

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018

Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.16567 of 2010

and

M.P.Nos.1 & 2 of 2010

1.M.Vaithiyanathan,
S/o.V.Murugesan.

2.A.Subramani,
S/o.Arumuga Bakthar.

..Petitioners/Accused
Nos.1 & 2

/Vs./

A.Arjunan,
Food Inspector,
Idappadi Municipality,
Salem District.

..Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings so far as the petitioners concern in C.C.No.286 of 2002 on the file of the Judicial Magistrate Court No.II, Sankari, Salem District as illegal.

For Petitioners: Mr.Sharath Chander for
Mr.V.Raghavachari

For Respondent : Ms.V.Saratha Devi,
Government Advocate

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O R D E R

The petitioners, who are accused Nos.1 and 2 in C.C.No.286 of 2002 pending on the file of the Judicial Magistrate Court No.II, Sankari for the offences under Sections 7(ii) and Section 16(1)(a)(i) r/w Section 2 (ix)(k) of the Prevention of Food Adulteration Act, 1954 and Rule 32(e) of the Prevention of Food Adulteration Rule, 1955.

2.The respondent is the complainant, who is the Food Inspector appointed and duly notified and has been empowered to file the complaint.

3.For the sake of convenience the petitioners herein are referred to as "Accused" and the complainant as "Respondent" and the Prevention of Food Adulteration Act is referred to as "Act" as found in the complaint.

4.The accused Nos.1 and 2 are the Partners of Meenakshi Departmental Store, Idappadi, from where the samples have been taken.

5.On 23.02.2001, the complainant had inspected the Departmental store of the accused Nos.1 and 2 introducing himself as Food Inspector of the Idappadi Municipality had conducted inspection and found 200 grams of Anjali Gingelly oil 30 packets. A copy of Form-6 was served to the accused and samples were drawn, properly sealed following the procedures and prepared Form-17 and thereafter, the sample was sent to Public Analyst, Food Laboratory, Palayamkottai on 23.02.2001 and the balance samples were sealed and handed over to the local health authority. The details about the manufacturers were found in the packets and Form-6 was sent on 24.02.2001 and which was received by them 28.02.2001.

6.The Public Analyst by his report dated 15.03.2001 had found that the product as misbranded and given an opinion "I am of the opinion that the sample is misbranded as it was not labeled in accordance with the requirements of Rule 32(e) and (i) of the Act". Thereafter following the procedure the manufacturer was asked to send the nomination. Though, the manufacturer had received the communication on 15.05.2001 till the date of the filing of the complaint no nomination was made by the manufacturer. Thereafter, arraying the accused herein and the manufacturers and its Partners. The details were obtained from the Commercial Tax Department, the complaint has been filed.

7.The counsel for the accused contended that the accused herein had not done any act against the principles of the Act warranting proceedings against them. Further, contended that the evidence placed before the trial court would reveal that the

case filed against the accused are baseless. The accused contended that the except for the Public Analyst report Palayamkottai no material evidence were produced to substantiate the case against this accused. This accused being mere vendor duly purchased the food article from duly licensed distributor. They have not committed any offence.

8.Further, they placed reliance citation of this Court reported in (1) 2009(2) MWN 446 in the case of P. ROBERT IMMANUEL AND ANOTHER VS. FOOD INSPECTOR, (2) 2010(3) MWN Cr1.57 in the case of MN KATHAR MAITHEEN VS. FOOD INSPECTOR and (3) 2011(4) Crimes 521 in the case of PREMALATHA VIJI VS. FOOD INSPECTOR and the case of Apex Court reported in 2012 (5) SCC 661 ANITHA HADA Case for the purpose of vicarious liability of the company.

9.The contention of the petitioner is that valuable right to get the sample tested by the Central Food Laboratory has been lost and deprived. Misbranding of label does not require public analyst opinion and the food inspector did not mention anything about the misbranding of the label or contravention of rules. The petitioner being only a vendor and they could not be held liable.

10.Considering the rival submissions and on the materials placed, this court finds that there is no merit in the contention of the petitioner and the citations relied upon by the petitioner and the facts of the above case are different. In this case, the other accused namely A.3 to A.5, who are the manufacturers despite notice has been served to them they failed to respond. In fact the constitution of the manufacturer could be obtained only after making enquiry through the Commercial Tax Office. In such circumstances, the contention of the petitioners is not acceptable. In view of the above, the quash petition is dismissed.

11.Hence, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.II,
Sankari, Salem.

CrI.O.P.No.16567 of 2010

mr[co]
srg 02/11/2018



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