(1988) 07 KL CK 0060

In the High Court Of Kerala

Case No : Criminal A. No. 54 of 1987

Secretary, Malabar Market Committee — APPELLANT

Vs

T. P. Nirmala — RESPONDENT

Date of Decision : 26-07-1988

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 468(1)

Citation : (1988) 2 KLJ 486

Hon'ble Judges : K. T. Thomas, J

Bench : Single Bench

Advocate : C. R. Natarajan, M. Vijayakumar and M. Ramesh Chander, for the Appellant;

Final Decision : Allowed

Judgement

K. T. Thomas, J.—The simple question in this appeal is whether the complaint filed against the respondent in the trial court was barred by limitation. The complainant (who filed this appeal) is the Secretary of Malabar Market Committee (which will be referred to hereinafter as the Committee) which was constituted under the Madras Commercial Crops Markets Act, 1933 (Madras Act 30 of 1933 - for short ''the Act''). The complaint was filed against the respondent for contravening Clause 25 (6) of the Malabar Market Committee By-laws (for short ''the By-laws). The trial magistrate found that the offence complained of cannot be taken cognizance of on account of the bar u/s 468(1) of the Code of Criminal Procedure (''the Code'' for short). Section 468 (1) of the Code provides that no court shall take cognizance of an offence punishable only with fine, after the expiry of a period of six months from the date of the offence. Clause 25 (18) of the By-laws makes contravention of any of the bylaws punishable with fine which may extend to Rs. 50/-. Section 19 (2) of the Act enables the making of provision in the By-laws that contravention thereof shall be punishable with fine which may extend to fifty rupees. According to the learned magistrate, the offence was committed in 1982 and hence cognizance of it cannot be taken on a complaint filed as late as 19-7-1985.

2. Section 19 (1) of the Act empowers the committee to frame by-laws. In exercise of the powers conferred by the said Section, the committee had framed the By-laws. Clause 25(6) of the By-laws says that "the licensee shall maintain regular accounts of his transactions in each kind of commercial crop in a form or forms approved by the Secretary and shall send to the Secretary such reports and returns as may from time to time be required in such forms as may be specified by him". It is alleged in the complaint that the respondent is a licensee under the Act and was dealing in coconut and its products having trade in Karuvancherry Village (Badagara Taluk). Respondent has not furnished monthly returns for the period from 1-1-1982 to 31-12-1982, The approved Form for submitting the returns was forwarded to the accused along with the notice sent by registered post on 21-2-1985. This fact is specifically averred in the complaint. Ext.P6 is the copy of the said notice issued to the respondent. The following requisition is made to the said notice: "You are hereby requested to furnish to me within 7 days of the receipt of this notice, monthly returns of your transaction in Copra for the above period (from 1-1-1982 to 31-12-1982) in the form given below.

3. The reasoning of the learned magistrate has been set out in para 12 of the judgment which is extracted below: "When a licensee fails to submit the monthly return of February in the next month, he has violated clause 6 of by law 25 since he is to send to the Secretary such returns as may from time to time be required. Sending of monthly returns from time to time is what this clause makes an offence. The'' forms of such returns may be specified by the Secretary. The clause nowhere says that monthly returns shall be submitted to the Secretary when required by him at any time as he pleases. The non submission of reports and returns as may from time to time be required in the form specified by the Secretary is what is made punishable under this clause". Learned counsel for the appellant contended that the court below has not correctly understood the scope of clause 25 (6) of the By-laws.

4. Clause 25 (6) of the By-laws, the relevant portion of which has been quoted above, consists of two limbs. The first limb deals with the obligation of a licensee to maintain regular account in a Form approved by the Secretary. As per the second limb of the said clause, the licensee is obliged to send to the Secretary of the committee such reports and returns "as may from time to time be required in such forms as may be specified by him". The legal obligation of the licensee to send reports and/or returns arises only if the Secretary requires him to do so. Requisition of the Secretary is hence sine qua non for submission of reports and/ or returns. As the Secretary has sent a requisition to the respondent to furnish monthly returns within 7 days of the receipt of the notice, contravention of Clause 25 (6) of the by-laws cannot take place on any day earlier than the expiry of the said period. Even if it is assumed that Ext. P6 was received by the respondent on the date of its issuance, the offence could have been committed

only on 28. 2. 1985. The complaint in this case was filed on 19.7.1985. Hence the complaint was filed within six months from the date of the offence. The decision of this court in Secretary v. Bapputty 1961 K. L. T. 1030 lends support to the above view. It was held in that decision that the Secretary is empowered to issue notice calling for records at any time he thinks necessary and "failure to obey the notice is an offence punishable under by-law 25(18)". The said decision was cited in the trial court, but the learned magistrate did not find any support from it merely on the ground that the said decision was rendered before the coming into force of the present Code of Criminal Procedure, 1973. (The provisions relating to limitation of period for taking cognizance of offences were absent in the old Code). But the important emphasis in the said decision that disobedience of the notice issued by the Secretary will amount to the offence of contravention of Clause 25(18) of the by-laws, escaped the attention of the learned magistrate. The said decision is of use in this case and should not have been bypassed. The acquittal is based on the erroneous view that the complaint is barred by limitation. I, therefore, allow this appeal and set aside the order of acquittal. Case is remitted to the trial court for disposal of the case afresh. It is made clear that if the respondent wants to adduce further evidence, the trial court can grant an opportunity to him. But no de novo trial is necessary. Issue carbon copy of this Judgment on usual terms.