(1986) 09 MAD CK 0020

In the Madras High Court

Case No : Criminal R.C. No. 793 of 1983/Crl. R.P. No. 776 of 1983

Kannan Chettiar APPELLANT

Vs

Tiruchirapalli Market Committee RESPONDENT

Date of Decision : 19-09-1986

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 300
Mines Act, 1952 — Section 66

Citation : (1988) LW(Cri) 92

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : N. Srivatsamani, for the Appellant; N.R. Chandran, for the Respondent

Final Decision : Dismissed

Judgement

Padmini Jesudurai, J.—This revision by the accused is directed against the judgment of the Sessions Judge, Trichinopoly, in C.A. No. 51 of

1982, confirming his conviction by the Chief Judicial Magistrate, there, in S.T.C. No. 404 of 1980, for an offence under S. 25(b) of the Tamil

Nadu Agricultural Produce Markets Act (XXIII of 1959) hereinafter referred to as the Act and sentencing him to pay a fine of Rs. 474 in default

to undergo simple imprisonment for a period of two weeks.

2. Facts giving rise to the present revision are briefly as follows:--The petitioner is a licensee of the Trichy Market Committee doing business in

notified agricultural products in Manapparai, a notified area under the Act. The licence was for the period from 1st February, 1973 to 31st March,

1976. According to R. 51A framed under the Act, every person who dealt with agricultural produce, had to submit weekly returns to the Market

Committee constituted under the Act, of the products bought and sold by him, for the purpose of enabling the Market committee to assess the

quantum of fees due to it under the Act leviable on every such person. The petitioner failed to submit returns under R. 51A for the period from 1st

February, 1973 to 31st March, 1976. Thereupon the Trichy Market Committee, represented by its Superintendent, filed a complaint before the

Chief Judicial Magistrate, Trichinopoly, for an offence under S. 25(a) and (b) of the Act, for failure to file the above returns. On trial in S.T.C. No.

488 of 1976, the petitioner was convicted and sentenced to pay a line of Rs. 25. Revision Petition No. 4 of 1977, preferred by the petitioner

against the above conviction was dismissed by the Sessions Judge, Trichinopoly. Even after that, the petitioner did not submit the returns for the

above period. Since the default continued, a fresh prosecution was launched against the petitioner for failure to submit returns for the same period

and the same was tried by the Chief Judicial Magistrate, Trichinopoly, in S.T.C. No. 4 of 1978 in which the petitioner was convicted for the

offence under S. 25(a) of the Act and sentenced to pay a fine of Re. 1 per day for the continued period of default from 29th December, 1976 to

8th May, 1976 (Rs. 496). The appeal filed by the petitioner against the above conviction in C.A. No. 198 of 1978 was dismissed by the Sessions

Judge, Trichy. Despite the above two convictions, the petitioner did not submit the returns for the same period and hence, a fresh complaint was

filed against the petitioner for an offence under S. 25(a) and (b) of the Act for failure to furnish returns. The Chief Judicial Magistrate who tried the

case as S.T.C. No. 404 of 1980 convicted the petitioner for an offence under S. 25(b) of the Act and sentenced him to pay a fine of Rs. 474

calculated at the rate specified in S. 25 for the continued period of default, in default to undergo simple imprisonment for a period of two weeks.

The above conviction was confirmed by the Sessions Judge, Trichy, in C.A. No. 51 of 1982. Hence, the present revision by the accused.

3. During trial, on the side of the complainant, P.Ws. 1 and 2 were examined and Exs.P1 and P2 were marked. The petitioner, had no evidence to

offer, either oral or documentary.

4. Thiru N. Srivatsamani appearing for the petitioner challenged the correctness of the conviction on the ground that since the petitioner had

already been tried and found guilty for the same offence in the prior prosecutions, the present prosecution could not be sustained in view of the bar

imposed by S. 300, Crl. P.C. The failure to submit returns under R. 51A for the period from 1st February, 1973 to 31st March, 1976 had already

been the subject matter of two prosecutions and the petitioner having been tried by a competent court, and convicted could not be tried again,

while the conviction was in force. Countering the above legal submission, Thiru N.R. Chandran appearing for respondent contended that the

offence committed by the petitioner was a continuing offence and as such, S. 300, Crl. P.C, would not apply and it was open to the respondent to

launch prosecution so long as the offence continued. Thiru N.R. Chandran placed reliance on a decision of the Supreme Court in Bhagirath

Kanoria and Others Vs. State of M. P., , and also on an unreported decision of this Court rendered by Swamikkannu, J., in K.S. Kandaswami v.

Tiruchirapalli Market Committee Crl. R.C. No. 801 of 1983, by Superintendent, Tiruchy Market Committee.

5. The question that arises for determination is whether the failure to submit weekly returns under R. 51A(5) framed under the Act made

punishable under S. 25(b) is a continuing offence or not.

6. Certain provisions of the Act could be beneficially extracted for proper appreciation.

R. 51A. Levy of Fees: (1) The Market Committee shall, in the case of notified agricultural produce levy and collect fee on such notified agricultural

produces brought or sold in the notified market area on ad valorem basis at such rates as may be specified in the by-laws of the Market committee

subject to the minimum and maximum prescribed in sub-S. (1) of S. 18.

(2) The fees referred to in Sub-rule

(1) shall be collected from the first purchaser on the basis of the records or returns submitted by him or on any other information obtained by the

market Committee from other sources. It shall be paid by the purchaser immediately after the purchase is effected in a market established by the

Market Committee and within a week in the case of purchases effected in any other place in the notified market area, except the market aforesaid.

(3)_________

(4)_________

(5) To enable the Market Committee to assess, the quantum of fees due to it under the Act, every person who deals with the notified agricultural

produce shall submit to the Market committee a weekly return in the form specified by the Market committee showing his purchase and sales of

each transaction of the notified agricultural produce relating to the previous week.

S. 25 Penalties: Any person who (a) fraudulently evades the payment of any fee or other amount due from him under this act or the rules or by-

laws made thereunder, or

(b) willfully acts in contravention of the provisions of this Act, shall be liable to line which may extend to five hundred rupees, and in the case of a

continuing evasion or contravention with a further fine which may extend to one hundred rupees for every day during which the evasion or

contravention is continued after conviction therefor"".

7. It is seen that this Act has been enacted in the year 1959 for the purpose of providing, for the better Regulation of buying and selling agricultural

produce and for the establishment and proper administration of markets agricultural produce in the State of Tamilnadu. Under the Act, the

Government notifies certain areas as ""notified areas"" and establishes Market committees. S. 6 of the Act prohibits licencees under the Act, to trade

except under or in accordance with the conditions of licence, granted to them. They are also required to comply with the provisions of the Act, the

rules and, by-laws that are made under the Act. Under S. 18 of the Act, the market committee has got the power to levy fee on any notified

agricultural produce brought or sold in the notified market. Guidelines are also formulated, regarding that rate at which this fee is to be levied.

Under S. 19 of the Act, the market committee is authorised to levy a subscription for collecting and disseminating among the subscribers

information as to any matter relating to statistics and marketing in respect of the notified agricultural produce. A market committee fund is

constituted under S. 20 of the Act and S. 21 prescribes, the purposes for which the market committee fund could be expended. The committee is

also given the power to borrow. It is therefore obvious from the scheme of the Act that the Act itself is intended for the proper establishment and

administration of markets for agricultural produce. The Market committee has got a fund into which would be credited the fees and subscriptions that would be collected from the licensees under the Act and which could be utilized for purposes mentioned in the Act itself. Payment of fees and

subscription, contemplated under the Act, is therefore a prime liability of a licensee in view of the fact that the fund itself is being utilized, only for

purposes connected with the establishment and administration of markets. R. 51A (16) insists upon filing of returns of products brought and sold

for the purpose of enabling the market committee, to assess the quantum of fees that would be due from a licensee. The fee so collected would be

pooled to the market committee fund. It is with this object that licensees are required to submit the above returns.

8. It is in this background that the question whether the offence is a continuing offence or not has to be decided. The Supreme Court in Bhagirath

Kanoria and Others Vs. State of M. P., when considering the question whether nonpayment of the employer''s contribution to the provident fund

made punishable under S. 14(2)A of the Employees'' Provident Funds and Miscellaneous Provisions Act (19 of 1957) is a continuing offence or

not, made the following observation:

The question whether a particular offence is a continuing offence, must necessarily depend upon the language of the statue which creates that

offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence.

Based on the above test the Supreme Court found that the non-payment of the employer''s contribution to the provident fund of the employees

was a continuing offence in view of the fact that the object and purpose of insisting upon the employers contribution was to ensure the welfare of

the workers and the liability of the employer to pay the above contribution within a particular time, did not come to an end within the period so

fixed, but the liability continued long as the employer''s contribution remained unpaid. From the mere fact that the period within which the employer

was called upon to pay his contribution, had expired, it could not be contended that the liability of the employer to contribute his share to the

employees'' provident fund had also come to an end. So long as the liability lasted, the offence also continued. Viewing thus, the Supreme Court

held that the failure of the employer to contribute to the employees'' provident fund was a continuing offence.

9. No doubt, in the above decision, reference is made to an earlier decision of the Supreme Court in State of Bihar Vs. Deokaran Nenshi and

Another, , wherein the failure to furnish returns under S. 66 of the Mines Act 1952, was held to be not a continuing offence. In the latter decision,

the Supreme Court with reference to the circumstances under which an offence could be said to be continuing or non-continuing, made the

following observation:

A 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 obey or comply with a rule or its requirement and which involved a penalty, the liability for which

continue 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.

The scheme of the Mines Act, 1952 would indicate that the above Legislation was primarily to enable the authorities to have a check over the

administration of mines. Certain registers were required to be maintained, notices to be issued and returns to be submitted, so that the agencies

enforcing the above Legislation, would be in a position to have a proper control over the mines that came within the operation of the above

Legislation. Under those circumstances, when the owner of the mine failed to furnish a return, within the period prescribed under the Statute, it was

held that the offence was committed once and for all and was not a continuing offence. No liability was created on the basis of the returns that

were required to be submitted. Distinct from the liability of an employ to pay his share of the '' provident fund contribution to the employees, no

liability was created on the owner of a mine on the basis of the returns he was required to file. The Supreme court therefore drew a distinction

between the earlier case in State of Bihar Vs. Deokaran Nenshi and Another, and the later case in Bhagirath Kanoria and Others Vs. State of M.

P., .

10. Looking at the provisions of the Act we find that the latter part of S. 25 of the Act, enabling the court to impose a fine which may extend to

five hundred rupees and in the case of a continuing evasion or contravention, with a further fine which may extend to one hundred rupees for every

day during which the evasion or contravention is continued after conviction, does not indicate for which offences included in S. 25 of the Act a

fixed fine could be imposed and for which offences, a further fine per day during the continuance of the offences could be imposed. It has therefore

been left to the courts to decide, for which offences a fixed fine could be imposed, for which offences a further fine per day during the period of

default could be imposed; in other words it is for the court to decide which offences are not continuous and which offences are continuous. Even

when S. 14(2A) of the Employees Provident Fund and Miscellaneous Provisions Act, did not provide for a further fine for the continued period of

default, but merely provided for punishment to be imposed at one point of time, the Supreme Could held that the offence was continuing one. It

follows, therefore, that even offences for which no continued penalty is provided under the penal S., can still be construed as a continuing offence,

if the nature of the offence and the object intended to be achieved by constituting the particular act as an offence, warrant such a construction.

11. Analyzing the Scheme of the present Act, as already indicated in paragraph 7 above, the Act itself has been enacted for the purpose of

establishing and administering agricultural markets. Certain areas alone are notified as being brought under the purview of the Act the certain

products alone are brought within the scope of the Act. Agencies to implement the act have been set up in the form of Market Committees and a.

fund has also been constituted to meet the expenses of the same. S. 20 itself provides that from out of the fund, any surplus that might remain after

meeting the expenditure indicated in S. 21, should be invested in such manner as the rules under the Act would prescribe. It is clear therefore that

collection of fees is one of the important functions of the market committee and the liability to pay fees is one of the important liabilities of licensee

under the, Act. R. 51A(5) itself is to the effect that returns are required to be filed ""to enable the Market committee to assess the quantum of fees

due to it under the Act."". The extent of the fiscal liability is assessed on the basis of the returns. This liability of the licensee to pay the fees lasts so

long as he fails to pay the fees. It is for this purpose that the weekly returns are required to be filed. Under these circumstances, it could not be said

that the offence is not a continuing offence. The offence continues till the fee is paid by the licensee to the market committee. The failure to submit

returns is made an offence since it deprives the market committee of the necessary data and basis for arriving at the quantum of fee which the

market committee had to levy on the licensee and licensee had in turn to pay. Applying the test indicated by the Supreme Court in Bhagirath

Kanoria and Others Vs. State of M. P., it has to be held that the failure to submit returns under R. 51A, Sub-R. (6) which is made punishable

under S. 25(b) of the Act, is a continuing offence. In fact, this Court in K.S. Kandhaswami v. Tiruchirapalli Market Committee By Superintendent,

Tiruchi Market Committee Crl. R.C. No. 801 of 1983, has taken a similar view. I therefore hold that the failure to submit returns under R. 51A(6)

made punishable under S. 25(b) of the Act is a continuing offence, and S. 300, Code of Criminal Procedure, would not be a bar to the present

prosecution.

12. The revision therefore fails and is dismissed.

