

R.S. Arora Vs. State

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Court : Delhi

Decided On : Oct-09-1986

Reported in : 1986(11)DRJ314

Judge : Jagdish Chandra, J.

Acts : [Seeds Act, 1966](#) - Sections 7; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 461 of 1986

Appellant : R.S. Arora

Respondent : State

Advocate for Pet/Ap. : G.D. Gandhi and; S.T. Singh, Advs

Judgement :

Jagdish Chandra, J.

(1) This petition under the Section 482 of the Code of Criminal Procedure, 1973 (in short the Code) has been filed by the petitioner R.S. Arora against the order dated 23-4-1985 of Shri A.S. Datkeer, Metropolitan Magistrate, Delhi and the order dated 6-1-1986 passed by Shri B.S Chaudhry, Additional Sessions Judge, Delhi and both these impugned orders are sought to be set aside and quashed together with the proceedings culminating therein. Vide the impugned order dated 23-4-1985 the learned magistrate ordered the issuance of notice under Section 250 of the Code

after rejecting the application of the petitioner for discharge in the complaint filed under Sections 7/19 of the [Seeds Act, 1966](#) (in short the Act). A revision petition was filed against the said order of the magistrate before the learned Additional Sessions Judge who vide his order dated 6-1-1986 dismissed the revision by observing that the various points urged in revision before him require to be thrashed out during trial.

(2) The prosecution case is that on 5-1-1985 at 11.00 AM. Shri Madan Lal of M/s National Seed Store 118-A, Bharola, Azadpur, Delhi was keeping brinjal seeds for sale and at that time sample of seed of brinjal (of Pusa Kranti variety) was lifted by a Seed Inspector. This seed was of M/s. Centaury Seed Pvt. Ltd., Anupam Bhavan, Nani Wala Bagh, Azadpur, Delhi. On examination by the Seed Analyst the sample was found substandard vide the report dated 1-3-1984 of the Seed Analyst. The complaint was thereupon filed under Section 17/19 of the Act.

(3) The petitioner R.S. Arora is engaged in the business of production quality control and distribution of vegetable seeds.

(4) A number of contentions have been raised by the learned counsel for the petitioner for the quashing of the prosecution against the petitioner. First of all he pointed out that vide notification no F No 7(2)/ 70-SD dated 20/25th February 1970 of the Government of India, Ministry of Food, Agriculture, Community Development and Cooperation. (Department of Agriculture) issued under Section 6(a) of the Act specifying minimum limits of germination and purity with respect to the seeds of notified varieties mentioned therein, specified the minimum limits of germination and purity in respect of only two notified varieties of brinjal. viz. (1) Pusa Purple Long and (2) Pusa Purple Round at 65 and 97 respectively and not for the brinjal seed generally or as a whole and consequently there was in this notification no minimum limit prescribed in respect of the lifted sample variety of 'Pusa Kranti' of brinjal and, thus, there could be no prosecution in respect of such a sample even though alleged to be sub-standard by the Seed Analyst. On the other hand, Sodhi Teja Singh representing the State asserted that even though the aforesaid notification dated 20/25th February 1970 did not make mention of the variety in question, i.e. 'Pusa Kranti' of brinjal and specified only two varieties of

brinjals, viz., Pusa Purple Long and Pusa Purple Round, the sample variety in question stood covered for that notification of 1970 by the subsequent notification no. 7-26/74-SD (ii) of June 1975 (date not mentioned) issued by Government of India. Ministry of Agriculture & Irrigation (Department of Agriculture) under Section 5 of the Act which notified brinjal generally and as a whole instead of specifying only some of the varieties thereof in the area of Delhi which area also stood notified in this notification, but this contention was not acceptable to the learned counsel for the petitioner. In order to appreciate this point one has to look to the relevant provisions of the Act under which such like notifications are issued and which point out the violation and those provisions of law are set out as under :-

'S 5 : If the Central Government, after consultation with the Committee, is of opinion that it is necessary or expedient to regulate the quality of seed of any kind of variety to be sold for purposes of agriculture, it may, by notification in the Official Gazette, declare such kind or variety to be a notified kind or variety for the purposes of this Act and different kinds or varieties may be notified for different States or for different areas thereof. S. 6 : The Central Government may, after consultation with the Committee and by notification in the Official Gazette, specify :- (a) the minimum limits of germination and purity with respect to any seed of any notified kind or variety; (b)..... S. 7 : No person shall, himself, or by any other person on his behalf, carry on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety, unless - (b) Such seed conforms to the minimum limits of germination and purity specified under clause (a) of Section 6 : xx xx The perusal of these provisions of law shows that the notification issued under Section 5 specifies the kinds or varieties of seeds to be notified kinds or varieties. Such a notification may also provide for different States or different areas for which different kinds or varieties may be notified. So, such a notification can provide for two things, viz., notified kinds/varieties and notified States/Areas for notified varieties. After the issuance of such a notification under Section 5, another notification may be issued under Section 6 of the Act for the purpose of specifying the minimum limits of germination and purity with respect to any seed of any notified kind or variety. The aforesaid notification of the year 1970 issued under Section 6(a) specifies the notified varieties in the first column and then the minimum limits of germination

and purity respectively in the second and third columns therein and as I have already pointed out above this notification has notified only two varieties of brinjal and not the sample variety of 'Pusa Kranti' or brinjal generally as a whole. The subsequent notification of the year 1975 issued under Section 5 specifies under Column No. 1 the notified kinds/varieties of various seeds including brinjal, generally as a whole, while in Column No. 2 it specifies the areas for which kinds/varieties of seeds are notified against the varieties specified in Column No 1. It would be noted that this notification of the year 1975 having been issued under Section 5 pertains only to the two matters, viz., notified varieties of seeds and notified areas for the same which are contemplated under that provision of law, and has nothing to do with the matters of minimum limits of germination and purity which pertain to the sphere of Section 6. Moreover, the notification of 1975 does not, on the plain reading of its language, link itself in any manner with the notification of 1970 issued under Section 6 and specifying the minimum limits of germination and purity. From these facts it cannot be said that the notification of 1975 issued under Section 5 is supplemental to the earlier notification of 1970 issued under Section 6 or is meant to fill up any lacuna in the notification of 1970. The reading of Sections 5 and 6 would go to show that whereas the former contemplates a notification specifying the notifying of certain kinds/varieties of certain seeds and different areas/States for the same notification, to be issued under Section 6 is to specify the minimum limits of germination and purity with respect to 'any' seed of 'any' notified kind/variety and not to 'all' notified kinds/varieties, and in this view of the matter the subsequent notification of 1975 issued under Section 5 notifying the seed of brinjal generally as a whole cannot be fitted in the earlier notification of 1970 issued under Section 6, so as to be read retrospectively in conjunction with that earlier notification of 1970 for the purpose of applying the germination and purity minimum limits for all kinds/varieties of brinjal inclusive of the sample variety, i.e. 'Pusa Kranti'. and so the contention raised by the learned counsel for the petitioner appears to be correct and that raised for the State erroneous. With this position at law, the sample in question could not be lifted by the Seed Inspector and consequently could not give rise to the launching of any prosecution against the petitioner in view of Section 7(b) of the Act which requires a seller to conform to the minimum limits of germination and

purity in regard to the seed under Section 6(a) of the Act, and as a result of this the launching of prosecution against the petitioner in the form of complaint as in this case as also the subsequent proceedings are liable to be quashed and both the impugned orders of the courts below have to be set aside.

(5) Sample in this case was lifted by the Seed Inspector on 5-1-1984 and the same was received by Seed Analyst on 16-1-1984 and he prepared his report on 1-3-1984 after 45 days of the receipt of the sample.

(6) Under Rule 21(3) of the Seeds Rules, 1968 (in short the Rules') as amended by the Seeds (Amendment) Rules, 1973 the Seed Analyst is bound to deliver the copy of his report of analysis to the Seed Inspector and the person from whom the sample was lifted (Vide Section 16(1) of the Act) within 30 days from the date of his receiving the sample. Mr. Sodhi representing the State submitted that the aforesaid period of 30 days stood amended in view of the time limit of 60 days prescribed for the analysis in Section 14 of the Seeds Control Order, 1983 issued by the Government of India, Ministry of Agriculture (Department of Agriculture and Cooperation) dated 30-12-1983 issued under Section 3 of the Essential Commodities Act, 1955 which reads as follows : -

'TIME limit for analysis The laboratory to which a sample has been sent by an Inspector for analysis under this Order shall analyze the said samples and send the analysis report to the concerned Inspector within 60 days from the date of receipt of the sample in the laboratory.' This contention of Mr, Sodhi is erroneous and cannot be accepted as this. Order was issued under Section 3 of the Essential Commodities Act, 1955 and not under the [Seeds Act, 1966](#) and the scope and the fields of the two are quite different and distinct from each other, inasmuch as the provisions of this Order pertain to the grant/refusal/renewal of the license and its period of validity or with the dealers displaying the stocks and price-list whereas the Seeds Act and the Rules made there under talk of altogether other things including the standard of the seeds to be sold and the sample lifted.

(7) It was contended by the learned counsel for the petitioner that in view of Rule 21(3) of the Seeds Rules, 1968 as amended by the Seeds (Amendment) Rules, 1973 the Seed Analyst was under a statutory obligation to deliver in Form VII a

copy of the report of the result of analysis to the persons specified in Sub-section (1) of Section 16, as soon as may be, but not later than 30 days from the date of receipt of sample sent by the Seed Inspector under Sub-section (2) of Section 15 of the Seeds Act. Under Section 16(1) the Seed Analyst is to analyze the sample at the State Seeds Laboratory and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample has been taken. On the basis of the aforesaid provisions the learned counsel for the petitioner pointed out that the report of the Seed Analyst having been prepared after 45 days of the receipt of sample by him, was necessarily delivered to be Seed Inspector and the petitioner later than that in violation of the aforesaid mandated maximum period of 30 days. He has further contended that in view of the aforesaid mandate of maximum period of 30 days and the prosecution having been launched against the petitioner still much later on 1-8-1984, the petitioner was deprived of his vital and valuable right of getting the sample in question re-tested from the Central Seed Laboratory as provided in Subsection (2) of Section 16 of the Act which is reproduced below :-

'AFTER the institution of a prosecution under this Act, the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the court for sending any of the samples mentioned in Clause (a) or Clause (c) of Subsection (2) of Section 15 to the Central Seed Laboratory for its report and on receipt of the application, the court shall first ascertain that the mark and the seal or fastening as provided in Clause (b) of Sub-section, (1) of Section 15 are intact and may then dispatch the sample under its own seal to the Central Seed Laboratory which shall thereupon send its report to the court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.'

The importance of this second test lies in the fact that the report sent by the Central Seed Laboratory supersedes the report given by the Seed Analyst as is provided in Sub-section (3) of Section 16 of the Act. On account of this deprivation, it was submitted that the petitioner was entitled to the quashing of the prosecution against him. This contention of the learned counsel for the petitioner appears to be quite sound and reasonable in view of the above mentioned as in-

built mandate of the maximum period of 30 days provided in the aforesaid statutory Rule 21(3) within which the Seed Analyst must send his report of analysis in respect of the sample lifted after the receipt of the sample by him and the same has to be sent within that period to the Seed Inspector and the person from whom the same was taken, and from all this it looks quite rational to infer that the sample is likely to degenerate in regard to its germination and purity so as to defeat the aforesaid right of the second test which supersedes the analysis of the Seed Analyst and in this view of the matter the accused person can acquire a reasonable belief that such delay on the part of the Seed Analyst in sending his report can degenerate the sample so as to mar his right of second test and, thus, in such a case the making of an application to the Court for sending the sample for second test to the Central Seed Laboratory on the payment of prescribed fees for the same, cannot be held to be a sine qua non for the sending of the sample for the second test, and for reaching this inference sufficient assistance is available from a Division Bench authority of this Court reported as *Municipal Corporation of Delhi v. Narinder Kumar*, 1980 (1) P A c 161 which was a case under the Food Adulteration Act, 1954 wherein Section 13(2) talks of the making of an application by the accused for the second analysis by the Director of Central Food Laboratory which is conclusive and supersedes the analysis report of the Public Analyst. On this count also the complaint and the subsequent proceedings against the petitioner are liable to be quashed and the impugned orders could be set aside.

(8) The learned counsel for the petitioner also raised a question of limitation in respect of the launching of the prosecution in this case. Section 19(i) of the Act provides for the first offence of contravening of any provision or any rule made there under with fine which may extend to Rs 500/ only and Section 468 of the Code provides a bar to the taking of cognizance of offences after lapse of a period of limitation and Sub-section (2) thereof prescribes six months as the period of limitation, if the offence is punishable with fine only. So, the offence is hand is governed by the period of limitation of 6 months Now, the question is as to which is the date from which this period of limitation is to start and the answer to that finds mention in Section 469(l)(b) of the Code according to which where the commission of the offence is not known to a person aggrieved by the offence or to any police officer, it is the first day on which such offence comes to the knowledge

of such person or to any police officer, whichever is earlier. The period of limitation for the prosecution for that offence could not start in the case in hand when the sample was lifted, as the making of the offence could not be known and it could be known only when the Seed Analyst submitted his report to the Seed Inspector under Section 16(1) of the Act whereupon the Seed Inspector could launch the prosecution against the offender. In this case, even though the sample was lifted on 3-1-1984, that is not the material date for the purpose of limitation, but the starting point of limitation is 1-3-1984 when the report of Seed Analyst was received by the Seed Inspector . and keeping that date in view the prosecution against the petitioner launched on 1-8-1984 is obviously within the statutory limitation of six months, and thus, the contention of the learned counsel for the petitioner on the point of limitation is not correct and must be discarded.

(9) It was then contended for the petitioner that sampling in this case was not done so as to be air-tight and as it was done in cloth, moisture could enter therein to the sample of seed which could have the effect of degenerating the same. This ground finds mention in ground no. Xiii of the petition and also in the application moved by the petitioner for his discharge before the learned magistrate. To that application for discharge before the learned magistrate the State filed the reply and in para l(d) thereof it was stated as under :- a

'THE sampling of the seed in question has been done as per seed Rule 24. The sample is taken in a clean dry cloth bag container which is closed sufficiently tight to prevent leakage and entrance of moisture It is further wrapped in a fairly strong thick paper. The ends of the paper are neatly folded in and affixed by means of gum. It is further secured by means of strong thread, both above and across the container and then sealing was is put with the clear impression of the seal of the sender, one at the top and one at the bottom. The Analyst will also not accept the seed sample if it is not properly sealed according to the seed rules '

This position taken up by the State is in conformity with Rule 24 of the Rules and so this contention of the learned counsel for the petitioner is of no avail to him.

(10) No other point was urged at the Bar and in view of the above discussion the petition succeeds and consequently the complaint against the petitioner and the

subsequent proceedings are quashed and the impugned- orders passed by the two courts below are set aside.

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