

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.27584 of 2016
and
Crl.M.P. Nos.14083 & 14084 of 2016

A.R.Khader ... Petitioner

Vs

The Food Safety Officer,
Code No.548,
Tamil Nadu Food Safety and
Standards Department,
Chennai District.

... Respondent

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the case in C.C. No.4054 of 2016 on the file of the IX Metropolitan Magistrate's Court, Saidapet and quash the same.

For Petitioner : Mr.A.Jenasenan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C. No.4054 of 2016 on the file of the IX Metropolitan Magistrate's Court, Saidapet.

2. In the instant case, the sample of black pepper whole was drawn on 05.08.2014 and sent for analysis under Section 45 of the Food Safety and Standards Act, 2006. The analysis report under Section 42[2] was made on 18.08.2014. The Designated Officer, after scrutiny of the food analysis, analysed and sent his recommendation on 02.01.2015 and consequently, the prosecution was initiated on 18.08.2016.

3. Learned Counsel for the petitioner submits that the recommendations sent by the Designated Officer as well as the prosecution initiated, is violative of Section 42[3] and 77 of the said Act and therefore, sought for quashing the proceedings.

4. Under Section 42[3] of the said Act, the Designated Officer is required to send his recommendations within 14 days to the Commissioner of Food Safety. In the petitioner's case, the recommendations for prosecution was sent by the Designated Officer on 18.08.2014, which is after the stipulated time of 14 days. As such, the recommendation is in violation of the provision of Section 42[3] of the said Act.

5. Likewise, it is also seen that the prosecution was initiated on 18.08.2016. Section 77 of the said Act prescribes that no Court shall take cognizance of an offence under the said Act after the expiry of one year period from the date of commission of an offence. Apparently, the prosecution has been initiated after a period of one year in the instant case. In view of the aforesaid violations, the impugned proceedings is liable to be set aside.

6. Learned Senior Counsel also relied upon the judgment of this Court passed in Crl.O.P.No.7242 of 2011 dated 28.03.2017, wherein, in an identical circumstances, the learned Judge has held as follows :

"5.In this regard, the learned counsel for the petitioners/accused also relied upon the decision of this Court reported in 2005-2-L.W. (Crl.) 598 [C.Suresh & Others Vs. The State, etc], and submitted that in an identical situation, on the ground of delay of 10 months in sending the notice under Section 13(2) of the Act along with the report, this Court quashed the complaint therein stating that by that time, the milk sample would have become decomposed. The relevant portion in the said judgment reads as follows :

"7.In the instant case, the sample of toned milk was taken on 22.07.2003 and despatched to the Government Analyst on 23.07.2003. Pursuant to an information that the toned milk food sample was broken in transit, the second portion of the sample was sent, and on analysis, a report was received on 07.08.2003. The same was received by the Local Health Authority on 28.08.2003. But, the written consent for launching the prosecution was received by the Local Health Authority on 23.01.2004, and the same was received by the Food Inspector on 30.01.2004. The complaint filed on 31.03.2004 was returned, and the same was re-submitted on 23.04.2004. The same was taken on file on 13.05.2004. It would be abundantly clear that the sample of toned milk was taken on 22.07.2003, the Food

Inspector presented the complaint on 31.03.2004, and after it was taken on file on 13.05.2004, notice under Section 13(2) was issued to the petitioners on 18.05.2004. Thus, it would be quite evident that a notice along with the report of the analyst was sent on 18.5.2004, after an interval of nearly 10 months. By that time, the milk sample would have become decomposed. Thus, the right of the accused available under Section 13(2) has been frustrated, due to the inordinate delay and inaction on the part of the prosecution."

The dictum laid down in the above said decision would squarely apply to the facts of the present case also. In the case on hand also, there is an inordinate delay of 1 year 8 months in lodging the complaint. Further, as pointed by the learned counsel for the petitioner, even if the milk sample would have been sent for analysis, by that time, it would have become decomposed. The petitioners/accused have been deprived of their right to have the analysis report from the Central Food Laboratory as provided under Section 13 (2) of the Prevention of Food Adulteration Act. Considering the facts and circumstances of the case, I am of the opinion that there is no useful purpose is going to be served if the trial is allowed to continue. It is a fit case to quash the complaint."

The above dictum squarely applicable to the facts of the case.

7. In the result, this Criminal Original Petition stands allowed and the impugned proceedings in C.C.No.4054 of 2016 on the file of the IX Metropolitan Magistrate Court, Saidapet is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rkp/gv

To

1.The IX Metropolitan Magistrate Judge,
Saidapet.

2.The Food Safety Officer,
Code No.548,
Tamil Nadu Food Safety and Standards Department,
Chennai District.

3.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. A. Jenasenan, Advocate SR.75341(8.12.17)

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BR(CO)
EU(08/12/2017)



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