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Crl.O.P(MD)No.4197 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 04.08.2021

ORDER PRONOUNCED : 22.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**

Crl.O.P.(MD)No.4197 of 2021

and

Crl.M.P(MD)No.2330 of 2021

1.Antony Raj

2.Balaji

... Petitioners/Accused Nos.1&2

Vs.

State represented through
The Food Safety Officer,
Code No.413,
Dindigul Town-11,
Dindigul District.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in connection with the impugned charge sheet in C.C.No.446 of 2020 on the file of the learned Judicial Magistrate Court No.2, Dindigul, Dindigul District and quash the same insofar as the petitioners are concerned.

For petitioners : Mr.S.Sarvagan Prabhu
For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.Side)

ORDER

This petition is filed seeking quashment of C.C.No.446 of 2020 on the file of the learned Judicial Magistrate No.II, Dindigul.

2.The case of the prosecution in brief is as follows:-

3.On 18.05.2017, the respondent, who is the Food Safety Officer of Dindigul Town, made a surprise inspection on the shop of the petitioners. During that surprise inspection, he took the samples of Padam Milk found in the vessel at the shop. By following due process, which is contemplated under the provisions of Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011, he took the samples of Padam Milk and sent the same for analysis on 18.05.2017.

4.On 07.06.2017, the report of the sample was received from the lab and on 12.06.2017, it was intimated that it is substandard quality, which does not satisfy the requirement of minimum standards that has been prescribed under regulation of 1.2 (5) r/w regulation 2.1.1(1) of the Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011. On the basis of the report,



the Designated Officer after obtaining approval from the Commissioner of Food Safety directed the respondent herein to file the complaint, which was also filed.

5. Seeking quashment of the aforesaid complaint, this petition came to be filed mainly on the ground that the offence under Section 51 of the Food Safety and Standards Act, 2006 is punishable only with fine. That is to be adjudicated under Section 68 of the Act. So, the learned Judicial Magistrate, before whom the complaint was filed, has no jurisdiction or power to make the adjudicating process.

6. The next contention is that the respondent violated the Rule of 3.1.1. of Food Safety and Standard Rules, 2011. Moreover, there is a bar by limitation, that has not been properly explained.

7. It is not denied that the petitioners are running a shop called B.G.Naidu Sweets situated at No.9, Spensor Compound, Thiruvalluvar Salai, Dindigul and on 18.05.2017 at about 12.30 pm., sample was taken from the Padam Milk, which was available in the shop for sale to the public. After completing the formalities, it was sent to the lab for analysis on 18.05.2017. It was received by the lab on 19.05.2017 and the lab report was also received on 07.06.2017 by the Designated Officer. A copy of the same was also sent to the petitioners on 12.06.2017.

8. From the report, it was found that the Padam Milk, which was exhibited for sale, was found to be substandard, which does not satisfy the requirement of minimum standard that has been prescribed under the specific rules as mentioned above.

9. The petitioners did not exercise their option to retest the sample within 30 days from the date of receipt of the notice. Reminder was also sent to the petitioners. That was not properly responded. Now, the petitioners are facing charge under Sections 51 and 63 of the Food Safety and Standards Act, 2006. Since the report received by the Designated Officer was sent to the petitioners, they did not exercise their option to retest the same. Now, the result of the test has become conclusive to the effect that it did not satisfy the requirement of minimum standard that has been prescribed in the aforesaid Rules. So, it is a substandard quality.

10. Now, the petitioners are on the technical ground. According to them, Section 51 of the Act prescribes only punishment. So, it has to be adjudicated only by the Adjudicating Authority, which was also decided by this Court in Crl.O.P.(MD) No.16501 of 2016 dated 19.03.2020. When a similar problem arose, this Court was of the view that Section 51 of the Act is liable to be proceeded only under Section 68 of the Act. So, Section 51 of the Act cannot be clubbed along with Section Section 63 of the Act. The fact remains that the



I mentioned above, the sample was taken on 18.05.2017, but the complaint was filed on 20.01.2020, which means after a lapse of 2½ years. The reason for the delay has not been properly explained.

11.In the counter, it has been stated that as per Section 473 of Cr.P.C., the delay can be condoned based upon the special reasons furnished. Here, the reason for the delay as mentioned in the complaint itself is that on 06.07.2017, the draft charge sheet was prepared and submitted to the Designated Officer, but the legal advisor post was kept vacant. So, they were not in a position to get approval from the Assistant Public Prosecutor. So, there was a delay in filing the complaint. Such type of casual explanation cannot be accepted in the absence of any specific acceptable ground and reasons. The reason that the post of Assistant Public Prosecutor was kept vacant and only because of that, they were not in a position to get approval cannot be a ground, which cannot be legally accepted. If really it was so, then the complainant ought to have filed a petition under Section 473 of Cr.P.C., before the concerned Court seeking extension of time for condoning the delay.

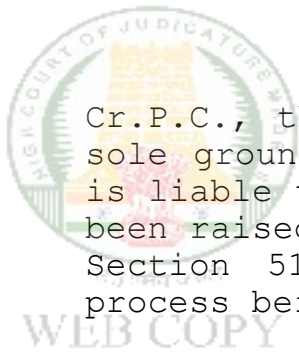
12.It appears that no such petition was filed before the trial Court seeking condonation of delay. As per the Act, within a year from the date of lifting the sample, the complaint must be filed. Here, as I mentioned earlier, there is a delay of 2½ years, which has not been properly explained on legal ground and even on the factual ground, no such attempt has been made to file the delay condone petition or seeking extension of time. So, in the absence of any such attempt on the part of this petitioners, the ground that has been made now cannot be accepted.

13.Section 77 of the Food Safety and Standards Act, 2006 is extracted hereunder:-

"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 an offence.

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

14.As per this Act, the Commissioner of Food Safety must record the reasons for condoning the delay or for giving permission to the respondent to file the complaint, after the 1 year period is over. Here, as I mentioned earlier, the Commissioner of Food Safety has granted permission on 08.01.2020, but the reasons as to whether the delay has been condoned and the reason was recorded by the Commissioner were not placed on record. Even in the counter affidavit, nothing has been stated except that under Section 473 of



Cr.P.C., the trial Court is competent to condone the delay. On the sole ground itself, I am of the considered view that this petition is liable to be allowed without going into the other issues that has been raised by this petitioners to the effect that the offence under Section 51 of the Act can only be proceeded with adjudicating process before the Magistrate concerned.

15.In the result, this petition stands allowed. The impugned complaint in C.C.No.446 of 2020 pending on the file of the learned Judicial Magistrate No.II, Dindigul is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate II,
Dindigul.
- 2.do through The Chief Judicial Magistrate,
Dindigul.
- 3.The Food Safety Officer,
Code No.413,
Dindigul Town-11,
Dindigul District.

Copy to:

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

**order made in
Crl.O.P. (MD)No.4197 of 2021
22.10.2021**

RS/JC (29.10.2021) 4P 5C

<https://hcservices.ecourts.gov.in/hcservices/>