

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NOs.6092 & 6205 OF 2018

COMMON ORDER:

Both these criminal petitions are filed by the petitioner/A-1 in C.C.No.1247 & 1248 of 2017 pending on the file of III Additional Judicial First Class Magistrate at Khammam, registered for the offences punishable under Sections 420, 120-B r/w 34 IPC & Sections 19 & 20 of Seeds Act, 1996.

Since both the offences are arising out of the same transaction of sale of Jeeva Agro Genetics JCH 801 Hybrid chilly seeds, though the defacto complainant differs in both the cases, the offences and the accused being one and the same, it is expedient to decide both the cases by common order.

The petitioner is Accused No.1 and the second respondent is the defacto complainant in both the cases. Though the defacto complainants in both the cases are different, they lodged two different reports with the police alleging that they are eking their livelihood by doing agriculture. It is stated in the complaint that the defacto complainant in C.C.No.1247 of 2017 along with the other villagers purchased Jeeva Agro Genetics JCH 801 Hybrid chilly seeds from the shop of Laxminarasimha Enterprises situated at Hanuman Temple road, Khammam in the month of June, 2016, total of 100 gms at total cost of Rs.3,000/-, whereas, the defacto complainant in C.C.No.1248 of 2017 purchased 12 packets with cost of Rs.3,600/-. On sowing the seeds in the agricultural land, the crop has grown to some extent and did not produce chilly crop

sufficiently. When the defacto complainants approached the distributors who supplied the seeds to them, they did not respond properly and they made the other farmers, including the the defacto complainants to believe that these seeds will grow abnormally and yield high chilly returns. But, the produce was not to the extent, as promised by the agency and the Jeeva Agri Genetics Company which manufactured the seed. The petitioner being the Managing Director of the seed manufacturing company, along with other accused conspired together and supplied spurious seed which resulted in wrongful loss to the poor farmers and requested to take necessary action against the petitioner and other accused.

Based on the complaint, the police registered crime and issued F.I.R. Thereafter, took up investigation and examined as many as 16 witnesses and recorded their statements under Section 161(3) Cr.p.C. On the basis of the evidence collected during investigation, concluded that the accused conspired themselves and supplied spurious seeds to the defacto complainants who are eking their livelihood on agriculture and for want of good crop, they purchased Jeeva Agro Genetics JCH 801 Hybrid chilly seeds manufactured and produced by Jeeva Agri Genetics Company and supplied to the dealer-Laxminarasimha Enterprises agency, which did not yield the minimum produce also and thereby, the petitioner/A-1 committed offences punishable under Sections 420, 120-B r/w 34 IPC & Sections 19 & 20 of Seeds Act, 1996.

It is also contended that Jeeva Agri Genetics Company is the producer of the chilly seed and they gave wide publicity in the area

of Warangal and Khammam Districts that Jeeva Agro Genetics JCH 801 Hybrid chilly seed will yield good crop i.e. more than the production. In the process of marketing, the petitioner herein/A-1 supplied Jeeva Agro Genetics JCH 801 Hybrid chilly seed to its dealers i.e. A-3 and A-4. A-5 to A-7 are the field assistants employed by the petitioner/A-1 for giving wide publicity of the seeds to the farmers in the areas of Khammam and Warangal Districts. Believing the publicity given by the company and its employees, the defacto complainants and other farmers bought those spurious chilly seed and after sowing the chilly seed, the defacto complainants came to know that the crop did not yield good returns and found that the seeds are sub-standard and spurious and thus all the accused conspired together and cheated the defacto complainants and other farmers, thereby committed offences punishable under Sections 420, 120-B r/w 34 IPC & Sections 19 & 20 of Seeds Act, 1996.

The present petition is filed by the first accused in both the calendar cases, mainly on the ground that the allegations made in the calendar cases do not constitute any offence, muchless, an offence punishable under Sections 420, 120-B r/w 34 IPC & Sections 19 & 20 of Seeds Act. Apart from that, it is contended that samples of seed were not taken strictly in compliance of Rule 23-A of the Seeds Rules, 1968. In the absence of such evidence, based on the DNA test of leaves, etc, the proceedings against the petitioner for the offences mentioned supra cannot be continued as the investigation was shown totally contrary to the mandatory requirement under Rule 23-A of the Seeds Rules, 1968.

During hearing, Sri Vedula Srinivas, learned counsel for the petitioner, mainly demonstrated that, Rule 23-a specifies the duties of a Seed Inspector. Further, Rule 23-A of the Seeds Rules, 1968 deals with, action to be taken by the Seed Inspector if a complaint is lodged with him and according to it,

1. If farmer has lodged a complaint in writing that the failure of the crop is due to the defective quality of seeds of any notified kind or variety supplied to him, the Seed Inspector shall take in his possession the marks or labels, the seed containers and a sample of unused seeds to the extent possible from the complaint for establishing the sources of supply of seeds and shall investigate the causes of the failure of his crop by ending samples of the lot to the Seed Analyst for detailed analysis at the State Seed Testing Laboratory. He shall thereupon submit the report of his findings as soon as possible to the competent authority.

2. In case, the Seed Inspector comes to the conclusion that the failure of the crop is due to the quality of seeds supplied to the farmer being less than the minimum standards notified by the Central Government, he shall launch proceedings against the supplier for contravention of the provisions of the Act or these Rules".

It is contended by the learned counsel for the petitioner that, this mandatory provision of Rule 23-A(1) that the Seed Inspector taking in his possession the marks or labels, the seed containers and a sample of unused seeds is not complied with by the investigating officer and therefore, the very DNA test conducted on the basis of leaves collected from the plants cannot be the basis for proceeding against the petitioner for the offences punishable under Sections 19 & 20 of Seeds Act, 1996.

It is also contended by the learned counsel for the petitioner that, though the petitioner's license was cancelled on the ground that the petitioner supplied sub-standard or spurious seeds, the license was restored by this Court on 11.10.2017 while deciding W.P.Nos.14356 of 2017 & batch, as the Investigating Agency did not comply with the mandatory requirements under Section 23-A of the Rules referred supra. Therefore, filing of charge-sheet against this petitioner in contravention of Rule 23-A of the Rules framed under the Act, is a serious illegality and on this ground alone, the proceedings against this petitioner are liable to be quashed.

Finally, it is contended by the learned counsel for the petitioner that the petitioner did not induce the defacto complainants or any other farmers who purchased seed, thereby making any false promise with dishonest intention to part with any amount or valuable security or property and in the absence of any *prima facie* material on record that this petitioner induced and cheated the defacto complainants and other farmers of the village, making false promise to part with any amount or immovable property, from the very inception, the said proceedings against this petitioner cannot be continued and prayed to quash the proceedings.

Whereas, the learned Public Prosecutor for the State of Telangana vehemently opposed the petition on the ground that the material collected so far disclosed commission of an offence *prima facie* and the statements of the witnesses recorded during investigation under Section 161(3) Cr.P.C disclosed that this

petitioner is the producer of the Jeeva Agro Genetics JCH 801 Hybrid chilly seed and this fact is confirmed by the receipts issued by Laxminarasimha Enterprises and the other evidences collected by the Investigating Agency during investigation.

If, all these statements, coupled with the evidence collected by the Investigating Agency during investigation, if accepted on its face value, the allegations made in the charge-sheet are sufficient to constitute offences punishable under Sections 420, 120-B r/w 34 IPC & Sections 19 & 20 of Seeds Act, 1996.

It is also further contended by the learned Public Prosecutor that, when the seeds purchased by the defacto complainants and other farmers of the village were sowed, question of Seed Inspector taking in his possession the seed containers and samples of unused seeds does not arise and the chilly plants of Jeeva Agro Genetics JCH 801 Hybrid chilly seeds in the agricultural fields of the defacto complainants are only available for examination. Therefore, leaves of the plants were collected and sent to the laboratory for examination and on the basis of laboratory report, the investigating agency filed charge sheet, as the laboratory opined that this petitioner produced sub-standard and spurious Jeeva Agro Genetics JCH 801 Hybrid chilly seeds.

The confessional statement of A-3-Unnam Mohan Rao, dealer and owner of Sri Laxmi Bargavi Seeds, Khammam, supports the case of the prosecution that this petitioner is the producer of Jeeva Agro Genetics JCH 801 Hybrid chilly seeds. The Jeeva Agri Genetics Company represented by the petitioner produced chilly making certain publications that the seeds would yield high crop.

But, during the course of time, the crop failed to yield even to the minimum result as fixed by the department. It is also further contended that, when the petitioner being the producer along with other accused, including the dealers, made a false promise and induced the poor farmers to purchase the seeds with a fond hope that the seeds would yield good crop and give good returns, the promise was proved to be false and the pamphlets collected during investigation substantiated the same. Therefore, such dishonest inducement at the beginning is sufficient to proceed against this petitioner for the offences referred supra and prayed to dismiss the petition.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1) ***Whether non-compliance of mandatory requirement under Rule 23-A of the Seeds Rules vitiates the proceedings against this petitioner for the offences punishable under Sections 19 & 20 of Seeds Act, 1996. If so, the proceedings against this petitioner in C.C.No.1247 & 1248 of 2017 pending on the file of III Additional Judicial First Class Magistrate at Khammam, registered for the offences punishable Sections 19 & 20 of Seeds Act, 1996, are liable to be quashed?***
- 2) ***Whether this petitioner cheated and induced the defacto complainants and other farmers of the village with dishonest intention to part with any amount or property or valuable security. If not, whether the proceedings against this petitioner in C.C.No.1247 & 1248 of 2017 pending on the file of III Additional Judicial First Class Magistrate at Khammam, registered for the offences punishable under Sections 420, 120-B r/w 34 IPC are liable to be quashed?***

P O I N T No.1

As seen from the material on record, the third respondent/Investigating Agency, after completion of investigation, having concluded that this petitioner being the Managing Director of Jeeva Agri Genetics Company, produced Jeeva Agro Genetics JCH 801 Hybrid chilly seeds, which are found to be spurious and not of good standard as fixed by the government, thereby production and sale of such sub-standard seeds is an offence punishable under Sections 19 & 20 of Seeds Act, 1996. The petitioner undisputedly the Managing Director of Jeeva Agri Genetics Company, produced the seeds and in the entire petition, the petitioner did not deny the production of Jeeva Agro Genetics JCH 801 Hybrid chilly seeds, but contended that the third respondent did not comply with the mandatory requirement of Rule 23-A of the Seeds Rules, which the Seed Inspector has to follow the procedure during investigation.

But, in the present case, the third respondent did not seize the remaining part of the seed and its containers. Therefore, the investigation done by the third respondent is totally in contravention of Rule 23-A of the Seeds Rules and based on the leaves of the plants, DNA test was conducted. But, it is not the mandatory requirement under Rule 23-A of the Rules framed under the Seeds Rules.

Sending leaves and stems for DNA analysis to the analyst is not contemplated in any of the Rules framed under the Seeds Act or Seeds Rules. But, Rule 23-A of the Seeds Rules, 1968 mandales

action to be taken by the Seed Inspector if a complaint is lodged with him and if farmer has lodged a complaint in writing that the failure of the crop is due to the defective quality of seeds of any notified kind or variety supplied to him, the Seed Inspector shall take in his possession the marks or labels, the seed containers and a sample of unused seeds to the extent possible from the complaint for establishing the sources of supply of seeds and shall investigate the causes of the failure of his crop by ending samples of the lot to the Seed Analyst for detailed analysis at the State Seed Testing Laboratory. He shall thereupon submit the report of his findings as soon as possible to the competent authority. In case, the Seed Inspector comes to the conclusion that the failure of the crop is due to the quality of seeds supplied to the farmer being less than the minimum standards notified by the Central Government, he shall launch proceedings against the supplier for contravention of the provisions of the Act or these Rules".

Therefore, the basic requirement to conduct test of unused seed and its containers. But, strangely, the third respondent sent the leaves of the chilly plant crop found in the agricultural fields of the defacto complainant and other farmers, which is contrary to Rule 23-A of the Seeds Rules. Therefore, on this ground alone, the report submitted by the seed analyst cannot be accepted that the seed supplied by this petitioner is sub-standard, as notified by the Central Government. Moreover, the material on record, though disclosed that the yield of the chilli crop is not even minimum, though not as promised by the company, by making publication, distributing pamphlets among the farmers of the village. Therefore,

based on the seed analyst report, the petitioner cannot be saddled with any criminal liability, since it is in total contravention of the Rules framed under the Act, as such the proceedings against this petitioner for the offences punishable under Sections 19 & 20 of Seeds Act, 1996, are liable to be quashed, in view of non-compliance of mandatory requirement under Rule 23-A of the Seeds Rules. Accordingly, the proceedings against this petitioner in C.C.No.1247 & 1248 of 2017 pending on the file of III Additional Judicial First Class Magistrate at Khammam, for the offences punishable under Sections 19 & 20 of Seeds Act, 1996, are hereby quashed.

P O I N T No.2

The **second** offence allegedly committed by the petitioner is punishable under Section 420 & 120-B r/w 34 IPC. The first petitioner is the Managing Director of Jeeva Agri Genetics Company, A-2-Sabbineni Ram**brahmam** is the Area Manager. Similarly, A-3 & A-4 are Unnam Mohan Rao and Prathapani Veeresha Lingam, who are owners of Sri Laxmi Bargavi seeds and Laxmi Narasinha Enterprises respectively, while A-5 to A-7 are the employees and field assistants of the said Jeeva Agri Genetics Company. A-1 & A-2 along with A-5 to A-7 all joined together and supplied seeds to A-3 & A-4 from whom the defacto complainant purchased Jeeva Agro Genetics JCH 801 Hybrid chilly seeds. But, on plantation of those seeds, it did not yield minimum and thereby, the petitioner allegedly committed an offence punishable under Section 420 & 120-B r/w 34 IPC.

The term 'criminal conspiracy' is defined under Section 120-A I.P.C, as when two or more persons agree to do, or cause to be done:- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

To constitute an offence punishable under Section 120-A I.P.C, the essential ingredients of the offence of criminal conspiracy is the agreement to commit an offence. Mere proof of such an agreement is sufficient to establish criminal conspiracy. (vide **Sushil Suri v. Central Bureau of Investigation¹**)

The essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both. Direct evidence to prove conspiracy is rarely available and, therefore, the circumstances proved before, during and after the occurrence have to be considered to decide the complicity of the accused. (**Pratapbhai Hamirbhai Solanke v. State of Gujarat²**).

¹ AIR 2011 SC 1713

² 2012 (10) JT 286

Therefore, by applying the principles laid down in the above two judgments, agreement though not to be provided between A-1 to A-7 cannot be proved by direct evidence, the agreement to do an illegal or a legal act by illegal means can be proved due to engaging A-2 as Area Manager, A-5 to A-7 as Field Assistants of Jeeva Agri Genetics Company and supplied Jeeva Agro Genetics JCH 801 Hybrid chilly seeds, so as to enable them to sell those seeds to the farmers who are depending upon the income derived from agriculture. Such agreement can be proved either by direct or indirect evidence and while deciding such issue, the Court shall take into consideration the circumstances before, during and after occurrence of the offence to decide the complicity of the accused. Therefore, the allegations made in the charge-sheet *prima facie* disclosed that A-1 to A-7 conspired together to cheat the farmers in the village by supplying spurious seeds or sub-standard seeds which did not yield proper chilli produce *prima facie*.

Yet, the other offence allegedly committed by these petitioners is that the petitioner cheated and induced the farmers with dishonest intention to purchase Jeeva Agro Genetics JCH 801 Hybrid chilly seeds and made propaganda in the villages of Khammam and Warangal Districts, as if the seed is of high quality and yields more crop than Teja Brand. Believing these words, the defacto complainants and other farmers purchased Jeeva Agro Genetics JCH 801 Hybrid chilly seeds from A-3 & A-4 with a fond hope that they will get high reap of profits out of the yield on account of planting Jeeva Agro Genetics JCH 801 Hybrid chilly

seeds. But, their hopes dashed to earth and did not yield proper chilli produce. Therefore, making such representation though they are aware that the seed is not of such high quality and inducing them to purchase by distributing pamphlets within the area, *prima facie*, pointing out the complicity of the petitioner.

Section 420 IPC deals with cheating and dishonestly inducing delivery of property. According to it, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

But, the word 'Cheating' is defined under Section 415 IPC and according to it, whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

In view of definition of 'cheating' under Section 415 IPC, to constitute an offence under Section 420 IPC, there must be cheating, coupled with dishonest inducement for delivery of the property to any person, or to make, alter or destroy the whole or

any part of a valuable security or anything which is signed or sealed, and which is capable of being converted into valuable security.

In **V.Y.Jose v. State of Gujarat**³ the Apex Court laid down following ingredients to constitute cheating.

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases:

- (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;
- (2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.”

In view of the law declared by the Supreme Court in the judgment referred supra, the act committed by this petitioner, i.e. production of sub-standard quality seeds and giving hope of high yields of crop to the farmers which was proved to be false.

³ (2009) 3 SCC 78

Therefore, the material collected during investigation disclosed that this petitioner made a false promise and induced the defacto complainants and other farmers of the village to purchase the sub-standard or spurious seeds manufactured by A-1 and supplied by A-3 & A-4-dealers and thereby, the allegations made in the charge sheet *prima facie* constitute offences punishable under Sections 420, 120-B IPC. Hence, I find no ground to quash the proceedings against this petitioner in C.C.No.1247 & 1248 of 2017 pending on the file of III Additional Judicial First Class Magistrate at Khammam for the offences punishable under Sections 420, 120-B IPC.

While deciding a petition under Section 482 Cr.P.C, the Court has to look into the allegations made in the complaint and the material, if any annexed to the complaint to find out whether the complainant made out any *prima facie* case to constitute an offence under the provisions of any penal law and this Court cannot appreciate the evidence but evaluate the material on record, in view of the limited scope and jurisdiction of this Court under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In **State of Haryana v. Bhajan Lal**⁴ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

⁴ 1992 Supp. (1) SCC 335

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

When the allegations made in the charge sheet *prima facie* disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

In view of my foregoing discussion, the proceedings against this petitioner in C.C.No.1247 & 1248 of 2017 pending on the file of III Additional Judicial First Class Magistrate at Khammam, for the offences punishable under Sections 19 & 20 of Seeds Act, 1996, are hereby quashed, while directing the Magistrate to proceed against these petitioners in C.C.No.1247 & 1248 of 2017 pending on the file of III Additional Judicial First Class Magistrate at Khammam for the offences punishable under Sections 420, 120-B IPC.

Accordingly, both the criminal petitions are allowed-in-part.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 13.08.2018

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