(2005) 09 KAR CK 0071

In the Karnataka High Court

Case No : Criminal Petition No''s. 3626, 3627, 3628, 3629 and 3630 of 2004 etc.

Dinesh Supari Traders and Others APPELLANT

Vs

Agricultural Produce Marketing (Regulations) Committee RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 472, 473
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 114, 65 A, 70, 83 A (1)

Citation : (2005) CriLJ 255 : (2005) ILR (Kar) 5804 : (2006) 6 KarLJ 433 : (2006) 3 KCCR 1313

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, for Chandru and S. Shekar, for the Appellant; B.G. Sreedharan, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—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 notices 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 punishable u/s 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 cognizance 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 beyond 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 Criminal Procedure Code, 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 unchallenged, 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 E.G. Sreedharan Learned Counsel appearing for the respondent points out from the records maintained by the ''Market Committee'' that a resolution 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'', inas much 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 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 Black''s 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 control 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 but 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 Vs. Deokaran Nenshi and Another, . 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 occassion 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 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, I find it impossible to hold that the offence is hot a continuing offence. If the offence is held to be not continuous, then the guilty assesses 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.

10. In view of the above, the offence alleged against the petitioners will be governed by Section 472 of Criminal Procedure Code in as much 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 Criminal Procedure Code, cannot have any application to the present case, and the offence alleged against the petitioners will be governed by Section 472 of Criminal Procedure Code.

11. Even otherwise, the provision of Section 473 of Criminal Procedure Code, does not bar the Courts in taking cognizance of such offences. Any Court may take the 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 Criminal Procedure Code is 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 Criminal Procedure Code. 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.