

(2003) 11 KAR CK 0040

In the Karnataka High Court

Case No : Criminal Petition No. 2559 of 2001

Mysore Fruit Products Limited and Others

APPELLANT

Vs

Fruits and Vegetables (Spl.) Agricultural Produce Marketing
Committee

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 468 (2)
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 114, 117,
117 A, 122
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2004) CriLJ 340 : (2004) ILR (Kar) 426 : (2004) 1 KarLJ 461 :
(2004) 1 KCCR 580

Hon'ble Judges : Huvadi G. Ramesh, J

Bench : Single Bench

Advocate : C.V. Nagesh, for the Appellant; C.S. Patil, for the Respondent

Judgement

Huvadi G. Ramesh, J.—This petition is filed assailing the order passed by the 7th Additional Chief Metropolitan Magistrate, Bangalore City in C.C. No. 16908 of 2000 (PCR No. 195 of 2000) by order dated 23-9-2000 and also the order passed by the Principal City Sessions Judge, Bangalore City in Cri. R.P. No. 60 of 2001 confirming the order of the Chief Metropolitan Magistrate, by his order dated 13-7-2001.

2. The brief facts are that the 1st petitioner is a Public Limited Company, registered under the provisions of the Companies Act, 1955. The 2nd and 3rd petitioners are the employees of the 1st petitioner-company being the General Manager and the Export Officer respectively, wherein the said company is engaged in processing food products and as such it falls within the definition "trader" as defined under the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as "the Act", for short). On inspection, on 7-8-1999 the officials of the said establishment noticed certain violations of the provisions of the Act and Regulations, wherein the said company

was said to be processing mangoes and tomatoes into pulp and exporting to foreign countries and the said produce is notified as agricultural produce and the accused purchased the notified agricultural produce within the market area of the complainant without there being a licence and also without paying the 1% of the process fee on the purchases made which comes to the tune of Rs. 11,21,492/-. Hence, the private complaint for violation of the provisions of Sections 114, 117 and 122 of the said Act for violation of Sections 8, 65(2) and 66 of the Act, which are punishable under Sections 114, 116, 117, 117-A and 122 of the Act. A demand notice has been issued to remit the said amount. In that regard, ultimately the cheque came to be issued by the petitioners and after adjusting the initial amount paid, for non-payment of the remaining amount in spite of issuance of legal notice, the authority referred the matter to the complainant-authority to take suitable legal action in that regard. The accused compounded the offence on 30-6-2000 and issued a cheque for Rs. 2,50,000/-which was dishonoured and later the complainant-authority passed a resolution authorising the complainant to file a complaint to take legal action on the said complaint; cognizance has been taken and issued process. The same has been assailed before the revision Court. The revision Court confirmed the said offence. Hence, this petition has been filed on several grounds.

3. The main ground of attack is that the complaint is filed beyond a period of one year and the prescribed punishment is only fine or else simple imprisonment for six months also assailed regarding taking cognizance against the petitioners 2 and 3 stating that they are only employees and cognizance should have been taken against the Directors and one more aspect is regarding the fact that the Magistrate has not indicated as to what is the offence for which cognizance is taken and also on the ground that the Secretary has filed the complaint without there being proper authorisation which is not maintainable.

4. The point that arises for consideration is whether the taking cognizance and issuance of process by the Additional Chief Metropolitan Magistrate, Bangalore and confirmation of the said order by the Principal City Sessions Judge, Bangalore, are liable to be set aside.

5. It is the argument of the learned Counsel for the petitioners while taking me through the various provisions of the Act alleged to have been committed under Sections 114, 116, 117 and 117-A and 120 of the Act submitted that for the violation of the said provisions, the punishment prescribed is fine or simple imprisonment for six months and the prosecution ought to have been launched within one year of the date of commission of the offence, as per Section 468(2) (a) and (b) of the Cr. P.C. He also argued on several other aspects regarding the fact that the petitioner has not made out any ground to attract the provisions of the Act itself. Apart from this submission regarding the dishonour of the cheque, they ought to have proceeded under the Negotiable Instruments Act and not to have invoked the provisions of the Act to prosecute the petitioners for having compounded the offence.

Cases referred:

1. Secretary, Agricultural Produce Marketing Committee, D.K. District Vs. Varadaraya Shenoy and Another, ;
2. Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, ;
3. N.K. Shah Vs. M/s Engineering General Workers Union, Bangalore, ;
4. Paravatagouda v. Revanashiddayya 2001(3) Kar. L.J. 518.

6. The main contention of the learned Counsel for the petitioner in respect of the complaint filed by the Assistant Secretary of the Authority in Varadaraya Shenoy's case, supra. To clarify this position when the records were secured, it was found that the Market Committee under the Act shown to have passed a resolution to take legal action against the petitioners. Therefore, the said contention of the Counsel for the petitioners does not stand to reason.

7. Further, the contention of the Counsel for the petitioners is in respect of making the petitioners 2 and 3 as parties on the ground that the petitioner 1 is the company registered under the Companies Act and stating that the company is manned by the Board of Directors and the petitioners 2 and 3 are only employees and as such the Magistrate ought not to have taken cognizance against the petitioners 2 and 3. In this regard, the decision relied upon by the Counsel for the petitioners is Ram Kishan Rohtagi's, case, supra, wherein it is held that complaint against company, its Directors and Manager and when there is no allegation made against the Manager and Directors that they were responsible for conduct of business of the disputed sample - held proceedings could be quashed against Directors but not against Manager. Of course, in the instant case as noted the petitioners 2 and 3 are almost acting as General Manager and Export Officer who are more concerned with the purchase of the products and acting on behalf of the company. Nonetheless a specific averment is made in respect of the duties discharged and their designations. Under the circumstances, there is no reason to say that the cognizance taken against them is not in accordance with law.

8. Of course, in the citation it is stated as to quashing of the proceedings against the Directors and not against the Manager.

9. The next contention of the learned Counsel for the petitioners is that the complaint is clearly barred by Section 468 of the Cr. P.C. as it is filed beyond the period of limitation as the punishment-prescribed is only fine or simple imprisonment upto six months.

10. However, the position is well-settled in the citation in N.K. Shah's case, supra, wherein it is held that in similar circumstances, when there is non-compliance of the settlement, it amounts to a continuing offence and does not take the shelter of Section 468 of the Cr. P.C. The complaint filed against such non-settlement cannot be said to be barred by limitation.

11. Admittedly, in the instant case, there is liability on the part of the petitioners so as to make payment for violation of certain provisions of the Act. Ultimately, it is noticed that the petitioner entered into compromise and the offence has been compounded and after the compounding of the offence, a is shown to have been issued but the cheque came to be dishonoured. It is the contention of the learned Counsel for the petitioner that the complaint ought to have been filed u/s 138 of the Negotiable Instruments Act, etc.

12. As far as the compounding of the offence is concerned, when the petitioners have agreed to make payment and having failed to keep the promise and from that point the limitation starts running and not exactly from the original date of offence committed. For this purpose, the limitation commences once again from the date of breach of promise, i.e., on the dishonour of cheque and for non-payment as undertaken since it is a continuing offence.

13. It is the submission of the learned Counsel for the petitioners that omission to specify offence renders the proceedings void.

14. However, it is to be noted in this regard in the complaint filed, it is specifically mentioned about the provisions of the said Act making specific allegation. As such, the question of mentioning the same by the Magistrate once again will not arise in the case on hand.

15. It is also submitted by the learned Counsel for the petitioners that the Secretary who has filed the complaint is not authorised to act upon as per the provisions of the Act, etc. In this regard, records have been called for from the Court below and on perusal, it is seen that the Market Committee headed by the Deputy Commissioner has passed a resolution authorising the Secretary to proceed in accordance with law. In view of the same, it cannot be said that the complainant has no authorisation to proceed against the petitioners. However, there is shown to be prima facie case to proceed against the petitioners based on the complaint filed by the complainant. In view of the overall discussion, I feel nothing warrants to quash the proceedings.

Accordingly, the petition is disposed of.