



Crl.O.P.Nos.14595 and 22925 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.04.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.14595 and 22925 of 2016

Crl.O.P.No.14595 of 2016:-

A.Venkatraman

...Petitioner

Vs.

1. The Food Safety Officer,
Omalur Block,
Salem District.
2. The Designated Officer,
District Food Safety Office,
Salem-636 001.
3. The Commissioner,
Office of the Commissioner of Food Safety,
5th Floor, DMS Building,
Teynampet, Chennai-6.

...Respondents

Crl.O.P.No.22925 of 2016:-

L.Kannan

...Petitioner

Vs.

1. The State represented by
The Food Safety Officer,
Omalur Block,
Salem District.



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2. The Designated Officer,
District Food Safety Office,
Salem-636 001.

...Respondents

PRAYER in Crl.O.P.No.14595 of 2016: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the complaint in STC No.1321 of 2015 dated 03.11.2015 pending on the file of the District Munsif cum Judicial Magistrate Court, Omalur, Salem.

PRAYER in Crl.O.P.No.22925 of 2016: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the proceedings in STC No.1321 of 2015 pending on the file of the Judicial Magistrate Court, Omalur.

In Crl.O.P.No.14595 of 2016

For Petitioner : Mr.C.Kanagaraj
For Respondents : Mr.S.Rajakumar
Additional Public Prosecutor

In Crl.O.P.No.22925 of 2016

For Petitioner : Mr.B.Jawahar
For Respondents : Mr.S.Rajakumar
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed to quash the complaint in STC No.1321 of 2015 dated 03.11.2015 pending on the file of the Judicial Magistrate Court, Omalur, Salem.



2. The petitioners are arrayed as A1 and A2. The crux of the complaint is that on 18.06.2014, the first respondent conducted an inspection in the first accused godown and made a seizure, by collecting 1 kg of Sago. After making 4 sample pockets as 250 grams each, it was sent to the respective authorities for analysis. The food analysis report was sent to the Designated Officer, Salem District for adjudication with the Food Analysis Report. On receipt of the report dated 02.07.2014, it was confirmed that the sago is “unsafe” and “substandard” and after following procedures as laid under the Food Safety and Standards Act, 2006 (herein after called as “FSS Act”) lodged complaint.

3. The learned counsel for the petitioner/first accused in Crl.O.P.No.14595 of 2016 submitted that Section 42 of the FSS Act deals with the procedure for launching prosecution wherein after food sampling was sent to the Food Analyst, then to the District Designated Officer concerned with a copy to Commissioner of Food Safety. As per Section 42(3) of the FSS Act, after scrutiny of the reports, he has to ascertain whether contravention is punishable with imprisonment or fine only. But in case of contravention punishment with imprisonment, he shall send his recommendation within 14 days to the Commissioner of Food Safety for



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sanctioning prosecution. As per Section 42(4), the Commissioner of Food Safety if he so deems fit, decide within the period prescribed by the Central Government.

The first analysis report on 02.07.2014 was sent to the Designated Officer concerned and on 08.07.2014 sending the notice before the Adjudication Officer for the accused reply. Thereafter, only on 04.09.2014, in order to prosecute the petitioner sought permission with the Commissioner of Food Safety, Chennai, who in turn on 16.09.2015 and 27.09.2015 had given consent for launching the criminal prosecution. There is a initial delay of 30 days and long delay of 16 months from the Commissioner of Food Safety, Chennai, which has totally violated the mandatory procedure laid down in Section 42 of the FSS Act. That apart, Section 77 of FSS Act also clears stating that 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. The present complaint was lodged after 16 months from the date of commission of offence. Therefore, the complaint itself is barred by limitation.

4. The learned counsel for the petitioner/second accused in Crl.O.P.No.22925 of 2016 submitted that there are two lab reports dated



02.07.2014 and 05.07.2014 in which only one test report is against the petitioner.

But the first respondent initiated proceedings as per the first report which was against the petitioner. If the Food Safety Officer received two variant analysis report, 3 samples have to be sent for analysis under Section 47(1)(c)(iii) of the FSS Act. Only on receipt of the third report from the referral laboratory, the first respondent can lodge a complaint. In the case on hand, admittedly, two variant reports were received by the Food Safety Officer and even then, without following the mandatory provisions, they launched prosecution as against the petitioner.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondents filed counter stating that the proviso under Section 77 of the FSS Act provides 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. By sanction order dated 16.09.2015, the Commissioner of Food Safety clearly stated that due to administrative reasons the prosecution is sanctioned belatedly which may be condoned. Insofar as the provisions under Section 46(4) of the FSS Act is concerned, an appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food



laboratory as notified by the Food Authority for opinion. According to the said provisions the Designated Officer sent a letter dated 08.07.2014 to the second accused asking for the appeal to referral laboratory to go with the second part of the sample within 30 days.

6. In response to the said notice, the second accused had sent a letter dated 16.07.2014 stating that he was not willing to send the sample to referral laboratory. The second respondent 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 14 days to the Commissioner of Food Safety for sanctioning prosecution. As per the provisions the complainant scrutinized the Food Analyst report, Salem from 18.08.2014 to 03.09.2014, which is punishable with imprisonment. Then on 04.09.2014, the second respondent sent a recommendation to the Commissioner of Food Safety and Drug Administration Department for sanctioning prosecution. Therefore, all the procedures were duly followed and launched prosecution as against the accused persons. That apart, the grounds raised by the petitioners can be considered only before the Trial Court during the Trial.



7. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondents.

8. Both the petitioners are arrayed as A1 and A2 in the complaint lodged by the first respondent for the offences under Sections 51, 59(1) of the FSS Act. The crux of the complaint is that on 18.06.2014, the first respondent conducted an inspection in the first accused godown and seized 1 kg of Sago. The samples were sent for analysis. The report says that the sago is unsafe and substandard and hence after according sanction for prosecution, the first respondent launched prosecution. The grounds raised by the petitioners that the food analysis report was sent to the Designated Officer on 02.07.2014, after scrutinizing the said report, the Designated Officer, only on 04.09.2014, sought permission with the Commissioner of Food Safety, Chennai to launch prosecution. The Commissioner of Food Safety, Chennai, who in turn on 16.09.2015 and 27.09.2015 had accorded sanction to launch criminal prosecution as against the accused persons.

9. It is relevant to extract the provisions under Section 42(3) of the FSS Act as follows:-



“42. Procedure for launching prosecution :-

(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.”

Thus, it is clear that the Designated Officer after scrutiny of the report of Food Analyst shall send his recommendations within 14 days to the Commissioner of Food Safety for sanctioning prosecution. In the case on hand, the report was received on 08.07.2014 and he sought for permission to launch prosecution only on 04.09.2014. It is a violation of the provisions under Section 42(3) of the FSS Act.

10. That apart, Section 77 of the FSS Act provides limitation for prosecution. It reads as follows:-

“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.”



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Accordingly, within a period of one year from the date of commission of offence, the prosecution shall be launched as against the accused persons, provided the Commissioner of Food Safety may record any valid reasons in writing, approve prosecution within an extended period of three years.

11. A perusal of sanction order dated 16.09.2015, though reveal that due to administrative reasons, the prosecution is sanctioned belatedly, which may be condoned, there was no valid reason stated by the Commissioner of Food Safety and Drug Administration so as to condone the delay in according sanction.

12. It is clear that the prosecution should be launched only before the expiry of a period of one year from the date of commission of offence. In the case on hand, it was launched after a period of one year. The Commissioner of Food Safety failed to state any valid reason for condoning the delay. In this regard, this Court already held in ***Crl.O.P.No18875 of 2016*** in the case of ***“M/s Thillaikkarasi Sago Factory, represented by its Proprietor D.Sridhar Vs. The State of Tamil Nadu, represented by its Secretary, Department of Health and Family Welfare, Secretariat, Chennai and others”***, wherein it has held as follows:-



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“16. In the opinion of this Court, 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. 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. Of course, on this short ground alone, the entire prosecution cannot be quashed, for, that will lead to such offenders going scot-free for the lapse of administrative authorities. The Act is intended to secure safe food stuffs for the common man and the very purpose of this Act will be defeated if the prosecution is quashed on such ground.”

13. Even according to the complainant, they had received two variant analysis reports. If both the reports varies, the Designated Officer shall send one part of the sample kept in his custody, to referral laboratory for analysis, whose decision thereon shall be final. It is relevant to extract the provisions of Section 47(1)(c)(iii) of the FSS Act:-

47. Sampling and analysis.—(1) *When a Food Safety Officer takes a sample of food for analysis, he shall—*

(c) (iii) send the remaining part for analysis to an accredited laboratory, if so requested by the food business operator, under intimation to the Designated Officer

Provided that if the test reports received under sub-clauses (i) and (iii) are found to be at variance, then the Designated Officer shall send one part of the sample kept in his custody, to referral laboratory for analysis, whose decision thereon shall be final.



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14. Accordingly, one part of the sample to be sent for analysis to the Food Analyst under the intimation to the Designated Officer and another part of sample to be sent to an accredited laboratory. If both reports found to be variance, the Designated Officer shall send one part of the sample to the referral laboratory. The report of the referral laboratory shall be final and on the basis of the said report, complaint has to be filed. In the case on hand, admittedly two reports received are found to be variant. Even then, the complainant did not take any steps to send the same to the Designated Officer in order to send another sample to the referral laboratory. This violation has vitiated the entire proceedings initiated by the complainant.

15. In view of the above, the complaint as against the petitioners cannot be sustained and it is liable to be set aside. Accordingly, the complaint in STC No.1321 of 2015 dated 03.11.2015 pending on the file of the Judicial Magistrate Court, Omalur, Salem, is hereby set aside. Accordingly, these Criminal Original Petitions are allowed.

13.04.2023

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Index: Yes/No

Speaking Order: Yes/No



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G.K.ILANTHIRAIYAN.J.,

mn

To

1. The Judicial Magistrate Court, Omalur, Salem.
2. The Food Safety Officer,
Omalar Block,
Salem District.
3. The Designated Officer,
District Food Safety Office,
Salem-636 001.
4. The Commissioner,
Office of the Commissioner of Food Safety,
5th Floor, DMS Building,
Teynampet, Chennai-6.
5. The Public Prosecutor,
High Court of Madras.

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