

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos. 16989 and 16990 of 2014
and
MP.Nos.1, 1 of 2014 & 1,1 of 2015

1.Somasundaram
2.Dr.P.Tamilselvi ... Petitioners/A1 to A2 in both Crl.OPs
Vs.

1.State rep. By
Food Safety Officer
Tamil Nadu Food Safety and Drug
Admn Dept, Coimbatore Corporation,
Coimbatore District ...1st respondent/complainant

2.Mrs. Kasthuri2nd respondent in both Crl.OPs

(impleaded the 2nd respondent as per the order of this Court
dated 14.10.2014 in MP.3/2014)

Common Prayer:Petitions filed under Section 482 of Cr.P.C.,
seeking to call for the records relating to the complaints in
C.C.Nos. 88 and 87 of 2014 respectively, on the file of the
Judicial Magistrate No.VI, Coimbatore and quash the same as far
as the petitioners are concerned.

For Petitioners: M/S.I.Abrar Mohad Abdullah
For Respondents: Mr.C.Iyyapparaj, APP for R1
: Mr. N. Suresh for R2

COMMON ORDER

The petitioners are accused have filed these petitions,
seeking to call for the records relating to the complaint in
C.C.Nos. 87 and 88 of 2014 on the file of the Judicial
Magistrate No.VI, Coimbatore and quash the same.

2.The case of the petitioners is that the defacto
complainant namely Food Safety Officer, T.N. Food Safety and
Drug Administration Depot, Coimbatore Corporation, lodged a
complaint against the petitioners for the offences under Section
52, 59(1) of the Food Safety and Standards Act 2006 (FSS Act).
Challenging the said complaints the present petitions have been
filed.

3.The case of the prosecution is that the second respondent viz., Kasturi had taken a food sample, namely, Slim Drink Level -I and II from Kovai Medical Center and Hospital, Avinashi Road, Coimbatore and the same was sent for sampling and after receiving the report, it had been found that the aid food sample is unsafe for consumption as food and is misbranded. It is further stated that the original documents and written reports were to be handed over to the Food Safety Department, Coimbatore District either in person or through post and the same was communicated to the above said purchaser by the first respondent herein by letter dated 11.10.2013 and reminder letter dated 17.10.2013 and the purchaser did not provide any information as requested for, and the same had to be sent to the Food Safety Commissioner, Chennai and only the xerox copies of documents were sent to the Commissioner for the purpose of filing a criminal case against the petitioners for the offence under section 52, 59(1) of Food Safety and Standards Act 2006 (FSS Act).

4.The learned counsel appearing for the petitioners submit that though the defacto complainant purchased the product namely, Slim Drink Level -I and II from Kovai Medical Center and Hospital, after consuming that medicine/product, however not satisfied with the product, again she purchased the sample from the petitioner, vide bills NO.3608 and 36821. The said samples were found in the packing and the seals were intact and unbroken and the samples tallied with specimen impression which were drawn in the presence of witnesses. One portion of the sample was submitted by the second respondent to the Designated Officer and another portion with seal intact was sent to the Food analyst, without complying with the procedure contemplated under Proviso to section 40(1) and rule 2.4.4.(2) of the Food Safety and Standards Rules, 2011(FSS Rules). Without following the prescribed rules, the samples were drawn and sent for analysis which vitiates the prosecution and therefore, petitions deserve to be allowed.

5. The learned counsel appearing for the second respondent and the learned Additional Public Prosecutor appearing for the first respondent stated that it is only a procedural violation and it does not vitiate the prosecution and the said issue is a triable one, and the petitioners can canvass all those points before the trial Court and filing petitions under Section 482 of Cr.P.C is not sustainable one.

6. This Court heard the learned counsel appearing for the petitioners and the learned Addl. Public Prosecutor appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

8. The facts in the case are not in dispute. Even according to the respondents, the violations, as pointed out by the petitioners are procedural violations, which can be canvassed at the time of trial.

9. Rule 2.4.4 (2), which has application to the case on hand, reads as under :-

"2.4.4(2): If the Purchaser desires to have the food article purchased by him to be analyzed by the Food Analyst, he shall give a notice in writing, then and there, in Form V B of his intention to have it so analyzed to the person from whom he has purchased the food article."

10. A perusal of the above rules make it clear that if the purchaser desires to have the food articles purchased by him to be analyzed by a food analyst, he shall give a notice in writing then and there, in Form V-B of his intention to have it so analyzed to the person from whom the said item of food article was purchased.

11. In the case on hand, the 2nd respondent purchased the product 'Slim Drink Level-I and II' from Kovai Medical Center & Hospital. However, no notice has been given by her in Form V-B submitting her intention to have the goods analyzed by a Food Safety Analyst. No material whatsoever has been placed either in the complaint or before this Court to show that Form V-B has been submitted by the 2nd respondent. It is to be pointed out that Rule 2.4.4 (2) is not a procedural formality, but it is a mandatory formality to be complied with and failing compliance of the mandatory requirement renders the prosecution liable to quashment. In the case on hand, as stated above, the mandatory requirement postulated under the above rule has not been complied with, which renders the prosecution unsustainable.

12. For the reasons aforesaid, the complaints in C.C. Nos.87 and 88 of 2014 on the file of the Judicial Magistrate No.VI, Coimbatore are hereby quashed and these petitions are accordingly allowed. However, liberty is granted to the petitioners to work out their remedy in a manner known to law for claiming damages, if so advised. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate,
No.VI, coimbatore.

2.The Food Safety Officer,
Tamilnadu Food Safety of Drug Admn, Rent,
Coimbatore Corporation,
Coimbatore Post.

+2 Ccs to Mr.I. Abrar Md Abdullah, Advocate sr 17879

+2 Ccs to Mr.N. Suresh, Advocate sr 17318.

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RR(CO)
SP(29/07/2020)



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