
(2012) 05 RAJ CK 0004

In the Rajasthan High Court

Case No : SB Criminal Miscellaneous Petition No. 895 of 2008

Sumer Singh Bhati

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Seeds Act, 1966 — Section 14, 15, 16, 6, 7

Citation : (2012) 3 Crimes 482 : (2012) 4 RLW 3508

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : T.S. Rathore, for the Appellant; M.A. Bhurat, PP for the State, for the Respondent

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties. The instant misc. petition has been preferred by the petitioner challenging the proceedings of Criminal Case No. 379/2005 pending in the Court of learned Additional Chief Judicial Magistrate, Nohar, Hanumangarh for the offences under Sections 6 & 7 read with Section 19A of the Seeds Act.

2. Succinctly stated the facts necessary for the disposal of the instant misc. petition are that the petitioner was posted as Plant Manager of Rajasthan State Seed Corporation Ltd., Suratgarh (for short "RSSCL") at the relevant time. RSSCL is the manufacturer of the seeds in relation where to the prosecution has been launched in this case. The Agriculture Officer (Crops) cum Seed Inspector, Nohar took a sample of Deshi cotton seeds from vendor -- M/s. R.S. Fertilizers, Nohar of RSSCL on 31.3.2005 for analysis. It is stated that the sample was sent to the Rajasthan State Seed Testing Laboratory, Durgapura from where the report was received that the seed sample was found to be sub-standard as the germination was found only 36%.

3. On receiving the said report, show cause notices were issued to the manufacturer company i.e. RSSCL as well as the vendor. Reply to the notice was given whereafter the Seed Inspector proceeded to file a complaint against the

petitioner -- Regional Manager of RSSCL, as well as vendor, stockist etc. in the Court of ACJM, Nohar under the provisions of Sections 6 & 7 read with Section 19A of the Seeds Act. The learned Magistrate proceeded to take cognizance upon the complaint and summoned the petitioner as well as other co-accused persons by order dated 31.8.2005. The said order summoning the petitioner as well as the proceedings of the complaint have been challenged by way of the instant misc. petition. It has also been prayed that all the proceedings pursuant to the complaint deserve to be quashed in entirety.

4. On the previous date of hearing, the concerned. Agriculture cum Seed Inspector, Jodhpur was directed to be kept before this Court and when the matter was taken up by this Court on 20.3.2012, the Agriculture Inspector and District Agriculture Officer were both unable to satisfy this Court about the procedure prescribed under the Seeds Act and Rules for packing of the seed samples. On this, the Court directed the learned PP to keep the Director, Agriculture, Government of Rajasthan present in the Court and accordingly, he appeared in this Court and made submissions.

5. Though the petition was filed on numerous grounds but at the time of the arguments, challenge to the proceedings has now been limited to a single ground i.e. proceedings of the complaint being vitiated because the mandatory procedure prescribed in the Seeds Act and the Rules regarding the manner in which the sampling of the seeds is to be done has not been adhered to. Resultantly, it has been submitted that the proceedings of the complaint deserve to be quashed in its entirety.

6. Learned PP and the Director, Agriculture submitted that under the Seeds (Amendment) Rules, 1973, the analysis of the samples has now been permitted to be done in accordance with Seed Testing Manual prescribed by the Indian Council of Agriculture Research as amended from time to time. It has been submitted that the procedure of taking the samples was in accordance with the Manual and, therefore, no illegality has been committed in the mode of taking and packing the samples in this case.

7. I have given my thoughtful consideration to the arguments advanced at bar.

8. For a proper appreciation of the contentions, the relevant portion of the complaint where the manner of taking samples in the case at hand is described is quoted below:-

9. This Court whilst dealing with this very issue in the case of Gauri Shanker & Ors. v. State 2011 (2) Cr.L.R. (Raj.) 1685, has held that the non-compliance of the provisions regarding the manner in which the seed samples are to be taken vitiates the proceedings of the complaint. This Court held as below :-

For appreciation of the second aspect of the matter regarding sampling of the seeds not having been done in accordance with the provisions of the Seeds Act, the relevant provisions of the Seeds Act and the Seeds Rules need to be

considered. The relevant provisions prescribing the procedure for sampling of the seeds are quoted herein Section 15 of the Seeds Act reads as under:-

Section 15.--Procedure to be followed by Seed Inspectors.

Whenever a Seed Inspector intends to take sample of any seed of any notified kind or variety for analysis, he shall-

(a)

(b) give notice in writing, then and there, of such intention to the person from whom he intends to take sample,

(c) except in special cases provided by rules under this Act, take three representative samples in the prescribed manner and mark and seal or fasten up each sample in such manner as its nature permits.

(2) When samples of any seed of any notified kind or variety are taken under sub-section

(1) the Seed Inspector shall-

(a) deliver one sample to the person from whom it has been taken;

(b) send in the prescribed manner another sample for analysis to the Seed Analyst for the area within which such sample has been taken; and

(c) retain the remaining sample in the prescribed manner for production in case any legal proceedings are taken or for analysis by the Central Seed Laboratory under Subsection (2) of section 16, as the case may be.

(3) If the person from whom the samples have been taken refuses to accept one of the samples, the Seed Inspector shall send intimation to the Seed Analyst of such refusal and thereupon the Seed Analyst receiving the same for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the Seed Inspector who shall retain it for production in case legal proceedings are taken.

(4) Where a Seed Inspector takes any action under clause (c) of sub-section (1) of

Section 14,-

(a) he shall use all dispatch in ascertaining whether or not the seed contravenes any of the provisions of Section 7 and if it is ascertained that the seed does not so contravene forthwith revoke the order passed under the said clause or, as the case may be, taken such action as may be necessary for the return of the stock of the seed seized;

(b) if he seizes the stock of the seed, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged offence is such that the defect may be removed by the possessor of the seed, he shall, on being satisfied that the defect has been so removed, forthwith revoke the order passed under the said clause.

(5) Where a Seed Inspector seizes any record, register, document or any other material object under clause (e) of sub-section (1) of section 14, he shall, as soon as may be, inform a magistrate and take his orders as to the custody thereof.

The procedure and the manner in which the samples are to be taken have been prescribed in Part X of the Seeds Rules, particularly rules 24, 25 and 26 of the Seeds Rules, which read as under:-

Rule 24.--Manner of taking samples.--Samples of any seed of any notified kind or variety for the purpose of analysis shall be taken in a clean dry container which shall be closed sufficiently tight to prevent leakage and entrance of moisture and shall be carefully sealed.

Rules 25.--Containers to be labeled and addressed.--All containers, containing samples for analysis shall be properly labeled and the parcels shall be properly addressed. The label on any sample of seed sent for analysis shall bear,-

- (a) serial number.
- (b) name of the sender with official designation, if any.
- (c) name of the person from whom the sample has been taken.
- (d) date and place of taking the sample.
- (e) kind or variety of the seed for analysis;
- (f) nature and quantity of preservative, if any, added to the sample.

Rules 26. Manner of packing, fastening and sealing the samples,--All samples of seeds sent for analysis shall be packed, fastened and sealed in the following manner:-

(a) The stopper shall first be securely fastened so as to prevent leakage of the containers in transit.

(d) The container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.

(e) The paper cover shall be further secured by means of strong twine or thread both above and across the container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the

body of the packet. The knots of the twine and thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

A perusal of Section 15 of the Seeds Act and rules 24, 25 and 26 of the Seeds Rules clearly disclose that there is a mandatory procedure prescribed under these rules regarding the manner in which the samples of the seeds are to be packed. The essence of the procedure is that the samples should be taken in such a manner so as to prevent them from being exposed to moisture or Sunlight. The procedure is thus prescribed because of the reason that if the seeds are exposed to moisture and Sunlight then the germination capacity is bound to be reduced and that is why there is a specific method provided for packing of the samples under the Seeds Rules so that the exposure of the samples to the moisture and Sunlight is avoided. The essence of the procedure is to ensure that the moisture does not enter into the samples of seeds after the same have been taken.

Considering the present complaint in the light of rules 24, 25 and 26 of the Seeds Rules, it is found that the samples of the seeds were taken in cotton bags. A cotton bag is not a receptacle which, by any stretch of imagination, can be said to be air-tight or good enough to prevent entering of moisture. In order to ensure that the samples of the seeds are not affected by moisture, the sampling has to be done in the manner prescribed under rules 24 to 26 of the Seeds Rules. Initially the sample has to be put in air-tight container and thereafter the container has to be securely fastened so as to prevent leakage. The container so fastened then has to be completely wrapped in a strong thick paper and the ends of the paper are to be fixed by adhesive and then secured by twine or thread and then the same has to be sealed by wax seal. The purpose of putting a thick paper is to prevent exposure of the seeds to Sun light.

10. From a consideration of the above provisions of the Act and the Rules as well as the law laid down in Gauri Shanker's case (supra), it is manifest that the samples of the seed for the purpose of analysis have to be taken in the manner prescribed in the Rules.

11. The amendment made in the year 1973 vide Seed (Amendment) Rules, 1973 prescribes additional guidelines regarding the manner in which the samples shall be analysed but undisputedly, the amendment which has been made in the Rules is only in relation to the manner prescribed for analysis. So far as the sealing, fastening & dispatch of the samples is concerned, the same has to be conducted in accordance with Rules 24, 25 and 26 of the Seed Rules.

12. When the facts of the case at hand are examined in context of the said Rules, the averment contained in the complaint reads that the samples which were taken for sending the laboratory for analysis were taken in three cloth bags and then sealed. After the samples were packed in the cloth bags, they were thereafter not put into a strong paper envelope and sealed. Even in the ICAR Manual on which reliance has been placed by the Director, Agriculture, though a

reference has been made regarding the permissibility of the seed samples to be taken in the cloth bags but thereafter, the cloth bag has to be packed in a strong paper envelope. The procedure adopted for sealing the samples as per the complaint, as reproduced above, does not reveal or disclose that any such action of putting the samples in the strong paper envelope was undertaken by the Seeds Inspector.

13. Resultantly, it is evident that the manner of taking seed samples in this case does not satisfy the necessary safeguards as provided in the Rules.

14. This Court in the case of Chandra Prakash and Others Vs. State of Rajasthan, whilst dealing with the provisions of Fertilizer Control Order, 1957 held that the provisions of Clause 14A of the Control Order regarding the manner in which the samples are to be drawn are mandatory and any non-compliance/non-observance of the manner in which the samples are to be taken, vitiates the proceedings.

15. So far as the contention of the Director Agriculture that there is a different mode/manner provided in the ICAR Manual regarding packing of the samples is concerned, the said contention need not hold this Court any further for the reason that the provisions and the manner of sampling prescribed in the Manual cannot override the specific and precise mode provided in the Rules itself. The Manual may provide additional guidelines for the manner in which the samples are to be taken but the prescribed mode for taking the samples as provided in Rules 24 to 26 cannot be overridden by or deviated from resorting to the provisions of the Manual.

16. The upshot of the above discussion is that this Court has no hesitation in holding that the order summoning the petitioner as accused person as well as the proceedings of the entire complaint are vitiated because the mandatory procedure prescribed in the Seeds Act and Rules for the sampling and packing of the samples has not followed by the seizure officer. Resultantly, the present misc. petition succeeds and complaint No. 379/2005 and all subsequent proceedings pursuant thereto are hereby quashed in its entirety. Stay petition also stands disposed of.