



CRL.M.P. No. 11065 of 2024
in
Crl.R.C. No.1265 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM

THE HON'BLE MR.JUSTICE M. NIRMALKUMAR

CRL.M.P. No. 11065 of 2024

in

Crl.R.C. No.1265 of 2024

P. Muthulingam

..Petitioner

Vs.

**State rep. by
The Food Safety Officer,
Poonamalee Municipality,
Poonamlee.**

..Respondent

Prayer: Criminal Miscellaneous Petition to suspend the sentence imposed on the petitioner by judgment dated 27.03.2024 in C.A. NO. 38 of 2021 on the file of the II Additional District and Sessions Court, Thiruvallur confirming the conviction and sentence imposed by judgment dated 26.03.2021 in STC No. 120 of 2019 by learned Judicial Magistrate No.II,



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Poonamalee and enlarge him on bail.

For Petitioner :: Mr.M. Vimal Bobby Crimson

For Respondent :: Mr.A. Damodaran,
Addl. Public Prosecutor

O R D E R

The petitioner/accused in STC No. 120 of 2019 was convicted by the Trial Court by judgment dated 26.03.2021 for offences under Sections 51, 52(i), 59(i) and 63 of Food Safety and Standards Act, 2006 (hereinafter 'the Act' for the sake of convenience) and imposed with fine of Rs.5000/- carrying a default sentence of 2 weeks simple imprisonment for the offence under Section 51 of the Act; to pay fine of Rs.5000/- and in default to undergo 2 weeks simple imprisonment for the offence under Section 52(i) of the Act; to undergo one month simple imprisonment and to pay a fine of Rs.5000 carrying a default sentence of 2 weeks simple imprisonment for the offence under Section 59(i) of the Act and sentenced to undergo one month simple imprisonment together with a fine of Rs.5000/- carrying a default sentence of 2 weeks simple imprisonment for the offence under Section 63



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of the Act. Aggrieved by the said conviction and sentence, the petitioner preferred an appeal in C.A. No. 38 of 2021 before Sessions Court, Thiruvallur and by judgment dated 27.03.2024, the learned II Additional District and Sessions Judge, Thiruvallur, confirmed the same as against which the present revision has been filed.

2. The gist of the prosecution case is that the respondent/Food Safety Officer filed a complaint against the petitioner for offences under Sections 51, 52(i), 59 (i) and 63 of Food Safety Act, 2006. The petitioner is the proprietor of Lingam Agencies engaged in sale of food products and on receiving information from Poonamalee Police Station that the petitioner was found stocking Panmasala and Gutkha products in his godown, went along with officials to the petitioner's godown where the respondent had taken 16 packets of sample Saffron Blended MGM weighing 160 gms each which contains Panmasala and Gutkha products. The samples taken were divided into four parts and three parts were sent for analysis and one part was handed over to the officer. On receipt of the result stating that the



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samples sent were found to be misbranded, substandard, unsafe and banned products, after obtaining sanction from the sanctioning authority, the complaint was lodged. The respondent was examined as P.W.1 and Exs.P1 to P18 were marked. On the side of the defence, one Muthu was examined as D.W.1. No documents were marked.

3. According to the learned counsel for the petitioner, in this case, the respondent did not add the manufacturer of the food product as contemplated under Section 27(1)(d) of the Act. Further, it is imperative that 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 the Act and the rules and regulations made thereunder. Further, as per Section 27(2) of the Act, 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*
- (c) unsafe or misbranded, or*



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*(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.*

The above provisions were not adhered to. Further, the samples were not forwarded for analysis within the stipulated period as per Section 42(2) of the Act. Hence, the learned counsel for the petitioner would contend that the conviction of the petitioner by the Trial Court is not proper and the Lower Appellate Court also failed to consider these aspects. Hence, the learned counsel would seek suspension of sentence.

4. Learned Additional Public Prosecutor has objected to the contentions of the petitioner stating that samples have to be sent to the laboratory within 14 days and report has to be received. In the event of any delay in receiving the report from the laboratory, the reason should be given and thereafter, the petitioner, if aggrieved, can challenge the same by way of appeal. In this case, the report with the reason for delay was sent together



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but the petitioner did not challenge/question the report. In such circumstances, the petitioner cannot now take such a stand. He would further submit that in this case, from the petitioner's godown, Gutkha products and other contraband have been seized, The petitioner did not deny that the godown belongs to him. The Trial Court considered all these aspects and the Lower Appellate Court also, in the appeal, independently considered the same and dismissed the appeal confirming the conviction and sentence of the Trial Court. Hence, the learned Additional Public Prosecutor would pray for dismissal of the petition.

5. During the course of arguments, the learned counsel for the petitioner would submit that without prejudice to the merits of the case, the petitioner is willing to deposit a sum of Rs.25,000/-

6. Considered the submissions and perused the materials on record.



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7. It is seen that there has been some delay in drawing the samples and sending the same to the laboratory. Further, for the delay, opportunity was not given to the petitioner to question the same thereby the petitioner has lost his right in sending the sample to an independent laboratory to challenge the report received. In such circumstances, this Court is inclined to suspend the sentence and enlarge the petitioner on bail.

8. Accordingly, the relief of suspension of sentence and bail are granted to the petitioner subject to the following conditions till the disposal of the above criminal revision:

(a) The petitioner shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in favour of 'SRI RAMACHANDRA UNIVERSITY, PORUR BRANCH, RAMACHANDRA NAGAR, PORUR, CHENNAI – 600 116 in Account No: CA 6203243021, IFSC Code: IDIB000s180 Indian Bank. This amount of Rs.25,000/- shall be utilized for the purpose of head and neck cancer surgeries, Department of Oral and Maxillofacial Surgery.



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(b)The petitioner/accused is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Poonamalee;

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.



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To

1. The Judicial Magistrate No.II,
Poonamalee.
2. The Public Prosecutor,
High Court, Madras.

M. NIRMALKUMAR,J.

nv

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