



*Crl.O.P.No.16249 of 2023*

In the High Court of Judicature at Madras

|                            |                             |
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| Reserved on :<br>28.8.2023 | Delivered on :<br>30.8.2023 |
|----------------------------|-----------------------------|

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.16249 of 2023  
& Crl.M.P.Nos.10265 & 10266 of 2023

Dharampal Satyapal Ltd.,  
Plot No.2, Phase I, HSIIDC  
Industrial Estate,  
Kondlisonepat, State of  
Haryana through its regd.  
nominee Mr.Devendra Kumar

...Petitioner

Vs

1.Government of Tamil Nadu,  
through Food Safety Officer,  
Code 24-018-580,  
Suramangalam Zone,  
Salem Town,  
Pazhaiya Nattammai Kazhaga  
Building, Salem-636001.  
State of Tamil Nadu.

2.D.S.Chewing Products,  
LLP, A-86, Sector 2,  
Gautambudh Nagar,  
Noida-201301.  
State of Uttar Pradesh.

3.Shri D.Ashok Raj



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**(R2 and R3 deleted from the array of respondents  
vide order of this Court dated 18.7.2023)** ...Respondents

PETITION under Section 482 of the Criminal Procedure Code praying to set aside the docket order passed by the Judicial Magistrate No.3, Salem in complaint bearing CC/STC No.3633 of 2019 dated 10.6.2019.

For Petitioner : Mr.Deepak Dingra  
For Respondent : Mr.A.Damodaran, APP

### ORDER

This is a petition filed by the petitioner (A1) seeking to quash the proceedings dated 10.6.2019 pending on the file of the Judicial Magistrate No.3, Salem (for short, the Court below) in S.T.C.No.3633 of 2019.

**2. By the order of this Court dated 18.7.2023, respondents 2 and 3 were deleted from the array of respondents. In view of the same, the remaining respondent shall be referred to as the respondent in this order throughout.**

3. The facts leading to filing of this petition are as hereunder :



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(i) The respondent herein filed a complaint before the Court below alleging that on 03.7.2018, the Designated Officer inspected the premises situated at Angalamman Kovil Street, Chevapet, Salem and found that the food items that were prohibited by the Government of Tamil Nadu were stocked and sold. This shop was run by the third respondent (A3). The petitioner (A1) was said to be the manufacturer and distributor of the food products called 'Rajnigandha flavoured Panmasala'. The second respondent (A2) was said to be manufacturer and distributor of the food product called 'Tulsi 00 Royal Zafrani Zarda' and the third respondent (A3) was the one, who was running the shop and had stocked all the banned materials.

(ii) A sample was drawn from the seized goods from the shop of the third respondent (A3) and it was sent for testing to a private food laboratory, which is recognized by the Central Government and also by the Food Safety and Standards Commission. The food sample was received by the laboratory concerned on 18.7.2018 and a report dated 31.7.2018 was obtained with findings that the sample was found to be unsafe and that the sale of chewable tobacco was banned as per the Tamil Nadu Government Gazette. The report dated 31.7.2018 received by the Designated Officer was sent to the accused persons and a reply



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dated 29.8.2018 was also received from the second respondent (A2) on 03.9.2018.

(iii) It was alleged in the complaint (i) that the petitioner (A1) had manufactured a food item, which is prohibited for sale in Tamil Nadu by the Government of Tamil Nadu; (ii) that the same contravened the relevant Act and the Rules framed thereunder and (iii) that it was also unfit for human consumption.

(iv) It was further alleged in the complaint that the petitioner (A1) had committed offences under Section 58 and 59(i) of the Food Safety and Standard Act, 2006 (for brevity, the Act). Similarly, the second respondent (A2) was said to have manufactured a food product, which is prohibited for sale in Tamil Nadu as it was unsafe for human consumption and in the complaint, it was also alleged that they were liable for prosecution under the very same provisions. The third respondent was the one, who sold the banned products and accordingly, he contravened the relevant Act and the Rules framed thereunder and it was alleged that he was also proceeded against for the very same offences.

(v) After filing of the complaint, the Court below issued the impugned proceedings. Challenging the same, the petitioner (A1)



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alone is before this Court.

4. When the matter came up for hearing on 18.7.2023, this Court passed the following order :

*"Mr.A.Damodharan, learned Additional Public Prosecutor, takes notice on behalf of the first respondent.*

*2. The respondents 2 and 3 are not necessary parties in this petition and hence, they are deleted from the array of respondents.*

*3. The short issue that was canvassed by learned counsel for petitioner is that the petitioner, who has been arrayed as A1 is the manufacturer of a food item called 'Rajnigandha Flavoured Pan Masala'. This food item which was sent for analysis was found to conform to the standards as specified under the relevant regulations and the Food Safety and Standards Act, 2006. It was contended that such analysis report was available before the first respondent and in spite of the same, the petitioner was made as an accused on the ground that the food item is unfit for human consumption which is contrary to the analysis report that was relied upon by the first respondent.*

*4. Considering the limited issues involved in this case, the main Criminal Original Petition can be taken up for final hearing.*

*Post this case under the same caption on 31.07.2023."*



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5. The respondent filed a counter affidavit along with the typed set of papers.

6. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent. This Court also perused the materials available on record.

7. The learned counsel for the petitioner focussed his arguments mainly on two issues. They are :

*(a) that the food item that has been manufactured by the petitioner (A1) conformed to the standards as specified under the relevant Act and the Regulations, that the same is evident from the analysis report and that therefore, the petitioner (A1) cannot be accused of committing any offence under the Act; and*

*(b) that there is a total non application of mind on the part of the Court below by taking cognizance of the complaint without assigning any reasons.*



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8. To substantiate the arguments, the learned counsel for the petitioner (A1) relied upon various judgments, which insisted that a Magistrate summoning the accused must keep in mind that it involves a person's dignity and reputation and hence, the summoning order must reflect application of mind to the facts of the case and the law applicable thereto.

9. This Court is first dealing with the second issue that has been raised by the learned counsel for the petitioner (A1). The answer given to the second issue will also have a bearing on the first issue that has been raised by the learned counsel for the petitioner (A1).

10. The Court below has taken cognizance of the complaint on 10.6.2019 in the following manner :

*"Records perused. Prima facie case made u/s 58, 59(i) of Food Safety and Standard Act, 2006. Taken on file u/s 58, 59(i) of Food Safety and Standard Act, 2006. Issue summon to the accused and prepare copies. Case posted on 03.7.2019."*



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11. The petitioner (A1) is admittedly having a place of business beyond/outside the jurisdiction of the learned Judicial Magistrate No.3, Salem. In view of the same, fulfilling the requirement under Section 202 of the Criminal Procedure Code (hereinafter called the Code) becomes mandatory.

12. By virtue of Act 25 of 2005, an insertion was made to Section 202(1) of the Code whereby the Legislature wanted to safeguard persons residing outside/having their place of business at far off places from being harassed by filing frivolous complaints. In view of the same, a mandatory obligation was imposed on the Magistrate to the effect that before summoning the accused residing beyond his jurisdiction, the Magistrate shall inquire into the case himself or direct an investigation to be made by a police officer and find out whether or not there was sufficient ground for proceeding against the accused. By virtue of this amendment, the Court below is expected to hold an inquiry before ordering for summons to persons residing/having places of business outside the jurisdiction of the Court below. It is not necessary at the stage of issuance of process that the Magistrate is required to record a detailed order.



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13. However, it is not enough for the Magistrate to merely state that a prima facie case was made out. This is more so in a case where the product that was manufactured by the petitioner (A1) was found in the analysis report to conform to the standards prescribed for Panmasala under the relevant regulations of the Act. When the Magistrate states that after satisfaction, a prima facie case was made out, he should record some reason as to why he came to such a conclusion. If that is not done, the Magistrate cannot mechanically issue the summoning order by stating that he is prima facie satisfied that a case had been made out.

14. In the instant case, it is seen that the product that was manufactured and sold by the petitioner (A1) was found to have been mixed with some other banned/prohibited food items and consumed. According to the petitioner (A1), what is prohibited under the relevant Notification is the product containing tobacco and/or nicotine, the same was not contained in the food product that was manufactured by the petitioner and it was found to conform to the standards prescribed under the Regulations.



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15. The petitioner has also raised a plea that Panmasala and Zarda have been mixed up and a wrong conclusion has been arrived at by the respondent and as a result, the respondent has been proceeding further as if Panmasala contained nicotine and/or tobacco when it was mixed with other banned substances. The respondent also seemed to have taken a stand that the product manufactured by the petitioner (A1) literally assisted the product manufactured by the second respondent (A2), that A1 and A2 belonged to the same group and that therefore, even if the products were sold separately, it was meant to be mixed up and consumed and thereby it became a banned substance.

16. The stand that has been taken by the respondent should have been verified by the Court below on the basis of the averments made in the complaint and the materials filed along with the same. Had this exercise been undertaken by the Court below, obviously the Court below would have recorded the reason as to why it came to the conclusion that a prima facie case had been made out.



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17. Issuing process to an accused person is a serious matter and in a case of this nature, summons were issued to entities beyond the jurisdiction of the Court below and therefore, the Court below must be prudent enough to record reasons and issue process to the accused persons.

18. In the instant case, the Court below had mechanically taken cognizance of the complaint without following the mandate under Section 202 of the Code.

19. It is now too well settled that the procedure prescribed under Section 202 of the Code has to be mandatorily followed, failing which, taking cognizance of the complaint gets vitiated.

20. Useful reference can be made to the following judgments of the Supreme Court :

(i) ***Birla Corporation Ltd. Vs. Advenz Investments & Holdings Ltd. [reported in 2019 (16) SCC 610];***

(ii) ***GHCL Employees Stock Option Trust Vs. India Infoline Ltd. [reported in***



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**2013 (4) SCC 505]; and**  
(iii) ***Pepsi Foods Ltd. Vs. Special Judicial Magistrate [reported in 1998 (5) SCC 749].***

21. In the light of the above discussions, this Court finds that the summoning order issued by the Court below dated 10.6.2019 is not in line with the mandate under Section 202 of the Code and hence, the same is liable to be interfered by this Court. In view of this finding rendered for the second issue, there is no need for this Court to go into the first issue and render its findings.

22. In the result, the order dated 10.6.2019 made in S.T.C.No. 3633 of 2019, through which, the learned Judicial Magistrate No.3, Salem had taken cognizance of the complaint and issued summons to the accused persons, is hereby set aside. The matter is remanded back to the file of the learned Judicial Magistrate No.3, Salem, who is directed to apply his mind and comply with the mandate prescribed under Section 202 of the Code after going through the averments made in the complaint, the materials filed along with the same and the sworn statements recorded on the side of the complainant, if any and



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thereafter proceed further in accordance with law. This exercise shall be completed by the learned Judicial Magistrate No.3, Salem within a period of four weeks from the date of receipt of a copy of this order.

23. This criminal original petition is allowed with the above directions. Consequently, the connected Crl.M.Ps. are closed.

30.8.2023

Index : Yes  
Neutral Citation : Yes  
Speaking Order : Yes

To

1.The Judicial Magistrate No.3, Salem.

2.The Food Safety Officer, Code 24-018-580,  
Suramangalam Zone, Salem Town,  
Pazhaiya Nattammai Kazhaga  
Building, Salem-636001.

3.The Public Prosecutor, High Court, Madras.

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N.ANAND VENKATESH,J

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