
(1990) 06 AP CK 0007
In the Andhra Pradesh High Court
Case No : C.R.C. No. 316 of 1989

Durga Prasad Soni and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-06-1990

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 12(2), 165, 23
Criminal Procedure Code, 1973 (CrPC) — Section 251, 372, 373, 374, 375
Penal Code, 1860 (IPC) — Section 375

Citation : (1990) 2 ALT 704 : (1992) CriLJ 1614

Hon'ble Judges : Bhaskara Rao, J

Bench : Single Bench

Advocate : B. Subhashan Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. The main question of law that arises for consideration in this revision is : whether an appeal lies u/s 374, Cr.P.C. against the judgment of the Addl. Judicial First Class Magistrate convicting the accused-petitioner for an offence u/s 23 of the Market Committee Act and sentencing them to pay a fine of Rs. 100/- each; in default to suffer one month S.I. and further directing that in the event the accused failing to pay the market fee due, they shall pay a further fine at Rs. 5/- per day for the period of which the contravention continues or whether the bar imposed under S. 376(c), Cr.P.C. of 1973 applies and the appeal is not maintainable.

2. The facts of the case are : The Agricultural Market Committee, Nizamabad, filed a complaint against the two petitioners herein alleging that the said petitioners obtained a licence for conducting business in the area of the Market Committee and in pursuance of the licence they purchased the agricultural produce which came into the market at Nizamabad on various dates i.e., with effect from 15-1-1983 to 16-12-1984, and thus they are liable to pay the market fee of Rs. 52,806-40 ps. on the purchases made by them. The Market Committee

called upon the accused through a show cause notice dated 18-2-1984 (Ex. P.4) issued to the first petitioner to pay the above market fee. On their failure to pay this market fee, another show cause notice dated 25-2-1984 was also issued, but the same was returned. Thus the petitioners have voluntarily and deliberately failed to pay the market fee, thereby contravening the provisions of sub-section (2) of Section 12 of the (A.P. & L.S.) Market Act, 1966 (for short "the Act") and the Rules framed thereunder. Therefore the accused are liable to be punished u/ S. 23 of the Act and the Rules made thereunder. There Assistant Secretary of the Market Committee was stated to have been authorised to launch prosecution against the petitioners, vide resolution dated 31-3-1984 (Ex. P.5).

3. After notices, the accused appeared and documents were supplied to them. They were examined u/s 251, Cr.P.C. The accused denied the offence.

4. The complainant examined P.Ws. 1 to 3 i.e., the Secretary, Supervisor and a Clerk of the Market Committee and filed documents Exs. P.1 to P.5. After considering the entire material on record and the contentions of the petitioners herein, the learned Magistrate found the accused guilty of the offence u/s 23 of the Act convicted and sentenced each of them to pay a fine of Rs. 100/- in default to suffer S.I. for one month. He further directed to pay the market fee of Rs. 52,806-40 ps. besides Rs. 50/- towards costs of the prosecution. The learned Magistrate further directed the payment of fine at Rs. 5/- every day for failure to pay the market fee due for the period for which the contravention continues. Against that order, the petitioners filed an appeal before the Additional Sessions Judge, Nizamabad. The Addl. Sessions Judge passed the following order :-

"Heard, Advocate for accused and Addl. P.P. Accused in this case is convicted of offence u/S. 23 of A.P.L.S. Market Act, 1966 and fined Rs. 100/-. No appeal lies against such conviction in view of Section 376 of Cr.P.C. Appeal dismissed."

Against the said order, the present revision is filed.

5. The learned Counsel for the petitioners submitted that the appellate Court failed to notice correctly the scope of Section 375, I.P.C. (Cr.P.C.) and erred in observing that no appeal lies. In the present case the petitioners are convicted u/ s 23 of the Act and sentenced to pay a fine of Rs. 100/- and have been further directed to pay a fine of Rs. 5/- every day for the period for which the contravention namely, the non-payment of market fee, continues, and further directed to pay a sum of Rs. 52,806.40 ps. Therefore the fine imposed is not only Rs. 100/- and also a fine of Rs. 5/- every day. Thus the fine amount exceed Rs. 100/-. In this case the contravention starts on and from 17-12-1984 and by the date of filing of appeal, in the year 1988, the relevant period came to more than two years. Therefore, at the rate of Rs. 5/- per day, the fine amount comes to thousands. Alternatively, it is submitted that even taking into account the fact that the fine amount is payable from the date of judgment of the learned Magistrate till the date of filing of the appeal, it comes to Rs. 375/-. The trial Court delivered the judgment on 19-3-1988 and the appeal was filed on

30-5-1988. Thus the fine amount accruing till the date of filing of the appeal at the rate of Rs. 5/- every day comes to more than Rs. 100/-. Therefore, the bar imposed u/s 376(c) will not apply and the appeal is maintainable u/s 374, Cr.P.C.

6. The learned Public Prosecutor contended that the appellate Court has dismissed the appeal as not maintainable as the fine amount imposed on each of the petitioners is Rs. 100/-. He submitted that the amount of Rs. 5/- per day, directed to be paid for non-payment of market fee, cannot be taken as "Fine" and that the further direction to pay the amount of Rs. 52,806-40 ps. also cannot be taken into consideration. According to the learned Public Prosecutor, there are no merits in this revision and it is liable to be dismissed.

7. In view of the above contentions, the only point to be considered is whether the amount of Rs. 5/- directed to be paid every day for the period for which the contravention continues, can be treated as "other punishment and combined with the fine amount of Rs. 100/- imposed on each of the petitioners, for the purpose of deciding the questions whether an appeal u/s 374, Cr.P.C. is maintainable or not.

8. For determining the above question, it is necessary to refer to Chapter XXIX of the Criminal P.C. Chapter XXIX deals with appeals. Section 372 says that no appeal shall lie from a judgment or order of a Criminal Court except as provided for by the Code or by any other law for the time being in force. Thus except as provided in the Code and other law, no appeal is maintainable. It is clear that the right to appeal is only a statutory right. Section 373, Cr.P.C. deals with appeals against orders regarding securities. Section 374, Cr.P.C. provides for appeals against the judgment to the High Court, to the Supreme Court and to the Sessions Court. Section 375 says that no appeal lies when the accused pleads guilty. Section 376, Cr.P.C. reads as follows :

Section 376 :- No appeal in petty cases : Notwithstanding anything contained in Section 374, there shall be no appeal by a convicted person in any of the following cases, namely :

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Sessions or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where Magistrate of the First Class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act u/s 260 passes only a sentence of fine not exceeding two hundred rupees;

Provided that and appeal may be brought against any such sentence if any other

punishment is combined with it, but such sentence shall not be appealable merely on the ground :-

- (i) that the person convicted is ordered to furnish security to keep the peace; or
- (ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or
- (iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case."

Here, we are concerned only with clause (c) of Section 376, Cr.P.C., since the sentence of fine imposed by the First Class Magistrate is Rs. 100/-. According to Section 376 notwithstanding anything contained in Section 374, there shall be no appeal by a convicted person in the cases narrated thereunder, the relevant one being where a Magistrate of the First Class passes "only sentence of fine not exceeding Rs. 100/-". However, the proviso to this section permits an appeal being brought against by such a convicted person if any other punishment is combined with the sentence of fine not specifically excluded by any of the clauses noted under the proviso. No doubt one such clause is a direction to suffer imprisonment in default of payment of fine. Therefore, on the ground that there is a default sentence in the case on hand for non-payment of fine no appeal can be brought against the sentence by virtue of the proviso. However, the punishment to pay at the rate of Rs. 5/- per day for non-payment of the market-fee for which the prosecution was launched is surely one envisaged by the proviso and not specifically excluded by it. Therefore, this "other punishment" when combined with the sentence of fine of Rs. 100/- imposed by the First Class Magistrate does exceed the maximum limit contemplated by clause (c) of Section 376, Cr.P.C., thereby releasing itself from the clutches of the said section and getting into the folds of Section 374, Cr.P.C.

9. In this context, it is also relevant to refer to some of the decisions on the subject. The first one is the decision in Executive Officer, Municipal Board Vs. Harka Ram, , where in the Rajasthan High Court had occasion to consider the scope of Section 313 of 1898, Cr.P.C. The facts in case are : The Executive Officer, Municipal Board, Rajgarh, filed a complaint in the Court of the Sub-Divisional Magistrate of First Class, Rajgarh, alleging that there was an open space adjoining the house of the accused Harka Ram in the locality called "Mohalla Mochiyam, Shitala Chowk" which belonged to the Municipal Board and which was leased out to one Dabu Mochi. The accused made an opening in a portion of the wall of his house, on the eastern side, in order to construct a door. When the Municipal Board came to know about it, it served a notice on the accused directing him to close the opening in the wall, made by him. The accused refused to accept that notice, and so another notice was sent to him by registered post. Even then, the accused did not comply with the notice and disobeyed it. So, a prosecution was launched against him u/s 165 of the

Rajasthan Town Municipalities Act. The Sub-Divisional Magistrate, after trial, held that the accused knowingly disobeyed the notice given by the Executive Officer and, therefore, convicted him u/s 165 of the Act and sentenced to pay a fine of Rs. 25/-. It was further ordered by the Magistrate that the accused shall close the door within one week from the date of order, and that, if he failed to carry out that direction within the said period, he will have to pay a recurring fine at the rate of Rs. 2/8 per day from the date of his order i.e. 30-5-1960. Against that order, the accused filed an appeal, which was allowed by the appellate Court considering the facts of the case. Against that, the Municipal Board filed an appeal before the High Court. In the appeal the first objection raised was that the learned Additional Sessions Judge who entertained and allowed the appeal, had no jurisdiction to do so, as no appeal is maintainable u/s 413, Cr.P.C. of 1898 where a person is convicted and sentenced to pay a fine of Rs. 25/- only. The accused therein contended that though the fine imposed was Rs. 25/- only, the Sub-Divisional Magistrate had further imposed a fine of Rs. 2/8 per day. By the time of filing of the appeal, the total amount of fine at the rate of Rs. 2/8 per day + Rs. 25/- came to Rs. 75/- which certainly exceeded the maximum limit of Rs. 50/-. The appeal was, therefore maintainable and the bar imposed under S. 413, Cr.P.C. would not apply. Dealing with the said contentions, the Court held as follows at page Raj 180, (of AIR) :

"Now it is true that the Sub-Divisional Magistrate had imposed a fine of Rs. 25/- only u/s 165 of the Act, but at the same time, he imposed a further fine of Rs. 2/8 per day commencing from 30th April, 1960 to an indefinite period unless the accused were to comply with the order closing the door within a week. It may be observed that Section 413, Cr.P.C. contemplates the imposition of a lumpsum fine and it does not envisage a case in which a recurring fine is imposed upon the accused. It may be pointed out that an appeal against the order of the Magistrate or the sentence awarded by him may be preferred to any Court other than a High Court within a period of thirty days from the date of the sentence or order which is sought to be impugned It is clear that Section 413, Cr.P.C. does not contemplate a case of recurring fine and therefore whenever a recurring fine is imposed by a Court, an appeal against such an order cannot be barred by this Section."

It therefore follows that if the recurring fine is also taken into account together with the lump sum fine amount, the amount exceeds Rs. 50/- and therefore, the bar imposed u/s 413, Cr.P.C. is not applicable. The facts of the present case are also similar to the facts in the case aforementioned.

10. The next decision relevant in this connection is the one reported in Aziz Khan Vs. State, . The case before the Allahabad High Court came on a reference made by the learned Sessions Judge, Shahjahanpur. In that case, it was held as follows :-

"Section 408, Cr.P.C. confers on a person convicted by a Magistrate, First Class, a right of Appeal to the Court of Session, Section 414 contains an exception to the

general rule. The exception contained in the latter section will not apply to the case of a person convicted in a summary trial of an offence of contravening clause 3 Cotton Textile (Control of Movement) Order where he is awarded both a sentence of fine and sentence of forfeiture of the cloth seized because the punishment awarded is of two different kinds and not a sentence of fine only within the meaning of Section 414. In such a case an appeal could be brought by an application of Section 415 also because the sentence of fine has been combined with the sentence of forfeiture or property in such circumstances, no revision would lie as an appeal lies."

11. The other case relevant is a decision of the Madras High Court reported in State of M.P. v. Kapurchand, . There a Division Bench was considering a case where the accused were sentenced to pay a fine of Rs. 100/- each with a further direction for forfeiture to the State, of the total amount of Rs. 368/- seized from the person of the five accused. It held as follows at page 419 :

"We are, therefore, of the view that the matter is clearly covered by the provisions of Section 415 of the Criminal P.C. which prescribes for an appeal in the case of combination of sentences. Section 415 provides that an appeal may be brought against any sentence referred to in Section 413 or 414 by which any punishment therein mentioned is combined with any other punishment, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to furnish security to keep the peace. As the forfeiture has been combined with the imposition of fine, in our view the appeal was clearly competent and has rightly been entertained by the lower appellate Court,"

12. The above decisions clearly lay down that where the sentence imposed is only a fine and such fine does not exceed the maximum amount prescribed to enable the accused to file an appeal, and the accused are further sentenced to pay a recurring fine per day, such fine amount and the amount of substantive fine must be taken together to decide the forum of appeal and also the question whether an appeal is maintainable or not, particularly in view of the bar imposition the Cr.P.C. in regard to petty offences. It was further been held that where the punishment is payment of fine, coupled with a direction regarding forfeiture of the seized property, in such a case also, an appeal is maintainable. In the present case also, the trial Court has imposed a fine of Rs. 100/- and further directed the accused to pay Rs. 5/- every day until the market fee is paid. So if the substantive fine amount and the direction to pay the recurring fine are taken together, it exceeds Rs. 100/- and the bar imposed u/s 376(c), Cr.P.C. will not be applicable, and an appeal does lie under S. 374, Cr.P.C. Therefore, in view of the above circumstances, I hold that where the substantive sentence of fine imposed and the recurring fine directed to be paid taken together exceeds the maximum amount of Rs. 100/-, an appeal does lie under S. 374, Cr.P.C., and bar imposed under S. 376(c), Cr.P.C. will not apply.

13. For the foregoing reasons, the impugned order is set aside and the matter is

remanded to the lower appellate Court for disposal afresh on merits according to law. The revision is accordingly allowed.

14. Petition allowed.