

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|             |               |
|-------------|---------------|
| Reserved On | Pronounced on |
| 07.12.2018  | 06.03.2019    |

CORAM :

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL. O.P.No. 15719 of 2010  
and  
M.P.No.1 of 2010

1. R.V. Unnikrishnan
2. Hello Aqua Mineral Packaged Drinking Water  
Suvarna Traders Rep.by its, Sole Proprietor,  
Mr.R.V.Unnikrishnan,  
Coimbatore.

... Petitioners/Accused -2 & 3

-Vs-

M. Vengadesh,  
Food Inspector,  
Tiruppur City Municipal Corporation,  
Tiruppur.

... Respondent/Complainant

PRAYER : These Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C. Nos. 260 of 2009, on the file of the Learned Judicial Magistrate-I, Tiruppur and quash the same.

For Petitioners : Mr. Thomas T Jacob  
For Respondent : Mr.T. Shanmuga Rajeswaran  
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition is filed by the petitioners to quash the proceedings pending against them in C.C. No. 260 of 2009, on the file of the Learned Judicial Magistrate-I, Tiruppur, which was instituted at the instance of the respondent / Food Inspector, Tiruppur City Municipal

Corporation, Tiruppur, for the violation of Prevention of Food Adulteration Act, 1954.

2. The case of the prosecution, in brief, is as follows:

2.1. The petitioners herein / accused 2 & 3 are Manufacturers of Mineral Water, in the name and style of 'Hello Aqua Mineral Packaged Drinking Water'. The 1<sup>st</sup> accused, who is a retailer of the petitioners herein, runs a shop. On 10.10.2007, the respondent / Food Inspector has conducted a surprise inspection in the 1<sup>st</sup> accused's shop and found some discrepancy in the trade. Hence, the respondent / Food Inspector had purchased three quantities of 20 liters water-can, complying with the rules of the Act for analyzing and the retailer / 1<sup>st</sup> accused issued Form-6 which is containing the details about the Manufacturer.

2.2. The water-canes were sent to the Public Analyst on 10.10.2007 and the same was received by the Public Analyst on 17.10.2007. After analysis, the Public Analyst gave his report on 12.11.2007 stating that the sample is found to be Adulterated since it contains coliform count and aerobic count more than the maximum permissible limit as per Appendix B of the Prevention of Food Adulteration Act 1954, Rules, 1955 for packaged Drinking Water.

2.3. Based on the Public Analyst's report, the respondent, on 03.12.2007, sent a show cause notice and after obtaining sanction from the competent authority, filed the present complaint on 29.09.2009 before the Judicial Magistrate-I, Tiruppur, against the petitioners/accused-2 & 3, for the offences punishable under Sections 16(1)(a)(i) and 7(i) read with 2(ia) (a) and (i) of the Prevention of Food Adulteration Act, 1954.

3. Sum and substance, the learned counsel appearing for the petitioners has contended as follows:

- The respondent took the samples for analysis on 10.10.2007 and as per the report of the Public Analyst dated 12.11.2007, the samples were analyzed between 29.10.2007 and 02.11.2007. The expiry date of the products is 23.10.2007, as such, it is clear that the analysis was done after the expiry date of the products;
- The right of the petitioners to have their sample analyzed by the Central Food Laboratory, as per Section 13(2) of the Act has been deprived of; and
- Though the Public Analyst gave his opinion as early as on 12.11.2007, the complaint was lodged only on 29.09.2009, i.e., after a period of nearly two years.

4. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent, supporting the complaint, submitted that the samples have been taken properly by the complainant / Food Inspector who is the competent authority, under the Food Adulteration Act and he is authorised to institute prosecution for offences, as required under Section 20 (1) of the Act. The Public Analyst, on examination of the samples drawn, has given a opinion that the samples are found to be adulterated and based on that, the respondent sent a letter to the petitioners seeking their response and after obtaining consent of the Public Health and Preventive Medicine (PFA) Madras as per G.O. Ms. No.299 health and Family Welfare AB Department, dated 10.05.1995, he lodged the complaint, as such, there is no infirmity in the complaint warranting interference.

5. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

6. Admittedly, the samples, which were taken by the respondent for analysis on 10.10.2007, was analyzed between 29.10.2007 and 02.11.2007. This was evident from the Public Analyst's report dated 12.11.2007. Even in the Public Analyst's report itself, the expiry date of the product is mentioned as 23.10.2007, as such, it is crystal clear that the samples have been analyzed after its expiry date. Therefore, this Court is of the view that the analyst report cannot be solely relied upon by the prosecution to proceed with the complaint. Had the samples been analyzed before its expiry date, the report of the Public Analyst can be taken into account. Other than the Public Analyst report, there is nothing on record in support of the prosecution. Moreover, had the complaint been lodged prior to the expiry of the samples, the petitioners would have established their defence, by having their samples analyzed by the Central Food Laboratory.

7. This Court is also informed that Food Safety and Standards Authority of India, being the Statutory Authority, vide communication dated 13.03.2018, proposed to withdraw the cases for violation under the old norms and standards, ie., under Prevention of Food Adulteration Act, 1954, subsequent to the introduction of the New Act, namely, Food Safety and Standards Act, 2006, subject to the satisfaction of the Commissioners concerned and accordingly, several cases instituted under the Prevention of Food Adulteration Act were withdrawn by the State Government.

8. In view of the foregoing discussions, this Court is inclined to quash the proceedings pending as against the petitioners / accused 2 & 3 in C.C. No.260 of 2009, on the file

of the learned Judicial Magistrate-I, Tiruppur, and the same is accordingly, quashed. In fine, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

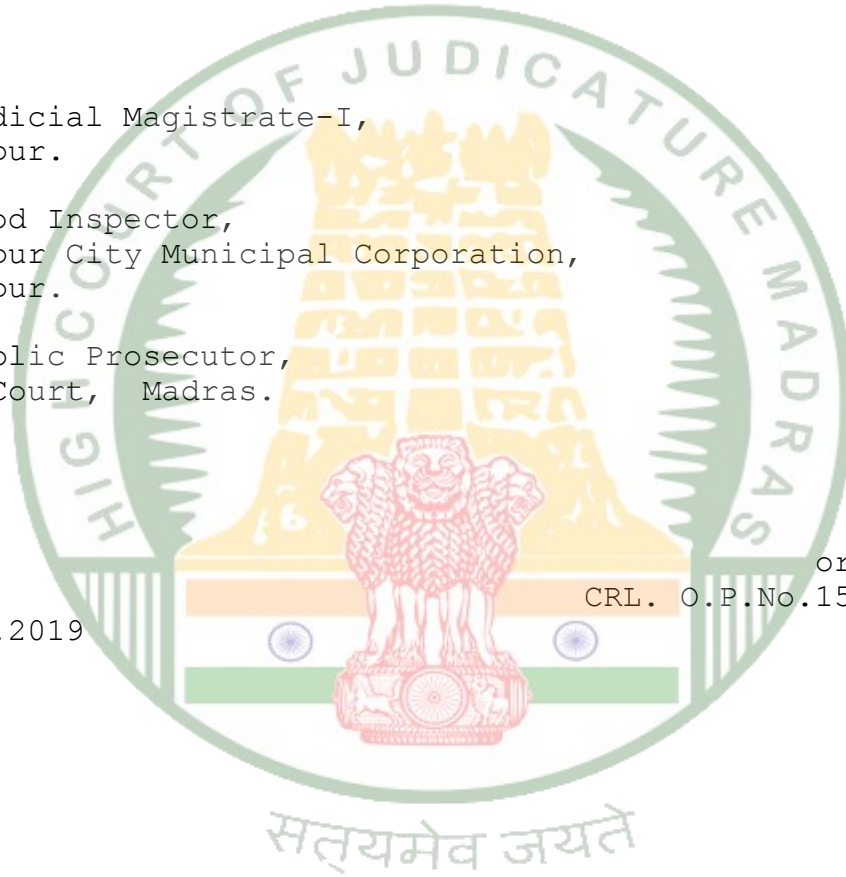
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To

1. The Judicial Magistrate-I,  
Tiruppur.
2. The Food Inspector,  
Tiruppur City Municipal Corporation,  
Tiruppur.
3. The Public Prosecutor,  
High Court, Madras.

CSL/01.07.2019

order made in  
CRL. O.P.No.15719 of 2010



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