(1991) 09 MAD CK 0002

In the Madras High Court

Case No : Criminal Appeal No''s. 731 and 732 of 1985

The Superintendent, Regulated Market, Krishnagiri	APPELLANT
Vs	
M/s. A.M.S. and Co. and Another	RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 468, 472

Citation : (1992) LW(Cri) 344

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : Lakshminarayana Reddy, for the Appellant; G. Dhesingu in C.A. 731 of 1985 and Mr. V. Prabakaran in C.A. 732 of 1985, for the Respondent

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—Both these appeals are by the Superintendent, Regulated Market, Krishnagiri challenging the acquittal of the

respondent in each appeal, tried by the Judicial I Class Magistrate, Dharmapuri, in S.T.R.206 of 1983 and S.T.R. 207 of 1983 respectively, for

offences under Rule 51-A of the Tamil Nadu Agricultural Produce Market Rules 1962 and by-laws 23 (4) and 23 (5) of the Dharmapuri Market

Committee read with Section 18(1) and 25 of the Tamil Nadu Agricultural Produce Markets Act 1959.

2. The respondent in C.A.731 of 1985 was prosecuted on the allegation that he had obtained a licence for dealing in coconut in the year 1980-

1981 and though he filed the returns for the period between 1.4.1980 and 31.3.81 on 24.6.81 had failed to pay the fee of Rs. 3114/- levied by the

appellant Committee, though a demand was made on 26.6.1981 after he had filed the returns on 24.6.1981, for the period between 1.4.1980 and

31.3.1981 despite receipt of the registered notice issued on 10.9.1981. The complaint was filed on 8.12.1981.

3. The respondent in C.A.732 of 1985 was prosecuted on the allegation that he had taken out a licence for trading in coconuts for the year 1980-

1981 and had not paid the fee of Rs. 4698/- levied by the appellant Committee, despite the demand made on 2.9.1981 on the basis of the returns

and accounts submitted by him on 14.9.1981 for the period from 1.4.1980 to 31.3.1981, and despite receipt of a registered notice on 29.9.1981.

4. During trial, in each of the cases, the Superintendent of the Regulated Market Committee concerned was examined and the relevant documents

showing the demand, sending of the registered notice, the acknowledgement of the respondent were marked. The respondent when questioned

denied having committed any offence. They had no evidence to offer. The learned Magistrate acquitted the respondents on the ground, that the

appellant should have prosecuted the respondents for failure to file returns under Rule 51-A(5) of the Tamil Nadu Agricultural Produce Market

Rules 1962 (hereinafter referred to as ''the rules'') and that the present prosecution for failure to pay the fee levied by the appellant Committee was

barred by limitation. Challenging the grounds of acquittal, the complainant has filed these appeals.

5. Thiru B. Lakshminarayana Reddy, the learned counsel for the appellant in both the appeals submitted that the respondents who had taken out

licence for carrying on business in notified areas, were bound to pay the fee levied u/s 18 of the Tamil Nadu Agricultural Produce Markets Act

1959 (hereinafter referred to as the Act) as covered by rules 51-A and the present prosecution for failure to pay the fee so levied, amounting to

fraudulent evasion of the fee, was a continuing offence as could be seen from the provisions of the Act and the Rules and as held by this court and

as such, the prosecutions were saved by Section 472 of the Criminal Procedure Code as relating to continuing offences.

6. Thiru G. Dhesingu, the learned counsel for the respondent in C.A. 731 of 1985 and Thiru V. Prabakaran, the learned counsel for the

respondent in C.A. 732 of 1985 would contend that the appellant had not chosen to prosecute the respondents for failure to file returns within the

period fixed under the Act and the rules and had taken its own time to file the present prosecution and as such the acquittal of the respondents by the trial court was justified. It was also submitted that Rule 51-A(5) required the licencee to pay the fee, within a week of the purchase and as

such, limitation would start running from the date of default and the offence being punishable with fine only and the period of limitation u/s 468

Cr.P.C. being only six months, the prosecution was clearly barred by limitation, as held by the learned Magistrate. In addition, it was contended

that there was nothing to indicate that the evasion of the payment of fee by the respondent was fraudulent. The acquittal, therefore, had to be

confirmed.

7. The question that arises in both these appeals is whether the complaints are barred by limitation.

8. It is admitted that both the respondents had obtained licence for trading in coconuts for the year 1980-1981. It is not denied that returns were

filed by them on 24.6.1981 and 14.9.1981 respectively. It is also not disputed that subsequent to the demand and the receipt of the registered

notice, the fee had not been paid and remains unpaid even today. The offence is punishable with fine only and as such the complaints will have to

be filed within six months as required u/s 468 Cr.P.C. Admittedly, the complaints are filed long after that. The only question, therefore, is whether

the failure to pay the fee levied u/s 18 of the Act and Rule 51 A, made punishable u/s 25, is a continuing offence within the language of Section 472

Cr.P.C.

9. Section 18 enables the Market Committee to levy fee on any notified agricultural produce, bought or sold, in the notified market area. Rule 51A

enables the Committee to levy and collect the fee on ad valorem basis at such rates as may be specified in the by-laws of the Market Committee,

subject to the minimum and maximum prescribed in Section 18(1). Section 25 of the Act is the penal provision for any one fraudulently evading the

payment of any fee or other amount due from him under the Act or rules or by-laws made thereunder, and renders him liable to be punished with

fine which could extend to Rs. 500/- and in the case of continuing evasion or contravention, with a further fine which may extend to one hundred

rupees for every day during which the evasion or contravention is continued after conviction therefore.

10. A reading of the above provisions would show that a liability is cast upon

anyone who buys or sells a notified agricultural produce, in a notified

market area, to pay the fee levied by the Committee. The liability to pay the fee continues till the fee is paid. The object of levying and collecting the

fee, is for the proper functioning of the Market Committee, entrusted with the task of enforcing the Act and Rules. Section 25 penalises not every

evasion or failure to pay the fee but only, when it is established, that the evasion is fraudulent. That the evasion could continue and the offence of

fraudulent evasion could be a continuing offence, is clear from Section 25 itself, which refers to continuing fraudulent evasion even after conviction

which calls for an enhanced sentence. The concept of a continuing offence of evasion of fee is, therefore, incorporated in the Act itself. A plain

reading of Section 25 shows, that fraudulent evasion of fee continues so long as the fee remains unpaid. The offence is, therefore, a continuing

offence.

11. Section 26 of the Act enables the trial court, on proof of wilful omission to pay the fee, to direct the payment of the fee to the Market

Committee. Section 28 empowers the trial court, on conviction of the accused to recover summarily and pay to the Market Committee, the fee or

other amounts due from him under the Act, together with the costs of the prosecution. These provisions also go to indicate that the offence of

fraudulent evasion of fee continues so long as the fee remains unpaid. The offence is a continuing offence.

12. A learned Judge of this court in Prabakaran and another v. Supervisor, Regulator Market, South Arcot Market Committee, Chinna Salem

1986 Cri. L.J. 485, referring to failure to pay fee levied u/s 18 of the Act, has observed that the accused were under an obligation to furnish

account particulars and also to remit the Market dues payable by them and when they fail to do so, the offence becomes a continuing one from the

date of default and that merely because the market dues became payable after the year came to a termination, it could not be said that the offence

became a completed one and prosecution could not be launched after the expiry of limitation. I am in respectful agreement of the view expressed

by the learned Judge.

13. From the foregoing discussion it follows that fraudulent evasion of fee levied u/s 18 of the Act read with Rule 51A is a continuing offence within

the meaning of Section 472 of the Criminal Procedure Code. The limitation imposed in Section 468 Cr.P.C. therefore, cannot apply to such

offences. The very fact that the respondents even after the lapse of the licensing year, did not file their returns and inspite of a notice and later a

registered notice being received by them, had neither chosen to reply nor make the payment shows that their evasion of the fee is fraudulent.

14. The acquittal being solely on the ground of the complaints being barred by limitation and the above ground now having been found to be legally

unsustainable and the prosecution having proved its case in all respects, this court has no option but to convict both the respondents for the offence

for which they were tried.

15. In the result, each of the respondents in each of the appeals is convicted for an offence u/s 25(a) read with Section 18 and Rules 51-A. Since

only a nominal fine is being imposed, the respondents are not called to be questioned on the sentence. Each of the respondents is directed to pay a

fine of Rs.20/-, in default, to undergo simple imprisonment for a period of one week. Time for payment of the fine is one month from the date of

receipt of this judgment by the trial Court.

16. It has been brought to my notice that the fee has not yet been paid by the respondents. Section 28 enables the court to make a summary

recovery of the fee that remains unpaid even after conviction. I, therefore, direct u/s 28 of the Act, that the sum of Rs.3114/- be recovered from

the respondent in C.A. 731 of 1985 and the sum of Rs.4698/- be recovered from the respondent in C.A. 732 of 1985. The learned Magistrate

shall recover the above amounts in the manner known to law.

17. In the result, C.A.731 of 1985 and C.A.732 of 1985 are allowed and the respondent in each appeal is convicted and sentenced as stated

above.