



Crl.O.P.No.23692 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 06.07.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.23692 of 2021

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Crl.M.P.Nos. 13059 & 13060 of 2021

1.K.T.Venkates Raja

2.K.T.Srinivasa Raja

3.A.Srinivasan

4. M/s.Adyar Ananda Bhavan Sweets India Pvt. Ltd.,

No.53, South Phase,

Second Sector, Third Street,

Ambattur Industrial Estate,

Chennai – 600 058.

...Petitioners/Accused 1 to 4

Vs.



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State by

P.Sundararaj,

Food Safety Officer,

Code No.551, Velachery Zone Chennai District

Tamil Nadu Food Safety and Drugs Administration Department,

No.33, West Jones Road, Saidapet, Chennai – 600 015.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the complaint in C.C.No.2079 of 2021 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and to quash the same.

For Petitioners : Mr.V.Gopinath
Senior Counsel for
M/s.R.Harishankar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petition is to quash the complaint filed under Sections 51 and 59 (1) of the Food Safety and Standards Act, 2006.



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2. It is alleged in the complaint that the respondent/food safety officer conducted an inspection in the Velacherry branch of the Restaurant run by the fourth petitioner/fourth accused/M/s.Adyar Ananda Bhavan Sweets India Pvt. Ltd., on 12.12.2020; that the respondent found that the Restaurant was selling a food item by the name “A2B Singles Dosa,” which had been prepared with non-permitted colours; that the food item fell under the category of proprietary food under regulations 2.12.1; that the food item was found to be sub-standard and unsafe and hence, the petitioners were liable for the violations of provisions under Section 26 (1) (2) (i) (ii) & (v) of Food Safety and Standards Act, 2006 punishable under Sections 51 and 59 (1) of the Food Safety and Standards Act, 2006.

3. Mr. V. Gopinath, the learned Senior Counsel for the petitioners, submitted that;

(a) It is alleged in the complaint that the “Dosa” seized by the respondent contained charcoal which is not a permitted additive as per



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Table 6.6 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. The learned Senior Counsel submitted that table 6.6 of Appendix - A only refers to a batter. Admittedly, the seized item was only a “Dosa,” and hence, the respondent cannot claim that the product, namely “Dosa,” does not conform to the standards.

(b) The learned Senior Counsel contended that since the respondent had not taken samples of batter to prove the content of activated Charcoal in the Batter, the prosecution cannot be maintained on the basis of the alleged presence of activated Charcoal in the end product, which could be even due to excessive heat.

(c) It is the admitted case of the respondent that the third accused/third petitioner/Mr. A. Srinivasan was the nominee appointed by the fourth petitioner/company as responsible for food safety in the branch where the samples were drawn. In such circumstances, the respondent ought not to have prosecuted the company and its Directors. The Proviso to Section 66 (1) of the Food Safety and Standards Act, 2006, states that if the nominee is appointed, he shall only be liable for the contravention, if any.



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(d) In any event, there is no allegation against the first and the second petitioners in order to invoke Section 66 of the Food Safety and Standards Act, 2006, which provides for vicarious liability of the Directors where the offence is committed by the Company. Hence, he prayed for the quashing of the complaint.

4. Mr. A. Damodaran, the learned Additional Public Prosecutor, *per contra*, submitted that:

(a) The question as to whether the batter or the end product contained activated Charcoal is factual and has to be adjudicated only before the Trial Court. Further, it is for the petitioners to establish before the Trial that there was no “charcoal” in the batter, as the end product contained “charcoal”.

(b) The respondent had sought for the details of the nominee appointed by the fourth petitioner herein. However, the fourth petitioner had not furnished the details of the nominee and the form sent by the fourth



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petitioner for appointing the nominee. Therefore, the company/fourth petitioner is liable, and the first and second petitioners as Directors are in charge and responsible to the company for the conduct of its business, and hence liable. It is for the first and second petitioners to establish before the Trial Court that they were not in charge of the day to day affairs of the fourth accused/ fourth petitioner.

5. This Court, on perusal of the impugned complaint, finds that it is true that table 6.6 of Appendix – A only refers to the “batter” and not to the end product. It is the case of the complainant that the “Dosa” contained activated Charcoal. Hence, it is for the Trial Court to consider whether the batter from which the “Dosa” was made contained activated Charcoal or whether the “Dosa” had charcoal or was burnt due to excessive heat. Since this issue is factual, this Court finds that the impugned complaint cannot be quashed on this ground.



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6. However, as regards the involvement of the Directors, namely the first and second petitioner, it is the submission of the learned Senior Counsel that there is no averment to invoke the Provisions of Section 66 of the Food Safety and Standards Act, 2006. This Court finds that the third petitioner is sought to be made an accused on the premise that he was the nominee appointed by the company. However, in the counter filed by the respondent, it is stated that the fourth petitioner/fourth accused company had not appointed any nominee, and the company had not produced Form IX as required under the Rules to show that they had appointed a nominee. This Court finds that there is a contradiction in the averments made in the complaint as well as in the counter filed by the respondent as to whether the third petitioner is a nominee of the fourth petitioner. The prosecution case has to be very clear. There cannot be contradictory stands as regards the role of a particular accused. However, the question as to whether the third petitioner is the nominee of the company and whether the company is liable as they had not nominated any person are the questions for the trial Court to consider.



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7. Be that as it may. Assuming that the company did not appoint any nominee or was unable to produce any proof of the appointment of the nominee, the question is whether the petitioners as Directors are liable for the contravention. If there is no nominee, then the Company would be liable for the contravention without any doubt. However, to make the Directors liable, there must be basic averments in the complaint which attract the Provisions of Section 66 of the Food Safety and Standards Act, 2006, which provides for vicarious liability of the Directors, where the offence is committed by the company. In the instant complaint, except for stating that the first and the second petitioners are Directors, there is nothing in the complaint to show as to how they are vicariously liable. A General and vague allegation such as they are also liable for the contravention is hardly sufficient. It is well settled that even without the basic averments that either they were in charge and responsible to the company for the conduct of its business or that the company committed the offence with their consent/connivance or their attributed neglect, the first and second petitioners cannot be prosecuted. In the instant case, there is not even a repetition of the words contained in Section 66 of the Food Safety and



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Standards Act, 2003. There cannot be an inference of vicarious liability merely because the first and second petitioners are Directors of the fourth accused company. Therefore, this Court is of the view that the first and second petitioners cannot be made vicariously liable in the absence of the averments to attract Section 66 of the Food Safety and Standards Act, 2003. Therefore, the impugned complaint is quashed in respect of first and second petitioners alone.

8. With the above observations, this Criminal Original Petition stands partly allowed in respect of Petitioners 1 and 2. The Trial Court shall expedite the trial as against the other accused. Consequently, the connected Miscellaneous Petitions are closed.

06.07.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

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To
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1. The XVIII Metropolitan Magistrate,
Saidapet,
Chennai.

2. The Food Safety Officer,
Code No.551, Velachery Zone Chennai District
Tamil Nadu Food Safety and Drugs Administration Department,
No.33, West Jones Road, Saidapet, Chennai – 600 015.

3. The Public Prosecutor
High Court of Madras
Chennai – 600 107.



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SUNDER MOHAN,J.

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