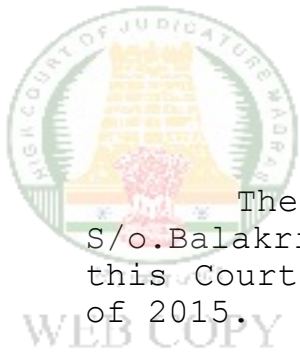




## BAIL SLIP

The Petitioner/Accused Namely, Ajeesh Balakrishnan, S/o.Balakrishnan was directed to be released on bail as per order of this Court dated 04.02.2015 in MP(MD).1 of 2015 in CrI RC(MD)No.38 of 2015.

## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                            |            |
|----------------------------|------------|
| <i>Date of reservation</i> | 11.07.2019 |
| Date of Judgment           | 25.10.2019 |

## CORAM

**THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI**

CrI.R.C(MD)No.38 of 2015

Ajeesh Balakrishnan : Revision Petitioner/Appellant/A1

Vs.

State represented by the  
Food Inspector,  
Nagercoil Municipality,  
Nagercoil,  
Kanyakumari District.

: Respondent/Respondent/  
Complainant

**Prayer:** Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, against the order of the Mahalir Fast Court, Nagercoil, passed in C.A.No.129 of 2003, dated 06.11.2014, confirming the judgment passed in C.C.No.306 of 1998 passed by the Judicial Magistrate Court No.II, Nagercoil.

For Revision Petitioner : Mr.M.Suri

For Respondent : Mr.OHM Sermakani  
Government Advocate  
(Criminal side)

**J U D G M E N T**

This Criminal Revision is directed against the judgment of the Mahalir Fast Court, Nagercoil, passed in C.A.No.129 of 2003, dated 06.11.2014, confirming the judgment passed in C.C.No.306 of 1998 passed by the Judicial Magistrate Court No.II, Nagercoil.



2. According to the prosecution, on 23.03.1998 at 1.30 pm, the Food Inspector attached to Nagercoil Municipality visited the shop of the petitioner namely Tops Biscuits Company, a Partnership Firm and taken Vennila Cream Biscuits for Food Analysis and PW1 complied with the provision of receiving Form-VI to the petitioner and to the 2<sup>nd</sup> accused namely Sowmi Balakrishnan, the mother of the petitioner and other partner of the above firm and at the time of taking sample, A2 was not present and the same was taken in the presence of PW2. PW1 had sent the sample to the public analysis, who filed a report stating that the food product, the biscuits was adulterated and after getting sanction, PW1 filed a private complaint in C.C.No.306 of 1998 on the file of the Judicial Magistrate No.II, Nagercoil against the petitioner/A1 and her mother/A2, the partner of the shop.

3. The learned Judicial Magistrate No.II, Nagercoil, after perusal of the entire materials on record, both oral and documents, convicted the revision petitioner/A1 alone and sentenced him to undergo 1 year simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo 1 months simple imprisonment for the offence under Section 7(1) and 16(1A) (i) r/w 2(ia)(a)(i) and Rule 28 of the Prevention of Food Adulteration Act, 1954 and Rules and acquitted A2 from the charges levelled against him. Aggrieved by the judgment of the trial court, the revision petitioner/A1 preferred appeal before the Mahalir Fast Track Court, Nagercoil, in C.A.No.129 of 2003. The learned first appellate court confirmed the findings of the trial court. Hence, the petitioner/A1 is before this court.

4. Heard both sides and perused the materials available on record.

5. The main contention raised on the side of the petitioner/A1 is that the respondent/complainant had not sent the second sample to the Court and they had not complied with the provisions of section 13(2-A) of the Prevention of Food Adulteration Act, 1954 and thereby the valuation right conferred on the accused for sending the second sample to the Central Food Laboratory was deprived of and A1 should not be held to suffer for the fault of the respondent/complainant and without giving opportunity to A1 to send the second sample to Central Food Laboratory and obtain the report, the courts below convicted the petitioner/A1 is not correct and directed the respondent/complainant to take steps to send the second sample to the Central Food Laboratory and obtained report and on the basis of the report obtained from the Central Food Laboratory, the case can be decided and prays that the judgments passed by the courts below are liable to be set aside and the revision petitioner/ A1 is entitled to acquittal.



6. In this case, on 02.09.1998, the revision respondent/complainant sent a notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 to A1 calling upon him whether he would like to have another portion of the sample taken from him to be analysed and certificate by the Central Food Laboratory.

7. The learned counsel appearing for the petitioner/A2 submitted that the petitioner/A2 paid Rs.200/- by way of Demand Draft in favour of the Accounts Officer, Central Food Laboratory, Directorate General of Health Services, Calcutta. On perusal of the judgment passed by the first appellate court, it is stated that the petitioner/A2 paid Rs.200/- for sending the second sample to the Central Food Laboratory, but the trial court dismissed the petition since petitioner/A2 was absent and the petitioner/A2 filed Civil Revision Petition before this court as against the order and in the Civil Revision, it is ordered directing the petitioner/A2 to pay the amount into the Court and took steps to send the second sample to the Central Food Library. But on perusal of the records, it is found that the second sample was not sent by the trial court to the Central Food Laboratory since petitioner/A2 paid the amount of Rs.200/- for sending the sample to the Central Food Laboratory. Hence, the provisions under section 13(2) of the Prevention of Food Adulteration Act, 1954 was not complied with. Without giving opportunity to the petitioner/accused to send the second sample to the Central Food Laboratory, the findings of the courts below that the revision petitioner/A2 found guilty under Section 7(i) and 16(1A) (i) r/w 2(ia)(a)(i) of the Prevention of Food Adulteration Act, 1954 and Rule 28 of the Prevention of Food Adulteration Rules 1955 is not correct.

8. Further, in this case, no document was filed on the side of the respondent/complainant to prove that second sample was sent to the Central Food Laboratory and report was received. Hence, it will affect the case of the prosecution.

9. For all the reasons stated above, this court is of the considered view that the judgments of the courts below are liable to be set aside and the matter is remitted back to the trial court for fresh disposal.

10. In the result, this criminal revision is **allowed**. The judgment of the courts below are set aside. The matter is remitted back to the trial court for fresh disposal. The trial court is directed to take steps to send the 2<sup>nd</sup> sample to the concerned Central Food Laboratory as expeditiously as possible. After getting report from the Central Food Laboratory, the trial court is directed to take up the case and dispose of the same based on the report received from the Central Food Laboratory, after giving opportunity



to the parties concerned and on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-I)

WEB COPY

// True Copy //

Sub Assistant Registrar(CS)

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To,

- 1.The Mahalir Fast Court,  
Nagercoil.
- 2.The Judicial Magistrate No.II,  
Nagercoil.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
- 4.The Food Inspector,  
Nagercoil Municipality,  
Nagercoil,  
Kanyakumari District.
- 5.The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 copies)

+1CC TO MR.M.SURI, Advocate Sr. No. 94851

Judgment made in  
Crl.R.C(MD)No.38 of 2015  
25.10.2019

KM(CO)  
TR(13.12.2019) 4P 8C