

THE HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

BEFORE SINGLE BENCH: JUSTICE SHRI SHAILENDRA SHUKLA

Case No.	:	M.Cr.C. No.28166/2020
Parties name	:	IMRAN MEMAN Vs. STATE OF MADHYA PRADESH
Date of Judgment	:	04/11/20
Bench constituted of	:	Hon'ble Justice Shri Shailendra Shukla
Judgment delivered by	:	Hon'ble Justice Shri Shailendra Shukla
Whether approved for reporting	:	Yes
Name of counsels for the parties	:	Shri S.K. Vyas, learned Senior Counsel with Shri Ayushyaman Choudhary, Advocate for the applicant. Shri Prabal Jain, Public Prosecutor for State.
Law laid down	:	Loose chilli seeds found in the godown of petitioner along with packaging machines and packets. Petitioner had license to deal in chilli seeds in the name of Synergy Seeds. Police seized the seeds and packaging material and filed charge sheet for not having license for packaging the chilli seeds and for committing offence under Sections 420, 467, 469 and 475 of IPC. and Sections 7(1)(A)(II) and 7(2) of Essential Commodities Act, 1955. Petitioner filed application under Section 482 of Cr.P.C for quashment of prosecution. Held – 1. Prosecution failed to show any provision of law/rule requiring license for packaging. 2 – Police was not authorized to search, seize the seeds which could only be done by seeds inspector as per Clause 13 of Seeds (Control) Order, 1983. 3 – Test analysis report of seized seeds was not made available even after expiry of 60 days from the date on which the report was received in the Laboratory. This is breach of Clause 14 of Seeds (Control) Order, 1983. 4 – No complainant has come forward alleging that petitioner has cheated him or has committed forgery. Provisions of

		Sections 420, 467, 469 and 475 of IPC are not attracted. 5 – No breach of Seeds (Control) Order, 1983 found to have been committed, hence there is no violation of provisions of Essential Commodities Act, 1955. 6 – The petition under Section 482 of Cr.P.C stands allowed and prosecution stands quashed.
Significant numbers	paragraph :	Paragraphs 14, 15, 16, 17, 18 and 19.

**(SHAIENDRA SHUKLA)
JUDGE**

Arun/-

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
SINGLE BENCH: HON'BLE MR. JUSTICE SHAILENDRA SHUKLA

MISC. CRIMINAL CASE NO.28166 OF 2020

IMRAN MEMAN

Versus

THE STATE OF MADHYA PRADESH

Mr. S.K. Vyas, learned senior counsel along with Mr. Ayushyaman Choudhary, learned counsel for the petitioner.

Mr. Prabal Jain, learned public prosecutor for the respondent/State of Madhya Pradesh.

Arguments heard through Video Conferencing.

ORDER

(Passed on 05th day of November, 2020)

1. This order disposes of the petition filed under Section 482 of Code of Criminal Procedure, 1973, seeking quashing of FIR registered against the applicant vide Crime No.245/2020, consequent final report No.264/2020 and Criminal Case No.59/2020 pending in the Court of JMFC, Barwah for the offence under Sections 420, 467, 469 and 475 of Indian Penal Code, 1860 along with Sections 7(1)(A)(II) and 7(2) of Essential Commodities Act, 1955.

2. The prosecution story in short was that on 01.05.2020, the Seed Inspector, Barwah lodged a report in police station Barwah, alleging that as per oral orders issued by the Sub-Divisional Officer, Barwah, he raided the warehouse (godown) of the petitioner, which is situated at village Manihar, Tehsil Barwah, District Khargone and found that petitioner was engaged in the activity of storing and packing of chilli seeds in the name and style of Synergy Seeds, Gujarat. The Seed Inspector had noticed that 40 kilograms of chilli seeds and 20 kilograms of loose chilli seeds had been stored and there was packing and sewing machine and empty pouches were also lying. The Seed Inspector asked the petitioner to produce the seed packaging license or the consent order from the concerned Government Department for

engaging in seed packaging and storing activities of seeds. The petitioner failed to produce the same hence, a report was lodged on 04.05.2020 in writing alleging that the petitioner was doing the said act with an intention to cheat the farmers. The FIR was registered under the provisions mentioned in paragraph-1 of this order. Subsequently, on 06.05.2020, the warehouse of Synergy Seeds was raided by the police and 720 kgs. of seeds were seized. The petitioner was arrested but was granted bail by the High Court on 13.07.2020. The final report has been submitted on 25.06.2020.

3. Learned senior counsel for the petitioner has submitted that there is no provision of law requiring separate license for packaging of seeds. On the contrary, Rules 7 to 12 contained in Part-V of Seeds Rules, 1968 relating to marking and labeling shows that the duty to pack and to put labeling and marking is the implied duty of the licensee. As such, FIR and final report do not disclose any offence of contravention of Seeds (Control) Order, 1983, which would invite offence under Section 7(1)(A)(II) and/or 7(2) of Essential Commodities Act. The FIR and final report do not disclose as to what false document was made or used by the applicant. The petitioner submits that he is the proprietor of Synergy Seeds and has every right to use the packing material and labels of Synergy Seeds. He has been given the license No.258 dated 28.02.2018 issued under the Seeds (Control) Order, 1983 by the Deputy Director of Horticulture, Khargone as per which he is authorized to sell, export and store seeds at Barwah. He has further submitted certificate of registration bearing No.14312 for the period 2014 to 2018 issued under the Bombay Shops and Establishments Act, 1948 by the Shop Inspector, Upletta, District-Rajkot, Gujarat. He has further been given license No.23 dated 09.02.2017 issued under the Seeds (Control) Order, 1983 issued by the Deputy Agriculture Regulator-Extension, Rajkot, which authorizes him to sell, export and store seeds. Thus, the applicant is

the proprietor of Synergy Seeds, Rajkot which were found in his warehouse. There is no question to counterfeiting any device or mark used authenticating any document when the device, mark and the product belongs to the petitioner himself and as such offence under Section 475 of IPC is not made out as there is no intention to cause wrongful gain to himself and/or wrongful loss to anybody. The provisions of Sections 467 and 469 of IPC are also not attracted and for the same reason, provisions of Section 420 of IPC are also not made out.

4. Learned senior counsel for the petitioner has submitted that the whole case is based on search and seizure by the police officer which is unauthorized and without jurisdiction in as much as per Clause 13 of the Seeds (Control) Order, 1983, it is the Seed Inspector appointed under Clause 12 who alone has the power of search and seizure in respect of the seeds. As per Section 14(1)(i) of the Seeds Act, the complainant/Seeds Inspector, before lodging any complaint against the petitioner, ought to have given an opportunity to the applicant to remove the defects, if any, found at the time of inspection. Further, as per Section 19 of the Seeds Act, 1966, any person convicted for violation of any provision of Seeds Act be punishable for the first offence with fine which may extend upto Rs.500/- whereas, for the reasons best known to the concerned authorities, petitioner has been booked for the offence punishable under Sections 420, 467, 469 and 475 of IPC. The Seed Inspector was required to report the fact of seizure to the Magistrate as per provisions of law under Section 13(3) of the Seeds (Control) order, 1983. There is no evidence to hold that the seeds seized from the warehouse of petitioner has been sold to the farmers by the petitioner. There is no seed notification report on the record stating that the seized seeds are sub-standard and do not conform to the standards prescribed under Section 6 of the Seeds Act, 1966. Further, there is no evidence on record to

substantiate the allegations that the applicant has committed forgery with the farmers. The petitioner submits that Synergy Seeds at Madhya Pradesh and Gujarat are one and the same business entity and owned by one single person i.e. the petitioner and no act of forgery or counterfeiting has been committed by the petitioner. The Seeds (Control) Order can be enforced only by the Seed Inspector and the respondent is not authorized to do so. The FIR and consequent final report is nothing but an abuse to the process of law and has been lodged to harass and pressurize the petitioner.

5. The Apex Court has held that the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice and that ends of justice are higher than the ends of mere law. There is no other evidence which may be useful for the prosecution to prove guilt against the applicant. Hence, it is prayed that the petitioner being an innocent person, having been falsely implicated, FIR registered against him in police station Barwah, vide Crime No.245/2020 final report No.264/2020 and Criminal Case No.59/2020 may be quashed.

6. The respondent/State of Madhya Pradesh has filed the written reply in which it has been stated that in this matter, charge-sheet has already been filed and the learned trial Court has taken the cognizance of the case and, therefore, at this juncture, the petitioner is having the efficacious alternative remedy available to file the discharge application before the learned trial Court. The grounds raised in the present petition may be raised before the learned trial Court also. It is further submitted that the petitioner has failed to provide any license or permit in respect of the fact that he was authorized to pack and then distribute/sell the essential commodities at Barwah, Khargone. The petitioner has further failed to acknowledge the fact that though he may get the license

to store and distribute the essential commodities at Barwah, but the essential commodities were to be obtained in a packed manner from Gujarat itself. The petitioner has also failed to comply with the conditions of license to plate/show the license at the conspicuous place/premises.

7. In para-wise reply by the respondent, it has been stated that the petitioner was having the license only for the storage and distribution of seeds but in the investigation it was found that the petitioner has used packaging material and packing machine in his premises and was also doing the packing work illegally. The petitioner was having huge quantity of chilli seeds and using the said packaging material in order to cheat the innocent buyers/customers to sell the said packed chilli seeds. The petitioner was thus forging the packets and stickers of Synergy Seeds Company and was using the same to pack the chilli seeds. The petitioner was also unable to produce any such license for the packaging of said chilli seeds. There is sufficient material including the documentary evidence against the petitioner on the basis of which the present offence has been registered. The petitioner was having the license only for the storage and distribution of seeds whereas, it was found that the packaging work was also going on and forged packing material was seized from the godown of the petitioner. The Seed Inspector was a competent person to raid the premises of the petitioner and make complaint to the police for further action. It has been submitted that the petitioner should have obtained the license/permit to show that he was authorized to pack and then distribute/sell the essential commodities at Barwah. The petitioner has failed to acknowledge that though he had license to store and distribute the essential commodities at Barwah, the said essential commodity was to be obtained in a packed manner in Gujarat itself. Hence, the petition deserves to be dismissed on the aforesaid ground.

8. Submissions were heard and the documents submitted by the learned counsel for the petitioner were perused.

9. As far as the ambit and scope of Section 482 of the Code of Criminal Procedure, 1973 are concerned, the Hon'ble Apex Court in the case of **State of Haryana and Others vs Bhajanlal and Others reported in 1992 SUPP (1) SCC 335** has laid down the guidelines for exercising such power under Section 482 of Code of Criminal Procedure, which in itself is an extraordinary power. These guidelines are as follows:

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. This Court has to see as to whether the case of the petitioner falls under anyone of such guidelines or not.

11. Seeds were not regarded as essential commodities

under Section 2 of the Essential Commodities Act prior to 1983. The Central Government by a notified order passed in February 1983, declared seeds of fruits, vegetable and food crops to be essential commodities. After issuing the aforesaid order, the Central Government issued Seeds (Control) Order, 1983, which was passed in exercise of the powers conferred by Section 3 of the Act. This order *inter-alia* contemplates that the persons carrying on business of selling, exporting or importing seeds should obtain license. It also provided for grant and/or refusal of license, renewal of license and various ancillary provision for suspension, cancellation of license and submissions of various returns including provision of punishing for violation of the Seeds (Control) Order, 1983. As far as the present matter is concerned, it is not disputed by the prosecution that petitioner Imran did not have license for storing, selling, importing or exporting chilli seeds. A panchnama dated 1.5.2020 shows that although Imran had license but he did not have relevant documents for packing of seeds or any documents showing permission issued by the department for packing of seeds.

12. In the complaint filed by the seeds inspector before police again it has been mentioned that Imran did not produce any license for packing of seeds or any documents showing permission issued by the department for packing of seeds.

13. Learned senior counsel for the petitioner submits that there is no provision in Seeds Act, 1966, Seeds Rules, 1968 or Seeds (Control) Order, 1983 regarding issuance of a separate license for packing of seeds.

14. A perusal of the aforesaid provisions show that there is of-course no provision requiring license for packaging of seeds. Chapter V of the Seeds Rules, 1968 is relating to marking or labelling of seeds. Rule No.7 to Rule No.12 of Seeds Rules, 1968 are reproduced as under :-

“7. Responsibility for Marking or Labelling. –
When seed of a notified kind or variety is offered for sale under section 7, each container shall be marked

or labelled in the manner hereinafter specified. The person whose name appears on the mark or label shall be responsible for the accuracy of the information required to appear on the mark or label so long as seed is contained in the unopened original container: Provided, however, that such person shall not be responsible for the accuracy of the statement appearing on the mark or label if the seed is removed from the original unopened container, or he shall not be responsible for the accuracy of the germination statement beyond the date of validity indicated on the mark or label.

8. Contents of the mark or label. – There shall be specified on every mark or label-

(i) particulars, as specified by the Central Government under clause (b) of section 6 of the Act;

(ii) a correct statement of the net content in terms of weight and expressed in metric system;

(iii) date of testing;

(iv) if the seed in container has been treated-

(a) a statement indicating that the seed has been treated;

(b) the commonly accepted chemical or abbreviated chemical (generic) name of the applied substance; and

(c) if the substance of the chemical used for treatment, and present with the seed is harmful to human beings or other vertebrate animals, a caution statement such as “Do not use for food, feed or oil purposes”. The caution for mercurials and similarly toxic substance shall be the word “Poison” which shall be in type size, prominently displayed on the label in red:

(v) the name and address of the person who offers for sale, sells or otherwise supplies the seed and who is responsible for its quality;

(vi) the name of the seed as notified under section 5 of the Act.

9. Manner of marking or labelling the container under clause (C) of section 7 and clause (B) of section 17. –

(1) The mark or label containing the particulars of the seed as specified under clause (b) of section 6 shall appear on each container of seed or on a tag or mark or label attached to the container in a conspicuous place on the innermost container in which the seed is packed and on every other covering in which that container is packed and shall be legible.

(2) Any transparent cover or any wrapper, case or other covering used solely for the purpose of packing of transport or delivery need not be marked or labelled.

(3) Where by a provision of these rules, any particulars are required to be displayed on a label on the container, such particulars may, instead of being displayed on a label be etched, painted or otherwise indelibly marked on the container.

10. Mark or Label not to contain false or misleading statement. – The mark or label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the seed contained in the container.

11. Mark or label not to contain reference to the

Act or Rules contradictory to required particulars.

– The mark or label shall not contain any reference to the Act, or any of these, rules or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these rules which directly or by implication contradicts, qualifies or modifies such particulars or declaration.

12. Denial of Responsibility for mark or label content prohibited. – Nothing shall appear on the mark or label or in any advertisement pertaining to any seed of any notified kind or variety which shall deny responsibility for the statement required by or under the Act to appear on such mark, label or advertisement.”

15. The prosecution case is not that the packages found in the godown of the petitioner contained incorrect statement or other particulars which are prescribed under Rule 8. No infringement of any of the Rules has been alleged. Thus, the contention of the learned senior counsel for the petitioner is accepted that no separate license is required for packaging the chilli seeds. There is further substance in the submission of learned senior counsel for the petitioner that a person who is dealer of seeds is only required to adhere to the aforesaid Rules of Seeds Rules of 1968 and the prosecution has not alleged that these Rules were violated. As already stated the petitioner was having a license to deal in Synergy chilli seeds. A perusal of document placed at Page No.50 of the compilation shows that Deputy Director of Agriculture and Seeds who is the licensing officer of Khargone District has issued a license in favour of petitioner Imran Meman for selling, exporting, storing and distribution of chilly and vegetable seeds. This license is dated 28.2.2018. The petitioner was also having a license in the name of Synergy Seeds issued by the Government of Gujarat on 1.2.2017, which is displayed at page no.51. This was valid up to 30.9.2024.

16. It is not the prosecution case that either of these licenses shown by petitioner were forged or fabricated. The documents placed at page no.54, 55 and 56 show that petitioner Imran Yunus Meman was given license for dealing in selling, distribution and exporting of chilli seeds

under the name of Synergy Seeds and this license was issued by concerned authorities at Rajkot Gujarat in which the address has been shown to be 2 Raja Complex, Upletta, District Rajkot. The prosecution has not challenged the validity of either of these license. The license which was issued from the concerned authority at Khargone shows that license had been granted to the petitioner for storing, selling and exporting chilli seeds in the name of Synegrgy Seeds Rajkot. This shows that the petitioner was having a license to store seeds. Thus, the petitioner could store the seeds in an appropriate place which can only be a godown and there is substance in the submission of learned senior counsel for the petitioner that petitioner had kept the seeds in the godown. Some of the seeds were found in loose state, which were being put in packets in the godown. As already stated that no license was required for packing seeds. If any person deals in a variety of seed which is different from the variety which he is authorized to deal in, the punishment is provided for such violation under Section 19 of the Seeds Act. If a person deals in business of seeds without license or without valid license, provisions of Seeds (Control) Order, 1983 would be violated and provisions of Essential Commodities Act would become attracted. Section 3(2)(d) of Essential Commodities Act, 1955 is of importance which reads as under :-

3. Powers to control, production, supply, distribution, etc, of essential commodities.- (1) If the central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices {or for securing any essential commodity for the defence of India or the efficient conduct of military operations}, it may be, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide-

(d) for regulating by licences, permits or otherwise the storage, transport, distribution,

disposal, acquisition, use or consumption of, any essential commodity;

17. Thus, it is clear that if a person deals in business of seeds without obtaining license or permit, he would be liable under provision of Essential Commodities Act. The Hon'ble Supreme Court in **State of Maharashtra & Ors. vs. Maharashtra Hybrid Seeds Co. Pvt. Ltd** (Civil Appeal No.6564/2019) dated 22.8.2019, observed that for labelling and packing of cotton seeds, the respondent was required to have a separate license granted under Section 11 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 and Rule 4 of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010 and without such license, activity of labelling and packing carried out in the godown was illegal. However, as far as the present case is concerned, the prosecution has not been able to show any such equivalent Rules framed by the State of M.P. requiring license for labelling and packaging. In absence of requirement of such license, breach of Seeds Rules would invite penalty only under Seeds Act and not under Essential Commodities Act.

18. There is further substance in the submission of the learned senior counsel for the petitioner that acts of search and seizure and drawing of sample of seeds for laboratory testing can only be done by a seeds inspector as per Clause 13 of Seeds (Control) Order, 1983, but in the present case it was not the seeds inspector who had seized the packets and the seeds found in the godown but the aforesaid act was done by the police, which is apparent from perusal of the charge sheet. The police was not authorized to do so as per the aforesaid provision. The police was also not authorized to take the samples of seeds and send it to the laboratory for testing. It was the job of seeds inspector only. Thus, the police has acted in

contravention of specific provision regarding search, seizure and taking sample of seeds. Further, Clause 14 of the Seeds (Control) Order, 1983 provides that the laboratory to which a sample has been sent by an inspector for an analysis under this order shall analyze the said sample and send the analysis report to the concerned inspector within 60 days from the date of receipt of the sample in the laboratory. In this matter the samples were sent by the police to the laboratory on 23.6.2020. The laboratory is situated at Sagar. However, so far the analysis report has not been received. This is a breach of Clause 14 of the Seeds (Control) Order, 1983.

19. Thus, it is apparent that provisions of Essential Commodities Act are not attracted in this matter. Further, no agriculturist has come forward and stated that he has been cheated by petitioner Imran Yunus Meman. Hence, provision of Section 420 of IPC are not attracted. Similar view was adopted by Co-ordinate Bench in M.Cr.C. No.6742/2016, passed on January 2017. A copy of the said order has been placed on record by the learned senior counsel for the petitioner, as also in another order passed in M.Cr.C. No.18348/2017 passed on 25.10.2018 by another Co-ordinate Bench. The other sections in which the police has implicated the petitioner are Sections 467, 469 and 475 of IPC as per which the police had to show that the petitioner had committed forgery of evidence by getting the packaging material printed in a manner which amounts to fabrication of documents. However, no person has come forward and stated that the packets found in the godown of the petitioner were forged. The police has made communication with authorized officer of Synergy Seeds at Upletta. The person's name is Mr. Shivkumar Sangem. The seized packets have not been sent to him and no query has been made from him as to whether the packets are genuine or not. Without doing so, the charge sheet has been filed. Hence, neither forgery can be proved nor it can be proved that the

petitioner was in possession of counterfeit marked material. Hence, provisions of Section 467 and 475 of IPC are also not attracted. Section 469 of IPC is a provision for punishing forgery for purpose of harming the reputation. No complainant has come forward alleging that forgery by the petitioner has harmed his reputation. Hence, provisions of Section 469 of IPC are also not applicable.

20. The prosecution case is such that if the facts are taken at their face value, the breach of provisions of Essential Commodities Act or provision of IPC are not attracted. Hence, no case is made out for prosecuting the petitioner under the aforesaid provisions. This petition under Section 482 of Cr.P.C stands allowed and FIR registered against the petitioner vide Crime No.245/2020, consequent Final Report No.264/2020 and Criminal Case No.59/2020, pending in the Court of JMFC Barwah stands quashed. His bail bonds shall stand discharged. The material seized by the police shall be returned to the petitioner. The petition stands allowed in the aforesaid terms.

**(SHAIENDRA SHUKLA)
JUDGE**

Arun/-