

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: March 22, 2011
Judgment delivered on: April 27, 2011

+ **CRL.M.C. No.2073/2009 & CRL.M.A.No.7688/2009**

MONSANTO HOLDINGS PRIVATE LIMITED PETITIONER
Through: Mr. Rajeev K.Virman, Sr. Advocate with
Mr. Vaibhav Bhadana, Advocate.

Versus

GOVERNMENT OF NCT OF DELHI,
Through Seed Inspector RESPONDENT
Through: Ms. Fizani Husain, APP.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. This is a petition under Section 482 Cr.P.C. whereby a prayer has been made for quashing of the Criminal Complaint No. 6482/1/23-10-2007 pending in the court of Metropolitan Magistrate, Tis Hazari Courts, Delhi titled "Govt. of Delhi Vs. Ramesh Kumar & Anr.".

2. The grievance of the petitioner before this court is that under the provisions of the Seeds Act, 1966 (hereinafter referred to as the

‘Act’), in particular Section 16(2) of the Act, after the prosecution is launched by the complainant i.e. Department of Development, Govt. of Delhi, the petitioner ought to have been given an option to exercise his right to get the sample drawn by the complainant retested during the subsistence of shelf life of the sample. In the instant case, the petitioner submits that he has been denied the option to exercise the right conferred upon him by the Statute i.e. the Seeds Act, 1966.

3. Briefly stated, facts relevant for disposal of this petition are that on 04th August, 2007 at 3.30. p.m., Sh. D.R.Pal, Seed Inspector, Govt. of NCT of Delhi took sample of turnip (purple top) from one Ramesh Kumar S/o Amar Nath, Salesman/Owner of M/s. Shri Ram Seeds Corporation, 89, Indira Market, Old Sabzi Mandi, Delhi. The aforesaid seed was supplied to M/s. Shri Ram Seeds Corporation by M/s. Seminis Vegetables Seeds (India) Private Limited, which stood amalgamated in Monsanto Holdings Private Limited by the orders of High Court of Judicature at Bombay in Company Petition No. 228/2008 (with connected Company Petitions No. 272/2008, 273/2008 & 229/2008).

4. The sample was sent to Seed Analyst, Development Department, Govt. of NCT of Delhi. The seed analysis report referred to various characteristics of the seed sample pertaining to

purity, germination and moisture content. However, what was found wanting in the drawn sample was that normally, seedling germination percentage was 61% against the standard of 70% prescribed by Govt. of India, Ministry of Agriculture vide Notification dated 24.11.1999. This deficiency in the drawn sample was communicated to the petitioner's predecessor M/s. Seminis Vegetables Seeds (India) Private Limited and the co-accused Shri Ram Seeds Corporation vide show cause notice dated 31st August, 2007 and M/s. Seminis Vegetables Seeds (India) Private Limited as well as Shri Ram Seeds Corporation were called upon to show cause within 15 days from the date of receipt of notice. It is the case of the respondent that after the receipt of show cause notice, petitioner company sent its reply dated 24th September, 2007 to the respondent, which was received in the office of respondent on 03rd October, 2007. In the said reply, petitioner company did not request for retesting of sample in exercise of the right available under Section 16 (2) of the Act.

5. Reply of the petitioner was not found satisfactory. This led to filing of complaint on 17.10.2007. Learned M.M. took cognizance of the offence under Section 7/16 Seeds Act 1966 and issued summons for appearance on 20.05.2008 to the accused person.

6. The petitioner appeared before the trial court on 20.05.2008 and filed an application serving production of sample seed with a request to send the same for test to Central Seed Laboratory. The respondent contested the request on the ground that validity of the sample seed had since expired on 15.11.2007, as such the retest of sample could not be done.

7. In the backdrop of aforesaid facts and circumstances, learned counsel for the petitioner has submitted that under the Provisions of Section 16(2) of the Seeds Act, the petitioner accused had a statutory right to seek retesting of sample drawn by the complainant, which right has been denied to the petitioner on the plea of the respondent that the counterpart sample could not be sent for retest as its validity had expired. In support of this contention, the petitioner has placed reliance on judgments of Supreme Court in **State of Haryana Vs. Unique Farmaid (P) Ltd. & Ors.**, (1999) 8 SCC 190, **Medicamen Biotech Limited & Anr. Vs. Rubina Bose, Drug Inspector**, (2008) 7 SCC 196 and the judgment of Single Judge of this court in **Crl.M.C.No. 656/2009 titled Jojo Joseph Vs. Govt. of NCT of Delhi** dated 04th August, 2009.

8. Ms. Fizani Husain, learned APP, on the contrary, submitted that the petitioner accused, by his own neglect, has allowed the sample

to expire. The petitioner ought to have approached the complainant or the court in time for getting sample retested, particularly when the petitioner was issued a show-cause notice dated 31st August, 2007 by a Registered A.D. Post on 03rd September, 2007 and also for the reason that the petitioner company was also communicated about the filing of the complaint through Registered Post sent vide receipt No. 2010 dated 01st November, 2007.

9. For proper appreciation of the submissions made by the rival parties, it would be useful to have a look on Section 16 of the Seeds Act, which reads thus:

“16. (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 thereport 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”.

10. Perusal of Section 16(2) of the Seeds Act would show that after the institution of the prosecution under the Seeds Act, the accused or the complainant upon payment of prescribed fee can make an application to the court for sending samples mentioned in clause (a) or clause (c) of Sub-section(2) of Section 15 of the Seeds Act to the Central Seed Laboratory for analysis and report. The report of the Central Seed Laboratory under Sub-section (2) shall supersede the report of seed analyst prepared under Sub-section (1). This right accrues in favour of the accused only after the institution of the prosecution. Therefore, the submission of the learned APP that on the receipt of show cause notice it was incumbent upon the petitioner/accused to seek re-test of the sample drawn rather than waiting for the shelf life of the seed to expire, and once he has failed to do so he cannot seek shelter of Section 16(2) Seeds Act, is not acceptable. Plain reading of Sub-section (2) of Section 16 of the Seeds Act makes it clear that the right to get sample retested accrues in favour of the accused only after the prosecution is instituted. It is not disputed that the petitioner on appearance in the court requested for retest of the counterpart sample, which request was not allowed as the shelf life of the sample had already expired. Now the question is that should for this reason, the complaint and

consequent proceedings against the petitioner be quashed? To find answer to this question, it would be useful to have a look on the law laid down by the Supreme Court on the subject.

11. The Supreme Court in the case of **State of Haryana Vs. Unique Farmaid (P) Ltd. & Ors**, (1999), 8 SCC 190 while dealing with a similar situation arising in a prosecution under the Insecticides Act 1968, inter alia, held thus:

“11. Sub-section (1) of Section 30 which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from 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, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer res integra. In *The State of Punjab v. National Organic Chemical Industries Ltd.* this Court in somewhat similar circumstances said that the procedure laid down under Section 24 of the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him. On this view of the matter, the court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in *State of Haryana v. Brij Lal Mittal and Ors.* under the Drugs and Cosmetics Act, 1940; *Municipal Corporation of Delhi v. Ghisa Ram Chetumal v. State of Madhya Pradesh and Anr.* and *Calcutta Municipal Corporation v. Pawan*

Kumar Saraf and Anr. all under the Prevention of Food Adulteration Act, 1954.

12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under Sub-section (4) of Section 24 of the Act. Under Sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, 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 accused have been deprived of that right, thus, prejudicing them in their defence.

13. In these circumstances, High Court was right in concluding that it will be an abuse of the process of court if the prosecution is continued against the respondents - the accused persons. High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals."

12. Similarly while interpreting a similar provision under the Drugs and Cosmetics Act 1940 in the matter of **Medicamen Biotech Limited & Anr. Vs. Rubina Bose, Drug Inspector**, (2008) 7 SCC 196, Supreme Court observed thus:

"We find that this judgment helps the case of the appellant rather than that of the respondent because in spite of two communications from the appellant that it intended to adduce evidence to controvert the facts given in the report of the Government Analyst, the fourth sample with the Magistrate had not been sent for re-analysis. The observations in Amery Pharmaceuticals's case (supra) are also to the same effect. We

find that the aforesaid interpretation supports the case of the appellants inasmuch they had been deprived of the right to have the fourth sample tested from the Central Drugs Laboratory. It is also clear that the complaint had been filed on the 2nd July 2002 which is about a month short of the expiry date of the drug and as such had the accused appellant appeared before the Magistrate even on 2nd July 2002 it would have been well nigh impossible to get the sample tested before its expiry. In the affidavit filed to the petition by Dr. D. Rao, Deputy Drugs Controller, and in arguments before us, it has been repeatedly stressed that the delay in sending of the sample to the Central Drugs Laboratory had occurred as the appellant had avoided service of summons on it till 9th May 2005. This is begging the question. We find that there is no explanation as to why the complaint itself had been filed about a month before the expiry of the shelf life of the drug and concededly the filing of the complaint had nothing to do with the appearance of the accused in response to the notices which were to be issued by the Court after the complaint had been filed. Likewise, we observe that the requests for retesting of the drug had been made by the appellant in August/September 2001 as would be clear from the facts already given above and there is absolutely no reason as to why the complaint could not have been filed earlier and the fourth sample sent for retesting well within time. We are, therefore, of the opinion that the facts of the case suggest that the appellants have been deprived of a valuable right under Section 25(3) and 25(4) of the Act which must necessitate the quashing of the proceedings against them."

13. In the instant case, admittedly the sample was drawn by the complainant on 04.08.2007. The report of the Seed Inspector is dated 30.08.2007. The date of expiry of sample date as per the Form-VIII filled by the Seed Inspector was 15.11.2007. The complaint was filed on 17.10.2007. Cognizance of the complaint was taken by learned M.M. on 23.10.2007 and the summons were issued on 20.05.2008. On perusal of the cognizance order dated 23.10.2007, it is seen that this order was passed in presence of the

Seed Inspector D.R. Pal, but did not care to bring it to the notice of the court that the sample was due to expire on 15.11.2007 nor he pressed for an early date for appearance of the accused so as to enable him to exercise his option to get the seeds sample retested under Section 16(2) of the Seeds Act before the expiry of the sample. Even in the show cause notice dated 31.10.2007 sent by the complainant to M/s. Seminis Vegetables Seeds (India) Private Limited, which now stands amalgamated with the petitioner company, there is no indication that the sample seed had expiry period upto 15.11.2007 or that the petitioner accused had statutory right to get the sample retested before the expiry date. Further, on perusal of trial court record, it transpires that summons issued pursuant to the order dated 23.10.2007 were served on co-accused Ramesh Kumar, Proprietor of M/s Shri Ram Seeds Corporation on 22.11.2007 i.e. after the expiry date of sample seed. However, there is nothing on record of trial court to indicate when the petitioner was served with the summons. Since the address of the petitioner is of Aurangabad, it can be safely assumed that he was served with the summons much later than the service of summons on the co-accused who is resident of Delhi. From the aforesaid sequence of events, it is evident that the petitioner came to know about the prosecution launched against him after the expiry of the shelf life of the seed, as such I have no hesitation in holding that

petitioner company has been deprived of its statutory right to seek retesting of the sample under Section 16(2) of the Seeds Act. Thus, he should succeed on this point alone.

14. In view of the facts and circumstances discussed above and the settled position of law as enunciated in above referred judgments of Supreme Court, I am of the considered view that the petitioner has been deprived of a valuable right conferred upon him by Section 16(2) of the Seeds Act. Thus, continuation of prosecution of the petitioner, when end result is obvious, will be an abuse of process of law. Accordingly, the complaint case and the summoning order as well as consequent proceedings qua the petitioner are quashed.

15. The petition stands disposed of.

(AJIT BHARIHOKE)
JUDGE

APRIL 27, 2011

Akb/pst