



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 10.01.2022
PRONOUNCED ON: 08.03.2022
CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P. (MD)No.9652 of 2019

and

Crl.M.P. (MD)Nos.6143 and 6144 of 2019

1.V.Malairaj Shanker
Distributor.

2.Arjun Kumar Sahu : Petitioners/Accused Nos.1 and 2

(Manufacturer-Nominee (inserted
as per order of the Judicial Magistrate
No.II, Dindigul in Cr.M.P.No.7835
of 2018)

Vs.

The Food Safety Officer,
Dindigul Urban,
Department of Food Safety and Drugs,
Administration,
Dindigul

: Respondent / Defacto Complainant

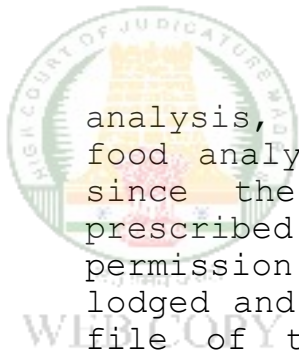
PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in C.C.No.362 of 2016, on the file of the Judicial Magistrate No.II, Dindigul, Dindigul District and quash the same.

For Petitioners : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu
For Respondent : Mr.R.Sivakumar
Government Advocate(Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking orders to call for the records in C.C.No.362 of 2016, pending on the file of the Court of Judicial Magistrate No.II, Dindigul and quash the same.

2. The petitioners are the accused 1 and 2 in C.C.No.362 of 2016, on the file of the Judicial Magistrate No.II, Dindigul. The respondent has lodged a private complaint against the petitioners alleging that on 13.03.2015 at about 04.00p.m., an official from the respondent has taken the sample of Sweetened Carbonated Beverage (Fanta) from the first petitioner, suspecting that the same may be unsafe for human consumption, that the samples were sent for



analysis, that the designated officer, Dindigul has received the food analysis report, with an opinion that the sample is unsafe, since the same contains more Benzoic Acid than the maximum prescribed for Carbonated Water and that after getting the permission of the Commissioner of Food Safety, the complaint was lodged and the case was taken on file in C.C.No.362 of 2016, on the file of the Judicial Magistrate Court No.II, Dindigul for the alleged offences under Section 59(1) of the Food Safety and Standards Act 2006.

3. Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed on record.

4. The learned Senior Counsel appearing for the petitioner would submit that as per Section 42 of the Food Safety and Standards Act, the sample received by the Food Analyst ought to have been analysed and report should have been sent within 14 days from the receipt of the samples and that the designated Officer shall send his report within 14 days to the Commissioner of Food Safety for sanctioning to the prosecution and that they have violated the mandatory provisions of the Act.

5. The learned Senior Counsel appearing for the petitioners would further submit that as per Section 77 of the Act, the concerned Court should take cognizance of the offence within a period of one year from the date of commission of the offence and that since the private complaint in the case on hand was filed after the expiry of one year, the criminal prosecution is clearly barred by time and as such the entire prosecution is liable to be quashed.

6. 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.

7. At this juncture, it is necessary to refer the decision of this Court passed 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 :



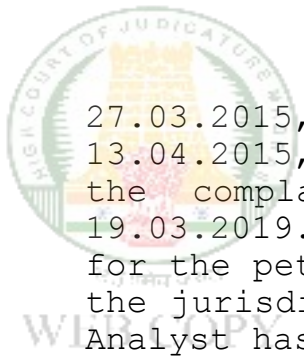
"7. In the instant case, the sample of toned milk was taken on 22.07.2003 and despatched to the Government Analyst on 23.07.2003. Pursuant to an information that the toned milk food sample was broken in transit, the second portion of the sample was sent, and on analysis, a report was received on 07.08.2003. 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.

8. In the case on hand, admittedly the sample was taken on 13.03.2015 at 04.00 p.m. The learned Senior Counsel appearing for the petitioners would submit that the analyst report was ready on



27.03.2015, but the same has been received by the accused on 13.04.2015, that the sanction has been obtained on 14.03.2016 and the complaint has been filed before the concerned Court on 19.03.2019. As rightly pointed out by the learned Senior Counsel for the petitioners, the respondent, in their complaint filed before the jurisdictional Court, has nowhere whispered as to when the Food Analyst has received the samples and when he has sent his report and when the Designated Officer has received the report and sent his recommendations. It is pertinent to note that even after filing of the quash petition, the respondent has not chosen to furnish the above particulars. As rightly pointed out by the learned Senior Counsel, it is not known as to whether the provisions of Section 42 of the Act, have been complied with or not.

9. The learned Senior Counsel appearing for the petitioners would submit that the official of respondent has taken the expired sample and as such, the very lodging of the complaint itself is legally not maintainable. According to the petitioners, the date of manufacture has been shown as 26.06.2014 and it has been specifically mentioned that the same has to be used within 3 months from the date of manufacture and that when the sample was taken on 13.03.2015, the shelf life for the product was already over.

10. The respondent has not disputed the above factual aspects. As rightly contended by the learned Senior Counsel, considering the date of manufacture 26.06.2014 and since it has been specifically mentioned as "best before 3 months from manufacture", the product got expired on 26.09.2014. The contention of the petitioners that the respondent official has taken the expired product as sample, cannot be rejected. As rightly contended by the learned Senior Counsel for the petitioners, since the expired product was analysed, the opinion of the Food Analyst that the sample is unsafe, cannot be looked into.

11. Before proceeding further, it is necessary to refer Section 77 of the Food Safety and Standards Act and the same is extracted hereunder:

"77. Time limit for prosecutions.-Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence: Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years. "

12. Section 77 of the Act contemplates that no Court shall take cognizance of the offence under this Act, after the expiry of the period of one year from the date of commission of offence, but at the same time, the Commissioner of Food Safety can approve the prosecution within an extended period up to three years and for that



approval, he has to record the reasons in writing. As already pointed out, in the present case, the sample was lifted on 13.03.2015. According to the petitioners, the complaint was filed on 19.03.2019. But the learned Government Advocate (Crl.Side) appearing for the respondent would submit that the complaint was originally filed on 13.03.2017 and that since the representative of the second accused was ordered to be impleaded in the place of the previous representative, vide order dated 11.10.2018 by the jurisdictional Court, the complaint was again filed on 19.03.2019. Thereafter, the petitioners have filed the copy of the original complaint filed by the respondent before the jurisdictional Court and wherein the complaint was dated 03.03.2016, but admittedly, the same was filed before the Magistrate Court on 06.08.2016 and that thereafter, the present complaint was filed on 19.03.2019.

13. As already pointed out, though the sample was taken on 13.03.2015, even according to the respondent, the complaint was originally filed on 06.08.2016 and that subsequently after orders for impleadment of the second accused, the present complaint was lodged on 19.03.2019. No doubt, the Commissioner of Food Safety can approve the prosecution with an extended period upto 3 years. But it is not the case of the respondent that the respondent had obtained such approval from the Commissioner of Food Safety and absolutely there was no explanation for the delay in launching the prosecution.

14. Considering the above and the legal position above referred, this Court has no hesitation to hold that the very launching of the complaint is barred by limitation. Considering the violation above noted, no purpose would be served in directing the petitioner to face the trial, as the respondent authorities have miserably failed to follow the mandatory requirements contemplated in the said Act and as such, the launching of the complaint is nothing but abuse of process of law. Hence this Court concludes that the proceedings in C.C.No.362 of 2016, pending on the file of the Court of Judicial Magistrate No.II, Dindigul as against the petitioners are liable to be quashed.

15. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.362 of 2016, pending on the file of the Court of Judicial Magistrate No.II, Dindigul as against the petitioners are quashed. Consequently, the connected Miscellaneous Petitions are closed.

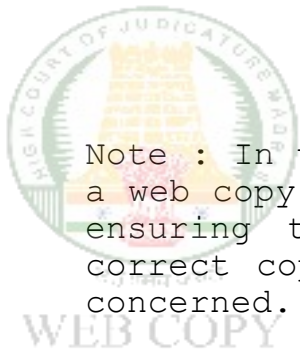
Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)



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 No.II,
Dindigul
- 2.The Food Safety Officer,
Dindigul Urban,
Department of Food Safety and Drugs,
Administration,
Dindigul.

+1 CC to M/s.K.PRABHU, Advocate (SR-10721[F] dated 08/03/2022)
Crl.O.P. (MD)No.9652 of 2019
08.03.2022

SSL (PA)
SS (CO)
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