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Crl.O.P.No.25778 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.25778 of 2021 and
Crl.MP.Nos.14321 & 14323 of 2021

1.Rajiv Subramanian
2.S.Indra Subramanian
3.Ubiquitous Foods Pvt Ltd.,
A Company incorporated under the
Companies Act of 1956,
No.46, Pammal Main Road,
Krishna Nagar, Pammal,
Chennai 600 017

... Petitioners

Vs.

The State
Represented by the
Food Safety Officer,
Area Code No.419,
Anakaputhur and Pammal Municipality,
Tamilnadu Food Safety and Drug Administration Dep,
42A, Railway Road, Kancheepuram 631 501

... Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to quash the criminal proceedings in STC.No.164 of 2021 which is pending on the file of the learned Judicial Magistrate-II, Tambaram.

For Petitioners

: M/s.Rohini Ravikumar

For Respondent

: Mr.A.Gopinath,
Government Advocate(crl.side)



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ORDER

This criminal original petition has been filed to quash the criminal proceedings in STC.No.164 of 2021 which is pending on the file of the learned Judicial Magistrate-II, Tambaram taken cognizance for the offence under Section 59(1) of Food Safety and Standards Authority of India Act, 2006(hereinafter called as FSSAI).

2. The respondent filed private complaint as against the petitioners alleging that the respondent conducted inspection in the premises of the accused and found that the petitioners were selling 'chicken tikka'. On suspicion, the respondent had taken samples for test. Accordingly, the Form V A was issued to the petitioners and purchased 1 kg of chicken tikka for a sum of Rs.588/- for sampling. It was divided into four equal parts and duly packed as contemplated under Rule 2.4.1 Food Safety and Standards Rules, 2011 (hereinafter called as 'FSS Rules'). One sample was sent to Food Analyst and the remaining samples were sent to Designated Officer. After analysis, the Food Analyst, Salem sent report dated 20.11.2019 to the designated officer and it revealed that the sample declared as unsafe under Section 3 (1) (zz)(v) of FSS Act, 2006 (hereinafter called as 'Act'). It contains added colour sunset yellow



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which shall be absent. The designated officer intimated to the respondent by communication dated 26.11.2019 for the contravention made by the petitioners for initiating prosecution. Accordingly, the respondent lodged complaint under Section 59(i) of the Act. There are totally five accused, in which the petitioners are arrayed as A2, A3 & A4.

3. The learned counsel for the petitioners raised grounds that the complaint itself is barred by limitation as per Section 77 of the Act. Accordingly, no court shall take cognizance of an offence under the Act after the expiry of the period of one year from the date of commission of offence. The sample was collected on 26.09.2019 and the report was sent on 11.11.2019. Thereafter, only on 28.07.2021, the complaint was lodged. He further submitted that as per under Section 42(3) of the Act, the time limit for sample testing is only 14 days. The lab report to be sent to the designated officer within a period of 14 days from the date of collection of samples. However, analysis was completed after 45 days and the report was not given within a period of 14 days. Analysis was completed on 11.11.2019 and the designated officer received report only on 26.11.2019. The samples were lifted on 26.09.2019 and sample was sent to analyst and received report as 'unsafe and sunset yellow is positive upto 59.58 mg / kg.



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4. Heard, the learned counsel appearing on either side.

5. It is seen that the accused were given opportunity to file an appeal for referral lab as against the analysis report on 26.11.2019. To prosecute the accused, sanction was accorded by the Commissioner of Food Safety on 22.06.2020. Thereafter, the respondent filed complaint on 06.01.2021 before the learned Judicial Magistrate-II, Tambaram. Subsequently, it was taken cognizance in STC.No.164 of 2021. Thereafter, it was transferred to the file of the Judicial Magistrate Court, Keezhkattalai on 02.11.2022 and it is pending for trial.

6. It is true that the time limit for sending analysis report to the designated officer is 14 days from the date of collection of sample as contemplated under Section 42 (2) of the Act. However, there is a proviso under Section 46(3) (ii) of the Act, which clearly indicates that in case the sample cannot be analysed within 14 days of its receipt, the Food Analyst shall inform to the Designated Officer and Commissioner of Food Safety giving reasons and specifying time to be taken for analysis. Accordingly, the Food Analyst vide its communication dated 30.09.2019 in proceedings



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R.No.2148/A3/2019 has duly intimated to the Designated Officer, Tamilnadu Food Safety and Drug Administration Department, Kancheeuram District and the Commissioner of Tamilnadu Food Safety and Drug Administration Department, Chennai and informed that the samples could not be analysed within the period due to shortage of manpower and also 14 days falls on the same day for many of the samples. It also revealed that they requested time of 740 days to analyse the samples. The food samples were duly preserved by putting formalin of 40 drops so that it could be appropriately preserved for analysis. Form V A, Memorandum of Food Analyst is also annexed which also revealed preservative method. Therefore, there is no contravention in collecting the analysis report as contemplated under Section 42(2) of the Act.

7. Insofar as the delay in lodging the complaint, as per Section 77 of the Act, the samples were taken by the respondent on 26.09.2019 and on receipt of sanction from the Commissioner of Food Safety to initiate prosecution on 22.06.2020, thereafter the complaint was filed on 06.01.2021. There was delay due to covid-19 pandemic circumstances and as such, it cannot be said that the delay is wanton or wilful. Therefore, the grounds raised by the petitioners cannot be considered to quash the proceedings initiated by the respondent.



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In view of the above, this Court finds no grounds to quash the present proceedings. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
lok

To

1.The learned Judicial Magistrate-II,
Tambaram.



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2. Food Safety Officer,
Area Code No.419,
Anakaputhur and Pammal Municipality,
Tamilnadu Food Safety and Drug Administration Dep,
42A, Railway Road, Kancheepuram 631 501
3. The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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