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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.4229 of 2015 and

M.P.(MD)Nos.1 and 2 of 2015

K.Murugesan

... Petitioner/Accused No.1

Vs.

Manogaran

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the private complaint in C.C.No.207 of 2014 pending before the learned Judicial Magistrate No.4, Madurai and quash the same with regard to the petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai,
for Mr.K.Sivabalan.

For Respondents : Mr.A.Robinson,
Government Advocate(Crl Side)

* * *

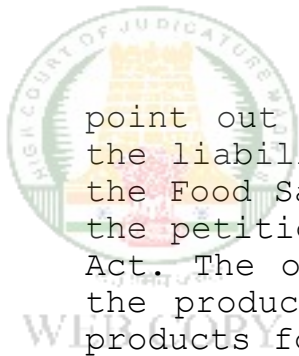
O R D E R

The petitioner is running a grocery retail shop in the name and style of Meenakshi Grocery store, at Haihindpuram, Madurai. The respondent herein purchased 80 packs of "Prepacked Moon Brand Chicken 65 Masala" which weighing 25 grams. Thereafter, he had sent the sample to the Food Analyst. The Food Analyst had given a report that the Prepacked Chicken Masala in question had colours beyond the permitted levels and therefore it is unsafe. Thereupon, the respondent filed C.C.No.207 of 2014 on the file of the Judicial Magistrate No.IV, Madurai against the petitioner as well as the manufacturer of the product. The manufacturer of the product is shown as accused No.2. The petitioner who is the seller of the product has been shown as accused No.1. To quash the said proceedings, the Criminal Original petition has been filed.

2. Heard the learned counsel on either side.

3. In this case, the only ground for fastening the penal liability on the accused is that the product in question is unsafe.

4. The learned counsel appearing for the petitioner would



point out that the petitioner being a seller can be fastened with the liability, if any of the conditions set out in Section 27(3) of the Food Safety and Standards Act 2006 are fulfilled. In this case, the petitioners will not fall under Section 27(3) (a) to (d) of the Act. The only ground on which the complaint has been filed is that the product is unsafe. But then, the mere receiving of the unsafe products for sale is not sufficient to attract penal liability. The seller must have received the unsafe articles with the knowledge of it being unsafe. In this case, the products in question are prepacked items.

5. Therefore, it is only the manufacturer who can be fastened with the liability. In the complaint, nowhere has it been averred that the petitioner herein received the same with the knowledge of it being unsafe. The elementary ingredients of the offence in question are not fulfilled. Therefore, the continuance of the impugned proceedings will be an abuse to legal process. The impugned proceedings stand quashed as far as the petitioner is concerned. They will continue against the other accused.

6. The Criminal Original petition stands allowed, on these terms. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To:

1. The Judicial Magistrate No.4, Madurai.

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

+1 CC to M/s.K.SIVABALAN, Advocate (SR-91330[F] dated 04/10/2019)

Crl.O.P. (MD)No.4229 of 2015
01.10.2019

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