

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

CRIMINAL WRIT PETITION NO. 611 OF 2021

**M/S. KAVERRI SEED COMPANY LTD AND OTHERS
VS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Ganesh P. Shinde, Advocate a/w Amol Shinde, Advocate for
the petitioners

Mr. S. W. Mundhe, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 28th November, 2022

PRONOUNCED ON : 02nd February, 2023

P. C.

1. This petition is filed by the company engaged in the business of production of seeds, its responsible persons and also dealers of the company challenging institution of the proceeding bearing RCC No. 72/2020 pending with the Judicial Magistrate, First Class, Ambejogai for the offences punishable under Sections 19(a)(i) of the Seeds Act, 1966 (hereinafter referred to as 'the Seeds Act') and Section 13 (2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 (hereinafter referred to as 'the Cotton

Seeds Act'). A prayer is made to quash the said proceeding.

2. The facts are as below:

a] That the Seed Inspector and Deputy Director of Agriculture filed a complaint stating that he visited the premises of respondent No.3 in Ambejogai and drawn the sample of seeds of the non BT Cotton seed pack contained in the packet of BG II Hy Cotton KCH 707 from the Lot No. CFGC1111529P with expiry date as 01-12-2019. The said seed was taken from market. It is alleged that sampling procedure was followed as per section 15 of the Seeds Act and Rules made there under. A notice in form No. VI as per rule 34 of the Seeds Rules, 1968 was given to the dealer. Required quantity of the seed was collected from the randomly selected packets from the stock of said seed and other seeds in presence of witness at the time of sampling and also in presence of dealer.

b] After following procedure sample was tested. After analyzing said samples by the testing laboratory, Parbhani report

was received by the Seed Inspector. Report of the analysis of the sample was reported to be not according to the minimum level of the BT toxin for refugee as separate packet. It was stated that the separate refugee Non-BT Cotton said pack with transgenes positive seeds not exceeding 5%. The explanation was called from the accused No.3 and 4. Accused Nos. 1 and 2 did not give explanation. After receiving the explanation it was found that said was not proper alleging that sample was in contravention of section 7 (b) of the Seeds Act and Section 12(1) of the Cotton Seeds Act. It is alleged that by the contravention the accused have committed offence and Petitioner Nos. 3 and 4 are liable for penalty under Section 19(a) (i) of the Seeds Act and Section 13(2) of the Cotton Seeds Act. Alongwith a complaint the complainant annexed all the relevant documents showing he is authorized to file a complaint by virtue of notification dated 13-10-2010 appointing him as Seeds Inspector for the purpose of said Act. On going thorough the complaint, learned Magistrate took cognizance by its order on Exh. 1 on 11-03-2020 and issued summons.

c] The petitioners being aggrieved by institution of the complaint have approached this court submitting that proceeding pursuant to the complaint would be an abuse of process of law. The report of the legal testing laboratory is not final and conclusive to hold the petitioners guilty of the contravention of the Seeds Act by virtue of Section 16(2) of the Seeds Act. After filing the complaint an opportunity needs to be given to the accused to challenge the report by way of making an application to the court for re-testing or rechecking of the samples. As per Section 9(4) of the Cotton Seeds Act the accused can challenge the report by making an application to the court. Shelf life of the seed is nine months and therefore complaint is required to be filed and notice needs to be given where the accused can apply for re-testing within time so that even retesting is also done before before expiry of ninety days. The shelf life in this case of the seeds expired on 11-03-2020 and therefore, accused persons have lost their valuable right to challenge report before the Central Testing Laboratory as the

prosecution is lodged after three months of the expiry of the shelf life of the seeds. As the complaint is lodged on 11-03-2020. The testing was done on 02-08-2018. As per section 15 of the Maharashtra Cotton Seeds Act the court can take cognizance of the offence only on the complaint in writing made by the controller or any of the officer authorized by him. In this case there is no such authorization by the controller in favour of the complainant. There is nothing on record to show that the complainant treated by the State Government as per Section 7 of the Maharashtra Cotton Seeds Act. It is the main case of the petitioners that no offence is in fact made out. Therefore, the proceeding of the RCC No.172/2020 would amount to abuse of process of law.

3. Learned APP for the respondents/State, in response, submitted that as per Section 16(2) of the Seeds Act it was necessary for the petitioners to file an application by appearing before the trial court and therefore, opportunity is now available to the petitioners. It is submitted that the petitioners

intentionally did not appear before the court and avoided to avail an opportunity by making an application for sending the sample for retesting. It is submitted that the Indian Seeds Minimum Certification Manual is not applicable in the present matter because the said shelf life is relating to the Germination of the seed and the present case is not relating to the Germination but it is related to BT gene for which there is no shelf life and therefore, the said period cannot be considered.

4. To consider the petition, it is necessary to see the relevant provision of the Seeds Act and Cotton Seeds Act as entire case is revolves around provisions of the Act. Section 16(2) of the Seeds Act reads as under:-

16(2)- Report of Seed Analyst- (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.

5. From the complaint it is seen that the date of conducting test is 02-03-2019 and the date of expiry of validity was 01-12-2019. Rule 3 requires that the complaint should be filed by the controller or any other officers authorized by controller. In this case, looking at the notification it is seen that the present complainant is not controller under the Seeds Act and therefore, no cognizance could have been taken.

6. In this case it is seen that this case is not filed before expiry of the shelf life of the seeds. Section 9 (4) of the Cotton Act also provides that after institution of the prosecution, the accused or the complainant may make an application to the court for sending the samples for analysis. Section 9(4) reads as under:-

9(4) After institution of prosecution under this Act, the accused vendor or the complainant, as the case may be, on payment of the prescribed fee, may make an application to the court, for sending any of the

sample retained with the Seed Inspector or vendor to any of the Referral Seed Testing Laboratory prescribed under Section 6 of the Act, for the analysis. The court shall first ascertain that the mark or seal or fastening, as prescribed is intact. On receipt of the application, the court may dispatch the sample under its own seal to any of the Referral Seed Testing Laboratory specified for the purpose, which shall, thereupon, within a period of thirty days from the date of receipt of sample, send its report to the court, in the prescribed form.

7. It is necessary to see that even after institution of the complaint there should be sufficient time gap to send the seeds for analysis before it's expiry. When the complaint itself is lodged after expiry of seeds, then the right of the accused naturally goes. Rule 3 of the Seeds Acts provides for function of Central Seed Company. Further considering Section 15 of the Cotton Act which provides that the court can take cognizance of an offence punishable under this Act only upon a complaint, in writing made by the controller or any other officers authorized by him for this purpose. So, the next question as to whether the complainant in this case can be said to be a person authorized to file a complaint. For this, the complainant has to show that he is a controller or an officer authorized by the controller. While

going through the definition of the word 'controller' given in section (ii) which reads as under:-

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

8. So, the government has to appoint the controller by notification in the official gazette. The controller only after he is appointed can lodge the complaint or can authorize some other officer to lodge a complaint. The judgment reported in 2018 ALL MR 910 (SC) in the case of Mahyco Vegetable Seeds Ltd and Ors Vs State of Maharashtra and others is relied upon the petitioner. In that case sample was taken on 01-09-2002 and report was dated 26-09-2002 and shelf life of the sample was till 07-11-2002. The complaint was filed on 31-01-2003. The Hon'ble Apex Court held that the accused is deprived of his valuable right of reanalysis. This deprivation goes to the root of the matter and renders prosecution case futile. Considering this judgment, it is seen that the shelf life of the sample was till 02-03-2019 & 01-12-2019 analysis was done on 02-08-2019 and the complaint was filed on 11-03-2020. It is thus clear that in this case also the

petitioners are clearly deprived of their valuable right to get the sample re-analysed.

9. The learned advocate for the petitioner also relies upon a judgment reported in *2016 ALL MR (Cri) 4409 in the case of R Shridhar Vs State Department of Agriculture and another*. In the said judgment the summons were issued to the applicant after the shelf life of the sample seeds had expired. There was no explanation offered for causing such a delay. It was held that the applicant's right under Section 16(2) of the Seeds Act to send the samples to Central Seed Testing Laboratory was lost and in that petition was allowed, the proceeding instituted against the accused and the complaint was quashed.

10. The petitioner further relied on the judgment reported in 2020 NearLaw (Bombay HC Bench at Nagpur) Online 433 in the case of Navin Ramanlal Shah Vs State of Maharashtra. This case was under the Seeds Act and also under

the Maharashtra Cotton Seeds Act. The court in that case allowed the petition and quashed the proceeding. The judgment reported in 2015 ALL MR (Cri) 2134 in the case of Managing Director Mahyco Seeds Limited & others Vs State of Maharashtra decided by this court at Principal Seat at Mumbai also held that prosecution was instituted after more than four months after expiry of the shelf life of the seeds and thus, the right under Section 16(2) of the Seeds Act could not be exercised & on that ground the proceedings were quashed. There are various other judgments relied upon by the petitioners but all are more or less on the similar point and therefore are not discussed.

11. Learned APP on the other hand vehemently opposed the petition. He submits that the complainant has produced on record a notification as per section 3 of the Seeds Act. He further submits that there are two notifications on record one is under the Seeds Act and other is under the Cotton Seeds Act. He submits that notification dated 13-10-2010 issued under Seeds Act in clause-11 it is clearly mentioned that Deputy Director,

Office of the District Superintendent Agriculture Officer has jurisdiction to lodge the complaint in the concerned district of the State of Maharashtra for which he is appointed. He submits that thus the complainant was very much authorized to lodge the complaint. He submits that person authorized to file the complaint under the Cotton Seeds Act is the same as under the Seeds Act. Since the complainant in this case was authorized to file the complaint under Seeds Act, it is clear that he was authorized to file the complaint even under the Cotton Seeds Act. He submits that the Seeds Act is Central Act and therefore, the person who is authorized by the Central Government is authorized for the purpose of State Act. He submits that reliance on the provision of Cotton Seeds Act are not material since the complaint is filed under the Seeds Act for violation of Section 7-b and 7-c as per Section 14. There are three classes of the certified seeds namely Foundation, Registered and Certificate and for each class there are different provisions. In this case, thus there was no question of shelf life. He submits that the controller possesses the powers for regulating and maintaining

the supply or distribution or sale of cotton. He submits that as per Section 18 of the Cotton Act the complainant could have preferred the appeal to the Commissioner Agriculture Maharashtra State within 30 days from the date of communication by the controller under Sections 4 & 5. In this case, the petitioners have not filed any appeal to the appellate authority.

12. So far as the judgments relied upon by the petitioners are concerned, the learned APP submits that the provision of Section 13 of the Act was not for consideration before the court while giving the judgment reported in 2015 ALL MR (Cri) 2134 in the case of Managing Director Mahayco Seeds Ltd and others Vs State of Maharashtra. He submits that in this case there was no question of expiry of shelf life. He further submits that considering all these aspects, it was necessary even in this circumstances for the petitioners to apply for reanalysis the cotton seeds. He submits that the Indian Seeds Minimum Certification Manual is not applicable and therefore shelf life is

not relevant to the BT gene cotton. His main argument is that the complainant was authorized under the Seeds Act i.e. Central Government Act therefore, was competent to lodge the complaint. Secondly in this case Indian Seeds Minimum Certification Manual is not applicable.

13. In the re-joinder the petitioner submits that in view of the judgment of the division bench reported in 2018 ALL MR 258 this court has clearly considered the provisions of both the acts i.e. Seeds Act and Cotton Seeds Act. This court by considering Section 15 of the Cotton Seeds Act has held that the court could not have taken cognizance on the complaint that was lodged by person who was appointed by the State Government under section 7 of the Cotton Seeds Act and the complaint was quashed in that case. It was further held that the controller and the inspector are totally different under both the Acts. The court had considered the role of the controller and his powers. Thus, it is the submission of the petitioners that in the present complaint also the judgment is very much applicable

and the petition deserves to be allowed.

14. Thus, considering all the judgments and considering the facts, this court holds that in this case the prosecution is not initiated in time. No opportunity was made available to the petitioners-accused to get the seeds re-analysed from the central laboratory. Right of the petitioner is thus taken away. This court finds that clearly a case is made out calling for interference at the hands of this court. The Inspector had received report on 02-08-2019 from the Testing Laboratory, Parbhani. Sample was found to be substandard. The show cause notice came to be issued on 15-11-2019. Reply to the notice was given by the petitioner Nos. 3 and 4. The shelf life expired on 11-03-2020. However by recording that reply is unsatisfactory, the complaint dated 13-03-2020 was filed. Thus, by that time there was no time left for the petitioners to go for re-testing. This court accepts that there is violation of Section 16(2) of the Seeds Act and there is also violation of Section 9(4) of the Cotton Seeds Act. This court also holds that the person who lodged the

complaint had no authority to lodge the complaint. This court, therefore, holds that case is made out to quash the proceeding of RCC No. 72/202 pending with JMFC, Ambajogai, Dist. Beed. Hence the criminal writ petition deserves to be allowed and same is allowed in terms of prayer clause-B.

[KISHORE C. SANT, J.]

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