



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.01.2022

Delivered on : 23.03.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.5994 of 2019

and

Crl.M.P. (MD)Nos.3871 and 3872 of 2019

1.S.Sakthivel

2.K.Sivakumar

... Petitioners/Accused No.1 & 2

vs.

The State Rep. by
Food Safety Officer,
Tamil Nadu Food Safety and Drug Administration,
Code No.313, Musiri Post-621 211,
Musiri Taluk,
Trichy District.

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the case in S.T.C.No.915 of 2018 on the file of the learned Judicial Magistrate, Musiri, Trichy District.

For Petitioners : Mr.G.Karuppasamy Pandiyan

For Respondents : Mr.M.Muthumanikkam

Government Advocate (Crl. side)

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.No.915 of 2018 pending on the file of the learned Judicial Magistrate, Musiri, Trichy District and quash the same.

2.The petitioners are the accused 1 and 2 in S.T.C.No.915 of 2018 on the file of the learned Judicial Magistrate, Musiri. The respondent has lodged a private complaint against the petitioners alleging that on 20.07.2018 at about 01.58 p.m, he made a visit to the first petitioner's shop and found that there were 40 candy pockets i.e. Raamani's Candy, each pocket containing 500 gms, that the respondent suspecting that the candys may be unsafe for human consumption, had purchased four pockets of candy weighing about 2kgs, that he sent the samples to the Food Analyst on 20.07.2018, that the Food Analyst has sent a report stating that the Raamani's candys are of sub standard, misbranded and unsafe, that the enquiry



revealed that the first petitioner had purchased the candy from the second petitioner, who is the manufacturer and that after obtaining the necessary sanction from the Commissioner of Food Safety, the above complaint has been lodged.

3. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. side) appearing for the respondent and perused the materials placed on record.

4. The learned counsel for the petitioners would submit that as per Section 42 of the Food Safety and Standards Act, 2006, the sample received by the Food Analyst has to be analysed and report should have been sent within 14 days from the date of receipt of the samples, that the Designated Officer shall send his report within 14 days to the Commissioner of Food Safety for sanctioning the prosecution and that they have violated the mandatory provisions of the said Act. The learned counsel would further submit that the candies were purchased on 20.07.2018, that the sample was received by the Food Analyst on 23.07.2018 for analysis, that though the Analyst report is dated 04.08.2018, the same was sent to the Designated Officer only on 06.08.2018, that the Designated Officer has sent his recommendation only on 16.08.2018 beyond 14 days and that since the respondent has violated the mandatory time limit contemplated under Section 42 of the said Act, the prosecution launched, violating the statutory provisions, is liable to be quashed.

5. Before entering into further discussion, it is necessary to refer Section 42 of the Food Safety and Standards Act, 2006 and the same is extracted hereunder:

"42. Procedure for launching prosecution.-

(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(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 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.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.

6. At this juncture, it is necessary to refer the decision of this Court passed in in Crl.O.P.No.27584 of 2016, dated 25.10.2017 in **A.R.Khader Vs. The Food Safety Officer, Chennai District** and the relevant paragraphs are extracted hereunder:

"6. Learned Senior Counsel also relied upon the judgment of this Court passed in Crl.O.P.No.7242 of 2011 dated 28.03.2017, wherein, in an identical circumstances, the learned Judge has held as follows :

5. In this regard, the learned counsel for the petitioners/accused also relied upon the decision of this Court reported in 2005-2-L.W. (Crl.) 598 [C.Suresh & Others Vs. The State, etc], and submitted that in an identical situation, on the ground of delay of 10 months in sending the notice under Section 13(2) of the Act along with the report, this Court quashed the complaint therein stating that by that time, the milk sample would have become decomposed. The relevant portion in the said judgment reads as follows :

"7. In the instant case, the sample of toned milk was taken on 22.07.2003 and despatched to the Government Analyst on 23.07.2003. Pursuant to an information that the toned milk food sample was broken in transit, the second portion of the sample was sent, and on analysis, a report was received on 07.08.2003. The same was received by the Local Health Authority on 28.08.2003. But, the written consent for launching the prosecution was received by the Local Health Authority



on 23.01.2004, and the same was received by the Food Inspector on 30.01.2004. The complaint filed on 31.03.2004 was returned, and the same was re-submitted on 23.04.2004. The same was taken on file on 13.05.2004. It would be abundantly clear that the sample of toned milk was taken on 22.07.2003, the Food Inspector presented the complaint on 31.03.2004, and after it was taken on file on 13.05.2004, notice under Section 13(2) was issued to the petitioners on 18.05.2004. Thus, it would be quite evident that a notice along with the report of the analyst was sent on 18.5.2004, after an interval of nearly 10 months. By that time, the milk sample would have become decomposed. Thus, the right of the accused available under Section 13(2) has been frustrated, due to the inordinate delay and inaction on the part of the prosecution."

The dictum laid down in the above said decision would squarely apply to the facts of the present case also. In the case on hand also, there is an inordinate delay of 1 year 8 months in lodging the complaint. Further, as pointed by the learned counsel for the petitioner, even if the milk sample would have been sent for analysis, by that time, it would have become decomposed. The petitioners/accused have been deprived of their right to have the analysis report from the Central Food Laboratory as provided under Section 13(2) of the Prevention of Food Adulteration Act. Considering the facts and circumstances of the case, I am of the opinion that there is no useful purpose is going to be served if the trial is allowed to continue. It is a fit case to quash the complaint."

The above dictum squarely applicable to the facts of the case."

7.Coming to the case on hand, admittedly, the sample was taken on 20.07.2018 and though analyst report was dated 04.08.2018, the same was sent on 06.08.2018 exceeding the 14 days limit contemplated for analyzing the sample and for issuance of the report.

8.As rightly contended by the learned counsel for the petitioners, the respondent in the complaint filed before the Jurisdictional Magistrate Court has no where whispered as to when the Designated Officer has received the report and send his recommendation. According to the petitioners, his recommendation was sent on 28.09.2018, after the lapse of 14 days. As rightly contended by the petitioners side, it is pertinent to note that even



after filing of the quash petition, the respondent has not chosen to furnish the above particulars specifically. Though the respondent in their counter statement has stated that the statement of the petitioners is wrong, he has not specifically disputed the particulars furnished by the petitioners.

9.In the present case, as already pointed out, though the sample was lifted on 20.07.2018, the same was analyzed and the report was sent on 06.08.2018 and that thereafter, the Designated Officer has sent his recommendation on 28.09.2018.

10.Considering the above, as rightly pointed out by the learned counsel for the petitioners, the respondent has violated the mandatory requirements contemplated under Section 42 of the said Act. Considering the above and also the legal decision above referred, this Court has no other option, but to hold that the very launching of the complaint itself is not proper. Considering the above violations, no purpose would be served in directing the petitioners to face the trial, as the respondent authorities have miserably failed to follow the mandatory requirements contemplated in the said Act. Hence, this Court has no hesitation to hold that the case in S.T.C.No.915 of 2018, pending on the file of the Court of Judicial Magistrate, Musiri, Trichy District as against the petitioners is liable to be quashed.

11.In the result, the Criminal Original Petition is allowed and the proceedings in S.T.C.No.915 of 2018, pending on the file of the Court of Judicial Magistrate, Musiri, Trichy District as against the petitioners is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Judicial Magistrate,
Musiri, Trichy District.

2.Food Safety Officer,
Tamil Nadu Food Safety and Drug Administration,
Code No.313, Musiri Post-621 211,
Musiri Taluk,
Trichy District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.5994 of 2019

and

Crl.M.P. (MD)Nos.3871 and 3872 of 2019

23.03.2022

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KB(18.04.2022) 6P 4C