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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.17767 OF 2018

&

CRL.M.P.NO.9213 OF 2018

1. Mondelez India Foods Pvt. Ltd.
(Formerly Cadbury India Ltd.)
Unit No.2001, 20th Floor,
Tower-III (Wing C),
India Bulls Finance Centre,
Parel, Mumbai - 400 013.
 2. Arlette Noronha (Product Company Nominee)
Senior Manager (Quality)
Mondelez India Foods Pvt. Ltd.
(Formerly Cadbury India Ltd.)
Unit No.2001, 20th Floor,
Tower-III (Wing C),
India Bulls Finance Centre,
Parel, Mumbai - 400 013.
- ... Petitioners

.Vs.

A.Elangovan,
Food Safety Officer,
Code No.528, Tondiarpet Area,
Tamil Nadu Food Safety & Drug
Administration Department,
Office of Designated Officer,
Chennai District,
No.33, West Jones Street,
Saidapet, Chennai - 600 015.

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in C.C.No.3867 of 2017 on the file of
the XV Metropolitan Magistrate, Georgetown, Chennai and quash
the same.



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For Petitioners : Mr.N.R.Elango
Senior Counsel
For Mr.P.Giridharan

For Respondent : Mr.R.Kishore Kumar,
Government Advocate
(Criminal Side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3867 of 2017 on the file of the XV Metropolitan Magistrate, Georgetown, Chennai filed against the petitioners for the offence punishable under Section 59(1) of the Food Safety & Standards Act.

2. The crux of the complaint is that one R.Santosh Kumar has ordered Cadbury Temptation "Almond Treat" through Grofers Online Shopping. However, he received "Cadbury Temptation rum raisins - 72 gms" instead of Cadbury Temptation "Almond Treat". When he opened the chocolate after keeping in the refrigerator for four days, he found worms in the chocolate. Based on the above, a complaint was given by the father of the buyer, Ramesh Kumar. The Food Safety Officer took sample of the Cadbury Temptation rum raisins - 72 gms and after sealing it properly, it was sent for analysis report. The report was received on 06.09.2016 indicating that the chocolate contained dead worms which is unsafe food under Section 3(1)(zz)(ix) of the Food Safety & Standards Act. Thereafter, he obtained the stock list and the nominee details. The analysis report was sent to the Grofers Store on 15.09.2016 and the analysis report is also sent to them on 20.09.2016. On 10.05.2017, after collecting the manufacturer details, sanction was accorded on 18.08.2017. Thereafter, a complaint was filed for the offence under Section 59(1) of the Food Safety and Standards Act.

3. The learned Counsel for the petitioner submitted that the mandatory conditions provided under the Food Safety and Standards Act has not been followed while lifting the sample. As the alleged chocolate is weighing about 72 gms, there is no difficulty in making it into four samples as mandated under the Act which has not been done so. Further, the analysis report has not been sent to the manufacturer at any point of time. Therefore, valuable right guaranteed under the statute has been violated. That apart, prosecution has been launched with an inordinate delay and no special circumstances existed to show that sanction to be accord beyond the period of limitation. Therefore, sought to quash the entire complaint.



the manufacturer at any point of time. Whereas Form VII [A] has been served only on the Grofers Super Store and not on the manufacturer. When the mandatory provisions are violated and those provisions were made for initiation of the prosecution, such penal provisions and mandatory provisions to be complied strictly which has not been done in this case.

10. It is also to be noted that though the alleged occurrence has taken place on 24.08.2016, the offence has been noted on 06.09.2016 on receipt of the analyst report. The prosecution ought to have been initiated within one year as per Section 77 of the Food Safety and Standards Act. Though proviso enable the Commissioner of Food Safety to approve the prosecution within an extended period of three years, for such approval of prosecution within the extended period of about three years, appropriate reasons have to be recorded in writing by the sanctioning authority. The reasons assigned for such approval of the prosecution beyond the period of one year is that since the Food Safety Officer has taken steps to find out the manufacturer and due to this administrative reason, the sanction was accorded.

11. It is to be noted that on 09.09.2016 itself the nominee details were received from the Grofers. However, sanction was not sought within the time. Considering the above violation of mandatory provisions, as the very right of the manufacturer to have the sample tested by the accredited laboratory has been lost, the prosecution in such a situation cannot be maintained against the petitioner who has been denied the statutory right. Hence, this Court is inclined to quash the proceedings against the petitioners.

12. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.3867 of 2017 on the file of the XV Metropolitan Magistrate, Georgetown, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vrc / kbs

To

1. The XV Metropolitan Magistrate,
Georgetown, Chennai.



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2. A.Elangovan,
Food Safety Officer,
Code No.528, Tondiarpet Area,
Tamil Nadu Food Safety & Drug
Administration Department,
Office of Designated Officer,
Chennai District,
No.33, West Jones Street,
Saidapet, Chennai - 600 015.
3. The Public Prosecutor,
High Court,
Madras - 104.

+1cc to Mr.P.Giridharan, Advocate, S.R.No.5530

CRL.O.P.NO.17767 OF 2018 &
CRL.M.P.NO.9213 OF 2018

PMK(CO)
PBS/11/02/2022