

(1971) 11 BOM CK 0012

In the Bombay High Court

Case No : Criminal Appeal No. 749 of 1970 with Criminal Revision Appeal No. 500 of 1970

The State of Maharashtra

APPELLANT

Vs

Shivbalak Gawrishankar Dube

RESPONDENT

Date of Decision : 08-11-1971

Acts Referred:

Constitution of India, 1950 — Article 368
Income Tax Act, 1961 — Section 2

Citation : (1972) 74 BOMLR 561 : (1972) MhLj 808

Hon'ble Judges : Gatne, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gatne, J.—This appeal has been filed by the State with a view to challenge the order of acquittal passed by the Judicial Magistrate, First Class, Palghar, District Thana, on March 18, 1970 in Criminal Case No. 363 of 1960 on his file.

2. The complaint in the Court below was filed by one Ratnakar Digambar Khulge, the Secretary of the Agricultural Produce Market Committee at Palghar. The allegation of the complainant was that the accused, who was a resident of Navli, Taluka Palghar, was trading in grass and paddy straw and since Palghar Taluka was declared to be a market area as far back as August 12, 1960 and a Market Committee was constituted at Palghar on July 18, 1963, it was incumbent on the accused to obtain the necessary licence u/s 6(i) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. It was said that he had actually obtained such a licence for the year 1967-68, but thereafter he continued to trade without obtaining the requisite licence for subsequent years and thereby incurred the penalty prescribed by Sections 46 and 52 of the aforesaid Act.

3. The defence of this accused was that he was not trading in agricultural produce as defined in Section 2(1)(a) of the Act and since he was merely dealing in grass that was spontaneously grown on his own lands, such grass did not

come within the definition of "agricultural produce" and it was consequently not necessary for him to obtain the licence prescribed by Section 6(1).

4. This contention of the accused having found favour with the learned Magistrate, the learned Magistrate passed an order of acquittal in his favour and that order is the subject-matter of this appeal. The unsuccessful complainant, on his part, has filed Criminal Revision Application No. 500 of 1970 for the purpose of challenging the same order of acquittal.

5. The sole question that falls to be decided in this appeal, therefore, is whether it was incumbent on the accused to obtain the requisite licence u/s 6(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. If it was, it would be obvious that by trading in grass without obtaining the licence, he did incur the penalties prescribed by Sections 46 and 52 of the Act.

6. Section 6(1) provides:

Subject to the provisions of this section and of the rules providing for regulating the marketing of agricultural produce in any place in the market area, no person shall, on and after the date on which the declaration is made under Sub-section (1) of Section 4, without or otherwise than in conformity with the terms and conditions of a licence granted by the Director when a Market Committee has not yet started functioning; and in any other case, by the Market Committee in this behalf,-

(a) use any place in. the market area for the marketing of the declared agricultural produce, or

(b) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce.

7. Section 46 lays down:

Whoever in contravention of the provisions of Sub-section (1) of Section 6 uses any place in the market area for marketing of any agricultural produce, or operates-as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in. any other capacity, without a valid licence, shall on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both; and in the case of continuing contravention, with a further fine which may in the case of contravention of Clause (a) of Sub-section (1) of Section 6 extend to one hundred rupees; and in any other case, to fifty rupees per day, during which the contravention is continued after the first conviction.

8. Section 52 provides:

Whoever contravenes any provision of this Act or any rule or bylaw thereunder shall, if no other penalty is provided for the offence, be punished with fine which

may extend to two hundred rupees.

9. For the purpose of appreciating all these provisions, it is, in the first place, necessary to consider whether the accused was dealing in agricultural produce. As to what "agricultural produce" means must in this case be decided in the light of the express definition contained in the Act. Since the expression "agricultural produce" has been specifically defined in Section 2(1)(a), it is not necessary to go to the dictionary or popular meaning of that expression. In *Chimanlal Premchand Vs. The State of Bombay*,¹ the question that fell to be considered was whether the accused in that case, who was a trader carrying on business in cotton at Broach, could be regarded as a person trading in "agricultural produce" as defined in Section 2(1)(i) of the Bombay Agricultural Produce Market Act, 1939. The contention urged on the side of the accused was that the Act and the Rules framed thereunder did not apply to pressed cotton, and, therefore, the accused did not contravene the provisions of Rule 65(1) of the Rules framed under that Act. Their Lordships pointed out that the answer to that contention clearly turned upon the interpretation of Clause (i) of Sub-section (1) of Section 2 of the Act read along with the relevant item or items in the Schedule. It is, therefore, clear that in the present case we must also decide the question whether the accused in this case was or was not dealing in agricultural produce with reference to the definition contained in the Section 2(1)(a) of the Maharashtra Agricultural Produce Marketing (Regulation) Act of 1963.

10. According to that definition, "agricultural produce" means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest specified in the Schedule and entry No. XI in that Schedule refers to grass and fodder. There can, under the circumstances, be no doubt, on a plain reading of this definition with the Schedule, that grass and fodder are included in the definition of "agricultural produce".

11. On the side of the accused, it was urged that "grass" contemplated by the definition in question must be "grass" raised or grown with human labour or skill and not "grass" which spontaneously grows on the lands without any human labour or skill and in support of this submission reliance was sought to be placed on the observations of their Lordships of the Supreme Court in *I.-T Commr. v. Benoy Kumar* AIR [1957] S.C. 786. That case has been decided with reference to Section 2(1) of the Income Tax Act and the expression "agricultural income" has been considered by their Lordships. Their Lordships have pointed out that the term "agricultural income" having been defined in the Constitution itself in Article 368(1) to mean agricultural income as defined for the purposes of enactments relating to Indian Income Tax, the Court has got to look to the terms of the definition itself in Section 2(1) of the Income Tax Act and construe the same regardless of any other considerations, but it has further been pointed out that the terms "agriculture" and "agricultural purpose" used in the definition of "agricultural income" in Section 2(1) not having been defined in the Income Tax Act, the Court must necessarily fall back upon the general sense in which they

have been understood in common parlance, and while considering that question, it has been observed that products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are not products of agriculture and the income derived therefrom is not agricultural income. These observations cannot, however, be of any assistance to the accused, because so far as the present case is concerned, the term "agricultural produce" has been defined by Section 2(1)(a) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, to which a reference has already been made, and in view of that definition, it is not open to this Court to consider what the meaning of that expression is in common parlance. The decisions of this Court, in *Hiralal Ravchand Shah Vs. Parbhulal Sakhidas Shah*, and *Moreswar v. Umrao singh* (1931) 34 Bom. L.R. 778, are for the same reason of no assistance to the prosecution in this case. In the first of these cases, a Division Bench of this Court has held that the term "Agriculturist", as defined in Section 2 of the *Dekkhan Agriculturists' Relief Act*, includes a person who derives a greater part of the income from the fruits of the mango trees, even though he bestows no care or attention and labour on them. The question was whether a person deriving income from mango trees which were already fully grown and received no attention from such person, could be said to be earning his livelihood on the produce of the land and the finding of the Court was that such income was income from produce of the land and the test was whether the income was derived from the produce of the land and not what was the actual quantum of labour which had to be bestowed on getting in the crop. Following that decision, another Division Bench of this Court in the subsequent case held that a person who grows grass on land taken on lease by him and makes his living out of the sale of the grass is an agriculturist as defined by Section 2 of the *Dekkhan Agriculturists' Relief Act*, 1879. Baker J., while delivering his judgment, observed (p. 779):

...There cannot be the slightest doubt that grass is agricultural produce, and I do not think that there can be any doubt that a person who sells grass provided it is produced by his own land and makes his living thereby would be regarded as an agriculturist.

As I have already pointed out, it is unnecessary to refer to these decision at any further length, because in the present case we have to decide the meaning of the expression "agricultural produce" solely with reference to the definition contained in Section 2(1)(a) read in, conjunction with the Schedule, and if that is done, there can be no doubt that "agricultural produce" does include grass.

12. The only question is whether there is warrant for saying that the "grass" mentioned in the Schedule is "grass" which is raised with the aid of human skill or labour. The submission of Dr. Naik is that grass which spontaneously grows on lands is not contemplated by this definition. Since grass has not been defined in the Act, it is necessary to refer to the dictionary meaning of that expression. In Murray's Oxford English Dictionary, 1901 Ed "grass" has been defined as

meaning "herbage in general, the blades or leaves and stalks of which are eaten by horses, cattle, sheep, etc." In Webster's New International Dictionary, "grass" has been defined as meaning "in the widest sense, green herbage affording food for cattle or other grazing animals, especially that of plants belonging to the families Poaceae, Cyperaceae, and Juncaceae, in which the leaves have narrow and spear shaped blades." In Corpus Juris Secundum, Vol. 38, "grass" has been defined as meaning "in common usage, the green plants on which cattle and other beasts feed; any herbage that serves for pasture." There is, therefore, nothing in any of these definitions to indicate that the normal connotation of the term "grass" is confined to "grass" raised with the aid of human labour or skill. In the absence of any qualifying words, all types of grass, whether grass which grows spontaneously on the lands or grass raised with human labour or skill, would be included in the expression "grass" appearing in the Schedule of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963.

13. The argument of Dr. Naik at the Bar was that since we are construing penal provisions in the Act, the expression "agricultural produce" must be strictly considered. There Dr. Naik is clearly right, but I have construed the definition strictly and, even on a strict construction of that definition, there can be no doubt that the definition does include "grass". Since "grass" has nowhere been defined, we must, as was done by the Supreme Court in *I.T. Gommur V. Benay Kumar*, fall back upon the general sense in which that expression has been understood in common parlance, and in the light of the definitions contained in the three Dictionaries, it seems to me that there is no warrant for limiting the expression "grass" to "grass" raised with the aid of human labour or skill.

14. Once it is realised that "grass" spontaneously growing on the lands is also "grass" falling within the ambit of the definition contained in Section 2(1)(a) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, the accused could not claim an exemption in respect of the licence by saying that he was merely trading or dealing in grass spontaneously growing on lands.

15. In spite of this view of the matter, the prosecution must, I think, fail for want of satisfactory evidence to show that during the years 1968-69 onwards, the accused in fact was dealing in grass. On this question there is no other evidence beyond the word of P.W.I. Ratnakar Khulge, the Secretary of the Market Committee, and his evidence shows that he has no personal knowledge about the facts stated by him. On his own showing, he made inquiries with certain persons, but the persons with whom inquiries were made were not examined in the Court below. One Inspector Pethe is also said to have made certain inquiries and submitted a report, but strangely enough Pethe, although present in Court, was not examined in the Court below. The accused in his written statement at exh 20 has denied that he was dealing in grass during the relevant period and since the prosecution led no evidence to establish its case, it is difficult to say that the fact of the accused having been a trader in grass in the relevant period is satisfactorily established. Merely because in 1967-08 the accused had obtained

the necessary licence for trading in grass, it does not by any means follow that even during the subsequent years he continued to follow that avocation. The learned Magistrate was, under the circumstances, right in coming to the conclusion that the prosecution had failed to establish that during the relevant period the accused was in fact dealing in grass. Therefore, although the learned Magistrate was not right in taking the view that "grass" spontaneously growing on lands did not come within the purview of the definition of "agricultural produce" in terms of Section 2(1)(a) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, the accused was entitled to an acquittal on the ground that the prosecution had failed to establish its case on the merits.

16. This appeal consequently fails and is dismissed and the order of acquittal passed in favour of the accused by the Court below is confirmed. In view of the order in the criminal appeal, no separate order is passed on the criminal revision application.