
(2013) 08 GUJ CK 0039

In the Gujarat High Court

Case No : Misc. Criminal Application (For Quashing and Set aside F.I.R/Order)
No. 2948 of 2012

Shree Mahalaxmi Seeds and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2014) 1 GLR 319 : (2014) 2 RCR(Criminal) 869

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.M. Thaker, J.—In present petition under Sec. 482 of the Criminal Procedure Code, 1973, the petitioners being manufacturer and dealer of the product in question, have prayed, inter alia, that: 4(A) The petitioners humbly pray before Your Lordships to kindly allow this petition.

(B) Your Lordships be pleased to allow this petition to quash and set aside proceedings against the original accused in Complaint No. 132 of 2009 before learned Principal Judge and Judicial Magistrate, First Class Court at Amirgarh.

So far as the relevant factual matrix is concerned, it is averred by the petitioners that respondent No. 1 is Seed Inspector appointed as such vide Notification dated 14-12-2004 under provisions of the Seeds Act, 1966 (hereinafter referred to as "the Act") and that in exercise of powers conferred upon him by the Act, he had visited the premises of petitioner No. 1 on 1-7-2008 and had drawn/collected sample of hybrid castor variety (Triveni pooja). It is also averred that after drawing the said sample, it was forwarded to Seed Testing Laboratory at Gandhinagar. The laboratory, after testing and analysing the sample, found that the percentage of purity of the seeds was upto only 79.84%, and accordingly, the seeds were found to be sub-standard. The laboratory forwarded its report to the respondent whereupon the respondent issued show-cause notice to the

petitioner viz. the manufacturer, the dealer and the officers of manufacturer and dealer. It is also claimed that on receipt of the show-cause notice, the petitioners forwarded their reply, however, the said reply did not satisfy the respondent, who after receiving sanction, filed criminal case which came to be registered as Criminal Case No. 132 of 2009 before the learned Principal Judge and Judicial Magistrate, First Class at Amirgarh. 2. The petitioners have claimed that the complaint/case came to be filed against the petitioners after expiry of shelf-life of the seeds/sample. It is also claimed that the respondent alleged that the petitioners committed offence under Sec. 6(a) read with Sec. 7A of the Act and Rule 10 of the Seed Rules, 1968 (hereinafter referred to as "the Rules"), which is punishable under Sec. 19 of the Act. It is further claimed that upon service of summons, the petitioners appeared before the learned Magistrate, and through their Advocate, submitted an application under Sec. 16(2) seeking sample for re-analysis of the seeds. The petitioners have also averred that re-analysis of the said sample could not be done, and that therefore, the petitioners moved an application under Sec. 258 of the Criminal Procedure Code, 1973 to drop the proceedings. It is claimed that the learned trial Court, without properly considering the contentions of the petitioners, rejected the said application. Therefore, the petitioners have preferred present petition. The petition is admitted under order dated 12-3-2013.

3. The respondent has filed affidavit and has mentioned the factual backdrop, in which the complaint came to be filed. It appears that in the narration of factual aspects by the petitioners and the respondent, there is no difference or dispute so far as the relevant dates are concerned. The respondent has mentioned that the sample was drawn on 1-7-2008 and for testing the genetic purity, the said sample was forwarded for analysis to the Seed Testing Laboratory at Gandhinagar on 4-7-2008. The germination test report was received on 29-7-2008 and further report was received on 31-12-2008. The respondent has also mentioned that the packing date mentioned on the package of the seeds was found to be May, 2008 and expiry was found to be January, 2009. The respondent has also claimed that the report, which was made on 31-12-2008, was received by him on 12-1-2009, which specified that the percentage of purity was 79.84% whereas, the minimum requirement is 85%, and therefore, the seeds were found to be sub-standard. Consequently, the show-cause notice came to be issued on 12-1-2009 which was replied by the petitioners on 21-1-2009 wherein, the petitioners mentioned that it was a first mistake, and therefore, they may be pardoned. It is also claimed by the respondent that the proposal for prosecution was sent to the Director of Agriculture on 12-2-2009 and sanction was granted on 6-3-2009, and thereafter, the complaint came to be filed on 17-4-2009. The respondent has also mentioned that the petitioners applied for re-analysis of the sample under Sec. 16(2) of the Act, however, since the laboratory at which the petitioners desired that the test for re-analysis may be conducted was shifted from New Delhi to Varanasi, the analysis could not be done. The respondent also submitted that as the shelf-life of the seeds expired

during this time, the petitioners filed application to drop the proceedings which is rightly rejected by the learned trial Court. The respondent has claimed that:

6. It is submitted that, analysis is to be done as per the guideline issued by the Indian Council of Agriculture Research in their manual and being a grow-out test, naturally take some more time is required to be taken for analysis of the seeds for genetic test.

7. It is submitted that, in fact, the reply to the show-cause notice was given by M/s. Triveni Agrotech on 6-2-2009. Therefore, also the some time was taken. In fact, intentionally the reply was not given in time and they are waiting for expiry period which is of 31-1-2009. Therefore, now they cannot claim the benefit of the delay lodging the prosecution.

8. It is submitted that, the petitioner themselves had admitted the offence and prayed pardon as the offence of first offence. It is submitted that, the learned Judge has rightly observed that, the case is on pre-change evidence and unless and until the evidence would not come on the record, the real picture would not be cleared. Therefore, the order passed by the learned Judge is not required to be interfered with and the petition is required to be dismissed.

4. At the time of hearing, learned Advocate for the petitioners reiterated the factual aspects, more particularly the relevant dates and submitted that due to the fault on the part of the respondent, the relevant period expired before the complaint came to be filed and more particularly before the applicant could apply for re-analysis and due to expiry of the relevant period before re-analysis could be done, precious right granted under the Act is lost, and therefore, the proceedings deserve to be quashed. So as to support his submissions, learned Advocate for the petitioners relied on the decisions in (i) Jhajhan Lal Gupta, Director and Another Vs. State of Haryana, ; (ii) Hindustan Ciba Geigy Ltd. and Others etc. Vs. State of Rajasthan and Others, ; (iii) State of Haryana Vs. Unique Farmaid P. Ltd. Ors., .

5. Learned A.P.P. referred to and relied upon the details and averments mentioned in the reply affidavit dated 9-4-2013 and submitted that the petitioners intentionally caused delay in replying the show-cause notice so that the relevant period would expire and that, therefore, the petitioners may not be allowed to take advantage of their own intentional acts.

6. I have heard learned Advocate for the petitioners and learned A.P.P. for the respondent at length and I have also examined material on record as well as the reply affidavit filed by the respondent.

7. The petitioners have prosecuted present petition on singular and solitary ground, viz. their right under Sec. 16 of the Act is infringed on account of the acts of the respondent which caused the delay in question.

8. In view of the contention raised by the petitioners to support the relief prayed for in present petition, it is necessary to keep in focus the relevant dates:

8.1. Besides, the above-mentioned relevant dates, the other two dates require to be kept in focus are : (i) the date of packaging and (ii) expiry date mentioned on the package of the seeds.

8.2. According to the respondent's affidavit, the dates mentioned on the package reflected packaging date as May, 2008 and expiry date as January, 2009.

8.3. Thus, what emerges from the above-mentioned relevant dates and other relevant facts is that the packaged seeds were "good until" or "valid upto" January, 2009.

8.4. Meaning thereby, if the re-test or re-analysis is undertaken after January, 2009, then such test - analysis would not yield correct result and could be negative. Differently put, the result would not be worthy to place reliance on.

9. In this view of the matter, the petitioners claim that their valuable right under Sec. 16(2) is lost.

10. So as to appreciate the submission, it is necessary to take into account the provisions under Secs. 6, 7 and 16 of the Act and Rules 10 and 21(3) of the Rules also need to be taken into account. The said provisions read thus:

Sec. 6. Power to specify minimum limits of germination and purity, etc.:--The Central Government may, after consultation with the Committee and by notification in the Official Gazette, specify--

(a) the minimum limits of germination and purity with respect to any seed of any notified kind or variety;

(b) the mark or label to indicate that such seed conforms to the minimum limits of germination and purity specified under clause (a) and the particulars which such mark or label may contain.

Sec. 7. Regulation of sale of seeds of notified kinds or varieties:--No person shall, himself or by any other person on his behalf, carry on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety, unless--

(a) such seed is identifiable as to its kind or variety;

(b) such seed conforms to the minimum limits of germination and purity specified under clause (a) of Sec. 6;

(c) the container of such seed bears in the prescribed manner, the mark or label containing the correct particulars thereof, specified under clause (b) of Sec. 6; and

(d) he complies with such other requirements as may be prescribed.

Sec. 16. Report of Seed Analyst.--(1) The Seed Analyst shall, as soon as may be after the receipt of the sample under sub-sec. (2) of Sec. 15, analyse the sample

at the State Seed Laboratory and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample has been taken.

(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-sec. (2) of Sec. 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 sub-sec. (1) of Sec. 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.

(3) The report sent by the Central Seed Laboratory under sub-sec. (2) shall supersede the report given by the Seed Analyst under sub-sec. (1).

(4) Where the report sent by the Central Seed Laboratory under sub-sec. (2) is produced in any proceedings under Sec. 19, it shall not be necessary in such proceedings to produce any sample or part thereof taken for analysis.

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Rule 10. Mark or label not to contain false or misleading statement:--The mark or label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the seed contained in the container.

Rule 21. Duties of a Seed Analyst:--(3) The Seed Analyst shall deliver in Form VII, a copy of the report of the result of analysis to the persons specified in sub-sec. (1) of Sec. 16, as soon as may be but not later than 30 days from the date of receipt of samples sent by the Seed Inspector under sub-sec. (2) of the Sec. 15.

11. On reading the relevant provisions under the Act, more particularly the above-quoted provisions, viz. Secs. 6, 7 and 16 of the Act and Rules 10 and 21(3) of the Seeds Rules, 1968 (hereinafter referred to as "the Rules"), it emerges that Sec. 6 confers power to specify minimum limits of germination and purity with respect to any seed of any notified kind or variety of seeds, which would mean that the notification, which can be issued under Sec. 6, would specify minimum germination and purity of the notified kind/variety of seeds and not all kinds or variety of seeds. The notification under Sec. 6 would follow the notification contemplated under Sec. 5 of the Act. Since, in present case any issue or dispute related to the notification under Sec. 5 or under Sec. 6 and/or kind or variety of seeds notified under such notification is not raised, it is not necessary or relevant to dwell on the said provisions. The limited issue raised in this matter is with reference to the right conferred under Sec. 16 of the Act.

12. According to the scheme of the Act, Sec. 7 imposes restrictions as regards sale of seeds of notified kinds or variety and it provides, inter alia, that no persons shall himself or by any other person on his behalf, carry on business of selling or keeping for sale or offering to sell or bartering or otherwise supplying any seed of any notified kind or variety unless it fulfils the four conditions/requirements mentioned under clauses (a) to (d) of Sec. 7 of the Act.

12.1. One of the requirements specified under the said four clauses of Sec. 7 is that such seeds must conform to the minimum limits of germination and purity specified by notification under Sec. 6 of the Act.

13. In the present case, it is alleged by the respondent authority that the seeds from the petitioners do not conform to the minimum limits of germination and purity. Thus, according to the respondent authority, the petitioners have committed, inter alia, breach of Sec. 7 read with Sec. 6 of the Act.

13.1. The Act provides, inter alia, that if the authority finds or believes that any person/dealer dealing in any seed of any notified kind or variety is indulging into sale or bartering or otherwise supplying or offering such seeds which do not conform to minimum limits of germination and purity, then the said authority (i.e. the Inspector) may take samples of the seeds in question.

13.2. The sample must be drawn in the manner prescribed under Sec. 14 read with Sec. 15 of the Act.

13.3. A conjoint reading of the said two Sections brings out that the sample so drawn must be forwarded by the Inspector to the Seed Analyst of State Laboratory by following the prescribed procedure.

13.4. According to the provisions under Sec. 16 of the Act, the Seed Analyst of the State Laboratory is obliged to analyse the sample as soon as may be after the receipt of the sample under sub-sec. (2) of Sec. 15.

13.5. Such analysis must be undertaken by the Seed Analyst of the State Laboratory and the report prepared upon such test/analysis must be delivered in prescribed form to the Seed Inspector and one copy of the report must be supplying to the person from whom the sample was drawn.

13.6. In the event, the report is negative, i.e. if the Seed Analyst reports that the sample of the seeds does not conform to the minimum limits of germination and purity as specified by the Notification under Sec. 6 and/or that the breach of any other requirement prescribed under Sec. 7 is found, then it would amount to contravention of the provisions of the Act and/or Rules which would entail prosecution and would culminate in penalty as prescribed under Sec. 19 of the Act.

13.7. In such cases, the provisions under Rule 21(3) of the Rules also come in picture inasmuch as the said rule prescribed time-limit for the submission of report by the Seed Analyst.

13.8. According to the provision under Rule 21(3), the Seed Analyst should deliver the report as soon as may be but not later than 30 days from the date of receipt of sample from Seed Inspector.

13.9. If, on receipt of the report of the Seed Analyst, the Seed Inspector finds that contravention of any provision of the Act is committed, then the Seed Inspector would initiate, in accordance with the provisions of the Act, prosecution.

13.10. After the prosecution is initiated, the person from whom the sample was drawn, acquires an additional right, viz. to apply to the Court to send the sample mentioned in Sec. 15(2)(a) or (c) to the Central Seeds Laboratory for its report. It is pertinent that the said right accrues and becomes available only after the prosecution is initiated.

14. The said right conferred on the person (from whom the sample was drawn) by the Legislature is valuable right and if any action of the Seed Inspector or Seed Analyst is not in conformity with the provisions of the Act read with the Rules, then such action cannot be approved and would be liable to be set aside.

14.1. A glance at the provision under Rule 21(3) would show that the Seed Analyst is statutorily obliged to submit his report to the Seed Inspector within 30 days from the date of the receipt of the sample. According to the provisions under Sec. 16(1) of the Act, a copy of the report should, simultaneously, be supplied to the person from whom the sample was drawn.

14.2. It is apparent that the Seed Inspector would institute prosecution, if considered appropriate, after receipt of the report from the Seed Analyst of State Laboratory and the right conferred under Sec. 16(2) on the person from whom the sample is drawn, would accrue and become available to the said person only after the prosecution is initiated. Only after the complaint was lodged inasmuch as Sec. 16(2) provides, inter alia, that "after the institution of prosecution under this Act...., the accused vendor can make an application to the Court for sending the sample to the Central Seeds Laboratory." Hence, only after "prosecution is instituted", the application for test by Central Laboratory can be made.

15. Thus, the said right cannot be exercised by the accused vendor before initiation of the prosecution.

15.1. The accused vendor is obliged to wait until the prosecution initiated.

15.2. Therefore, it becomes crucial and important that the time-limit mentioned under Rule 21(3) is adhered to and even at subsequent stage, any delay is not caused.

16. The said provision confers a right as well as opportunity to the concerned person to bring out, demonstrate and establish mistake or anomaly, discrepancy, if any, from Analyst's report.

17. The right conferred under Sec. 16(2) is an important and a valuable right inasmuch as the report of the Central Seeds Laboratory would, according to the

provisions contained under sub-sec. (3) of Sec. 16, supersedes the report given by the Seed Analyst (of State Laboratory) under sub-sec. (1) of Sec. 16.

17.1. In view of the said provision, if there is any contradiction or anomaly or discrepancy between two reports, i.e. the report submitted by the Seed Analyst of the State Laboratory and the report of the Central Seeds Laboratory, then the report of the Central Seeds Laboratory shall prevail.

17.2. It, thus, becomes clear that the power of, and vital ingredient of Sec. 16(2) actually lies in the provision under sub-sec. (3) of Sec. 16 of the Act.

18. When the provisions under Secs. 16(2) and 16(3) are read conjointly, then the importance of the right conferred on the person from whom the sample is drawn, becomes apparent.

18.1. The said aspect would also clarify that if for any reason or on account of any action on the part of the Seed Inspector and/or Seed Analyst, the person from whom the sample is drawn, is deprived of the right conferred by Sec. 16 of the Act, then the said person can lawfully claim and contend that his right to defence would be adversely affected and jeopardised, and therefore, the initiation of the prosecution must fail, and that therefore, such proceedings must be terminated.

18.2. The provisions under Secs. 16(2) and 16(3) read with Rule 21(3) make the intention of the Legislature very clear, viz. the said provisions impose mandatory obligation on the Seed Analyst to submit report within 30 days as contemplated under Rule 21(3). The period/limitation seems to have been prescribed having regard to the possibility of the deterioration in germination of the seeds with passage of time.

18.3. The said provisions also make it clear that the Legislature has conferred right on the person from whom the sample is drawn to controvert the report of the Seed Analyst (of State Laboratory) by getting the sample re-analysed by the Central Seeds Laboratory.

18.4. Now, it is apparent that if the report by the Seed Analyst of the State Laboratory is delayed, it would result into delay in initiation of prosecution. Until the prosecution is initiated, the person to whom the aforesaid right is granted, i.e. person from whom the sample was drawn, would not get the opportunity to apply to the Court for sending the sample (mentioned in Sec. 15(2)(a) or (c) of the Act) to the Central Seeds Laboratory and if on account of such delay, the shelf-life of the seeds expires in the meanwhile, then the process or opportunity of getting the sample re-analysed by the Central Seeds Laboratory would be frustrated and would be rendered infructuous.

18.5. Similar situation and eventuality would arise in the event, delay in initiation of proceedings is caused by the Seed Inspector for any other reason, i.e. if the Seed Inspector causes delay, even after having received the report of Seed Analyst within prescribed time-limit, in completing the formalities for initiating

prosecution and if in the meanwhile the shelf-life of the seeds expires, then also the said person would be deprived of his right to seek re-analysis of the seeds/sample by the Central Seeds Laboratory which, in turn, would entitle the said person to claim and contend that his right of effective defence which includes the right to controvert the report of the Seed Analyst of the State Laboratory, is jeopardised or adversely affected, and therefore, the prosecution must fail and should be terminated.

19. In this context, it would be profitable to refer to the observations by the Hon"ble Apex Court with reference to the similar provisions under the Insecticides Act. In the case between State of Haryana Vs. Unique Farmaid P. Ltd. Ors., , Hon"ble Apex Court observed that:

11. Sub-section (1) of Sec. 30 which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from 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, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer res Integra. In State of Punjab v. National Organic Chemical Industries Ltd., JT 1996 (10) SC 480, this Court in somewhat similar circumstances said that the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him. On this view of the matter, the Court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in State of Haryana Vs. Brij Lal Mittal and Others, under the Drugs and Cosmetics Act, 1940; Municipal Corporation of Delhi Vs. Ghisa Ram, ; Chetumal Vs. State of Madhya Pradesh and Anr, and Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, all under the Prevention of Food Adulteration Act, 1954.

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 sub-sec. (4) of Sec. 24 of the Act. Under sub-sec. (3) of Sec. 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 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.

20. When the facts of present case are examined in light of the above-mentioned provisions and above-quoted observations by Hon''ble Apex Court, then it emerges that in present case, the initiation of the prosecution was unreasonably and inordinately delayed and by the time, the Seed Inspector initiated/lodged prosecution, the shelf-life of the seeds/sample in question had already expired.

21. In this context, it would be appropriate, even at the cost of repetition, to revert to the details of the dates and events mentioned hereinabove earlier. It is noticed from the said details that--

- (a) On 1-7-2008, the sample was drawn/collected;
- (b) On 4-7-2008, the sample was forwarded to the Seed Analyst at State Laboratory;
- (c) On 7-7-2008, the Laboratory/Seed Analyst received the sample;
- (d) On 12-1-2009, the Seed Inspector received the report of Seed Analyst;
- (e) On 12-2-2009, the Seed Inspector submitted proposal for initiating prosecution;
- (f) On 6-3-2009, the competent authority granted sanction;
- (g) On 17-4-2009, the complaint in question came to be filed.

21.1. The above-mentioned chronology brings out that the Seed Analyst received the sample on 7-7-2008, whereas the report was forwarded on or around 31-12-2008 and it was received by the respondent (i.e. Seed Inspector) as per his affidavit on 12-1-2009, i.e. after more than about 5 months from the date when the Seed Analyst received the sample. It is also noticed that the shelf-life of the seeds/sample in question expired in January, 2009, whereas the prosecution came to be initiated (on 17-4-2009) after the shelf-life expired (in January, 2009).

22. Thus, when the prosecution was initiated, the right available to the petitioners under Sec. 16(2) read with Sec. 16(3) of the Act was already frustrated because in view of the delay, the petitioners could not make any application to the Court under Sec. 16(2) for sending the seeds/sample for re-

analysis to the Central Seeds Laboratory after the expiry of shelf-life of the seeds/ sample in question inasmuch as after the expiry date de-generation of the seeds would set-in/commence. Consequently, the petitioners are deprived of their right available under Sec. 16(2), and therefore, their defence is jeopardised and frustrated.

23. In this background, it emerges that the petitioners are justified in their contention that because of the delay their right of effective defence is jeopardised, and therefore, the prosecution/criminal case deserves to be quashed and the prosecution cannot be allowed to continue. Therefore, below-mentioned order is passed. Having regard to the above discussed facts and circumstances and also having regard to the above-quoted observations by the Hon"ble Apex Court and considering the delay caused in submission of the report by the Seed Analyst of the State Laboratory and the delay caused in initiating prosecution which resulted into frustration of right available to the petitioners under Sec. 16(2) of the Act, the application deserves to be and is required to be allowed. Consequently, the application is allowed in terms of Paragraph No. 4(B) and the Criminal Case/Complaint No. 132 of 2009 before the learned Principal and Judicial Magistrate, First Class, Court at Amirgarh is quashed. Rule is made absolute to the aforesaid extent. The application is disposed of.