



Crl.O.P.No.25138 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :20.10.2023

Pronounced on :30.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25138 of 2022

1.M/s Blue Planets Foods Pvt.Ltd.(Pandikadai)
VIA South Food Court, 3rd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

2.Navin Kumar (Director), M/41y
M/s Blue Planets Foods Pvt.Ltd.(Pandikadai)
VIA South Food Court, 3rd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

3.Balasubramanian Goudhaman(Director),M/45y
M/s Blue Planets Foods Pvt.Ltd.(Pandikadai)
VIA South Food Court, 3rd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

4.Dominic Antony Michel (Director)M/68y
M/s Blue Planets Foods Pvt.Ltd.(Pandikadai)
VIA South Food Court, 3rd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.



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5.Balaji Balachander(Director)M/45y
M/s Blue Planets Foods Pvt.Ltd.(Pandikadai)
VIA South Food Court, 3rd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

6.Rajendran Sudagar (Director),M/48 y
M/s Blue Planets Foods Pvt.Ltd.(Pandikadai)
VIA South Food Court, 3rd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

..Petitioners/1 to 6 accused

/versus/

1.State
Rep.by the Food Safety Officer,
Code No.545, Vadapalani Area,
Tamil Nadu Food Safety & Drug
Administration Department (Food Wing),
O/o Designated Officer, Chennai District,
No.33, West Jones Road, West Saidapet,
Chennai 600 015.

.. Respondent/Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.884 of 2020 pending on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the petitioner/accused 1- 6.

For Petitioners	:Mr.B.Kumar, Senior Counsel for M/s Kritika Kamal, P.
For Respondent	:Mr.S.Udaya Kumar Government Advocate (Crl.Side)



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ORDER

The petitioners herein are accused 1 to 6 in C.C.No.884/2020 on the file of XVII of Metropolitan Magistrate, Saidapet, Chennai. The complaint is filed by a public servant namely, the Food Safety Officer, Chennai District under Section 59(i) of the Food Safety and Standards Act, 2006.

2. The substance of the complaint is as under:-

The complainant/Food Safety Officer (FSO), on 31.01.2019 after obtaining permission from the Designated Officer went to M/s The Forum Vijaya Mall at Vadapalani, Chennai, at about 12.30 hours. In the said Mall at the third floor, he found a restaurant by name M/s Blue Planets Foods Pvt Ltd (Pandi Kadai). The Food Safety Officer introduced himself to the Manager of the restaurant Mr.P.Shanmuga Raja/the seventh accused and informed him the purpose of his visit to the restaurant. After confirming, whether the restaurant have proper license. From 900 grams of chicken 65 kept for sale, after informing 7th accused that he is going to collected 4 samples 150 grams each, paid Rs.840/- and drawn samples. The sample packets were labelled as I , II, III and IV. The mahazar for drawing samples prepared in the presence of



witnesses. The seventh accused acknowledged by signing in it .

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3. The designated officer was informed about the inspection and drawing of samples. On the same day, one of the sample packet marked as 'I ' was sent to the Food Analysis Lab at Thanjavur. The remaining 3 samples labelled as II, III and IV were handed over the Designated Officer. On receipt of the sample for test, the Food Analyst at Food Analysis Laboratory, Thanjavur conducted the test and reported that the sample tested indicates presence of colouring material Sunset Yellow, which is not permitted to be added in 16.0 of food category system in Appendix 'A' of food safety and standard Act. The test report dated 02/04/2019 accompanied a letter even dated stating that the report could not be sent within 14 days from its receipt due to administrative reasons.

4. The petitioners were informed about the analysis report and informed about the right to prefer appeal within 30 days and seek the sample for test by referral lab. The petitioners did not avail the option. Meanwhile, the Designated Officer on 12/04/2019 forwarded his recommendation to the Commissioner of Food Safety for grant of sanction to prosecute. The



Commissioner of Food Safety after considering the materials placed, accorded sanction to prosecute vide his proceedings dated 11/07/2020. The complaint along with the sanction order was taken cognizance by the trial Court on 18/02/2020.

5. Learned Senior Counsel appearing for the petitioners submitted that, under the scheme of the Act, the FSO has to draw 4 samples from the suspected food item. Should sent one sample to the notified lab forthwith following the procedure laid in Rule 2. On receipt of the sample, the Food Analyst who receives the sample for test should complete the test and report within 14 days from the date of receipt of the sample. If the Food Analyst unable to complete the analysis within the time prescribed, then he should address to the Commissioner of Food Safety and seek for time extension specifying the expected date for completing the lab test. In case adverse report is received about the food product, then the Designated Officer on receipt of the lab report, informs to the persons suspected their right to seek for forwarding the second sample for analysis by the referral Food Analysis Lab notified under the Act. The complaint can be taken cognizance by the Court if it is filed within one year from the date of drawing sample. The proviso enables the



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Commissioner of Food Safety to extend the time for filing complaint up to three years for reasons stated.

6. The Learned Senior Counsel appearing for the petitioners contended that the complaint is barred by limitation on all aspects. The Food Analyst who is supposed to complete the analysis and sent the report within 14 days did not adhere to the time line. His explanation for the delay is belated and not immediate as mandated under Section 46 (3). The sample received at the lab on 31/01/2019. While so, the Food Analyst ought to have sent the lab report 13/02/2019. Instead, after expiry of the time line, the lab report sent with the explanation report . The delay in analyst report has denied the opportunity for the accused to send the second sample to referral lab since, the food samples would have decomposed by the time the communication dated 02/04/2019 sent to the accused.

7. The intimation to the petitioners / food business operator was sent on 08/04/2019. The time for preferring appeal was stated as 30 days. Before the time for appeal expired, the designated officer recommended for prosecution and addressed to the Commissioner Food Safety vide his letter dated



12/02/2019. The predetermined intention of the FSO to prosecute clearly show the mala fide intention of the respondent. The sanction to prosecute granted by the Commissioner on 11/07/2019. The complaint filed before the Metropolitan Magistrate Court only on 30/01/2020 after 6 months delay and the same was taken cognizance by the Court on 18/02/2020. The reason for delay in granting permission to file complaint, after one year from the date of drawing sample not specifically mentioned. Stating administrative reason for delay is not sufficient to take the complaint on file after the lapse of time limit prescribed under the statute. The trial Court without proper application of mind has taken cognizance of the complaint on 18/02/2020, after expiry of one year period. Further, petitioners 2 to 6 are not in day to day management of the Company. However, they are also arrayed as accused as Directors of the offending company.

8. The respondent/complainant filed a detailed counter and contended through the Government Advocate (Criminal Side) that, the FSO in exercise of his power under Section 38 of the Act, following the procedure laid under Section 47 and Rule 2.4 while drawing samples and forwarding it for analysis. sample drawn during the inspection held on 31/01/2019 was sent for



analysis to the Lab at Thanjavur on the same day. They were preserved properly as per the procedure laid in the rule and there is no scope for any decomposition. The Food Analyst along with the report given a letter dated 02/04/2019 expressed his difficulty in complying the time line for sending the report. This explanation is in accordance to the proviso to Sub-Section (3) of Section 46 of the Act. Soon after the receipt of the report dated 02/04/2019, the Designated Officer intimated the Business operators in the letter dated 08/04/2019 about the outcome of the result and their right to appeal within 30 days. The food business operators/accused persons who had the right to seek for second opinion from any other referral lab did not avail the option either immediately on seizure of sample or after the report from the Food Analysis Lab, Thanjavur. The food substance was found to be unsafe due to addition of colouring agents which is not permitted. The petitioners cannot take advantage of their own fault in not exercising their option to sent for analysis by any other lab inspite of intimation.

9. Regarding the allegation of delay, the Learned Government Advocate for the respondent submitted that, the delay in getting the lab report is for the reason mentioned in the letter of the Lab Analyst dated 02/04/2019. The



Lab Report dated 02/04/2019 received by the Designated Officer on 05/04/2019. The outcome of the lab report was intimated to the Food Business Operators/accused/petitioners herein by the Designated Officer vide his letter dated 08/04/2019. The accused/petitioners were given 30 days time to prefer appeal. The recommendation of the Designated Officer to prosecute was made on 12/04/2019 within 14 days from the date of receipt of the Lab report. On 11/07/2020, the Commissioner of Food Safety accorded sanction to prosecution after applying his mind. After getting the sanction to prosecute from the Commissioner of Food Safety, the complaint was presented before the Magistrate on 30/01/2020. The complaint was taken cognizance by the XVII Metropolitan Magistrate Court on 18/02/2020. The timeline prescribed under the act not breached except the failure of the Food Analyst not informing immediately about the reason for delay in not completing the lab test within 14 days. The delay in completing the analysis is explained by the Food Analyst but not immediately after receiving the sample and before test not after completion of test. The reason for delay and the lab report are on the same day ie 02/04/2019. This lapse on the part of the Food Analyst cannot be attributed to the complainant and deprive him from effectively enforcing the law.



10. The other aspect is whether the limitation is to be reckoned on the date of filing the compliant or the date of taking cognizance.

11. In this case the date of offence is 31/01/2019. The limitation prescribed for taking cognizance is one year. From the Court seal on the complaint, this Court finds that the complaint presented on 30/01/2020. As per the authoritative pronouncement of the Hon'ble Supreme Court in ***Sarah Mathew –vs- Institute of cardiovascular diseases reported in [(2014 (2) SCC 62)]***, the date relevant for computation of period of limitation is the date, when the criminal complaint is filed, or date of institution of prosecution/criminal proceedings and not the date when the Court takes cognizance. Therefore, the complaint presented on 30/01/2020 is well within the limitation period of one year prescribed under Section 77 of the Act, though the cognizance is taken on 18/02/2020. Further, the time taken to accord sanction is saved by Section 470 of Cr.P.C. Therefore, even otherwise the complaint taken cognizance after one year of the seizure will fall within the period of limitation prescribed on exclusion of time taken for according sanction. Therefore, this Court finds no merit to entertain the quash petition.



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12. As a result, this Criminal Original Petition is dismissed.

30.10.2023

Index:yes/no

Speaking order/non speaking order
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To:

1.The XVII Metropolitan Magistrate, Saidapet, Chennai.

2.The Food Safety Officer,
Code No.545, Vadapalani Area,
Tamil Nadu Food Safety & Drug
Administration Department (Food Wing),
O/o Designated Officer, Chennai District,
No.33, West Jones Road, West Saidapet,
Chennai 600 015.

3.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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delivery order made in
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