

(2016) 09 BOM CK 0023

In the Bombay High Court

Case No : Criminal Application No. 2116 of 2005

R. Shridhar, Regional Manager Prabhat Agri Bio-Tech Ltd.

APPELLANT

Vs

State Department of Agriculture

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482

Seeds Act, 1966 — Section 19(a), 7(b)

Seeds Rules, 1968 — Rule 10, 7, 8

Citation : (2016) ALLMRCri 4409 : (2017) 1 BomCR(Cri) 518

Hon'ble Judges : V.K. Jadhav, J.

Bench : Single Bench

Advocate : Mr. Swapnil S Patil, Advocate, for the Applicant; Mr P.G. Borade, APP, for the Respondent No. 1; Mr. H.F. Pawar, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

V.K. Jadhav, J.(Oral)—By this criminal application, the applicant original accused is challenging the criminal proceedings of S.C.C. No. 313 of 2003 pending before learned Chief Judicial Magistrate, Beed lodged by respondent No. 1 against the applicant for the offences punishable under Sections 19(a) and 7 (b) of the Seeds Act 1966 and Rules 7, 8 and 10 of Seeds Rules 1968.

2. Brief facts giving rise to the present application are as follows:-

a) Respondent No. 1, Seed Inspector, has filed a private complaint bearing S.C.C. No. 313 of 2003 on 24.2.2003 before the Chief Judicial Magistrate, Beed against the applicant and respondent No. 2. On 19.7.2002, respondent No. 1 had carried out inspection in the premises of respondent No. 2 for taking samples of seed products manufactured and marketed by the applicant at Hyderabad cotton having lot No. 2214116 of variety PCH 115. During the course of inspection, respondent No. 1 had taken sample of two bags of 450 gms of the Seeds produced and packed the same in two bags of cotton and sealed it. On 19.7.2002 itself, respondent No. 1 had sent one packet of sample of seeds to the Seed

Analyst at Parbhani for testing. On 22.8.2002, the Seed Analyst issued report wherein it is stated that the sample is showing 3% germination of sample, which is not as per the standard prescribed. Thus, respondent No. 1 had issued notice to the present applicant and respondent No. 2 on 11.9.2002 thereby calling their explanations. Respondent No. 1 after observing their explanation not satisfactory, filed complaint, as aforesaid, before the learned Chief Judicial Magistrate, Beed.

3. Learned counsel for the applicant submits that in view of provisions of Section 16(2) of the Seeds Act 1966, the applicant's right to send the sample to the Central Seed Testing Laboratory has been lost, as the shelf life of the said seed expired on 24.12.2002. Learned counsel submits that in the explanation offered to the show cause notice issued by respondent No. 1, present applicant has controverted the analyst report by pointing out that when the said seed was put in the market, the germination of the said seed was tested and it was 85% in terms of Section 7 of Seeds Act 1966 r.w. Section 12 of the Seeds (Control) Order 1983. It has specifically stated in the explanation that thus question of offering of substandard seeds in terms of germination does not arise. Learned counsel submits that in spite of the said explanation, after shelf life of the seed was expired, the complaint was filed before the Magistrate belatedly with no explanation whatsoever stated in the complaint for the delay caused in filing the complaint. Learned counsel submits that the complaint came to be filed before the learned Chief Judicial Magistrate on 24.2.2003 and summons came to be issued on 24.2.2005 to the present applicant and respondent No. 1. In view of sub-section 2 of Section 16 of Seeds Act, only after institution of a prosecution under the Act, the applicant accused on payment of prescribed fee, make an application to the Court for sending any of the samples as mentioned above. In response to the said summons, the applicant and respondent No. 2 put their appearances before the court in the year 2005. Thus, the applicant and respondent No. 2 have lost their right to send the sample to the Central Seed Testing Laboratory as the shelf life of the seed was expired in the year 2002 itself. The sample become unfit for analysis by the Central Seed Laboratory and it had caused prejudice to the defence of the applicant. Learned counsel submits that thus continuation of said proceeding before the court is nothing but abuse of court process and thus, the said complaint is liable to be quashed and set aside.

Learned counsel submits that even the complaint is also barred by limitation in view of the provisions of Section 468 of Cr.P.C. Learned counsel for the applicant, in order to substantiate his contentions, places reliance on the following judgments:-

I) State of Haryana v. Unique Farmaid Private Limited, reported in 1999 (8) SCC 190,

II) Smt. Mallela Laxmi and others v. State of Andhra Pradesh, reported in 2003 Cri. L.J. 638

III) Omprakash Gulabchandji Partani v. Ashok Ruprao Ulhe and another, reported in 1993 (3) Bom.C.R. 611

4. Learned A.P.P. submits that the expiry of shelf life of the seed is nowhere mentioned in the relevant provisions of the Seeds Act 1966. Furthermore, delay has been caused in filing the complaint before the Magistrate for the reason that re-testing has been done in respect of said lot of seed and only after receipt of report of retesting, complaint came to be filed before learned Chief Judicial Magistrate.

5. I have also heard learned counsel appearing for respondent No. 2, who has adopted the submissions advanced by learned counsel for the applicant.

Learned counsel for respondent No. 2, places reliance on the following judgments:-

I) Shiv Kumar v. State of Maharashtra, reported in 2010 (2) FAC 239,

II) State of Maharashtra v. Shiv Kumar, SLP (Cri.) 6332 of 2010 decided on 13.9.2010,

III) Girishbhai Dayabhai Shah v. C.C. Jani and Another, reported in 2009 (15) SCC 64.

IV) M/s. Medicamen Biotech Ltd. & Anr v. Rubina Bose, Drug Inspector, reported in JT 2008 (4) SC 45.

V. State of Haryana v. Unique Farmaid (P) Ltd. and Ors. Reported in (1998) 8 SCC 190.

VI State of Punjab v. National Organic Chemical Industries Ltd., reported in (1996) 11 SCC 613.

VII Rameshwar Dayal v. State of U.P., reported in 1996 (2) FAC 196.

VIII Municipal Corporation of Delhi v. Ghisa Ram, reported in 1948- 1997 (supp) FAC 93.

IX. Pepsico India Holding Pvt. Ltd. v. Food Inspector, reported in 2011 1 RCR (Cri.) 93.

X. Dhariwal Tobacco Products v. State of Maharashtra, reported in 2009 1 AD (Cri.) (SC) 627.

XI. Smt. Mallela Laxmi and others v. State of Andhra Pradesh, reported in 2003 Cri.L.J. 638.

XII. S.A. Jayanarayana v. State of Karnakata, reported in 2003 Cri.L.J. 3245.

6. Section 16(2) of the Seeds Act 1966 reads 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 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."

7. In the case of *State of Haryana v. Unique Farmaid (P) Ltd. and Ors.* (supra) the manufacturing date of the insecticide was March 1994 and its expiry date was February 1995. By the time the accused was summoned to appear in the court on 6.4.1995, they had almost their right of getting the samples reanalyzed from the Central Insecticides laboratory under sub-section (4) of Section 24 of the Insecticides Act. The Supreme court in para 12 of the judgment has made following observations:-

"12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under subsection (4) of Section 24 of the Act. Under subsection (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence."

8. In the case of *Smt. Mallela Laxmi and others v. State of Andhra Pradesh* (supra), the Andhra Pradesh High Court by relying upon the judgment of the Supreme court in the case of *State of Haryana v. Unique Farmaid* (supra) while considering the provisions of section 16(2) of the Seeds Act 1966 in para 14 of the judgment, has made following observations:-

"14. It is clear from Section 16 of the Act that the petitioners had the right to send the sample for analysis to the Central Seed Laboratory. It is a statutory right conferred on the petitioners, which cannot be deprived. Deprivation of the said right would certainly cause prejudice since the valuable right to get the sample analysed is lost. I am of the considered view that the shelf life of the seed has

expired and there is no purpose in continuing the prosecution as it amounts to abuse of process of the Court as adumbrated by the Supreme Court in the aforesaid decisions. The department itself has to be blamed for the sorry state of affairs for launching the prosecution belatedly and sleeping over the matter. When once prejudice is caused to the petitioners, they are certainly entitled to invoke the inherent powers of this Court. Hence, I disagree with the contentions advanced by the learned Public Prosecutor. Since the shelf life of the seed has expired, the question of sending the same to Central Seed Laboratory for analysis does not arise and the petitioners are certainly entitled to seek quashing of the proceedings."

9. S.A. Jayanarayana v. State of Karnataka, (supra) the Karnataka High Court after considering the provisions of Section 16(2) of Seeds Act 1966 has also taken similar view.

10. This Court, in the case of Shivakumar v. State of Maharashtra, (supra) relied upon by learned counsel for respondent No. 2, has considered identical provisions of Prevention of Food Adulteration Act 1954, Drugs and Cosmetics Act, 1940, Seeds Act 1966 and Insecticides Act 1968. While referring various judgments of Hon"ble Supreme Court, including the judgment in the case of State of Haryana v. Unique Farmaid (supra), this Court has taken similar view and further observed that in case of such violation the prosecution cannot succeed and it is of no use in continuing with the prosecution. The order passed by this Court stands confirmed by the Supreme court in Special Leave to Appeal (Criminal) No. 6332 of 2010.

11. In the case of Municipal Corporation of Delhi v. Ghisa Ram (supra) in Criminal Appeal No. 194 of 1966 decided on 23.11.1966, in para 9 of the judgment, the Supreme Court has made the following observations:-

"9. In the present case, the sample was taken on the 20th September, 1961. Ordinarily, it should have been possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample. It, however, appears that delay took place even in obtaining the report of the Public Analyst, because the Public Analyst actually analysed the sample on 3rd October, 1961 and sent his report on 23rd October, 1961. It may be presumed that some delay in the analysis by the Public analyst and in his sending his report to the prosecution is bound to occur. Such delay could always be envisaged by the prosecution and consequently, the elementary precaution of adding a preservative to the sample which was given to the respondent should necessarily have been taken by the Food Inspector. If such a precaution had been taken the sample with the respondent would have been available for analysis by the Director of the Central Food Laboratory for a period of four months which having been sent on 23rd October, 1961 to the prosecution, the prosecution could have been launched well in time to enable the respondent to exercise his right under Section 13(2) of the Act without being handicapped by the deterioration of his sample. The prosecution, on the other hand, committed

inordinate delay in launching the prosecution when they filed the complaint on 23rd May, 1962 and no explanation is forthcoming when the complaint in Court was filed about seven months after the report of the Public Analyst has been issued by him. This is, therefore, clearly a case when the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution. In such a case, we think that the respondent entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaranteed by the Act, as a result of the conduct of the prosecution."

12. It is thus clear that right of the accused to send the sample of seed for analysis to the Central Seed Laboratory arise only on institution of prosecution. In the instant case, undisputably, the shelf life of seed is expired on 24.12.2002. Thus, the sample has become unfit for analysis by the Central Seed Laboratory. It is pertinent to note that in the instant case, the complaint came to be filed before the Court after shelf life of seed came to be expired. It is further pertinent to note that even though the complaint came to be filed before the Magistrate in the year 2003, the summons were issued to the applicant accused in the year 2005. I do not find any explanation or reason as to issuing the summons to the applicant accused and respondent No. 2 belatedly by the Court. However, it is for the complainant to pursue his case and only after recording his verification statement before the Court or even the same also stands dispensed with in case the complaint is filed by the public officer, the summons to the accused are issued as a matter of routine course.

13. In the catena of judgments, relied upon by the counsel for the applicant, it has laid down that the samples have to be tested by the Central Laboratory before expiry of shelf life of the sample and if shelf life of the sample is expired, it causes prejudice. The complaint is therefore, stand vitiated for the sole reason that the applicant accused has been deprived of his valuable rights, as provided under the provisions of Section 16(2) of the Seeds Act.

14. In the case of Omprakash Gulabchandji Partani (supra) relied upon by learned counsel for the applicant, this Court observed that the provisions of Section 468 (2) (a) is applicable which provides limitation of six months, if offence is punishable with fine only. Section 469 of Cr.P.C. deals with commencement of period of limitation. It is further observed that limitation commences after receipt of report of the analyst and not from the date on which sample is collected by the Seed Inspector. In the instant case, even from the date on which report of analyst is received, the complaint is not filed within limitation.

15. In view of the discussion, criminal application is allowed in terms of prayer clause "C" to the extent of present applicant only.

16. Criminal application is accordingly disposed of. Rule made absolute in the above terms.