
(2010) 06 AP CK 0083

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 4823, 4843, 4845, 4855 and 4875 of 2010

Sri Padmavathi Traders

APPELLANT

Vs

The Agricultural Market Committee and Another

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 12, 12(1), 12A, 12B, 12C
Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 — Rule 48, 74(1)
Criminal Procedure Code, 1973 (CrPC) — Section 468, 472, 482

Citation : (2010) 2 ALD(Cri) 654 : (2010) CriLJ 4239 : (2011) 2 Crimes 224

Hon'ble Judges : Samudrala Govinda Rajulu, J

Bench : Single Bench

Advocate : T. Sridhar, for the Appellant; Public Prosecutor for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Samudrala Govinda Rajulu, J.—The petitioners in this batch of petitions are accused of offence punishable u/s 23(1) of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act, 1966 as amended by the Act of 1987 (in short, the Act) for contravention of Section 7(1) of the Act in C.C. Nos. 270, 292, 267, 288, 276, 290, 274, 271, 280, 273, 275, 291, 289, 278, 277, 279, 272 of 2009 on the file of Special Judicial magistrate of the First Class for Excise cases, Nellore and C.C. Nos. 271, 280, 270, 269, 268, 279, 266, 272, 281 of 2009 on the file of II Additional Judicial Magistrate of the First Class, Nellore. Supervisor-cum-Authorised person of Agricultural Market Committee, Nellore filed complaints in the above cases against the respective petitioners. The petitioners are seeking quashing of those complaints u/s Supervisor-cum-Authorised person of Agricultural Market Committee Nellore filed complaints in the above cases against the respective petitioners. The petitioners are seeking quashing of those complaints u/s 482 Cr.P.C on various grounds.

2. It is alleged in the complaint that the petitioners/accused are wholesale dealers in Tamarind, Jaggery etc., which are notified agricultural produce u/s 4(4) of the Act within the notified market area of the Agricultural Market Committed, Nellore and that the accused carried on business in the above notified market within the said notified area since the years mentioned in the respective complaints and failed to pay license fee for that year and that the complainant/the 1st respondent herein issued show-cause notice to the accused on 04.01.2008 and the same was acknowledged by the accused and that inspite of the notice, the accused failed to pay license fees as per Section 7(1) of the Act and contravened the said provisions.

3. It is contended by the petitioner's counsel that the complaint of the 1st respondent on its face value of facts and impediments is not sustainable and amounts to abuse of process of criminal law. According to the petitioners, they are not traders or dealers, but are only commission agents. The allegations on this aspect in the petitions are exactly on the following terms:

the Petitioner sells commodity only as an agent of another authorised seller/dealer from other places other than Nellore like Chittor, Madanapalle etc., who is already a licensee at that Notified Market Area and paid levied fee u/s 12(1) of the Act on the notified agricultural produce, sent to the petitioner to sell the same on his behalf of on the incentive of commission. Thus, the petitioner herein, who is the accused in the court below, is a commission agent.

There is no dispute that the petitioners are carrying on their respective businesses at Nellore within the notified market area of Agricultural Market Committed, Nellore. According to the complainant/1st respondent, the accused are wholesale dealers. The accused dispute the fact of they being wholesale dealers and contend that they are commission agents. Whether the accused are wholesale dealers or commission agents is purely a question of fact. It is to be decided after the respective parties leading evidence before the trial court during trial of these cases. Names of the petitioners are 1) Sri Padmavathi Traders, 2) M/s. Sri Padmavathi Trading Company, 3) M/s. Sri Satyanarayana General Trading Company, 4) M/s. Sri Satyanarayana General Trading Company, 5) M/s. Sri Raja Rajeswari Trading Company, 6) M/s. Kolluru Krishna Murthy & Sons, 7) M/s. Karamsetty Lakshmaiah Setty & Sons, 8) M/s. Sri Satyanarayana General Trading Company, 9) M/s. Sri Satyanarayana General Trading Company, 10) Sri Parvathi Trading Company, 11) Sri Padmavathi Traders, 12) M/s. Sri Satyanarayana General Trading Company, 13) Sri Padmavathi Traders, 14) M/s. Karamsetty Lakshmaiah Setty & Sons, 15) M/s. Sri Raja Rajeswari Trading Company, 16) Sri Padmavathi Traders, 17) M/s. Sri Satyanarayana General Trading Company, 18) M/s. Karamsetty Lakshmaiah Setty & Sons, 19) M/s. Bommisetty Lakshmi Narasimhaswamy & Co., 20) M/s. Sri Parvathi Trading Company, 21) M/s. Karamsetty Lakshmaiah Setty & Sons, 22) M/s. Karamsetty Lakshmaiah Setty & Sons, 23) M/s. Karamsetty Lakshmaiah Setty & Sons, 24) Sri Padmavathi Traders, 25) M/s. Sri Satyanarayana General Trading Company, and 26) M/s. Sri

Raja Rajeswari Trading Company and they prima facie indicate that they are traders and not commission agents. It is contended that Rule 74(1) of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Rules, 1969 (in short, the Rules) declares that fees liveable u/s 12(1) of the Act on notified Agricultural Produce, Live Stock and Products of Live Stock, if paid to a Market Committee within the State shall not be collected by any other Market Committee subject to production of proof of payment of fees if already paid once. Rule 74(1) of the Rules speaks about levy of market fees and bar or levy of same market fees for the second time on the same agricultural produce or live stock or product of live stock in case proof of payment of market fees in this State previously to any other market committee is produced. Therefore, it is for the trader to produce proof of payment of market fees on the same agricultural produce or live stock or products of live stock to any other market committee and claim exemption from paying market fees again to the market committee of the complainant. This is also a question of fact, because Rule 74(1) of the Rules contemplates production of prove in that regard. The burden is on the trader to produce receipt and proof that market fees was already collected by another market committee on the same agricultural produce or live stock or products of live stock.

4. It is contended by the petitioner's counsel that since the petitioners are not traders or dealers, they are not liable to obtain license and are not liable to pay license fees under Sections 7(1) of the Act. Relevant portion of Section 7(1) of the Act reads as follows:

7 Trading Etc., in Notified Agricultural Produce, Livestock and Products of Livestock in the Notified Area:

(1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, pressing to processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee.

As per Section 7(1) of the Act, not only activities of purchase or sale but also activities of storage or weighment or curing or pressing or processing of any notified agricultural produce or products of live stock are covered. Simply because the petitioners are allegedly not undertaking activity of purchase or sale, they cannot claim that Section 7(1) of the Act has no application to them. Again, it is a question of fact whether even assuming for the sake of argument that the petitioners are not dealers but are only commission agents, their business activity include storage or weightment or curing or pressing or processing of any notified agricultural produce. In case the petitioners are indulging in any of the above said activities, then they are liable to comply with Section 7(1) of the Act.

5. The petitioners further contend that Sections 12, 12-A, 12-B and 12-C of the Act deal with levy of market fees, submission of returns of turnover, assessment

of market fees and payment of market fees and other dues under the Act and that non-compliance of any of the above provisions are not made penal and that no criminal prosecution can lie against any person who violates said provisions, as laid down by this Court in 1990 (3) ALT 31. At this stage, it may be noted that the petitioners are not being prosecuted for contravention of any of Sections 12, 12-A, 12-B and 12-C of the Act for non payment of market fees, but the petitioners are being prosecuted u/s 23(1) of the Act for non payment of license fees and contravening Section 7(1) of the Act. Section 23(1) to (3) of the Act reads as follows:

23 Penalties:

(1) Whoever contravenes the provisions of Section 7 or fails to pay the fees levied under Sub-section (1) of Section 12 shall, on conviction be punished with imprisonment for a term, which shall not be less than six months but which may extend to one year and with contravention with further fine which may extend to five hundred rupees for every day during which the contravention is continued after conviction thereof; Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2) Whenever any person is convicted of an offence u/s 7 or fails to pay the fees levied under Sub-section (1) of Section 12, the Magistrate shall, in addition to any fine which may be imposed recover summarily and pay over to the market committee the amount of the fees chargeable for the licence u/s 7 or the fees levied under Sub-section (1) of Section 12 as the case may be, and may in his discretion also recover summarily and pay over to the market committee such amount, if any, as he may fix as the cost of the prosecution.

(3) The recovery of the licence fees under Sub-section (2) shall not entitle the person convicted to the grant of a licence under this Act.

Thus, as per Section 23(3) of the Act, even if license fees is recovered under Sub-section (2), it will not clothe the person with any right for grant of license in his favour under the Act. Even after payment of the license fees, that person who paid the market fees has to comply with Rule 48 of the Rules relating to application for grant of license, and thereupon it is left to discretion of the market committee to grant or refuse to grant license or reject the application in exercise of powers under Sections 7(4)(a), 7(4)(b) and Section 7(7) of the Act.

6. It is contended by the petitioner's counsel basing on A. Hampayya v. Market Committee 1996 (2) ALD 443 and S. Narender Reddy Vs. Agricultural Market Committee, Jogipet, Medak District and Others, to the effect that Section 12(B) of the Act prescribes that assessment of market fee can only be done for a period within three years from the expiry of the year to which the assessment relates, and that proceeding to recover any dues or arrears from any person by market committee after the prescribed three years is bad in law, and that where the market committee is barred from making claims for the dues for the said

period, to obtain a license without payment of arrears is not permissible. Both the above reported decisions arose out of Writ Proceedings questioning levy of market fees and in the latter case after quashing of complaint filed by market committee for non submission of returns properly. It may be noted again at this stage that in the complaints filed by the 1st respondent/complainant in the lower courts, subject-matter of the complaints is not contravention of any of Sections 12, 12-A, 12-B or 12-C of the Act for non submission of returns or non payment of market fees levied, but the complaints are filed in these cases relating to contravention of Section 7(1) of the Act for non payment of license fees.

7. It is further contended that the complaints are barred by limitation u/s 468 Cr.P.C and that they were filed with inordinate delay. Admittedly none of the petitioners obtained any license u/s 7 of the Act from the 1st respondent much less paid license fees from the time of respective dates of commencing of their businesses at Nellore. In the complaints, the 1st respondent gave various dates of commencement of businesses by each of the petitioners to the following effect:

-----						1. CrI.P. No. 4823 of
2010	1996-97	-----				2.
CrI.P.	No.	4825	of	2010	1999-00	
-----						3. CrI.P. No. 4828 of
2010	1999-00	-----				4.
CrI.P.	No.	4836	of	010	2002-03	
-----						5. CrI.P. No. 4837 of
2010		2003-04			2007-08	
-----						6. CrI.P. No. 4838 of
2010		2003-04			2007-08	
-----						7. CrI.P. No. 4839 of
2010	2002-03	-----				8.
CrI.P.	No.	4840	of	2010	2005-06	
-----						9. CrI.P. No. 4841 of
2010	2006-07	-----				10.
CrI.P.	No.	4842	of	2010	2002-03	
-----						11. CrI.P. No. 4843
of 2010	1995-96	-----				
12.	CrI.P.	No.	4844	of	2010	1997-98
-----						13. CrI.P. No. 4845
of 2010	1998-99	-----				
14.	CrI.P.	No.	4846	of	2010	2001-02
-----						15. CrI.P. No. 4847
of 2010	2001-02	-----				
16.	CrI.P.	No.	4855	of	2010	1997-98
-----						17. CrI.P. No. 4858
of 2010	2000-01	-----				
18.	CrI.P.	No.	4859	of	2010	1999-00
-----						19. CrI.P. No. 4864

of 2010	2005-06	-----					
20.	Crl.P.	No.	4865	of	2010	2003-04	
						21. Crl.P. No. 4867	
of 2010	1998-99	-----					
22.	Crl.P.	No.	4868	of	2010	2003-04	2007-08
						23. Crl.P. No. 4873	
of 2010	2000-01	-----					
24.	Crl.P.	No.	4875	of	2010	1999-00	
						25. Crl.P. No. 4876	
of 2010	2001-02	-----					
26.	Crl.P.	No.	4879	of	2010	2002-03	

When once licence is taken and licence fees is paid, it is the duty of the licensees to renew the said license periodically by paying renewal license fees. It is not as if the petitioners commenced their respective businesses in the above years and stopped their business activity in the same year. Payment of license fees and renewal fees is a continuous process. Non payment of license fees is a continuing offence until license fee is paid and license is obtained. Section 23(1) of the Act also deals with continuing contravention, of course, after conviction. No doubt, the market committee may not be able to recover license fees for more than the prescribed period. That does not mean that the petitioners are not liable to pay license fees even for the said period subject to expiry of the prescribed period. Thus, non payment of license fees is a continuing offence and is therefore, not barred by limitation in view of Section 472 Cr.P.C. Offence relating to non payment of license fees every year from the year of commencement of business of the respective petitioners arose continuously on annual basis.

8. The complaint alleges that the 1st respondent gave show-cause notice to the petitioners prior to filing of the complaints and that none of the petitioners gave any reply therefore after acknowledging the notice. As per allegations in the petition, even though show-cause notices were stated to have been sent by certificate of posting, none of the petitioners received such notice. Again it is a question of fact as to whether show-cause notices were sent to the petitioners and if so by which mode and whether they were acknowledged or not received by all the petitioners or any of them. Proof of sending of show-cause notices and acknowledgments of their receipt by the petitioners will be let in during the course of trial of the cases in the court below. So, it cannot be said that the petitioners/accused were denied opportunity of putting forth their respective contentions before the 1st respondent. At any rate, giving of show-cause notice is not a condition precedent for launching prosecution for offence punishable u/s 23(1) of the Act.

9. Thus, viewed from any angle, the petitioners could not make out any legal grounds for quashing the complaints in all these cases. Therefore, all the criminal cases are liable to be dismissed.

10. Accordingly, all the Criminal Petitions are dismissed at admission stage.