(2007) 10 JH CK 0013

In the Jharkhand High Court

Om Prakash Agarwala APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 2(w), 48, 49

Citation : (2008) CrLJ 2195

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The petitioner has filed the instant application praying for quashing the entire criminal proceedings including the order of cognizance dated 12.02.2002: passed by the learned CJM, Ranchi in C/III Case No. 40 of 2002 for an offence u/s 48 or the (sic)agricultural Produce Markets Act which is now pending in the court of Sri Santosh Kumar, Judicial Magistrate. Ranchi.

2. the case against the petitioner was registered of the basis of a complaint dated 11.2.200 filed in the court of the CJM, Ranchi, by the Agriculture Produce Markets Committee through its Secretary alleging inter alia that the accused persons are traders as defined u/s 2(w) of the Bihar Agriculture produce Markets Act (hereinafter referred to as the Act) engaged in business of ply board/ply patti and other similar commodities which are agriculture produce as defined u/s 2(1 (a) of the Act vide notification of the State of Bihar vide SO No. 2531 dated 31.8.2000 published on 23.10.2000 in the official gazette. Pursuant to the notification, the Market Committee issued notice to the accused persons on 13.11.2000 followed by similar notices issued on 18.11.2000, 27.1.2001, 29.6.2001 by registered posts calling upon them to obtain licence and pay market fees as per rules under the Act, but the accused persons did not comply with the instructions. Contending that the act of the accused persons is in violative of Section 27 of the Act and Rule 82 and 98 of the Rules under the Act, which act is punishable u/s 48 of the Act, the complaint was filed. It is further stated that the Secretary under whose signature the complaint was filed is

authorized to grant sanction under rule 132 of the Rules under the Act as amended in 1996 and he has accordingly granted sanction for prosecuting the accused persons as required u/s 49 of the Act.

3. On receipt of the complaint, by order impugned dated 12.2.2002 the Chief Judicial Magistrate took cognizance of the offence u/s 48 of the Act and ordered issuance of summons against the accused persons directing them to appear and face trial before the transferee court.

4. The petitioner has challenged the impugned order of cognizance and continuance of the criminal proceedings pursuant to the order of cognizance primarily on the ground that the compliant as filed by the Secretary of the Agriculture produce Markets Committee is without jurisdiction and without authority since no resolution/decision was passed by the committee to prosecute the petitioners, nor was any, authorization by the Agriculture Produce Market Committee given to the Secretary to launch prosecution.

5. Sri P.D. Agarwal, learned Counsel for the petitioner explains that Section 18 of the Act deals with powers and duties of he market committee. Section 18(2) (vi) specifically empowers the committee to bring or launch prosecution against the alleged violator. Learned Counsel explains hat it is the market committee which has to decide as to whether the prosecution needs to be launched against any alleged violator and it is only after the resolution/decision to this effect is taken by the market committee that any prosecution under the Act can be launched. Learned Counsel submits that in the instant case, no resolution/decision was taken by the market committee to launch prosecution against the petitioners. Rather, the Secretary has assumed the authority in purported exercise of powers under Rule 132 (as amended in 1996) to file prosecution against the petitioners, without there being any prior resolution taken or authorization made by the Market Committee. Relying in this context in support of his argument on decisions in the case of Secretary, Agricultural Produce Marketing Committee, D.K. District Vs. Varadaraya Shenoy and Another, , Mahabir Pd. v. State of Bihar 1998 (3) PLJR 205 and Kailash Chand Suresh Kumar and Anr. v. State of Bihar reported in 1996(2) Eastern Criminal Cases 124, learned Counsel submits that the Secretary has no authority under the provisions of the Act or the Rules made there-under to file the present prosecution and on this ground alone, the Criminal Prosecution against the petitioner is liable to be quashed. Learned Counsel submits further that the present prosecution having not been filed without previous sanction of the competent authority i.e. the market committee or the Director or Assistant Director any officer authorized by him as required u/s 49 of the Act read with the original Rule 132 of the Rules initiation of the prosecution is bad in law. Further, grounds which appears to have been taken in the instant application is in respect of the vires of the amendment made in Rule 132 vide the government notification No. 92 dated 26.9.2006. Learned Counsel for the petitioner further submits that the petitioner does not press this ground and prefers to confine his ground only to the maintainability of the complaint

application on the grounds earlier mentioned.

6. Sri V.P. Singh, Senior Advocate representing opposite party No. 2 would counter the grounds advanced by the petitioner contending that the grounds are entirely misconceived and misleading and not maintainable. Learned Counsel explains that the complainant in the present case is the Market Committee itself and not the Secretary of the Committee and therefore, the question of grant of separate sanction for prosecution of the petitioner does not arise and neither does arise the question of authorization of the Secretary to launch prosecution. Referring to the Rule 132 as amended by the government notification dated 26.9.2006, learned Counsel explains that the amended rule empowers, the Secretary of the market committee to accord sanction for prosecution and therefore, the present complaint having been filed with sanction granted by the Secretary, there is no infirmity in the launching of the prosecution against the petitioner by virtue of the complaint petition. Learned Counsel explains further that the requirement of Section 49(2) having been complied with by sanction for prosecution accorded by the Secretary under Rule 132 of the Act, the impugned order of cognizance does not suffer from any illegality.

7. For better appreciation of the grounds advanced Section 49 of the Act may be referred as under:

Section 49. Trial and cognizance of offences (1) No Court inferior to the court of a Magistrate of the second class shall take cognizance of or try, any offence under this, Act or under the rules or bye-laws made thereunder. (2) No court shall take cognizance of alleged contravention of the provisions of this Ad, the rules or bye-laws or of any order made thereunder except with the previous sanction of the authority prescribed in this behalf.

Section 2(j) of the Act defines "market committee" as a committee established u/ s 6. Section 6 of. the Act deals with the establishment of the Market Committee and reads as follows:

Section 6: Establishment of the Market Committee - For every market area the State Government shall, by notification, establish a Market Committee.

Section 18 of the Act deals with powers and duties of the Market Committee. Section 18(2(vi) explains the powers of the Market Committee which includes powers to launch prosecution against individuals who are alleged to have violated the provisions of the Act and Rules there under and it reads as follows:

Section 18(2)(vi): To bring, prosecute or defend, or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration in regard to any matter on behalf of the committee, or otherwise when directed by the Board.

Rule 66(i) of the Rules under the Act lays down powers and functions of the Secretary and lays down that the Secretary shall be the chief executive officer of the market committee and shall carry into effect the resolutions of the Committee.

Rule 66(xiv) lays down that the Secretary shall prefer complaint in respect of prosecutions to be launched on behalf of the Market Committee and conduct proceedings, civil or criminal, in all courts and tribunals or any authority on behalf of the Market Committee.

8. It is apparent from powers and functions as laid down u/s 66(i) that the Secretary shall carry into effect the resolutions of the market committee and he shall represent the Market Committee in respect of prosecution to be launched on behalf of the market committee, either civil or criminal, in all courts including criminal.

9. From provisions of Section 18(6) of the Act, it is manifest that it is within the exclusive powers and duties of the market committee to bring prosecution or defend, in any proceeding.

10. Rule 132 (as amended by the notification of 1996), prescribes the authorities who are empowered to sanction prosecution and reads as under:

Rule 132 of the Act : Authorities empowered to sanction prosecution : The following shall be substituted in the place of rule 132 of the Rules:

No court shall take cognizance of any provision of the Act, Rules, byelaws or order of the Market Committee made thereunder except with the previous sanction of the Secretary of the Market Committee or Assistant Director or any officer authorized by him.

11. Learned Counsel for the opposite party No. 2 has claimed that the complainant in the case in hand is not the secretary but the Agricultural Produce Markets Committee, itself. However, the contents of paragraph 3 of the complaint petition declares otherwise when it reads that "the Secretary who is the complainant of this base has granted sanction as required u/s 49 of the said Act. The Secretary is authorized to grant sanction under Rule 132 of the said Rules as amended in 1996."

It cannot therefore be disputed that the complaint was filed by the Secretary though in the name of the Agriculture Produce Market Committee, in purported exercise of powers under Rule 66 (XIV) of the Jhakrhand State Agriculture Produce Markets Rules as has been declared by him in the complaint petition.

12. Section 18 of the Act which lays down powers and function of the market committee overrides the powers granted to the Secretary u/s 66 of the Rules as would be evident from the provisions of Rule 66(j) of the Rules which declares that as the chief executive officer of the market committee, the Secretary shall carry into effect the resolutions of the market committee. Since u/s 18(vi) it is the Market Committee which is empowered to launch prosecution, it becomes imperative therefore that there should be a prior decision/resolution of the Market Committee to launch prosecution against any individual for violation of the provisions of the Act or Rules there-under and such resolution shall be carried into effect by the Secretary. Thus, the decision to launch prosecution can

be taken only by the Market Committee and only thereafter it can authorize the Secretary to file complaint. Power to grant sanction as aforesaid in the Secretary under the amended rule 132 would also therefore be subject to prior decision or resolution taken by the market committee to launch prosecution.

13. In the case reported in Secretary, Agricultural Produce Marketing Committee, D.K. District Vs. Varadaraya Shenoy and Another, , the, Supreme Court while dealing with the case of Karnataka Agriculture produce Markets Act, 1966 has held that power to launch prosecution vests with the market committee and the functions in respect thereof are required to be carried out by the Secretary on behalf of the market committee. The power of the committee and the function of the Secretary in the matter of prosecution of the offenders are independent and cannot be confused, nor can be distinguished between the powers of the committee and the functions and duties of the Secretary be overlooked. The apex court has further held that it is for the Market Committee to decide whether or not the prosecution is required to be launched against an alleged violator and it is only after such decision is taken that the Secretary of the market committee can be authorized by the resolution or otherwise to file complaint and conduct the proceedings against the offenders for and on behalf of the market committee in the appropriate forum. The conclusive inference which can be drawn therefore is that it is only after the market committee has taken the decision to, launch prosecution against any offender that sanction for prosecution on the basis of the decision of the Market Committee is required and it is only at a later stage that the Secretary in exercise of powers under the amended Rule 132 may sanction for prosecuting the offender.

14. The ratio laid down by the apex court and the High Court in all the cases referred to above, adequately applies to the facts and circumstances of the instant case. The present complaint as, lodged by the complainant has therefore to be held as not maintainable.

15. In view of the above discussions, I find merit in this application. Accordingly, this application is allowed and the entire criminal proceedings including the order of cognizance dated 112.2.2002 passed by the learned CJM, Ranchi in C/III Case No 40 of 2C02 against the present petitioner pending in the court of Sri Santosh Kumar, Judicial Magistrate or his successor court is quashed.