



CRL.O.P(MD)No.12157 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 29.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P(MD)No.12157 of 2022
and
Crl.M.P(MD)Nos.7681 and 7683 of 2022

I.M.Selvaraj

... Petitioner/Accused No.1

Vs.

The Designated Officer,
Code No.012,
The Designated Officer's Office,
Multipurpose Health Supervisors (F)
Training School,
Viswanathapuram,
Madurai – 625 014.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in S.T.C.No.2740 of 2021 on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

For Petitioner : Mr.M.Rajaraman

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



CRL.O.P(MD)No.12157 of 2022

ORDER

WEB COPY

This petition is filed to quash the proceedings in S.T.C.No.2740 of 2021 on the file of the learned Judicial Magistrate No.VI, Madurai.

2.The learned counsel appearing for the petitioner submitted that the respondent/Designated Officer has seized the lighting oil from the petitioner's premises on 20.04.2020 and not returned the oils seized by them. The petitioner has filed a Writ Petition in W.P(MD)No.15211 of 2020, to release the goods seized from the premises of the petitioner. This Court, by order dated 13.07.2021, directed the respondent herein to release the goods specified in seizure memo, dated 21.07.2020, which pertains to 188 Oil Tins within a period of one week from the date of receipt of a copy of that order. He further submitted that in view of the Food Safety Standards Act 2006, the lighting oil is not for human being. Therefore, the Food Safety Officer is not a competent to seize the lighting oil and the prosecution is unsustainable and it is liable to be quashed.

3.The learned Additional Public Prosecutor appearing for the respondent police submitted that the petitioner filed a Writ Petition in



CRL.O.P(MD)No.12157 of 2022

W.P(MD)No.15211 of 2020 pertaining to seizure conducted by the respondent on 20.04.2020. But in this case, the sample has been taken from the petitioner's premises on 21.07.2022. The respondent has seized 15 kg of Gingelly oil weighing 500 ml each in loose condition and without any label. Further, the Food Analyst report, dated 23.09.2020, stating that the samples were received in plain plastic bottles without label and after analysing, they found that the sample of Gingelly oil in loose condition 15 kg Tin do not confirm to standards and it is found to be substandard and prohibited and restricted on sales.

4. I have considered the submission of the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent police.

5.A perusal of records shows that the petitioner was prosecuted by the respondent/Designated Officer for the offences under Sections 53(1)(a), 52, 51, 59(1), 58 and 63 of the Food Safety and Standards Act. The case was taken on file in S.T.C.No.2740 of 2021 by the learned Judicial Magistrate No.VI, Madurai and the same was posted for trial. The learned counsel for



CRL.O.P(MD)No.12157 of 2022

the petitioner further submitted that the petitioner is doing a business only for selling lighting oil and not any Gingelly Oil. He further submitted that during the lock down period, on 20.04.2020, the respondent has seized the lighting oil of 188 Tins belonging to the petitioner. That was done on the ground that the petitioner had violated the prohibitory order issued under Section 144 of Cr.P.C., wherein essential commodities alone were permitted to be sold during the relevant period. Since the seized goods were not returned back, the petitioner filed a Writ Petition in W.P(MD)No.15211 of 2020. This Court, by order dated 13.07.2021, directed the respondent herein to return the seized lighting oils.

6. According to the prosecution, the respondent inspected the petitioner's premises on 21.07.2020 and seized 15 kg of Gingelly oil weighing 500 ml each in loose condition and without label and the same was sent to the Food Analyst. The Food Analyst by its report, dated 23.09.2020, found that the sample were substandard and prohibited and restricted for sales. Hence, after getting sanction order from the Commissioner of Food Safety and Drug Administration, Chennai – 600 006, the respondent prosecuted. Now the petitioner's counsel disputed that the



CRL.O.P(MD)No.12157 of 2022

seized oil is not a Gingelly oil and it is only a lighting oil. Therefore, the question is whether the seized oil is a lighting oil or Gingelly oil as contended by the respondent. This disputed fact has to be adjudicated before the trial Court after let in evidence on both side. This factual dispute has to be adjudicated by examining the prosecution witnesses. Therefore, before commencement of trial, the factual dispute cannot be adjudicated while considering the proceedings for quashing in exercise of power under Section 482 of Cr.P.C. The trial Court has to record the evidence for proper adjudication. Therefore, it is inappropriate to quash the proceedings before commencement of trial and let in evidence of the parties. Hence, I find no merits in this case.

7.Further, the learned counsel for the petitioner submitted that the petitioner seeks his personal appearance to be dispensed with before the trial Court. Considering his request, the personal appearance of the petitioner before the trial Court is dispensed with on condition that the petitioner should be appear before the trial Court, whenever his present is required by the learned Judicial Magistrate.



CRL.O.P(MD)No.12157 of 2022

WEB COPY

8. Accordingly, this Criminal Original Petition stands dismissed.

Consequently connected miscellaneous petitions are closed.

29.08.2022

Internet: Yes./No

Index: Yes/no

vsd

To

1. The Designated Officer,
Code No.012,
The Designated Officer's Office,
Multipurpose Health Supervisors (F)
Training School,
Viswanathapuram,
Madurai – 625 014.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL.O.P(MD)No.12157 of 2022

V.SIVAGNANAM, J.

vsd

ORDER IN
CRL.O.P(MD)No.12157 of 2022
and
Crl.M.P(MD)Nos.7681 and 7683 of 2022

29.08.2022