
(2002) 10 AP CK 0035

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5648 of 2001

Smt. Mallela Laxmi and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Seeds Act, 1966 — Section 16, 19, 7B
Seeds Rules, 1968 — Rule 7, 8

Citation : (2003) CriLJ 638

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : S. Leoraj, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.R.K. Prasad, J.—The petitioners, who were accused in C.C. No. 51 of 2001 on the file of the II Additional Judicial First Class Magistrate, Khammam, invoke the inherent powers of this Court u/s 482, Cr.P.C. to quash the proceedings in the above C.C.

2. A brief resume of the background of the facts is necessary for disposal of this petition.

The 1st petitioner is a dealer in pesticides and seeds. He is carrying on his business at Mudigonda in Khammam district. The 2nd petitioner is the wholesale dealer, who supplies the seeds to the 1st petitioner. The 3rd petitioner is the Production Manager of M/ s. Hindustan Lever Private Limited. The Seed Inspector Sri. V. Jayaraju took sample of the seed after serving notice in Form 6 from the shop of the 1st petitioner. He sent one part of the sample to the Assistant Director, Agriculture (Seed Testing Laboratory), Tadepalligudem on 6-7-2000 by registered post and the remaining part of the sample was retained with the Assistant Director of Agriculture for safe custody. On 31-7-2000 a report was sent by the Assistant Director, Agriculture (Seed Testing Laboratory),

Tadepalligudem. He has declared that the seed was sub-standard and the germination was found to be 73% as against the requisite 90%. A copy of the said report was served on the 1st petitioner on 14-8-2000. Thereupon, the Assistant Director, Agriculture launched a complaint before the IInd Class Additional Munsif Magistrate, Khammam, who took it on file u/s 7-B read with Section 19(a)(i) of the Seeds Act, 1966 ("the Act" for short). The same is numbered as C.C. No. 51 of 2001. Aggrieved by the same, the petitioners have approached this Court seeking quashing of the proceedings in the above C.C.

3. Sri E. Manohar, learned counsel appearing for the petitioners contends that the truthful label of the seed in question was not filed with the complaint and it was intentionally withheld. It is also contended by the learned Senior Counsel that the petitioners' right to send the sample to the Central Seed Testing Laboratory has been lost as the shelf life of the seed expired on 28-2-2001 and hence prejudice is caused.

4. Learned Public Prosecutor, on the other hand contends that the petitioners have not produced any certificate from the concerned authority before the Court. It is also contended that they have never applied for sending the sample to the Central Seed Testing Laboratory and as such no prejudice is caused. In support of his contention, learned Public Prosecutor placed reliance on Thimmiah Vs. Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and Another,

5. Adverting to the above contentions, it is necessary to have a look at the provisions of the Act before appreciating the contentions of both sides. Section 9 of the Act reads as follows :

"Grant of certificate by certificate agency:--

(1) Any person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety may, if he desires to have such seed certified by the certification agency, apply to the certification agency for the grant of a certificate for the purpose.

(2) Every application under Sub-section (1) shall be made in such form, shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) On receipt of any such application for the grant of a certificate, the certification agency may, after such enquiry as it thinks fit and after satisfying itself that the seed to which the application relates conforms to the prescribed standards, grant a certificate in such form and on such conditions as may be prescribed:

Provided that such standards shall not be lower than the minimum limits of germination and purity specified for that seed under Clause (a) of Section 6." Section 16 of the Act reads as follows :

"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 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.

(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 u/s 19, it shall not be necessary in such proceedings to produce any sample or part thereof taken for analysis."

6. Rules 7 and 8 of the Seeds Rules, 1968 deal with the responsibility for marking or labelling and the contents of the mark or label respectively.

7. The learned Senior Counsel has drawn my attention to the principles laid down by the Supreme Court in *State of Haryana Vs. Unique Farmaid P. Ltd. Ors.*, and *State of Punjab Vs. National Organic Chemical Industries Ltd.*, and wanted the same to be applied by analogy to the Seeds Act also.

8. In *Thimmiah Vs. Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and Another*, it is stated in paras 10 to 13 as follows :

"Section 30 provides for defences which may or may not be allowed in prosecution under the Act. Section 30(1) only prescribed 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 Sections 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."

9. In *State of Punjab Vs. National Organic Chemical Industries Ltd.*, at para 6 of the judgment it is stated as follows :

"Unfortunately, in this case, the appellant did not adopt the course as was required under the Act. Of course, the respondent, Without availing of the remedy of report by the Director of CIL, may not be entitled to plead deprivation of the statutory defence. But, the complaint should be lodged with utmost dispatch so that the accused may opt to avail of the statutory defence. The appellant had not given the third sample to the respondent. As a result, the respondent has been deprived of his statutory opportunity to have the sample tested by the CIL. Resultantly, the respondent has been deprived of a valuable defence statutorily available to him. Under these circumstances, we think that further proceedings in the Court of the Chief Judicial Magistrate would be rendered fruitless. Consequently, though for different reasons the complaint quashed by the Court may be justified warranting no interference."

10. It is clear from the principle laid down by the Supreme Court in the aforesaid decisions that the samples have to be tested by Central Insecticides Laboratory before the expiry of the shelf life of the sample. If the shelf life of the sample expires, it causes prejudice. Hence, the complaint made against the accused gets vitiated and their valuable right is lost.

11. In *Thimmiah Vs. Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and Another*, it is observed by Justice B. Suderahan Reddy at para 27 of the judgment as follows :

"It is thus clear that unless it is shown that the sample became unfit for analysis by the Central Seed Laboratory on account of the delay and the same has caused prejudice to the accused entitling them to acquittal, mere delay on the part of the Seed Analyst in sending the report per se would not be fatal to the case of the prosecution."

12. It is clear from the principles laid down in the aforesaid decisions that mere delay on the part of the Seed Analyst per se would not be fatal to the prosecution unless it is shown that the sample became unfit for analysis by the Central Seed Laboratory. It is clear from the provisions of Section 16 of the Act that the right of the accused to make an application to the Court for sending the samples for analysis arises only when the prosecution is instituted. In the instant

case, the sample was taken on 5-7-2000 and the copy of the report was served on the accused on 31-7-2000. Mere service of notice will not give rise to any right to the petitioners to ask the Court to get it analysed by the Central Seed Laboratory. The prosecution was launched on 27-1-2001 and the summons are said to have been sent on 3-3-2001 directing the petitioners to appear on 17-4-2001. That means, almost nine months later the complaint has been presented.

13. It is mainly contended that the shelf life of the seed expired on 28-2-2001 and hence the sample has become unfit for analysis by the Central Seed Laboratory and it caused prejudice to the petitioners. The petitioners based their claim in respect of the certificate issued by the manufacturer. The contention of the Public Prosecutor is that the document, which is a self-serving statement, issued by the 3rd petitioner, cannot be relied on. It appears that the truthful label of the seed in question is not filed into the Court and has been deliberately withheld by the prosecution. The said fact is not noted even at the time of taking the sample and the mediators' report does not reflect the true state of affairs. The prosecution has suppressed an important document by withholding it and the certificate produced by the petitioners cannot be said to be a false one since the manufacturer is the best person to certify the shelf life of the seed. Prima facie, the shelf life certificate issued by the manufacturer has to be taken into consideration in the absence of any other material placed by the complainant or the averments made to that effect in the complaint. If that is taken into consideration, the shelf life of the seed expired long back.

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.

15. Accordingly the proceedings in C.C. No. 51 of 2001 pending on the file of the II Additional Judicial Magistrate of First Class, Khammam are quashed and the Criminal Petition is allowed.