

(2003) 05 KAR CK 0025

In the Karnataka High Court

Case No : Criminal Petition No"s. 2194, 2387, 2834, 3855, 3856, 4151 and 4249 of 2001 and 797, 2054, 2206, 2532, 2801, 2802, 2865, 2866, 2943, 3192, 3690, 4159, 4224 and 4494 of 2002

S.A. Jayanarayana

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Seeds Act, 1966 — Section 19 (a), 30, 30 (1), 6, 9

Citation : (2003) CriLJ 3245 : (2003) 4 KarLJ 231

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : S.P. Kulkarni, Cri. P. Nos. 2194 of 2001 and 3690, 4159 and 4494 of 2002, B.V. Shankar Narayana Rao, Cri. P. Nos. 2387, 3855, 3856, 4151 and 4249 of 2001 and 2532, 2801, 2802, 2865, 2866 and 2943 of 2002, R. Gopal, in Cri. P. No. 2834 of 2001, C.H. Jadhav, in Cri. P. No. 797 of 2002, H.C. Shivaramu and Sri Udayakumarsingh, in Cri. P. No. 2054 of 2002 and Udayakumarsingh, in Cri. P.Nos. 2206, 3192 and 4224 of 2002, for the Appellant; B.A. Belliappa, High Court Government Pleader, for the Respondent

Judgement

S.R. Bannurmath, J.—All these petitions filed by different petitioners pertain to the prosecution of the petitioners for having committed the offence punishable u/s 19(a) of the Seeds Act, 1966 (hereinafter referred to as "the Act") by the respective Assistant Director of Agriculture and Seeds Inspector. As common questions of law arise for consideration in these petitions, all the matters are taken up together for consideration and disposal by this common order.

2. The brief facts which are common in all these cases are that the petitioners, who are accused in the respective criminal cases or the special cases pending before the respective Judicial Magistrate First Class or the Sessions Judge, are the dealers, distributors of producers of various seeds which are governed by the Act. All these petitioners have been prosecuted for the contravention of Section 6

of the Act read with the penal provisions of Section 19 of the Act on the ground that, when the premises of the dealers or the sellers of the seeds were checked by the concerned Seeds Inspector, he suspected the seeds to be sub-standard ones, that is to say, the seeds did not conform to the minimum limit of germination and purity as specified u/s 6 of the Act. As such, following the procedure prescribed, the respondent after dividing the sample seeds in three lots sent one sample lot to the Seeds Analyst, another lot was retained by him and the third lot was given to the petitioner. In all these cases, after the receipt of the report of the seeds Analyst that the germination percentage of these seeds is below the norms fixed and as such the purity is affected it was held that the seeds are sub-standard ones. Thereafter, the respondent has issued notices to the petitioners which have been replied to in most of the cases and being not satisfied with the reply the respondent has proceeded to file the criminal complaints u/s 200 of the Cr. P.C. against the petitioners alleging the commission of the offence u/s 6 of the Act.

3. The concerned Courts have taken cognizance of the offence, registered the cases and issued process against the accused. The accused have appeared before the learned Magistrates or the Sessions Judges and have been released on bail and the trial is pending.

4. At this stage, all these petitioners have approached this Court u/s 482 of the Cr. P.C. praying for quashing of the proceedings.

5. The common arguments of the petitioners, as put forth by Sri Devaraj, learned Senior Counsel in these cases, are: u/s 16(2) of the Act, a right has been provided to the accused to get the samples reanalyzed by the Central Seed Laboratory. u/s 16(3) of the Act, the report of the Central Seed Laboratory supersedes the report of the Seeds Analysts. It is contended that in all these cases, though the samples were taken and sent to the Analysts and reports were received at the earliest, the filing of the complaints is belated, in the sense, by the time the complaints were filed before the learned Magistrate or the Sessions Judge, the shelf-life of the seeds had expired and especially even after the issuance of the summons, as per Section 16(2) of the Act the accused could not exercise the statutory right provided under the Act as the same would have been rendered worthless. As such, since the petitioners have been deprived of the valuable statutory right provided under the Act, the prosecution is illegal and liable to be set aside.

6. Nextly, it is also contended that in all these cases, the seeds in respect of which the present prosecutions have been lodged have already been certified by certification agency as provided u/s 9 of the Act. As per the said certificate issued by the competent and statutory agency, the seeds in question have been certified as pure (standard) and in conformity with the requirement of the minimum limit of germination. It is submitted that the said certificate is valid for a period of six months and extendable to another six months subject to the further satisfaction of the certification agency. However, in all these cases, the

seeds have been seized and the prosecution has been launched much later than the expiry of the shelf-life of the seeds which is illegal and unsustainable. It is also contended that even the alleged Seed Analyst's reports do not reveal the date of test, validity of the shelf-life or as to on what basis the said conclusion of below standard has been arrived at. It is submitted that by the bare looking of these certificates which are in printed forms it is apparent that only certain basic informations are mentioned therein and not the required reasons as to why these seeds were found to be sub-standard or not in conformity with the minimum standard prescribed. It is submitted that, since the statute itself provides a right to the petitioners to get the seeds once again tested by the Central Seed Laboratory whose report is actually final indicates that for the satisfaction of the Court the minimum analysis details are to be mentioned in these reports. Hence, in the absence of such reports, the present prosecutions are illegal and liable to be set aside.

7. It is also contended that, since the learned Magistrates or the learned Sessions Judges have not taken into account these aspects, their act of taking cognizance appears to be mechanical in nature without application of mind. All these among other grounds it is contended that these are fit cases to quash the proceedings.

8. On the other hand, learned High Court Government Pleader appearing for the respondent-State argued in support of the prosecution. At the outset, he contended that, as these petitions are filed u/s 482 of the Cr. P.C. for quashing the proceedings, in the light of the pronouncement of the Hon'ble Supreme Court in various cases including the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, this Court should not interfere and quash the proceedings thereby depriving the State to prove its case by substantiating the same during trial.

9. Insofar as the mandatory requirement and its compliance u/s 16 of the Act is concerned this Court in the case of V. Chandru and Others Vs. State of Karnataka, following an unreported decision in the case of Shailaja Vs. State of Karnataka, as well as the decision of the Hon'ble Supreme Court in the case of State of Haryana Vs. Unique Farmaid P. Ltd. Ors., has observed thus:

"7. Insofar as the question of limitation is concerned particularly for the offence arising under Seeds Act, in the case of Smt. Shailaja, supra, this Court has elaborately considered this aspect as to what is the starting point of limitation as per Section 19 of the Act. Since the punishment for the first offenders for contravention of the provisions of the Act concerned is only fine and even in respect of second and later offence by the same accused, the same being maximum of six months and fine of maximum of Rs. 1,000/- the limitation to file complaint as per Section 468 of the Cr. P.C. is six months. There is absolutely no material at this stage to show prima facie that the petitioners are habitual offenders under the Act. As such, it is to be treated as the petitioners are the first offenders and in that case the maximum punishments awardable is only a

fine. In view of this maximum punishment, as per Section 468, Sub-section (2) (a) of the Cr. P.C., the period of limitation would be six months. In the aforesaid pronouncements of this Court, it is held that the date of report or receipt of the report that would give the cause of action and that is the starting point for the limitation. Admittedly, in the present case, the report as per the complainant itself was received on 19-9-1998 and since the complaint is not filed within six months thereof and in fact has been filed beyond two years, the prosecution is beyond the period of limitation and on this count itself, the proceedings initiated against the petitioners are liable to be quashed.

8. Next, it is to be seen that the report of the local Seed Testing Laboratory is not final and conclusive so as to hold the petitioners guilty of contravention of the provisions of the Act. u/s 16(2) of the Act, after filing of a complaint and issue of process, an opportunity is available to the accused to challenge the report by way of making an application to the Court for sending the sample to the Central Seed Laboratory for retesting or rechecking the veracity of the report of local laboratory and as per Sub-section (3) of Section 16 of the Act, this report of the Central Seed Testing Laboratory supersedes the report of the local Seed Testing Laboratory. As rightly contended by the learned Counsel for the petitioners, the Indian Seeds Minimum Certification Manual itself prescribes the validity period of such certificates is nine months and as is not much in dispute, the shelf-life of seeds is taken as nine months. Any prosecution has to be filed within that period of nine months. If it is not done, then, opportunity of challenging and rebutting the local Seed Testing Laboratory by submitting the seeds beyond the said nine months to the Central Seed Testing Laboratory would be lost. As such, the basic right of the accused to defend himself by proving the correctness or otherwise of the local Seed Testing Laboratory report is taken away or made nugatory by launching the prosecution beyond this period of nine months. Since the right to defend is one of the fundamental rights and if such rights are taken away by delay or laches on the part of the prosecuting agency, the prosecution becomes illegal. Hence, in my view as the complaint has been filed on 6-6-2001, that is almost after a period of two years from the date of report, thereby negating the right of the accused to get the seeds tested as the shelf-life itself has already expired, the prosecution has to be quashed on this count also. In this regard, the observation of the Apex Court in the case of Unique Farmaid (Private) Limited, *supra*, is worth noting:

If the expiry date of the sample was not relevant, there was no reason why in the form prescribed for submission of the report by the Insecticide Analyst, the dates of manufacture of the article and the expiry date are mentioned.

Section 30 provides for defences which may or may not be allowed in prosecution under the Act. Section 30(1) only prescribes in effect that ignorance would be no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. The procedure for testing the sample is prescribed and if it is contravened to the

prejudice of the accused, he certainly has the right to seek dismissal of the complaint. Then in order to safeguard the right of the accused to have the sample tested from the Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, the expiry date of the insecticide was already over and sending of the sample to the Central Insecticides Laboratory at that late stage would be of no consequence. Therefore, in view of Section 24(3) and 24(4) of the Insecticides Act, the report of the Insecticide Analyst was 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 the accused have been deprived of that right, thus, prejudicing them in their defence. In these circumstances, the High Court was right in concluding that it would be an abuse of the process of the Court if the prosecution was continued against the accused persons. The High Court rightly quashed the criminal complaint".

Though the case with which the Apex Court was dealing arises from the Insecticides Act, the principles laid down in the said pronouncement are clearly attracted to this case also as the provisions of both Acts are on par with each other regarding this aspect. Hence, the second contention of the learned Counsel for the petitioners that, because of delay and laches, prejudice is caused to his case and thereby the valuable right to defend has been taken away, has to be accepted.

9. In the result, it is to be held that the present prosecution is barred by limitation as well as in contravention of the mandatory provisions including the fundamental rights of the accused of giving opportunity to defend has been taken away".

The finding and observation in the latest pronouncement of the Hon"ble Supreme Court in the case of Gupta Chemicals Private Limited and Ors. v. State of Rajasthan and Anr. 2002(2) FAC 148 (SC) is worth noting. That case arose for the offence under the Insecticides Act. But, the mandatory provisions in that Act are *pari materia* to the provisions of the Act insofar as the statutory rights to the petitioners are concerned. The Hon"ble Supreme Court has held as follows:

"12. From our perusal of the aforequoted provisions it is manifest that ordinarily in the absence of any material to the contrary, the report of the Insecticides Analyst will be accepted as final and conclusive of the material contained therein. This is however subject to the right of the accused to have the sample examined by the Central Insecticides Laboratory provided he communicates his intentions for the purpose within 28 days of the receipt of the copy of the report. It needs no emphasis that this right vested under the statutes valuable for the defence. As noted earlier in the present case the appellants had intimated the Insecticides Inspector their intention to have the sample tested in the Central Insecticides Laboratory within the prescribed period of 28 days of receipt of the copy of the

State Analyst Report, yet no step was taken by the Inspector either to send the sample to the Central Insecticides Laboratory or to file the complaint in the Court with promptitude in which case the appellants would have moved the Magistrate for appropriate order for the purpose. The resultant position is that due to sheer inaction on the part of the Inspector, it has not been possible for the appellants to have the sample examined by the Central Insecticides Laboratory and in the meantime, the shelf-life of the sample of insecticides seized had expired and for that reason no further step could be taken for its examination. In the circumstances, we are of the view that continuing this criminal prosecution against the appellant will be a futile exercise and abuse of the process of Court".

In my view, though the aforesaid judgment is in a case arising under the Insecticides Act, as the rights provided therein the accused are in *pari materia* with the rights under the Act, i.e., Seeds Act, the law laid down is squarely applicable to the present case also and as such the prosecution is to be held as illegal. In an unreported judgment, the High Court of Judicature at Bombay in the case of Rao, S.O.M., Hindustan Lever Limited, Secunderabad v. Bhaskar Tannagi Badkal, District Quality Control Inspector, Agricultural Development Office, Akola, Cri. A. No. 878 of 1986, DD: 7-11-1989 (Bom.) has considered these provisions of the Act and almost in the similar circumstances under the Act has held that, as the statutory rights of the accused are affected, the prosecution is not maintainable.

10. In the present case also, having looked into the provisions of the Act especially Section 8 which provides for setting up a certification agency by the Central or the State Government and Section 9 of the Act which provides for grant of certificate by the certification agency as to the seeds conform to the prescribed standard as well as Rule 17 of the Rules make it quite clear that as the certificate issued by the certification agency protects the accused from any prosecution as long as the certificate is valid and operative. In all these present cases, the seizure of the seeds is within the expiry of the certification period and filing of the present complaints beyond the period prescribed under the certificate clearly, in my view, defeats the very object of obtaining the certificate as well as the statutory rights provided to the petitioners and hence such prosecution is to be held as illegal and liable to be quashed.

11. As this Court has already noted, our country is mainly an agriculture based country and, no doubt, quality seeds are the essence for growing good crop and as such the authorities under the Act are empowered to take action against the erring seed producers or the seed sellers, who produce and sell sub-standard seeds to the innocent and mostly illiterate farmers. But, at the same time it cannot be forgotten that certain valuable rights have also been conferred upon the seed producers and sellers so as to protect them from malicious prosecution or at any rate the prosecution without application of mind or due to sheer negligence in not following the mandatory requirements. As such, I deem it fit to direct the Registry to send a copy of this order to the Department of Agriculture

for taking effective steps to curb the negligence or inaction pointed out on the part of the Seeds Inspector and other concerned authorities and hope the Government will take appropriate steps in this regard.

12. In the result and for the reasons stated above, in my view, as the prosecution launched against the petitioners is being barred by limitation as well as is in contravention of the mandatory provisions including violation of the statutory rights of the accused are clearly unsustainable and hence the prosecution in each of these petitions is liable to quash and accordingly the same is quashed.