

(2001) 11 KAR CK 0020
In the Karnataka High Court
Case No : Criminal Petition No. 2587 of 2001

V. Chandru and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 468, 482

Citation : (2002) CriLJ 1676 : (2002) ILR (Kar) 1205 : (2002) 2 KarLJ 425 : (2002) 1 KCCR 347

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

Bench : Single Bench

Advocate : S.P. Kulkarni, for the Appellant; N.V. Prakash, Additional State Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bannurmath, J.—This petition is filed u/s 482 of the Cr. P.C. challenging the initiation of proceedings in Special Case No. 101 of 2001 on the file of the Principal District and Sessions Judge, Mysore, as well as quashing the entire proceedings.

2. The brief facts necessary for consideration are as follows:

The petitioner 1 is the proprietor of Monsoon Agro Centre, Periyapatna, dealing in seeds. The petitioner 2 is the distributor of Akshaya Agro Sales Limited, who has supplied the seeds to the first petitioner. The petitioner 3 is the Managing Director of Kaveri Seeds Company (Private) Limited, Secundarabad, which company procures the seeds and distributes for sale through various distributors like petitioner 2.

3. On an inspection held on 31-8-1998 by the complainant Seeds Inspector of the shop of petitioner 1, suspecting that certain seeds were sub-standard, the same were seized by the complainant. After following the due procedure as prescribed under the Seeds Act, 1966, by dividing the samples from such seeds

taken, into three parts, one was given to the accused-petitioner 1, another retained by the complainant and the third was sent to the Seed Testing Laboratory at Hebbal, Bangalore. According to the complaint, on 19-9-1998, he received the report showing that the seeds so seized and sample tested were sub-standard, accordingly, a notice was issued to the accused. Thereafter, on 6-6-2001, as the act of petitioner 1 was in contravention of the provisions of the Act and liable to be criminally prosecuted and punished u/s 19 of the Act, the complaint u/s 200 of the Cr. P.C. came to be lodged. On receipt of the complaint, the learned Judge took cognizance of the case against the accused for the offence u/s 19 read with Sections 6 and 7 of the Seeds Act and issued process. As against the same, the petitioners have approached this Court challenging the correctness and validity of launching of prosecution itself.

4. Sri Kulkarni, the learned Counsel appearing for the petitioner vehemently contended that the complaint filed by the respondent is liable to be quashed at the initial stage itself as the same is barred by Limitation Act. Elaborating the same, it is contended that as the punishment prescribed for the offence in question is only a fine which may extend to Rs. 500/- and in the case of second and later offenders imprisonment would be upto six months or fine which may extend to Rs. 1,000/-, the limitation to file the complaint would be six months as per Section 468 of the Cr. P.C. It is contended that admittedly the sample was seized on 31-8-1998 and even if the report date is taken as the starting period which is 19-9-1998, the prosecution ought to have been launched within six months from thereof and as in the present case, since the complaint is launched after more than two years, the same is barred by limitation.

5. Next, it is contended that the prosecution is also liable to be quashed on the ground of delay and laches and thereby depriving the petitioners of their defence. In this regard, taking me through the provisions of the Act, it is contended that the report of the Local Seed Testing Laboratory is not a final report. According to Section 16 of the Act, there is an opportunity provided to the accused to seek permission of the Court by way of an application to get the seeds re-tested from the Central Seed Testing Laboratory and this report as per Clause 3 of Section 16 becomes final report. As such, it is submitted that as the present prosecution and the dates mentioned above indicate that the report of the Local Seed Testing Laboratory is received on 19-9-1998, it was mandatorily required for the prosecuting agency or the complainant to lodge the complaint expeditiously so that the accused could get the report of the Local Seed Testing Laboratory verified and re-checked through the Central Seeds Testing Laboratory. It is contended that as per the standard fixed by the Indian Seeds Minimum Certification Manual, the validity of the Certificate is being nine months, which can be extended to a maximum period thereof by six months. Thereby only fifteen months at the most is taken as the shelf-life of the seed. If such seeds are thereafter not tested, its value is lost. Hence, it is submitted that once the certificate or the report is received on 19-9-1998, before expiry of six months thereof, the prosecution ought to have been launched. In the present case filing

of complaint and issue of process after about 2 years, an opportunity to defend by way of getting the seeds re-tested and confirm the report of the Local Seed Testing Laboratory through the Central Seed Testing Laboratory is lost to the accused. Hence, on this count also, the prosecution of the accused-petitioners is liable to be quashed.

6. On the other hand, Sri Prakash, the learned Additional State Public Prosecutor argued in support of the correctness of the proceedings initiated.

7. Insofar as the question of limitation is concerned particularly for the offence arising under the Seeds Act, in the case of Shailaja Vs. State of Karnataka, , 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. Nextly, 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 seeking the sample to the Central Seed Laboratory for re-testing or re-checking the veracity of the report of local laboratory and as per Sub-section (3) 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 as 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 Seeds 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 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 State of Haryana Vs. Unique Farmaid P. Ltd. Ors., , 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 petition is allowed and the proceedings in Special Case No. 101 of 2001 are hereby quashed.

10. Before closing, it is to be observed that this country is an agricultural based one and quality seeds are essence for growing the good crop, the authority under the Seeds Act are empowered to take action against erring seeds sellers. If real culprits are not tried and convicted for the negligence of such officials and even Court by filing complaint beyond period of limitation, it will be a major loss to poor agriculturists who purchase such seeds for cultivation.

11. Hence, copy of this order be sent to concerned Ministry/Law Department and all the Courts to take right and appropriator steps in this regard