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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.12746 of 2017

&

Crl.M.P.Nos.8307 and 8500 of 2017

Jayaseelan

...Petitioner/Accused

Versus

State of Tamilnadu rep. By its
Food Safety Officer
A.Sivasankaran
Code No.527, Kodungaiyur Zone
Tamilnadu Food Safety and Medicine
Administrative Department
O/o.Designated Officer's Office
Chennai District
No.33, West Jones Road
Saidapet, Chennai - 600 015

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C.
to call for the records in STC 5736 of 2016 on the file of X
Metropolitan Magistrate at Egmore, Moore Market Complex, Chennai
- 600 008 and quash the same.

For Petitioners ... Mr.V.K.Sathiamoorthy

For Respondent ... Mr.S.Vinoth Kumar
Government Advocate (Crl.side)

O R D E R

This Criminal Original Petition has been filed to quash
complaint in STC 5736 of 2016 on the file of X Metropolitan
Magistrate at Egmore, Moore Market Complex, Chennai - 600 008
for the offences under Section 52, 58 and 59(i) of the Food
Safety and Standards Act, 2006.



2. The case of the prosecution is that the Food Safety Officer conducted inspection and collected Gram flour samples by dividing into four parts as per Section 47 of the Act and sent the same for analysis. The analysis report indicates that the sample is unsafe. Since the petitioner was not satisfied with the report, again the sample was sent to the referral lab. There also, it is found that the sample contravenes Regulations 2.3.1(5) and 2.2.2(8) of Food Safety and Standards (Packing and Labeling) Regulations, 2011 and the sample showed presence of BOAA, based on which the prosecution has been launched.

3. Heard the learned counsel for the petitioner.

4. The main contention of the learned counsel for petitioner is that the prosecution has been launched beyond a period of one year in violation of Section 77 of the Act and hence, it is submitted the Court cannot take cognizance of the Act.

5. This Court heard the learned Government Advocate (Crl.side) on the above submissions and also perused the documents placed before this Court.

6. It is not in dispute that though the sample was lifted on 28.01.2015 and analysis report was received on 10.02.2015, the sanction was accorded by the Commissioner on 12.02.2016. Thereafter the prosecution was launched. Section 77 of the Act, which deals with time limit for launching the prosecution reads 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 a offence.

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of upto three years.

This clause provides that no Court shall take cognizance of an offence under the Act after the expiry of the period of one year from the date of commission of an offence unless the Commissioner of Food Safety may, the reasons to be recorded in writing approve prosecution within an extended period of upto three years'

7. The non-obstante clause makes it clear that no Court shall take cognizance of the offence after expiry of one year



from the date of commission of the offence. The proviso empowers the Commissioner of Food Safety to extend the period to accord sanction within an extended period of three years. It is not the case of the prosecution that the Commissioner of Food and Safety by reasons recorded in writing had accorded permission to launch the prosecution by extending the period by three years, whereas, on perusal of the records, it reveals that no sanction whatsoever has been accorded by the Commissioner within the period of one year. In fact, the Commissioner has accorded the sanction only on 12.03.2016 after the expiry of one year period that too without assigning any reason for extending the period of limitation. It is to be noted that the administrative delay has been cited as the reason for launching the prosecution. Though this Court vide order dated 17.11.2016 made in CrI.O.P.No.24678 of 2016 has held that administrative delay cannot be cited as a reason, the same reasons are being assigned for delay in launching the prosecution beyond a period of one year. As no reason has been assigned in writing, continuation of prosecution is nothing but a abuse of process of law.

Accordingly, the instant Criminal Original Petition is allowed and the case in STC 5736 of 2016 on the file of X Metropolitan Magistrate at Egmore, Moore Market Complex, Chennai - 600 008 is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gba/gpa

To

- 1.X Metropolitan Magistrate,
Moore Market Complex,
Egmore, Chennai - 600 008.
- 2.The Chief Metropolitan Magistrate,
Moore Market Complex, Egmore,
Chennai.
- 3.The Public Prosecutor,
Madras High Court,
Chennai.



4.The Food Safety Officer,
Code No.527, Kodungaiyur Zone,
Tamilnadu Food Safety and Medicine,
Administrative Department,
No.33, West Jones Road,
Saidapet, Chennai - 600 015.

+1cc to Mr.S.Selvaraj, Advocate SR. No.61069

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SPD (CO)
PR (07/12/2021)