

(2017) 04 BOM CK 0189
In the Bombay High Court
Case No : 517 of 2003

M/s Mahyco Vegetable Seeds Ltd.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 226, Article 227, Article 19(1) (g) - Appointment of Commission to inquire in

Citation : (2017) 04 BOM CK 0189

Hon'ble Judges : T.V. Nalawade

Bench : SINGLE BENCH

Advocate : Joydeep Chatterji, N.K. Choudhari, R.V. Dasalkar

Judgement

1. The petition is filed under Articles 14, 21, 19(1) (g), 226 and 227 of the Constitution of India and section 482 of the Code of Criminal Procedure for challenging the order of issue process made by the Judicial Magistrate, First Class, Parner, District Ahmednagar in S.T.C. No.55/2003 and also for quashing and setting aside the proceeding of S.T.C. No.55/2003. Both the sides are heard.

2. Criminal Case No.55/23003 is filed by Seed Inspector of the State Government against present petitioners and four other accused for offences punishable under section 6(b) read with section 7 of the Seeds Act 1966 and under Seeds Rules 1968. Petitioner No.1 - M/s Mahyco Vegetable Seeds Ltd. Jalna is a producer of seeds. Accused No.2, petitioner No.2 was working as Deputy Manager (Legal) and accused No.3, petitioner No.3 of the present matter was working as Senior Manager (SDM) at the relevant time and it is the contention of the complainant that accused Nos.2 and 3 were responsible for conduct of business of accused No.1 at the relevant time.

3. Accused Nos.4 and 5 are the dealers appointed by accused No.1 Company and accused Nos.6 and 7 are the retailers who collect goods from accused Nos.4 and

5. Accused Nos.5 and 7, who are respondents, are the proprietors of accused Nos.4 and 6 concerns and accused Nos.5 and 7 are responsible for conduct of business of accused Nos.4 and 6.

4. On 1-9-2002 the complainant, Seed Inspector, visited the business premises situated at Devbhoyare Fata, Vadzire, Tahsil Parner of accused No.6, the retailer and necessary procedure like giving intimation notice was followed by the Seed Inspector. During inspection, the complainant drew sample of seeds of onion of variety -Nasik Red, and the sample was from Lot No.R00-66-29- JLP-60657 from accused No.6. The sample was marked as Sample No.09012308720022003-S. Representative samples were prepared from this sample after following the procedure by the Seed Inspector and one sample was handed over to accused No.6. On 2-9-2002 the second portion was sent by the complainant to Seed Testing Laboratory Pune for the purpose of analysis and the third sample was retained with the senior officers of the Department.

5. The report of the Seed Testing Laboratory Pune was received on 1-10-2002 and the report was to the effect that the seeds failed in germination test. As against required percentage of 70% the germination percentage of 41% was found.

6. After receipt of the aforesaid report, the complainant gave notices to the accused Nos.1,4 and 6, the manufacturer, the dealer and the retailer. They replied the notices. The complaint came to be filed on 31-1-2003 and the order of issue process was also made on 31-1- 2003. In stead of filing revision, present proceeding came to be filed on 5-12-2003. It appears that initially the matter was only admitted on 18-6-2004 but on 19-1-2006 the matter was again admitted and on that date, interim relief like stay to the proceeding was granted. The matter remained pending since then. It appears that first time in January 2017 then learned Single Judge heard the matter but the matter was adjourned as the counsel for the petitioners sought time for showing some citations. This Court insisted for advancing arguments and after giving two adjournments the matter came to be heard on 4-4- 2017. Thus, it can be said that from the year 2003 the trial Court could not make progress in the matter due to the pendency of present matter in this Court.

7. The learned counsel for the petitioners argued that (i) there is no material to the effect that accused Nos.2 and 3 (present petitioner Nos.2 and 3) are involved in the management of accused No.1, company and they are responsible for conduct of business of accused No.1 company; and (ii) due to late filing of complaint in the Court, the petitioners have lost their right to get sample tested through Central Seeds Laboratory under section 16(2) of the Seeds Act, 1966.

8. So far as the first ground is concerned, it can be said that in the reply given by accused No.1, company, to the notice issued by the Seed Inspector, nowhere it is the contention of accused Nos.1 to 3 that a particular employee or person is responsible for the conduct of the business of the company. The reply dated

31-10-2002 is signed by accused No.2 Shri. Chavan by giving his designation as Deputy Manager (Legal). The reply shows that it is not disputed that accused Nos.4 and 5 are the dealers of the company and from the dealer, the accused No.6 had collected the goods from which the sample was purchased by the Seed Inspector. The contents also show that accused No.2 has the knowledge about the conduct of the business and he has given particulars of the procedure followed for manufacture and supply of seed by accused No.1. Request was made in the reply to the Seeds Inspector to get the seeds tested through "Other Seed Testing Laboratory". The learned counsel for the petitioners submitted that the information was supplied to the Department of the Seed Inspector in the past in Statement I and Statement II and in those statements names of accused Nos.2 and 3 were not informed. The learned counsel for the petitioners further submitted that for Ahmednagar District different officers were appointed by the company and so action cannot be taken against accused Nos.2 and 3 who were working in Jalna office. In the present proceeding some record like photo copy of declaration, which is notarized, is produced to show that accused Anil Kolte, Senior Manager was to work in Jalna and one Ajay Bhamare was to work for Pune which covered Ahmednagar. This Court has carefully gone through the photo copy of the said affidavit. Though there is no record of receipt of such declaration by the Government Department, this affidavit also does not show that such restriction for liability was declared. On the contrary, the declaration shows that respondent Anil Kolte was the authorized person to sign principal certificates.

9. The learned counsel for the petitioners placed reliance on the observations made by the Apex Court in the case reported as AIR 2010 SC 2986 (State of NCT of Delhi v. Rajiv Khurana). He took this Court through paragraph 18 wherein some observations are made with regard to necessity to state the duties and responsibilities of the accused with regard to the conduct of business of the company. There cannot be dispute over the observations made by the Apex Court in this case. It is already observed that there is specific allegation against the petitioners, accused, who are managers that they are involved in the management of the company. In this regard, the provision of Section 21 of the Seeds Act, 1966 needs to be kept in mind. Relevant portions are Section 21(1) and 21(2) and they run as under : "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 in charge of, and 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 subsection (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 that offence and shall be liable to be proceeded against and punished accordingly. Explanation.-- For the purposes of this section,-- (a) "company" means anybody corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm."

10. The provision of section 21(1) of the Act shows that every person he may be Director or not but who is in charge of the business of and is responsible to the company for the conduct of the business of the company can be deemed to be guilty of the offence. It can be said that unfortunately in the present matter persons who could have been made accused and who were in charge of and responsible for the conduct of the business of the company viz. Mahyco Company as per section 21(1) of the Act are not made accused and they are spared. Section 21(2) shows that when managers are involved it is always open to the complainant to prove that offence is committed with consent and connivance of such managers and in that case such managers can be deemed to be guilty of the offence and shall be liable to be proceeded against. Relevant material against the two managers, accused Nos.2 and 3 is already quoted. In view of the factual aspects of the present matter and the aforesaid position of law, this Court holds that accused Nos.2 and 3 have no room to say that the process could not have been issued against them. In the present matter the point involved is little-bit different but it can be said that it is not the contention of the petitioners that there was compliance of the provisions of Rules 7 and 8 of the Seeds Rules, 1968. In view of these circumstances also the aforesaid contention made by the two managers cannot be considered.

11. On the second point viz. loss of opportunity to get the second sample tested through Central Seed Laboratory, the submissions made show that the accused persons did not exercise right given to them under section 16(2) of the Act. On this point the learned counsel for the accused submitted that the expiry date of the seed was 7- 11-2002 and as the complaint was filed on 31-1-2003, after the expiry period, there was no opportunity to the accused to exercise this right. It was submitted that summons was actually served on the accused on 17-5- 2003 and so such right was not exercised by the accused. The relevant portion of section 16(2) runs as under:- "16. Report of Seed Analyst.-- (1) (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 sub-section (2) of section 15 to the Central Seed laboratory for the 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 sub-section (1) of section 15 are intact and may then despatch 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."

12. The learned counsel for the petitioners, accused placed reliance on some observations made by the Apex Court and also different Benches of this Court in following cases :- (i) AIR 1967 SC 970 (Municipal Corporation of Delhi v. Ghisa Ram);

(ii) 2015 ALL MR (Cri) 2134 (Managing Director, Mahyco Seeds Ltd. vs. State of Maharashtra) (Nagpur Bench);

(iii) 2010 ALL MR (Cri) 2818 (Shivkumar @ Shiwalamal Narumal Chugwani v. State of Maharashtra) (Nagpur Bench);

(iv) Decision of Aurangabad Bench of this Court in Criminal Writ Petition No.1188 of 2014 (Shridhar Dattatraya Dahanagare v. The Govt. of Maharashtra) dated 3-3-2015;

(v) Decision of Aurangabad Bench of this Court in Criminal Writ Petition No.296 of 2015 (The Maharashtra Hybrid Seeds Co. Ltd. v. The Government of Maharashtra) dated 27-7-2015.

13. It can be said that in view of the observations made by the Apex Court in the case of Ghisa Ram cited supra, different Benches of this Court quashed the proceedings filed under the provisions of the Prevention of Food Adulteration Act, 1954 and also under the provisions of Seeds Act, 1966. This Court has carefully gone through the reported case of Ghisa Ram cited supra. That case was criminal appeal filed by the prosecution to challenge the acquittal. Food article "curd" was involved in the matter and when right was exercised by the accused under the relevant provisions of the Prevention of Food Adulteration Act, 1954 to get the sample tested through Central Food Laboratory, report was received that sample was decomposed. The decomposition was due to the delay caused in sending the sample. In view of the circumstances the Apex Court held that the right given under the similar provision of the Prevention of Food Adulteration Act was lost and so the accused was entitled to acquittal.

14. In the present matter the accused did not exercise such right. Neither in the Seeds Act nor in the Prevention of Food Adulteration Act there is any provision raising presumption in favour of the accused that if shelflife period is over, the sample is not fit for testing and on that point, the prosecution cannot be instituted or cognizance cannot be taken of the offence. It needs to be kept in mind that the purpose of various Acts like Seeds Act, 1966, Prevention of Food Adulteration Act, 1954 and the Insecticides Act, 1968 is different. The adulteration as defined in Prevention of Food Adulteration Act, 1954 shows that it can be of many kinds and in many cases where foreign substances are mixed, there will be no question of raising presumption that sample was unfit after shelf-life period. Even the food article can be preserved for longer period in the same

condition under controlled conditions. This aspect always needs to be kept in mind by the Court and the Court is expected to go with the presumption that the authority like Seed Inspector or Food Inspector has taken care to see that under the controlled condition the sample which can be sent to Central Laboratory is preserved. That can be done in view of provision of section 114 of the Evidence Act. If the Court does not start with this presumption then it will not be possible to file prosecution when the sample is collected just before few days of the date of the expiry and most of the accused will escape from criminal liability. Thus it is all matter of evidence and at initial stage the Court is not expected to use extraordinary jurisdiction and quash the proceeding in such cases. While exercising extraordinary jurisdiction the Court is also expected to keep in mind the conduct of the accused like to avoid to exercise the right given under the provisions like Section 16(2) of the Act. It appears that the accused themselves have misused the process of law by filing present proceeding when they had not exercised the right given under section 16(2) of the Act. As there is no report of the Central Laboratory in the matter like present one, the report of the State Laboratory can be safely used by the prosecution.

15. The instances of selling substandard seeds are increasing day by day and two years back due to absence of germination entire crop of Soyabeen in Marathwada region had failed. Present matter is of the year 2002 and it can be said that as the Courts were not that strict, such instances have now increased. It can be said that even the Government Department is not that strict and they are not taking action against the persons who are responsible to the company for conduct of the business. In the present matter the Managing Director could have been made accused. In view of these circumstances, this Court holds that it is not possible to quash the proceeding itself. It is unfortunate that due to present matter the case itself could not make progress since the year 2003. Not only the accused persons but even the system needs to be blamed for the pendency. In the result, the petition stand dismissed. Rule discharged. Interim relief is vacated.