



WEB COPY



Crl.O.P.(MD).No.3905

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.3905 of 2022

1.Shanmuga Vinoth

2.M.S.Solamon

...Petitioners

Vs.

The State,
Food Safety Officer,
Code No.289,
Sankarankovil Talui,
Tamil Nadu Primary Health Centre,
Karivalamvanthanallur-627 753,
Tenkasi District.
(S,T,C.No.729 of 2018)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to quash the proceedings in S.T.C.No.729 of 2018 pending on the file of the learned Judicial Magistrate, Sankarankovil and quash the same as illegal.

For Petitioners

: Mr.C.Christopher

For Respondent

: Mr.S.Ravi,
Additional Public Prosecutor



ORDER

This petition has been filed seeking to quash the proceedings in S.T.C.No. 729 of 2018 pending on the file of the learned Judicial Magistrate, Sankarankovil.

2. The respondent has filed a private complaint against the petitioners for the offences under Sections 3(1) (zz) (v) (viii) and 02.12.1.1 and Section 59(i) of the Food Standards and Safety Act, 2006 (hereinafter referred to as 'the Act'). The first petitioner is a salesman and he used to purchase the bakery items from the second petitioner (A2) and sell the same through out the southern region. On 24.01.2017, the Food Safety Officer intercepted the vehicle and took a sample of a cake and it was sent for food analysis. The report was received from the Food Analyst to the effect that the sample is unsafe as it contains a non-permitted synthetic colour. After issuing statutory notices and after getting the sanction, the private complaint came to be filed before the Court below.

3. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

4. When the matter was taken up for hearing today, it was informed to this Court that the first petitioner (Accused No.1) died during the pendency of the case. In view of the same, the proceeding itself stands abated insofar as Accused No.1 is concerned. The case is prosecuted only for Accused No.2.



WEB COPY

5. The main grounds that were raised on the side of the second petitioner is that there is violation of Section 42 (2) of the Act, since the Food Analyst report was not sent within 14 days from the date of receipt of the sample. The other ground that was raised is that there was violation of Section 42 (3) of the Act, since after receipt of the Food Analyst report, the Designated Officer should send the recommendation within 14 days to the Commissioner of Food Safety for sanctioning prosecution. However, the Designated Officer received the report on 13.02.2017 and he had sent his recommendation only on 24.01.2018 seeking sanction for prosecution.

6. The other ground that was raised is violation of Section 46 (4) of the Act, which provides for a right of appeal against the report of the Food Analyst.

7. It will suffice to go into the issue regarding the non-compliance of Section 46 (4) of the Act. This provision provides for an appeal against the report of the Food Analyst before the Designated Officer, who can refer the matter to the Referral Food Laboratory for opinion. On carefully reading the complaint filed by the respondent, such a right of appeal, at the best was only given to Accused No.1 and there is absolutely no indication as to whether such an opportunity was given to the petitioner (Accused No.2).



WEB COPY

8. The right to appeal is a very important right that has been given to the accused person to question the report of the Food Analyst. If this requirement is not satisfied, the prosecution itself will be vitiated, which will require the interference of this Court. The law on this issue is now too well settled.

9. In the light of the above discussion, this Court holds that there is a mandatory violation of Section 46(4) of the Act and therefore, the continuation of the criminal proceedings against the second petitioner (Accused No.2) will result in abuse of process of law, which requires the interference of this Court.

10. In the result, the proceedings in S.T.C.No.729 of 2018 pending on the file of the learned Judicial Magistrate, Sankarankovil is quashed insofar as the second petitioner (Accused No.2) is concerned. Insofar as the first petitioner (Accused No.1), since he died during the proceedings, the proceedings itself stands abated.

11. In the result, the Criminal Original Petition stands allowed.

26.11.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non Speaking Order
TSG



Cri.O.P.(MD).No.3905

To

1.The Food Safety Officer,
Code No.289,
Sankarankovil Talui,
Tamil Nadu Primary Health Centre,
Karivalamvanthanallur-627 753,
Tenkasi District.

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



WEB COPY



Crl.O.P.(MD).No.3905

N.ANAND VENKATESH, J.

TSG

Crl.O.P.(MD).No.3905 of 2022

26.11.2024