

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.1479 of 2020 and

CrI.MP.Nos.885 & 887 of 2020

- 1.M/s.Amma Naana Departmental Stores,
No.100, Chamiers Road,
Teynampet, Chennai-600 018.
- 2.V.R.Govindasamy (Partner-I),
S/o.V.Ramasamy,
M/s.Amma Naana Departmental Stores,
No.100, Chamiers Road,
Teynampet, Chennai-600 018.
- 3.G.Rajamani (Partner-II),
W/o.Mr.V.R.Govindasamy,
M/s.Amma Naana Departmental Stores,
No.100, Chamiers Road,
Teynampet, Chennai-600 018.
- 4.M.Senthilraj (Partner-III),
S/o.Mr.K.Muthuswamy,
M/s.Amma Naana Departmental Stores,
No.100, Chamiers Road,
Teynampet, Chennai-600 018.
- 5.G.Sakthi Devi (Partner-IV),
W/o.M.Senthilraj,
M/s.Amma Naana Departmental Stores,
No.100, Chamiers Road,
Teynampet, Chennai-600 018.
- 6.Srinivasan (Manager),
S/o.Mr.Suriya Narayanan,
M/s.Amma Naana Departmental Stores,
No.100, Chamiers Road,
Teynampet, Chennai-600 018.

... Petitioners

Vs.

The State of Tamil Nadu, rep. by its
Food Safety Officer, Mr.R.Selvam,
Code No.544, Teynampet Division,
Tamil Nadu Food Safety and Drug Administration Dept.,
O/o the Designated Officer, Chennai District
No.33, West Jones Road, Saidapet,
Chennai-600 015.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records of the impugned complaint in CC.No.2640 of 2019 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : Mr.M.Sriram

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

This petition has been filed to quash the proceedings initiated by the respondent in CC.No.2640 of 2019 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai in respect of the complaint initiated under Section 2 of Cr.P.C r/w Section 190(1) and 200 Cr.P.C. r/w Section 59(1) of Food Safety and Standards Act, 2006 by the respondent.

2. The case of the prosecution is that the respondent purchased the product of the petitioners by name "Roasty Tasty Mint Pudina Snacks" on 31.08.2017 and found that there was no manufacturing date and expiry date and the contents of the said snacks was also not available. Therefore, the respondent purchased 12 packets of the said snacks and segregated the snacks packet into four parts, each 500 grams. The same was intimated to the sixth petitioner herein whether he wants to test the sample before the concerned laboratory, for which the sixth accused said that he was not willing to send the sample for test. Therefore, as per Rule 2.4.1(8) of the Food Safety Rules, 2011, the respondent obtained signature from the sixth accused and sealed the entire packets. Thereafter the respondent sent one of the samples to Food Analyst, Food Testing Laboratory, Thanjavur on 31.08.2017. Thereafter, the respondent also sent notice to the manufacturer and even after receipt of the same, no reply was sent. Thereafter, the respondent received food sample report on 07.03.2018 and the said report was sent to the Office of the Designating Officer, Food Safety, Chennai.

2.1 As per the report of the Food Analyst, the sample sent was tested and declared as "unsafe" and "mis-branded" and the same was not sent in accordance with the provisions under Section 3 (1) (zz) of the Food Safety and Standards Act, 2006 and under Regulation 2.2.2(1), (2), (3), (4) & 8 and 2.2.1(7) of Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Thereafter, the manufacturer and also the accused persons were informed about the report of the Food Analyst dated 16.03.2018 and the same was duly received by them. Thereafter the accused persons did not file any appeal. Hence, the respondent initiated proceedings under Section 2 of Cr.P.C r/w Section 190(1) and 200 Cr.P.C. r/w Section 59(1) of Food Safety and Standards Act, 2006.

3. The learned counsel for the petitioner would submit that the complaint cannot be sustained on two grounds. The first ground is that the complaint was filed in total contravention of Section 77 of Food Safety Act since the complaint itself is preferred nearly after two years of the commission of offence and as such the complaint cannot be sustained. He further submitted that the respondent took the sample on 31.08.2017 and the same was sent to the Food Analyst on 31.08.2017. It was received by the Food Analyst on 15.09.2017. Thereafter, the analysis was done only from 20.02.2018 to 26.02.2018, namely after 155 days after receipt of the sample. Therefore, it is a violation of the provision of the procedure laid down under Section 42 (2) of the Food Safety and Standard Act, 2006 r/w Rule 2.4.2 (5) of Food Safety Standard Rules, 2011. According to the procedure, the Food Analyst ought to have sent the report of the analysis within 14 days from the date of receipt of the sample. Therefore, he sought for quashment of the entire proceedings initiated by the respondent herein.

4. The learned Additional Public Prosecutor submitted that the grounds raised by the petitioners are mixed question of fact and the documents produced by the petitioners have to be tested before the trial court only during the trial. Therefore, he sought for dismissal of the quash petition.

5. Heard, Mr.M.Sriram, the learned counsel for the petitioners, and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent.

6. The petitioners are arrayed as A1 to A6 in CC.No.2640 of 2019. The first accused is a partnership firm and the other accused persons are partners of the first accused firm and the sixth accused is the manager of the first accused. The petitioners are running departmental store in the name and style of the first accused, namely Amma Naana Departmental Stores at No.100, Chamiers Road, Teynampet, Chennai-18. They used to

purchase the chips, namely Roasy Tasty Mint Pudina Snacks in bulk and the same is sold in retail by the petitioners.

7. Now, the point for consideration to quash the proceedings are that whether the complaint is barred by limitation and contravention of Section 77 of Food Safety Act, and whether the complaint is in violation of the provision under Section 42 (2) of the Food Safety and Standard Act, 2006. It is relevant to extract the provisions under Section 77 of Food Safety Act as follows:

"77. Time limit for prosecutions.-Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence: Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years."

8. In the case on hand, the respondent purchased the food product on 31.08.2017 and according to the respondent, the date of offence committed by the petitioner on 31.08.2017 whereas the complaint filed on 22.07.2019. There is also no evidence to show that the respondent filed petition for condoning the delay for extension of period to lodge the complaint. Therefore, no court shall take cognizance of the offence under Section 77 of Food Safety Act after expiry of period of one year from the date of commission of offence as such the complaint is barred by limitation and cannot be sustained.

9. As far as the other ground raised by the petitioner is concerned, it is relevant to extract the provisions under Section 42 of the Food Safety and Standard Act, 2006 as follows:

42. Procedure for launching prosecution.-

(1)The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2)The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3)The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within

fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.

10. According to the prosecution on 31.08.2017, the food product was purchased by the respondent. Thereafter the sample of the said food product was sent for analysis on 15.09.2017. Thereafter, food analyst analysed the food product from 20.02.2018 to 26.02.2018 and opined that the said food sample was "unsafe" and "mis-branded" by the report dated 07.03.2018. The respondent received the analysis report from Food Analyst, Food Testing Laboratory, Thanjavur on 14.03.2018. Thereafter it was communicated to the sixth accused on 16.03.2018. Thereafter only on 22.07.2019, the complaint was lodged by the respondent against the petitioners. Therefore, the Food Analyst analysed the food product only after 155 days from the date receipt of the food sample from the respondent herein. As per the provisions under Section 42 of the Food Safety and Standard Act, 2006, the Food Analyst after receipt of the sample from the Food Safety Officer shall analyse the sample and send the analysis report within a period of 14 days to the Designated Officer. Further as per the Rule 2.4.2(5) of Food Safety Standard Rules 2011, Food Analyst has to analyse the sample and send his report within 14 days from the date of receipt of the sample. It is also relevant to extract the Rule 2.4.2(5) of the Food Safety Standard Rules, 2011 as follows:

"On receipt of the sample, the Food Analyst shall analyse or cause to be analysed the sample and send the analysis report mentioning the method of analysis. The analysis report shall be as per Form VII A and four copies of the same shall be sent to the

Designated Officer under whose jurisdiction the Food Safety Officer functions or the purchaser of article of food. The analysis report shall be signed by the Food Analyst and such report shall be sent within fourteen days of the receipt of the sample by the Food Analyst."

Hence, the Food Analyst had failed to comply the above procedure laid down under Rule 2.4.2(5) of the Food safety Standard Rules, 2011. Since the analysis was done after expiry of the said food sample, the same cannot be considered for prosecuting the petitioners for violation of Section 59 (1) of Food Safety and Standards Act, 2006.

11. In view of the aforesaid violation, the impugned complaint lodged by the respondent is liable to be quashed. It is also relevant to rely upon the judgment of this Court passed in CrI.OP.No.7242 of 2011 dated 28.03.2017, wherein this Court has held as follows:

"6. Learned Senior Counsel also relied upon the judgment of this Court passed in CrI.O.P.No.7242 of 2011 dated 28.03.2017, wherein, in an identical circumstances, the learned Judge has held as follows :

5. In this regard, the learned counsel for the petitioners/accused also relied upon the decision of this Court reported in 2005-2-L.W. (CrI.) 598 [C.Suresh & Others Vs. The State, etc], and submitted that in an identical situation, on the ground of delay of 10 months in sending the notice under Section 13(2) of the Act along with the report, this Court quashed the complaint therein stating that by that time, the milk sample would have become decomposed. The relevant portion in the said judgment reads as follows :

"7. In the instant case, the sample of toned milk was taken on 22.07.2003 and despatched to the Government Analyst on 23.07.2003. Pursuant to an information that the toned milk food sample was broken in transit, the second portion of the sample was sent, and on analysis, a report was received on 07.08.2003. The same was received by the Local Health Authority on 28.08.2003. But, the written consent for launching the prosecution

was received by the Local Health Authority on 23.01.2004, and the same was received by the Food Inspector on 30.01.2004. The complaint filed on 31.03.2004 was returned, and the same was re-submitted on 23.04.2004. The same was taken on file on 13.05.2004. It would be abundantly clear that the sample of toned milk was taken on 22.07.2003, the Food Inspector presented the complaint on 31.03.2004, and after it was taken on file on 13.05.2004, notice under Section 13(2) was issued to the petitioners on 18.05.2004. Thus, it would be quite evident that a notice along with the report of the analyst was sent on 18.5.2004, after an interval of nearly 10 months. By that time, the milk sample would have become decomposed. Thus, the right of the accused available under Section 13(2) has been frustrated, due to the inordinate delay and inaction on the part of the prosecution."

The dictum laid down in the above said decision would squarely apply to the facts of the present case also. In the case on hand also, there is an inordinate delay of 1 year 8 months in lodging the complaint. Further, as pointed by the learned counsel for the petitioner, even if the milk sample would have been sent for analysis, by that time, it would have become decomposed. The petitioners/accused have been deprived of their right to have the analysis report from the Central Food Laboratory as provided under Section 13(2) of the Prevention of Food Adulteration Act. Considering the facts and circumstances of the case, I am of the opinion that there is no useful purpose is going to be served if the trial is allowed to continue. It is a fit case to quash the complaint.

The above dictum squarely applicable to the facts of the case."

The above dictum laid down by this Court is squarely applicable to the facts of this case. Therefore, the impugned complaint is barred by limitation and also violation of the provision under Section 42 (2) of the Food Safety and Standard Act, 2006 r/w Rule 2.4.2 (5) of Food Safety Standard Rules, 2011. Hence, the complaint is liable to be quashed.

12. Accordingly, this criminal original petition is allowed and the proceedings in CC.No.2640 of 2019 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The XXIII Metropolitan Magistrate, Saidapet,
Chennai.
2. The Food Safety Officer,
Code No.544, Teynampet Division,
Tamil Nadu Food Safety and Drug Administration Dept.,
O/o the Designated Officer, Chennai District
No.33, West Jones Road, Saidapet,
Chennai-600 015.
3. The Additional Public Prosecutor,
Madras High Court,
Chennai.

Crl.O.P.No.1479 of 2020

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srg 25/09/2020

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