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Crl.O.P.No.3406 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.3406 of 2022
and Crl.M.P.Nos.1596 & 1598 of 2022

B.Selvakumar

... Petitioner

Versus

State by
Food Safety Officer,
Adyar Zone – Code 550
No.33 West Jones Road, Saidapet,
Chennai – 600 015.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the further proceedings in C.C.No.2796 of 2021 on the file of IX Metropolitan Magistrate, Saidapet.

For Petitioner : Mr.A.Ashwinkumar

For Respondent : Mr.S.Vinoth Kumar
Govt. Advocate (Crl. Side)



Crl.O.P.No.3406 of 2022

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ORDER

The petitioner has filed this Criminal Original petitions to quash the proceedings in C.C.No.2796 of 2021 on the file of IX Metropolitan Magistrate, Saidapet, in which cognizance was taken for the offences punishable under Sections 52(1) and 59(1) of the Food Safety and Standards Act, 2006.

2. The case for the prosecution is that the complainant is a food safety officer duly authorized to inspect, take samples, and send them for analysis from any commercial organization. The complainant inspected M/s. Cheers Ventures, a retail supermarket located at No.79, LB Road, Adyar, Chennai, on 27.02.2019 at around 4:40 p.m. to take food samples. He introduced himself to a sales staff member named B. Muthukumar (A1). The complainant, on suspicion, bought 6 packets of Raja Snacks Mixture to be taken as 3 samples, with each sample consisting of 2 packets weighing 150 grams each. Upon seizure of the products, following appropriate procedures, the rights available under



Section 2.4.1(10)(iii) of the Food Safety and Standards Rules 2011 were explained to the Manager (A1). Thereafter, one of the food samples was handed over to the designated officer.

3. On 01.03.2019, a notice was issued to A3 (the Manufacturer) to produce the requisite licenses immediately. On 11.03.2019, a letter explaining the delay in analysis was sent by the Food Analyst under Section 46(3)(iii) of the Act and under 2.3.2.(6) of the Rules and was received by the designated officer. About one year later, the report dated 13.02.2020 from the Food Analyst was received on 17.02.2020 stating that the sample violated Rule 2.2.1(4) & 2.2.2(8) of the Food Safety and Standards (Packaging & Labelling) Rules 2011. The sample was also found to be unsafe since it contained "Tartrazine 7.49mg/kg," which is not a permitted coloring agent, as per 15.1 of the Food Category System in Appendix-A of Food Safety and Standards (Food Products Standards & Food Additives) Regulation 2011. Thereafter, the designated officer sent communication to all the accused, including the petitioner, on 20.02.2020, intimating the report of the food analysts and the opportunity



CrI.O.P.No.3406 of 2022

to file an appeal. Subsequently, upon obtaining necessary sanction from the Commissioner of the Food Safety Department, the present complaint has been filed.

4. The learned counsel for the petitioner submitted that the petitioner is innocent and has not committed any offense as alleged by the prosecution. He also submitted that the petitioner is only a seller under the Food Safety and Standards Act of 2006. In the present case, A3 is the manufacturer under Section 3(zc). The liability of the seller is enumerated under Section 27(3) of the Act. He also submitted that the sample taken from the petitioner's shop is a packed food which was licensed to be sold by FSSAI. The said product is being sold in various retail shops across Tamil Nadu; the only person who could be accountable for the safety and standard of the packaged goods is the manufacturer himself. Once the product is licensed to be sold by FSSAI, it is beyond the scope of the retailer to verify the content of each and every packaged good. Therefore, unless there is a specific averment that the retailer had knowledge that the product is unsafe, it would be obnoxious to charge the retailer under



Section 59 of the Act. Therefore, he prays for the proceedings to be quashed.

5. To support his contentions, he relied on the following authorities:

i) reported in **2019 SCC Online Mad 25015, in the case of High Court of Madras in P.Iyappan and others Vs.Food Safety Officer**, in which stated as follows:

“4. Section 27 of the Food Safety and Standards Act 2006 reads as under;-

27. Liability of Manufacturers, packers, wholesalers, distributors and sellers-

(1) The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is-

(a) supplied after the date of its expiry; or

(b) stored or supplied in violation of the safety instructions of the manufacturer; or

© unsafe or misbranded, or

(d) unidentifiable of manufacturer from whom the article of food have been received; or

(e) stored or handled or kept in violation of the provisions of this Act, the rules and regulations made thereunder; or

(f) received by him with knowledge of being unsafe

(3) The seller shall be liable under this Act, for any



article of food which is-

- (a) Sold after the date of its expiry; or*
- (b) handled or kept in unhygienic conditions; or*
- © misbranded; or*
- (d) unidentifiable of the manufacturer or the distributors from whom such*
- (e) received by him with knowledge of being unsafe.”*

5.It is not in dispute that the first petitioner is the salesman and the second petitioner is the shop owner, while the third petitioner is the wholesaler. These three petitioners can be fastened with penal liability only if it can be shown that the food article in question was received by them with the knowledge of their being unsafe. The food articles of masala powder are being sold only in sealed packets. There is nothing on record to show that petitioners 1 to 3 herein had purchased the same with the knowledge of their being unsafe. Therefore, petitioners 1 to 3 are entitled to the benefit set out in Section 27(2)(f) and section 27(3)(e) of the said Act. But, then, the manufacturer cannot claim the same benefit. The manufacturer will be liable if he does not meet the requirements of the Act and rules and regulations framed therein.”

ii) reported in **2020 SCC Online Mad 9099, in the case of High Court of Madras in Amma Naana Departmental Stores and others vs. State of Tamil Nadu, rep by its Food Safety Officer, Mr.R.Selvam**, in which stated as follows:

“10.As far as the other ground raised by the petitioner is concerned, it is relevant to extract the provisions under



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Section 42 of the Food Safety and Standard Act, 2006 as follows:

42. Procedure for launching prosecution-

(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to designated officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decided as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the central Government, as per the gravity of offence, whether the matter be referred to-

(a) a Court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) s Special Court in case of offences punishable with imprisonment for a term exceeding three year where such special Court is established and in case no special court is established, such cases shall be tried by a Court of ordinary jurisdiction.

5. The Commissioner of Food Safety shall communicate his decision to the designated officer and the concerned Food safety officer who shall launch prosecution before Courts of ordinary jurisdiction or special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under Section 40.



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11. According to the prosecution on 31.08.2017, the food product was purchased by the respondent. Thereafter, the sample of the said food product was sent for analysis on 15.09.2017. Thereafter, food analyst analysed the food product from 20.02.2018 to 26.02.2018 and opined that the said food sample was “unsafe” and “mis-branded” by the report dated 07.03.2018. The respondent received the analysis report from Food Analyst, Food Testing Laboratory, Thanjavur on 14.03.2018. Thereafter, it was communicated to the sixth accused on 16.03.2018. Thereafter only on 22.17.2019, the complaint was lodged by the respondent against the petitioners. Therefore, the Food Analyst analysed the food product only after 155 days from the date receipt of the food sample from the respondent herein. As per the provisions under Section 42 of the Food Safety and Standard Act, 2006, the Food Analyst after receipt of the sample from the Food Safety and Standard Act, 2006, the Food Analyst after receipt of the sample from the Food Safety officer shall analyse the sample and sent the analysis report within a period of 14 days to the Designated Officer. Further as per the Rule 2.4.2(5) of Food Safety Standard Rules 2011, Food Analyst has to analyse the sample and send his report within 14 days from the date of receipt of the sample. It is also relevant to extract the Rule 2.4.2(5) of the Food Safety Standard Rules, 2011 as follows:

“On receipt of the sample, the Food Analyst shall analyse or cause to be analysed the sample and send the analysis report mentioning the method of analysis. The analysis report shall be as per Form VII A and four copies of the same shall be sent to the Designated Officer under whose jurisdiction the Food Safety Officer functions or the purchaser of article of food. The analysis report shall be signed by the Food Analyst and such report shall be sent within fourteen days of the receipt of the sample by the Food Analyst.”



12.Hence, the Food Analyst had failed to comply the above procedure laid down under Rule 2.4.2(5) of the Food safety standard rules, 2011. Since the analysis was done after expiry of the said food sample, the same cannot be considered for prosecuting the petitioners for violation of Section 59(1) of Food Safety and Standards Act, 2006.”

6. By relying on these authorities, the learned counsel for the petitioner submitted that there is an inordinate delay in the food analysis, which itself shows that the sample has not been analysed within the time. Therefore, the report as such is also not valid under the law.

7. The learned Government Advocate (Crl. Side) submitted that on 27.02.2019 at about 4:40 p.m., the respondent purchased 6 packets of "Raja Snacks Mixture" (each containing 150 grams) from the Manager of the Retail Trade M/s. Cheers Venture, No.79 L.B. Road, Adyar, Chennai-600 020, after serving Form-VA as per 2.4.1(3) of FSS Rules 2011 and paid a sum of Rs.259/- and obtained a cash receipt with the signature of the Manager. As per Section 47 (1)(b) read with FSS Rule 2.4.1, other following sampling procedures were adopted and the same sent to the Food Analyst and remaining parts handed over to the designated officer.



He further submitted that on 11.03.2019, a letter was received from the Food Analyst, Thanjavur, under Section 46(3)(ii) r/w rule 2.4.2(6) mentioning the reason for the delay in analysis. The Food Analyst's report dated 13.02.2020 revealed that the sample food contains added color Tartrazine, which shall be absent with respect to 15.1 of the Food Category System in Appendix-A of FSS Regulations 2011, and also is being MISBRANDED as it is not labeled in accordance with the requirements under regulations 2.2.1(4) & 2.2.2(8) of FSS (Packing and Labeling) Regulations 2011. The respondent collected the relevant necessary documents and facts and sent the necessary proposal to the concerned officer for obtaining written consent on 26.02.2020 to the Commissioner of Food Safety, Chennai, through the Designated Officer, Chennai District. The Commissioner of Food Safety, Chennai, accorded necessary consent on 11.03.2021 to the Food Safety Officer for launching prosecution against all accused under Section 52(1) & 59(i) of FSS Act 2006. Accordingly, the case was filed before the Metropolitan Magistrate IX MM Vouty, Saidapet, Chennai-15, who took cognizance and issued summons to all the accused.



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8. Even though the petitioner is a Proprietor of the chain of supermarkets at 5 different places in Chennai, the proprietor concern is not attracted under Section 66 of FSS Act 2006 read with FSS Rule 2.5 within the meaning of “Company” and “Director.” He also submitted that even as a retailer or seller, he is also accountable with regard to selling the product in the market. To that effect, he relied on Section 27(3) of the Act. The provision under Section 27(3) of the Act is extracted hereunder.

“Section 27(3) Liability of manufacturers, packers, wholesalers, distributors and sellers.

The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.

(3) The seller shall be liable under this Act for any article of food which is

(a) sold after the date of its expiry; or

(b)Handled or kept in unhygienic conditions; or

© Misbranded; or

(d) Unidentifiable of the manufacturer or the distributors from whom such articles of food were received; or

(e) Received by him with knowledge of being unsafe”.



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9. Considering the provision under Section 27(3) of the Act, which holds the seller liable for any misbranded article, one of the allegations against the petitioner is that the product in question is misbranded. According to the report of the Food Analyst, the sample is deemed unsafe under Sections 3(1)(zs) of the Food Safety and Standards Act of 2006. The report also states that the product is misbranded as it does not have the required labeling. The food analysis report prima facie reveals that the product is misbranded and unsafe. Therefore, the objection raised by the petitioner, claiming that he is only a seller and not responsible for verifying the conduct of each and every food product, is not acceptable. The responsibility of ensuring that food is not damaged or unsafe falls on the retailer, and by extension, the seller as well. The authorities relied upon by the petitioner do not apply to the facts of the present case. Since the product is being sold to various retail shops across Tamil Nadu, the seller also bound by the rules of the Food Safety and Standards Act. As per Section 46(3)(2) of the Act, if a Food Analysis is delayed beyond 14 days, a reason must be provided by the Food Analyst. Valid



Crl.O.P.No.3406 of 2022

WEB COPY

communication regarding the delay can only be proved or disproved during the trial.

10. Considering the submissions made by the learned counsels on both sides, this Court is not inclined to quash the proceedings in C.C.No.2796 of 2021 on the file of IX Metropolitan Magistrate, Saidapet. However, liberty is granted to the petitioner to seek remedy before the trial Court.

11. Accordingly, this Criminal Original Petition is dismissed and Consequently, the connected miscellaneous petitions are closed.

05.03.2024

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Crl.O.P.No.3406 of 2022

T.V.THAMILSELVI, J.

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To

1.The IX Metropolitan Magistrate, Saidapet.

2.Food Safety Officer,
Adyar Zone – Code 550
No.33 West Jones Road, Saidapet,
Chennai – 600 015.

3.The Public Prosecutor,
High Court, Madras.

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