(2008) 07 OHC CK 0105

In the Orissa High Court

Case No : Criminal Appeal No. 76 of 1990

Secy,Sakhigopal Regulated Market Committee — APPELLANT

Vs

Jatadhari Mishra — RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Orissa Agricultural Produce Markets Act, 1956 — Section 21(a), 21(b), 21(c)

Citation : (2008) CLT 1130 (Suppl Crl)

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Advocate : Jagannath Pattnaik, H.M. Dhal and B.B. Ray, for the Appellant; A. Mukherji, G. Mukherji and J.P. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Indrajit Mahanty, J.—The present criminal appeal arises after the leave having been granted by this Court on 6.3.1990 in Criminal Misc. Case No. 165 of 1990. The Appellant-Secretary of Sakhigopal Regulated Market Committee has sought to appeal against the order of acquittal dated 22.12.1989 passed by the Learned Addl. Chief Judicial Magistrate. Puri in 2(C)CC Case No. 185 of 1982 acquitting the Respondent from the charge u/s 21 (a)(b) and (c) of the Orissa Agricultural Produce Market Act, 1956 (in short "OAPM ACT").

2. The essence of the case against the Respondent is that he had been carrying on business in buying and marketing coconuts within the area of Sakhigopal R.M.C. without obtaining license from the authorities thereunder thereby attracting penalty u/s 21 of the said Act.

3. The Secretary of the R.M.C., inter alia, initiated a complaint case against the accused-Respondent alleging that he had been transacting business of purchasing coconuts and selling the same in the market within the area of the complainant''s market and also collecting market fees from his customers without obtaining license from the RMC concerned and without depositing the

fees collected with the authorities. Accordingly, it was alleged that the Respondent had contravened the provisions of Sections 4(3) and 18 of the OAPM Act and thereby committed an offence under the said Act and is liable for punishment u/s 21 (a)(b) and (c) of the OAPM Act.

4. While the prosecution examined six witnesses on their behalf and exhibited thirty documents to establish its charge, the accused denied the allegations leveled and did not examine any witness on his behalf.

5. The Trial Court on perusal of the evidence of prosecution witnesses, did not believe the evidence of P.W.2 since he has stated that he had not personally sold coconuts to the accused whereas the evidence of P.W.3 was treated as suspicious in nature since the said witness alleged to have seen the accused purchasing coconuts from P.W.2 while P.W.2 denied to have sold coconuts personally to the accused and having no direct knowledge about the transaction. In so far as the evidence of P.W.5, who is the Accountant, is concerned, his evidence was not similarly relied upon on the ground that it was alleged that the accused used to send slips through one Sagar Bhoi on three occasions, but no slip was produced relating to the transaction against which complaint was filed in the matter. The Accountant''s evidence was not relied upon by the Trial Court on the ground that in the Cash Book and in the challan, the name of the accused was mentioned on three occasions, but neither the challan nor the Cash Book had been filed before the Court to establish the aforesaid challan and the nature of transaction.

6. In view of the aforesaid discussions, the Trial Court came to hold that the prosecution has not been able to establish the fact that the accused had sold coconuts to different persons at different places within the R.M.C. without any authority since no evidence in this respect has been adduced.

7. Learned Counsel appearing for the Appellant submitted that although various documents including the receipts issued by the accused-Respondent had been submitted in the proceeding, the Trial Court had not made any reference to those documents and therefore, there has been total non-application of mind and non-consideration of relevant documents on record. According to him, the statement of Sagar Bhoi (since deceased), the cart-man of Shri Satyabadi Gopinath Deb Endowment recorded under Ext-6 along with the report of the Secretary under Ext- 8 should have been relied upon by the Trial Court and only because of the death of said Sagar Bhoi, his evidence, as recorded, ought not to have been ignored on the ground that Ext-6 did not contain any certification to the effect that the said statement of Sagar Bhoi was dictated by him to the scribe. Apart from the above, Learned Counsel for the Appellant submitted that various other documentary and oral evidence in the proceeding justify an order of conviction and therefore, the appeal should be allowed.

8. Learned Counsel for the Respondent, on the other hand, supported the impugned judgment and submitted that the Respondent did not carry out any business of cocoanuts either buying or selling within the area of Sakhigopal

R.M.C. According to him, the Respondent is a Trader in coconut and was duly registered with the Sales Tax Authority and his establishment is located at Bira Harekrishnapur i.e. outside the territorial jurisdiction of Sakhigopal R.M.C. He further submitted that none of the transactions referred to in the complaint petition was proved by the Appellant in course of trial and hence, the judgment of the Trial Court ought to be affirmed and the appeal ought to be dismissed.

9. In the light of the aforesaid rival contentions, it becomes necessary to go through the evidence gathered in course of trial. P.W.1 is the Commercial Tax Officer, Puri. In his evidence he stated that the accused is a registered dealer under the Sales Tax Act and is the proprietor of M/s. Jagannath Coconut Bhandar at Bira Harekrishnapur and his farm has been granted registration No. PUI 987 under the Sales Tax Act. In his cross-examination, he denied any personal knowledge so far as the allegations are concerned. Therefore, the evidence of the Commercial Tax Officer is of no consequence in the present proceeding.

P.W.2 is Nabakrushna Misra, who claims to be a cultivator. Although he was the person who had given a written report to the Secretary of Sakhigopal RMC under Ext-3, yet in his evidence-in-chief, he admitted that he had sent the coconuts through ''his men'' for sale at Sakhigopal and stated "My men told me that accused had purchased my coconuts". In his evidence, he did not indicate the names of those men and in his cross-examination, he admitted that he has no direct knowledge about the alleged transaction. So once again, the evidence of P.W.2 cannot form a basis for the prosecution.

P.W.3 is the Licence Inspector of Sakhigopal R.M.C., who claims that on 10.2.1982, he saw the accused purchasing coconuts from Nabakishore Misra (P.W.2), but on the denial of P.W.2 of having ever met the accused and having claimed that he had made the sale through his men, reference to the evidence of P.W.3 is incapable of reliance. In so far as the statement of Sagar Bhoi (since deceased) is concerned, this witness claims to have scribed the report under Ext-8 which purportedly contain the complaint of said Sagar Bhoi against the accused. Yet in his cross-examination, P.W.3 stated that he did not ascertain from Sagar Bhoi (Cart-man) regarding transaction nor even seen the transaction personally on 13.2.1982. Therefore, once again in absence of any evidence supporting Ext-8, the Trial Court was justified in not placing reliance on it.

P.W.4 was the Secretary of Sakhigopal RM.C. who claims to have received Ext-3 from P.W.2- Nabakrishna Mishra as well as the report Ext-5 from P.W.3?Licence Inspector and the report of Sagar Bhoi under Ext-6. From his evidence it appears that those reports formed the basis of the Secretary''s report to the Chairman of the Committee on the basis of which resolution was passed by the Committee on 24.8.1982 to lodge an F.I.R against the accused. In his cross?examination in Paragraph-9, this witness has categorically stated that he did not make any inquiry when Nabakrishna Misra made a complain and the extent of his inquiry was limited to ascertaining the facts from the staff of the RM.C. and not from any other person. It appears that the further complain of Sagar Bhoi was once again ascertained from the staff and not from any other source and apart from the above complaints, he has not received any other complaint either from the public or from the staff. P.W.4 further stated that the allegations were brought against the accused on the basis of the complaint lodged by Nabakrishna Misra, Sagar Bhoi (Cart-man), the Licensing Inspector and the Market Guard.

10. From the extensive cross-examination, it can be seen that P.W.4 had no personal knowledge about the allegations leveled against the accused.

P.W.5- Satyabadi Mohanty was working as a Moharir in Gopinath Jew Temple. According to him the coconuts were sold through the Cart-man Sagar Bhoi who used to carry the coconuts to Sakhigopal for sale and on three dates i.e. on 13.2.1982, 16.2.1982 and 17.2.1982, Sagar Bhoi informed that he had sold the coconuts to the accused-Jatadhari Misra. He further stated that Sagar Bhoi had intimated him that Jatadhari Misra had deducted market fees from the value. He further stated that said Sagar Bhoi had expired since two years to the date of recording of his evidence. This witness had admitted that he had never gone personally to sell the coconuts. He stated that Sagar Bhoi had given in writing where he had sold the coconuts and those written documents were kept in office, but those were not produced in course of trial. Very importantly he stated that he did not mention in Ext-13 that Sagar Bhoi took coconuts in the Cart for sale and that he sold the coconuts to Jatadhari Misra outside the market. He claimed that on his own accord he had submitted Ext-30 indicating the name of Jatadhari Misra without asking him anything before preparing his report. Once again this witness claimed that the accused-Jatadhari had sent accounts slips through Sagar Bhoi on three occasions, but he could not say if there was signature of Jagadhari on those slips. It was further admitted by this witness that in Cash Book the name of Jatadhari Misra was mentioned as the purchaser of cocoanuts.

P.W.6 is the President of Shri Satyabadi Gopinath Dev Endowment Trust Board. He claims to have directed the Executive Officer of the Trust to make due inquiry and submit a report. This witness had admitted that Sagar Bhoi, the Cart?man took the coconuts to the market for sale and in his cross-examination admitted that no other document except Ext-30 was produced before me in connection with the inquiry.

11. In the light of the discussion of the evidence gathered in course of trial, it is abundantly clear that the prosecution has failed to establish the fact that the accused-Respondent had sold coconuts to different persons at different places as complained in the petition and no evidence to that effect has been adduced and therefore, in the light of the aforesaid discussion, I have no hesitation in dismissing the present appeal.

12. Accordingly, the criminal appeal is dismissed and the impugned judgment dated 22.12.1989 passed by the Trial Court is affirmed.

13. Appeal dismissed.

