

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P No.14226 of 2010

and M.P.No.1 of 2010

1. C.Senthilkumar

2. P.Chellappan

.. Petitioners/Accused
1 and 2

Vs.

The Food Inspector
Thiruvarur Municipality
Thiruvarur.

... Respondent/Compliance

Prayer : - Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the case in STC No.391 of 2010 on the file of the learned Judicial Magistrate, Thiruvarur and quash the same.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.B.Ramesh Babu

Govt. Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed by the petitioner / Accused 1 and 2 praying to call for the records relating to the case in STC No.391 of 2010 on the file of the learned Judicial Magistrate, Thiruvarur and quash the same.

2. It is averred in the petition that the petitioners are not the owners of one Nataraj Mess situated in Thiruvarur, wherein the respondent / Food Inspector conducted inspection and took sample of chicken-65 on 24.07.2008 and sent the same to the public analyst for testing. The report of the public analyst dated 14.08.2008 discloses that the sample contains synthetic food colours of sunset yellow which is not included in the list of colours enumerated in Rules 23 and 29 of Prevention of Food Adulteration Rules, 1955. The copy of the said report was sent to the petitioners on 09.02.2010 and thereafter, the respondent filed a complaint before the Judicial Magistrate Court and the same was taken on file in S.T.C.No.391 of 2010.

3. The petitioners are not the owners of Nataraj Mess and they have no connection with the said hotel. However, the valuable right conferred by Section 13(2) of the Prevention of Food Adulteration Act, 1954 to have the sample analysed by the Director of Central Food Laboratory has been denied by serving the copy of the report of the public analyst after about 1 1/2 years from the date of the Report.

4. The sample taken by the Food Inspector will stand to the scrutiny of the second analysis only for six months from the date of taking the sample even if preservative is added. Chicken has a tendency to deteriorate making it unfit for analysis. There is also delay in sending the first sample for analysis and the same was not sent on the next working day as stipulated under Section 11(3) of the Act. Therefore, the case against the petitioners is liable to be quashed.

5. The respondent in his counter per contra contends that the sample was taken and sent to the public analyst by following the procedure under law. The petitioners are salesmen in the Nataraj Mess. As per the analyst report, offences are made out and the petitioners are liable and therefore, the petition is to be dismissed.

6. The learned counsel appearing for the petitioners submits that the proceedings in S.T.C.No.391 of 2010 is to be quashed on the sole ground that the valuable right provided under Section 13(2) of the Prevention of Food Adulteration Act, 1954. He also cited the Judgment of this Court in *Nirmala Rajasabapathy & others v. Food Inspector, Coimbatore* reported in 2006-1-LW (Cr1) 65. In the Judgment, it has been held that the right conferred under Section 13 (2) of the Act shall not be denied to the vendor and such denial entitles to quash the proceedings.

7. In this case, sample chicken-65 was taken by the Food Inspector on 24.07.2008 and the same was sent to the public analyst for analysis. The Report of the public analyst is dated 14.08.2008. The copy of the report was served on the petitioners on 09.02.2010. The complaint was preferred before the Magistrate on 12.03.2010. Thus there is delay of about 17 months in serving the copy of the report and thereafter, complaint was lodged.

8. Section 13 (2) of the Prevention of Food Adulteration Act, provides that after institution of prosecution against the persons from whom the sample of the article of food was taken, forward a copy of the report of the result of the analysis to such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of a copy of the report to get

the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. Thus under Section 13 (2) of the Act, the petitioners are given a valuable right for second analysis by the Central Food Laboratory.

9. The sample taken in this case is chicken-65. The copy of the report was served on the petitioners about 17 months after taking the sample. As rightly pointed out by the learned counsel appearing for the petitioners, the food item namely chicken-65 taken from the petitioners even with preservatives cannot be of any use for analysis after 17 months. Thus the valuable right of the petitioners provided under Section 13(2) of the Act has been denied in this case due to inordinate delay caused because of the lethargic conduct of the concerned Food Inspector. Therefore, the proceedings as against the petitioners are to be quashed.

In fine, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.391 of 2010 on the file of the learned Judicial Magistrate, Thiruvavur are quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Judicial Magistrate
Thiruvavur.

2 do Thro The Chief Judicial Magistrate
Thiruvavur

3. The Food Inspector
Thiruvavur Municipality
Thiruvavur.

4. The Public Prosecutor,
High Court of Madras, Chennai.

+lcc to Mr.N. Manokaran, Advocate, S.R.No.70854

vd(CO)

md(22/12/2016)

CrI.O.P No.14226 of 2010