

HONOURABLE SRI JUSTICE RAJA ELANGO

**CRIMINAL APPEAL Nos.520, 521, 522, 523, 524, 525 526, 527,
528 & 529 of 2007**

COMMON JUDGMENT:

All these Criminal Appeals are filed by the appellant-complainant by invoking the provision under Section 378(4) of the Code of Criminal Procedure (Cr.P.C.), challenging the orders of acquittal, dated 01.11.2006, passed in CrI.A.Nos.128 of 2006, 127 of 2006, 124 of 2006, 123 of 2006, 122 of 2006, 126 of 2006, 121 of 2006, 120 of 2006, 129 of 2006, 125 of 2006, by the III Additional District & Sessions Judge (Fast Track Court), Nellore, whereby and whereunder the orders of conviction and sentence passed by the Additional Judicial Magistrate of First Class, at Kovur, on 17.10.2006 in S.T.C.Nos.41 of 2013, 40 of 2013, 09 of 2013, 10 of 2013, 11 of 2013, 39 of 2013, 12 of 2013, 90 of 2013, 89 of 2013 & 38 of 2013, were set aside and the accused was found not guilty for the contravention of provisions under Section 7(1) of the A.P. (Agri. Produce and Live Stock) Markets Act, 1966 as amended in 1987 (for short, 'the Act') and he was acquitted.

2. The brief facts, that are necessary for the disposal of the present Criminal Appeals, may be stated as follows:

The Supervisor, Agricultural Market Committee, Kovur filed a complaint against the accused alleging that the complainant is the Agricultural Market Committee, Kovur, constituted for the notified area as per G.O.Ms.No.875, Food & Agriculture (Agri.IV) Department, dated 29.10.1976 and declared its markets and its area as per G.O.Ms.No.411, Food & Agriculture (Agri.II) Department, dated 20.05.1977. The accused is the trader carrying

on business in the name and style of Sri Lakshmi Traders. He is doing business in sale of paddy and rice which are notified commodities as per Section 4(4) of the A.P. (Agri. Produce and Livestock) Markets Act, 1966 as amended in 1987 (for short, 'the Act') and he has not obtained the license from the complainant. Thus, contravened the mandatory provisions of Section 7(1) read with Section 23(1) and Rule 50 read with by law 20 of the A.P. (A.P. & LS) Markets Act, 1966, amended Act, 1987 and Market Rules, 1969. In spite of issuing notice, no reply was given. After passing resolution, the complaints were lodged.

3. The trial Court took cognizance of the offence under Section 7(1) r/w Section 23(1) and Rule 50 read with by-law 20 of Agricultural Market Committee Act, 1987 and Rules, 1969 against the accused and proceeded with the case.

4. On appearance of the accused, he was examined under Section 251 Cr.P.C. and when the substance of accusation for an offence under Section 7(1) r/w Section 23(1) and Rule 50 read with by-law 20 of Agricultural Market Committee Act, 1987 and Rules, 1969, was framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried.

5. To substantiate its case, the prosecution got examined P.Ws.1 and 2 and marked Exs.P-1 to P-7. On behalf of defence, the accused himself got examined as D.W.1 and no documentary evidence was adduced.

6. On closure of the complainant's side evidence, the accused was examined under Section 313 of Cr.P.C. on behalf of the firm and he denied the incriminating circumstances appearing

against him in the evidence of P.Ws.1 and 2 and on behalf of the accused, no oral or documentary evidence was adduced.

7. After evaluating the oral and documentary evidence adduced by the prosecution, the trial Court found the accused guilty for the contravention of provisions under Section 7(1) of the Act punishable under Section 23(1) of the said Act and accordingly, he was convicted under Section 255(2) of Cr.P.C. and he was sentenced to suffer Simple Imprisonment for a period of six (6) months and also to pay a fine of Rs.1,000/- for the offence punishable under Section 7(1) of the Act, in default to suffer another Simple Imprisonment for a period of three (3) months. Aggrieved by the said judgments, the accused filed Crl.A.Nos.128 of 2006, 127 of 2006, 124 of 2006, 123 of 2006, 122 of 2006, 126 of 2006, 121 of 2006, 120 of 2006, 129 of 2006, 125 of 2006, before the III Additional District & Sessions Judge (Fast Track Court), Nellore, whereby the learned Sessions Judge, after re-appreciation of the evidence, allowed the said criminal appeals by setting aside the judgments of the trial Court vide judgments, dated 01.11.2006, in S.T.C.Nos.41 of 2013, 40 of 2013, 09 of 2013, 10 of 2013, 11 of 2013, 39 of 2013, 12 of 2013, 90 of 2013, 89 of 2013 & 38 of 2013, and the accused was found not guilty for the contravention of the provisions under Section 7(1) of the Act and he was acquitted. Aggrieved by the said judgments, the complainant preferred the present appeals.

6. Heard both sides and perused the material available on record.

7. The lower appellate Court allowed the above said criminal appeals by observing that the evidence of P.Ws.1 and 2 is

not clear that the accused did the business within the jurisdiction of the complainant committee and Ex.P-7 proceedings no way improvises the stand of the complainant that the accused did the business within jurisdiction and the learned Magistrate has erred in convicting the accused and there are no merits in the case.

8. The 1st respondent/accused has also filed written arguments before this Court, which reads as follows:

“2. In order to get jurisdiction to lay any complaint, the market committee should satisfy the court that by virtue of the two notifications they are entitled to file the complaint. The notified area is a larger area and the notified market area is small one with markets comprised in it. It is their case that the trader did business in Allurpet. Although P.W.2 deposed that there is no entry in Ex.P7 to show that he did business either at Aluru or Alurpet, the learned Magistrate stated that he perused and found out that the accused did business at Allurpet (Aluru). How can prosecution be sustained without any proof that the accused did business in the notified market area without filing notifications which is direct evidence. The learned Sessions Judge perused all the documents Ex.P1 to Ex.P7. The admission of P.W.1 that no notification was issued by the Government noting the area of Kovur Panchayat. The learned Appellate Judge rightly said that itself cuts away the entire case of the prosecution.

3. The complainant only relied upon Ex.P7 turn over particulars to show that the accused did business. But the concerned officer who produced the document specifically stated that there is no entry that the accused did business at Alluru or Kovur. Even the status of the accused is doubtful. When a prosecution was laid, care should be taken with regard to the status of the firm whether it is partnership firm or sole proprietary concern and whether the particular person who was shown as accused was in charge of the financial affairs of the firm. Because the complainant is a statutory Body it cannot be assumed that whatever is done is bonafide. The Market committee should be more diligent while launching

prosecutions in the year 2003 for the alleged offences for so many years. Ex.P7 was observed by the learned Magistrate that he did not business during 2001-2002 and the complaints were filed even for the year 2002-2003 and the earlier periods.

4. The learned Magistrate relied upon the statement given by the accused in the W.P.No.22452/2003. In that petition the accused had stated that he was having licence in the year 2003.

5. The learned Sessions Judge rightly held that the complaints are barred by limitation. There is no dispute with regard to the proposition of Law that the failure to obtain licence under Section 7 read with rules and by laws is continuing offence as is held by His Lordship J. Ramaswamy. In the later judgment of 1984, Justice Ramaswamy elaborated about the continuing offence because in that judgment it was held failure to pay the market fees under Section 12 of the Act is not a continuing offence. His Lordship the author of the judgment discussed the concept of continuing offence.

6. Under Section 472 of the Cr.P.C., it is stated that in the case of continuing offence, a fresh period of limitation shall begin to run at every moment of time during which the offence continues. The consequences of the offence are subject to the law of Limitation. So it is clear that with every default the fresh cause of action arises. It cannot be said that in the case of continuing offence there is no limitation. The complainant launched several cases alleging that for a particular financial year, the accused did not obtain the licence. When several cases were filed, the prosecution has to explain how there are within time because for every complaint there is a cause of action. When the consequences are enduring till the last cause of action all the cases filed for the earlier period should be dismissed solely on the point of limitation. The point of limitation will assume importance when factually it is proved that the accused did business in the notified commodity in the notified market area till the relevant period i.e., up to the date of launching the last case.

7. It is humbly submitted that in all the cases there is a categorical finding of fact recorded by the learned

Sessions Judge that the prosecution failed to prove that the accused did business in the notified market area because the notifications are not forth coming and Ex.P7 which is marked through the C.T.O. will not help the case. The evidence of the C.T.O. as observed by the learned Magistrate shows that the accused did business for the year 2000-2001 but there is no entry that the accused did business at Alluru or at Kovur. Except this document no other independent evidence is there to show that the accused has been doing business from 1998 till the date of prosecution in the year 2003.”

9. The learned lower appellate Judge also observed the same and acquitted the accused. Hence, this Court is of the view that the judgments of the lower appellate Court are in accordance with law and there is nothing to interfere with the same.

10. Accordingly, the Criminal Appeals are dismissed. Miscellaneous petitions, if any pending, in all these criminal appeals shall stand closed.

RAJA ELANGO, J

Date: 13th October, 2016

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