

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

Criminal Revision Case Nos.1842 and 1843 of 2008

Crl.R.C.No.1842 of 2008

Between:

M/s. A.P. Farm Needs
Rep., by its Manager & another

Petitioners

VERSUS

State of A.P.,
rep., by Seed Inspector & Asst. Director of Agriculture,
rep., by its Public Prosecutor,
High Court of A.P., Hyderabad & another.

.. Respondents

Date of Judgment Pronounced: **11.09.2018**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE P. KESHAVA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE P. KESHAVA RAO

*** HON'BLE SRI JUSTICE P. KESHA RAO**

+ CRIMINAL REVISION CASE Nos.1842 and 1843 OF 2008

% Dated 11-09-2018

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High Court of A.P., Hyderabad & another.

Respondents

! Counsel for Petitioner : Sri D. Krishna Murthy.

^Counsel for the 1st respondent : Public Prosecutor

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> HEAD NOTE:

? Cases referred

1. 2007 (1) ALD (CrI.) 955 (AP)

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE Nos.1842 and 1843 of 2008

COMMON ORDER:

Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the 1st respondent State.

The present revision cases are filed against the orders passed in CrI.M.P.Nos.3290 and 2626 of 2008 in C.C.No.577 of 2006 dated 15.10.2008 on the file of the II Additional Judicial Magistrate of I Class, Eluru, dismissing the petitions filed by the petitioners under Section 245 Cr.P.C., to discharge them from the case.

The petitioners (A2 and A3) in CrI.R.C.No.1842 of 2008 are the seed distributor and producer of the seeds respectively and the petitioner (A1) in CrI.R.C.No.1843 of 2008 is the dealer. For convenience, the petitioners are referred to as A1, A2 and A3.

The facts in brief are that A2 is distributing the seeds produced by A3. A3 supplied the PLA-1100 T/L paddy seed to A1 through A2. On 29.06.2003, the Seed Inspector and the Mandal Agricultural Officer, Devarapalli, inspected the shop of A1 by exercising their power under Section 14 of the Seeds Act, 1966 (for short, the Act"). At the time of inspection, A1 was present dealing with the business transactions. The Seed Inspector, after issuing Form-VI notice to A1 and on verification of the stocks of the seeds available for sale and the concerned records under cover of mediators report, has drawn one seed sample of paddy PLA-1100 with lot No.Nov-2002-01-651 (P) supplied by A3 through A2 being the distributor. The sample drawn was sealed by the Seed Inspector in the presence of the mediators. As per the procedure laid down in sub-section (2) of Section 15 of the Act, one portion of the sample was handed over to the dealer, the second sample was sent to the

seed testing laboratory, Rajendranagar, Hyderabad, along with other seed sample and the third sample was retained by the Seed Inspector as reference sample. On testing the said seed samples, the Seed Analyst i.e., Assistant Director of Agriculture (Seed Testing), Rajendranagar, Hyderabad, has communicated the seed testing results vide Roc.No.260/03, dated 04.08.2003 mentioning that the paddy seed sample is having only 75% of germination with remarks as sub-standard. In fact, the minimum percentage fixed for germination under clause (a) of Section 6 of the Act is 80%. Therefore, the sample was branded as sub-standard, which is in contravention of the provisions of the Act. Under clause (b) of Section 7 of the Act, selling, keeping for sale, offering to sell or supplying seeds of any notified kind or variety, unless such seed confirm to the minimum limits of germination and purity, specified under clause (a) of Section 6, is a contravention and punishable under Section 19 of the Act. The Seed Inspector, after receipt of the testing results, visited the premises of the seed dealer, Devarapalli, on 11.08.2003 and handed over one copy of the seed testing results to him in the presence of mediators duly taking mediators' report. Thereafter, the complainant i.e., the Government of A.P., represented by the Seed Inspector and Assistant Director of Agriculture, Kovvur, West Godavari District, issued show cause notice to A1 to A3 calling upon them to explain why they should not be prosecuted. Thereafter, the Commissioner and Director of Agriculture (A.P.) Hyderabad, accorded authorization vide S & HVP (4) 2189/2003 dated 05.01.2004 to the Assistant Director of Agriculture (R), Kovvur, for launching prosecution against the concerned persons, who are responsible for contravening the procedure as contemplated under the provisions of the Act, and punishing them under Section 19 of the Act. Pursuant thereto, a complaint was lodged under Section 190 (1)

Cr.P.C., for contravention of clause (a) of Section 6 and clause (b) of Section 7 of the Act, which are punishable under Section 19 of the Act in the II Additional Judicial First Class Magistrate, Kovvur.

The learned Magistrate, after taking cognizance of the offence, numbered the case as C.C.No.577 of 2006. During the pendency of the C.C., A2 and A3 filed CrI.M.P.No.3290 of 2008 and A1 filed CrI.M.P.No.2626 of 2008 under Section 245 Cr.P.C., to discharge them for the offence against which they are charged. The learned Magistrate, after hearing, dismissed the said petition by orders dated 15.10.2008. Aggrieved by the said orders, the present revision cases are filed.

Learned counsel appearing for the petitioners would contend that the Court below committed material irregularity in exercise of its jurisdiction in dismissing the petitions filed under Section 245 Cr.P.C., to discharge the petitioners. Admittedly, the offence under Section 19 of the Act is punishable with fine only and the complaint was filed on 24.06.2004 i.e., beyond the period of six months limitation as prescribed under Section 468 (2) (a) Cr.P.C., and as such the petitioners ought to have been discharged from the case on the ground of limitation. Learned counsel also submitted that the respondent State failed to serve the analyst report within 30 days on the petitioners, as contemplated under Rule 21 (3) of A.P. Seed Rules and the same vitiates the entire proceedings. Learned Magistrate also failed to see that due to delay in launching the prosecution, the petitioners have lost their valuable right of sending the second sample to the Central Laboratory and prejudiced their case and therefore they ought to have been discharged, since no useful purpose would be served in continuing the proceedings except to harass the petitioners.

The learned Public Prosecutor appearing for the respondent State supported the impugned orders.

Having heard both the counsel and from a perusal of the material on record, the issue that crops up for consideration is:

Whether the prosecution launched by the 1st respondent State for the offence under Section 19 of the Act against the petitioners is beyond the period of limitation prescribed for the said offence?

The admitted facts in the present case are that the Seed Inspector and the Assistant Director of Agriculture (R), Kovvur, West Godavari District, inspected the premises of A1 on 29.06.2003 at Door No.2-306-C, Main Road, Devarapalli, in exercise of the power under Section 14 of the Act. During the course of investigation, the Seed Inspector issued Form-VI notice to A1 and on verification of the stocks of the seeds available for sale and the concerned records, drawn one seed sample of paddy PLA-1100 under a cover of mediators report. The said sample was divided into three equal representative portions duly enclosing the information sheets in the sample packet and sealed in the presence of the mediators. In compliance with the procedure as contemplated under sub-section (2) of Section 15 of the Act, one portion of the sample was handed over to the dealer, the second sample was sent to the Seed Testing Laboratory, Rajendranagar, Hyderabad, along with other seed sample and the third sample was retained with him as reference sample. On testing the said seed sample, the Seed Analyst i.e., Assistant Director of Agriculture (Seed Testing), Rajendranagar, Hyderabad, communicated the seed testing results vide Roc.No.260/03 dated 04.08.2003 in which he has stated that the paddy seed sample seized was having only 75% of germination with remarks as sub-standard. In fact, the minimum percentage of germination fixed for paddy seed under clause (a) of

Section 6 of the Act is 80%. The Seed Inspector, after receipt of the seed testing results, inspected the premises of A1 and served a copy on the dealer on 11.08.2003 in the presence of the mediators duly taking the mediators report and etc. Thereafter, after obtaining the authorization from the Commissioner and Director of Agriculture (AP) dated 05.01.2004, a complaint was filed on 24.06.2004. For the purpose of ascertaining as to whether the said complaint is filed within the period of limitation or not, Section 19 of the Act, which prescribes the penalty, is as under:

“19. Penalty – 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.”

From the above provision, it is evident that if any person contravenes the provisions of the Act or the Rules made thereunder and etc., he shall, on conviction, be punishable for the first offence with fine, which may extend to Rs.500/- and etc. The specific case of the petitioners is that this is the first complaint lodged against them.

As far as the limitation for initiation of criminal prosecution against the petitioners is concerned, it is governed by the provisions of Section 468 Cr.P.C., and the same is 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.”

Therefore, as per Section 468 (2) (a), the period of limitation shall be six months if the offence is punishable with fine only.

From the conspectus of the material available on record, the petitioners are sought to be punished for the offence under Section 19 of the Act and since the said offence is committed for the first time, as per Section 19 (a) (1) of the Act, the punishment will be with fine, which may extend to Rs.500/-. Similarly, the limitation prescribed in cases where the offence is punishable with fine **only** is six months. Admittedly, in the case on hand, though the inspection was made on 29.06.2003 and the analyst report was submitted on 04.08.2003, the complaint was lodged on 24.06.2004 on the file of the II Additional Judicial I Class Magistrate, Kovvur, West Godavari District. The same is evident from a perusal of the complaint filed in the material papers with the Court seal. If the said date is taken into consideration, the complaint, as filed by the 1st respondent State, is well beyond the period of limitation prescribed under Section 468 (2) (a) Cr.P.C.

In fact, in **Varun Agritech, Munjampalli, Manokondon Mandal, Karimnagar District and another vs. Assistant Director, Agriculture,**

Gudivada, Krishna District and another¹ this Court had an occasion to consider similar issue and pleased to observe as under:

“In **G.S. Prasad and others v. State** (2002 (1) ALD (crl.) 314 (AP), a learned Single Judge of this Court held that prosecution for an offence under Section 19 of the Seeds Act cannot be maintained when the complaint was filed by the Seeds Inspector eight months after the receipt of the report of the analyst and the time spent in obtaining sanction for prosecution cannot be excluded since such a sanction is not required under law. Therefore, the complaint is barred by limitation.

In the light of the above judgments and the facts and circumstances of the present case, the complaint is barred by limitation. Hence, the proceedings are liable to be quashed.”

Therefore, continuation of proceedings in C.C.No.577 of 2006 would amount to abuse of process of the Court, since the complaint itself is not maintainable on limitation aspect as discussed supra and there is no chance of conviction of the petitioners.

Accordingly, the criminal revision cases are allowed, setting aside the orders passed in CrI.M.P.Nos.3290 and 2626 of 2008 in C.C.No.577 of 2006 dated 15.10.2008 on the file of the II Additional Judicial Magistrate of First Class, Eluru, and consequently, the petitioners (A1 to A3) are discharged for the offence under Section 19 of the Act.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 11.09.2018.
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L.R. Copies to be marked.

¹ 2007 (1) ALD (CrI.) 955 (AP)