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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.1828 OF 2022

V.Balakrishnan,
S/o.Velaisamy,
Proprietor Kadavul Mixture Company,
No.11, Thursday Postal Colony,
A, Goundanur, Perur Chettipalayam,
Coimbatore 641010.

... Petitioner

Vs.

1. The State Represented by,
Food Safety Officer,
Area Code No.563,
Through the Designated Officer,
Coimbatore District.
2. Tamil Nadu Food Safety and
Drugs Administration Department,
No.219, Race Course,
Coimbatore 641 018.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in STC.No.1561 of 2018 on the file of Judicial Magistrate No.V, Coimbatore and quash the same.

For Petitioner	:	Mr.S.Pooja Shree
For Respondents	:	Mr.E.Raj Thilak, Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.1561 of 2018, on the file of the Judicial Magistrate No.V, Coimbatore.

2.The learned counsel for the petitioner submitted that the petitioner is the Proprietor of Kadavul Mixture Company at No.2, T.G.R Nagar, Telungupalayam, Coimbatore, wherein the respondent



inspected the premises on 08.05.2017, at about 03.00 p.m., and obtained 4 sample packs of mixture and one of the sample pack has been sent to Food Analyst on 08.05.2017, in turn the Food Analyst report has been sent on 17.08.2017. In the report, dated 17.08.2017, it is stated that the samples were analysed from 03.08.2017 to 17.08.2017. She further submitted that as per Section 42(2) of the Food Safety and Standards Act, 2006, (Hereinafter referred to as Act) the analyst after receiving the sample from the Food Safety Officer, shall analyse the sample and send the analysis report mentioned method of sampling and analysis within fourteen days to Designated Officer, with a copy to Commissioner of Food Safety. Added to it, as per Section 45 (3) of the Act, the Designated Officer after scrutiny of the report of Food Analyst 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 recommendation within 14 days to the Commissioner of Food Safety for sanctioning prosecution. In this case, on 08.05.2017, the sample packs were collected from the petitioner and forwarded to the Food Analyst. Whereas, the samples were analysed on 03.08.2017 to 17.08.2017 by the Food Analyst and the same is crystal clear from the report dated 17.08.2017, which is violation of Section 42(2) of the Act.

3. She further submitted that the case is hit by Section 77 of the Act. The complaint to be filed within one year from the date of inspection of taking samples. In this case, the date of inspection and the samples collected on 08.05.2017 and the complaint was filed and taken on file on 18.06.2018, which is beyond the limitation period. Hence, she prayed for quashing of the proceedings against the petitioner.

4. The learned Additional Public Prosecutor appearing for the 1st respondents submitted that in this case, the petitioner's shop was inspected on 08.05.2017, four sample packs of mixture were collected and sent to the Food Analyst. The Food Analyst, vide its report, dated 17.08.2018 found the samples to be mixer filling under the category of proprietary food under Regulation 2.12.1 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. The report is that the said sample is unsafe under Section 3(1)(xx) of Food Safety and Standards Act, 2006, since it contains added colouring matter, Tartrazine the addition of which is not permitted under Food Category system 15.1 of Appendix A of Regulation 3.1 of Food Safety and Standards (Food Products Standards and Food Additive) Regulation, 2011. Hence, the petitioner committed the offence. He further submitted that the points raised by the learned counsel for the petitioner are to be decided only during trial and not in this quash petition.



5.This Court considered the rival submissions and perused the materials available on record.

6.In this case, the four samples of mixture have been collected on 08.05.2017 from the petitioner's shop, which were sent on the same day to the Food Analyst, but it has been analysed between 03.08.2017 and 17.08.2017, which is beyond 14 days violating Section 42(2) of the Act. Likewise, the copy of the Food Analyst Report was forwarded to the Designated Officer on 17.08.2017. The Designated Officer has forwarded his recommendation for sanctioning prosecution against the petitioner only on 08.05.2018, which is almost a year and it is hit by Section 42(3) of the Act. Further, the complaint to be filed within one year from the date of inspection of taking samples. In this case, it has not been done, hence, the case is hit by Section 77 of the Act.

7.In view of the above, the continuation of the proceedings in S.T.C.No.1561 of 2018, on the file of the Judicial Magistrate Court No.V, Coimbatore would amount to abuse of process of law and the same is hereby quashed against the petitioner. This Criminal Original Petition is, accordingly, allowed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.V,
Coimbatore.
 2. The Designated Officer,
Food Safety Officer,
Area Code No.563,
Coimbatore District.
 3. The Tamil Nadu Food Safety and
Drugs Administration Department,
No.219, Race Course,
Coimbatore 641 018.
 4. The Public Prosecutor,
High Court, Madras.
- +1cc to M/s.A.Parthasarathy, Advocate, S.R.No.6216

Cr1.O.P.No.1828 of 2022

KSM(CO)
RLP(22/02/2022)