

The Superintendent vs Pioneer Cashews Enterprises on 10 April, 2019

Author: R.Suresh Kumar

Bench: R. Suresh Kumar

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2018

Pronounced on : 10.04.2019

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Crl.A.Nos.85 to 88 of 2012

The Superintendent
Regulated Market Committee
Panruti

... Appellant / Comp
Crl.A.Nos.85 to

Vs

Pioneer Cashews Enterprises
Rep. by its Proprietor Mr.Sivasubramanian
S/o. Chokkalingam,
No.300, P.H.Road,
Maduravoil, Chennai - 602 102.

... Respondent / Accused in
Crl.A.Nos.85 to 87 of 2012

Tamil Nadu Maligai
Rep. by its Proprietor
Mr.Thanikachalam,
S/o. Subramanian,
No.25, B, Gandhi Road,
Panruti, Cuddalore District.

... Respondent / Ac
Crl.A.No.88

Prayer in Crl.A.No.85 of 2012 : Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Judgment passed in S.T.C.No.165/1996, dated 29.03.2011 by the learned Magistrate No.I, Panruti, Cuddalore District.

Prayer in Crl.A.No.86 of 2012 : Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Judgment passed in S.T.C.No.1706/1999, dated 29.03.2011 by the learned

Prayer in Crl.A.No.87 of 2012 : Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Judgment passed in S.T.C.No.82/2002, dated 29.03.2011 by the learned Magistrate No.I, Panruti, Cuddalore District.

Prayer in Crl.A.No.88 of 2012 : Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Judgment passed in S.T.C.No.84/2002, dated 29.03.2011 by the learned Magistrate No.I, Panruti, Cuddalore District.

For Appellant : Mr.V.Jayaprakash Narayanan

For Respondent : Mr.C.K.M.Appaji
for Crl.A.Nos.85 and 86 of 2012

Mr.A.Gopalakrishnan
for Crl.A.No.87 of 2012

M/s. Sai Bharath Ilan
for Crl.A.No.88 of 2012

COMMON JUDGMENT

Crl.A.No.85 of 2012 has been filed against the Judgment made in S.T.C.No.165/1996, dated 29.03.2011 on the file of the Judicial Magistrate No.I, Panruti, Cuddalore District.

2. Crl.A.No.86 of 2012 has been filed against the Judgment made in S.T.C.No.1706/1999, dated 29.03.2011 on the file of the Judicial Magistrate No.I, Panruti, Cuddalore District.
<http://www.judis.nic.in>

3. Crl.A.No.87 of 2012 has been filed against the Judgment made in S.T.C.No.82/2002, dated 29.03.2011 on the file of the Judicial Magistrate No.I, Panruti, Cuddalore District.

4. Crl.A.No.88 of 2012 has been filed against the Judgment made in S.T.C.No.84/2002, dated 29.03.2011 on the file of the Judicial Magistrate No.I, Panruti, Cuddalore District.

5. In all these appeal, the facts are similar. Except Crl.A.No.88 of 2012 in respect of all other appeals, the respondent / accused is one and the same. In all the four appeals, the appellant / complainant is the Superintendent, Regulated Market Committee, Panruti, Cuddalore District.

6. In each of the case, the appellant / complainant had preferred private complaint under Section 200 of Cr.P.C, by setting the law in motion, seeking indulgence of the Court to punish the respective

respondents for the alleged offence committed by the respondents under Section 48(1) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (herein after referred to as "the Act").

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7. The respondent / accused in these appeals, according to the appellant / complainant were running a business / trade and in this regard, the respondent / accused obtained license from the appellant market committee under Section 8 of the Act relating to the purchase and sale of agricultural produces.

8. The case of the appellant / complainant in each of the case is that, being the licensee, these respondents / accused under Section 8(9) of the said Act are supposed to file a monthly return for each and every month on or before 10th of every succeeding month, whereby the accounting for purchase and sale of agricultural produces under the license shall be submitted before the appellant / complainant market committee.

9. In this regard, in respect of Crl.A.No.85 of 2012, it is the case of the appellant / complainant that, the respondent has not filed the return or submitted the account for the period from 01.04.1993 to 31.08.1995 and demanding such filing of the return and to pay the marketing committee fee, a notice was given on 28.09.1995, but the respondent / accused failed to file return and also failed to pay the marketing fee as required under the Act and the rules made thereunder.

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10. In respect of Crl.A.No.86 of 2012, it is the case of the appellant / complainant that, the respondent / accused had been in default in filing the return and paying the market fee up to 1997 and therefore a notice to that effect was issued by the appellant / complainant on 06.05.1997 demanding the accused to get license and submit the return for the said period and also for payment of marketing fee. Since the accused failed to file return and further failed to pay the marketing fee as required, according to the appellant / complainant, the said act on the part of the respondent was an offence within the meaning of Section 48 of the Act.

11. In so far as Crl.A.No.87 of 2012 is concerned, it is also a similar complaint from the appellant / complainant against the respondent. Accordingly, the respondent allegedly not filed the return for the period from 01.09.1995 to 31.01.1997 and in this regard, notices had been send by the appellant / complainant on 21.01.1996 and 24.02.1997 demanding the respondent / accused to submit the return for the said period and for payment of marketing fee also, the said action on the part of the respondent constitute an offence within the meaning of Section 48 of the Act.

12. In so far as Crl.A.No.88 of 2012 is concerned, the respondent / accused in this case also, according to the appellant / <http://www.judis.nic.in> complainant, had been in default in filing the return and paying the marketing fee for the period from 08.01.1996 to 31.03.1997, therefore a notice of demand was issued on 02.04.1997 asking them to submit the return and to make payment of the fee for the said period, however, the respondent / accused failed to file the return and pay the

marketing fee as required. Therefore according to the appellant / complainant, the respondent / accused committed an offence within the meaning of Section 48 of the Act.

13. In order to appreciate the said case set up by the appellant / prosecution against the respondents in all these appeals, the necessary provisions of the Act are to be first looked into.

14. Under Section 8(1) of the Act, no person in the notified area, can set up or establish any place for the purchase or sale of agricultural produce and they cannot operate as a broker or weighman etc., The relevant portion of Section 8(1) reads thus :

"(8) Trading in agricultural produce in notified area.-- (1) No person shall, within a notified area -

(a) set up, establish or use, or continue or allow to be continued any place for the the purchase or sale, storage, weighment, measurement or processing of any notified
<http://www.judis.nic.in> agricultural produce, or

(b) Operate as a broker, weighman, measurer, trader, warehouseman or any other capacity in the relation to buying and selling of any notified agricultural produce, except under, and in accordance with the conditions of a license granted to him by the market committee:"

15. Sub-Sections 7, 8 and 9 of Section 8 are also relevant, hence, they are reproduced hereunder :

"(7) A licence granted under sub-section (1) shall be valid for a period of—

(a) Three years in respect of a person who carries on the business by wholesale of purchasing or selling any notified agricultural produce; (b) one year in respect of others.

and may be renewed from time to time and the provisions of this Act shall, so far as may be, apply in relation to the renewal of a licence as they apply in relation to the grant of a licence. (8) Every person to whom a licence is granted under the sub-section (1) shall comply with the provision of this act, the rules and by-laws made under this act and the conditions specified in the licence.

(9) Every person licensed or liable to pay fee or any other amount under this act shall keep and maintain a true and correct account and such other records showing such particulars as <http://www.judis.nic.in> may be specified in the by-laws of the market committee and shall submit such periodical returns relating to his business transaction including processing as may be prescribed, to the market committee in such manner and within such period as may be prescribed, together with the fee or other amount due on the basis of the return."

16. The marketing committee is having the right to levy fee on the licensees, which is provided under Section 24 of the Act, which reads thus :

"24. Levy of fee by market committee - (1) The market committee shall levy a fee on any notified agricultural produce bought or sold in the notified market area at a rate not less than one rupee, but not exceeding two rupees for every hundred rupees of the aggregate amount, for which the notified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable consideration.

Provided that when any agricultural produce brought into any notified market area for the purpose of processing only, or for export is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been brought into such notified market area for buying and selling, and shall be <http://www.judis.nic.in> subject to the levy of fee under this section on the value of the agricultural produce, as if it had been bought and sold therein."

17. If the licensee failed to adhere to the said provisions by not filing any return or not paying the marketing fee in spite of the demand is made, there is a provision, which enables the market committee authority to launch prosecution against such defaulter or erring person, as such default amounts to a violation. Those who involve in such violation is liable to be inflicted with a punishment of penalty. This has been provided under Section 48 of the Act, which reads thus :

"48. Penalties - (1) Any person who -

(a) evades the payment of any fee or any other amount due from him by or under this Act, or

(b) being a licensee under this Act, fails either to submit the reports and returns to the market committee as specified in its by-laws or to produce accounts, records etc., when demanded by any officer or servant of the market committee duly empowered, or

(c) (i) when required by or under this Act to make any statement or furnish any information, makes any statement or furnishes any information which he knows or has reasonable cause to believe to be false, or not true, in any material particular, or <http://www.judis.nic.in>

(ii) makes any such statement as aforesaid in any account, declaration, estimate, return or other document which he is required by or under this Act to furnish, or

(d) prevents or obstructs inspection of vehicle, boat or other conveyance carrying or believed to be carrying notified agricultural produce, or verification, search or seizure by any office or servant of the market committee empowered by the Director in this behalf, or

(e) prevents or obstructs, entry, inspection and verification of any notified agricultural produce, weights and scales and accounts relating to the transactions of such produce in any premises either licensed or liable to be licensed under this Act by any officer or servant of the market committee empowered by the Director in this behalf, or

(f) contravenes any of the provisions of section 32, or fails to obtain a permit for the transport of the notified agricultural produce as required by or under this Act or any of the terms and conditions of any such permit, shall, on conviction, be punishable with fine which shall not be less than five hundred rupees, but may extend to two thousand and five hundred rupees and in the case of a continuing evasion or contravention, with a further fine which may extend to five hundred rupees for every day during which the evasion or contravention is continued after conviction <http://www.judis.nic.in> therefor.

(2) Whoever contravenes any provision of this Act or any rule or any regulation or any by-law made under this Act shall, if no other penalty is provided for such contravention elsewhere in this Act or in the rules or regulations or by-

laws, on conviction, be punishable with fine which may extend to one thousand and five hundred rupees."

18. The obligation on the part of the licensee to file monthly return is mandated under Rule 32 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Rules, 1991 (hereinafter referred to as "The Rule"). Rule 32 reads thus :

"32. Submission of periodical return - (1) Every licensee shall send a monthly return under sub- section (9) of section 8 of the Act relating to the purchase or sale of every notified agricultural produce so as to reach the Head of market on or before the 10th day of the succeeding month in Form 9. All particulars required to be furnished in that Form shall be duly furnished therein. The periodical return shall be handed over to the head of market concerned and acknowledgment therefor obtained or the same shall be sent by registered post with acknowledgment due. In respect of every transaction referred to in the return, proper documentary evidence therefor <http://www.judis.nic.in> shall be produced.

(2) Every licensee under sub-section (a) of section 8 of the Act shall produce the accounts to the market committee for verification once in six months.

...

...

..."

19. With these background of the statutory provisions, the complaint made in each of the appeal against the respondent in all these appeals before the learned Magistrate Court have been taken on file, as the said complaints were given under Section 200 of Cr.P.C and accordingly, after issuing summons and after found incriminating materials against the respondent / accused in each of the case, the learned Magistrate has proceeded to go for trial for each of the case.

20. In all these appeals, before the trial Court on behalf of the appellant / complainant, P.W.1 was examined and some exhibits were marked.

21. In CrI.A.No.85 of 2012, P.W.1 was examined, who is the Superintendent of the Marketing Committee. Ex.P.1 to Ex.P.3 were marked. Ex.P.1, dated 19.04.1994 is the application given by the accused for grant of license, Ex.P.2, dated 28.09.1995 is the legal notice issued by the complainant and Ex.P.3, dated 19.12.1995 is the <http://www.judis.nic.in> sanction for prosecution accorded by the Director, SAMC.

22. In CrI.A.No.86 of 2012 before the trial Court, P.W.1 was examined. Ex.P.1 to Ex.P.3 were marked. Ex.P.1, dated 06.05.1997 is the legal notice issued by the complainant, Ex.P.2 is the postal acknowledgment and Ex.P.3, dated 11.11.1997 is the sanction for prosecution accorded by the Director, SAMC.

23. In CrI.A.No.87 of 2012 before the trial Court, the very same P.W.1 was examined. Ex.P.1 to Ex.P.6 were marked. Ex.P.1, dated 08.09.2008 is the license issued to the accused by the complainant, Ex.P.2, dated 21.11.1996 and Ex.P.4, dated 24.02.1997 are the legal notices issued by the complainant, Ex.P.3 and Ex.P.5 are the postal acknowledgments and Ex.P.6, dated 11.11.1997 is the sanction for prosecution accorded by the Director, SAMC.

24. In CrI.A.No.88 of 2012 before the lower Court, the very same P.W.1 was examined. Ex.P.1 to Ex.P.3 were marked. Ex.P.1, dated 02.04.1997 is the legal notice issued by the complainant, Ex.P.2 is the postal acknowledgment and Ex.P.3, dated 11.11.1997 is the sanction for prosecution accorded by the Director, SAMC.

25. In each of these cases, there is no oral or documentary evidence on the side of the respondent / accused. <http://www.judis.nic.in>

26. With the strength of those evidences, the trial Court proceeded to complete the trial and ultimately given the impugned Judgment, of course separately in each of these cases and in all these cases, the trial Court has come to the conclusion that, the complaint is barred by limitation, nevertheless on merits also, the trial Court found that, the prosecution has not proved the case against the respondent / accused in each of these cases beyond reasonable doubt and therefore on both these grounds, in all the four cases, the respective accused / respondents were acquitted, through the impugned Judgments.

27. Mr.V.Jayaprakash Narayanan, learned counsel appearing for the appellant / complainant in all these appeals have contended that, the provisions under the Act are very clear and unambiguous.

Under Section 8 of the Act, no trader can purchase or sell or possess in the warehouse or godown any agricultural produce in the notified area and in this regard, they shall get license from the market committee and once they got the license, when they do the business, they must maintain the record with proper accounts and such accounts shall every month be submitted as return on or before 10th of every next or succeeding English calendar month.

28. In this context, the learned counsel submitted that, in all the four cases, the respective respondents / accused except in one <http://www.judis.nic.in> case, though they obtained license under Section 8(1) of the Act, have not submitted the return for quite long period as has been specifically mentioned in the complaint and for the said period, they have not at all paid the marketing fee. Therefore demand has been made on behalf of the complainant marketing committee by sending written demand notice and having receipt of that notice, the respective respondent / accused not only have not come forward to file the return and pay the marketing fee but also they have not chosen to reply to the said notice. Therefore non-submitting the monthly return and not making the payment of marketing fee, even after the demand, certainly be an offence within the meaning of Section 48 of the Act and therefore after getting sanction from the competent authority, i.e., the Director, the Superintendent of the Market Committee has launched the prosecution by making the complaint under Section 200 of the Cr.P.C before the learned Magistrate Court.

29. The learned counsel would further submit that, the learned Magistrate in all these cases taken the complaint on file, issued summons and after the respondent / accused appeared before the Magistrate Court, copies were given and after incriminating documents are found against the accused, the Magistrate decided to try the case. In all these cases, the Superintendent of the Market Committee, deposed as P.W.1, who was also cross-examined by the <http://www.judis.nic.in> defence side and in each of the cases, exhibits were marked as set out above.

30. However the learned Magistrate, according to the learned counsel appearing for the appellant / complainant, without appreciating the evidence on the side of the appellant / complainant, had dismissed all the complaints and acquitted the respective accused on two grounds. In the first ground, the learned Magistrate found that, the complaint was not maintainable, because of beyond the period of limitation within the meaning of Section 468 of the Code (Cr.P.C). Secondly the learned Magistrate, in each of the cases on merits found and stated that, the appellant / complainant has not proved the case beyond reasonable doubt.

31. In this context, in so far as the first ground of rejection and acquittal made by the trial Court is concerned, the learned counsel appearing for the appellant / complainant submitted that, though Section 468 of the Code makes a limitation of six months, if the offence is punishable with fine only and the provision for the alleged offence, for which the prosecution was launched, no doubt only attracts fine, nevertheless, the limitation of six months as provided under Section 468 (2) (a) of the Code would not be made applicable to these cases, because the offence committed by these respondents / <http://www.judis.nic.in> accused is in the form of non-filing of the return and non-payment of the marketing fee. The non-filing of the return is not a one time offence, it is a continuing offence, as every month, the licensee, i.e., the respondent / accused are liable to file the return, therefore every month if they fail to make it, that become an offence.

32. The learned counsel would further elaborate his argument by stating that, since the offence is a continuous one, six months limitation as prescribed under Section 468 (2) (a) of the Code cannot be applied in this case. In this regard, the learned counsel has relied upon two decisions of this Court. (1) Crl.A.Nos.731 and 732 of 1985, dated 12.09.1991 in the matter of The Superintendent, Regulated Market, Krishnagiri v. M/s. A.M.S. & Co., and another and (2) Crl.O.P.Nos.8549 to 8552 and 9016 to 9028 of 2000, dated 16.03.2001 in the matter of A.Gunasekara Chettiar and others v. Salem Market Committee.

33. By relying upon these two decisions, the learned counsel submitted that, the issue as to whether non-filing of the return by the licensee before the Marketing Committee under Section 8(9) of the Act would be a continuous offence or not has already been decided in those decisions and it has been settled that, it is a continuous offence. Therefore the Law of Limitation, especially in the context of Section 468 (2) (a) would not be applicable in these cases. <http://www.judis.nic.in>

34. In so far as the merits of each of the case is concerned, the learned counsel submitted that, the trial Court, without appreciating the evidence adduced by the appellant / complainant in each of the cases has come to a cryptic conclusion that, the appellant / prosecution has not been able to prove the case against the respondents / accused beyond reasonable doubt.

35. Per contra, Mr.C.K.M.Appaji and Mr.A.Gopalakrishnan, learned counsel appearing for the respondents in these cases have made submissions that, the limitation prescribed under the statute, i.e., under Section 468 Cr.P.C is very clear and unambiguous and it is admittedly the prosecution case was to punish the respondent / accused under Section 48 of the Act, which provided only fine of not less than Rs.500/- and there is no imprisonment under the said Section. When that being the position, the limitation of six months as has been contemplated under Section 468 (2) (a) of the Code certainly would be applicable in all these cases and therefore in this context, the learned trial Court Judge has come to a right conclusion that, these complaints have been made beyond the limitation period and therefore they are liable to be dismissed or rejected by invoking Section 468 of the Code.

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36. The learned counsel for the respondents / accused would further submit that, even on the side of merits in each case by separate impugned Judgment, which are appealed in these appeals, the learned trial Court Judge has taken into account the evidence produced on the side of the appellant / complainant and since there is absolutely no documents whatsoever filed on the side of the appellant / complainant to show that, the respective respondent had been involving in the business of trade of buying, selling or marketing of agricultural produces within the marketing committee area and in view of that, since the prosecution failed to prove the said fact, that the respondent / accused had been in business, the question of filing any return does not arise and therefore there is no scope for launching any prosecution against the respondents and only in that context, of course after appreciating the evidences on the side of the prosecution, the trial Court had come to the conclusion that, the prosecution has not proved the case beyond reasonable doubt and therefore the trial Court had rightly acquitted the accused in all these cases and therefore the said Judgments do

not require any interference from this Court.

37. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

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38. With regard to the the legal position under the Act, as to whether the offence committed under Section 8(9) of the Act, punishable under Section 48 is a continuing offence or not, as has been rightly submitted by the learned counsel appearing for the appellant / complainant, atleast by the said two decisions cited by him, the issue has been considered and decided.

39. In the first case, i.e., in CrI.A.Nos.731 and 732 of 1985, dated 12.09.1991, the learned Judge had an occasion to confront with the similar situations, where also the very same ground had been raised. While dealing with the said issue, the learned Judge has made the following findings :

"7. The question that arises in both these appeals is whether the complaints are barred by limitation.

8. It is admitted that both the respondents had obtained licence for trading in coconuts for the year 1980-1981. It is not denied that returns were filed by them on 24.6.1981 and 14.9.1981 respectively. It is also not disputed that subsequent to the demand and the receipt of the registered notice, the fee had not been paid and remains unpaid even today. The offence is punishable with fine only and as such the complaints will have to be filed within six months as required under Section 468 Cr.P.C. <http://www.judis.nic.in> Admittedly, the complaints are filed long after that. The only question, therefore, is whether the failure to pay the fee levied under Section 18 of the Act and Rule 51 A, made punishable under Section 25, is a continuing offence within the language of Section 472 Cr.P.C.

9. Section 18 enables the Market Committee to levy fee on any notified agricultural produce, bought or sold, in the notified market area. Rule 51A enables the Committee to levy and collect the fee on ad valorem basis at such rates as may be specified in the by-laws of the Market Committee, subject to the minimum and maximum prescribed in Section 18(1). Section 25 of the Act is the penal provision for any one fraudulently evading the payment of any fee or other amount due from him under the Act or rules or by-laws made thereunder, and renders him liable to be punished with fine which could extend to Rs.500/- and in the case of continuing evasion or contravention, with a further fine which may extend to one hundred rupees for every day during which the evasion or contravention is continued after conviction therefore.

10. A reading of the above provisions would show that a liability is cast upon anyone who buys or sells a notified agricultural produce, in a notified market area, to pay the fee levied by the Committee. The liability to pay the fee continues till the fee is paid.

The object of <http://www.judis.nic.in> levying and collecting the fee, is for the proper functioning of the Market Committee, entrusted with the task of enforcing the Act and Rules. Section 25 penalises not every evasion or failure to pay the fee but only, when it is established, that the evasion is fraudulent.

That the evasion could continue and the offence of fraudulent evasion could be a continuing offence, is clear from Section 25 itself, which refers to continuing fraudulent evasion even after conviction which calls for an enhanced sentence. The concept of a continuing offence of evasion of fee is, therefore, incorporated in the Act itself. A plain reading of Section 25 shows, that fraudulent evasion of fee continues so long as the fee remains unpaid. The offence is, therefore, a continuing offence.

...

13. From the foregoing discussion it follows that fraudulent evasion of fee levied under Section 18 of the Act read with Rule 51A is a continuing offence within the meaning of Section 472 of the Criminal Procedure Code. The limitation imposed in Section 468 Cr.P.C. therefore, cannot apply to such offences. The very fact that the respondents even after the lapse of the licensing year, did not file their returns and in spite of a notice and later a registered notice being received by them, had neither chosen to reply nor make the payment <http://www.judis.nic.in> shows that their evasion of the fee is fraudulent.

14. The acquittal being solely on the ground of the complaints being barred by limitation and the above ground now having been found to be legally unsustainable and the prosecution having proved its cases in all respects, this Court has no option but to convict both the respondents for the offence for which they were tried."

40. Like that, in the other Judgment in Crl.O.P.No.8549 of 2000 etc., batch, dated 16.03.2001, the learned Judge has held as follows :

"4. As far as the second ground is concerned, in my view, as settled by this Court as well as the Supreme Court, the offence under the Tamil Nadu Agricultural Produce Marketing Regulation Act is continuing offence and therefore, there is no merit in the second ground."

41. Therefore we can safely conclude that, if at all any offence is committed by the licensee under the Act, in not filing any return periodically, i.e., the monthly return, within the meaning of Section 8(9) of the Act, certainly such offence is punishable under Section 48 of the Act and such offence is very well be considered as a <http://www.judis.nic.in> continuous offence, since the obligation on the part of the licensee to make the return every month is a recurring one, unless the licensee is able to show or prove that it had not conducted any business or in fact closed the business.

42. Therefore the finding in this regard given by the learned Magistrate in the Judgments impugned, which are appealed in these Criminal Appeals that, the complaint is barred by limitation is unsustainable and therefore on that ground, no acquittal could have been given by the learned Magistrate.

43. However in so far as the merits of the case is concerned, before the learned trial Court Judge, on behalf of the prosecution, only one witness was examined in each of the case, who is the P.W.1 and the very same person has been examined as P.W.1 in all the four cases.

44. While he deposing before the trial Court, especially in the cross-examination, the P.W.1 has stated certain things, which are noteworthy. In this context, in respect of Crl.A.No.85 of 2012, which is arising out of S.T.C.No.165 / 1996, the P.W.1 has deposed as follows :

http://www.judis.nic.in ",e;j tHf;F vjphp fzf;Ffis jhf;fy;
bra;ahjjw;fhf bjhlug;gl;l Fw;w tHf;F

vd;why; rhpjhd;/ 1/9/95 Kjy;
tiuapyhd fhyfl;l;j;ppy; vjphp
rkh;g;gpf;ftpy;iy vd;why; rhpjhd;/
cs;s tpahghpfs; tptrha tpisbghUl;fi
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tpisbghUs;fis mwpf;ifaplg;gl;l
th';fp tpw;f ntz;Lkhdhy; fzf;
rkh;g;gpf;f ntz;Lk; vd;why; rhpjhd;/
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,y;iyah vd;w tptuk; vdf;F bjhpa[kh vd;why;

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tplg;gl;Ltpl;lJ vd;Wk; 1/9/95 fhyfl
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brhd;dhy; mJ gw;wp vdf;F

vjphpf;F nfl;gl mwptpg;gl mDg;gpa gpwF nkw;go epWtdk; bray;gLfpwnjh vd;W epWtdk;

bray;gl;l ,lj;jpw;F brd;W
el;j;jpndhnkh vd;why; ,y;iy/
epWtdk; kw;Wk; me;j njjpapy;
epWtdj;jpw;Fk; fzf;Ffs; nfl;L
mDg;gpd mwptpg;gl jtwhdJ vd;why;
31/1/97 tiuf;Fz;lhd fzf;if

v';fsplk; vjphp brYj;jpapUf;fntz;Lk; vd;why;

rhpjhd;/ mt;thW brYj;jhjJ mth;
g[hpe;jtuhfpwhh; vd;why; rhpjhd;/"

45. In respect of Crl.A.No.86 of 2012, arising out of S.T.C.No.1706 / 1999, P.W.1 deposited in the cross-examination, which reads thus :

<http://www.judis.nic.in> "gadPh; nf!;a{!; epWtdk; fhllhk;g[ypa[Uf;F tptrha bghUl;fis th';fp tpw;gid bra;tjpy v';fs; epWtdj;jpy; gjpt[bra;ag;gl;lJ vd;why; rhpjhd;/ vjphp gadPh;

nf!;a{!; ,d;l!;hP!; vd;w epWt
chpkk; bgwtpy;iy vd;gjw;fhf ,e
jhff;fy; bra;ag;gl;Ls;sJ/ fhllhk;gy
[pa{hpy; gadPh;
nf!;a{!; vd;w epWtdk; Vw;fdn

bra;ag;gl;L tpahghuk; bra;J tUfpwJ vd;why;

rhpjhd;/ gadPh; nf!;a{!; vd;w
Muk;gpj;jJ rk;ge;jkhf v';fsplk;
vJt[k; cs;sjh vd;why; mjw;fhd
vJt[k; v';fsplk; ,y;iy/ gadPh
vd;w epWtdk; bray;gl;L tUfpwJ
ve;j mog;gilapy; cwjp bra;ag
mwptpg;g[tH';fg;gl;lJ vd;why;
jw;ngHJ vdf;F bjhpahJ/ Mdhy

nf!;a{!; ypkpbll; vd;w bgahpy; byl;lh; ngoy;

v';fSf;F gjpy; mwptpg;g[tH';f
,e;j epWtdk; tzpfthp my;yJ
cs;spl;l Jiwfspy; gjpt[bra
vt;tpj Fwpg;g[k; ,e;j byl;lh; ngo
vd;why; rhpjhd;/" (Emphasis s

46. Similarly in respect of Crl.A.No.87 of 2012, arising out of S.T.C.No.82 / 2002, P.W.1 in his cross-examination has deposited as follows :

"epWtdj;jpd; chpkk; jw;ngHJ
cs;sjh vd;why; ,y;iy/ vt;tst[
chpkk; g[Jg;gpf;fg;gltpy;iy vd;why
Mtzk; jw;ngHJ vd; trk; ,y;

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nf!;a{!; epWtdk; fh\hk;g[ypa{hpy;
 tpahghuk; bra;J te;jhh;fs; vd;why;
 me;j epWtdk; Rkhh; 14 Mz;LfSf;F
 t';fp f\df;fhf Vyk; tplg;gl;L

ngha;tpl;lJ vd;why; mJgw;wp vdf;F bjhpahJ/ fle;j 5 Mz;Lfshf gadPh; nf!;a{!; epWtdk;

eyptile;J vt;tpjkhhd ghpkhw;wKk; bra;ahky;

,Ug;jhy; fzf;Ffs; vJt[k; rkh;g;gpf;fg;glhky;

,Uf;fpwJ vd;why; rhpay;y/
 epiyf;fj;jf;jjy;y vd;why; rhpjhd;/"
 (Emphasis suppli

47. Like that, in respect of CrI.A.No.88 of 2012, arising out of S.T.C.No.184 / 2002, P.W.1 in his cross-examination has deposed as follows :

"mwpf;ifaplg;gl;l gFjp ve;j ve;j Ch;fis cs;slf;fpaJ rk;ke;jkhf ehd; ml;ltizia jhf;fy;
 bra;atpy;iy vd;W brhd;dhy; rhpjhd;/ 8/1/96 Kjy; 31/3/97 tiuapyhd fhy;jpy; vjphp
 ky;yp tpahghuk; bra;jhh; vd;gfw;F Mtzk;

Mjhuk; vJt[k; ePjpkd;wj;jpy; jhf;fy; bra;atpy;iy vd;W brhd;dhy; rhpjhd;/ chpkk;

bgw;wjhnyna me;jg;bghUis bfhs;Kjy; my;yJ tpw;gid bra;antz;Lk; vd;W mtrpak;

,y;iy vd;W brhd;dhy; rhpjhd;/
 mtw;Wf;Fz;lhd khjhe;jpu fzf;Ff

rkh;g;gpj;jhy; nghJkhdJ/ bghUis bfhs;Kjy; bra;anth. tpw;gid bra;anth ,y;iy vd;why;
 khjhe;jpu fzf;F rkh;g;gpf;f ntz;oa mtrpak;

,y;iy vd;W brhd;dhy;
 mwpf;ifaplg;gl;l gFjpapy;
 tpisatpy;iy vd;W brhd;dhy;
 gz;Ul;o xG';FKiw tpw;gid Tlj;jpy; ky;yp
<http://www.judis.nic.in>

tpisatpy;iy vd;W brhd;dhy; rhpjhd;/ ky;yp gaphplg;gLk; nryk;. tpUJefh; gFjpfspnyna
 ky;yp tpw;fidf;F br!; tpjpf;fg;gLfpwJ vd;W brhd;dhy; ,J gw;wp vdf;F bjhpahJ/ Mdhy;
 mwpf;ifaplg;gl;l tpisg;bghUl;fshf ,Ue;jhy; br!; tpjpf;fg;gl ntz;Lk;/ k/rh/M/1
 Kd;dpiyf;F 7 ehl;fSf;F fzf;if rkh;g;gpf;FkhW vjphpf;F mwpt[Wj;jpndhk;

vd;why; rhpjhd;/ k/rh/M/2 y;
 ifbahg;gk; cs;sjh vd;why;
 ifbaGj;jh vd;W vdf;F bjhpahJ/
 mth; tpyhrj;jpw;F mDg;gg;gl;l

bgw;Wf;bfhz;l jw;fhd xg;g[if m;l;il
mjpy; vjphp filapd; rPy; nghlg;gl
vd;W brhd;dhy; rhpjhd;/"

(Emphasis

48. Apart from these oral evidences, though some of the exhibits have been marked on the side of the appellant / complainant in each of these cases, those Exhibits are only the demand notice issued by the complainant, acknowledgment card and the sanction letter given by the Director for Prosecution.

49. On careful perusal of these evidences produced before the trial Court, it can be concluded without any iota of doubt that, the respective respondent / accused has not committed the offence within the meaning of Section 8(9) r/w 48 of the Act, as it is hardly to believe those evidences produced by the appellant / complainant, which <http://www.judis.nic.in> cannot said to be enough to come to a safe conclusion that, the respondents / accused have committed the offence.

50. If we read Section 48 of the Act, which provides, especially under Section 48(b) that, being a licensee under the Act, if any one fails either to submit the report and return to the market committee as specified in its by-laws or to produce the accounts or records etc., when demanded by any officer or servant of the market committee duly empowered. Therefore it means that, the licensee is supposed to produce the accounts and records only at the demand.

Here in the case in hand, no such demand seems to have been made, except the legal notice which had been made for several years.

51. Assuming that, under Section 48(1) (c) (i) and (ii) of the Act, if the Act is required to make any statement or furnish any information by the licensee, which they failed to furnish, will also constitute an offence punishable under Section 48, here in the case in hand, in the first three criminal appeals, the respondent / accused is one and the same, who claimed to have closed his business long back and this is evidenced in the suggestion made before the trial Court before P.W.1 in the cross-examination and when such suggestion was made, the P.W.1 replied that, he did not know about the closure of the business about the respondent / accused in those cases long back. <http://www.judis.nic.in>

52. Though a statutory requirement of producing the records or furnishing of accounts makes it obligatory on the part of the licensee to do so, once the licensee has closed the business, whether such obligation still continues is also doubtful one.

53. Further under Section 8(7) of the Act, if a license is granted, that shall be valid for

three years in respect of a person who carries the business, by wholesale, of purchasing or selling any notified agricultural produce and in all other cases, the license expires by one year. Here in the cases in hand, it is not known whether a three years license or one year license was given to all these respondents / accused, as the copy of the license has not been produced before the trial Court for perusal. Assuming that, the license has been given for three years, unless the same is renewed, the respondent / accused cannot be blamed that, they have not furnished the account every month as contemplated under Section 8(9) of the Act, because the opening sentence of sub-section 9 of Section 8 says "Every person licensed are liable to pay fee or any other amount under this Act shall keep and maintain true and correct account..."

54. Therefore under the scheme of the Act, the default committed by licensee during the life time of license is one thing and the default committed by other persons outside the purview of license <http://www.judis.nic.in> by marketing the agriculture produce in the notified area, without even getting a license is yet another issue. Here in the case on hand, it is the definite case of the appellant / complainant that, the respective respondents / accused though being a licensee have not furnished their account as required under Section 8(9) of the Act.

55. However as has been rightly pointed out by the learned trial Court Judge, in all these cases, the appellant / complainant has not proved beyond reasonable doubt that, the license was granted to the respective respondent / accused on a particular date and it was subsisting for the period under which they demand for complying with the provisions of Section 8 (9). Without establishing or proving these issues by filing necessary documents, the appellant / complainant cannot expect that, the trial Court will accept their case.

56. Moreover the only oral evidence, i.e., P.W.1 in each of these cases, in his deposition, especially in cross-examination, has not been definite in pursuing the case. Most of the suggestion put forth before him, has been accepted by him as those extracts of the cross- examination of the P.W.1 has been, verbatim reproduced herein above.

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57. On complete evaluation of all these aspects especially from the angle that, whether the prosecution has proved their case beyond reasonable doubt by producing enough evidences, this Court is of the considered view that, the prosecution has not proved their case, as the evidence adduced by them either irrelevant or insufficient.

58. Moreover since a number of doubts already been created as to whether the license was still subsisting and whether the license was granted and if so, on what date and when it expires whether the same has been renewed or not, these issues have not been properly projected by the prosecution before the trial Court, with the result, the trial Court having no other option has come to the conclusion that, the prosecution has not proved their case beyond reasonable doubt.

59. I find there is no unsustainability or unacceptability attached with the said findings given by the trial Court in each of the impugned Judgments under these appeals and therefore on merits, the findings given by the trial Court, in the considered opinion of this Court, requires no interference.

60. For all these reasons, the Judgments which are under appeal in these Criminal Appeals are sustainable and therefore they do <http://www.judis.nic.in> not warrant any interference from this Court. Accordingly, these appeals fail. Hence, these Appeals are dismissed.

10.04.2019

Index : Yes

Speaking Order

tsvn

To

1. The Judicial Magistrate No.I,
Panruti, Cuddalore District.

2. The Public Prosecutor
High Court of Madras, Chennai.

<http://www.judis.nic.in>

R.SURESH KUMAR, J.

tsvn

Judgment
in
Crl.A.Nos.85 to 88 of

10-04-2019

<http://www.judis.nic.in>