

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

949 CRIMINAL APPLICATION NO.1985 OF 2021

BHIMRAO SHIVAJI NAGARGOJE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr.Kalyan V. Patil
APP for Respondent/State : Mr.R.V. Dasalkar

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**
DATED : 14th JUNE, 2023.

PER COURT :-

1. Heard.
2. This application has been moved for quashment of the proceedings in Regular Criminal Case No. 229 of 2021 pending on the file of Court of Judicial Magistrate, First Class, Tuljapur.
3. In short, the case of the prosecution is that M/s Vardaan Biotech Private Limited deals in business of seeds. Soybeans seed was supplied by the Company to the farmers during Kharip season of 2020. The seed which they had purchased did not germinate. They, therefore, made various complaints to the authorities. The F.I.R. therefore came to be registered at the instance of the Agriculture Officer against the company and the present applicant as well. The crime was registered against the applicant mainly on the ground of he being responsible person of the Company at the relevant time. The

record indicates that the Investigating Officer on completion of the investigation filed charge-sheet against the applicant alone without proposing to prosecute the Company. The applicant was proposed to be prosecuted for the offence punishable under sections 420 of the Indian Penal Code and offence under sections 6(b) and 78(b) of the Seeds Act, 1966 read with rule 23 (b) of the Seeds Rules, 1968.

4. Section 21 of the Seeds Act speaks of offences by the Companies, which reads as under :-

“Section 21(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.”

5. It is now settled legal position that when the person is to be held vicariously liable, the principal offender has to be prosecuted

along with him. This is not being done in the present case. The Company is not an accused in the aforesaid criminal case. Moreover, the applicant has placed on record certain documents of sterling quality suggesting that he had resigned from the Company long before the alleged offence took place. There is material to suggest that the applicant had joined services in some other company, namely Invicta Agritech India Private Limited. There are further documents in the nature of entries in the bank account and income tax returns to show that he has received salary from his subsequent employer. As such, the facts on record undoubtedly indicate that when the offence was committed, the applicant was not in service of M/s Vardaan Bitotech Private Limited, and therefore, he cannot be said to have committed offence vicariously.

6. In our view, allowing the prosecution to continue against the applicant herein would therefore be an abuse of process of court. In the result, we are inclined to allow the application. Thus application succeeds. Accordingly, the application is allowed in terms of prayer clause "BB" and "CC".

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

sga/