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CrI.O.P.No.31363 of 2022

and

CrI.M.P.No.19180 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 23.01.2023	Orders pronounced on 24.02.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.31363 of 2022

and

CrI.M.P.No.19180 of 2022

1. Ali Hemati
M/s.Paradise Food Court Private Limited
No.2/1, Dr.Muthulakshmi Salai
(Lattice Bridge Road)
Thiruvanmiyur
Chennai – 600 041.
2. Dr.Kazim Himathi
M/s.Paradise Food Court Private Limited
No.72/1, Dr.Muthulakshmi Salai
(Lattice Bridge Road)
Thiruvanmiyur
Chennai – 600 041.
3. Mohsin Himathi
M/s.Paradise Food Court Private Limited
No.72/1, Dr.Muthulakshmi Salai
(Lattice Bridge Road)
Thiruvanmiyur
Chennai – 600 041.



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4. M/s.Paradise Food Court Pvt. Ltd.,
No.392, Anjali Devi Towers
Kandanchavadi, OMR,
Perungudi,
Chennai – 600 096.

... Petitioners

Vs.

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

... Respondent

This Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records in C.C.No.1477 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : Mr.P.H.Arvind Pandian
Senior Counsel
for
Mr.S.Premanand

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)



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ORDER

This criminal original petition is filed to quash C.C.No.1477 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. The case in C.C.No.1477 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, was filed against the accused/petitioners under section 59(i) of Food Safety and Standards Act 2006. Respondent/Food Safety Officer visited M/s.Paradise Food Court Private Limited at No.72/1, Dr.Muthulakshmi Salai, Thiruvanmiyur, Chennai at about 2.30 p.m. on 21.02.2019. He introduced himself to fourth accused. He suspected that mint chutney kept for sale to the public had chemical colouring agent added. Therefore, he had taken four samples of 250 grams each, after paying necessary charges. He followed necessary procedures for lifting samples, added formalin for preserving the samples and packed the samples. Fourth accused was also informed that he is entitled for sending one sample to NABL for analysis. Fourth accused had given a letter that he is not interested in sending the sample to NABL. First sample was sent to



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the Food Analyst in Form-VI through courier service on 21.02.2019. One sample was sent to Designated Officer on 21.02.2019. Respondent had also sent a communication under section 47(1)(a) with form V-A to accused 1, 2 and 3 intimating about the lifting of food samples from M/s.Paradise Food Court Private Limited. The report of Food Analyst in Form- B shows that food sample is unsafe for human consumption, since it contained added chemical colour matters 'Tartrazine' and 'Brilliant Blue'. Accused 1 to 5 were served with the report and intimation letter on 02.11.2019. Fourth accused received the report on 04.11.2019 and he sent a letter dated 06.11.2019 stating that he is not willing to send one of the samples to Central Food Research Laboratory. By selling the mint chutney, which is unsafe for human consumption, accused committed offences under Section 26(2)(i)(ii) and section 59(i) of Food Safety and Standards Act 2006. Therefore, the complaint was given.

3. Petitioners have challenged the complaint on the ground that food sample was not analysed immediately, but it was analysed only during



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the period 09.10.2019 to 21.10.2019. The report has not been sent within 14 days of receipt of the sample. No reason has been stated by the Food Analyst for delayed analysis of the food. It is not known whether the sample was kept in fit condition conducive for conducting analysis. The sample ought to have been tested immediately and the report ought to have been sent within 14 days, otherwise, reasons should have been assigned for not having analysed the sample within the prescribed period. Respondent violated the mandatory provisions of the Act and Rule and therefore, the complaint cannot be proceeded against the petitioners. There is no specific allegation against the petitioners or the Directors of the company and therefore, they have been falsely implicated in this case. In view of the violation of mandatory provisions, it is submitted by the learned counsel for petitioners that petitioners cannot be prosecuted. In support of his submissions he relied on the following orders:-

(i) Order of this High Court dated 21.07.2020 passed in Crl.O.P.No.1479 of 2020 (*M/s.Amma Naana Departmental Stores and others Vs. The State of Tamil Nadu*);



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WEB COPY (ii) Order of this High Court dated 03.08.2022 passed in Crl.O.P.No.16418 of 2022 (*Subramanian and others Vs. The State of Tamil Nadu*);

(iii) Order of Madurai Bench of this High Court dated 05.01.2022 passed in Crl.O.P.(MD).No.22641 of 2018 (*Siva Foods Vs. The Food Safety Officer*);

(iv) Order reported in *2017 SCC Online Mad 32978 (A.R.Khader Vs. The Food Safety Officer, Tamil Nadu Food Safety and Standards Department, Chennai)*;

(v) Order of this High Court reported in *2021 SCC OnLine Mad 9289 (R.Paduvairajan and another & S.Kathirvel Vs. The Food Safety Officer)*;

(vi) Order of Madurai Bench of this High Court dated 28.03.2017 passed in Crl.O.P.No.7242 of 2011 (*Thiagarajan ..vs.. Food Inspector*);

(vii) Order of this High Court dated 06.05.2022 passed in Crl.O.P.Nos.26918 and 26919 of 2016 (*C.S.Chandrika and another ..vs.. State of Tamil Nadu at the instance of Food and Safety Officer*);



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WEB COPY (viii) Order of Madurai Bench of this High Court dated 29.08.2022

passed in Crl.O.P.(MD) No.15146 of 2022 (***K.Mariappan ..vs.. State of Tamil Nadu rep. by its Food Safety Officer***);

4. In response, learned Government Advocate (Crl. side) submitted that the reason for delay in analysing the sample and not submitting the report within the stipulated time is due to the administrative reason. Food sample was properly preserved and it was in perfect condition at the time of analysis. Merely for delay in analysing the food samples, the prosecution cannot be quashed.

5. Considered the rival submissions and perused the records.

6. There is no dispute with regard to the taking of samples and analysis report. The main ground on which, this petition is filed is that there is delay in the analysis of the sample and sending the report.



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7. The cases concerned in,

(i)Crl.O.P.No.1479 of 2020, in the case of ***“M/s.Amma Naana Departmental Stores and others Vs. The State of Tamil Nadu”***.

(ii)Crl.O.P.No.16418 of 2022, in the case of ***“Subramanian and others Vs. The State of Tamil Nadu”***.

(iii)Crl.O.P.(MD).No.22641 of 2018, in the case of ***“Siva Foods Vs. The Food Safety Officer”***

(iv)The case in ***“A.R.Khader Vs. The Food Safety Officer, Tamil Nadu Food Safety and Standards Department, Chennai”*** reported in **[2017 SCC Online Mad 32978]**,

were quashed not only for the reason that, there was a violation in provision under Section 42(2) of the Food Safety and Standards Act, 2006, but also the complaint was filed beyond the period of limitation.

8. In the case concerned in Crl.O.P.No.17038 of 2018 in ***“R.Paduvairajan and another Vs. The Food Safety Officer”*** , the product



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was tested after it lost its validity i.e., after the expiry period.

9. However, in the case before hand, the prosecution was launched in time. The only legal ground raised by learned counsel for the petitioner is that, the food sample was not analyzed by Food Analyst within the time and the report has not been sent within a period of 14 days from the date of receipt of the food sample for analysis.

10. Section 46(4) of Food Safety and Standards Act, 2006 gives an option to file an Appeal against the report of the Food Analyst to the Designated Officer. It appears that the petitioners have not taken any steps for filing an Appeal before the Designated Officer under Section 46(4) of Food Safety and Standards Act, 2006. It is specifically stated in the complaint that, the fourth accused, when given an option to send one of the samples to the NABL Accredited Laboratory, that option was not taken favorably by the fourth accused i.e., food business operator.



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11. It is true that Section 46(3) of Food Safety and Standards Act, 2006 mandates the Food Analyst to analyse the food sample and send a report within a period of 14 days from the date of receipt of food sample. However, the proviso to Section 46(3) of Food Safety and Standards Act, 2006 also provides that, in case, the sample cannot be analysed within a period of 14 days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety, giving reasons and specifying the time to be taken for analysis. When an option was given to the Food Analyst to seek extension of time for analysing the food sample, giving reasons and specifying the time required for analysis, the question is, whether a criminal case can be quashed, for the reason that food sample was not analysed and report was not sent within a period of 14 days from the date of receipt of food sample?

12 The reason given in this case for not analysing the food sample within a period of 14 days from the date of receipt of food sample is administrative reason. When a question arose, whether a criminal case can



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be quashed for the reason that the case was taken cognizance after the period of one year from the date of commission of the offence, this Court in Crl.O.P.No.18875 of 2016 in the case of ***“Thillaikkarasi Sago Factory Vs. The State of Tamil Nadu and others”***, observed as follows,

“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.”



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13. In the case before hand, it is true that, the food sample was not analysed and report was not sent within a period of 14 days from the receipt of the food sample. The analysis was done only after 243 days. It is the submission of the learned Government Advocate (Criminal side) that the food sample was appropriately preserved in the manner required and therefore, the sample was in proper condition, at the time of analysis. If the food sample was in proper condition at the time of analysis, then petitioners cannot have any grievance for the reason that there was delay. There is no prejudice caused to the petitioners due to the delayed analysis of the food sample. As said earlier, the 4th accused refused the offer to send the sample for Accreditation Laboratory for analysis and there is no Appeal filed under Section 46(4) of Food Safety and Standards Act, 2006 against the report of the Food Analyst. When the petitioners have not shown any prejudice caused to them due to delayed analysis, this Court is of the view that quashing the complaint on the mere ground that, food sample was not analysed and report was not sent within a period of 14 days cannot be accepted.



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15. In this view of the matter, this petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

24.02.2023

mra

Index : **Yes**
Speaking Order : Yes/No

To

1. The Food Safety Officer
Code No.551, Velachery Zone
Chennai District
Tamil Nadu Food Safety & Drugs Administration Department
No.33, West Jones Road
Saidapet, Chennai – 600 015.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN,J.

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