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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.01.2022

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.19829 of 2017

and

Crl.M.P.Nos.11961 and 11962 of 2017

M/s.Tej Ram Dharam Paul
Represented by its Manager
S.Raja, Son of S.Subramaniam
Nathpur
Sonepat
Haryana - 131 029

... Petitioner / Accused No.2

Vs.

The Government of Tamil Nadu
Rep. By Dr.M.Kavikumar, M.B.B.S.,
Designated Officer
Code No.014
Tamil Nadu Food Safety and Drug
Administration Department
District Collector Campus
Namakkal District

... Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in private complaint filed in S.T.C.No.643 of 2017 on the file of Judicial Magistrate No.1, Namakkal District and quash the same.

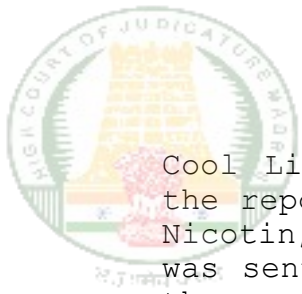
For Petitioners : Mr.K.R.Laxman

For Respondents : Mr.S.Vinoth Kumar
Government Advocate (Crl.side)

ORDER

This petition has been filed to quash the private complaint filed in S.T.C.No.643 of 2017 for the offences under Sections 55, 58, 59(1) and 63 of the Food Safety and Standards Act, 2006.

2. The crux of the prosecution case is that on 22.08.2015 at 11.00am the Food Safety Officer conducted inspection in a shop belonging to the first accused and seized four packets of



Cool Lip Filter Tobbaq and sent the same for analysis. From the report of the Analyst, it was found that the sample contains Nicotin, which is unsafe and thereafter on 24.11.2016, a letter was sent to the Central Food Safety Officer to give the name of the manufacturer and after receipt of reply, the present prosecution has been launched.

3. It is the contention of the learned counsel for the petitioner that the petitioner is only the manufacturer and the petitioner Company has also been registered with Tobacco Board vide Registration No.TB/EXP.TOB.PR/2021/1218. The petitioner is no way responsible for the sale of the product in Tamil Nadu and his area of operation is only Haryana. It is further submitted that the petitioner has been arrayed as accused only because the packets seized by the Food Safety Officer contains his Company's name as manufacturer.

4. The learned counsel appearing for the petitioner vehemently contended that the prosecution launched as against the petitioner is without any basis. In fact, the product seized by the Food Safety Officer is a Tobacco product and it is not a food product and only when the tobacco is mixed with any food product, the same can be construed as an offence. It is further submitted that the petitioner is manufacturing the product only after obtaining permission. It is his further contention that the referral lab report also clearly indicates that the Tobacco is not a food product and it falls only under the category of tobacco products. The learned counsel contended that without any materials to show that the manufacturer is involved in selling the products in Tamil Nadu, mechanically the prosecution has been launched against the petitioner.

5. The learned Government Advocate (Crl.side) submitted that the report of the Food Analyst clearly shows that the sample sent for analysis contains Nicotin, which is unsafe to use. It is his further contention that when the petitioner himself has admitted that he is the manufacturer, he is also liable to be prosecuted and opposed for quashing of the charge sheet.

6. Normally, this Court would be reluctant to interfere with the complaint, but at the same time when the materials relied upon by the prosecution, in the considered view of the Court, do not constitute any offence against the person and continuation of the prosecution is a sheer waste of time and futile exercise, this Court can very well exercise its power under Section 482 Cr.P.C. The charge against the petitioner itself indicates that some tobacco products were seized from A1, who is noway connected with the present petitioner. It is not the case of the prosecution that this product was supplied for sale in Tamil Nadu by the manufacturers. It is also brought to



the notice of this Court that the sale and manufacture is not totally prohibited in some of the States. Therefore, the question remains whether the prosecution is maintainable if any such product is found in Tamil Nadu without establishing any nexus between the manufacture and sale. As discussed above, on perusal of the final report this Court finds that it is not the case of the prosecution that the manufacturer themselves has supplied the products for sale in Tamil Nadu. Only some unknown persons said to have supplied it. Therefore, in the absence of any nexus between sale and supply by the manufacturer and when the manufacturing of the product is permitted in other States, the manufacturer cannot be prosecuted, as if he has committed the offence, without any material. For example, manufacture of IMFL (Indian Made Foreign Liquor) is permitted in Puducherry and Puducherry liquor is totally prohibited in Tamil Nadu. If any such prohibited liquor is found in possession of somebody, this Court cannot presume that the manufacturer has committed any offence. The same analogy will be followed here.

7. That apart, it is also relevant to note that report from the referral lab indicates that the products seized by the Food Safety Officer do not fall under the category of food product and referral lab report available on record clearly indicates that it was only a tobacco product and it is not a food product. This also cannot be ignored. Hence, this Court is of the view that continuation of prosecution against the present petitioner is a mere waste of time and futile exercise.

8. Accordingly, this Criminal Original Petition is allowed and the case in S.T.C.No.643 of 2017 pending on the file of Judicial Magistrate No.1, Namakkal District is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gpa/gba

To

1. The Judicial Magistrate No.1,
Namakkal District



2. Dr. M. Kavikumar, M.B.B.S.,
Designated Officer

Code No. 014

The Government of Tamil Nadu

Tamil Nadu Food Safety and Drug

Administration Department

District Collector Campus

Namakkal District

3. The Public Prosecutor

Madras High Court, Chennai - 104

Crl.O.P.No.19829 of 2017 and
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PM(CO)

GMV(02/02/2022)