

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.06.2022

PRONOUNCED ON : 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.18485 OF 2020

AND

CRL.MP.NOS.7231 OF 2020

1. Sajeer Koyiloth
2. Sajid Koyiloth
3. Jafar Ali
4. P.Abdul Sathar
5. K.P.Ibrahim

6. M/s.Palmshore Multicusine BBQ Restaurant,
No.95, Jawaharlal Nehru Salai,
Jafferkanpet, Ashok Nagar,
Chennai - 600 083.

7. K.Shahan Kasim

... Petitioners/Accused
1 to 7

.Vs.

The Food Safety Officer,
Code No.546,
T.Nagar and Saidapet Area,
Chennai District,
The Tamil Nadu Food Safety
and Standards Department,
No.33, West Jones Road,
Saidapet, Chennai - 600 106.

... Respondent/Complainant

PRAYER:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.2641 of 2019 on the file of the XXIII Metropolitan Magistrate's Court, Saidapet and quash the same.

For Petitioners : Mr.P.S.Raman
Senior Counsel
For Mr.S.Vijayan Subramanian

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

ORDER

This petition has been filed to call for the records pertaining to the case in C.C.No.2641 of 2019 on the file of the XXIII Metropolitan Magistrate Court, Saidapet and quash the same.

2. The respondent has lodged a complaint under Section 59(i) of the Food Safety and Standards Act, 2006 against the petitioners. The petitioners who are arrayed as A1 to A5 and A7 are partners of the partnership firm named M/s.Palmshore Multicuisine BBQ Restaurant namely the 6th petitioner herein. On 27.10.2018, when the respondent inspected the 6th petitioner's restaurant, found that the BBQ chicken prepared food was kept on display, so that the public can see the dishes. The respondent has assumed that additional colour may have been added in the BBQ chicken prepared food. Therefore, the respondent has taken the samples of 500 grams x 4 pieces of BBQ chicken prepared food for inspection from the sixth respondent/M/s.Palmshore Multicuisine BBQ Restaurant. The same was sent to the approved food safety analysis laboratory (NABL) for analysis on 27.10.2018. It was received by the Food Analyst, Food Analysis Laboratory, Thanjavur on 27.10.2018 and after analysis, the analyst submitted its report on 18.02.2019 stating that the samples of BBQ Chicken prepared food is unsafe. The said report was received by the respondent on 21.02.2019. On receipt of said report, the Designated Officer of Tamil Nadu Food Safety and Standards Department has sent a letter to the Commissioner of Tamil Nadu Food Safety and Standards Department recommending initiation of proceedings for the offence under Section 59(i) of the Food Safety and Standards Act. 2006 against the petitioners. By an order dated 29.04.2019, the Commissioner had granted permission to the respondent to conduct the criminal case as against the petitioners. Accordingly, the respondent has lodged a complaint.

3. The learned senior counsel for the petitioners would submit that as per Section 42(2) of the Food Safety and Standards Act 2006, the Food Analyst is required to send report within a period of 14 days to the Designated Officer with the copy of samples to Commissioner of Food Safety, whereas in the case in hand, the Food Analyst had received samples of BBQ Chicken prepared food on 27.10.2018 and the Analyst failed to give report within a period of 14 days. On receipt of the samples, the Food Analyst sent a report only on 18.02.2019. Therefore, there is no cause of action to lodge the complaint.

4. The learned senior counsel for the petitioners further submits that as per Section 77 of the Food Safety and Standards Act 2006, no Courts shall take cognizance of the offence that too after the expiry period of one year from the date of commission of offence. The samples had been taken by the respondent on 27.10.2018 and in the present complaint, the petitioners have received summons on 07.12.2019. Therefore, the cognizance for the offence had been taken by the trial Court after expiry of one year.

5. The learned Government Advocate (Crl.Side) has submitted that as per Section 46(3)(2) of the Act, if the Analyst is not able to analyse the samples within a period of 14 days of its receipt, it shall inform the same to the Designated Officer and the Commissioner of Food Safety giving reasons and specifying time to be taken for analysis. Accordingly, the Food Analyst on receipt of sample of BBQ Chicken prepared food for analysis on 27.10.2018, sent a letter dated 07.11.2018 to the Designated Officer, Chennai as well as the Commissioner of Food Safety and Standards Department, stating that analysis cannot be done within a period of 14 days and the analysis report cannot be sent within a period of 14 days and requested further time for sending report. Accordingly, on 18.02.2019, the analysis report was sent to the respondent. Therefore, the grounds raised by the petitioners that the respondent failed to comply the provision under Section 77 of the Food Safety and Standards Act 2006 cannot be countenanced.

6. The samples were taken from the petitioners/the sixth petitioner Restaurant on 27.10.2018 and the Food Analyst has submitted its report only on 18.02.2019 and there was 111 days delay. Though the Food Analyst sought for extension of time for the period of 270 days, the Food Analyst has submitted the report within a period of 116 days from the date of receipt of the samples.

7. So far other grounds raised by the petitioners that the complaint was lodged beyond the period of one year and it violates the provision under Section 77 of the Food Safety and Standards Act 2006, on perusal of the records, it reveals that the respondent lodged a complaint as early as 03.06.2019. Therefore, there is no delay in lodging the complaint and the respondent duly followed the procedure under Section 77 of the Food Safety and Standards Act 2006.

8. The samples weighing BBQ chicken 500 x 4 pieces of prepared food had been taken for analysis and the samples were sent to the Food Analysis Laboratory, Thanjavur on 27.10.2018. The Food Analyst had submitted its report on 18.02.2019. Though the Food Analyst had sent its report after the period of 111

days from the date of receiving sample by communication dated 07.11.2018, sought for further time to send his analysis report. He also mentioned about accepted delay of 270 days to send the analysis report. Further the Food Analyst had sent his report within a period 111 days from the date of sample received. Further, the petitioners never asked for any appeal to Referral Food Laboratory to re-analyse the samples. Therefore, this Court finds no grounds to quash the proceedings in C.C.No.2461 of 2019 on the file of the XXIII Metropolitan Magistrate's Court, Saidapet . That apart, the grounds raised by the petitioners is a mixed question of fact and law which cannot be considered in the quash petition filed under 482 of Cr.P.C.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.2461 of 2019 on the file of the XXIII Metropolitan Magistrate's Court, Saidapet. Chennai The respondent rightly prosecuted the petitioners for the offence punishable under Section 59(1) of Food Safety and Standards Act. Therefore, this Court finds no merits to quash the present proceedings and this petition is liable to be dismissed.

10. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., wherein it has been held as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

11. Recently, the Hon'ble Supreme Court of India, while dealing with the very same issue in CrI.A.No.1572 of 2019 dated

17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

12. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will

be able to prove the allegations in a manner known to law would arise only at a later stage"

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. However, the Trial Court viz., XXIII Metropolitan Magistrate's Court, Saidapet, Chennai is directed to complete the trial in C.C.No.2461 of 2019, within a period of six months from the date of receipt of a copy of this Order.

13. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Vv

To

1. The XXIII Metropolitan Magistrate Court,
Saidapet, Chennai.
2. -Do thro the Chief Judicial Magistrate,
Egmore, Chennai.
3. The Food Safety Officer,
Code No.546,
T.Nagar and Saidapet Area,
Chennai District,
Tamil Nadu Food Safety and Standards Department,
No.33, West Jones Road,
Saidapet, Chennai - 600 106.
4. The Public Prosecutor,
High Court, Madras.

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RSV(CO)
PBS/20/07/2022