

(2014) 02 KAR CK 0022

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1055 of 2008

Mr. Dhirendra Ishwarlal

APPELLANT

Vs

Agricultural Produce Market Committee

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397 401

Citation : (2014) 02 KAR CK 0022

Hon'ble Judges : Pradeep D. Waingankar, J

Bench : Single Bench

Advocate : N. Dinesh Rao, for the Appellant; H.K. Thimmegowda, for the Respondent

Final Decision : Allowed

Judgement

Pradeep D. Waingankar, J.—This criminal revision petition u/s 397 r/w 401 of Cr.P.C. is arising out of an order of dismissal of CrI. A. No. 24/2008 dated 30.08.2008 on the file of III Addl. District & Sessions Judge, Dakshina Kannada, Mangalore, filed by the petitioner-accused against an order of conviction and sentence of the accused u/s 114 of Karnataka Agricultural Produce Marketing Committee (Regulation) Act, 1966 dated 12.12.2007 in C.C. No. 19452/2000 on the file of JMFC II Court, Mangalore. The petitioner was the accused before JMFC II Court, Mangalore in C.C. No. 19452/2000 and the respondent Agricultural Produce Market Committee was the complainant. The accused is the dealer in pepper, ginger, supari etc., which are notified commodities under the provisions of Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. It is the case of the complainant that accused has to file periodical returns in respect of notified agricultural commodities and has to pay market fee to the complainant at the rate of 1% over the transactions effected as per Section 65 of K.A.P.M.(R) Act, 1966. However, on 4.9.1995, when the Marketing Inspector. Enforcement Cell of the Department of Agricultural Marketing, Bangalore inspected the business premises of the accused and called upon the accused to produce the

accounts for the period 1995-1996, the accused failed to produce the same. Therefore, the inspector issued him a notice dated 13.9.1995 calling upon him to produce the accounts books. The accused sought for time. Accordingly, two months time was granted to produce books of accounts. Since, he failed to produce the books of accounts, the complainant issued notice dated 5.10.1995, 6.12.1995, 27.1.1996 and 11.4.1996 calling upon the accused to pay market-fee of Rs. 36,526/- and a penalty of Rs. 10,989/- and also to produce the accounts books. The accused on 24.4.1996 replied contending that he has paid the market fee and penalty, but infect he has not paid the market-fee and penalty and thereby accused committed offence punishable u/s 65, 65-A, 66, 61, 83 r/w 114 of the Act. As such, the complainant's committee on 16.3.2000 in its meeting passed a resolution to prosecute the accused. In furtherance of the resolution, a private complaint was filed before JMFC-II Court, Mangalore in C.C. No. 19452/2000. The accused appeared and pleaded not guilty. As such, the complainant in order to establish the charges examined one Sharathchandra as PW-1 and K.C. Kadirayya as PW-2 and marked Exs-P1 to P9. On behalf of the accused, one Dheerendra Ishwarlal is examined as DW-1 and Exs.-D1 to D19 came to be marked. The learned Magistrate upon hearing the counsel appearing for both the parties and upon consideration of the entire material placed on record found the accused guilty and thereby by his order dated 12.12.2007 convicted the accused and sentenced him to pay fine of Rs. 37,713/- and shall further to pay Rs. 200/- per day, in case of continuing evasion after conviction. Aggrieved by the judgment of conviction and sentence, accused preferred CrI. A. No. 24/2008 on the file of III District and Sessions Judge, Mangalore. The learned Sessions Judge on re-appreciation of the evidence and upon hearing the arguments of both the learned counsel, dismissed the appeal while confirming the judgment of conviction and sentence passed by the Magistrate. The accused has called in question the legality and the correctness of both the orders passed by the Courts below.

I have heard both the learned counsel appearing for the parties.

2. The point for my consideration is:-

Whether the conviction and sentence calls for my interference?

My finding is in the affirmative for the following:-

REASONS

Perusal of the order passed by both the Courts below discloses that accused made purchase of agricultural goods worth of Rs. 25,65,625/- and accordingly he paid 1% of it as market fee to the complainant-APMC, which is not in dispute. After he purchased the aforesaid agricultural goods for the period in question, i.e., for the year 1995-1996, he effected sale of very same agricultural goods in the same period for Rs. 9,67,000/- for which admittedly, he has not paid the market fee at 1%. According to the accused, he is liable to pay market fee only at once i.e., at the time of the purchase, which he has paid and therefore he is

not liable to pay again the market fee at the rate of 1% at the time of sale. The contention of the accused has been rejected by both the Courts below and thereby the Courts held that the accused has committed an offence and he has been directed to pay 1% market price on Rs. 9,67,000/- which comes to Rs. 9,670/- and he has been directed to pay penalty u/s 65-A of the Act at the rate of 30% of Rs. 9,670/- which comes to Rs. 2,901/-. Thus, total penalty comes to Rs. 12,571/- and u/s 114 of the Act, if the accused fails to pay the penalty, he shall on conviction be punished with fine, which shall be equal to three times, which comes to Rs. 37,713/-. The correctness of the orders passed by both the Courts below has been questioned by the accused. The accused has relied upon the decision of Division Bench of this Court in the case of Shri Krishna Trading Company Vs. The Agricultural Produce Market Committee, . It was the case wherein the accused purchased raw cashews and pepper from farmers and paid market fee of Rs. 1,37,430.50 paise to the APMC, Puttur at 1%. Thereafter, the accused sold raw cashews and pepper in the same area in the same market. The Market committee by their letter dated 20.11.1993 levied a market fee of Rs. 1,41,054.10 paise. The accused filed writ petition, wherein stay was granted, subject to deposit of an amount of Rs. 1,41,054.10 paise. The accused deposited the said amount. The writ petition was allowed by the Full bench by holding that the Market Committee is not justified in levying and collecting market fee u/s 65(2) of the Karnataka Agricultural Produce Marketing (Regulation) Committee, 1966, even though the market fee as collected by the Market Committee on the first transaction. On the question of refund of market fee deposited by the accused, the Full Court directed as under:-

We therefore, direct that the petitioner may prove his claim before the Secretary of Market Committee that he has not passed on the burden of market fee to its buyers by producing the relevant material. If such a claim is made within one month from the date of judgment copy is made ready, the Secretary, Market Committee shall thereupon decide whether the claim is correct and if it is correct, the amount shall be refunded within one month thereafter, with interest at 12% p.a., from the date of collection.

After disposal of the writ petition, the accused approached the Marketing Committee for refund of sum of Rs. 1,41,054.10 paise deposited by it during the pendency of the writ petition. The Marketing Committee rejected to refund the amount by endorsement dated 27.3.2011, on the ground that the accused has passed on the burden of market fee on its buyers and as per the provisions of the Act, he is not entitled for refund. Aggrieved by the endorsement given, he filed writ petition No. 257/2002 before this Court. The learned Single Judge by order dated 1.4.2002, rejected the writ petition on the ground that the appellant accused is not entitled to recumbent of market fee u/s 65 of the Act. Hence, writ appeal was preferred before the Division Bench, which ultimately held that if the accused has passed on the burden of market fee on its buyers, in that case, he is entitled to pay market fee at 1% at the time of sale. It was noticed from the bills produced by the accused in that case that he had charged the amount in the bill

separately towards market fee apart from sale price. It is in that context, this Court held that the accused is not entitled for refund.

3. Therefore, what is to be examined is as to whether the accused in this case has recovered the amount from its buyers towards market fee in the bills apart from sale price of the goods. If answer is yes, then, he is liable to pay market fee as demanded by the Market Committee, if not, he is not liable to pay market fee. This aspect of the matter has not been considered by both the Courts below. That is the clinching issue involved in this case. The burden is on the prosecution to establish the same. But the prosecution failed to establish the same. Unless it is established by the prosecution that the petitioner collected market fee from the buyers, he is not entitled to pay the market fee for the second time at the time of sale of the goods, for which, already market fee is levied and paid at the time of purchase. As such, the impugned order passed by both the Courts below calling upon the petitioner to pay the market fee together with penalty is not sustainable in law. Accordingly, I pass the following order:-

Criminal revision petition is allowed. The impugned order passed by the Magistrate and confirmed by the Sessions Judge calling upon the petitioner to pay the market fee together with penalty is hereby set-aside.