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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.5997 of 2018

and

Crl.M.P.Nos.3013 & 3014 of 2018

1. E.Saravana Kumar
2. S.Narayanan
3. M/s. AR.EN.AR.Caters,
296, Anna Salai,
Teynampet, Chennai-18.
4. M/s.Vajravelu Mudhaliar,
No.140, Waltax Road,
Park Town, Chennai-3.
5. K.Vinoth Kumar
6. M/s.Sri Vaitheesh Food Ingredients,
No.190, Sai Kannappa Salai,
Anna Nagar,
Vadaperumpakkam,
Chennai.
7. T.Saravanan
- 8.T.Sundaravinayagam

.. Petitioners/Accused

Vs.

A.Chidambaram
Food Safety Officer,
Code No.548, Guindy Range,
Chennai District.

.. Respondent/complainant

Prayer : This Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C. No.4053 of 2016 from the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai and quash the proceedings against the petitioners.



For Petitioner : Mr. A.Ganesh

For Respondent : Mr. C.E.Pratap, GA (Crl. Side)

ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4053 of 2016 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai.

2. The case of the prosecution is that on 15.09.2015, the respondent visited the canteen situated inside Anna University. The respondent examined the canteen and also the store room. In the store room, he found the packets of 'Mayura Badam Flavour Powder'. On enquiry, the first petitioner, who is the manager of the canteen, said that he kept the product for the purpose of making Badam flavored milk and the first petitioner had purchased the said product from the 4th petitioner, which was manufactured by the 6th petitioner. On suspicion, the respondent purchased 4 packets of 'Mayura Badam Flavour Powder' from the first petitioner and sent the sample to the food laboratory for analysis. After getting a report from the lab, the respondent straight away sent his recommendation to the Commissioner of Food Safety on 30.11.2015, instead of sending the same to the Designated Officer as provided under the Act. On the basis of the said report, the Commissioner had granted permission for prosecution, which resulted in filing of the complaint before learned IX Metropolitan Magistrate, Saidapet, Chennai on 07.09.2016 for offences under Section 3(1)(zz), (xi) Section 19, 23, 26(1)(2)(i) Section 27(1) of the Food Safety and Standards Act, 2006 read with Regulation 3.1.2(7), Table-3/Sl.No.5/Appendix-A of FSS (FPS & FA) Reg. 2011 and Regulation 2.2.2(3) and Regulation 2.2.2(5)(i), (iib) of FSS (Packaging and Labeling Regulation) 2011 read with Sections 58 & 59 of Food Safety and Standards Act 2006, which was taken on file in C.C.No.4053 of 2016. Against the same the present petition has been filed for quashment of the proceedings pending before the learned IX Metropolitan Magistrate, Saidapet, Chennai.

3. The learned counsel for the petitioners submitted that on 15.09.2015, the respondent visited the canteen and store room situated inside the Anna University and purchased Mayura Badam Flavored Milk from their shop on suspicion. On the same day, the respondent has sent the food sample to the food laboratory for analysis under Section 45 of Food Safety and Standards Act, 2006 (hereinafter referred to as 'FSS Act'). It is the submission of the learned counsel for the petitioners that as per Section 42 (3) of the FSS Act, the Food Analyst is required to send the report to the Designated Officer within the time prescribed under the Act and on receipt of the report, the Designated



Officer, if not satisfied, within the period prescribed, is empowered to address the Commissioner of Food Safety seeking permission for initiation of prosecution. It is the submission of the learned counsel for the petitioner that though the Food Analyst has sent his report to the Designated Officer, however, curiously, the Designated Officer has not initiated the prosecution, but the Food Safety Officer has addressed the Commissioner for prosecution, which is not what is envisaged under the FSS Act and the act of the respondent is an overreach of his duties and responsibilities and the act not being in consonance with the FSS Act, the complaint and the cognizance taken thereof, deserves to be quashed. It is further submitted by the learned counsel for the petitioner that the act of the respondent has also resulted in the right of the petitioners to have the sample tested by the Central Food Laboratory, Hyderabad, which vitiates the prosecution.

4. No counter is filed till date on behalf of the respondent and the case is of the year 2018. Considering the pendency of the matter, this Court heard the learned Government Advocate (Crl. Side) appearing for the respondent submitted that the act of the respondent is not an incurable defect and merely because the Designated Officer has not sent the report to the Commissioner seeking permission for prosecuting the petitioners would not vitiate the complaint and its subsequent cognizance, as permission has been granted by the appropriate authority, which decision has been taken after proper appreciation and, therefore, the trial court has satisfied itself of the materials before taking cognizance and, therefore, no interference is warranted.

5. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The moot point that requires determination in this case is whether Section 42 (2) and (3) of the FSS Act has been violated, which renders the prosecution unsustainable. For better appreciation, Section 42(3) of FSS Act is quoted hereunder :-

"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



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

7. The facts relating to the purchase of the food packets by the Food Safety Officer, its consequent dispatch to the Food Analyst for analysis is not in dispute. The whole gamut of the petitioners case is that the requirement u/s 42 (2) of the FSS Act is for the Food Analyst to send the analysis report to the Designated Officer, who, on satisfying himself u/s 42 (3), as to the necessity for prosecution, send his recommendation to the Commissioner requesting necessary permission for prosecution within the time prescribed. However, it is pointed out by the petitioners that on receipt of the samples from the Food Safety Officer, the Food Analyst, after causing analysis on the said samples had forwarded the report to the Designated Officer u/s 42 (2) of the FSS Act. It is to be pointed out that but for the permission granted by the Commissioner of Food Safety, no other communication pertaining to permission sought for by the Designated Officer is placed on record. Though it is the submission of the petitioners that the Designated Officer has not sought for permission for initiating prosecution but it is only the Food Safety Officer, who has sought permission, however, it is to be pointed out that no material that emanated from the Food Safety Officer has been placed before this Court to hold that the Food Safety Officer alone has sought permission of the Commissioner of Food Safety seeking permission for prosecution.

8. It is true that no authority has been vested on the Food Safety Officer to seek permission for prosecution. The duty of the Food Safety Officer only relates to seizure of the food sample and send the same to the Food Analyst for analysis and after analysis, the Food Analyst shall send his report to the Designated Officer. However, there is no material available on record, as pointed out above, to hold that it is only the Food Safety Officer, who has addressed the Commissioner of Food Safety. If the petitioner wants to take the plea that the Designated Officer has not addressed the Commissioner seeking permission for prosecution, the course open to the petitioners is to implead the Designated Officer as party respondent, who



alone would be the appropriate authority either to accede to or controvert the stand of the petitioners. In the absence of the petitioners impleading the Designated Officer as a party respondent, the stand of the petitioners that no communication has emanated from the Designated Officer to the Commissioner cannot be sustained, more so, when the Food Analyst has sent his analysis report directly to the Designated Officer, as envisaged u/s 42 (2) of the FSS Act.

9. The petitioner having impleaded only the food safety officer and the appropriate authority, viz., the designated officer having not been impleaded as party respondent, this Court has no hesitation to arrive at a conclusion that the stand of the petitioners that there is infraction of Section 42 (2) and (3) of the FSS Act cannot be sustained.

10. For the reasons aforesaid, the prayer sought for in this petition cannot be considered and accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. IX Metropolitan Magistrate,
Saidapet, Chennai.

2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr. A.Ganesh, Advocate, S.R.No.35693

Cr1.O.P.No.5997 of 2018 and
Cr1.M.P.Nos.3013 & 3014 of 2018

AD(CO)
CT(17/09/2021)