

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

Criminal Application No.3958 of 2006

- 1) Ajeet Seeds Ltd.
Through Manohar Trimbakrao Pathrikar
Manager, Ajit Seeds Ltd.,
2nd Floor, Tapadia Terraces,
Adalat Road, Aurangabad.
- 2) M/s.Bhushan Agro Agencies
173, Jilapeth (Visamji Nagar),
Jalgaon, through its Proprietor-
Nana Popat Mahajan.
- 3) M/s.Bharatkumar Purushottam Potdar
Bajarpeth, Chopada, Dist.Jalgaon,
through its Proprietor-
Bharatkumar Purushottam Potdar ..Applicants

Versus

- . The State of Maharashtra,
through Surendra Himmatrao Patil,
Seed Inspector and District Quality
Inspector,
C/o. District Superintending
Agricultural Officer, Jalgaon,
Dist.Jalgaon. ..Respondent

...

Mr.A.B.Jagtap and Mr.B.S.Dhawale h/f. Mr.V.D.Sapkal,
Advocate for the applicants.

Mr.G.O.Wattamwar, APP for the respondent.

CORAM : PRAKASH D.NAIK, J.

DATED : 03.11.2017

ORAL JUDGMENT:-

1) The applicants have invoked the inherent powers of this Court under Section 482 of Code of Criminal Procedure, 1973, challenging the proceedings in Criminal Case No.45 of 2005 pending in the Court of the Judicial Magistrate First Class, Chopada, District Jalgaon.

2) The respondent has filed a criminal complaint on 5.4.2005 for an offence under Section 7(b) of the Seeds Act, 1966. The Court took cognizance of the said complaint and issued summons to the applicants.

3) The prosecution's case is as follows:-

(a) The complainant is authorized to institute the prosecution for the breach of provisions laid down under the Seeds Act, 1966 and the Seeds Rules, 1968.

(b) The accused No.1 is carrying business of

selling and distribution of seeds and the accused Nos.2 and 3 are dealers. On 2.12.2003, the Seed Inspector visited the place of the accused No.3 where the seed was being stocked. At that time proprietor- Mr.Bharatkumar Purushottamdas Potdar was present in the premises.

(c) The Seed Inspector submitted Form No.6(VI) indicating his intention to take sample of seeds from the balance stock of Wheat, Lok-1 with the other kind of seeds available in the godown as described in Form-VIII. The sample of seed was taken from original sealed packet. The sample was randomly selected for germination and physical purity test. One sealed part was given to accused No.3. The second sealed part was wrapped in a paper and after sealing, it was labelled for the purpose of sending it to the Seed Testing Lab, Pune for germination and physical purity analysis. On 18.12.2003, the second sealed packet was forwarded

to the Seed Testing Lab, Pune. The third sealed sample is retained in the office as counter sample.

(d) On 20.1.2004, the Seed Inspector received the report dated 16.1.2004 from Seed Testing Lab, Pune. It is alleged that the sample was found to be non-standard i.e. not according to the prescribed standards as per the Seeds Act, 1966. The Inspector issued show cause notice to accused No.3 on 28.1.2004. The reply was given by accused No.3 on 16.2.2004. Since the reply was not satisfactory, the Seed Inspector - original Complainant approached the Court and filed the subject complaint under Section 7(b) of the Seeds Act, 1966. The accused No.1 produced, distributed and sold the seed lot which is non-standard i.e. not of prescribed standard, thus, contravening Section 7(b) of Act. Accused Nos.2 and 3 have stocked, distributed and sold the non-standard seed to dealers and farmers.

4) The learned counsel appearing for the applicants submits that the criminal case filed by the respondent -original complainant is an abuse of process of law. The learned Magistrate ought not to have taken cognizance of the said complaint. It is submitted that the maximum punishment, which is provided under Section 19 of the Seeds Act, 1966 is six months imprisonment with the maximum fine of Rs.1,000/-. It is submitted that the limitation for taking cognizance of the complaint under Section 468 of the Code of Criminal Procedure, 1973, is six months. It is not the prosecution's case that the applicants are habitual offenders and with the maximum punishment, as per Clause 2(a) of Section 468 of the Criminal Procedure Code, the period of limitation would come to six months. It is submitted that the cause of action would start from the date of receipt of the report from Lab. The report was received on 20.1.2004 whereas the complaint was filed beyond the period of limitation. It is therefore, submitted that the complaint is barred

by the law of limitation and the Trial Court had committed an error in taking cognizance of the said complaint.

5) It is further submitted by the learned Advocate for the applicants that the report of the local Seed Testing Laboratory is not final and conclusive for holding the applicants guilty for contravention of the provisions of the Seeds Act, 1966. It is submitted that as per Section 16(2) of the Seeds Act, 1966, after filing the complaint, opportunity is available to the accused to challenge the report by way of making an application to the Court for sending the sample to the Central Seed Laboratory for retesting or rechecking. It is contended that the Indian Seeds Minimum Certification Manual prescribes that the validity period of Seeds certified to be nine months. Therefore, shelf life of seeds is nine months. The complaint is required to be filed within a period of nine months. It is submitted that this is not done in the present case. It is therefore, contended that the

accused has lost the valuable right of challenging the report before the Central Testing Laboratory. The prosecution is filed after a period of sixteen months on account of which the right to challenge the report is frustrated. It is submitted that on this ground, the complaint and the proceedings are required to be quashed and set aside.

6) The learned counsel for the applicants relied upon the following decisions:-

i) Judgment and Order dated 21.6.2010 passed by the Bombay High Court in Criminal Application No.3439 of 2006 in the case of Shivkumar alias Shiwalamal Narumal Chugwani, Proprietor of Kanhaiya General Stores Vs. State of Maharashtra.

ii) *R.Shridhar Vs. State Department of Agriculture and another, reported in 2017 (1), Bom.C.R.(Cri.), 518.*

iii) Judgment and Order dated 27.7.2015 passed by the Bombay High Court in Criminal Writ Petition No.296 of 2015 in the case of the Maharashtra Hybrid Seeds

Company Ltd. And another Vs. The Government of Maharashtra.

*iv) Laborate Pharmaceuticals India Ltd. and ors. Vs. State of Tamil Nadu, reported in **AIR 2017, SC, 2423.***

7) Learned APP submitted that the submissions advanced by the counsel for the petitioner cannot be considered at this stage. The complaint is not barred by the law of limitation. It is further submitted that the delay in lodging the complaint is attributed to the accused. The notices were issued to the accused for seeking certain information and there was delay in forwarding such information, which has resulted in delay in filing the said complaint. It is further submitted that the submissions advanced by the applicants can be agitated during the trial and in exercise of powers under Section 482 of the Code of Criminal Procedure, this Court may not adjudicate upon the same.

8) It is submitted that the report of analysis was

received on 20.1.2004 and in pursuant to the receipt of report of the Analyzer, immediately the notices were issued to the accused Nos.1 and 3 on 28.1.2004 and to accused No.2 on 1.3.2004. However, the accused No.2 replied the said notice on 5.3.2004 and the accused No.3 forwarded his reply on 13.2.2004. The accused No.1 submitted his reply on 5.3.2004 which was incomplete as name of responsible person was not given deliberately. Hence, another notice was issued to accused No.1 for want of details on 23.3.2004. The accused No.1 did not reply the said notice for long time. When the local authorities were asked to submit the name of authorized responsible person, the same was declared vide letter dated 29.3.2005 i.e. after one year. Thereafter, within a short span of time, the complaint was filed on 5.4.2005.

9) It is further submitted that Section 468 of the Code of Criminal Procedure, relates to bar to taking cognizance after lapse of the period of limitation. The learned APP submitted that as per clause-b of Sub-section

2 of of Section 468 of the Code of Criminal Procedure, the limitation prescribed for taking cognizance of the complaint is one year, if the offence is punishable with imprisonment for a term not exceeding one year.

10) It is further submitted that vide Section 473 of the Code of Criminal Procedure, the Court may take cognizance of offence after limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice. It is therefore, submitted that on the ground of the limitation, the proceedings should not be quashed. The impugned proceedings were filed within the limitation prescribed by law and there is no infirmity in the order taking cognizance of the said complaint.

11) Learned APP further submitted that the report was received on 20.1.2004 and the complaint was filed on 5.4.2005. On account of delay in submitting the reply by

the accused persons, the complaint was filed on 5.4.2005. It is submitted that when the sample was drawn on 2.12.2003, the date of seed testing was 23.7.2003. When the sample was taken on dealer's premises, only four months and 20 days were left for the expiry of the seeds. When the report dated 20.1.2004 was received, only three months were left for the expiry of the life of the said seeds. The show cause notice was issued to the accused for giving them fair opportunity to tender explanation. However, the accused No.1 has deliberately delayed the submission of the reply to the show cause notice. There was deliberate delay on the part of the accused with a view to prolong the initiation of prosecution by the prosecuting agency. It is therefore, submitted that the complaint should not be quashed on the ground of bar of limitation as well as on the ground that there was violation of provisions of Section 16 of the Seeds Act, 1966.

12) On perusal of the documents on record, it is

apparent that the seed sample was drawn on 2.12.2003, the report of the Seed Analyst was received on 20.1.2004, and the complaint was filed on 5.4.2005. The shelf life of the subject product had expired on 22.4.2004. With a view to consider the issue raised by the applicants, it would be necessary to embark upon the provisions of Section 16 of the Seeds Act, 1966. The said provisions reads as follows:-

"16. Report of Seed Analyst.-(1) The Seed Analyst shall, as soon as 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 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."

13) On reading the aforesaid provisions, it is clear that after institution of the prosecution under this Act, the accused vendor or the complainant may make an application to the Court for sending any of the samples mentioned in the 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 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. As per sub-section (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).

14) In view of the above, it is apparent that the report of Central Seed Laboratory would have a binding effect and it would supersede the report of the said Analyst. In the present case, the complaint itself was filed on 5.4.2005. The shelf life of the product has already expired on the date when the complaint was filed. The application for forwarding the sample for the second test as stipulated in Section 16 Sub Section 3 could have been

filed only after filing of the complaint. Since the complaint itself was filed belatedly, the accused were prevented from exercising the right for sending the sample to the Central Seed Laboratory. In the light of the binding effect of the Central Seed Laboratory upon the first report of the Public Analyst, it will have to be determined that belated filing of the complaint has resulted in depriving the applicants-accused of their right as prescribed under Section 16(2) of the Seeds Act. On this ground itself the proceedings are required to be quashed and set aside. This Court in the case of *Shivkumar alias Shiwalamal Narumal Chugwani* (supra) has considered the purport of Section 16(2) of the Seeds Act as well as similar provisions under the other Acts. This Court in the said decision had a occasion to consider the similar provision under other Acts and after considering the said aspects, the Court has observed that violation of the valuable right of the accused under the said provision, would vitiate the prosecution.

15) In the case of *R.Shridhar* (supra), this Court had an occasion to deal with Section 16(2) of the Seeds Act. The Court considered the effect of violation of Section 16(2). The Court has observed that the complaint is vitiated because accused is prejudiced for deprivation of his right under Section 16(2) of the Seeds Act. In paragraph No.12 of the said decision, the Court has observed that the right of the accused to send the sample of seeds for analysis to Central Seed Laboratory arises only on institution of prosecution. Since the shelf life of the seed had expired, the sample was unfit for analysis by the Central Seed Laboratory. The complaint was filed in the Court after shelf life of seed had expired.

16) Similar view is expressed by this Court in Criminal Writ Petition No.296 of 2015. It would be appropriate to quote the observations of this Court in paragraph Nos.12 to 15.

"[12] 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.

[13] The complaint is filed on 28/03/2013. The complainant was aware that the shelf-life of the sample is to expire on 17/12/2012. Since the complaint itself is filed after the shelf-life was over, the Petitioners naturally will get the knowledge about filing of the complaint after the shelf-life of the sample was over. 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.

[14] 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 Council, Delhi Vs. Ghisa Ram* [**AIR 1970 SC 970**], 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.

[15] 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 take necessary steps in the complaint as early as possible and in any case before the expiry of the shelf-life of the product. Denial of such right results into denial of fair trial."

17) The Hon'ble Supreme Court in the case of *Laborate Pharmaceuticals India Ltd. and Ors. Vs. State of Tamil Nadu* (supra) has also considered the fact of the expiry of shelf-life of the drug and the right of the accused under Section 23(4) of the Drugs and Cosmetics Act, 1940. In paragraph Nos.7 to 9, the Court has observed as follows;

"7. A reading of the provisions of Section 23(4) and 25 of the Act would indicate that in the present case the sample having been taken from the premises of the retailer had to be divided into four portions; one portion is required to be given to the retailer; one portion is required to be sent to the Government Analyst and one to the Court and the last one to the manufacturer whose name, particulars, etc. is

disclosed under Section 18A of the Act. In the present case, admittedly, one part of the sample that was required to be sent to the appellant (manufacturer) under Section 23(4)(iii) of the Act was not sent. Instead, what was sent on 22nd March, 2012 was only the report of the Government Analyst. When the part of the sample 5 was not sent to the manufacturer, the manufacturer could not have got the same analyzed even if he wanted to do so and, therefore, it was not in a position to contest the findings of the Government Analyst. In the present case, the sample was sent to the appellant-manufacturer on 10th August, 2012 and on 13th September, 2012 the appellant had indicated its desire to have another part of the sample sent to the Central Laboratory for re-analysis. This was refused on the ground that the aforesaid request was made much after the stipulated period of 28 days provided for in Section 25(3) of the Act.

8. The cognizance of the offence(s) alleged in the present case was taken on 4th March, 2015 though it appears that the complaint itself was filed on 28th November, 2012. According to the appellant the cough syrup had lost shelf life in

the month of November, 2012 itself. Even otherwise, it is reasonably certain that on the 6 date when cognizance was taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory.

9. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analyzed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4) (iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4th March, 2015 though the same was filed on 28th November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for re-analysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of
7 the view that as on date the prosecution, if allowed to continue, would be a lame

prosecution."

18) The submission of the learned APP that the delay was caused on account of belated reply forwarded by the accused cannot be accepted in the light of provision of Section 16(2) of the Seeds Act. It was contended by the learned APP that it was bounden duty of the accused-applicants to forward details regarding responsible persons, who are responsible for conducting business. It is submitted that the notice was issued to accused No.1 on 23.3.2004 seeking information, which was replied on 29.3.2005 and thereafter the complaint was filed. It is pertinent to note that accused Nos.2 and 3 had already forwarded information, which was sought from them. It is also required to be noted that nothing had prevented the authorities to follow-up and seek information at the earlier point of time. Therefore, I do not find any substance in the said submissions.

19) In the light of the ratio laid down in the aforesaid decisions and considering the factual aspects involved in

the present case, it is crystal clear that there is complete violation of the right given to the accused under Section 16(2) of the Seeds Act, 1966. In order to afford indefeasible right available in view of Section 16(2) of the Seeds Act, 1966, the prosecution was under obligation to take necessary steps before expiry of shelf life of the product. On this ground, the proceedings initiated against the applicants are required to be quashed and set aside. Since I have considered the scope of Section 16(2) of the Seeds Act, 1966, on which ground the proceedings are required to be quashed and set aside, I do not find it necessary to deal with issue of Bar of limitation in filing complaint.

20) For the reasons stated herein above, in exercise of inherent powers under Section 482 of the Criminal Procedure Code, the impugned proceedings are required to be quashed and set aside. Hence the following order:-

ORDER

(I) Criminal Application No.3958 of
2006 is allowed.

(II) Criminal proceedings in Criminal
Case No.45 of 2005 pending before
the Court of Judicial Magistrate
First Class, Chopada, District
Jalgaon, are quashed and set
aside.

[PRAKASH D.NAIK, J.]