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**(2011) 10 RAJ CK 0054**

**In the Rajasthan High Court**

**Case No : SB Criminal Miscellaneous Petition No's. 554 and 555 of 2009**

Gauri Shankar and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision : 12-10-2011**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 397, 782  
Essential Commodities Act, 1955 — Section 3, 7  
Seeds Act, 1966 — Section 13, 14(1), 15, 19, 21

**Citation : (2012) 1 Crimes 729 : (2012) 2 RLW 1013**

**Hon'ble Judges : Sandeep Mehta, J**

**Bench : Single Bench**

**Final Decision : Allowed**

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## **Judgement**

Sandeep Mehta, J.—The present miscellaneous petitions have been filed challenging this orders taking cognizance against the petitioner dated 29.10.2009 passed by the Additional Chief Judicial Magistrate, Raisinghnagar, District Sri Ganganagar in Criminal Cases No. 572 of and 573/2007 respectively, u/s 7/13 read with sub-section (B) of Sections 6, Section 13 and 14 (1) of the Seeds Act, as affirmed by the learned Additional Sessions Judge, Raisinghnagar in Revision Petitions No. 40 of 2008 and 41 of 2008 respectively vide impugned orders dated 21.11.2008. The facts necessary for disposal of the present miscellaneous petitions are set out herein below. Two complaints were filed by the Seeds Inspector under the Seeds Act against the petitioners in the Court of the learned Additional Chief Judicial Magistrate, Raisinghnagar (for short, "the trial Court") on 25.10.2007 with the allegations that the Seed Inspector went to the premises of M/s. Rajasthan Seeds Store on 20.10.2007 and took samples of "Deshi" Kapas in Criminal Case No. 572/2007 and American Kapas in Criminal Case No. 573/2007 after making payment thereof, it is alleged that the seeds were got analysed from the State Seeds Laboratory Durgapura, Jaipur, from where a report was received that the germination rate of the seeds was found to be 58% as against the minimum requirement of 65% as per the Seeds Act and

as such the seeds were found to be of sub-standard quality. It has further been alleged in the complaint that subsequent to receipt of the report, the manufacturer Vishnu Seeds Company (of which the petitioner are also the petitioners) was also given a notice intimating the firm about the report of the Laboratory. The learned trial court, on the basis of the said complaints, proceeded to take cognizance against the petitioners who are the partners of Vishnu Seeds Company by the order dated 29.10.2007. The petitioners assailed the said order dated 29.10.2007 by way of two separate revision petitions (Nos. 40/2008 and 41/2008 and in the revision petitions a specific argument was raised that the mandatory provisions of the Seeds Act and the Rules framed thereunder regarding the manner in which the samples were to be taken were not followed. Objection was also raised that the firm had already nominated one Brij Mohan as the responsible person for the performance of day to day affairs of the firm and the licence was also exclusively in the name of Shri Brij Mohan and as such the prosecution of the other partners of the firm, in absence of any allegation regarding their participation in the day to day affairs of the firm, was absolutely illegal. The learned Revisional Court observed that the objection which the petitioners wanted to raise before the revisional court was not taken before the trial court and as such the revisional court held that the order of the trial court could not be interfered with u/s 397 Cr.P.C. and consequently the revision petitions were dismissed filed by the petitioners vide impugned order(s) dated 21.11.2008.

2. Being aggrieved by the aforesaid orders, the petitioners have approached this court u/s 482 Cr.P.C. for quashing of the cognizance orders and all the subsequent proceedings against them in the court of the learned Additional Chief Judicial Magistrate, Raigarh for the violation of the Seeds Act.

3. Assailing the impugned orders passed by the learned trial court and the revisional court, the learned counsel for the petitioners has raised three contentions; firstly, that the prosecution of the petitioners was not in accordance with law for the reason that whenever there is a prosecution of partners of a firm then it has to be averred in the complaint that the partners, who were sought to be prosecuted, were responsible for its day to day affairs. It has been submitted that there is no allegation in the complaint as to how the petitioners were responsible for the conduct of affairs of the firm. Placing reliance on the provisions of Section 21 of the Seeds Act and a decision of this Court in *Shamsundar Agrawal v. State of Rajasthan & Anr.* 2007(1) RLR 721 the proceedings are challenged by the counsel for the petitioners as being unsustainable. The second argument raised by the learned counsel for the petitioner is that the samples of the seeds are mandatorily required to be taken in accordance with the provisions of the Seeds Act. He submitted that there is a specific requirement that the samples of the seeds have to be taken in a clean dry container and they have to be sealed in an air-tight condition. It has been submitted that in the instant case, it is the admitted position from the reading of the complaint that the samples of the seeds were taken in a cloth bag and as

such there is a non-compliance of the mandatory provisions in regard to manner prescribed for taking of the samples leading to the proceedings against the petitioners under the Seeds Act vitiated. Thirdly, it has been contended that the responsible person for conducting day to day affairs of the firm was Brij Mohan, in whose name alone, the licence was there and as such only Brij Mohan should have been prosecuted for the offences alleged to have been committed by the firm.

4. Per contra, learned Public Prosecutor has opposed the contentions advanced before this Court and submitted that the petitioners are always at liberty to raise all such objections, which they have raised before this Court, at the appropriate stage before the trial Court.

5. I have considered the arguments advanced at Bar and perused the complaint as well as the order passed by the trial court taking cognizance and the order passed by the revisional court affirming the order of the trial court.

6. The relevant portion of the complaint whereby the petitioners have been arrayed as accused in the complaint is quoted below:

(Matter in other language)

7. For an appropriate appreciation of the arguments which have been raised before this Court, the relevant provisions of the Seeds Act and the Seeds Rules have to be considered. The Seeds Act incorporates the provisions regarding prosecution of a company and the provisions to this effect read as follows:

Section 21-Offences by Companies:

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge, and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Explanation-For the purposes of this section:

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

8. This provision regarding prosecution of company in the Seeds Act is analogous with the like provisions in the Prevention of Food Adulteration Act, Essential Commodities Act and Negotiable instruments Act. Thus, before the partners of the firm or Director of a company can be prosecuted in relation to violation committed by the firm, the necessary requirements of Section 21 of the Seeds Act have to be fulfilled. There has to be a specific averment in the complaint supported by proper material which can show as to how a particular person [Director of a company or partner(s) of a firm] is being sought to be prosecuted for an offence committed by the firm or company. There has to be specific material, by virtue whereof an inference can be drawn that the person who is sought to be prosecuted was responsible for the conduct of day to day affairs of the firm or company. The controversy in this regard is no longer *res integra*. The Hon'ble Supreme Court, in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhatia & Am.* AIR 2005 SC 4700 and *Pepsico India Holdings Pvt. Ltd. v. Food Inspector & Anr.* (2011) 2 SCC 176, has clearly laid down that for the prosecution of Director of a company or partners) of a firm, there has to be a specific averment in the complaint regarding the responsibility of the person sought to be prosecuted towards the conduct of business of the company or the firm or its day to day affairs.

9. A reading of the relevant portion of the complaint which has been reproduced above, discloses that in the present cases reveals that apart from the fact that the petitioners are the partners of the firm, there is not a word in the complaint as to how the petitioners are responsible for the day to day affairs of the firm. As has been mentioned above, the licence which was issued in this case under the Seeds Act, is in the name of Brij Mohan and as such before any other partners of the firm could be prosecuted, the complainant was under an obligation to make a specific averment regarding their status in the firm in relation to the day to day affairs of the firm. In absence of any such averment in the complaint and material in support thereof the prosecution of the partners of the firm is patently illegal in view of the dictum of Their Lordships of the Hon'ble Supreme Court in the aforesaid two decisions.

10. For appreciation of the second aspect of the matter regarding sampling of the seeds not having been done in accordance with the provisions of the Seeds Act, the relevant provisions of the Seeds Act and the Seeds Rules need to be considered. The relevant provisions prescribing the procedure for sampling of the seeds are quoted herein under:

12. Section 15 of the Seeds Act reads as under:

Section 15-Procedure to be followed by Seed Inspectors

Whenever a Seed Inspector intends to take sample of any seed of any notified kind or variety for analysis, he shall:

(a) xxx

(b) give notice in writing, then and there, of such intention to the person from whom he intends to take sample,

(c) except in special cases provided by rules under this Act, take three representative samples in the prescribed manner and mark and seal or fasten up each sample in such manner as its nature permits.

(2) When samples of any seed of any notified kind or variety are taken under sub-section (1), the Seed Inspector shall:

(a) deliver one sample to the person from whom it has been taken;

(b) send in the prescribed manner another sample for analysis to the Seed Analyst for the area within which such sample has been taken; and

(c) retain the remaining sample in the prescribed manner for production in case any legal proceedings are taken or for analysis by the Central Seed Laboratory under subsection (2) of section 16, as the case may be.

(3) If the person from whom the samples have been taken refuses to accept one of the samples, the Seed Inspector shall send Intimation to the Seed Analyst of such refusal and thereupon the Seed Analyst receiving the same for analysis shall divide it into two parts and shall seal or fasten up on of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the Seed Inspector who shall retain it for production in case legal proceedings are taken.

(4) Where a Seed Inspector takes any action under clause (c) of sub-section (1) of Section 14:

(a) he shall use all dispatch in ascertaining whether or not the seed contravenes any of the provisions of Section 7 and if it is ascertained that the seed does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, taken such action as may be necessary for the return of the stock of the seed seized;

(b) if he seizes the stock of the seed, he shall, as soon as may be, inform a Magistrate and take his orders as to the. custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged offence is such that the defect may be removed by the possessor of the seed, he shall, on being satisfied that the defect has been so removed, forthwith revoke the order passed under the said clause.

(5) Where a Seed Inspector seizes any record, register, document or any other material object under clause (e) of sub-section (1) of Section 14, he shall as

soon as may be, inform a Magistrate and take his orders as to the custody thereof.

12. The procedure and the manner in which the samples are to be taken have been prescribed in Part X of the Seeds Rules, particularly Rules 24, 25 and 26 of the Seeds Rules, which read as under.

Rule 24. Manner of taking samples:

Samples of any seed of any notified kind or variety for the purpose of analysis shall be taken in a clean dry container which shall be closed sufficiently tight to prevent leakage and entrance of moisture and shall be carefully sealed.

Rules 25. Containers to be labelled and addressed-All containers, containing samples for analysis shall be properly labelled and the parcels shall be properly addressed. The label on any sample of seed sent for analysis shall bear:

- (a) serial number.
- (b) name of the sender with official designation, if any,
- (c) name of the person from whom the sample has been taken.
- (d) date and place of taking the sample.
- (e) kind or variety of the seed for analysis;
- (f) nature and quantity of preservative, if any, added to the sample.

Rules 26. Manner of packing, fastening and sealing the samples- All samples of seeds sent for analysis shall be packed, fastened and sealed in the following manner:

- (a) The stopper shall first be securely fastened so as to prevent leakage of the containers in transit.
- (d) The container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.
- (e) The paper cover shall be further secured by means of strong twine or thread both above and across the container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine and thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

13. A perusal of Section 15 of the Seeds Act and Rules 24, 25 and 26 of the Seeds Rules clearly disclose that there is mandatory procedure prescribed under these rules regarding the manner in which the samples of the seeds are to be packed. The essence of the procedure is that the samples should be taken in

such a manner so as to prevent them from being exposed to moisture or sunlight. The procedure is thus prescribed because of the reason that if the seeds are exposed to moisture and sunlight then the germination capacity is bound to be reduced and that is why there is a specific method provided for packing of the samples under the Seeds Rules so that the exposure of the samples to the moisture and Sunlight is avoided. The essence of the procedure is to ensure that the moisture does not enter into the samples of seeds after the same have been taken. The relevant para in both the complaints regarding the sampling procedure carried out is reproduced hereinbelow:

(Matter in other language)

14. Considering the present complaint in the light of Rules 24, 25 and 26 of the Seeds Rules, it is found that the samples of the seeds were receptacle which, by any stretch of imagination, can be said to be air-tight or good enough to prevent entering of moisture. In order to ensure that the samples of the seeds are not affected by moisture, the sampling has to be done in the manner prescribe under Rules 24 to 26 of the Seeds Rules. Initially the sample has to be put in air-tight container and thereafter the container has to be securely fastened so as to prevent leakage. The container so fastened then has to be completely wrapped in a strong thick paper and the ends of the paper are to be fixed by adhesive and then secured by twine or thread and then the same has to be sealed by wax seal. The purpose of putting a thick paper is to prevent exposure of the seeds to Sun light.

15. As has been mentioned above, admittedly, in the present case, the samples have not been taken in accordance with the mandatory provisions of the Seeds Rules. The procedure which has been prescribed for taking of seed samples as per the aforesaid rules is mandatory in nature. All the three rules (Rules 24 to 26 of the Seeds Rules) begin with the word "shall" before the procedure of taking the sample is laid down and as such once there is deviation from the specific mode prescribed for taking the samples then in such an event, if any report of the Seeds Analyst is received on the basis of the samples taken in violation of the rules, such a report cannot be read against the person from whom the sample was taken. This Court, in *Dhiraj Mal & Ors. b. State of Rajasthan* 2004(2) Cr. LR 1412 had an occasion to deal with the effect of not conforming to the procedure prescribed for taking the samples. In a case of Essential Commodities Act relating to samples of petrol and diesel the Hon"ble Court held that once there was a breach regarding the manner in which the sample was to be taken, then the FIR could not be permitted to be continued and the FIR for the offence u/s 3/7 of the Essential Commodities 7 was quashed.

16. The result of the aforesaid discussion is mat the prosecution of the accused for violation of the provisions of the Seeds Act is vitiated because in both the cases there is a gross violation of the mandatory provisions of Section 15 of the Seeds Act and Rules 24, 25 and 26 of the Seeds Act. Likewise, the prosecution of the petitioners, who are partners of the manufacturing firm, is also illegal and

impermissible as there is no allegation in the complaint regarding any liability of the petitioners in relation to the affairs of the firm. The upshot of the above discussion is that the miscellaneous petitions are allowed and the proceedings going on against the petitioners in Criminal Cases No. 572/2007 and 573/2007 pending in the Court of the Additional Chief Judicial Magistrate, Raisinghnagar for the offences under Sections 7/19, 6 (B), 13 and 14 (1) of the Seeds Act are hereby quashed. The stay applications also stand disposed of.