



Crl.O.P.(MD) No.10900 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	20.06.2022
Delivered on	13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.10900 of 2022
and
Crl.M.P(MD)No.6875 and 6877 of 2022

1. J.Jegadeesh,
2. S.Dhanabalan,

: Petitioners

Vs

The State of Tamil Nadu represented by
The Food Safety Officer,
(Code No. 109 and 120 Chellampatti and
Vadipatti Taluk),
Health and Family Welfare Training
Centre Campus,
Vishwanathapuram,
Madurai District-625 014.

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records pertaining to the case in impugned Private
Complaint in STC.No.12 of 2022 on the file of the Judicial Magistrate



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Court, T.Vadipatti dated 09/07/2021 filed U/s 190(1)(A) and 200 of Cr.P.C and Sections 51,59(1), 58 and 63 of Food Safety and Standards Act, 2006 in so far as the petitioners/Accused Nos.1 and 3 are concerned and quash the same as illegal.

For Petitioners : M/s.Pinaygash I,
For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to quash the criminal proceedings in STC.No.12 of 2022 on the file of the Judicial Magistrate Court, T.Vadipatti.

2.The learned Counsel appearing for the petitioners submitted that the petitioners are the first and third accused persons in the case in S.T.C.No.12 of 2022, on the file of the Judicial Magistrate Court, T.Vadipatti. The second accused is one M/s.P.K. Oil Store (Packer), Madurai. The first and second petitioners are the Accountant and owner of the Tamilan Lorry Service, respectively. The Respondent/Food Safety Officer, while prosecuting the second accused/M/s.P.K. Oil Store



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(Packer), Madurai, for selling unsafe oil and also for selling misleading, misbranded, substandard, prohibited and restricted food, jointly prosecuted the Accountant and the owner of the Tamilan Lorry Service.

The Food Safety Officer, on 25.08.2020 at about 05.15 p.m, came to the office of the second petitioner, took the oil, which had been kept for forwarding to the addressee, the respondent forwarded the same for analysis. After obtaining the report, which states that the sample is unsafe, the respondent prosecuted the transport owner and the Accountant. They are no way connected with the said oil company. They only received the parcel and transported the same as directed by the second accused. They were not selling the oil to any customer. They have run only courier service. The petitioners did not aware of the standard of the goods. Therefore, the prosecution against the petitioners herein, is unsustainable, which has to be quashed.

3.The learned Additional Public Prosecutor submitted that admittedly, the petitioners are the first and the third accused in this case, who are the Accountant and owner of the Tamilan Lorry Service,



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respectively. They are not dealing with the sample oil.

4.I have considered the matter in the light of the submissions made by both the parties.

5.On a perusal of records, it reveals that the Food Safety Officer, on 25.08.2020 at about 05.15 pm went to the second petitioner's office and found Palmolein Oil in 15 kilogram, from that the respondent took 500 milliliter of oil in four packets and forwarded the same for analysis. The Food Analyst, Guindy, sent a report on 28.09.2020, as it is unsafe. Therefore, after obtaining the proper sanction from the Commissioner, the criminal proceedings had been initiated against the petitioners as well as M/s.P.K. Oil Store (Packer). The fact is that the petitioners are accountant and owner of the said lorry office, but there is no material on record to show that they are dealing with seized Palmolein oil. In the absence of any material to show that these petitioners are dealing with Palmolein oil either as a manufacturer or a retail seller, they cannot be prosecuted. The petitioners are only running the lorry office and Courier



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service. In the absence of any material to show that they are handling the oil commercially except doing courier service, they cannot be prosecuted. However, the petitioners are prosecuted for the offences punishable under Sections 51, 59(1), 58 and 63 of Food Safety and Standards Act, 2006. The provisions runs as follows:

'51. Penalty for sub-standard food.-Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees;

59.Punishment for Unsafe Food-Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,--

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less



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than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees.

58. Penalty for contraventions for which no specific penalty is provided.-Whoever contravenes any provisions of this Act or the rules or regulations made thereunder, for the contravention of which no penalty has been separately provided in this Chapter, shall be liable to a penalty which may extend to two lakh rupees.

63. Punishment for carrying out a business without licence.-If any person or food business operator (except the persons exempted from licensing under sub-section (2) of section 31 of this Act), himself or by any person on his behalf who is required to obtain licence, manufactures, sells, stores or distributes or imports any article of food without licence, shall be punishable with imprisonment for a term which may extend to six months and also with a fine which may extend to five lakh rupees.'

6.In the present case, the petitioners are being the accountant and the owner of the Tamilan Lorry Service and not dealing with the oil seized by the Food Safety Officer and even admitting the food analyst report, the petitioners cannot be prosecuted, as they are not dealing with the seized oil commercially, except doing courier service as directed by the second accused. Under these circumstances, continuing the criminal proceedings against the petitioners is a clear misuse of process of law.



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7.Hence, the criminal proceedings in S.T.C.No.12 of 2022, on the file of the Judicial Magistrate Court, T.Vadipatti, is quashed against the petitioners. Accordingly, this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

13.07.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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V.SIVAGNANAM, J.

lr

To

1.The Food Safety Officer,
(Code No. 109 and 120 Chellampatti and
Vadipatti Taluk),
Health and Family Welfare Training
Centre Campus,
Vishwanathapuram,
Madurai District-625 014.

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

Pre-Delivery Order made in

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13.07.2022