
(2010) 12 DEL CK 0230

In the Delhi High Court

Case No : Criminal M.C. No"s. 3357 and 3358 of 2010

Nunhems India Pvt. Ltd.

APPELLANT

Vs

Seed Inspector

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 24(3), 24(4)
Prevention of Food Adulteration Act, 1954 — Section 13(1), 13(2), 13(2)
Prevention of Food Adulteration Rules, 1955 — Rule 32
Seeds Act, 1966 — Section 16, 16(2), 19, 7

Citation : (2011) 1 JCC 677

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sidharth Luthra, Ali Naqvi and Abhishek Singh, for the Appellant;
Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—These two petitions have been filed by the Petitioner seeking quashing of complaints under Seeds Act, 1996 ("the Act" for short).

2. The sole contention urged by the Petitioner for seeking quashing of complaint under Seeds Act is that by the time prosecution was filed against the Petitioner, the shelf-life of the seeds had expired and the Petitioner did not get an opportunity in terms of Section 16 of the Seeds Act to exercise an option of sending sample to Central Seeds Laboratory. The contention of the Petitioner is that this grossly prejudiced the right of the Petitioner and, therefore, the complaint should be quashed.

3. The few relevant dates are: On 12th January 2007, Seeds Inspector collected sample of coriander manufactured by the Petitioner. The sample so collected was sent to Seeds Tested Laboratory, Barwalla of Govt. of Delhi on 15th January 2007. The report of analyst came from Seeds Testing Laboratory, Barwalla on 9th

February 2007 indicating that against minimum requirement of 65% germination, the sample showed germination of 49%. A complaint was filed u/s 7 and 19 of the Seeds Act before the learned MM on 25th May 2007 and the learned MM took cognizance of the offence on 26th May, 2007 and issued summons to Mr. Sanjay Tyagi and the company and in the matter next hearing was given as 12th December 2007. It is submitted by learned Counsel for the Petitioner that seeds in question were tested by the company on 4th January 2007 and packed on 11th January 2007 showing shelf-life up to 3rd October 2007. Thus, by the next date of hearing i.e. 12th October 2007, the shelf-life had already expired. The accused No. 1 entered appearance before the court on 25th March, 2008 and obtained bail on that day. The matter was renotified thereafter. Similar contention is raised in respect of other complaint in petition No. 3358 of 2010, however, there is a little change in the dates.

4. It is not the case of the Petitioner that the Petitioner was not sent a copy of the report of public analyst or the Petitioner applied to the court for sending sample to Central Seeds Laboratory for analysis after prosecution filed complaint before the court concerned. The contention of the Petitioner is that at the time of taking cognizance on the first date of hearing itself shelf-life of seeds had expired, the Petitioner was gravely prejudiced and as the right of the Petitioner as provided u/s 16 of the Seeds Act stood taken away. Thus, the complaint should be quashed.

5. This issue was squarely dealt by Andhra Pradesh High Court wherein a similar petition was made u/s 482 Code of Criminal Procedure for quashing of complaint and the averments made by the Petitioner were on the same lines that since the accused was issued show-cause notice by the court after expiry of shelf-life, the complaint should be quashed. The Andhra Pradesh High Court in *Hyderabad Beverages Pvt. Ltd. etc v. State of AP* 2006 CrL.J 3988 after considering various judgments on this issue and after analyzing the provisions of Seeds Act and the Rules made there under, came to following conclusion:

102. Since the provisions of the Prevention of Food Adulteration Act and the Seeds Act are not in pari materia with the provisions of the Insecticides Act, it is not a sound principle of construction to interpret Section 13(2) of the Prevention of Food Adulteration Act and Section 16(2) of the Seeds Act, on the basis of the decisions of the Supreme Court, in *National Organic Chemical Industries Ltd., Unique Farmaid and Gupta Chemicals Ltd.*, all of which arose u/s 24(3) & (4) of the Insecticides Act.

To sum up:

103. 1. Since the object and purpose of the PFA Act is to eliminate danger to human life and health from the sale of unwholesome articles of food, strict adherence to the PFA Act and the rules made thereunder is essential. In offences relating to food articles, strict liability is the rule.

2. The report of the public analyst, u/s 13(1) of the PFA Act and Section 16(1) of

the Seeds Act, forms the basis for institution of prosecution for adulteration offences. This report, prima facie, indicates that the accused have sold adulterated food/seed.

3. The option given for analysis to the Central Laboratory, is to enable them to ascertain the correctness or otherwise of the findings of the public analyst. This valuable right, u/s 13(2) of the PFA Act and Section 16(2) of Seeds Act, if denied, would cause prejudice to the accused.

4. Denial of the right of the accused, u/s 13(2) of the PFA Act and Section 16(2) of the Seeds Act, would arise only when the accused have applied to the Court to have the sample sent for analysis to the Central Laboratory. Failure to exercise this option or to make an application to the Court, requesting that the sample be sent for analysis to the Central Laboratory, would disentitle the accused from contending that they have been denied their right u/s 13(2) of the PFA Act and Section 16(2) of the Seeds Act. Babu Lal Hargovindas Vs. The State of Gujarat, , Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, , Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , Tulsiram Vs. State of Madhya Pradesh, , and Gangaiahnaidu Rama Krishna.

5. "Best Before date", under Rule 32 of the PFA Rules, merely requires the manufacturer to indicate the period during which the product would remain fully marketable and retain its specific qualities. Explanation VIII (i) thereunder provides that beyond the "Best Before date", the food may still be perfectly satisfactory.

6. Expiry of the "Best Before" date or the shelf life of the product would only enable a manufacturer to disclaim liability regarding the marketability and the specific qualities of the product. Expiry of the shelf life would not automatically render the sample unfit for analysis.

7. The "Best Before" date would vary from one article to another. Similarly the extent of delay in furnishing a copy of the report of the public analyst to the accused would vary from one case to another.

6. After going through the above conclusion culled out from several judgments, the Andhra Pradesh High Court further devolved upon the Supreme Court Judgments and gave following conclusion:

113. In these four criminal petitions the accused have not exercised their option, u/s 13(2) of the Prevention of Adulteration Act and Section 16(2) of the Seeds Act, and have not requested or made an application to the Court to send the sample for analysis to the Central Laboratory. The delay in furnishing a copy of the report of the public analyst cannot, therefore, be said to have caused prejudice to them. It is only if the Petitioners herein had made a request and if, on the sample being sent thereafter to the Central Laboratory, the Central Laboratory had certified that the sample had so decomposed as to render it unfit for analysis, can the Petitioners herein be said to have suffered prejudice. In any

event these are all matters for the learned Magistrate to examine on the basis of evidence, in the facts and circumstances of each case, and not for this Court to infer in proceedings u/s 482 Code of Criminal Procedure.

7. In the case in hand, the Petitioner had not indicated as to when the Petitioner received the notice from the court. The Petitioner has only indicated the next date of hearing given by the learned trial court in its order dated 26th May, 2007. On 26th May, 2007 i.e. the date of filing complaint, the seeds' shelf-life had not expired and around five months period of shelf- life still was there. The summons would have been issued in this case soon after the order of the court in the name of the Petitioner company and its director. Although in the complaint, the name of one of the directors was not mentioned, but issuing of summons at the address of the company is a service good enough to all the directors of the company. If company is served, all the directors of the company are considered to be served. Similarly, if one director is served, the company is deemed to be served. It is not the case of the Petitioner that the summons were not served upon the Petitioner company or any of its directors upto expiry of the shelf-life. It is also not the case of the Petitioner that the Petitioner did apply to the court for sending the seeds to Central Seeds Laboratory.

8. I am in agreement with the decision of Andhra Pradesh High Court that unless the accused /Petitioner makes an application to the court expressing his desire to send the sample for second opinion to Central Seeds Laboratory, the accused cannot claim that prejudice has been caused. I also consider that in this case, there was no delay on the part of the prosecution. The prosecution was launched well within time and the summons also would have been received by the company well within time. The company was not supposed to wait till next date of hearing for making an application. The company ought to have made application for sending the samples to Central Seeds Laboratory immediately on receipts of summons.

9. I, therefore consider that the complaint cannot be quashed on the basis of alleged prejudice caused to the Petitioner in depriving the Petitioner u/s 16 of the Act. In fact, the Petitioner did not opt to exercise this right at any stage. Both the petitions are hereby dismissed with no orders to costs.