

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.30487 of 2010
and
M.P.No.1 of 2010**

1.A.Nandhakumar

2.J.Radhakrishnan

3.JVS "N" Gold Double Filtered Groundnut Oils,
Jaaveeyes Oil Industries,
4/204, Bangaluru Road,
Palaya Voor,
Royakottai – 635 116.

.. Petitioners

vs.

The State rep. by
Food Inspector
Krishnagiri Municipality,
Krishnagiri,
Krishnagiri District.

... Respondent

Prayer: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings in C.C.No.112 of 2010 on the file of the learned Judicial Magistrate Court No.1, Krishnagiri.

For Petitioners : Mr.P.Mani

For Respondent : Mr.B.Ramesh Babu
Government Advocate (Crl. Side)

JUDGMENT

The instant quash petition is filed as against the charge sheet in C.C.No.112 of 2010 on the file of the learned Judicial Magistrate No.1, Krishnagiri. The offence involved in the present case is under Section 7(ii), 16(1)(a)(i), Section 2(ix)(k), Rule 32(i), (17) Rule 42(zzz) of Prevention of Food Adulteration Act and Rules.

2.It is the case of the Petitioner that on 31.07.2007 the Respondent/Complainant herein conducted a search at the retail shop of 1st Petitioner and the Respondent/Complainant seized a 500 ml pocket containing groundnut oil manufactured by the 3rd Petitioner and thereby filed the complaint before the concerned court and the same was taken on file on C.C.No.112 of 2010. Subsequently, two charges have been framed namely "the best before declaration on the packing has been printed as "best before within six months" containing the word "within" which shall not be mentioned in the best before declaration after 1st September 2001". Another charge is that the "Declaration of vegetarian Symbol on the pocket has not been mentioned. With the above two charges the Respondent/Complainant launched his prosecution alleged that the Petitioner has committed the offence above mentioned.

3.The learned counsel for the petitioner would contented that the complaint launched by the prosecution is liable to be dismissed as the alleged two charges cannot be construed as misbranding, misled, misdirection of the customers. Further, the issue involved in the complaint of the complainant has already been settled by this High Court in the decided case in T.Prabhu and others Vs The States represented by its Food Inspector, City Municipal Corporation, Coimbatore reported in **2007 (1) LW(Crl) 367** and **2008 (1) MLJ (Crl.) 408**. It is held by this court in the judgments relied on by the Counsel for the Petitioners that "though it is specifically instructed in the rule that "within" must be omitted after 01.09.2001 merely by adding such word, the customers are not mislead or misdirected by using the language best before 12 months. The meaning to be conveyed is, the customers must use it before 12 months and such meaning has been conveyed by this language best before within 12 months.

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4.The another citation relayed on by the Counsel for the petitioner reported in **2008 (1) MLJ (Crl.) 408** in **A.Raja Singh and others v. Food Inspector, Erode District**. The ratio laid down in the citation is that the requirement label on heat auto packet misbranded as best within 4 months instead of the best before 4 months from manufacture or

packing.” Here the use of different terminology would no way mislead the usage of the product.

5. For the second charge, the citation reported in **CDJ 2010 MHC 5948**, it is held that the manufacture of Agmark Honey/Respondent inspected the shop of the seller and taken the Agmark honey sample and was sent for analyzes. As per the analysis report, the sample was misbranded and violation of rules. It is held that there must be specific averments that the customers are being misled on account of misbranding and in the absence of any such clear averments that the customers are misled or misdirected.

6. Per contra, the learned Government Advocate (Criminal side) has contended that the filing of the complaint by the Food Inspector concerned was followed by search and based on the sample taken from the 1st Petitioner and the same was manufactured by 3rd Petitioner. The complaint was registered by the Complainant/Respondent after the careful perusal of the case records no violations could be alleged. In such circumstances, the petitioners cannot say that no charges have been made out. Further, proof is available to substantiate the case of prosecution, so the case of the complainant is to be further proceeded with in accordance with law.

7.I heard Mr.P.Mani, learned counsel appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the respondent and the materials available on record are perused.

8.It is the case that when the Respondent/Complainant seized 500 ml. groundnut oil and he found that 500 ml. pack from the 1st Petitioner as the sample did not satisfy the procedure contemplated by the Food Adulteration Act and Rule. But the perusal of the materials available on record would show that the non-declaration has mentioned in the charges will not make the complainant to be perused under law. However, the settled legal position is totally contradictory and the two non declarations for which the charges have been framed will never made the same as misbranded and mislead the customers. So appraisal of the overall circumstances would warrant the intervention of this court, as the charges do not satisfy the ingredients of the offence under the Food Adulteration Act. So, in the considered opinion of this court that the citations relied on by the learned counsel for the petitioners would applicable in the facts and circumstances of the present case.

pending in C.C.No.112 of 2010, on the file of the learned Judicial Magistrate Court No.1, Krishnagiri and the same is liable to be quashed.

10.In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.112 of 2010, on the file of the learned Judicial Magistrate Court No.1, Krishnagiri, is hereby quashed. Consequently, connected miscellaneous petition is closed.

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vs

Note:Issue order copy on 20.12.2017

Speaking order

Index : Yes

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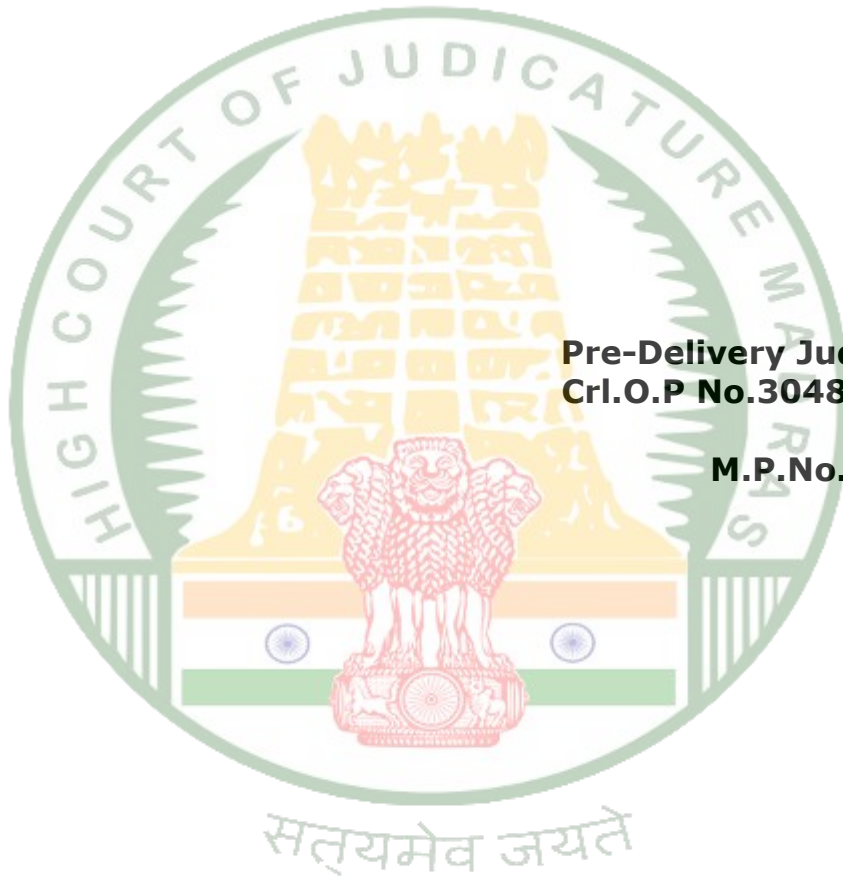
1.The Judicial Magistrate Court No.1,
Krishnagiri.

2.The Food Inspector
Krishnagiri Municipality,
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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
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