

(2015) 03 BOM CK 0085

In the Bombay High Court

Case No : Criminal Writ Petition No. 781 of 2014

Vishwas and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Seeds Act, 1966 — Section 13(2), 15, 16, 16(2), 19

Citation : (2015) ALLMR(Cri) 3884

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

Bench : Single Bench

**Advocate : Shirish Gupte, Senior Counsel i/b N.K. Choudhari, for the Appellant;
V.H. Dighe, APP, Advocates for the Respondent**

Judgement

V.M. Deshpande, J.—Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. By the present Writ Petition, the petitioners are challenging the summonses as accused, issued against them by the learned Judicial Magistrate First Class, Jafrabad in S.T.C. No. 192/2011. Along with the challenge to the summonses, the petitioners are also praying for quashing of S.T.C. No. 192/2011 pending on the file of the Judicial Magistrate First Class, Jafrabad 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].

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

Mr. Gaikwad Rajaratna Pralhadrao, Seed Inspector visited Shrikant Krushi Seva Kendra, Mahora, Tq. Jafrabad, Dist. Jalna. His visit to the said place is dated 29/10/2010. Petitioner No. 3 Ramdas S/o Dnyandev Kadam is the Proprietor of the said Krushi Seva Kendra.

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:

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

A memorandum in form VIII as envisaged under Rule 39 of Rules was prepared and was given to the person present. The collected seed sample was well mixed and it was made a composite sample. Thereafter, the Seed Inspector divided it in three portions of 200 gm. It was packed, labeled and sealed properly. The drawn sample was given sample Code.

The drawn and sealed sample was sent for analysis by the Seed Inspector to the Seed Analyst, Seed testing Laboratory, Parbhani on 30/10/2010 in the prescribed memorandum for germination and physical purity test.

The sample was analyzed by Seed Analyst, Seed testing Laboratory, Parbhani which communicated the results in prescribed form under the analytical report No. 4101 dated 10/11/2010, according to the said report, the sample which was sent for analysis, found 41% as against 85% germination specified under Section 6(a) of the Act. The seed sample as per the report of Seed Analyst since was not confirming to the minimum limits of germination standards. According to the Seed Inspector, petitioner No. 1/accused No. 1 is responsible person on behalf of said Seed producer Company and the petitioner Nos. 2 and 3/accused Nos. 2 and 3 are responsible for conduct of business of said seeds. In view of the report, dated 10/11/2010, according to the Seed Inspector, the petitioners contravened the provisions of Section 7(b) of the Act read with Rule 7, 10 of the Rules. With these assertions of facts, on 03/09/2011 Seed Inspector filed Complaint before the learned Magistrate at Jafrabad, which was registered as S.T.C. No. 192/2011 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. He submitted that there is inordinate delay which remain to be explained of filing the Complaint from the date of the report of the Seed Analyst. 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 26/04/2011 and though the report of the Seed Analyst was available on 10/11/2010, the Complaint is lodged on 03/09/2011. Thus, according to him, the Complaint is filed 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 in the matter of Managing Director, Mahyco Seeds Ltd. and others V/ s. 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 persuaded 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 01/12/2010, 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 the controversy in the present case 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 subsection (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 29/10/2010 and it was sent to the Seed Analyst at Parbhani by the complainant/Seed Inspector on 30/10/2010. Undisputedly, the Seed Analyst of seed testing Laboratory, Parbhani gave his report dated 10/11/2010, which found that germination is at 41% as against 85% as specified u/s. 6(a) of the Act. Admittedly, the case is filed on 03/09/2011.

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 01/12/2010.

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 01/12/2010 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 01/12/2010 was replied by the petitioners vide reply dated 18/12/2010, 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. In spite of the receipt of the said reply, for good nine months, the complainant did not take any steps for filing the complaint before the Court.

15. Admittedly, the shelf-life of the sample expired on 26/04/2011, which is much prior to the filing of the complaint. 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 Corporation of Delhi Vs. Ghisa Ram, , 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 lost their indefeasible right.

17. The dates as referred in the preceding paragraphs, clearly shows that the prosecution was instituted more than five months after the expiry of the shelf-life of the seed and 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 launch the prosecution 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 of launching the prosecution before 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.

19. Upshot of the aforesaid discussion leads me to pass the following order.

(1) The summonses issued to the present petitioners as accused in S.T.C. No. 192/2011 by the learned Judicial Magistrate First Class, Jafrabad are hereby quashed and set aside.

(2) The criminal case bearing S.T.C. No. 192/2011 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, Jafrabad filed against the present petitioners is hereby dismissed.

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