

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 21.04.2022	Orders pronounced on 06.05.2022
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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.26918 & 26919 of 2016
and
Crl.M.P.Nos.13544 to 13547 of 2016

1. C.S.Chandrika

2. M/s.Chandrika Home Needs
No.65, 1st Avenue
Ashok Nagar
Chennai - 600 083.

...Petitioners in Crl.O.P.26918/2016
- 3rd and 5th Accused

N.Jayaraj

...Petitioner in Crl.O.P.26919/2016
- 4th Accused

Vs.

State of Tamil Nadu
at the instance of
Food and Safety Officer
and Medicine Administrative Department
Chennai District.

...Respondent in both Crl.O.Ps.

These Criminal Original Petitions have been filed under
Section 482 Cr.P.C. to call for the records in C.C.No.4052 of
2016 on the file of learned IX Metropolitan Magistrate,
Saidapet, Chennai and quash the same.

For Petitioners : Mr.V.Vikram Veerasamy
in both Crl.O.Ps. for
M/s.C.V.Shailendharan

For Respondent : Mr.R.Murthi
in both Crl.O.Ps. Government Advocate

COMMON ORDER

Both the petitions have been filed to call for the records in C.C.No.4052 of 2016 on the file of learned IX Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. There are totally five accused in C.C.No.4052 of 2016. Petitioners in Crl.O.P.No.26918 of 2016 are 3rd and 5th accused and the petitioner in Crl.O.P.No.26919 of 2016 is 4th accused. Respondent filed this case against the petitioners and co-accused 1 & 2 for violating the provisions of Food Safety and Standards Act, 2006. The substance of the allegations made against the accused in this case is that Food and Safety Officer Mr.A.Chidambaram, inspected M/s.Chandrika Home Needs at about 12.50 p.m on 16.12.2014. After introducing himself and following necessary procedures, he took samples of "Diabetics Dezire Natural" on paying Rs.464/-. After purchasing the sample, he made appropriate sealing of the samples, in the presence of fourth accused, obtained his acknowledgment, sent one sample to Food Analysis Laboratory, Kings Institute, Guindy, for analysis. The analysis report dated 05.01.2015 shows that food sample is "sub-standard and misbranded". It was intimated to the fifth accused and second accused on 21.01.2015. Second accused expressed his desire to send the second sample to the Central Food Laboratory through a letter dated 23.02.2015 and 27.03.2015. Accordingly, the second sample was sent for analysis to the Central Food Laboratory, Calcutta. The report of Central Food Laboratory, Calcutta dated 17.06.2015 was received on 19.06.2015, wherein it is stated that the sample is "unsafe and misbranded". Thus, accused have committed the offences punishable under Sections 59(i) and 52(1) of Food Safety and Standards Act, 2006.

3. This case was taken cognizance by learned IX Metropolitan Magistrate, Saidapet. Challenging the taking cognizance, these petitions are filed for quashing.

4. Learned counsel for the petitioners in both the petitions submitted that the petitioners displayed "Diabetics Dezire Natural" only after verifying the existence of essential statutory licence given by the respondent. Petitioners are mere retail sellers and they cannot be expected to know the delicate details of contents of a product. Petitioners bonafidely displayed the product after verifying the statutory licence. There is no allegations against the petitioners that they intentionally and purposely sold the "Diabetics Dezire Natural". The allegation of misbranding i.e., non-mentioning of anti-

baking agent is completely within the domain of first and second accused and it is out of the domain of retail sellers. There are violations of certain mandatory provisions of Food Safety and Standards Act, 2006. As per section 42(2) of the Act, after receiving the sample, Food Analyst should send the analysis report within 14 days to the Designated Officer. In the case before hand, it is alleged that the food sample was sent to Food Analyst on 16.12.2014, but the Food Analyst report was received only on 05.01.2015. There is a delay of 5 days in sending the report. After scrutinizing the report of the Food Analyst, the Designated Officer should decide as to whether contravention is punishable with imprisonment or fine and in the case of contravention punishable with imprisonment, he shall send his recommendation within 14 days to the Commissioner of Food Safety and Drug Administration, for sanctioning prosecution. However, the Designated Officer had, only on 10.07.2015, addressed the Commissioner of Food Safety and Drug Administration, seeking permission to launch prosecution. There is a huge delay in seeking the permission. As per Section 77 of the Act, no Court shall take cognizance of the offence under this Act, after expiry of the period of one year from the date of commission of offence. However, in this case, the complaint was filed in the Court only on 16.08.2016, more than one year after the date of taking of samples. For the failure to avail the mandatory provisions, the complaint is liable to be quashed. In support of his submissions, learned counsel for the petitioners relied on the order of this Court passed in CrI.O.P.(MD) No.5994 of 2019 (S.Sakthivel and another ..vs.. The State, represented by Food Safety Officer), for the proposition that the failure to follow the mandatory requirements, result in quashing the proceedings. He relied the order reported in (2021) 2 MadWN (Cri.) 508 (Jayaseelan ..vs.. State of Tamil Nadu) for the proposition that the delay in launching the prosecution without assigning reason is nothing but an abuse of process of law and the proceedings is liable to be quashed. The judgment reported in (2020) 3 MadWN (Cri.) 290 (Mohammed Yasith ..vs.. The Food Safety Officer) is relied for the proposition that if the product is found to be sub-standard, only adjudication is permissible and not the criminal prosecution. Thus, the learned counsel for the petitioners prays for quashing the proceedings.

5. In response, learned Government Advocate (CrI. Side) submitted that Food Analyst, Guindy report was received certifying the sample food "Diabetics Dezire Natural" was sub-standard and misbranded. The report was received by the Designated Officer on 06.01.2015. Since the food sample was sub-standard and misbranded, it was found to be in violation of Sections 59(i) and 52(1) of Food Safety and Standards Act, 2006. It is an adjudicating offence under Section 68 of Food Safety

and Standards Act, 2006 r/w. Rule 3.1.1(5) of Food Safety and Standards Rules 2011. This report was sent to the retailers and manufacturer on 20.01.2015 with specification of right to appeal. On 23.02.2015 and 27.03.2015, appeal letters were received from the manufacturing Company. Based on the appeal letters, another sample kept in the custody of Designated Officer was sent to Referral Lab at Calcutta. A final report in Form-A of Director General, Food Laboratory, Calcutta, dated 17.06.2015 was received on 19.06.2015 and this report certified that the food item was unsafe due to presence of heavy metal - aluminium and was also misbranded due to the presence of misleading statements in the label. This report was sent to the manufacturer on 29.06.2015. Since the food sample was certified as unsafe and misbranded, it is in violation of Section 59(i) and 52(1) of Food Safety and Standards Act, 2006, which is an offence punishable with imprisonment and fine. The Designated Officer sought permission to launch prosecution to the Commissioner of Food Safety on 10.07.2015. The permission was granted by the Commissioner of Food Safety and Drug Administration on 21.01.2016. Thereafter, the complaint was filed on 16.08.2016. This Court in M/s.Aachi Masala Foods (P) Limited ..vs.. State represented by its Food Safety Officer, in Crl.O.P.(MD) No.9346 of 2017 dated 22.12.2021 observed that wherever sanction to prosecute is pre-condition, the period taken for granting sanction to take cognizance has to be excluded. When the period taken for obtaining sanction ie., 193 days is excluded, the complaint is filed well within the time. The limitation commences in this case only from the date of knowledge of the commission of offence ie., from 17.06.2015, when the report of the Central Food Laboratory was received. The case was filed in time. Therefore, learned counsel for the respondent prays for dismissal of these petitions.

6. Considered the rival submissions and perused the records.

7. Petitioners have filed these petitions mainly on the grounds that Food Analyst report was not sent within 14 days, permission to prosecution was not sent within 14 days from the receipt of Food Analyst report by the Designated Officer and that the complaint was not filed within the period of one year from the date of commission of offence. Certain dates are important in this case for better appreciation of the case. In the additional counter filed by the respondent, a table is given giving the dates and events of this case. It is extracted for better appreciation of this case.

Sl.No	Type of Document	Date of Document
1	(VA-Date of Sampling (Form	2014/12/16
2	(B-Food Analyst Report (Form	2015/01/05
3	Food Analyst report received by Designated Officer, Chennai	2015/01/06
5	Report sent to Food Business Operators	2015/01/20
6	Appeal Received from Manufacturer	2015/02/23
7	Date of sample sent to Referral Lab	27/03/2015
8	Date of Central Food Lab Report	17/06/2015
9	Central Food Lab Report received by Designated Officer, Chennai	19/06/2015
10	Report Received by Manufacturer	29/06/2015
11	Recommendation of Designated Officer	10/07/2015
12	Sanction of Prosecution	21/01/2016

8. It is seen from the case set out and the submissions of learned counsel appearing for the parties, Food Analyst, Guindy found that food sample is sub-standard and misbranded, which is an offence to be adjudicated by the authority under the Act, ie., the Adjudicating Officer or the Tribunal, for violation of Section 51 and 52(1) of the Food Safety and Standards Act, 2006 under Section 68 of the Act. However, second accused, on receiving the copy of the Food Analyst report, sent appeal letters dated 23.02.2015 and 27.03.2015 to send the second sample to the Referral Lab for analysis. Accordingly, the second sample was sent to Central Food Laboratory at Calcutta. The Food Analyst report shows that the sample was found to be 'unsafe and misbranded', which is an offence under Sections 59 (i) and 52(1) of Food Safety and Standards Act, 2006 and punishable with imprisonment and fine. Only thereafter, the Designated Officer sought permission to prosecute the accused on 10.07.2015. The permission to prosecute was granted on 21.01.2016. Then complaint was filed before the Court on 16.08.2016.

9. The sample was taken on 16.12.2014, the Central Food Laboratory report stating the food sample as 'unsafe and misbranded' was received on 19.06.2015. Only then the Designated Officer came to know that the accused had committed the offence punishable under Sections 59(i) and 52(1) of Food Safety and Standards Act, 2006. Therefore, he addressed the

Commissioner seeking permission to prosecute on 10.07.2015 and the sanction for prosecution was granted on 21.01.2016.

10. There is one thing required to be considered by this Court. That is conflicting reports received from the Food Analyst, Kings Institute, Guindy and the Food Analyst, Central Food Laboratory, Calcutta. Food Analyst, Kings Institute, Guindy report shows that the food sample is 'sub-standard and misbranded', whereas the Central Food Laboratory, Calcutta report shows that the food sample is 'unsafe and misbranded'. Consequence of first report is only an adjudicating process with the possibility of imposition of penalty. The second report results in criminal prosecution. It has to be borne in mind that the second report was sent to Central Food Laboratory, Calcutta at the instance of second respondent/second accused. Second accused invited this prosecution by sending the food sample to Central Food Laboratory, Calcutta. When there are two conflicting reports for the samples lifted on the same day with reference to same batch of "Diabetics Dezire Natural", even if the Rule 2.4.6(1) says that the report of Referral Lab is final, this Court or anybody else is in predicament as to which report has to be taken into consideration, especially in a case of retailer.

11. In the cases before hand, the accused 1 & 2 are not the parties, but only retailers are the parties. They go by information supplied by the manufacturers. They are not expert in analysing the food samples. The fact remains that even after the sanction for prosecution was given on 21.01.2016, the complaint was filed only on 16.08.2016. There is no proper explanation for delay in filing the complaint, after sanction for prosecution was given. Food Safety and Standards Act, 2006 has a specific provision with regard to the time limit for prosecution. It is a mandatory provision stating that no Court shall take cognizance of offence under this Act, after the expiry of period of one year from the date of commission of offence. There is also a proviso permitting the taking of cognizance, if the Commissioner of Food Safety for the reasons to be recorded in writing, approved the prosecution, within the extended period of upto three years. In the cases before hand, the sanction order shows that due to administrative reasons, the prosecution was sanctioned belatedly. This Court in the order reported in (2021) 3 MadWN (Cri.) 508 (cited supra) found that administrative delay cannot be cited as a reason for the delay in launching the prosecution. In the order referred by the learned counsel for the respondent in M/s.Aachi Food Masala Private Limited ..vs.. State (cited supra), reasons were assigned for the delay in sanctioning prosecution. However, in the case before hand, no reason is assigned, except the reason of administrative delay. This reason cannot be accepted. This

Court finds that in view of the delay in launching the prosecution, the case is C.C.No.4052 of 2016 on the file of learned IX Metropolitan Magistrate, Saidapet, Chennai is liable to be quashed as against the petitioners in these Criminal Original Petitions.

12. In this view of the matter, C.C.No.4052 of 2016 on the file of learned IX Metropolitan Magistrate, Saidapet, Chennai is quashed insofar as the petitioners in these Criminal Original Petitions/accused 3,4 and 5 alone and accordingly, these Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Mra

To:

- 1.The IX Metropolitan Magistrate,
Saidapet,
Chennai.
- 2.-do-through The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Food and Safety Officer
and Medicine Administrative Department,
Chennai District.
- 4.The Public Prosecutor,
High Court,
Madras.

+2ccs to Mr.C.V.Shailendharan, Advocate SR. Nos. 31138, 31139

Cr1.O.P.Nos.26918 & 26919 of 2016
and
Cr1.M.P.Nos.13544 & 13546 of 2016

SSN (CO)
PR (26/05/2022)