

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

Criminal Application No. 01699 of 2018

District : Aurangabad

M/s. Pruthvi Agro Services,
P/48, through its proprietor,
Chhaburao s/o. Kishanrao Haraal,
Age : 53 years,
Occupation : Business,
r/o. Shivali Housing Society,
Warudgaon, Ahmednagar,
Taluka & Dist. Ahmednagar.

.. Applicant

versus

The State of Maharashtra,
through Police Station,
Waluj, Taluka Gangapur,
District Aurangabad.

.. Non-applicant

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Mr. N.B. Khandare, Advocate, for the applicant.

*Mr. S.P. Sonpawale, Additional Public Prosecutor,
for the non-applicant.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02ND AUGUST 2018

ORAL ORDER :

01. Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, challenging the order passed in Criminal Misc. Application No. 524 of 2017, dated 06.03.2018, by the

Judicial Magistrate (F.C.) [Court No.2), Gangapur,
District Aurangabad.

02. The present applicant had filed application for return of property under Section 457(2) of the Cr.P.C. It was contended by the applicant, that the applicant is in the business of selling seeds. The applicant had purchased seeds from Green Pride Traders (I) Ltd., which was the authorized dealer of Green Gold Seeds Pvt. Ltd. It was contended by the applicant further, that Green Gold Seeds Pvt. Ltd. had delivered rights to Green Pride Traders (I) Ltd. The applicant had purchased wheat seeds on 20th December 2017 by delivery challen no. 682 dated 12.10.2017, through transporter by name, Shri Gajanan Road Lines. There were about 800 packets weighing 16000 kg worth Rs. 11,20,000/-. Delivery of the goods was taken by the applicant and those seeds were kept with its godown in Ahmednagar Market yard. It was contended that the applicant was a *bona fide* purchaser. However, police authority had attached the seeds on 17.10.2017. Though the local documents were shown by the applicant to the police, police had not released those goods to the applicant. The property which has been seized, is perishable in nature and if it is kept idle, then its germination capacity would be decreased and the products would be useless. Therefore, it was prayed that the seized articles be handed over to the applicant.

03. Say of the Investigating Officer and

prosecution were called. The application was resisted by the prosecution on the ground that the wheat seeds are seized in the crime of bogus seeds and if those seeds are released, then the applicant would sell those seeds. Even the say of the Collector was called taking into consideration the offences alleged to have been committed under the Essential Commodities Act. It was submitted on behalf of the Collector, that the concerned police station has not reported the seizure to the office of the Collector. After hearing both sides, the learned Magistrate has rejected the application on the ground that the quality of the seized seeds is not determined till the date of the order. Under such circumstance, if the interim custody is granted, then the applicant would sell the articles in the open market. It was also stated in the order, that the Green Pride Traders (I) Ltd. had also filed similar application for release of other seized property and the said application was rejected by the court. This order of rejection of the application is under challenge in this application.

04. Heard learned Advocate Mr. N.B. Khandare appearing for the applicant. Also, heard learned Additional Public Prosecutor Mr. S.P. Sonpawale appearing for the non-applicant.

05. Perused the documents as well as police papers.

06. In order to cut short, I would like to say that the learned Advocate for the applicant and the learned Additional Public Prosecutor have made submissions in support of their respective contentions.

07. It is necessary to see at the first place, what are the allegations those have been in the FIR. The present applicant is not an accused in the said FIR. The FIR has been lodged bearing Crime No. 185/2017 with Waluj Police Station, Aurangabad, on 14.10.2017 by one of the Directors of Green Gold Seeds Pvt. Ltd. It has been stated that one Vijay Bhanudas Chaudhary is serving as the Director of Green Gold Seeds Pvt. Ltd. and his son Saurabh Chaudhary is Senior Manager, H.R. and Admin. since 02.04.2013. They have possession of the record room of Green Gold Seeds Pvt. Ltd. Three persons, namely, Dnyaneshwar Vidhate, Shivprasad Shinde and Rajendra Kshirsagar were serving with Green Gold Seeds Pvt. Ltd. It was found by the Directors of Green Gold Seeds Pvt. Ltd., that their sales have gone down and, therefore, they made enquiry with the market. At that time, it was revealed that Saurabh Chaudhary has started one Green Pride Traders (I) Ltd. He had not obtained any permission from Green Gold Seeds Pvt. Ltd. The said company which has been formed by Saurabh Chaudhary in the year 2013, is also in the business of seeds. Taking disadvantage of the fact that he was on the key post and without taking any permission or resolution from the Directors of Green

Gold Seeds Pvt. Ltd., accused Vijay Chaudhary and his son have entered into an agreement on 11.01.2017. The said agreement is shown to be between Green Gold Seeds Pvt. Ltd. and Green Pride Traders (I) Ltd. It was in respect of co-marketing agreement. Thereafter, on 31.03.2017, Saurabh Chaudhary has obtained license to sell seeds by way of co-marketing by illegal means. In fact, there was no such legal agreement between the two companies. Therefore, it was stated by the informant, that accused Vijay Chaudhary and Saurabh Chaudhary have cheated Green Gold Seeds Pvt. Ltd.

08. It is also contended that without the proper and legal permission of Green Gold Seeds Pvt. Ltd., the laboratory of the said Company has been used in order to sell those seeds which have been manufactured by Green Gold Seeds Pvt. Ltd. It has been further stated in the FIR, that confidential information was leaked by Saurabh Chaudhary and he has sold 23 types of seeds which were developed by Green Gold Seeds Pvt. Ltd., by showing that they have been manufactured by his Company. On the basis of such contentions, offence under Sections 408, 417, 419, 467, 468, 471, 420, 381, 120B of the Indian Penal Code; Section 7 of the Seeds Act, 1999; Section 3 and 8A of the Seeds Control Act, 1983; Sections 43B, 66A & 66C of the Information Technology Act, 2000, and Sections 3 and 7 of the Essential Commodities Act, 1955, was registered.

09. Perusal of the FIR would clearly show that there are no allegations against the present applicant. In fact, why the seeds which were in possession of the applicant were seized by police, itself is a question. Taking into consideration the contents of the FIR, accused Saurabh Chaudhary had prepared certain forged documents and on the basis of those documents, projected Green Pride Traders (I) Ltd. as a company which is co-marketing the product of Green Gold Seeds Pvt. Ltd. As regards the applicant is concerned, it can be certainly said that he was under *bona fide* belief that Green Pride Traders (I) Ltd. is duly authorized by Green Gold Seeds Pvt. Ltd. The applicant has produced on record, the invoice and the billable delivery challan. The price has been paid by the applicant to the Green Pride Traders (I) Ltd. When such documents were produced, it ought to have been held by the Magistrate, that the applicant is the owner of the product i.e. wheat seeds worth Rs. 11,20,000/-. The interim custody ought to have been granted to the applicant in the capacity as owner. The application has been rejected on the ground that a statement was made by the prosecution, that the seeds have been seized in the crime of bogus seeds. Perusal of the FIR would show that the grievance is not in respect of bogus seeds i.e. substandard seeds, but it was in respect of cheating the Company and selling its product under the pretext that the said Company had authorized Green Pride Traders (I) Ltd. to mark it the product. The learned Magistrate has failed to

consider that report regarding the quality of the seeds was not at all necessary because the case was not in respect of bogus seeds or substandard quality seeds. Another fact that is required to be considered is that the product which is seized was wheat seeds. Definitely, they can be said to be of perishable nature. In other words, if they are not used within its shelf period, then it would have caused loss to any such person who can be said to have owner of that product.

10. Section 459 of the Code of Criminal Procedure deals with 'power to sell perishable property'. It provides that *"If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of the opinion that its sale would be for the benefit of the owner, then the Magistrate may at any time direct it to be sold; and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."* Therefore, when the seizure was reported to the Magistrate and it was informed to the Magistrate, that the product is the seed, which is of perishable nature, then the custody of such product ought to have been given to the claimant subject to preserving the sale proceeds. Indemnity could have been taken in respect of the amount that could have been fetched by sale of such product. The reason given by the learned Magistrate, while

rejecting the application is not at all proper and legal. Another fact that was not considered by the learned Magistrate was that neither the informant nor the accused had claimed the property and the property was admittedly seized from the custody of the applicant. The applicant being the owner, bona fide purchaser, was entitled to have the custody of the property.

11. Now, it is informed to this Court, that the seeds have been analyzed and the report is given by the Seed Inspector, Parbhani, stating that the seeds can be put to cultivation. Under such circumstance, the applicant is entitled to get the possession of the property.

12. Hence, I proceed to pass the following order:-

(a) The application is hereby allowed.

(b) The order passed below Exhibit 1 in Criminal Misc. Application No. 524 of 2017, on 06.03.2018, by the Judicial Magistrate (F.C.) [Court No.2], Gangapur, District Aurangabad, is hereby set aside. The said application stands allowed.

(c) The seized property i.e. as per *panchanama* dated 17.10.2017 be handed over as interim custody to the applicant on his executing bond of Rs. 10,00,000/- [Rupees ten lacs]. In the said bond, it should be

specifically mentioned that the applicant would make it good at the time of final outcome of the case. Bond be executed before the concerned authority.

(Smt. Vibha Kankanwadi)
JUDGE

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