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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 21/03/2023

Date of Pronouncement : 14/08/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.6019 of 2023

and

Crl.MP(MD)Nos.5279 and 5280 of 2023

1.Shirajudden
2.U.Mohammed Sultan
3.U.Mohammed Zabair
4.U.Mohammed Jamal
5.M/s.M.U.Mohammed Sultan and Co.,
Represented by its Managing Partner,
T.S No.3556-57, West 3rd Street,
Pudhukottai-622 001 : Petitioners/A1, A3 and A6

Vs.

State represented by
The Food Safety Officer,
Department of Food Safety and
Drug Administration,
Pudukkottai District-622 -1. : Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of the impugned proceedings in STC No.459 of 2022 on the file of the Judicial Magistrate No.1, Pudhukottai and quash the same as illegal and pass such other or other orders.



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For Petitioners : Mr.M.Rajarajan
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 STC No,459 of 2022 on the file of the Judicial Magistrate No.1, Pudukottai.

2.The case of the prosecution in brief:-

Food Safety Officer attached to Pudukkottai filed a private complaint stating that he is the authorised officer as per section 38(1)(2) of FSSA. According to the complainant, one Ramanathan who is the authorised officer conducted search on 19/02/2019 at about 04.00 pm, in Taj Mahal Tobacco Company. At that time, one Sirajudeen was available. He revealed that one Uppathulla is the owner of the company. By following the procedure, inspection was made and found 200 kgs of banned tobacco products and further samples were taken by following the procedure. Sample taken was sent to food analysis. A report was received stating that the above said sample is unsafe and prohibited by virtue of the notification dated 23/05/2018 in GO Ms.No.184 issued by the Commissioner of



Tamil Nadu Food Safety and Drugs Administration Department. After sanction order was issued, complaint was filed by the complainant. Since the original Food Safety Officer namely Ramanathan was transferred, successor has filed this complaint.

3. Seeking quashment of the same, this petition has been filed on the sole ground that the tobacco products banned 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.

4. Heard both sides.

5. 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



6.Originally, 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 WP Nos.3076 and 3084 of 2019 was allowed.

7.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



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(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.

(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.



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(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."

8.Tobacco products with or without addict 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. On that ground, ban order was imposed by the Commissioner. Issuance of successive ban orders is beyond the powers of the Director of Food Safety. On the ground that, above said notification was quashed.

9.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



10. 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 Petitions are closed.

Index:Yes/No
Internet:Yes/No
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1.The Judicial Magistrate No.1,
Pudukkottai.

2.The Food Safety Officer,
Department of Food Safety and Drug
Administration,
Pudukkottai District.

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



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Madurai.
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G.ILANGOVAN, J

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