



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P. (MD)No.5276 of 2015
and M.P. (MD)Nos.1 and 2 of 2015

1. P.Iyappan
2. Panneerselvam
3. Mahendran Dominic
4. S.Saroja

... Petitioners/Accused Nos.1 to 4

Vs.

State represented by,
Food Safety Officer,
Vickramasingapuram,
Tirunelveli District.

... Respondent/Complainant

PRAYER : Criminal Original petition is filed under Section 482 of Cr.P.C., to admit this quash petition on file, to call for the records in C.C.No.262 of 2014 on the file of the Judicial Magistrate, Ambasamudram, Tirunelveli District and to quash the same.

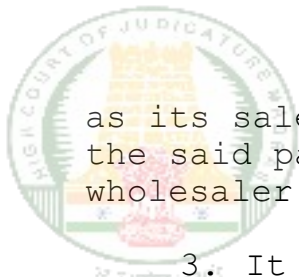
For Petitioners : Mr.V.Kathirvelu,
Senior Counsel,
for Mr.K.Prabhu.

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

O R D E R

Heard the learned Senior counsel appearing for the petitioners and the learned Government Advocate(Crl.Side) appearing for the respondent.

2. The respondent herein is the Food Safety Officer. On 21.04.2014, at about 2.00 p.m., the respondent herein went to the shop run by the second petitioner Panneerselvam in the name and style of "V.Mani Store" and purchased 48 samples of Sindhu Mutton Roast Masala. Each pack weighed 20 grams and was priced at Rs.5/-. At that time, the first petitioner Iyappan was in the shop premises



as its salesman. When he enquired, the first petitioner replied that the said packets were purchased from the third petitioner who is the wholesaler.

3. It is not in dispute that the food item was manufactured by the fourth petitioner herein. All the packets were fully sealed. The samples were sent for analysis. The report of the analyst revealed that the food item contained Sunset Yellow. The food analyst gave his opinion to the effect that the sample sent by the respondent is unsafe under Section 3(1)(zz) of the Food Safety and Standards Act 2006, since it contained added colouring matter, the addition of which is prohibited under Regulation 3.1.2(1) of Food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011. It also contained 'Flavour Enhancement'. Based on the report of the Food Analyst, the respondent instituted the impugned private complaint before the Judicial Magistrate, Ambasamudram. Cognizance of the offences under Section 59(1) and 63 of the Food Safety and Standards Act was taken and summons were issued to the petitioners herein. To quash the same, this criminal original petition came to be filed.

4. Section 27 of the Food Safety and Standards Act 2006 reads as under:-

"27.Liability of Manufacturers, packers, wholesalers, distributors and sellers - (1) The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is -

- (a) supplied after the date of its expiry;
- or
- (b) stored or supplied in violation of the safety instructions of the manufacturer; or
- (c) unsafe or misbranded, or
- (d) unidentifiable of manufacturer from whom the article of food have been received; or
- (e) stored or handled or kept in violation of the provisions of this Act, the rules and regulations made thereunder; or
- (f) received by him with knowledge of being unsafe.

(3) The seller shall be liable under this Act, for any article of food which is -

- (a) sold after the date of its expiry; or
- (b) handled or kept in unhygienic



conditions; or

(c) misbranded; or

(d) unidentifiable of the manufacturer or the distributors from whom such articles of food were received; or

(e) received by him with knowledge of being unsafe."

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5. It is not in dispute that the first petitioner is the salesman and the second petitioner is the shop owner, while the third petitioner is the wholesaler. These three petitioners can be fastened with penal liability only if it can be shown that the food article in question was received by them with the knowledge of their being unsafe. The food articles of masala powder are being sold only in sealed packets. There is nothing on record to show that petitioners 1 to 3 herein had purchased the same with the knowledge of their being unsafe. Therefore, petitioners 1 to 3 are entitled to the benefit set out in Section 27(2)(f) and Section 27 (3)(e) of the said Act. But then, the manufacturer cannot claim the same benefit. The manufacturer will be liable if he does not meet the requirements of the Act and rules and regulations framed therein.

6. In this view of the matter, the impugned prosecution stands quashed as far as petitioners 1 to 3 are concerned and as regards the fourth petitioner, she will have to necessarily face the trial and establish her innocence in the trial before the Court below.

7. The learned Senior counsel of course raised the contentions with regard to this sampling procedure adopted by the respondent herein.

8. I am of the view that this is a factual aspect. It will have to be gone into only by the learned trial Magistrate. It is made clear that all the defences of the fourth petitioner/manufacture are entirely left open. The fourth petitioner is a woman. Therefore, her personal appearance before the Court below is dispensed.

9. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. The petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioner can be represented through her counsel.

10. It is once again reiterated that the dismissal of this criminal original petition will not be put against the fourth petitioner.



11. This criminal original petition stands allowed as far as petitioners 1 to 3 are concerned and stands dismissed as far as the fourth petitioner is concerned. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-

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Sub Assistant Registrar (CS-)

To

1. The Judicial Magistrate,
Ambasamudram, Tirunelveli District.
 2. The Food Safety Officer,
Vickramasingapuram,
Tirunelveli District.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.K.PRABHU, Advocate (SR-93853[F] dated 23/10/2019)

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ME/SAR /18.03.2020/4P/6C