

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 247

Criminal Miscellaneous No.M-31574 of 2014 (O & M)
Date of Decision: April 06, 2015

M/s Parbhat Seed Traders

..... PETITIONER

VERSUS

State of Punjab & another

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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

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PRESENT: - Mr. Aayush Gupta, Advocate, for the petitioner.

Mr. Jaspreet Singh Sekhon, Assistant Advocate General,
Punjab.

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Jaspal Singh, J

1. Instant petition has been preferred by M/s Parbhat Seed Traders through its proprietor Hans Raj Kalra, under Section 482 Cr.P.C., seeking quashing of complaint No.RT-9/7.1.09.2009 dated January 7, 2009 (Annexure P-1) captioned as 'State vs. M/s Vicky Pesticides & others' under Section 7(b) read with Section 6(a) of the Seeds Act, 1966 (for short, 'Act'), punishable under Section 19 of the Act as well as summoning order dated January 7, 2009 (Annexure P-2), and further, order dated July 30, 2014 (Annexure P-4) whereby an application for discharge (Annexure P-3) was dismissed and subsequent quashing

of chargesheet dated August 6, 2014 (Annexure P-5) alongwith all consequent proceedings.

2. In nutshell, facts giving rise to instant petition are that respondent No.2 – complainant preferred a complaint (Annexure P-1) unfolding the allegations that on May 13, 2008, he being Seed Inspector, took sample from the shop of M/s Vicky Pesticides which was sold by the wholesaler and produced by the petitioner. The complainant took sample of the seeds on May 13, 2008 and sent the same to Seed Testing Officer on May 16, 2008. The Testing Officer, vide report dated June 9, 2008, opined that germination of seeds was failed. Accordingly, he lodged a complaint on January 7, 2009 (Annexure P-1), on the basis of which, learned Trial Court passed summoning order Annexure P-2. Dissatisfied with summoning order as well as dismissal of application moved by him for his discharge in complaint vide order dated July 30, 2014, petitioner preferred instant petition.

3. In response to notice of motion issued by this Court, Mr. Jaspreet Singh Sekhon, Assistant Advocate General, Punjab represented the respondents and also filed reply to the petition.

4. While assailing the impugned complaint as well orders, referred to above, it has been ebulliently argued by learned counsel for the petitioner that neither complaint nor subsequent orders thereon are legal sustainable, firstly, on the ground that complaint has not been lodged within the prescribed period provided under Section 468(1) Cr.P.C.; and secondly, that petitioner has lost his valuable right accrued to him under Section 16(2) of the act which provides that vendor of the complainant has right to re-analyze the samples from the Central Seeds Laboratory and the report, if any, sent by it shall supersede the report given by the Seed Analyst. Since the complaint is neither within prescribed period of

limitation under Section 468(1) Cr.P.C., and further, that right to re-analyse the sample provided to the petitioner under Section 16(2) of the Act has since been snatched by the complainant, neither complaint nor consequent proceedings are legally justified or maintainable. The same are liable to quashed by way of acceptance of instant petition.

5. Per contra, learned State counsel has supported the orders challenged by learned counsel for the petitioner through this petition contending that same are absolutely in consonance with evidence available on file and settled canons of law, and impugned orders or complaint do not call for any interference by this Court. Instant petition being devoid of merits deserves to be dismissed.

6. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and find a good deal of force in contention(s) put-forth by learned counsel for the petitioner.

7. The offence complained of against the petitioner is punishable under Section 19 of the Act, which runs ut-infra:-

“Penalty

19. If any person-

- (a) contravenes any provision of this Act or any rule made thereunder; or
- (b) prevents a Seed Inspector from taking sample under this Act;

Or

- (c) prevents a Seed Inspector from exercising any other power conferred on him by or under this Act;

he shall, on conviction, be punishable-

- (i) for the first offence with fine which may extend to five hundred rupees, and
- (ii) in the event of such person having been previously convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

8. A glance at the aforesaid provision transpires that on conviction, in offence under Section 19 of the Act, a person shall be punishable for the first

offence with fine which may extend to ₹ 500/-, and in the event of such person having been previously convicted or an offence under this Section, with imprisonment for a term which may extend to 6 months or with fine which may extent to ₹ 1,000/- or with both.

9. Section 468 Cr.P.C. creates a bar for taking cognizance by a Criminal Court which reads as under:-

“468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

10. Reverting back to the facts of the case in hand, sample of seed in this case was taken on May 13, 2008 which were sent to the Testing Officer for analysis on May 16, 2008 and report made by Testing Officer was received on June 9, 2008 but the complaint was lodged on January 7, 2009 i.e. after expiry of period of 6 months. So, period of limitation for taking cognizance under Section 468(1) Cr.P.C. for commission of offence under Section 19 of the Act, is six months and as such, cognizance stood barred. Moreover, as per Section 16(2) of the Act, a right has also been provided to the vendor to get the sample(s) reanalyzed from Central Seed Laboratory and the report, if any, sent by the said Laboratory, prevails upon the report given by the Seed Analyst but in the instant

case, due to non-filing of complaint within limitation, said right could not be exercised which also caused prejudice to the petitioner as well as resulted into miscarriage of justice. Thus, taking case of petitioner from either of the angles, complaint is not legally maintainable and there is no chance for conviction of petitioner. Rather, continuing of complaint is nothing but an abuse of process of law. Accordingly, petition is allowed.

11. Complaint No.RT-9/7.1.09.2009 dated January 7, 2009 (Annexure P-1) captioned as 'State vs. M/s Vicky Pesticides & others' under Section 7(b) read with Section 6(a) of the Seeds Act, 1966 (for short, 'Act'), punishable under Section 19 of the Act as well as summoning order dated January 7, 2009 (Annexure P-2), and all consequent proceedings are hereby quashed.

April 06, 2015
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(Jaspal Singh)
Judge