



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.10941 of 2016

and

Crl.M.P. (MD)Nos.5387 and 5388 of 2016

WEB COPY

1.Shokkalingam
2.Mahendren Dominik
3.S.Saroja

...Petitioner/Accused No.1 to 3

-VS-

State represented by
N.Mohammad Ismail Kasim,
Food Safety Officer,
Vikramasingapuram,
Tirunelveli District.

... Respondents/
Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to admit this quash petition on file, to call for the records in C.C.No.193 of 2015, on the file of the Judicial Magistrate, Ambasamuthiram, Tirunelveli District and quash the same.

For Petitioners : Mr.K.Prabhu
For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

ORDER

The petitioners are facing trial in C.C.No.193 of 2015 on the file of learned Judicial Magistrate, Ambasamuthiram for the offences under Sections 3(1)(zz), 26(1), 26(2)(i), 26(2)(v) and 27(3)(e) of Food Safety and Standard Rules, 3.1.2(1) and 3.1.11(1) and Section 50,55 and 59(1), 62 and 63 of Food safety and standards Act, 2016.

2.The complaint was instituted by the respondent food safety officer. The case of the respondent is that on 26.08.2014 at about 11 am, he purchased samples of Sindhu Fish Roast Masala from the first petitioner herein. He purchased 80 packets. Each packet contained 20 grams of the food product. The samples were sent for analysis. But then, the report of the analysts was that the sample is unsafe. Therefore, the complaint was laid.

3.It is not in dispute that the first petitioner is the retail seller, the second petitioner is the wholesaler while the third petitioner is the manufacturer.



4.The learned counsel for the petitioners submitted that he would withdraw this Criminal Original Petition as regards the third petitioner. It is dismissed as withdrawn as far as the third petitioner is concerned. All her defences and contentions are left open. Since she is a lady, her personal appearance before the Court below is dispensed with. Ofcourse, she has to appear on those occasions when her presence is necessary and imperative.

5.The learned counsel for the petitioners confined her arguments to petitioners 1 and 2 alone. She would submit that the petitioners 1 and 2 are entitled to the benefit set out in Section 27 of the Food Safety and Standards Act, 2006. 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 articles 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.*

6.The first petitioner as a seller and the second petitioner as a wholesaler will be liable only if they had received the food product with the knowledge that it is unsafe. In this case, that is not the case projected by the respondent herein.



7.As rightly pointed out by the learned Government Advocate, when the process of taking the sample was going on, the second petitioner who is the wholesaler had prevented and obstructed the complainant from discharging his duties. The second petitioner is also said to have intimidated the food safety officer. Therefore, prima facie offence under Section 62 of the Act is attracted. Therefore, the proceedings are quashed in toto as regards the first petitioner. The second petitioner will have to face trial for the offence under Section 62 of the Act. The other offences against the second petitioner stand quashed. The third petitioner will have to face the trial fully.

8.Accordingly, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate,
Ambasamudram,Tirunelveli District.

2.Food Safety Officer,
Vikramasingapuram,
Tirunelveli District.

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

+1 CC to M/s.K.PRABHU, Advocate (SR-8826[F] dated 27/02/2020)

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