



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.01.2022

PRONOUNCED ON: 24.01.2022

CORAM

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THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P. (MD)No.19430 of 2019

and

Crl.M.P. (MD)Nos.11405 and 11406 of 2019

1.A.Sudalaimani

2.M/s Aarthi Sweet,
Plot No.87, Melakkal Main Road,
Kochadai, Madurai,
Madurai District.

: Petitioners/Accused Nos.2 and 3

Vs.

The Food Safety Officer,
Rajapalayam (Code No.515),
Virudhunagar District.

: Respondent / Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to quash the proceedings in S.T.C.No.1131 of 2019, on the file of the Judicial Magistrate, Rajapalayam.

For Petitioners : Mr.R.Parthiban

For Respondent : Mr.M.Muthumanikkam
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 S.T.C.No.1131 of 2019, on the file of the Court of the Judicial Magistrate, Rajapalayam.

2. The petitioners are the accused Nos.2 and 3 in S.T.C.No.1131 of 2019, on the file of the Judicial Magistrate Court, Rajapalayam. The respondent has filed a private complaint against three persons



arraying the petitioners as accused Nos.2 and 3 alleging that the respondent/complainant, on 28.07.2018 at about 02.30p.m., had gone to a shop viz., Bharathy store of the first accused, that the complainant had purchased four pockets of Aarthi Maavu sweet and had taken samples and sealed the same in accordance with the procedures and sent the same to the Food Analyst, that the Food Analyst had sent a report dated 21.01.2019 stating that the sample was unsafe and misbranded, that the respondent, after obtaining necessary sanction from the Commissioner of Food Safety, lodged a complaint for the offences under Sections 59(i) and 52 of the Food Safety and Standards Act and that the case was taken on file in S.T.C.No.1131 of 2019 and the same is pending on the file of the Judicial Magistrate Court, Rajapalayam.

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 expiry period for the product seized is two months from the date of manufacturing, that the product was manufactured on 12.07.2018, that the sample was taken on 28.07.2018, but the sample was analysed during 26.11.2018 and 07.12.2018 after the expiry of the said product and that therefore, the opinion of the Food Analyst that the sample was unsafe cannot be looked into, as the same was analysed only after the expiry period.

5. The learned Counsel for the petitioners would further submit that though the sample was lifted on 28.07.2018, the same was analysed and the report was taken after the lapse of nearly five months and thereby the respondent has violated the mandatory time limit contemplated under Section 42 of the said Act and that therefore, the prosecution launched is legally unsustainable and the same 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

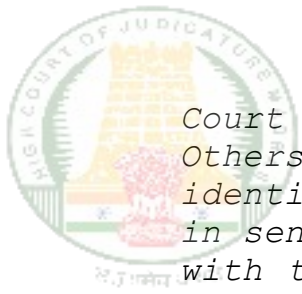
(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

(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.

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



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 case on hand, admittedly the respondent has seized the product on 28.07.2018. It is not in dispute that the sample has been analysed during the period between 26.11.2018 and 07.12.2018 and that the Analyst Report was sent on 21.01.2019. As rightly contended by the learned Counsel for the petitioners, it has been shown in the label of the product that the same was manufactured on 12.07.2018 and the expiry period is mentioned as "two months period from the date of manufacturing". It is pertinent to mention that after seizing the product on 28.07.2018 with two months as expiry period, the product was analysed during the period between 26.11.2018 and 07.12.2018, after the lapse of more than two months since the date of expiry. As already pointed out, the Food Analyst, after the receipt of the sample from the Food Safety Officer, shall analyse the same and send the Analyst Report within the period of 14 days to the Designated Officer. In the present case, as already pointed out, though the sample was sent to the Food Analyst on 28.07.2018, the report was sent on 21.01.2019 after the lapse of more than five months. Considering the above, as rightly contended by the learned Counsel for the petitioners, the respondent has violated the mandatory requirement contemplated under Section 42 of the said Act.

8. As rightly pointed out by the learned Counsel for the petitioners, the petitioners are certainly entitled to prefer an appeal by challenging 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 present case, the Designated Officer has sent the report to the petitioners, vide letter dated 25.01.2019 and the same was received by the petitioners on 03.02.2019.

9. Considering the above, it is clearly evident that when the notice along with the report was received by the petitioners, the product has already exceeded its expiry period and as rightly contended by the learned Counsel for the petitioners, no useful purpose would be served by sending the product to the referral laboratory and as such, as rightly contended by the petitioner's side, sending of notice was only an eyewash.

10. Considering the above and also the legal position above referred, this Court has no other option, but to hold that the very launching of the 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 authority has miserably failed to follow the mandatory provisions contemplated in the said Act. Hence, this Court has no hesitation to hold that the



Court of the Judicial Magistrate, Rajapalayam as against the petitioners are liable to be quashed.

11. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.1131 of 2019, pending on the file of the Court of the Judicial Magistrate, Rajapalayam as against the petitioners are quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

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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, Rajapalayam.

2. The Food Safety Officer,
Rajapalayam (Code No.515),
Virudhunagar District.

3.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P. (MD) No.19430 of 2019
24.01.2022

RD(09.02.2022) 6P 4C