



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Crl.O.P(MD)No.5505 of 2015

and

M.P.(MD).Nos.1 and 2 of 2015

1.Manufacturer,
M/s.Tejram Dharam Paul,
Maurmandi-151009,
Bhatinda District,
Punjab.

2.M/s.Tejram Dharam Paul,
Represented by its
Managing Partner,
Neeraj Kumar Singla
Son of Dharam Paul,
Maurmandi-151009,
Bhatinda District,
Punjab.

... Petitioners/A3 and A4

-Vs-

The Food Safety Inspector,
Ambasamudram Region,
Government Hospital Road,
Ambasamudram-627 401. ... Respondent/De-facto complainant

PRAYER:- Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the charge sheet in ***C.C.No.335 of 2014** on the file of the Judicial Magistrate Court, Ambasamudram as far as the petitioners are concerned and to quash the same.

For Petitioners : Mr.G.Thalaimutharasu
for Mr.K.R.Laxman

For Respondent : Mrs.S.Prabha,
Government Advocate(Crl.side)

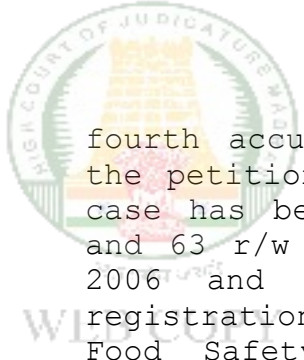
ORDER

This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to call for the charge sheet in ***C.C.No.335 of 2014** on the file of the Judicial Magistrate Court, Ambasamudram as far as the petitioners are concerned and to quash the same.

2.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.side) appearing for the respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The third accused is said to be the authorized agent of the



fourth accused, who is a manufacturer of tobacco. After manufacturing, the petitioners said to have sold it to A1 through A2. Accordingly, the case has been registered against the petitioners under Sections 55, 58 and 63 r/w Section 26(i), 26(ii)(iv), 27(i) of the Food and Safety Act 2006 and Rule 2.1.2 of Food Safety and Standards(licensing and registration of Food Business) Regulations Act 2011 and Rule 2.3.4 of the Food Safety and Standards (Prohibition and restrictions on sales) Regulations Act, 2011.

4.The only submission made by the learned counsel for the petitioners is that the sale of tobacco would not attract the provisions of the enactment. He further submits that as per Rule 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on sales) Regulations Act, 2011, tobacco shall not be used as ingredients in any food products. As the tobacco does not come within the purview of the food product, the provisions will not apply. Moreover, when the allegation itself is that it has been sold in packet as tobacco.

5.The learned counsel for the petitioners has made reliance upon the order passed by the High Court of Delhi in CrI.M.C.No.1360 of 2011 and the order passed by High Court of Judicature at Patna in Civil Writ Jurisdiction Case No.19286 of 2014 and the writ petition in W.P.(C). No.16496 of 2012(J) passed by the Kerala High Court dated 20.12.2012, in which incidentally the very same petitioners were the party. He also submits that the decision rendered by the Kerala High Court has become final.

6.The learned Government Advocate (CrI.side) on instructions would submit that as the petitioners are involved in manufacturing and selling of tobacco, they were charged.

7.Considering the very same issue with respect to the petitioners, the High Court of Kerala was pleased to hold while dealing with the very same provisions in the following manner:

"30.Having found that chewing tobacco is not a food product as defined under the FSS Act, I am of the view that the writ petitions are only to be allowed as follows:

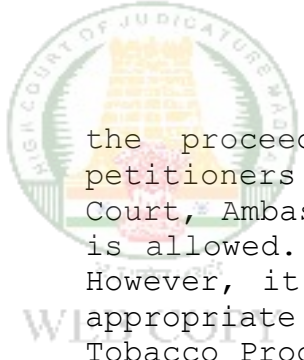
i)That tobacco or tobacco products are not food as defined under Section 3(j) of the FSS Act and it is not a food product as specified in the Regulation 2.3.4 of the Regulations.

ii)Tobacco and tobacco products are to be manufactured and sold strictly in accordance with the provisions of the CTP Act and the Rules framed thereunder.

iii)The respondents have no right take any action against tobacco or tobacco products by virtue of Government Order dated 22.05.2012(Ext.P9 in W.P.C.No.13580 of 2012)."

8.Thus it is clear that the petitioners who are manufacturing ****Tobacco** cannot be proceeded under the FSSAI. Tobacco is covered under the COTA(Cigarettes and other Tobacco Products Act, 2003).

9.In the light of the above, this Court is constrained to quash



the proceedings. Accordingly, the proceedings initiated against the petitioners in ***C.C.No.335 of 2014** on the file of the Judicial Magistrate Court, Ambasamudram, is hereby quashed and the criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed. However, it is made clear that this order will not stand in the way the appropriate authority to take action under COTA (Cigarettes and other Tobacco Products Act, 2003).

Sd/-
Assistant Registrar(C.O.,)

()Corrected as per the order of
this Court dated 23.06.2015 in
Crl.OP.No.5505/2015**

**(*)Amended as per Order of this
Court Dated 23/07/2015 and made
in M.P. (MD)NO.3/2015 in CRL.O.P
No.5505/2015**

/True Copy/

Sub-Assistant Registrar

To

**(To be Substituted for the earlier order despatched on 29.04.2015 and
06/07/2015)**

1.The Judicial Magistrate, Ambasamudram.

2.The Food Safety Inspector,
Ambasamudram Region, Government Hospital Road,
Ambasamudram-627 401.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.R.Laxman, Advocate, in SR. No.22730.

Crl.O.P (MD)No.5505 of 2015
and M.P. (MD) .Nos.1 & 2 of 2015
27.04.2015

Ns

msm 29.04.2015 p3/5c(IT)

AA/02.07.2015/ 3p- 5c/(Corrected Order)

GJM/GSV/P.M.LIB/1.9.15-3P-5C