

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23RD DAY OF DECEMBER 2010

B E F O R E

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRL. R.P. NO.608/2009

BETWEEN:

SMT.NEETHA AJIT PRASAD
MAHAVEERA TRADERS,
AGED ABOUT 33 YEARS,
OPP: KSRTC BUS STAND
NAGAMANGALA
MANDYA DISTRICT

... PETITIONER

(By SRI C R GOPALASWAMY & ASSTS)

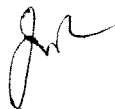
AND

THE KARNATAKA AGRICULTURAL
PRODUCE MARKETING COMMITTEE BY ITS
SECRETARY
REPTD. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BANGALORE - 560 001

... RESPONDENT

(By Sri C S PATIL, ADV.)

CRL.REVISION PETITON IS FILED U/S.397 R/W 401
CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING
THAT THIS HON'BLE COURT MAY BE PLEASED TO SET
ASIDE THE JUDGMENT OF COVICTION AND SENTENCE
PASSED BY THE CIVIL JUDGE (JR.DN) AND JMFC.,



NAGAMANGALA, IN C.C.NO.81/2001 DATED:16.2.2009, AND FURTHER THE JUDGMENT DATED:16.6.2009, PASSED BY THE ADDL.SESSION JUDGE AND PRESIDING OFFICER, FTC-III, MANDYA, IN CRL.APPEAL NO.29/2009 AND THEREBY ACQUIT THE PETITIONER FROM THE CHARGES LEVELED AGAINST HIM.

This petition having been heard finally and reserved for orders, this day JAWAD RAHIM J., pronounced the following

O R D E R

Petition is by the convicted accused against the judgment in Crl.A.29/09 dated 16.6.2009 on the file of Fast Track Court, Mandya, confirming the judgment dated 16.2.2009 in C.C.81/01 on the file of JMFC, Nagamangala, convicting the petitioner for the offence under Section 114 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, (hereinafter referred to as the Act, for short) and directing her to pay market fee of ₹28,533/-.

2. Heard.

3. As is manifest from the records, on the basis of a private complaint submitted by the Secretary, Agricultural Produce Marketing Committee, under Section 200, Cr.P.C., the jurisdictional magistrate took cognizance for the offence



under Section 114 of the Act to impose penalty as per Section 116 of the Act and for compensation in a sum of ₹1,14,132/-.

4. In support of the charge, it was alleged that Marketing Committee has specified market fee at Nagamangala and Pandavapura areas and caters to the need of farmers in sale of their agricultural produce. Necessarily the Committee is entitled to collect fee from every buyer in respect of agricultural produce purchased in the market area at the rate of 1% under Section 65 of the Act. The Committee has also power to inspect stock of agricultural produce and books of accounts in exercise of power under Section 66 of the Act.

5. Petitioner-accused was dealing in dry coconut (copra) under the name of Mahavir Traders at Nagamangala town. On 29.10.1999, the Deputy Director, Enforcement Cell, inspected the shop of the accused with his staff, and noticed she had kept stock of 75 bags of copra weighing 33,075 kgs. worth ₹13,23,000/-. On comparing the stock register,



the officer found accounts were not tallying with reference to actual stock kept in the premises. Accused was called upon to produce proper accounts. She replied stating that the stock kept in the premises belongs to various purchasers and she had received it for storage as a commission agent for the purpose of selling. On production of sales books, it was noticed accused had sold 10,750 kgs. of copra worth ₹3,83,921/- to one Tiptur Sapthagiri Traders on 11.8.1999. Similarly on 27.9.1999, she had effected sale of 10,750 kgs. of copra worth ₹3,50,045-80 to one S.G.Bhaskar of APMC Yard, Tiptur.

6. Noticing discrepancy in the stock, a show-cause notice was issued to her to explain the transactions, but she did not give a convincing reply. The Committee took a decision on 27.3.2007 that she had violated Sections 8, 65(2), (2-A), 66 and 81 of the Act , thereby committed offences punishable under Sections 114, 116, 117(a) and 122 of the Act.

7. The Committee estimated her liability to pay



₹1,14,132/- towards market fee and penalty under Section 172 of the Act.

8. In support of the allegations, one J.Boraiah tendered evidence as PW1 and placed reliance on Exs.P1 to P10. Despite challenge by the accused, learned trial judge found evidence incriminating in nature and convicted the petitioner for the offences under Section 114 and 116 of the Act. Accused questioned the same in CrI.A.29/09, but the learned appellate judge rejected the same. Against both the judgments, she is in revision.

9. The question at this juncture that confronts us is, whether on the allegations so made, the offences under Sections 114 and 116 of the Act are attracted. It is not in dispute that the main allegation against the petitioner is discrepancy in stock, i.e. when physical inspection was done, the Enforcement Cell found 735 bags of copra, i.e. 33,075 kgs. worth ₹13,23,000/- which were unaccounted, and that accounts were not maintained. The second allegation is, she had sold 10,750 kgs. worth ₹3,83,921-20



to Tiptur Sapthagiri Traders on 11.8.1999 and similarly on 27.9.1999, she had effected sale of copra worth ₹3,50,045-80 to one S.Gbhaskar . There is no allegation in the complaint that she had not paid market fee on the sale so effected. The allegation in the complaint is that 1% market fee is payable by the '**buyer**'.

10. Undoubtedly, accused is a commission agent. The question is, who was liable to pay 1% market fee and who has to acknowledge the same. When liability is on the '**buyer**' to pay market fee at 1%, it was Tiptur Sapthagiri Traders and S.G.Bhaskar, purchasers of copra who had to pay the same. There is absolutely no statement in the complaint that the said buyers had not paid the fee. If there is no allegation against them, then how can the petitioner held responsible.

11. The learned trial judge and appellate judge have made reference to Section 8 of the Act, which postulates '*no local authority shall, notwithstanding anything contained in any law for the time being in force establish, authorise or*



continue or allow to be established, authorised or continued any place in the market area for the marketing of any notified agricultural produce'. Under Section 65, there is a levy of market fee. Sub-section (2) of Section 65 postulates 'the Market Committee shall levy and collect market fees from every 'buyer' in respect of agricultural produce bought by such 'buyer' in the market area at such rate as may be specified in the by-laws.' Therefore, there is reiteration of the fact that under Section 62(2) of the Act, it is the '**buyer**' who has to pay the market fee and not the **seller**. There is no indication in the said provision that there is an independent or vicarious liability on the seller of agricultural produce to pay the said levy.

12. Be that as it may, if the levy is not paid, we have to examine what is the consequence. Petitioner has been convicted for the offence under Section 114 of the Act, which postulates '*whoever evades the payment of any fee, or other amount due from him under this Act or the Rules, or the Regulations or by-laws, shall, on conviction, be punished with fine, (which shall be a sum equal (three times*



the amount of fee or other amount due or three thousand rupees, whichever is more)), and in case of a continuing evasion with further fine which may extend to (two hundred) rupees for every day, during which the evasion is continued after conviction therefor.' Therefore, it is clear that Section 114 is applicable to such person who, under the Act,, is liable to pay such market fee. As discussed above, under Section 65(2), market fee is payable only by the '**buyer**' and therefore, being a defaulter in payment of such fee, he will be liable for prosecution under Section 114.

13. In the instant case, the assertion of the prosecution is, the accused is a seller of copra. There is no doubt on this issue as in the complaint the allegation is that accused had sold 10,750/- kgs. of copra on two occasions to two buyers. Section 65(2) does not bring the seller in its mischief. In this view of the matter, prosecution could not have been launched against the petitioner. Consequently, the allegation in the complaint that the accused was liable to pay the amount will be of no avail.



14. Section 15 deals with liability to pay cess which is not charged against the accused. The only charge against the petitioner is contravention of Section 8 which is punishable under Section 117 of the Act. It postulates, *'whoever in contravention of the provisions of clause (b) of sub-section (1) of Section 8 uses any place in the market area for marketing any agricultural produce, or operates as a trader, commission agent, broker, processor, warehouseman or in any other capacity, without a valid licence, or whoever in contravention of the provisions of sub-section (2) of Section 8 uses any place for purchase or sale of notified agricultural produce, shall on conviction, be punished with imprisonment for a term which may extend to six months and with fine which may extend to Rs.5,000/-, but shall not be less than Rs.500/- and in the case of a continuing contravention, with a further fine which may extend to Rs.200/- per day during which the contravention is continued after the first conviction.'* Thus, to sustain the charge under Section 117, necessarily prosecution had to establish that the accused was either running the business



without licence or that there was contravention of the terms of licence.

15. On a perusal of the allegations made in the complaint, it is noticed that it is only about discrepancy in the stock and entries made in the stock register. The accused has answered the charge stating she is only a commission agent. Sellers bring their produce and store it in the premises of the accused and then sale is effected. In that case, stock will definitely not be static, but will vary. The time of inspection will, therefore, be relevant. If it is examined during the course of the day, it cannot be said the accused willfully contravened the terms of licence, as the correct position would be available only after closure of business so that actual stock could be taken into account.

16. For the reasons discussed above, I am satisfied the conviction recorded by the trial court was certainly unsustainable as no charge could have been raised against the petitioner for the offences indicated above. The appellate court also erred in confirming the said finding and



thus, both the judgments are liable to be set aside.

15. In the result, the petition succeeds. The impugned judgments in C.C.81/01 dated 16.2.2009 and CrI.A.29/09 dated 16.6.2009 passed by the courts below are set aside. The accused is acquitted of all the charges levelled against her. Any amount deposited as fine by the accused shall be refunded to her.

**Sd/-
JUDGE**

vgh*