



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.12.2021

PRONOUNCED ON: 05.01.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.22641 of 2018

and

Crl.M.P. (MD)Nos.10646 and 10647 of 2018

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Siva Foods,
represented by its Partner,
Kathiresan.

: Petitioner/Accused No.4

Vs.

The Food Safety Officer,
Ambasamuthiram Town,
Tirunelveli District.

: Respondent/Complainant

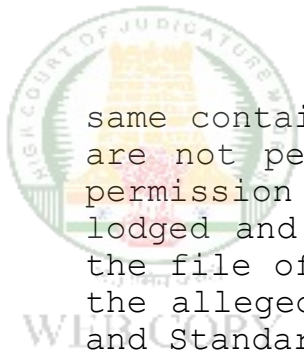
PRAYER : This Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records relating to the private complaint filed in S.T.C.No.3198 of 2018, pending on the file of the Judicial Magistrate Court, Ambasamuthiram and quash the same as illegal so far as the petitioner is concerned.

For Petitioner : Mr.R.Gandhi
For Respondent : Mr.R.Sivakumar
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking orders to call for the records relating to S.T.C.No.3198 of 2018, pending on the file of the Court of Judicial Magistrate, Ambasamuthiram and quash the same.

2. The petitioner is the fourth accused. The respondent has lodged a private complaint against one Senthil and others arraying the petitioner as fourth accused, alleging that on 03.06.2017 at about 02.30p.m., he inspected one Murugan stores, that during the inspection, he suspected that a food item named as Flubbers Pudding Fruits flavoured may be an unsafe food and manufactured contrary to the rules and regulations of Food Safety and Standards Act (hereinafter referred as "the said Act"), collected the samples, that the said samples were sent for food analysis, that the Designated Officer, Tirunelveli received Food Analysis Report, dated 23.10.2017, with an opinion that the sample is unsafe, since the



same contains added coloring matter tartrazine and carmoisine, which are not permitted in the food category and that after getting the permission from the Commissioner, Food Safety, this complaint was lodged and the case was taken on file in S.T.C.No.3198 of 2018, on the file of the Court of the Judicial Magistrate, Ambasamuthiram for the alleged offences under Sections 59(i) and 63 of the Food Safety and Standards Act, 2006.

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

4. The learned Counsel appearing for the petitioner would submit that as per Section 46(3) of the Food Safety and Standards Act, 2006, the sample received by the Food Analyst ought to have been analysed and the report should be sent within 14 days from the date of receipt of the samples, that though the Food Analyst has received the samples on 05.06.2017, he has analysed the samples only on 12.09.2017 and that thereby they have violated the mandatory provisions of the said Act. The learned Counsel would further submit that the petitioner is entitled to file an appeal against the report of the Food Analyst within 30 days by referring the sample to a referral lab for the second analysis, as per Section 46(4) of the said Act, that the Designated Officer has sought for sanction from the Commissioner of Food Safety for initiating the prosecution on 09.11.2017, but sent notice on 10.11.2017 to the petitioner for availing an opportunity for the second analysis and that therefore, the said notice was given only as an eye wash and as such, the prosecution launched, violating the statutory provisions, is liable to be quashed.

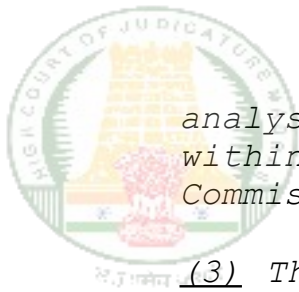
5. The learned Counsel for the petitioner would further submit that as per Section 77 of the said Act, the concerned Court has to take cognizance of the offence within a period of one year from the date of commission of the offence and that since the private complaint in the present case was filed on 13.11.2018, 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. The learned Counsel for the petitioner has relied on 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."

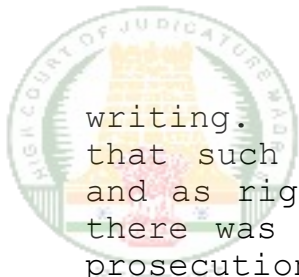


8. Now turning to the case on hand, admittedly, the sample was taken on 03.06.2017 and the same was analysed by the Food Analyst on 12.09.2017, after the lapse of 97 days from the date of receipt of the sample. It is pertinent to mention that the report was dated 23.10.2017 and the same was received by the Designated Officer, Tirunelveli on 27.10.2017. As already pointed out, as per Section 42 of the Food Safety and Standards Act, 2006, the Food Analyst, after the receipt of the sample from the Food Safety Officer, shall analyse the sample and sent the analyst report within a period of 14 days to the Designated Officer. But in the case on hand, as rightly pointed out by the learned Counsel for the petitioner, though the sample was received on 05.06.2017, the Food Analyst report, signed on 23.10.2017, has been received by the Designated Officer on 27.10.2017, after a long delay. Considering the above, this Court has no other option, but to say that they have violated the mandatory requirement contemplated under Section 42 of the said Act.

9. As already pointed out by the learned Counsel for the petitioner, the petitioner is certainly entitled to prefer an appeal to challenge the report of the Food Analyst, by referring the sample to a referral lab within 30 days from the date of receipt of the notice. In the case on hand, the Designated Officer has issued a notice dated 31.10.2017. As rightly pointed out by the learned Counsel for the petitioner, it is evident from the postal endorsement that the notice was sent only on 10.11.2017. It is evident from the records available that the Food Safety Officer has sent a communication to the Designated Officer, Tirunelveli, requesting to issue necessary written consent for launching the prosecution, who in turn sent a letter dated 09.11.2017 to the Commissioner, Food Safety and Drug Administration Department, Chennai, recommending for prosecution sanction and that thereafter, the Commissioner of Food Safety has granted sanction vide letter dated 20.11.2017.

10. As rightly contended by the learned Counsel for the petitioner, the Designated Officer has recommended for prosecution sanction vide his communication dated 09.11.2017. But only thereafter, the Designated Officer has sent the notice, though dated 31.10.2017, on 10.11.2017 and as such, as rightly contended by the learned Counsel for the petitioner, it was only as eye-wash and not with any intention to given an opportunity to the petitioner to refer to the referral lab.

11. Section 77 of the said Act contemplates that no Court shall cognizance of the offence under the said Act, after the expiry of the period of one year from the date of commission of offence. As already pointed out, in the present case, the sample was lifted on 03.06.2017 and admittedly, the private complaint was filed on 13.11.2018, after a lapse of 17 months. No doubt, the Commissioner of Food Safety can approve the prosecution with an extended period for that approval, he has to record the reasons in



writing. In the case on hand, it is not the case of the respondent that such approval was taken from the Commissioner of Food Safety and as rightly contended by the learned Counsel for the petitioner, there was absolutely no explanation for the delay in launching the prosecution.

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12. Considering the above and also the legal position above referred, this Court has no other option, but to hold that the very launching of complaint itself is barred by limitation. Considering the above violations, 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 an abuse of process of law. Hence this Court has no hesitation to hold that the case in S.T.C.No.3198 of 2018, pending on the file of the Court of Judicial Magistrate, Ambasamuthiram as against the petitioner is liable to be quashed.

13. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.3198 of 2018, pending on the file of the Court of Judicial Magistrate, Ambasamuthiram as against the petitioner is quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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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 Court,
Ambasamuthiram.

2.The Food Safety Officer,
Ambasamuthiram Town,
Tirunelveli District.

+1 CC to M/s.R.GANDHI, Advocate (SR-551[F] dated 06/01/2022)

Crl.O.P. (MD)No.22641 of 2018

05.01.2022

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