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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19..01..2022

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRIMINAL ORIGINAL PETITION NOS.18881 AND 18882 OF 2016
AND
CRL.M.P.NOS.8883 AND 8885 OF 2016

Crl.O.P.No.18881 of 2016:-

1. P.Panneer Selvam (M / 42 years),
Son of K.Perumal,
Manager, SVS Classic Foods,
SF No.47, Ayodhiyapattinam Post,
Salem District-636 103.
2. V.Anbazhagan (M / 60 years),
Son of R.Varadarajan,
Managing Partner, SVS Classic Foods,
SF No.47, Ayodhiyapattinam Post,
Salem District-636 103.

... Petitioners

-Versus-

Thiru.P.Jaganathan, B.Sc.,
The Food Safety Officer (A/c),
Ayodhiyapattinam Block,
Salem District-636 103.

... Respondent

Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records in STC No.249 of 2016 pending on the file of the learned Judicial Magistrate-II, Salem and to quash the same.

Crl.O.P.No.18882 of 2016

1. P.Panneer Selvam (M / 42 years),
Son of K.Perumal,
Manager,
SVS Classic Foods,
SF No.47, Ayodhiyapattinam Post,
Salem District-636 103.



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2. V.Anbzhagan (M / 60 years),
Son of R.Varadarajan,
Managing Partner,
SVS Classic Foods,
SF No.47, Ayodhiyapattinam Post,
Salem District-636 103.

3. M/s.SVS Classic Foods,
Rep. By its Managing Partner,
Mr.V.Anbalagan,
Varalakshmi Towers,
3rd Floor, 127/1, Gandhi Road,
Asthampatti, Salem 636 007.

... Petitioners

-Versus-

Thiru.P.Jaganathan, B.Sc.,
The Food Safety Officer (A/c),
Ayodhiyapattinam Block,
Salem District-636 103.

... Respondent

Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records in STC No.146 of 2016 pending on the file of the learned Judicial Magistrate-II, Salem and to quash the same.

For Petitioner(s)	: Mr.V.P.Sengottuvel for petitioners in both Original Petitions
For Respondent	: Mr.C.E.Pratap, Government Advocate (Criminal Side) for respondent in both Original Petitions

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the criminal prosecutions instituted in C.C.Nos.249 of 2016 and C.C.Nos.146 of 2016 for offences under Section 3, sub-section (1)(a), clause (zz), sub clause (i)(ii), (v) (xi) and Section 26, sub-section (1) & (2)(i)(ii)&(v) and Section 27(1) of Food Safety Standards Act, 2006 and Regulation 2.4.14:2 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and Section 3, sub section (1), clause (zf), (B), (II), Section 23(1) of Food Safety and



Standards Act, 2006 and Regulations 2.2.1:3, 2.3.1:1 and 2.3.1:5 of Food Safety and Standards (Packaging and Labelling) Regulations, 2011 r/w 52 and 59(i) of the Act pursuant to private complaints filed by the respondent.

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

(i) that one SVS Classic Foods is a wholesaler, stockist and retailer of Sago products. The petitioners 1 and 2 in both the original petitions are Manager and Managing Partner of SVS Classic Foods, and the 3rd petitioner in Crl.O.P.No.18882 of 2016 is the firm - SVS Classic Foods, represented by its Managing Partner.

(ii) On 10.10.2013, the respondent conducted inspection and took two samples of sago powder under mahazars and sent them for analysis. Thereafter, on 23.01.2013, respondent received two separate reports dated 21.10.2013. According to the report, number of sago grains exhibit fluorescence under UV light was absent and hence, the the petitioners have violated the provisions of the Act and Rules. The respondent after having obtained sanction from the authority filed a private complaint on 25.01.2016 and 16.03.2016 and the learned Magistrate took cognizance of offences and issued process. Seeking to quash the private complaints, the petitioners are before this court with these original petitions.

3. Mr.V.P.Sengottuvel, the learned counsel for the petitioners would submit that the petitioners are only wholesaler, retailer and stockists, not the manufacturer of sago powder and therefore, he cannot be made liable for the alleged offence. That apart, under section 42(3) of the Food Safety and Standards Act, 2006 (hereinafter referred to as the 'Act'), after the receipt of the food analysis report, the designated officer after scrutiny of the report shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within a period of fourteen days to the Commissioner of Food Safety for sanctioning prosecution. In the instant case, even though the reports of the food analyst were received on 23.10.2013 and requests were made only on 13.12.2014 which was beyond the mandatory period of fourteen days prescribed under Section 42(3) of the Act.

4. The learned counsel would further submit that, under Section 77 of the Act, if the Food Safety Officer / designated officer decides to launch the prosecution he should do it within one year, however, proviso to Section 77 of the Act enable the



Commissioner to condone the delay for a period of three years. In the instant case, the complaints were filed on 25.01.2016 and 16.03.2016, beyond the period of one year. However, the sanctioning authority had assigned only a vague reason for sanctioning prosecution of the petitioners, stating that, administrative reasons caused the delay in filing the complaint in time, which according to the learned counsel for the petitioners was not sound and valid reasons and mere administrative delay cannot be a ground condoning delay for sanctioning prosecution.

5. The learned counsel would lastly submit that for the very same contravention of provisions of Food Safety and Standards Act, 2006 and the rules thereunder two separate complaints were filed and based on the same two separate criminal proceedings have been instituted by the learned Magistrate which cannot be maintained in the eye of law.

6. Per contra, the learned Government Advocate appearing for the respondent would submit that, even though the report was received on 23.10.2013, due to some unavoidable administrative reasons, there had occurred a delay in sending the request for sanctioning prosecution and the delay was bona fide, and the complaint could not be quashed on that ground. The sanctioning authority considered the delay in a proper perspective and there is no illegality in it.

7. So far as filing of two separate complaints is concerned, according to the learned Government Advocate, since two samples were drawn from the premises of the petitioners' firm, two separate sanction orders were obtained and based on that two separate complaints were filed and as such no illegality or irregularity could be found in the procedure adopted by the respondent.

8. I have considered the rival submissions and perused the records carefully.

9. It could be seen from the available records that, on 10.10.2013, the respondent inspected the premises and took two different set of samples of the same product and sent them for analysis. The analysis reports dated 21.10.2013, were received by the designated officer on 23.10.2013, he did not send his recommendations within fourteen days to the Commissioner of Food Safety, seeking for sanctioning prosecution though the alleged contravention is punishable with imprisonment. However, a request for sanctioning prosecution was made only on 13.02.2014 which was beyond the mandatory period of period of 14 days and thus, admittedly, there has been a clear violation of mandatory provisions.



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10. Nextly, it is not in dispute that the Food Analyst reports were received 21.10.2013 and the one year period prescribed under Section 77 of the Act to take cognizance of the offence was expired on 09.10.2014, whereas the complaints were filed on 25.01.2016 and 16.03.2016 respectively. Section 77 of The Food Safety and Standards Act, 2006 reads as under:-

"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".

Admittedly, the prosecution in the instant cases were not launched within a period of one year from the date of commission of offence. However, on a careful perusal of records, more particularly, the order of the sanctioning authority, it could be seen that sanction for prosecution was approved on 19.10.2015 and 21.01.2016 respectively and the sanctioning authority condoned the delay in launching the prosecution holding that the delay was caused due to administrative reasons. There is an embargo under Section 77 of the Act, for the court to take cognizance of an offence beyond the period of one year from the date of commission of offence. However, the sanctioning authority for the reasons to be recorded approve the prosecution within an extended period of upto three years. The said proviso has been enacted with the object that due to some unavoidable reasons, there might be some delay occurred in launching the prosecution and in such circumstances, for the reasons to be recorded in writing, the sanctioning authority may approve the prosecution. However, the sanctioning authority in the instant cases, grant approval without any reason whatsoever, even though the authority has stated that, due to administrative reason, without explaining the reason for the delay, the reason assigned by the sanctioning authority for condoning the delay in launching the prosecution, cannot be a valid and sound in law.

11. That apart, admittedly, the inspection was conducted on 10.10.2013 and two set of samples were drawn from the petitioner for the same products, however, for that, there cannot be two separate prosecution and separate complaints cannot be maintained. On this ground also, the criminal prosecutions are liable to be quashed.



12. For the foregoing discussions, this court is of the view that the respondent failed to follow the mandatory requirements and on that ground the complaints are liable to be quashed.

In the result, both the original petitions are allowed and the criminal prosecution instituted in STC No.249 of 2016 and STC No.146 of 2016 on the file of the learned Judicial Magistrate-II, Salem are quashed in its entirety. Consequently, connected MPs stand closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Judicial Magistrate-II, Salem.

2.Do-thro The Chief Judicial Magistrate, Salem.

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.3349

Criminal Original Petition
Nos.18881 & 18882 of 2016

JP II (CO)
PM/02/03/2022