



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.(MD)No.6498 of 2017 &
CrI.M.P.(MD).Nos.4309 and 4310 of 2017

V.Murugan : Petitioner/Accused No.1

Vs.

R.Mathan Kumar
Food Safety Officer,
Kudalur Town (Additional in charge)
Food Safety and Drug Administration Department,
Theni District. : Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the STC No.669 of 2016 on the file of the Judicial Magistrate Court, Uthamapalayam and set aside the proceedings for Mistake of fact on merits as the Food Safety Authorities differ on preservative of whole fruit and the powder of the same fruit and quash the same.

For Petitioner : Mr.K.Krishna
For Respondents : Mr.K.Anbarasan
Government Advocate (Criminal Side)

ORDER

The Food Inspector Mr.R.Mathan Kumar, inspected the premises of the petitioner on 21.08.2014 and lifted samples of Coriander Powder in accordance with the Food Safety and Standards Act, 2006 and sent the same for chemical analysis.

2. The chemical analysis report, dated 04.09.214, states as follows:-

"I am of the opinion that the said sample is UNSAFE under Section 3(1)(zz) of the Food Safety and Standards Act, 2006, since

(i) It contains Sulphur di oxide which is not permitted under regulation 2.9.7(2) of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and



(ii) by virtue of its being Sub-standard as the volatile oil is absent which shall not be 0.09% under regulation 2.9.7(2) of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011."

WEB COPY

Thereafter, the Food Inspector, has launched the prosecution in S.T.C.No.669 of 2016 before the learned Judicial Magistrate, Uthamapalayam. Challenging the same, the petitioner is before this Court.

3. Heard Mr.K.Krishna, learned counsel for the petitioner and the learned counsel Government Advocate for the respondent. Mr.R.Mathan Kumar, the Food Inspector, is present before this Court.

4. The learned counsel for the petitioner submitted that Coriander can be preserved only with Sulphur di Oxide and therefore, Sulphur di Oxide will be present in Coriander Powder and that cannot be said to be violation of the standards.

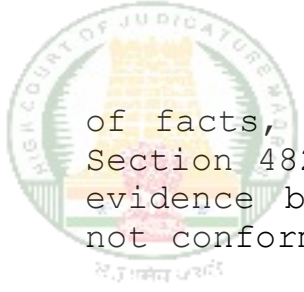
5. Per contra, the learned Government Advocate (Criminal Side) brought to the notice of this Court, the Food Safety and Standards (Food Products Standards & Food Additives) Regulations, 2011, relating to Coriander (Dhania) Powder, which reads as follows:-

"Coriander (Dhania) Powder means the powder obtained by grinding clean, sound, dried mature fruits of Coriandrum sativum L. It shall be in the form of rough or fine powder. It shall have typical aroma and shall be free from mustiness. It shall be free from mould, living and dead insects, insect starch, bleach or preservative.

It shall conform to the following standards:-

(i) Moisture	Not more than 9.0 percent by weight
(ii) Volatile oil content on dry basis	Not less than 0.09 percent by v/w
(iii) Total ash on dry basis	Not more than 7.0 percent by weight
(iv) Ash insoluble in dilute Hcl on dry basis	Not more than 1.5 percent by weight."

6. This regulation clearly states that the Coriander Powder shall be free of any preservative. It also states that it should contain not less than 0.09% of volatile oil. Thus, prima facie there are materials to show that the prosecution against the petitioner is not misconceived. As regards the disputed question



of facts, the same cannot be gone into a quash application under Section 482 Cr.P.C.. It is always open to the petitioner to adduce evidence before the Trial Court to justify that the report does not conform to the permitted standards.

7. In the result, the criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed. At this juncture, the learned counsel for the petitioner sought permission to dispense with the personal appearance of the petitioner. The procedure that has to be followed is adumbrated in Chapter XIX -'B' of the Act. The prosecution will have to adduce evidence and thereafter charges have to be framed. Therefore, the presence of the petitioner till charges are framed is essential. After the charges are framed, if the petitioner file an application under Section 317 Cr.P.C. undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in his absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioner adopt any dilatory tactics, it is open to the Trial Court to insist upon his presence.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1.The Food Safety Officer,
Kudalur Town (Additional in charge)
Food Safety and Drug Administration Department,
Theni District.

2.The Judicial Magistrate,
Uthamapalayam.

+ 1 CC TO Mr.K.KRISHNA, ADVOCATE IN SR No. 59852

JKR

TE/KKR/SAR-I : 21/06/2017 : 3P/4C

Order made in
Cr1.O.P. (MD) No.6498 of 2017 &
Cr1.M.P. (MD) .Nos.4309 and 4310 of 2017
12.06.2017