



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD) No.17344 of 2017

and

CRL.M.P.(MD) Nos.11367 and 11368 of 2017

I.M.Selvaraj : Petitioners / Accused No.2

Vs.

The Food Safety Officer,
Pudur Block (326),
Pudur Union Camp Office,
Pudur - 628 905,
Thoothukudi District. : Respondent / Complainant

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to quash the proceedings in S.T.C. No. 548 of 2017 on the file of the learned Judicial Magistrate, Vilathikulam.

For Petitioner : Mr.M.Rajaraman
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to quash the proceedings in S.T.C. No. 548 of 2017 on the file of the learned Judicial Magistrate, Vilathikulam.

2.The petitioner states that he is promoting a product, namely, gingelly oil. A complaint was lodged by the Food Safety Officer, the respondent, on 25.01.2017, after taking samples of the product in the first accused shop, where the petitioner's products are sold as food items. The petitioner has actually sold the products in the name of Vetrivel Brand Gingelly Oil to the first accused and that the same was to be sold by the first accused as a retailer. The Food Safety Officer had purchased two pockets from the first accused and taken sample of the said oil, after following the procedure contemplated under the Food Safety and Standards Act, 2006 and had sent the same to the Food Analyst on 25.01.2017.

3.It is further stated that the complainant received the food analysts report on 13.02.2017. Subsequently, on the basis of the
<https://hse.cemag.vic.gov.au> report, it is stated that the complainant had sought for permission from the Designated Officer to file a case against the accused and the same was granted by the Commissioner of Food

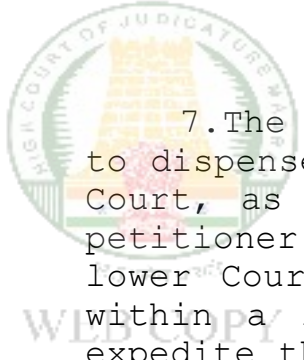


Safety and thereafter the complaint was filed under Sections 23(1) (2), 24(1) (2), 26(1), 26(2) (ii) (iii) and 31(1) of Food Safety and Standards Act and section 2.1.2. of Food Safety and Standards (Licensing and Registration of business) Regulations, 2011 and Section 2.2.1.3 of Food Safety and Standards (Packaging and Labelling) Regulations 2011 and Sections 51, 53 and 63 of the Food Safety and Standards Act.

4. Sum and substance, the learned Counsel for the petitioner submitted that the sample of the product was sent on 25.01.2017. Though the food analyst report was received by the complainant, it is stated that the petitioner could not avail the opportunity to file an appeal before the Appellate Authority as against the analyst report because of the delay in sending the copy of the report of Food Analyst to the petitioner and that therefore the complaint based on the food analyst report is unsustainable. The next submission of the learned Counsel for the petitioner is that the product of the petitioner "Vetrivel Brand Oil" is a non-edible oil and that therefore the provisions of Food Safety and Standards Act has no application to the said product. This point, if accepted, the petitioner need not press the first point regarding the delay in furnishing the analyst report. However, both the contentions are factual has to be established based on evidence. It is further submitted that the complainant had not followed the provisions of Sections 42 and 47 and the Food Safety and Standards Act and further stated that the Food Safety Officer ought to have issued Form VA before sending samples to the Food analyst as it is a mandatory requirement.

5. The learned Counsel for the petitioner also contended that the complainant had not followed the mandatory requirements of the Act in drawing the samples. All the other issues, raised by the petitioner are also factual. With regard to the first submission, it is to be noted that the petitioner himself claims that the product marketed by him is not edible. Every public will be mislead by the petitioner as the product marketed by the petitioner, is Gingelly oil, which is known only as edible oil used mainly for cooking purpose. The petitioner would contend that the complaint itself is not maintainable as the product is sold as non-edible one. This cannot be accepted having regard to the position that the petitioner sells the product as gingelly oil.

6. Though the learned Counsel for the petitioner raised several other grounds, this Court is not inclined to entertain this petition as the grounds raised by the petitioner are all factual and the learned Counsel for the petitioner is not able to demonstrate before this Court as to how the complaint is not maintainable or liable to be quashed. Hence this petition is dismissed. The petitioner is open to the petitioner to raise all his submissions at the time of trail.



7. The learned Counsel for the petitioner request this Court to dispense with the appearance of the petitioner before the lower Court, as he is carrying business in Madurai. It is open to the petitioner to file such application before the lower Court and the lower Court is directed to consider and dispose of the petition within a reasonable time. The lower Court is also directed to expedite the trial and dispose of the case in S.T.C.No.548 of 2017 within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Vilathikulam.

2. The Food Safety Officer,
Pudur Block (326), Pudur Union Camp Office,
Pudur - 628 905, Thoothukudi District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.RAJARAMAN, Advocate, SR.93993

CRL.OP. (MD) No.17344 of 2017
18.12.2017

CMR

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