 MOHD. YAMIN, J. ( Single Bench )

Cri. Revn. Petn. No. 145 of 1991, D/- 7 -2 -2000.

Vijay Kumar, Petitioner v. Krishi Upaj Mandi Samiti, Sriganganagar and another, Respondents.

Rajasthan Agricultural Produce Markets Act (38 of 1961), S.37(2) - AGRICULTURAL PRODUCE - Offence under - Contravention of bye law by petitioner - Bye-laws do not provide any punishment for contravention thereof - Conviction of petitioner under S. 37(2) for contravention of bye law - Not permissible. (Para 4)

S. L. Jain, for Petitioner; M. L. Garg, (for No. 1), Ramesh Purohit, Public Prosecutor, for Respondents.

Judgement

ORDER :- The instant revision petition has been filed by petitioner Vijay Kumar who was convicted by learned Additional Munsif and Judicial Magistrate, Sriganganagar for offences under Sections 28(2) and 37(2) of the Rajasthan Agricultural Produce Markets Act, 1961 (hereinafter referred as 'the Act of 1961').

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He was given benefit under the Probation of Offenders Act. An appeal was preferred by him which was decided by learned Additional Sessions Judge No. 1, Sriganga-nagar on 15-12-1990 by which the petitioner was acquitted from charge of Section 28(2) of the Act of 1961 but was held liable for contravening the bye-laws and as such conviction under Section 37(2) of the Act of 1961 was upheld.

2. I have heard the learned counsel for the petitioner, learned counsel for the respondent No. 1 and the learned Public Prosecutor.

3. Learned counsel for the petitioner submitted that conviction of the petitioner for offence under Section 37(2) of the Act of 1961 is illegal as it provides that if any bye-law made under this section may provide that any contravention thereof shall on conviction by punishable with fine which may extend to fifty rupees then only the petitioner could be convicted and that too with a fine which may extend to fifty rupees. He submitted that there is no bye-law which may provide for contravention shall be punishable as per sub-section (2) of Section 37 of the Act of 1961. He submitted that learned Additional Sessions Judge has erroneously interpreted the provision of Section 37 of the Act of 1961.

4. I have gone through the bye-laws (Bylaw 40(2)) which are said to have been contravened by the petitioner. They do not provide that contravention thereof shall be punishable. As such the learned Additional Sessions Judge has committed illegality in holding that the petitioner was rightly convicted for offence under Section 37(2) of the Act of 1961. Learned counsel for the respondent No. 1 agrees that such an interpretation could not have been made.

5. Consequently, the revision petition is hereby allowed and the petitioner is acquitted from the charge under Section 37(2) of the Rajasthan Agricultural Produce Markets Act, 1961.

 Petition allowed.

1999 CRI. L. J. 3078 "Raj Kumar Rishabh Kumar, M/s. v. Krishi Upaj Mandi Samiti, Jodhpur"

 RAJASTHAN HIGH COURT

 Coram : 1 G. L. GUPTA, J. ( Single Bench )

Cri. Misc. Petn. No. 875 of 1998, D/- 30 -3 -1999.

M/s. Raj Kumar Rishabh Kumar and another, Petitioner v. Krishi Upaj Mandi Samiti, Jodhpur, Respondent.

Rajasthan Agricultural Produce Markets Act (38 of 1961), S.32 - AGRICULTURAL PRODUCE - Non-payment of market fees - Complaint against - Can be filed by Secretary of market committee where product was first sold and not by Secretary of market committee at another place - Cognizance of offence by Magistrate on complaint filed by Secretary at another place - Not proper.

Criminal P.C. (2 of 1974), S.177. (Para 5)

K. L. Jasmatia, for Petitioners; Rajendra Vyas, for Respondent.

Judgement

ORDER :- This misc. petition under Section 482, Cr.P.C. is directed against the order dt. 31-8-98 passed by the learned Addl. Chief Judicial Magistrate No. 3, Jodhpur in a case under Section 17 of the Rajasthan Agriculture Produce Act, 1961 (for short the Act of 1961).

2. The relevant facts of the case are these. Shri R.S. Kanawat, Secretary, Krishi Upaj Mandi Samiti, Jodhpur filed a criminal complaint against the petitioners with the allegations that they had purchased "Desi Ghee" in 1993-94 from M/s. Rashtriya Chawal Vikreta, Udaipur, M/s. Sri Nath Trading Co., Udaipur, M/s. Bhagwati Trading Company, Udaipur and Shri Ram Kripa Trading Co., Udaipur for Rs. 8,92,125.00, and it was their duty to pay market fees and in fact, in the bills, it was shown that the market fees was paid, but factually it was not paid. It was averred that by avoiding the payment of market fees, accused (petitioners) committed offence under Section 17 of the Act and Rule 58(1) of the Rajasthan Agriculture Produce Rules, 1963. The learned Magistrate took cognizance against the petitioners and summoned them. On their appearance, the petitioners put in an application for recalling the order of taking cognizance. The learned

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Magistrate rejected the application by the impugned order.

3. Mr. Jasmatia, learned counsel for the petitioners, pointing out that the transaction of sale of 'Ghee' had taken place at Udaipur, contended that the market fees was chargeable by 'Mandi Committee' of Udaipur, and hence the Court at Jodhpur had no jurisdiction to take cognizance of the offence against the petitioners on the complaint filed by Secretary, Krishi Upaj 'Mandi' Samiti, Jodhpur. In this connection, he relied on the Notification No. 15(10) Agriculture/2B/90/S.O. 131, dt. 27-9-91 published in Rajasthan Gazette 4 Ga/Upkhand dt. 28-9-91 at page No. 223 issued, by the State Government, in exercise of its power under Section 17 of the Act of 1961.

4. The learned counsel for the respondent submitted that since the petitioners had avoided payment of market fees, they have been rightly prosecuted by the Secretary, Krishi Upaj Mandi Samiti, Jodhpur.

5. I have considered the rival contentions of the parties. It is admitted position of the parties that the transaction of sale of 'Ghee' had taken place at Udaipur. Section 17 of the Act of 1961 empowers the Market Committee to collect market fees from the licensees on agriculture produce bought or sold by them in the market area at such rate as may be specified by the State Government by the notification in the official gazette. Market Committee is established u/S. 6 of the Act. Under Section 6 the State Government establishes a Market Committee for every market area in respect of agriculture produce. Section 32(2) of the Act of 1961 provides that no Court shall take cognizance of any offence under this Act except upon the complaint in writing either by the Secretary or by any other person specially authorised. The Secretary of the Market Committee is appointed u/S. 11B of the Act.

6. The scheme of the Act thus provides that for every Market Committee there shall be a Secretary. The secretary who can file complaint under sub-section (2) of Section 32 obviously mean the Secretary of the concerned Market Committee. In the instant case, the concerned Market Committee is the Market Committee of Udaipur where the transaction of sale had taken place. The complaint, therefore, could only be filed by the Secretary of the Market Committee of Udaipur. That being so, on the complaint filed by the Secretary of the Market Committee of Jodhpur cognizance of an offence could not be taken by the Magistrate.

7. The notification referred to above clearly provides that the market fees shall be collected only in the Market Committee where the agriculture produce was bought or sold. The transaction of the first sale of 'Ghee' to the petitioner had taken place at Udaipur. It is obvious that the Market Committee of Jodhpur is not authorised to collect fees from the petitioners. The complaint by Secretary, Market Committee of Jodhpur, in the circumstances was not entertainable.

8. Section 177, Cr.P.C. provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. It is obvious that the market fees was payable at Udaipur where the transaction of sale had taken place. If there was non payment of the fees, the offence was obviously committed in the territorial jurisdiction of a Court at Udaipur. That being so, the Court at Udaipur only had got jurisdiction to take cognizance of the offence, under the Act.

9. For the reasons stated above, it is held that the learned A.C.J.M. has committed error in taking cognizance against the petitioners. The continuance of the proceedings against the petitioners shall be abuse of the process of the Court.

10. Consequently, the petition succeeds. The proceedings against the petitioners are hereby quashed.

 Petition allowed.

1999 CRI. L. J. 4045 "Arihant Ghee Agency v. Krishi Upaj Mandi Samiti, Jodhpur"

 RAJASTHAN HIGH COURT

 Coram : 1 G. L. GUPTA, J. ( Single Bench )

Cr. Misc. Petition No. 883 of 1998, D/- 30 -3 -1999.

Arihant Ghee Agency, Petitioner v. Krishi Upaj Mandi Samiti, Jodhpur, Respondent.

Criminal P.C. (2 of 1974), S.177 - CRIMINAL PROCEDURE - AGRICULTURAL PRODUCE - Territorial jurisdiction - Transaction of sale of 'Ghee' took place at one place - Non-payment of market fees by Licensee - Complaint could be filed by Secretary of Market Committee where transaction of sale had taken place - Court at that place only has jurisdiction to take cognizance of offence.

Rajasthan Agricultural Produce markets Act (38 of 1961), S.17, S.32.

Rajasthan Agriculture Produce Rules (1963), R.58(1). (Paras 6, 7, 8, 9)

K. L. Jasmatia, for Petitioner; Rajendra Vyas, for Respondent.

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Judgement

ORDER :- This misc. petition under S. 482, Cr. P.C. is directed against the order dt. 31-8-98 passed by the learned Addl. Chief Judicial Magistrate No. 3, Jodhpur in a case under S. 17 of the Rajasthan Agriculture Produce Act, 1961 (for short the Act of 1961).

2. The relevant facts of the case are these. Shri R. S. Kanawat, Secretary, Krishi Upaj Mandi Samiti, Jodhpur filed a criminal complaint against the petitioners with the allegations that they had purchased 'Desi Ghee' in 1993-94 from M/s. Rashtriya Chawal Vikreta, Udaipur, M/s. Sri Nath Trading Co., Udaipur, M/s. Bhagwati Trading Company, Udaipur and Shri Ram Kripa Trading Co. Udaipur for Rs. 31,28,213.25, and it was their duty to pay market fees and in fact, in the bills, it was shown that the market fees was paid, but factually it was not paid. It was averred that by avoiding the payment of market fees, accused (petitioners) committed offence under S. 17 of the Act and Rule 58(1) of the Rajasthan Agriculture Produce Rules, 1963. The learned Magistrate took cognizance against the petitioners and summoned them. On their appearance, the petitioners put in an application for recalling the order of taking cognizance. The learned Magistrate rejected the application by the impugned order.

3. Mr. Jasmatia, learned counsel for the petitioners, pointing out that the transaction of sale of 'Ghee' had taken place at Udaipur, contended that the market fees was chargeable by 'Mandi Committee' of Udaipur, and hence the Court at Jodhpur had no jurisdiction to take cognizance of the offence against the petitioners on the complaint filed by Secretary, Krishi Upaj 'Mandi' Samiti, Jodhpur. In this connection, he relied on the Notification No. 15(10) Agriculture/2B/90/S.O. 131 dt. 27-9-91 published in Rajasthan Gazette 4 Ga/Upkhand dt. 28-9-91 at page No. 223 issued, by the State Government, in exercise of its power under S. 17 of the Act of 1961.

4. The learned counsel for the respondent submitted that since the petitioners had avoided payment of market fees, they have been rightly prosecuted by the Secretary, Krishi Upaj Mandi Samiti, Jodhpur.

5. I have considered the rival contentions of the parties. It is admitted position of the parties that the transaction of sale of 'Ghee' had taken place at Udaipur. Section 17 of the Act of 1961 empowers the Market Committee to collect market fees from the licensees on agriculture produce bought or sold by them in the market area at such rate as may be specified by the State Government by the notification in the official gazette. Market Committee is established u/S. 6 of the Act. Under S. 6 the State Government establishes a Market Committee for every market area in respect of agriculture produce. Section 32(2) of the Act of 1961 provides that no Court shall take cognizance of any offence under this Act except upon the complaint in writing either by the Secretary or by any other person specially authorised. The Secretary of the Market Committee is appointed u/S. 11B of the Act.

6. The scheme of the Act thus provides that for every Market Committee there shall be a Secretary. The Secretary who can file complaint under sub-sec. (2) of S. 32 obviously mean the Secretary of the concerned Market Committee. In the instant case, the concerned Market Committee is the Market Committee of Udaipur where the transaction of sale had taken place. The complaint, therefore, could only be filed by the Secretary of the Market Committee of Udaipur. That being so, on the complaint filed by the Secretary of the Market Committee of Jodhpur, cognizance of an offence could not be taken by the Magistrate.

7. The notification referred to above clearly provides that the market fees shall be collected only in the Market Committee where the agriculture produce was bought or sold. The transaction of the first sale of 'Ghee' to the petitioner had taken place at Udaipur. It is obvious that the Market Committee of Jodhpur is not authorised to collect fees from the petitioners. The complaint by Secretary, Market Committee of Jodhpur, in the circumstances was not entertainable.

8. Section 177, Cr. P.C. provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. It is obvious that the market fees was payable at Udaipur where the transaction of sale had taken place. If there was non payment of the fees, the offence was obviously committed in the territorial jurisdiction of a Court at Udaipur. That being so, the Court at Udaipur only had got jurisdiction to take cognizance of the offence, under the Act.

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9. For the reasons stated above, it is held that the learned A.C.J.M. has committed error in taking cognizance against the petitioners. The continuance of the proceedings against the petitioners shall be abuse of the process of the Court.

10. Consequently, the petition succeeds. The proceedings against the petitioners are hereby quashed.

 Petition allowed.

1999 CRI. L. J. 4428 "Basudev Bansal v. Secretary, Market Committee, Solan"

 HIMACHAL PRADESH HIGH COURT

 Coram : 1 R. L. KHURANA, J. ( Single Bench )

Crl. Revn. No. 47 of 1998, D/- 9 -9 -1998.

Basudev Bansal, Petitioner v. The Secretary, Market Committee, Solan, Respondent.

H.P. Agricultural Produce Markets Act (9 of 1970), S.32 - AGRICULTURAL PRODUCE - Contravention of Act/Rules - Imposition of fine - Powers of Magistrate - Plea by petitioner-accused that he stopped dealing in foodgrains in the year 1994 - Order for recovery of fine by Magistrate for the period beyond 1994 - Passed without recording of finding that petitioner was continuing to deal in foodgrains and that contravention was continuing - Liable to be set aside. (Paras 10, 11, 12, 13)

Ajay Kumar Sood, for Petitioner; Anand Sharma and Tarlok Chauhan, for Respondent.

Judgement

ORDER :- The petitioner is the proprietor of Messrs Basdev Bansal and Bros., Lower Bazar, Solan. He was prosecuted for the offence punishable under Section 32 of the H. P. Agricultural Produce Markets Act, 1991, hereinafter referred to as the Act. He was convicted for such offence by the learned Chief Judicial Magistrate, Solan, on 7-9-1987 and sentenced to pay a fine of Rs. 500/-. Since the offence was found to be a continuing one, the learned Magistrate allowed a period of 30 days to the petitioner to obtain the requisite licence under the Act and on his failure to do so, he was directed to pay a fine of Rs. 13/- per day from the date of conviction and sentence till the date of obtaining of the requisite licence.

2. The conviction and sentence imposed upon the petitioner was affirmed in appeal by the learned Sessions Judge, Solan, on 16-7-1988.

3. The petitioner thereafter assailed the judgments of the two Courts below by way of a

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writ petition, being C.W.P. No. 530 of 1989. Such writ petition was dismissed by a Division Bench of this Court on 24-7-1997.

4. Since the petitioner failed to deposit the amount of fine of Rs. 13/- per day as imposed upon him, the respondent on 1-8-1989 approached the learned Magistrate for the enforcement of the order dated 7-9-1987.

5. As per the details of calculation of fine, annexed to the application the petitioner was shown as a defaulter for 3831 days from 7-9-1987 till 3-3-1998. The total amount of fine recoverable from the petitioner at the abovesaid rate of Rs. 13/- per day was claimed at Rs. 49,803/-.

6. In response to the notice issued to him by the learned Magistrate and after the dismissal of the writ petition, the petitioner made a representation before the learned Magistrate on 2-1-1998. Following submissions were made :-

(a) recovery of the amount for the period beyond three years was time-barred;

(b) the petitioner had stopped dealing in foodgrains in 1994 and had finally surrendered his foodgrain licence in December, 1995; and

(c) the respondent is estopped from recovering the amount since Shri Attar Singh, the then Commissioner, Agricultural Products to the Government of Himachal Pradesh had recommended for initiating proper steps to write off all the recoveries pending against traders engaged in the business of foodgrains.

7. The learned Magistrate negatived all the submissions made by the petitioner on 8-1-1998 and vide order dated 4-3-1998 held that a sum of Rs. 49,803/- as fine was due from the petitioner for the period 7-9-1987 till 3-3-1998 calculated at the rate of Rs. 13/- per day. The learned Magistrate accordingly directed for the issuance of the warrants of recovery of the said amount.

8. Feeling aggrieved, the petitioner has come up before this Court by way of the present petition. The only point urged during the course of hearing on behalf of the petitioner is that the impugned order is bad inasmuch as while ordering the recovery of the amount of Rs. 49,803/-, the learned Magistrate has failed to record a finding that the contravention of the provisions of the Act was continuing and if so uptil what date. It was contended that since the petitioner had taken the plea that he had ceased to deal in foodgrains since 1994, an enquiry ought to have been held by the learned Magistrate before determining the outstanding amount of fine at the rate of Rs. 13/- per day.

9. Section 32 of the Act, insofar as it is material for the purpose of the present case, reads :-

"(1) Any person who contravenes any of the provisions of Section 4 or Section 6 or Section 26 or the rules or bye-laws made thereunder shall, on conviction, be punishable with simple imprisonment which may extend to 90 days, or with fine which shall not be less than fifty rupees but may extend to five hundred rupees, or with both, and in the case of a continuing contravention, with a fine which, in addition to such fine as aforesaid, may extend to thirty rupees for every day after the date of first conviction during which the contravention is continued."

10. A bare reading of the above provision shows that fine in the case of a continuing offence imposed for every day after the date of first conviction is to be confined to the period only during which the contravention is continued.

11. Therefore, before an order for recovery of such fine can be passed, the learned Magistrate is obliged to hold an inquiry and record a finding that there has been a contravention after the date of conviction and if so for what period.

12. In the present case, as stated above, as per the petitioner he had stopped dealing in foodgrains in 1994. The learned Magistrate, therefore, before proceeding to order recovery of fine for the period beyond 1994 should have recorded a finding, after an inquiry, that petitioner was continuing to deal in foodgrains and that the contravention was continuing.

13. In the absence of an inquiry and the requisite finding, the impugned order cannot be sustained and is liable to be set aside.

14. Resultantly, the present petition is allowed. The impugned order is set aside and the case is remanded to the learned Magistrate for disposal afresh in accordance with law and in the light of observations made above.

15. Be it stated that in pursuance of the orders of this Court, a sum of Rs. 34,739/-, representing the amount of fine for the period ending 31-12-1994 stands deposited by the

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petitioner with the learned trial Court. Such deposit shall be subject to the determination by the learned Magistrate of the amount of fine due from the petitioner.

16. The parties are directed to appear before the learned Chief Judicial Magistrate, Solan, on 21-9-1998. The records be returned forthwith so as to reach all before the date fixed.

 Petition allowed.

1993 CRI. L. J. 749 "Secretary, A. P. M Committee v. M/s. Cashew Trading Co."

 KARNATAKA HIGH COURT

 Coram : 2 D. P. HIREMATH AND L. S. SREENIVASA REDDY, JJ. ( Division Bench )

Criminal Appeal No. 790 of 1988, D/- 9 -10 -1992.

The Secretary, Agricultural Produce Market Committee, Appellant v. M/s. Cashew Trading Co. and others, Respondents.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.63(b)(ii), S.56(xi) - AGRICULTURAL PRODUCE - Prosecution for violation of Act - Power vests in Market Committee - Filing of complaint by its Secretary in absence of resolution conferring such power - Not justified - Accused entitled to acquittal. (Para 1)

B. V. Acharya, for Appellant; T. J. Chouta, for Respondents.

Judgement

HIREMATH, J. :- This appeal could be disposed of on a short point. The Secretary - the complainant, Agricultural Produce Market Committee filed complaint against the respondents for various offences under the Karnataka Agricultural Produce Market (Regulation) Act of 1966. He admitted in his evidence that the Committee passes resolution and such resolutions passed are implemented by him though he is the Secretary of the Committee. Section 56, Cl.(xi) dealing with powers, functions and duties of the Secretary states that he has power to prefer complaints in respect of prosecutions to be launched on behalf of the Market Committee and conduct proceedings civil or criminal on behalf of the Market Committee. Admittedly, in the instant case, no such resolution was passed by the Market Committee either empowering or directing the Secretary to launch prosecution against the accused persons. The said provision makes it amply clear that whatever he does in civil or criminal matters, it is on behalf of the Market Committee. Therefore ultimately it is the Market Committee which must take a decision whether to launch prosecution or not and if it decides in that behalf and empowers the Secretary then only he can file complaint against any person. The trial court found that no such resolution was passed by the Market Committee and, therefore, the Secretary by himself could not have filed complaint against the accused persons. Section 63(b)(ii) also specifies that Market Committee may prosecute persons violating the provisions of the Act, Rules and Bye-laws and compound such offences. Therefore, if these two provisions are read together, it follows that it is the Committee which must take a decision to prosecute persons for any violations alleged and in the absence of such decision by the Market Committee, the Secretary could not have filed the complaint. We find no merit in this appeal and the same is dismissed.

 Appeal dismissed @page-CriLJ750

1992 CRI. L. J. 2986 "Market Committee v. Kundan Lal"

 PUNJAB & HARYANA HIGH COURT

 Coram : 2 S. S. GREWAL AND A. S. NEHRA. JJ. ( Division Bench )

Criminal Appeal No. 597-DBA of 1986, D/- 19 -9 -1991.

Market Committee, Appellant v. Kundan Lal, Respondent.

Punjab Agricultural Produce Markets Act (23 of 1961), S.6(3), S.10 - Punjab Agricultural Produce Markets (General) Rules (1962), R.18 - AGRICULTURAL PRODUCE - Offence of selling specified agricultural produce without licence - Accused a petty shopkeeper whose turnover being not beyond Rs.60000/- per year-Sale of said goods made by him in his shop without using area of market committee for sale in public auction - Such shopkeeper is not duty-bound to get licence renewed - Accused held rightly acquitted. (Para 9)

A. S. Machaki, for Appellant; R. L. Balli Sr. Advocate with Mr. G. C. Tangri and Mr. Sanjiv Kumar Pabbi, for Respondent.

Judgement

A.S. NEHRA, J.:- This judgment will dispose of Criminal Appeals Nos. 584-DBA to 602-DBA of 1986 which are directed against the judgments dated 1-8-1986 passed by Judicial Magistrate Ist Class, Gidderbaha,

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 by which the respondents in all the cases have been acquitted of the charge u/S. 37 of the Punjab Agricultural Produce Markets Act, 1961, as the complaint and the evidence in all these cases are identical.

2. Briefly stated, the facts of this case are that a complaint u/S. 6(3) read with S. 37 of the Punjab Agricultural Produce Markets Act.1961 (hereinafter called the Act) was filed by the appellant. The contents of the complaint are that the Secretary of the Market Committee had been duly authorised by the Market Committee to lodge complaints u/S. 39(2) of the Act against the persons who contravene the provisions of the Act; rules and bye-laws made thereunder; that u/S. 6(3) of the Act, no person unless exempted by rules made under the Act shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish, or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified; or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of the Act; the rules and bye-laws made thereunder, and the conditions specified in the licence; and that whereas the respondent had been doing business in the purchase. Sale and storage of agricultural produce such as Gur, Shakkar, Khandsari and cotton seed since 1-4-1983 in the notified market area of the Market Committee without taking any licence under S. l0 of the Act, therefore, he contravened the provisions of S.6(3) of the Act, which is punishable under S. 37 of the Act.

3. Notice under S.6(3) of the Act, punishable under S.37 of the Act, was served upon the respondent. The respondent pleaded not guilty and claimed trial.

4. In order to prove its complaint, the appellant examined Jagjit Singh Walia PW-1, Secretary of the Market Committee; Darshan Singh PW-2, Mandi Supervisor, Market Committee; and Tarsem Sehgal PW-3, Record-keeper. Copy of notice Exhibit P-1, copy of resolution Exhibit P-2 and complaint Exhibit P-3 have also been relied upon.

5. In his statement under S. 313, Code of Criminal Procedure, the respondent denied the prosecution allegations and stated that it was a false complaint filed on account of personal enmity. In defence, the respondent examined Kewal Krishan DW-1 and Bhan Chand DW-2.

6. The learned counsel for the appellant has argued that the shop of the respondent is situated within the notified area of the Market Committee and that the respondent is engaged in the purchase, sale and storage of agricultural produce which includes gur, shakkar, Khandsari and cotton seed. The learned counsel for the appellant has further submitted that for the purchase, sale and storage of these items, it is necessary to obtain a licence from the Market Committee u/S.10 of the Act and that the respondent is carrying on the above-mentioned business in the notified area of the Market Committee without obtaining a licence and so the respondent has committed an offence under S.6(3) of the Act and is therefore, liable to be convicted under S. 37 of the Act.

7. The learned counsel for the respondent has argued that the respondent has not violated the provisions of S. 6(3) of the Act and, therefore he is not liable to be convicted under S. 37 of the Act. He has further submitted that if the respondent had ever violated the provisions of the Act, then the Secretary of the Market Committee must have confiscated the goods or the account books of the respondent. He has relied upon Ss. 33-A and 33-B of the Act and submitted that there is no evidence produced by the appellant that the Secretary of the Market Committee had ever checked the account books of the respondent to find out the violation of the Act, rules or bye-laws made thereunder; or had seized the goods of the respondent. According to S. 13 (2) of the Act, which lays down the duties and powers of a Committee, every person licensed u/S. 10 or S.13 and every person exempted u/S. 6 from taking out licence, shall, on demand by the Committee or any person authorised by it in this behalf furnish such information and returns, as may be necessary, for the proper enforcement of the Act, or the rules and bye-laws made thereunder. According

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 to S.33-A of the Act, any officer empowered by the Board in this behalf, may, for the purposes of this Act, require any dealer to produce before him the accounts and other documents and to furnish any information relating to the stock of agricultural produce or purchase, sale, storage and processing of agricultural produce by such person and also to furnish any other information relating to the payment of fees levied under the Act by such person. The Secretary or any other officer of the Board has also power under S. 33-B of the Act to stop vehicles when there is violation of the rules and this section lays down that at any time when so required by the Secretary of the Board or any other officer of the Board so authorized by the Secretary, the driver or any other person in-charge of any vehicle or other conveyance which is taken or proposed to be taken out of the notified market area, shall stop the vehicle or other conveyance, as the case may be, keep it stationary as long as may reasonably be necessary and allow the Secretary of the Board or such officer to examine the contents in the vehicle or other conveyance and inspect all records relating to the agricultural produce carried, and give his name and address and name and address of the owner of the vehicle or other conveyance and of the owner of the agricultural produce carried in such vehicle or other conveyance. It has been further argued by the learned counsel for the respondent that, in this case, if there was any violation committed by the respondent and his annual return was more than Rs. 60,000/- then the Secretary must have inspected the account books of the respondent or had seized the vehicle in which, at any point of time, the respondent had brought any goods to the notified area of the Market Committee. Jagjit Singh Walia PW-1 deposed that the respondent imported gur, shakkar etc. from outside the State, stored in the shop and sold them in the shop itself. He admitted that the respondent did not sell goods by auction. He further deposed that he did not know as to which commodity the accused had sold, to whom and for what amount. Darshan Singh PW-2 also deposed that the respondent did not sell goods through auction; that he sells his goods while sitting inside his shop and that it is not necessary for the respondent to sell agricultural produce through auction. Jagjit Singh Walia PW-1 further deposed that the annual return of the respondent is about 3 1/2 lakhs. When Jagjit Singh Walia PW-1 neither knew even the nature of the business run by the respondent nor did he visit the shop of the respondent, then his estimation of the return of the respondent, is based on mere conjectures. Darshan Singh PW-2 deposed that the annual return of the respondent is about 4-5 lakhs and he admitted that it is based on estimation. Therefore, both these witnesses have given the annual return of the respondent merely on the basis of conjectures. The explanation to clause (c) of sub-rule (1) of Rule 18 of the Punjab Agricultural Produce markets (General) Rules, 1962 (hereinafter called the Rules), lays down that, for the purpose of this clause and clause (b) of sub-rule (2), a person whose turnover of sales and purchases of agricultural produce does not exceed Rs.60,000/- during a year, shall be treated as a petty retail shopkeeper. The appellant has failed to prove that the annual return of the respondent is more than Rs. 60,000/- after 1-4-1983.

8. The next argument advanced by the learned counsel for the respondent is that the respondent is a retail shopkeeper, because he sells his goods within the premises of the shop and not in any open auction and that a licensee under rule 24 of the Rules is required to sell the goods by public auction and this fact also proves that the respondent is a retailer after 1-4-1983 and, therefore, he is not required to get the licence renewed after 31-3-1983. We find force in the argument raised by the learned counsel for the respondent, because Jagjit Singh Walia PW-1 and Darshan Singh PW-2 have admitted that the respondent never sold his goods in public auction. When the respondent never used any area of the Market Committee for the sale of his goods in a public auction, he sells his goods within the shop, and his turnover is not proved to be beyond Rs.60,000/- per year, therefore, the respondent is a petty shopkeeper.

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9. The next argument of the learned counsel for the appellant is that once a dealer gets a licence under the Act, then he is bound to get it renewed. To meet this argument, the learned counsel for the respondent has submitted that the word used in S.10 of the Act is 'may' and not 'shall' and there is no section in the Act; or rule or bye-law framed under the Act, which enjoins a duty upon a dealer to get the licence renewed even when his turnover is less than Rs. 60,000/- per annum. We agree with the argument of the learned counsel for the respondent, because there is no section, rule or bye-law to the effect that a person, who once gets a licence, is duty-bound to get it renewed when his annual return is less than Rs. 60,000/-.

10. In view of the above-mentioned discussion, we find no merit in these appeals and, therefore, the same are dismissed.

 Appeals dismissed.

1991 CRI. L. J. 277 "B. Youdhister v. Secretary Agricultural Marketing Committee, Jogipet"

 ANDHRA PRADESH HIGH COURT

 Coram : 1 BHASKAR RAO, J. ( Single Bench )

Crl. Petn. Nos. 429. 400 and 516/90, D/- 8 -8 -1990.

B. Youdhister, Petitioner v. The Secretary Agricultural Marketing Committee, Jogipet and another, Respondents. @page-CriLJ278

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966) as amended by Act 4 of 1987, S.12A, S.12B, S.12C, S.23 - AGRICULTURAL PRODUCE - CRIMINAL PROCEEDINGS - Non-payment of market fee - Violation of Ss.12A, 12B, 12C -Not penal in view of Art.20(1) - Criminal prosecution - Not maintainable - No corresponding amendment made in S.23 for penalising such violation.

Constitution of India, Art.20(1). (Para 3)

P. Prabhakara Reddy, for Petitioner; Public Prosecutor, for State/ Respondents.

Judgement

ORDER:-These petitions can be disposed of by a common order as a common question of law arises in these petitions. The Ist respondent-Agricultural Market Committee, Jogipet filed complains against the petitioners for violation by non-payment of market fees under Ss.12A, 12B and 12C of the A.P. Agricultural Produce and Livestock Markets Act, 1966 hereinafter referred to as the 'Act'.

2. In the complaints it is stated by the Ist respondent that a notice under S. 12A of the Act was issued to the petitioners to file the account books, so that the assessment under S.12B of the Markets Act could be made. Even though a notice was given by the Ist respondent to the petitioners, the petitioners did not file any accounts. Therefore, the Market Committee-lst respondent assessed the market fee, following the best judgment procedure as provided under S.12B of the Act. Thereafter a notice was given to the petitioners to pay the amount, but the said amount was not paid, even though a reminder was issued by the Ist respondent after-notice. Therefore, the prosecutions are launched through complaints.

3. The said complaints are challenged in these petitions on the ground that violation of the provisions of Ss.12A, 12B and 12C of the Act cannot be penalised as per S.23 of the Act. Ss.12A, 12B and 12C of the Act were introduced by way of an Amendment Act, Act 4/87 for facilitating the Market Committee to take action for non-production of the accounts and to assess the market fees, where the persons failed to produce the accounts in spite of a notice and further providing issuance of notice and collecting the market fees. Thus, this is the procedure provided by the Amendment Act. S.12(1) of the Act which was there, before introduction of Ss. 12A,12B and 12C, fastened the liability on the person to pay the market fees whenever the person contravenes the provisions of the Act, and failure to pay the market fees as per S. 12(1) was penalised as an offence under S.23 of the Act. After introduction of Ss. 12A, 12B and 12C of the Act there is no corresponding amendment to S. 23 of the Act extending penalization for the violation of Ss. 12A, 12B and 12C as an offence. Therefore, once the violation of Ss.12A, 12B and 12C is not made penal, there cannot be any prosecution for their violation. As per Art.20(1) of the Constitution of India no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence. Though there is violation of the provisions covered by Ss.12A, 12B and 12C still since there is no corresponding penal provision for such violations by means of an amendment or insertion of a penal provision in the Market Act, the accused cannot be prosecuted before the Criminal Court for such violations. In view of this, the proceedings against the petitioners in the Criminal Court are not maintainable and are accordingly quashed.

4. However, it is made clear that it is open to the Market Committee to take such action as is available under the said provisions to recover the amounts as arrears of land revenue from the petitioners as also to prosecute them under S. 12(1) of the Act.

5. The petitions are accordingly allowed.

 Petitions allowed.

1990 CRI. L. J. 1758 "D. A. P. M. Committee, Dhari v. Chavda Rajaballi Valibhai "

 GUJARAT HIGH COURT

 Coram : 1 K. J. VAIDYA, J. ( Single Bench )

Criminal Appeal No. 83 of 1981, D/- 7 -10 -1989.\*

Dhari Agricultural Produce Market Committee, Dhari and another, Appellants v. Chavda Rajaballi Valibhai and another, Respondents.

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.8, S.2(xxiii), S.2(vii) - AGRICULTURAL PRODUCE - Exclusive dealer in fair price shop - Shop situated in market area - Not necessary for him to obtain licence under Markets Act - He is not a "trader" or "Commission Agent" within meaning of the Act.

Fair price shop - Exclusive dealer in - Shop situated in market area - Still not necessary for him to obtain licence under Agri. Produce Markets Act.

Gujarat Agricultural Produce Markets Rules (1965), R.56.

If a person who is strictly and exclusively a dealer in the fair price shop, and is so authorised by the Government intending to distribute the essential commodities like

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 foodgrains, sugar, rice, millet, etc. (for short, hereafter referred to as the agricultural produce) to the weaker Sections of the society at a fair and reasonable price, and is accordingly supplied with the same, and when such fair price shop dealer in his turn distributes the same to specifically allotted and so named card holders, residents of so named specific areas only, at stipulated, fixed and reasonable price, and further when the relationship between the Government on the one hand and the dealer of the fair price shop on the other hand is purely of a contractual nature being subject to the over-all control and supervision under the terms and conditions of the Rules and Regulations under the statute, and further when such fair price shop dealer has nothing to do with any other deal or transaction which directly or otherwise adversely affects the interest of the poor, illiterate and ignorant agriculturist for whose ultimate benefit and protection the said Market Act has been specially enacted, and when the said dealer in the fair price shop is merely a conduit-pipe serving as a passage of essential supplies between Government and the recipient weaker Sections of the society then it is not obligatory for him to obtain a licence under the Gujarat Agricultural Produce Markets to carry on the distributing activity of the agricultural produce to the customers supplied by the Government, even though such shop is situated within the market area. However if any person dealing in the fair price shop is also desiring to carry on his activity as a trader by purchasing and selling the agricultural produces other than and/or over and above the supplies made by the Government, it will be obligatory upon him to have the licence under the Act. Though a person who is exclusively a fair price shop dealer is not under the legal obligation to obtain a licence to carry on his distribution activity, yet to the extent his shop is situated within the market area, he would be subject to the power of supervision and check under the authorities provided under the said Marketing Act in order to see that under the clever disguise of running an exclusive fair price shop, a fair price shop dealer is not clandestinely carrying on his activity as a "trader" or a "broker" or a "general commission agent" as defined in the Act. (Paras 12, 13, 19, 20)

It cannot be said that since agricultural produces are purchased by the dealer of fair price shop from the Government and thereafter he sells it to the customers for a price, therefore, he as a dealer of the fair price shop is also a "trader" within the defined meaning under the Marketing Act. Firstly, definition of "trader" does not expressly include any sole and exclusive dealer of the fair price shop. Secondly, the exclusive dealer of the fair price shop is certainly not a free-lance trader of his own as the word trader is generally known and commonly understood. Further a dealer in the fair price shop is not a "trader" or a businessman in the sense that like any other traders or a business man while purchasing the agricultural produce, he is not in a position to strike a deal and then to sell it off at the highest possible price, keen of course to have a margin of profit as much as his greed and the circumstances would permit him to have. Thirdly, an exclusive dealer in fair price shop is merely serving as a distributing channel or a supply-line between the Government godown and needy economically weaker Sections of the society. Further, nor does the case of the dealer of fair price shop dealer can be brought within the fold of the word "general commission agent" as defined in S.2(vii) of the Market Act. Thus, S.8 comes into operation only when a "person operates in a market area" i.e. operates independently as a trader by purchasing and selling the agricultural produce at arbitrarily fixed profit. (Paras 16, 17)

(B) Essential Commodities Act (10 of 1955), S.3 - Gujarat Agricultural Produce Markets Act (20 of 1964), Pre., S.2(xxiii), S.8 - AGRICULTURAL PRODUCE - ESSENTIAL COMMODITIES - Fair price shop Scheme and Markets Act - Object of both is to subserve interests of weaker Section of society - No conflict between the Scheme and the Act.

Fair price shop scheme - Object is to subserve interests of weaker Section of society.

The scheme of fair price shop, under the

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 public distribution management under which the essential commodities like wheat, rice, sugar, edible oil, kerosene etc. are easily, regularly and at a reasonable price made available has a distinct and laudable object to serve economically weaker Sections of the society. At the same time, the Gujarat Agricultural Produce Markets Act has also a definite object viz. to subserve the interest of the poor, illiterate and ignorant agriculturists from being exploited by the powerful vested interest. As a matter of fact, there is no conflict whatsoever between the aims and objects as clearly set out in the Marketing Act and that of the fair price shop. Both interests can independently and separately as well as jointly serve the cause for the classes of the society for which the same have been designed. Neither the aims and objects of the Marketing Act nor the scheme of the fair price shop appear to overlap or conflict in any manner with each other. (Para 13)

The dominant object under the scheme of fair price shop is an equitable distribution and availability of the essential commodities at fair and reasonable price so as to benefit the consumers a class consisting of the weaker Section of the society. The primary consideration, therefore, under the scheme of fair price shop is a fixation of price, which would be in the interest of the consumers, and the individual interests, howsoever precious or great, if need so arises, it has got to yield to the larger and ultimate interest of the consumers weaker Section of the society. (Para 19)

Cases Referred : Chronological Paras

AIR 1959 SC 300 14

S.K. Zaveri, for Appellants; S.J. Joshi, for Respondent No. 1; Mr. R.A. Tripathi, Addl. Public Prosecutor, for the State.

\* Against judgement and order of G.R. Shah, Judl. Magistrate 1st Class, Dhari, D/-30-8-1980.

Judgement

JUDGEMENT :- It is compulsory for a dealer in the fair price shop having his shop situated in the market area to obtain a licence under the Gujarat Agricultural Produce Markets Act, 1963 (for short hereafter referred to as the Market Act) ?

Thus, an important question that arises for consideration in this appeal is regarding the interpretation of S.8 and words (i) "general Commission Agent", and (ii) "Trader" as defined Ss.2(vii) and 2(xxiii) respectively of the said Market Act.

2. The material facts constituting the context and the background out of which the above question emerges are briefly stated as under :

"Whether, when any person (i) who is strictly and exclusively a dealer in the fair price shop, and (ii) is so authorised by the Government intending to distribute the essential commodities like foodgrains, sugar, rice, millet, etc. (for short, hereafter referred to as the agricultural produce) to the weaker Sections of the society at a fair and reasonable price, and (iii) is accordingly supplied with the same, and (iv) when such fair price shop dealer in his turn distributes the same to specifically allotted and so named card holders, residences of so named specific areas only, (v) at stipulated, fixed and reasonable price, and (vi) further when the relationship between the Government on the one hand and the dealer of the fair price shop on the other hand is purely of a contractual nature being subject to the overall control and supervision under the terms and conditions of the Rules and Regulations under the statute, and (vii) further when such fair price shop dealer has nothing to do with any other deal or transaction which directly or otherwise adversely affects the interest or the poor, illiterate and ignorant agriculturist for whose ultimate benefit and protection the said Market Act has been specially enacted, and (viii) when the said dealer in the fair price shop is merely a conduit-pipe serving as a passage of essential supplies between Government and the recipient weaker Sections of the society can he under such circumstances be said to be a person operating in the 'market area' within the scope and meaning of S.8 of the said Market Act ? and further therefore can he be under the statutory obligation to obtain the licence from the market committees ? merely and incidentally because (a) his shop is situated within "market area" and (b) he deals with the foodgrains which is also an 'agricultural

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produce' within the definition meaning of Ss.2(xii) and 2(i) respectively of the said Market Act ?

3. In order to appreciate and understand the parameters of this question and to have correct legal answer to it, it is necessary, first of all to understand brief facts of the case, the evidence brought on the record and then aims and objects underlying the scheme of the fair price shop and the said Market Act.

4. Briefly, according to the prosecution, one P.W. 1 Dhirajlal Revashanker, Ex. 6, who was working as an Inspector in Dhari Agricultural Produce Market Committee, filed a complaint Ex. 1 against the accused viz. Chavda Rajabhai Valibhai, a fair price shop dealer at Dhari, before the learned J.M.F.C. Dhari, for the alleged offence punishable under S.36(1) of the said Market Act, alleging therein that since the Act in question was made applicable to the entire area of Dhari, it was incumbent upon every such person dealing in business of purchase and sale of agricultural produce to obtain a licence from Dhari Agricultural Produce Market Committee. Accordingly, it was further alleged that the accused who was also having a fair price shop at Dhari (as being approved and authorised by the Government) was a "trader" of the agricultural produce like wheat, rice, millet, etc. as well as other agricultural produces. Since during the period from 1-7-1979 till 30-9-1980, the accused had carried on his aforesaid activity of distributing wheat, rice and millet, it was not only compulsory for him to obtain the licence but who also required to maintain certain registers as per the rules and regulations under the said Market Act. Thus, the accused having not obtained the required licence, had committed a breach of S.8 of the said Market Act and therefore consequently was liable to be punished under S.36(1) of the said Marketing Act.

5. On receipt of the above complaint, the trial Court directed the same to be registered as a Criminal Case No. 196/80 and further ordered issuance of summons against the accused for the alleged offence under S.8 read with S.36(1) of the said Marketing Act.

6. At the trial, accused not only not pleaded guilty, and claimed to be tried, but he raised a specific defence to the effect that he was merely an exclusive dealer in fair price shop and was distributing essential commodities like wheat, rice, millet, sugar, etc. at fair and reasonable price as supplied to him by Mamlatdar and that he was neither purchasing nor selling any other agricultural produces from any other persons and accordingly it was not obligatory for a person like him to have a licence under the said Act.

7. The prosecution in order to bring home the charge against the accused, have mainly relied upon two witnesses, viz. (i) P.W. 1, Dhirajlal Revashanker Joshi, Ex. 6, Inspector in Dhari Agricultural Produce Market Committee, and (ii) P.W. 2, Rameshchandra Bhanushanker Bhatt, Ex. 11, Deputy Mamlatdar, Civil Supply Department, Dhari.

8. The trial Court after duly appreciating the evidence and considering the rival contentions of the parties, by judgement and order dated 30th August, 1980, was pleased to acquit the accused and hence, aggrieved by the same, the original complainant has filed this acquittal appeal.

9. Mr. S.K. Zaveri, the learned counsel appearing for the appellant-complainant has made the following submissions :

That the impugned judgement and order of acquittal is patently illegal inasmuch as the trial Court has not correctly interpreted S.8 and other relevant provisions of the said Market Act vis-a-vis facts of this case.

Developing this point further, Mr. Zaveri submitted that since the accused as a dealer of the fair price shop, has purchased the agricultural produce viz. wheat, millet, rice, etc. from the Mamlatdar Office and thereafter he sold the same to the customers by charging the price from them and was gaining the profit, he was a person operating within the market area and therefore it was compulsory for him to have a licence for the same. According to

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Mr. Zaveri, thus, the trial Court committed a serious error in treating the entire transaction of the purchase of the agricultural produce from the Mamlatdar Office and selling it to the customers, as merely a distribution work. According to Mr. Zaveri, the accused who was a dealer in the fair price shop was in fact 'trader' and was carrying on his activities of purchase and sale within the market area which squarely fall within the scope and ambit of the said Market Act. It was further submitted by Mr. Zaveri that the fair price shop was run by accused as a "trader" on his own sole responsibility and the Government had no concern except to supervise and regularise the sale price of the agricultural produces or any other item purchased by the said dealer and sold by him to the card holders. Mr. Zaveri finally submitted that the accused fair price shop dealer must be held to be operating in the market area dealing with the agricultural produce regulated under the said Market Act and therefore was liable to be punished under S.36(1) for the breach of S.8 of the said Market Act.

10. As against the above submissions of Mr. Zaveri, Mr. S.J. Joshi, learned advocate for the accused has supported the judgement and order of acquittal and has adopted the very reasoning of the trial Court by way of his arguments in this appeal.

11. Mr. R.R. Tripathi, the learned Addl. P.P. appearing for the State has submitted that the view taken by the trial Court appears to be just, legal and proper and there is no reason for this Court to interfere with the same.

12. Now in our quest for the just interpretation of the relevant provisions of the said Marketing Act, let us first of all advert to the evidence brought on the record by the prosecution.

(A) To start with the first witness examined in this case is P.W. 1 Dhirajlal Revashanker, Ex. 6, who is a complainant. According to this witness, the accused was a dealer in the fair price shop and was also selling other agricultural produce and has not obtained required licence for the period in between 1st September, 1979 and 30th September, 1980, and as a result of this, he was constrained to file the complaint against him for an offence punishable under S.36(1) of the said Act. The cross-examination of this witness makes an interesting reading. In substance, it has been admitted by this witness in his cross-examination that the accused was running a fair price shop since many years in Station Plot area in Dhari. He has also admitted that though in compound of the market area, auction of the agricultural produce does take place where merchants participate, however, the accused has never before purchased or sold any agricultural produce. He has also specifically admitted that the accused was selling these commodities only which was being supplied by the Mamlatdar to him. Surprisingly, this witness in his further cross-examination has made a convenient summersault to quote the same. "It is not true that the accused was not selling other commodities except those received from the Mamlatdar office. He did not know from where other commodities come." He also admitted that he did not know as to whom the said commodities were sold. He also admitted that at no point of time, he has made any efforts to make a panchanama about other commodities, at his fair price shop. According to him, he had merely orally conveyed to the President of the Committee that the accused was keeping in his shop other agricultural produces also. He has also admitted that the accused has to account for and re-deposit commodities supplied to him by the Mamlatdar. He further deposed that to quote - "It is true that the accused is distributing those agricultural produce only which is received by him from the Mamlatdar and that he was not doing any other business." He has also denied the suggestion of the learned advocate for the accused that the accused was shown a letter addressed to him by the Mamlatdar wherein it was suggested that it was not necessary to have a licence for him. It could be seen that the evidence of this witness ultimately favourable leans in favour of the accused.

(B) The next witness is P.W. 2 Rameshchand Bhanushanker Bhatt, whose evidence in substance is that even the office of the Mamlatdar has to take a licence from Marketing Yard Committee and accordingly the fair price shop dealer also had to obtain the said licence. Like the first witness, the admissions

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elicited in cross-examination of this witness also throws a flood of light on the real facts and circumstances which is ultimately going to decide which way S.8 of the said Act, deserve to be interpreted. This witness has admitted that the Mamlatdar office is giving food-grains, sugar etc. at the controlled rates to the dealers; of the fair price shop and the said dealer in turn has to distribute the said commodities at fixed price. He also admitted that the customers of the fair price shop are issued cards and every fair price shop dealer is allotted a specific area and named card holders to whom agricultural produce supplied by the Mamlatdar is to be distributed. He also admitted that a dealer in fair price shop cannot sell agricultural produce to any other person accept to the card holders of the specified area. He has also admitted that the office of the Mamlatdar also specific the quantity of all the agricultural produce to be given to each card holding customer. In any given month, if the supplied agricultural produce is found to be in excess as a result of the card holders not purchasing the same, then such stock is to be accounted for etc. He also admitted that one Mr. Korant was serving as a clerk in the office of the Mamlatdar. He also admitted that a circular dated 14th April, 1978, issued by the Mamlatdar office at Dhari and produced at Ex. 12, was also given to the accused. The said circular is produced at Ex. 12 and which in substance reads as under :-

"That all the dealers of the fair price shop in Dhari are hereby informed that any of them who are dealing in other agricultural produce, it is necessary to obtain a licence under the provisions of the Gujarat Agricultural Produce Market Act, 1963. However, if the said fair price shop dealers are merely distributing Government food-grains, not selling any other agricultural produce, then for them it is not compulsory to pay every year licence fees. The fair price shop dealers only distributing Government food-grains, if they have paid any market fee, they are entitled to get it refunded on an application being made in this regard to the Collector :

(C) The conjoint appreciation of the evidence of aforesaid two witnesses coupled with reading the purport of the circular dated 14th April, 1978 at Ex. 12, makes it abundantly clear that - (i) the accused is admittedly an exclusive fair price shop dealer, (ii) that he is receiving agricultural produce at the controlled rates from the Government, (iii) that he distributes the said agricultural produce to the named card holders of a specified area, (iv) at a fixed and reasonable price (v) that there is no evidence on record that the accused was ever found in possession of agricultural produce other than the one supplied by the Government, (vi) that he had never participated in auction sale in market yard, (vii) that he was never found to have sold any other agricultural produce except one supplied by the Government, (viii) that the fair price shop dealer was a sort of a conduit-pipe channelising the supplies of the essential commodities and thereby implementing the Government's intention to distribute the agricultural produce to the specified and named card holders at a fair and reasonable price; and (ix) that he is controlled under certain statutory rules and regulations and terms and conditions thereunder as per the agreement between the fair price shop dealer and the Government, (x) that there is not an iota of an evidence on record to show that the transaction regarding the "supply" and the "distribution" of the agricultural produce had any element which was working to the prejudice and contrary to the interest of the poor, illiterate cultivaters, ignorant of market prices, subjecting them to exploitation out of helpless situation, (xi) that two terms "purchase" and "sale" in the context of facts and circumstances of the case cannot be termed as "purchase" and "sale". The whole transaction broadly speaking, is that of a "supply" of an agricultural produce by Government through the fair price shop dealer to be for "distribution" to card holders, (xii) that the dealer in fair price shop is not a free-lance trader as the word 'trader' is commonly understood. Thus, how in view of such glaring facts and circumstances of the case, the accused can ever be said to 'operate' in the market area within the meaning of S.8 of the said Marketing Act so as to make obligatory upon him to obtain the licence under the said Marketing Act.

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13. Thus, having appreciated the evidence of the two witnesses, let us now concentrate on second important aspect of the case viz. what are the aims and objects underlying the scheme of the fair price shop. In this regard, Mr. Tripathi, learned Addl. P.P. has invited my attention to the underlying object of the scheme of the fair price shop. According to Mr. Tripathi, by this time, it is quite well known and therefore a judicial notice can be taken of the fact that the Government of Gujarat, in order to render succour to economically weaker Sections of the society and persons residing in the remote Adivasi areas, has resolved and evolved an exhaustive and self-contained scheme of the fair price shop, under the public distribution management under which the essential commodities like wheat, rice, sugar, edible oil, kerosene etc. are easily, regularly and at a reasonable price made available. Mr. Tripathi submits that this scheme of the fair price shop in substance and effect promotes and protects the interest of the needy consumers and as such society at large. Under this scheme, a person intending to be a dealer of the fair price shop has first to make an application in a prescribed form to the appropriate Government authorities furnishing the required particulars on oath declaration. After the said application is granted, the applicant is required to enter into a written agreement with the Government and thereafter a contract between the parties comes into existence and that thereafter the relationship between the Government and the said dealer of the fair price shop will be governed as per the said terms and conditions of the said contract. According to Mr. Tripathi, this is nothing but a shop set-up by the Government of Gujarat under its own scheme. There are number of terms and conditions and accordingly as per the contract, the dealer of the fair price shop over and above, though he is free to carry on other retail or wholesale business (over and above the distribution activity under the fair price shop), he cannot do so unless and until he obtains a prior permission and licences from the concerned appropriate authorities. Further, a person who is both (i) a dealer in the fair price shop; and (ii) a wholesale or a retail "trader" will have to maintain separate registers, accounts, godowns, etc. Not only that, but as a dealer in fair price shop, he is prohibited from trading the essential commodities supplied by the Government under the fair price scheme in an open market. Thus, the scheme of the fair price shop has a distinct and laudable object to serve economically weaker Sections of the society. At the same time, the said Marketing Act, as will be seen in the course of the later part of this judgement, has also a definite object viz. to sub-serve the interest of the poor, illiterate and ignorant agriculturists from being exploited by the powerful vested interest. As a matter of fact, there is no conflict whatsoever between the aims and objects as clearly set out in the said Marketing Act and that of the fair price shop. Both interests can independently and separately as well as jointly serve the cause for the classes of the society for which the same have been designed. Neither the aims and objects of the said Marketing Act nor the scheme of the fair price shop appear to overlap or conflict in any manner with each other. It must be made clear that a person desiring to ride two horses viz. to be (i) a dealer in fair price shop, and (ii) a "trader", then it will be incumbent upon him to obtain licence under Marketing Act as well.

14. Having screened the object and spirit of the scheme of the fair price shop, let us now scan the third important aspect of the case viz. what are the aims and objects underlying the scheme of the said Market Act. The Gujarat Agricultural Market Produce Act, 1963 (Gujarat Act No. 20 of 1964) came into force on 20th May, 1964. Its preamble at the very outset duly introduces the character and significance of the said Act with a declaration that - "This Act is to consolidate and amend the law relating to the regulation of (i) buying and selling of agricultural produce, and (ii) the establishment of the markets of agricultural produce in the State of Gujarat". This Act in fact replaces the prior Act viz. The Bombay Agricultural Produce Market Act, 1939. In order to find and finalise answer to the question raised in this appeal, it is worthwhile to have a look at the observations made by the Supreme Court in a case of

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M.C.V.S. Arunachala Nadar v. State of Madras, reported in AIR 1959 SC 300. By this decision while considering the validity of the Madras Commercial Crops Market Act, 1939. Their Lordships of the Supreme Court have traced and examined the historical background of the Act and the necessity of the marketing legislation. In paragraphs 6 and 7 of 'Their Lordships' learned judgement, which is reproduced as under :

Para 6. There is a historical background for this Act. Marketing legislation is now a well settled feature of all commercial countries. The object of such legislation is to protect the producers of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce. In Madras State, as in other parts of the country, various Commissions and Committees have been appointed to investigate the problem, to suggest ways and means of providing a fair deal to the growers of crops, particularly commercial crops, and find a market for selling their produce at proper rates. Several Committees, in their reports, considered this question and suggested that a satisfactory system of agricultural marketing should be introduced to achieve the object of helping the agriculturists to secure a proper return for the produce grown by them. The Royal Commission on Agriculture in India appointed in 1928 observed -

"That cultivator suffers from many handicaps; to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar Market is also in that crop. We consider that the system can conveniently be extended to other crops and with a view to avoiding difficulties, would suggest that regulated markets should only be established under provincial legislation."

The Royal Commission further pointed out in its report -

"The key note to the system of marketing agricultural produce in the State is the predominant part played by middlemen.

It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies".

The necessity for marketing legislation was stressed by other bodies also like the Indian Central Banking Enquiry Committee, the All India Rural Credit and Survey Committee, etc. Recently the Government of Madras appointed an expert committee to review the Act. In its report the committee graphically described the difficulties of the cultivators and their dependence upon the middlemen thus :

"The middleman plays a prominent part in sale transactions and his terms and methods vary according to the nature of the crops and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to the taluka or district centre and entrusts it to a commission agent for sale. If it is not sold on the day on which it is brought, it is stored in the commission agent's godown at the cultivators' expense and as the latter generally cannot afford to wait about until the sale is effected, he leaves his produce to be sold by the commission agent at the best possible price and it is doubtful whether eventually he receives the best price. The middle-class ryot invariably disposes of his produce through the same agency but, unlike the rich ryot he is not free to choose his commission agent, because he generally takes advances from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price but he

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loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between a creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour the villages and the price at which it changes hands is governed not so much by the market rules, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middlemen occupies and his methods of sale and the terms of his dealings have long ago been realised".

The aforesaid observations describe the pitiable dependence of the middle-class and poor ryots on the middlemen and petty traders, with the result that the cultivators are not able to find markets for their produce wherein the can expect reasonable price for them".

Para-7. ".....The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet one equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings....."

15. Having examined the historical background of the Marketing Act, in reference to the question involved in this appeal, it is also necessary to consider and examine the relevant provisions of the Marketing Act, which are reproduced as under :

S.2(i)" 'agricultural produce' means all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the Schedule".

S.2(iii) 'broker' means an agent whose ordinary course of business is to negotiate and make contracts on payment of commission or purchase or sale of agricultural produce on behalf of his principal but does not include a servant of such principal whether engaged in negotiating or making such contracts;

S.2(vii) 'general commission agent' means a trader who bona fide buys or sells or offers to buy for sell for an agreed commission, any agricultural produce on behalf of another person and does or offers to do anything necessary for completing and carrying out the transaction of such sale or purchase;

S.2(ix) 'licence' means a licence granted under S.6 or as the case may be a general or special licence granted under S.27;

S.2(x) 'licensee' means a person holding a general licence under this Act;

S.2(xiii) 'market area' means any area declared or deemed to be declared to be a market area under this Act;

S.2(xiv) 'market committee' means a market committee established or deemed to be established under this Act;

S.2(xv) 'market proper' means any area declared or deemed to be declared to be a market proper under this Act;

S.2(xxiii) 'trader' means any person, who carries on the business of buying or selling of agricultural produce or of processing of agricultural produce for sale and includes a co-operative society, joint family or an association of persons, whether incorporated or not, which carries on such business".

Section 6 pertains to the declaration of market area.

(1) xxx xxx xxx

(2) Notwithstanding anything contained in any law for the time being in force, from the date on which any area is declared to be a market area under Sub-Sec. (1) no place in the said area shall be used for the purpose of sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act :

Provided that pending the establishment of a market in such area the Director may grant

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a licence to any person to use any place in the said area for the purchase or sale of any such agricultural produce and a licence so granted shall unless it is cancelled or otherwise ceases to be in force, continue in force until the establishment of a market in the said area and for such period thereafter as may be prescribed.

S.8. No person shall operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under this Act;

S.23. 'A market committee shall exercise the powers and perform the functions and duties conferred or imposed on it by this Act and the rules.;

S.26. It shall be the duty of every market committee to maintain and manage the market, to take all possible steps to prevent adulteration and to promote grading and standardisation of the agricultural produce as may be prescribed, to provide such facilities in the market as the Director may from time to time direct and to enforce in the market area the provisions of this Act the rules, bye-laws and the conditions licences granted under the Act in connection with the purchase and sale of the agricultural produce with which it is concerned. It shall also be the duty of every market committee to collect and maintain such information relating to market intelligence as may be prescribed and to supply the same to Government whenever so required;

S.29. The Chairman, Vice-Chairman or Secretary of the market committee or any member, officer or servant authorised by the committee in this behalf, may

(a) for carrying out any of the duties imposed on the market committee under this Act at all reasonable times enter and search any place, premises or vehicle, and

(b) seize any article in respect of which he has reason to believe that an offence under this Act has been or is being or is about to be committed, and any vehicle or animal which he has reason to believe to be in use or to have been used or to be about to be used for carrying such articles, and shall detain the same so long as may, be necessary in connection with any proceeding under this Act or for a prosecution :

Provided that a report of the seizure shall forthwith be made by the person seizing the article, vehicle or animal to the Chairman if he is not the Chairman himself :

Provided further that the grounds for seizing any such article, vehicle or animal shall be communicated in writing within twenty four hours of the seizure to the person from whose possession the same was seized.

S.30(1) The Chairman, Vice-Chairman or Secretary of the market committee or any other member, officer or servant authorised by the committee in this behalf may summarily evict from the market any person found to be operating in the market area without holding a valid licence.

(2) Such eviction shall be without prejudice to any punishment to which the person evicted may be liable under this Act. Section 36 pertains to penalty for contravention of S.6 or 8. S.41 pertains to trial of offences. S.42 pertains to previous sanction necessary for prosecution.

In exercise of the powers conferred by S.59 of the said Marketing Act, the Government of Gujarat has framed the Rules which are known as The Gujarat Agricultural Produce Markets Rules, 1965 (for short hereafter to be referred to as the said Rules). The relevant rules of the said Rules are reproduced as under -

Rule 54(1). Place of sales of agricultural produce in the market -

(1) All agricultural produce arriving into the market shall be brought into the principal market yard or sub-market yard in the first instance and shall not be brought or sold at any place out side such yards :

Provided that ginned cotton, husked paddy, groundnut seeds split, pulses and tobacco may be sold anywhere in the market area in accordance with the provisions of bye-laws.

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(2) Details of all agricultural produce resold in wholesale in the market area shall be reported to the market committee.

(3) Any person who contravenes the provisions of this rule shall, on conviction, be punishable with fine which may extend to Rs. 500/-

Rule-56. Licenced traders and general commission agents -

(1) Any person desiring to obtain a licence to do business as a trader or a general commission agent in agricultural produce in any market area or part thereof shall make a written application in such form as the market committee may determine to the market committee and shall pay such fees as may be determined by the market committee subject to a maximum of Rs. 200/-.

Provided....

(2) to (6) xx xx xx

Rule-57. Pertains to business in market area prohibited except under licence. On careful perusal of the entire scheme of the Act as well as Rules made thereunder, it is very clear that the facts and circumstances of the case in no way fall within the ambit of the Act.

16. Now in background of the aforesaid discussion, picking up the thread of arguments made by Mr. Zaveri, learned counsel for the appellant in paragraph 9 of this judgement further, at the outset it must be stated that the same has failed to convince me. First of all, it is not possible to agree with Mr. Zaveri that since agricultural produces are purchased by the accused from the office of the Mamlatdar and thereafter the accused sells it to the customers for a price, therefore, he as a dealer of the fair price shop; was also a "trader" within the defined meaning under the Marketing Act. Firstly, definition of "trader" does not expressly include any sole and exclusive dealer of the fair price shop; and rightly so. Secondly, the exclusive dealer of the fair price shop is certainly not a free-lance trader of his own as the word trader is generally known and commonly understood. Further a dealer in the fair price shop is not a "trader" or a businessman in the sense that like any other traders or a business man while purchasing the agricultural produce, he is not in a position to strike a deal and then to sell it off at the highest possible price, keen of course to have a margin of profit as much as his greed and the circumstances would permit him to have. Thirdly, an exclusive dealer in fair price shop is merely serving as a distributing channel or a supply-line between the Government godown and needy economically weaker Sections of the society. Further, nor does the case of the accused fair price shop dealer can be brought within the fold of the word "general commission agent" as defined in S.2(vii) of the Market Act. Thus, S.8 comes into operation only when a "person operates in a market area" i.e. operates independently as a trader by purchasing and selling the agricultural produce at arbitrarily fixed profit. The exclusive fair price shop dealer has not those traders-wings to be a trader in the sense that he can fly anywhere, in any direction, at any heights, in whatever manner and wherever he likes.

17. Further, in the matter of licences under the Marketing Act, a provision is also made in R.56 of the said Rules, which pertains to the licenced traders and general commission agents. The sum and substance of this rule is that if any person is desiring of obtaining a licence to do business as a "trader" or a "commission agent" (emphasis supplied) in agricultural produce in any market area, he shall make a written application in such form as the market committee may determine and shall pay such fees as may be determined by the market committee subject to the maximum of Rs. 200/-. Thus, it is very clear that a licence as a condition precedent is necessary only in those cases, wherein any person is desiring to do a business as a "trader" or a "general commission agent" in agriculture produce (in any market area). Therefore a person like an accused in the instant case, who is not desiring to do a business as a "trader" or "commission agent"but wants; to carry on his limited activity as an approved agent of the Government as a dealer in fair price shop, it is not necessary for him to obtain the licence. Merely because a fair price shop dealer incidently is having a shop in a market area

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and distributes items which also fall within the ambit of the word "agricultural produce" as defined in S.2(i) of the Marketing Act, that by itself does not bring him within the statutory limits and liability to obtain a licence; unless he is also proved to be a freelance trader in commodities over and above those supplied by the Government for distribution.

18. This does not mean that the market committee will be helpless and powerless to control a "trader" within the meaning of the Marketing Act, operating clandestinely under the guise of a dealer in fair price shop. In this regard, it is necessary to bear in mind the powers and duties of the market committee as provided in Ss.23, 26 and 27 and 30 of the Marketing Act. Thus, on examining the aforesaid provisions, it is very clear that the market committee is fully empowered under the said Marketing Act to enter and search any place, premises or a vehicle in order to carry out and implement the objectives of the Act. The said market committee is also empowered to remove unauthorised person from the market i.e. the person carrying on business as a trader or as a commission agent or as a broker as defined in the Act prejudicially to the interest of the poor, illiterate and ignorant agriculturists. Thus, if a person like an accused in the present case, who is strictly and exclusively a fair price shop dealer, if he happens to be found ultimately to be a trader dealing in purchase and sale of agricultural produce over and above supplied by the Government for distribution at fair price, by the market committee, then in that case, the market committee is not powerless to control him under the Act.

19. Therefore, if the shop keeper is a person who is dealer in a fair price shop and is also trading in agricultural produce in a market area, other than the one covered by the fair price shop, then he has to abide by the statutory rules and regulations and the terms and conditions thereunder of both i.e. under the said Market Act as well as under the scheme of fair price shop. But in case, the dealer in a fair price shop is exclusively and strictly dealing in the agricultural produce under the authorisation and terms and conditions regarding fair price shop of the Government, then in that case, there is no duty cast on him to have a licence from the marketing committee under the said Market Act. It has got to be borne in mind that the dominant object under the scheme of fair price shop is an equitable distribution and availability of the essential commodities at fair and reasonable price so as to benefit the consumers - a class consisting of the weaker Section of the society. The primary consideration, therefore, under the scheme of fair price shop is a fixation of price, which would be in the interest of the consumers, and the individual interests, howsoever precious or great, need so arises, it has got to yield to the larger and ultimate interest of the consumers weaker Section of the society.

The last submission of Mr. Zaveri was to the effect that witnesses in terms have deposed to the effect that the accused even as a dealer in a fair price shop was bound to have a licence under the said Market Act. I do not agree. Merely because the said witnesses are labouring under some misconception of law and asserts that accused was under a legal obligation to obtain a licence, that by itself cannot add or abridge the legal position. No provision of the Act can ever be interpreted by mere assertion of any witness, divorced of its spirit, aims and objects of the Act and the rule of common sense interpretation.

20. Thus, as per the above discussion having examined the question involved from all angles, the net result of the same is answered as under :

(i) if a person happens to be a dealer in a fair price shop falling within the streamlined category as referred to in the earlier paragraph 2 of this judgement, then in that case, it is not obligatory to obtain a licence under the Marketing Act to carry on the distributing activity of the agricultural produce to the customers supplied by the Government, even though such shop is situated within the market area.

(ii) As against the first category, if any

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person dealing in the fair price shop is also desiring to carry on his activity as a trader by purchasing and selling the agricultural produces other than and/or over and above the supplies made by the Government, it will be obligatory upon him to have the licence under the Act.

(iii) Though a person falling in the first category, is held to be not under the legal obligation to obtain a licence to carry on his distribution activity, yet to the extent his shop is situated within the market area, he would be subject to the power of supervision and check under the authorities provided under the said Marketing Act in order to see that under the clever disguise of running an exclusive fair price shop, a fair price shop dealer is not clandestinely carrying on his activity as a "trader" or "broker" or a "general commission agent" as defined in the Act.

Thus, in view of the facts and circumstances of the case, it was not necessary for the accused to obtain licence under the said Marketing Act, as his activity of distributing agricultural produce does not fall in ambit of word "trader" or any other provisions of the Market Act.

21. In the result, the impugned judgement and order of acquittal passed by the trial Court is confirmed and the appeal against the acquittal deserves to be dismissed and hence it is dismissed accordingly.

 Appeal dismissed.

1986 CRI. L. J. 485 "N. Prabakaran v. Supervisor, R. M., S. A. M. Committee"

 MADRAS HIGH COURT

 Coram : 1 NATARAJAN, J. ( Single Bench )

Crl. M.P. Nos.5043, 5045, 5047 and 5049 of 1980, D/- 11 -7 -1983.

N. Prabakaran and another, Petitioners v. Supervisor, Regulator Market, South Arcot Market Committee, Chinna Salem, Respondent.

(A) T.N. Agricultural Produce Markets Act (23 of 1959), S.18 - AGRICULTURAL PRODUCE - Furnishing of full particulars of accounts - Casual inspection or checking of account books by complainant on particular day would not amount to furnishing of full particulars by accused. (Para 3)

(B) T.N. Agricultural Produce Markets Act (23 of 1959), S.18 - AGRICULTURAL PRODUCE - Delay in filing complaints - Prosecution for non-furnishing of accounts - Complainant seeking assistance of Tax Authorities to get account particulars because of non-furnishing of accounts and obtaining orders of his superiors

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before filing complaint - Held, delay was not sought to be explained only on ground of administrative reasons. (Para 4)

(C) T.N. Agricultural Produce Markets Act (23 of 1959), S.18 - AGRICULTURAL PRODUCE - Limitation - Merely because market dues became payable at the end of a year, it cannot be said that offence was complete and hence prosecutions cannot be launched after expiry of limitation - Offence u/s.18 is continuing one.

1980 Mad LW (Cri) 226 Applied.

Criminal P.C. (2 of 1974), S.468. (Para 6)

(D) T.N. Agricultural Produce Markets Act (23 of 1959), S.18 - AGRICULTURAL PRODUCE - It only refers to quantum of market dues payable and is not concerned about their time of payment. (Para 8)

Cases Referred: Chronological Paras

1982 Mad LW (Cri) 1 : 1982 TLNJ 44 4

1980 Mad LW (Cri) 226 : 1980 Mad LJ (Cri) 769 6

1977 Cri LJ 1375 : 1977 Mad LJ (Cri) 496 5

T.S. Arunachalam, for Petitioners; B. Lakshminarayana Reddy, for Respondent.

Judgement

ORDER : -Crl. M.P. Nos. 5043 and 5047 of 1980 filed by Prabhakaran and Crl. M.P. Nos. 5045 and 5049 of 1980 filed by Shafuyullah were heard jointly and they are being disposed of by a common order since the questions raised therein are identical or closely related.

2. The Supervisor, Regulated Market of South Arcot Market Committee, Chinnasalem filed complaints against Prabakaran and Shafuyullah for non-payment of market rates as laid down in S. 18 of the Tamil Nadu Agricultural Produce Markets Act, 1959, hereinafter referred to as the Act. The prosecution against Prabakaran was for nonpayment of market rate for the period from 1-4-1978 to 31-3-1979 and the prosecution against Shufuyullah was for non-payment of market rate for the period from 14-6-1978 to 31-3-1979. The complaints were filed on 3-5-1980. Having regard to the sentence awardable in these cases, the period of limitation for filing complaints will be six months under S. 468 of the Cr.P.C. In order to explain the delay in filing the complaints, the complainant filed petitions under S. 473 Cr.P.C. Prabhakaran and Shafuyullah raised objections to the Court condoning the delay in filing the complaints and the Court below has overruled their objections and granted condonation of delay. It is against that order Crl.M.P. Nos. 5047 and 5049 of 1980 have been filed. In order to explain the delay, the complainant has set out in his affidavit that the accused in each of the two cases was prosecuted for non-furnishing of accounts according to the terms of the Act. In spite of it, the respective accused did not furnish the accounts for the relevant period in question so as to enable the complainant to determine the quantum of market dues payable by each. Therefore, the complainant was forced to approach the Commercial Taxes Authorities to obtain an extract of the accounts submitted by the respective accused for the period in question. He was able to get true extracts of the accounts only on 6-4-1980 whereafter the complaints were preferred after obtaining the permission of his higher authorities for launching the prosecution. Eventually the permission was granted and the complainant filed the complaints on 3-5-1980.

3. The learned Magistrate has felt that the delay in filing the complaints had been occasioned due to the lapses of the accused themselves because, on account of the wrong submission of the accounts, the complainant had to approach the Commercial Tax Authorities and get certified extracts of accounts and in such circumstances, the delay in filing the complaints has been properly explained. Mr. T.S. Arunachalam, learned counsel for the petitioner in each of the two cases contends that the complainant had inspected the account books on 23-1-1979 and initialed the entries and as such there is no substance in the contention that the particulars of accounts were not made available to the complainant. This is not a tenable contention because a casual inspection of the accounts on a particular date, to wit, 23-1-1979, will not amount to the accused furnishing full particulars to the complainant for the period in question. Moreover the accounting period was extended till 31-3-1979 and therefore even if the complainant had checked the accounts on 23-1-1979, it cannot be said that the accused had placed the account particulars before the complainant and, therefore, they cannot be accused of having failed to furnish the account particulars.

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4. The next contention of the learned counsel is that the delay is sought to be explained on the ground of administrative reasons and such an explanation ought not to be accepted. In support of this proposition he cites Manickam v. State, 1982 Mad LW (Crl) 1. That is a case where the State sought to file an appeal against the accused who was acquitted of an offence under S. 323 I.P.C. There was a delay of 17 months in filing the appeal and the only reason given was 'administrative reasons'. It was in such a situation, Sathar Sayeed, J., held that the delay cannot be condoned as sufficient cause, which means a cause which is beyond the control of the party seeking condonation of the delay, had not been established. The ratio in that case will have no application to the facts of the prosecution case because, the affidavit of the complainant shows that he had prosecuted the accused for non-furnishing of accounts, that even thereafter the accused did not furnish accounts and that, therefore, the complainant had to seek the assistance of the Commercial Taxes Authorities to get the account particulars of the accused. Subsequently the complainant had to obtain the orders of his superiors and file the complaint Having regard to these factors it cannot be said that the delay is sought to be explained only on the ground of administrative reasons.

5. Mr. Arunachalam then submitted that there is no necessity to obtain the orders of sanction from higher authorities to file the complaint. Therefore the complainant need not have taken time to obtain permission of his higher officers to file the complaint. This contention is also devoid of merit because the complainant has to obtain administrative orders from his superiors before filing the complaint. The learned Magistrate has considered all these aspects and deemed fit to exercise his discretion in favour of the complainant in the interests of justice. As pointed by Ratnavel Pandian, J., in Thanga Pillai v. Superintendent, South Arcot Market Committee, 1977 Mad LJ (Cri) 496: (1977 Cri LJ 1375) the term 'interests of justice' has broad meaning implying conditions which assist or are in aid of or in furtherance of justice and it imports exercise of discretion which considers both the interests of parties and those of society. It cannot therefore be said that the Magistrate has acted illegally in condoning the delay in the filing of the complaint.

6. The matter can be viewed from another angle also. After the end of the year on 31-3-1979, the accused were under an obligation to furnish account particulars and also to remit the market dues payable by them. When they failed to do so, the offence becomes a continuing one from the date of default. A Division Bench of this Court has held in Premier Studs and Chaplets Co. In re 1980 Mad LW (Cri) 226 that when an employer fails to pay the employer's contribution of provident fund, the offence would constitute a continuing offence and as such the limitations contained in the Code of Criminal Procedure for completed offences cannot be availed of by the erring employer. The ratio laid down in that case would be fully applicable to the facts of this case also. Merely because the market dues became payable after the year came to a termination, it cannot be said that the offence became a completed one and hence prosecutions cannot be launched after the expiry of limitation.

7. For the aforesaid reasons, I am clearly of the view that the orders of the Magistrate which are impugned in Cri. M.P. Nos. 5047 and 5049 of 1980 are not in any way illegal. Hence both those petitions have to fail.

8. In the other two petitions, viz., C.M.P. Nos. 5043 and 5045, which have been filed to assail the orders of the Magistrate to the effect that there is no misjoinder of charges and that the trial can proceed without hindrance, the contention of the petitioners is that under S. 18, an offence of non-payment will become completed if the aggregate turnover is Rs. 100, and only three offences of the same nature can be clubbed together and charged in a complaint But in this case the complaint is for non-payment of market dues for the period from 1-4-1978 to 31-3-1979 in one case and from 14-6-1978 to 31-3-1979 in another case and therefore there is misjoinder of charges. There is absolutely no merit in this contention because S. 18, only refers to the quantum of market dues payable viz., the rate not exceeding fortyfive paise and subject to a minimum of twentyfive paise for every hundered rupees of the aggregate amount S. 18 does not say anything about the time of payment of the same. If Mr. Arunachalam's argument is to be accepted, then for payment of fee ranging between twentyfive to fortyfive paise for every one hundred rupees, a complaint

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should be filed. This is too preposterous a submission to be accepted. Therefore, there is no misjoinder of charges in either of these cases. The learned Magistrate was, therefore, right in overruling this objection. Consequently, it follows that these two petitions also have to fail.

9. In the result all these petitions will stand dismissed.

 Petition dismissed.

1985 CRI. L. J. 176 "K. Ch. Pandu Ranga Rao v. Secy., Agrl. Appellate Committee, Ongole"

 ANDHRA PRADESH HIGH COURT

 Coram : 2 PUNNAYYA AND RAMASWAMY, JJ. ( Division Bench )

Criminal Revn. Case No.287 of 1983, D/- 26 -4 -1984.

K. Ch. Pandu Ranga Rao, (Accused) Petitioner v. The Secretary, Agricultural Appellate Committee, Ongole and another, Respondents.

(A) Criminal P.C. (2 of 1974), S.468(2) and S.473 - A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.23 - AGRICULTURAL PRODUCE - LIMITATION - Offences under - Limitation under S.468, Cr.P.C., applies.

A period of limitation has been prescribed under S.468 and the Court is enjoined not to take cognizance of an offence specified in sub-s.(2), S.468, after the expiry of the period of limitation. Notwithstanding such a prohibition, in view of the language "except as otherwise provided" in S.468 which includes the one provided under S.473 and with the non abstante clause in S.473, the Court is invested with discretionary power to take cognizance of an offence despite the expiry of the period of limitation. The power is hedged

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with satisfaction of the Court on the facts and circumstances of the case (1) that the delay has been properly explained: or (2) that it is necessary to take cognizance in the interests of justice. The Court can go into the bar of limitation even after the cognizance was taken on the charge-sheet or complaint, the process was issued and trial was conducted. It is incumbent to give an opportunity to the accused at the time when the question of delay was being considered on the facts and circumstances and explaining the delay or if the Court considers necessary in the interests of justice to take cognizance, though delay has not been properly explained. (Para 12)

In construing the delay it is not necessary to meticulously explain every day's delay but may be construed liberally to advance substantial justice when there is no wanton negligence, deliberate inaction or want of bona fides in pursuing the prosecution. How the discretion has to be exercised is left to the Magistrate concerned depending on the facts and circumstances of each case. It is open to the accused to place the material in regard to want of bona fides or diligence in pursuing the prosecution. When the Court is condoning the delay, by necessary inference, it is interfering with the right of the accused assuring him of the bar of limitation. Therefore the Court has to be circumspect to put harmonious interpretation of the relevant provisions and has to consider the facts and circumstances in each case and has to exercise the discretion reasonably assigning reasons therefor. (Para 13)

(B) A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.12(1) - AGRICULTURAL PRODUCE - CONTINUING OFFENCES - Offence under is not a continuing offence.

Criminal P.C. (2 of 1974), S.472.

In respect of the offence created under sub-s.(1) of S.12, it is not a continuing offence but the offence is complete as soon as he fails to lpay the market fee though the consequencee subsist till payment is made. Hence offence under S. 12 (1) is not a continuing offence. ( Para 22)

(C) Criminal P.C. (2 of 1974), S.473 and S.468 - A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.12(1) - AGRICULTURAL PRODUCE - COGNIZANCE OF OFFENCE - LIMITATION - Cognizance of offence under can be taken even after expiration of limitation period prescribed under S.468.

The two clauses of S.473 are independent to operate in different fields and cannot be caged in a strait-jacket formula. In a given case it may bridge the gap. But where the explanation is offered and found to be acceptable, then there is no need to invoke the latter clause of S.473. But where the explanation offered is found to be unacceptable and yet on the facts and circumstances the interests of justice requires the Court to take cognizance of the offence despite the bar of limitation, the Court could exercise the power. The paramountcy is always the interests of justice. In such situation, the latter clause would be brought into play. To invoke that power, the Court has to exercise its discretion bona fide, reasonably but not arbitrarily and capriciously, keeping in view the object of the relevant Act, the purpose for which the power is given under the Act, Rules etc., and the relevant facts and circumstances of each case. Act 16 of 1966 gave power to the Magistrate to collect the market fee and licence fee and pay over to the Committee; thereby the Legislature confided the power in the Court to exercise the power in appropriate cases as an efficacious and inexpensive process to achieve the public purpose. The Court would, in appropriate cases, take these and other relevant facts and circumstances and the Court would exercise the power to take cognizance of the offence, despite the fact that the limitation prescribed under S.468 of the Code expired by efflux of time under sub-s.(2)(a), S.468 of the Code. (Para 27)

(D) Criminal P.C. (2 of 1974), S.473, S.397 and S.401 - LIMITATION - REVISION - Revision - Trial Court not exercising discretion under latter clause of S.473 to condone delay - High Court in revision will not exercise such power for the first time.

Normally, where there is no occasion for the prejudice to the accused and the justice requires, the High Court may take recourse to the latter clause of S.473. But the accused has a right to assail the reasoning given by the trial Court in an appeal or revision. If the power is exercised for the first time in revision it is not possible to know what would be the reasons the Courts below would have given and then the petitioner would be deprived of a valuable right. Therefore, though High Court has the power, it is not safe to invoke the power under the latter clause of S.473 for the first time in the revisional jurisdiction. (Para 28)

Cases Referred : Chronological Paras

AIR 1985 NOC 7 : (1984) 1 AP LJ (HC) 180 27

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1984 Cri LJ 503 : (1983) 2 AP LJ (HC) 385 5, 8, 15

1982 Cri LJ 734 : (1981) 2 AP LJ (HC) 315 5, 12, 14

1982 Cri LJ NOC 180 : 1982 Mad LJ (Cri) 448 (Andh Pra) 20

1981 Cri LJ 722 : AIR 1981 SC 1054 5, 9, 14

(1979) 1 AP LJ (HC) 173 19

(1979) 2 AP LJ (HC) 398 : (1980) 1 Andh LT 142 4, 5, 7, 12, 14

1978 Cri LJ 764 : AIR 1978 SC 986 10

1974 Cri LJ 313 : AIR 1974 SC 228 27

1973 Cri LJ 347 : AIR 1973 SC 908 17

1965(1) Cri LJ 90 : AIR 1964 SC 1893 27

1955 Cri LJ 66 : AIR 1955 Bom 161 18

(1949) AC 530 : (1949) 2 All ER 452 : 65 TLR 471 (HL) Hill v.William Hill (Parklane) Ltd. 26

T. Bali Reddy, for Petitioner; M.S. Prasad, (for No.1) and Public Prosecutor, (for No.2), for Respondents.

Judgement

K. RAMASWAMY, J. :- The Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act (16 of 1966), for short, "the Act", though couched with pragmatic provisions with sufficient elasticity to meet diverse situations, became ineffectual at the behest of the trader, a trustee de son tort, obligated under the Act to collect the market fee and to make over payment thereof to the Committee but was animated to have unjust enrichment, mainly due to the notorious recalcitrant executive apathy to take expeditious action by playing into the hands of dilatory tactics of the trader and partly due to inapt application of the relevant provisions by the Courts below.

2. The petitioner is a trader under the Act. He transacted trade in the notified agricultural produce (tobacco) in the notified market area and having collected market fee levied under S.12(1) of the Act for the years from 1970 to 1975 failed to pay the same. When a demand for payment of the market fee of Rs. 96,859-80 ps. was made, he filed a writ petition in this Court, prevented collection thereof and when ultimately he was unsuccessful, he laid a suit in a representative capacity. The suit also became ineffectual. Yet another attempt was made by another suit to restrain the respondent committee from collecting the market fee, but proved to be abortive. In the meantime, a demand under Ex P-1 D/- June 18, 1976 was made, followed by a show cause notice Ex. P-3 dated December 15, 1976 and notice for prosecution as required under R.64, A.P. (Agricultural Produce and Livestock) Markets Rules, 1969, for short "the Rules" by Ex. P-6 D/- 22-12-1976 and yet did not make payment thereof. The Committee passed a resolution Ex.P-7 dt. 31-1-1977 under S.25(2) authorising the Secretary to lay the complaint, but for the reasons undisclosed, no complaint was laid for an year and was laid under S.23 of the Act on January, 30, 1978 before the trial Court.

3. The main defence set up by the petitioner is that the complaint is barred by limitation by operation of S.468, Cr.P.C., 1973, for short, "the Code", since the complaint was laid beyond six months from the date of the demand under Ex. P-1 and that no explanation has been offered for the delay occasioned. But that objection was overruled holding that the respondent has offered satisfactory explanation for the delay thereof and the learned Magistrate accordingly convicted the petitioner under S.23 read with S.12(1) of the Act and sentenced him to pay a fine of Rs. 400/- in default to undergo rigorous imprisonment for one month. The petitioner was also directed to pay the market fee of Rs. 96,859-80 ps. The matter was carried in appeal. The appellate Court confirmed the conviction and the direction. In addition to the finding that the respondent offered sufficient explanation for the delay occasioned, it also held that the failure to pay the market fee is a continuing offence and, therefore, there is no limitation occasioned. Against that order, this revision has been filed.

4. The revision has come up before our learned brother, Chennakesav Reddy, J. The learned Public Prosecutor has argued that the decision reported in Khasim Baig v. State of Andhra Pradesh (1979) 2 A.P. LJ (HC) 398 requires reconsideration which was found to be having force. Therefore, the learned Judge referred the entire case to a Division Bench. Thus this matter has come up before us.

5. The main thrust of Sri T. Bali Reddy, learned counsel for the petitioner is that the prosecution has been clearly barred by limitation. The sentence under S.23 of the Act is one of fine. Therefore, under S.468(2)(a) of the Code, the period of limitation for taking cognizance of an offence is six months. The demand was made on June 18, 1976 (Ex. P-1). The resolution under Ex. P-7 though was

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passed on 31-1-1977 to lay the prosecution, it was in fact laid on 30-1-1978, viz., one year thereafter. There is no explanation offered by the respondent for the delay of six months. The view of the Courts below that the explanation is proper is vitiated by error of law. The delay occasioned due to filing of the writ petition and pendency of the suit is not a proper explanation for the delay subsequent to the resolution Ex. P-7. The Courts below have committed error of law in not considering the case from this perspective. He also contended that the view of the learned single Judge that Khasim Baig's case (1979-2 APLJ (HC) 398) requires reconsideration is not warranted in view of the subsequent decisions of this Court in K. Hanumantha Rao v. K. Narasimha Rao (1981) 2 AP LJ (HC) 315 : (1982Cri LJ 734) and of the Supreme Court in State of Punjab v. Sarwan Singh AIR 1981 SC 1054: (1981 Cri LJ 722). The view of the lower appellate Court that the offence is a continuing offence is not correct in view of the recent judgment of this Court reported in Secretary, Agricultural Market Committee K. Valasa v. S.V.G. Oil Mills (1983) 2 A.P. LJ (HC) 385 : (1984 Cri LJ 503).

6. On the other hand, Sri M.S. Prasad, learned standing counsel for the respondent Market Committee contended that the failure to pay the market fee is a continuing offence and therefore the question of limitation does not arise. Even otherwise, if it is to be construed that limitation would apply, the Court has power to take cognizance of the offence even after the expiry of the period of limitation, under the latter part of S.473 of the Code, viz., "if it (the Court) is satisfied on the facts and in the circumstances of the case or it is necessary so to do in the intersts of justice." The Courts below would have exercised this power. Therefore even though if the Court comes to the conclusion that there is no satisfactory explanation given by the respondent on the facts and circumstances in this case, it does not warrant interference in this revision. The learned Public Prosecutor supported the reference.

7. Upon the respective contentions, the questions that arise for consideration are:

(1) Whether the decision of the Division Bench in Khasim Baig v. State of A.P. (1979) 2 A.P. LJ (HC) 398 (supra) requires reconsideration?

(2) Whether the failure to pay the market fee under S.12(1) is a continuing offence?

(3) Whether the prosecution has given satisfactory explanation for the delay in laying the complaint?

8. Before answering these questions, it is necessary to adumbrate the relevant provisions of the Act. Under S.7 of the Act, the petitioner is a trader having obtained licence thereunder for the purchase and sale of the notified agricultural produce (tobacco) within the notified market area. He transacted business during the years 1970 to 1975 and he was due of a sum of Rs. 96,859-80. Under sub-s.(2). S.12, the fee shall be paid by the purchaser of the notified agricultural produce. The trader, undisputedly, is enjoined under the provisions of the Act to pay the market fee to the Market Committee. The failure thereof is declared to be an offence punishable under S.23(1) of the Act, with fine which may extend to Rs. 500/-. Under sub-s.(2) thereof, the Magistrate also, in addtion to impose fine under sub-s.(1) is empowered to recover summarily the fee payable under sub-s. (1) of S.12 or S.7 and to pay over to the Market Committee the amount of fee chargeable thereunder. Admittedly the petitioner did not make payment thereof. Therefore, he was rightly convicted and direction given by the trial Court and was confirmed by the appellate Court provided the complaint was laid within the limitation. This Court in Secretary Agrl. Market Committee. K. Valasa v. S.V.G. Oil Mills (1983) 2 A.P. LJ (HC) 385 : (1984 Cri LJ 503) (supra) speaking through one of us (K. Ramaswamy, J.) had an occasion to consider the applicability of limitation to the offences created under S.23 and held in para 16 that Chap. XXXVI of the Code does apply to the offences created under the Act. To reach that conclusion the object of introducing the limitation under Chap.XXXVI of the Code was considered and in para 13 it was held :

"Expedition to send up the offender to take his trial for the offences complained of before the memory of the persons acquainted with the facts connected with the crime fades out and its effect diluted and to receive the verdict is a facet of the concept of fair procedure enshrined under Art.21 of the Constitution." A person cannot be made to await in perpetual animation bereft of peace of mind, of the haunt of prosecution at the whim of the prosecutor. By legislative sanction new

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"offences" in countless Acts are created and many a time the person may be oblivious of committing an offence. Prior to April 1, 1974, there is no express embargo on the power of the Court to take cognizance of the offence laid at a belated stage but had discretionary power to decline convicting an offender, even if the offence is proved. Prescription of the period of limitation is a law relating to procedure and an extinctive prescription directing the person to work out the rights accrued under a contract or enforce remedies created under law within the period provided by such law. It merely bars the remedy; and may sometimes extinguishes the rights. The person aggrieved is enjoined to initiate the action to redress the injury or enforce the right lest its efficacy denuded or the remedy remains unenforceable. Anson says in his Law of Contracts that "though the rights possess the permanent character, the remedies a rising from their violation are by their various statutory provisions withdrawn after a certain lapse of time. The remedies are not extinguished". In other words, the remedy gets extinguished by operation of law of limitation. Legislature in recognition of the mandate of Art.21 of the Constitution, seized of the situation, felt the need of its intervention, most acute, brought in the Cr.P.C., 1973, Chap.XXXVI putting limitation to take cognizance of certain class of offences; classified them to be grave and trivial, excluded the former by implication obviously on the touchstone of public interest, viz., safety of the society; elected to interpose by prescribing graded period of limitation even in respect of minor offences; excluded continuing offences from its purview; provided extension of time occupied in bona fide prosecutions under specified circumstances and provided an opportunity to the prosecution to give reasonable explanation for the delay caused to lay prosecution allowing discretion to the Court to condone the delay thereof in appropriate cases. This appears to have been done with a twin objective putting pressure on the prosecutor to be diligent to pursue prosecution and to repose peace to the offenders. In other words, Chap.XXXVI is a complete Code of limitation in respect of offences punishable ranging with fine simpliciter to sentence of three years imprisonment, be they emanate or embraced either the Penal Code or any other law. This fact is discernible from a conjoint reading of S.4(1) and (2) and saving S.5 of the Code. This is also apparent from the statement of objects and reasons to introduce Chap.XXXVI. No doubt the statement of the objects and reasons cannot control the operation of the provisions when the language in the section is explicit. But when it is ambiguous they provide material and source to consider the scope and ambit of the Act or Section. S.468(2)(a) of the Code provides that the period of limitation shall be six months if the offence is punishable with fine only. S.23 of the Act prescribes only penalty of fine. Therefore, a complaint has to be laid within six months from the date of the offence and if it is laid thereafter, prohibition is engrafted against the Court from taking cognizance of such an offence after the expiry of the period unless satisfactory explanation is given for the delay occasioned therefor. The two objects to introduce Chap.XXXVI, relevant for the purpose of these cases, are thus :

Object No.2 : For the purpose of peace and repose it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences many persons at sometime or the other commit some crime or the other. People will have no peace of mind if there is period of limitation even for petty offences.

Object No.5 : The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

The above objectives make the matter manifest that the Parliament is also cognizant of the offences created under special enactments when it is stated that "Within the multifarious laws creating new offences." It could also be seen that the Parliament after enacting Chap XXXVI, has passed an enactment viz., Economic Offences (An applicability of Limitation Act 12 of 1974) excluding the Chap XXXVI of the Code in respect of the offences mentioned in the schedule to the Act, as contemplated under S.2 thereof. The Special Acts are not one of those excluded from the purview of Chap XXXVI of the Code."

9. Their Lordships of the Supreme Court also considered the object in State of Punjab

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v. Sarwan Singh AIR 1981 SC 1054: (1981 Cri LJ 722) where S.M. Fazal Ali, J. speaking on behalf of the Court held that the object to put the bar of limitation on the prosecution was clearly to prevent the parties from filing cases after a long time, as result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art.21 of the Constitution. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complaint must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.

10. In S.M. Vikal v. A.L. Chopra AIR 1978 SC 986: (1978 Cri LJ 764) their Lordships of the Supreme Court speaking through P.N. Shinghal, J. also considered the object of the limitation and held.

"It is hardly necessary to say that statutes of limitation have legislative policy behind them. For instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also have the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor."

11. The result of the above discussion is that the law of limitation puts pressure on the prosecutor or the complainant to laly the prosecution expeditiously within the limitation provided under Chap XXXVI of the Code. Lest the prosecution entails with dismissal. The object being to effectuate fairness of trial enshrined under Art.21 of the Constitution. The offences created under S.23 of the Act are also governed by the provisions of the limitation provided under Chap XXXVI of the Code.

12. Section 467 of the Code defines the period of limitation to mean the period specified in S.468 for taking cognizance of an offence. Section 468 postulates that:

"(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-sec.(2) after the expiry of the period of limitation."

Sub-sec.(2) thereof prescribes a period of six months for an offence punishable with fine only. Section 469(1)(a) provides that the period of limitation in relation to an offender shall commence from the date of the offence. Section 473, marginal note reads "the extension of period of limitation in certain cases" and the section starts with a non obstante clause stating that "notwithstanding anything contained in the foregoing provisions of the Chapter" any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied, on the facts and in the circumstances of the case that (a) the delay has been properly explained or (b) that it is necessary so to do in the interests of justice. A conjoint reading of these fascicle of the provisions makes manifest that period of limitation has been prescribed under S.468 and the Court is enjoined not to take cognizance of an offence specified in sub-s.(2) of S.468, after the expiry of the period of limitation. Notwithstanding such a prohibition, in view of the language "except as otherwise provided" in S.468 which includes the one provided under S.473 and with the non obstante clause in S.473, the Court is invested with discretionary power to take cognizance of an offence despite the expiry of the period of limitation. The power is hedged with satisfaction of the Court on the facts and circumstances of the case (1) that the delay has been properly explained; or (2) that it is necessary to take cognizance in the interests of justice. In the former case it does not envisage to file an application to condone delay. It is needless to mention that the cognizance is being taken of an offence of the categories specified in sub-s.(2). S.468 but not of the offenders. Therefore at what point of time the Court is enjoined to go into the question of limitation is not explicit. The Courts have considered the intendment thereof and there is a cleavage of opinion among the High Courts. As far as this Court is concerned, in the two Division Bench decisions viz., Khasim Baig v. State of Andhra Pradesh (1979) 2 APLJ (HC) 398 (supra) and K. Hanumantha Rao v. K. Narasimha Rao (1981) 2 APLJ (HC) 315 : (1982 Cri LJ 734) (supra) to which one of us (Punnayya, J.) is a party, took the view that the Court could go into the bar of limitation even after the cognizance was taken on the charge-sheet or complaint, the process was issued and trial was conducted. This Court has held that it is incumbent to give an

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opportunity to the accused at the time when the question of delay was being considered on the facts and circumstances and explaining the delay or if the Court considers necessary in the interests of justice to take cognizance, though delay has not been properly explained. In fact this Court itself, in the above two cases, considered the facts and held that the delay has not been properly explained and on that ground the prosecutions were set at naught.

13. It is, open to the prosecuting agency to explain the delay to the satisfaction of the Court. After the expiry of the limitation prescribed in respect of the offences specified in sub-sec (2) of S.468 the offender is assured that there would be no prosecution against him but that assurance is defeasible on the prosecution giving a reasonable explanation for the delay occasioned. Equally the cognizance taken is nullified due to non-explantaion of the delay or the Court finding it not expedient to take cognizance despite the failure to explain the delay. In construing the delay it is not necessary to meticulously explain every day's delay but may be construed liberally to advance substantial justice when there is no wanton negligence, deliberate inaction or bona fides in pursuing the prosecution. How the discretion has to be exercised is left to the Magistrate concerned depending on the facts and circumstances of each case. It is open to the accused to place the material in regard to want of bona fides or diligence in pursuing the prosecution. When the Court is condoning the delay, by necessary inference, it is interfering with the right of the accused assuring him of the bar of limitation. Therefore the Court has to be circumspect to put harmonious interpretation of the relevant provisions and has to consider the facts and circumstances in each case and has to exercise the discretion reasonably assigning reasons therefor.

14. The next question is whether the decision of the Division Bench in Khasim Baig's case (1979) 2 APLJ (H.C.) 398 (supra) requires reconsideration, as doubted by our learned brother, we may state that our learned brother while making the reference, did not give any reasons of his own on what grounds the decision requires reconsideration, but when it has been referred to the Division Bench, we have to go into that question. Before considering that decision, it is necessary to State that in that case though the prosecution was laid for a major offence, a minor offence has been established. But by that date the limitation prescribed for the minor offence expired by operation of sub-s.(2) of S.468 of the Code. The question therein raised was whether the delay could be ignored by the Court since cognizance was already taken and whether the accused is entitled to an opportunity thereof. While considering that question, the Division Bench has held that the accused is entitled to raise the question of limitation and the Court has to go into that question and to consider whether the delay has been properly explained. Subsequently, their Lordships of the Supreme Court in State of Punjab v. Sarwan Singh AIR 1981 SC 1054: (1981 Cri LJ 722) (supra) had also an occasion to consider the same point. In that case, the offence charged was under S.408, IPC but the accused was convicted for a lesser offence under S.406, IPC and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-. On appeal, the Punjab and Haryana High Court allowed the appeal holding that the offence under S.406 IPC is clearly barred by limitation. The offence of embezzlement was committed on 22-8-1972 and it was detected on 5-1-1973. Charge sheet was laid on 5-1-1975. Under those circumstances, their Lordships have held that the prosecution was clearly barred by limitation even for the minor offence. This decision also was considered by the latter Division Bench decision in K. Hanumantha Rao v. K. Narasimha Rao (1982 Cri LJ 734) (Andh Pra) (supra) land it was held that though the charge sheet was laid for a major offence, during the trial when the minor offence was made out, even in respect thereof the limitation prescribed under sub-sec.(2) of S.468 of the Code applies and the Court has to give an opportunity to the accused and then find out whether the prosecution has given satisfactory explanation for the delay for the minor offence and the Court has to exercise judicious discretion under S.473 of the Code. In this view, we hold that the decision rendered in Khasim Baig's case (1979 (2) APLJ (H.C) 398) (supra) does not require reconsideration.

15. The next question is whether the offence under S.12(1) of the Act is a continuing offence Sri Bali Reddy as well as Sri M.S. Prasad, learned counsel for the respondent Committee, relied upon the

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decision in Secretary Agricultural Market Committee, Valasa v. S.V.G. Oil Mills (1983) 2 APLJ (H.C.) 385 : (1984 Cri LJ 503) (supra) and Sri Prasad contended that this Court has held that the offence under S.23(1) of the Act is a continuing offence and as there is no period of limitation the prosecution is not barred. In order to appreciate this contention, it is necessary to consider the facts therein. In that case the offence complained of was failure to obtain license as required under S.7 of the Act and the respondent continued to trade in the notified agricultural produce. While considering that question, one of us (K. Ramaswamy, J.) held in para 18 thus :

"As stated earlier, S.7 employs negative language declaring that no person shall carry on purchase or sale of any notified agricultural produce, etc. except and in accordance with the terms and conditions of the licence issued under R.50. The failure to obtain the licence and continuing to purchase or sell by a person without obtaining a licence every day thereafter shall remain to be a continuing offence punishable under S.472 of the Code (which) envisages thus :

"In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

The concept of "continuing offence" is a vexed question confronted the Courts time and again. If the contravention complained of is complete in itself though the consequent result therefrom may continue, the offence is complete and is not a continuing offence. The expression "continuing offence" means that if an act or omission constituting an offence continues from day to day then, fresh offence is committed every day on which the act or omission is repreated, recurred or continued. A continuing wrong or a continuing offence is nothing but a breach of a duty enjoined by a statute or an act of parties which itself is a continuing one. The non-performance of the duty from day to day is a continuing wrong. It is the very essence of a continuing wrong, a source of injury frequented every day which make the person doing it liable for the act or omission complained of. The offence may be committed by a positive act prohibited by law or by the omission to do that which the law makes it obligatory on the emphasis supplied - part of the person to do on pain of punishment. So far as the first is concerned, there can be no doubt that an offence is committed at every time when the positive act is repeated. In the latter case, it makes no difference so long as the law expects the door of the act to fulfil an obligation cast under the Act. Consequently every day when that omission is not rectified or perpetrated by the performance of the negative duty, an offence is committed. No doubt, technically every moment's omission is punishable as a separate offence. To continue means to remain in existence not to cease. Therefore, if the omission continues de die in diem then fresh offence is committed on every day on which the omission to obtain licence and continuing to purchase or sale of the notified agricultural produce, etc., within the notified market area is continued. Thus the continued contravention of transacting the sale or purchase without a valid licence issued under R.50 is a continuing offence de die in diem".

16. A reading of S.7 clearly shows that a person acquires a right to do trade in the notified agricultural produce only on obtaining a licence and doing trade without licence is an offence and its continuance shall also be a continuing offence because every day and every moment he continues to contravene S.7 and therefore this Court has held that it is a continuing offence. Though the offences under S.7 and S.12(1) were clubbed in S.23 of the Act, their field of operation is distinct and separate. Section 23(1) reads :

"Whoever contravenes the provisions of S.7 or fails to pay the fees levied under sub-s.(1), S.12, shall be punishable with fine which may extend to five hundred rupees, and in the case of a continuing contravention with a further fine which may extend to one hundred rupees for every day during which the contravention is continued after conviction therefor.

17. A reading of this provision would show that the failure to pay market fee levied under sub-s.(1) of S.12 is an offence. In the case of continuing contravention, power is given to the Magistrate to impose further fine. The immediate question is, whether failure to pay the market fee is a continuing offence. This question directly arose in State of Bihar v. Deokaran AIR 1973 SC 908 : (1973 Cri LJ 347). Therein the question was whether the failure to furnish the returns under Mining Act was a continuing offence. There also the failure thereof was prescribed to be an offence

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punishable with as a punishment with fine. Bar of limitation of six months was created. It was contended that it is a continuing offence. In that context, their Lordships of the Supreme Court, speaking through Shelat, J. held in para 4 :

"The failure to furnish the annual returns either in the prescribed froms or within the time prescribed for it, that is, by January 21, in the succeeding year, is undoubtedly an offence punishable under S.66 of the Act. A complaint in respect of such an offence has under S.79, to be filed within six months from the date of such default. In the present case 21-1-1960. The question then is whether the offence in question is covered by the substantive part of S.79, or whether it is covered by the Explanation thereto. If the offence is of the former kind, the complaint in regard to it would be clearly time barred. It would not be so if the offence is of the kind often called a continuing offence in which event the Explanation to S.79 would operate".

18. The continuing offence was explained in para 5 and the case law in that regard was considered and it was held that the failure to file annual returns is not a continuing offence. A Division Bench of the Bombay High Court in State v. Bhiwandiwala AIR 1955 Bombay 161 : (1955 Cri LJ 666) also considered this question and held that failure to apply for registration is not a continuing offence. But if the respondent without applying for licence continues to conduct his business, it amounts to a continuing offence. In that view it held that the latter action is a continuing offence and the former is not a continuing offence.

19. In E PF. Organization v. Shalimar Biscuits (1979) 1 APLJ (HC) 173 one of us (K. Punnayya, J.) had to consider the case whether the failure on the part of the employer under the Employees Provident Fund Scheme and the Family Pension Fund Act (19 of 1952) to deposit the employer's share of the provident fund is a continuing offence. It was contended therein that by operation of sub-sec.(2) of S.468 of the Code, the prosecution was barred by limitation. It was also contended that failure to deposit the employer's share of the provident fund is a continuing offence. While considering that question it was held that there is nothing in the Act or the Scheme to show that non-payment continued to be a recurring offence with each passing day. If the Legislature had intended that defaults committed by employers would be continuing offences, then that would have been clearly indicated in the Act or the Schemes. In that view it was held that the prosecution was barred by limitation.

20. In Tripura Sundari v. Vijayawada Municipality 1982 Mad LJ (Cri) 448 : (1982 Cri LJ NOC 180) (Andh Pra) our learned brother, Chennakesav Reddi, J. was called upon to consider the question whether failure do obtain licence for installation of electric motor was continuing offence. While considering that question, it was held that establishment of an electric motor without prior permission is completed as soon as the installation was made and therefore though the contravention continues, it is not a continuing contravention and the limitation begins to run on the date when the installation was made or the workshop established.

21. Under sub-sec.(2) of S.12, the market fee shall be paid by the purchaser on the notified agricultural produce, etc. In case the trader himself is a purchaser he too has to pay the same.

22. It is well settled that conditions of the licence are statutory, being Part of the statutory rules and the trader is enjoined to abide by law. Under R.65 of the Rules, every commission agent shall effect payment in accordance with the tak patti (sale slip). It is common knowledge that tak patti contains various items, including the market fee. Under condition 3 of Form VIII of the Licence or renewal the licensee (trader) shall submit to the Committee not later than 25th of every month true and correct information regarding purchase, sale and storage of agricultural produce produced by him in the preceding month to enable the market committee to determine the fee payable by him and collect the said fee under S.12 of the Act, due on such transaction as per the provisions of the Act, Rules, Bye-laws. Condition 5 enjoins the licensee that he shall pay and also facilitate collection of the dues to the market committee. Under Condition No.8, the licensee where he himself is the owner of the notified agricultural produce, etc., he shall collect the market fee from the purchaser and remit the same to the market committee The failure to pay when demanded constitutes an offence. The limitation begins to run from the date of failure to pay the market fee. As soon as he makes default in payment he commits the offence

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and the offence is complete on his failure to pay. Though he persist in non-payment, the contravention does not continue to be a continuing contravention but comes to a terminus with the due date. In case trader was convicted under S.23 read with S.12(1) and thereafter continues to disobey, it constitutes a continuing contravention and thereby becomes continuing offence. Under these circumstances, in respect of the offences created under sub-s.(1) of S.12, it is not a continuing offence but the offence is complete as soon as he fails to pay the market fee though the consequence susbsists till payment is made. Accordingllly we hold that the offence under S. 12(1) is not a continuing offence.

23. The next question is whether the respondent had given any explanation for the delay occasioned. It is no doubt true that the petitioner had invoked the jurisdiction of this Court by filing a writ petitioon, obtained sstay of collection and ultimately the writ petition was dismissed. Thereafter, action in the civil suit was laid in a representative capacity and the Committee was prevented from collecting. That suit was also dismissed. After the demand yet another attempt was made but proved to be abortive. Thereafter, on 15-12-1976, notice was given for prosecution and in Ex. P5 reply, the petitioner requested extension of time for payment till the end of January 1977. The resolution was passed authorising the Secretary to lay prosecution of 31-1-1977. Therefore, on the facts in this case, the limitation begins to run from 1-2-1977, when the petitioner failed to pay the market fee as promised on 31-1-1977. But the prosecution was laid on 30-1-1978 i.e., one year thereafter. Under sub-s.(2)(a) of S.468 of the Code, the limitation prescribed is six months. It expired by July 31, 1977. Therefore the Court has been given power under S.473 of the Code to take cognizance of the offence. The Courts below held that proper explanation for the delay was given and they were satisfied with the explanation. Thereby they exercised the power under the first part of S.473 of the Code From the evidence on record it is clear that P.W. 1, the Secretary of the Market Committee did not give any explanation for the delay between August 1, 1977 to January 30, 1978. The explanation offered is only for the period anterior to the passing of the resolution. Therefore, the Courts below committed error of law in holding that the respondent has given satisfactory explanation for the delay. It is case of no explanation at all. Realising this difficulty, Mr. Prasad has contended that this Court can exercise the power, having all the powers of the trial Court under the latter clause of S.473 of the Code viz., "that is necessary to take cognizance in the interests of justice." The immediate question is whether we would be jusfitied to exercise this power.

24. It is true that the Act is a fiscal enactment like Sales Tax Act, Income tax Act, etc, the object being not only to eliminate middlemen but the ameliorate the economic conditions of the grower, by facilitating remunerative price to the produce and also to provide speedy, inexpensive and efficacious remedies of collection of the market fee so as to enable the market committees to spend the fee collected for providing amenities required under the Act S.26(2) empowers the Committee to recover all sums due to it in the same manner as arresrs of land revenue. It is already noticed that under S.23(2), in addition to the imposition of fine, the Magistrate is also empowered to recover summarily the fee payable under S.7 or under sub-s.(1) of S.12 and costs and to pay over to the market committee. These two remedies are in addition to the ordinary right of civil action. Under R.70, the trader, commission agent etc, are required to maintain accounts in such manner and submit such reports and returns to such authority as may be specified by the market committee in that behalf. The failure thereof entails under sub-r.(2) thereof with a penal consequence. R.75 provides check posts to verify the payment of the prescribed fee and the collection in respect of such notified agricultural produce, etc. R.76 provides penalty for evasion. We have already noticed the provisions under S.12(2); conditions of licence tak pattis etc.

25. A conspectus of the above provisions tirade the trader with inescapable obligation to pay the market fee to the market committee and evasion of it is penalized. The limitation prescribed under Chap.XXXVI of the Code relates not only in respect of the offences under the I.P.C but also of the special enactment. The scope of obliteration of the evidence in respect of the offences under the Penal Code may be greater than in the cases where there would be documentary evidence adumbrated under the relevant provisions of the Act Rules and Bye-laws.

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26. Under the first part of S.473 of the Code it is the duty of the prosecution to explain the delay to the satisfaction of the Magistrate. But under the latter part, power to given to the Court despite non-explanation of the delay, on the facts and circumstances and in the interests of justice, if the Court is of opinion that the cognizance may be taken, it could exercise that power. This is undoubtedly a discretionary power. Though it is prima facie unfettered Legislature gave large leeway to meet the desired result of rendering effectual and substantial justice meeting divergent situations. Yet it is subject to an implied limitation to the exercise of the said power in good faith for the purpose for which it is granted after taking into consideration all the relevant facts and circumstances. It must not be exercised arbitrarily or capriciously. It is not glossed with private opinion but should be according to rules, reason and justice. In this context the contention of Mr. Bali Reddy is that the second clause of S.473 of the Code could be invoked only when there is halting gap, of explanation and sufficiency thereof to condone the delay. The exercise of the power should not be fettered in such a narrow circumference. This gamut of the operation of the second part of S.473 could not be circumscribed within a limited ambit or field. The Parliament appears to have given this power with definite purpose to meet varied situations. While considering S.18, Gaming Act 1845, Viscound Simon in Hill v. Williana Hill (Parklane) Ltd (1949) A.C. 530 at 546 and 547 (HL) held that "when the legislature enacts a particular phrase in a statute, the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should if possible be given to every word in the statute implies that unless there is good reason to the contrary, the words add something which would not be there if the words were left out..... The presumption therefore, is that the second limb of S.18 is not coincident with the first limb." It is equally settled law that in interpretation of the provisions of a statute the Court should endeavour to read together all the provisions harmoniously to give effect to every section, clause or word so as to give "force and effect" to it in implementation thereof and in the process of construction it would not be construed so as to render any provision redundant or tautologous surplusage. Keeping these settled principles in view and the facts and circumstances in this case, it must be held that the two clauses are independant to operate in different fields and cannot be caged in a strait jacket formula. In a given case it may bridge the gap as contended by Sri Bali Reddy. But where the explanation is offered and found to be acceptable, then there is no need to invoke the latter clause of S.473. But where the explanation offered is found to be unacceptable and yet on the facts and circumstances the interests of justice requires the Court to take cognizance of the offence despite the bar of limitation, the Court could exercise the power. The paramountcy is always the interests of justice. In such situation, the latter clause would be brought into play. To invoke that power, as stated earlier, the Court has to exercise its discretion bona fide, reasonably but not arbitrarily and capriciously, keeping in view the object of the relevant Act, the purpose for which the power is given under the Act Rules, etc, and the relevant facts and circumstances of each case.

27. As stated earlier, the object of the Act is fiscal enactment and the trader is a trustee de son tort, the right to collection is mainly dependent upon the documentary evidence and the scope for the fading away of the memory is minimal the offence is a statutory offence, mens rea is not an essential ingredient as held by one of us (K. Ramaswamy. J) in T. Prukasa Rao v. Agricultural Market Committee, Tenali (1984) 1 A.P. LJ (HC) 180 : (AIR 1985 NOC 7) (at 188 para 31) and of the Supreme Court in P.K. Tejali v. M.R. Dange AIR 1974 SC 228 : (1974 Cri LJ 313) and State of Gujarat v. Kansara Manilal AIR 1964 SC 1893 : (1965(1) Cri LJ 90). The statute gave power to the Magistrate to collect the market fee and licence fee and to pay over to the Committee: thereby the Legislature confided the power in the Court to exercise the power in appropriate cases as an efficacious and inexpensive process to achieve the public purpose. The Court would in appropriate cases, take these and other relevant facts and circumstances and the Court would exercise the power the take cognizance of the offence, despite the fact that the limitation prescribed under S.473 of the Code expired by efflux of time under sub-s.(2)(a) of S.468 of the Code.

28. But the question is whether this Court would exercise that power. Admittedly the Courts below did not exercise the power under latter clause of S.473 of the Code. Normally,

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where there is no occasion for the prejudice to the accused and the justice requires, this Court may recourse to the latter clause of S.473. But the accused has a right to assail the reasoning given by the trial Court in an appeal or revision. If the power is exercised for the first time we do not know what would be the reasons the Courts below would have given and then the petitioner would be deprived of a valuable right. Therefore, though we have the power, it is not safe to invoke the power under the latter clause of S.473 for the first time in the revisional jurisdiction, by this Court On the facts and circumstances, though we are satisfied that the petitioner is facilitated to have unjust enrichment yet as a sentinal to maintain rule of law, it is the duty of this Court to interpret the law and to leave to the other organs to adopt the appropriate course open under law to effectuate the provisions of the Act. Under these circumstances, we hold that the respondent failed to explain the delay and on that ground the prosecution is barred by limitation. Accordingly, the Criminal Revision Case is allowed and the conviction and the directions are set aside.

 Petition allowed.

1984 CRI. L. J. 192 "Supervisor Agricultural Market v. D. Jagannadham"

 ANDHRA PRADESH HIGH COURT

 Coram : 1 JAYACHANDRA REDDY, J. ( Single Bench )

Criminal Appeals Nos. 701 to 704 and 708 of 1981, D/- 16 -3 -1983.

Supervisor Agricultural Market, Appellant v. Dandi Jagannadham and another, Respondents.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.5 - SANCTION FOR PROSECUTION - AGRICULTURAL PRODUCE - Sanction to prosecute - Market Committee constituted in accordance with Section 5 - Section 5 subsequently struck down as unconstitutional - Criminal proceeding started and case taken up for trial only after striking down of Section 5 - Held, validity of sanction granted by Committee can be questioned since Section 5 itself was struck down.

AIR 1976 Andh Pra 193, Disting. (Para 3)

Cases Referred : Chronological Paras

(1980) 1 APLJ (HC) 120 2

AIR 1976 AP 193 3

S. Venkateswara Rao, Standing Counsel, for Appellant; V Jagannadha Rao (for No. 1) and Addl. Public Prosecutor (for No. 2), for Respondents.

Judgement

JUDGMENT:- In all these cases a common question of law is raised by Sri S.Venkateswara Rao, the learned Counsel for the appellants, viz., the Agricultural Market Committee, Salur. The Committee filed complaints against the respondents that they have contravened bylaw No. 24 (7) inasmuch as they failed to file the returns. The lower Court held that the complaint itself is not maintainable inasmuch as the sanction granted by the Market Committee is invalid.

2. It may be mentioned here that S. 5 of the Markets Act was declared to be unconstitutional by a Division Bench of this Court in P. Chandramouli v. Govt. of Andh. Pra., (1980 (1) APLJ (HC) 120). It is under this section the Market Committee in the instance case is constituted which gave sanction.

3. The learned Magistrate held that the Market Committee is not a non-entity in view of the fact that Section 5 is struck down. The learned counsel for the appellant submits that this is a case where the doctrine of de facto is to be applied. According to the learned counsel in the year 1979 when the sanction was accorded, the Market Committee was constituted in accordance with the section and just because the section is struck down subsequently, it cannot be said that all the acts done by the Market Committee including according the sanction are invalid. The learned counsel for the appellant places reliance on a judgment of a Division Bench of this Court in I. R. Sons v. State, (AIR 1976 Andh Pra 193). That is also a case which arose under the Andhra Pradesh Markets Act. There the contention was that the Market Committee was not constituted in accordance with Section 5 (1) and therefore any act done by that committee was invalid. The Division Bench repelled this contention holding that in cases of this nature the acts done are saved by the application of the doctrine of de facto. The facts in the instant case are different. Section 5 itself is struck down, as unconstitutional. The market committee no doubt was in existence in 1979 was constituted in accordance with Section 5 before it was struck down. But now the criminal proceeding is pending and the case is taken up for trial only after Section 5 was struck down. Therefore, the respondents got a right to question the validity of the sanction since Section 5 itself is struck down, and hence this is distinguishable. However, I do not think these are fit cases where the accused should be ordered to be tried again for these petty offences The appeals are dismissed.

 Appeals dismissed.

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1984 CRI. L. J. 503 "Secy., Agrl. Market Committee v. S. V. G. O. Mills"

 ANDHRA PRADESH HIGH COURT

 Coram : 1 RAMASWAMY, J. ( Single Bench )

Criminal Appeals Nos.931 to 934 of 1981 and Criminal Revn. Cases Nos.843 to 848 of 1982, D/- 16 -7 -1983.

The Secretary, Agricultural Market Committee, Kothavalasa, Appellant v. Sri Venkateshwara Groundnut Oil Mills, and others, Respondents.

(A) A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.3, S.4, S.5, S.23 - AGRICULTURAL PRODUCE - PRECEDENT - COMPLAINT - Market Committee - Essential steps constituting it complied with - Composition of members of the Committee as contemplated under Section 5, declared by High Court unconstitutional in 1979 (1) A.P.L.J. 120 - Actions of the Committee prior to that decision would not become void ab initio in view of the ''de facto authority" held by it - Resolution passed by Committee to lay complaints against trader under Section 23 - Follow up action by Secretary in filing complaint in pursuance thereof were valid in law.

(i) Criminal P.C. (2 of 1974), S.200.

(ii) Precedents. (Para 11)

(B) Criminal P.C. (2 of 1974), S.2(4) - A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.7, S.23 - AGRICULTURAL PRODUCE - LICENSE - Offence - Failure to obtain licence and carrying on trade - It is an offence.

(i) General Clauses Act (10 of 1897), S.3(38).

(ii) A.P. General Clauses Act (1 of 1891), S.3(21).

A reading of Section 7 (1) read with Section 23 of A.P. (Agricultural Produce and Live Stocks) Markets Act would establish that any person carrying on trade in contravention of sub-section (1) of Section 7 is committing an offence. "Though the Act does not define the term 'offence', Section 3 (38) of the General Clauses Act (10 of 1897) and Sec.3 (21) of the Andhra Pradesh General Clauses Act, 1891, define 'offence' to mean any act or omission made punishable by any law for the time being in force. Section 2 (n) of the Criminal P.C. expands it defining as including any act in respect of which a complaint under S.20 of the Cattle-trespass Act may be made. Therefore, failure to obtain a licence and carrying on trade i.e., business of purchase or sale, etc., of the notified agricultural produce, etc. within the market area of the concerned Market Committee shall be an offence. (Para 12)

(C) Criminal P.C. (2 of 1974), Chap.36, S.468, S.4 and S.5 - A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.7, S.23, Pre. - AGRICULTURAL PRODUCE - LICENSE - COMPLAINT - INTERPRETATION OF STATUTES - TRIAL - COGNIZANCE OF OFFENCE - LIMITATION - Scope and applicability - Nature of Act - Failure to obtain licence - Complaint under Section 23 - Chapter 36, Cr.P.C. attracted. (Interpretation of Statutes).

Expressly there is no period of limitation prescribed under the Act to lay the complaint. The object of the Act is to regulate the purchase and sale of agricultural produce, livestock or products of livestock and the establishment of markets in connection thereof. Failure to obtain the licence was declared to be an offence. Apart from that, the Act also envisages speedy and inexpensive collection of arrears of licence fee or market fee through coercive process of prosecution (Section 25 (2)), apart from recovery thereof as arrears of land revenue (Section 26) in addition to the usual remedy of suit. Therefore it is in the nature of fiscal enactment. Undoubtedly it is a special enactment covering the gamut of activity of purchase and sale of the notified agricultural produce, livestock and products of livestock within the notified market area. There is no exclusion by implication of the applicability of the general provision of limitation vis-a-vis a special enactment. (Para 13)

Chapter 36 of the Cr.P.C. is a complete Code of Limitation in respect of offences punishable ranging with fine simpliciter to sentence of three years' imprisonment, be they emanate from or embrace either the Penal Code or any other law. This fact is discernible from a conjoint reading of Section 4 (1) and (2) and saving Section 5 of the Code. This is also apparent from the Statement of Objects and Reasons to introduce Chapter 36. Section 468 (2) (a) of the Code provides that the period of limitation shall be six months if the offence is punishable with fine only. Section 23 of the Act prescribes only penalty of fine. Therefore, a complaint has to be laid within six months from the date of the offence and if it is laid thereafter, prohibition is engrafted against the court from taking cognizance of such an offence after the expiry of the period unless satisfactory explanation is given

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for the delay occasioned therefor. The Special Acts are not one of those excluded from the purview of Chapter 36 of the Cr.P.C. (Para 15)

A reading of Sections 4 and 5 of Cr. P.C. would clearly indicate that where there is any enactment occupying the field regulating "the manner'' or place of investigation or "enquiry" into "trying" or otherwise dealing with such offences, they are alone excluded. Otherwise; the procedure prescribed under the Code including limitation shall prevail. Section 5 expressly saves operation of such special or local law and the "special form of procedure" prescribed, power conferred or jurisdiction invested, etc. Wherever the Legislature intended to prescribe the special limitation for the offences created like Municipalities Act, they have expressly provided the period of limitation. But in the A.P. Agricultural Produce and Live Stocks Markets Act, there is no special limitation provided. Therefore, Chapter 36 of the Cr.P.C. does apply to the offences created under the A.P. Act. (Para 18)

(D) Criminal P.C. (2 of 1974), S.472 - A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.7, S.23 - CONTINUING OFFENCES - AGRICULTURAL PRODUCE - LICENSE - Expression "continuing offence" - What is - Failure to obtain licence - Continuing to purchase or sale without licence - It is continuing offence.

The failure to obtain the licence as required under Section 7 of the Act and continuing to purchase or sale agricultural produce within the notified area by a person without obtaining a licence every day thereafter shall remain to be a continuing offence punishable. The expression "continuing offence'' means that if an act or omission constituting an offence continues from day to day, then, fresh offence is committed every day on which the act or omission is repeated recurred or continues. A continuing wrong or a continuing offence is nothing but a breach of a duty enjoined by a statute or an act of parties which itself is a continuing one. The non-performance of the duty from day to day is a continuing wrong. It is the very essence of a, continuing wrong, a source of injury frequented every day which makes the person doing it liable for the act or omission complained of. The offence may be committed by a positive act prohibited by law or by the omission to do that which the law makes it obligatory on the part of the person to do on pairs of punishment. So far as the first, is concerned, there can be no doubt that an offence is committed at every time when the positive act is repeated. In the latter case, it makes no difference so long as the law expects the doer of the act to. fulfil an obligation cast under the Act Therefore, if the omission continues de die in diem then fresh offence is committee on every day on which the omission to obtain licence and continuing to purchase or sale of the notified agricultural produce etc. within the notified market area is continued. Thus the continued contravention of transacting the sale or purchase without a valid licence issued under Rule 50 is a continuing offence de die in diem. AIR 1959 Sc 798, Applied. (Paras 23, 29)

(E) INTERPRETATION OF STATUTES - LIMITATION - PRECEDENT - CONTINUING OFFENCES - Interpretation of Statutes - Par materia - Section 472 of Criminal P.C. is mutatis mutandis similar to Section 22 of Limitation Act - Ratio of decision of Supreme Court on Limitation will equally apply to a case of continuing offence.

(i) Constitution of India, Art.141.

(ii) Precedents.

(iii) Criminal P.C. (2 of 1974), S.472.

(iv) Limitation Act (36 of 1963), S.22. (Para 24)

Cases Referred : Chronological Paras

1982 Cri LJ NOC 180 : 1982 Mad LJ (Cri) 448 (Andh Pra) 9, 27

1981 Cri LJ 876 : AIR 1981 SC 1473 11

(1980) 1 APLJ (HC) 120 6, 11

(1979) 1 APLJ (HC) 173 9, 27

AIR 1976 AP 193 6, 11

1973 Cri LJ 347 : AIR 1973 SC 908 9, 25, 26, 27

1970 Cri LJ 1330 : AIR 1970 Bom 333 20

AIR 1959 SC 798 24

1957 Cri LJ 616 : AIR 1957 All 343 (2) 26

1955 Cri LJ 666 : AIR 1955 Bom 161 26

1953 Cri LJ 431 : AIR 1953 Mad 204 26

(1949) 50 Cri LJ 823 : AIR 1949 Mad 547 (FB) 19

(1943) 44 Cri LJ 120 : AIR 1942 Bom 326 26

AIR 1940 Lahore 359 (FB) 24

(1932) 2 KB 108 : 147 LT 99 : 101 LJKB 759 Best v. Butler and Fitzgibbon 26

(1909) 1 KB 444 : 78 LJKB 292 : 100 LT 348 Verney v. Mark Fletcher and Sons 26

S. Venkateswara Rao. for Appellant; E. V. Bhagiratha Rao, for Respondent, Addl. Public Prosecutor for the State, M/s. Advocate-General and T. Bali Reddy as Amicus Curiae.

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Judgement

JUDGMENT:- In this batch of four Criminal Appeals and six criminal revision cases, the Market Committee, Kottavalasa is the appellant/petitioner. It initiated action against each of the respondents in these cases under Section 23 of the Andhra Pradesh (Agricultural Produce and Live Stocks) Markets Act (16 of 1966), hereinafter referred to as "the Act", and the Rules made thereunder. The respondent in each of the cases did not obtain licence as required under Section 7 of the Act and thereby committed offence punishable under Section 23 of the Act. The learned Magistrate acquitted the respondents on the ground that the Market Committee was not validly constituted. In the criminal revision cases, though the Magistrate initially convicted and imposed penalty on them, on revision, the learned Sessions Judge, Vizianagaram acquitted them on the same ground, namely, the Market Committee was not validly constituted. Thus, the appeals and revisions came to be filed.

2. Since common questions of law and facts arise in all these cases, they are being disposed of by a common judgment.

3. The facts are not in dispute. The respondent in each case is admittedly a trader as defined under Rule 2 (xxxiii), namely, a person ordinarily engaged in the business of buying and selling of notified agricultural produce, livestock or products of livestock. Section 7 of the Act interdicts that "no person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market Committee." Chapter V of the Rules prescribed the procedure regulating the trade of the agricultural produce; etc. Under Rule 48, any person desirous to obtain or renew a licence under subsection (1) of Section 7 shall make an application in Form 5 and under Rule 50 thereof, the Market Committee shall, within the specified period, issue or renew licence in Form 8, or Form 9 or Form 10 or Form 11, as the case may be, or reject the application therefor giving reason for such rejection.

In the case of rejection, procedure, has been provided for redressal and we are not concerned with those contingencies in these cases. Therefore it is unnecessary to deal with them here. A reading of these provisions makes manifest that a person acquires right to trade i.e., business of purchase or sale of any notified agricultural produce, livestock and their products within the notified area only on obtaining a valid licence and he shall trade in accordance with the conditions of the licence granted by the Market Committee in that behalf. Violation thereof is a contravention. Section 23 of the Act prescribes penalties. Sub-section (1) thereof contemplates that "whoever contravenes the provisions. of Section 7 or.... shall be punishable with fine which may extend to five hundred rupees...''

4. Section 25 empowers the Magistrate of First Class to try the offences punishable under Sec.23. It is not disputed that the respondents are traders within the notified area of the appellant/ petitioner Committee and they did not obtain licences as required under Sec.7 of the Act and that they have been carrying on trade in purchase or sale etc, of the notified agricultural produce, etc. The Market Committee issued notices twice (Exs.D1 and D2) to the respondents calling upon them to obtain licences. In spite of receipt of the notices, the respondents did not obtain licence and therefore complaints have been laid by the Secretary of the Committee in the trial Court under Section 23.

5. At the trial, though several contentions have been raised, the material contentions that survived in these cases are that the Market Committee, as required under Section 5 of the Act, has not legally been constituted and that the offences are barred by limitation since the complaints have been laid beyond six months as prescribed under Sec.468 of the Criminal P.C., 1973 (in Chapter XXXVI). The trial court as well as the Court of Session in revisions, have held that the failure to obtain licences is a continuing offence and the complaints are not barred by limitation. However, it was held that the Market Committee has not been properly constituted and therefore the complaints were not validly laid by a competent Committee. Thus, they held that the

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prosecution is not maintainable and accordingly the respondents were acquitted.

6. In these appeals and revisions, Sri Venkateswara Rao, learned counsel for the Market Committee, contended that though a Division Bench of this Court in P. Chandra Mouli v. State of Andhra Pradesh, (1980 (1) APLJ (HC) 120) declared Section 5 of the Act to be ultra vires, since the constitution of the petitioner-Committee and the complaints were made and laid prior to the decision of this court as per law then in vogue, under the doctrine of "de facto authority", in discharge of the functions entrusted to the Committee under S.25 (2) of the Act, the Market Committee passed resolutions empowering the Secretary to lay complaints on its behalf. Therefore, the complaints have been validly laid. In support thereof, he relied on a Division Bench decision of this Court reported in I.R. Sons v. State ((AIR 1976 Andh Pra 193). Therefore the courts below committed illegality in acquitting the accused.

7. Sri Bhagiratha Rao, on the other hand, contended that though he is unable to support the acquittal in view of the doctrine of de facto authority, yet sought to sustain the acquittal on the ground that the offence viz., failure to obtain the licence as required under Section 7 (1) is an offence punishable only with fine. Section 468 (2) (a) of the Criminal P.C. precludes the court to take cognizance of the offence when it was laid beyond the period of six months. Admittedly in this case, complaints were laid beyond the period of six months. It is enough to extract the facts in Crl. Appeal No.931/81, since the same is the case in all these cases. Therein the fact is that the licence expired by March 31, 1979 and renewal has to be obtained within one month therefrom but not obtained. Therefore the licence stood expired by April 30, 1979. The last day to lay prosecution is October 31, 1979. But admittedly the complaint was laid on January 15, 1980. Therefore in the teeth of the provision under Sec.468 (2) (a), the cognizance taken by the court is beyond the period of limitation. No explanation has been offered for condonation of the delay. Therefore the acquittal is perfectly legal on this ground.

8. Sri Venkateswara Rao, counterweighed this contention stating that the failure to obtain the licence and conducting trade within the notified area is a continuing offence and the complaints are not barred by limitation. The Court is, therefore, not precluded from taking cognisance of the offence. He also further contended that Chapter XXXVI of the Code does not apply for the offences under the provisions of the Act, a special Act. He sought support from Section 17-A of the Act which provides special limitation for recovery of the excess collections made by the traders. Though there is no express exclusion of the applicability of Chapter XXXVI of the Code, he contends that by necessary implication the limitation prescribed in this Chapter is excluded. In support thereof he also relied upon Sections 4 and 5 of the Code.

9. Sri Bhagiratha Rao, learned counsel for the respondents contended that the offence is not a continuing offence and in support thereof, he relied upon the decisions of this court and the Supreme Court reported in E.P.F. Organisation v. M/s. Shalimar Biscuits (1979 (1) APLJ (HC) 173); Smt. Bala Tripurasundari v. Vijayawada Muncipality, (1982 Mad LJ (Cri) 448) : (1982 Cri LJ NOC 180) and State of Bihar v. Deokaran, AIR 1973 SC 908 : (1973 Cri LJ 347). At the first blush, I too had a lurking doubt whether the period of limitation prescribed in Chapter XXXVI of the Code would be applicable to the offences created under the special enactments like the present Act. There is no authoritative pronouncement either of the Supreme Court or of any other Court and this question may frequently arise. Therefore, I gave notice to the learned Advocate-General to assist the court had also requested Sri T. Bali Reddy to act as amicus curiae. I have heard the counsel on record and the learned Advocate-General and Sri T. Bali Reddy on this point and investigated independently into the matter. The learned Advocate-General relied upon Sections 4 and 5 of the Code.

10. Upon these rival contentions the questions that arise for decision are:

(1) Whether Chapter XXXVI of the Criminal P.C. would apply to the offences under the Act?

(2) Whether the failure to obtain licence as required under Section 7 of the Act is a continuing offence?

11. Before dealing with these questions, it would be necessary to clear the

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doubt cast on the authority of the Market Committee by the courts below, viz., whether the complaints have been validly laid. Under Section 3 (3) of the Act, the Government may publish a notification declaring the areas specified in sub-section (1) thereof (Draft Notification) to be notified area regulating purchase and sale of notified agricultural produce, livestock and products of livestock in such area specified in the notification. Thereafter, the Government shall constitute under Sec.4 (1), by notification, a market committee for every such notified area and the Committee so constituted shall be a "body corporate" by that name. Under sub-section (3) of Section 4, every market committee shall establish in the notified area such number of markets as the Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or produce of livestock. Under sub-section (4) of Section 4, after the establishment of a market under sub-sec.(3) the Govt. shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification to be a notified market area for the purpose of this Act.

The composition of the market committee while constituting it, has been adumbrated under Section 5 of the Act and the Government is empowered to constitute a market committee composing such number of members in the manner specified in Section 5. The aforesaid essential steps constituting the appellant/petitioner market committee have been complied with. But a Division Bench of this Court in the case referred to above Chandra Mouli v. State of A.P. 1980 (1) APLJ (HC) 120) declared that the composition of the members of the Committee as contemplated under Section 5 was ultra vires of the provisions of the Constitution. Therefore, though the composition of the petitioner/appellant Committee was not assailed specifically, but in view of the declaration made by this Court, its validity has been knocked down to its bottom denuding its legality. But the immediate question is whether the actions of the Committee done prior to the decision would become void ab initio. This question directly came up for consideration before this Court and a Division Bench of this Court in I.R. Sons v. State (AIR 1976 Andh Pra 193) speaking through Chinnappa Reddy, J. (as he then was) held that :-

"Where under Section 5 (1) (i) the Government nominated certain persons to constitute the Market Committee and subsequently the nomination of the members of the committee was declared illegal by the High Court, it was held that the acts done by the de facto committee including the declarations of market area under Section 4 (3) (c) in the interregnum prior to its being declared as illegally constituted must be upheld as valid in law."

This view is not approved by the Supreme Court in Gokaraju Rangaraju v. State of A.P. (AIR 1981 SC 1473) : (1981 Cri LJ 876). Since this ground has already been covered by these decisions, it is redundant to travel once over. While respectfully following the same, I hold that though the appellant/petitioner Committee was constituted as per law then prevailing, the Division Bench decision of this Court in Chandramouli's case robbed off its legality. Yet, all the actions taken by the Committee before the decision is rendered by this Court in exercise of the power under the provisions of the Act, are valid in view of the "de facto authority" held by it. Therefore, the resolution passed by the Market Committee to lay complaints against the respondents and the follow up action taken up the Secretary in pursuance thereof, are valid in law. Therefore, the complaints have been validly laid.

12. The next question that arises for consideration is whether the provisions of Chapter XXXVI of the Criminal P.C. 1973, would apply to the offences committed under the Act. At the cost of repetition it is to be mentioned that Section 7 (1) of the Act postulates that no person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale etc., of any notified agricultural produce or products ......... except under and in accordance with the conditions of a licence granted to him by the market committee. Section 23 creates penalties and one of the penalties is that "whoever contravenes the provisions of Section 7...... shall be punishable with fine which may extend to Rupees five hundred......" A reading of Section 7 (1) read with Section 23 would establish that any person carrying on trade in

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contravention of sub-section (1) of Section 7 is committing an offence. Though the Act does not define the term 'offence', Section 3 (38) of the General Clauses Act (Central Act X of 1897) and S.3 (21) of the Andhra Pradesh General Clauses Act, 1891, defines 'offence' to mean any act or omission made punishable by any law for the time being in force. S.2 (n) of the Criminal P.C. expands it defining as including any act in respect of which a complaint under Section 20 of the Cattle-trespass Act may be made. Therefore, failure to obtain a licence and carrying on trade i.e., business of purchase or sale, etc., of the notified agricultural produce, etc., within the market area of the petitioner/appellant-Market Committee shall be an offence.

13. Expressly, there is no period of limitation prescribed under the Act to lay the complaint. The object of the Act is to regulate the purchase and sale of agricultural produce, livestock or products of livestock and the establishment of markets in connection thereof. It seeks to achieve the object of eradicating or at least reducing the scope of exploitation in dealings of purchase and sale of notified agricultural produce etc., from the growers by assuring equal bargaining power to the grower through the aegis of market committee so as to ensure maximum remunerative price to his agricultural produce or livestock or products of livestock when sold in the markets established under the Act and to ameliorate thereby the economic conditions of the tillers of the soil. Licensing system is one of the schemes through which the above objective is sought to be enforced.

Failure to obtain the licence was declared to be an offence. Apart from that, the Act also envisages speedy and inexpensive collection of arrears of licence fee or market fee through coercive process of prosecution (Section 25 (2)), apart from recovery thereof as arrears of land revenue (Section 26) in addition to the usual remedy of suit. Therefore, it is in the nature of fiscal enactment. Undoubtedly, it is a special enactment covering the gamut of activity of purchase and sale of the notified agricultural produce, livestock and products of livestock within the notified market area. No doubt, the learned counsel for the Market Committee may be right in contending that Section 17-A provides special limitation of eleven years for the recovery of excess and unauthorised collections made by the trader or the commission agent in the notified market area, but that does not give an indicia clinchingly to conclude that there is exclusion by implication of the applicability of the general provision of limitation vis-a-vis a special enactment. The question that has to be considered is whether the exclusion was made by necessary implication? This can be done on a reading of the provisions of the Act as a whole vis-a-vis Chapter XXXVI of the Criminal P.C.

14. Expedition to send up the offender to take his trial for the offences complained of before the memory of the persons acquainted with the facts connected with the crime faded out and its effect diluted and to receive the verdict is a facet of the concept of "fair procedure" enshrined under Article 21 of the Constitution. A person cannot be made to await in perpetual animation bereft of peace of mind, of the haunt of prosecution at the whim of the prosecutor. By legislative sanction of new "offences" in countless Acts are created and many a time a person may be oblivion of committing an offence. Prior to April, 1 1974, there is no express embargo on the power of the Court to take cognizance of the offence laid at a belated stage but had discretionary power to decline convicting an offender, even if the offence is proved. Prescription of the period of limitation is a law relating to procedure, an extinctive prescription directing the person to work out the rights accrued under a contract or enforce remedies created under law within the period provided by such law. It merely bars the remedy and may sometimes extinguish the rights. The person aggrieved is enjoined to initiate the action to redress the injury or enforce the right lest its efficacy denuded or the remedy remains unenforceable. Anson says in his Law of Contracts that "though the rights possess the permanent character, the remedies arising from their violation are by their various statutory provisions withdrawn after a certain lapse of time. The remedies are barred though the rights are not extinguished." In other words, the remedy gets extinguished by operation of law of limitation.

15. Legislature in recognition of the mandate of Article 21 of the Constitution seized of the situation, felt the

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need of its intervention most acute, brought in the Criminal P.C. 1973 Chapter XXXVI putting limitation on the power of the Court to take cognizance of certain class of offences; classified them to be grave and trivial, excluded the former by implication obviously on the touchstone of public interest viz., safety of the society; elected to interpose by prescribing graded period of limitation oven in respect of minor offences; excluded continuing offences from its purview; provided extension of time occupied in bona fide prosecutions under specified circumstances and provided an opportunity to the prosecution to give reasonable explanation for the delay caused to lay prosecution allowing discretion to the Court to condone the delay thereof in appropriate cases. This appears to have been done with a twin objectives of putting pressure on the prosecutor to be diligent to pursue prosecution and to repose peace to the offenders. In other words, Chapter XXXVI is a complete Code of Limitation in respect of offences punishable ranging with fine simpliciter to sentence of three years imprisonment, be they emanate or embrace either the Penal Code or any other law. This fact is discernible from a conjoint reading of Section 4 (1) and (2) and saving Section 5 of the Code. This is also apparent from the Statement of Objects and Reasons to introduce Chapter XXXVI.

No doubt the Statement of the Objects and Reasons cannot control the operation of the provisions when the language in the section is explicit. But when it is ambiguous they provide material and source to consider the scope and ambit of the Act or section. Section 468 (2) (a) of the Code provides that the period of limitation shall be six months if the offence is punishable with fine only. Section 23 of the Act prescribes only penalty of fine. Therefore, a complaint has to be laid within six months from the date of the offence and if it is laid thereafter, prohibition is engrafted against the Court from taking cognizance of such an offence after the expiry of the period unless satisfactory explanation is given for the delay occasioned therefor. The two objects to introduce Chapter XXXVI are relevant for the purpose of these cases are thus:

''Object No.2: For the purpose of peace and repose it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences many persons at sometime or the other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

Object No.5: The period of limitation would not pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly." The above objectives make the matter manifest that the Parliament is also cognizant of the offences created under special enactments when it is stated that "within the multifarious laws creating new offences". It could also be seen that the Parliament after enacting Chapter XXXVI, has passed an enactment viz., Economic Offences (Inapplicability of Limitation) Act (12 of 1974) excluding the Chapter XXXVI, of the Code in respect of the offence mentioned in the schedule to the Act, as contemplated under Section 2 thereof. The Special Acts are not one of those excluded from the purview of Chapter XXXVI of the Code.

16. Sri Venkateswara Rao learned counsel for the Market Committee laid emphasis on Sections 4 and 5 of the Code and contended that by implication of reading of the above two provisions also, the limitation provided under Chapter XXXVI is excluded. The learned Advocate-General, Sri Bali Reddy and Bhagiratha Rao contended contra.

17. Sections 4 and 5 read thus: "4. (1) All offences under the Indian Penal Code (45 of 1860), shall be investigated, enquired into, tried, and otherwise dealt with according to the provisions hereinafter contained;

(2) All offences under any other laws shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Nothing contained in this Code shall in the absence of a specified provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure

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prescribed, by any other law for the time being in force."

18. A reading of the above provisions would clearly indicate that where there is any enactment occupying the field regulating "the manner" or "place of investigation'' or "enquiry" into "trying" or otherwise dealing with such offences, they are alone excluded. Otherwise, the procedure prescribed under the Code including limitation shall prevail. Section 5 expressly saves operation of such special or local law and the "special form of procedure" prescribed, power conferred or jurisdiction invested, etc. It may also be relevant to note that wherever the Legislature intended to prescribe the special limitation for the offences created like Municipalities Act, they have expressly provided the period of limitation. But in that Act, there is no special limitation provided.

19. A Full Bench of the Madras High Court in Thiruvengadasami v. Municipal Health Officer, (AIR 1949 Mad 547 at p.557) : ((1949) 50 Cri LJ 823 at p.833) speaking through Govinda Menon, J. (as he then was) held that:

"Law of procedure is not different in the trial of cases under the Penal Code and those under other statutes according to Section 5, Criminal P.C. except that in the case of offences under other laws the procedure laid down by the Criminal P.C. is subject to any enactment for the time for regulating the manner or place of investigation, enquiry or trial."

20. Same is the view taken by a Division of the Bombay High Court in Sholapur Municipality v. R.V. Relekar (AIR 1970 Bom 333) : (1970 Cri LJ 1330) speaking through Chandrachud, J. (as he then was) cited by the learned Advocate General while construing the provisions of Section 1 (2) and Section 5 (2) of the old Criminal P.C.(1898).

21. While respectfully agreeing with the above view and following the same and in view of the consideration of the subject referred to above, I have no hesitation to hold that Chapter XXXVI of the Code does apply to the offences created under the Act.

22. The next question for consideration is whether the complaint was laid within the period of limitation and if not whether the offence is barred by limitation. Undoubtedly, in view of the facts stated earlier, the complaints have been laid beyond the period of limitation. But the contention of Sri Venkateswara. Rao is that failure to obtain a licence and. conducting trade in purchase and sale of the notified agricultural produce etc. within the notified area of the market committee is a continuing offence and that therefore the complaints are not barred by limitation and converse is the contention of Sri Bhagiratha Rao learned counsel for the respondents.

23. As stated earlier, Section 7 employs negative language declaring that no person shall carry on purchase or sale of any notified agricultural produce, etc. except and in accordance with the terms and conditions of the licence issued under Rule 50. The failure to obtain the licence and continuing to purchase or sell by a person without obtaining a licence every day thereafter shall remain to be a continuing offence punishable. Section 472 of the Code envisages thus:

"In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.'' The concept of "continuing offence" is a vexed question confronted the Courts time and again. If the contravention complained of is complete in itself though the consequence result therefrom may continue, the offence is complete and is not a continuing offence. The expression "Continuing offence" means that if an act or omission constituting an offence continues from day to day, then, fresh offence is committed every day on which the act or omission is repeated, recurred or continues. A continuing wrong or a continuing offence is nothing but a breach of a duty enjoined by a statute or an act of parties which itself is continuing one. The non-performance of the duty from day to day is a continuing wrong. It is the very essence of a continuing wrong, a source of injury frequented every day which makes the person doing it liable for the act or omission complained of. The offence may be committed by a positive act prohibited by law or by the omission to do that which the law makes it obligatory on the part of the person to do on pain of punishment. So far as the first is concerned, there can be no doubt that an offence is committed at every time when the positive act is repeated. In the latter case, it makes no difference so long as the law expects the doer of the act to fulfil an obligation cast under the Act.

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Consequently every day that omission is not rectified or perpetrated by the performance of the negative duty, an offence is committed. No doubt, technically every moment omissions is punishable as a separate offence. To continue means to remain in existence not to cease. Therefore, if the omission continues de die in diem then fresh offence is committed on every day on which the omission to obtain licence and continuing to purchase or sale of the notified agricultural produce etc. within the notified market area is continued. Thus the continued contravention of transacting the sale or purchase without a valid licence issued under Rule 50 is a continuing offence de die in diem.

24. Section 22 of the Limitation Act 1963 postulates that in the case of a continuing breach of contract or tort a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. Therefore, even under civil law, when a wrongful act complained of is continuing or a breach of contract is allowed to perpetrate, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort continues. Section 22 is similar to Section 23 of the old Limitation Act, 1908. The latter provision was the subject of consideration by several courts and it is enough to state that a Full Bench of the Lahore High Court in Khair Mohd. Khan v. Mt. Jannat, (AIR 1940 Lahore 359) and the Supreme Court in Balakrishna v. Sree D.M. Sansthan, (AIR 1959 SC 798 at p.807) considered the scope of continuing wrong. The Supreme Court held:

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked."

The language under Section 472 of the Code is mutatis mutandis similar to the language couched in Section 22 of the Limitation Act. The ratio laid down by their Lordships of the Supreme Court referred to above, while considering Section 23 of the Limitation Act 1908 which is similar to Section 22 of the present Limitation Act, will equally apply to a case of continuing offence.

25. The concept of continuing offence was considered by the Supreme Court in State of Bihar v. Deokaran, (AIR 1973 SC 908) : (1973 Cri LJ 347) (supra). In considering the question whether the failure to furnish the annual return prescribed under the Mines Act is a continuing offence, Shelat, J. speaking on behalf of the court held thus (Para 5) :

"Continuing offence is one which insusceptible of continuance and is distinguishable from the one which is committed once and for all.

It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involve a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds, of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues, In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

No doubt, on the facts in that case their Lordships have held that failure to furnish the annual return is not a continuing offence.

26. Before a Division Bench of the Bombay High Court consisting of Gajendragadkar and Shah, JJ. (as their Lordships then were) in State v. Bhiwandiwalla, (AIR 1955 Bom 161) : (1955 Cri LJ 666) the question that arose was whether the failure to obtain permission from the Inspector of Factories for continuing to run the factory as per Rules 3 and 4 of the Factory Rules, is a continuing

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offence. While construing those rules, the learned Judges have held that the grant of a licence which is issued in Form 4 prescribed under Rule 5 authorises the occupier to use the premises mentioned in the licence as a factory employing the number of workers as specified and using the electric power as indicated in the licence subject to the provisions of the Factories Act and the Rules made thereunder. The failure to apply for registration is not a continuing offence. The respondent did not apply for a licence and has been running the factory without licence, his conduct amounts to a continuing offence and in respect of continuing offence, it would be impossible to uphold the plea of limitation under Section 106 of the Act. This view was approved by the Supreme Court in State of Bihar v. Deokaran, (AIR 1973 SC 903) : (1973 Cri LJ 347). (supra). Similar is the view taken by several courts, viz., Verney v. Mark Fletcher and Sons, (1909 (1) KB 444) by Lord Alverstone, C.J., Best v. Butler and Fitzgibbon, (1932 (2) KB 108) Lord Hewart, C.J., Emperor v. Karsandass, (AIR 1942 Bom 326) : (1943 (44) Cri LJ 120); by Beaumont C.J., (as he then was); Public Prosecutor v. Veerabhadrappa, (AIR 1953 Mad 204) : (1953 Cri LJ 431) by Govinda Menon, J. (as he then was) and State v. Laxmi Narain, (AIR 1957 All 343 (2)) : (1957 Cri LJ 616).

27. The two decisions relied on by Sri Bhagiratha Rao, learned counsel for the respondents have no application to the facts in this case and they are distinguishable. In Smt. Balatripurasundari v. Vijayawada Municipality, (1982 Mad LJ (Cri.) 448) : (1982 Cri LJ NOC 180) the question that arose was whether the failure to obtain licence for installation of electric motor and establishment of a workshop without licence is a continuing offence. The establishment of the electric motor without prior permission or the Municipality is completed as soon as the installation was made and therefore though the contravention continues, it is not a continuing contravention and he limitation begins to run on the date when the installation was made or the workshop established. That is the ratio in that case and it was expressly stated so in paragraph 15 of the judgment. Similarly, in E.P.F. Organisation v. M/s. Shalimar Biscuits (1979 (1) APLJ (HC) 173) (supra) this Court was called upon to consider whether the failure of the employer to deposit his share of the Provident Fund of the employees was to be a continuing offence. In view of the statement of law laid by the Supreme Court referred to earlier in State of Bihar v. Deokaran, (AIR 1973 SC 908) : (1973 Cri LJ 347) (supra) and following the same, the learned Judge has held on the facts in that case that it is not a continuing offence.

28. The further contention of Sri. Bhagiratha Rao, learned counsel for the respondent that unless there is a first conviction, it cannot be said that the offence under Section 23 is a continuing offence sought support from the latter part of Section 23 which reads thus :

".........and in the case of a continuing contravention with a further fine which may extend to one hundred rupees for every day during with the contravention is continued after conviction therefor.'' We cannot accede to this contention. This latter clause clears the ground that the Court is empowered to impose higher rate of penalty of rupees one hundred for continuance of contravention of every day after the first conviction, but that does not mean that the contravention is not a continuing contravention or that the continuing contravention would begin to arise only from the date of the conviction. The construction sought to be put upon would do, not only violence to the language but also defeats the very purpose of the Act. While construing the provisions like the present Act, a remedial or beneficial legislation equitable construction of the statute which shall suppress the mischief and advance the remedy is to be adopted. As stated earlier, the object of the Act is to ameliorate the economic conditions of the growers by regulating the sale and purchase of the notified market produce within the notified market area and the licensing system is one of the prescriptions through which the enforcement of the provisions is intended for and therefore failure to obtain the licence is made to meet with a penal consequence with graded severity.

29. Viewing from this angle, I have no hesitation to hold that failure to obtain licence as required under Sec.7, of the Act and continuing to trade in sale and purchase of the agricultural produce within the notified area is a continuing offence and became liable to penalty provided under Section 23 of the Act. In view of this conclusion, I

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hold that the prosecution has established its case beyond reasonable doubt that the respondents have contravened the provisions of Section 7. Therefore they have committed an offence punishable under Section 23 of the Act. Accordingly, the four appeals are allowed and the orders of acquittal are set aside and the respondent in each of the appeals is convicted under Section 23 of the Act. Similarly, the six revision cases are allowed, the orders of acquittal recorded by the learned Sessions Judge, Vizianagaram are set aside and that of the Magistrate are restored. The respondents are convicted under Section 23 of the Act and each of the respondents in all these cases is sentenced to pay a fine of rupees two hundred, in default to undergo simple imprisonment for one month. The respondents shall pay the licence fee and make over payment under Section 25 (2) of the Act to the appellant/petitioner. The fine amount and the licence fee shall be paid within six weeks from the date of receipt of the order and on intimation therefor by the lower Court.

30. Before parting with the case, I place on record the valuable assistance given by the learned Advocate General and Sri Bali Reddy as amicus curiae.

 Appeals allowed.

1984 CRI. L. J. 794 "State of Rajasthan v. Mool Chand"

 RAJASTHAN HIGH COURT

 Coram : 1 G. M. LODHA, J. ( Single Bench )

Criminal Appeals Nos. 485, 476, 478, 479 and 477 of 1978, D/- 20 -5 -1983.\*

State of Rajasthan, Appellant v. Mool Chand and others, Respondents.

Rajasthan Agricultural Produce Markets Act (38 of 1961), S.4(2), Expln. and S.14 - AGRICULTURAL PRODUCE - LICENSE - Person, not a producer, buying Kapasia in wholesale market and conducting retail sale in market area

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without obtaining licence - Not entitled to benefit of Expln. to S. 4 (2).

Where the person accused of committing offence under Section 4 (2) for selling "Kapasia" without license was neither a producer nor a seller of such a produce as a producer and he had not purchased Kapasia for his own private use but he purchased it in wholesale market and conducted retail sale of Kapasia in market area it was held that he would not be entitled to the benefit of Expln. to Section 4 (2). The question of charging of market fees need not be confused with the question of taking a licence because taking of license is meant for several purposes and the most important being the object of the Act to ensure fair price to the agriculturists is achieved by regulations of the sale and purchase in the market area, through the agency of the market committee to a limited extent and by insisting on maintaining various record is achieved. His acquittal was liable to be set aside. (Paras 12 and 20)

Cases Referred : Chronological Paras

1974 Tax LR 2352 : 1974 Raj LW 263 3, 14

AIR 1962 SC 1517 3, 17

A.K. Mathur, Addl. Advocate General, for the State.

\* Against judgment of Kishorelal Mathur, Munsif and Judicial Magistrate, Pali, D/- 22-9-1978.

Judgement

JUDGMENT:- As all the five appeals mentioned above are identical in nature and hence they are disposed of by one common judgment. The facts of Appeal No. 485/78 are given here as an illustrative case.

2. The non-petitioner respondent was prosecuted by the Secretary, Marketing Committee (Krishi Upaz Mandi Samiti Ltd., Pali) under Section 28 (1) for the violation of Section. 4 (2), Rajasthan Agricultural Produce Act. It is not in dispute that the respondent was doing the business of 'Kapasia' in the market area of Pali Krishi Upaj Mandi Samiti. It is also not in dispute that 'Kapasia' is an agricultural produce. However, the dispute raised by the accused is that he used to purchase Kapasia from outside Rajasthan. He only conducted retail sale of Kapasia in Pali. It was pleaded that Kapasia is not produced by the agriculturists of Pali.

3. The trial Court at the conclusion of the trial acquitted the accused on the ground that the explanation of Sec. 4 (2) Rajasthan Agricultural Produce Markets Act permits retail sale without obtaining a license. Relying upon the decision of Hon'ble Supreme Court, AIR 1962 SC 1517, Paras 15 and 19 at Page No. 1525-26, para 2 at Page 1520 and para 4 at page 1521 and further taking support, from the observations made in para 10 of the decision of this Court reported in 1974 Raj LW 263 : (1974 Tax LR 2352), the trial Court held that it was not necessary to obtain a license for retail sale of Kapasia and, therefore, the prosecution, cannot succeed.

4. No one has appeared on behalf of the accused in spite of service and, therefore, the appeal was heard by considering the record and hearing Mr. A. K. Mathur for the State.

5. Although, the case appears to be of very trivial and insignificant nature to start with, but it raises very serious important question of law, as it affects the functioning of the Krishi Upaj Mandi Samiti throughout Rajasthan on the one hand and the question regarding liability of the traders functioning in the market area of these Krishi Upaj Mandi Samities.

6. The explanation to Section 4 (2) reads as under :-

"Nothing in sub-section (2), shall apply to purchase or sale of any agricultural produce if the producer of such produces is himself its seller and the purchaser is a person who purchases such produce for his own private use or if such produce is sold to such purchaser by way of a retail sale."

7. Section 14 of the Act of 1961 requires the issue of license, which reads as under:-

. "Power of market committee to issue licences:-

Where a market is established under Clause (b) of sub-section (2) of Section 9, the market committee may issue and renew licences, in accordance with the rules and bye-laws, to traders, brokers, weighmen, measurers, surveyors warehousemen and other persons to operate in the market area on payment of the prescribed fees:"

8. A combined review of Section 4 and Section 14 would show that once a notification is issued under Section 4 and an area is declared as Market Area, no agricultural produce can be bought and sold without a license obtained under Section 14 of the Act.

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9. The explanation to sub-clause (2) of Section 4 only exempts the producer of an agriculture produce and none else. In order to avail of such an exemption the following requirements are mandatory ;-

(1) That the person claiming exemption must be producer;

(2) That the producer himself must be the seller;

(3) That the purchaser should be the person who should purchase it for his own private use or he must purchase it by way of retail sale.

10. In the instant case, the accused is neither a producer himself nor he claims that he is seller of such a produce as a producer. The first prerequisite condition being missing, the explanation cannot apply. Even otherwise, it is not the case of the petitioner-accused that he has purchased Kapasia for his own private use. Contrary to it in his statement he has stated that he has purchased it in wholesale market and the purchase by him is wholesale.

11. It is surprising how the Magistrate gave benefit to the accused by misinterpreting this explanation. Neither the accused claimed to be producer of 'Kapasia' nor he claims to have purchased it for his private use, nor he claims to purchase it by way of retail sale.

12. I am, therefore, of the view that the acquittal of the accused is based on misinterpretation of explanation to sub-clause (2) of Section 4 of the Act of 1961.

13. Now it is to be examined whether the two decisions relied upon by the trial Court in any way can help the accused in obtaining the acquittal as has been done by the Magistrate concerned,

14. Let me first examine the decision of the case of Kundan Mal Basti Mal v. State of Rajasthan reported in (1974 Raj LW Page 263) : (1974 Tax LR 2352) Para 10 (of Raj LW) Para 9 (of Tax LR) of this decision reads as under:-

"Cotton seeds may be a component of unginned cotton, but as soon as it is separated from unginned cotton commercially it becomes a different commodity though chemically it may remain the same. Further what is important is that a commodity is bought and sold in the market proper or market yard. It is not necessary that it be produced in the market area. If it were so then by asserting that a particular commodity was not produced in a particular market area the law could very easily be evaded. Therefore, there is no point in contending that the commodity to be regulated should have been produced in the market area. It may be that the petitioner brings the commodity from Gujarat, but there is no sufficient data for holding that he acquires title in the goods while they are outside Rajasthan and he does not purchase them at Pali. These are all questions of fact which cannot conveniently be gone into in the exercise of the extraordinary jurisdiction of this Court."

15. It is difficult to appreciate how the above observation helps, the accused. Hon'ble Justice Kan Singh as he then was, has held that it is not necessary that the commodity should be produced in the market area, further it is significant that the Hon'ble Judge has held that even though the commodity may be purchased from Gujarat, it would not mean that the trader acquire title in Gujarat and not in Rajasthan.

16. Moreover what is important is that the dealer must deal with it either by purchase or by sale or by both in the market Area. In the instant case it is admitted position that the accused sells it in the market area and, therefore, he would require a license for doing so. In my considered opinion the principles laid down in Kundanmal Bastimal's case supports the prosecution rather than the accused,

17. It would be now proper to examine the principles laid down in Mohd. Bhai Khuda Bux v. State of Gujarat, (AIR 1962 SC 1517) relied upon by the trial court justifies the acquittal. In the above decision validity of notification was challenged being violative of Article 14 of the Constitution. The notification provided maximum fees to be charged. The bye-laws provide that A class and B-Class dealers' licenses were challenged being violative of Arts. 14 and 19 sub-cls. (1) and (g) of the Constitution. Certain other provisions were also challenged as being ultra vires. Para 15 of the above decision considers the question whether the Act is invalid and in that context it was observed that the Act does not control retail trade. The observations were confined to peculiar provisions of the Act, the Rules, etc.

18. In the present, case, the petitioner himself has admitted that he purchases

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Kapasia in wholesale and then sells it in retail. In view of this it is not in dispute the petitioner is a wholesaler so far as his purchase is concerned and Kapasia is bought by him in the market area by wholesale purchases.

19. Neither paragraph 15 nor para 19 nor paras 2 and 4 in any manner lays that a dealer who purchases goods in wholesale in the market area, though the purchases may be in the area or outside the area, but when he brings that goods in the market area for the purpose of sale, is not governed by the provisions of the Act and he need not take a licence.

20. The question of charging of market fees need not be confused with the question of taking a licence because taking of license is meant for several purposes and the most important being, the object of the Act to ensure fair price to the Agriculturists is achieved by regulations of the sale and purchase in the market area, through the agency of the market committee to a limited extent and by insisting on maintaining various record is achieved.

21. In view of the above, I am of the opinion that the acquittal of the accused is untenable and deserves to be set aside.

22. The result of the above discussion is that the judgments of the trial court acquitting the above five accused under Section 28 (i),Rajasthan Agricultural Produce Markets Act, 1961 for violation of Section 4 (2) and Section 17 of the Act are set aside in all the following five appeals and the accused respondents in all the following five appeals are convicted for committing the offence of Section 28 (i) of the Act for violation of Sections 4 (2) and 17 of the Act:-

1. S. B. Criminal Appeal No. 485/78 State of Rajasthan v. Moolchand,

2. S. B. Criminal Appeal No. 476/78, State of Rajasthan v. Parasmal,

3. S. B. Criminal Appeal No. 478/78 State of Rajasthan v. Sukan Raj.

4. S. B. Criminal Appeal No. 479/78 State of Rajasthan v. Sensmal,

5. S. B. Criminal Appeal No. 477/78 State of Rajasthan v. Shantilal.

The accused respondents in each of the above appeals are sentenced to a fine of Rs. 1,000/- (one thousand rupees) and sentenced to one month in default of payment of fine. The fine must be deposited within a period of three months from today.

23. The trial court would inform the accused and make a demand for the payment of fine as the accused respondents are absent and no one has appeared to represent them.

24. Consequently, all the five appeals are accepted as indicated above.

 Appeals allowed.

1982 CRI. L. J. 1141 "Trichy Market Committee, Perambalur v. S. Savaridoss"

 MADRAS HIGH COURT

 Coram : 1 M. N. MOORTHY, J. ( Single Bench )

Criminal Revn. Case No. 81 and Criminal Revn. Petn. No. 80 of 1980, D/- 14 -8 -1981.\*

Trichy Market Committee, Perambalur, Petitioner v. S. Savaridoss, Respondent.

Criminal P.C. (2 of 1974), S.468 and S.469 - AGRICULTURAL PRODUCE - LIMITATION - Breach of bye-law under T. N. Agricultural Produce Market Act punishable only with fine - Prosecution beyond 6 months of the commission and even knowledge thereof was barred.

T.N. Agricultural Produce Markets Act (23 of 1959), S.25 and S.30.

The respondent failed to submit the returns as required by Bye-Law 25(5) of the Bye-Laws framed under the above T. N. Act and the breach was punishable only with fine under Cl.11 of Bye-Law 25. Time limit for prosecution for the case prescribed under S.468(2) Criminal P.C. being 6 months and the period commencing from the date of the offence (S.469 Cr. P.C.) prosecution levied beyond six months from the date of commission and even from the date of knowledge thereof was held barred by S.468(1). (Para 5)

B. Lakshminarayana Reddy, for Petitioner; R. Muthukumaraswamy, for Respondent.

\* To revise judgement of Chief Judicial Magistrate, Tiruchirapalli, D/- 3-10-1979.

Judgement

ORDER :- This is a Revision against the order of S. T. C. No. 113 of 1979 on the file of the Chief Judicial Magistrate, Trichy.

2. The Revision arises under the following circumstances : The Supervisor, Trichy Market Committee, Perambalur, laid a complaint under Ss.25(a) and (b) and 30(1) and (2) of the Tamil Nadu Agricultural Produce Market Act and By-laws framed thereunder on the allegation that the accused is a trader dealing in cotton business at Padalur which fact came to the light of the complainant only on 20-6-1978 when he inspected the place of the accused. Where the accused was having his business is a notified market area and he should have obtained a licence under S.6(1) of the Act and he has to maintain regular accounts and submit returns to the Trichy Market Committee as per the By-laws 23(6) and 25(5). While so he failed to submit the returns to the said Committee from 1-11-1976 to 31-3-1978 which is an infringement under S.51(A)(5) (sic) and By-laws 23(6) and 25(5).

3. P.W. 1 was the Supervisor of the Trichy Market Committee at Perambalur till 23-4-1979. According to him, the accused was running cotton, ginning and rice mill at Padalur within the jurisdiction of Perambalur Division and was also doing cotton business. He has to obtain licence for dealing in cotton under S.6 of the. Tamil Nadu Agricultural Produce Market Act and maintain and submit his accounts every month for his dealing in cotton and paddy. But the accused has not maintained and submitted the accounts from 1-11-1976 to 31-3-1978 for his dealings in cotton to the Trichy Regulated Market Committee. The fact that the accused was dealing in cotton came to the light of P.W. 1 only on 20-6-1978 when he inspected the business premises of the accused. On 23-6-1978 he again inspected the business premises of the accused and then issued Ex. P-1 notice. In spite of this the accused has not maintained and submitted the accounts. Again another notice Ex. P-2 through a lawyer was sent to the accused which was acknowledged by him. Even after Ex. P-2 the accused has not maintained accounts and submitted returns. Hence the Trichy Regulated Market Committee passed a resolution on 30-1-1979 to prosecute and proceedings were initiated against him.

4. When questioned on the evidence of P.W. 1 under S.313 Cr. P.C. the appellant denied the offence. He did not examine any witness on his behalf.

5. Counsel for the accused argued that the complaint is barred by limitation by virtue of S.468 Cr. P.C. The complaint against the accused is that he

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is dealing in the notified agricultural produce viz., doing business in cotton within the notified area at Padalur by (sic) obtaining licence for doing the said business from the Trichy Regulated Market Committee. As per the By-laws 23(6) and 25(5) the accused has to obtain licence and he is bound to maintain accounts for his dealing in cotton every month, and as per the said By-laws, he has not submitted the returns from 1-11-1976 to 31-3-1978. This fact has not been in dispute. But it is contended that the action for non-obtaining of licence and non-submission of returns from 1-11-1976 to 31-3-1978 is barred by limitation as action is not taken within six months after the offence is committed. By-law 25(5) of the Act states. "That the licencee shall maintain regular accounts of all his transactions in each kind of agricultural produce in a form or forms approved by the Secretary and shall send to the Secretary such reports and returns as may from time to time be prescribed in such forms as may be specified by him." The accused has to submit the returns of his dealings for the month of November, 1976, i.e. from 1-11-1976 to 30-11-1976 on 1-12-1976. But he has not submitted his returns on 1-12-1976. So, the offence is committed on 1-12-1976.

Cl.11 of the By-law 25 states, "that contravention of that By-law shall be punishable with fine which may extend to Rs. 50/-". S.468(1) Cr. P.C. provides, ''except as otherwise provided elsewhere in this Code, no court shall take cognizance of an offence of the category specified in Sub-S. (2) after the expiry of the period of limitation. Sub-S. (2) provides the period of limitation shall be (a) six months if the offence is punishable with fine only as in this case. S.469 Cr. P.C. provides the period of limitation in relation to an offender shall commence on the date of the offence. So, looking into the provisions of the aforesaid sections, action for the non-submission of returns must have been taken within six months of the offence committed. This point has been taken in the lower Court and rightly upheld by the Chief Judicial Magistrate, Tiruchirapalli. It is seen from the prosecution case that the complainant has not taken action for the non-submission of the accounts from 1-3-1978 to 31-3-1978 within six months after they became due or came to the knowledge of P.W. 1 and it is clearly barred by limitation.

6. In the result, there is no substance in this Criminal Revision Petition and is dismissed.

 Petition dismissed.

1981 CRI. L. J. 1208 "Prem Pal Singh v. Mohan Lal"

 HIMACHAL PRADESH HIGH COURT

 Coram : 1 T. R. HANDA, J. ( Single Bench )

Criminal Misc. Petn. (M) No. 287 of 1980, D/- 28 -4 -1981.

Prem Pal Singh and others, Petitioners v. Mohan Lal, Respondent.

(A) Penal Code (45 of 1860), S.441, S.442 - CRIMINAL TRESPASS - HOUSE TRESPASS - AGRICULTURAL PRODUCE - Secretary of Marketing Committee empowered to inspect account books of shop-keeper entering into shop of complainant - During stay, secretary, using

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abusive language to shopowner - No evidence of intention to abuse in entering shop - No ground to frame charge under S.442.

H.P. Agricultural Produce Markets Act (9 of 1970), S.42.

Where the accused who was empowered under Section 42 of Himachal Pradesh Agricultural Produce Markets Act 1970 and Rule 62 to check/inspect the account books of the shops, entered into shop of the complainant, in absence of any material on record to suggest any other intention on the part of the accused in entering the shop of complainant then, even in case, during their stay in shop they used some abusive language, this would not by itself suggest that their main intention in entering the shop was to abuse or defame the complainant and thus, there would be no ground to frame charge under S.442. (Para 6)

House trespass is an aggravated form of criminal trespass. The main aim or object of entry on the property of the other by the person accused of an offence of criminal trespass should be to commit an offence or to annoy, intimidate or insult a person in possession of that property. It is not sufficient for this purpose to show merely that the likely or natural consequence of such an entry could be annoyance, intimidation or insult and that such likely consequence was known to the person entering. Such intention, aim or object of the person entering is to be gathered from the particular facts and circumstances of each case. (Para 6)

(B) Penal Code (45 of 1860), S.499 - DEFAMATION - WORDS AND PHRASES - Expression "imputation" - It means accusation against a person and it implies an allegation of fact and not merely a term of abuse - No allegation whatever that any imputation was made by accused - Charge under S.499 is vitiated. (Para 7)

(C) Penal Code (45 of 1860), S.504 - CRIMINAL INTIMIDATION - BREACH OF PEACE - Intentional insult as contemplated by S.504 - Mere allegation without mention of actual words that accused petitioners used abusive language not sufficient to frame charge under S.504. (Para 8)

Chhabil Das, for Petitioners; A.K. Goel, for Respondent.

Judgement

ORDER :- By this petition moved under Section 482 of the Code of Criminal Procedure, the petitioners seek the quashing of the criminal proceedings now pending against them in the court of the Chief Judicial Magistrate, Kulu under Sections 448, 500 and 504 of the Indian Penal Code. Petitioner No. 1 is the Secretary of the Marketing Committee, Kulu, petitioner No. 2 is the Fee Collector, Marketing Committee, Kulu and petitioner No. 3 is a daily paid employee in the same Market Committee.

2. The facts giving rise to this petition are short and simple. On 24-7-1979 a petition of complaint was filed by Shri Mohan Lal respondent against the present petitioners under Sections 448, 500, 501 and 504, I.P.C. in the Court of the Chief Judicial Magistrate, Kulu. The allegations in the complaint were that on 21-7-1979 at about 6 P.M. the petitioners entered the shop of the respondent-complainant without his permission and on so entering they forcibly took into possession certain books of account concerning the shop of the respondent-complainant. When asked to disclose their identity, the petitioners abused the respondent and further threatened him that they would call the S.H.O. Kulu and get him arrested. Some other persons of the locality gathered at the shop of the respondent and in their presence also the petitioners abused him and threatened to get him arrested by the police.

3. After recording the preliminary evidence of the respondent-complainant the learned Chief Judicial Magistrate vide his order dated 7-8-1979 summoned all the three petitioners under Secs. 448, 504 and 500, I.P.C. The petitioners entered appearance in response to the summons issued against them and moved an application before the learned Chief Judicial Magistrate under Section 197 of the Code of Criminal Procedure on 30-4-1980 praying that the provisions of Section 197, Cr. P.C. were attracted in their case and since no sanction of the State Government had been obtained, the proceedings taken against them deserved to be quashed. The learned Chief Judicial Magistrate, however, without recording any order on that application proceeded to frame charges against the petitioners under Sections 448, 500 and 504, I.P.C. The charges as framed may be reproduced :

"Firstly that you on or about 21-7-1979 at about 6 P.M. at Akhara Bazar Kulu committed house trespass by entering into the shop of Shri Mohan Lal used for the custody of property with

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intent to abuse and defame him and that you thereby committed an offence punishable under Section 448, I.P.C. and within the cognizance of this Court;

Secondly that on the aforesaid day, time and place you defamed Mohan Lal by abusing and threatening him that you will get him arrested by the police by calling the S.H.O. intending thereby to harm the reputation of said Mohan Lal and thereby committed an offence punishable under Section 500 I.P.C. and within the cognizance of this Court;

Thirdly, that you on or about the same day, time and place intentionally insulted and thereby gave provocation to said Mohan Lal intending that such provocation would cause the said Mohan Lal to break the public peace and thereby committed an offence punishable under Section 504 I.P.C. and within the cognizance of this Court."

4. The petitioners contended that they had gone to inspect the shop of the respondent in the discharge of their official duties and they were authorised under the provisions of the Himachal Pradesh Marketing Act to check and search the premises of the respondent. As a result of such inspection they actually filed a challan against the respondent under Section 32(1) of the Himachal Pradesh Agricultural Produce Markets Act, 1969 (9 of 1970). The complaint filed by the respondent was a counterblast to such challan filed against him at the instance of the petitioners. Even otherwise the allegations in the complaint disclose no offence for which the learned Chief Judicial Magistrate could take cognizance. The initiation of the proceedings against the petitioner is thus only an abuse of the process of the Court.

5. After going through the record the case and hearing the learned counsel for the parties, I find that there is a good deal of substance in the submissions made on behalf of the petitioners. The simple allegations as set out in the complaint and as referred to earlier would not, even if taken at their face value, constitute any of the three offences for which the petitioners were summoned and stand charged. The preliminary evidence recorded in support of the complaint petition would not improve the case against the petitioners any further.

6. The first head of the charge framed against the petitioners is under Sec. 448 I.P.C. which provides for punishment for house trespass, as defined in Section 442 I.P.C. House trespass is only an aggravated form of criminal trespass which has been defined in Section 441 I.P.C. in the following terms :-

"Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass."

When Section 441 I.P.C. speaks of entering on property with intent to commit an offence or to intimidate, insult or annoy any person in possession of the property, it speaks of the main intention in the action on the part of the alleged trespasser and not of any subsidiary intention that may also be present in addition to the main intention. In other words the main aim or object of entry on the property of the other by the person accused of an offence of criminal trespass should be to commit an offence or to annoy, intimidate or insult a person in possession of that property. It is not sufficient for this purpose to show merely that the likely or natural consequence of such an entry could be annoyance, intimidation or insult and that such likely consequence was known to the person entering. Such intention, aim or object of the person entering is to be gathered from the particular facts and circumstances of each case. The facts of this case show that on entering the shop of Shri Mohan Lal complainant the petitioners had declared that they wanted to check his books of account (as per statement of Shri Daryodhan Lal P.W. 3). Shri Kishan Chand P.W. 4 had next stated that the identity of the petitioners had become known when they threatened to get Shri Mohan Lal complainant arrested through the police. In these circumstances the main and the avowed object/intention of the petitioners in entering the shop of Shri Mohan Lal complainant was to check/inspect his account books. They had of course the power to do so under the law (see Section 42 of the Himachal Pradesh Agricultural Produce Markets Act 1970 and Rule 62 of the Rules framed thereunder). There is no material on the record to suggest any other intention on the part of the petitioners in entering

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the shop of Shri Mohan Lal complainant and in case during the course of their stay in the shop of the complainant for checking his account books, the petitioners actually used some abusive language, this would not by itself suggest that their main intention in entering the shop was to abuse or defame the respondent as mentioned in the charge and not to check/inspect the account books of the complainant. The charge under Section 448 I.P.C. as framed against the petitioners is thus groundless.

7. Coming next to the charge under Section 500 I.P.C. the necessary ingredients required to constitute this offence appear to be lacking both in the allegations set out in the complaint petition as also in the language in which the charge has been framed. The essential ingredients for an offence falling under Section 500 I.P.C. are (i) the making or publishing of an imputation concerning any person; (ii) such imputation must have been made (a) by words either spoken or intended to be read; or (b) by signs; (c) or by visible representations and (iii) such imputations must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person concerning whom it is made. Imputation means accusation against a person and it implies an allegation of fact and not merely a term of abuse. In the instant case there is no allegation whatever of any imputation had been made by the petitioners or any of them concerning Shri Mohan Lal complainant. It was perhaps on account of this reason that no such imputation finds mention in the language of the charge as framed by the learned Chief Judicial Magistrate against the petitioners. The second charge under Section 500 I.P.C. is thus vitiated in law and cannot be sustained.

8. The third charge is under Sec. 504 I.P.C. which reads :

"Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The first essential element constituting the offence falling under Section 504 I.P.C. is that there should have been an act or conduct on the part of the accused which would amount to an intentional insult. The second ingredient of this offence is that the intentional insult so caused should be such as to give provocation to the person insulted and the provocation given should be of the nature as would cause the person given the provocation to break the public peace or to commit any other offence. The third ingredient of this offence is that the person giving the insult must intend or know that his act would cause a provocation of the nature mentioned above. In the instant case though the language of the charge is silent with regard to the act of intentional insult alleged to have been committed by the petitioners, the allegations in the complaint suggest that such act was the use of abusive language by the petitioners. In order to appreciate whether the language used by the petitioners could amount to an insult of the type as could invoke provocation of the nature mentioned above, it was necessary to know what were the abusive words alleged to have been used by the petitioners. In the absence of the actual words alleged to have been used, it is not possible to conclude if those words at all amounted to insult or indicated such intention or knowledge on the part of the petitioners as is contemplated by the language of Section 504 I.P.C. If for some reason it was not possible to reproduce the exact words used constituting the insult, the gist or purport thereof must have been stated. It may be remarked that the term 'abusive language' is very elastic and of wide amplitude and the words falling within the ambit of this term may not always amount to insult. On the basis of the mere allegation that the petitioners used abusive language, no charge under Section 504 I.P.C. could be framed against the petitioners. This charge thus also cannot be sustained.

9. This is thus clearly a case where the allegations contained in the complaint do not constitute any offence and the learned Chief Judicial Magistrate was certainly in error in taking cognizance of a complaint of this type and in framing charges against the petitioners in the manner he has done. I would accordingly accept this petition and quash the charges framed against the petitioners as also the criminal proceedings pending against them in the Court of the Chief Judicial Magistrate, Kulu.

 Petition allowed.

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1978 CRI. L. J. 1479 "Anakapalli Agrl. Market Committee v. T. R. G. S. and Co."

 ANDHRA PRADESH HIGH COURT

 Coram : 1 GANGADHARA RAO, J. ( Single Bench )

Cri. Revn. Cases Nos. 497, 499, 505, 506, 507 and 508 of 1977, Cri. Revn. Petns. Nos. 490, 492, 498, 499, 500 and 501 of 1977, D/- 17 -2 -1978.\*

The Secretary, Anakapalli Agricultural Market Committee, Petitioner v. M/s. Thammana Reddiyya Gari Somaraju and Co., and others, Respondents.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.34(2) - INTERPRETATION OF STATUTES - AGRICULTURAL PRODUCE - Market Committee Bye-Laws - Publication of in English and Telugu in the A. P. Gazette mandatory - Publication only in English not effective. (Interpretation of Statutes).

Anakapalli Agricultural Market Committee, Bye-law 44(5) and Bye-law 45.

Considering that sub-sec. (2) of S.34 A. P. (Agricultural Produce and Livestock) Markets Act clearly, specifically and admitting of no exceptions lays down that every bye-law made under it "shall" be published in English and Telugu in the A. P. Gazette and it comes into operation on the date of its publication in the A. P. Gazette, that the object of the provision is that most of the traders who do not know English should understand reading its Telugu version and that there is no circumstance or context indicating permissibility of permissive interpretation, the requirement should be construed as mandatory. Publication of the bye-law only in one language would not satisfy the condition precedent as could bring the bye-law into operation. Bye-law 44 (5) of the Agricultural Market Committee, Anakapalle obliging the licensee to maintain accounts and records and produce them whenever called upon to do so and bye-law 45 providing for a fine up to Rs. 500/- for violation thereof published only in English in the A. P. Gazette held did not bring those bye-laws into operation and the proceeding to punish the licensee for violating them was not competent. 1975 Cri LJ 1993 (SC) Rel. on. AIR 1967 SC 1074, AIR 1972 SC 1242 and (1961) 1 Cri LJ 773 (SC) Ref. (Paras 7, 8, 10 and 12)

Cases Referred : Chronological Paras

1975 Cri LJ 1993 : AIR 1976 SC 263 9

AIR 1974 SC 1682 9

AIR 1972 SC 1242 9

AIR 1967 SC 1074 9

(1961) 1 Cri LJ 760 : (1961) 2 SCR 890 : AIR 1961 SC 674 9

(1961) 1 Cri LJ 773 : AIR 1961 SC 751 11

AIR 1956 SC 140 9

D. V. Reddi Pantulu, for Petitioner in all Nos; T. Ramachandra Rao and M. Venkata Rao (for No. 1) and 1st Addl. Public Prosecutor (for No. 2), for Respondents in all Nos.

\* Against order of 1st Addl. Sessions, J. Visakhapatnam, D/- 24-3-1977.

Judgement

ORDER:- These revisions are filed by the Anakapalle Agricultural Market Committee, Anakapalli, against the acquittal of the accused by the 1st Addl. Sessions Judge, Visakhapatnam.. The accused are

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licensees under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. The Market Committee issued a notice to the accused calling upon them for production of accounts and records for assessment of the market fee under bye-law 44 (5). The accused did not produce them in spite of repeated demands. Therefore, a complaint was filed against the accused for violating bye-law 44 (5) of the Bye-laws of the Agricultural Market Committee, Anakapalle. The learned First Additional Sessions Judge, Visakhapatnam acquitted the accused on the ground that Bye-laws framed by the Agricultural Market Committee have not come into force for they were not published in Telugu in Andhra Pradesh Gazette.

2. In these revisions it is submitted by Sri Reddipanthulu, the learned counsel for the Market Committee, that publication of the Bye-Laws in Telugu in the Andhra Pradesh Gazette is not mandatory but only directory and, therefore, the order of the learned Sessions Judge is not correct.

3. The complaint against the accused is that they have contravened Bye-Law

44 (5) and, therefore, they are liable to be punished under Bye-Law 45.

4. Bye-Law 44 (5) provides that a licensee shall maintain regular accounts of his transactions and shall send to the Secretary such reports and returns as may be specified by the market committee. The record should be produced for inspection and for assessment of market fee on demand by any employee of the committee not below the rank of a Supervisor at such time and place as may be indicated in the demand made. Bye-law 45 says that the contravention of bye-law 44 shall be punishable with fine which may extend to rupees five hundred only. These bye-laws are made under S.34 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966.

5. We are only concerned with sub-secs. (2) and (3) of that Section. They read as follows:

"S.34 (2): Every bye-law made under this Section shall be published in English and Telugu in the Andhra Pradesh Gazette and it shall come into operation on the date of its publication in the Andhra Pradesh Gazette;

(3) Any bye-law made under this Section may provide that any contravention thereof shall be punishable with fine which may extend to five hundred rupees."

6. In this case the bye-laws were published in English in the Andhra Pradesh Gazette. They were not published in Telugu in the Andhra Pradesh Gazette. Bye-law 45 provides punishment for contravention of bye-law 44.

7. A reading of sub-sec. (2) of S.34; shows that every bye-law made under that section shall be published in English and Telugu in the Andhra Pradesh Gazette and it comes into operation on the date of its publication in the Andhra Pradesh Gazette. I am of the opinion that a bye-law shall be published both in English and Telugu in the Andhra Pradesh Gazette. It is only when it is so published it comes into operation. Publication in English and Telugu in the Andhra Pradesh Gazette is a condition precedent for a bye-law to become operative. Sri Reddipanthulu wants me to read the first part of sub-sec. (2) of S.34 as follows : Every bye-law made under this Section 'may' be published in English 'or' Telugu in the Andhra Pradesh Gazette. I am of the opinion that if the sub-section is read in that manner it makes no sense and will defeat the very object for which it is made. Then it means that it may not also be published. If it is not published the question of its coming into operation on the date of its publication does not arise. If so, there will be no bye-laws. Therefore, that interpretation cannot be accepted.

8. I am not also prepared to read the sub-section so as to say that bye-law can be published in English or Telugu. The reason why the Legislature wanted that bye-law should be published in Telugu also is that traders who know Telugu would understand it. It is only a few traders that know English. Further, bye-law itself can provide for its contravention and prescribe punishment of fine. Therefore, it is all the more important that it should be published in Telugu so that traders may know it. Hence, I am of the opinion that a bye-law should be published both in English and Telugu in the Andhra Pradesh Gazette. It is only when it is published in both the languages it comes into operation on the date of its publication in the Gazette. If it is published only in one language it does not come into operation, for the condition precedent mentioned in sub-sec. (2) of S.34 is not fulfilled.

9. The nearest case to the point placed before me is that of the Supreme Court

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in Govindlal v. Agriculture Produce Market Committee, AIR 1976 SC 263: (1975 Cri LJ 1993). It is a case arising under the Gujarat Agricultural Produce Markets Act 1964. Sec. 6 of that Act provides that a notification declaring an area to be a market area shall also be published in Gujarati in a newspapers having circulation in that area and in such other manner as may be prescribed. In that case notification was not published in Gujarati. The question for consideration was whether the notification issued under S.6 (5) of that Act, covering additional varieties of agricultural produce like ginger and onion, must not only be published in the official gazette but must also be published in Gujarati in a newspaper. It was contended before the Supreme Court that the word 'shall' in S.6 should be read as 'may' and requirement to publish it in Gujarati in a newspaper was only directory but not mandatory. Chandraohud J., speaking for the Court observed (at p. 1996 of 1975 Cri LJ):

"Plainly, 'shall' must normally be construed to mean 'shall' and not 'may' for the distinction between the two is fundamental. Granting the application of mind there is little or no chance that one who intends to leave a lee-way will use the language of command in the performance of an act. But since, even lesser directions are occasionally clothed in words of authority, it becomes necessary to delve deeper and ascertain the true meaning lying behind mere words." Then the learned Judge referred to Crawford on Statutory Construction, Edition 1940, Art.261, page 516, and extracted the following passage:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other." Then the learned Judge observed:

"Thus, the governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words used by the legislature but from a variety of other circumstances and considerations. In other words, the use of the word 'shall' or 'may' is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. Shriram v. State of Maharashtra (1961) 2 SCR 890: (1961-1 Cri LJ 760)."

The learned Judge referred to Khub Ohand v. State of Rajasthan (AIR 1967 SC 1074) in which it was observed (at p. 1077) :

"The term 'shall' in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations."

The same principle was expressed in Haridwar Singh v. Bagun Sumbrui (AIR 1972 SC 1242) in the following words (at p. 1247):

"Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured." Recently in the Presidential Election Case, ............... (AIR 1974 SC 1682) (at

p. 1686) the learned Chief Justice speaking on behalf of a seven Judge Bench observed:

"In determining the question whether a provision is mandatory or directory, the subject-matter, the importance of the provision, the relation of that provision to the general object intended to be

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secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending to the whole scope of the provision to be construed. 'The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole'."

Then, after referring to the provisions of the Act, the learned Judge observed :

"Publication of the notification in the official Gazette was evidently thought by the legislature not an adequate means of communicating the Director's intention to those who would be vitally affected by the proposed declaration and who would therefore be interested in offering their objections and suggestions. It is a matter of common knowledge that publication in a newspaper attracts greater public attention than publication in the Official Gazette. That is why the legislature has taken care to direct that the notification shall also be published in Gujarati in a newspaper. A violation of this requirement is likely to affect valuable rights of traders and agriculturists because in the absence of proper and adequate publicity their right of trade and business shall have been hampered without affording to them an opportunity to offer objections and suggestions an opportunity which the statute clearly deems so desirable ............ A violation of these provisions attracts penal consequences under S.36 of the Act. It is therefore vital from the point of view of the citizens' right to carry on trade or business, no less than for the consideration that violation of the Act to penal consequences, that the notification must receive due publicity. As the statute itself has devised an adequate means of such publicity, there is no reason to permit a departure from that mode. There is something in the very nature of the duty imposed by Ss. 5 and 6, something in the very object for which that duty is cast, that the duty must be performed. 'Some Rules', as said in Pratap Singh v. Sri Krishna (AIR 1956 SC 140 at p. 141) 'are vital and go to the root of the matter : they cannot be broken.' The words of the statute here must therefore be followed punctiliously."

Finally, the learned Judge came to the conclusion that the notification must also be published in Gujarati in a newspaper having circulation in the particular area, that the requirement is mandatory and must be fulfilled, and since admittedly no such notification was published in a newspaper at all much less in Gujarati, the inclusion of new varieties of agricultural produce in that notification lacks legal validity and no prosecution can be founded upon its breach.

10. Following this decision I have no hesitation in holding that under S.34 (2) every bye-law must be published not only in English but also in Telugu in the Andhra Pradesh Gazette and it is only when it is so published it comes into operation on the date of its publication.

11. Sri Reddipanthulu referred to a number of decisions on the question of interpretation of the statute as to whether it is mandatory or directory. It is not necessary to refer to all of them except the decision in State of U. P. v. Babu Ram, AIR 1961 SC 751 : (1961-1 Cri LJ 773). After referring to Maxwell on the Interpretation of Statutes, 10th Edition, at p. 381, Subba Rao J., observed (at p. 787 of Cri LJ):

"The relevant rules of interpretation may be briefly stated thus : When a statute uses the word 'shall', prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

12. Relying upon this passage, it is submitted by Sri Reddipanthulu, that since non-compliance of the provisions in the case on hand is not visited with a penalty, the provision may be read as directory but not mandatory. I do not agree. That is not the only test. On the face of it, S.34 (2) is clear and specific and admits of no exceptions. I am not persuaded to read the provision as only directory in the sense that a bye-law

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'may be published' in English or Telugu in the Andhra Pradesh Gazette. Therefore I reject this contention. If so, in the absence of publication of the Bye-Laws in Telugu in the Andhra Pradesh Gazette, there is no question of Bye-Laws 44 and 45 coming into force. If they have not come into force the petitioners cannot be penalised.

13. Consequently, agreeing with the learned First Additional Sessions Judge, I dismiss these revisions.

 Petitions dismissed.

1975 CRI. L. J. 1993 "Govind Lal v. Agr. P. M. Committee"

 SUPREME COURT

(From : Gujarat)\*

 Coram : 3 Y. V. CHANDRACHUD, P. N. BHAGWATI AND R. S. SARKARIA, JJ. ( Full Bench )

Criminal Appeal No. 158 of 1972, D/- 27 -8 -1975.

Govind Lal Chaggan Lal Patel, Appellant v. The Agriculture Produce Market Committee and others, Respondents.

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.6(1) - AGRICULTURAL PRODUCE - BOOKS, NEWS PAPERS AND PRESS - Interpretation of - Requirement of publication in Gujarati in a newspaper applies equally to notification under S.6(5).

The requirement laid down by Section 6(1) that a notification under "this section" shall also be published in Gujarati newspaper would govern any and every notification issued under any part of Section 6, that is to say, under any of the Sub-Sections of Section 6, including Sub-Section (5). (Para 9)

(B) INTERPRETATION OF STATUTES - Interpretation of Statutes - Provision whether directory or mandatory - Tests to determine.

The governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words used by the legislature but from a variety of other circumstances and considerations. In other words, the use of the word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstances that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. AIR 1961 SC 674 : (1961) 1 Cri LJ 760 and AIR 1967 SC 1074 and AIR 1972 SC 1242 and AIR 1974 SC 1682, Rel. on. (Para 13)

(C) Gujarat Agricultural Produce Markets Act (20 of 1964), S.6(5) - AGRICULTURAL PRODUCE - BOOKS, NEWS PAPERS AND PRESS - Notification under - Requirement of publication in Gujarati in newspaper is mandatory and not

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directory - Effect of non-compliance.

Cr. App. No. 219 of 1970, D/-12-11-1971 (Guj), Reversed.

Unlike the Bombay Act 1939, the notification issued under Section 6(5) of the Gujarat Act, like that under Section 6(1), must also be published in Gujarati in a newspaper having circulation in the particular area. This requirement is mandatory and must be fulfilled. A violation of this requirement is likely to affect valuable rights of traders and agriculturists because in the absence of proper and adequate publicity their right of trade and business shall have been hampered without affording to them an opportunity to offer objections and suggestions, an opportunity which the statute clearly deems so desirable. Furthermore sections 6(2), 8 and 36 show that a violation of this provision leads to penal consequences. Hence, if the notification is not at all published in a newspaper the inclusion of new varieties of agricultural produce in that notification lacks legal validity and no prosecution can be founded upon its breach. Cr. App. No. 219 of 1970, D/-12-11-1971 (Guj), Reversed. (Paras 16, 18)

(D) Gujarat Agricultural Produce Markets Rules (1965), R.3 - AGRICULTURAL PRODUCE - Rule must be complied with regard to notification under S.5(1) and S.6(1) of the Act. (Para 19)

Cases Referred : Chronological Paras

AIR 1974 SC 1682 : (1974) 2 SCC 33 13

AIR 1972 SC 1242 : (1973) 3 SCC 889 13

AIR 1967 SC 1074 : (1967) 1 SCR 120 13

AIR 1961 SC 674 : (1961) 2 SCR 890 : (1961) 1 Cri LJ 760 13

AIR 1956 SC 140 : (1955) 2 SCR 1029 16

Mr. H.S. Patel, Mr. S.S. Khanduja and Miss Lalita Kohli Advocates, for Appellant; Mr. S.K. Zauri Sr. Advocate. (Mr. Amaresh Kumar and Mr. M.V. Goswami, Advocates with him), (for Nos. 1-2) and M/s. H.R. Khanna and M.N. Shroff Advocates (for No. 3), for Respondents.

\* Criminal Appeal No. 219 of 1970, D/- 12-11-1971 - Guj.

Judgement

The Judgement of the Court was delivered by

CHANDRACHUD, J. :- This is an appeal by special leave from the judgement of the Gujarat High Court convicting the appellant under Section 36 read with Section 8 of the Gujarat Agricultural Produce Markets Act, 20 of 1964 (referred to herein as "the Act") and sentencing him to pay a fine of Rs. 10/-. The judgement of conviction was recorded by the High Court in an appeal from an order of acquittal passed by the learned Judicial Magistrate, First Class, Godhra.

2. An Inspector of Godhra Agricultural Produce Market Committee filed a complaint against the appellant charging him with having purchased a certain quantity of ginger in January and February, 1969 without obtaining a license as required by the Act. The learned Magistrate accepted the factum of purchase but he acquitted the appellant on the ground that the relevant notification in regard to the inclusion of ginger was not shown to have been promulgated and published as required by the Act.

3. The case was tried by the learned Magistrate by the application of procedure appointed for summary trails. That circumstance together with the token sentence of fine imposed by the High Court gives to the case a petty appearance. But occasionally, matters apparently petty seem on closer thought to contain points of importance though, regretfully, such importance comes to be realized by stages as the matter travels slowly from one court to another. As before the Magistrate so in the High Court, the matter failed to receive due attention : a fundamental premise on which the judgement of the High Court is based contains an assumption contrary to the record. Evidently, the attention of the High Court was not drawn either to the error of that assumption or to same of the more important aspects of the case which the parties have now perceived.

4. It is necessary, in order to understand the controversy to notice some of the relevant statutory provisions.

5. In the erstwhile composite State of Bombay there was in operation an Act called the Bombay Agricultural Produce Markets Act, 22 of 1939. On the bifurcation of that State on May 1, 1960 the new State of Gujarat was formed. The Bombay

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Act of 1939 was extended an appropriate order to the State of Gujarat by the Government of that State. That Act remained in operation in Gujarat till September 1, 1964 on which date the Gujarat Agricultural Produce Markets Act, 20 of 1964, came into force.

6. The Act was passed "to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat". Section 4 of the Act empowers the State Government to appoint an officer to be the Director of Agricultural Marketing and Rural Finance. Sections 5, 6(1) and 6(5) of the Act read thus :-

"5. Declaration of intention of regulating purchase and sale of agricultural produce in specified area. - (1) The Director may, be notification an the Official Gazette, declare his intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified therein. Such notification shall also be published in Gujarati in a newspaper having circulation in the area and in such other manner as may be prescribed.

(2) Such notification shall state that any objection or suggestion received by the Director within the period specified in the notification which shall not be less than one month from the date of the publication of the notification, shall be considered by the Director.

(3) The Director shall also send a copy of the notification to each of the local authorities functioning in the area specified an the notification with a request to submit its objections and suggestions if any, in writing to the Director within the period specified in the notification.

6. Declaration of market areas. - (1) After the expiry of the period specified in the notification issued under Section 5 (hereinafter referred to in this section as "the said notification"), and after considering the objections and suggestions received before its expiry and holding such inquiry as may be necessary, the Director may, be notification in the official Gazette, declare the area specified in the said notification or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. A notification under this section shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner, as may be prescribed.

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x x x x x

6. (5) After declaring in the manner specified in Section 5 his intention of so doing, and following the procedure therein, the Director may, at any time by notification in the Official Gazette, exclude any area from a market area specified in a notification issued under Sub-Section (1), or include any area therein and exclude from or add to the kinds of agricultural produce so specified any kind of agricultural produce."

By Section 8, no person can operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under the Act. Section 36 of the Act provides, to the extent material, that whoever without holding a licence uses any place in a market area for the purchase or sale of any agricultural produce and thereby contravenes Sec. 8 shall on conviction be punished with the sentence mentioned therein.

7. Rule 3 of the Gujarat Agricultural Produce Markets Rules, provides that a notification under Section 5(1) or Section 6(1) shall also be published by affixing a copy thereof at some conspicuous place in the office of each of the local authorities functioning in the area specified in the notification.

8. The simple question, though important, is whether the notification issued under Section 6(5) of the Act, covering additional varieties of agricultural produce like ginger and onion, must not only be published in the official gazette but must also be published in Gujarati in a newspaper. The concluding sentence of Section 6(1) says that a notification under "this section" "shall also be published in Gujarati in a newspaper" having circulation in the particular area. The argument of

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the appellant is twofold : Firstly, that "this section" means "this Sub-Section" so that the procedure in regard to publication which is laid down in Sub-Section (1) of Section 6 must be restricted to notifications issued under that Sub-Section and cannot be extended to those issued under Sub-Section (5) of Section 6; and secondly, assuming that the words "this section" are wide enough to cover every Sub-Section of Section 6, the word "shall" ought to be read as "may".

9. First, as to the meaning of the provision contained in Section 6(1) of the Act. It means what it says. That is the normal rule of construction of statutes, a rule not certainly absolute and unqualified, but the conditions which bring into play the exceptions to that rule do not exist here. Far from it; because, the scheme of the Act and the purpose of the particular provision in Section 6(1) underline the need to give to the provision its plain, natural meaning. It is not reasonable to assume in the legislature an ignorance of the distinction between a "section" of the statute and the "Sub-Sections" of that section. Therefore, the requirement laid down by S.6(1) that a notification under "this section" shall also be published in Gujarati in a newspaper would govern any and every notification issued under any part of Section 6, that is to say, under any of the Sub-Sections of S.6. If this requirement was to govern notifications issued under Sub-Section (1) of Section 6 only, the legislature would have said so.

10. But the little complexity that there is in this matter arises out of a known phenomenon, judicially noticed but otherwise disputed, that sometimes the legislature does not say what it means. That has given rise to a series of technical rules of interpretation devised or designed to unravel the mind of the law-makers. If the words used in statue are ambiguous, it is said, consider the object of the statute, have regard to the purpose for which the particular provision is put on the statute-book and then decide what interpretation best carries out that object and purpose. The words of the concluding portion of Section 6(1) are plain and unambiguous rendering superfluous the aid of artificial guidelines to interpretation. But the matter does not rest there. The appellant has made an alternative argument that the requirement regarding the publication in Gujarati in a newspaper is directory and not mandatory, despite the use of the word "shall". That word, according to the appellant, really means "may".

11. Maxwell, Crawford and Craies abound in illustrations where the words "shall" and "may" are treated as interchangeable. "Shall be liable to pay interest" does not mean "must be made liable to pay interest", and "may not drive on the wrong side of the road" must mean "shall not drive on the wrong side of the road". But the problem which the use of the language of command poses is : Does the legislature intend that its command shall at all events be performed ? Or is it enough to comply with the command in substance ? In other words, the question is : is the provision mandatory or directory ?

12. Plainly, "shall" must normally be construed to mean "shall" and not "may", for the distinction between the two is fundamental. Granting the application of mind, there is little or no chance that one who intends to leave a lee-way will use the language of command in the performance of an act. But since, even lesser directions are occasionally clothed in words of authority, it becomes necessary to delve deeper and ascertain the true meaning lying behind mere words.

13. Crawford on "Statutory Construction" (Edn. 1940, Art.261, p. 516) sets out the following passage from an American case approvingly : "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other." Thus, the governing factor is

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the meaning and intent of the legislature, which should be gathered not merely from the words used be the legislature but from a variety of other circumstances and consideration. In other words, the use of the word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature : Shriram v. State of Bom., (1961) 2 SCR 890 at p. 898 : (AIR 1961 SC 674 at pp. 677-678 : (1961) 1 Cri LJ 760 at p. 764). Sec. 6(1) of the Act provides in terms, plain and precise, that a notification issued under the section "shall also" be published in Gujarati in a newspaper. The word "also" provides an important clue to the intention of the legislature because having provided that the notification shall be published in the Official Gazette, Section 6(1) goes on to say that the notification shall also be published in Gujarati in a newspaper. The additional mode of publication prescribed by law must, in the absence of anything to the contrary appearing from the context of the provision or its object, be assumed to have a meaning and a purpose. In Khub Chand v. State of Rajasthan (1967) 1 SCR 120 at pp. 124, 125 : (AIR 1967 SC 1074 at p. 1077) it was observed that "The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act.The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations". The same principle was expressed thus in Haridwar Singh v. Begum Sumbrui; (1973-3 SCC 889 at p. 895) : (AIR 1972 SC 1242 at p. 1247) "Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured." Recently in the Presidential Election case, (1974) 2 SCC 33 at p. 49 : (AIR 1974 SC 1682 at p. 1686) the learned Chief Justice speaking on behalf of a seven Judge Bench observed :

"In determining the question whether a provision is mandatory or directory, the subject-matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending to the whole scope of the provision to be construed. "The Key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole"."

14. The scheme of the Act is like this : Under Section 5(1) the Director of Marketing and Rural Finance may by a notification in the Official Gazette declare his intention of regulating purchase and sale of agricultural produce in the specified area. Such notification is also required to be published in Gujarati in a newspaper having circulation in the particular area. By the notification, the Director under Section 5(2) has to invite objections and suggestions and the notification has to state that any such objections or suggestions received by the Director within the specified period, which shall not be less

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than one month from the date of the publication of the notification, shall be considered by the Director. After the expiry of the aforesaid period the Director, under Section 6(1), has the power to declare an area as the market area in respect of the particular kinds of agricultural produce. This power is not absolute because by the terms of Section 6(1) it can only be exercised after considering the objections and suggestions received by the Director within the stipulated period. The notification under Section 6(1) is also required to be published in Gujarati an a newspaper. The power conferred by Section 5(1) or 6(1) is not exhausted by the issuance of the initial notification covering a particular area or relating to a particular agricultural produce. An area initially included in the market area may later be excluded, a new area may he added and likewise an agricultural produce included in the notification may be excluded or a new variety of agricultural produce may be added. This is a salutary power because experience amending by working the Act may show the necessity for amending the notification issued under Sec. 6(1). This power is conferred by Sec. 6(5).

15. By Section 6(5), if the Director intends to add or exclude an area or an agricultural produce, he is to declare his intention of doing so in the manner specified in Section 5 and after following the procedure prescribed therein. Thus, an amendment to the Section 6(1) notification in regard to matters described therein is equated with a fresh declaration of intention in regard to those matters, rendering it obligatory to follow afresh the whole of the procedure prescribed by Section 5. That is to say, if the Director intends to add or exclude an area or an agricultural produce, he must declare his intention by notification in the Official Gazette and such notification must also be published in Gujarati in a newspaper. Secondly, the Director must invite objections or suggestions by such notification and the notification must state that any objections or suggestions received within the stipulated time shall be considered by him. The Director must also comply with the requirement of Sub-S. (5) of Section 3 by sending a copy of the notification to each of the local authorities functioning in the particular area with a request that they may submit their objections and suggestions within the specified period. After the expiry of the period aforesaid and after considering the objections or suggestions received within that period, the Director may declare that the particular area or agricultural produce be added or excluded to or from the previous notification. This declaration has to be by a notification in the Official Gazette and the notification has to be published in Gujarati in a newspaper having circulation in the particular area. The last of these obligations arises out of the mandate contained in the concluding sentence of Section 6(1).

16. The object of these requirements is quite clear. The fresh notification can be issued only after considering the objections and suggestions which the Director receives within the specified time. In fact, the initial notification has to state expressly that the Director shall consider the objections and suggestions received by him within the stated period. Publication of the notification in the Official Gazette was evidently thought by the legislature not an adequate means of communicating the Director"s intention to those who would be vitally affected by the proposed declaration and who would therefore be interested in offering their objections and suggestions. It is a matter of common knowledge that publication in a newspaper attracts greater public attention than publication in the Official Gazette. That is why the legislature has taken care to direct that the notification shall also be published in Gujarati in a newspaper. A violation of this requirement likely affect valuable rights of traders and agriculturists because in the absence of proper and adequate publicity, their right of trade business shall have been hampered without affording them an opportunity to offer objections and suggestions, an opportunity which the statute clearly deems so desirable. By Section 6(2), once an area is declared to be a market area, no

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place in the said area can be used for the purchase or sale of any agriculture produce specified in the notification except in accordance with the provisions of the Act. By S.8 no person can operate in the market area or any part thereof except under and in accordance with conditions of a licence granted under Act. A violation of these provisions attracts penal consequences under Section 36 of the Act. It is therefore vital from the point of view of citizens" right to carry on trade or business, no less than consideration that violation of the Act leads to penal consequences, that the notification must receive due publicity. As the stature it self has devised an adequate means of such publicity, there is no that mode. There is something in the very nature of the duty imposed by Sections 5 and 6, something in the very object for which that duty is cast, that the duty must be performed. "Some Rules" as said in Thakur Pratap Singh v. Sri Krishna (1955) 2 SCR 1029 at p. 1031 : (AIR 1956 SC 140 at p. 141) "are vital and go to the root of the matter : they cannot be broken." The words of the statute here must therefore be followed punctiliously.

17. The legislative history of the Act reinforces this conclusion. As stated before, the Bombay Agricultural Produce Markets Act, 1939 was in force in Gujarat till September 1, 1964 on which date the present Act replaced it. Section 3(1) of the Bombay Act corresponding to Section 5(1) of the Act provided that the notification "may" also be published in the regional languages of the area. Section 4(1) of the Bombay Act which corresponds to Section 6(1) of the Act provided that "A notification under this section may also be published in the regional languages of the area in a newspaper circulated in the said area." Section 4(4) of the Bombay Act corresponding to Section 6(5) of the Act provided that exclusion or inclusion of an area or an agricultural produce may be made by the Commissioner by notification in the Official Gazette, "subject to the provisions of Section 3". Section 4(4) did not provide in terms as Sec. 6(5) does, that the procedure prescribed in regard to the original notification shall be followed if an area or an agriculture produce is to be excluded or included. The Gujarat legislature, having before it the model of the Bombay Act, made a conscious departure from it by providing for the publication of the notification in a newspaper and by substituting the word "shall" for the word "may". These are significant modifications in the statute which was in force in Gujarat for over 4 years from the date of reorgainsation till September 1, 1964. These modifications bespeak the mind of the legislature what was optional must be made obligatory.

18. We are therefore of the opinion that the notification issued under Section 6(5) of the Act, like that under Section 6(1), must also be published in Gujarati in a newspaper having circulation in the particular, area. This requirement is mandatory and must be fulfilled. Admittedly, the notification (Ex. 10) issued under Section 6(5) on February 16, 1968 was not published in a newspaper at all, much less in Gujarat. Accordingly, the inclusion of new varieties of agricultural produce in that notification lacks legal validity and no prosecution can be founded upon its breach.

19. Rule 3 of the Gujarat Agricultural Produce Markets Rules, 1965 relates specifically and exclusively to notifications "issued under Sub-Section (1) of Section 5 or under Sub-Section (1) of Section 6". As we are concerned with a notification issued under Sub-Section (5) of Section 6, we need not go into the question whether Rule 3 is complied with. We may however indicate that the authorities concerned must comply with Rule 3 also in regard to notifications issued under Sections 5(1) and 6(1) of the Act. After all, the rule is calculated to cause no inconvenience to the authorities charged with the duty of administering the Act. It only requires publication by affixing a copy of the notification at some conspicuous place in the office of each of the local authorities functioning in the area specified in the notification.

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20. The prosecution was conducted before the learned Magistrate in an indifferent manner. That is not surprising because the beneficent purpose of summary trials is almost always defeated by a summary approach. Bhailalbhai Chaturbhai Patel, an Inspector in the Godhra Agricultural Produce Market Committee, who was a material witness for proving the offence, said in his evidence that he did not know whether or not the notifications were published in any newspaper or on the notice board of the Godhra Municipality. The learned Magistrate acquitted the appellant holding that the prosecution had failed to prove beyond a reasonable doubt that the notifications were published and promulgated as required by law.

21. In appeal, the High Court of Gujarat began the operative part of its judgement with a wrong assumption that Ex. 9 dated April 19, 1962 was a "notification constituting the Godhra Market area". In fact Ex. 9 was issued under Section 4-A(3) of the Bombay Act as amended by Gujarat Act XXXI of 1961 declaring certain areas as "market proper" within the Godhra Market area. The High Court was really concerned with the notification, Ex. 10, dated February 16, 1968 which was issued under Section 6(5) of the Act and by which new varieties of agricultural produce like onion, ginger, sunhemp and jowar were added to the old list. The High Court set aside the acquittal by following the judgement dated February 12, 1971 rendered by A. D. Desai J. in Cr. Appeal 695 of 1969. That judgement has no application because it arose out of the Bombay Act and the question before Desai J. was whether Section 4(1) of the Bombay Act was mandatory or directory. That section, as noticed earlier provided that the notification "may" also be published in the regional languages of the area in a newspaper circulated in that area. The High Court, in the instant case, was concerned with Section 6(5) of the Act which has made a conscious departure from the Bombay Act in important respects. The High Court did not even refer to the provisions of the Act and it is doubtful whether those provisions were at all brought to its notice. Everyone concerned assumed that the matter was concluded by the earlier judgement of Desai J.

22. For these reasons we set aside the judgement of the High Court and restore that of the learned Judicial Magistrate, First Class, Godhra. Fine, if paid, shall be refunded to the appellant.

 Appeal allowed.

1974 CRI. L. J. 258 (V 80 C 99) "Krishi U. M. Samiti v. Mohanlal"

 MADHYA PRADESH HIGH COURT

(GWALIOR BENCH)

 Coram : 2 G. L. OZA AND N. C. DWIVEDI, JJ. ( Division Bench )

Criminal Appeal No. 51 of 1969, D/- 20 -9 -1973, from judgement of D.N. Bhargawa City Magistrate. 1st Class, Gwalior, D/- 21 -9 -1967.

Krishi Upaj Mandi Samiti, Lashkar, Appellant v. Mohanlal Khemehand, Respondent.

(A) M.P. Agricultural Produce Markets Act (19 of 1960), S.17, S.29, R.69.AGRICULTURAL PRODUCE - SALE - LICENSE - Is unlicensed sale of imported Mirchi etc. in notified area an offence ? Yes.

Notified agricultural produce includes, vide Notification No. 145/XIII dated 9- 6-1953. Mirchi, Dhania and Haldi and can be imported. Rule 69(2) imposes a restriction on sale of the goods in the intra. State market area without obtaining a licence. Therefore, failure to obtain a licence under Rule 69 is a breach of Section 17 and the person is liable for prosecution under S. 29. (Paras 7, 8)

(B) M.P. Agricultural Produce Markets Act (19 of 1960), S.32(3), R.69(3).AGRICULTURAL PRODUCE - COMPLAINT - SANCTION FOR PROSECUTION - Where the Mandi Committee authorises a particular person to file complaints on their behalf is it necessary to obtain prior sanction of the Committee before instituting prosecutions ? No.

Rule 69(3) does not provide that the Mandi Committee has to sanction the prosecution. Under Section 32(3) of M.P. Act (19 of 1960) no question of applying one's mind to the facts of the case before institution of a complaint arises. What the section requires is only a conferment of authority on somebody to institute a particular case or a class of cases. 1970 Cri LJ 492 (SC), 1968 Cri LJ 20 (Andh Pra). 1962 Jab LJ (SN) 350 and 1968 Cri LJ 1554 (Ker). Rel. on. (Para 15)

Swamisaran, for Appellant; J.P. Sharma, for Respondent.

Judgement

DWIVEDI, J. :- This is a complainant's appeal by grant of special leave challenging the order of acquittal dated 21-9-J967 under Section 17 read with Section 29 of the Madhya Pradesh, Agricultural Markets Act, 1960. (hereinafter referred to as the 'Act') recorded by the Additional District Magistrate (Judicial).

2. It is not disputed that a Mandi area has been established at Lashkar as per notification No. 145/XIII Indore, dated 9th June 1953 by the Commerce and Food Department for notified agricultural produce including Mirchi, Dhanis and Haldi. It is also not disputed that the respondent Mohanlal is a wholesale dealer in Dal Bazar. Inder Gani, Lashkar, carrying on business under the name and style "Mohanlal Shreechand." It is also not disputed that the respondent sells Kirana goods. Mirchi, Dhania and Haldi. The respondent admittedly did not obtain licence from the Mandi Committee Lashkar. The Mandi Committee Lashkar through its Accountant instituted a complaint against the respondent for contravention of Section 17 of the Act for dealing in Mirchi, Dhania and Haldi without obtaining a' licence from the Committee.

3. The respondent admitted that he was carrying on trade in Mirchi, Dhania and Haldi in Dal Bazar. Interganj, Lashkar and also admitted that he had not obtained any licence from the Mandi Committee. His contention. was that since he was purchasing the above produce from outside Madhya Pradesh he was not bound to obtain a licence.

4. After scrutiny of the evidence; the Additional District Magistrate (Judicial), Gwalior, acquitted the respondent on the following three grounds -

(1) That no notice was served on the respondent;

(ii) that the respondent purchased agricultural produce from the area outside Madhya Pradesh for sale at Lashkar.

(iii) The copy of the resolution Ex. P. 3 generally authorising the Accountant to lodge complaints in the competent court for contravention of the provisions of the M.P. Agricultural Produce Markets Act. 1960, by laws and rules framed thereunder was bad in law and hence the prosecution suffered for want of proper sanction.

5. We have heard Shri Swamisaran. Advocate for the appellant and Shri J.P. Sharma for the respondent. We are of the view that the appeal, for

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the reasons hereinafter stated, deserves to be accepted.

6. It is not disputed that there is a market area and market yard together with a Market Mandi in Gwalior. It is also not in dispute that the respondent is a wholesale dealer. According to the notification No. 145/XIII Indore. dated 9-6-1953, issued by the Commerce and Food Department, the State Government under Section 31 of the Madhya Bharat Krishi Upaj Mandi Act, Samvat 2009 notified the area of Lashkar Mandi and also notified the agricultural produce which included Mirchi. Dhania and Haldi. It is thus established that in Lashkar - Gwalior, a Mandi with defined area exists with notified agricultural produce. The Madhya Pradesh Agricultural Produce Markets Act. 1960, extended to the whole of Madhya Pradesh with effect from 15-10-1960. This Act was to provide for the establishment of the markets with a view to secure better regulation of buying and selling of agricultural produce in Madhya Pradesh. Under Section 3 of the said Act the State Government upon a representation made by the local authorities or by the growers of any agricultural produce within the area for which the market is proposed to be established or otherwise, by notification declare its intention to establish a market for regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification. Thus under Section 3 of the Act a notification to establish market was for regulating purchase and sale of the agricultural produce.

7. Rule 63 of the M.P. Agricultural Produce Markets Rules, 1962, provided that all notified agricultural produce brought into market proper for sale shall pass through the principal market yard or sub-market yards and shall not, subject to the provisions of sub-rule (2), be sold at any other place outside such yards. Sub-rule (2) of Rule 63 provided that such notified agricultural produce as may be purchased by the licensed traders from outside the market area in the course of commercial transactions may be sold anywhere in the market proper in accordance with the provisions of the bye-laws. Under Rule 69, any person desiring to practice his calling as a commission agent or trader within the market area in respect of any notified agricultural produce shall obtain a licence in this behalf from the market committee. Under sub-rule (2) of Rule 69, there shall be two main categories of traders, viz., wholesale traders and retail traders. It is further clear from Rule 71 that any person desiring to practice his calling as a broker, weighman, hamal, surveyor or ware houseman within the market area in respect of any notified agricultural produce shall obtain a licence in this behalf from the market committee. Rules 69 and 71 show that any person whether wholesale trader or a retail trader or a broker or weighman etc., desirous of practising his calling within the market area, in respect of any notified agricultural produce has to obtain a licence in this behalf from the market Committee. The respondent is admittedly a wholesale trader, and, therefore, if he desired to practise his catting as a 'trader' within the market area in respect of any notified agricultural produce, he had to obtain a licence from the market Committee.

8. The provisions of the Act covered both buying and selling of agricultural produce and the market was to be established for regulating the purchase and sale of notified agricultural produce. Section 3(5) of the Act, provided that notwithstanding anything contained in any enactment for the time being in force, no local authority or other person shall within the market area or within such distance therefrom as may be notified in the Gazette set up, establish, continue or use or allow to be set-up, established, continued or used, any place for the purchase or sale of any notified agricultural produce except under a licence granted by the prescribed authority in such manner and upon such conditions including payment of fee as may be prescribed. It is apparent that a licence is required both for purchase or sale. The respondent claimed exemption from obtaining licence on the ground that he had purchased the produce from outside Madhya Pradesh. There is no provision for a wholesale purchaser of agricultural produce from outside the State be exempted from taking a licence. Section 17 of the Act provided that subject to Rules made under Section 38, a Market Committee may provide by bye-laws for licensing of commission agents, traders, brokers, weighman etc. practising their calling, within the market area in respect! of a notified agricultural produce, on payment of a fee not exceeding such amount as may be prescribed. Sub-rule (2) imposed restriction on any person to operate in the market area without obtaining any licence. We are, therefore, of the view that the wholesale trader who purchases or sells any notified agricultural produce within his market are is required to obtain a licence from the Mandi Committee and since the respondent purchases or sells the notified agricultural produce including Mirchi. Dhania and Haldi, he was bound to obtain a licence and since he did not take any licence, he committed breach of Section 17

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and became liable for prosecution under Section 29 of the Madhya Pradesh Agricultural Produce Markets Act, 1960.

9. The Additional District Magistrate (Judicial) held that no notice of the intended prosecution was served on the respondent. We find no provision "in the Act or Rules or Bye-laws making the issue of notice a condition precedent for the institution of the complaint. The absence of service of notice, therefore, could not invalidate the institution of the complaint.

10. The Additional District Magistrate (Judicial) held that me authorisation to institute the complaint against the respondent granted by the Mandi Committee in favour of Laxman Kumar (P.W. 1) as per resolution No. 40 dated 21-1-1963 was bad in law. The Magistrate felt that the setting of criminal law in motion was an important work and the authority must apply its mind fully to the facts of the case and then decide each particular case on merits and demerits. He was, therefore, of the view that this type of general resolution passed in the year 1963 does not confer any right on the, complainant to file the complaint.

11. Section 32(3) of the M.P. Agricultural Produce Markets Act. 1960, read as under :-

"No court shall take cognizance of any offence punishable under this Actor any rule or any bye-law made thereunder other than an offence punishable under Section 30, except on the complaint of the Director or of the market Committee or of any person duly authorised in writing by the committee."

The above sub-rule only required that the court could take cognizance of the offence punishable under this Act or any Rule or any Bye-law made thereunder if the complaint was filed by the Director or by any person duly authorised in writing by the Committee. The resolution No. 40 dated 21-1-1963 authorised Shri Laxman Kumar Vijayyargiya offences arising out of the Act or Rules or Eye-law made thereunder. Sub-rule (3) does not state that the authority concerned should give sanction for the prosecution. The requirement was that a person duly authorised in writing by the Committee was competent to institute a complaint and in this case, we find that Shri Laxman Kumar (P.W. 1) was duly authorised in writing by the Committee.

12. We may refer to Section 20(1) of the Prevention of Food Adulteration Act. 1954. which reads as under :-

"(i) No prosecution for an offence under this Act shall be instituted except by or with the written consent of (the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or Special order by the Central Government the State Government or a local authority.)

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 12, if he produces in a court a copy of the report of the public analyst along with the complaint."

In dealing with Section 20 of the Prevention of Food Adulteration Act. 1954, the Supreme Court in Criminal Appeal No. 122 of 1967 : (reported in 1970 Cri LJ 492 SC) (Dhiansingh v. Municipal Board, Saharanpur) observed as under :-

"Mr. Garg, learned counsel for the accused, urged that a permission under Section 20 of the Prevention of Food Adulteration Act, 1954, to file a complaint under the provisions of that Act, was necessary. The fulfilment of that condition must be satisfactorily proved by the complainant before a Court can entertain the complaint. Without such a proof, the court will nave no jurisdiction to try the case. In support of that contention of his he sought to take assistance from the decision of the Judicial Committee in Gokulchand Dwarkadas v. The King. (1948) 49 Cri LJ 261 (PC) and Madan Mohansing v. State of U.P. (1954 Cri LJ 1656 (SC). Both those decisions deal with the question of the validity of sanctions given for the institution of certain criminal proceedings. The provisions under which sanction was sought in those cases required the sanctioning authority to apply its mind and find out whether there prosecutions. The Judicial Committee as well as this Court had laid down that in such cases, the court must be satisfied either from the order of sanction or from the other evidence that " all the relevant facts had been placed before the sanctioning authority and that authority had granted the sanction after applying its mind to those facts. The ratio of those decisions has no bearing on the facts of this case. Under Section 20 of the Prevention of Food Adulteration Act, 1954, no question of applying one's mind to the facts of the case before the institution of the complaint arises as the authority to be conferred under that provision can be conferred long before a particular offence has taken place. It is a conferment of an authority to institute a particular case or even a class of cases. That section merely prescribes that persons or authorities designated in that section are

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alone competent to file complaints under the statute in question."

13. In Public Prosecutor v. Thatha Rao AIR 1968 Andh Pra 17 : (1968 Cri LJ 20). while dealing with Section 20(1) of the Prevention of Food Adulteration. Act, the High Court of Andhra Pradesh interpreted the expression "authorised in. this behalf" and held that the expression cannot be given a restricted meaning, viz. authorization must be with respect to specific complaint. In order to relieve Municipal Council of the necessity of passing resolution every time offence under the Act is brought to its notice, it has been authorised to delegate the powers to institute prosecutions to a person and a general authorisation by it therefor b sufficient. The same view has been taken in Subbayyan Muthukomaran v. State of Kerala AIR 1968 Ker 330 = (1968 Cri LJ 554).

14. In Jagannath v. Municipal Corporation Gwalior 1962 Jab LJ (SN) 350. this Court while dealing with Section 20 of the Prevention of Food Adulteration Act observed as follows :-

"It was contended on behalf at the applicant that the consent required under Section 20 of Prevention of Food Adulteration Act must be a consent given after due application to the facts of the case. In the first place the words 'consent in writing' as used in Section 20 of the Act cannot be treated as synonymous with a 'sanction' in respect of which it has been held in several cases that it should be given only after due application of the mind of the sanctioning authority to the facts of the case. A consent is necessary only in order to avoid prosecution on insubstantial grounds."

15. In view of the above, the requirement of Section 32(3) of the M.P Agricultural Produce Markets Act. 1960 is that any person duly authorised in writing by the Committee could institute complaint and there is a resolution in writing authorising Shri Laxman Kuanar (PW-1) to institute complaints. Such a general authorisation, in our opinion is substantial and valid compliance with provisions of S. 32(3) of the Act. Such authorisation could not be treated on par with the provisions under which sanction is sought which requires the sanctioning authority to apply its mind and find out whether there was justification for instituting the prosecution. In this case as also in the case of the Prevention of Food Adulteration Act no question of applying one's mind to the facts of the case before institution of the complaint arises because what is required was a conferment of authority to institute a particular case or even a class of cases. We are, therefore, of the view that the Additional District Magistrate was definitely in the wrong in judging the authorisation in favour of Laxman Kumar (PW 1) in the context of sanction to prosecute. Disagreeing with the Additional District Magistrate (Judicial) we hold that the authorisation in Ex. P. 3 duly empowered Shri Laxman Kumar Vijayvargiya to institute the complaint and the prosecution is valid and competent.

16. For the reasons given above, we are of the view that the additional District Magistrate (Judicial) committed an error in interpreting the provisions of the Act. Rules or bye-laws made thereunder and thus recorded acquittal of the respondent on erroneous view of law. The acquittal of the respondent was thus unjustified and the respondent was liable for conviction for contravention of Section 17 read with Section 29 of the M.P. Agricultural Produce Markets Act, 1960. HP traded without obtaining any licence and. therefore, deserves substantial punishment.

17. In regard to sentence, on the facts and circumstances of the case, we think that a fine of Rs. 200/- or in default to undergo three months rigorous imprisonment shall be proper punishment to the respondent.

17A. In view of the above, we allow the appeal of the Krishi Upaj Mandi Samiti. set aside the order of acquittal and convict the respondent Mohanlal under Section 17 read with Sec. 29 of the M.P. Agricultural Produce Markets Act, 1960, we sentence him to pay a fine of Rs. 200/- or in default to undergo three months rigorous imprisonment.

 Appeal allowed.

1974 CRI. L. J. 1210 (V 80 C 382) "P. G. Bewoor v. Ramachandra"

 KARNATAKA HIGH COURT

 Coram : 2 SANTHOSH AND NESARGI, JJ. ( Division Bench )

Criminal Appeals 258 to 262 of 1972, D/- 30 -8 -1973.

P.G. Bewoor, Appellant v. Ramachandra Ananta Rao and others, Respondents.

Prevention of Food Adulteration Act (37 of 1954), S.7(iii) - FOOD ADULTERATION - LICENSE - AGRICULTURAL PRODUCE - Failure to take necessary licences under rules under the Act - Licences taken under S.8 of Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966) not sufficient.

Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.8.

Brief Note :- Whenever a person desires to sell, stock or exhibit for sale or distribute any food falling within the provisions of Rule 50 of the Prevention of Food Adulteration Rules 1955, it is incumbent upon him to take a licence as provided in Rule 50 and Rules 3 and 9 of the Mysore Prevention of Food Adulteration Rules (1960). The object of the Marketing Act as is clear from the Preamble is for better regulation of buying and selling of agricultural produce and the establishment and administration of markets for such agricultural produce. It is not all agricultural produce that would be covered by the provisions of the Marketing Act. Only those items as notified off and on by the State Government that would be covered by the Marketing Act. The prohibition contained in Section 8 of that Act which operates in spite of anything contained in any other law is only in regard, to the establishment of any place in a market area for the purpose of marketing the notified agricultural produce falling within the ambit of the marketing Act. That prohibition has nothing to do with the lawful exercise of the powers of the local authority in regard to the issuing of licences, etc., for other purposes. Hence the use of notwithstanding anything contained in any other law for the time being in force' in the said Section cannot be said to provide exemption to the respondents from obtaining licences under Rule 50 of the Central Rules and Rule 9 of the Mysore Rules, especially when such licences have nothing to do with the object contained in the provisions of Section 8(1)(a) of the Marketing Act. (Paras 5-A, 7)

B.V. Deshpande, for Appellant; A.K. Lakshmeshwar, for Respondents.

Judgement

NESARGI, J. :- These appeals are filed by the Sanitary and Food Inspector, Hubli-Dharwar Municipal Corporation, Dharwar, against the orders of acquittal of the respondents in all these appeals passed by the J.M.F.C., 1st Court, Dharwar, in C.C. Nos. 2327, 2328, 2329, 2330 and 2331 of 1971 respectively.

2. The appellant had prosecuted the respondents under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) on the allegations that they were selling articles of food falling within the provisions of the Act, but had not taken any licences for doing so under Rule 50 of the Prevention of Food Adulteration Rules 1955 (hereinafter referred to as the Rules). It was alleged that each one of the respondents had committed offence under Section 7(iii) of the Act punishable under Section 16(1)(a)(ii) of the Act.

3. The respondents pleaded that it was not the law that they had to take licences as complained by the appellant because they were doing their business in the Market Yard after taking necessary licences from the Market Committee established under the Mysore Agricultural Produce Marketing (Regulation) Act, 1966. (hereinafter referred to as the Marketing Act). They further contended that they and other business people doing similar business have been operating in the market area since many years and no such licences under Rule 50 of the Rules had been insisted upon and therefore, they were not required to take any such licences as complained by the appellant.

4. The learned Magistrate after looking into, the relevant provisions, of the Act and the Rules and Section 8(1)(a) of the Marketing Act, concluded that in view of the non obstante clause in Section 8(1)(a) of the Marketing Act, it was not incumbent on the respondents to take licences under Rule 50 of the Rules, and, therefore, no offence had been committed by these respondents. It is the correctness of this order that is challenged by the appellant in these appeals.

5. The facts concerned in these appeals are undisputed. It is only the interpretation of different provisions mentioned above that arises in these appeals. Hence, we are disposing of these appeals by a common judgement.

5-A. Rule 50 of the Rules lays down that no persons shall manufacture, sell, stock, distribute or exhibit for sale any of the articles of food mentioned therein except under a licence. Clause (f) of the Rule mentions

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pulses, grams, nuts, starches, sago, suji, flours, such as maida besan and articles made out of flour including bakery products. It is undisputed that these respondents have been dealing in pulses, grams, nuts, etc, in their establishments in the market which has been established under the Marketing Act. It is also not disputed that they have not taken licences under this Rule for exhibiting these articles for sale, and that these articles are articles of food falling within the provisions of the Act. The rules framed by the State of Mysore and called as the Mysore Prevention of Food Adulteration Rules, 1960 (hereinafter referred to as the Mysore Rules) are in supplementation of the Rules. Rule 3 of the Mysore Rules states who is the authority to issue licences under Rule 50 of the Rules and provides the necessary procedure. Rule 9 of the Mysore Rules states that no person shall sell, stock and exhibit for sale or distribute any food specified under Rule 50(1) of the Rules without a valid licence issued under the Mysore Rules. It is therefore, abundantly clear that whenever a person desires to sell, stock or exhibit for sale or distribute any food falling within the provisions of Rule 50 of the Rules it is incumbent upon him to take a licence as provided in Rule 50 of the Rules and Rules 3 and 9 of the Mysore Rules. The respondents having admittedly not taken any such licences, have therefore violated these Rules.

6. Section 7(iii) of the Act lays down that no person shall himself or by any person on his behalf manufacture, for sale, or store, sell or distribute any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence. This provision makes it manifest that the respondents have committed an offence by not taking the requisite licences as mentioned above. Section 16(1)(a)(ii) of the Act lays down that if any person whether by himself or by any other person on his behalf stores, sells or distributes any article of food other than the adulterated or misbranded food or food the sale of which is prohibited by the Food (Health) Authority in the interests of public health in contravention of any of the provisions of the Act or of any rule made thereunder, is punishable with imprisonment for a term which shall not be less than six months, but which may extend to six years, and with a fine which shall not be less than one thousand rupees. It has been already shown that these respondents have committed the offence under Section 7(iii) of the Act by not taking licences under the Rules and the Mysore Rules. This offence is therefore punishable under Section 16(1)(a)(ii) of the Act. Proviso (ii) to Section 16(1) of the Act vests certain discretion in exercise of which the Court may for adequate and special reasons to be mentioned in the judgement, impose a sentence less than the one mentioned above.

6(a). Taking up the contention put forward on behalf of the respondents that in view of Section 8 of the Marketing Act, they are not required to take any such licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules, and therefore, they have not committed any offence as complained by the appellant, we find, as is shown by the material on record in these cases, that the authorities concerned appear to have entertained that view till recently and therefore had not insisted on these respondents and other businessmen similarly situated to take licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules. But what arises for consideration is the correct interpretation of Section 8 of the Marketing Act.

7. Section 8(1)(a) of the Marketing Act is the relevant provision and it reads as follows :-

"(1) After the market is established -

(a) no local authority shall notwithstanding anything contained in any law for the time being in force, establish, authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of any notified agricultural produce :

Provided that a local authority may establish or continue any place for retail sale of any notified agricultural produce subject to the condition that no market functionary shall operate in such place except in accordance with the provisions of this Act, and the rules and the bye-laws and standing orders of the market committee."

The object of the Marketing Act as is clear from the preamble is for better regulation of buying and selling of agricultural produce and the establishment and administration of markets for such agricultural produce. It is not all agricultural produce that would be covered by the provisions of the Marketing Act. Only those items as notified off and on by the State Government that would be covered by the Marketing Act. Before establishing a market, a notification has to be issued under Section 3 of the Marketing Act and then a decision taken. What is to happen on establishment of a market established in regard to the marketing of notified agricultural produce that was being done under the control of the local authority as defined under Section 2(17) of the Marketing Act, is laid down in Section 8 (1) (a) of the said Act. A plain reading of the above provision makes it crystal clear that after the establishment of the market, a local authority which in these appeals is the Hubli-Dharwar Municipal Corporation will be prohibited from establishing, authorising or continuing or allowing the already established arrangements to continue in regard to any place in the market area for marketing of the notified agricultural produce. In case of retail sales of notified agricultural produce, the local authority is permitted to establish

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or continue any place for such purpose in the market area, subject to the condition that no market functionary shall operate except in accordance with the provisions of the Marketing Act and the Rules made thereunder and bye-laws and standing orders of the market Committee. It is further plain that the prohibition contained in Section 8 which operates in spite of anything contained in any other law is only in regard to the establishment of any place in a market area for the purpose of marketing the notified agricultural produce falling within the ambit of the marketing Act. That prohibition has nothing to do with the lawful exercise of the powers of the local authority in regard to the issuing of licences, etc., for other purposes. If a person wants to have an establishment in a market area i.e., after the establishment of the market under the Marketing Act, he has under the provisions of the Marketing Act and rules thereunder and also bye-laws and standing orders of the concerned market committee, to take necessary licence or licences from the Market Committee; such licence or licences as is clear from the provisions of the Marketing Act and the rules pertains to establishment of a place of business by such a person in the market area. The licence provided in Rule 50 of the Rules and Rule 9 of the Mysore Rules is only in regard to the sale of articles of food falling within the provisions of the Act to facilitate the enforcement of the provisions of the Act. The object of the Act is to see that proper control is exercised by the concerned authorities functioning under the Act in regard to the articles of food for the purpose of ensuring that adulteration of such articles is not made and if made the offenders are punished. When it is clear that Section 8 of the Marketing Act deals only with the establishment or continuation of the establishment already made, of a place in a market area for the marketing of any notified agricultural produce, we are unable to see how the use of he non obstante clause notwithstanding anything contained in any other law for the lime being in force' in the said Section provides exemption to the respondents from obtaining licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules, especially when such licences have nothing to do with the object contained in the provisions of Section 8(1)(a) of the Marketing Act. Sri A.K. Lakshmeshwar, learned Advocate appearing on behalf of the respondents, strenuously urged that if a person conducts his business in a market area, he will have to take two licences, one from the Market Committee and another from the local authority, in case he has to sell articles of food, and that would be a great hardship on such a person. He also contended that to ask a person to take two licences for the sale of the same commodity would be an absurd proposition. For the reasons already mentioned in regard to the scope of Section 8 of the Marketing Act and different provisions of the Act, and the Rules thereunder, we do not see any force in this contention. If it so happens that an article, in which a person has to deal, falls within the ambit of different provisions of different Acts and Rules, he has got to comply with those provisions and secure the necessary licences. We do not see any absurdity therein.

8. In view of the foregoing reasons, we are of the opinion that the offence complained of has been satisfactorily proved as against the respondents and they are punishable under Section 16(1)(a)(ii) of the Act. We have already pointed out that till recently the authorities concerned appear to have been under the impression that it was not necessary for the respondents and other businessmen similarly situated to take licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules as they appeared to be exempted by Section 8(1)(a) of the Marketing Act. In view of the fact that these persons had gone on conducting their business without taking such licences and especially in view of the further fact that the law did not appear to have been settled till now, we are of the opinion that proviso (ii) to Section 16 of the Act is applicable and a lenient view is to be taken. It is particularly to be taken into consideration that the orders of acquittal passed in favour of the respondents are being set aside nearly about 1½ years after the said orders. In view of these adequate and special reasons, we hold that the ends of justice would be satisfied if each one of the respondents is sentenced to pay a fine of Rupees 25/- only and in default to undergo simple imprisonment for one week.

9. We, therefore, allow these appeals and set aside the orders of acquittal in each of the said criminal cases. We convict each one of the respondents for having committed the offence under Section 7 (iii) of the Act read with Rule 50 of the Rules and punishable under Section 16(1)(a), (ii) of the Act. We sentence each one of the respondents to pay a fine of Rs. 25/- and in default to undergo simple imprisonment for one week.

 Appeals allowed.

1973 CRI. L. J. 123 (V. 79 C.45) "State v. Shivbalak"

 BOMBAY HIGH COURT

 Coram : 1 GATNE, J. ( Single Bench )

Criminal Appeal No. 749 of 1970 (by State) and Criminal Revn. Appln. No. 500 of 1970, D/- 8 -11 -1971.

State, Appellant v. Shivbalak Gawrishankar Dube, Respondent.

Maharashtra Agricultural Produce Markets (Regulation) Act (20 of 1964), S.6(1) - AGRICULTURAL PRODUCE - Grass which spontaneously grows on the lands without any human labour or skill is also agricultural produce and the person dealing in such grass is required to obtain licence u/S.6(1).

Maharashtra Agricultural Produce Markets (Regulation) Act (20 of 1964), S.2(1)(a). (Paras 8, 10)

Cases Referred : Chronological Paras

1960 Cri LJ 168 : AIR 1960 SC 96, Chimanlal v. State of Bombay 6

AIR 1957 SC 768 :1958 SCR 101, Income Tax Commr. v. Benoy Kumar 8, 10

AIR 1932 Bom 397 : 34 Bom LR 778, Moreshwar v. Umrao Singh 8

AIR 1922 Bom 146 : 23 Bom LR 796, Hiralal Ravchand Shah v. Prabhulal Sakhidas 8

In Cri. Appeal No. 749 of 1970 :-

V.T. Gambhirwala, Asst. Govt Pleader for the State. Dr. B.R. Naik, for Respondent.

In Cri. Revn. Appln, No. 500 of 1970:-

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S.J. Deshpande, for Complainant, V.T. Gambhirwala, Asst. Govt. Pleader, for the State, B.R. Naik, for Accused.

Judgement

JUDGMENT :- This appeal has been filed by the State with a view to challenge the order of acquittal passed by the Judicial Magistrate, in Criminal Case No. 363 of 1969 on his file.

2. The complaint in the Court below was filed by one Ratnakar Digamber Khulge, the Secretary of the Agricultural Produce Market Committee at Palghar. The allegation of the complainant was that the accused who was a resident of Navli, Taluka Palghar, was trading in grass and paddy straw and since Palghar Taluka was declared to be a market area as far back as 12-8-1960 and a Market Committee was constituted at Palghar on 18-7-1963, it was incumbent on the accused to obtain the necessary licence under Section 6 (1) or the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. It was said that he had actually obtained such a licence for the year 1967-68, but thereafter he continued to trade without obtaining the requisite licence for subsequent years and thereby incurred the penalty prescribed by Sections 46 and 52 of the aforesaid Act.

3. The defence of this accused was that he was not trading in agricultural produce as defined in Section 2 (1) (a) of the Act and since he was merely dealing in grass that was spontaneously grown on his own lands, such grass did not come within the definition of "agricultural produce" and it was consequently not necessary for him to obtain the licence prescribed by Section 6 (1).

4. This contention of the accused having found favour with the learned Magistrate, the learned Magistrate passed an order of acquittal in his favour and that order is the subject-matter of this appeal. The unsuccessful complainant, on his part, has filed Criminal Revision Application No. 500 of 1970 for the purpose of challenging the same order of acquittal.

5. The sole question that falls to be decided in this appeal, therefore, is whether it was incumbent on the accused to obtain the requisite licence under Section 6 (1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. If it was it would be obvious that by trading in grass without obtaining the licence, he did incur the penalties prescribed by Sections 46 and 52 of the Act.

Section 6 (1) provides : -

"Subject to the Provisions of this section and of the rules providing for regulating the marketing of agricultural produce to any place in the market area, no person shall, on and after the date on which the declaration is made under sub-section (1) of Section 4, without or otherwise than in conformity with the terms and conditions of, a licence (granted by the Director when a Market Committee has not yet started functioning; and in any other case, by the Market Committee) in this behalf :-

(a) use any place in the market area for the marketing of the declared agricultural produce, or

(b) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce."

Section 46 lays down :-

"Whoever in contravention of the provisions of sub-section (1) of Section 6 uses any place in the market area for marketing of any agricultural produce, or operates as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity, without a valid licence, shall on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both; and in the case of a continuing contravention, with a further fine which may in the case of contravention of clause (a) of sub-section (1) of Section 6 extend to one hundred rupees; and in any other case to fifty rupees per day, during which the contravention is continued after the first conviction."

Section 52 provides :-

"Whoever contravenes any provision of this Act or any rule or bye-law thereunder shall, if no other penalty is provided for the offence, be punished with fine which may extend to two hundred rupees."

6. For the purpose of appreciating all these provisions, it is, in the first place, necessary to consider whether the accused was dealing in agricultural produce. As to what "agricultural produce" means must in this case be decided in the light of the express definition contained in the Act. Since the expression "agricultural produce" has been specifically defined in Section 2(1)(a), it is not necessary to go to the dictionary or popular meaning of that expression. In Chimanlal v. State of Bombay, AIR 1960 SC 96, the question that fell to be considered was whether the accused in that case, who was a trader carrying on business in cotton at Broach, could be regarded as person trading in "agricultural produce" as defined in S. 2 (1) (i) of the Bombay Agricultural Produce Markets Act, 1939. The contention urged on the side of the accused was that the

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Act and the Rules framed thereunder did not contravene the provisions of R. 65 (1) of the Rules framed under that Act. Their Lordships pointed out that the answer to that contention clearly turned upon the interpretation of Clause (i) of S. 2 of the Act read along with the relevant item or items in the Schedule. It is, therefore, clear that in the present case we must also decide the question whether the accused in this case was or was not dealing in agricultural produce with reference to the definition contained in Section 2 (1) (a) of the Maharashtra Agricultural Produce Marketing Regulation) Act, 1963.

7. According to that definition, "agricultural produce" means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisiculture and forest specified in the Schedule and entry No. XI in that Schedule refers to grass and fodder. There can, under the circumstances, no doubt, on a plain reading of this definition with the Schedule, that grass and fodder are included in the definition of "Agricultural Produce".

8. On the side of the accused, it was urged that "grass" contemplated by the definition in question must be "grass" raised or grown with human labour or skill and not "grass" which spontaneously grows on the lands without any human labour or skill and in support of this submission reliance was sought to be placed on the observations of their Lordships of the Supreme Court in I. T. Commr. v. Benoy Kumar, AIR 1957 SC 768. That case has been decided with reference to Section 2 (1) of the Income-tax Act and the expression "agricultural income" has been considered by their Lordships. Their Lordships have pointed out that the term "agricultural income" having been defined in the Constitution itself in Article 366(1) to mean agricultural income as defined for the purposes of enactments relating to Indian Income-tax Act the Court has got to look to the terms of definition itself in Section 2(1) of the Income-tax Act and construe the same regardless of any other considerations, but it has further been pointed put that the terms "agriculture" and "agricultural purpose" used in the definition of 'agricultural income' in Section 2 (1) not having been defined in the Income-tax Act, the Court must necessarily fall back upon the general sense in which they have been understood in common parlance and while considering that question, it has been observed that products which grow wild on the land or are of spontaneous growth not involving any human labour skill upon the land are not products of agriculture and the income derived therefrom is not agricultural income. These observations cannot, however, be of any assistance to the accused, because so far as the present case is concerned, the term "agricultural produce" has been defined by Section 2 (1) (a) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, to which a reference has already been made, in view of that definition, it is not open to this Court to consider what the meaning of that expression is in common parlance. The decisions of this Court in Hiralal Ravchand Shah v. Prabhulal Sakhidas, AIR 1922 Bom 146, and Moreshwar v. Umrao Singh 34 Bom LR 778 : (AIR 1932 Bom 397), are for the same reason of no assistance to the prosecution in this case. In the first of these cases, a Division Bench of this Court has held that the term "Agricultural" as defined in Section 2 of the Dekkhan Agriculturists, Relief Act, includes a person who derives a greater part of the income from the fruits of the mango trees, even though he bestows no care or attention and labour on them. The question was whether a person deriving income from mango trees which were already fully grown and received no attention from such person, could be said to be earning his livelihood on the produce of the land and the finding of the Court was that such income was income from produce of the land and the test was whether the income was derived from the produce of the land and not what was the actual quantum of labour which had to be bestowed in getting in the crop. Following that decision, another Division Bench of this Court in the subsequent case held that person who grows grass on land taken on lease by him and makes his living out of the sale of the grass is an agriculturist as defined by Section 2 of the Dekkhan Agriculturists' Relief Act 1879. Baker J; while delivering his Judgment observed :-

"There cannot be the slightest doubt that grass is agricultural produce and I do not think that there can be any doubt that a person who sells grass provided it is produced by his own land and makes his living thereby would be regarded as an agriculturist."

As I have already pointed out, it is unnecessary to refer to these decisions at any further length, because in the present case we have to decide the meaning of the expression "agricultural produce" solely with reference to the definition contained in S. 2 (1) (a) read in conjunction with the Schedule and if that is done, there can be no doubt that "agricultural produce" does include grass.

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9. The only question is whether there is warrant for saying that the 'grass' mentioned in the Schedule is 'grass' which is raised with the aid of human skill or labour. The submission of Dr. Naik is that grass which spontaneously grows on lands is not contemplated by this definition. Since grass has not been defined in the Act, it is necessary to refer to the dictionary meaning of that expression. In Murray's Oxford English Dictionary, 1901 Edition, "grass" has been defined as meaning "herbage in general, the blades or leaves and stalks of which are eaten by horses, cattle, sheep, etc." In Webster's New International Dictionary, "grass" has been defined as meaning "in the widest sense, green herbage affording food for cattle or other grazing animals, especially that of plants belonging to the families Poaceae cyperaceae and Juncaceae, in which the leaves have narrow and spear shaped blades." In Corpus Juris Secundum, Volume 38, "grass" has been defined as meaning "in common usage, the green plants on which cattle and other beasts feed; any herbage that serves for pasture. There is, therefore, nothing in either of these definitions to indicate that the normal connotation of the term "grass" is confined to "grass" raised with the aid of human labour or skill. In the absence of any qualifying words all types of grass, whether grass which grows spontaneously on the lands or grass raised with human labour or skill, would be included in the expression "grass" appearing in the Schedule of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963.

10. The argument of Dr. Naik at the Bar was that since we are construing penal provisions in the Act, the expression "agricultural produce" must be strictly considered. There Dr. Naik is clearly right, but I have construed the definition strictly and even on a strict construction of that definition there can be no doubt that the definition does include "grass". Since "grass" has nowhere been defined we must as was done by the Supreme Court in AIR 1957 SC 768, fall back upon the general sense in which that expression has been understood in common parlance, and in the light of the definitions contained in the three Dictionaries, it seems to me that there is no warrant for limiting the expression "grass" to "grass" raised with the aid of human laboour or skill.

11. Once it is realised that "grass" spontaneously growing on the lands is also "grass" falling within the ambit of the definition contained in Section 2 (1) (a) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, the accused could not claim an exemption in respect of the licence by saying that he was merely trading or dealing to grass spontaneously growing on lands.

12. In spite of this view of the matter, the prosecution must, I think, fail for want of satisfactory evidence to show that during the year 1968-69 onwards, the accused in fact was dealing in grass. On this question there is no other evidence beyond the word of P. W. 1 Ratnakar Khulge, the Secretary of the Market Committee, and his evidence shows that he has no personal knowledge about the facts stated by him. On his own showing, he made inquiries; with whom inquiries were made were not examined in the Court below. One Inspector Pethe is also said to have made certain inquiries and submitted a report, but strangely enough Pethe, although present in Court, was not examined in the Court below. The accused in his written statement at Ex. 20 has denied that he was dealing in grass during the relevant period and since the prosecution led no evidence to establish its case, it is difficult to say that the fact of the accused having been a trader in grass in the relevant period is satisfactorily established. Merely because in 1967-68 the accused had obtained the necessary licence for trading in grass, it does not by any means follow that even during the subsequent years he continued to follow that avocation. The learned Magistrate was under the circumstances right in coming to the conclusion that the prosecution had failed to establish that during the relevant period the accused was in fact dealing in grass. Therefore, although the learned Magistrate was not right in taking the view that "grass" spontaneously growing on lands did not come within the purview of the definition of "agricultural Produce" in terms of Section 2 (1) (a) of the Maharashtra Agricultural Produce Marketing (Regulation) Act 1963, the accused was entitled to an acquittal on the ground that the prosecution had failed to establish its case on the merits.

13. This appeal consequently fails and is dismissed and the order of acquittal passed in favour of the accused by the Court below is confirmed. In view of the order in the Criminal Appeal, no separate order is passed on the Criminal Revision Application.

 Order accordingly.

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1968 CRI. L. J. 1227 (Vol. 74, C. N. 347) "Wamanrao v. Amrutlal"

 BOMBAY HIGH COURT = AIR 1968 BOMBAY 336 (V 55 C 57)

(AT NAGPUR)

 Coram : 2 ABHYANKAR AND PADHYE, JJ. ( Division Bench )

Criminal Appeal No. 46 of 1967, D/- 18 -10 -1967.

Wamanrao Motiramji Masodkar, Complainant, Appellant v. Amrutlal Gulabchand, Accused and another, Respondents.

(A) C.P. and Berar Agricultural Produce Market Act (29 of 1935) - AGRICULTURAL PRODUCE - LICENSE - Rules under - R.33(1) and (2) - Person trading through broker in respect of agricultural produce - Must take trader's licence.

Though Rule 33(1) and (2) permits the same person to be a trader and take a trader's licence and also to be a broker if he takes a broker's licence, it does not mean and cannot possibly be intended to mean that whenever transactions are effected through the agency of broker, the trader who puts such transactions through the agency of the broker need not take a licence. What is intended to be regulated is a trading activity in agricultural produce and that must mean regulating the activities of both purchasers and sellers provided they are traders within the market area. (Para 8)

(B) C.P. and Berar Agricultural Produce Market Act (29 of 1935), S.19 - AGRICULTURAL PRODUCE - Inspector can initiate prosecution for contravention of provisions of Act, if authorised by Market Committee.

Section 19 makes a special provision for initiation of prosecution by any person which may include the Chairman, Vice Chairman, or any officer or servant of the Market Committee, the only condition being that such person shall be duly authorised by the Market Committee in this behalf. When the Inspector was duly authorised by the Market Committee he must be held to be fully competent to institute proceeding for the committee. (Para 11)

J.N. Chandurkar, for Appellant; R.N. Deshpande, for Respondent No. 1; P.G. Palsikar, Honorary Asst Govt. Pleader, for Respondent No. 2 (State).

Judgement

ABHYANKAR J. :- This appeal raises an interesting question regarding interpretation of Rule 33 of the rules framed under the C. P. and Berar Agricultural Produce Market Act, 1935 (Act No. XXIX of 1935).

2. The appellant is an Inspector in the employment of the Grain Market Committee, Amravati, which has been duly constituted under the provisions of the C. P. and Berar Agricultural Produce Market Act, 1935. Section 3 of this Act enables the provincial Government to declare by a notification any place or market as a market for sale or purchase of agricultural produce. Every such notification has to define the limits of the market. Accordingly, a notification was issued on 27th October, 1956 for defining the limits of the market under Agricultural Produce Market Act at Amravati. The market yard is the area included within the defined limits stated in this notification, and the second paragraph of the notification says that the market proper shall include market yard and land and buildings within a radius of one mile from the market yard.

3. The appellant was authorised by the market Committee under Section 19 of the Act to institute the present proceedings by way of a complaint against respondent no. 1. The complaint is that respondent no. 1 is a dealer or trader in agricultural produce in Amravati, that every trader or dealer in agricultural produce in Amravti is required to obtain a licence for such trade from the Committee and that respondent no. 1 has not obtained such a licence. It was further alleged that the accused purchased through the Adat of one Harinarayan Bhagirath, a grain broker, 120 bags of groundnut on 14-11-1964. A copy of the bill relating to this transaction is on record as Ex 14. It shows that the respondent is a purchaser of this quantity of groundnut, that one Harikisan Mundada of Udkhed was the seller, and the transaction was brought about through the brokerage or agency of Messrs Harinaryan Bhagirath, grain and pulse broker. Inasmuch as respondent no. 1 has not obtained licence as a licensed trader entitled to make purchase or sale in the market area, he was prosecuted under a complaint dated 3-1-1966. The respondent on appearing in obedience to the notice admitted that Harinarayan Kalantri firm had purchased groundnuts on 14-11-1964 and sold the same to him at Amravati under bill no. 16, and that the firm of brokers had collected Adat, i. e. commission, in respect of the transaction from him. In a further answer respondent no. 1 stated that he had purchased the above bags from the commission agent and that he was not required to hold a licence for making such purchase. The reason given was that his commission agent was holding the necessary licence and therefore he was not required on a proper construction of the rules, to hold the licence. This contention has found favour with the learned Magistrate who has acquitted the first respondent. Against this acquittal the complainant asked for leave to appeal and leave having been granted the matter is now before us in appeal against acquittal.

4. In this appeal the appellant challenged the interpretation of the rules and especially the effect of sub-rule (4) of R. 33 of the rules on the finding of the Magistrate recorded as follows:-

"It is an admitted fact that M/s Harinarayan Bhagirath made alleged purchases as commission agent acting for and on behalf of the accused. In other words it may be said that the accused did not directly

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make alleged purchases on the Market yard, but such purchases were made for and on his behalf by his commission agent who was already a registered trader and holding necessary licence ........."

The appellant challenges the correctness of this view.

5. In order to understand the nature of the controversy certain provisions of the C. P. and Berar Agricultural Produce Market Act and the rules framed thereunder are required to be examined. The preamble of the Act shows that the legislation is put on the statute book to provide for the establishment and better regulating of recognised open markets for the sale and purchase of agricultural produce other than cotton in this region. Section 3 provides for establishment of market, and Section 4 for a Market Committee. Under Section 5 power is given to the Government to make rules and, among other matters, rules can be made under sub-clause (vii) of sub-section (2) of Section 5 for grant of licence by a market committee to traders, brokers, weighmen measures surveyors, warehousemen and other persons using the market, and fixing the fees leviable by them, the form in which and the conditions under which such licences should be granted and the fees to be charged for such licences. Under Section 19 of the Act provision is made for institution of prosecutions and under that section prosecutions under the Act may be instituted by any person duly authorised in writing by the Market Committee in this behalf. Under sub-section (3) of Section 5, which gives the rule-making power to the Government, it is further provided that any such rule may, when necessary provide that contravention thereof or of any of the conditions of the licence issued thereunder shall be punishable on conviction by a competent Magistrate, with fine which may extend to five hundred rupees.

6. Rules have been framed by the Government under Section 5 of the Agricultural Produce Market Act. Rule 5(1) provides that all persons engaged in purchasing or selling agricultural produce in the market, including adatyas, who have been registered as traders under Rule 33, shall form the traders electorate and shall be qualified to be elected as representatives of the traders on the committee. The rule does not apparently define as to who can be called 'a trader'. Provision for taking licence is made in Rules 33, 38 and 46 for licence to traders, brokers, weighmen etc. Rule 33 is as follows:-

" 33(1) (i) Any trader in agricultural produce shall, on application at the office of the committee, be entitled to have his name registered as a trader on his executing an agreement in such form as the Committee may prescribe, agreeing to conform to the Market rules, and on his paying such fee as the Committee, subject to the provision of clause (ii), with sanction of the Collector may fix in that behalf, according to the class of the Market as determined under Rule 61.

(ii) The fee to be levied by Committee under Clause (1) shall,

(a) in the case of retail traders, be not less than Rs. 15/- and not more than Rupees 45/- per annum;

(b) in the case of wholesale traders, be not less than Rs. 50/- and not more than Rs. 200/- per annum.

(iii) Any Adatya as defined in the Explanation to Rule 5(1) shall on application at the office of the Committee be entitled to have his name registered as a trade on his executing an agreement in such form as the Committee may prescribe, agreeing to conform to the market rules, and on his paying such fee, not less than Rs. 15/- and not more than Rs. 45/- per annum, if he is a retail trader and not less than Rs. 50/- and not more than Rs 200/- per annum, if he is a whole sale trader, as the Committee with previous sanction of the Collector, may from time to time prescribe:

Provided that the Committee may refuse to register an adatya as a trader for any reasonable cause to be recorded by it in writing.

(iv) For the purposes of Clauses (ii) and (iii);

(a) a retail trader means a trader who sells or purchases agricultural produce in quantities not exceeding 15 Bengali Maunds per day;

(b) a wholesale trader means a trader who is not a retail trader.

(2) Every person registered as a trader shall be granted a licence in such form as the committee may prescribe without payment of an additional fee.

(3) Every registration shall remain in force from the date on which it takes place until the 30th of September following and may be renewed for each succeeding year on payment of the prescribed fee.

(4) No person shall buy or sell agricultural produce within the market proper unless he is registered as a trader provided that an agriculturist may sell his own agricultural produce without such registration.

(5) An appeal shall lie to the Collector against the committee's orders under this rule, if it is presented within fifteen days from the date of such order."

7. It will be seen that the literal interpretation of sub-rule (4) of Rule 33 would mean that no person can buy or sell agricultural produce within the market proper unless he is registered as a trader, though under the proviso to this sub-rule itself an agriculturist may sell his own agricultural produce without registration. The first question therefore that falls for determination is which kind of sale or purchase transactions within the market proper are intended to be regulated by requiring licence to be taken for such purchase or sale. It is

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difficult to hold that the rules intend every person or any person who wants to purchase any quantity of agricultural produce or sell is required to take a licence simply because the transaction of sale or purchase takes place within the market proper. What is intended to be regulated under the licence and the rules is trading activity in agricultural produce in the market area. It is therefore difficult to hold that the sale or purchase by individuals for their own consumption and which is not part of a trading activity of such person, is required to be protected by a trading licence. The licence that is required for purchase and sale is to act as a trader. It is thus clear that even in respect of sale or purchase, only that person who trades in the agricultural produce concerned whether by way of purchase or sale, is alone required to obtain a licence and such a licence is called trader's licence. It is also clear that a broker or an adatya is also entitled to have his name registered as a trader, and on payment of requisite fee to obtain a trader's licence required to be taken by a trader. Such a licence obtained by an adatya is not to be confused with the licence required to be taken by a person who wants to practise as a broker in the market. Under Rule 38 no person shall practise as a broker without obtaining a licence from the committee. Even though, therefore, a broker, may be entitled to have himself registered as a trader, if he intends to make purchase in his own name the necessity of traders to be armed with licences is not obviated because their transactions are carried through brokers. The argument that has found favour with the Magistrate is that because a broker is entitled to make purchases for his constituent, the rules apparently do not require such constituents themselves to take licences as traders. In our opinion rules do not yield such a construction. What is intended to be regulated by Rule 33(1) is the trading activity of a person with respect to agricultural produce within the market. Whether or not the trading activity is carried on by a person by making purchases and sales through the agency of adatya, that cannot possibly relieve such a person as a trader from the obligation to take licence and to be registered as a trader with the Market Committee. Thus, the crucial question that falls for decision, whenever it is alleged that a person has made a purchase or sale without a licence in the market area, is whether such person is a 'trader'. In the instant case on the material on record we do not find a clear finding recorded by the Magistrate whether or not respondent no. 1 was a trader trading in agricultural produce within the market area concerned.

8. The learned counsel appearing for the respondent no. 1 has suggested that so to construe Rule 33(1) and (2) would create difficulties in respect of large class of upcountry sellers who may place orders for purchases or sales of agricultural produce with their agents operating in the market area. The fact that such brokers effect sales or purchases on behalf of their principals within the market area will entail an obligation on such principals to take licences as traders from the Market Committee having jurisdiction over the market area. We do not see any difficulty in implementation of such rules and the scheme of the Act. The scheme of the Act and the rules is to regulate the trading activity of every transaction in respect of sale or purchase of agricultural produce taking place within the market area proper. In respect of each such transaction different persons may play different roles. If the transaction is brought about through the agency of a broker or an adatya, such persons must be armed with a broker's licence. If the transaction is on behalf of a trader, whether as purchaser or seller, then such person again must obtain a licence under which he can trade in that commodity in the market area. Similarly, weighmen who may be employed with actual measurement of produce are also required to take licences under the rules. It is difficult to accept the contention that the transaction having been put through a licenced broker, other persons concerned in the transaction such as purchasers and sellers, should not be required to obtain licence. The function of a broker is different from that of a trader. Though the rules permit the same person to be a trader and to take a trader's licence and also to be a broker if he takes a broker's licence, it does not mean and cannot possibly be intended to mean that whenever transactions are effected through the agency of broker, the trader who puts such transaction through the agency of the broker need not take licence what is intended to be regulated is a trading activity and that must mean regulating the activities both of purchasers and sellers provided they are traders within the market area. The reason for this regulation is obvious. The learned counsel for the appellant has produced before us forms of agreement required to be executed by a trader and also by a broker. The obligations of a trader are different from those of a broker. Though the object of regulating the activities of each of these classes operating in the market is to secure a fair deal and clean transactions and to see that proper rates are obtained and proper prices are paid as agreed to ensure that weighmen are faithful, and no kind of unlawful deductions are made, the obligations of each person playing his part in respect of a transaction taking place in the market or in respect of agricultural produce are different from each other. A trader is required to keep his own record and show the names of persons entering into transactions, their addresses, the name of the weighman, the name of the broker the name of the person to whom payment was made, the date of the payment,

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details of deduction, if any, to be properly made, and he is bound to conform to the regulations of the market under the supervision of the Market Committee. The obligations of brokers are different. We are therefore unable to understand how it can be said that merely because a transaction is put through on behalf of a trader through the agency of a broker, such a trader, if he is trading in the market, is not required to take a licence. It was also argued that the brokers themselves being entitled to be registered as traders, and obtain licence as traders, are not bound to disclose the name of principal if they are pakka adatyas. We fail to see what turns upon some of the transactions being of this nature. Even if the names of purchasers and sellers as the case may be, may not be required to be disclosed by a pakka adatya, the moment the name is disclosed as a purchaser or seller, ordinarily that person will have to answer whether he is a trader within the market or not. The necessity of disclosing the name of the purchaser is that all purchases and sales have to conform to the regulation of the market. If the broker enters into a transaction of sale or purchase in his own name, then he does not act as a broker but acts as a trader, and for this activity he has to be properly armed with a trader's licence. But we fail to see how the fact that same person can have two kinds of licences can possibly lead to the conclusion that the employment of such a broker will relieve a trader from obtaining a licence in his own name merely because he prefers to trade through a broker.

9. The crucial question therefore is whether a person is a trader in the market area. If he is found to be a trader in the market area, then there is no doubt that he is bound to take a licence as provided in sub-rule (1) of Rule 33 and cannot effect sales and purchases in contravention of sub-rule (4) of Rule 33. On the other hand, if the person is not shown to be a trader within the market area in respect of agricultural produce then we do not think that an act of purchase or sale of agricultural produce within the market area will involve an obligation to be armed with a trader's licence. What is required under the rule is 'trader's licence' and not merely a licence for sale or purchase in the market area. The activity which is intended to be regulated is trading activity in respect of agricultural produce within the market area and not sales and purchases for individual consumption, which are not of trading nature and for which there may be no necessity of taking licences for such person. On the other hand, if the activity is of a trading nature even though the transactions are effected through the agency of a broker or adatya, in our opinion, rules require such a trader to take out a trader's licence if he operates within the market area.

10. Applying these principles to the facts of this case, it will be found that there is no finding recorded whether the first respondent is a trader in the market area. As this finding is essential for any enquiry whether licence is required to be taken out by him under Rule 33, we must hold that proper enquiry should be held and a finding recorded in this connection. Inasmuch as, however the learned Magistrate has acquitted the first respondent on his view that the transaction having been put through a broker the principal was not required to take out a licence, we are unable to sustain the finding of acquittal. It is accordingly set aside and the case is remanded to the trial Court for a fresh trial and a decision in the light of the observations made above.

11. It was also contended on behalf of the first respondent that the complaint is not properly initiated. The learned counsel urged that the complainant in such a case must be the Market Committee itself and not the complainant Wamanrao who is an Inspector of the Market Committee. In support of this argument the learned counsel relied on Section 12 of the Act which provides for incorporation of the Market Committee. Under that section every Market Committee shall have a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall be competent to acquire and hold property. Basing the argument on this provision, it is urged that the right to sue and be sued having been vested in the Market Committee as an incorporate body or entity, a prosecution in the name of its Inspector was not proper. The short answer to this question is that Section 19 makes a special provision for initiation of prosecution by any person which may include the Chairman, Vice Chairman, or any officer or servant of the Committee, the only condition being that such person shall be duly authorised by the Market Committee in this behalf. It is this special provision which must govern the solution of the question whether the complaint in this case has been properly made. There is no doubt that Wamanrao, who was Inspector, was duly authorised by the Market Committee. Once that condition is satisfied, there is no doubt that Wamanrao was fully competent to institute the proceedings for the Committee. The objection on this ground therefore must fail.

12. The result is that the appeal is allowed, the acquittal of the first respondent is set aside and the case is remanded to the Court of the Magistrate for a fresh decision after giving opportunity to both sides to lead evidence they desire.

 Appeal allowed.

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1968 CRI. L. J. 1260 (Vol. 74, C. N. 358) "Krishi Upajmandi Samiti v. Ganesh Oil Mills"

 RAJASTHAN HIGH COURT

 Coram : 1 G. M. MEHTA, J. ( Single Bench )

Criminal Ref. No. 206 of 1967, D/- 13 -3 -1968, from order of S.J., Bhilwara, D/- 31 -8 -1967.

Krishi Upajmandi Samiti, Bhilwara, Petitioner v. Ganesh Oil Mills, Bhilwara, Non-Petitioner.

(A) Civil P.C. (5 of 1908), Pre. - PREAMBLE - CIVIL PROCEDURE - INTERPRETATION OF STATUTES - LEGISLATURE - Interpretation of Statutes - Courts to give effect to intention of legislature expressed in words - Outside considerations cannot be called in aid - Words and context and not punctuation from which meaning is collected.

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It is an elementary duty of a Court to give effect to the intention of the legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention. Cardinal rule of construction of statutes is to read the statute literally by giving the words their ordinary, natural and grammatical meaning. If such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. AIR 1955 S C 376 and AIR 1955 S C 504, Rel. on. (Paras 7, 8)

It is from the words and from the context and not from punctuation that the meaning of the statute is to be collected. Case law referred. (Para 12)

(B) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.9(1)(f) - AGRICULTURAL PRODUCE - Action under - Market Committee can independently take action - Government or Director can also direct market committee to take action under the section - Comma occurring after words "Or otherwise", does not make any difference to the meaning of section. (Paras 10, 12, 13)

Cases Referred : Chronological Paras

(1959) AIR 1959 Punj 497 (V 46) : 1959 Cri L J 1207, State v. Satramdas 12

(1955) AIR 1955 SC 376 (V 42) : 1955 S C R 1369, Jugal Kishore v. Ram Cotton Co., Ltd. 7

(1955) AIR 1955 SC 504 (V 42) : 1955-2 SCR 303, Thakur Amarsinghji v. State of Rajasthan 8

 (1952) AIR 1952 SC 369 (V 39) : 1953 SCR 1, Aswini Kumar v. Arabiada Bose 12

(1944) AIR 1944 Lah 353 (2) (V 31) : 1944-12 ITR 393 (FB), Guamukh Singh v. Commr. of Income tax 12

(1941) AIR 1941 Lah 28 (V 28) : 43 Pun LR 352, Bhola Singh v. Ramanlal 12

(1937) AIR 1937 Bom 39 (V 24) : ILR (1937) Bom 763, Indian Cotton Co., Ltd v. Hari Poonjoo 12

(1931) AIR 1931 All 154 (V 18) : ILR 53 All 374, Niaz Ahmad v Parshottam Chandra 12

(1929) AIR 1929 P C 69 (V 16) : ILR 8 Pat 516, L. Pugh y. Ashutosh Sen 12

(1886) 14 Ind App 30 : ILR 14 Cal 365 (PC), Maharani of Burdwan v. Martonjoy Singh 12

K.M Singhvi, for Petitioner, A.L. Mehta, for Non-Petitioner.

Judgement

ORDER :- This is a reference by the learned Sessions Judge, Bhilwara, recommending that the order dated 31-7-1967 of the City Magistrate, Bhilwara, be set aside. The facts leading to this reference may be stated as below :

2. On 24-2-1967 Shri Omprakash Gupta, Secretary Krishi Upaj Mandal Samiti (hereinafter called the Samiti) Bhilwara, filed a complaint for contravention of S. 4 punishable under S. 28 of the Rajasthan Agricultural Produce Markets Act (Act No. 38 of 1961 hereinafter referred as the Act) in the Court of City Magistrate, Bhilwara, against Ganesh Oil Mills Bhilwara. The allegation made against the accused was that it was carrying on the purchase and sale of agricultural produce in the market area without obtaining any licence. The said Mill was asked by notices dated 29-11-1966 and 5-12-1966 to obtain a licence but with no effect. It was prayed that the accused be punished in accordance with law.

3. A preliminary objection was raised on behalf of the accused that the complaint was liable to be dismissed as no direction of the State Government or the Director for its prosecution had been obtained by the complainant as envisaged under S. 9 (l) (f) of the Act. The learned City Magistrate upheld the contention of the accused and held that sanction of the Director or the State Government was a condition precedent for making the complaint. Against that order, the complainant preferred a revision in the Court of Session at Bhilwara. The learned Sessions Judge has opined that the Market Committee was authorised by law to bring, prosecute or defend or aid in bringing, prosecuting or defending any suit, action, proceedings, application or arbitration on its behalf. In this view of the matter, he has held that no sanction of the Director or the State Government was necessary for the Market Committee to bring action against the accused. The learned Sessions Judge has therefore, recommended that the order dated 31-7-1967 of the City Magistrate be set aside and the case be sent back to that Court to proceed further in accordance with law. It is in this way that the present reference has come before this Court.

4. Section 9 (1) (f) of the Act the interpretation of which is in dispute between the parties and which, according to them, has not been the subject matter of interpretation by this Court so far. runs as under :

"9 (1) A market committee shall-

(f) bring, prosecute or defend, or aid in bringing, prosecuting or defending, any suit, action, proceeding, application or arbitration on behalf of the market committee or otherwise, when so directed by the State Government or the Director; and"

5. Its Hindi rendering published in Rajasthan Rajpatra dated 24-11-61 in Part IV in accordance with S. 4 of the Official Language Act, 1956 reads as below:

6. On behalf of the Samiti, it has been urged that the plain meaning of S. 9 (l) (f) of the act was that the market committee was competent to bring, prosecute or defend any suit, action, proceeding, application or arbitration on its behalf or otherwise and the State Government or the Director too can give such direction. On the other hand, it has been contended on behalf of Ganesh Oil Mills that the direction by the State Government or the Director was a condition precedent for the market committee to bring,

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prosecute or defend any suit, action, proceeding, application or arbitration.

7. It is an elementary duty of a Court to give effect to the intention of the legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention. In Jugalkishore v. Raw Cotton Co., Ltd., AIR 1955 S C 376, it has been observed by the Supreme Court that the cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the Legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adapt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation.

8. Again, in Thakur Amarsinghji v. State of Rajasthan, AIR 1955 S C 504, their Lordships of the Supreme Court observed that recourse to rules of construction would be necessary only when a statute is capable of two interpretations. Where the language is clear and the meaning plain, effect must be given to it,

9. Applying the above principles, the words used in S. 9 (1) (f) do not appear to be capable of two constructions. The words used in S. 9 (1) (f), when analysed, spell out the following meaning :

(1) A Market Committee shall bring, prosecute or defend or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration on its behalf or

(2) A Market Committee shall also bring, prosecute or defend, or aid in bringing, prosecuting or defending, any suit, action, proceeding, application or arbitration on its behalf when so directed by the State Government or the Director.

10. The first part of this section casts a duty on the Market Committee to bring, prosecute or defend, or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration on its behalf. The later part of the section means that it shall also act in that manner when so directed by the State Government or the Director.

11. The scheme of the Act is to provide for better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Rajasthan. Chapter 2 of the Act deals with the constitution of markets, while Chap. 3 deals with the market committees. In this chapter are laid down how the market committees are constituted and what are their functions and duties. S. 9 in this chapter deals with the functions and duties of the market Committee. Under this section, management, control, regulation of the markets and other powers have been given to the market committees. In cl. (1) of S. 9 (i), power has been given to the market committee to prosecute or defend etc. on its behalf or otherwise. From the scheme, it appears to be clear that the intention of the Legislature was that the market Committee shall prosecute, defend etc. all matters connected with it. While giving this power to the market committee, the Legislature has made a provision that the State Government or the Director may also direct it to do so and it shall be incumbent upon it to carry out their directions. S. 9 (1) (f) does not show that any action by the market committee under it should be preceded by a direction by the State Government or the Director. The market committee may act suo motu under the said section in the circumstances mentioned in it and shall also so act when directed by the State Government or the Director.

12. Learned counsel for the non-petitioner has argued that the "comma" occurring after the words "or otherwise," shows that the clause relating to the direction of the State Government or the Director is applicable to all the cases whether the prosecution is on behalf of the market committee or otherwise. On the other hand, learned counsel for the petitioner has submitted that the comma after the words "or otherwise" has no significance and, in any case, it does not alter the meaning of S. 9 (1) (f). It is from the words and from the context and not from punctuation that the meaning of the statute is to be collected. In Maharani of Burdwan v. Murtonjoy Singh, (1887) 14 Ind App 30 at p. 35 (PC) the Privy Council opined that it was an error to rely on punctuation in construing the Act of Legislature. It is from the words and from the context and not from punctuation that the meaning of the statute is to be collected. In L. Pugh v. Ashutosh Sen, AIR 1929 P C 69 their Lordships of the Privy Council observe, "The truth is that if the article is read without the commas inserted in the print, as a Court of law is bound to do, the meaning is reasonably clear." In Niaz Ahmad v. Parshottam Chandra, AIR 1931 All 154, Sulaiman J. felt that the difficulty was caused mainly by the punctuation and following the dicta of the two Privy Council cases ignored the comma. In Indian Cotton Co. Ltd. v. Hari Poonjoo, AIR 1937 Bom 39, Kania, J. (as he then was), after taking into consideration the previous Bombay case and the two Privy Council cases referred to above, observed that in considering the plain words of a section punctuation could not be relied upon. In Bhola Singh v. Raman Mal, AIR 1941 Lah 28, Dalip Singh J. opined that a statute must be interpreted without regard to punctuation and in a later Full Bench case Garmukh Singh v. Commissioner of Income-tax, AIR 1944 Lah 353 (2) (FB), Munir J. observed:

''In the interpretation of Statutes, punctuation, not being a part of the statute to be construed, is not the

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determining factor and if the provision as punctuated leads to an absurd result or conflicts with some other provisions of the statute which is unambiguous and free from doubt, the punctuation must yield to an interpretation that is reasonable and makes it consistent with the other provisions of the Act."

In State v. Satramdas, AIR 1959 Punj 497 it has been observed that punctuations do sometimes lend assistance in the construction of sentences, but they are always subordinate to the context and the Court may legitimately punctuate or disregard existing punctuation or repunctuate in order to give effect to the legislative intent. In Ashwini Kumar v. Arabinda Bose, AIR 1952 SC 369 it has been held that punctuation may have its use in some cases, but it cannot be allowed to control the plain meaning of a text and further that punctuation is after all a minor element in the construction of a statute and very little attention is paid to it by English Courts.

13. In the present case, it may be considered as to what would be the result if we give effect to the punctuation or in the alternative if we ignore it. In either case, it does not make any difference in the meaning of S. 9 (1) (f) of the Act. Its plain meaning would remain the same which would be that a market committee shall bring, prosecute or defend etc., on its behalf and shall also so act when directed by the State Government or the Director.

14. For the aforesaid reasons, the reference is accepted, the order dated 31-7-67 of the City Magistrate, Bhilwara, is set aside and the case is sent back to that Court to proceed further in accordance with law.

 Reference accepted.

1965 (1) CRI. L. J. 43 (Vol. 70, C. N. 17) "State of M.P. v. Jogilal"

 MADHYA PRADESH HIGH COURT

= AIR 1965 MADHYA PRADESH 27 (V 52 C 9)

INDORE BENCH

 Coram : 3 V. R. NEWASKAR, J. on difference of Opinion between H. R. KRISHNAN AND S. B. SEN, JJ. ( Full Bench )

Criminal Appeal No. 229 of 1962, D/- 19 -4 -1963.

The State of M.P., Appellant v. Jogilal Keshrimal and another, Respondents.

(A) M.P. Foodgrains Dealers Licensing Order (1958), Cl.2 - ESSENTIAL COMMODITIES - LICENSE - WORDS AND PHRASES - Dealer - Who is - A dealer is one who sells and buys; but tie need not be actually selling every moment. (Para 7)

(B) Essential Commodities Act (10 of 1955), S.16(1)(b) - Madhya Bharat Agricultural Produce Markets Act (17 of 1952)-ESSENTIAL COMMODITIES - AGRICULTURAL PRODUCE - LICENSE - Not covered by S.16 - License under Madhya Bharat Act does not dispense with license under Madhya Pradesh Foodgrain Dealers Licensing Order 1958.

The Madhya Bharat Agricultural Produce Markets Act of 1952 is not one that is covered by S. 16 of the Essential Commodities Act. For that, it should be one controlling or authorizing the control of the production, supply and distribution of and trade and commerce in any essential commodity. The Madhya Bharat Agricultural Produce Markets Act has altogether nothing to do with this subject. It only provides for licenses enabling a dealer in agricultural produce to do business in a particular market area constituted under that Act. Thus, that Act has not been repealed by S. 16 of the Essential Commodities Act, nor can license issued under that Act take place of a license under the Madhya Pradesh Foodgrains Control Order (1958) made under S. 3 of the Essential Commodities Act. Thus the accused persons having been licensed under the said, Madhya Bharat Act does not in any manner enable them to deal in essential commodities or Foodgrains without a license, under the Madhya Pradesh Foodgrain Dealers Licensing Order, 1958. (Para 8)

(C) Essential Commodities Act (10 of 1955), S.7, S.12 - ESSENTIAL COMMODITIES - LICENSE - Breach of provisions of M.P. Foodgrain Dealers Licensing Order (1958) - Accused Importing foodgrains after application for but before receipt of license - Held conduct of accused was mot bona fide - Fine to be Imposed must be heavy to serve as deterrent - Offence tried by Magistrate First Mass - Fine of Rs. 2000/- held should be awarded.

Per Newaskar, J. (On difference between Krishnan and Sen, JJ.) :

After the Madhya Pradesh Foodgrain Dealers Licensing Order had been promulgated on. 7-10-1958 the accused had deposited requisite licensing fee on 16-01-1959 and had applied for a license as required by the provisions of the Order on 29-01-1959 but before he received the same he imported a truck load of rice weighing one hundred and fifty five Maunds and had that quantity in stock with him on 16-2-1959 when the Naib Tensildar visited his place. The accused on coming to know of Naib Tehsildar's visit submitted an application on the same day i.e. 16-2-1959 admitting to have brought approximately 150 maunds of rice and to have the same in his store. Under the provisions of S. 3(2) of the Order if a dealer had in his store any quantity of foodgrain for which license is required in excess of 100 maunds there would be presumption that he had the same for the purpose of sale.

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Held that since the accused had not secured license till that date or even later upto 16-5-1959 there would tie on terms of the provision aforesaid a presumption that he had stored the food-grains for the purpose of sale and consequently because of such storage he would be a dealer. As this was done by him when he was not armed with a license, which was a pre-condition, there was a clear contravention of the Order. Since the offence consisted in contravention of the provision of the Order not to carry on business as a dealer except and in accordance with the terms and conditions of the license issued in this behalf by the Licensing authority, procuring grain without having secured any such license to an extent which would lead to a presumption about a person's carrying on business as a dealer clearly ought to amount to an offence. Conduct of the accused in submitting to the Naib Tehsildar an application admitting the existence of the stock could not be construed as indicative of his bona fides as he should be credited with the knowledge that the Naib Tehsildar had come for checking and would discover him as having in his store contraband quantity. Therefore the fine to be imposed must be sufficiently heavy so as to serve as a deterrent for any other person in going ahead with a similar act with the hope of being dealt with leniently. As the offence had been tried by the First Class Magistrate ends of justice would be served if the maximum sentence of fine impossible by the trying Magistrate was imposed. Section 12 of the Essential Commodities Act did not fix the upper limit; hence where a State Government empowers a First Class Magistrate specially under the Essential Commodities Act the fine which he can impose is not limited to that under S. 32 Cr. P. Code. The limit which S. 32 has now imposed by Cr. P.C. Amendment Act, 26 of 1955 (i.e. Rs. 2000/-) will be the legitimate limit for the imposition of fine. AIR 1948 Bom 358 Rel. on. (Paras 31, 32)

Cases Referred : Courtwise Chronological Paras

('48) AIR 1948 Bom 358 (V 35) : 49 Cri LJ 518, Mohanlal Gokaldas v. Emperor 34

S.L. Dubey, A. G. A., for Appellant; S.N. Gupta, for Respondent.

Judgement

KRISHNAN, J. :- The respondents who run a business in foodgrains at a place called Khetia on the border of the Maharashtra State have been acquitted by the First Class Magistrate, Sendhwa, of the offence of contravening one of the provisions of the Madhya Pradesh Foodgrain Dealers Licensing Order, punishable under S. 7 of the Essential Commodities Act of 1955. The contravention was their storing, in course of their business, 155 maunds of rice on 16-2-1959 without a valid license. While finding the facts as alleged by the prosecution, the learned Magistrate held that the respondents were only guilty of "haste and ignorance" and there was no mens rea; elsewhere he has suggested that the offence was only of "technical nature". Accordingly he has acquitted them. In the State appeal it is pointed out that on the facts themselves these appellants wore liable to punishment especially because such contraventions lead to extensive export to other States and sales at unconscionably high prices.

2. The questions in this Court are, whether they were justified because they had already obtained a license under the Madhya Bharat Agricultural Produce Markets Act on 1952, which was valid on the date of the storage of the rice; further, whether the Court was right in acquitting simply by calling it a "technical offence", or one without mens rea.

3. The facts are simple. Khetia is a municipal town and there is a market there constituted under the Madhya Bharat Agricultural Produce Markets Act 1952 (hereinafter called "the Act of 1952"). That Act has nothing to do with the control over the supply, distribution and sale of essential commodities; it provides for the licensing of business in agricultural produce in the declared market areas. The respondents had been licenses under that Act, Theirs seems to be a family business run by the father and son, namely, Keshrimal and Jogilal Jointly; but in the relevant transactions, it was Jogilal-who was playing the active part and for the purpose of the criminal prosecution it would be convenient to treat him as the only person in charge of the business.

4. The Madhya Pradesh Foodgrain Dealers Licensing Order was made under S. 3 of the Essential Commodities Act (10 of 1955) for the purpose of controlling business in foodgrain anywhere in the Madhya Pradesh. Every person who wants to do business in foodgrain should, from the date of the commencement of the order which was-the 23rd October, 1958, obtain a license from the licensing authority. If anybody carries on the business of a dealer of foodgrain without a valid license he would be liable to punishment under the general penal S. 7, the maximum punishment being three years' imprisonment and a fine; imprisonment is mandatory, except where the Court records reasons why a fine alone would meet the ends of Justice. Dealing in foodgrain has been defined and there is a provision that anybody who stores foodgrain in a-quantity more than 100 maunds would, unless he proves the contrary, be presumed to be. storing it for the purpose of sale, which straightway would make him a dealer.

5. The respondents had applied for a license on the 23rd January, 1959 though they seem to have purchased the appropriate stamp sometime before. This application was under consideration, and the license was issued to-them about three months later. In that application itself it was clearly stated that there was no stock of rice; but on the 16th February, the Naib Tehsildar paid a visit to Khetia because he had got information that a few days before it, the respondents had brought to their godowry a truckload, of 155 maunds of rice, which, so the information went, was to be exported to a neighbouring State without appropriate license or sanction. The information is of course not evidence, but it was Introductory to the Tehsildar's conduct. When he went and called upon the respondents to explain, respondent Jogilal appeared and gave a written statement that a few days before it, the rice had come and a quantity of 150 maunds were with him. He added :

"We have not sold them yet and we intend to do so after obtaining the license according to law when we shall inform you of the particulars of the sale".

The point to note here is that this was not a piece of information conveyed to the authorities spontaneously, but one given as an explanation when the Naib Tehsildar went for inspection and actually confronted the respondent. The stock was checked and the quantity which is given as 155 and not 150 maunds was taken over (which is only a minor difference). Since on that date there was no license under the Madhya Pradesh Foodgrains Control Order, the respondents were prosecuted under S. 3 of the Act with the results already mentioned.

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6. The defence inter alia was of having been coerced la give the admission; here, however, the stand is on the statement itself. Any way, it is admitted that there was the stock on the 16th February. It was not there on the date on which the license was applied for and had some sometime before the 16th; obviously it was in secrecy, because the Tehsildar has pointed out, without contradiction, that there was no reference to the arrival of the truckload in the octroi books of the municipality. Howsoever it was brought, the stock was there certainly for the purpose of sale, which even without the respondent's statement, has to be presumed. No doubt the respondent Jogilal stated that he would sell it later on, but it was a statement made not of his own accord directly to the authorities but when he was confronted with the stock and asked to explain.

7. The first point raised here is that the respondents are not dealers at all, because a dealer is one who actually sells, and in any view of the matter they were not actually doing so at or about the time the stock was seized. This argument is fallacious; a dealer is one who sells and buys; but he need not be actually selling it every moment. Here the storage was for the purpose of selling which may be immediate or deferred.

8. The most seriously urged argument, which has been made for the first time here is that the respondents were already holding a valid license. There was a law in force in this area from before the enactment of the Essential Commodities Act (10 of 1955); that was the Madhya Bharat Agricultural Produce Markets Act of 1952. This Act, it is urged, has been repealed by the operation of S. 16 of the Essential Commodities Act; but under Sub-Sec. (2) all appointments made, licenses and permits granted under the repealed Act will continue to be in force unless and until they are superseded. Since the respondents had been licensed under that Act and that license was valid till the 31st March, 1959, it is seriously argued that they are not affected by the absence at the relevant time of a license under the new Order. This argument overlooks two important features; the first fatal to it. The Madhya Bharat Act of 1952 is not one that is covered by S. 16 of the Essential Commodities Act. For that It should be one controlling or authorizing the control of the production, supply and distribution of and trade and commerce in arty essential commodity. The peculiarity of this repealing Section is it does not set cut expressly the Parliamentary or the State enactments that were sought to be repealed, but describes them as a class. This was probably because different States had different laws on that subject and it was difficult to make an exhaustive list within a short time. But that does not in the least alter the position that only the laws dealing with this subject stand repealed; if such a law stood repealed, then appointments, licenses and permits under it would continue all the same, till superseded by similar appointments, licenses, and permits under the new Act. But the Madhya Bharat Act has altogether nothing to do with this subject.

As already mentioned in the beginning, it only provides for licenses enabling a dealer in agricultural produce to do business in a particular market area constituted under that Act. Thus, that Act has not been repealed by S. 16 of the Essential Commodities Act, nor can license issued under that Act take place of a license under the Madhya Pradesh Foodgrains Control Order made under S. 3 of the Essential Commodities Act. The second question is, whether in the event of our really dealing with an Act on the same subject, the promulgation of the said Order in October 1958 would not supersede the older licenses. But since the old enactment is not on the same subject, it is unnecessary in the instant case to examine that question. Thus, the respondents having been licensed under the said Madhya Bharat Act does not in any manner enable them to deal in essential commodities or food-grains without a license under the Madhya Pradesh Food-grains Control Order, 1958.

9. This takes us to the question whether the mare fact of the respondents having applied for a license doss in any manner justify or extenuate their storing this quantity of foodgrain. Obviously, the mere fact of applying for a license is not equal to obtaining a license. For one thing, the. license might not be granted; for another, there may be conditions; thirdly, the vigilance that the authorities exercise on the operation under license may start after its issue, while clandestine dealing before it is given might escape. The point to remember is that the obtaining of a license is not merely a ritual, but is something of considerable practical consequence; for one thing, the general reliability of the applicant for license and his amenability to the control of the authorities concerned is always a ground for the grant. In fact, by such an application the dealer is really lulling the authorities into a feeling that he is a straightforward person, and is not likely to do anything in that regard till he obtains it. Exceptional circumstances might arise. For example, for reasons - beyond his control the applicant might already have a stock. The obvious course for him is to mention it in his application. In the instant case, he recorded no stock, another exceptional circumstance conceivable is where for unavoidable reasons the stock has come into his hands before the expected license has been issued. In that case again, he should either before or immediately after the arrival of the stock report to the licensing authorities 'of his own accord'.

In this case, the respondents did not do so. It was made to appear during the argument on behalf of the respondents at the bar that Jogilal had gone to the office of the licensing authority with the letter Ex. P/5 which has already been referred to. The fact was that when the Naib Tehsildar arrived at Khetia and called upon the respondents to state if they did not have a stock of about 150 maunds of rice, then and then alone, did Jogilal who is one of them, give this letter as an explanation. Certainly, a quantity like this could not be concealed; confronted with that difficulty, the respondent tried to make the best of it by saying that it was for sale and he proposed to sell it after obtaining the license. But storing for sale is itself dealing in the business and therefore this letter does not give him either the benefit of a justification or of extenuation. What the respondent seems to have done is to apply for a license and then store the foodgrain for sale on the off chance of escaping detection.

10. All this is found by the Magistrate himself; but he seems to have a notion that every offence should have what he calls "mens rea", and without it even if it is apparently one covered by the definition of an offence, there could he no conviction. Without entering into any elaborate discussion about the principle of mens rea, we need only note that unlike in England we are in the field of criminal jurisprudence governed wholly by enacted law, and have nothing similar to common law offences. Most of the enactments expressly provide for the ingredients of

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guilty knowledge, bad faith and the like; when we are dealing with control provisions restricting the freedom of trade for the benefit of the public in general no occasion arises for discussion of mens rea at all. These laws are enacted because of the possibility of very considerable harm to the public in general, if people are allowed to store, distribute and sell essential commodities without the supervision and check enforced by the licensing authorities. Courts are not concerned with the propriety or ethics of this policy; but they have to note that while administering the control laws they are not called upon to discuss the mens rea, but to hold that if there is contravention, an offence has been committed. Nor is it pertinent to ascertain if the contravenor has really intended or stood to gain at the expense of the public by that particular act; he has violated the law meant to arrest tendencies which the Legislature considers most dangerous to public interest.

11. Another word which seems to be favourite with some of our Courts is "technical". In a general sense every offence is technical because it has in our country to be a breach of a statutory provision, using the word statute in a broad sense. But by that they usually seem to mean that there is nothing like moral turpitude in the breach concerned. Moral turpitude and mens rea sometime appear to be similar, but there is a basic difference. But we are not dealing with that aspect of the matter. To consider whether the offence involves moral turpitude is very easy when we are dealing with what might be called "classical offences" like theft or murder which have throughout ages been disapproved and punished. On the other hand, control laws like the present on are comparatively modern, necessitated by the extended commerce and movements of essential commodities in the organized industrial societies of today. There may be quite a number of general public or even of Courts who are not able to visualize the moral significance of these control laws. To them pick-pocketing of a rupee or two might seem an enormity because throughout ages people have been disapproving of it. And the breach of some control law by which foodgrain is imported or exported In the wrong direction and sold at unconscionably high prices seems to tie "technical" though in the ultimate analysis far more harm is done to society by such breaches. So the best for Courts in such cases is to avoid hazy notions such as the "technicality" of breaches of control laws.

12. We would, therefore, allow the appeal and convict the respondent Jogilal under S. 7 of the Essential Commodities Act for the breach of the licensing provision in the Madhya Pradesh Foodgrains Control Order of 1958. At all stages connected with the storage of the rice Jogilal alone has been figuring and not his father Keshrimal. In the special circumstances, it would be proper to acquit Keshrimal. Coming to the sentence, imprisonment is mandatory unless special reasons are recorded. The purpose of selling the foodgrain has to be read in the light of the fact that Khetia is on the border of Maharashtra State and it is a notorious fact for Judicial notice that at that time Maharashtra was a deficit State In this regard and Madhya Pradesh a surplus one. On the other hand, the respondent had tried to obtain a license; and in spite of this breach the authorities have given him one in the beginning of May, that is to say, two-and-a-half months after the detection of this breach. This we would consider a sufficient ground why a sentence of Imprisonment need not be awarded. We would accordingly sentence the respondent Jogilal to pay a fine of Rs. 5000 (five thousand) which is a small multiple of the ten or fifteen rupees per maund he might have made by the uncontrolled dealing. The imprisonment in default shall be rigorous for nine months. It is ordered that the stock of rice or its sale proceeds in deposit if it has already been sold is forfeited to Government.

13. SEN, J. :- I have the advantage of reading the Judgement written by my learned brother. Though I agree with hint-about the conclusions he has reached in finding the respondent Jogilal guilty; I am afraid I cannot take a serious - view of the offence.

14. The admitted facts are that the respondents are dealers of agricultural produce including rice for a number of years, more than 40 years according to the application Ex. P-8. They also have got license for carrying on business under the M.B. Agricultural produce Markets Act of 1952, for selling foodgrains in the Mandi area of village Khetia. This license was valid upto 31-3-59.

15. There was no prohibition for dealers for dealing in foodgrains without license before the coming into force of the M.P. Foodgrain Dealers Licensing Order of 1958. The order came into force in 1958. The respondents deposited the necessary license fee on 16-1-59 for obtaining a license under the M.P. Foodgrain Dealers Licensing Order and obtained the same on 16-5-59. In the meantime after they had applied for license in January, the Naib Tehsildar, according to the prosecution story, on information received by him that the respondent was in possession of certain quantity of rice without license, visited the village Khetia. Jogilal came to him and stated that he was in possession of 150 maunds of rice. He also stated that he had applied for a license already. He also gave an undertaking that he would not sell the stock of rice which he brought from Khandwa before obtaining a license.

16. On the basis of Ex. P-5 however a challan was filed against both Jogilal and Kesrimal on 23-9-59.

17. The prosecution relies on the statement of the accused Jogilal and the possession of 150 maunds of rice which was found on 16-2-59. There is no reliable evidence on record as to when the rice was brought. Reliance was placed on Ex. P-5 in order to say that "a few days before the incident, Naib Tehsildar arrived at Khetia, rice was brought from Khandwa."

18. It cannot be doubted that the possession, of 150 maunds of rice without license is contrary to clause 3 of the M.P. Foodgrain Dealers Licensing Order. But the counsel for the respondents submitted that according to Ex. P-5 they had undertaken not to sell unless a license was obtained.

19. The clause which is alleged to have been contravened read as follows :-

"No person shall carry on business as a dealer except under and in accordance with the terms and conditions of the license issued in this behalf by the licensing authority."

20. Dealer has been defined in clause 2. For the purpose of this case the relevant portions are as follows :-

" 'Dealer' means a person engaged in the business of .................. storage for sale, of any one or more of the foodgrains in quantity of one hundred maunds or more................."

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21. The respondent was undoubtedly found in possession of 150 maunds of rice. Question is whether this was for sale. The prosecution relies on clause 3(2) of the Order which reads as follows :-

"For the purpose of this clause, any person who stores any foodgrains in quantity of one hundred maunds or more at one time shall, unless the contrary is proved be deemed to store the foodgrains for the purpose of sale."

22. The contention of the respondent is, he is entitled to show that it was not for the purpose of sale. He says that it was not for the purpose of sale because he did not obtain license. He would only sell it if he would get the license. Therefore so long he does not get the license, the storage cannot be called for the purpose of sale. There is no evidence that he had made any attempt to sell the foodgrains beforehand. Undoubtedly burden is on the accused to show that the storage was not for sale.

23. The prosecution does not challenge the statement of the accused that the rice would be sold only after obtaining a license. But the offence against the accused is not selling without license but storage without license and this was undoubtedly storage for the purpose of sale, as there could not be any other purpose. In fact the accused admits that.

24. There cannot therefore be any doubt that he was contravened clause 3 of the M.P. Foodgrain Dealers Licensing Order 1958. He had no license required under Clause 3 on the date he was found to be in possession. But the circumstances indicated that this possession cannot be taken to be very seriously. There is no allegation that he was attempting to export foodgrains to another State. Simply because Khetia happens to be entitle border of Maharashtra and Madhya Pradesh an inference should not be drawn even for awarding punishment. He has been in this business for 30 to 40 years. Not only that, he has a license already for selling in that area under the M. B. Agricultural Produce Markets Act of 1952. He has not done anything surreptitiously. In fact before the date when foodgrains was seized he had applied for a license. If that was granted promptly as in such cases it should be, there could not have been any prosecution in spite of his being in possession of the foodgrains. Though it has not been pleaded by the accused it is known that rice is cheaper in. February and the dealers always purchase rice in that season if they want to do business. The prosecution has given no date or data as to when rice was brought. That could have been easily available from the entry in the Octroi Naka if an attempt was made in that direction. The statement of the Naib Tehsildar that he did not see any entry between 1-2-59 to 16-2-59 is no evidence. The books, were not produced, Whatever that may be if the authorities were prompt in granting license within a fort-night there would have been no offence as the storage was reported to be on 16-2-59.

25. It is not always possible to get foodgrains immediately after the license is obtained, When the accused applied for a license he could have reasonably expected that he would get the same within a reasonable time and the reasonable time cannot be 4 months. The offence according to me is therefore nominal, if we avoid the use of the word 'technical'. From the storage of foodgrains alone it cannot be suspected that it was meant for importing or exporting In a wrong direction after obtaining black market price, to use the common words. If really there was any evidence to that effect the matter was serious.

26. In the absence of a clear-cut evidence as to the date when rice was brought, or any evidence about his intention to export to prohibited areas, or to earn a black market price, I cannot speculate as to what his intention was. That he has been dealing in grains was known to everybody for the last 30 or 40 years. Within a short time after the Licensing Order came out he applied for license. The best season for obtaining rice is February March and it was not improper for him to think that he would get license before the stock arrived; but the delay in the office made the difference.

27. Therefore though I uphold the conviction of the applicant punishable under S. 7 of the Essential Commodities Act of 1955, I sentence him to pay a nominal fine. of Rs. 50/- or in default to suffer simple imprisonment for 15 days only.

(ORDER BY THE DIVISION BENCH)

28. As there is difference of opinion regarding sentence, the records of this case may be placed before my lord the Chief Justice for opinion by a third Judge.

(ORDER. BY NEWASKAR, J. ON DIFFERENCE BETWEEN

KRISHNAN AND SEN, JJ.)

29. In this appeal against the order of acquittal the matter has been placed before me as difference had arisen between the learned Judges constituting the Division Bench as regards the sentence of fine to be imposed upon the accused who was found guilty of the offence punishable under Sec. 7 of the Essential Commodities Act, 1955, for the contravention of the Madhya Pradesh Food-grain Dealers Licensing Order issued in pursuance of the power vested in the State Government under Sec. 3 of the Act.

30. Facts on which he was found guilty by the learned Judges constituting the Division Bench were that after the Madhya Pradesh Foodgrain Dealers Licensing Order (hereinafter called 'the Order') had been promulgated on 7-10-1958 the respondent had deposited requisite licensing fee on 16-1-1959 and had applied for a license as required by the provisions of the Order on 29-1-1959 but had not received the same when he imported a truck load of rice weighing one hundred and fifty five Maunds and had that quantity in stock with him on 16-2-1959 when the Naib Tehsildar Tappa Pansemal visited Khetia. The accused on coming to know of Naib Tehsildar's visit submitted an application on the same day i.e. 16-2-1959 admitting to have brought approximately 150 maunds of rice and to have the same in his store. Under the provisions of Sec. 3(2) of the Order if a dealer had in his store any quantity of foodgrain for which license is required in excess of 100 maunds there would be presumption that he had the same for the purpose of sale. Since the respondent had not secured license till that dale or even later upto 15-5-1959 there would be on terms of the provision aforesaid a presumption that he had stored the food-grains for the purpose of sale and consequently because of such storage he would be a dealer. As this was done by him when he was not armed with a license, which was a pre-condition, there was a clear contravention of the Order.

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Both the learned Judges agree upon this. But when it came to awarding sentence Krishnan, J., was of the opinion that the mere circumstances, that he had deposited the license fee on 16-1-1959 and had submitted an application for a license on 29-1-1959 or had submitted an application to the Naib Tehsildar on 16-2-1959 accepting the fact that he had in store about 150 Maunds of rice brought by him about four or five days before that, cannot have the effect of operating ,as extenuating circumstance so as to reduce the gravity of the offence. On the other hand Sen, J., thought that there was no allegation that he was attempting to export food-grains to another State and that simply because Khetia happened to be on the border of Maharashtra an inference should not be drawn that he wanted to smuggle away the goods into the adjoining Maharashtra territory, while considering the question of sentence. The learned Judge was of the view that his applying for a license even before the goods came into his possession and his bringing of the goods not surreptitiously but openly were circumstances which ought to be taken into account in awarding moderate fine on the ground that the offence was nominal.

31. In my opinion since the offence consists in contravention of the provision of the Order not to carry on business as a dealer except and in accordance with the terms and conditions of the license issued in this behalf by the licensing authority, procuring grain without having secured any such license to an extent which would lead .to a presumption about a person's carrying on business as a dealer clearly ought to amount to an offence. About this both of the learned Judges agree. What extenuation could there be for a person who knows that he has no license and yet secures goods. His conduct in submitting to the Naib Tehsildar an application admitting the existence of the stock cannot be construed as indicative of his bona-fides as he should be credited with the knowledge that the Naib Tehsildar had come for checking and would discover him as having in his store contraband quantity. It is therefore clear that the fine to be imposed must be sufficiently heavy so as to serve as a deterrent for any other person in going ahead with a similar apt with the nope of being dealt with leniently.

32. But as the offence has been tried by the First Class Magistrate ends of justice will be served if the maximum sentence of fine impossible by the trying Magistrate, is imposed. Section 12 of the Essential Commodities Act provides that notwithstanding anything contained in Sec. 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the First Class especially empowered by the State Government in this behalf to pass a sentence of fine exceeding Rs. 1000/-. This Act was passed in 1955 as No. 10 of 1955 when Sec. 32 of the Criminal Procedure Code contained a provision authorizing a First Class Magistrate to impose a fine of Rs. 1090/- only. Later the Criminal Procedure Code Amendment Act No. 26 of 1955 was passed which raised the limit of imposition of fine by him to Rs. 2000/-. Section 12 did not fix the upper limit hence where a State Government empowers a First Class Magistrate specially under the Essential Commodities Act No. 10 of 1955 the fine which he can impose Is not limited to that under Section 32 Cr. P. Code. The learned Government Advocate was unable to bring to my notice any such special (sic) empowering of a First Class Magistrate. In view of this the limit which Sec. 32 has now imposed will be the legitimate limit for the imposition of fine.

33. I am led to impose maximum amount of fine because of the necessity that the sentence awarded ought to have a deterrent effect and should prevent others from emulating the example of the guilty person with impugnity.

34. In Mohanlal Gokuldas v. Emperor, AIR 1948 Bom 358 it was observed by Chagla, Acting C.J. and Gajendragadkar, J. :-

"Usually a fine is imposed when the offence is the result of cupidity. When a person wants to make more money and to get rich and to amass a fortune at the cost of society and of its poor and needy members, the only way to deter others from following in his footsteps is to make it clear that crime is not easy and that he should not be permitted to enjoy his ill-gotten wealth. If the only sentence were the sentence of imprisonment and if the accused was permitted to come back after serving his sentence to enjoy the wealth which he has amassed by antisocial acts or by committing offences, then it certainly would not deter others from following in his footsteps. Therefore, not only must a fine be imposed, but the fine must be of such a character and of such an amount as to be really deterrent in its character."

35. I agree with the opinion thus expressed by the learned Chief Justice.

36. I would therefore hold that sentence of fine of Rs. 2000/- ought to be imposed upon the accused that being the maximum fine which could have been imposed by the trying Magistrate.

37. Reference is answered accordingly.

 Reference answered accordingly.

1965 (2) CRI. L. J. 388 (Vol. 71, C. N. 123) "Secy., Market Committee v. Jhari Sahu"

 ORISSA HIGH COURT =AIR 1965 ORISSA 174 (V 52 C 66)

 Coram : 1 R. K. DAS, J. ( Single Bench )

Criminal Appeals Nos. 59 and 60 of 1964, D/- 20 -11 -1964, from Order of Sessions Judge, Puri, D/- 7 -1 -1964.

Secretary, Market Committee, Jatni Railway Market, Appellants v. Jhari Sahu and another, Respondents.

(A) Orissa Agricultural Produce Market Act (3 of 1957), S.22(2) - AGRICULTURAL PRODUCE - SANCTION FOR PROSECUTION - Sanction for prosecution - Sanction must not only be for prosecution of specified individual but also for specific offence - Non-compliance renders sanction invalid.

AIR 1963 SC 1198 and AIR 1960 Ker 356 SC AIR 1960 Andh Pra 27, Rel. on. (Para 11)

(B) Criminal P.C. (5 of 1898), S.423 - AGRICULTURAL PRODUCE - APPEAL - PLEA - New plea - Prosecution under Orissa Agricultural Produce Market Act (1956), (3 of 1957), without strict compliance with provisions of S.22(2) of Act - Objection can be raised at any stage as it affects jurisdiction itself. (Para 11)

Cases Referred : Courtwise Chronological Paras

('63) AIR 1963 SC 1198 (V 50) :1963 (2) Cri LJ 194, Gour Chandra Rout v. Public Prosecutor, Cuttack 12

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('60) AIR I960 AP 27 (V 47) : 1960 Cri LJ 46, Public Prosecutor v. Satyanarayana 13

('60) AIR 1960 Ker 356 (V 47) : 1960 Cri LJ 1469 (1), City Corporation of Trivendrum v. V.P.N. Arunachalam Reddiar 12

('63) AIR 1963 Ori 158 (V 50) : 29 Cut LT 325 : 1963 (2) Cri L J 305, Anjaneyalu v. Puri Municipality 11

H. Kanungo, for Appellants.

Judgement

JUDGEMENT. -The Secretary, Market Committee Jatni Railway Fish Market; the complainant in this case, has preferred both these appeals against the orders of the Sessions Judge, Puri, acquitting the accused-respondents and setting aside their conviction and sentence passed by the Sub-Divisional Magistrate, Bhubaneswar.

2. Jhari Sahu, respondent in criminal appeal No. 59/64 is the brother of Khetrabasi Sahu, respondent in criminal appeal No. 60/64. It is the prosecution case that each of them carried on business in potato and onion on 20-6-62 in the market area of Jatni without obtaining necessary license from the local market committee and thereby committed an offence under S. 21(b) of the Orissa Agricultural Produce Market Act, 1956, read with clause 60(1) and (7) of the Rules framed thereunder.

3. The plea of the accused was that they carried on their business jointly and held a joint licence (Ext. A) for the year 1960-61. In the year 1962 when they asked for the licence the complainant insisted that each of the accused persons should take separate licences as they were carrying on their business separately in two different rooms in the aforesaid market. Accused Jhari examined himself as a defence witness in both the cases and also produced the previous licence Ext. A.

4. Two separate cases were started one against each of the accused. In support of the prosecution case, the complainant examined himself and some Other witnesses to prove that the 2 accused persons have got two separate stalls in the Railway Market, Jatni, where they sell potatoes and onions.

5. The trial Court was satisfied on evidence that a case under S. 21(b) of the Orissa Agricultural Produce Market Act, 1956, had been made out against the accused persons and he accordingly convicted them and sentenced each of them to a tine of Rs. 51/- in default to simple imprisonment for one month.

6. In both the appeals, the learned Sessions Judge set aside the order of conviction and sentence mainly on the ground that the prosecution had not been launched in accordance with the provisions of S. 22(2) of the said Act, and acquitted the accused persons. It is against this order of acquittal, the complainant has preferred these two appeals, which are disposed of by the common judgement.

7. The only point for consideration is whether the prosecution has been initiated in accordance with the law. The Orissa Agricultural Produce Market Act, 1959 (Orissa Act 3 of 1957) (hereinafter referred to as 'the Act') was enacted for regulating the buying and selling of the agricultural produce and to establish markets for agricultural produce in the State of Orissa. Section 5 of the Act makes provision for establishment of market committees by the State Government and defines the functions of these committees to enforce the provisions of the Act, the Rules and by-laws made thereunder and the conditions of licences granted to traders in such market areas. Section 21(b) provides the penalty for carrying on any business without obtaining a licence. It says :

"Whoever carries on occupation in a market area without obtaining a licence shall on conviction, be punishable with imprisonment which may extend to one month or with fine which may extend to five hundred rupees or with both ......."

Rule 60(1) of the Rules framed under the Act also provides that no person shall do any business as a trader or as a commission agent in Agricultural Produce in any market area except under a licence granted by the Market Committee. Sub-Section (7) of R. 60 provides whoever does business as a trader or as a Commission Agent in agricultural produce in any market area without a licence shall be punishable with a fine of Rs. 200/-…….

8. There is no dispute that potatoes and onions have been declared as 'agricultural produce' for the purposes of this Act and trading in these vegetables in any market area requires a licence to be granted by the Market Committee. That the accused persons were carrying on business in potatoes and onions without a licence is not disputed. Therefore their liability under S. 21(b) has been fully made out. The only question that remains for consideration is whether the prosecution was properly launched as required under the law. At this stage, it is necessary to refer to Sub-S. (2) of S. 22 of the Act which runs as follows :

"Section 22(2). Prosecution under this Act or any rule or by-laws made thereunder, may be instituted by any person duly authorised in writing by the Market Committee in this behalf."

The learned appellate Court acquitted the accused persons on the ground that the above provision of the law had not been complied with.

9. P.W. 1 is the Secretary of the Market Committee. He filet! the prosecution report on 21-6-62. It is stated in that report as follows :

"The Secretary of the Market Committee is authorised to launch prosecution against Sri Khetra-basi Sahu vide Resolution No. 10(d) of the Market Committee dated 14-3-62."

In this report he made no reference to this resolution or to his authority to institute these proceedings against the accused persons. In fact, there is nothing to show that he was authorised in writing by the Market Committee to institute these proceedings against the accused. Clearly enough the provisions of Sub-S. (2) of S. 22 have not been complied with.

10. Mr. Kanungo, learned counsel for the appellant, contended that since in the complaint petition there is a reference to the resolution of the Market Committee that itself may be taken as sufficient. In his evidence P.W. 1, however, has not made any reference even to the complaint-petition or to the resolution referred to therein.

11. Mr. Kanungo next contended that the accused not having raised any such objection at the earliest stage of the proceedings, it was not open to the appellate Court to take notice of this objection and set aside the conviction on that ground. But these are questions which fundamentally affect the jurisdiction and there is no bar to their being raised at a later stage. It is well-settled that such provisions have to be strictly complied with by the prosecution. In a case of this Court reported in Anjanevalu v. Puri Municipality, 29 Cut LT 325 : (AIR 1963 Orissa 158) where my Lord the Chief Justice was dealing with a case under S. 20(1) of the Prevention of Food Adulteration Act, 1954 which is similar to S. 21(b) of the Act, there it provided that :

"No prosecution for an offence under this Act shall be instituted except by, or with the consent of the State Government or local authority, or a person authorised in this behalf by the Stale Government or local authority."

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In that case a resolution of a general nature was passed by the Municipal Council authorising the Chairman to institute and conduct cases on its behalf. His Lordship held that the words in this behalf in the Sub-Section seems to require that the authorisation of a person to institute prosecution must be with special reference to the particular case under the Prevention of Food Adulteration Act that was placed before the Municipality. In the present case, the text of the resolution of the Market Committee has not been placed before the Court. Even if we accept the prosecution report in the present case, as part of the evidence of P.W. 1, there is nothing in the resolution to show that the Market Committee took into consideration the particular offence alleged to have been committed by the accused and authorised the Secretary to institute a prosecution for a specific offence. For a prosecution to be validly instituted under S. 22(2) of the Act, it is necessary to prove that the Market Committee took into consideration a specific complaint against an accused and then authorised a person in writing to institute a case.

12. The expression 'in this behalf also finds place in S. 198(B)(3)(a) of the Criminal P.C. In a decision of the Supreme Court reported in Gour Chandra Rout v. The Public Prosecutor, Cuttack, AIR 1963 SC 1198, their Lordships while dealing with the question whether a complaint had been duly instituted held that the authority concerned must apply their mind to the specific complaint before giving the necessary, sanction. The question of authorisation is not a matter of idle formality, but has to be strictly complied with. In a case of the Kerala High Court reported in City Corporation of Trivandrum v. V.P.N. Arunchalam Reddier, AIR 1960 Ker 356 their Lordships also took the same view and held that the sanction required under S. 20 of the Prevention of Food Adulteration Act must show that the authority giving the sanction had applied its mind to the alleged commission of an offence by the accused and was satisfied that the accused has to be prosecuted for the said offence. The sanction must be for the prosecution of specified individual and for specific offences and such non-compliance is a serious irregularity which materially prejudices, the accused. In the present case though the name of the accused was there, the specific offence for which he was to he prosecuted is absent from the alleged resolution as appears from the prosecution report.

13. The Andhra Pradesh High Court in a case reported in Public Prosecutor v. Satyanarayanan, AIR I960 Andh Pra 27 held that when a statute which creates an offence provides for a procedure to be followed and prescribes the limits and limitation within which the jurisdiction created thereunder could be exercised, it is not open to courts of law to give a go-bye to it and hold that notwithstanding the non-compliance with the conditions provided in the Act, they could nevertheless proceed with the enquiry and the trial into these offences.

14. In view of this position in law, it is no longer open to the complainant to contend that the resolution of the Market Committee is a sufficient authority for initiation of the present proceeding. As I have already said, a copy of the resolution has also not been placed before the Court, to strengthen the submission made by the learned counsel for the appellant. Mr. Kanungo, however, made a prayer to remand this case to the trial Court to fill up the deficiency in the evidence. But we are already at the end of 1964 and more than two years have elapsed in the meanwhile. To remand the case at this stage would certainly be prejudicial to the accused. Under the circumstances, both the appeals must be dismissed, and the order of acquittal maintained.

 Appeal dismissed.

1962 (2) Cri. L. J. 546 (Vol. 65, C. N. 153) "Secretary, M. M. Committee v. Baputty"

 KERALA HIGH COURT

 Coram : 1 P. GOVINDA MENON, J. ( Single Bench )

Criminal Appeal No. 241 of .1960, D/- 28 -3 -1961., from order of Munsif Magistrate, Ponnani, in C.C. No. 8 of 1960.

Secretary, Malabar Market Committee, Kozhikode, Appellant v. Baputty, Respondent.

(A) Madras Commercial Crops Markets Act (20 of 1933), S.19(2) read with bye-laws 25(6) and 25(18) - AGRICULTURAL PRODUCE - TRIAL - DOUBLE JEOPARDY - Order to produce reports and returns under Bye-law 25(6) - Trial for disobedience and acquittal - Subsequent trial for disobeying different order - Offence not the same - Trial not barred by S.403, Cr. P. C.

Criminal P.C. (5 of 1898), S.403.

Section 403, Cr. P. C. does not say that a person who has been tried and convicted or acquitted shall be acquitted if an attempt is made to prosecute him again for the same offence. It says that he shall not be tried at all. Further, under S. 403, a person who was once tried for an offence and convicted or acquitted is not liable to be tried again for the same offence. Thus where a person is tried under S. 19 (2) of the Madras Commercial Crops Markets Act, 1933, read with bye-laws 25 (6) and 25 (18) framed there under, for disobeying the order of the secretary to file certain reports and returns but the order disobeyed was not the same order which was made the subject of the charge in a previous case in which the accused was tried and acquitted, the offences are not the same and Sec. 403, Cr. P. C. does not bar the subsequent trial. AIR 1938 Mad 847 and AIR 1926 Mad 763, Rel. on. (Paras 3, 5, 7)

(B) Evidence Act (1 of 1872), S.74, S.81 - DOCUMENTS - Market committee established under Madras Act 20 of 1933 - Proceedings of its meetings recorded in a minute book - Minute book being record of its acts is public document - secretary producing minute book to prove certain resolution passed by the committee - Document being original and produced from proper custody held proper evidence. (Para 9)

Cases Referred : Courtwise Chronological Paras

('25) AIR 1925 Mad 1067 (V 12) : 26 Cri LJ 1049, Ramanujachariar v. Kailasam Ayyar 7

('26) AIR 1926 Mad 763 (V 13) : ILR 49 Mad 880 : 27 Cri LJ 948, Ramachandra Chetty v. Chairman, Municipal Council, Salem 6, 7

('38) AIR 1938 Mad 847 (V 25) : 39 Cri LJ 712, Public Prosecutor v. Sabapathy Chetty 6

V. Balakrishna Eradi and K.P.G. Menon, for Appellant; B. Moosakutty, for Respondent.

Judgement

JUDGMENT : The Secretary of the Malabar Market Committee had filed a complaint C. C. No. 8 of 1960 before the Munsiff-Magistrate of Ponnani against the respondent under S. 19 (2) of the Madras Commercial Crops Markets Act, 1933 read with Bye-law No. 25 (6) and (18) of the bye-laws framed by the Committee. The accused in the case is a licensee carrying on his trade in arecanuts within a radius of 5 miles of the regulated market at Vattamkulam. Under Bye-law 25 (6), the licensee shall maintain regular accounts of all his transactions in commercial crops in prescribed form and shall send to the Secretary such reports and returns as may from time to time be required by him.

2. That Pw. 1 the Secretary of the Market Committee had issued notices calling for the returns, that the notices were received and acknowledged and that they were not submitted is admitted. The case of the accused was that on a prior occasion a criminal complaint had been filed against him in C. C. No. 15 of 1959 for failure to send the returns, that the case was withdrawn and he was acquitted and therefore that acquittal will be a bar for a trial for the same offence. The learned Magistrate accepted the contention and acquitted the accused. This appeal has been filed challenging the correctness of the order of acquittal.

3. If S. 403, Cr. P. C. is applicable the respondent could not have been put on his trial at all in this case. Section 403 does not say that a person who has been tried and convicted or acquitted shall be acquitted if an attempt is made to prosecute him again for the same offence. It says that he shall not be tried at all. That however is a minor matter.

4. The important question for decision is whether the previous acquittal in C. C. No. 15 of 1959 would be a bar to the prosecution of the accused in this case. The learned Magistrate has proceeded on the basis that the offence on which he was tried in the first case was for failure to send the returns for 1958 and that it is for the same offence that he is again charged in the instant case. That is not so. Under Bye-law No. 25 (6) the Secretary is empowered to call for the returns at any time he thinks necessary and failure to obey the notice is an offence punishable under Bye-law 25 (18).

5. C. C. No. 15 of 1959 referred to by the learned Magistrate was based on a requisition made by the Supervisor of the Market Committee for the production of the returns. Under the Bye-law the Secretary alone is competent to call for the returns and on this legal defect the case, was withdrawn. This prosecution is not in respect of that offence, but for totally a different offence, viz., failure to obey the notice issued under Ext. P.12 by Pw. 1. The offences are not the same and S. 403, Cr. P. C. has no application. Section 403 says that a person who was once

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tried for an offence and convicted or acquitted shall not be liable to be tried again for the same offence. The offence in both the cases consists of disobeying a particular order. The order disobeyed in the present case was not the order that the accused disobeyed which was made the subject of the charge in C. C. No. 15 of 1959. So the offence was not the same and he was not therefore acquitted of the same offence.

6. A similar question whether the acquittal in a previous case of a failure to obey the notice issued under S. 159 (1) of the Madras Local Boards Act, would be a bar to the prosecution of the accused for failure to obey the 2nd notice had come up for consideration in a Division Bench of the Madras High Court in Public Prosecutor v. Sabapathy Chetty AIR 1938 Mad 847 and it was held :

"The offence is failure to comply with any direction lawfully given or any requisition lawfully made; it is not strictly speaking correct to say that the offence consists in failure to remove the encroachment. Nobody commits an offence under the Local Boards Act by mere failure to remove an encroachment. He only commits an offence under Sec. 207(1) when he fails to comply with a direction lawfully given. As Waller, J. observed in Ramachandra Chetty v. Chairman, Municipal Council, Salem ILR 49 Mad 880 : (AIR 1926 Mad 763) :

"If a particular direction or requisition is not enforced, there is nothing in the Act that prevents the President from issuing another, and if a prosecution is then launched, it is for failure to comply with the second requisition and not for failure to comply with the first............ The disobedience of the later notice is not the same offence as the disobedience of the earlier notice, but a different and distinct offence. If the encroachment is really an encroachment the encroacher is liable any time to receive a notice to remove it, and an acquittal or conviction on a charge of disobedience of any one of such notices cannot be a bar to his being tried for disobedience of any other."

7. The same view was taken in an earlier Division Bench decision in AIR 1926 Mad 763 where the learned Judge dealing with precisely similar provisions of the District Municipalities Act pointed out that the offence consists in the failure to obey the requisition issued by the competent authority. Their Lordships dissented from the decision of Srinivasa Aiyangar, J. in Ramanujachariar v. Kailasam Ayyar, AIR 1925 Mad 1067 which took a contrary view. The learned Magistrate has therefore erred in thinking that Sec. 403 Cr. P. C. will apply.

8. Another ground on which the learned Magistrate had based his acquittal is that the prosecution has failed to prove that the Secretary had been duly authorised in writing by the Market Committee to launch the prosecution. Pw. 1 the Secretary has produced the original minutes book of the Committee. That book is marked as Ex. P6 and the relevant resolution is marked as Ex. P6(a). The objection of the defence was that it was not proved by a competent person, Pw. 1 not being the Secretary at the time the resolution was passed. According to the defence the resolution ought to be formally proved by the scribe or one of the persons who is a signatory to the resolution. The learned Magistrate accepted the contention and held that the authority to file the complaint has not been properly proved. This view is erroneous. Sec. 74 of the Evidence Act says that the following documents are public documents .

(1) Documents forming the acts or records of the acts.

(i) xx xx xx xx xx

(ii) of the official bodies and tribunals,

(iii) xx xx xx xx xx

The Market Committee has been constituted under the provisions of Sec. 4-A of the Act which says that the State Government shall establish a Market Committee for every notified area. The relevant notifications have been produced and marked in the case. So the Malabar Market Committee is an official body within the definition of Sec. 74 of the Evidence Act and the documents forming the acts or records of the acts of such an official body will be public documents.

9. Section 65 of the Evidence Act says that secondary evidence may be given when the original is a public document within the meaning of Sec. 74 and therefore even a certified copy of the relevant resolution contained in the minutes book would have been admissible. Here the original itself had been produced. Under Sec. 81 of the Evidence Act the Court shall presume the genuineness of evey document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody. Under R. 18 of the Madras Commercial Crops Markets Rules 1948, a minute book shall be kept by every Market Committee for permanent record and a record of the proceeding at every meeting of the Market Committee shall be entered therein by or under the supervision of the Chairman, Vice Chairman or other presiding member, and shall be signed by him. According to By-law 16, the minutes book shall be in the personal custody of the Secretary. Therefore Ex. P. 6 proves itself and there is no need for any further proof. The acquittal is therefore unsustainable in law and is set aside. On the evidence adduced in the case, 1 find the accused guilty of the offence charged against him and sentence him to pay a fine of Rs. 25/- or in default to suffer simple imprisonment for one week. Time for payment one month from this date.

 Appeal allowed.

1962 (2) Cri. L. J. 549 (Vol. 65, C. N. 155) "Secretary, M. M. Committee v. A. V. Bapputty"

 KERALA HIGH COURT

 Coram : 1 ANNA CHANDY, J. ( Single Bench )

Criminal Appeal No. 333 of 1960 D/- 19 -6 -1961., from order of Munsiff Magistrate's Court, Ponnani, in C. C. No. 14 of 1960.

Secretary, Malabar Market Committee, Kozhikode, Appellant v. A. V. Bapputty, Accused, Respondent.

(A) Evidence Act (1 of 1872), S.57(1) - EVIDENCE - AGRICULTURAL PRODUCE - "All laws in force in the territory of India" - Bye-laws framed by Market Committee u/S.19 of Madras Commercial Crops Markets Act (20 of 1933) - Courts can take judicial notice of.

Bye-laws framed by a Market Committee under Section 19 of the Madras Commercial Crops Markets Act are framed in the exercise of delegated power of legislation and have the force of law and as such Courts can take judicial notice of them under Sec. 57 of the Evidence Act. (S) AIR 1955 SC 25, and AIR 1951 SC 318 and (S) AIR 1956 Madh-B. 138, Rel. on. (Para 6)

(B) Evidence Act (1 of 1872), S.74(1)(ii), S.65(e) - DOCUMENTS - AGRICULTURAL PRODUCE - Documents forming records of acts of official bodies - Minutes book kept by Market Committee under Madras Commercial Crops Markets Rules (1948) is public document.

The Market Committee constituted under the provisions of Sec. 4(a) of the Madras Commercial Crops Markets Act is an official body within the definition of Sec. 74 of the Evidence Act. The minutes book kept by such committee as per the provisions of R. 18 of the Madras Commercial Crops Markets Rules, 1948 which is a record of the proceeding of the meetings of the Market Committee is a public document which could be proved by production of a copy under Sec. 65(e), Evidence Act. (Para 7)

Cases Referred : Courtwise Chronological Paras

('51) AIR 1951 SC 318 (V 38) : 52 Cri LJ 1361, State of Bombay v.F.N. Balsara 4

('55) (S) AIR 1955 SC 25 (V 42) : 1955-1 SCR 735, Edward Mills Co. Ltd. v. State of Ajmer 4

('56) (S) AIR 1956 Madh-B. 138 (V 43) : 1956 Cri LJ 621 (FB), State v. Gopal Singh 4

V. Balakrishna Eradi and K.P.G. Menon, for Appellant; B. Moosakutty, for Respondent.

Judgement

JUDGMENT : The Secretary of the Malabar Market Committee, Kozhikode, is the appellant. The respondent is a licensee under the Malabar Market Committee dealing in arecanuts and having business within five miles of the regulated market at Vattamkulam. Under by-law 25(6) framed under the Madras Commercial Crops Markets Act XX of 1933, every such licensee is bound to submit the returns of his business transactions in the prescribed form to the Secretary of the Market Committee as and when required by him. On 1-1-1960 the complainant sent a registered notice to the respondent calling upon him to furnish returns of his transactions for the year 1959 in compliance with bye-law 25(6). Since the respondent did not furnish the returns a further notice was sent to him intimating that a prosecution will be launched in case he failed to submit the returns within ten days. As the respondent failed to furnish the returns even then, the complainant filed C. C. No. 14 of 1960 on the file of the Munsiff-Magistrate of Ponnani under S. 19(2) of the Madras Commercial Crops Markets Act read with bye-laws 25(6) and 25(18) of the bye-laws framed under the said Act. The respondent had no case that he furnished the returns or that there was any ground to exempt him from the liability to furnish the returns. The only defence set up by the respondent was that the prosecution launched by the appellant as Secretary of the Committee was not maintainable since there was no proper proof of the appellant's authority to prosecute. This objection seems to have been put forward on the ground that the certified copy of the resolution authorising the Secretary to launch the prosecution filed before the Magistrate is not admissible in evidence. The sustainability of the prosecution appears to have been challenged on the further ground that the bye-laws which formed the basis of it are not proved.

2. Both these objections were accepted by the Magistrate and the accused was acquitted. On the first objection the Magistrate held that the minutes book is not a public document as defined in Sec. 74 of the Indian Evidence Act and no ground is made out as contemplated in Sec. 65 of the Act to allow secondary evidence to be given. Regarding the second objection the learned Magistrate took the view that as the bye-laws of the committee cannot claim any statutory force the court cannot take judicial notice of them.

3. I shall first consider the question whether the court could have acted upon the bye-laws in the absence of proof or in other words whether judicial notice of the bye-laws could have been taken under Sec. 57 of the Evidence Act.

4. Under Sec. 57 of the Evidence Act the court is required to take judicial notice of the facts specified in clauses 1 to 13 and cl. 1 is "all laws in force in the territory of India." In Edward Mills Co. Ltd. v. State of Ajmer, (S) AIR 1955 SC 25 while interpreting the words "Law in force" as used in Article 372 of the Constitution their Lordships observed that :

"..........the words "law in force" as used in Art. 372 are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law. However, an order must be a legislative and not an executive order before it can come within the definition of law".

In State of Bombay v. F. N. Balsara, AIR 1951 SC 318 a notification issued by the Government under the Bombay Excise Act was held to be one having the force of law and as if made by the legislature itself. Following these decisions the Madhya Bharat High Court in State v. Gopal Singh, (S) AIR 1956 Madh-B 138, in dealing with the question whether judicial notice of a Government notification can be taken under Sec. 57 of the Evidence Act held that :

"Judicial notice can, therefore, be taken of a notification issued by the Government or any competent authority in the exercise of delegated power of legislation, as such a notification is a part of the law itself, judicial notice cannot, however, be taken of a notification issued by any authority in the exercise of its executive functions."

5. So, the question that has to be considered is whether the bye-laws framed under the Madras Commercial Crops Markets Act were issued by the Government or any competent authority in exercise of delegated power of legislation.

6. The bye-laws are passed under Sec. 19 of the Act which reads as follows :

"19(1) Subject to any rules made by the State Government under Sec. 18 and, with the previous sanction of the Director of Agriculture, Madras a market committee may in respect of the notified area for which it was established make bye-laws for the regulation of the business and the conditions of trading therein :

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Provided that where a market committee fails to make by-laws under this sub-section within one month from the date of its establishment the Director of Agriculture, Madras, may make such bye-laws as he thinks fit and the bye-laws so made shall remain in operation until the market committee has made bye-laws under this sub-section.

(2) Any bye-law made under this section may provide that contravention thereof shall be punishable with fine which may extend to fifty rupees." The preamble to the bye-laws states that they were framed in exercise of the powers conferred by Sec. 19 of the Act by the Malabar Market Committee having been approved by the Director of Agriculture as required in Sec. 19 of the Act aforesaid. It is not disputed before me that the bye-laws were framed by the Malabar Market Committee and that the same has been approved by the Director of Agriculture as mentioned in the preamble. The bye-laws were framed by the Committee in the exercise of delegated power of legislation and have the force of law and as such Courts can take judicial notice of them.

7. The next question arising for determination is whether the minutes book which contains the resolution authorising the complainant to launch the prosecution in his capacity as the Secretary is a public document as defined in Sec. 74 of the Indian Evidence Act.

Section 74 of the Evidence Act says that the following documents are public documents :

"(1) documents forming the acts or records of the acts-

(i) ........ ... ... ......

(ii) of official bodies and tribunals, and.......

The Market Committee is constituted under the provisions of Sec. 4(a) of the Act and it is not disputed that it is an official body within the definition of Sec. 74 of the Evidence Act. S. 65(e) permits secondary evidence to be given when the original is a public document within the meaning of Sec. 74. S. 77 of the Act permits proof of public documents by production of certified copies. The minutes book was kept as per the provisions of R. 18 of the Madras Commercial Crops Market Rules, 1948. Hence it is clear that the minutes book which is a record of the proceeding of the meetings of the Market Committee is a public document which could be proved by production of a copy. This is also the view taken by this Court in Criminal Appeal 240 of 1960.

8. The order of acquittal passed on two such erroneous assumptions is unsustainable and has to be set aside. The order is therefore set aside and the accused found guilty under Secs. 25(6) and 25 (18) of the Bye-laws framed under the Madras Commercial Crops Markets Act, XX of 1933 and sentenced to pay a fine of Rs. 25/- or in default to suffer simple imprisonment for one week. Time for payment of fine one month from this date.

 Appeal allowed.

1960 Cri. L. J. 168 (Vol. 61, C.N. 44) "Chimanlal v. State of Bombay"

 SUPREME COURT =AIR 1960 SUPREME COURT 86 (Vol. 47, C. 17)

(From Bombay)\*

 Coram : 2 S. JAFER IMAM AND K. SUBBA RAO, JJ. ( Division Bench )

Criminal Appeal No. 200 of 1957, D/- 15 -9 -1959.

Chimanlal Premchand, Appellant v. The State of Bombay, Respondent.

(A) Bombay Agricultural Produce Markets Act (22 of 1939), S.2(1)(i) and Sch. - AGRICULTURAL PRODUCE - Agricultural produce - Cotton pressed into bales - Trade in - Contravention of R.65.

Bombay Agricultural Produce Markets Rules (1941), R.65, R.67.

Cotton, ginned or unginned, continues to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost, the fact that it is pressed into bales or packed otherwise does not make it any the less cotton specified in the Schedule to the Act. In this view, the pressed cotton in bales is an agricultural produce as defined in S. 2(1)(i) of the Act, and, therefore, a person doing business in the said produce without licence contravenes R. 65 of the Rules. (Para 9)

(B) Bombay Agricultural Produce Markets Rules (1941), R.65 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - STATE - Validity - R.65 not in excess of powers of State Government.

Bombay Agricultural Produce Markets Act (22 of 1939), S.26, S.27.

Under S. 27(1), the bye-laws made by the Market Committee for the regulation of business and conditions of trading in the market area are subject to the rules made by the State Government under S. 26. This indicates that under S. 26 of the Act, the State Government has also power to make rules for the regulation of business and conditions of trading in the market area and that power can be spelled out from the provisions of S. 26(1) of the Act. Therefore, S. 26(1) confers ample power on the State Government to make R. 65. In this view, it is not necessary to invoke the provisions of S. 26(2)(e) to sustain the power of the State Government to make R.65. (Para 11)

(C) Bombay Agricultural Produce Markets Rules (1941), R.65(1) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - FORWARD CONTRACT - 'Business' - Meaning of - Includes even forward contracts.

Words and Phrases - Business. (Para 12)

Mr. Purshottam Tricumdas, Senior Advocate (M/s. J.B. Dadachanji, S.N. Andley and Rameshwar Nath, Advocates of M/s. Rajinder Narain and Co., with him), for Appellant; M/s. H.J. Umrigar and R.H. Dhebar, Advocates, for Respondent.

The following Judgment of the Court was delivered by

\* Criminal Appeal No. 742 of 1956, D/- 11-09-1956-Bom.

Judgement

SUBBA RAO, J. :- This is an appeal by special leave against the judgment of the High Court of Judicature at Bombay setting aside that of the First Class Magistrate, Broach, and convicting the appellant for contravening the provisions of R.65(1) of the Bombay Agricultural Produce Markets Rules, 1941, hereinafter called the Rules, and imposing on him a. fine of Rs. 25.

2. The appellant was a trader carrying on business in cotton at Broach. On February 7 and 9, 1953, he purchased full pressed cotton bales from M/s. Ratanji Faranji and Sons in two instalments of 200 bales each through a licensed broker, Dahyabhai Acharatlal. He also purchased 100 bales from Halday Multi-Purpose Co-operative Society. All these purchases were made by the appellant as a trader in the market area of Broach without the requisite licence from the Market Committee. He was charged in the Court of the Joint Civil Judge (Junior Division) and Judicial Magistrate, First Class, Broach, for committing the breach of R. 65(1) of the Rules. The Judicial Magistrate held that pressed cotton was not cotton, ginned or unginned within the meaning of one of the items mentioned in the Schedule to the Bombay Agricultural Produce Markets Act (hereinafter called "the Act"), and, therefore, the appellant did not commit any offence under the Act or the Rules framed thereunder. The State of Bombay carried the matter by way of appeal to the High Court of Bombay, and

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a Division Bench of the said High Court, consisting of Chainani and Shah JJ., allowed the appeal and convicted the appellant for contravening the provisions of R.65(1) of the Rules and imposed upon him a fine of Rs.25. This appeal challenges the correctness of the judgment of the High Court.

3. Learned Counsel for the appellant raised before us the following three contentions : (i) the Act and the Rules framed thereunder did not apply to pressed cotton, and, therefore, the appellant did not contravene the provisions of R. 65(1) of the Rules; (ii) R.65 is ultra vires inasmuch as its provisions are in excess of the rule-making power of the State Government; and (iii) the transactions in question were forward contracts for future delivery, and, as no delivery was intended or in fact made, the appellant cannot be said to have traded in cotton within the market area.

4. The answer to the first contention turns upon the interpretation of cl. (1) of Sub-S. (1) of S. 2 of the Act read along with the relevant item or items in the Schedule. The relevant provisions read :

"S. 2(1) : In this Act unless there is anything repugnant in the subject or context,-

(i) "Agricultural Produce" includes all produce of agriculture, horticulture and animal husbandry specified in the Schedule;

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(vi) "Market Area" means any area declared to be a market area under Section 4.

 SCHEDULE E.

Fibres :-

(i) Cotton (ginned and, unginned)

The Bombay Agricultural Produce Markets Rules, 1941 :

Rule 65. (1) : No person shall do business as a trader or a general commission agent in agricultural produce in any market area except under a licence granted by the market committee under this rule.

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(7) Whoever does business as a trader or a general commission agent in agricultural produce in any market area without a licence granted under this rule or otherwise contravenes any of the provisions of this rule shall, on conviction, be punishable with a fine which may extend to Rs. 200 and in the case of a continued contravention with a further fine which may -extend to Rs. 50 for every day during which the contravention continues after the date of the first conviction, subject to the maximum of Rs. 200."

The gist of the aforesaid provisions may be stated thus: Agricultural produce includes all produce of agriculture specified in the Schedule. Cotton, ginned and unginned, is specified in the Schedule as an agricultural produce. A trader cannot do business in the said produce in any market area without obtaining licence from the Market Committee. If he does such business without a licence, he1 is liable to punishment under R. 65 of the rules.

5. If pressed cotton is "cotton, ginned or unginned", specified in the Schedule, the appellant, having admittedly done business in the said cotton in the market area, has contravened the provisions of R. 65, and, therefore, he is liable to be convicted under R.67 of the Rules.

6. It is contended that ginned cotton which has been pressed into bales is not cotton within the meaning of the Act. What is "pressed cotton" in bales? It involves a simple process described as pressing, and cotton is pressed into bales only to facilitate its transport from one place to another; it does not involve any chemical change or even a manufacturing process. Ginned cotton, after it is pressed into bales, continues to be ginned cotton, and it is sold and purchased only as cotton, though in bales. We find it difficult to accept the argument that pressed cotton is a different commodity. Nor do we find any relevancy in the argument that stockists, industrialists and exporters deal with pressed cotton and not loose cotton, because the said fact does not in any way change the essential character of the-agricultural produce. If a trader carries OB business in that commodity, the consideration whether the trader or the buyer is an agriculturist or a non-agriculturist is not relevant to the enquiry.

7. Items II to XI of the Schedule specify cereals, pulses, oilseeds, narcotics, sugarcanes fruits, vegetables, animal husbandry products, condiments, spices and others, and grass and1 fodder. A perusal of the items indicates that most of them would be sold in containers like baskets, packages, tins etc. It cannot be argued that when the pulses, fruits or vegetables are packed in a basket, the basket with its contents becomes a different commodity from that contained in it. So too, when tobacco is pressed and packed, it cannot be; suggested that packed tobacco has changed its character. So also in the case of other products mentioned in the Schedule. We do not, therefore, see any principle or reason for treating cotton in a different way from other agricultural porducts.

8. It is said that the primary object of the Act is to help agriculturists, that agriculturists do not ordinarily deal or do business in-bales of cotton and that the, legislature

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could not, therefore, have intended to make the Act applicable to pressed cotton. It cannot be disputed that one of the objects of the Act is to protect the producers. That object would certainly be defeated, if within the market area a trades, whether he is an agriculturist or not, can do business of buying and selling cotton pressed into bales, for by that simple process he would be free from the restrictions imposed to protect the agriculturists. The object of such legislation is to protect the producers of agricultural crops from being exploited by tile middlemen and profiteers and to enable them to secure a fair return for their produce. This object would certainly be defeated if we were to accept the contention of the learned Counsel for the appellant.

9. Shortly stated the position is this: Cotton, ginned or unginned, continues to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost, the fact that it is pressed into bales or packed otherwise does not make it any the less cotton specified in the Schedule to the Act. In this view, the pressed cotton in bales is an agricultural produce as defined in S. 2(1)(i) of the Act, and, therefore, the appellant in doing business in the said produce without licence has contravened R.65 of the Rules.

10. The second contention is that R.65 is in excess of the rule-making power of the State Government. This argument is elaborated by the learned Counsel in the following manner: purporting to exercise the powers conferred by S. 26 of the Act, the Government of Bombay made R. 65 prohibiting any person from doing business as a trader, or as a commission agent, in any agricultural produce in any market area except under a licence granted by the Market Committee under that rule. Under S. 26(2)(e) of the Act, the State Government has power only to make rules fixing the maximum fees which may be levied by the Market Committee in respect of agricultural produce bought and sold by persons holding a licence under the Act in the market area. Under the Act the State Government is only empowered to grant a licence to any person to use any place in the market area for the purpose of buying or selling of any agricultural produce; therefore, under S. 26(2)(e) of the Act, the Government can only make a rule prescribing the fees in respect of a licence issued to a person to use any place in the said area and not prohibiting any other person from doing business without a licence in that area. So stated the argument appears So-be plausible, but a scrutiny of the relevant provisions of the Act, the Rules made by the Government and the Bye-laws framed by the Market Committee shows that there is no basis, for this contention. The relevant provisions read :

"The Bombay Agricultural Produce Markets Act, 1939.

S. 26 (1); The Provincial Government may, either generally or specially for any market area or market areas, make rules for the purposes of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for or regulate :-

(e) the management of the market, maximum fees which may be levied by the market committee in respect of agricultural produce- bought and sold by persons holding a licence under the Act in the market area.

S. 27(1) : Subject to any rules made by the Provincial Government under Section 26 and with the previous sanction of the Director or any other officer specially empowered in this behalf by the Provincial Government, the market committee may in respect of the market area under its management make bye-laws for the regulation of the business and the conditions of trading therein.

The Bombay Agricultural Produce Markets Rules, 1941.

Rule 65. (1) : No person shall do business as a trader or a general commission agent in agricultural produce in any market area except under a licence granted by the market committee under this rule.

(2) Any person desiring to hold such licence shall make a written application for a licence to the market committee and shall pay such fee as may be specified in the byelaws.

(3) On receipt of such application together with the proper amount of the fee the market committee may, after making such enquiries, as may be considered necessary for the efficient conduct of the market, grant him the licence applied for. On the grant of such licence the applicant shall execute an agreement in such form as the market committee may determine, agreeing to conform with these rules and the bye-laws and such other conditions as may be laid down by the market committee for holding the licence.

(4) Notwithstanding anything contained in sub-rule (3), the market committee may refuse to grant a licence to any person, who, in its opinion, is not solvent or whose operations in the market area are not likely to further efficient working of the market under the control of the market committee.

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(5) The licence shall be granted for a period of one year, after which it may be renewed on a written application, and after such enquiries as are referred to in Sub-Section (3) as may be considered necessary, and on payment of such fees as may be specified in the bye-laws.

(6) The names of all such traders and general commission agents shall be entered in a register to be maintained for the purpose.

(7) Whoever does business as a trader or a general commission agent in agricultural produce in any market area without a licence granted under this rule or otherwise contravenes any of the provisions of this rule shall, on conviction, be punishable with fine which may extend to Rs. 200 and in the case of a continued contravention with a further fine which may extend to Rs. 50 for every day during which the contravention continues after the date of the first conviction, subject to the maximum of Rs. 200.

Bye-laws of the Agricultural Produce Market Committee, Broach.

Bye-law 33. (1) : All traders, general commission agents, brokers, weighmen, measurers, and surveyors operating in the market area shall pay full fees for each market year or any part thereof as per Schedule I given in appendix No. 2 for obtaining licences, required to be taken by them, under Rr. 65 and 67."

The said provisions may be summaried thus: Section 27 of the Act empowers the Market Committee, subject to any rules made by the State Government under S. 26 and with the previous sanction of the Director, to make bye-laws in respect of a market area for the regulation of the business and conditions of trading therein. Section 26(1) of the Act enables the State Government to make rules for the purposes of carrying out the provisions of the Act. In exercise of that power conferred under S. 26(1), the State Government made R. 65 prohibiting any trader from doing business in agricultural produce except under a licence granted by the Market Committee. In exercise of powers conferred under S. 27 on the Market Committee, it made bye-law 33 prescribing the fee payable in respect of a licence under R.65 of the Rules.

11. The question is whether under S. 26(1) the State Government is empowered to make R. 65 prescribing the taking of a licence as a condition for doing business in a market area. It can do so for the purposes of carrying out the provisions of the Act. Section 27, which is a provision of the Act, enables the Market. Committee to make bye-laws for the regulation of the business and the conditions of trading in the market area. To enable the Market Committee to discharge its functions under S. 27 of the Act more effectively, the Government made a rule prohibiting a trader from doing business in a market area without licence, and the Market Committee prescribed the fees payable in respect of the licence. The rule was certainly one made for the purpose of facilitating the Market Committee to function effectively under S. 27 of the Act. That the legislature conferred such a power on the State Government is also supported by the provisions of S. 27 of the Act. Under S. 27(1), the bye-laws made by the Market Committee for the regulation of business and conditions of trading in the market area are subject to the rules made by the State Government under S. 26. This indicates that under S. 26 of the Act, the State Government has also power to makejules for the regulation of business and conditions of trading in the market area, and that power can be spelled out from the provisions of S. 26(1) of the Act. Therefore, S. 26(1) confers ample power on the State Government to make R. 65. In this view, it is not necessary to invoke the provisions of S. 26(2)(e) to sustain the power of the State Government to make R.65.

12. The third contention though raised was not pursued in view of the word "business" in R. 65(1) which is comprehensive enough to take in even forward contracts.

13. In the result the appeal fails and is dismissed.

 Appeal dismissed.

1959 Cri. L. J. 38 (Vol. 60, C. N. 21) "Chottey Lal v. State"

 CALCUTTA HIGH COURT = AIR 1959 CALCUTTA 32 (V 46 C 8)

 Coram : 2 K. C. DAS GUPTA AND DEBABRATA MOOKERJEE, JJ. ( Division Bench )

Criminal Appeals Nos. 165 and 173 of 1955, D/- 28 -8 -1957.

Chottey Lal, Appellant v. The State, Respondent.

(A) Constitution of India, Art.14 - EQUALITY - TRADE MARK - AGRICULTURAL PRODUCE - COGNIZANCE OF OFFENCE - Same Acts constituting offences under two statute - No discrimination - Art.14 not contravened by S.488, Penal Code and S.4, of Act 1 of 1937.

Penal Code (45 of 1860), S.488.

Agricultural Produce (Grading and Marking) Act (1937), S.4.

Criminal P.C. (5 of 1898), S.190.

The act of fixing a grade designation mark in a manner calculated to cause a person to believe that the goods contained in the receptacle are of a nature or quality different from the real nature or quality thereof, will constitute an offence u/s. 488/ 487 Penal Code and thus become punishable with imprisonment extending to 3 years or with fine or with both and will in many cases also constitute an offence u/s. 4 of the Agricultural Produce (Grading and Marking) Act, 1937 punishable with fine which may extend to Rs. 500/-. But the fact that the same act is thus punishable under two different statutes, does not result in any contravention of the provisions of Art. 14 of the Constitution.

The result of the same act being made punishable by two statutes, is not that one person guilty of that act is liable to punishment under one statute and another person committing the same act is liable under the other statute. The position in law is that every person committing the act is liable to punishment under both the statutes. There is, therefore, no discrimination. (Para 6)

It is also of little consequence that a prosecuting authority may mention in the petition of complaint or report in one case a contravention of S. 4 of the Agricultural Produce (Grading and Marking) Act and in another case the contravention of S. 488 I.P.C. In each of these cases the Magistrate who takes cognizance of the offence on receipt of a complaint, is not only free, but bound under S. 190 (1) (a) or S. 196 (1) (b), Cr. P. C. to take cognizance of both these offences which these acts constitute. (Para 7)

There is, therefore, no scope for thinking that there is any discrimination in law, when the same acts constitute offences under two statutes. Section 488, I. P. C. or S. 4 of the Agricultural Produce (Grading and Marking) Act, are, therefore, not void on the ground of violating Art. 14 of the Constitution. (Para 11)

Anno : AIR Com. Const. of India, Art. 14, N. 1, 42. AIR Mam. I. P. C. S. 488, N. 1, AIR Com Cr. P. C. S. 190, N. 19.

(B) Penal Code (45 of 1860), S.487, S.488 - TRADE MARK - Trader having tins of ghee with false Agmark Labels - Labels also found in his shop - Offence u/S.488 is committed.

Where it is found that a trader has used false Agmark labels on the tins of Ghee in a manner reasonably calculated to make any person to believe that the goods contained in the receptacles were of superior quality - a circumstance different from the real circumstance, and had also in his possession 296 labels, it shows that he had clearly acted with intent to defraud, and it must therefore be held that he has failed to prove that he acted without intent to defraud and has also made use of a false mark in a manner prohibited by S. 487 I. P. C. He is therefore rightly convicted of an offence u/s. 488/ 487, I. P. C. (Para 12)

(C) Penal Code (45 of 1860), S.484 - TRADE MARK - PUBLIC SERVANTS - Mark used by public servant - Agmark label is not such a mark.

An agmark label is really a label prescribed by the Central Government and cannot be said to be a mark used by a public servant. By using a counterfeit Agmark label a person cannot therefore be held to have committed an offence u/s 484 I. P. C. (Para 13)

Cases Referred : Courtwise Chronological Paras

(A) AIR 1952 Cal 639 (V 39) : 56 Cal WN 659 (SB), Ram Kissen v. State of West Bengal 8

Ajit Kumar Dutta and Ninnal Ch. Choudhury, for Appellant; Sukumar Sen, for the State.

Judgement

K. C. DAS GUPTA, J. :- The Agricultural Produce (Grading and Marking) Act, 1937 provides in S. 3 that the Central Government may, after previous publication by notification in the Official Gazette, make rules fixing grade designations to indicate the quality of any scheduled article, defining the quality indicated by every grade designation, specifying grade designation marks to represent particular grade designations, authorising a person or body of persons subject to any prescribed conditions, to mark with a grade designation mark any article in respect of which such mark has been prescribed or any covering containing or label attached to any such article and specifying the conditions. The Schedule contains among other things "Dairy produce". Under the above provision, the Central Government made, in 1938 certain Rules which were called the Ghee Grading and Marking Rules, 1938. By these Rules which were applied to Ghee produced in India, they fixed the grade designation to indicate the quality of Ghee as set out in Column 1 of Schedule I of the Rules and also prescribed the colour design as set out in Schedule II thereof as the grade designation mark. In 1950 the grade designation mark was altered. The mark, as now prescribed and set out in the Schedule substituted by the Rule made in 1950 shows a design with the words 'Agmark' in English, with an outline Map of India, and the words 'Agmark' and certain other words in Deb Nagri. One design is prescribed for special grade of Ghee and another for the general Grade of Ghee. In Schedule I which prescribes grade designation and defines the quality, two qualities are shown, one for the special grade, another for the general grade. Both these qualities require a minimum which is admittedly above the ordinary quality of Ghee available in the market and certainly above the quality of adulterated Ghee. The necessary result on the market is that inferior quality Ghee, if marked with the prescribed 'Agmark' design, would fetch a much better price than otherwise.

2. The prosecution case is that the two appellants before us agreed on a scheme to use labels showing the design as prescribed by the 1950 Rules referred to above on tins containing inferior quality adulterated Ghee and that for this purpose they actually got hold of number of labels very similar in design to the prescribed mark, used them on some tins of Ghee and stored them for sale in their shops. It is said that on the 6th May, 1954, the shop of appellant Santlal was searched, a number of tins of Ghee with such labels was found in his shop, and a bundle of 296 such labels was also found inside a box. The shop of the appellant Chottey Lal was searched on the same date and six tins with similar labels affixed were found. Prior to the search, it is said, a Police Officer, Ardhendu Sekhar Sarkar had gone to Santlal's shop and offered to purchase three mds. of Ghee, posing as an Order Supplier outside Calcutta and was shown 2 or 3 tins with label affixed which appeared to him

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to be counterfeit Agmark labels. As Santlal had not the necessary quantity in his own shop, Santlal, it is said, took him to Mahalakhi Bhandar at 11 Burtolla Street where he had talk with the other appellant Chottey Lal and thereafter Santlal agreed to supply the quantity demanded by the Officer. There also, the officer was shown some tins of Ghee with labels which appeared to the Officer to be counterfeit Agmarks.

3. The prosecution case is that the appellants committed offence u/s. 484 and also u/s. 488/487. I. P. C. by using such labels on tins containing Ghee and that this was done by them in pursuance of a previous conspiracy. The learned Magistrate has convicted both the appellants for an offence u/s. 484 I. P. C., for 488/487 I. P. C. and also for an offence of conspiracy u/s. 120-B/484/488/487 I. P. C. For each of the offences u/s. 484 and 488/487 I. P. C. the learned Magistrate sentenced them to R. I. for two years but directed the two sentences to run concurrently. He did not pass any separate sentence on the conspiracy charge.

4. The defence was that there was no such conspiracy, that even if the labels found , on tins seized from the shops be in fact counterfeit, the accused persons did not know that, having honestly obtained them from bigger merchants for the purpose of carrying on their retail business. The story that the 296 labels were found in Sandal's shop was also denied.

5. Before we come to a consideration of the evidence to decide whether it justifies the conclusions of the learned Magistrate, a question of law raised by Mr. Dutta on behalf of the appellants deserves consideration. Section 4 of the Agricultural Produce (Grading and Marking) Act 1937, under S. 3 of which the Rules fixing grade designations and specifying grade designation marks and authorising some person to mark are made, provides that whoever marks any Scheduled article with a grade designation mark, not being authorised to do so by rule made under S. 3, shall be punishable with fine which may extend to Rs. 500/-. Thus, any person who affixes a tin of Ghee with the designation mark as prescribed under the 1950 Rules mentioned above, without being one of the persons authorised under the Rules framed under S. 3, would commit an offence u/s. 4 of that Act and be punishable with fine which may extend to Rs. 500/-. The prosecution case is, and there can be little doubt about its correctness, that any person who marks a tin of Ghee with the designation mark which is false - whether by reason of its not being prepared exactly in accordance with the Rules or by reason of its not being affixed by an authorised person, - commits an offence u/ss. 488/487, I. P. C. where the marking is done in a manner reasonably calculated to cause any person to believe that it is of a quality different from the real nature or quality thereof. Mr. Dutt contends that in many cases therefore, it will happen that the very act which is punishable u/s. 4 of the Agricultural Produce (Grading and Marking) Act, 1937, with fine which may extend to Rs. 500/- will also be punishable under the provisions of S. 488/487 I. P. C. with imprisonment of either description for a term which may extend to 3 years or with fine or with both. According to Mr. Dutt, the necessary consequence of this is that while one person prosecuted for the same act u/s. 4 of the Agricultural Produce (Grading and Marking) Act, 1937, will be liable to the maximum punishment of Rs. 500/-, another person having committed the same act, may be prosecuted and punished for an offence u/s. 488/487 I. P. C. and thus become liable to punishment and be actually punished with imprisonment, rigorous or simple, for a term extending to 3 years or with fine without any limitation or with both. This, according to him, contravenes the provisions of Art. 14 of the Constitution of India and therefore, the provision of S. 488 of the Indian Penal Code as also the provision of S. 4 of the Agricultural Produce Act are void in law.

6. I agree with Mr. Dutta that the act of fixing a grade designation mark in a manner calculated to cause a person to believe that the goods contained in the receptacle are of a nature or quality different from the real nature or quality thereof, will constitute an offence u/s. 488/487 I. P. C. and thus become punishable with imprisonment extending to 3 years or with fine or with both and will, in many cases also constitute an offence u/s. 4 of the Agricultural Produce (Grading and Marking) Act 1937 punishable with fine which may extend to Rs. 500/-. I can find no basis, however, for the contention that the fact that the same act is thus punishable under two different statutes, results in any contravention of the provisions of Art. 14 of the Constitution. Article 14 guarantees to every person equality before the law and the equal protection of laws; so that, if any law results in discrimination as between different persons similarly circumstanced, that law will be void. The result of the same act being made punishable by two statutes, is, however, not that one person guilty of that act is liable to punishment under one statute and another person commiting the same act is liable under the other statute. The position in law is that every person committing the act is liable to punishment under both the statutes. There is, therefore, no scope for saying that there is discrimination. The law is the same for all persons and any one guilty of the act punishable under two statutes is liable to punishment under both the statutes.

7. But, says Mr. Dutta, it is open to the prosecuting authority to institute a case against one person under the Agricultural Produce (Grading and Marking) Act, 1937 and in respect of the same act institute a case against another person under the Indian Penal Code under S. 488/487, and that if that is done, that will be discrimination. This argument overlooks the position in law that when any complaint is made to a Magistrate, the complainant has to mention the acts which are said to constitute the offence. It is usual to mention the offence which, according to the complainant, has been committed, but the omission to mention the name of the statute or the particular section of the statute under which the act is punishable is of little consequence. What is necessary is that the acts alleged constitute an offence in law. As soon as a complaint alleging the commission of such acts is before the Magistrate, he has to take in law the cognizance of the same. If, ex hypothesi, the acts complained of constitute an offence punishable under two different statutes, it seems to me clear that when the Magistrate takes cognizance of an offence under the provisions of S. 190(1) (a), (b) or (c) he is bound in law to take cognizance not of one offence under one of the statutes but of both the offences under the two statutes. It is therefore of little consequence that a prosecuting authority may mention in the petition of complaint or report in one case a contravention of S. 4 of the Agricultural Produce (Grading and Marking) Act and in another case the contravention of S. 488 I. P. C. In each of these cases the Magistrate who takes cognizance of the offence on receipt of a complaint, is not only free, but in my opinion, bound to take cognizance of both these offences which these acts constitute. It is helpful to remember in this connection the actual words of Cl. (a) or (b) of S. 190 (1) Cr. P. C. which empowers a Magistrate to take cognizance of an offence. Clause (a) is in these words : "Upon receiving a complaint of facts which constitute such

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offence". Clause (b) similarly is in these words : "upon a police-report of such facts, made by any police officer. The position clearly is that facts have to be stated and where the facts constitute an offence under two or more statutes, the Magistrate will take cognizance of all such offences. There is, therefore, in my opinion, no scope for thinking that there is any discrimination in law.

8. In this connection Mr. Dutt has drawn our attention to a decision of a Special Bench of this Court in Ram Kiseen v. State of West Bengal, 58 Cal WN 659 : (AIR 1952 Cal 639) (A). In that case the Special Bench had to consider whether Section 12 (1) of the West Bengal Black Marketing Act was ultra vires the Constitution, being in violation of Art. 14 thereof. Section 12 (1) of the West Bengal Black Marketing Act provides that the

"Provincial Government may, from time to time, by notification in the Official Gazette, allot cases for trial to each Special Tribunal, and may also from time to time by like notification transfer any case from one Special Tribunal or make such modifications in the description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary."

9. The argument mainly turned on the meaning to be attached to the word may'. The Special Bench held that 'may' cannot here mean 'must' and as under the provisions it was open to the Provincial Government to allot some cases of offences under the Act to the Special Tribunal and not to allot some other cases under the same Act, there was discrimination for which there was no justification and therefore the Section was ultra vires the Constitution. The 2nd contention raised in support of the argument that the Section was ultra vires was that most, if not all black marketing offences were clearly offences also against the Essential Supplies Act, 1946, and Orders made thereunder; and there was nothing which compelled Government to prosecute a person under the Black Marketing Act on facts which constitute an offence also under the Essential Supplies Act, but as different punishments were prescribed for the offences under the present Act a higher punishment could be imposed on one person than upon another guilty of having committed the same acts. So, it was urged the Section was discriminatory. This contention was also accepted as sound by the learned Judges constituting the Special Bench.

10. It is important to notice that whereas in the present case and ordinarily, in all cases before the courts of criminal law, a case is instituted as soon as cognizance is taken by the Magistrate in the manner prescribed u/s. 190 (1) (a), (b) or (c), the institution of cases under section 12 (1) of the Black Marketing Act is by the allotment of the case by the Government. The power and the duty of the Magistrate to take cognizance of all the offences which the facts alleged constitute, are not possessed by the Special Tribunal to whom a prosecution case under the Black Marketing Act is allotted by the Government. This distinction may very well justify the decision of the Special Bench on the second contention raised before them that because the same acts constituted in most cases an offence under the Black Marketing Act and also under the Essential Supplies Act, 1946, and different punishments were prescribed for the two offences and the Government was not compelled to prosecute a person under the Black Marketing Act on facts which were committed also under the Essential Supplies Act, there was discrimination. That case, can, however, in my opinion, be no authority for the proposition that even in cases which are instituted in the ordinary criminal courts, the fact that the same acts constituted offences under two different statutes, amounts to discrimination.

11. I have, therefore, come to the conclusion that Mr. Dutt's contention that Sec. 488 I. P. C., or Section 4 of the Agricultural Produce (Grading and Marking) Act is void on the ground of violation of Art. 14 of the Constitution, must be rejected.

12. Coming now to the facts of the present case, we find that there is no reasonable ground to doubt the prosecution case that the 296 labels were actually found inside a box in the shop of Santlal Agarwala, as stated by the Police Officer who searched the shop and search witnesses. In prescribing the grade designation mark for ghee in Schedule II of the Rules framed u/s 3 of the Agricultural Produce (Grading and Marking) Act, 1937, the Central Government not only prescribed the design that was to be printed but further prescribed that these labels shall be printed on the water mark paper of the Government of India and shall have a micro-tint background bearing the words "Government of India'' in olive green colour. The 296 labels that were seized from Sandal's shop show the design and other features almost correctly, but we find that they have not been printed on water mark paper of the Government of India. I am satisfied on an examination of these labels that they are not in full accordance with the prescribed mark, and that they are false labels. When it is remembered that in Santlal's shop were found 11 tins of Ghee which contained marked labels exactly similar to these, it is reasonable in my opinion, to conclude that it was Santlal who had affixed the labels that we now find on the tins, and that these labels on the tins are also false marks. It may be mentioned in this connection that the contents of the tins were chemically examined and found to contain highly adulterated Ghee. I have no doubt in my mind on a consideration of all these circumstances that Santlal used the false mark on the tins of Ghee in a manner reasonably calculated to make any person to believe that the goods contained in the receptacles were of superior quality - a circumstance different from the real circumstance. His possession of the 296 labels shows that he had clearly acted with intent to defraud. It must therefore be held that he has failed to prove that he acted without intent to defraud and has also made use of a false mark in a manner prohibited by Sec. 487, I. P. C. He has therefore been rightly convicted of an offence u/s 488/487 I.P.C.

13. According to the prosecution, by affixing the label, Santlal also committed an offence u/s 484 I. P. C. Section 484 provides inter alia that whoever uses as genuine a counterfeit of a mark used by a public servant to denote that a property is of a particular quality, shall be punishable. The prosecution case which the learned Magistrate has apparently accepted is that the Agmark label is a mark which has been used by a public servant to denote that the property is of a particular quality. Mr. Dutt has contended that the label which is said to have been counterfeited is really a label prescribed by the Central Government and cannot be said to be a mark used by a public servant. In my judgment, this contention is correct, and that by using a counterfeit Agmark label a person cannot be held to have committed an offence u/s 484 I. P. C.

14. On the charge under S. 120B against both these appellants, the only circumstance relied on by the prosecution is that Santlal took the Police Officer who had gone to his shop and demanded three maunds of Ghee, to Chottey Lal's shop at 11 Burtola Street and talked with him there, and thereafter Chottey Lal produced before him two or three tins which he thought, contained forged labels.

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The tins that were seized from Chottey Lal's shop also appeared to contain labels not in full accordance with the prescribed mark. The contents of this were examined and also found to be adulterated. I have no hesitation, therefore, in holding that the prosecution case that the tins found in Chottey Lal's shop were also marked with false labels is true. That fact or the fact that Santlal took the officer to Chottey Lal's shop is, however, wholly insufficient to justify a conclusion that there was an agreement between the two. For, it may very well be that while Santlal who appears to have got hold of a number of false labels, used the labels on tins of Ghee procured by him, Chottey Lal had nothing to do with it and may have obtained the tins of Ghee with the labels already affixed without his being aware that they were false labels. I must confess that I was surprised and indeed rudely shocked to find that the genuine Agmark label prescribed by the Department is of so flimsy a character as to make it easy for almost any one with command of a printing machine to produce a label very similar in design and appearance. The guarantee of quality supposed to be given by the prescribed mark, is worth little therefore in practice. I think it will be very difficult for most people to distinguish without any careful examination between a genuine Agmark label and a counterfeit Agmark label. This is so even before the label is affixeo. But once a false label has been affixed, it is next to impossible for most people to say that this is not genuine label. We have to remember this when considering Chottey Lal's defence that he had no idea that the labels on the tins found in his shop were not genuine labels. When we remember further that he does business in Ghee in a very small way, his story that he obtained, these tins of Ghee with the labels already affixed and stored them in his shop without having any suspicion that the labels were not genuine, seems reasonably probable. On consideration of all these circumstances I am of opinion that the prosecution has failed to prove that there was any conspiracy between Santlal and Chottey Lal for commission of the alleged offence.

15. The order of conviction of Chottey Lal and Santlal under S. 120-3/487/488/484, I. P. C., must therefore be set aside.

16. As regards Chottey Lal's conviction u/s 488 I. P. C., the position is that by keeping the goods in his shop, Chottey Lal may be said to have used the false marks on the tins. Unless therefore, he can satisfy the Court that he acted without intent to defraud, he must be held to have committed an offence u/s 488 I. P. C., Chottey Lal has not produced any evidence himself to discharge this burden. But the evidence produced for the prosecution, in my opinion, justifies the conclusion that his defence that he obtained these tins with the labels already affixed and had no suspicion that they were false, is reasonably correct. In view of this, he should, in my opinion, be held to have succeeded in proving that he acted without intent to defraud. The consequence is that his conviction u/s 488 I. P. C. is not maintainable in law. His conviction u/s 484 I. P. C. must be set aside for the simple reason that it has not been shown that he knew the label to be counterfeit. Apart from this, however, as I have already pointed out, when discussing the case of Santlal, the user of a counterfeit Agmark label would not amount to an offence under Sec. 484.

17. I would, therefore, allow the appeal of Chottey Lal and set aside the order of conviction and sentence passed against him.

18. I would also allow the appeal of Santlal Agarwala in part and set aside the order of conviction passed against him u/ss. 120B/484/488/487, I. P.C., as also the conviction and sentence under section 484 I. P. C., but dismiss his appeal so far as it relates to his conviction and sentence under sections 488/487, I. P. C.

19. Appellant Chottey Lal is acquitted but appellant Santlal must surrender to his bail.

20. DEBABRATA MOOKERJEE, J. :- I agree.

 Order accordingly.

1953 Cri. L. J. 1556 (Nagpur) "Krishnarao v. The State"

 NAGPUR HIGH COURT

 Coram : 1 HEMEON, J. ( Single Bench )

Criminal Revn. No. 121 of 1952, D/- 19 -2 -1953.

Krishnarao Vithobaji (Accused), Applicant v. The State.

C.P. and Berar Foodgrains Control Order (1945), Cl.2(a) - ESSENTIAL COMMODITIES - AGRICULTURAL PRODUCE - Dealer.

C.P Agricultural Produce Market Act (29 of 1935), S.5 and R.3.

Applicant did not at any time purchase or sell the goods for himself and acted only on behalf of the purchasers who were present on the spot - Held that he was a commission agent or 'adatya' of the type contemplated in cl. 2 (a). (Para 6)

M. Adhikari, for Applicant; W.K. Sheorey, Addl. Govt. Pleader, for the State.

Judgement

ORDER :- The applicant Krishnarao was convicted and sentenced to pay a fine of Rs. 100/- under S. 7, Essential Supplies (Temporary Powers) Act, 1946 by the Additional District Magistrate, Wardha, for contravention of Cl. 3, Central Provinces and Berar Foodgrains Control Order, 1945; and his appeal was dismissed by the Sessions Judge, Wardha. He has now come up in revision to this Court. Janrao, Bhaiyya and Pandurang, his servants, were discharged by the trial Court.

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2. The prosecution case was, briefly stated, to the effect that, although the applicant was not licensed to deal as a wholesale dealer, he had on each of 4 occasions purchased and sold grain which exceeded 5 maunds in weight during March and April 1950 at Wardha.

3. The applicant admitted in examination that these transactions had taken place, but he claimed that as he was not an 'arhatiya' within the scope of the Central Provinces and Berar Foodgrains Control Order, 1945, he was not required to be licensed. He added that he did not deal personally in the purchase, sale or storage of grain. In his written statement he asserted that an 'adatya' under the grain market rules was not an 'adatya' or commission agent as contemplated by that Order, that he 'bona fide' believed that it was not necessary for him to have a licence and that until 9-7-1950 he was shown as the agent of his son Vinayak, with whom he is joint, in Vinayak's licence. Of the four defence witnesses examined, three declared that the applicant was a mere 'dalal' (broker) or 'kaccha adatya'.

4. The applicant was a licensed 'adatya' in the Wardha grain market and his name was duly registered therein under R. 30 (2) of the rules framed under S. 5, Central Provinces Agricultural Produce Market Act, 1935. The explanation to R. 3 'ibid' is as follows :

"An 'adatya' means a general commission agent who, in consideration of 'adat' or commission, offers to make, or makes, purchases or sales of agricultural produce or offers to do, or does, things necessary for completing and carrying out those purchases or sales for and on account of others, that is, his principals or constituents."

5. Rule 34 defines a "broker" as any agent (not being a private servant) habitually employed on commission to make contracts for the purchase or sale of agricultural produce for the purchase of which he does not advance any money, or of which he is not entrusted with the possession or documents of title. There is thus a distinction under the Agricultural Produce Market Rules between an 'adatya' and a broker; and, as shown, the applicant was a duly registered 'adatya' in the grain market in question. Clause 2 (a), Central Provinces and Berar Foodgrains Control Order, 1945 contains the following definition:

"'deal in foodgrains' means to engage in the business of purchase, sale, or storage for sale of foodgrains whether on one's own account or on account of or in partnership or in association with any other person or as a commission agent or 'arhatiya', and whether or not in conjunction with any other business; and the words 'dealer' and 'dealing' shall be construed accordingly."

6. Under that definition a person who as a commission agent or 'adatya' engages in the business of purchase, sale, or storage for sale of foodgrains is a person who deals in foodgrains; and Cl. 3(1) 'ibid' inhibits a person from dealing in foodgrains as a wholesale dealer except under and in accordance with a licence issued by the Deputy Commissioner of the district. On this view, the applicant was liable for contravention of Cl. 3 of that Order. It is true that there was material to show that the applicant did not at any time purchase or sell the goods for himself and that he acted only on behalf of the purchasers who were present on the spot, but the definition in cl. 2 (a) of the Order is wide enough to cover his activities. He apparently brought buyers and sellers together and, after the grain was sold, obtained commission from them. He was thus an 'adatya' or general commission agent as defined in R. 3 of the rules framed under S. 5, Central Provinces Agricultural Produce Market Act, 1935. He too, as shown, was a registered 'adatya' under those rules and being a commission agent or 'adatya' of the type contemplated in Cl. 2 (a) of the aforesaid Order, was rightly adjudged liable for contravention of cl. 3 'ibid'.

7. The learned appellate Judge has also given good reasons for holding that the case was one in which there was 'mens rea' on the applicant's part and that he had not in the transactions in question acted as an agent off his son Vinayak or as a member of the joint family consisting of Vinayak and himself. It is true that for many years licences were not demanded from 'adatyas', such as the applicant, in grain markets either by food or police officers, but this did not necessarily connote that such 'adatyas' were not required to be licensed for the purpose of Cl. 3, Central Provinces and Berar Foodgrains Control Order, 1945.

8. The conviction is, therefore, affirmed. The sentence was not harsh and, indeed, the learned Additional District Magistrate, when awarding it, took into consideration the fact that the applicant and other 'adatyas' had an impression that they were not required to obtain licences. The sentence is maintained.

9. The application is dismissed.

 Application dismissed.

1950 Cri. L. J. 1008 "Chikkadodiah v. Mysore Govt."

 MYSORE HIGH COURT

 Coram : 2 MEDAPA, C.J. AND VENKATA RAMAIYA, J. ( Division Bench )

Criminal Revn. Petns. Nos. 148 and 149 of 1949-50, D/- 9 -1 -1950, against order of Special 1st Class Magistrate, Madhugiri, in C.Cs, Nos. 610 and 579 of 1948-49, respectively.

Chikkadodiah and others, AccuseD/- Petitioners v Government of Mysore, Complainant Respondent.

(A) Mysore Articles of Food Acquisition (Harvest) Order (1948), Art.17 - AGRICULTURAL PRODUCE - NATIONAL SECURITY - Accused attempting to transport paddy without permit or committing act preparatory to such transport - Accused must be deemed guilty for contravening Art.17 by virtue of R.121, Defence of India Rules, operation of which is continued by S.5 of Act 20 of 1947.

Mysore Supplies, Services and Miscellaneous Provisions (Temporary Powers) Act (20 of 1947), S.5. (Para 6)

(B) Mysore Articles of Food Acquisition (Harvest) Order (1948) - AGRICULTURAL PRODUCE - Government notification dated 24-11-1948 - Effect of, is not to supersede or suspend the operation of the Harvest Order by Hoarding and Profiteering (Foodgrains) Prevention Order, 1948. (Para 5)

(C) Defence of India Rules (1939), R.121 - NATIONAL SECURITY - Rule is not ultra vires the powers conferred by S.2(1) of Defence of India Act (1939) :

AIR (34) 1947 Mad 203, Rel. on. (Para 7)

(D) INTERPRETATION OF STATUTES - Interpretation of Statutes - Two inconsistent statutes - It must be seen if one cannot be read as a qualification of the other. (Para 5)

V. Krishnamurthy, for Petitioners;

Advocate-General, for Respondent.

Judgement

ORDER :- The question for decision in these two cases is whether the convictions of the petitioners for contravention of Art. 17, Food Acquisition (Harvest) Order of 1948 by removing certain quantities of paddy on the night of 11th December 1948 without permits are correct. In one case 10 bags of paddy were found in a double bullock cart belonging to accused 1 on the way from his village Gutte to another village Dandinadibba, at a river bed. In the other case, there were 51 bags of paddy loaded or about to be loaded in a lorry at or near the same place for the purpose of being taken to a village in another Taluk viz., Koratagere. The prosecution evidence about this and the seizure of the paddy in the course of transit outside the village is not challenged and admittedly the petitioners had no permits with them for removal of the paddy. They contended, there was no need for a permit as the paddy was intended to be taken to the Government depot for disposal and even otherwise they are not culpable as the order said to have been contravened is itself ultra vires. The learned Magistrate, taking into account the place and time at which the paddy was found for being conveyed and the suspicion attaching to it, disbelieved the plea of accused that it was about to be taken to the Government depot, and held that even if it were so, the absence of a permit rendered it wrongful. The objection to the prosecution on the ground of the order not being in force at the time was rejected and the petitioners in both cases were convicted for breach of the Food Acquisition (Harvest) Order, 1948. The sentence in each case being that of fine and not being appealable, the petitioners seek revision of the convictions. The petitions were referred to a Bench as the point involved was

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of some importance and consideration of the view expressed in another case about the same.

2. Sri Krishnamurthy on behalf of the petitioners did not dispute the finding of fact in the two cases but attacked the convictions as illegal firstly by urging that the Food Acquisition Order was not in force on the date of the alleged offence and secondly by arguing that the acts of petitioners do not amount to a contravention of the order. In support of these contentions, the unreported decisions in Criminal Revn. Petn. No.152 of 1944-45 and Criminal Revn. Petn. No. 54 of 1949-50 wherein convictions for similar acts under orders issued under Defence of India Rules were set aside, were relied upon.

3. The Articles of Food Acquisition Order, 1948, came into force in November 1948 by virtue of a notification of Government dated 4th November 1948. It purports to have been made in exercise of the powers conferred by Rr. 75A, 75B and 81, Defence of India Rules as applied to Mysore and continued by the Supplies, Services and Miscellaneous Provisions (Temporary Powers) Act, 20 of 1947. Rule 75A provides for requisitioning of property, R. 75B for maintenance of food supplies and under R. 81(2). Government so far as appears to it to be necessary or expedient for maintaining supplies and services essential to the life of the community may, by order provide, (2) for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsover. Clause (iv) of R. 81 says that if any person contravenes any order made under this rule he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both and if the order so provides the Court trying such contravention may direct the property regarding which there is contravention to be forfeited. According to S. 2(1), Defence of India Act, Government may by notification in the Gazette make such rules as appear to it to be necessary or expedient.....for maintaining supplies and services essential to the life of the community. Sub-section (3) of S. 2 states that the rules made under sub-s. (i) may further provide that any contravention of, or any attempt to contravene and any attempt or attempt to abet the contravention of any of the provisions of the rules or any order issued under any such provision shall be punishable.

4. In view of these provisions, it cannot be said that the Food Acquisition Order is ultra vires the Rules or the Act. The authority to make the order is conferred by the rules and the section referred to. The validity of these being clear and not doubted, these petitioners were not entitled to remove the bags of paddy outside the village without permits therefor as Art. 17 of the order prohibits movement or transport of foodgrains from one place to another except when it is for the purpose of Government or when it is authorised by a permit or when the quantity of the grain is less than 10 seers in certain circumstances or the removal is from the land of the holder to his residence in the same village. None of the conditions necessary for the permit being dispensed with exists in these cases as the quantity is more than 10 seers, the removal is beyond the village and not for Government purposes. The acts of the petitioners must be considered to be prima facie unlawful as offending Art. 17. Assuming that there was no movement or transport for the reason that the paddy had not reached the destination at the time of seizure, but was in the course of transit, the case is clearly one of attempting to transport or committing an act preparatory for such transport and as such comes under the purview of R. 121. That Rules states :

"Any person who attempts to contravene or abets or attempts to abet or does any act preparatory to, and contravention of any of the provisions of these Rules or any order made thereunder shall be deemed to have contravened that provision or as the case may be that order."

5. With a view to show that consideration of R. 121 does not arise by reason of the Food Acquisition Order being non-existent at the time Sri Krishnamurthy referred to a notification of Government dated 24th November 1943 which states that :

".....Notwithstanding the provisions of the Articles of Food Acquisition (Harvest) Order, 1948, issued.....the power to make order under Cl. 3, Hoarding and Profiteering (Foodgrains) Prevention Order, 1948, issued under notification etc., shall continue to be in force and that the other provisions of the said Hoarding and Profiteering (Foodgrains) Prevention Order, 1948, shall apply to any such order as if the Articles of Food Acquisition (Harvest) Order, 1948, was not in force."

The words found in the notification do not denote that the Food Acquisition Order was superseded or suspended by the later order but that irrespective of the provisions in the former the latter will be operative. If the case of the petitioners was that the Hoarding and Profiteering Prevention Order sanctions transport of paddy without a permit it would have had some force. But no such provision is pointed out. In the absence of specific words to show that the Acquisition Order was repealed or suspended from being effective, it is not reasonable to assume that it ceased to be in force. Its provisions can only be deemed to be qualified by those of the Hoarding and Profiteering (Prevention) Act if there be inconsistency between the two as :

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"it is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments it must be seen if one cannot be read as a qualification of the other."

Ebbs v. Boulnois, (1875) 10 Ch A 479 at p. 484 : (44 LJ Ch 691) when there is nothing to relieve a person from the need for a permit to transport, under the Hoarding and Profiteering Act even this rule of construction cannot help the petitioners.

6. Another important contention raised against the conviction relates to the applicability of R. 121 as it is found that the accused did not actually transport the paddy and were arranging to do so which can at best be deemed only preparatory to contravention of Art. 17, Food Acquisition Order. It is urged that the Defence of India Act and the Rules under the Act ceased to be in force on the date of the offence and R. 121 is not saved from being ineffective by any express legislation. The provisions of the Defence of India Act operative at the time are to be gathered from Act 20 of 1947. Section 2 of this Act is as follows :

"The rules made under the Defence of India Act, 1939, as applied to Mysore, etc., which are specified in the schedule to this Act and as in force on 30th September 1946, shall, by virtue of this Act continue in force notwithstanding the expiry of the said Act and have effect as if references (if any) therein to any of the purposes specified in S. 2 of the said Act were omitted therefrom."

Sri Krishnamurthy points out that Sch. 1 to the Act does not specify R. 121 and therefore the rule can have no application for anything done in December 1948. There is, however, S. 5 which states that :

"The provisions of Cl. 1 of the Schedule to the Defence of India (Adaptation to Mysore) Act, 1939, and the provisions of sub-ss. (4) and (5) of S. 2.....and Part XVII and Part XVIII, Defence of India Rules, as applied to Mysore, shall, notwithstanding their expiry for all other purposes, continue to apply (so far as applicable) to any rule continued by S. 2 and to any order made under such rule and to any appointment made, license or permit granted or direction issued under any such order, and whether or not it is necessary or expedient for the purposes (if any) specified in any of the aforesaid provisions of the said Act or the Defence of India Rules, as applied to Mysore."

Rule 121 occurs in Part XVIII, Defence of India Rules and, therefore, according to S. 5 applies to orders made under Rules said to be continued under S. 2. The Food Acquisition Order was made under R. 81. Since that is one of the Rules declared to be continued, it follows R. 121 clearly applies. But from the words "so far as applicable" which can only mean "so far as circumstances permit" it is sought to be made out that the application of R. 121 being excluded by the provisions of S. 2, cannot by S. 5 be regarded as being continued though some other rules in Chap. XVIII may be taken as continued. The words following the bracketed words as well as those preceding it do not warrant a construction in such a limited sense. Reliance is placed on the order of Puttaraj Urs, J., in Criminal Revn. Petn. No. 54 of 49-50 to show that Act 20 of 1947 cannot be construed as extending the operation of R. 121. In that case, conviction under the Cotton Textile (Control of Movement) Order, 1946, for attempt to transport mill cloth from Bangalore to Secundarabad without a permit was set aside on the view that there is no provision in the notification of the order or the order itself to render a mere attempt to transport an offence and that R. 121 by which it could be an offence cannot be applied. If the order declares in any of its clauses that an attempt to contravene the same is an offence there is no need to consider the applicability of R. 121 and if this rule applies, the existence of such a provision in the order is superfluous and its absence immaterial. The learned Judge has expressed that R. 121 creates a substantive offence, that it is expressly deleted by S. 2 of Act 20 and is not saved by S. 5 of that Act. The decision is that of a single Judge and not binding on us. It is difficult to see how R. 121 creates a substantive offence when it comes into play only on proof of something done in relation to an act which is forbidden. Unless an act is prohibited by law an attempt to commit it cannot be wrongful. Rule 121 has to be applied with reference to other provisions and is only procedural as shown by the heading to the chapter in which it is found. The rule cannot be said to be expressly deleted by S. 2 of Act 20 of 1947 as it makes no reference to it. Section 5 lays down the conditions necessary for its being applicable and these are that there should be an order under the Rules specified. When these are made out R. 121 is made applicable to such orders. To hold otherwise would be ignoring the scope and purpose of S. 5 of the Act. We are unable to agree that operation of R. 121 is not continued by virtue of S. 5 of Act 20 of 1947.

7. The learned Magistrate has referred in the judgment to an unreported decision of this Court in criminal Revn. Petn. No. 152 of 44-45 in which Ghani, J., apparently thinking of S. 2(3) of the Act observed :

"It is doubtful, in my opinion, whether the mention of preparation in R. 121 is not ultra vires because the provisions of the Act under which these rules are made do not contemplate making rules which include preparation to commit an offence as an offence in addition to an attempt to commit it."

Though the learned Judge did not determine the point and remarked : "Anyway, I need not go into that aspect as it is not necessary to do so at present." We may point out that the doubt raised by the learned Judge is resolved in

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Emperor v. Sibnath Banerji, AIR (32) 1945 PC 156 : (ILR (1945) Kar PC 371), by Lord Thankerton who expressed that :

"The function of sub-s. (2) is merely an illustrative one, the rule-making power is conferred by sub-s. (1) and the 'rules' which are referred to in the opening sentence of sub-s. (12) are the rules which are authorised by and made under sub-s. (1) : the provisions of sub-s. (2) are not restrictive of sub-s. (1) as indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-s. (1)'."

These words are quoted in Picha Mooppanar v. Velu Pillai, 1946-2 MLJ 404 : (AIR (34) 1947 Mad 203), where the identical contention that R. 121 is ultra vires was advanced. The learned Chief Justice rejected it saying :

"Rule 121 is a rule made under S. 2(1) of the Act and is within the power conferred by the Central Government by that clause. The accused was preparing the contravene the Act. The fact that sub-s. (3) of S. 2 does not contain any reference to preparation does not affect the validity of R. 121."

These observations with which we respectfully agree, apply to these cases. The petitioners were rightly convicted and the sentences being only of small amounts of fine do not call for interference. The petitions are dismissed.

8. It is represented that the value of the paddy seized from the accused has been paid to them and they should not be made liable to refund it. The learned Advocate-General on behalf of the Government has no objection to the amounts received by the accused being retained by them. There is no need, therefore, for the lower Court to take any steps for the accused returning the amount.

 Petitions dismissed.