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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.15966 OF 2017

&

CRL.M.P.NOS.9906 AND 9907 OF 2017

(Through Video Conference)

R.Ramanan

... Petitioner

.Vs.

The Food Safety Officer,
Pedhanaickenpalayam Block,
Attur Taluk,
Salem District.

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.189 of 2016 on the file of the learned Judicial Magistrate Court No.II, Attur and quash the same.

For Petitioner : Mr.Zeenath Begum

For Respondent : Mr.S.Vinothkumar
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings initiated by the respondent.

2. The case of the prosecution is that the Food Safety Officer lifted the sample of Sago from the petitioner's Sago Factory on 17.12.2013 and the same was sent to the Food Analyst Laboratory on 18.12.2013 and the report was received on 26/12/2013, which would indicates that it contains some whitener, which was not fit for human use. Thereafter, sanction was sought only on 26.03.2014, after a delay of 88 days and in



fact, it is contrary to Section 42 of the Food Safety and Standards Act. Finally, the Commissioner of Food Safety sanctioned prosecution on 19.10.2015 and the complaint was filed only on 08.11.2016. Though the proviso to Section 77 of the Act permits the complainant to file a complaint within an extended period of three years, for such delay, the reasons have been mechanically recorded by the Commissioner of Food Safety in writing in this case, as if there is an administrative delay. No reasons whatsoever mentioned as to the nature of administrative delay. That itself clearly indicates that the Commissioner of Food Safety has not applied his mind and just for the statistical purpose, this complaint has been filed. This adulterated content was unearthed during the seizure followed by the report, permission would have been sought within a period of 14 days sending recommendation as contemplated under Section 42 of the Act.

3. These violations are apparent on the face of record. Despite this Court has indicated in the previous occasions that these are all the violations by the officers, who are launching prosecution, such violations are repeatedly unabated.

4. In such view of the matter, this Court is of the view that though for same violation, this Court would have quashed the complaint, however, taking note of the fact that whitener which was meant for using textile and washing materials, it has been used in the food items, for which the Commissioner has mechanically passed an order sanctioning the prosecution, on the ground that there is an administrative delay. Such order of the Commissioner is highly deprecated. In the similar matter, this Court in a similar petition in CrI.OP.No.18875 of 2016 in the case [M/S.Thillaikkarasi Sago Factory vs The State of Tamil Nadu] has held in paragraph 16 and 17 as follows,

"16. In the opinion of this Court, the Commissioner of Food Safety has not approached the issue with the solemnity it requires and has in a cavalier manner, exercised the powers under the Proviso to Section 77 of the Act, by saying that the delay was due to administrative reasons. When a person has to be prosecuted in a Court of law for a criminal offence, it is the duty of the State to follow the letter and spirit of the legislation. Of course, on this short ground alone, the entire prosecution cannot be quashed, for, that will lead to such offenders going scot-free for the lapse of administrative authorities. The Act is intended to secure safe food stuffs for the common man and the very purpose of this Act will be defeated if the prosecution is quashed on such ground.



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17. In the result, the order dated 01.10.2015 passed by the commissioner of Food Safety, Office of the commissioner of Food Safety and Drug Administration, Chennai-6, condoning the delay in filing the prosecution is hereby set aside. The matter is remitted to the Commissioner of Food Safety, Office of the Commissioner of Food Safety and Drug Administration, to apply his mind on the facts and circumstances of the case and pass orders in accordance with law under Proviso to Section 77 of the Act, within one month from the date of receipt of a copy of this order. Until then, the Trial Court shall not proceed further in C.C.No.37 of 2016 on the file of the Judicial Magistrate Court-I, Salem."

5. Following the above judgment, this Court is also inclined to set aside the order and remand the matter back to the Commissioner of Food Safety to apply his mind in the facts and circumstances of the case and pass orders in accordance with law under Proviso to Section 77 of the Act, within a period of one month from the date of receipt of a copy of this order. Until then, the Trial Court shall not proceed the case further in **C.C.No.*189 of 2016** on the file of the ***Judicial Magistrate-II, Attur.**

6. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)
(26/11/2021)

***Corrected as per the order made
in CrI.OP.No.15966 of 2017
dated 24.01.2022**

Sd/-

**Assistant Registrar(CS VII)
(08/03/2022)**

//True Copy//

Sub Assistant Registrar

rpp/gd



To

1. The Judicial Magistrate Court No.II,
Attur.
2. The Food Safety Officer
Pedhanaickenpalayam Block
Attur Taluk
Salem District.
3. The Public Prosecutor,
High Court of Madras.

Copy To

**The Section Officer,
Criminal Section, High Court,
Madras-104.**

***To be substituted the
order already
despatched on
29.12.2021**

+1cc to Mr.Zeenath Begum, Advocate, S.R.No.58586

CRL.O.P.NO.15966 OF 2017

SSV(CO)
PBS/01/12/2021
PM/09/03/2022