



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**CRL OP(MD) . Nos.13576 and 19449 of 2015
and
M.P. (MD)Nos.1 and 2 of 2015**

R.Vaithilingam ... Petitioner/Accused No.3 in
Crl.O.P.(MD)No.13576 of 2015

R.Chandramohan ... Petitioner/Accused No.3 in
Crl.O.P. (MD)No.19449 of 2015

-Vs-

The Food Safety Officer,
Ambasamudram Blcok,
Government Hospital Road,
Ambasmudram - 627 401. ... Respondent/Complainant
in both Crl.O.Ps

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C, to call for the records in C.C.No.264 of 2014 and C.C.No.49 of 2015 respectively, on the file of the Judicial Magistrate, Ambasamudram and quash the same insofar as the petitioners are concerned.

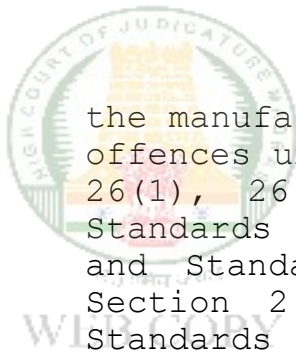
(in both Crl.O.Ps)

For Petitioner : Mr.M.Rajaraman

For Respondent : Mr.A.Robinson
Govt. Advocate (Crl. Side)

C O M M O N O R D E R

The petitioners are manufacturers of gingelly oil. The respondent obtained samples of gingelly oil said to have been sold by the petitioners herein to a retailer by name Natarajan, Propretor of Sri Vinayagar Store, Ambasamuthuram, on 23.01.2014 at about 11.30 a.m. The respondent sent the samples for test analysis to the Food Analyst, Palayamkottai. The report dated 19.02.2014 sent by the Food Analyst concluded that the sample is misbranded and is also substandard. Based on the report, the respondent filed the impugned private complaint not only against the retailers but also against



the manufactures namely., the petitioners herein. Cognizance of the offences under Sections 51, 52, 55 r/w. Sections 3(1)(ZF), 3(1)(Zx), 26(1), 26(2)(2)(5), 27(1) and 27(2)(c) of the Food Safety and Standards Act r/w. Section 2.2.1(3), 2.2.2(4) and 8 of Food Safety and Standards (Packaging and Labelling) Regulations, 2001 and Section 2.2.1.(12) of Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011, was taken and summons were issued to the accused. To quash the same, these criminal original petitions came to be filed.

2.The learned counsel appearing for the petitioners submitted that the respondent failed to serve a copy of the report of the Food Analyst and as a result, they were deprived of the valuable right of filing statutory appeal. On that ground, the petitioners want the impugned proceedings to be quashed.

3.Per contra, the learned Government Advocate (Crl. Side) submitted that the report in question was duly served on the retailers from whom the samples were taken. The learned Government Advocate (Crl. Side) would contend that there is no mandate to serve a copy of the report on the manufacturer. In this regard, the learned Government Advocate (Crl. Side) placed reliance on the Rule 2(4)(2)(6) of the Food Safety and Standards Rules, 2011. Which reads as follows:-

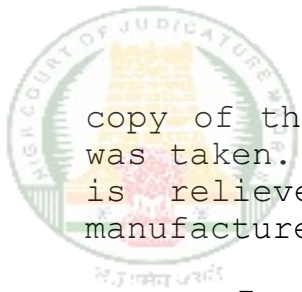
6.The Designated Officer shall keep two copies of analysis report for further action, one copy shall be sent to Food Safety Officer for record andn one copy to Food business Operator from whom the sample was taken.

4.It is true that the requirement of the rule is that the Designated Officer should get two copies of the analysis report for further action, send one copy to the Food Safety Officer for record and one copy to the food business operator from whom the sample was taken. Of course, the learned Government Advocate (Crl. Side) is right in his contention that the aforesaid rule casts a duty to send a copy only to the person from whom the sample was taken.

5.The expression ''food business operator'' has been defined in Section 3(0) of the Food Safety and Standards Act, 2006, as follows:-

''(0) 'food business operator' in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder, ''

6.The definition of the term ''food business operator'' is rather wide. It includes not only the retailer but also the manufacturer. But Rule 2(4)(2)(6) of the Act talks about serving a



copy of the analyst report only on the person from whom the sample was taken. But then, the question is whether the Designated Officer is relieved of the responsibility of serving a copy on the manufacturer also.

7. One cannot lose sight of the fact that the authority has prosecuted not only the retailer but also the manufacturer. Therefore, the rights of the manufacturer are at stake.

8. As rightly contended by the learned counsel appearing for petitioners, the retailer can escape from his liability by simply taking a stand that he sold the article in the same condition in which it was received by him and that he had no knowledge that it was unsafe. But then, the manufacturer would be liable if it is established that the food article does not meet the requirements of the Act and the rules and regulations made thereunder.

9. As per Section 46(4) of the Act, an appeal against the report of the Food Analyst shall lie before the Designated Officer, if he so decides to refer the matter to the referral food laboratory as notified by the Food Authority for opinion.

11. I am therefore of the view that the issue will have to be approached on an analysis of the overall statutory scheme. If the authority intends to prosecute the manufacturer then certainly, the authority was obliged to put the manufacturer on notice by serving a copy of the analyst's report in time so that the appeal remedy can be suitably availed.

12. In fact while interpreting the earlier statute i.e., Prevention of Food Adulteration Act, 1954, the Hon'ble Supreme Court in the decision reported in **(2019) SCC 1310 (M/s. Alkem Laboratories Ltd., v. State of Madhya Pradesh)** held that the accused has to be given prior notice that the samples of food articles manufactured and sold by them have been sent for analysis before the Public Analyst prepares their report. Only if this requirement is fulfilled, the accused can be said to have a fair trial.

13. By depriving the right of the the accused to file a statutory appeal challenging the report of the Food Analyst, his right to fair trial will be infringed. If the respondent has no proposal to prosecute the manufacturer, then obviously he need not serve a copy of the same. But where the manufacturer is also sought to be included in the list of accused, then he will have to be treated on par with the person from whom the sample is taken. Unless the statutory provision is read and understood in this manner, it would certainly fall foul of Article 21 of the Constitution of India. Inasmuch as the petitioners' right has been infringed, the impugned proceeding stands quashed as far as the petitioners are concerned. I have not expressed any opinion with



regard to the sustainability of the prosecution against the remaining accused.

14. The criminal original petitions allowed on these terms. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ias

To:

1.The Judicial Magistrate,
Ambasamudram.

2.The Food Safety Officer,
Ambasamudram Blcok,
Government Hospital Road,
Ambasmudram - 627 401.

+2 CC to M/s.M.RAJARAMAN, Advocate (SR-103951,103950[F] dated 06/12/2019)

Crl.O.P. (MD)Nos.13576 and 19449 of 2015
04.12.2019

VB (01.07.2020) 4P 5C