

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.2172 OF 2021

Between:

Vuda Nagesh & Others

... Petitioners

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 10.01.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 2172 of 2021

% Dated 10.01.2023

Vuda Nagesh & Others

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High Court for the State of Telangana,
Hyderabad & Another

... Respondents

! **Counsel for the Petitioners:** Sri. Asad Hussain

^ **Counsel for the Respondents:** Sri S.Sudershan,

Addl. Public Prosecutor

>**HEAD NOTE:**

? **Cases referred**

¹ 1997 (5) ALD 809

² MANU/MH/0681/2000

³ MANU/ MP/1263/2020

⁴ MANU/KA/3604/2022

⁵ (2012) 10 SCC 303

⁶ Criminal Appeal No. 1195 of 2018

⁷ (2014) 9 SCC 772

⁸ Criminal Appeal Nos.1328-1329 of 2019, dated 04.09.2019

⁹ Criminal Appeal No. 905 of 2010, dated 04.10.2019

¹⁰ (2003) 2 SCC 152

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION No.2172 OF 2021

ORDER:

1. The petitioners are aggrieved by the prosecution for the offences under Sections 420 IPC and also Section 7 of the Essential Commodities Act, 1955 (for short 'the Act').
2. According to the charge sheet filed by the Police Shantinagar, a written complaint was filed by the Agricultural Officer stating that the brands namely 'Arunium' and 'Akshi' varieties of chilli crop seeds are of sub-standard genetic purity. The said seeds were sold by the petitioner's company, which is M/s.Monsanto Holdings Private Limited. The farmers were made to believe through their authorized dealers that the seeds were of genuine quality and the farmers would be benefited. However, when the farmers have sowed and cultivated the said seeds which were of sub-standard quality, they did not yield any crop and all the farmers have incurred losses. Aggrieved by the said sub-standard quality of seeds, the farmers staged dharna on 19.10.2016.

3. On 20.10.2016, a Scientist of Horticulture Department collected leaf samples from the farmers' fields and sent for DNA testing analysis for verifying the genetic purity of plants. During investigation, it was found that 'Arunim' variety chill crop seeds were received from M/s.Monsanto Holdings Private Limited and 'Akshi' variety seeds were received from Univeg Seed Technologies Private Limited.

4. The said samples which were sent for analysis were received by the DNA Finger Printing Laboratory, Hyderabad and declared them as sub-standard mentioning 'genetic purity does not confirm to the prescribed standards of Genetic Purity'. In the said circumstances, the police conducted investigation and seized stock registers, invoices, licenses, bills books etc., from the retailers. Several farmers were also examined who incurred losses.

5. The Police concluded investigation and arrayed these petitioners along with seven others as liable for the offence under Sections 420 of IPC and Section 7 of the Act.

6. Learned counsel for the petitioners would submit that the entire investigation is void for the reason of the allegations not

attracting any of the offences under Section 420 of IPC or Section 7 of the Act.

7. In respect of any spurious seeds, the same would fall within the provisions of the Seeds Act, 1966 (for short 'the Act of 1966') and any prosecution can be only under the provisions of the Seeds Act and the Rules made there-under. The Police have no jurisdiction to conduct investigation. Several other grounds are also raised questioning the way in which investigation was conducted. Learned counsel has relied on the judgments of this Court in **Sai Seed Agricultural Farms v. State of A.P**¹ in which, the Hon'ble Division Bench of this Court held that Essential Commodities Act, 1955 is general Enactment and the Seeds Act 1966 is a Special Enactment dealing only with quality of seeds for agriculture purpose so as to ensure proper quality for germination and consequent yield.

In the said judgment, the Division Bench took notice of both the Enactments and observed that, without delving into

¹ 1997 (5) ALD 809

the facts of the case whether the activity alleged falls within the ambit of Seeds Act 1966 or Section 3 r/w Section 7 of the Essential Commodities Act, it was left open to the concerned Court to decide regarding the prosecution under the enactment of Seeds (Control) Order 1983 or the Essential Commodities Act.

8. Learned counsel for the petitioners also relied upon the judgment of High Court of Bombay in the case of **Korra Srinivas Rao and others v. State of Maharashtra**². The High Court dealt with FIR registered by the police for the offence under Section 420 of IPC. Criminal complaints were filed stating that seeds sold by the petitioners therein did not yield desired results by the farmers as such crime was registered for the offences under Section 420 r/w Section 34 of IPC and Sections 6(a) and 7(b) of the Seeds Act. The High Court held that criminal case cannot be registered by the police and quashed the same. However, options were left open to prosecute the petitioners either under the Seeds Act or under

² MANU/MH/0681/2000

the provisions of the Trade and Merchandise Marks Act, 1958. He also relied upon the judgment of High Court of Madhya Pradesh in the case of **Imran Meman v. State of Madhya Pradesh**³. In the said case, the police seized 720 kgs of seeds and the petitioner therein failed to produce any licence or any consent from the government department for engaging any seed packaging and storing of seeds. In the said circumstances, the High Court of Madhya Pradesh quashed the proceedings stating that the provisions of the Essential Commodities Act are not attracted. Further, none of the farmers had come forward to state that they were cheated. For the said reason, FIR registered under Sections 420, 467, 469 and 475 of IPC was quashed. He also relied upon the judgment in the case of Deepak Gilda v. State of Karnataka and others⁴, wherein the Assistant Director of Agriculture lodged FIR with the police stating that the accused therein were dealing with Seeds and food grains and sold seeds of

³ MANU/MP/1263/2020

⁴ MANU/KA/3604/2022

green gram to agriculturists. The agriculturists have sowed the seeds in about 150 acres and even after 90 days, the seeds have not given any flowers, for which reason, it was inferred that the seeds were of sub-standard quality and accordingly, FIR was registered for the offence under Section 420 of IPC. The Karnataka High Court placing reliance on the judgment of High Court of Bombay in the case of **Korra Srinivas Rao and others v. State of Maharashtra (supra)**, held that FIR cannot be registered under the provisions of IPC. However, action can be taken under the Seeds Act or the Trade and Merchandise Marks Act 1958.

9. Learned counsel for the petitioners relying on the aforesaid judgments argued that even assuming that the seeds which were sold were not of the genetic purity as claimed by the DNA lab, there cannot be any prosecution under Section 420 of IPC or the Essential Commodities Act. However, the prosecution, if any may be under the Seeds Act. The Seeds Act in itself is a complete Enactment which prescribes procedure for dealing with such sub-standard or genetically impure seeds. The Seed Inspector is the person, according to the Seed

Rules 1968, who can inspect any such complaint of spurious seeds and take necessary action. The offence by the petitioners, if any, would be under Section 19 of the Seeds Act. In the said circumstances, charge sheet has to be quashed.

10. Sri S.Sudershan, learned Additional Public Prosecutor submits that there were several hundred farmers who have been cheated and incurred heavy losses by purchasing the seeds sold by the petitioners, for the said reason, it is a clear case of cheating, prosecution cannot be quashed.

11. Alternatively, learned counsel for the petitioners submits that all the farmers were compensated, for which reason of settling the issues with the farmers by adequately compensating them, this Court can take view of the settlement and quash the proceedings as observed by the Hon'ble Supreme Court in the case of **Gian Singh v. State of Punjab**⁵ that offences arising out of commercial, financial, mercantile, civil, partnership or similar transactions arising out of marital

⁵ (2012) 10 Supreme Court 303

relations can be quashed when the disputes are civil in nature.

12. Perused the record. The crime was registered on the basis of written complaint filed by the Mandal Agricultural Officer. During the course of investigation, the samples of leaves of the crops were taken for analysis and it was found that there was no genetic purity and according to the analysis report, it was declared as sub-standard mentioning genetic purity does not confirm to the prescribed standard of genetic purity.

13. During the course of investigation, several farmers who incurred losses using the sub-standard chilli seeds were also examined. The scientists collected samples and experts are also examined. Further, to prove that the stocks were received from the company of the petitioners, stock registers, invoices, licences and other bill books were seized from the possession of A10 to A12, who are the retail sellers of the seeds.

14. To attract an offence of cheating, the essential ingredients are; i) deliberate misrepresentation of fact; ii) believing such misrepresentation, a person must have been

induced; iii) such person who has been induced due to the misrepresentation parts with property.

15. In the present case, the farmers allege that on the basis of claims made by the company regarding the purity and standard quality of seeds, seeds were purchased by making payments. Thereafter, the crop did not yield expected results, for which reason, there was an enquiry conducted. The enquiry revealed that the seeds which were purchased by the farmers through the dealers were of the petitioners' company and the seed variety did not meet the prescribed standards for which reason the farmers incurred losses. *Prima facie*, the ingredients of Section 420 are made out.

16. Learned counsel for the petitioners submits that Section 7 of the Essential Commodities Act is also not attracted. Only the Seeds Act 1966 is made applicable in cases of seeds such as chilli seeds in the present case.

17. Section 7 of Essential commodities Act penalises any person contravening any order made under Section 3 of the Act. According to the Schedule of the Act, chilli seeds also fall within 'essential commodities'.

18. There is no dispute that Seeds Act 1966, is a special enactment for regulating the quality of seeds for sale and other matters which are connected to seeds. In accordance with the Act, the Seed Inspector and Seed Analyst are appointed by official notification. Said Seed Inspectors have powers under Section 14 of the Act to take sample of the seed and the procedure to be followed by the Seed Inspector is also enumerated under Section 15 of the Act. On receiving any sample, the Seed Inspector shall analyse and give a report. Section 19 of the Seeds Act penalises the contravention of any provisions of the Act and other acts as stated therein.

19. The Seeds Rules 1968 are framed in exercise of powers conferred under Section 25 of the Seeds Act 1966. The Rules specify regarding the functions of the Central Seed Laboratory, Central Seed Committee and other aspects regarding labelling etc., in respect of Seeds.

20. Though there is a special enactment dealing with seeds, the same will not preclude any prosecution, if the acts make out an offence under any of the provisions of IPC or E.C.Act, unless specifically barred. In the present case, as discussed

above, the farmers were induced into purchasing the seeds on the basis of misrepresentation that was made regarding genetic quality of the seeds and thereby incurred losses. The said seeds were supplied by the petitioners, which is not in dispute.

21. The Hon'ble Supreme Court in the case of **State of Maharashtra and another v. Sayyed Hassan Sayyed Subhan**⁶, held as follows:

“7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. 1. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the and at the same time, an offence under any other law. 2 The High Court ought to have taken note of of the General Clauses Act, 1897 which reads as follows:

“Provisions as to offences punishable under two or more enactments – Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of 1 – (1969)3SCR652 –(1988)4SCC655 those enactments, but shall not be liable to be punished twice for the same offence.”

⁶ Criminal Appeal No.1195 of 2018

22. In the said case, the Hon'ble Supreme Court was dealing with the situation wherein Gutka/Pan Masala were seized and FIR was registered for the offences under Sections 188, 272, 273 and 328 of IPC. The Hon'ble Supreme Court held that though the offences are punishable under Sections 26 and 30 of the Food and Safety Standards Act, 2006, the prosecution under IPC for the said provisions stated above was not expressly or impliedly barred under the Food and Safety Standards Act, 2006 and the Rules made there under. For the said reasons, prosecution under the provisions of IPC was upheld.

23. In the judgment of Hon'ble Supreme Court in the case of State (NCT of Delhi) v. Sanjay⁷, the Hon'ble Supreme Court was dealing with illegal mining of sand from riverbeds. The Hon'ble Supreme Court held that though the provisions of MMDR Act have to be invoked in such cases, police are not barred from proceeding by criminal prosecution under Section 378 of IPC and observed as follows:

⁷ (2014) 9 Supreme Court Cases 772

“72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of of the Act is an offence punishable under of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State’s possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in of Criminal Procedure.”

24. In the judgment reported in the case of the **State of Uttar Pradesh v. Aman Mittal and another**⁸, wherein the Hon’ble Supreme Court while dealing with Sections 3 and 7 of the Essential Commodities Act in respect of sale of petrol and diesel found that the prosecution for the offences under Sections 467, 468 and 471 of IPC were not covered under the Essential Commodities Act, as such, the prosecution can be maintained under relevant provisions of IPC. The Hon’ble Supreme Court held as under:

⁸ Criminal Appeal Nos.1328-1329 of 2019, dated 04.09.2019.

“35. The scheme of the Act is for the offences for use of weights and measures which are non-standard and for tampering with or altering any standards, secondary standards or working standards of any weight or measure. The act does not foresee any offence relating to cheating as defined in Section 415 of IPC or the offences under Sections 467, 468 and 471 of IPC. Similarly, an act performed in furtherance of a common intention disclosing an offence under Section 34 is not covered by the provisions of the Act. An offence disclosing a criminal conspiracy to commit an offence which is punishable under Section 120-B IPC is also not an offence under the Act. Since such offences are not punishable under the provisions of the Act, therefore, the prosecution for such offences could be maintained since the trial of such offences is not inconsistent with any of the provisions of the Act. Similar is the provision in respect of the offences under Sections 467, 468, 471 IPC as such offences are not covered by the provisions of the Act.”

25. In the case of the State of **Arunachal Pradesh v. Ramchandra Rabidas @ Ratan Rabidas and another**⁹, the Hon’ble Supreme Court while dealing with the offences under the Motor Vehicles Act, held as follows:

“6. In our view there is no conflict between the provisions of the IPC and the MV Act. Both the statutes operate in entirely different spheres. The offences provided under both the statutes are separate and distinct from each other. The penal consequences provided under both the statutes are also independent and distinct from each other. The ingredients of offences under the both statutes, as discussed earlier, are different, and an offender can be tried and punished independently under both statutes. The principle that the special law should prevail over the general law, has no

⁹ Criminal Appeal No.905 of 2010, dated 04.10.2019

application in cases of prosecution of offenders in road accidents under the IPC and M.V.Act.

7. It is pertinent to mention that there is no provision under the M.V.Act which separately deals with offences causing death, or grievous hurt, or hurt by a motor vehicle in cases of motor vehicle accidents. Chapter XIII of the M.V.Act is silent about the act of rash and negligent driving resulting in death, or hurt, or grievous hurt, to persons nor does it prescribe any separate punishment for the same; whereas Sections 279, 304 Part II, 304A, 337 and 338 of the IPC have been specifically framed to deal with such offences.”

26. In the case of **State of Rajasthan v. Hat Singh and others**¹⁰, the Hon’ble Supreme Court while dealing with Rajasthan Sati (Prevention) Act, 1987 held as follows:

“11. The leading Indian authority in which the rule against double jeopardy came to be dealt with and interpreted by reference to of the Constitution is the Constitution Bench decision in *Maqbool Hussain v. State of Bombay* [AIR 1953 SC 325]. If the offences are distinct, there is no question of the rule as to double jeopardy being extended and applied. In *State of Bombay v. S.L.Apte*, [AIR 1961 SC 578], the Constitution Bench held that the trial and conviction of the accused u/s 409 did not bar the trial and conviction for an offence u/s 105 of the Insurance Act because the two were distinct offences constituted or made up of different ingredients though the allegations in the two complaints made against the accused may be substantially the same. In *Om Prakash Gupta v. State of U.P* [AIR 1957 SC 458 and *State of M.P. v. Veereshwar Rao Agnihotri* [AIR 1957 SC 592], it was held that prosecution and conviction or acquittal u/s 409 of IPC do not debar the accused being tried on a charge u/s 5(2) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content. In *Roshan Lal v. State of Punjab* [AIR 1965 SC 1413], the accused had caused disappearance of the evidence of two offences u/s 330 and 348 IPC and, therefore, he was alleged to have committed two separate offences u/s 201. It was held that neither Section 71 IPC nor Section 26 of the General Clauses Act came to the rescue of the accused and the accused was liable to be convicted

¹⁰ (2003) 2 Supreme Court Cases 152

for two sets of offences u/s 201 IPC though it would be appropriate not to pass two separate sentences.”

27. The Seeds Act 1966 or the Seeds Rules 1968 made there under, do not in any manner prohibit any prosecution with regard to ‘Seeds’ under any other enactment other than Seeds Act 1966. There is no express or implied provision in Seeds Act barring prosecution under IPC or Essential Commodities Act.

28. As already discussed above, on the facts of the present case, there is a deliberate inducement of the farmers into purchasing seeds of inferior quality by claiming them to be of superior quality. There is wrongful loss to the farmers in the process of relying upon the claims made by the company regarding the quality of seeds and purchasing them at a price. In turn, the sellers of the seeds have gained wrongfully by passing sub-standard seeds or seeds not adhering to the genetic quality requirements, claiming them to be of standard quality. For the said reasons, as a prima facie case is made out, I am not inclined to quash the proceedings in C.C.No.262 of 2017 on the file of Additional Judicial First Class

Magistrate, against the petitioners. However the Trial Court can draw its own conclusions on the basis of evidence adduced by both the parties during trial, uninfluenced by the observations in the present order, which is decided at the threshold only on the basis of documents filed under section 207 CRPC.

28. Accordingly, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

K.SURENDER, J

Date: 10.01.2023

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.2172 OF 2021

Date: 10.01.2023.

kvs

