

(2002) 10 AP CK 0001

Andhra Pradesh High Court

Case No: Criminal P. No. 4063 of 2001

Srinivasa Hatcheries

APPELLANT

Vs

Agricultural Market Committee
and Another

RESPONDENT

Date of Decision: Oct. 8, 2002

Acts Referred:

- Andhra Pradesh (Agricultural Produce and Livestock) Markets (Amendment) Act, 1987
- Section 3

Citation: (2002) 6 ALD 640 : (2002) 2 ALD(Cri) 656 : (2003) 1 ALT(Cri) 74 : (2003) CriLJ 518

Hon'ble Judges: S.R.K. Prasad, J

Bench: Single Bench

Advocate: E.V. Bhagiratha Rao, for the Appellant; Posani Venkateswarlu and Public
Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.R.K. Prasad, J.

Petitioner, who is accused in S.T.C. No. 28/2001 on the file of the learned Additional Judicial I Class Magistrate, Vizianagaram, invokes the inherent powers of this Court u/s 482 Cr.P.C. to quash the proceedings.

2. A brief resume of the backgrounds of facts is necessary. The petitioner is running a business in Hatcheries at Gunkalam Village, Bhogapuram Mandal. The petitioner is represented by its Managing Director, Mr. K. Ashok Reddy. It is alleged by the 1st respondent that the petitioner was doing the business without licence for the period from 1997-98 to 2000-2001 as contemplated u/s 7(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, the Act) and Act No. 4 of 1987. Therefore, it was called upon to obtain a licence. Since the petitioner did not obtain license, prosecution was launched in S.T.C. No. 28/2001 for contravention of the provisions of the Act and Act No. 4 of 1987. The learned

Magistrate took cognizance of the offence.

3. Learned Counsel for the petitioner, Mr. E.V. Bhagiratha Rao, assails the order on two grounds. Firstly, he contends that the petitioner is dealing with chicks which do not form part of the notification issued under Schedule II of G.O. Ms. No. 2095, Food and Agriculture (Agri-IV), dated 29.10.1968, wherein Poultry Group has been specified. The second contention is that Bhogapuram Mandal does not fall within the jurisdiction of the Agricultural Market Committee, Poosapatirega, and hence 1st respondent has no jurisdiction to lodge a complaint.

4. Learned Counsel, Mr. Posani Venkateswarlu, appearing for the 1st respondent contends that chicks are the products of cocks and hens, and hence they are covered by the said notification. It is also contended by him that Bhogapuram Mandal has been brought within the purview of the Agricultural Market Committee, Poosapatirega, by a subsequent notification, dated 20.7.1996. Learned Public Prosecutor contends that this is not a fit case where the inherent powers of this Court can be exercised and the case has to be relegated to trial.

5. Adverting to the above contentions, Section 3 of the Act is extracted below.

"5. Declaration of notified area :--(1) The Government may publish in such manner as may be prescribed a draft notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification.

(2) Such notification shall state that any objections or suggestions which may be received by the Government from any person within a period to be specified therein will be considered by them.

(3) After the expiration of the period specified in the draft notification and after considering such objections and suggestions as may be received before such expiration, the Government may publish in such manner as may be prescribed a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification.

(4) Subject to the provisions of Sub-sections (1), (2) and (3), the Government may, by notification

(a) exclude from a notified area, any area comprised therein; or

(b) include in any notified area, any area specified in such notification; or

(c) declare a new notified area by separation of area from any notified area or by uniting two or more notified areas or parts thereof or by uniting any area to a part of any notified area :

Provided that where, as a result of declaration of a new notified area under this clause, the entire area comprised in an existing notified area is united to one or more notified areas, the said existing notified area shall stand abolished."

Under Schedule II of G.O. Ms. No. 2095, dated 29.10.1968, published in the Andhra Pradesh Gazette, dated 7.11.1968, Poultry Group has been brought within purview of agricultural produce, livestock and products of livestock u/s 3 of the Act. Group VII of the said Scheduled II brings (1) Hens, (2) Ducks, and (3) Cocks, within the purview of the Poultry Group.

6. The point that now falls for consideration is whether "chicks" are the products of cocks and hens under the category of "Poultry Group"?

7. It is not stated in the said Notification that the products of the said Poultry Group come within its purview. It is specifically mentioned that hens, ducks and cocks alone would be within the purview of the Notification. The Notification has clearly excluded chicks from the Poultry Group. It is also not mentioned that the Poultry Group includes the products derived from hens and cocks. But, under Group VIII Products of Poultry Group-Eggs (Hens and Ducks Eggs) are mentioned.

8. A close reading of the above Groups shows that chicks are not covered by the notification. A strict interpretation has to be given in respect of notification included powers to collect taxes or fees. Therefore, it cannot be said that the Notification generally covers all the products derived from hens and cocks. When the Legislature intended to bring chicks within the purview of the notification, it should have done so by including chicks under the head of Poultry Group of Products of Poultry Group. There is a lacuna in not including chicks in the Notification. Persons who are dealing with chicks are certainly entitled to take advantage of the non-inclusion of chicks in the Notification, and they are entitled to claim benefit on that account.

9. It is also contended by the learned Counsel for the petitioner that it is very difficult to determine the sex of chicks. It cannot be that the said contention is without any force. I am of the considered view that the Notification has to be strictly construed and when chicks are not mentioned specifically in it, the petitioner is certainly entitled to take advantage of it. It is rightly contended by the learned Counsel for the petitioner, when chicks are not included in the Notification, they will not come within the purview of Agricultural Market Committee and, therefore, the Market Committee cannot demand licence to deal with chicks. Hence, the question of petitioner obtaining licence for dealing with chicks does not arise as the 1st respondent-Market Committee has no right to demand licence as chicks are not included under the Notification. I also hold that launching of prosecution against the petitioner for its failure to obtain licence is bad for the fact that the 1st respondent has no right to demand licence or any fees under law.

10. Coming to the second contention canvassed by the petitioner's Counsel, this Court cannot look into any documents which are not filed before the lower Court.

This Court, while exercising the powers u/s 482 Cr.PC to quash a criminal complaint, has to look at the complaint and the sworn statements and the other material gathered alone. If fresh documents or material are filed subsequently, the matter has to be relegated to trial. This Court time and again has stated that this Court would not receive any documents or material for considering the validity of the proceedings which they were not made available before the lower Court at the time of taking cognizance.

11. In that view of the matter, I relegate the aspect whether the 1st respondent-Market Committee has got jurisdiction over Bhogapuram, by virtue of the Notification issued on 20-7-1996.

12. To sum up, I find that chicks are not included in the Notification and, therefore, no licence is required to deal with the same. Hence, the proceedings in STC No. 28/2001 on the file of the learned Additional Judicial I Class Magistrate, Vizianagaram, are liable to be quashed, and accordingly the proceedings are quashed. The petition is allowed.