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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

CRL.O.P.NO.7559 OF 2017

AND

CRL.M.P.NO.5477 OF 2017

1.M.I.Shahul Hameed

2.Mohamed Ismail

3.M.I.Kaleelur Rahman

4.M.I.Abdul Rasheed

...Petitioners

Vs

State of Tamil Nadu

Rep by Food Safety Officer,

Tamil Nadu Food Safety and

Medicine Administrative Department,

Chennai.

...Respondent

Prayer : Petition filed under Section 482 of Code of Criminal Procedure, seeking to call for the records in C.C.No.4930 of 2016 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai 15 and quash the same.

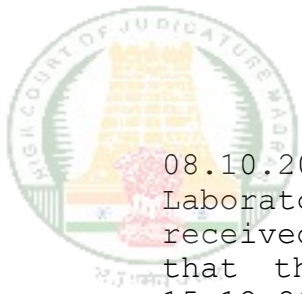
For Petitioners : M/s.R.Amizhdhu

For Respondent : Mr.L.Baskaran,
Govt. Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed, seeking to quash the proceedings in C.C No.4930 of 2016 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai 15.

2. The case of the prosecution is that the petitioners sold unsafe food. Therefore, routine inspection was conducted by the Food Safety Officer on 19.08.2014 and the sample was seized and sent for analysis to King Institute Campus, Guindy on the same day. Thereafter, on 03.09.2014, he received the inspected sample report stating that the said food was an un-safe food. However, considering the request of the Manufacturers/A5 & A6, on



08.10.2014, the second sample was sent for analysis to Central Laboratory, Kolkatta and the report dated 14.11.2014 was received on 17.11.2014. The said report was also of the opinion that the food was unsafe and misbranded. By letter dated 15.12.2014, the Food Safety Officer requested the Commissioner to accord sanction to lodge the prosecution against the petitioners. The Commissioner had also accorded the sanction vide proceedings dated 27.04.2015. Pursuant to the same, a complaint was filed on 24.08.2016 before the learned XVII Metropolitan Magistrate Court, Saidapet, Chennai under Sections 52, 59 (i) & 63 of Food Safety and Standards Act (Act No.34) of 2006 (in short, 'the Act').

3. The learned counsel appearing for the petitioners submits that he was aggrieved over the above said proceedings and hence, the present petition was filed to quash the proceedings in C.C.No.4930 of 2016. He would submit that the Commissioner has accorded the sanction to file the complaint on 27.04.2015, but the complaint was filed only on 24.08.2016, i.e. after a period of 2 years. According to the petitioners, the complaint should have been filed by the Food Safety Officer within a period of one year from the date of occurrence of the offence. However, in the present case, the complaint was filed on 24.08.2016. Therefore, on this ground, the learned counsel would submit that the learned Magistrate ought not to have taken cognizance of the complaint and hence, he sought for quashing the complaint. Further, he fairly submitted that under Section 77 of the Act, the Commissioner is empowered to approve the prosecution within an extended period of up to 3 years. But in the present case, no such approval was granted. Therefore, he submitted that the prosecution was not legally sustainable and the same is liable to be quashed.

4. Per contra, Mr.L.Baskaran, learned Government Advocate (Crl. Side), for the prosecution submits that the complaint was filed on 24.08.2016 and the sample was seized and sent on 19.08.2014 and the report was received from the King Institute by the Food Safety Officer on 03.09.2014. Thereafter, report of the second sample was received from Central Laboratory, Kolkatta was received on 17.11.2014. However, due to the difficulties in implementation of the newly enacted law (i.e.) Food Safety and Standards Act, 2006, the Department had faced some difficulties in regard to the jurisdictional issue where to launch the prosecution proceedings. Therefore, there was a confusion over the said issue which caused the delay.

5. Heard the learned counsel appearing for the petitioners as well as the respondent and perused the materials available on record.



6. In the present case, admittedly there was a routine inspection on 19.08.2014 and immediately on the same day, the Food Safety Officer found some unsafe food and a sample was seized and sent for analysis to King Institute Campus. The King Institute has sent a report to the Food Safety Officer and the same was received by him on 03.09.2014 and in the said report it was stated that the samples sent to the Institute was analysed and it was found that the food was unsafe. However, the second sample was sent for analysis to Central Laboratory, Kolkatta and the report dated 14.11.2014 was received on 17.11.2014 stating that the food was unsafe and misbranded. Thus, the respondent has decided to take legal action against the petitioners. Thereafter, on 15.12.2014, a request was made by the respondent to the Commissioner to accord sanction for launching the prosecution. Accordingly, the Commissioner has also accorded the sanction on 27.04.2015. However, it is to be noted that after receipt of the sanction proceedings dated 27.04.2015, the complaint was filed only on 24.08.2016, i.e. after a period of 2 years. As per the terms of Section 77 of the Act, the complaint has to be filed within the period of one year from the date of commission of an offence. At this juncture, it will be useful to extract Section 77 of the Act, which reads as under:

"77. Time limit for prosecution.-
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 reason to be recorded in writing, approve prosecution within an extended period of up to three years".

7. On a perusal of the above said provision, it clearly shows that the prosecution has to be lodged within a period of one year from the date of the commission of an offence. In the present case, it is not in dispute that the date of occurrence of offence was on 19.08.2014. Therefore, as per the terms of Section 77 of the Act, the prosecution should have lodged the complaint on or before 18.08.2015. However, in the present case, the prosecution was launched on 24.08.2016 only after expiry of the limitation period under Section 77 of the Act.

8. A perusal of the proviso to Section 77 shows that the Commissioner of Food Safety Officer can approve the prosecution within an extended period of up to three years. Therefore, the Commissioner is empowered to approve prosecution within an extended period of up to three years. But in the present case, it was admitted that no such extension of period was granted though there was a delay while lodging the complaint before the



learned Magistrate. The only reason assigned by the prosecution was that they were perplexed about the jurisdiction. Therefore, in such cases, there is nothing prevented the prosecution to approach the Commissioner and get extension of time to file the complaint within the extended period of three years. No such steps were taken by the prosecution. In the absence of any such orders from the Commissioner in respect of extended period for filing the complaint before the concerned Court, this Court is unable to accept the reason assigned by the prosecution for not filing the complaint within the period of one year as contemplated in the Act.

9. Further, this Court is of the view that even assuming that if they had any difficulties to find out the jurisdiction of the Court, there is nothing prevented them to present the petition either before the Chief Judicial Magistrate or the Chief Metropolitan Magistrate. However, no such steps were taken by the respondent.

10. Therefore, this Court finds that there is serious lapse on the part of the officer who failed to take initiative to get sanction for prosecution within the stipulated time.

11. In view of the above, this Court does not find any merit or substance in the submissions made by the prosecution. Therefore, the complaint filed beyond the period of limitation under Act, cannot be entertained. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.4930 of 2016 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai are hereby quashed. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

- 1.The XVII Metropolitan Magistrate,
Saidapet, Chennai 15.
- 2.The Food Safety Officer,
Tamil Nadu Food Safety and
Medicine Administrative Department,
Chennai.



3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Amizhdhu, Advocate SR.No.57093

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KSM(CO)
RVM(30/11/2021)

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