

(1999) 03 RAJ CK 0029

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 883 of 1998

Arihant Ghee Agency

APPELLANT

Vs

Krishi Upaj Mandi Samiti

RESPONDENT

Date of Decision : 30-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 482
Rajasthan Agricultural Produce Markets Act, 1961 — Section 11B, 17, 32(2), 6
Rajasthan Agricultural Produce Markets Rules, 1963 — Rule 58(1)

Citation : (1999) CriLJ 4045 : (1999) 3 RLW 1779 : (1999) 3 WLC 582 : (1999) 1 WLN 493

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : K.L. Jasmatia, for the Appellant; Rajendra Vyas, for the Respondent

Final Decision : Allowed

Judgement

G.L. Gupta, J.—This misc. petition u/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 u/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 u/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 u/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. u/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-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.