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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRIMINAL ORIGINAL PETITION NO.12188 OF 2021

AND

CRL.M.P.NO.6867 OF 2021

1. Ravichandran

2. Sanjaikumar Agarwal

3. Dillibabu

... Petitioners

.Vs.

The State Rep. by
The Food Safety Officer,
Code No.072, Kundrathur Division,
The Tamil Nadu Food Safety and
Medicine Administration,
No.42A, Railway Road,
Kancheepuram.

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceedings in C.C.No.183 of 2019 on the file of the Judicial Magistrate, Sriperumbudur.

For Petitioners : Mr.K.Selvakumaraswami

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petition has been filed seeking to quash the proceedings in C.C.No.183 of 2019 on the file of the Judicial Magistrate, Sriperumbudur.

2. The case of the prosecution is that the first petitioner being a Salesman, and petitioners 2 and 3 are respectively owner



and nominee of Guptha Bhavan have been alleged to have sold the foods items viz., Babay Laddu (Loose condition) which are unsafe for consumption as revealed from the Report of the Food Analyst on the analysis conducted on the food samples lifted from such oranisation on 27.11.2018 at 11.30 am.

3. Learned counsel for the petitioners would submit that Section 42 of the Food Safety and Standards Act, 2006 prescribes the procedure for launching the prosecution and though the sample lifted during inspection on 27.11.2018 was sent to the Food Analyst on the same day itself, the Report of the Food Analyst had reached the Designated Officer only on 9.4.2019 in violation of Section 42(2) of the said Act, which prescribes a time limit of 14 days for such a process and in the instant case, the sample was lifted on 27.11.2018 and it had been sent to the Food Analyst on the same day 27.11.2018, however, the opinion of the Food Analyst was made ready only on 9.4.2019, after a delay of 56 days on 19.4.2019 and thereby, the proceedings pending in C.C.No.183 of 2019 is liable to be quashed. In support of his contention, he relied on the judgment of this court in A.Muthukumar v. Chidambaram (Crl.O.P.No.968 of 2017 dated 25.10.2017).

4. The learned Additional Public Prosecutor would submit that the sample was lifted on 27.11.2018 and it was sent to the Analyst on the same day. However, he would fairly concede that the opinion was made ready only on 9.4.2019.

5. To decide whether there is any procedural lapse in the case of the prosecution, let us refer to the relevant provision viz., Section 42 of the Food Safety and Standards Act, 2006, which reads as under:-

42. Procedure for launching prosecution.-

(1)

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety. (3) 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 recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. (4) The Commissioner of Food Safety



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shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,- (a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or (b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction."

6. The above provision makes it clear that as per Section 42 (2) the Food Analyst, after receiving the sample from the Food Safety Officer, shall analyse the sample and send the Analysis Report mentioning the method of sample analysis within 14 days to the designated officer with a copy to the Commissioner of Food Safety. In the case on hand, a perusal of the materials available on record reveals that the inspection was conducted and sample was lifted on 27.11.2018 and sent to the Food Analyst on the same day itself, however, the Report thereon was made ready only on 9.4.2019 after a long day of more than four months which rendered the whole exercise futile and the entire proceedings is vitiated.

7. This court in A.Muthukumar v. Chidambaram (Crl.O.P.No.968 of 2017 dated 25.10.2017), having found that though the Analysis Report was made ready on 18.8.2014 itself, the Designated Officer had sent his recommendation only on 2.1.2015, quashed the criminal proceedings.

8. Still worse, in the case on hand, the Food Analyst Report itself had reached the Designated Officer after a delay of more than four months which goes to the root of the case as there is procedural lapse in the basic level of analysis of food sample itself.

9. In view of the above, the impugned proceedings in C.C.No.183 of 2019 on the file of the Judicial Magistrate, Sriperumbudur is liable to be quashed and accordingly, it is quashed. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Food Safety Officer,
Code No.072, Kundrathur Division,
The Tamil Nadu Food Safety and
Medicine Administration,
No.42A, Railway Road,
Kancheepuram.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Selvakumaraswami, Advocate, S.R.No.9948

CRL.O.P.NO.12188 OF 2021 AND
CRL.M.P.NO.6867 OF 2021

AD(CO)
PBS/22/02/2022