

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

CRIMINAL WRIT PETITION NO. 717 OF 2023

**SAMEER PADMAKAR MULAY AND ANOTHER
VERSUS
PRASHANT SAMBHAJIRAO PAWAR**

Mr. A. K. Bhosle, Advocate for the petitioners
Mr. G. O. Wattamwar, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 25th OCTOBER, 2023

P.C. :-

1. Petitioners are seeking quashment of RCC No. 360/2022 pending before JMFC, Paithan, Dist. Aurangabad for the offences punishable under Sections 6(a), 7(a)(b)(c) of Seed Act, 1966, Rule 7, 8, 9, 10, 11, 12 of Seed Rules, 1968, under Sections 19 of Seed Act, 1966, Clause 13(1)(c) of Seed Control Order, 1983, under Section 7(1)(a)(ii) of Essential Commodities, Act, 1955, Sections 4(1)(ii) and 12(1)(2)(d)(f) of Maharashtra Cotton Seed (Regulation of Supply, Distribution, Sale & Fixation of Sale Price) Act, 2009, under Sections 13(1)(2) of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009, Section 15(1), 15(2), 16(1), 16(2) of 2(a), 2(b), 2(c) of Environment Protection Act, 1986.

2. It is the case of the petitioners that M/s Ajeet Seeds Pvt. Ltd.,

Company is engaged in manufacture and sale of seeds. The petitioner No.1 is the Managing Director and petitioner No.2 is Senior General Manager (Quality Control). On 7th May, 2022 Seeds Inspector collected samples of cotton seeds of the company for testing. The report dated 19th May, 2022 indicated that 5 out of 9 collected samples have failed the test. On 6th July, 2022 complaint was lodged with JMFC, Paithan which has registered at RCC No. 360/2022. On 7th July, 2022 learned Magistrate issued process against the petitioners. Petitioners further claimed that they appeared in the said proceeding and filed an application under Section 16(2) of the Seed Act, 1966 requesting for the retesting of the samples through Central Seed Testing laboratory, Nagpur. The said application was not decided before the shelf life of the samples has expired. Hence, this petition.

3. Learned counsel for the petitioners at the outset raised issue about maintainability of the complaint in absence of joining the company as an accused. It is his submission that owing to the settled position of law, no person can be held vicariously liable for offence committed by company without making company as an accused. To support his submission he placed reliance on the judgment of Hon'ble Apex Court in case of ***Aneeta Hada Vs. M/s. Godfather Travels And Tours Pvt. Ltd., 2012 SC 2795*** and Karnataka High Court in case of ***Rafel Del Riyo Vs.***

State of Karnataka in Criminal Writ Petition No. 102512 of 2021.

Apart from this it is his submission that since the shelf life of the seeds expired before retesting could be done, the accused/petitioners have lost their valuable and indispensable right under Section 16(2) of the Act and therefore, the proceeding cannot be allowed to be continued.

4. Learned APP contended that there is no allegation in respect of non germination of seeds but the protein contains therein are said to be not up to the mark. It is his submission that it is a genetic character and hence has no shelf life unlike in case of germination capacity. He further submits that the license issued to the company indicates that it is a propriety firm and therefore the petitioner No.1 is rightly described as proprietor and hence joining company as a party is not necessary. Without prejudice to this submission it is contended that respondent No.2 be permitted to amend the complaint by including the company as party.

5. The contention raised by the learned counsel for the petitioners about maintainability of the complaint for want of joining company as an accused goes to the root of the matter and hence the same is decided at the outset. Admittedly, M/s Ajit Seeds is private ltd. company incorporated under the Companies Act, 1956. It is not in dispute that in complaint being RCC No. 360/2022 company has not been made as an

accused. The Managing Director and General Manager of the said company are arraigned as accused.

6. Section 21 of the Seeds Act which reads thus:-

"21. Offences by companies.—

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

7. This provision abundantly makes it clear that wherever the company is an accused the person responsible for its management is deemed to have committed offence. The said provision therefore is explanatory and does not give any right for not joining company as an accused. The said provision creates vicarious liability of the persons incharge of the business of company and they are deemed to have

committed offence. In this regard it would be material to take note of the judgment of Hon'ble Apex Court in case of ***Aneeta Hada Vs. M/s. Godfather Travels And Tours Pvt. Ltd.*** (supra) wherein it is held that commission of offence by company is express condition precedent to attract vicarious liability of the directors and others. The said judgment was passed in the context of the provisions of Section 141 of Negotiable Instruments Act (for short 'NI Act'). The said provision reads thus:

" 141 Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: 22 [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]"

8. Section 21 of Seeds Act and Section 141 of NI Act are pari materia. Thus, the judgment of the Hon'ble Apex Court leaves no room of doubt that unless company is arraigned as an accused, vicarious liability cannot be imposed upon the directors and others, even though they are in-

charge of the company and its business. In the instant case company is not joined as an accused therefore no prosecution can be permitted to be continued against the petitioners in the capacity of Managing Director or General Manager of the company.

9. Learned APP contended that the complainant/respondent No.2 be permitted to amend the complaint to incorporate the name of the complainant and arraigned it as an accused. To support his submission he placed reliance on the judgment of this Court in case of **Safa Khwaja Shaikh Vs State of Maharashtra, 2019(6) Mh.L.J. (Cri.)** it is contended that the complainant is not precluded by filing appropriate proceeding before the appropriate Court and hence if amendment is allowed it would suffice the said purpose.

10. The aforesaid contention of learned APP does not get support from the provisions of Cr.P.C. as well as the binding precedent. The Hon'ble Apex Court in case of **S.R. SUKUMAR Vs. S. SUNAAD RAGHURAM, 2015 9 SCC 609** while considering to provisions of Cr.P.C. as held that there is no provision in Cr.P.C. for amendment. However, it is further held that before taking cognizance a complaint can be allowed to be amended. Meaning thereby any clerical error or mistake can be corrected before the cognizance of the complaint has been taken. In the instant case the learned Magistrate has taken cognizance of the complaint while

issuing process against the present petitioners by passing order dated 7th July, 2022. It is thus clear that once cognizance is taken of the offence it is not open for the Magistrate to permit the complainant to amend the complaint. As such the said request of learned APP does not deserve consideration. Once the Court holds that the complaint is not maintainable against the others in absence of joining company as an accused, the complaint deserves to be dismissed on this count alone. Hence petition is allowed. RCC No. 360/2022 stands quashed.

(R. M. JOSHI, J.)

ssp