
(2008) 04 RAJ CK 0139
In the Rajasthan High Court

Ram Seeds and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 245, 397, 482
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2008) 3 RLW 2645

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.R. Panwar, J.—All these criminal miscellaneous petitions u/s 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) involve common questions of law and facts and, therefore, with the consent of the learned Counsel for the parties, they are being heard and decided at the admission stage, taking the facts of S.B. Criminal Miscellaneous Petition No. 207/2005 (M/s. Sri Ram Seeds and Ors. v. State of Rajasthan) as the leading case.

2. The order dated 20.10.2004 passed by the Additional Sessions Judge No. 1, Sri Ganganagar (for short, "the Revisional Court" hereinafter) has been challenged in this criminal miscellaneous petition, whereby the Revisional Court dismissed the revision petition filed by the petitioners against the order dated 29.1.2004 passed by the Chief Judicial Magistrate, Sri Ganganagar (for short, "the trial Court" hereinafter) dismissing the application filed by the petitioners u/s 245(2) of the Code in a criminal case instituted against them for the offence u/s 3/7 of the Essential Commodities Act, 1955 (for short, "the E.C. Act, 1955" hereinafter).

3. The facts and circumstances giving rise to the case are that a criminal case was instituted against the petitioners for the offence u/s 3/7 of the E.C. Act, 1955. During pendency of the criminal case, the accused-petitioners filed an application u/s 245(2) of the Code on 17.7.2003 requesting the trial Court to

discharge them from the offence on the ground that if at all there is any violation then it is the violation of the Seeds (Control) Order, 1983 (for short, "the Order, 1983" hereinafter) and, therefore, if any offence has been committed then the offence has been committed under the Seeds Act, 1966 (for short, "the Act, 1966" hereinafter) and the complaint could have been filed for violation of the provisions of the Act, 1966. Had the complaint been filed under the Act, 1966, the accused-petitioners would have a right to get the seeds re-analysed from the Central Laboratory as there exists, such provision for getting the sample re-tested by the Central Laboratory, whereas there is no such analogous provision under the E.C. Act, 1955.

4. Section 245 of the Code deals with the provisions when accused shall be discharge. Sub-section (1) of Section 245 of the Code provides that if, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Sub-section (2) of Section 245 of the Code provides that nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for the reasons to be recorded by such Magistrate, he considers the charge to be groundless.

5. It is not disputed that the violation of the Order, 1983 has been made punishable u/s 3/7 of the E.C. Act, 1955. It is for the prosecution to institute the prosecution if there is prima facie evidence of violation of the Order, 1983. It is not within the domain of the accused to select the forum as to whether the accused would face criminal trial under the provisions of the E.C. Act, 1955 or under the Act, 1956.

6. In the instant case, the complaint has been filed against the petitioners under Clause 13(1)(c) of the Order, 1983 read with Section 3/7 of the E.C. Act, 1955 and, therefore, the violation of Clause 13(1) (c) of the Order, 1983 is punishable u/s 3/7 of the E.C. Act, 1955. If the E.C. Act, 1955 does not provide a provision for re-testing of the sample of re-branded seeds by the Central Laboratory then the petitioners cannot claim such a right unless it is provided under the Statute, for which the complaint has been instituted.

7. Learned Counsel for the petitioners submits that had the prosecution been launched under the Act, 1966 then there are certain provisions which prescribe the procedure for taking the sample and violation thereof would be fatal to the prosecution. Be that as it may, so far as the procedure prescribed under the provisions of the Order, 1983 are concerned, there is no such provision of re-analysing the sample and, therefore, the petitioners cannot claim discharge only on such ground.

8. The trial Court, by an elaborate and well-reasoned order, dismissed the application filed by the petitioners holding therein that the constitutional validity of the Order, 1983 has been upheld by the Hon"ble Supreme Court in Raghu

Seeds and Farms and others Vs. Union of India and others, and, there the violation of Clause 13(1)(c) of the Order, 1983 has rightly been made punishable u/s 3/7 of the E.C. Act, 1955. On a revision, the Revisional Court did not find any error in the order of the trial Court and after examination of the record of the trial Court, the Revisional Court came to the conclusion that there exists no ground to discharge the petitioners after taking the evidence or at any stage prior to that. The Revisional Court noticed that Chapter XIII of the Order, 1983 clearly provides the inspection, taking of sample and its analysis by the Seeds Laboratory and, therefore, it cannot be said that the Order, 1983 does not provide the procedure. It may or may not be analogous to the procedure prescribed under the Act of 1955 or the Rules made thereunder, but at any rate, it cannot be said that no procedure has been provided under the Order 1983 and on these premises, the revision petition came to be dismissed by the Revisional Court.

9. The petitioners have already availed one revision as envisaged u/s 397 of the Code and in the garb of the petition u/s 482 of the Code, the petitioners want to avail second revision, which is otherwise barred by Sub-section (3) of Section 397 of the Code.

10. Though this Court, in appropriate cases, has inherent powers to be exercised where it appears that the orders which are under challenge, have resulted in serious miscarriage of justice or abuse of the process of the Court. The cases in hand are not of that nature. Whatever the defence the petitioners may have, it is always open for them to take the same before the trial Court at the appropriate stage and certain questions which are to be raised, are purely the questions of fact and they have to be decided on adducing the evidence by the parties. In the circumstances, therefore, I do not find any good ground to interfere with the impugned orders in exercise of the inherent jurisdiction u/s 482 of the Code.

11. In this view of the matter, I do not find any merit in all these criminal miscellaneous petitions and, therefore, they are dismissed accordingly. The stay petitions also stand dismissed.