

(1983) 07 MAD CK 0025

In the Madras High Court

Case No : Criminal M.P. No's. 5043, 5045, 5047 and 5049 of 1980

N. Prabakaran and Another

APPELLANT

Vs

Supervisor, Regulator Market, South Arcot Market
Committee, Chinna Salem

RESPONDENT

Date of Decision : 11-07-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473
Penal Code, 1860 (IPC) — Section 323

Citation : (1983) 07 MAD CK 0025

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : T.S. Arunachalam, for the Appellant; B. Lakshminarayana Reddy, for the Respondent

Judgement

1. Crl. M.P. Nos. 5043 and 5047 of 1980 filed by Prabhakaran and Crl. M.P. Nos. 5045 and 5049 of 1980 filed by Shafuyullah were heard

jointly and they are being disposed of by a common order since the questions raised therein are identical or closely related.

2. The Supervisor, Regulated Market of South Arcot Market Committee, Chinnasalem filed complaints against Prabakaran and Shafuyullah for

non-payment of market rates as laid down in S. 18 of the Tamil Nadu Agricultural Produce Markets Act, 1959, hereinafter referred to as the Act.

The prosecution against Prabakaran was for non-payment of market rate for the period from 1-4-1978 to 31-3-1979 and the prosecution against

Shufuyullah was for non-payment of market rate for the period from 14-6-1978 to 31-3-1979. The complaints were filed on 3-5-1980. Having

regard to the sentence awardable in these cases, the period of limitation for filing complaints will be six months under S. 468 of the Cr.P.C. In

order to explain the delay in filing the complaints, the complainant filed petitions under S. 473 Cr.P.C. Prabhakaran and Shafuyullah raised

objections to the Court condoning the delay in filing the complaints and the Court below has overruled their objections and granted condonation of

delay. It is against that order Crl. M.P. Nos. 5047 and 5049 of 1980 have been filed. In order to explain the delay, the complainant has set out in

his affidavit that the accused in each of the two cases was prosecuted for non-furnishing of accounts according to the terms of the Act. In spite of

it, the respective accused did not furnish the accounts for the relevant period in question so as to enable the complainant to determine the quantum

of market dues payable by each. Therefore, the complainant was forced to approach the Commercial Taxes Authorities to obtain an extract of the

accounts submitted by the respective accused for the period in question. He was able to get true extracts of the accounts only on 6-4-1980

whereafter the complaints were preferred after obtaining the permission of his higher authorities for launching the prosecution. Eventually the

permission was granted and the complainant filed the complaints on 3-5-1980.

3. The learned Magistrate has felt that the delay in filing the complaints had been occasioned due to the lapses of the accused themselves because,

on account of the wrong submission of the accounts, the complainant had to approach the Commercial Tax Authorities and get certified extracts of

accounts and in such circumstances, the delay in filing the complaints has been properly explained. Mr. T. S. Arunachalam, learned counsel for the

petitioner in each of the two cases contends that the complainant had inspected the account books on 23-1-1979 and initialled the entries and as

such there is no substance in the contention that the particulars of accounts were not made available to the complainant. This is not a tenable

contention because a casual inspection of the accounts on a particular date, to wit, 23-1-1979, will not amount to the accused furnishing full

particulars to the complainant for the period in question. Moreover the accounting period was extended till 31-1-1979 and therefore even if the

complainant had checked the accounts on 23-1-1979, it cannot be said that accused had placed the account particulars before the complainant

and, therefore, they cannot be accused of having failed to furnish the account particulars.

4. The next contention of the learned counsel is that the delay is sought to be explained on the ground of administrative reasons and such an explanation ought not to be accepted. In support of this proposition he cites *Manickam v. State*, 1982 Mad LW 1. That is a case where the State sought to file an appeal against the accused who was acquitted of an offence under S. 323 I.P.C. There was a delay of 17 months in filing the appeal and the only reason given was "administrative reasons". It was in such a situation, *Sathar Sayeed, J.*, held that the delay cannot be condoned as sufficient cause, which means a cause which is beyond the control of the party seeking condonation of the delay, had not been established. The ratio in that case will have no application to the facts of the prosecution case because, the affidavit of the complainant shows that he had prosecuted the accused for non-furnishing of accounts, that even thereafter the accused did not furnish accounts and that, therefore, the complainant had to seek that assistance of the Commercial Taxes Authorities to get the account particulars of the accused. Subsequently the complainant had to obtain the orders of his superiors and file the complaint. Having regard to these factors it cannot be said that the delay is sought to be explained only on the ground of administrative reasons.

5. Mr. Arunachalam then submitted that there is no necessity to obtain the orders of sanction from higher authorities to file the complaint. Therefore the complainant need not have taken time to obtain permission of his higher officers to file the complaint. This contention is also devoid of merit because the complainant has to obtain administrative orders from his superiors before filing the complaint. The learned Magistrate has considered all these aspects and deemed fit to exercise his discretion in favour of the complainant in the interests of justice. As pointed by *Ratnavel Pandian, J.*, in *A.K. Thaga Pillai and Others Vs. Superintendent, Regulated Market of the South Arcot Market Committee*, the term "interests of justice" has broad meaning implying conditions which assist or are in aid of or in furtherance of justice and it imports exercise of discretion which considers both the interests of parties and those of society. It cannot therefore be said that the Magistrate has acted illegally in condoning the delay in the filing of the complaint.

6. The matter can be viewed from another angle also. After the end of the year

on 31-3-1979, the accused were under an obligation to furnish account particulars and also to remit the market dues payable by them. When they failed to do so, the offence becomes a continuing one from the date of default. A Division Bench of this Court has held in Premier Studs & Chaplets Co. In re 1980 MLW 226 that when an employer fails to pay the employer's contribution of provident fund, the offence would constitute a continuing offence and as such the limitations contained in the Code of Criminal Procedure for completed offences cannot be availed of by the erring employer. The ratio laid down in that case would be fully applicable to the facts of this case also. Merely because the market dues because payable after the year came to a termination, it cannot be said that the offence became a completed one and hence prosecutions cannot be launched after the expiry of limitation.

7. For the aforesaid reasons, I am clearly of the view that the orders of the Magistrate which are impugned in Cri. M.P. Nos. 5047 and 5049 of 1980 are not in any way illegal. Hence both those petitions have to fail.

8. In the other two petitions, viz., C.M.P. Nos. 5043 and 5045, which have been filed to assail the orders of the Magistrate to the effect that there is no misjoinder of charges and that the trial can proceed without hindrance, the contention of the petitioners is that under S. 18, an offence of non-payment will become completed if the aggregate turnover is Rs. 100/-, and only three offences of the same nature can be clubbed together and charged in a complaint. But in this case the complaint is for non-payment of market dues for the period from 1-4-1978 to 31-3-1979 in one case and from 14-6-1978 to 31-3-1979 in another case and therefore there is misjoinder of charges. There is absolutely no merit in this contention

because S. 18, only refers to the quantum of market dues payable viz., the rate not exceeding fortyfive paise and subject to a minimum of twentyfive paise for every hundred rupees of the aggregate amount. S. 18 does not say anything about the time of payment of the same. If Mr.

Arunachalam's argument is to be accepted, then for payment of fee ranging between twentyfive to fortyfive paise for every one hundred rupees, a complaint should be filed. This is too preposterous a submission to be accepted. Therefore, there is no misjoinder of charges in either of these cases. The learned Magistrate was, therefore, right in overruling the objection.

Consequently, it follows that these two petitions also have to fail.

9. In the result all these petitions will stand dismissed.

10. Petition dismissed.