

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

43 CRIMINAL WRIT PETITION NO. 1406 OF 2021

1. M/s. Kaveri Seed Company Limited, **...PETITIONERS**
A Company incorporated under the
Companies Act, 1956,
Having its office at Plot No. X81
Bajaj Nagar, More Chouk,
Waluj MIDC, Aurangabad 43116
2. Satish S/o. Prabhakar Pathak,
Age-56 years, Occu-Responsible Person,
Plot No. X81, Bajaj Nagar, More Chouk,
Waluj MIDC, Aurangabd 43116
3. Sanjay Nandlal Bangad,
Age-52 years, Occu-Prop. Bangad Krushi Kendra
Manwat, Dist. Parbhani

VERSUS

1. State of Maharashtra **...RESPONDENTS**
2. Balasaheb Rajaram Shinde,
Age-Major, Occu-Seed Inspector & District
Superintendent Agri Office, Office of District
Superintendent Agriculture Officer,
Old Padegaon Road, Parbhani Dist. Parbhani

AND

WRIT PETITION NO.1440 OF 2021

1. M/s. Kaveri Seed Company Limited, **...PETITIONERS**
A Company incorporated under the
Companies Act, 1956,
Having its office at Plot No. X81

Bajaj Nagar, More Chouk,
Waluj MIDC, Aurangabad 43116

2. Satish S/o. Prabhakar Pathak,
Age-56 years, Occu-Responsible Person,
Plot No. X81, Bajaj Nagar, More Chouk,
Waluj MIDC, Aurangabd 43116
3. Shri Purshottam Sheshrao Raut,
Age-50 years, Occu-Regional Business Manager,
Aditya Agritech Pvt. Ltd. Secunderabad
Lalit E, 1205, Nanded City, Singhgad Road,
Taluka Haveli, Dist. Pune
4. Shri. Kiran Baburao Kotegire,
Age-42 years, Occu- Proprietor
MS Surya Fertilizers Loha

VERSUS

1. Stater of Maharashtra **...RESPONDENTS**
2. Anil Chandrakantrao Jondhale,
Age-35 years, Occu-Seed Inspector
& Agriculture Officer, Panchayat Samiti,
Loha, Dist. Nanded

Mr. Ganesh P. Shinde, Advocate for the petitioners
Mr. S. R. Yadav-Lonikar, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 10th APRIL, 2023

JUDGMENT

1. Heard the learned advocates for the parties.

2. Rule.

3. Rule made returnable forthwith By consent of the parties.

4. Writ Petition No. 1406/2021 is filed praying for quashing and setting aside the proceeding in SCC No. 107/2017 pending in the Court of learned JMFC, Manwat, Dist. Parbhani for the offences punishable under Sections 19(a)(i) of the Seed Act for violation of Section 7 (c) of the Seed Act, 1966 and Rule 7 and 8 of the seeds Rules, 1968 and for quashing and setting aside the order of issuance of process dated 15-10-2019.

5. Writ Petition No. 1440/2021 is filed praying for quashing and setting aside the proceeding in SCC No. 349/2017 pending in the Court of learned JMFC, Loha, Dist. Nanded for the offences punishable under Sections 19(a) read with Section 6 & 7 of the Seeds Act, 1966 and Section 7 & 8 of the Seed

Rules, 1968 and for quashing and setting aside the order of issuance of process dated 30-07-2019.

6. Since the facts are identical both the petitions are taken up together for final disposal.

7. The petitioner company is registered under the provisions of Companies Act, 1956 and is engaged in the business of Production of Marketing of hybrid seeds. Respondent No. 2 Seeds Inspector collected the samples of cotton seeds and same was sent to the Laboratory for the purpose of testing. After receiving the report from the testing Laboratory he lodged the complaints respectively in the concerned court. In writ petition No. 1406/2021 seeds were found to be with Cry 1 AC 7.77% and Cry2 AB 8.88% in Non-BT. Against 0% as specified. It was alleged that sample was not according to the testing report. Sample was not as per the minimum limits of BT percentage. Copy of report was served on the dealer namely M/s. Bangad Krushi Kendra on 16-06-2017. The copy of the report of analysis

was also served to the petitioners. Against the petitioner No.3 the allegations was that he contravened section 7(c) of the Seeds Act and Rule 7 and 8 of the Rules. As he happens to be proprietor and responsible person for the conduct of business on behalf of company. Against petitioner No.1/ accused No. 1 it is averred that he is a Director and responsible person for conduct of the business of accused No.2. The complaint was lodged on 16-08-2017. The learned Magistrate issued process by order dated 15-10-2019 and same is challenged in these petitions.

8. So far as the facts in writ petition No. 1440 are concerned respondent No. 2 collected samples of the BT cotton seeds from accused Nos. 4. He draw samples of the cotton seeds from accused No. 3 and sent the seeds for analysis. He received the report of analysis on 07-08-2017 as per the report of analysis sample was found with Cry 1 AC 16.67% and Cry 2 AB-21.11 % in Non BT test which was not according to the minimum limits which is prescribed at 0%. The Inspector immediately sent copy to accused Nos. 4 i.e. seller. He also sent a report of analysis.

Accused Nos. 1 and 3 i.e. responsible persons of Kaveri Seeds Ltd and accused No.4 -Proprietor of M/s. Surya Fertilizers. Thereafter he lodged the complaint in the court learned JMFC, Loha on 28-08-2017. The learned Magistrate on going through complaint issued process on 30-07-2019.

9. Thus, the petitioners are before this court. In both the petitions common grounds taken are that by the time the summons was issued. Shelf life of the seeds was already expired. In view of the same now sample could not be sent for retesting and thus there is violation of section 16(2) of the Seeds Act. The petitioners could not get an opportunity to challenge the report by making an application to the court for sending the sample for retesting in view of Section 9 (4) of the Cotton Seeds. In this case admittedly shelf life expired on 17-11-2017. It is further stated that this is fundamental defect that goes to the root of the matter and the petitioners cannot be now prosecuted. If they are prosecuted, it would be without giving them proper opportunity which is already lost.

10. Learned APP for the State opposes the petitions. He submits that it was necessary for the petitioners to immediately file an application for retesting by appearing before the court. The petitioners have failed to do so and make any grievance now. It is submitted that the petitioners have deliberately not approached before the court and made any application to send the samples for retesting. Shelf life is related only to the germination of the seeds.

11. The petitioners relied upon the judgment passed by this court in criminal writ petition No.611/2021 in the case of M/s. Kaverri Seed Company Ltd and Others Vs State of Maharashtra and another. This court by considering the judgments of the Hon'ble Apex Court reported in 2018 All MR 910 (SC) in the case of Mahyco Vegetable Seed Ltd and others Vs State of Maharashtra and others and allowed the said petition by holding that when the shelf life of the sample had expired prior to date of lodging of the complaint. Accused is

deprived of his valuable right to send sample for reanalysis. Said deprivation goes to the root of the matter and rendered prosecution futile. Another judgment relied upon by the petitioners is *reported in 2016 All MR (Cri) 4409 in the case of R. Shridhar Vs State Department of Agriculture and another*. In the said judgment a process was issued to the applicant after shelf life of the sample had expired and there was no explanation offered for such delay and in that case it was held that right of the accused under Section 16(2) was lost and the petition was allowed. The petitioners thus relied upon the judgment pointing out that the facts are identical and law point involved is also same.

12. The learned APP fairly accepts that the judgments are applicable to the facts of the case.

13. In view of the same, this court finds that case is made out to allow both the writ petitions. Hence, the following order.

(9)

criwp1406

ORDER

a] Criminal Writ Petitions stand allowed in terms of prayer clauses- B & C.

[KISHORE C. SANT, J.]

VishalK/criwp1406