

Shiv Chand and anr. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Nov-29-1989

Reported in : 1989(2)WLN344

Judge : M.B. Sharma, J.

Appeal No. : S.B. Cr. Revision Petition No. 275 of 1986

Appellant : Shiv Chand and anr.

Respondent : State of Rajasthan and anr.

Disposition : Petition dismissed

Judgement :

M.B. Sharma, J.

1. This revision petition is directed against the judgment dated 31st July, 1986 of the learned Sessions Judge, Jhalawar dismissing the appeal filed by the accused-petitioner which had been filed against the judgment dated 18th November, 1983 of the learned Chief Judicial Magistrate, Jhalawar convicting the accused-petitioner under Section 28(2) of the Rajasthan Agriculture Produce Market Act, 1961 (for short the Act) and sentenced to undergo one month's simple imprisonment and to pay a fine of Rs. 200/- to each of the accused petitioners and in default of payment of fine to further suffer 15 days simple imprisonment each.

The learned Sessions Judge, maintained the conviction of each of the accused petitioner under Section 28(2) of the Act but each of the accused petitioner was sentenced to undergo imprisonment upto the rising of the court under that Act and to pay a fine of Rs. 200/-. The accused petitioners were also directed that if they do not deposit the fine then each of them will further suffer three month's rigorous imprisonment.

2. There is no dispute that both the accused-petitioners are the partners of M/s Shivchand Hukumchand a firm dealing in sugar etc. in Jhalaratapan, District Jhalawar. The said firm is situated within the market area of Krishi Upaj Mandi Samiti, Jhalarapatan. The firm deals in food grain and sugar and is a licence holder. The business premises of the said firm were inspected some time in the year 1978 and on inspection it was; found that the petitioner's firm of which both the petitioners were partners was not paying the cess at rate of 1% on the sale of the agriculture produce bought and sold by it. It was revealed that the aforesaid cess was not paid for the period from 1st August, 1977 to 31st December, 1977 on sugar,. Gur & Khand which were bought and sold by the petitioner's firm After the inspection several communications were addressed to the petitioner's firm but some of them were not acknowledged and it was only under Ex D 1 dated 11th March, 1978 that it was said the cess was not paid on such of the goods which had been sold out side the market area. A complaint was filed and the accused petitioners were tried and in their statements recorded under Section 313 Cr.PC each of the accused petitioner took the similar stand and came out with a case that what ever goods were sold, out sides or thus no cess v. as paid on them. They did not examine any witness in defence. The learned Magistrate convicted and sentenced as aforesaid and on appeal the conviction was maintained and sentence was reduced as aforesaid.

3. The first contention of the learned Counsel for the petitioner is that the complaint was not filed within the prescribed period of limitation. He contends that a look at Section 28(2) of the Act will show that the offence is punishable with the imprisonment for a term of three months and a fine which may extend to one thousand rupees. A look at Section 468 Cr. PC will show that no court shall take cognizance of an offence after the expiry of the period of limitation and in case the

offence is punishable with imprisonment for a term not exceeding one year then the period of limitation prescribed to one year. It may be stated in the present case that the offence under Section 28(2) of the Act only came to the knowledge of the Secretary, Krishi Upaj Mandi Samiti, on inspection of the business premises of the petitioner's firm on the month of January, 1973 and the complaint was filed on 7th September 1978, i.e. within one year of the knowledge by the Secretary of the commission of the offence by the firm of the accused-petitioner and as such the first submission of the learned Counsel that the cognizance was taken after the expiry of the prescribed limit has no merit and is dismissed, in view of the provision contained in Section 468 Cr.PC.

4. The next contention of the learned Counsel for the petitioners is that the petitioners were liable to pay the market fee or cess on sale and purchase of sugar, Gur etc. within the market area and not outside it because the petitioner's firm had sold the goods detailed in Ex D 2, outside the market area and the firm was not liable to pay any market fee or cess. It may be stated that the petitioner's firm was required by the Secretary of the Krishi Upaj Mandi Samiti to produce the record in respect of the sale of the various commodities for the period in dispute but the record was not produced for inspection.

5. The question is as to whether the petitioner's firm was not required to pay the market fee or cess on such of the sales which according to it took place out side the market area ?

6. Under Section 17 of the Act the market committee shall collect market fees from the licensees in the prescribed manner on agricultural produce bought or sold by them in the market area at such rate as may be specified by the State Government, by notification in the Official Gazette, subject to a maximum of Re. 1/- per one hundred rupees worth of agricultural produce. The State Government vide Notification No. F. 10(5) Agri./ 11/73, dated July 14, 1973, SC 47, in exercise of powers conferred by Section 17 of the Rajasthan Agricultural Produce Markets Act, 1961 (Act No. 38 of 1961), has specifies Re 1/- per hundred rupees worth of agricultural produce as market fees which is to be levied by the Market Commodities, in the State of Rajasthan. A look at Rule 58 of the Rajasthan

Agricultural Produce Market Rules, 1963 will show that it is under Part-VI and deals with 'Cess and Fees-Levy and Collection' and under the explanation to Sub-rule (1) of Rule 58, for the purpose of this rule a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed by a licenced weighman measurer or surveyor in the market area for the purpose of sale, notwithstanding the fact the property in the agricultural produce has by reason of such sale, passed to a person include outside the market area. Under explanation (b) to Sub-rule (1) of Rule 58, for the purpose of this rule, all notified agricultural produce taken out or proposed to be taken out of the market area wheel unless the contrary is proved, be presumed to be bought and sold within such market area. Therefore, if any notified market produce is taken out from the market area then it is presumed that they have been bought and sold within the market area unless the contrary is proved by the licensee. In this case despite the fact that the licensee petitioner's firm was required to produce his account books to show that the notified market produce namely sugar and gur have not been bought and sold in the market area but did not produce the same.

7. Consequently, I find no merit in this revision petition and it is hereby dismissed summarily.