

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.18875 of 2016

and Crl.MP.No.8878 of 2016

M/s.Thillaikkarasi Sago Factory,
Rep. by its Proprietor D.Sridhar,
S/o.Dhanasekaran,
C-1, Vilva Home, Nakeerar Street,
Subramaniya Nagar, 1st Gate,
Salem-5. ... Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai.
- 2.The Commissioner of Food Safety,
Office of the Commissioner of Food Safety,
5th Floor, DMS Buildings,
Teynampet, Chennai - 6.
- 3.The Designated Officer,
District Food Safety Office,
Salem - 636 001.
- 4.The Food Safety Officer,
Panamarathuppatti Block,
Salem District - 636 204. ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and to quash the complaint in C.C.No.37 of 2016 dated 27.10.2015 of the Judicial Magistrate Court-I, Salem.

For Petitioner : Mr.C.Kanagaraj
For Respondents : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the complaint in C.C.No.37 of 2016 dated 27.10.2015 on the file of the Judicial Magistrate Court-I, Salem.

2. On 07.10.2013, the Food Safety Officer, Salem, inspected the Sago Manufacturing Unit run by the petitioner in Salem and purchased one kilogram of sago for consideration. Thereafter, in the presence of the petitioner, the Food Safety Officer divided the one kilogram sample into four parts of 250 grams each. The Food Safety Officer suspected that the sago may be adulterated and may not satisfy the parameters laid down under the Food Safety and Standards Act, 2006 (for short "The Act") and the Rules framed thereunder. The petitioner was given an option to send one sample to the National Accreditation Board for Testing and Calibration Laboratories in Tamil Nadu, if he so desires, but he declined the offer.

3. Out of the four samples, one sample was sent by the Food Safety Officer, Salem, to the Food Analysis Laboratory, Salem, for analysis on 07.10.2013. The Food Analysis Laboratory, Salem, gave a report dated 18.10.2013, which was received by the Designated Officer on 22.10.2013. The report disclosed that the sago tested is "white coloured sago crystals" and that it is "unsafe" as per the provisions of the Act. The Designated Officer sent a copy of the analysis report to the petitioner on 25.10.2013 and the petitioner had 30 days time to appeal to the Referral Food Laboratory, Kolkata. After receipt of the Designated Officer's communication and the report of the Food Analysis Laboratory, Salem, the petitioner elected on 25.11.2013 to send one of the samples to the Referral Food Laboratory, Kolkatta and accordingly, the Designated Officer sent the same to the Referral Food Laboratory, Kolkatta.

4. The Referral Food Laboratory, Kolkatta, analysed the food sample and has given a report dated 31.12.2013 and the date below the signature of the Director appears to be 2/2014. The report states the physical appearance as "Off-white coloured round shaped sample" and the analysis shows that the sample is "sub-standard and unsafe" for consumption. This report was received by the Designated Officer on 06.01.2014. The Designated Officer forwarded a copy of the Referral Food Laboratory report to the petitioner on 09.01.2014.

5. Since the Salem Food Analysis Laboratory's report and the Kolkatta Referral Food Laboratory's report stated that the sago is "unsafe" for consumption, the Designated Officer made ready the papers and sent the same to the Office of the Commissioner of Food Safety and Drug Administration, Chennai under Section 42

(3) of the Act, and the Commissioner of Food Safety communicated his decision to the Designated Officer on 07.10.2015, to prosecute the petitioner before the Court of ordinary jurisdiction (under Section 42(4a) of the Act). Thereafter, on the directions of the Designated Officer, the Food Safety Officer filed the present complaint in C.C.No.37 of 2016 on 27.10.2015, before the Judicial Magistrate Court No.I, Salem, challenging which the petitioner is before this Court.

6. Heard Mr.C.Kanagaraj, learned counsel appearing for the petitioner and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondents.

7. Today, Dr.T.Anuradha, M.B.B.S., District Designated Officer, Food Safety Department, Salem is present.

8.Mr.C.Kanagaraj, learned counsel for the petitioner submitted that the Food Safety Officer and the Designated officer have used improper forms for sending the samples for analysis. He submitted that they have used Form-VIA, but whereas there is no such form available in the textbook.

9. Per contra, Mr.C.Emalias, learned Additional Public Prosecutor produced the authorised version of the Act and Rules, which show that there is "Form-VIA" that has been approved by the Government.

10. Be that as it may, the law requires a Seizing Officer to send the seized sample for analysis to ensure whether the sample that has been seized is sent to the laboratory. The seal will be affixed on the seized item as well as in the accompanying form. The receiving laboratory will compare the facsimile found on both at the time of receiving the material for analysis. Usage of a wrong form will not, in any way, vitiate the action taken by the authorities.

11. Mr.C.Kanagaraj, learned counsel submitted that in the report of the Food Analysis Laboratory, Salem, the appearance of the sample is stated as "white coloured sago crystals" whereas, in the report of the Referral Food Laboratory, Kolkata, the physical appearance of the sample is stated as "Off-white coloured round shaped sample".

12. In the considered opinion of this Court, under Section 482 Cr.P.C., this dispute cannot be resolved, as opportunity should be given to the authorities to get into the witness box and clarify the same and the matter has to be appreciated by the trial Court only during evidence.

13. Lastly, Mr.C.Kanagaraj submitted that the offence in this case had taken place on 07.10.2013 i.e., on the date when the samples were lifted, but the complaint was filed only on 27.10.2015 in violation of Section 77 of the Act, which reads as follows :

"77. Time limit for prosecutions:-
Notwithstanding anything contained in this Act, no Court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of upto three years."

14. From a reading of the aforesaid Section, it is crystal clear that the prosecution should be launched only before the expiry of a period of one year from the date of commission of the offence i.e., on or before 07.10.2014. But, admittedly, in this case, the prosecution has been launched only on 01.10.2015. Proviso to Section 77 empowers the Commissioner of Food Safety to record the reasons in writing for approving the prosecution within an extended period of upto three years.

15. Therefore, this Court has to see whether in the instant case, the Commissioner has exercised the powers under proviso to Section 77 of the Act. On a reading of the Commissioner's order dated 01.10.2015, it is seen that he has merely stated as follows :

"Due to administrative reasons the prosecution is sanctioned belatedly which may be condoned."

16. In the opinion of this Court, the Commissioner of Food Safety has not approached the issue with the solemnity it requires and has in a cavalier manner, exercised the powers under the Proviso to Section 77 of the Act, by saying that the delay was due to administrative reasons. When a person has to be prosecuted in a Court of law for a criminal offence, it is the duty of the State to follow the letter and spirit of the legislation. Of course, on this short ground alone, the entire prosecution cannot be quashed, for, that will lead to such offenders going scot-free for the lapse of administrative authorities. The Act is intended to secure safe food stuffs for the common man and the very purpose of this Act will be defeated if the prosecution is quashed on such ground.

17. In the result, the order dated 01.10.2015 passed by the Commissioner of Food Safety, Office of the Commissioner of Food Safety and Drug Administration, Chennai-6, condoning the delay in filing the prosecution is hereby set aside. The matter is remitted to the Commissioner of Food Safety, Office of the Commissioner of Food Safety and Drug Administration, to apply his mind on the facts and circumstances of the case and pass orders in accordance with law under Proviso to Section 77 of the Act, within one month from the date of receipt of a copy of this order. Until then, the trial Court shall not proceed further in C.C.No.37 of 2016 on the file of the Judicial Magistrate Court-I, Salem.

With the above direction, this petition is ordered accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ds

To

- 1.The Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai.
- 2.The Commissioner of Food Safety,
Office of the Commissioner of Food Safety,
5th Floor, DMS Buildings,
Teynampet, Chennai - 6.
3. The Commissioner of Food Safety,
Office of Commissioner of Food Safety
and Drug Administration,
Chennai - 600 006.
- 4.The Designated Officer,
District Food Safety Office,
Salem - 636 001.

5.The Food Safety Officer,
Panamarathuppatti Block,
Salem District - 636 2014.

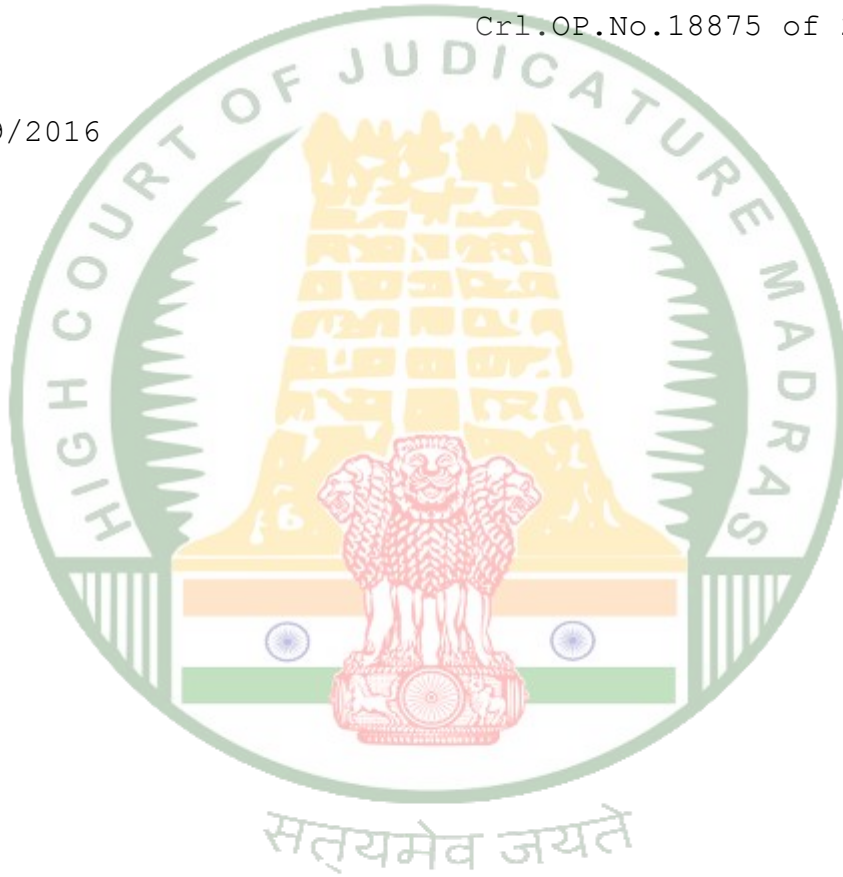
6 The Judicial Magistrate I, Salem

7 The Public Prosecutor,
High Court, Chennai.

+1 CC to M/s. C. Kanagaraj Associates, Advocate, Sr.No.49565

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AD (CO)
MD : 20/09/2016



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