



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 439/2023

Bayer Bio-Science Pvt. Ltd. through its authorized officer Anil Rathi And anr. .Vs.
State of Maharashtra, through Pravinkumar Vijay Kharche

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Deshpande, Advocate for applicant.
Mrs. M. H. Deshmukh, A.P.P. for non applicant – State.

CORAM : **ANIL L. PANSARE, J.**
DATE : **25.09.2023**

The applicants-original accused are seeking to quash the criminal proceedings-complaint bearing Summary Criminal Case No. 230/2018, pending on the file of Judicial Magistrate First Class, Malkapur, district Buldhana for the offences punishable under Sections 6(B) and 7 (C) of the Seeds Act, 1966, Sections 2(VIII), 2(X), 12 (1) and 13(2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and fixation of Sale Price) Act, 2009 (hereinafter referred to as the, “Act of 2009”).

2. The non applicant-State of Maharashtra, through Pravinkumar s/o Vijay Kharche, Seed Inspector and District Quality Control Inspector, has filed complaint as stated supra. The applicant-accused no.1 is bio-science company, represented through Mr. Anil Rathi (original accused no.2), applicant no.2-original accused no.3 is said to be responsible for the conduct of business

of seeds, selling of various types of seeds to various farmers. On 02.06.2017, the complainant visited the applicant no.2, the stockist of various types of seeds for sale. The complainant has drawn sample of seeds and samples were then sealed. The sealed samples were divided into three parts. Out of those three samples, one sample was handed over to applicant no.2, one sample was sent for analysis to Seed Testing Laboratory, Nagpur, vide letter dated 05.06.2017 and the third sample was kept with the complainant. The report of testing followed on 28.06.2017.

3. Learned counsel for the applicants has invited my attention to the forwarding letter of the seed samples sent to Seed Testing Laboratory, Nagpur, which is dated 05.06.2017. Clause 8 indicates that the sample is valid till 08.11.2017. He further submits that the complaint has been filed on 09.02.2018 i.e. after the validity of samples drawn has expired. He then invited my attention to Section 9 of the Act of 2009, which reads thus:

“9. (1) The Seed Analyst shall, as soon as may be, after the receipt of seed the sample from the Seed Inspector, analyse the sample at the State Seed Testing Laboratory and furnish a report on the result of the analysis to the Seed Inspector.

(2) The Laboratory to which a sample has been sent by a Seed Inspector for analysis shall send the analysis report to the concerned Seed

Inspector within thirty days from the date of receipt of the sample to the Laboratory.

(3) The Seed Inspector may, on the basis of the report of the Seed Analyst under sub-section (1), institute proceedings for the prosecution of the producer or vendor, as the case may be, of the said seed.

(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.

(5) The report sent by the Referral Seed Testing Laboratory under sub-section (4) shall supersede the report given by the Seed Analyst under sub-section (1).”

4. Learned counsel for the applicants has rightly argued that the applicants have been deprived of the opportunity to get the samples tested in terms of sub section (4) of section 9, the result of which would supersede the report dated 28.06.2017.

5. I need not go into result of the test analysis inasmuch as the Act of 2009 provides for fair opportunity to the accused to make an application to the Court for sending the samples retained with the Seed Inspector or the vendor to any of the referred Seed Testing Laboratory prescribed under Section 6 of the Act. Since the complaint has been filed subsequent to the expiry date of the samples, the applicants have been prevented from invoking this provision.

6. Learned counsel for the applicants has invited my attention to Sections 3 and 15 of the Act of 2009. Section 3 provides that the State Government, by notification in official gazette, shall appoint an officer possessing such a qualification as may be prescribed to be a controller. Section 15 provides that no Court shall take cognizance of the offence punishable under this Act, except upon a complaint in writing made by the controller or any other officer authorized by him for this purpose. In the present case, the non applicant-complainant, though has averred in the complaint that he is authorized to institute the prosecution in respect of the case under the Seeds Act of 1966, he has not placed on record any document in support.

7. Learned A.P.P. has opposed the application on the ground that the sample was taken to test genetics and not the germination and, therefore, the shelf life will not be relevant in the present case. This argument is

contrary to the contents of the forwarding letter dated 05.06.2017. The letter under clause 13 indicates that the samples were collected for germination and purity and not for genetic purity as argued by the learned A.P.P. In clause 11, the words “Genetic Purity” have been scored and replaced by “BT Protein”. Thus, the fact is that the samples drawn had validity up to 08.11.2017. The complaint has been filed subsequent to the expiry period. The applicants have been deprived of legitimate right to get the samples retested, the compliance of Section 15 is also absent and, therefore, the continuation of complaint will be nothing but a futile exercise of which result is already sealed.

8. The applicants, therefore, have made out a case. The continuation of the complaint will be an abuse of process of law.

9. Accordingly, the application is allowed. Complaint bearing S.C.C. No.230/2018, pending on the file of Judicial Magistrate First Class, Malkapur, District Buldhana is quashed and set aside.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)