



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**

WEB COPY

Crl.O.P. (MD)No.18098 of 2018

and

Crl.M.P. (MD)No.8037 of 2018

1.D.Immanuel Selvaraj

2.G.Kannan : Petitioners/Accused Nos.1 and 2

Vs.

The Food Safety Officer,
Code No.042, Dindigul Block,
Food Safety and Drug Administration
Department,

Dindigul District. : Respondent / Complainant

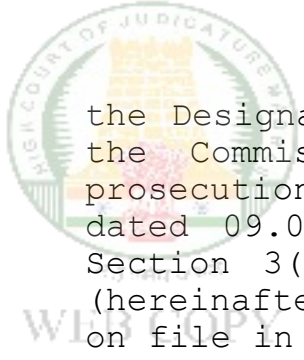
PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records relating to C.C.No.302 of 2018, on the file of the Judicial Magistrate Court -II, Dindigul, dated 15.05.2018 and quash the same as illegal.

For Petitioner : Mr.K.Krishna
For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking orders to call for the records relating to C.C.No.302 of 2018, pending on the file of the Court of Judicial Magistrate No.II, Dindigul and quash the same.

2. The petitioners are the accused Nos.1 and 2 facing trial in C.C.No.302 of 2018, on the file of the Court of Judicial Magistrate No.II, Dindigul. In the present case, the respondent, on 17.08.2017, at about 01.30p.m., visited a concern by name "GPR Mineral Water" at Plot No.22, Sri Kamatchi Nagar, Thottanuthu road, Dindigul-1, that he suspected the water pocket named as "Raaj Packaged Drinking Water" may be unsafe for human consumption and seized 64 pockets of 250ml, that the sample was sent to Food Analyst, that the Food Analyst has analysed the pockets from 18.08.2017 to 20.11.2017 and a report was sent on 23.11.2017, that



the Designated Officer has sent a communication dated 20.12.2018 to the Commissioner of Food Safety, requesting for sanction for prosecution, that after obtaining necessary sanction, vide order dated 09.04.2018, a complaint was lodged for the offences under Section 3(1)(zz) r/w 59(1) of the Food Safety and Standards Act (hereinafter referred as "the said Act") and that the case was taken on file in C.C.No.302 of 2018 and the same is pending on the file of the Judicial Magistrate No.II, Dindigul.

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. The learned Counsel for the petitioners would submit that the shelf life time for the product ie., Raaj packaged drinking water is only 30 days, that the product was packaged on 14.08.2017 and its best before is on 14.09.2017, that the water samples should be analysed and the result should be sent within 14 days from the date of receipt of samples, that the products seized have been analysed from 18.08.2017 to 20.11.2017 after the lapse of 94 days from the date of sample collection, that the analysis report was sent only on 23.11.2017 and that the opinion of the Food Analyst that the sample is unsafe cannot be looked into, as the same was analysed only after the expiry of the best before period. The learned Counsel would further submit that since the respondent has violated the mandatory time limit contemplated under Section 42 of the said Act, the prosecution launched cannot be sustained and the same is liable to be quashed.

5. 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.

6. The learned Counsel for the petitioners 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

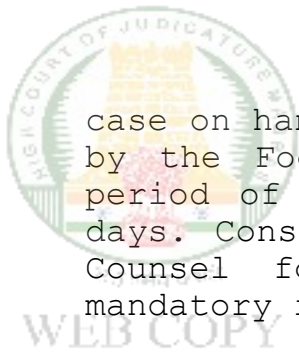


for launching the prosecution was received by the Local Health Authority on 23.01.2004, and the same was received by the Food Inspector on 30.01.2004. The complaint filed on 31.03.2004 was returned, and the same was re-submitted on 23.04.2004. The same was taken on file on 13.05.2004. It would be abundantly 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."

7. In the present case, admittedly the respondent had seized the water pockets on 17.08.2017. It is not in dispute that the sample has been analysed during the period between 18.08.2017 and 20.11.2017 and the analyst report was sent on 23.11.2017. Moreover, as rightly pointed out by the learned Counsel for the petitioners, it has been shown in the water pocket that the same was packed on 14.08.2017 and its best before was shown as 14.09.2017. It is pertinent to note that after collecting the water pocket on 17.08.2017 with best before date as 14.09.2017, the product was analysed for the period between 18.08.2017 and 20.11.2017 nearly for 94 days and the report was sent on 23.11.2017. As already pointed out, the Food Analyst, after the receipt of the same from the Food Safety Officer, shall analyse the sample and sent the analysis report within a period of 14 days to the Designated Officer. In the



case on hand, as already pointed out, though the sample was received by the Food Analyst on 18.08.2017, the same was analysed for a period of 94 days and the report was sent after the lapse of 94 days. Considering the above, as rightly pointed out by the learned Counsel for the petitioners, the respondent has violated the mandatory requirement contemplated under Section 42 of the said Act.

8. 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 not proper. Considering the above violations, no purpose would be served in directing the petitioners to face the trial, as the respondent authorities have miserably failed to follow the mandatory provisions contemplated in the said Act. Hence this Court has no hesitation to hold that the case in C.C.No.302 of 2018, pending on the file of the Court of Judicial Magistrate No.II, Dindigul as against the petitioners is liable to be quashed.

9. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.302 of 2018, pending on the file of the Court of Judicial Magistrate No.II, Dindigul as against the petitioners is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

SSL

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 -II, Dindigul
2. The Food Safety Officer,
Code No.042, Dindigul Block,
Food Safety and Drug Administration
Department,Dindigul District.

+1 CC to M/s.K.KRISHNA, Advocate (SR-694[F] dated 07/01/2022)

Crl.O.P. (MD)No.18098 of 2018

05.01.2022