
(2015) 03 BOM CK 0422

In the Bombay High Court

Case No : Criminal Writ Petition No. 1188 of 2014

Shridhar and Others

APPELLANT

Vs

The Govt. of Maharashtra

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Seeds Act, 1966 — Section 15, 16, 16(2), 19, 19(a)(i)

Citation : (2015) ALLMR(Cri) 4384

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : Shirish Gupte, Senior Advocate i/b N.K. Choudhari, Advocate, for the Appellant; V.H. Dighe, A.P.P., for the Respondent

Judgement

V.M. Deshpande, J.—Rule. Rule is made returnable forthwith. Heard finally by consent of the parties. By the present Writ Petition, the petitioners are praying for quashing of R.C.C. No. 224/2012 pending on the file of the Judicial Magistrate First Class, Amalner filed against them u/s. 19(a)(i) read with Section 7(b) of the Seeds Act, 1966 [hereinafter referred as the "Act" for the sake of brevity] and Rule 2(g), 7 and 10 of the seeds Rules, 1968 [hereinafter referred as the "Rules" for the sake of brevity].

2. Facts giving rise to the present Writ Petition can be stated herein under:

Mr. Arun Vitthalrao Patil, Seed Inspector visited Shivram Fertilizer 5, M.G. Market, Amalner. His visit to the said place is dated 20/06/2012. Petitioner No. 2/accused No. 1 Prakash S/o. Jagatmal Sainani is the Proprietor of the said shop.

The purpose for the visit by the Seed Inspector was for inspection of seeds and for drawing the sample. The details as per the label on the seed bag stored and kept for sale and sample drawn for analysis is as under:

3. The purpose for drawing the sample by the Seed Inspector was for ascertaining quality standards.

Three test samples were prepared as per the procedure laid down in section 24 , 25 , 34, 35 of part "X" of the Rules. One sample part was given to accused No. 1, second was retained by the complainant and third part was sent to Seed Analyst, Pune.

The sample was analyzed by Incharge, Seed Testing Laboratory, Pune and communicated the results vide report No. STL/A/137/12 dated 22/08/2012 and according to the said report, the sample which was sent for analysis, found 50% as against 75% germination as per prescribed seed certification standards.

4. According to the Seed Inspector, petitioner No. 2/accused No. 1 is registered seed dealer and dealer with stocking and sale of seeds and petitioner No. 1/accused No. 3 is seed producer and marketer. He is responsible person for conduct of business of company. Accused No. 2 is registered seed distributor. In view of report dated 22/08/2012, according to Seed Inspector, the petitioners/accused committed an offence u/s. 7(b) of the Seed Act, 1966. With these assertions of facts, on 21/11/2012 Seed Inspector filed Complaint before the learned Magistrate at Amalner, which was registered as R.C.C. No. 224/2012 and the learned Magistrate issued summonses to the petitioners as accused.

5. Heard Mr. Shirish Gupte, the learned Senior Counsel with Mr. N.K. Chaudhari, the learned counsel for the petitioners and Mr. V.H. Dighe, the learned A.P.P. for the respondent - State in extenso.

6. According to the learned Senior Counsel, the valuable right of the petitioners as envisaged under sub-section (2) of Section 16 of the Act is infringed. According to him, it is the indefeasible right of the petitioners. According to him, the valuable right u/s. 16(2) of the Act is completely denied.

The learned Senior Counsel strenuously urged before me that the sample which was taken from the lot was having the validity only till 28/12/2012 and though the report of the Seed Analyst was available on 22/08/2012, the Complaint is lodged on 21/11/2012. However, the complainant it appears had failed to take immediate steps to pursue the learned Magistrate to pass the order of issuance of process prior to expiry of shelf-life. Thus, according to him, the order of issuance of process is passed after the shelf-life of the sample in question was over. In that view of the matter, he submitted that the indefeasible right flowing in favour of the petitioners in view of sub-section (2) of Section 16 of the Act is completely defeated and, therefore, the continuance of the Complaint is nothing but an abuse of process of law and hence he submitted that the petition needs to be allowed.

In order to buttress his submission, he placed reliance on the Judgment of the learned Single Judge of this Court in Criminal Application No. 184 of 2013 dated 16/01/2015 : [Managing Director Mahyco Seeds Limited Vs. State of Maharashtra] in the matter of Managing Director, Mahyco Seeds Ltd. and others Vs. State of Maharashtra, through Seed Inspector or Extension Officer, Panchayat Samiti, Washim and submitted that the issue involved in the present case was an

identical issue in the said case and, therefore, he persuade me to follow the view taken by the learned Single Judge in Criminal Application No. 184 of 2013.

7. Per contra, Mr. V.H. Dighe, the learned A.P.P. for the respondent - State submitted that it does not lie in the mouth of the petitioners that their valuable right under sub-section (2) of Section 16 of the Act is not vested in view of the fact that show cause notice was given to the petitioners on 21/09/2012, wherein the report of the Seed Analyst was made known to them. He, therefore, submitted that since the prima facie case is pointed out in the Complaint, at this stage, the Court should not exercise its inherent power for quashing the Complaint.

8. From the rival submissions as advanced before this Court, it is clear that it rallies around Section 16 of the Act. In that view of the matter, it will be useful to reproduce the same.

"16. Report of Seed Analyst-

(1) The Seed Analyst shall, as soon as may be after the receipt of the sample under sub-section (2) of section 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-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 sub-section (1) of section 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-section (2) shall supersede the report given by the Seed Analyst under sub-section (1).

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

9. The scrutiny of the aforesaid provision would reveal that the Seed Analyst is under obligation to analyze the sample at the said Seed Laboratory, which he has received under sub-section (2) of section 15 and the said report is to be delivered to the Seed Inspector and the another copy thereof is to be sent to the person from whom the sample is taken.

Sub-section (2) mandates that either the accused or the complainant on

payment of prescribed fee are entitled to make an application to the Court for sending the sample to the Central Seed Laboratory and sub-section (3) of section 16 supersedes the report given by the Seed Analyst, if the report is sent by the Central Seed Laboratory.

10. Admittedly, in the present case, the sample was drawn on 20/06/2012 and it was sent to the Incharge, Seed Testing Laboratory, Pune by the complainant/Seed Inspector on 20/06/2012. Undisputedly, the Incharge, Seed Testing Laboratory, Pune gave his report dated 22/08/2012, which found that germination is at 50% as against 75% as per prescribed seed certification standards.

11. In the backdrop of the aforesaid admitted factual position, Court has to consider the submissions of the learned Senior Counsel for the petitioners in respect of sub-section (2) of section 16 of the Act and the objection of its applicability as advanced by the learned A.P.P. in the light of factual aspect about the issuance of show cause notice dated 21/09/2012.

12. A closure look and scrutiny to sub-section (2) is absolutely essential to decide the controversy. The provisions of the said sub-section shows that even the right is given to the complainant for re-test of the sample from Central Seed Laboratory.

From the plain reading of sub-section (2) of section 16 of the Act, there can not be a doubt in the mind that either accused/vendor or complainant are entitled to make an application to the Court after the institution of the prosecution under the Act for sending the sample to the Central Seed Laboratory.

Upon such receipt of the application either from the accused or from the complainant, the Court to whom such application is moved, is duty bound first to ascertain the remark and seal or fastening as provided under clause (b) of sub-section (1) of section 15 are intact and 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 collection of sample specifying the result of the Seed Analyst.

13. Thus, it is crystal clear that before sending the sample for re-test to the Central Seed Laboratory, the Court has to ensure about the seal and then the Court is to send the said sample under its own seal to the Central Seed Laboratory.

Obviously, such exercise by the Court can be done only after the institution of the case/proceedings before the said Court. In that view of the matter, neither the accused nor the complainant, as the case may be, is having right to send the sample for re-testing with the Central Seed Laboratory. Since that exercise has to be done only by the Court, wherein the proceedings are initiated or filed under its own seal.

14. In the above analysis of the provisions of sub-section (2) of section 16 of the

Act, the submissions advanced by the learned A.P.P. that on 21/09/2012 show cause notice was given to the present petitioners pointing out the report of the Seed Analyst, is wholly mis-conceived and mis-placed, since admittedly that time the prosecution was not initiated and, therefore, there was no occasion for them to make an application to the Court for sending the sample for re-testing.

Worth to note, show cause notice dated 21/09/2012 was replied by the petitioners vide reply dated 10/12/2012, wherein a request was made to arrange to send the sample for re-test to the Central Seed Laboratory as per the law. Thus, by the reply, the petitioners had disclosed their intention to avail their right of re-testing by the Central Seed Laboratory.

15. The complaint is filed on 21/11/2012. The complainant was aware that the shelf-life of the sample is to expire on 28/12/2012. Therefore, it was obligatory on the part of the complainant to pursue the learned Magistrate to pass the order of issuance of summons. The order of issuance of summons was necessary, since in absence of the same the petitioners were unaware of filing of complaint against them before the Court. In the present case, admittedly, the order of issuance of summons was passed by the Court after the shelf-life was over. Thus, the petitioners naturally got the knowledge about the filing of complaint after the shelf-life of sample was over.

Therefore, it would have been a futility on the part of the petitioners to exercise the right under sub-section (2) of section 16 of the Act, because no one could be sure that sample will not undergo the change after its shelf-life and the Central Seed Laboratory would not have been in a position to express the opinion about the sample on the date of its seizure, since the report will be on the date of the examination at the belated stage.

16. Identical provision is found u/s. 13(2) of the Food Adulteration Act, 1954. While considering the right as envisaged under the prevention of Food Adulteration Act and after considering the decision of the Hon'ble Apex Court in the case of Municipal Council, Delhi Vs. Ghisa Ram [AIR 1970 SC 970], this Court has taken a view in the case of Charandas Vallabhdas Mariwala and others Vs. The State of Maharashtra [Criminal Application No. 1842 of 1996] delivered on 19/07/2014 that when the delay is solely attributable to the prosecution, then in that event, the accused person will lose their indefeasible right.

17. The dates as referred in the preceding paragraphs, clearly show that the knowledge of proceedings filed in the Court came to the knowledge of petitioners only after the expiry of shelf-life of sample was over. Since right under sub-section (2) of section 16 of the Act can be exercised only after the institution of the prosecution, the same is virtually denied to the petitioners.

18. In order to afford the indefeasible right available in view of sub-section (2) of section 16 of the Act, the complainant was under obligation to take necessary steps in the complaint as early as possible and in any case before the expiry of the shelf-life of the product. The Court is at pains to observe that allowing to

lapse the period by keeping the complaint in dormant state till the shelf-life of the sample is over, is nothing but an act on the part of the complainant to nullify the indefeasible right of the petitioners. Therefore, denial of such right results into denial of fair trial. Upshot of the aforesaid discussion leads me to pass the following order.

(1) The summonses issued to the present petitioners as accused in R.C.C. No. 224/2012 by the learned Judicial Magistrate First Class, Amalner are hereby quashed and set aside.

(2) The criminal case bearing R.C.C. No. 224/2012 filed u/s. 19(a)(i) read with section 7(b) of the Act and Rule 2(g), 7, 10 of the Rules pending on the file of the learned Judicial Magistrate First Class, Amalner filed against the present petitioners is hereby dismissed.

(3) Rule is made absolute in the above terms.