

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

Criminal Application No. 4402 Of 2013.

- (1) Maharashtra Hybrid Seeds Company Limited.
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, Sambhajinagar,
Mulund, Mumbai. **:: Applicants.**

V e r s u s.

The State of Maharashtra.
Represented by R.R. Chandak,
Fertilizer Inspector and
District Superintending Agricultural Officer,
Beed, Dist. Beed. **:: Respondent.**

Appearance =>

Mr. Shirish Gupte, Senior Counsel i/by S.V. Adwant a/with Mr. Shiv Sapra, Advocate for the Applicants.

Mr. V.P. Kadam, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 3rd MARCH, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with consent of 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. (In Short, “the Act”).

[3] I have heard Mr. Shirish Gupte, Senior Counsel i/by S.V. Adwant a/with Mr. Shiv Sapra, Advocate for the Applicants and Mr. V.P. Kadam, 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 Ground/s “G” 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] Shri. Garande Sayappa Dagadu, Seed Inspector and District Quality Control Inspector, Beed 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. “G” 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. R.R. Chandak, Fertilizer Inspector and District Superintending Agricultural Officer, Beed, Dist. Beed. 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. R.R. Chandak, Fertilizer Inspector and District Superintending Agricultural Officer, Beed, Dist. Beed. In the entire complaint, there is no statement or averments that Mr. R.R. Chandak, Fertilizer 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] Alongwith the complaint, certain documents are filed. One of such document is communication dated 13th June, 2011.(जा.क.गुनियो/गुनि-७-८/कापुस बियाणे/१५२३/२०११ कृषी आयुक्तालय, महाराष्ट्र राज्य, पुणे ४११ ००१ 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 Section/s 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.P. Kadam, 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.446 Of 2011 pending on the file of the Chief Judicial Magistrate, Beed 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) Criminal Application is allowed.

(ii) Regular Criminal Case No.446 Of 2011 pending on the file of the Chief Judicial Magistrate, Beed, Dist. Beed 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.

(V.M. DESHPANDE, J.)