



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

CRIMINAL APPLICATION (APL) NO.1129/2019

1. Kanubhai Ramajibhai Chaudhari,
A/a 44 Yrs., Occ. Business,
R/o Bapupura, Mansa, Gandhinagar,
Tah. & Dist. Gandhinagar,
Gujrat.
 2. Harishbhai Meghrajibhai Yyas,
A/a 34 Yrs., Occ. Business,
R/o Takhatpura, Mansa, Gandhinagar,
Tah. & Distt. Gandhinagar,
Gujrat.
- ... Applicants

- Versus -

1. State of Maharashtra,
through its Police Station Officer,
Police Station, Avdhutwadi,
Dist. Yavatmal.
 2. Litesh Jagdevrao Yelve,
aged 30 Yrs., Occ. Service,
R/o Wadgaon Road,
Dist. Yavatmal.
- ... Non-applicants

Mr. A.A. Dhawas, Advocate for the Applicants.
Ms. Kalyani Marpakwar, A.P.P. for Non-applicant No.1.
Mr. S.B. Raut, Advocate for non-applicant No.2.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 18.7.2024.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard Mr. A.A. Dhawas, learned Advocate for the applicants, Ms. Kalyani Marpakwar, learned A.P.P. for non-applicant No.1 and Mr. S.B. Raut, learned Advocate for non-applicant No.2. **Rule.**

2. By the instant application the applicants have approached this Court to quash and set aside the F.I.R. and chargesheet registered for the offence punishable under Sections 420, 463, 465, 468, 471, 120B of Indian Penal Code and Sections 7 and 4 of Seeds Act, Sections 7, 8, 9, 10, 11, 12 and 13 of Seeds Rules, Sections 3, 9(C) and 10 of Cotton Seeds Rules, Section 15 of Environment Protection Act and Sections 2(8) and 12 of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act is registered at Police Station Avdhutwadi, District Yavatmal.

3. The F.I.R. is registered on the complaint of District Quality Control Inspector, Yavatmal. On 24.6.2018 on the information of Crime Branch trap was laid. During the raid, raiding party found one red coloured Suzuki Access coming towards the spot. The vehicle was driven by accused No.1 Nagorao Gautre and Kawdu Bandhate was sitting as a pillion rider. They were carrying nylon bag. When they inspected said bag it was found that they were carrying total 119 bags of cotton seeds and same were seized by the police authorities as they were not having authorized certificate or licence of transporting the said seeds or to sell them. The F.I.R. was lodged against the said two persons. It was found during investigation that illegal sale of the cotton seeds was done by the applicants and other accused persons. They were knowing that the seeds are not of approved quality and loss to nature will also cause. The accused and present applicants were in regular contact with each other. Involvement of these applicants was confirmed from their C.D.Rs. During the investigation the accused have given the statement and

specifically named these applicants and their role was also explained in the statement which indicates that crime has been committed by the accused persons in collaboration with each other. Therefore, the chargesheet is filed against these applicants along with other co-accused.

4. Learned Advocate for the applicants has stated that in the entire chargesheet there is no disclosure about the role of present applicants in alleged offence. Merely on some C.D.R's. the prosecution has falsely implicated the present applicants. Even if the C.D.Rs. are taken into account no link has been established showing that accused persons from whom seeds were found and the present applicants have any nexus with other accused.

5. The specific submission of learned Advocate for the applicants is that the F.I.R. cannot be registered under the provisions of Maharashtra Cotton Seeds Act. As per Section 15 of the said Act, a complaint is to be filed by the Controller or any

other authorized officer for taking cognizance of the crime. The punishment provided under Section 13 of the said Act is not more than 3 years or fine or with both. In view of this, there is apparent illegality in registration of crime.

6. As per the provisions of Section 19 of Environment Protection Act the complaint is to be filed by Central Government or authorized officer for violation of the said Act else cognizance cannot be taken by the Court. The offence under Section 15 of the Act is punishable up to 5 years and without complaint no cognizance can be taken and as such F.I.R. is not permissible under the said Act.

7. There is no material to establish the link of the present applicants with the persons who were found in possession of the seeds. *Prima facie*, no case of cheating, misbranding etc. is made out against these applicants. There is no disclosure as to how and what way the cheating has been committed by the applicants. There is nothing to show that the applicants have

committed any fraudulent act or cheating with any one. Hence prayed to quash the F.I.R. and chargesheet filed against these applicants.

8. Learned A.P.P. opposed the application stating that during the investigation it was found that various people by using their agricultural shop has sold this illegal product including the present applicants and, therefore, they are arrayed in the offence. There is ample evidence against them because of which the accused persons were arrested. No case is made out to quash and set aside the F.I.R. and chargesheet. Hence prayed to reject the application.

9. We have carefully considered the contents of the F.I.R. The offence registered in the F.I.R. punishable under Sections 420, 463, 465, 468, 471 read with Section 120B of Indian Penal Code along with other co-accused which are cognizable offences and, therefore, police are within their powers

to register the complaint and commence the investigation.

Section 420 of I.P.C. speaks as under:-

“420. Cheating and dishonestly inducing delivery of property.-

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

10. Section 420 I.P.C. provides for punishment for cheating and dishonestly inducing a person to deliver the property. It clearly requires that a person to be prosecuted for the offence under the said section has necessarily to do an act which would amount to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security. The necessary ingredients of the offence under Section 420 of I.P.C. is dishonestly inducing

the person cheated and to deliver the property or valuable security. Undisputedly on the consideration of the F.I.R. in question it does not disclose any fact which can constitute a *prima facie* case establishing an inducement for the sale of seeds in question. The role of these applicants appear that the accused Nos.1 and 2 were in contact with these applicants who are the distributors of the seeds. Even in the affidavit filed by the informant there is no whisper about any material having been disclosed either at the time of lodging of F.I.R. or thereafter which *prima facie* establishes the act of inducement and much less the inducement by the applicants to any person either to deliver any property or valuable security in relation to the seeds in question.

11. The allegation made against these applicants was that they are the Distributors in Gujarat State and as accused who were arrested in this crime were in contact with these applicants and the same has transpired from the C.D.Rs. collected during the investigation. There is absolutely no case made out on the basis

of C.D.Rs. or even any other information given by the complainant disclosing the basic ingredients of offence under Section 420 of I.P.C. In the F.I.R., having considered in the context of offences alleged under Sections 463, 465, 468 and 471 of I.P.C., there is no document alleged in the F.I.R. which has been used for the purpose of cheating much less fraudulently or dishonestly, deceiving someone and, therefore, we are satisfied from the allegations in the F.I.R. and the material produced by the non-applicant on record that no case is made out disclosing the ingredients of offence punishable under Sections 463, 465, 468 and 471 of I.P.C.

12. On scrutinizing the contents of F.I.R. and other material for the purpose of considering as to whether the offence under Section 15 of the Environment Protection Act have been made out or not, the learned Advocate for the applicants has relied on the judgment in the case of Korra Srinivas Rao Krishnamurthy and another V/s. State of Maharashtra and others reported in **2002 (Suppl.2) Bom. C.R. 89** wherein it is observed

that the police had no jurisdiction to investigate the matter and only the Seeds Inspector can launch the proceeding in respect of complaints of farmers regarding failure of crops due to defective quality and seeds after detailed investigation by himself.

13. Having considered the contents and the provisions of Sections 7 and 15 of the said Act, we find that there are absolutely no allegations in the F.I.R. that the applicants have done anything which has resulted into discharge of emission or environmental pollution in excess of standards prescribed. Section 15 of the said Act provides for penalty for contravention of the said Act. Since the allegations and the F.I.R. and the material produced by the non-applicant No.1 does not disclose basic ingredients of the offence punishable under Section 15 of Environment Protection Act, we are satisfied that the *prima facie* case cannot be made out against the applicants for the offence punishable under Section 15 of Environment Protection Act.

14. We have considered the contents, allegations in the F.I.R. for scrutinizing or fulfilling the ingredients of the offence

under the Seeds Act and Rules. Rules 7 to 13 are about responsibility about marking or labelling of containers. From the contents in the F.I.R. it is clear that there is no material produced by the prosecution that the applicants have sold the seeds to the farmers.

15. Once it is held that the offence punishable under the provisions of I.P.C. are not made out remaining offences alleged against the applicants being non-cognizable offences Section 155(2) Cr.P.C. gets attracted. Section 155(2) Cr.P.C. debars the investigation by the police authorities in case of non-cognizable offence without an order of Magistrate. There being clear-cut provision of debarring the police authorities from investigating into non-cognizable offence without the order of Magistrate and since F.I.R. discloses the material on the basis of which the non-cognizable offences are made out, it cannot be said that police authorities would be justified in continuing with investigation without permission from the Magistrate. As per the guidelines of the Hon'ble Apex Court in State of Haryana V/s.

Bhajanlal reported in **1992 Supp (1) SCC 335** there must be an information and that information must disclose the cognizable offence.

16. In our view, therefore, continuation of proceedings against the applicants would amount to abuse of process of the Court. We, therefore, pass the following order:-

The Chargesheet dated 18.7.2019 arising out of Crime No.0812/2018, along with F.I.R., registered by non-applicant No.1 for the offence punishable under Sections 420, 463, 465, 468, 471, 120B of Indian Penal Code and Sections 7 and 4 of Seeds Act, Sections 7, 8, 9, 10, 11, 12 and 13 of Seeds Rules, Sections 3, 9(C) and 10 of Cotton Seeds Rules, Section 15 of Environment Protection Act and Sections 2(8) and 12 of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act against the present applicants are quashed and set aside.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)