



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER
09.06.2022

DATE OF PRONOUNCING ORDER
17.06.2022

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.OP.NOS.16814 & 19716 OF 2018
AND

CRL.MP.NOS.8692 & 10101 OF 2018

CRL.OP.NO.16814 OF 2018

Shanthini, W/o.Senthil,
Aged about 27 years,
Proprietor,
Kovai Pazhamuthir Nilayam,
12, Kangeyam Road,
A.S.Nagar, Amarjothi Garden,
Tiruppur, Tiruppur District.

... Petitioner

.Vs.

The State Rep. By
The Food Safety Officer,
Tamil Nadu Food Safety and Drug Admin Department,
Tiruppur Corporation,
Tiruppur, Tiruppur District.
(Code No.Do/FSO:24/027/589)

... Respondent

PRAYER:- Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the case in STC.No.50 of 2018 on the file of the learned Judicial Magistrate No.IV, Tiruppur and quash the complaint filed by the Respondent and consequential all further proceedings against the Petitioner.

CRL.OP.NO.19176 OF 2018

M.Ramakuru, S/o.Muthaiah
aged about 29 years,
Manager,
Kovai Pazhamuthir Nilayam,
No.12, Kangeyam Road,
A.S.Nagar, Amarjothi Garden,
Tiruppur, Tiruppur District.

... Petitioner



.Vs.

The State,
Rep. by the Food Safety Officer,
Tamil Nadu Food Safety and Drug Admin Department,
Tiruppur Corporation,
Tiruppur, Tiruppur District.
(Code No.Do/FSO:24/027/589)

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the case in STC.No.50 of 2018 on the file of the learned Judicial Magistrate No.IV, Tiruppur and quash the complaint filed by the Respondent and consequential all further proceedings against the Petitioner.

For Petitioner : Mr.K.Doraisamy
Senior Counsel
For M/s.Muthumani Doraisami
(in both the cases)

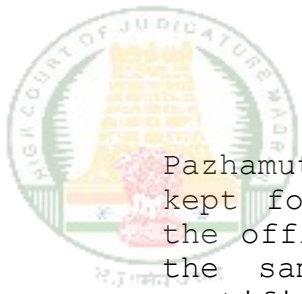
For Respondents : Mr.C.E.Pratap
Government Advocate
(in both the cases)

C O M M O N O R D E R

These Petitions are filed to call for the records relating to the case in STC.No.50 of 2018 on the file of the learned Judicial Magistrate No.IV, Tiruppur and quash the complaint filed by the Respondent and all further proceedings against the Petitioners.

2. The Petitioner in Crl.OP.No.16814 of 2018 is the owner of the shop, while the Petitioner in Crl.OP.No.19176 of 2018 is the Manager. Both these Petitions are filed for quashing the complaint filed by the Respondent, which was taken on file on STC.No.50 of 2018, on the file of the learned Judicial Magistrate IV, Tiruppur.

3. On 24.07.2017, the Complainant namely the Food Safety Officer made a visit to the Petitioners' shop namely Kovai



Pazhamuthi Nilayam and took sample of Cinnamon piece, which was kept for sale. The Complainant sent the sample of Cinnamon to the office of the Food Analysis Laboratory at Madurai to analyse the same. In the Analysis report dated 25.09.2017, it is certified that the sample satisfied all the requirements regarding quality. However, regarding labeling it was alleged that the sample should be treated as "Misbranded". The Complainant had come to the conclusion that the accused have committed the offences punishable under Sections 52 & 63 of the Food Safety and Standards Act 2006 and filed the complaint. The learned Judicial Magistrate No.IV, Tiruppur has taken cognizance of the alleged offences punishable under Sections 52 & 63 of the Food Safety and Standards Act 2006. Aggrieved over the said complaint, the Petitioners have come before this Court with these Criminal Original Petitions.

4. Mr.K.Doraisami, learned Senior Counsel appearing for the Petitioner in both the cases would contend that the learned Magistrate went wrong in entertaining the complaint under Section 63 of The Food Safety and Standards Act 2006, ignoring the 1st Proviso to regulation 2.1.2:1 of the Food Safety and Standards (Licensing the Registration of Food Business) Regulations 2011, granting Sixty month's time to obtain license from 15.07.2016 as per the Notification F. No.2-15015/30/2012, dated 13.7.2016. The Complainant has no power to initiate Criminal proceedings, since the Food Safety Commissioner only has power to sanction criminal proceedings as per Section 30(2) (e) of the Food Safety and Standards Act 2006, since the alleged offence is punishable with imprisonment as per Section 63 of the said Act.

5. The learned Senior Counsel for the Petitioner would further contend that as per Section 42 of the the Food Safety and Standards Act 2006, the Designated Officer has to make written recommendation to the Food Safety Commissioner, within 14 days to initiate proceedings, if the said offence is punishable with imprisonment and no such recommendation was made by the Commissioner in this case within the specified time. This fact clearly proves that the Complainant has filed this complaint without following the mandatory provisions of the Act and hence the present complaint is illegal and unsustainable. He would further contend that the Complaint is liable to be quashed on the ground of Analysis report itself, where it was stated that the sample has every ingredient of Cinnamon as per the prescribed Standards but the Complainant wrongly concluded that the sample is "Misbranded" without any basis.



6. Mr.C.E.Pratap, learned Government Advocate has filed objections. Based upon the objections, he would contend that food samples were collected from the shop running by the Petitioner in CrI.OP.16814 of 2018 and the food samples collected were sent for the Food Analysis Laboratory at Madurai. The food samples have been reported "Misbranded" under Section 3 (1)(zf) of the Food Safety and Standards Act 2006 and Regulations 2.2.1(7), 2.2.2.(4), (6) (8) & (10) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. In view of the aforementioned report, it was concluded as "Misbranded" as per Food Safety and Standards Act, 2006. Complaint was filed with sanciton from the Food Safety Commissioner. The learned Judicial Magistrate No.IV has taken cognizance of the alleged offences punishable under Section 52 & 63 of the Food Safety and Standards act 2006. He would further contend that The complaint was filed before the Court of Judicial Magistrate No.IV, Tiruppur based on the certificate of the Food Analyst, Madurai dated 25.09.2017 as per Rule 2.2.1(7), 2.2.2.(4), (6) (8) & (10) of the Food Safety and Standards (Packaging and Labelling) Regulation, 2011 & Section 63 (without License and Registration of Food Business, Regulation 2.1.2:1)

7. After hearing the rival submissions and the records produced by both the parties, this Court has to find that whether the mandatory provisions prescribed under the Act has been duly complied with or not. In the order passed in CrI.OP.No.774 of 2020 dated 06.08.2020 and CrI.OP.No.23802 of 2017 dated 03.12.2021, this Court has consistently taken the view that the procedure prescribed under Seciton 42(3) of the Act is mandaotry. On violation of those mandatory provisions, prosecution cannot be allowed to continue.

8. In the instant case, records reveal that on 24.07.2017 Food Safety Officer visited the premises of the Petitioners and took sample of Cinnamon (இலவங்கப்பட்டை) and the sample was sent for food analysis on the very same date. The Food Analyst has received the sample on 25.09.2017 and the sample was analysed by the Food Analyst between 12.09.2017 and 19.09.2017 and the report of the Food Analyst was made ready on 25.09.2017. As per the detailed report the presence of "Mould" is the only defect. "Mould" formation was due to the delay of about two months caused by the Food Analyst in analysing the sample.

9. As per Rule 2.4.2.5 of the Food Safetey and Standards Rules 2011, the report should be sent within 14 days. Admittedly, the sample was taken on 24.07.2017, analysis was carried out only between 12.09.2017 and 19.09.2017 and report



was sent on 25.09.2017 and hence, I find that there is a delay of 55 days in analysing the sample, which is against mandatory provision of 14 days. Even for sending the report there is a delay of 60 days instead of 14 days.

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10. It remains to be stated that when selling the food without license, as per the proviso to Rule 2.1.2(1), 60 months time was granted from 15.07.2016 for getting license. The date of inspection and the date of sample was on 24.07.2017, license was obtained on 30.06.2018 and hence, the offence under Section 63 was not made out and thus, I find that in sending report there is a delay of two months and hence, if it is a case of imprisonment, the Designated Officer should send his recommendation to the Commissioner within 14 days for prosecution before Special Court. In the instant case, it is seen that the Designated Officer sent the recommendation on 23.11.2017 and there is a delay of one month and twenty eight days for sending recommendation.

11. It is made clear that for launching the prosecution under Section 42, after the receipt of analysis report, the Designated Officer has to send recommendation within 14 days. Complaint itself indicates that no such procedure was followed. Therefore, in view of the said provisions of law, when a citizen is to face a criminal prosecution, the statute mandates all procedures to be adopted as a pre-condition for prosecution. On non compliance of the same, the prosecution is not maintainable and hence, continuing the prosecution with all the violation of the statutory and mandatory provisions of law cannot be permitted. It is nothing but abuse of process of law.

12. In this view of the matter, STC.No.50 of 2018, pending on the file of the learned Judicial Magistrate No.IV, Tiruppur is quashed and accordingly, the Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate No.IV,
Tiruppur.

2. The Food Safety Officer,
Tamil Nadu Food Safety and Drug Admin Department,
Tiruppur Corporation,
Tiruppur, Tiruppur District.

+1cc to M/s.Muthumani Doraisami, Advocate, S.R.No.36642

CRL.OP.NO.16814 & 19716 OF 2018 AND
CRL.MP.NOS.8692 & 10101 OF 2018

GPL (CO)
PBS/04/07/2022