
(2015) 01 BOM CK 0125

In the Bombay High Court

Case No : Criminal Application No. 184 of 2013

Managing Director Mahyco Seeds Limited

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13, 13(2), 13(3)
Seeds Act, 1966 — Section 15, 16, 16(2), 16(3), 19

Citation : (2015) ALLMR(Cri) 2134 : (2015) 4 BomCR(Cri) 201

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : Shirish Gupte, Senior Advocate and Prafulla S. Khubalkar, for the Appellant; Mukund Ikre, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.—Heard.

2. Admit. Heard finally by consent of the parties.

3. By this petition, the petitioners are seeking quashing and setting aside of criminal case bearing S.T.C. No. 1231 of 2007 filed against the applicant by the State-respondent under Rules 19 and 23 (g) of the Seeds Rules, 1968 for contravention of the provisions of Section 6(a) and 7(b) of the Seeds Act, 1966.

4. It has been the case of the State that Sunflower seeds of the variety MSFH8 of which samples were drawn by the Seed Inspector on 19/9/2006 were not found to be containing same amount of germination as was represented by the applicants. It was represented by the applicants on the label of the packets of the seeds that seeds had 70% germination capacity, whereas the Seed Analyst, Nagpur found, upon testing of the seeds sample, that germination capacity was only 9%.

5. The main contention of the applicants is that their valuable right under Section 16(3), Seeds Act, to get the sample tested for its quality from the Central Seed

Laboratory has been seriously hampered in this case as the prosecution against them was instituted by the State much after the expiry of shelf life period of the seeds. The seeds were manufactured on 24/5/2006 and admittedly the date of expiry of validity of the seeds was 19/11/2006, but the prosecution has been filed on 07/4/2007 and as such, learned Counsel for the applicants further submits, important right of the applicants has been violated in this case.

6. Learned A.P.P. for the State submits that the delay which has occurred in this case was due to some administrative reasons and, therefore, the applicants should not be allowed to draw an advantage from such delay, which cannot be attributed to any negligent or malafide act on the part of the concerned officer of the State.

7. In order to appreciate the issue involved in this case, it would be necessary to first consider to the nature of right conferred upon the applicants under Section 16 of the Seeds Act, 1966. Section 16 reads as under.:

16. Report of Seed Analyst.- (1) The seed Analyst shall, as soon as may be after the receipt of the sample under subsection (20) of section 15, analyse the sample at the State Seed Laboratory and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample has been taken.

(2) After the institution of a prosecution under this Act, the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending any of the samples mentioned in clause (a) or clause (c) of subsection (2) of section 15 to the Central Seed Laboratory for its report and on receipt of the application, the Court shall first ascertain that the mark and the seal or fastening as provided in clause (b) of subsection (1) of section 15 are intact and may then dispatch the sample under its own seal to the Central Seed Laboratory which shall thereupon send its report to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.

(3) The report sent by the Central Seed Laboratory under subsection (2) shall supersede the report given by the Seed Analyst under subsection(1).

(4) Where the report sent by the Central Seed Laboratory under subsection (2) is produced in any proceedings under section 19, it shall not be necessary in such proceedings to produce any sample or part thereof taken for analysis.

8. A conjoint reading of the subsections of Section 16, in particular subsections (2) and (3), would make it clear that the right that law has conferred upon the vendor-accused to get sample tested from the Central Seed Laboratory is exercisable not before but after the institution of prosecution against him under the Seeds Act and for asserting his right all that required is to make an application in that behalf to the prosecuting Court. Upon receipt of such an

application, the Court is required to send the sample to the Central Seed Laboratory under its own seal and a mandatory duty has been cast upon the Central Seed Laboratory to send its report to the Court within one month from the date of receipt of the sample, specifying the result of the analysis. Under subsection (3) it has been made clear that report sent by the Central Seed Laboratory under subsection (2) shall supersede the report given by the Seed Analyst under subsection (1). In other words, the report of Central Seed Laboratory stands as conclusive proof of the quality of the seeds sample tested by it. Such conclusive nature of the report of Central Seed Laboratory is what makes the right of the accused under Section 16(2) valuable and important.

9. There is almost identical provision existing in the Prevention of Food Adulteration Act, 1954 (for short, the PFA Act). In Section 13(2) of the PFA Act also, similar right has been conferred upon the accused to get the sample tested from Central Food Laboratory and it has been further provided in subsection (3) of Section 13 that the certificate issued by the Director of the Central Food Laboratory shall supersede the report given by the Public Analyst under Subsection (1). This right has been held to be indefeasible by the learned Single Judge of this Court in the latest judgment rendered in the case of Charandas Vallabhdas Mariwala and others Vs. The State of Maharashtra (Criminal Application No. 1842 of 1996) delivered on 19/7/2014. While taking this view, the learned Single Judge of this Court has considered judgment of the Hon'ble Apex Court and also the judgments of this Court taking similar view. The learned Single Judge has in particular followed the law laid down by Hon'ble Apex Court in the case of Municipal Corporation of Delhi Vs. Ghisa Ram, wherein the right conferred by Section 13(2) of the Prevention of Food Adulteration Act has been held to be a valuable one because the certificate of the Director of Central Food Laboratory supersedes the report of the Public Analyst and it is treated as a conclusive evidence of the quality of the sample. Rationale for giving such a status to the right of the accused under Section 13(2) of the PFA Act as held in Municipal Council, Delhi Vs. Ghisa Ram is that the right has been given to a vendor in order that, for his, satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence and this right would be rendered meaningless if it is made available to him at a time when character and quality of the sample which he was allowed to retain in his possession had deteriorated due to passage of time. Obviously, quality of the sample would be deteriorated and adversely affected if the sample is to be sent to the Central Laboratory for retesting and analysis after the expiry of shelf life and in that case there would occur denial of said valuable right of vendor-accused.

10. This law has also been followed by the learned Single Judge of this Court in the case of Shivkumar @ Shiwalamal Nanumal Chugwani and others Vs. State of Maharashtra, reported in 2010(3) Bom. C. R.(Cri.) 103, wherein the learned Single Judge has observed that the right under Section 13(2) of the Prevention of Food Adulteration Act has been given to the vendor in order that for his

satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by the Court as conclusive evidence and as such, if the sample is to be sent to the Director of Central Food Laboratory after expiry of the shelf life, there would be virtual denial this right to the vendor.

11. Although the above observations have appeared while considering the nature of right under Section 13(2) of the PFA Act, the principle of law emerging therefrom can be applied in the instant case also as Section 16(2) of the Seeds Act confers a similar right as the right conferred under the provision of Section 13(2) of the PFA Act. Just like Section 13(3) of the PFA Act, there is similar provision under Section 16(3) of the Seeds Act, which provides that the report of the Central Seed Laboratory would supersede the report of the Seed Analyst thereby indicating that the report of the Central Seed Laboratory would be conclusive proof of its contents and would put at rest the controversy in the matter. If the report of the Central Seed Laboratory is put on a higher pedestal than the report of Seed Analyst and is to be treated as according finality to the issue of quality and character of the sample, the right of the vendor-accused to get the sample tested after institution of prosecution, given under Sec. 16(2), is valuable one, on the principle of law laid down in the *Municipal Council, Delhi Vs. Ghisa Ram* (supra) and as held by learned Single Judge in the case of *Charandas Vallabhdas Mariwala and others* (supra), cannot be allowed to be defeated by delay in launching of prosecution against vendor-accused. Section 16(2), Seeds Act requires vendor-accused is given an opportunity after institution of prosecution against him to get the seed sample in his charge retested through intervention of the Court by Central Seed Laboratory. The opportunity would be meaningful and realistic only if the quality and character of the sample is not deteriorated by the passage of time. If the opportunity is made available to the vendor-accused after the expiry of shelf life of the seeds sample, it would be obvious that result of the analysis would not be objective and the right would be rendered meaningless and thus there would occur virtual deprivation of the right to the vendor-accused.

12. Having considered the law governing the field, now, it would be necessary to refer to the facts admitted in this case, which pertain to the dates on which various events have taken place so as to examine the question as to whether or not there is denial of valuable right of applicants under Section 16(2), Seeds Act. They could be stated in brief as under.:

13. It is clear from the above referred events that the prosecution has been instituted more than four months after the expiry of shelf life of the seeds and since the right conferred under Section 16(2) of the Seeds Act can be exercised only after the institution of the prosecution, this right has been virtually denied to the applicants. The right is valuable and indefeasible. It cannot be taken away in any circumstance. But, by launching the prosecution after expiry of shelf life of the seeds, Section 16(2) right, has been smothered in this case as the result of

the analysis of the sample by Central Seed Laboratory carried out after expiry of validity of seeds is bound to be one-sided, blotched and coloured to the prejudice of the vendor-accused, thereby sabotaging the very rationale of Section 16(2), Seeds Act of providing "satisfaction and proper defence" to vendor-accused as held by Hon"ble Apex Court in Municipal Council, Delhi Vs. Ghisa Ram (supra). Therefore, the prosecution as launched against the applicants by the State cannot be sustained in law, it being violative of indefeasible right of the applicants in this case. By deprivation of this right, the applicants have been denied an opportunity to prove their defence and now the prosecution would only be one sided, which goes against the well settled principles of Criminal Jurisprudence. Therefore, to secure the ends of justice, the complaint case filed against the applicants deserves to be quashed and set aside.

The application is allowed and the Criminal Case No. 1231 of 2007 pending before the Court of J. M. F. C., Washim is quashed and set aside.