

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6222 of 2020
and
Crl.MP.No.3472 of 2020

Regina J Murali

...Petitioner

Vs.

State, Represented by
Food Safety Officer,
No.076, St.Thomas Mount Block,
Kanchipuram District.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to STC.No.440 of 2019 on the file of the Judicial Magistrate, Alandur and to quash the same.

For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
for Ojas Law Firm

For Respondent : Mr.A.Gopinanth
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed, invoking Section 48 Cr.P.C seeking orders to call for the records pertaining to STC.No.440 of 2019 pending on the file of the Judicial Magistrate, Alandur and to quash the same.

2.The case of the respondent is that on 02.11.2018 at around 5.30 p.m., the complainant went on a inspection to Jeppiaar Engineering College wherein the second accused was present at the relevant time. The complainant enquired about the drinking water facility provided by the college for which the second accused explained that the college has a decentralised system for potable water as per the industrial standards. Further, the complainant herein on the apprehension that the drinking water is being distributed in violation of the Food Safety and

Standards Act, collected samples of the RO water from the college mess as per the provisions of the Food Safety and Standards Act. The samples were sent to the Food Analyst on 03.11.2018 and the same has been acknowledged by the Food Analysis Laboratory, Guindy, Chennai. The Food Analyst by its report dated 31.12.2018 addressed to the Designated Officer declared that the sample to be substandard and unsafe for consumption. Subsequently, the result of the report was intimated to the accused and the accused has preferred an appeal before the Designated Officer, Kancheepuram District. Thereafter, the Designated Officer sent the requisite sample to the Referral Food Laboratory on 27.02.2019. The Referral Laboratory by its report dated 12.03.2019 stated that the sample purified RO water does not conform to chemical and microbiological parameters of the Indian Standards for Drinking Water.

3. Heard Mr.ARL.Sundaresan, the learned Senior counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed on record.

4. The learned Senior Counsel submitted that the Jeppiaar Engineering College is part of the Jeppiar Educational Trust wherein, the petitioner is Director of two Engineering Colleges and also the Chairman of school in the name of Jeppiaar Schools. The Petitioner has appointed Principal / Head of the Institution to manage the day to day management of the institutions. He further submitted that a perusal of the entire complaint reveals that there is no prima facie offence made out against the petitioner/accused. He further submitted that there is a discrepancy in the report submitted by the Food Analyst under Section 46 of the Act and the report submitted by the FSSAI Referral Laboratory. He further submitted that there is no presence of Coliform count in the report submitted by the Food Analyst, but, the report submitted by the Referral Food Laboratory suggests that coliform bacteria is detected. He further submitted that Section 42(3) of the Act indicates that the Food Analyst has to send the analysis report to the Designated Officer, within 14 days from the receipt of sample from the Food Safety Officer. The samples were sent to the Food Analyst on 03.11.2018 and there is same has been acknowledged by the Food Analysis Laboratory, Guindy, Chennai-600 032 and the analysis report was sent to the Designated Officer on 31.12.2018 and there is gross violation of the aforesaid provision under Section 42(3) of the Act. As per the Food Safety and Standard Rules 2011, clause 6 of Rule-2.4.2 clearly states that in case the sample cannot be analysed within 14 days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and

specifying the time to be taken for analysis. Therefore, the complaint cannot be sustained as against the petitioner and liable to be allowed.

5. The learned Government Advocate (Crl.Side) has filed Counter by stating that the samples were sent to the Food Analyst on 03.11.2018 and the same was duly acknowledged by the Food Analyst, Guindy, Chennai and the analysis report was sent to the Designated Officer on 31.12.2018 by the communication dated 12.11.2018. The food Analysts duly reported to the Designated Officer, Tamil Nadu Food Safety and Drug Administration Department, Chennai that the sample of purified water (RO Water) received vide reference cited 03.11.2018 cannot be analysed within the stipulated time of 146 days due to administrative reasons and also 14th day falls on the same day for many of the samples. Therefore, the sample will be taken for analysis and report sent in 15 days approximately. Therefore, as per Section 46(3) (ii) of that Act, the Food Analyst duly informed about the delay in analysis of the samples. He further submitted that the petitioner was given opportunity to file an appeal before the Director, FSSAI Referral Laboratory, Food Testing Laboratory, Indian Institute of Food Processing Technology, Thanjavur-613 005. Accordingly, three samples were sent to the Referral Laboratory, Thanjavur on receipt of the report from Referral Food Laboratory, Thanjavur on 08.12.2019 and lodged a complaint.

6. There are two accused in the complaint lodged by the respondent for the offences punishable under Section 51 and 59 (1) of Food Safety and Standards Act. Of these two accused, the petitioner herein has been arrayed as A1 and the Principal of the Jeppiaar Engineering College has been arrayed as A2.

7. The learned Senior Counsel for the petitioner raised two grounds to quash the complaint lodged by the respondent. The grounds are as follows;

1. The respondent failed to follow the procedure as contemplated under Section 42 of Food Safety and Standards Act.
2. There is a discrepancy in the report submitted by the Food Analyst under Section 46 of the Act and the report submitted by the FSSAI Referral Food Laboratory and 3. The petitioner was not given an opportunity of referring the samples to the Referral Food Laboratory on receipt of the food analysis report.

8. On perusal of the same reveals that by the communication dated 12.11.2018, the Food Analysis Laboratory, Guindy, Chennai duly informed to the Designated Officer and the Commissioner of Food Safety and Drug Administration, Chennai that the samples of purified water (RO Water) received vide letter dated 03.11.2018

cannot be analysed within the stipulated time of 14 days of its receipt, due to administrative reasons and also on 14th day falls on very many samples. Therefore, the samples will be taken for analysis and report sent in 15 days approximately.

9.It is relevant to extract Section 46 (3)(ii) are follows:

" 46(3) (ii) where such sample is received under Section 40, a copy of the report indicating the method of sampling and analysis to the person who had purchased such article of food with copy to the Designated Officer."

Provided that in case in hand the sample cannot be analysed within 14 days of its receipt, the Food Analyst shall inform to the Designated Officer and Commissioner of Food Safety giving reasons and specifying time to be taken for analysis.

If the sample cannot be analysed within 14 days of receipt, the Food Analyst shall inform to the Designated Officer and Commissioner of Food Safety giving reasons and specifying time to be taken for analysis. Therefore, the grounds raised by the learned Senior Counsel cannot be countenanced and the Food Analyst duly followed the procedure as contemplated under Section 46(3) (ii) of Food Safety and Standards Act 2006. The second ground that there is a discrepancy in the report submitted by the Food Analyst under Section 46 of the Act and the report submitted by the FSSAI Referral Food Laboratory can be considered only during the trial by cross examination before the Trial Court. The petitioner was duly given an opportunity to send sample for analysis to the Referral Food Safety, Thanjavur on receipt of the report from the Food Analyst that it is substandard and unsafe and send their sample for analysis before the Referral Food Laboratory, Thanjavur. Accordingly, the their samples were sent to the Referral Food Laboratory, Thanjavur and received a report dated 18.03.2019. Accordingly, the sample does not conform to chemical and microbiological parameters of Indian Standard for Drinking Water IS10500;2012. The respondent rightly prosecuted the petitioner and another for the offence punishable under Sections 51 and 59(1) of Food Safety and Standards Act. Therefore, this Court finds no merits to quash the complaint lodged by the respondent and this petition is liable to be dismissed.

10.In the result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed. However, the appearance of the petitioner is dispensed with before the learned Judicial Magistrate, Alandur. Further, this Court directs the Trial Court to complete the trial within

a period of six months from the date of receipt of a copy of this Order.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Vv

To

1. The Judicial Magistrate,
Alandur.
2. Do Thro Chief Judicial Magistrate
Egmore, Chennai.
3. The Food Safety Officer,
No.076, St.Thomas Mount Block,
Kanchipuram District.
4. The Public Prosecutor,
High Court, Madras.

+2cc to M/s.Ojas Law Firm, Advocate, S.R.No.35416

Cr1.O.P.No.6222 of 2020
and
Cr1.MP.No.3472 of 2020

SKM(CO)
RGA(13/07/2022)