

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2018

CORAM

THE HONOURABLE MR.JUSTICE.M.DHANDAPANI

W.P.No.13473 of 2006

S.V.S.Chidambara Nadar Co.,
rep. by its Managing Partner
R.Radhakrishnan

.. Petitioner

Vs.

The Superintendent,
Regulated Market,
Chidambaram.

.. Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records on the file of Judicial Magistrate No.II, Chidambaram pertaining to the criminal prosecution in STC No.456/2006 filed against the petitioner and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.S.Saravana

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorari calling for the records on the file of Judicial Magistrate No.II, Chidambaram pertaining to the criminal prosecution in STC No.456/2006 filed against him and for quashing the same.

2.The case of the petitioner is that he is the Managing Partner of the petitioner company. The petitioner company obtained licence under the provisions of Tamil Nadu Agriculture Produce Marketing (Regulation) Act, 1987. According to the petitioner, since there was no establishment of market as contemplated under Section 6(1) of the Act and there was no notification under Section 8(3) of the Act, any action by the respondent market to insist for licence would be non est in the eye of law. In this regard, the petitioner made a representation on 25.01.2003 seeking to cancel the licence granted in his

favour. Subsequent to the expiry of the licence, the petitioner made a detailed representation to the respondent for not having the licence renewed and questioning the validity of the levy made under the Act by way of separate proceedings. While that being the legal position, the respondent has launched criminal prosecution against the petitioner under Section 48 of the Act for not having renewed the licence beyond 2003. Hence, he is before this Court seeking the above said prayer.

3.The learned counsel appearing for the petitioner would submit that as per Section 58(2) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, cognizance of the offence under this Act can be taken by a Criminal Court only when the complaint is made in writing either by the Director or by an officer empowered by the Director by means of the special order. In this regard, he placed reliance on the judgment of the Division Bench of this Court dated 28.03.2008 in W.A. Nos.408 of 2006 etc. batch. Accordingly, he prays for allowing this petition.

4.A perusal of the above complaint would show that the petitioner without obtaining sanction from the Commissioner of Agricultural Marketing and Agri Business, has sold the agricultural products. However, as per Section 58(2) of the Act, a complaint can be made by the Director or any other Officer empowered by him in his behalf by a special order. The very same issue has been dealt with by the Division Bench in W.A. Nos.408 of 2006 batch dated 28.03.2008 wherein this Court while dismissing the appeal, has observed as follows:

"8.For instance, in 1992 SCC (Cri) 426 (STATE OF HARYANA AND OTHERS V. BHAJAN LAL AND OTHERS), it was observed:-

"102.In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV end of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the code, which we have extracted and reproduced above, we give the following categories of case by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined any sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

...

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings....

9. Similarly in STATE OF WEST BENGAL V. SWAPAN KUMAR GUHA (1982) 1 SCC 561, the power of the High Court to quash criminal proceedings in exercise of jurisdiction under Article 226 of the Constitution was recognised.

10. Once the above submission made by the learned Addl. Advocate General is brushed aside, the question is what remains in the appeals filed by the State Government.

11. The basic conclusion of the learned single judge is to the effect that the person who had filed the complaint in writing was admittedly not the Director or the empowered officer. Even though in the writ appeals the conclusion that complaints had not been filed by the competent officer has been challenged in a rather halting manner, the learned Addl. Advocate General in his usual forthright and fair manner has conceded that the conclusion of the learned single judge on the above aspect is justified and the complaint had not been filed by the officer contemplated under Section 58 of the Act. Therefore, it is apparent that the appeals filed by the State Government had no legs to stand upon.

The second submission of the learned Advocate General that the question as to whether any offence had been committed or not should ordinarily left to be decided at the appropriate stage, shall be dealt with in the later part of the judgment while considering the submission made by the learned counsel for the private appellants that the allegations do not reveal commission of offence."

5. In view of the fact that the present case has been squarely covered by the above said decision, this writ petition is allowed and the complaint filed by the respondent is hereby quashed. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

vga

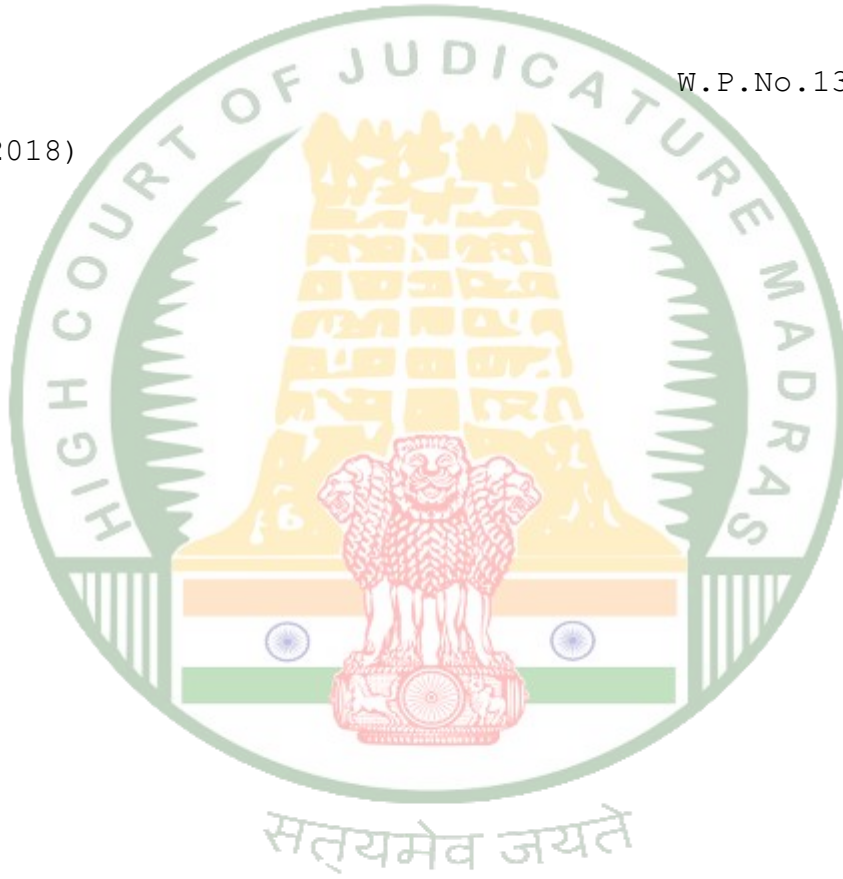
To

The Superintendent,
Regulated Market,
Chidambaram.

+ 1 cc to Mr. S.Saravanan, Advocate Sr.28679
+ 1 cc to Mr. G. Sankaran, Advocate Sr.25603

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SV(CO)
EU(15/05/2018)



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