



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.22575 of 2023

and

CrI.MP.Nos.15798 & 15799 of 2023

- 1.Mfg & Packed by
Way Cool Foods & Products Pvt.Ltd.
Rep.by Amrit Bajpai
Survey No.64, Kappa Village
Hullmangala Post, Jigani
Hobli, Anekal (T),
Bengaluru-560 105.
- 2.Licensee
Amrit Bajpai
Way Cool Foods & Products Pvt.Ltd.
Survey No.64, Kappa Village
Hallmangala Post, Jigani
Hobli, Anekal (T), Bengaluru-560105.
- 3.Marketed by
CFB Retail Pvt.Ltd
Rep.by Karthik Jayaraman
III B, Old No.01, New No.105
Arcot Road, Virugambakkam
Chennai-92.
- 4.Director 1
Karthik Jayaraman age 43/M
S/o.S.Jayaraman
CFB Retail Pvt.Ltd.
III B, Old No.01, New No.105
Arcot Road, Virugambakkam
Chennai-92.



5. Director 2

Vinod Kumar Dasari age 52/M
S/o. Mr. M. Rao Dasari
CFB Retail Pvt. Ltd.
III B, Old No. 01, New No. 105
Arcot Road, Virugambakkam
Chennai-92.

6. Director 3

Sanjay Venkat Dasari age 25/M
S/o. Mr. Vinod K. Dasari
CFB Retail Pvt. Ltd.
III B, Old No. 01, New No. 105
Arcot Road, Virugambakkam
Chennai-92.

7. Trade/Retailer

Uppuluri Farms Pvt. Ltd
Rep. by Uppuluri Ganga Ratnakumari
No. 554(136), T.T.K. Road
Alwarpet, Chennai-18.

8. Director 1

Venkat Ramarao Uppuluri age 55/M
S/o. Mr. U. Vijayendra Babu
Uppuluri Farms Pvt. Ltd
No. 554(136), T.T.K. Road
Alwarpet, Chennai-18.

9. Director 2

Uppuluri Ganga Ratnakumari age 77/F
W/o. Mr. Nagabasavaiah Chalasani
Uppuluri Farms Pvt. Ltd
No. 554(136), T.T.K. Road
Alwarpet, Chennai-18.

...Petitioners /Accused 1-9

.Vs.

1. Food Safety Officer

ID No. 543
Teynampet and Valluvarkottam Zone
Chennai District
Tamil Nadu Food Safety Department
No. 33, North Jones Road
Saidapet, Chennai-600 015.

... Respondent/Complainant



PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.1756 of 2023 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the proceedings as against the petitioners.

For Petitioners : Mr.A.Ramesh
Senior Counsel
for Mr.R.Ashwin

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor.

ORDER

This criminal original petition has been filed challenging the proceedings in C.C.No.1756 of 2023, pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai.

2.The respondent filed a complaint before the Court below on the ground that on 17.11.2021, the food safety officer made an inspection and enquired the food safety business operator and in the course of inspection 'Sunny Bee Palm Sugar Candy', which was sold in the shop was purchased for the purpose of taking a sample and the sample was also sent to the food safety officer on 17.11.2021. It is to be mentioned here that the shelf life of the commodity is six months from the date of packaging. The food analyst received the sample and the analysis was done from 7.3.2022 to 26.4.2022. An analysis report was prepared dated 07.5.2022 stating that the commodity is 'unsafe, substandard and misbranded'. This analysis report was received by the designated officer on 16.5.2022 and it was intimated to the food



business operator by letter dated 17.5.2022, which was received on 19.5.2022. Thereafter, a requisition letter was made to the sanctioning authority by the designated officer on 24.5.2022 and the sanction was signed on 24.2.2023. The complaint was presented before the Court below on 24.3.2023. The complaint was filed for the alleged offence under Section 59(1), 51 and Section 52(1) of the Food Safety and Standards Act, 2006 (hereinafter referred as 'the Act of 2006').

3.Heard Mr.A.Ramesh, learned Senior Counsel for the petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor for respondent.

4.The learned Senior Counsel appearing on behalf of the petitioners primarily raised three grounds questioning the proceedings pending before the Court below. The first ground that was raised was that the shelf life of the commodity expires on 23.4.2022 and whereas the analysis itself was done beyond the shelf life from 7.3.2022 to 26.4.2022 and the analysis report dated 7.5.2022 was forwarded through letter dated 17.5.2022 which was received on 19.5.2022 and by then, the shelf life of the product had come to an end. In view of the same, a valuable right that has been given under Section 46(4) of the Act of 2006 and Rule 2.4.6 of Food Safety and Standards Rules, 2011, to make an appeal against the food analysis report and to refer the matter to the referral food laboratory was lost.

5.The next ground that was urged by the learned Senior Counsel was



that the launching of the prosecution was beyond the limitation prescribed under Section 77 of the Act of 2006.

6.The third ground that was urged by the learned Senior Counsel for the petitioners is that the requirements under Section 66 of the Act has not been complied with and the directors have been added as accused without even making an averment as to how and in what manner they are incharge of and responsible for the conduct of the day-to-day business of the company.

7.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the shelf life of six months from the date of packaging does not make the food product unfit for consumption after the expiry of the shelf life and therefore, the petitioners after the receipt of the analysis report should have filed an appeal and they failed to do so. To substantiate this submission, the learned Additional Public Prosecutor relied upon regulation 1.2.1(1) and (10) of the Food Safety and Standards(packing and labelling) Regulations 2011. The learned Additional Public Prosecutor submitted that even if the shelf life had expired, the food may still be perfectly safe to consume though quality may have diminished and therefore, it cannot be presumed that the petitioners could not have filed an appeal just because shelf life came to an end.



8.The learned Additional Public Prosecutor in order to substantiate the above submission relied upon the judgment of the High Court of Madhya Pradesh in W.P.No.1951 of 2017, dated 9.9.2019.

9.Insofar as the issue regarding limitation, the learned Additional Public Prosecutor submitted that the proviso to Section 77 of the Act authorises the Commissioner of Food Safety to extend the period of limitation upto three years and in the instant case, the period has been extended for two years by the Commissioner through proceedings dated 23.2.2023 and therefore, the complaint has been filed well within limitation and it is not barred.

10.Insofar as third submission is concerned, the learned Additional Public Prosecutor submitted that sufficient averments have been made in the complaint against the directors and that it is for the directors to establish during trial that they were not incharge and responsible for the conduct of the day-to-day affairs of the company. Thus, the learned Additional Public Prosecutor sought for the dismissal of this petition.

11.This Court has carefully considered the submissions made on either side and the materials available on record.

12.This Court will take the first issue for consideration. The answer that



is given to this issue will have a bearing to decide as to whether the other two issues that have been raised must also be answered in this petition. If the issue is answered in the affirmative, it may not necessary for this Court to get into the other issues that have been raised on the side of the petitioners since it will become an academic exercise.

13. In the instant case, the 'Sunny Bee Palm Sugar Candy' was purchased from the food business operator on 17.11.2021 and a sample was taken and it was sent for analysis on the same day. There is no dispute with regard to the fact that this food product had a shelf life of six months and it is best for use for six months from the date of packaging. The shelf life for this food product comes to an end on 23.4.2022.

14. The food product was sent for analysis to the food analysis laboratory at Tanjore. The analysis was done for the period from 7.3.2022 to 26.4.2022. As stated above, the shelf life comes to an end on 23.4.2022 and whereas, the analysis itself had taken place for more than three days after the shelf life of the food product. On completion of the analysis, a report was prepared to the effect that the food product is unsafe, substandard and misbranded. The analysis report dated 07.5.2022 was sent to the food business operator through letter dated 17.5.2022 and it was received on 19.5.2022. Therefore, by the time the report was received by the food business operator, nearly 26 days had crossed beyond the shelf period of the



food product.

WEB COPY

15. Section 46(4) of the Act provides a very valuable right of appeal against the report of a food analysis report wherein the food business operator can seek for referring the matter to the referral food laboratory as notified by the food authority. This valuable right has been given to ensure that the aggrieved persons get at least one opportunity to test the analysis report that has been given against them since it will form the basis for criminal prosecution against the concerned person.

16. The case of the petitioners is that by the time they received the analysis report, the shelf life of the food product had expired by more than 26 days and therefore, they found that no useful purpose will be served in referring the matter to the food laboratory. Thereby, they have raised a ground that they have lost a valuable right of appeal to refer to the food laboratory and that by itself is a ground to quash the criminal prosecution launched by the respondent.

17. To counter the above ground that was taken by the petitioners, the learned Additional Public Prosecutor has relied upon the relevant regulations under the Act of 2006 and has also relied upon the High Court of Madhya Pradesh.

18. The case before the Madhya Pradesh High Court was that a mango



drink named 'Frooti' was purchased by the Food Safety Officer and the sample was taken and it was sent for analysis. The shelf life of this food product comes to an end on 25.10.2015. On reading the facts of the case, it is seen that the analysis had taken place well within the shelf life period of the food product and the analysis report was prepared on 26.9.2015. In the instant case, the analysis itself crossed almost three days after the shelf life of the food product which is the subject matter in this case. Thereafter, the copy of the report was sent to the petitioners therein on 02.1.2016 and by that time, the shelf life of the product came to an end. This was the factual matrix before the Madhya Pradesh High Court.

19. The ground that was taken before the Madhya Pradesh High Court was that the report of the food analyst was received by the petitioners therein after the expiry of the shelf life of the food product and therefore, they lost their right of appeal for referral under Section 46(4) of the Act. This issue was dealt with by the Madhya Pradesh High Court in the following manner:

*18. The main contention of the petitioners in this writ petition is that the report of the Food Analyst was received by them on 02.01.2016 with liberty to file an appeal under **section 46 (4)** of the Act of 2006 and rule 2.4.6 of the Rules of 2011 within thirty days but by that time the shelf life of the product had already been expired, therefore, they could not avail the statutory right of appeal to get the product analysed by referral laboratory. The product was seized from the petitioner's dealer/ food business*



operator on 08.09.2015 by the Food Safety Officer and on the next date he has sent the same to the Food Analyst, who analysed the food and prepared the report dated 26.09.2015. As per the Food Analyst's report the food was found to be 'sub-standard' as defined under **section 3 (zx)** of the Act of 2006. The said report was received by the Food Safety Officer on 12.10.2015. Thereafter, he demanded requisite information from the petitioners vide letter dated 28.10.2015 and according to the petitioners by that time the shelf life of the product had expired i.e. within six months. As per the information recorded in Form No.VI (Ex.P/3) frooti mango drink was bottled on 26.04.2015 and it was 'best before six months expiry period'. According to the petitioners, the best before six months means the life of the product was only six months from the date of manufacturing and if it is to be analysed after the said date the report is bound to come as sub-standard. **In the Act** of 2006, the sub-standard means the article of food shall be deemed to be sub-standard if it does not meet the specified standards but not to render the article of food unsafe. As per rule 1.2.1 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 the word "best before" means the date which signifies the end of the period during which the food shall remain fully marketable and beyond that date the food may still be perfectly safe to consume through its quality may have diminished. Sub-rule (3) defines "date of packaging" which means the date on which the food is placed in the immediate container in which it will be ultimately sold. Sub-rule (10) defines the word "use-by date" or "recommended last consumption date" or "expiry date" means the date which signifies the end of the estimated period under any stated storage conditions, after which the food probably will not



have the quality and shall not be sold.

19. It is clear from the aforesaid definitions that after expiry date the food probably will have the quality and the safety attributes normally expected by the consumer and as per the definition of "best before" the date beyond that date the food may be perfectly safe to consume though its quality may have diminished, however, it becomes unsafe. This is only an information but not mandatory to use before six month only. It is not mention in the product or sample as whether it is to be used before six month from the date of manufacture or packaging. Under rule 2.4.1 of the Rules of 2011, it is the duty of the Food Safety Officer to keep the sample in such safe condition to maintain the conditions suitable for analysis. It is for the designated officer to take the decision whether after the expiry of the date the product is still referable to the laboratory for re-examination or not. Admittedly, in the present case, the petitioners did not prefer any appeal against the report of Food Analyst and presumed that it is of no use after expiry of six months from the date of packaging. The petitioners ought to have preferred an appeal, if so advised, and then it was for the designated officer to take a decision whether to refer one of the samples to the referral laboratory or not.

20. On dismissal of the appeal by the designated officer or in case of no appeal has been preferred still the designated officer can examine the case on the basis of the sections under which the person has been charged and take a decision for prosecution either by the adjudicating authority or by a special Court, as the case may be. The petitioners are still having the full opportunity before the adjudicating officer to object that they cannot be proceeded under the Act of 2006 and Rules of 2011 only based on



an analyst's report or in absence of filing any appeal. Under the Act of 2006 and Rules of 2011, there is no bar of taking action or decision for prosecution in case the person who did not prefer an appeal and he can be prosecuted based on the report given by the Food Analyst. There is a limitation of 30 days for filing the appeal from the date of Food Analyst's report. There is no bar under the entire Act of 2006 and Rules of 2011 for designated officer to take decision after expiry of shelf life of the product.

21. Shri Aniket Naik learned counsel for the petitioners submits that the provision of section 46 (6) of the Act of 2006 and provision of section 24 of the Insecticides Act are para materia and has placed reliance over the judgment passed by the Apex Court in the case of Gupta Chemicals Pvt. Ltd. (supra). In the aforesaid judgment, the Apex Court has considered the provisions of Insecticides Act, 1968. The Apex Court has quashed the prosecution due to sheer inaction on the part of the Inspector due to which it was not been possible for the appellant to have the sample examined in the central insecticides laboratory and the meantime the shelf life of the sample had expired. The only difference is that under section 24 (4) of the Insecticides Act the accused is required to apply to the Court after launching of prosecution. The Magistrate may in its discretion send the report for analysis to the central laboratory. In the Act of 2006 and Rules of 2011, the right of appeal is provided before the stage of taking decision for prosecution by the designated authority. The designated authority may decide to prosecute after the dismissal of the appeal if preferred by a person or no appeal is preferred. The petitioners received the report of the Food Analyst but did not



prefer the appeal within thirty days. Thereafter, the designated officer has decided to go for prosecution on 17.06.2016.

22. Even otherwise [Section 12](#) provides that the Food Safety Officer while taking a sample for analysis may add to the sample a preservative to maintain it in a condition suitable for analysis .Therefore in a case where the sample of the food has been preserve such a way either by way of adding preservative or by keeping in cold storage than it cannot be presume that after expiry of shelf life same cannot be analysed. For example if sample is taken just few days before "use-by date" or "recommended last consumption date" or "expiry date" and within such period it could be examine by the food analyst only and no time left for referral to higher laboratory by way of appeal than food operator would be free from any punitive action, certainly this cannot be intention of the legislature, hence the provision has been made for prosecution on the basis of the report of food analyst.

20.The learned Additional Public Prosecutor by relying upon the above judgment submitted that, even though the food analysis report was received by the petitioners in this case after the shelf period, nothing prevented them from filing an appeal as provided under Section 46(4) of the Act and just because the shelf life was over, that does not mean that the food product has become substandard and it is merely an assumption on the part of the petitioners to come to such a conclusion.

21.The Madhya Pradesh High Court has taken into consideration two



definitions under the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. The first definition that was taken into account is the definition of the term "best before". For proper appreciation, the definition is extracted hereunder:

1.2.1. "Best before" means the date which signifies the end of the period under any stated storage conditions during which the food shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made and beyond that date, the food may still be perfectly safe to consume, though its quality may have diminished. However, the food shall not be sold if at any stage the product becomes unsafe.

22.The next definition that was relied upon the Madhya Pradesh High Court was the definition of the term "use by date" and for proper appreciation, the same is extracted hereunder:

1.2.10. "Use by date" or "Recommended last consumption date" or "Expiry date" means the date which signifies the end of the estimated period under any stated storage conditions, after which the food probably will not have the quality and safety attributes normally expected by the consumers and the food shall not be sold;

23.After considering the above definitions, the Madhya Pradesh High Court came to a conclusion that even after the expiry date of the food, the quality and the safety attributes of the food may have diminished but however it does not become unsafe. The Court held that it is only an



information given but it is not mandatory to use before six months. Having come to that conclusion, the Court found that the petitioners therein having not filed an appeal, cannot be heard to complain about the violation of Section 46(4) of the Act. The Court also made an observation to the effect that preservatives can be added to the sample to keep it in a proper condition or be kept in a cool storage and thereby, even if the shelf life expires, the sample will not become sub standard. In view of the same, it was held that the food operator should have filed an appeal and worked out his remedy and having failed to do so, cannot turn around and question the prosecution launched against the petitioners.

24. With all due respects, this Court is not able to concur with the view that has been taken by the Madhya Pradesh High Court. The definitions that have been referred by the Madhya Pradesh High Court, on a close scrutiny, clearly shows that the quality of the food will diminish beyond the shelf life of the food product. Therefore, it may be safe to consume the food product but however there is no guarantee that the quality of the food product will not be diminished. It is also clear that after the shelf life period, the quality and the safety attributes of the food product may also diminish. The seminal question that arises for consideration is if a shelf life is given to a food product, it is mandatory that it should not be sold beyond the shelf life. If any food product is sold after the shelf life, that by itself will become an offence under the Act.

This only means that the food product will lose its quality and also the safety



attributes beyond the shelf period. If that is not so, there is no logic or meaning in giving a shelf life to a food product. When it comes to a food product, it should not be dealt with on the basis of assumptions and surmises. It has a direct impact on the health of a person who consume the food product. Therefore, once the shelf life comes an end, it must be safely taken that it will not be safe to consume that food product as it could have lost its quality and safety attributes.

25.If the above test is applied, the food product that is sent to the referral laboratory in the appeal after its shelf life will obviously be found to be lacking in quality. If such report is given by the referral laboratory, it will become very difficult to find out as to whether the report of the referral laboratory has confirmed the report of the food analyst or such report was given since the food product had lost its quality and safety attributes due to the expiry of its shelf life. Hence, no useful purpose will be served in referring the food product to the laboratory after its shelf life.

26.If the judgment of the Madhya Pradesh High Court is taken to its logical end, it will only mean that the shelf life of a food product can be disregarded on the assumption that the food product is safe for consumption and in spite of the expiry of the shelf period, the food business operator must prefer an appeal with the referral laboratory. As stated above, the very basis on which the shelf life period is fixed for a food product will get defeated if



this proposition is accepted. Hence, this Court is not in agreement with the judgment of the Madhya Pradesh High Court.

27. In the light of the above discussion, this Court holds that by the time the petitioners received the analyst report, 26 days had expired after the shelf life and therefore, no useful purpose would have been served by filing an appeal and requesting for sending the sample to the referral laboratory. If that is so, obviously the petitioners have lost a very valuable right given to them under Section 46(4) of the Act.

28. In the light of the above finding, it is not necessary for this Court to go into the other two issues that have been raised and it will only be a wasteful academic exercise.

29. The continuation of the criminal prosecution as against the petitioners will result in abuse of process of law which requires the interference of this Court exercising its Jurisdiction under Section 482 of Cr.PC and accordingly, the proceedings in C.C.No.1756 of 2023, on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed in entirety and this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.



Speaking Order
Index: Yes
Internet: Yes
kp





WEB COPY



19

N.ANAND VENKATESH.J.,

kp

To

- 1.The Inspector of Police
All Women Police Station
Egmore Police Station
Chennai.
- 2.The Public Prosecutor,
High Court of Madras
Madras.

CRL.O.P No.22575 of 2023

22.02.2024