

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.24678 of 2016
and
Crl.M.P.No.11866 of 2016

1.M/s Sabu Trade Pvt Ltd
rep by its Director G.Vikash Sabu
2.S.Gopal Sabu
3.G.Kaushalya Sabu
4.G.Vishal Sabu Petitioners

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 Building
Teynampet, Chennai 6.
3.The Designated Officer
District Food Safety Office
Salem 636 001.
4.The Food Safety Officer
Soormangalam Zone-1
Salem District 636 001.

5.The Managing Director
Sago Serve
Jagirampalayam,
Omalur Main Road
Salem 636 302. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and to quash the complaint in STC No.201 of 2016 dated 24.11.2015 pending on the file of the Judicial Magistrate No.III, Salem.

For Petitioners : Mr.C.Kanagaraj

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

O R D E R

This petition has been filed to call for the records and to quash the complaint in STC No.201 of 2016 dated 24.11.2015 pending on the file of the Judicial Magistrate No.III, Salem.

2. Today, Mr.N.Thirumurthi, Food Safety Officer, Suramangalam Zone I, Salem Corporation, is present before this Court.

3. It is the case of the complainant that the accused are running a Company in the name M/s Sabu Trade Pvt Ltd., and are into wholesale and retail business in sago. The complainant visited the premises of the accused on 20.09.2013 and purchased 4 boxes of Sachamoti Agmark Tapioca Sago for Rs.150/-. He sent one packet of this sago to Food Analysis Laboratory, Salem for analysis and report. The accused did not elect to send one sample to National Accreditation Board for Testing and Calibration Laboratory, though they have the right under the Food Safety Act. The report dated 30.09.2013 from the Food Analysis Laboratory, Salem is as follows:

"Opinion:

I am of the opinion that the sample of "Sago" specified under Regulation 2.4.14:2 is found to be "Unsafe" as per Section 3(1) of (zz) (i), (iii), (v) & (xi) and Sec.26, Sub-Sec.(1)&(2) (i) (ii)&(v) and Section 27(1) of Food Safety and Standard Act, 2006. Since it contains Optical Whitener (Stilbene derivative) a harmful ingredient."

4. A copy of the report was furnished to the accused by the complainant. The accused elected to send one sample to the Referral Food Laboratory, Kolkata and accordingly, one sample was sent there for analysis. The Analysis Report dated 31.12.2013 issued by the Referral Laboratory, Kolkata confirmed the findings of the Food Analysis Laboratory, Salem. Thereafter, the prosecution in this case was filed on 27.01.2016 before the Judicial Magistrate No.III, Salem and the same was taken on file on 10.06.2016 in STC No.201 of 2016, challenging which the accused are before this Court.

5. Mr.C.Kanagaraj, learned counsel for the petitioners submitted that the accused had purchased the sago in wholesale from "The Salem Sago Serve Co-operative Society" and therefore, they are not liable for any adulteration in that.

6. Per contra, Mr.C.Emalias, learned Additional Public Prosecutor submitted that this is a disputed question of fact, which cannot be gone into in a quash petition and that apart, the sago that was purchased by the Food Inspector bears the label of the accused Company. It is also possible for the

accused to have adulterated it after having purchased in wholesale from "The Salem Sago Serve Co-operative Society".

7. There is much force in the submission of the learned Additional Public Prosecutor, as disputed questions of fact cannot be gone into in a prosecution u/s 482 Cr.P.C.

8. The learned counsel for the petitioners pointed out certain infirmities in the two reports issued by the laboratories. I am afraid the infirmities in the report of an expert cannot be tested in a quash application and only when the witness is in the box, he can be asked to explain the infirmities, if any.

9. Lastly, the learned counsel for the petitioners submitted that the complaint should have been filed within one year from the date of lifting of sample, i.e. on or before 20.09.2014, whereas the complaint has been filed only on 27.01.2016.

10. Repelling this submission, learned Additional Public Prosecutor submitted that u/s 77 of the Food Safety and Standards Act, 2006, the Commissioner of Food Safety has been empowered to record his reasons in writing and approve the prosecution within an extended period of three years.

11. It is true that u/s 77 of the Act, the Commissioner does have the power to extend the period upto three years, nevertheless, he is required to apply his mind before ordering extension by giving reasons. 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 19.10.2015, it is seen that he has merely stated as follows:

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

12. In CrI.O.P.No.18875 of 2016, this Court had set aside such an order passed by the Commissioner of Food Safety and had asked him to once again pass fresh orders on merits.

13. In the result, the order dated 19.10.2015 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, 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 STC No.201 of 2016 on the file of the Judicial Magistrate No.3, Salem. After receipt of the fresh order from the Commissioner of Food Safety, a copy of it

should be furnished to the accused and the trial Court shall proceed further in accordance with law.

14. The petitioners are directed to appear before the Court within two weeks from the date of receipt of a copy of this order and on their appearance, they shall be released on bail u/s436 Cr.P.C. on the same day, on condition that they shall execute a bond for a sum of Rs.10,000/- each with two common sureties.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Secretary
State of Tamil Nadu
Department of Health and Family Welfare
Secretariat, Chennai.
- 2.The Commissioner of Food Safety
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Teynampet, Chennai 6.
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- 4.The Food Safety Officer
Soormangalam Zone-1
Salem District 636 001.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Kanagaraj, Advocate, S.R.No.66534

Cr1.OP No.24678 of 2016

SV(CO)
CA(02/12/2016)