



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

CRIMINAL APPLICATION (APL) No.465 OF 2024

- 1. M/s. Bayer Bio-Science Pvt. Ltd.,
Bayer House Central Avenue Road,
Hiranandani Estate Thane (West),
400 607.

- 2. Shri Anil Rathi, Regional Manager,
Aged about 43 years,
Occupation : Service,
R/o. c/o. Bayer CropScience Pvt. Ltd.,
1st Floor Shubhlaxmi Complex,
Opp. Vidyut Bhavan, Durga Chowk,
Akola 444 001. : APPLICANTS

...VERSUS...

State of Maharashtra,
through District Agriculture and Seed Inspector,
Zilla Parishad, Akola,
Shri Gopal Rajaram Bonde,
Aged about Major, R/o. Akola. : RESPONDENT

Mr. Amol Deshpande, Advocate for Applicants.
Mr. C.A. Lokhande, Additional Public Prosecutor for respondent.

AND

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 Mr. V.A. Thakare, Additional Public Prosecutor for respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 05th FEBRUARY, 2025.

JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith.
3. By this application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as, the “Code”), the applicants prays for quashing of the proceeding in Criminal Case No.5136/2019 and 5137/2019 pending with the Chief Judicial Magistrate, Akola for the offences punishable under Section 13(2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 (hereinafter referred to as, the “Maharashtra Cotton Seeds Act, 2009”). The applicant No.1 is a company registered under the provisions of the Companies Act, 1956.

M/s. Bayer Bio-Science Private Limited is the company which manufactures seeds and engaged in the business of production and marketing of hybrid seeds such as cotton, Corn Paddy, Pearl Millet, Wheat and Mustard. The company carrying on the business of production and marketing of various seeds across India. The applicant is also holding the licence under the provisions of the Maharashtra Cotton Seeds Act, 2009 to sell and storage of cotton seeds in the State of Maharashtra. The Directorate of Agriculture, Office of Commissionerate of Agriculture, Maharashtra State, Pune had granted licence for carrying out business of genetic seeds and validity of the said licence from 2.6.2017 to 1.6.2020, bearing licence No.LCCD10010017 issued on 19.3.2019.

4. The respondent is a public servant and designated as District Agriculture Officer and Seed Inspector (Quality and Control) for entire agriculture development office, Agriculture Department, Zilla Parishad, Akola. That the respondent is Seed Inspector appointed under Section 7 of the Maharashtra Cotton Seeds Act, 2009 vide notification dated 13.10.2010.

5. On 21.5.2019 the respondent Seed Inspector visited the premises of applicant No.1 and drive sample of seeds of cotton and divided it into three parts. Out of three seed samples one portion was handedover to the applicant No.1 and his signature was obtained on Form No.VIII. As per Section 7(2) of the Maharashtra Cotton Seeds Act, 2009, the Seed Inspector is having power to enter, search any premises and draw samples and detain or seize the cotton seeds. The Seed Inspector gave a notice to the present

applicant on 21.5.2019 with an intention for taking sample of seed from stock for the purpose of test or analysis in Form No.VI and drive sample in Form No.VIII in respect of hybrid Cotton Safal-555 Non-BT Lot No.4172800006, bearing sample No.23012600420192012. The second portion of seed sample was sent to analyst on 28.5.2019 in Form V to the Seed Testing Laboratory on 28.5.2019. In perusal to that the said Testing Laboratory, Nagpur forwarded his report dated 6.6.2019. On the basis of report from the Laboratory the Seed Inspector alongwith said report issued show cause notice on 2.7.2019 to the applicants thereby called upon them to tender an explanation regarding adverse findings recorded by the Seed Testing Laboratory, Nagpur. On 20.6.2019 the said show cause notice was replied by the applicants by denying all allegations made in the said show cause notice. Being dissatisfied with the reply given by the applicant No.1, the respondent Seed Inspector had served the notice on 23.9.2019 informing that he is intending to file a complaint in the Court for the violation of provisions of the Maharashtra Cotton Seeds Act and accordingly filed complaint bearing No.5137/2019. Similarly, another complaint was filed by the respondent on an allegation that on 21.5.2019 he intends to visit the company for taking sample of seed from stock for the purpose of test or analysis in Form No.VI and accordingly drew sample in Form No.VIII in respect of hybrid Cotton Safal-555 Non-BT Lot No.4172800006 bearing sample No.23012600420192012. The second portion of seed sample was sent to analyst in Form No.V to the Seed Testing Laboratory, Nagpur on

28.5.2019. The report of Seed Testing Laboratory was received on 6.6.2019. On the basis of said report again respondent issued show cause notice on 2.7.2019 to the applicants calling explanation regarding adverse finding recorded by the Seed Testing Laboratory, Nagpur. The applicants replied the said notice by denying all allegations on 26.7.2019.

6. Being aggrieved and dissatisfied with the said explanation the respondent Seed Inspector issued a notice informing that he is intending to file complaint against the applicants for the violation of Sections 6(B) and 7(C) of the Seeds Act 1966 and Section 2(VIII), 2(X) and Section 13(2) of the Maharashtra Cotton Seeds Act, 2009. Learned counsel appearing for the applicants referred the grounds taken in the petition and submitted that the Maharashtra Cotton Seeds Act, 2009 made applicable and the Act was specifically enacted to regulate the supply, distribution, sell and fixation of sell price of cotton seeds for the matters connected therewith or incidental thereto. Under the said Act cotton seeds are not notified under Section 5 and consequently no sell of such seed is regulated under Section 7 of the Maharashtra Cotton Seeds Act, 2009. He further submitted that to implement the provisions of the Maharashtra Cotton Seeds Act, 2009 under Section 3 of the said Act a Controller is appointed and powers are vested with the Controller for regulating, maintaining and increasing supply or distribution or sell of cotton seeds. It is submitted that under the provisions of the Maharashtra Cotton Seeds Act, 2009 only Controller can by an order in writing regulate any person engage in the supply, distribution and sell of

cotton seeds to comply with the directions as may be specified in the notification. The Controller can only direct to sell the cotton seeds at such price as may be fixed by the State Government. It is further submitted that Court can take cognizance of an offence punishable under the Maharashtra Cotton Seeds Act, 2009 only on complaint in writing made by the Controller and any other person authorized by the Controller. The respondent Seed Inspector has no authority to file a complaint in respect of offences under the provisions of the Maharashtra Cotton Seeds Act, 2009.

7. Another point raised by the applicants is that the samples were sent for analysis on 28.5.2019, report is received on 6.6.2019. On receipt of report another notice was issued asking the applicant to explain adverse findings recorded by the Seed Testing Laboratory, Nagpur on 2.7.2019. The notice was replied on 26.7.2019 and proceeding was filed on 9.10.2019. The opportunity was not granted to the present applicants to re-analyse the sample during the shelf-life of the said seeds.

8. In respect of the contention learned counsel placed reliance on decision of this Court in Criminal Application No.568/2018, decided on 11.12.2018, Criminal Application No.439/2023, decided on 25.9.2023. Maharashtra Hybrid Seeds Company Limited Vs. State of Maharashtra, reported in 2015 ALL MR (Criminal) 2213, Mahik Vegetable Seeds Limited Vs. State of Maharashtra 2018 ALL MR (Criminal) 910 SC.

9. Per Contra, learned Additional Public Prosecutor strongly opposed the said application on the ground that second portion of the seed

sample was sent to analyst on 28.5.2019. Thereafter, on 6.6.2019 the Seed Testing Laboratory, Nagpur sent its report. On receipt of the report show cause notice was issued and reply was sought. Thereafter, complaint was filed. Though the complaint was filed on 9.10.2019 which is after expiration of validity of seed but the sample of seed as well as report of analyst was submitted to the applicants before expiration of validity period and it is done in continuity. As per Section 9(3) of the Maharashtra Cotton Seeds Act, 2009 the Seed Inspector on the basis of report of the seed analyst under sub-section(1) instituted proceeding for prosecution as the seed was BT positive. Thus, the application is devoid of merits and liable to be rejected.

10. I have given careful consideration to the submissions of the learned counsel appearing for the applicants and learned Additional Public Prosecutor for the State. Though the learned Additional Public Prosecutor submitted that the sample which was obtained was Non BT and it has no shelf-life but reply filed by the State shows that the complaint was filed on 9.10.2019 which is after expiration of validity of seed. Section 2 of the Maharashtra Cotton Seeds Act, 2009 has come into force on 9th May 2009. Section 2 of the said Act deals with definition and Section 2(II) defines Controller as “Controller means the cotton seeds, Controller appointed by the Government under Section 3.” Section 3 pertains to ‘appointment of controller’. The State Government may, by notification in the official gazette, appoint an officer possessing such qualification as may be prescribed, to be

the Controller. From the plain reading of the said Section it could be gathered that it would require notification in the official gazette to appoint an Officer having requisite qualification to be the Controller. The powers of the Controller are enumerated in Section 4 of the said Act. Section 15 of the said Act shows that Court shall not take cognizance of an offence under the Act unless the complaint is lodged in writing. Such complaint has to be made either by the Controller or any other officer authorized by the Controller for this purpose. In the present case complaint is lodged by the Seed Inspector. Thus, it is crystal clear that the complaint is neither filed by the Controller nor any other officer authorized by the Controller for this purpose. Admittedly, the complaint in the present complaint is filed by Gopal Rajaram Bonde whose designation is Seed Inspector. The notification which is filed on record nowhere reveals that Seed Inspector is authorized by the Controller to file and initiate the proceeding as filed before the Magistrate. Thus, admittedly, the complainant is not competent person, who can file the said complaint. This Court has already dealt this issue in the case of Maharashtra Hybrid Seed Company Private Limited (*supra*).

11. Another ground raised by the applicant is that no opportunity was granted to the applicants to re-analyse the sample. Though the learned Additional Public Prosecutor submitted that Non BT sample has no shelf-life but in reply it is admitted by the State that the complaint was filed on 9.10.2019 which is after expiration of validity of seeds. Section 9 of the said Act reads as follows :

“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).”

12. Learned counsel for the applicants has rightly submitted that the applicants have been deprived of the opportunity to get the sample tested in terms of sub-section (4) of Section 9. The result of which would supersede the report dated 6.6.2019. It is not necessary to go into the result of the test analysis inasmuch as 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 or 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. Thus, the applicants have made out a case. The continuation of the complaint against the provisions of law will be an abuse of process of law. Therefore, the applications deserve to be allowed.

13. The Criminal Case Nos.5136/2019 and 5137/2019 pending on the file of Chief Judicial Magistrate, First Class, Akola are quashed and set aside.

14 The applications are disposed of in the above terms.

(URMILA JOSHI-PHALKE, J.)