

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 10109 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE GITA GOPI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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UMIYA AGRO CENTRE & 1 other(s)

Versus

AGRICULTURE OFFICER VIVEKKUMAR NAVINCHANDRA RAMANI &
1 other(s)

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Appearance:

MR AI SURTI(875) for the Applicant(s) No. 1,2

MR. MIHIR A SURTI(6887) for the Applicant(s) No. 1,2

MR PRANAV TRIVEDI APP(2) for the Respondent(s) No. 2

RULE SERVED(64) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 29/01/2021

ORAL JUDGMENT

1. This petition has been filed under section 482 of the Code of Criminal Procedure for quashing and setting aside the complaint being Criminal Case No.860 of 2014 pending before

the Court of learned Chief Judicial Magistrate, First Class, at Upleta and the proceedings initiated pursuant thereto.

2. The facts of the case are that the respondent – Mr. Vivekkumar Navinchandra Ramani was serving as an Agricultural Officer at Upleta to discharge his duty. In furtherance of the power conferred upon respondent no.1 under The Seeds Act, 1966 (hereinafter referred to as 'the Act' for short) as the Seeds Inspector, the respondent no.1 collected sample of Hybrid Cotton Seeds variety “73C99 (NSPL 999)” BG-II, bearing lot no. GR11B0161 from the petitioners for G.O.T. Test. The sample so collected was sent for analysis to the Seed Testing Laboratory, Gandhinagar. The report of the analysis was received on 09.07.2014 and as per the said report, the sample of Hybrid Cotton Seeds were found to be of sub-standard quality. The petitioners were served with the show cause Notice dated 21.07.2014, to which detailed reply was given by the petitioners. However, as the respondent-authority found the reply to be unsatisfactory, he filed a case being Criminal Case No.860 of 2014 before the Court of learned Chief Judicial Magistrate, First Class, Upleta.

3. Mr. Mihir A. Surti, learned advocate for the petitioners submitted that on service of summons, the petitioners appeared before the trial Court and applied for re-analysis of the sample of seeds under Section 16(2) of the Act by the Central Seed Testing Laboratory at Varanasi. However, the trial Court rejected the application of the petitioners vide its order dated 03.03.2015 on the ground that the shelf-life of the seeds had expired and therefore, they could not be re-analyzed. Learned advocate Mr.

Surti contended that the said order of the trial Court by which it has refused permission to get the seeds re-analyzed has led to violation of the very valuable right of the petitioners guaranteed under the Act. It was, therefore, urged that the impugned complaint filed by the respondent authority is bad in law as the same is in violation of the provisions of the Act and hence, the same deserves to be quashed and set aside in exercise of the powers under Section 482 of the Cr.P.C..

3.1 In support of his submissions, learned advocate Mr. Surti has relied on the following decisions :

(i) **Shree Mahalaxmi Seeds & Ors. Vs. State of Gujarat**, reported in 2013 LawSuit (Guj.) 2197;

(ii) **Mahyco Vegetable Seeds Ltd. (Now known as Maharashtra Hybrid Seeds Co. Pvt. Ltd.) And Ords. Vs. State of Maharashtra And Ors.**, reported in 2017 LawSuit (SC) 687;

(iii) **Khodiyar Agro Thro Trada Nanlal Gandhubhai And ors. Vs. Agriculture Officer Shri J.D. Gondaliya & Ors.**, reported in 2018 LawSuit (Guj) 34.

4. Mr. Pranav Trivedi, learned Addl. Public Prosecutor, submitted that the trial Court has rejected the prayer of the petitioners for getting the sample re-analyzed by the Central Seed Testing Laboratory for the reason that the shelf-life of the seeds had expired. The said reasoning given by the trial Court could not be faulted with since seeds are perishable items. Hence, no relief may be granted in favour of the petitioners.

5. This Court has heard the learned advocates on both the sides and has perused the material on record. The issue on hand revolves around the applicability or otherwise of the provision of Section 16 of the Act, which relates to re-analysis of samples. As per the said provision, on receipt of the sample, the Seed Analyst has to analyze such sample at the State Seed Laboratory and prepare a report thereof. One copy of such report has to be sent to the Seed Inspector and another copy thereof to the person from whom the sample has been taken. If, thereafter, any decision is taken to institute prosecution under the provisions of the Act, the accused vendor or the complainant has been given the option to get the samples mentioned in Clause (a) or Clause (c) of sub-section (2) of Section 15 of the Act further tested by the Central Seed Laboratory by making an application before the competent Court in that regard. It has been further provided that on receipt of such application, the trial Court concerned shall first ascertain whether the mark and the seal or fastening, as provided in clause (b) of sub-section (1) of section 15, are intact and if the same are found to be satisfactory, then such sample may be dispatched to the Central Seed Laboratory under its own seal, who, in turn, shall re-analyze the sample and sent its report to the trial Court concerned in the prescribed form within a period of one month from the date of receipt of the sample.

6. Sub-section 3 of Section 16 of the Act prescribes that the report sent by the Central Seed Laboratory under sub-Section (2) shall supersede the report given by the Seed Analyst under sub-Section (1) of section 16 of the Act. Under the scheme of the Act, a valuable right has been given to the vendor concerned to get

the sample re-analyzed by the Central Seed Laboratory in a case where a prosecution is lodged on the basis of the report of the State Seed Laboratory. In this case, the petitioners had applied for re-analysis of the sample under section 16 of the Act before the trial Court. However, the trial Court rejected the said application on the ground that though the accused or the complainant had the right to get the sample re-analyzed by the Central Seed Laboratory but, the sample is not required to be sent for re-analysis as the seeds, whose sample had been collected, had ended its shelf-life.

7. A bare reading of the impugned order passed by the trial Court shows that the sample in question were not sent for re-analysis, as provided under Section 16 of the Act, for the reason that the sample, which consisted of seeds, had lost its shelf-life. However, in my opinion, the reasonings adopted by the trial Court calls for stopping of the proceedings of the case, which power the trial Court ought to have exercised under section 258 of the Cr.P.C. The provision of Section 16 of the Act makes it explicit that it is the report of the Central Seed Laboratory which would prevail upon the report of the State Seed Laboratory and would supersede the report given by the State Seed Laboratory.

8. In the case of ***Shree Mahalaxmi Seeds & Ors. (supra)***, it has been held that the accused has the right to get the sample re-analyzed by the Central Seed Laboratory and if complaint is filed after the expiry of the shelf-life of the sample, the accused would be deprived of his right of defence under Section 16(2) of the Act.

8.1 In the case of **Khodiyar Agro Thro Trada Nanlal Gandhubhai (supra)**, this Court has made the following observations in para-20 of the judgment :

“20. In a catena of judgments, relied upon by the counsel for the applicants, the Court has laid down that the samples have to be tested by the Central laboratory before the expiry of shelf life of the sample and if the shelf life of the sample has expired, it causes prejudice. The complaint therefore, stands vitiated for the sole reason that the applicants accused have been deprived of their valuable rights, as provided under the provisions of Section 16(2) of the Seeds Act.”

8.2 In the case of **Mahyco Vegetable Seeds Ltd. (supra)**, the facts were that the sample of the seeds were taken on 01.09.2002 and the report of the Seed Analyst is dated 26.09.2002. The shelf-life of the sample was till 07.11.2002. A complaint came to be filed on 31.01.2003 under the provisions of the Seeds Act, 1966. It was held by the Apex Court that by the time the complaint came to be filed on 31.01.2003, the sample had lost its shelf-life and thus, the accused has been deprived of his valuable right of getting the sample re-analyzed, which led the prosecution futile and redundant.

9. Here, in this case, the sample consisting of seeds was drawn and sent for analysis to the State Seed Laboratory on 13.06.2014 and the report thereof was received on 09.07.2014. As per the details furnished in Form-5 provided under the Act, the shelf-life of the seeds so drawn is noted as 14.09.2014. The complaint in question came to be filed on 01.12.2014, i.e. after a

period of more than two and a half months. In the impugned order, the trial Court has observed that since the sample has lost its shelf-life, no purpose would be served by sending the same for re-analysis to the Central Seeds Laboratory. However, the non-availability of the report of the Central Seed Laboratory on account of the loss of shelf-life of the sample concerned, has deprived the petitioners of their statutory defence under the Act, which, in my opinion, goes into the root of the matter. Hence, any further proceedings thereof would render the entire prosecution case futile and redundant in view of the protection provided under Section 16 of the Act. Considering the facts and circumstances of the case and the principle rendered by the Apex Court in the case of *Mahyco Vegetable Seeds Ltd. (supra)*, the impugned complaint and the proceedings initiated in pursuance thereof deserves to be quashed and set aside.

10. In the result, the petition is allowed. The impugned complaint being Criminal Case No.860 of 2014 pending before the Court of learned Chief Judicial Magistrate, First Class, Upleta and all the proceedings initiated in pursuance thereof, are quashed and set aside. Rule is made absolute.

(GITA GOPI, J.)

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