



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPLICATION (APL) NO. 894/2023

Vishnupanth Uddhavrao Nillawar

.. Applicant/s

versus

The State of Maharashtra

Th: Pramod Bagde

.. Non-applicant/s

.....
Mr. I.M. Ghongade, Adv.for the applicant

Ms.Shamsi Haider, APP for the non-applicant
.....

CORAM: ANIL L. PANSARE, J.

DATED : 28th August, 2023.

PC:

Heard.

2. The applicant is seeking to quash the complaint bearing SCC No. 542/2017 pending before the learned Judicial Magistrate, First Class, Digras, Dist. Yavatmal, under sections 6(b) and 7(c) of the Seeds Act 1966 and u/ss.2(viii), 2(x) and punishable u/s 13(2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixations of Sale Price) Act, 2009.

3. On 19.05.2017, the sample of Hybrid Cotton Seeds NON-BT-D-29 variety No.26311, were seized by the Respondent-Seeds Inspector. On 20.06.2017, an adverse report was given by the Seeds Testing Laboratory, Nagpur. On 20.11.2017, the impugned complaint is filed by the respondent before the learned Judicial Magistrate First Class. On 09.01.2018 the shelf life of sample of cotton seeds has expired. That, on 02.11.2019, i.e after 23 months of expiry of shelf life of cotton seeds,

summons of impugned complaint has been served on him. Hence, it is the contention of the applicant that his right to send the sample of cotton seeds to the Referral Seeds Testing Laboratory, u/s. 9(4) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 (henceforth abbreviated to “ Act of 2009”) is infringed.

4. Undisputedly, the summons has been served after expiry of shelf life of the seeds. The applicant’s right to send the sample of cotton seeds to the Testing Laboratory u/s. 9(4) of the Act of 2009 has been therefore infringed.

5. The learned APP fairly admits that the samples were drawn in the year 2018. It has been more than five years, the samples have not been sent to the Laboratory. She submits that no fruitful purpose would be served if the samples are now sent to the Laboratory. In other words, it is suggested that fate of the prosecution is sealed and no fruitful purpose would be served in continuation of the prosecution.

6. I have perused the record with the assistance of both sides. The samples has been drawn on 03.06.2018 by the complainant (non-applicant herein). The validity of the same as expressed by the complainant is up to 09.09.2018. The prosecution has been instituted on 29.10.2018. The summons has been served upon the applicant on 02.11.2019.

7. Section 9 of the Act of 2009 reads thus :

“9. **Report of Seed Analyst:**

(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 the 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 send by the Referral Seed Testing Laboratory under sub-section (4) shall supersede the report given by the Seed Analyst under sub-section (1)."

8. Thus, sub-section(4) of Section 9 gives right to the applicant/accused to make an application before the Court for sending the sample to the Testing Laboratory for analysis. The report of Laboratory would supersede the earlier report in terms of sub-section (5).

9. The Hon'ble Supreme Court in the case of Mahyco Vegetable Seeds Ltd. vs. State of Maharashtra & others, reported in (2017)

Vol.13 SCC 367, has held in similar such case, that since the accused had lost is valuable vested right to apply for re-analysis of seed sample since shelf life of the sample had expired, proceedings are liable to be quashed because such deprivation goes to the root of matter, rendering prosecution futile and redundant.

10. In the present case also, if the proceedings are permitted to continue the exercise of sending the sample will be a futile exercise.

11. In the backdrop of the above-referred facts and taking aid of the judgment of the Hon'ble Supreme Court (supra), I am of the considered view that the applicant is entitled for the relief as prayed. Hence the following order :-

ORDER

The Criminal Application is allowed in terms of prayer clause (a) which reads thus:-

“(a) Quash and set aside the impugned complaint bearing SCC No. 542/2017 pending in the Court of learned Judicial Magistrate First Class, Digra Dist. Yavatmal, which is filed by the Respondent, under sections 6 (b) and 7(c) of the Seeds Act, 1966 and under sections 2 (viii), 2 (x) and punishable under section 13(2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixations of Sale Price) Act, 2009 to the extent of present applicant; and for that purpose issue necessary directions”

[ANIL L. PANSARE, J.]