

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 1598 OF 2015

1. Maharashtra Hybrid Seeds Company Ltd.

A Company registered under
the Companies Act, 1956,
having its registered office at
Resham Bhavan,
78, Veer Nariman Road, Mumbai.
Its Office at Dawalwadi, Jalna,
Dist. Jalna.

Through It's Authorized Signatory
Mr. Govind R. Patel.

2. Govind R.Patil s/o Ramjibhai Patel

Age : 51 Years., Occ. : Service.

R/o.: 901 Sagar Garden,

Sambhajanagar, Mulund, Mumbai. **APPLICANTS**

V E R S U S

The State of Maharashtra.

Represented by Suresh Jalram Koyalwar

Seed Inspector and District Quality

Control Inspector, C/o : District

Superintending Agricultural Officer,

Dist. Nanded.

.... **RESPONDENT**

.....
Mr. Shirish Gupte, Senior Counsel i/b
Mr. S.V. Adwant a/w Mr. Shiv Sapra
and Mr. Abhay Ostwal,
Advocates for the Applicants.

Mr. V.H.Dighe, A.P.P. for Resp.- State

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CORAM : V.M. DESHPANDE, J.

DATE OF JUDGMENT : 10th AUGUST, 2015.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel for both the parties.
2. Prosecution against the present Applicants is based on the allegations that the applicants have violated the mandate of Section 4 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009. [for Short, “the Act”].
3. Heard Mr. Shirish Gupte, Senior Counsel instructed by Mr. S.V. Adwant along with Mr. Shiv Sapra, learned counsel for the Applicants and Mr. V.H.Dighe, learned Additional Public Prosecutor for the Respondent – State.

4. In order to appreciate the contentions raised by the learned Senior Counsel, it would be useful to have reference of certain provisions of “the Act”. The Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 has come into force on 9th May, 2009. Section 2 of “the Act” deals with the “Definitions”. Clause (ii) of sub Section (1) of Section 2 defines “Controller”, which reads as under :-

“**Controller**” means the Cotton Seeds Controller appointed by the Government under Section 3.

Section 3 pertains to “Appointment of Controller”. The State Government may, by notification in the Official Gazette, appoint an officer, possessing such qualifications as may be prescribed, to be the Controller.

From the plain reading of said Section, it could be gathered that, it would require notification in the Official Gazette to appoint an officer having requisite qualification, to be the Controller.

The powers of the Controller are enumerated in Section 4 of “the Act”.

“ **Section 4. (1)** *Subject to the control of the State Government, the Controller, if it appears to him to be necessary or expedient for regulating, maintaining or increasing the supply or distribution or sale of cotton seeds, may, by order*

in writing, require any person, -

(i) holding stock of cotton seed, to sell the whole or specified part thereof at such prices as may be fixed by the State Government, by publication of notification in the Official Gazette, from time to time and to such persons in such circumstances as may be specified in the notification.

(ii) engaged in the supply, distribution and sale of cotton seeds, to comply with the directions, as may be specified in the notification, as to the variety, quality or quantity of the cotton seeds to be sold or delivered by him.

(2) The controller shall determine the compensation payable for sale of misbranded or spurious or substandard seed, in such manner, as may be prescribed.

(3) Notwithstanding anything contained in any contract or instrument to the contrary, every person to whom an order is issued under sub-section (1) shall comply with such order ”.

Section 13 provides penalty. Sub Section (1) of Section 13 reads as under :-

“ Any person who contravenes any order

issued to him by the Controller under Section 4, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to rupees five thousand or with both.”

The next will be in respect of cognizance of the offence that is enumerated in Section 15 of “the Act”. Section 15 reads as under :-

“ Section – 15. Cognizance of Offences. No court shall take cognizance of an offence punishable under this Act except under a complaint, in writing, made by the Controller or any other officer authorized by him for this purpose ”.

5. The submission of the learned Senior Counsel is that, in the present case :-

- (i) There is no notification, as contemplated under Section 4(1) of “the Act”, and,
- (ii) that, the complaint is not filed by authorized person; in his other words, the complaint is filed by a person, who is incompetent to lodge the said complaint.

6. The learned Senior Counsel has invited my attention to the Grounds “H” and “J” in the present Application and submits that the

applicants have specifically raised these grounds in respect of notification as well as in respect of authorization.

7. Mr.Suresh Jalram Koyalwar, Seed Inspector and District Quality Control Inspector, Nanded has filed his affidavit in the present Application on behalf of State. What is pertinent to note here is that, there is no reply or even reference to specific grounds, which the applicants have raised in the Application, as Ground Nos. “H” and “J”. Thus, those two grounds, specifically raised, remained uncontroverted.

8. Section 15 of “the Act” shows that, the court shall not take cognizance of an offence punishable under “the Act” unless the complaint is lodged in writing. Now such complaint has to be made either by the Controller or any any other officer authorized by the Controller for this purpose.

9. In the present case, complaint is lodged by Mr.Suresh Jalram Koyalwar, Seed Inspector and District Quality Control Inspector, Nanded, Dist. Nanded. Thus, it is crystal clear that, the complaint is not filed by the Controller. Since the complaint is not filed by the Controller, unless and until complaint is filed either by the Controller or any any other officer authorized by him for this purpose it could not be said that the

complaint is filed by duly authorized person.

10. The complaint in question is filed by Mr.Suresh Jalram Koyalwar, Seed Inspector and District Quality Control Inspector, Nanded, Dist. Nanded. In the entire complaint, there is no statement or averments that Mr.Suresh Jalram Koyalwar, Seed Inspector and District Quality Control Inspector is authorized by the Controller to file and initiate the proceedings as filed before the Magistrate. The only averment made in the complaint is that, he is a Public Servant in view of Section 11 of the Essential Commodities Act, 1955.

11. Along with the complaint, certain documents are filed. One of such documents is communication dated 13th June, 2011. [जा.क्र.गुनियो/गुनि-७-८/कापूस बियाणे/१५२३/२०११ कृषी आयुक्तालय, महाराष्ट्र राज्य, पुणे - ४०० ००१, दिनांक १३ जून, २०११]. It is addressed to the District Agricultural Officer and said communication is from the Chief Quality Control Officer, Pune. Said communication also does not show that, authorization was from the Controller. Further, said document would reveal that authorization was given only for prosecution under Sections 420 and 406 of the Indian Penal Code and not under the Seeds Act.

12. This Court had an occasion to decide the identical issue in

Criminal Application No. 5256 of 2013 and this court [CORAM : M.T.JOSHI,J.] on 15th September, 2014 has specifically ruled that, in absence of notification under Section 4 of “the Act”, complaint cannot proceed and has to be dismissed. Same view is followed by this court [CORAM : S.B.SHUKRE,J.] in another Judgment dated 16th January, 2015 in Criminal Application No. 232 of 2013 with other companion Applications.

13. In the present case, affidavit of Respondent is totally silent in respect of issuance of notification. Further, Mr. V.H.Dighe, learned Additional Public Prosecutor is unable to point out from any other material to show that, notification was issued. Further since there was no authorization available on record to lodge the complaint, from the controller, it is clear that, complaint bearing Regular Criminal Case No.530 of 2011 pending on the file of the Chief Judicial Magistrate, Nanded is filed by the person, who is not competent to file the same.

14. In that view of the matter, present Criminal Application needs to be allowed. Hence, I proceed to pass the following order :-

ORDER

[i] Present Criminal Application is allowed.

[ii] Regular Criminal Case No. 530 of 2011 pending on the file of the Chief Judicial Magistrate, Nanded, Dist. Nanded is hereby dismissed; since it is filed by the person, who is not competent to file the same and as there is no notification as contemplated under Section 4 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009.

[iii] Rule is made absolute in above terms.

[V.M. DESHPANDE, J.]

[J]