

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2702 OF 2018

Xylem Seeds Private Limited

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. V. B. Jadhav, Advocate for the applicant.

Mr. V. S. Badakh, APP for the State.

**CORAM : R. M. JOSHI, J.**

**DATE : 3<sup>rd</sup> JULY, 2023**

ORDER

1. This application is filed under Section 482 of the Code of Criminal Procedure for quashment of criminal case bearing No. 530/2017 filed by respondent No. 1 i.e. Seeds Inspector and Campaign Officer for violation of Section 19 read with Section 16(2) of the Seeds Act.

2. Applicant is in the business of manufacturing, sale and supply of BT Cotton Seeds and Non-BT Cotton Seeds. Respondent No. 2 is the dealer of the applicant. On 28<sup>th</sup> June, 2016, Inspector of Seeds collected samples of seeds i.e. NSPL999(BT) and NSPL405(BT) from respondent No. 2. The said samples were sent to the laboratory

and report dated 28<sup>th</sup> June, 2016 was adverse to the applicant. It is contended that applicant was not given show cause notice but it was given only to respondent No. 2 on 26<sup>th</sup> August, 2016. A complaint was filed before Judicial Magistrate First Class on 22<sup>nd</sup> February, 2017. Applicant received summons on 12<sup>th</sup> December, 2017. The shelf life of BT Hybrid and BT Non-Hybrid seeds was till 3<sup>rd</sup> September, 2016 and 11<sup>th</sup> September, 2016 respectively. Thus, the notice issued by the applicant in respect of the said proceeding was much later in time i.e. after the expiry of the period of shelf life of the seeds. It being so, there is violation of provisions of Section 16(2) of the Seeds Act as applicant could not get an opportunity to refer the seeds to Central Laboratory for re-analysis. Thus, according to applicant, the said criminal proceeding cannot be permitted to be continued.

3. Learned counsel for the applicant submits that it is a fit case for quashment of proceeding in question. By referring to facts of the case, to support his contention he placed reliance on judgment in the case of Mahyco Vegetable Seeds Limited and others vs. State of Maharashtra and others, (2017) 13 Supreme Court Cases 367 wherein the Hon'ble Apex Court has held that since the accused has

lost his valuable vested right to apply for re-analysis of seed sample since the shelf life of the sample had expired, the proceedings are required to be quashed.

4. Learned APP opposed the said contention by submitting that in the absence of any application being made before the Magistrate under Section 16(2) of the Act, the benefit of the said provision cannot be taken by the applicant. To support his contention, he placed reliance on the judgment of Delhi High Court in the case of Nunhems India Pvt. Ltd. vs. Seed Inspector in Criminal M.C. No. 3357/2010 decided on 8<sup>th</sup> December, 2010.

5. The undisputed facts as they appear from record indicate that the Seed Inspector conducted raid on respondent No. 2 who is the dealer of BT and Non BT Cotton Seeds manufactured by applicant. On 28<sup>th</sup> June, 2016, both types of seeds were seized and were sent to the laboratory for testing. Report dated 28<sup>th</sup> June, 2016 shows that the seeds were of inferior quality. Admittedly, complaint was filed before the Judicial Magistrate First Class on 22<sup>nd</sup> February, 2017. Further there is no dispute about the fact as it also appears

from record that the shelf life of BT Hybrid expired on 3<sup>rd</sup> September, 2016 and Non-Hybrid on 11<sup>th</sup> September, 2016.

6. In the light of aforesaid facts if provisions of Section 16(2) of the Act are perused, then it is clear that the accused has indispensable right to place objection with regard to the analysis report obtained by the Seeds Inspector and that the sample which is submitted to the Court can be asked to be sent to the Central Laboratory for its analysis. It is thus a valuable right of the accused which would permit him to defend himself and to prove innocence.

7. In the instant case, complaint is lodged with the concerned Magistrate much after the expiry of shelf life of the seeds seized. Summons were also received by the applicant on 12<sup>th</sup> December, 2017 i.e. much later in time after complaint. In such circumstances, question did not arise for the applicant to make any application to the learned Magistrate requesting to send the seeds for analysis to the Central Laboratory, as after expiry of shelf life of seeds seized, no purpose would have served by sending it for re-analysis.

8. The Hon'ble Apex Court in case of Mahyco (supra), after appreciating importance of right of accused to apply for re-analysis of the seed sample, has held that such deprivation will go to the root of the matter and render the prosecution futile and redundant. If that is so, we are inclined to hold that there is no reason why the proceedings should not be quashed. As against this, perusal of the judgment of Delhi High Court shows that in the said case, a complaint was lodged with the Magistrate much before expiry of the shelf life of the seeds. In spite of this, no application was made by the accused for sending the seeds for re-analysis to the Central Laboratory. In such circumstances, it was held that unless accused makes an application to the Court expressing his desire to send sample for second opinion of the Central Laboratory, the accused cannot claim that prejudice has been caused. The facts involved in the said case before Delhi High Court completely differ from the facts in the instant case. In the instant case, shelf life of the seeds had already expired and hence question to apply to the Magistrate for re-analysis does not arise. Hence, prosecution cannot get benefit of said judgment. The judgment of Hon'ble Apex Court cited supra squarely applies to the case in hand.

9. In view of the mandatory provision of Section 16(2) of the Seeds Act and the law laid down by the Hon'ble Apex Court, it is a fit case for quashment of the complaint. Hence, application is allowed. Criminal proceeding bearing Criminal Case No. 530/2017 pending before the Chief Judicial Magistrate, Nanded, is hereby quashed. Application stands allowed.

10. Pending application, if any, does not survive and stands disposed of.

( R. M. JOSHI)  
Judge

dyb