

BEFORE THE HON'BLE COURT OF 44th ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE AT BANGALORE

P.C.R. No. _____/2018

IN

C.C. No. _____/2018

(KUMARASWAMY LAYOUT POLICE STATION)

BETWEEN

KARNATAKA BIODIVERSITY BOARD

(Constituted by the Government of
Karnataka under Section 22 of The
Biological Diversity Act, 2002

Dept. of Forest, Ecology & Environment
Having its office at

Ground Floor, "VANA VIKAS" 18th Cross
Malleshwaram, Bangalore – 560 003

Represented by its authorized officer

Smt. DAKSHAYINI, Assistant Conservator of Forests

Karnataka Biodiversity Board

Dept. of Forest, Ecology & Environment

... COMPLAINANT

AND

1. M/s PRADHAN HERBAL COMPANY

Having its office at

20-27, J.C. Industrial Area

Opp. Delhi Public School, Yelachenahalli

Off Kanakapura Road, Bangalore – 560 062

2. Smt. SHOMITA BISWAS

Chief Executive Officer

M/s Pradhan Herbal Company

Having its office at

20-27, J.C. Industrial Area

Opp. Delhi Public School, Yelachenahalli

Off Kanakapura Road, Bangalore - 560 062

3. Mr. H.R. PRAKASH BABU

Partner

M/s Pradhan Herbal Company

Having its office at

20-27, J.C. Industrial Area

Opp. Delhi Public School, Yelachenahalli

Off Kanakapura Road, Bangalore - 560 062

... **ACCUSED**

**MEMORANDUM OF COMPLAINT UNDER SECTION 61(a) OF THE
BIOLOGICAL DEVERSTY ACT, 2002 READ WITH SECTION 200 OF THE
CODE OF CRIMINAL PROCEDURE FOR THE OFFENCES PUNISHABLE
UNDER SECTION 55 (2) OF THE BIOLOGICAL DIVERSITY ACT, 2002 R/W
RULE 15 (1) OF THE KARNATAKA BIOLOGICAL DIVERSITY RULES, 2005**

The Complainant respectfully submits as follows: -

1. The Complainant respectfully submits that for the purpose of court notice, summons etc. from this Hon'ble Court is as stated in the cause title above and they may be also served through their counsel H.K VASANTH, Advocate, No. 36, 1st Cross, Near Pallavi Theatre, Sampangirama Nagar, Bangalore - 560 027.

2. The Complainant submits that the address of the accused for the purpose of notice, summons etc. from this Hon'ble Court is also as stated in the cause title above.

3. The Complainant respectfully submits that The Biological Diversity Act, 2002 (Hereinafter referred to as 'Act') is an Act of the Parliament of India for preservation of biological diversity in India and provides mechanism of equitable sharing of benefits arising out of the use of traditional biological resources and knowledge. The Act was enacted to meet the obligations under Convention on Biological Diversity organised by The United Nations at Rio de Janeiro in the year 1992. At the end of The Convention on Biological Diversity, a multilateral treaty was entered into between all the participating nations to which India is also a party. The Convention has three main goals including i) The conservation of biological diversity, ii) The sustainable use of its components and iii) The fair and equitable sharing of benefits arising from the use of genetic resources. In other words, its objective is to develop national strategies for the conservation and sustainable use of biological diversity. Subsequently, the Nagoya Protocol was adopted on 29/10/2010 in Nagoya, Japan and India's ratification of the same in the year 2012, on Access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation which is a supplementary agreement to the Convention

on Biological Diversity. The Nagoya Protocol provides a transparent legal framework for the effective implementation of one of the three objectives of the Convention on Biological Diversity; the fair and equitable sharing of benefits arising out of utilisation of genetic resources. The Nagoya Protocol's objective is the fair and equitable sharing of benefits arising from utilisation of genetic resources, thereby contributing to the conservation and sustainable use of biological diversity.

4. The Complainant respectfully submits that after the Rio de Janeiro Summit, the Hon'ble Supreme Court of India in various judgements have developed basic and essential features of sustainable development such as Precautionary Principles, Polluter Pays etc. These principles have become part of environmental law in India. Under Article 48A of the Constitution of India, there is a constitutional mandate upon the State to protect and improve environment. In order to fulfil the mandate, various legislations have been enacted with an attempt to solve the problem of environmental degradation. The Precautionary Principle, as laid down by the Hon'ble Supreme Court of India, provides that where there is threat of serious or irreversible damage, prior Environmental Clearance is made mandatory. This is made with an intention to take protective measures against specific environmental hazards by avoiding or reducing

environmental risks before specific harms are experienced. The idea behind making the prior Environmental Clearance mandatory for certain projects is that Precautionary Principles and Preventive Measures are better than taking penal action.

5. The Complainant respectfully submits that Section 22 of the Act mandates every State Government to establish its own Biodiversity Board having jurisdiction over entire state. The Government of Karnataka in exercise of the powers conferred under Section 22 of the Act has established the Karnataka Biodiversity Board (Herein referred to as the 'Board') vide Government Order bearing No. FEE 125 ENV 2003, BANGALORE dated 19/06/2003 (Unique Serial No. 64/2003). The copy of G.O. mentioned above is furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 1**. As per the powers vested in the State Government under Section 22 (4) of the Act, the members of the Board including the Chairperson have been appointed vide Special Gazette Notification bearing No. 168, Part 1, dated 14/02/2017. The copy of the notification bearing No. 168 dated 14/02/2017 is furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 2**. The functions of the Board is to i) Advise the State Government on matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation

of biological resources, ii) Regulate by granting of approvals or otherwise requests for commercial utilisation or bio survey and bio utilisation of any biological resources by Indians and iii) perform such other functions as may be necessary to carry out the provisions of the Act or as may be prescribed by the State Government.

6. The Complainant respectfully submits that Section 7 of the Act expressly prohibits any person, who is a citizen of India or a body corporate, association or organization which is registered in India, from obtaining any biological resources for commercial utilisation, or bio survey and bio utilisation for commercial utilisation except after giving prior intimation to the State Biodiversity Board concerned. Section 24 (1) of the Act mandates any person, who is a citizen of India or a body corporate, association or organization which is registered in India, intending to undertake any activity referred to in Section 7 to give prior intimation in such form as may be prescribed by the State Government to the state Biodiversity Board. Section 55 (2) of the Act prescribe penalties for the contravention or attempt to contravene or abetment of contravention of the provisions of Section 7 of the Act. Section 58 of the Act prescribes that the offences under the Act shall be cognizable and non - bailable.

7. The Complainant respectfully submits that the accused No. 1 is a Company registered under the Companies Act, 1956. The accused No. 2 & 3 are the Chief Executive Officer/partner of accused No. 1 company who are responsible for the day to day affairs of the company and conducting its business. The accused No. 1 is involved in the manufacturing of herbal hair oils, hair creams, hair serums, ayurvedic capsulations and supplements. For the manufacturing purpose, the accused No. 1 is procuring herbal raw materials within the Karnataka State and also from outside the State.

8. The Complainant respectfully submits that as required under Section 7 and 24 (1) of the Act, the accused No. 1 had filed Form - I for the year 2012-13 which was not in the prescribed format. The copy of the letter addressed by the accused No. 1 to the Complainant dated 10/11/2012 is furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 3**. Hence, a notice was issued to the accused No. 1 by the Complainant asking them to furnish the details in Form - I as prescribed in Rule 15 of the Karnataka Biological Diversity Rules, 2005. The copy of the notice dated 26/11/2012 issued by the Complainant to the accused is furnished herewith and marked as **DOCUMENT NO. 4**. Following the notice dated 26/11/2012, the accused No. 1 has filed Form - I for the year 2013-14. The copy of

letter addressed by the accused No. 1 to the Complainant dated 17/07/2013 along with Form - I is furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 5**. While scrutinizing Form - I for the year 2013-14 submitted by the accused No. 1, it was found by the Complainant that mandatory requirements are not fulfilled by the accused. Hence, a notice dated 12/08/2013 was addressed to the accused No. 1 calling them to furnish additional information which are mandatory followed by another notice dated 17/12/2013. The copies of two notices dated 12/08/2013 and 17/12/2013 addressed to the accused No. 1 are furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 6 & 7** respectively. The Complainant further submits that when the accused No. 1 failed to comply with the directions issued under two notices dated 12/08/2013 and 17/12/2013 and also failed to file Form - I for the year 2014-15 and 2015-16, another notice dated 02/02/2016 was issued to the accused calling upon them to comply with the provisions of the Act and Rules made there under. The copy of the notice dated 02/02/2016 is furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 8**.

9. The Complainant respectfully submits that in spite of several notices, when the accused did not comply with the directions

issued by the Complainant, that on 18/03/2016 and 18/04/2016, two notices were sent to the accused No. 1 by the Complainant providing them an opportunity for personal hearing before passing any order on initiating legal action against the accused for violating the provisions of the Act. The copies of two notices dated 18/03/2016 and 18/04/2016 are furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 9 & 10** respectively. Finally, another opportunity of personal hearing was given to the accused by issuing one more notice dated 19/06/2017 calling upon the accused to appear before the Complainant Board on 04/07/2017 and show cause for non compliance of the provisions of the Act. The copy of notice dated 19/06/2017 is furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 11**. But the accused, despite several notices and opportunities, has consistently failed to furnish Form - I providing details relating to the procurement of bi - resources within State of Karnataka and also failed to comply with the provisions of the Biological Diversity Act, 2002. Without any other alternative, the Complainant issued a final notice dated 20/12/2017 calling upon the accused to submit Form - I for the year 2014-15, 2015-16, 2016-17 and 2017-18 as per the provisions of Section 7 and 24 of the Act and Rule 15 (1) of the KBD Rules, 2005 failing which appropriate legal action will be initiated in accordance with law as provided under Section 55 (2)

of the Biological Diversity Act, 2002. The copy of the notice dated 20/12/2017 is furnished herewith for the perusal of this Hon'ble Court and marked as **DOCUMENT NO. 12**. But the accused have neither replied to the said notice nor complied with the directions made therein. Without any other alternative, the Complainant has decided to initiate legal action against the defaulting persons/companies in its Board meeting. Hence this complaint.

10. The Complainant respectfully submits that the accused have contravened the provisions of The Biological Diversity Act, 2002 inasmuch as, they have failed to submit Form - I for the year 2014-15, 2015-16, 2016-17 and 2017-18 as per the provisions of Section 7 and 24 of the Act and Rule 15 (1) of the Karnataka Biological Diversity Rules, 2005 which is mandatory and therefore, it is clear that the Accused have committed an offence punishable under Section 55 (2) of the Biological Diversity Act, 2002.

11. The Complainant submits that the accused are carrying on their manufacturing activity at No. 20-27, J.C. Industrial Area, Opp. Delhi Public School, Yelachenahalli, Off Kanakapura Road, Bangalore - 560 062, which falls within the jurisdiction of Kumaraswamy Layout Police Station and this Hon'ble Court has got jurisdiction to entertain this complaint.

PRAYER

WHEREFORE, the Complainant most humbly prays that this Hon'ble Court be pleased to: -

- a) Take cognizance of the offences, punishable under Section 55 (2) of the Biological Diversity Act, 2002 committed by the Accused
- b) Secure the presence of the accused before this Hon'ble Court
- c) Punish the accused for the offences committed by them by conducting trial
- d) Pass any such other order/s as this Hon'ble Court deems fit and proper under the facts and circumstances of the case, in the interests of justice and equity.

HC

Advocate for Complainant

Complainant

VERIFICATION

I, Smt. Dakshayini, Assistant Conservator of Forests, Karnataka Biodiversity Board, Department of Environment & Ecology, authorized

- 12 -

to file the above complaint by the Complainant - Board, do hereby verify and declare on behalf of the Complainant Board that the averments made in Paragraphs 1 to 11 of the complaint are true and correct to the best of my knowledge, information and are based on the official records maintained in my office and I have not concealed any material facts there from.

.....
Complainant

Place: Bangalore
Date: 09/02/2018

64283/18 ORDER SHEET C-F 50/- (54) 3888
14/9/18
IN THE COURT OF THE XLIV ACMM COURT, BANGALORE.

(P.C.R. No. 2037/2018) CE 6424/18.

Complainant

Accused

Karnataka Bioiversity Board,
Dept. of Forest, Ecology & Environment

1. M/s. Pradhan Herbal Co.
2. Shomita Biswas
3. H.R. Prakash Babu

Date: 12/02/2017

The Administrative Officer, Karnataka Biodiversity Board, Bangalore, has filed the complaint under section 61 (a) of Biological Diversity Act 2002. R/w 200 of CRPC against the accused for an offence punishable u/Sec. 55 (2) of the Biological Diversity Act 2002. R/w Rule 15 (1) of K.B.D. Rules 2005.

For Orders.

Complainant is present. Perused the complaint.

Register as P.C.R. and call on: 14/2

XLIV ACMM BANGALORE.
12/2



CC 64241
~~Register~~

Complainant is present. Cognizance of the offence U/Sec. 55 (2) of the Biological Diversity Act 2002 R/w 15 (1) of the Karnataka Biological Diversity Rules 2005 is taken. As complainant is a public servant recording of his Sworn statement is dispensed with as contemplated under Section 200 (a) of Cr.PC.

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no- 1 to 3. Rly 5/4
7/12

XLIV ACMM BANGALOR

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CC 6424/18

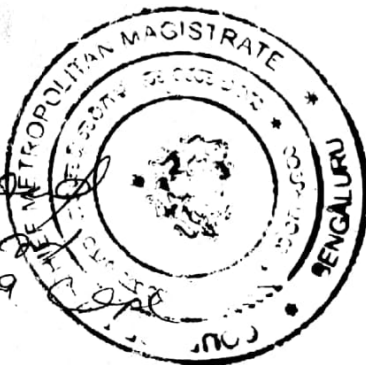
Counsel for complainant is present.

Accused no.1 and 3 are absent. counsel for accused filed EP, perused and rejected as no grounds.

Re-issue Summons to accused no.2 and issue NBW against accused no.1 and 3 through concerned police, ACP and COP. R/by 31-5-2018.

5/5/18

Adv for
filed a
C/S - 309



[Signature] 26/4.
XLIV ACMM.B'LORE

Case advanced.

Accused no.3 is present.

Sri AK adv., has filed vakalath and bail application U/s 436 of Cr.P.C. for the offences punishable U/s 55(2) of Biological Diversity Act 2002 r/w 15(1) of Karnataka Biological Rules 2005 and application U/s 445 of Cr.P.C. and an application 70(2) of Cr.P.C.

Perused, alleged offences are bailable in nature, Hence proceeded pass following

ORDER

Accused no.3 is enlarged on bail subject to execution of personal bond of personal bond of **Rs.10,000/-** with cash surety of **Rs.3,000/-** along with furnishing his address proof on following conditions.

1. He shall not indulge such or similar kind of activities.
2. He shall not tamper or hamper the prosecution witness or evidence in any manner.
3. He shall regularly appear before the court.

Office is directed to take bond and forth with collect Cash surety.

In view of the above order, NBW against accused no.3 is hereby recalled.

Call on 31-5-2018.

XLIV ACMM B'LORE



CC 6424/18

Accused no.3 is present and expressed intention to plead guilty.

At this stage, counsel complainant is submits that, he has to take instructions from the complainant's side.

Accordingly adjourned.

Re-issue Summons to accused no.2 through concerned police, ACP and COP.

R/by 21-6-2018.

XLIV ACMM.B'LORE

21-6-18

sp. A



A 3 in present.
Counsel for A 3 has
deposed Apple 15241
cr. pr. for present
Aug. 6
to present
name by 9/8

Accused no.3 by name H R Prakash Babu , partner of a M/S Pradhan Herbal Company is present along with his counsel Sri. SK.

Counsel for Complainant is also present.

Heard both sides on the application filed U/s 241 of Cr.P.C. accordingly accused is permitted to plead guilty in the interest of justice.

At this stage, accused no.3 as well as his counsel is submits that, since accused no.1 is a Herbal company it will be represented by accused no.3 by name H R Prakash Babu.

The learned counsel for accused has also filed a memo along with a acknowledgment for having paid **Rs. 30,028/-** as penalty to the Karnataka Biodiversity Board under form I the year 2015 to 2018.

Accordingly plea is recorded, the substance of accusation have been read over and explained to the accused no.3, he being the partner of M/s Pradhan Herbal Company pleaded his guilt as well as on behalf of accused no.1, consequences of pleading guilty made known to the accused person, his guilt appears to be voluntarily, hence, proceeded to pass following

ORDER

Accused no.3 is convicted for the offences punishable **U/s 55(2)** of



M
25/8

A1 & A2

Ed fine auto of

Rs-50000/-wde

(Rs-25000/- each)

Onb - 9208/18

(DD-161674-SR)

Dt-27/8/18

u

Biodiversity Act 2002 and sentenced followingly

1. Accused no.1 and 3 are sentenced to a fine of Rs. 25,000/- each.

and in default of payment of fine amount accused no.3 shall under go **SI for 1 month on behalf of himself as well as on behalf of accused no.3.**

Accused is hereby directed to forthwith deposit the fine amount.

At this stage, counsel for Complainant also filed a memo for the dismissal of the complaint as against accused no.2. accordingly memo is accepted and complaint against accused no.2 is dismissed as withdrawn.

(Mala. N.D.) 25/8
XLIV ACMM, B'lore.

