HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.1829 of 2007

JUDGMENT :

This Criminal Appeal is filed by the Agricultural Market Committee, Tuni represented by its Supervisor-II aggrieved by the judgment dated 23.8.2007 in CC No. 182 of 2002 passed by the learned Judicial First Class Magistrate, Tuni, East Godavari District, dismissing the complaint filed by the Agricultural Market Committee under Section 12(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short "the Markets Act").

2. The factual matrix is thus:

The Agricultural Market Committee filed the complaint against Sri K. Rajeswari and Co., Tuni on the allegations that the accused did cashew nut business in the name and style of K. Rajeswari and Co., but it failed to pay market fee for the year 1998-99 to a tune of Rs. 25,933/-. It is further alleged that the accused failed to produce account books for the assessment of market fee for the year 1998-99 and hence, the market committee obtained turnover particulars of the accused from Commercial Tax Officer (C.T.O), Tuni and estimated market fee of Rs. 25,933/-. A demand notice was issued to the accused on 9.2.2002 directing to pay the aforesaid market fee. Again a show cause notice was issued to accused on 31.3.2002, which was received by the accused on the same day. Thus, inspite of several opportunities being given to accused, he failed to pay market fee. Therefore, the market committee passed resolution dated

15.5.2002 authorizing Supervisor-II to file a complaint against the accused. Hence, the complaint for contravention of provision 12 (1) of the Markets Act, 1966 and amended Act, 1987 by the accused.

3. During the trial PWs 1 and 2 were examined and Exs. P1 to P3 were marked on behalf of the complainant. The accused did not produce any oral or documentary evidence.

4. PW-1 is the Supervisor, Market Yard, Tuni and PW-2 has assessed the market fee of the firm K. Rajeswari & Co., for the year 1998-99. Ex.P1 is the copy of resolution dated 15.5.2002, Ex. P-2 is the office copy of proceedings dated 9.2.2002 and Ex. P-3 is the copy of the show cause notice dated 31.3.2002.

5. The evidence of the prosecution witnesses is that the accused did cashew nut business for the year 1998-99, but failed to produce account books for fixing the market fee, hence, the market committee obtained turnover particulars of the accused from CTO, Tuni, as per which, the accused has to pay the market fee of Rs. 25,933/-. Inspite of serving demand notice, the accused did not respond. Hence, the complaint.

6. PW-1, during the course of examination, stated that they have obtained particulars from the CTO as the accused failed to produce account books and they made assessment basing on the particulars of CTO but they have not made any requisition to furnish turnover particulars of accused. PW-1 admitted that to obtain any particulars they have to submit

written requisition to the concerned authority. He stated that he himself visited CTO and verified particulars and made the assessment. He admitted that turnover will be fixed by the CTO by observing the pay bills issued and used by the trader. The CTO used to estimate the turnover and collect the tax from the entire business done by the trader though they purchased cashew even outside the notified area.

7. Basing on the evidence of PW-1, the trial Court observed that though PW-1 visited CTO and verified particulars but he has not filed any document to show that he took particulars from CTO to make the assessment. The trial Court further observed that the complainant has not filed any document to show that the accused did cashew nut business for the year 1998-99 and market committee made assessment for levying market fee. The trial Court also observed that PW-1 has not produced any record to show that the accused did business in their market committee. It observed except Ex.P-1 no document was filed to show that they gave exemption before levying market fee for the business done by the accused. From the answers given by PW-1 during the course of cross-examination, the trial Court also observed that generally the market committee will impose fine if the trader failed to submit turnover particulars but in the instant case no record was produced to show that any fine was imposed against the accused.

8. Then coming to PW-2, he stated that he assessed the market fee for the year 1998-99 payable by the accused. However, the accused failed to

pay assessment as such he issued notice under Ex.P-3. Since he failed to pay the amount inspite of notice, they filed the case. During the course of cross-examination he admitted that as per Section 12(A) of the Markets Act, whenever a trader failed to submit returns for every month they can impose fine; they have not initiated any action against accused under Section 12 (A) of Markets Act though accused failed to submit monthly returns; there was no proof to show that assessment order was received by the accused.

9. The trial Court basing on the evidence of PWs 1 & 2 has opined that though they stated that they obtained particulars from CTO, except producing Exs.P1 to P3, they have not produced any document to show that they made assessment basing on the turnover particulars obtained from CTO. They also failed to produce record showing that licence was given to the accused to do business for the year 1998-99. The trail Court further observed that the assessment order was given in the year 1998-99 whereas the complaint was filed on 24.7.2002 and so there was a lapse of three years before launching prosecution. The complainant failed to follow the mandatory provisions under Section 12(B) of the Markets Act, 1966 and amended Act, 1987 and therefore, the complaint is time barred. With all these observations, the trial Court dismissed the complaint.

10. It is an old matter of the year 2007. Inspite of the matter being posted for dismissal there is no representation on behalf of the appellant today. Hence, this Court perused the record and the impugned judgment.

11. As already noticed supra, the trial Court dismissed the complaint for the main reason that though the complainant authorities claimed that they went to CTO and obtained turnover particulars of the accused for the relevant period and basing on the turnover particulars they fixed the market fee, however they did not produce the crucial material i.e., turnover particulars said to be obtained from the CTO and therefore, there was no basis for the claim made by the complainant. The trial Court also dismissed the claim on the ground that the complaint was lodged after the lapse of three years.

12. Basing on the material on record, I find no illegality in the judgment impugned. Therefore, the Criminal Appeal is dismissed by confirming the judgment dated 23.8.2007 in CC No. 182 of 2002 passed by the Judicial Magistrate of First Class, Tuni, East Godavari District.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.06.2018
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