



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

CRIMINAL WRIT PETITION NO. 1881 OF 2023

1. Mr. Sameer S/o Padmakar Mulay,
Age: 44 years, occu: Managing Director,
M/s Ajeet Seeds Pvt Ltd.
Gat No.233, Chittegaon,
Tal. Paithan, Dist. Aurangabad.
 2. Mr. Mahendra S/o Vasantrao Deshmukh,
Age: 52 years, Occu: General Manager (Quality Control)
M/s Ajeet Seeds Pvt. Ltd.
Gat No.233, Chittegaon,
Tal. Paithan, Dist. Aurangabad
- ...PETITIONERS**

VERSUS

1. Mr. Prashant Sambhajirao Pawar
Age: 47 years, Major Occu: Seed Inspector and Technical
Officer (Quality Control),
O/o Divisional Joint Director of Agriculture,
Aurangabad 431001.
 2. The State of Maharashtra
Through Seed Inspector and
Technical Officer (Quality Control)
O/o Divisional Joint Director
of Agriculture,
Aurangabad-431001.
- ...RESPONDENTS**

AND
CRIMINAL WRIT PETITION NO. 1897 OF 2023

1. Mr. Sameer S/o Padmakar Mulay,
Age: 44 years, occu: Managing Director,
M/s Ajeet Seeds Pvt Ltd.
Gat No.233, Chittegaon,
Tal. Paithan, Dist. Aurangabad.
 2. Mr. Mahendra S/o Vasantrao Deshmukh,
Age: 52 years, Occu: General Manager (Quality Control)
M/s Ajeet Seeds Pvt. Ltd.
Gat No.233, Chittegaon,
Tal. Paithan, Dist. Aurangabad
- ...PETITIONERS**

VERSUS

1. Mr. Prashant Sambhajirao Pawar
Age: 47 years, Major Occu: Seed Inspector and Technical
Officer (Quality Control),
O/o Divisional Joint Director of Agriculture,
Aurangabad 431001.
 2. The State of Maharashtra
Through Seed Inspector and
Technical Officer (Quality Control)
O/o Divisional Joint Director
of Agriculture,
Aurangabad-431001.
- ...RESPONDENTS**

AND
CRIMINAL WRIT PETITION NO. 1898 OF 2023

1. Mr. Sameer S/o Padmakar Mulay,
Age: 44 years, occu: Managing Director,
M/s Ajeet Seeds Pvt Ltd.
Gat No.233, Chittegaon,
Tal. Paithan, Dist. Aurangabad.

2. Mr. Mahendra S/o Vasantrao Deshmukh,
Age: 52 years, Occu: General Manager (Quality Control)
M/s Ajeet Seeds Pvt. Ltd.
Gat No.233, Chittegaon,
Tal. Paithan, Dist. Aurangabad **...PETITIONERS**

VERSUS

1. Mr. Prashant Sambhajirao Pawar
Age: 47 years, Major Occu: Seed Inspector and Technical
Officer (Quality Control),
O/o Divisional Joint Director of Agriculture,
Aurangabad 431001.
2. The State of Maharashtra
Through Seed Inspector and
Technical Officer (Quality Control)
O/o Divisional Joint Director
of Agriculture,
Aurangabad-431001. **...RESPONDENTS**

....
Mr. Pratik A. Bhosale, Advocate for the Petitioners
Mr. S. M. Ganachari, APP for the Respondent State
....

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 13.01.2025
PRONOUNCED ON : 20.01.2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the Petitions are heard finally at the stage of admission.

2. In all these Petitions, the Petitioners accused and Respondent No. 1 / complainant are the same persons, but they had initiated different proceedings, therefore, to avoid multiplicity, all the petitions are taken together.

3. The Petitioner No.1 is the Managing Director and Petitioner No.2 is the General Manager of M/s Ajeet Seeds Pvt Ltd., prays for quashment of Criminal proceedings in (i) RCC No.265 of 2020 (ii) RCC No.266 of 2020 and (iii) RCC No.225 of 2021 pending on the file of the learned Judicial Magistrate First Class, Paithan, Dist. Aurangabad for the offences punishable under Section 6, 7, 19 of Seed Act 1966, Rule 7, 8, 9, 10, 11 & 12 of Seed Rule 1968. Clause 13 of Seed Control Order, 1983, Section 7 of Essential Commodities Act 1955, Sections 4, 12 ,13 of the Maharashtra Cotton Seed Act, 2009 and Section 15 and 16 of the Environmental Protection Act, 1986.

4. The Respondent No.1 Mr. Prashant Sambhajirao Pawar, the Seed Inspector and Technical Officer (Quality Control) attached with Divisional Joint Director of Agriculture, Aurangabad has independently instituted three complaints bearing (1) RCC No.265 of 2020, (2) RCC No.266 of 2020 and (3) RCC No.225 of 2021, alleging

that the Present Petitioner No. 1 / accused No.1 is the Managing Director of M/s Ajeet Seeds Pvt. Ltd., the company is registered under the Companies Act, 1956. M/s Ajeet Seeds Pvt. Ltd., produces the various types of seeds including Cotton Seed.

5. As per Notification No. SO4215 dated 27.12.2016 issued by the Government of India, Department of Agriculture, Co-operation and Farmers Welfare specified minimum and maximum limits of transgene purity. On 22.05.2021, the Respondent No.1 / Complainant visited Seed Packing Storage and selling premises of M/s Ajeet Seeds Pvt. Ltd., Gut No.233, Chitegaon Tal. Paithan, Dist. Aurangabad. After due compliance of the provisions of Seed Act and Seed Rules, he collected samples from each variety of Bt. Hy. Cotton seed manufactured by M/s Ajeet Seed Company as per procedure prescribed under Schedule 1 of Seed Control Order 1983 and Section 15(1) of the Seed Act 1966 read with the Provision under Rule 24, 25 and 26. Thereafter, he got tested the said samples in Laboratory. After testing the said samples, the same did not find in confirmation with the maximum limits of transgene purity as specified under the notification dated 27.12.2016. Therefore, it was found that the Petitioners / accused have committed above offences.

6. After hearing both the sides, a question arises that, whether the complaint is maintainable as against the Managing Director of M/s Ajeet Seeds Pvt. Ltd., in absence of joining the seed company as an accused ?

7. The learned counsel for the Petitioners / accused canvassed in vehemence that, the Petitioners are not responsible for production of alleged seed of which samples have been collected by the Respondent Complainant because the Company is the manufacturer of the Seeds of which samples are collected. Therefore, in absence of impleading the company as an accused, the complaint is not maintainable and the Petitioners cannot be prosecuted in absence of joining the company as an accused.

8. To buttress these submissions, the learned counsel for the Petitioners placed reliance on the judgment of Hon'ble Apex Court in the case of *Aneeta Hada Vs. M/s. Godfather Travels And Tours Pvt. Ltd., 2012 SC 2795* and Karnataka High Court in the case of *Rafel Del Riyo Vs. State of Karnataka* in *Criminal Writ Petition no. 102512 of 2021*. Apart from this, it is his submission that since the shelf life of the seeds expired before retesting could be done, the accused /

Petitioners have lost their valuable and indispensable right under Section 16(2) of the Act and therefore, the proceeding cannot be allowed to be continued.

9. Learned APP contended that there is no allegation in respect of non germination of seeds but the protein contains therein are said to be not up to the mark. It is his submission that it is a genetic character, hence, it has no shelf life unlike in case of germination capacity. He further submits that the license issued to the company indicates that it is a propriety firm and therefore the petitioner No.1 is rightly described as proprietor, hence, joining company as a party is not necessary.

10. The learned counsel for the petitioner raised question about maintainability of the complaint for want of joining company, which goes to the root of the matter. Admittedly, M/s Ajeet Seeds is private Ltd. company is incorporated under the Companies Act, 1956. It is not in dispute that in complaint bearing (1) RCC No.265 of 2020 (2) RCC No.266 of 2020 and (3) RCC No.225 of 2021 company has not been impleaded as an accused. The Managing Director and General Manager of the said company is arraigned as accused in all these complaints.

11. Section 21 of the Seeds Act which reads thus:-

"21. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

12. This provision abundantly makes it clear that, wherever the company is an accused the person responsible for its management is deemed to have committed offence. The said provision therefore is explanatory and does not give any right for not joining company as an accused. The said provision creates vicarious liability of the persons in charge of the business of company and they are deemed to have

committed offence. In this regard, it would be material to take note of the Judgment of Hon'ble Apex Court in case of ***Aneeta Hada Vs. M/s. Godfather Travels And Tours Pvt. Ltd.*** (supra), wherein it is held that commission of offence by company is express condition precedent to attract vicarious liability of the directors and others. The said judgment was passed in the context of the provisions of Section 141 of Negotiable Instruments Act (for short 'NI Act'). The said provision reads thus:

"141 Offences by companies. -

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: 22 [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]....."

13. Section 21 of Seeds Act and Section 141 of NI Act are pari materia. Thus, the judgment of the Hon'ble Apex Court leaves no room of doubt that unless company is arraigned as an accused,

vicarious liability cannot be imposed upon the directors and others, even though they are in-charge of the company and its business. In the case in hand the seeds manufacturing Company is not impleaded as an accused, therefore, no prosecution can be permitted to be continued against the petitioners in the capacity of Managing Director or General Manager of the company.

14. In the case of *Managing Director of M/s Castrol India Ltd.; 2018 ALL M. R. Cri. 465 (SC)*, wherein the Hon'ble Supreme Court held that, to determine vicarious liability of Officer of Company, clear and categorical statement that he was In charge of the conduct of business of company in respect of which an offence is alleged to have been committed, is required to be made. If no such statement or averment is made in the complaint that the Managing Director was responsible for conduct of business of the company or for commission of any act on the basis of which an offence is alleged to have been committed, the proceeding against the Managing Director of company is liable to be quashed.

15. In the case in hand, admittedly, the present petitioners in all these Petitions, are working as Managing Director and General

Manager, respectively, of M/s Ajeet Seeds Pvt. Ltd., company. The Respondent No.1 complainant has instituted complaints bearing (1) RCC No.265 of 2020 (2) RCC No.266 of 2020 and (3) RCC No.225 of 2021 for committing the offence punishable as stated above.

16. After going through the averments made in the complaint, it does not reveal that, the present Petitioners are responsible for conduct of business of M/s Ajeet Seeds Pvt. Ltd., and day to day affair of production of seeds or commission of any act on the basis of which offence is alleged to have been committed at the hands of the present Petitioners. Therefore, considering the law laid down in case of ***Aneeta Hada*** cited (supra), continuation of proceedings as against the present Petitioners in the capacity of Managing Director and General Manager of M/s Ajeet Seeds Pvt. Ltd., would amount to abuse of process of law because alleged samples of seeds have been manufactured by the company and no vicarious liability can be fasten on with the Directors, hence, no Criminal prosecution can be continued as against the petitioners without impleading the company as an accused. Accordingly, legal question framed in para no. 6 is answered.

17. In view of the above discussion, all these Petitions deserve to be allowed. Accordingly, I proceed to pass the following order:

ORDER

(i) The complaints bearing RCC Nos. (1) RCC No.265 of 2020 (2) RCC No.266 of 2020 and (3) RCC No.225 of 2021 pending on file of the learned Judicial Magistrate First Class, Paithan, Dist. Aurangabad are hereby quashed and set aside.

(ii) Resultantly, orders of issuance of process, if any, passed by the learned Judicial Magistrate in all these complaints are also quashed and set aside to the extent of present Petitioners.

No order as to costs. Rule is made absolute in above terms.

[Y. G. KHOBRAGADE, J.]