HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7918 of 2017

ORDER :

The petitioner is M/s.Oceanic Tropical Fruits Private Limited, Director, by name, A.Joseb Raj of Annur Village, Karveti Nagaram Mandal, Chittoor District, is accused in S.T.C.No.41 of 2016 pending on the file of the Judicial Magistrate of First Class, Puttur. It is for the offences punishable under Section 12(1) read with Section 23(1) and rule 74 read with Bye Law of the A.P. (Agricultural Produce & Live Stock) Market Act, 1966, Amendment Act 1987 (for short, 'the Act') and Market Rules 1969, for the non-payment of the agricultural market committee fees for the years 2011-2012 and 2012-2013. It is based on the private complaint of the Secretary of the Market Committee, the learned Magistrate has taken cognizance for the said offences against the petitioner/accused, the same is seeking for quashment herein.

2. The contentions in the quash petition are that the petitioner is having a trade licence during 2010-2015 from the Market Committee in carrying business of mangoes, guava, papaya and tomatoes, etc., which are notified commodities under Section 4 of the Act supra. The licence was granted under Section 7(1) of the Act read with Rule 48 Bye Law 20 for purchase and sale of the commodities in the market committee area. The market committee raised the demand for alleged part payment of the market fees as due of Rs.19,54,015/- from the

alleged verification by the Additional Superintendent of Police and Regional Vigilance and Enforcement Officer, Tirupati, of the records, ledgers, purchase bills and cash receipts in raising said token on 17.12.2013. The accused received the said notice on 29.12.2013 and again on 18.06.2014 to pay the said amount with interest and later he paid only Rs.2 crores and failed to pay the balance, it is there from sought for prosecution. However, the said offences are for the period of 2011 to 2013 and the prosecution launched is in February, 2016 and the punishment provided under Section 23(1) of the Act is up to a maximum punishment of one year and thereby the prosecution is hopelessly barred by limitation under Section 468 of Cr.P.C. and the prosecution thereby unsustainable.

3. The contention of the counsel for the Market Committee is that the limitation commenced from the date of knowledge and it is after knowledge only the notices are served and there is a part payment and subsequently failed to pay, the prosecution is launched and prosecution is not barred by time, therefore, the quash petition is liable to be dismissed for non-payment on demand by leaving itself constitutes a penal offence. Sections 468 of 473 Cr.P.C of Chapter 36 for the purpose of answering the issue from hearing of both sides read as follows:

> <u>S.468</u>: Bar to taking cognizance after lapse of the period of limitation.
> <u>(1)</u> Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category

specified in sub- section (2), after the expiry of the period of limitation.
(2) The period of limitation shall be-
(a) six months, if the offence is punishable with fine only
1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 end Sch.
(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
(3) [1] For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]
469. Commencement of the period of limitation.
(1) The period of limitation, in relation to an offender, shall commence,-
(a) on the date of the offence; or
(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.
(2) In computing the said period, the day from which such period is to be computed shall be excluded.
470. Exclusion of time in certain cases.
(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of

jurisdiction or other cause of a like nature, is unable to entertain it.
(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.
1. Ins. by Act 45 of 1978, s. 33 (w. e. f. 12- 12- 1978).
(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.
(4) In computing the period of limitation, the time during which the offender-
(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or
(b) has avoided arrest by absconding or concealing himself, shall be excluded.
471. Exclusion of date on which Court is closed. Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens. Explanation.- A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.
472. Continuing offence. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.
473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of

> an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

4. The period of limitation defined in Section 467 Cr.P.C is the period specified for taking cognizance. The law is fairly settled by the expression of the Apex Court that is the filing of the complaint irrespective of delay later in taking cognizance up to which the period from the accrual of cause of action to compute the limitation to be considered. Section 468 IPC speaks from the above that the Court cannot take cognizance all the offences after expiry of six months, if the offence is punishable with fine only; one year, if the offence is punishable with imprisonment for a term not exceeding one year; three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Section 469 Cr.P.C. supra speaks the commencement of the period of limitation from the date of offence or where the commission of the offence was not known to the person aggrieved or to any police officer, the first day on which such offence comes to the knowledge. Here, even taken from the above, the first notice served after the Vigilance verification is in December, 2013, the demand was dated 17.12.2013 by levy and the same was served on the accused on 29.12.2013, leave about a subsequent notice even from that one year period of limitation even computed from that knowledge of 17.12.2013 expired by 17.12.2014 and the prosecution filed by private complaint in the year 2016 on

26.02.2016 and the same once hopelessly barred, taking of cognizance is unsustainable for the prosecution is barred by limitation and the accused is entitled to take the plea of the cognizance order and bar of limitation at any stage.

5. Accordingly and in the result, the criminal petition is allowed quashing the proceedings against the petitioner/accused in S.T.C.No.41 of 2016 on the file of the Judicial Magistrate of First Class, Puttur, Chittoor District. However, it will not prevent the civil recovery, if any.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

10th November 2017.

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