

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1289 OF 2016

Ramnarayan s/o Bansilal Mundada,
Age-57 years, Occu:Business,
R/o-Paithan, Tq-Paithan,
Dist-Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Public Prosecutor,
Hon'ble High Court of Judicature
at Bombay, Bench at Aurangabad,
- 2) Sandeep s/o Dashrath Shirsat,
Age-Major, Occu:Agriculture Officer
and Seed Inspector,
Panchayat Samittee, Paithan,
Tq-Paithan, Dist-Aurangabad.

...RESPONDENTS

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Mr.D.S. Bharuka Advocate for Petitioner.
Mr.D.R. Kale, A.P.P. for Respondent No.1.
Mr.S.R. Dheple Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE OF RESERVING JUDGMENT : 5TH DECEMBER, 2017

DATE OF PRONOUNCING JUDGMENT: 11TH DECEMBER, 2017

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition is filed with following prayers:

"(B) The Charge-sheet bearing R.C.C. No.384/2015 pending before the learned Judicial Magistrate, First Class, Paithan may kindly be quashed and set-aside and Petitioner, who is arrayed as Accused No.1 in the Charge-sheet may kindly be discharged.

(C) Order of issue of process, if any, against the Petitioner may kindly be quashed and set-aside."

3. The brief facts giving rise to this Petition are as under:

A) It is the case of the Petitioner that he is dealing in business of different seeds, fertilizer and other agriculture items since more than 20 years in the name and style as "Rameshwar Krushi Seva Kendra", Paithan. It is submitted that on 9th June, 2015, Respondent No.2 visited shop of the Petitioner and he satisfied himself that the Petitioner was selling the seeds as per Government Regulation dated 8th June, 2015 at the rate of Rs.830/- per bag and issuing purchase bills. Thereafter Respondent No.2 left the shop of the Petitioner and again after 15 minutes came back to the shop. At that time many agriculturist had gathered for purchasing seeds. One Shivpal Gangaram Rathod, resident of Khoda-Tanda was also present and he purchased 10 bags of golden cotton seed of Vithal variety. The Petitioner issued the bill of 10 bags at the rate of Rs.830/- per bag. It is the case of the Petitioner that Respondent No.2 without satisfaction of real facts and

without any complaint from any agriculturist present there or any complaint of Shivlal Gangaram Rathod about charging excess rate of Rs.900/- per bag, drawn a false panchnama by alleging that, the Petitioner has collected Rs.9000/- from Shivlal Gangaram Rathod for 10 bags instead of Rs.8300/- and has not issued purchase bill to the said person.

B) It is the further case of the Petitioner that Respondent No.2 also visited another shop of Sunil Lalasaheb Sawar, namely "Ishwar Krushi Kendra" Paithan,. Respondent No.2 on 10th June, 2015 filed a complaint at Paithan police station against the Petitioner and Sunil Lalasaheb Rawas and police registered Crime No.43 of 2015 for the offences punishable under Section 420 of the Indian Penal Code, Section 8 of Seeds Control Order, 1983, Section 4 of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 (for short

"Maharashtra Cotton Seeds Act, 2009") and Section 3 of Essential Commodities Act, 1955. It is submitted that the Petitioner was released on anticipatory bail on 24th August, 2015 by the learned Sessions Judge.

4. Learned counsel appearing for the Petitioner referring to the grounds taken in the Petition, submitted that the Maharashtra Cotton Seeds Act, 2009 made applicable on 3rd July, 2009 and this Act was specifically enacted to regulate the supply, distribution, sale and fixation of sale price of cotton seeds and for the matters connected therewith or incidental thereto. Under the said Act cotton seeds are not notified under Section 5 and consequently no sale of such seeds is regulated under Section 7 of the Maharashtra Cotton Seeds Act, 2009. It is submitted that as per the said Act, cotton seed is not an essential commodity within the meaning of the Essential Commodities Act, 1955 as amended in the year 1985

and amended by the Essential Commodities (Amendment Act 2006). Similarly, provisions of the Seed (Control) Order, 1983 which was issued under Section 3 of the Essential Commodities Act, are not applicable so far as they relate to the cotton seeds.

5. Learned counsel further submitted that to implement the provisions of the Maharashtra Cotton Seeds Act, 2009, under Section 3 of the said Act a Controller is appointed and powers are vested with the Controller for regulating, maintaining and increasing the supply or distribution or sale of cotton seeds. It is submitted that under the provisions of the Maharashtra Cotton Seeds Act, 2009, only Controller can by an order in writing, regulate any person engaged in the supply, distribution and sale of cotton seeds to comply with direction as may be specified in the notification. Controller can only direct to sell the cotton seeds at such

price as may be fixed by the State Government. It is submitted that after Enactment of the Maharashtra Cotton Seeds Act, 2009, provisions of Seeds Act and Seeds (Control) Order are not applicable in respect of cotton seeds.

6. Learned counsel further submitted that under Section 13 of the Maharashtra Cotton Seeds Act, 2009, for contravention of Section 4 of the Act punishment is provided. Under Section 15 of the Maharashtra Cotton Seeds Act, 2009, Court can take cognizance of an offence punishable under the Maharashtra Cotton Seeds Act, 2009, only on complaint in writing made by the Controller and any other person authorized by the Controller. Learned counsel submitted that the police has no authority to take cognizance of any complaint in respect of offence under the provisions of the Maharashtra Cotton Seeds Act, 2009.

7. It is further submitted that police

station, Paithan had taken cognizance of a complaint filed by Respondent No.1.2 - Sandeep Dashrath Shirsat who was only Seeds Inspector and Agriculture Officer of Panchayat Samittee, Paithan and on the basis of complaint of the said officer, crime was registered as Crime No.115 of 2015 for the offences punishable under Sections 4 and 13 of the Maharashtra Cotton Seeds Act, 2009, Section 8 of Seeds (Control) Order, 1983, Section 3 of the Essential Commodities Act and Section 420 of the Indian Penal Code. It is submitted that the police has no authority to take cognizance and deal with the matter.

. It is further submitted that police of Paithan police station filed a charge-sheet against the Petitioner and the same was registered as R.C.C. No.384 of 2015. It is submitted that learned Judicial Magistrate, First Class, Paithan has wrongly and illegally taken cognizance of the offence contrary to the provisions of Section 15

of the Maharashtra Cotton Seeds Act, 2009. Under the provisions of the said Act, the learned Court below can take cognizance only upon a complaint in writing made by the Controller and as such cognizance of the complaint by the police by an unauthorized officer was also illegal, as the police has no power to take cognizance and investigate the matter. It is further submitted that the learned J.M.F.C., Paithan against the provisions of law has taken cognizance of offence and registered the case against the Petitioner and on the basis of the same, issued process against the Petitioner. Learned counsel therefore, submits that the act of police and act of the learned J.M.F.C. is illegal, void and as such the charge-sheet is liable to be quashed and set aside.

8. On the other hand, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2 invite our attention to the allegations in the First Information Report

(for short "the F.I.R.") and also the statement of the witnesses recorded during the course of investigation and submit that after proper investigation charge-sheet has been filed before the Court of J.M.F.C. at Paithan. The Investigating Officer has collected sufficient material and on the basis of said material trial can proceed. It is submitted that Respondent No.2 was appointed as Seed Inspector by Notification dated 13th October, 2010, issued by the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, Government of Maharashtra and therefore he was authorized officer to make enquiry and file the complaint and the J.M.F.C. Paithan has rightly taken cognizance of the said offence.

9. Learned counsel appearing for Respondent No.2 invites our attention to the provisions of Section 7 of the Maharashtra Cotton Seeds Act, 2009, and submits that there can be appointment of

Seed Inspector under the said provision by the State Government. Accordingly, Respondent No.2 is appointed as Seed Inspector and he has exercised his powers under the provisions of the Maharashtra Cotton Seeds Act, 2009 as well as the provisions of the Essential Commodities Act and the provisions of Seeds Act, 1966.

10. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2. With their able assistance, we have perused the pleadings in the Petition and annexures thereto. It appears that the Government of Maharashtra, Department of Agriculture, Animal Husbandry, Dairy Development and Fisheries Department issued Notification on 8th June, 2015 thereby regulating maximum price of sale of the cotton seeds. In the said Notification various varieties of the cotton seeds are mentioned and

for that maximum sale price has been mentioned. The said Notification is issued taking recourse to Section 10 of the Maharashtra Cotton Seeds Act, 2009.

11. Upon careful perusal of the F.I.R., it appears that the Petitioner herein who is running "Rameshwar Krushi Seva Kendra" sold cotton seed bags to one Shri Shivlal Gangadgar Rathod for higher price than the one prescribed under the aforesaid Notification. The allegation is that the Petitioner though received an amount of Rs.9000/-, did not issue receipt to Shivlal Gangadhar Rathod after selling the bags of cotton seed. It is also alleged that the Petitioner prepared the bill mentioning therein that each bag was sold for Rs.830/-, however the said bill was kept by the Petitioner with him in the shop and the same was not given to said farmer namely Shivlal Rathod. It appears that the said incident had taken place on 9th June, 2015. It is relevant to mention that the

afore mentioned Notification was issued by the concerned Department of the Government of Maharashtra on 8th June, 2015. It appears that the statement of Shivilal Gangadhar Rathod was recorded on 11th June, 2015. There is no explanation on record why his statement was recorded on 11th June, 2015 when it is alleged that cotton seed bags were sold by the Petitioner for higher price on 9th June, 2015 at about 12.00 O'clock. It is also not made clear whether the shop owners who were authorized to sell the cotton seed bags were made aware about said Notification.

12. It would be apt to make reference to the provisions of introductory part/ preamble of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009, which reads as under:

"An Act to regulate the supply, distribution, sale and fixation of sale

price of cotton seeds and for the matters connected therewith or incidental thereto. Whereas cotton seeds of certain varieties are not notified under section 5 and consequently no sale of such seeds are regulated under section 7 of the Seeds Act, 1966;

And Whereas cotton seed is not an essential commodity within the meaning of the Essential Commodities Act, 1955 as amended by the Essential Commodities (Amendment) Act, 2006;

And Whereas the provisions of the Seeds (Control) Order, 1983 issued under section 3 of the Essential Commodities Act, 1955 are not applicable in so far as they relate to the cotton seeds."

13. Therefore, it is clarified in the Maharashtra Cotton Seeds Act, 2009 that cotton seed is not an essential commodity within the meaning of the Essential Commodities Act, 1955 as amended by the Essential Commodities (Amendment)

Act, 2006. It is further made clear that the provisions of the Seeds (Control) Order, 1983 issued under Section 3 of the Essential Commodities Act, 1955 are not applicable so far as they relate to the cotton seeds. However, interestingly while registering the F.I.R., it is mentioned that there is violation of Sections 3 and 7 of the Essential Commodities Act, 1955 and also the provisions of Seeds Act, 1966 and the Rules of 1968 and also the Seeds (Control) Order, 1983. Since the aforesaid provisions are not made applicable to cotton seeds, as it is evident from the afore mentioned extracted portion from the Maharashtra Cotton Seeds Act, 2009, the prosecution of the Petitioner under the said provisions, would not arise.

14. In the Maharashtra Cotton Seeds Act, 2009, under Section 2 i.e. Definitions, in clause (2) "Controller" is defined as under:

"(ii) "Controller" means the Cotton Seed Controller appointed by the Government under Section 3."

. Section 3 of the Maharashtra Cotton Seeds Act, 2009 is about the appointment of Controller and Section 4 is about powers of Controller, which read thus:

"3. 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,

4. Powers of Controller.- (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 cottonseed 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 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."

15. Section 5 of the Maharashtra Cotton Seeds Act, 2009 regulates the functions of the Controller. Therefore, upon conjoint reading of definition of "Controller", "cotton seeds", the provision of appointment of controller, powers of controller and functions of controller, it is clear that ultimate authority is left with the controller to make order in writing for regulating, maintaining or increasing the supply or distribution or sale of cotton seeds.

16. At the relevant time, Respondent No.2 was working as Seed Inspector. It is true that Section 7 of the Maharashtra Cotton Seeds Act, 2009 provides for appointment of Seed Inspector by the State Government. However, upon careful perusal of the Notification issued by the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, dated 13th October, 2010

of which reference has already been made, in which there is no reference to the Maharashtra Cotton Seeds Act, 2009 or Section 7 thereof while appointing the Seed Inspector for particular area. Section 10 of the Maharashtra Cotton Seeds Act, 2009 authorizes the State Government for fixation of maximum sale price of all types of cotton seeds.

17. Section 15 of the Maharashtra Cotton Seeds Act, 2009, reads thus:

"15. Cognizance of offences.- No Court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by the Controller or any other officer authorized by him for this purpose."

. Upon careful perusal of Section 15 referred herein above, it is abundantly clear that the Court can take cognizance of an offence

punishable under the Maharashtra Cotton Seeds Act, 2009 only on the complaint in writing made by the controller or any other officer authorized by him for this purpose. During the course of hearing of the Petition neither the learned A.P.P. nor learned counsel appearing for Respondent No.2 brought to our notice any such authorization by the controller in favour of Respondent No.2 or that Respondent No.2 is appointed by the State Government taking recourse of Section 7 of the Maharashtra Cotton Seeds Act, 2009.

18. It is pertinent to note that Respondent No.2 was appointed by Notification dated 13th October, 2010 issued by the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department of the Government of Maharashtra. The said Notification reads thus:

"No.Biyane 2010/CR-5/(1)/1A.- In
pursuance of the provisions of sub-

section (1) of section 13 of the Seeds Act, 1966 (54 of 1966) read with rule 22 of the Seeds Rules, 1968 and in supersession of Government Notification, Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, No. Biyane 1707/CR-306/1-A, dated the 13th June 2007, the Government of Maharashtra hereby appoints the persons mentioned in column (2) of the schedule appended hereto to be the Seed Inspectors for purpose of the said Act and specifies the areas mentioned against each of them in column (3) of the said Schedule within which they shall exercise their jurisdiction."

19. In the light of discussion herein above, in the first place there was delay of more than two days in recording statement of Shivilal Gangadhar Rathod. Secondly, the Respondents have not filed any document on record to show that as a matter of fact the Petitioner and authorized sellers of cotton seeds were made aware about the

Notification issued on 8th June, 2015 of which reference is already made. Thirdly, the F.I.R. itself recites as under:-

"विकेत्याने अधिसूचना मिळण्या अगोदर शेतक-याला ०८/०६/२०१५ रोजी बियाणे विक्री केलेले होते. सदर शेतकरी जादा गेलेली रक्कम मागण्यासाठी गेले असता विकेत्याने त्यास नकार दिला होता. परंतु मी चौकशी केली असता विकेत्याने जादा घेतलेली रक्कम देण्यास तयार असल्याचे मान्य करून सदर शेतक-यास रु. २००/- परत केले. यावरून सिद्ध होते की, विकेत्याने शेतक-यास जादा दराने बियाणे विक्री केले."

. Therefore, it appears that the F.I.R. lodged by Respondent No.2 was in a confused state of mind and it was not clear whether the sale of those bags containing cotton seeds was prior to 8th June, 2015 or on 8th June, 2015 or on 9th June, 2015. The date and time assumes much importance keeping in view the fact that the Notification regulating price of the cotton seeds

was issued on 8th June, 2015 by the concerned Department of State of Maharashtra.

20. In the light of discussion in foregoing paragraphs, we are of the view that the charge-sheet bearing R.C.C. No.384 of 2015 pending before the Judicial Magistrate, First Class, Paithan, to the extent of Petitioner, deserves to be quashed.

21. In the result, the Writ Petition is allowed. The Rule is made absolute in terms of prayer clause "(B) and (C)" to the Writ Petition. The Writ Petition stands disposed of, accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]

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