THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.2033 of 2012

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) is filed by the petitioner/Accused requesting to quash the proceedings against it in CC.No.392 of 2010 on the file of the learned Judicial Magistrate of First Class, Bodhan taken on file for the offences punishable under the provisions of the A P(Agricultural Products & Livestock) Markets Act, 1966 ('the Act' for brevity) and the rules made under the provisions of the said Act for contravention of Sections 7 and 12 of the said Act and Rule 74 of the A.P (AP & LS) Market Rules ('the Rules' for brevity) and bye-law no.24.

2. I have heard the submissions of the learned counsel for the petitioner/accused, the learned Additional Public Prosecutor appearing for the 1st respondent/State and the learned counsel appearing for the 2nd respondent/complainant. I have perused the material record.

3. Now the point for determination is:

Whether the petitioner/accused had made out valid and sufficient grounds for quashing the proceedings against it in CC.No.392 of 2010 on the file of the Court of the Judicial Magistrate of First Class, Bodhan?

4. POINT:

4. (a) The Agricultural Market Committee, Bodhan represented by its Special Grade Secretary had filed a complaint under Section 200 of the CrPC against the accused i.e., the Food Corporation of India, Nizamabad represented by its Area Manager, Swarna Complex, Yellammagutta, Nizamabad stating *inter alia* as follows: - 'The complainant is the regulatory authority for regulating the business transactions within the notified market yard, Bodhan. Every trader who purchases or sells any notified agricultural produce/live stock or produce of live stock within the notified market area has to pay Rs.1 for every one hundred rupees of the aggregate amount for which the notified agricultural produce, live stock or produce of the live stock is purchased. During the inspection of the Regional Vigilance and Enforcement Department of the Government of Andhra Pradesh it is found that the accused/FCI, Nizamabad ('the accused' for brevity) had purchased rice from various rice mills within the notified area between 01.04.2008 to 30.11.2009 and that the said total purchased quantity of raw rice and boiled rice during the above said period is of 15,768,23.58 quintals and is of a total value of Rs.23,907.65 lakhs and on which a market fee @ 1% is payable to the complainant; and, the same works out to Rs.239.08 lakhs. The accused having purchased both raw and boiled rice of the above value from various rice mills within the notified area had failed to pay the prescribed market fee as mentioned supra. After gathering details of such purchases made by the accused during the said period, the complainant had issued a demand notice dated 21.04.2010 to the accused to make payment of the said amount, which is due. However, the accused had failed to pay the said amount. On that the complainant had issued a notice dated 07.07.2010 calling upon the accused to show cause as to why the accused should not be prosecuted for non payment of the market fee to the complainant which had resulted in violation of Section 12 of the Act, Rule 74 of the Rules under the Act and bye-law no.24 of the Agricultural Markets Committee. The accused having received the said notice gave a vague and false reply dated 13.07.2010 and had failed to pay the amount due to the complainant. Hence the complaint was lodged requesting to punish the accused under Section 230A of the Act and recover the amount due to the complainant.'

Based on the said complaint, the CC.No.392 of 2010 was taken on file by the learned Magistrate as already stated supra.

4. **(b)** The case of the accused in support of the request to quash the proceedings against it in the above calendar case is as follows: 'The accused is a statutory corporation fully owned and controlled by the Central Government. It is a non profit organisation. It undertakes the activity of procurement of food grains for and on behalf of the State Government and stores them in the go-downs and supplies the food grains to the State Government for its various schemes, which are aimed at benefiting the poorer sections of the society. Every year before the commencement of the procurement season, the Government issues a Government Order appointing the accused as its agent for procurement of rice under the mill levy. Under the said GO, the Government also fixes the quantity of rice to be procured by the accused. As per the directions of the State Government, the accused procures rice every year and stores the same in go-downs and distributes the same as per the directions of the State Government. Only for the purpose of this procurement, the accused had purchased huge quantities of rice from rice millers and the same is called levy rice. In an earlier year-2004, when the Agricultural Markets Committees in the State had demanded market fee from the accused, the accused had filed WP.21570 of 2004 before this court seeking a writ of mandamus to declare the action of the respondents therein in notifying the rice as an agricultural produce for the purpose under the Act as arbitrary and illegal or in the alternative to declare that the petitioner is not liable to pay the market fee on its purchases from the rice millers. As the first limb of the prayer was covered by the judgment dated 14.03.2008 of this court in a batch of cases, the writ petition was dismissed. The learned Judge did not go into the second limb of the prayer sought in the writ petition. Aggrieved of the judgment, the accused filed Writ Appeal 737 of 2008 before the Division Bench. Notice before admission was ordered and stay of levy, demand and recovery of the market fee from the accused was granted. Subsequently, the interim order was continued until further orders. The writ appeal is still pending. The interim order also is still in force and till now the respondents in the writ petition have not served on the counsel for the accused a counter affidavit, if any, filed. The Division Bench directed the respondents therein not to take any coercive steps to recover the market fee from the petitioner. The said interim orders are binding on all the market committees in the State including the complainant herein. Hence the 2nd respondent/complainant cannot file the criminal complaint against the accused. The action of the 2nd respondent/complainant herein amounts to contempt of court. The accused reserves its right to initiate separate proceedings in that regard against the 2nd respondent herein. Hence the present petition is filed to quash the proceedings.'

4. **(c)** At the time of hearing, the learned counsel for the accused made submissions in line with the pleaded case, which is extracted supra. The learned counsel for the complainant had reiterated, at the time of hearing, the averments in the complaint, which are also extracted supra. The fact remains that the issue as to whether the market committees like the complainant are entitled to levy, demand and collect market fee from the accused is one of the questions pending consideration in the pending W.A.No.737 of 2008. The question whether the accused is entitled to a declaration that the accused is not liable to pay market fee on its purchases of rice from rice millers under Section 28 of the Act is also one of the questions pending consideration in the said writ appeal. Therefore, the liability of the petitioner/accused depends upon the answers to the questions involved in the writ appeal which is still pending. Section 28 of the Act reads as follows: -

'**Act not to apply to markets established by or**

> **on behalf of Government:-** Nothing in this Act shall apply to any place set up, established or continued on behalf of the Government for the purchase, sale, storage, weighment, pressing or processing of any notified agricultural produce or products of livestock or the purchase, sale or accommodation of livestock or to the purchase or sale of any such notified agricultural produce, livestock or products of livestock by or on behalf of the Government.'

Be that as it may. It is undisputed before this court that in the writ appeal, this court granted the following interim order on 11.08.2008. '***Learned Government Pleader for Agriculture prays for time for filing counter. Adjourned to 25.08.2008. In the meantime, there shall not be any coercive recovery of the amount sought to be recovered from the appellate corporation.***' Further by orders dated 08.09.2008 in WAMP.No.1543 of 2008 this court had extended the interim orders by ordering that interim orders granted on 11.08.2008 shall continue until further orders. In view of the pendency of the writ appeal and the questions involved in the writ appeal and the interim order, this court is of the considered view that the petitioner had made out valid and sufficient grounds for quashing the proceedings as continuation of the proceedings would amount to coercing the petitioner/accused to pay the amount.

5. Viewed thus, this court finds that this is a fit case to invoke the powers under Section 482 of the CrPC and quash the proceedings.

6. In the result, the Criminal Petition is allowed and the proceedings against the petitioner/accused in CC.No.392 of 2010 on the file of the Court of the Judicial Magistrate of First Class, Bodhan are hereby quashed.

Miscellaneous petitions pending, if any, in this petition shall stand closed.

M.SEETHARAMA MURTI, J

19th January, 2015
Vjl