

(2017) 01 MP CK 0179
MADHYA PRADESH HIGH COURT
Case No: 6742 of 2016

M/s R.K. Rai

APPELLANT

Vs

Smt. Seema Dubey & Ors.

RESPONDENT

Date of Decision: Jan. 20, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
- Indian Penal Code, 1860, Section 420, Section 468 - Cheatin

Hon'ble Judges: Jarat Kumar Jain

Bench: Single Bench

Advocate: Akash Rath, Sudhanshu Vyas, R R Bhatnagar

Final Decision: Allowed

Judgement

1. THIS petition under Section 482 of the Code of Criminal Procedure for short "the Code". has been filed for quashment of final report of Crime No.35/2015 of Police Station Mahidpur, District Ujjain for the offence under Sections 420 & 468 of IPC and Section 3/7 of the Essential Commodities Act (in short "E.C.Act").

2. Brief facts of this case are that on 14.07.2014 Bahadur Singh Chouhan, MLA, Mahidpur sent a written complaint to Director, Farmer Welfare and Agriculture Development, Bhopal stating that since the year 2004 to 2013 Navalakha Seeds, Mahidpur instead of producing the seeds purchased the seeds of Soyabean (1,53,930.4 quintal) and Wheat (41,415.47 quintal) from Krashi Upaj Mandi, Mahidpur and sold the same to farmers. Thus, he has cheated the farmers, hence, constitute the committee for inquiry. Thereafter three members Committee in the Chairmanship of Joint Director, Agriculture, Ujjain was constituted. After inquiry, on 26.11.2014 Committee has given a detailed report. The report was sent to Collector,

Ujjain for registration of offence against Navalkha Seeds, Mahidpur. On 27.01.2015, Crime No.35/2015 was registered at Police Station Mahidpur for the offence punishable under Sections 420 and Section 3/7 of the E.C.Act against Navalkha Seeds, Mahidpur and the applicant being proprietor he was arrested. After investigation Police filed final report against the applicant for the offence under Sections 420 & 468 of IPC and Section 3/7 of the E.C.Act. Being aggrieved the applicant filed this petition for quashment of final report.

3. The petition is filed on the following grounds :-

(i) No allegation that the applicant violated any of the order of the Seeds (Control) Order, 1983, hence, cannot be punished under Section 3/7 of the E.C.Act.

(ii) The sale of unauthorized seeds does not violate Seeds (Control) Order, 1983, hence, no offence is made out.

(iii) Inspector appointed under Clause 12 of Seeds (Control) Order, 1983 can enforce the Seeds (Control) Order, 1983 and Police cannot register the offence.

(iv) Complete record of last 10 years is not available, hence, the allegations cannot be proved.

(v) Which false document was prepared by the applicant is not mentioned in final report and no false document was seized from the applicant.

(vi) No evidence that applicant has dishonestly induced any person to purchase the seeds from his shop. Thus offence of cheating cannot be proved.

(vii) No evidence that applicant purchased seeds from Krashi Upaj Mandi, Mahidpur.

(viii) The farmers in their police statements did not state that they have purchased seeds from the applicant.

(ix) The investigation has been conducted in a partial manner and statements of some farmers were recorded which does not give complete and fair picture.

(x) There are vague and general allegations, hence, to continue criminal proceedings against the applicant is misuse of process of law.

4. The non-applicant resisted the petition on the

following grounds :-

(i) The State Govt. under Section 25 of the Seeds Act, 1966 and Rule 6-B of Seeds Rule, 1968 issued guidelines for seed certification i.e Beej Pramanikaran Sanstha Kee Karya Pranali. The applicant has contravened the guidelines. This is a clear violation of Seeds Act, 1966 and the rules framed thereunder.

(ii) The applicant had purchased the seeds from unregistered farmers and sold the same to the farmers, but had not provided sample of seeds. Therefore, there was no occasion for the authority to have confirmed the quality of the seeds sold by the applicant. Thus, there is a violation of Section 3 of the E.C.Act.

(iii) Seeds (Control) Order, 1983 has been framed under the E.C.Act and the applicant has committed violation of Section 3 of the E.C.Act, which is punishable under Section 7 of the Act.

(iv) The applicant has sold the seeds representing that the seeds have confirmed the standard quality. Thus, cheated the farmers which is punishable under Section 420 of IPC.

(v) In the year 2014 the applicant had purchased seeds and issued receipts to the farmers but the same is not mentioned in the crop register maintained by the Seed Inspector, which is mandatory. Thus, the applicant has prepared forged receipt and thereby committed the offence under Section 468 of IPC.

5. After hearing learned Counsel for the parties, perused final report.

6. MLA Bahadur Singh Chouhan made a complaint against the applicant and requested for inquiry to the Director, Farmer Welfare and Agriculture Development. The Inquiry Committee was constituted in the Chairmanship of Joint Director, Agriculture, Ujjain with two members i.e. Assistant Directors, Agriculture. On 26.11.2014, they have submitted an inquiry report. The conclusions are as under :-

"VERNACULR MATTER OMITTED"

9. The Section 7(1) of the E.C.Act provides that when there is a violation of any "order" regarding any Essential Commodity, then the provisions of E.C.Act, 1955 may apply. In the present case the prosecution is required to prove the contravention of Seeds (Control) Order, 1983 which is issued under Section 3 of the E.C.Act. Then a person can be punished under Section 7 of the E.C.Act.

10. Learned Counsel for the non-applicant submits that Beej Pramanikaran Sanstha Kee Karya Pranali is a guideline which is framed under Section 25 of Seeds Act, 1966 and Rule 6-B of Seeds Rules, 1968. As the applicant has committed the violation of the said guideline, therefore, applicant has contravened the provisions of Seeds (Control) Order, 1983. Section 25 of the Seeds Act, 1966 deals with power to make rules to carry out the purpose of the Act. The State of Madhya Pradesh has issued the said guideline under Rule 6-B of Seeds Rules, 1968. There is no provision that violation of said guideline is punishable under Seeds (Control) Order, 1983 or under Seeds Act, 1966. Admittedly said guideline has not been issued under Seeds (Control) Order, 1983.

11. Section 19 of the Seeds Act, 1966 provides penalty which reads as under :-

19. Penalty :- If any person, -

(a) contravenes any provision of this Act or any rule made thereunder; or

(b) prevents a Seed Inspector from taking sample under this Act; or

(c) prevents a Seed Inspector from exercising any other power conferred on him by or under this Act, he shall, on conviction, be punishable, -

(i) for the first offence with fine which may extend to five hundred rupees, and

(ii) in the event of such person having been previously convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with oath."

- 12.** With the aforesaid, it is clear that if any person contravenes any provision of the Seeds Act or the Seeds Rules, 1968 then he is liable for the penalty provided under Section 19 of the Act.
- 13.** If any person contravenes the Seeds (Control) Order, 1983 which is made under Section 3 of the E.C.Act then he be punished under Section 7 of the E.C.Act. In this case in the FIR, final report as well as in the reply of the petition it is not mentioned that the applicant has violated or contravened any of the Seeds (Control) Order, 1983, hence, the applicant cannot be punished under Section 3/7 of E.C. Act.
- 14.** Now, I have considered who is the enforcement authority for Seeds (Control) Order, 1983. As per Clause 12, the State Govt. may appoint Inspector of Seeds as enforcement authority, hence, the police is not enforcement authority under Seeds (Control) Order, 1983. Thus, the Police cannot register and investigate such an offence.
- 15.** Now I have considered that whether the applicant had cheated any farmer. None of the farmer stated that the applicant had dishonestly induced to purchase the seeds and to part with sale consideration. The purchaser/farmer have not made any complaint whereas the complaint is made by third party viz. Bahadur Singh Chouhan MLA. In such circumstances, the applicant cannot be punished for the offence under Section 420 as held by the Hon"ble Apex Court in the case of Mohd. Ibrahim V/s. State of Bihar reported in (2009) 8 SCC 751.
- 16.** Now, I have considered whether the applicant had made a false document. In the FIR and final report it is not mentioned that the applicant has made a false document, however, in the reply of the petition it is mentioned that the applicant had purchased the seeds and issued receipt to the farmers but the same didn't mentioned in the crop register maintained by the Seed Inspector and thus he prepared forged receipt. Twenty documents are annexed with the final report, however, any forged receipt is not annexed. Hence, there is no evidence on record to presume that the applicant has prepared a false document.
- 17.** Complete record of last 10 years is not available. There is no evidence that applicant purchased seeds from Krashi Upaj Mandi, Mahidpur and sold the same. In the inquiry report dated 26.11.2014 the Committee has opined that they have prepared a preliminary inquiry on random basis. Detailed and actual inquiry can be conducted by any high level inquiry committee after obtaining the records, then only it is clear that the applicant has committed any offence. However, from the record it is not clear that any such high level committee was constituted for detailed and actual inquiry. Surprisingly no report has been obtained from the Seeds Inspector, who is the enforcement authority for Seeds (Control) Order, 1983.

18. With the aforesaid, I am of the view that the allegations made in the final report even if they are taken in their face value and accepted in their entirety do not prima facie constitute any offence or made out a case against the applicant under Section 3/7 of the Essential Commodities Act or under Section 420 and 468 of IPC. The prosecution at the instance of police authority against the applicant is bad in law and deserves to be quashed.

19. With the aforesaid, the FIR registered at Crime No.35/15 at Police Station Mahidpur, District Ujjain for the offence under Section 420, 468 of IPC and Section 3/7 of E.C. Act and the final report against the applicant is hereby quashed. Resultantly, applicant is discharged from aforesaid charge as well as from his bail bonds.

Thus, the petition is allowed.

Copy of the order be sent to the trial court for information.