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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 13/03/2023

Date of Pronouncement : 14/08/2023

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

Crl.OP(MD)No.2417 of 2023

and

Crl.MP(MD)No.2175 of 2023

- 1.Mr.Shathishkumar Dahyal Patel  
(Director),  
M/s.SHIV SHANKAR TOBACCO PVT LTE  
Block No.2160,  
At & Post,  
Sanjet-382 721 (N G)
- 2.Mr.Ashish Sathishbhai Patel  
Director),  
M/s.SHIV SHANKAR TOBACCO PVT LTE  
Block No.2160,  
At & Post,  
Sanjet-382 721 (N G)
- 3.Mayriben Sathikumar Patel (Director)  
M/s.SHIV SHANKAR TOBACCO PVT LTE  
Block No.2160,  
At & Post,  
Sanjet-382721 (NG) : Petitioners/A1 to A3

Vs.

Food Safety Officer,  
Madurai Corporation No.572  
O/o.Designated Officer,  
Food Safety and Drug Administration Department,  
Viswanathapuram,  
Madurai-625 014 : Respondent/De-facto Complainant



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**Prayer:** Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to charge sheet in CC No.776 of 2019 on the file of the Judicial Magistrate No.1, Madurai and to quash the same.

For Petitioners : Mr.S.D.Ramalingam  
For Respondent : Mr.B.Nambiselvan  
Additional Public Prosecutor

### **O R D E R**

This criminal original petition has been filed seeking quashment of the case in CC No776 of 2019 on the file of the Judicial Magistrate No.1, Madurai.

#### **2.The case of the prosecution in brief:-**

The complainant namely the Food Safety Officer attached to Madurai Corporation, Viswanathapuram filed a private complaint stating that on information on 17/09/2018 at about 11.30 am along with police team, he made search in Door No.17, Othuvar Lane, Keela Chithrai Veethi, Madurai. At that time the shop owner by name Barvin V.Jail was available. They introduced themselves to the shop owner and made search with the consent of the



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shop owner. At that time, they found the following banned tobacco products:-

Ganesh 701 Tobacco Premium Product - 28 pockets  
Ganesh 701 Tobacco Premium 21 pocket  
Shankar Chaap Tobacco 6 pockets  
Miraj Swadeshi Tobacco 25 pockets  
RMD PANMASALA 50 boxes  
M Scented Tobacco Gold - 56 boxes

3. Samples were lifted as per the procedure. Further process was undertaken as per the procedure and rules. The shop owner was also informed about the sending of samples to the laboratory for examination. Samples were sent to the laboratory by following proper procedure and rules. A report was received from forensic analysis, on 29/11/2018. In the above said report, it has been stated that it was unsafe under sections 3(1)(zz)(iii) & (V), 26(2)(i) & (V) of Food Safety and Standards Act and also the sale of chewable tobacco is Prohibited as per the Tamil Nadu Government Gazette No.184, dated 23/05/2018 and r/w section 26(2)(iv) of Food Safety and Standards Act 2006. After getting proper sanction order, he has filed a complaint on 15/07/2019.



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4. Seeking quashment of the same, this petition has been filed on the sole ground that the tobacco products banning order was challenged in Writ Appeal No.2093 of 2018 and WP Nos.3076 and 3084 of 2019. One of the writ petition No.3076 of 2019 was filed to quash the private complaint pending on the file of the Judicial Magistrate No.II, Ariyalur in CC No.129 of 2018 and another Writ Petition in WP No.3084 of 2019 was filed seeking quashment of the Government Order, vide Tamil Nadu Government Gazette Extraordinary No.184 (No. 1418/2013/S8/FSSA), dated 23.05.2018.

5. Heard both sides.

6. As mentioned above, this petition has been filed solely on the ground of order passed by the Division Bench of this court in WA No.2093 of 2018, dated 20/01/2023. The GO No.184 (No.1418/2013/S8/FSSA), dated 23.05.2018 was the subject matter of WP No.3076 of 2019. In the judgment reported in the case of **The Designated Officer, The Food Safety & Drugs Control Department Vs. Jayavilas Tobacco (2023-1-L.W-639)**, elaborate discussion was made by the Division Bench of this court.



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7.The above said writ petition was allowed by the single Judge. Challenging the same, Food Safety Officer filed writ appeal before the Division Bench, as mentioned above. After elaborate discussion, the Hon'ble Division Bench of this court allowed WP Nos.3076 and 3084 of 2019, dated 20/01/2023.

8.The following points were framed for consideration.

*"7.From the pleadings and the submissions of the counsel on either side, the following core issues arise in these proceedings before us:*

*(i)Whether the enactment of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) by invoking the power under Article 52 of the Constitution of India would denude the parliament to enact any other law relating to Cigarettes and Tobacco Products.*



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*(ii) Whether there is nay conflict between the COTPA and the Food Safety and Standards Act, 2006 in relation to Tobacco products.*

*(iii) whether COTPA a special enactment would prevail over the Food Safety and Standards Act, 2006, a subsequent General Law.*

*(iv) Whether Tobacco or Tobacco Products would fall within the definition of food under Section 3(i) of the Food Safety and Standards Act, 2006.*

*(v) Whether the provisions of Section 30(2)(a) of the Food Safety and Standards Act, 2006 confer the power on the Commissioner, Food Safety to impose a total ban on the sale of Tobacco and Tobacco products by issuing successive notification year on year."*



9. Tobacco products with or without addiction will be the Food Products, as defined in section 3(g) of the Food Safety and Standards Act, 2006. But so far as the power of the Commissioner of Food Safety to impose the ban is concerned, it is concluded that no such power is available. Issuance of successive ban orders is beyond the powers of the Director of Food Safety, on that ground, above said notification was quashed.

10. But against the judgment, Government of Tamil Nadu preferred SLP before the Hon'ble Supreme Court, wherein stay has been passed. The ground on which, this petition has been filed is now become non-existing. The petitioner can revive the petition at the appropriate time, if the trial is not completed within a period of six months, depending upon the SLP that was filed by the State.

11. So with the above said liberty, this criminal original petition stands dismissed. But however, there shall be a direction to the trial court to expedite the trial process and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is



closed.

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14/08/2023

Index:Yes/No  
Internet:Yes/No  
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To,

1.The Judicial Magistrate No.1,  
Madurai.

2.Food Safety Officer,  
Madurai Corporation No.572  
O/o.Designated Officer,  
Food Safety and Drug Administration Department,  
Viswanathapuram,  
Madurai-625 014

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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G.ILANGOVAN, J

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Cr1.OP(MD)No.2417 of 2023

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