

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	10.08.2021
DELIVERED ON	02/09/21

WEB COPY

CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****Cr1.RC(MD)No. 736 of 2016**

1. Arockiyam
2. Somasundaram

...Petitioners/Appellants/A-1 & A-2

Vs.

The Food Protection Officer,
Devakottai.
(No.195)

...Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the order passed in C.A.No. 35 of 2015 dated 20.10.2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, in S.T.C.No.1710 of 2014 dated 23.06.2015 on the file of the learned Judicial Magistrate, Devakottai.

For Petitioners : Mr.V. Kannan

For Respondent : Mr.K. Sanjai Gandhi
Government Advocate (crl. Side)

ORDER

This criminal revision case has been preferred by these petitioners against the Judgment, dated 20.10.2016 in C.A.No. 35 of 2015, passed by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, confirming the Judgment, dated 23.06.2015 in S.T.C.No.1710 of 2014, passed by the learned Judicial Magistrate, Devakottai.

2. The learned counsel appearing for the petitioners would submit that the trial Court failed to note that the respondent has not given any particulars about the quality and quantity of the contraband and the respondent has not followed the procedure during the preparation of seizure mahazar. He would further submit that the trial Court had deliberately failed to procure reliable and credible evidence of independent persons as the alleged occurrence has taken place. He would further submit that the prosecution has failed to prove the occurrence as alleged and therefore, he prays to allow the Criminal Revision Case.

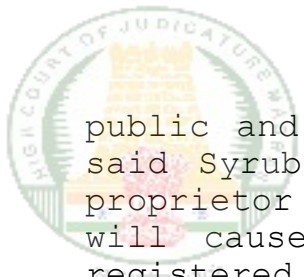


3. It is stated in the counter affidavit filed by the respondent that the second petitioner herein stated that his product Sri Vinayagar Sarbath Nannari was failed to agitate before the designated officer, that the above product was not his manufacture product of the sample taken by the Food Safety Officer. On receipt of the notice form of the intimation of lab report (Ex.P.14 in S.T.C.No.1710 of 2014) send by the Designated officer for any agitate in the food lab result Form VIIA of Madurai. It is further stated that the trial Court note that in Ex.P.11, the name of proprietor is mentioned for that above said sample as N.Somasundaram S/o.Nagarajan in their Registration certificate obtained from Tamilnadu Food Safety and Drug administration department. In the Food Safety Standards and Act, 2006, Section 3.1(zd) mentioned manufacture means a person engaged in the business of manufacturing any article of food for sale and includes any person who obtains such article from another person and packs and labels it for sale or only labels it for such purposes. It is further stated that, further the second petitioner has not agitate the same subjection matter during the trial in the Judicial Magistrate Court by adduced evidence to contradict the Food Safety Officers Statements and prove his innocence. It is further stated that the petitioners/accused/appellants had not raised the false label issue in both trial Court and Sessions Court.

4. Heard on either side and perused the material documents available on record.

5. The revision petitioners were charged for an offences under Section 51, 52, 59(1) of Food Safety and Standards Act, 2006 and they were convicted and sentenced to undergo Rigorous imprisonment for 6 months, each, and to pay a fine of Rs.10,000/-each, in default to undergo simple imprisonment for 1 ½ month, each, for the offence under Section 59(1) of Food Safety and Standard Act, 2006, by the Judgment passed by the learned Judicial Magistrate, Devakottai, dated, 23.06.2015 in S.T.C.No.1710 of 2014. Against the said Judgment, dated 23.06.2015 an appeal was preferred by these petitioners in C.A. No.35 of 2015 before the learned Sessions Judge, Fast Track Mahila Court, Sivagangai. The appellate Court has modified the conviction and passed sentence to undergo rigorous imprisonment for 2 months, each, and to pay a fine of Rs.10,000/-, each, in default to undergo simple imprisonment for 1 ½ month, each. Aggrieved over the said Judgment, the petitioners are before this Court by way of filing the Criminal Revision Case.

6. The case of the prosecution is that the first petitioner is running a Grocery Shop in the name and style of Arojai Maligai near Sarugani Bus Stand. On 24.02.2014, the respondent made a surprise visit to the first petitioner's grocery shop and conducted an exploration. During the search the first petitioner was found in possession of 750ml., bottles of misbranded Nannari Syrub in the name of "Sri Vinayaga Sarpath (Nannari)" for retail sale to the



public and customers. More over the fake label was fasten on the said Syrub bottles in the name of "Sri Vinayaga Sarpath Nannari, proprietor K.Balamurugan". If the public will consume the same, it will cause injuries to health and hence the respondent officer registered a case against these petitioners in No.195 for the offences under Sections 51, 52, 59(1) of Food Safety and Standard Act, 2006. After the investigation, the respondent police has filed charge sheet against these petitioners for the offences under Sections 51, 52, 59(1) of Food Safety and Standard Act, 2006.

7. The point for consideration is Whether the charge for an offence under Section 59(1) of Food Safety and Standard Act, 2006 is proved against A-1 & A-2 beyond reasonable doubt?

8. The ingredients of Section 59(1) of Food Safety and Standard Act, 2006 is extracted hereunder:-

"59. Punishment for unsafe food:- Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable:-

(i). Where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;."

9. The contraband was seized from first petitioner/A-1's shop, which was well established by the prosecution. As per Form 7A report the standard of Nannari Sarbath is not as per standard.

Total Soluble solids	DGHS method	Manual	55.0%	Not less than 65% by weight.
Benzoic acid	DGHS method	Manual	982 PPM	Shall not exceed 600 PPM
Added colouring matter	DGHS method	Manual	Carmoisine & Sunset Yellow total dye 200 PPM	May be positive

Therefore, A-1 is responsible for selling the Nannari sarbath which was not upto the standard and it is unsafe for human consumption.

10. Whether the second petitioner/A-2 is the manufacturer of the Nannari sarbath. As per label, the Proprietor is one K.Balamurugan and the company name is Sri Vinayaga Sarbath. The label also bogus. Ex.P.11/ registration certificate is in the name of A-2. Admittedly, the label is also bogus. The prosecution should prove that the Nannari sarbath bottles and the labels were manufactured by A-2.



11. Both the Courts below have wrongly shifted the burden of proof on the second petitioner. If the label is bogus one how the second petitioner/A-2 being same name contained in both sarbath bottle and registration certificate is responsible. There was no independent witness was examined to prove that the Nannari sarbath bottles were received by A-1 from A-2 for sale. Therefore, the charge framed against the second petitioner/A-2 is not proved.

12. Accordingly, the impugned judgment passed by the learned Sessions Judge, Fast Track Court, Mahila Court, Sivagangai, in C.A.No.35 of 2015, dated 20.10.2016, confirming the conviction and sentence imposed by the learned Judicial Magistrate, Devakottai, in S.T.C.No.1710 of 2014, dated 23.06.2015, is hereby confirmed insofar as the first petitioner/A-1 is concerned and set aside insofar as the second petitioner / A-2 is concerned. The second petitioner /A-2 is acquitted of the charges framed against him. Fine amount, if any paid, shall be refunded and bail bonds, if any executed, shall stand terminated. Since the first petitioner / A-1 is in bail, the trial Court is directed to secure and confine him, in accordance with law. Bail bonds, if any executed, shall stand terminated.

13. In fine, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

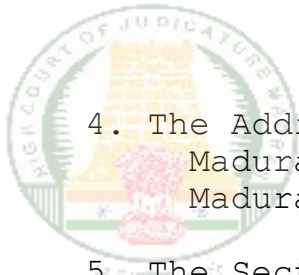
Sub Assistant Registrar(CS)

ksa

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 Sessions Judge,
Fast Track Mahila Court,
Sivagangai.
2. The Judicial Magistrate,
Devakottai.
3. The Food Protection Officer,
Devakottai.



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

5. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Cr1.RC(MD)No. 736 of 2016
02.09.2021

RD(21.09.2021) 5P 6C