



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 04.01.2022
PRONOUNCED ON : 24.01.2022
CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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Crl.O.P. (MD)No.6326 of 2018
and
Crl.M.P. (MD)Nos.3004 and 3005 of 2018

1.R.N.A.Pawankumar Agarwal
2.R.N.A.Pramodhkumar Agarwal
3.R.N.A.Manojkumar Agarwal
4. M/s Manoj Enterprises,
represented by the petitioners 1 to 3,
271-E, Rangai Gowder Street,
Coimbatore-641 001. : Petitioners/Accused 6 to 9

Vs.

The Food Safety Officer,
Ambasamudiram Circle,
Government Hospital Road,
Ambasamudiram-627 401. : Respondent / Complainant

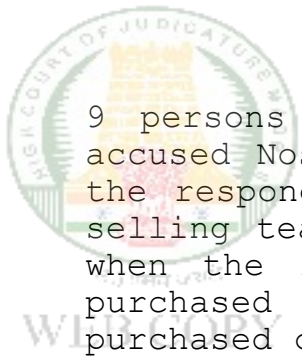
PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in C.C.No.379 of 2017 and quash all further proceedings of the said case as against the petitioners pending on the file of the Judicial Magistrate, Ambasamudram, Tirunelveli District.

For Petitioners : Mr.V.Gopinath
Senior Counsel
for Mr.L.Mahendran
For Respondent : Mr.R.Sivakumar
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.379 of 2017 pending on the file of the Court of the Judicial Magistrate, Ambasamudram, Tirunelveli District and quash the same.

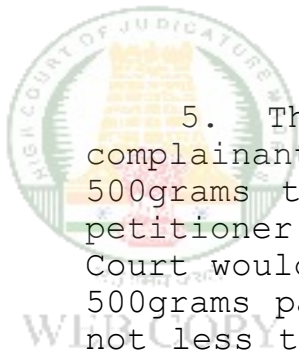
2. The petitioners are the accused 6 to 9 in C.C.No.379 of 2017, on the file of the Court of the Judicial Magistrate, Ambasamudram. The respondent has lodged a private complaint against



9 persons including the petitioners arraying the petitioners as accused Nos.6 to 9 alleging that on 13.10.2014 at about 11.00a.m., the respondent went to the tea shop of the first accused, who was selling tea and found sealed packets in 500grams in the shop, that when the first accused was questioned, he informed that he had purchased the same from the second accused, that the complainant purchased one sealed tea packet containing 500gram and thereafter he took samples from that following the procedures and sent one portion of the sample to the Court and the other portion to the Food Analyst, that the Food Analyst has given his report dated 28.10.2014, stating that the said sample is unsafe under Section 3 (1)(zz) of the Food Safety and Standards Act 2006, since it contains added colouring matter the addition of which is prohibited under Regulation 3.1.2(1) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011, that when the second accused was enquired, he informed that he purchased the tea from the accused Nos.3 to 5 - Maragadam Tea Company, that on enquiry from Maragadam Tea Company, the complainant came to know that the tea packets were supplied by the fourth petitioner/9th accused M/s Manoj Enterprises, that the complainant has sent a letter dated 07.11.2014 to A.9 and sought particulars about M/s Manoj Enterprises for which the petitioner sent a reply dated 11.11.2014 stating that they are dealing only in garden fresh tea as whole sale only and they are not selling any loose packets or without label to any unregistered dealers and the said Nataraja Tea Stall has never purchased tea from them and that after getting permission from the Commissioner of Food Safety, the complaint was lodged and the case was taken on file in C.C.No.379 of 2017, on the file of the Court of the Judicial Magistrate, Ambasamudram for the alleged offences under Sections 52, 59(i) r/w 26(i), 26(2)(i)(ii)(v), 27(1), 27(2)(c)(f), 27(3)(c)(e) of the Food Safety and Standards Act 2006.

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. Admittedly, the fourth petitioner/9th accused is a partnership firm and the petitioners 1 to 3 /A.6 to A.8 are its partners. According to the complainant, the fifth accused is also a partnership firm, in which, the accused Nos.3 and 4 are its partners. The petitioners, while elaborating about their mode of business, have stated that the fourth petitioner firm is the member of the Tea Traders Association, Coimbatore and as such, they are permitted to participate in the auction of tea by various companies, that they used to purchase tea in bulk quantity in sealed bags containing not less than 9kgs in each bag and used to sell the same, in the same condition as they purchased, to traders with bills and that the various distributors, who purchased from them, used to sell to various dealers, who in turn sell the same in loose or in a small

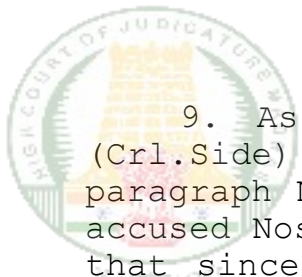


5. The main contention of the petitioners is that the complainant has allegedly purchased one sealed tea packet containing 500grams tea from the first accused, that the bill of the fourth petitioner produced by the complainant before the jurisdictional Court would go to show that the petitioners have not sold any tea in 500grams packet and they have sold only the tea packages containing not less than 30kg and that therefore, the petitioners have nothing to do with the packets allegedly seized by the complainant from the first accused.

6. As already pointed out, it is the case of the complainant that the first accused has purchased the tea from the second accused, who in turn purchased the same from the fifth accused concern, who in turn purchased from the ninth accused concern. Admittedly, the complainant has produced the copy of the bill given by the ninth accused to fifth accused concern, along with the complaint before the jurisdictional Court and wherein it is evident that the ninth accused has sold different varieties of tea in packages containing tea dust weighing between 30kgs and 54kgs totally in 54 packages of 2267 kgs of tea.

7. As rightly contended by the learned Counsel for the petitioners, the ninth accused has not sold any packets containing 500gms of tea, as evident from the bill issued by the fifth accused. According to the complainant, he seized the sealed packet containing tea of 500grams, but without any label or printing of any particulars about the contents of the packet. Admittedly, there is absolutely no evidence to show as to who had packed the tea packets of 500grams. As already pointed out, even according to the complainant, there were two people in between the petitioners and the first accused. In the absence of any evidence to show that the tea found in the packets available in the shop of the accused were purchased only from the ninth accused, the question of mulcting the liability on the ninth accused does not arise at all. Moreover, there is no evidence to show that the fifth accused had repacked the tea purchased from the ninth accused in bulk quantity and packed in small packets or that the second accused who purchased from the fifth accused had packed the tea in small packets. As rightly contended by the learned Counsel for the petitioners, there is absolutely no evidence or materials to connect the petitioners with the tea allegedly received from the first accused.

8. The learned Counsel for the petitioners would submit that though the petitioners 1 to 3 are the partners of the fourth petitioner Company, there is nothing to show in the complaint that they were in charge of and were responsible for the conduct of the business, when the offence was committed, that the complainant has no knowledge about as to who are the persons in charge of and responsible for the conduct of the business of the company and that in the absence of any materials, the petitioners cannot be made

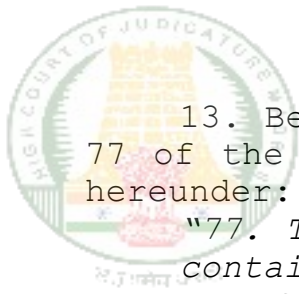


9. As rightly contended by the learned Government Advocate (Crl.Side) appearing for the respondent, the complainant, in paragraph No.10 of the complaint, has specifically alleged that the accused Nos.6 to 8 are the partners of the ninth accused concern and that since the concern was doing manufacturing and also acting as whole sale dealer, the accused Nos.6 to 8 were totally responsible for the conduct of the said business and that separate Form V A were sent to the accused Nos.6 to 8. It is evident from the records that the accused Nos.6 to 8, in response to the notice in Form V A, have sent separate reply to the complainant and wherein they have taken a uniform stand, that they are the whole sale traders in tea and they used to purchase tea in bulk in public auction recognized by Tea Board, Government of India and sell the same to their dealers and that they have nothing to do with the alleged sample taken from Nataraj Tea stall.

10. As rightly contended by the learned Government Advocate (Crl.Side) appearing for the State, in the said reply given by the petitioners 1 to 3, they have not whispered that they were not in charge of and responsible for the conduct of the business at the relevant point of time. Moreover, in the present Criminal Original Petition, while claiming the relief of dispensing with their personal appearance before the trial Court, in paragraph No.14, they have specifically alleged that they are conducting business at Coimbatore and their presence is very much necessary for the conduct of the business of their Company and that they have to travel 500km for attending each and every hearing before the trial Court and it is difficult to attend each and every hearing without fail and that therefore, their personal appearance may be dispensed with.

11. As rightly contended by the learned Government Advocate (Crl.Side) appearing for the respondent, it is not the case of the petitioners 1 to 3 that they were not the partners and some other persons were the partners at the relevant point of time and that they were not in charge of and responsible for the conduct of the business at that time. Considering the above, the contention of the petitioners that in the absence of any materials to show that they were in charge of and responsible for the conduct of the business, the petitioners cannot be made liable, is devoid of merits and the same is liable for rejection.

12. Now turning to the third and technical plea of limitation, it is the specific case of the petitioners that though the sample was taken on 13.10.2014, the complaint was lodged on 07.10.2017, after the expiry of 3 years and as such, the complaint lodged by the complainant itself is barred by time as per Section 77 of the Food Safety and Standards Act, that though the Commissioner has approved the prosecution by condoning the delay, he has not assigned any valid reason for condoning the delay of more than 3 years and that the Commissioner, without application of mind, has mechanically



13. 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. "

14. 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. In the case on hand, admittedly, the sample was lifted on 13.10.2014 and the complaint was lodged on 07.10.2017, after a lapse of 3 years. But the Commissioner of Food Safety, invoking the proviso to Section 77 of the said Act, has approved the prosecution by condoning the delay.

15. It is necessary to refer the order dated 24.06.2017, passed by the Commissioner of Food Safety and Drug Administration approving the prosecution by condoning the delay.

" The Food Safety Officer has taken steps to find out the address of distributor and manufacturer Company further due to administrative reason, in the interest of public health, I, the Commissioner of Food Safety under Section 77 of Food Safety and Standards Act 2006 approve prosecution which may be condoned."

16. At this juncture, it is necessary to refer the decision of the learned Single Judge of this Court in ***M/s Thillaikkarasi Sago Factory Vs. the State of Tamil Nadu, represented by its Secretary, Department of Health and Family Welfare, Chennai and Others*** (Crl.O.P.No.18875 of 2016, dated 30.08.2016). In the said decision also, the prosecution was laid after the lapse of one year and when the launching of prosecution, consequent to the condonation of the delay by the Commissioner was challenged, the learned Judge, considering the reason of "administrative reasons" given by the Commissioner for condoning the delay, has held that the Commissioner of Food Safety has not approached the issue with the solemnity it requires and has in a cavalier manner, exercised the powers under the Proviso to Section 77 of the Act, by saying that the delay was due to administrative reasons and that when a person has to be prosecuted in a Court of law for a criminal offence, it is the duty of the State to follow the letter and spirit of the legislation.



17. No doubt, in the said case, since the delay was condoned only for the administrative reasons, the learned Single Judge has set aside the order of the Commissioner in condoning the delay in filing the prosecution and remitted the matter back to the Commissioner of Food Safety to apply his mind on the facts and circumstances of the case and pass orders in accordance with law under proviso to Section 77 of the said Act.

18. In the case on hand, the Commissioner, apart from the reason of administrative reasons, has also given another reason that the Food Safety Officer has taken steps to find out the address of the distributor and manufacturer Company. As already pointed out, the Food Safety Officer has sent a letter dated 07.11.2014 to the ninth accused directing them to furnish the registered name of the Company, name of the partners/proprietors, address and other particulars and in pursuance of the same, the ninth accused has sent a reply dated 11.11.2014 furnishing the particulars, called for by the Food Safety Officer. It is pertinent to mention that the complainant in paragraph No.17 of the complaint, has specifically alleged that he had submitted the entire documents on 23.12.2014 to the Designated Officer for getting sanction to launch the prosecution, who in turn submitted the proposal to the Commissioner and that the Commissioner has granted permission, vide order dated 24.06.2017.

19. Considering the above, it is very much clear that the particulars about the name of the Concerns and its partners and their addresses have been collected/gathered by the complainant in the year 2014 itself and the same were submitted to the Designated Officer on 23.12.2014 itself. Hence, the reason given by the Commissioner of Food Safety that the delay was occasioned as the Food Safety Officer has taken steps to find out the addresses of the distributors, manufacturing Companies, is proved to be false. As rightly held by the learned Judge of this Court in the judgment, cited above, the administrative reasons cannot be considered as a proper and valid reason to condone the delay.

20. Considering the above, this Court has no hesitation to hold that the Commissioner of Food Safety, without application of mind, has casually and mechanically granted permission to launch the prosecution by condoning the delay. Consequently this Court decides that the proceedings in C.C.No.379 of 2017 pending on the file of the Court of Judicial Magistrate, Ambasamudram, Tirunelveli District is liable to be quashed.

21. In the result the Criminal Original Petition is allowed and the proceedings in C.C.No.379 of 2017 pending on the file of the



Court of Judicial Magistrate, Ambasamudram, Tirunelveli District as against the petitioners is quashed. Consequently, the connected Miscellaneous Petitions are closed.

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Assistant Registrar (T&P)

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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,
Ambasamudram,
Tirunelveli District.
- 2.The Food Safety Officer,
Ambasamudiram Circle,
Government Hospital Road,
Ambasamudiram-627 401.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
Crl.O.P. (MD)No.6326 of 2018
24.01.2022

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GC(10.02.2022) 7P 4C