

The Manager, M/S ITC Ltd., Kakinada. Vs. State of A.P., Rep. by P.P. and Another.

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Court : Andhra Pradesh

Decided On : Aug-17-2012

Judge : G.Krishna Mohan Reddy

Appellant : The Manager, M/S ITC Ltd., Kakinada.

Respondent : State of A.P., Rep. by P.P. and Another.

Advocate for Def. : Sri. C.R.SRIDHARAN Counsel

Judgement :

THE HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY CRIMINAL PETITION
No.3596 o

17. 8-2012 The Manager, M/s ITC Ltd., Kakinada.

State of A.P., rep.

by P.P.

& another.

Counsel for the Petitioner: Sri C.R.SRIDHARAN Counsel for the Respondent
No.1: The Public Prosecutor Counsel for the Respondent No.2 : Ms.

K.LALITHA, S.C.

for Agr.Mrkt.Comt.

Gist: Head Note: Cases referred: ORDER: This petition is filed seeking to quash proceedings in C.C.No.373 of 2009 on the file of the Court of Judicial Magistrate of First Class-cum- Special Mobile Magistrate at Kakinada.

The petitioner is the accused and the second respondent is the complainant in the calendar case.

For the sake of convenience, I refer the parties as arrayed in the calendar case.

The case of the complainant is that the accused is doing business of purchasing, processing, storaging, weighing and selling notified commodities i.e.

paddy or rice within the notified market area of the Agricultural Market Committee, Kakinada.

He obtained licence to do that business for the period of 2004-2005.

He became liable to pay market fee @ 1% on their purchase value as per Section 12(1) of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act, 1966 and as amended by Act 4 of 1987 and the rules and bye-laws made thereunder, and basing on the account books and other records filed by the accused, the assessing authority i.e.

Selection Grade Secretary, Market Committee, Kakinada assessed the market fee dues and issued assessment order dated 14.10.2005 demanding the accused to pay market fee of RS.57,36,209/- for the period of 2004-2005 in respect of procuring agricultural products from outside into the market area.

According to the complainant, in spite of issuing the assessment order, the accused did not pay the market fee, thereby the accused is liable for punishment under Section 23(1) of the Act.

Admittedly the assessment order was set aside by the Commissioner and Director of Marketing/Revisional Authority in Revision Petition not SI(1)516/2008 dated 22.7.2008.

The question involved in this petition is as to whether the prosecution of the charge would survive though the assessment order dated 14.10.2005 passed by the Secretary, Agricultural Market Committee, Kakinada was set aside by the competent authority i.e.

the Commissioner and Director of Marketing/Revisional Authority in Revision Petition not SI(1)516/2008 dated 22.7.2008.

Significantly, the prosecution of the petitioner/accused was launched by the Secretary, Agricultural Market Committee, Kakinada under the said provision of law on the ground that the petitioner/accused failed to pay the relevant market fee as per the assessment order for procuring agricultural products from outside to the market area at Kakinada.

Crl.M.P.No.742 of 2008 was filed before the Judicial Magistrate of First Class, Special Mobile Magistrate at Kakinada for discharge consequent upon setting aside the assessment order by the competent authority.

Learned Magistrate dismissed the application vide order dated 10.3.2010 on the ground that after framing the corresponding charge, there was no occasion to entertain the matter till the commencement and conclusion of the trial of the case.

Learned counsel for the petitioner/accused would contend that when once the assessment order was set aside, the question of prosecution does not survive at all and therefore the observations made by the learned Magistrate are not tenable.

The question of prosecution is subject to the survival of the assessment order.

When once the assessment order is set aside, the question of prosecution does not survive at all.

When it is clear that the prosecution does not survive, the question of procedural stage to entertain the matter loses its ground or need not be entertained.

Therefore, the observation of the learned Magistrate that as there was no stage to entertain the application and the matter could be disposed of only by the ultimate trial is not tenable.

In the result, the petition is allowed quashing the proceedings as prayed for.

_____ G.KRISHNA MOHAN REDDY, J Date:

17. 8.2012

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