



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.09.2019**

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.3080 of 2018

and

Crl.M.P.(MD)No.1423 of 2018

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1. A. Balamurugan

2. S.K.M. Animal Feeds and Food (India) Ltd.,
Edible Oil Division,
represented by Nominee
A.Balamurugan, Chemist ... Petitioners/A3 and A4

Vs.

The Food Inspector,
Tirunelveli Corporation,
Tirunelveli. ... 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 in S.T.C.No.267 of 2011 on the file of the Judicial Magistrate Court No.V, Tirunelveli, as against the petitioners/A3 and A4.

For Petitioners : Mr.A. Sivasubramanian

For Respondent : Mr.K. Suyambulinga Bharathi
Government Advocate (Criminal side)

O R D E R

This Criminal Original Petition has been filed by the petitioners challenging the proceedings in S.T.C.No.267 of 2011, pending on the file of the Judicial Magistrate Court No.V, Tirunelveli.

2.The case of the petitioners is as follows:

The petitioners were arrayed as Accused Nos.3 and 4 and implicated in a criminal case for the alleged offences punishable under Sections 7(ii), 16(1)(a)(i) r/w. Section 2(ix)(k) of the Prevention of Food Adulteration Act, 1954 [hereinafter referred to as ''the Act''] and Rule 39 of the Prevention of Food Adulteration Rules, 1955 [hereinafter referred to as ''the Rules].



2.1.The respondent/Food Inspector, Tirunelveli, on 18.02.2009, at 12.30 a.m. in order to take samples of food products, visited the 1st accused shop and had taken three sealed 500 ml Porna Rice Bran Oil packets, in the presence of the first accused, after paying sale consideration for the same. After securing the Porna Rice Bran Oil sealed packets from the second accused shop, on the same day, the respondent had sent the same to the Public Analyst, Food Analysis Laboratory, Madurai, for opinion of Public Analyst, as per the procedure contemplated under the Act. Thereafter, the Public Analyst sent a report dated 17.03.2009 to the Local Welfare Officer and the same was received by him on 18.03.2009, wherein it has been stated that the sample is misbranded, as it is labeled in contravention of Rule 29 of the Rules. Accepting the said report, the respondent herein sent a letter to the second petitioner through the City Welfare Officer on 30.03.2009 and the second petitioner received the said letter and did not respond the same. Therefore, the respondent sent a letter to the Joint Commissioner of Commercial Taxes, Salem, through the City Welfare Officer, for furnishing the full particulars of the Manufacturer. After getting the full details of the Manufacturer from the Joint Commissioner of Commercial Taxes, the respondent informed the same to the 2nd peittioner/Manufacturer. Thereafter, on 28.06.2010, the respondent sent a letter to the Joint Director of Food Adulteration, Chennai, for sanction of prosecution. After receipt of the said letter, the Joint Director of Food Adulteration, vide his proceedings in Na.Ka.No.87950/PFA/2010/S-4/19.01.2011, granted permission for launching the prosecution against the petitioners herein. Thereafter, the respondent filed the complaint before the Judicial Magistrate Court No.V, Tirunelveli, for the alleged offences stated above.

3.The learned counsel for the petitioners submitted that the allegations contained in the complaint did not make out the offence under the Act and the main allegation contained in the complaint is reflected in the Public Analyst Report and therefore, there is no independent conclusion arrived at by the respondent as required under Rule 32(b) of the Rules. The learned counsel for the petitioners submitted that the complaint does not state how the sample is misbranded and what is the offence committed by the petitioners.

4.The learned counsel for the petitioners further submitted that on perusal of the Public Analyst Report and the same is extracted in the complaint, it is seen that it does not disclose any violation except the following information:

''அதில் The Sample is Misbranded as it is
labeled in contravention of Rule 39 of the PFA
Rules, 1955'' என்று கண்டிருந்தது.''



5. In support of his submissions, the learned counsel for the petitioners relied on the judgment of this Court reported in **MANU/TN/2619/2012 : 2013 (2) MLJ (Cri) 572 [S.Shanmugavelan and Others Vs. Food Inspector]**.

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6. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submitted that after receipt of the samples from the first accused shop in the presence of the first accused, the said samples were sent for the opinion of the Public Analyst. After receipt of the Public Analyst Report, in order to launch a prosecution before the competent Court, it is necessary to obtain a sanction from the appropriate authority and after obtaining permission from the authority, the complaint has been filed before the Judicial Magistrate Court No.V, Tirunelveli. The specific allegation as against the petitioners is that the said Porna Rice Bran Oil packet is recommended by the World Health Organization, but, in fact, the World Health Organisation has not recommended the Porna Rice Bran Oil. In order to misguide the consumers, the said procedure has been followed by the Manufacturer, as if the World Health Organisation recommended it for consumption. Therefore, after getting a report from the Public Analyst, the respondent filed a complaint before the competent Court and there is no violation of procedure contemplated under the Act and the Rules.

7. From a bare perusal of the complaint, extracted portion of Public Analyst Report, dated 17.03.2009, it is seen that the Public Analyst did not disclose any misbrand as contended by the learned Government Advocate (Criminal side) appearing for the respondent. He simply stated that the sample is misbranded, as it is labeled in contravention of Rule 39 of the Rules and the same was reflected in the complaint and there is no specific allegation against the petitioners implicating them for the offences stated in the complaint.

8. It is not the case of the respondent, as per the complaint, that the oil packets were found without any label. Therefore, there is no allegation whatsoever in respect of absence of information in the label in respect of the ingredients. Even in the complaint, the respondent did not disclose anything with regard to misbrand information appeared in the label. The relevant provisions attracting the misbrand reads thus:

"32. Every prepackaged food to carry a label.- (a) General.- (1) Prepackaged food shall not be described or presented on any label or in any labeling manner that is false misleading or deceptive or is likely to create an erroneous



impression regarding its character in any respect.

(2) Label in prepackaged foods shall be applied in such a manner that they will not be come separated from the container.

(3) Contents on the label shall be clear, prominent, indelible and readily legible by the consumer under normal condition of purchase and use.

(4) Where the container is covered by a wrapper the wrapper shall carry the necessary information or the label on the container shall be readily legible through the outer wrapper or not obscured by it.

(b) Labeling of prepackaged foods.- Every package of food shall carry the following information on the label.

(1) The name of the food.-The name of the food shall include trade name or description of food contained in the package.

(2) List of ingredients.-A list of ingredients shall be declared on the label and shall be in the following manner:-

(i) the list of ingredients shall contain an appropriate title, such as the term "ingredients";

(ii) the names of ingredients used in the product shall be mentioned in descending order in respect of their composition, by weight or volume, as the case may be;''

9. A perusal of the above provisions, makes it crystal clear that the provision contemplates that the label should contain Trade Name or description of food contained in the package and as per that, the names of the ingredients used in the product should be in descending order of their composition by weight or volume as the case may be.

10. On a perusal of the complaint in this matter, the same does not disclose any specific and definite allegation against the petitioners. In the absence of any allegation against the petitioners, this Court has no other option except to conclude the



proceedings against the respondent.

11. In view of the above discussion and the decision cited supra, I am inclined to quash the proceedings in S.T.C.No.267 of 2011 on the file of the Judicial Magistrate Court No.V, Tirunelveli. Accordingly, this Criminal Original Petition is allowed and proceedings in S.T.C.No.267 of 2011 pending against the petitioners before the Judicial Magistrate Court No.V, Tirunelveli, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Judicial Magistrate No.V,
Tirunelveli.

2.The Food Inspector,
Tirunelveli Corporation,
Tirunelveli.

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

+1 CC to M/s.A.SIVASUBRAMANIAN, Advocate (SR-86188[F] dated 10/09/2019)

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KM/ (25.10.2019) 5P 5C