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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. OP (MD)Nos.5027 & 5028 and 15598 of 2013
and
MP(MD)No.1, 1 and 1 of 2013

S.Sangaiya ... Petitioner
in Crl OP(MD)Nos.5027&5028 of 2013

S.M.Karthick ... Petitioner
in Crl OP(MD).15598 of 2013

Vs.

Trichy Market Committee,
Rep.by Superintendent of Market,
Regulated Market,
No.199, Madurai Road,
Trichy - 8. ... Respondent in all cases

Prayer in Crl OP(MD)No.5027 of 2013 : This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for the records and proceedings in STC No.2398 of 2012 on the file of the Judicial Magistrate IV, Trichy.

Prayer in Crl OP(MD)No.5028 of 2013 : This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for the records and proceedings in STC No.2399 of 2012 on the file of the Judicial Magistrate IV, Trichy.

Prayer in Crl OP(MD)No.15598 of 2013 : This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for the records and proceedings in STC No.73 of 2013 on the file of the Judicial Magistrate III, Trichy.

For Petitioners : Mr.G.Sankaran
For Respondent : Mr.A.Robinson,
Government Advocate (Crl.Side)

COMMON ORDER

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These Criminal Original Petitions have been filed to quash the private complaints filed by the respondent for the alleged offences

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under Sections 8(1), 48, 51, 58 (2) of Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (hereinafter referred to as "the Act").

2. The case of the complainant is that the petitioners are dealing in purchase and sale of watery coconuts. They had originally taken the license from the Trichy Market Committee. But they failed to renew the same upon its expiry. The Market Committee issued notices calling upon the petitioners to take the license. But the petitioners gave a reply stating that they are not obliged to do so. The non-renewal of licence by remitting the due license fee is an offence under the provisions of the Act. According to the respondent, the petitioners have contravened Section 8 (1) of the Act and hence punishable under Section 48 of the Act.

3. Heard the learned counsel on either side.

4. The Tamil Nadu Agricultural Produce (Regulation) Act, 1987, (Tamil Nadu Act 27 of 1989) provides for regulation of buying and selling of agricultural produce and for establishment and proper administration of markets for such purposes in the State. It provides for notifying certain areas for the purpose of the Act in respect of any agricultural produce specified in the notification. A Market Committee shall be established for every notified area. The Market Committee shall establish in the notified area such number of markets providing such facilities, from time to time direct for the purchase and sale of the notified agricultural produce. Thereafter, no person shall within a notified area trade in agricultural produce except in accordance with the conditions of license granted to him by the Market Committee. The contravention of those requirements set under Section 8 of the Act shall entail penalty under Section 48 of the Act.

5. The complaint of the respondent is that the petitioners are whole sale traders dealing in purchase and sale of coconuts in Trichy. They have failed to renew their licenses. Earlier the issue as to whether license should be taken or not was the subject matter of the judgment of this Court in S.A.(MD).No.645 of 2008 dated 24.09.2008. As per the schedule to the Act Coconut (Unhusked or Husked or Kopra) is a notified agricultural produce.

6. This Court had held that watery coconuts will not fall under the said category and that therefore no license fee can be levied. This Court had observed that it is for the competent authority to make corrections in this respect. Taking a cue from the judgment, the Government issued G.O.(Ms).No.222, Agricultural Department, dated 01.10.2010, amending the schedule to the Act in this regard. Now "Coconut in all forms except tender Coconut" fall within the purview of the Act. Therefore, the learned counsel appearing for the respondent wanted this Court to dismiss these Criminal Original Petitions as devoid of merits.

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7. This Court is unable to agree with the said submission of the learned counsel appearing for the respondent. As rightly pointed out by the learned counsel for the petitioners, trading in agricultural produce in the notified area in contravention of Section 8 of the Act would certainly invite penalty under Section 48 of the Act. But the question is whether watery coconuts in which the petitioners are trading would fall within the purview of the Act. Section 2(1) of the Act defines “Agricultural produce” as “any produce of agriculture, whether processed or unprocessed, specified in the Schedule”. As per Section 2(20) “Schedule”means the Schedule to this Act.

8. Section 65 of the Act confers power on the Act to amend the Schedule to include in it any agricultural produce or to exclude therefrom any agricultural produce or to alter the description of any agricultural produce therein.

9. Analysing the structure of the Schedule, it is seen that it has two columns. The first column sets out the “Class of agricultural produce”. The second column contains the corresponding names of agricultural produce. There are totally 15 classes set out in the Schedule. The 15th category is termed as “Miscellaneous”. The case on hand falls under the third category. As many as 11 items have been brought under the Class “Oil Seeds”.

10. The only issue that is to be decided now is whether the judgment made in S.A.(MD).No.645 of 2008 has been overcome by the amendment of the Schedule made by G.O.(Ms).No.222, Agriculture Department dated 01.10.2010. As rightly pointed out, the relevant entry was earlier described as “Coconut (Unhusked or husked or Kopra),” for the existing “coconut in all forms except tender coconut”. This Court while dismissing the Second Appeal filed by the Trichy Committee followed the judgment of the Hon'ble Supreme Court reported in (1996) 5 SCC 479 (State of Rajasthan Vs. Rajasthan Agriculture Input Dealers Association Etc.). The Hon'ble Supreme Court observed that the real difficulty comes in interpreting the items mentioned in the Schedule as to whether as to whether mention of a particular item would ipso facto mean inclusion of all its forms and derivatives achieved by manufacture or processing or by some other method. The Hon'ble Supreme Court took the view that such a wide interpretation of the items in the Schedule can in no event be given. When a particular item finds way in the Schedule in that form, it stays there for all purposes as long as it is in some way referable to the purpose for which the Schedule is set up. The Schedule is not meant to be filled by inferences. What is contained therein shall be explicit and categorical. Nothing stops the State Government to add suitable words therein. This decision was followed in the subsequent decision of the Hon'ble Supreme Court reported in (2004) 1 SCC 391 Krishi Utpadan Mandi Samiti & Ors Vs. Pilibhit Pantnagar Beej Limited & Another (s). As per U.P. Act 25 of 1964, food grains are to be levied with a market fee. In the

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said case, the contestant purchased wheat seeds from farmers and sold them after they were chemically treated and converted into certified seeds. It thus becomes unfit for the human consumption. The question was whether it was a commodity distinct from food grain. The Authority took the stand that wheat seed is also an agricultural produce. But the Hon'ble Supreme Court negatived the stand of the Authority. In the concurring judgment, it was observed that the Schedule will have to be construed strictly. The intention of the legislature in directing the trader to obtain license is absolutely clear and unambiguous insofar as it seeks to regulate the purchase, sale and trade. Since penal consequences ensue, in case of doubt, the same should be construed in favour of the subject and against the State.

11. As earlier pointed out, the Schedule has two columns. Therefore, Schedule must be harmoniously read and understood as a whole. The Columns 1 and 2 will have to be interposed against each other. Otherwise, there is absolutely no reason for having Column No.1. Column No.1 contains the names of the classes of agricultural produce. It is genus. Column No.2 contains the names of the individual items of agricultural produce. It is like species. If the intention of the legislature was to levy fee on coconuts in all forms except tender coconut, then, there is no need for bringing it under the category of oil seeds. Every coconut is not an oil seed. The petitioners had categorically submitted that they are trading in watery coconuts which are not sold for oil extracting purpose. They are only meant for human consumption or religious purposes. They are not oil seeds as such. Only Kopra is used as Oil Seeds. Since the petitioners have taken the stand that they are not obliged to take license because they are not dealing in coconut that is not an oil seed, this Court is of the view that ambiguity and doubt will have to be resolved in favour of the petitioners and against the respondents.

12. Nothing prevented the Government to include this entry "Coconut in all forms except tender coconut" under category 15, which is the residual or miscellaneous category. Likewise, they have not been included under the vegetable category. They have instead been specifically included under the "Oil seeds category. Watery coconuts cannot by any stretch of imagination be classified as oil seeds.

13. This Court is of the view that the Amendment made to the Schedule vide G.O.(Ms).No.222 Agriculture Department dated 01.10.2010 cannot be said to have made any difference to the legal position enunciated in the judgment of this Court in S.A.(MD).No.645 of 2008 dated 24.09.2008. In AIR 1992 SC 604 (State of Haryana Vs. Bhajanlal), it was held that where the allegations made in the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offences, the complaint can be quashed.

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14. In the present case, this Court has come to the conclusion that so long as the Schedule stands as it is, there is no need for any trader to take license for trading in watery coconut. Therefore, no offences are made out against the petitioners herein.

15. In this view of the matter, all the impugned complaints stand quashed. All these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.III,
Trichy.

2.The Judicial Magistrate No.IV
Trichy.

3.The Chief Judicial Magistrate,
Trichy.

+1cc to Mr.F.Deepak., Advocate, SR.No.61541.

Crl. OP (MD)Nos.5027 & 5028
and 15598 of 2013
and
MP(MD)Nos.1, 1 & 1 of 2013
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tsg

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